STATE AID — UNITED KINGDOM

Aid C 61/2002 (ex N 196/2002) — Aid to newsprint reprocessing capacity support under the WRAP programme

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

(2002/C 283/04)

(Text with EEA relevance)

By means of the letter dated 2 October 2002, reproduced in the authentic language on the pages following this summary, the Commission notified United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42.

These comments will be communicated to United Kingdom. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

1. Procedure

In December 2001, the Commission received a complaint, against a planned aid measure by the UK Government for the erection of a newsprint reprocessing facility under the WRAP programme. The subsequent correspondence between the Commission and the UK resulted in a notification dated 20 March 2002, of an aid project for a newsprint reprocessing capacity under the Waste and resources action programme. By letter registered on 16 July 2002, the UK notified the general scheme 'Waste and resources action programme', registered under number N 474/02. This notification will be subject to a separate assessment.

2. Description of the measure

2.1. The WRAP programme

The aid is given within the framework of the Waste and resources action programme (WRAP). WRAP is an entity established to promote sustainable waste management. It is funded by the government for the period 2001-2004. WRAP intends to promote the creation of a newsprint reprocessing capacity which utilises waste newspapers and magazines as its raw material input.

2.2. The tender process

WRAP has issued a competitive tender process in July 2001. The tender was submitted to two key conditions: first of all, the reprocessing facility had to produce newsprint, and must be located within the United Kingdom. Secondly, the reprocessing facility must use an agreed tonnage of waste paper per year recovered from the municipal waste stream as raw material input for the duration of the life of the facility. The agreed tonnage must be in excess of the aggregate amount of waste paper used by the successful bidder in a prior calendar year in its newsprint manufacturing facilities in the UK. A funding agreement was entered into on 21 February 2002. The funding is subject to state aid clearance.

2.3. The beneficiary: Shotton

Shotton is based in Shotton, Flintshire, North Wales, being an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. Shotton is owned by UPM-Kymmene Corporation, a Finnish company. The present site of Shotton disposes of two paper machines, using pulp derived from virgin wood and from recycled wastepaper.

2.4. The project presented by Shotton

The project proposes the adaptation of the paper machines to enable wastepaper to substitute for virgin pulp. It proposes also the enhancement of one of the de-inking lines for the recycled paper feeding one of the paper machines. This would allow an increase in wastepaper consumption of approximately 321 000 tonnes per year. The adaptations of the facility will be finished in 2003, and the facility will be fully operating by 2005.
Shotton will source the waste paper from local authorities and waste management companies, which will need to build up a wastepaper collection infrastructure. UPM-Kymmene aims to enter into long term contractual arrangements with local authorities for the major part of its needs in waste paper. Other specific environmental obligations are imposed on Shotton in the specific funding agreement, concerning the reduction of the CO₂ emissions, the reduction of the lorry movements, the reduction of emissions of volatile organic compounds, and the recycling of water.

The total costs of the project are estimated at GBP 127,9 million (EUR 199,16 million), of which the element attributable to recycling constitutes GBP 88,2 million (EUR 137,34 million). The remaining GBP 39,7 million (EUR 61,82 million) represent enhancements to the production and quality capabilities of the existing paper machines, and do not relate to recycling. Shotton has applied for a support of GBP 23 million (EUR 35,81 million).

According to the UK authorities the eligible costs amount to GBP 88 200 000 from which they deduct the investment to meet the mandatory environmental standards (1) (GBP 35 000), and the benefits in the year 1-5 (GBP 824 000) (2). This brings the eligible costs to a total of GBP 87 341 000. As the support asked amounts to GBP 23 million, the aid intensity would be 26,334 %.

3. Assessment of the measure

The measure is funded by resources, granted by the State under the WRAP programme. The measure is granted to an individual beneficiary. It distorts or threatens to distort competition, and could affect trade between Member States, since both newsprint and waste paper are traded internationally. Therefore, the Commission considers at this stage that the measure qualifies as State aid under article 87(1) of the EC Treaty.

3.1. Applicability of the environmental guidelines (3)

The Commission has doubts on the fact that the aid would qualify for an assessment under the environmental guidelines. In general, investment aid approved under these guidelines aims at reducing the pollution caused by the beneficiary, but not at indirect environmental effect, like in the case at hand.

In the first place, the Commission notes that the investment is not designed to improve on standards directly applicable to the company, but to comply with Community standards that apply to the United Kingdom.

