COMMISSION

COMMISSION DECISION

of 4 December 1981

on proposed assistance by the Belgian Government for investments by an Antwerp chemical firm for the production of polyether-polyol

(Only the Dutch and French texts are authentic)

(82/4/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice to the parties concerned to submit their comments as provided for in Article 93,

Whereas :

I

The Belgian law of 17 July 1959, implemented by the Royal Order of 17 August 1959 (1), introduced general measures to aid the Belgian economy and in particular interest rate rebates on loans contracted to pay for investments, State guarantees covering loans contracted by undertakings with banks where certain interest rebates are given, and exemption for five years from tax on income from immovable property.

When examining the Belgian law, pursuant to the procedure defined in Article 93 (1) and (2) of the EEC Treaty, the Commission pointed out that, since it contained no industrial or regional objectives and permitted aid to be given for investment by any firm in any area or industry, it constituted a general aid system which, as such, could not qualify for exemption under Article 92 (3) (a) or (c). In the absence of such specific references, the Commission could not assess the scheme's effects on trade between Member States or on competition and was, therefore, unable to form an opinion as to its compatibility with the common market.

It is now the well-established policy of the Commission to accept such general aid schemes subject to one of two conditions, namely that the Member State concerned informs the Commission of either a regional or sectoral plan of application or where this is felt not to be possible, that it notifies significant individual cases of application.

Commission Decision 75/397/EEC (2), required the Government of the Kingdom of Belgium to notify the Commission in advance and in sufficient time of significant cases of application of the Belgian Law of 17 July 1959, introducing measures to promote economic expansion and the creation of new industries so as to enable the Commission to decide on the compatibility of the proposed aids with the common market.

II

By telex dated 18 January 1979 the Belgian Government informed the Commission of its intention to grant assistance under the Law of 17 July 1959 for investment by a chemical firm located in Antwerp.

The assistance proposed by the Belgian Government is for the establishment of a plant for the manufacture of polyether-polyol with an annual production capacity of 50 000 tonnes. The investment would create 45 new jobs.

(1) Moniteur Belge of 29. 8. 1959.

(2) OJ No L 177, 8. 7. 1975, p. 13.

The firm concerned has 3 000 employees; in 1977 sales totalled Bfrs 21 000 million, of which 78 % were exports to other Member States. The major part of the new output would be exported to other Member States.

The assistance would take the form of a five-year 3 % interest relief grant on a loan representing two-thirds of the investment (Bfrs 519 million), equivalent, according to the Belgian authorities, to a subsidy of 8 % of the investment.

III

The Belgian Government considers that the investment is a normal development of the firm's plant in Antwerp, and in its view the assistance is mainly intended to offset certain costs which are higher in Belgium than in the country in which the group is primarily based.

The Belgian Government also takes the view that the extent to which trade may be affected by an increase in capacity is reduced by the fact that the new output will largely be accounted for by transfers within the group.

IV

In the course of consultations with interested parties, the Government of one Member State pointed out that the assistance proposed by the Belgian Government did not seem to be justifiable on grounds arising from the market in polyether-polyol. The Government of another Member State supported the Commission's position of principle regarding assistance of this type, but did not oppose this particular scheme.

V

The aid proposed by the Belgian Government is therefore likely to affect trade between Member States and distort or threaten to distort competition by favouring the undertaking in question or the production of its goods within the meaning of Article 92 (1) of the EEC Treaty.

A national measure may, in principle at least, compensate for certain differences between the costs of firms in different Member States, but such a measure remains an aid measure, as was stated very clearly by the Court of Justice in its judgments of 10 December 1969 [1] and 2 July 1974 [2], which concerned cases in which the French and Italian Governments put forward, as justification for certain forms of assistance, differences obtaining in the Member States between interest rates and the level of certain wage costs.

(1) Joined cases 6/69 and 11/69 [1969] ECR 523.
(2) Case 173/73 [1974] ECR 709.

The terms of the Treaty provide that aids fulfilling the criteria set out in Article 92 (1) of the Treaty shall be incompatible with the common market. The exemptions from this incompatibility set out in Article 92 (3) of the EEC Treaty specify objectives to be pursued in the Community interest and not that of the individual beneficiary. These exemptions must be strictly construed in the examination both of regional or sectoral aid schemes and of individual cases of application of general aid systems. In particular they may be granted only when the Commission can establish that this will contribute to the attainment of the objectives specified in the derogations, which the recipient firms would not attain by their own actions under normal market conditions alone.

To grant an exemption where there is no compensatory justification would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any benefit in terms of the interest of the Community, while at the same time accepting that undue advantages accrue to some