The use of waste paper for the production of newsprint seems to be the current state of the art. Paper reprocessing facilities exist in all Member States. Waste paper appears to be a normal raw material with an economic value, subject to trade on the markets.

According to the tender, the aid should be used for the production of newsprint, and the project should be located within the UK. The winning company should commit itself to take up an agreed tonnage of waste paper from the municipal waste stream. The first two conditions in the tender (i.e. the fact that the aid should be used for the production of newsprint, and the condition for the undertaking to be located in the UK) might be seen as excessive in order to achieve the environmental objectives, since it excludes solutions for the waste problem based on direct incentives for collection systems which may rely on the market for waste paper to ensure that the collected waste paper is recycled. Therefore, the Commission has doubts for the justification of these conditions for considering the aid to pursue an environmental objective.

Taking the above considerations into account and based on the information available, the Commission doubts whether the investment qualifies as an investment in the meaning of point 29 of the guidelines. The investment, at least in part, may rather constitute an investment, to which the environmental guidelines do not apply.

Given the doubts on the compliance with the environmental aid guidelines, the commission assessed the measure as well under the guidelines for national regional aid (4). However, since it seems that the investment not only concerns an initial investment, but at least partly a replacement investment, not all the investment costs would be eligible. Furthermore, the aid intensity of the project amounts to 17 %, assuming that all costs would be eligible for regional aid. This exceeds the maximum aid intensity applicable in the Flintshire region, which amounts to 15 %. Moreover, the aid would have to be assessed under the multisectoral framework (5). Other exemptions under article 87(2) and (3) of the EC Treaty do not seem to apply either.

3.2. Compatibility with the environmental guidelines

Although the Commission expressed doubts, at this stage, on the applicability of the environmental guidelines, it is appropriate for the Commission to try and assess environmental guidelines, as the UK notified the aid on that basis. According to the UK, the maximum intensity allowed would amount to 35 %. Increasing the recycling rate of waste paper brings undoubtedly benefits for the environment and this objective is in line with EU-policy on waste management.

First of all, point 37 of the environmental guidelines requires that the eligible costs must be strictly confined to the extra investment costs necessary to meet the environmental objectives. In the present case, the eligible costs presented by the UK refer to the overall investment for the conversion of the existing paper mills to mills using waste paper.

(1) This amount is relating to the part of the investment necessary to meet environmental standards, and concerning the monitoring of air emissions.

(2) These benefits were calculated taking into account the difference between the actual facility and the future facility during the first five years of the investment.

(3) OJ C 37, 3.2.2001, p. 3.


Secondly, point 37 of the environmental guidelines requires the Commission to calculate the cost net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. The UK provided detailed information, but despite the Commission’s request, the UK has not provided full information on the assumptions as regards input and output prices.

Therefore, the Commission has, at this stage and based on the information available, doubts on the compatibility of this aid with the environmental guidelines.

4. Conclusion
In the light of the foregoing considerations, on basis of the information available, and of the preceding preliminary assessment, the Commission decided to initiate the proceedings according to Article 88(2) of the EC Treaty. In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF THE LETTER
The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

1. PROCEDURE
By letter dated 20 December 2001 and registered on 21 December 2001 under number A/40145, the Commission received a complaint, against a planned aid measure by the UK Government for the erection of a newsprint reprocessing facility under the WRAP programme. The complaint was registered by the Commission under number CP219/01. Following this complaint, the Commission asked for clarifications to the UK by letter dated 24 January 2002 and registered under number D/50289. The UK replied by letter dated 5 February 2002, and registered on 7 February 2002 under number A/30923. The Commission asked further questions by letter dated 14 February 2002, and registered under number D/50655. The UK replied by letter dated 7 March 2002, and registered on 11 March 2002 under number A/31885.

By letter dated 20 March 2002, and registered by the Commission on 20 March 2002, under number A/32132, the authorities of the UK notified an aid project for a newsprint reprocessing capacity under the Waste and resources action programme. The notification was registered under number N 196/02. According to the notification, the UK authorities intended, at a later stage, to notify the general scheme ‘Waste and resources action programme’. The Commission informed the UK authorities that the notification was considered to be incomplete, and asked for further questions by letter dated 15 May 2002 and registered under number D/52364. The UK submitted the answers by letter dated 14 June 2002, and registered on 19 June 2002 under number A/34497. By letter registered on 16 July 2002, the UK notified the WRAP scheme. This scheme has been registered under number N 474/02, and will be subject to a separate assessment. By letter dated 26 July 2002, and registered on the same date under number A/35727, the UK asked for a meeting, and agreed to extend the time limit for the Commission to take a decision until 20 October 2002. A meeting was held on 29 August 2002 between the Commission and representatives of the UK Government and of the WRAP programme. The UK provided further information by letter dated 6 September 2002.

2. DESCRIPTION OF THE MEASURE
2.1. The WRAP programme
The aid is given within the framework of the WRAP programme (hereafter WRAP). According to the information submitted by the UK, WRAP is an entity established to promote sustainable waste management, and more specifically to promote efficient markets for recycled materials and products. Its central objective is to enable recycled markets to function more effectively by stimulating demand for recycled materials and products, thereby improving the economics of collection. WRAP’s members comprise the charity Wastewatch, the Environmental Services Association as well as the Secretary of State for Environment, Food and Rural Affairs. It has as duty to administer the aid, and is funded by the government for the period 2001-2004. WRAP ensures that the funds for recycling projects are the minimum necessary, are proportionate to WRAP’s objectives, and that the use of non-government funding is maximised. WRAP functions as an adjunct to the government, and implements government policies, although it has a private corporate form. The financial support in itself is provided though WREB (Waste and Resources Environmental Body Limited), a subsidiary of WRAP. WREB is also in charge with the process for identifying the recipient of the support.

In the present case, WRAP has chosen to give support for the creation of newsprint reprocessing capacity for the following reasons: in the UK newsprint sector, there seems to be an established demand for the recycled products, but a market failure seems to have led to a shortage of reprocessing capacity (1). The UK identified the main cause of the market failure to be the lack of sufficient reprocessing capacity for waste newsprint, which is currently being landfilled in the UK because of the low prices for landfilling. With a greater recycling capability, waste paper would be in strong demand. This market failure would have led to difficulties experienced in sourcing wastepaper in the last decade, and attendant price fluctuations. For this reason, an increase in reprocessing capacity has been hampered by lack of investor confidence. In order to correct for this market failure, WRAP decided, by way of a competitive tender process, to offer support to the private sector to increase newsprint reprocessing capacity which utilises waste newspapers and magazines as its raw material input. According to the UK, the current project will create a real market demand for waste paper, which will provide environmental benefits over time.
2.2. The tender process

In the present case, WRAP has issued a competitive tender in July 2001 inspired by EC public procurement procedures (7), in view to promote the creation of newsprint reprocessing capacity. The specific aim expressed in the tender procedure was to provide a subsidy towards the creation of a newsprint reprocessing facility in return for a commitment to use an agreed tonnage of waste newspapers and magazines recovered from the municipal waste stream as the raw material for the new facility. WRAP’s waste input target was for the agreed tonnage to exceed 300 000 tonnes per year, and the facility to enter into production in 2003, with full capacity to be reached as soon as possible thereafter. The tender was submitted to two key conditions: first of all, the reprocessing facility has to produce newsprint, and must be located within the United Kingdom. Secondly, the reprocessing facility must use an agreed tonnage of waste paper per year recovered from the municipal waste stream as raw material input for the duration of the life of the facility. The agreed tonnage must be in excess of the aggregate amount of waste paper used by the successful bidder in a prior calendar year in its newsprint manufacturing facilities in the UK. Tenderers needed to specify the level of support required to bring forward their proposals, and to demonstrate technological developments and environmental benefits. Furthermore, the tender specification stipulated that any costing included in the tender bids should only refer to the activities and investments needed to achieve the required environmental benefits.

Following the tender procedure, a prequalification pack was sent to five companies, four of which did prequalify and received a tender invitation document. Applications were finally received from two companies: Aylesford Newsprint Limited, and UPM Kymmene — Shotton (hereafter ‘Shotton’). Aylesford Newsprint was appointed preferred bidder in November 2001, but during the discussion between WRAP and Aylesford Newsprint, it appeared that Aylesford Newsprint would not be able to enter into the level of contractual commitment which would enable WRAP to achieve its objectives. That is why WRAP reviewed its position, and appointed Shotton preferred bidder. The decision was taken on 18 January 2002. Discussions then followed between WRAP and Shotton, regarding the completion of the funding arrangements to enable the overall investment to proceed. The funding is subject to state aid clearance. A funding agreement was entered into on 21 February 2002.

According to the UK, the fact that there has been a competitive tender to ensure that the minimum necessary is paid to secure the environmental benefits, avoids the existence of any distortion of competition. That is why the UK authorities consider it arguable that the funding does not constitute State aid. But in order to obtain full legal certainty, it has been decided by the UK to notify the project.

2.3. The beneficiary: Shotton

Shotton is based in Shotton, Flintshire, in North Wales, being an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. Shotton is owned by UPM-Kymmene Corporation, a Finnish company. The present site of Shotton disposes of two paper machines, using pulp derived from a combination of virgin wood and from recycled wastepaper.

2.4. The project

The project proposes the adaptation of the current paper machines to enable wastepaper to substitute for virgin pulp. It proposes also the enhancement of one of the de-inking lines for the recycled paper feeding one of the paper machines. According to the UK authorities, this project will allow to achieve an increase in wastepaper consumption of approximately 321 000 tonnes per annum over that achieved in the UK in 2000. This exceeds WRAP’s objective of achieving a net increase target of 300 000 tonnes per annum in the year 2000. The adaptations of the facility will be finished in 2003, and the facility will be fully operating by 2005.

The UK authorities explain that the waste paper used by Shotton as raw material in its newsprint production process will source from local authorities and waste management companies. UPM-Kymmene aims to enter into long term contractual arrangements with local authorities for the major part of its feedstock. This will enable the local authorities to implement comprehensive long term collection systems where they do not currently exist. The excess wastepaper collected prior to commissioning will be diverted to other paper mills within the UPM-Kymmene group. According to the UK, the local authorities and the waste management companies will need to build up a wastepaper collection infrastructure.

Apart from the fact that Shotton has to use an agreed tonnage of waste newspapers and magazines recovered from the municipal waste stream as the raw material for the new facility, the support to Shotton is submitted to other environmental obligations set out in the funding agreement. These comprise:

— an additional reduction of 118 000 tonnes of CO₂ emissions,

— an annual reduction of some 6 500 lorry movements (this means a minimum reduction of some 325 000 lorry miles per year),

— an annual reduction of 53 tonnes of emissions of volatile organic compounds,

— the recycling of an additional total of 54 600 m³ of water.

According to the UK, the main objective of the current project is to achieve additional newsprint recycling. But the UK argues that the investment project would bring about other environmental benefits consisting in a reduction of the waste going to landfills (8), in the reduction of carbon dioxide and methane emissions from landfills, and in the virgin timber conservation of 1.9 million tonnes. Furthermore, they claim that this project will lead to the creation of an increasing demand for a major proportion of the household waste stream in the region concerned to be recycled. This demand for waste newspapers and magazines, being 30-40 % of household waste by weight, would provide a stable economic platform for the establishment and maintenance of separated collections for household waste for recycling. The simultaneous collection of other recyclable materials at much higher rates could therefore also be supported. This leads to the conclusion that the facility would enable greater proportions of household waste to be recycled (8). This will bring benefits for the environment, while this will also allow less waste to be disposed in the landfills.
The UK authorities argue that the investment in the newsprint facility will enable the UK to make significant progress toward achieving its obligations within the framework of European waste management policy, and deliver tangible environmental benefits. These environmental benefits bring the UK to affirm that the aid qualifies for investment aid under point 29 of the Community guidelines on State aid for environmental protection (10) (hereafter 'environmental guidelines'), when firms undertake investment in the absence of mandatory Community standards. According to the UK authorities, there are no specific mandatory requirements for any newsprint manufacturer to use recycled wastepaper as a raw material. As far as concerns the waste water standards, the new investment in the facility does not involve any additional expenditure on waste water treatment. In the case of air emissions, there is only a very small part referable to mandatory air emissions standards. This investment concerns the installation of equipment for online monitoring of emissions, and amounts approximately to GBP 35 000.

Concerning the costs of the project, the total costs are estimated at GBP 127.9 million (EUR 199,16 million) (11), of which the elements attributable to recycling constitutes GBP 88.2 million (EUR 137,34 million). The remaining GBP 39.7 million (EUR 61,82 million) represent enhancements to the production and quality capabilities of the existing paper machines, and do not relate to recycling. Shotton has applied for a support of GBP 23 million. The UK provided a detailed schedule of the payment of the GBP 23 million.

The elements attributable to recycling are distributed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost (GBP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rebuild of recycled fibre mill line 1</td>
<td>8 400</td>
</tr>
<tr>
<td>Recycled fibre mill line 3</td>
<td>40 600</td>
</tr>
<tr>
<td>Extension of recycled fibre storage</td>
<td>6 700</td>
</tr>
<tr>
<td>Sludge combustion</td>
<td>22 200</td>
</tr>
<tr>
<td>Sludge dewatering</td>
<td>4 000</td>
</tr>
<tr>
<td>Power distribution</td>
<td>1 600</td>
</tr>
<tr>
<td>Raw water treatment</td>
<td>1 500</td>
</tr>
<tr>
<td>Effluent treatment</td>
<td>700</td>
</tr>
<tr>
<td>Mill site installations</td>
<td>2 500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>88 200</strong></td>
</tr>
</tbody>
</table>

This total includes the amount of GBP 35 000 relating to the part of the investment necessary to meet environmental standards, and concerning the monitoring of air emissions. According to the UK, the switch from the current paper mills to the new paper mills using only waste paper will result in an increase in the total earnings of GBP 824 000 over the five year period from the date of full operation.

The UK authorities calculated the aid intensity in the present case on the following manner, based on point 37 of the environmental guidelines: the eligible costs amount to GBP 88 200 000 and they deducted from this figure the investment to meet the mandatory environmental standards (GBP 35 000), and the benefits in the year 1-5 (GBP 824 000). These benefits were calculated taking into account the difference between the actual facility and the future facility during the first five years of the investment. According to the UK, this brings the eligible costs to a total of GBP 87 341 000. As the support asked amounts to GBP 23 million, the aid intensity would be 26,334 %. According to the UK, this aid intensity would be below the maximum intensity, which would amount to 35 % (30 % + 5 %) because of the fact that the investment is located in a region eligible for regional aid under Article 87(3)(c) of the EC Treaty (12).

As far as concerns the employment, the UK authorities argue that the level of employment after the investment is expected to be similar to the present plant.

3. PRELIMINARY ASSESSMENT OF THE MEASURE

According to Article 6 of the Procedural Regulation (13), the decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

3.1. Existence of aid under Article 87(1) EC Treaty

Under Article 87(1) EC 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'.

In this case, the measure is funded by resources, granted by the State under the WRAP programme. The measure is granted to an individual beneficiary. The aid granted under the WRAP programme will cover a significant part of investment costs, which will relieve the company from costs it should normally have to bear. The measure distorts or threatens to distort competition, and could affect trade between Member States, since both newsprint and waste paper are traded internationally (14). In fact, a large part of the UK paper consumption is imported mainly from other Member States (15). It should also be noted that the UK exported 138 000 tonnes of newsprint paper in 2001. It is also clear from the case-law of the Court that when aid granted by the State strengthens the position of an undertaking vis-à-vis other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid (16).

Therefore, the measure qualifies as State aid under Article 87(1) of the EC Treaty.
The investment takes place in an area eligible for regional aid under Article 87(3)(c) of the EC Treaty. For this reason, the aid could be assessed as regional investment aid. However, since the investment seems not to concern only an initial investment, but seems to be at least partly a replacement investment, not all the investment costs would be eligible for regional aid under the Guidelines for national regional aid (18). Furthermore, the aid intensity of the project amounts to 17%, assuming that all costs would be eligible for regional aid. This exceeds the maximum aid intensity applicable in the Flintshire region, which amounts to 15%. Moreover, as the amount of the investment exceeds EUR 50 million, the cumulative aid intensity expressed as a percentage of the eligible investment costs as defined in point 37. The Commission does not have all the information for such an assessment, but the allowable intensity can only become lower. For this reason, the aid could not be approved. Furthermore, according to the UK authorities, the investment will not lead to the creation of employment, as the level of employment is expected to be the similar to that at present. For these reasons, the regional benefits of the project seem to be doubtful to the Commission.

3.3. Assessment of the aid under the Community guidelines on State aid for environmental protection (20)

3.3.1. Applicability of the Community guidelines on State aid for environmental protection

Increasing the recycling rate of waste paper brings undoubtedly benefits for the environment and this objective is in line with EU policy on waste management. However, the Commission has doubts that the notified aid for the investment would qualify for an assessment under the environmental guidelines. It results from point 36 of the environmental guidelines that these guidelines are applicable inter alia to investments which are strictly necessary to meet environmental objectives. In general, investment aid approved under the environmental guidelines aims at reducing the pollution caused by the beneficiary, but not at indirect environmental effects, like the case at hand. Due to the particularities of this investment, the Commission doubts whether the aim of the environmental guidelines is to apply to such cases. This is also confirmed by the fact that (at least for the last years) all aid for similar projects has been approved by the Commission as regional investment aid on the basis of the multisectoral framework, and not under the current environmental guidelines (20).

According to point 6 of the environmental guidelines, the concept of environmental protection refers to any action taken to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources.

According to the conditions set out in the tender, the aid should be used for the production of newsprint, and the project is to be located within the UK. Furthermore, the winning company should commit itself to take up an agreed tonnage of waste paper from the municipal waste stream. The first two conditions in the tender (i.e. the fact that the aid should be used for the production of newsprint, and the condition for the undertaking to be located in the UK) might be seen as excessive in order to achieve the environmental objectives, since it excludes solutions for the waste problem based on direct incentives for collection systems which may rely on the market for waste paper to ensure that the collected waste paper is recycled. Therefore, at this stage, the Commission has doubts on the justification of these two conditions for considering the aid to pursue an environmental objective.

According to point 29 of the 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 as defined in point 37. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards [. . .].’

The Commission notes that the investment is not designed to improve on standards which would directly apply to the undertakings, but to improve the recycling ration in the UK.

According to the information of which the Commission disposes, the use of waste paper for the production of newsprint seems to be the current state of the art. It seems that paper reprocessing facilities exist in all Member States, and that they function similarly. Waste paper appears to be a normal raw material with an economic value, subject to trade on the markets. According to the information available on the website of the Confederation of the European Paper Industry, it seems that 65 % of the newsprint paper is produced on the basis of waste paper (21). Furthermore, nearly the total amount of newsprint seems to be produced on the basis of waste paper in the United Kingdom (21). Waste paper seems therefore to be the normal raw material for the production of newsprint. This is confirmed by the fact that Shotton already uses waste paper in part of its current plant.

Taking the above considerations into account and based on the information available, the Commission doubts whether the investment qualifies as an investment in the meaning of point 29 of the guidelines. The investment, at least in part, may rather constitute an investment, to which the environmental guidelines do not apply.
3.3.2. Compatibility with the environmental guidelines

Although the Commission expressed doubts, at this stage, in the former paragraph about the applicability of the environmental guidelines, it does not prejudice their applicability in the present case. Therefore, it is appropriate for the Commission to try and assess the aid under these guidelines, on basis of the fact that the UK authorities notified the aid on that basis.

First of all, at this stage, the calculation of the eligible costs raises doubts as far as concerning the definition of the eligible costs. Point 37 of the environmental guidelines requires that the eligible costs must be strictly confined to the extra investment costs necessary to meet the environmental objectives. In the present case, the eligible costs presented by the UK refer to the overall investment for the conversion of the existing paper mills to mills using waste paper. Even though the remaining operational life of the existing machines seems to be 10-20 years, the replacement of the existing machines should not be considered as a whole to be admissible as an eligible cost strictly necessary to achieve an environmental benefit.

Secondly, point 37 of the environmental guidelines require the Commission to calculate the cost net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. The UK provided detailed information, but despite the Commission’s request, the UK has not provided full information on the assumptions as regards input and output prices. It should also be noted that, according to the British Recovered Paper Association, it seems preferable to use recycled fibres in large volumes, because it is very expensive to install the necessary de-inking and cleaning equipment to allow recovered paper to be re-processed (24). For this reason, the Commission doubts whether the benefits resulting from the switch to using waste paper as raw material instead of virgin wood pulp could be more important than the amount of GBP 824 000 estimated by the UK.

Therefore, the Commission has, at this stage and based on the information available, doubts on the compatibility of this aid with the environmental guidelines.

4. CONCLUSION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

(24) According to the information submitted by the UK, each time the recycling capacity increased in the UK, the price of mixed waste paper and magazines increased. The supply responds very slowly to the increasing demand, and causes upward pressure on prices.

(2) According to the UK, since the process related to the award of financial support rather than the procurement of a work, supply or service, there could be no publication in the Official Journal. The structure of the process was however informed by the EC procurement rules.

(9) According to the UK, it is estimated that the demand for newsprint of the scale created by the development of this facility will allow around 596 Kt of other materials (steel, aluminium, glass, newsprint, plastic) to be recycled per year.

(10) OJ C 37, 3.2.2001, p. 3.
(12) Point 34(a) of the environmental guidelines.
(14) According to the statistics provided by the Confederation of European Paper Industries, the trade balance of waste paper amounted to 1 774 million tonnes in the EU in the year 2000.
(17) OJ C 37, 3.2.2001, p. 3.
(20) OJ C 37, 3.2.2001, p. 3.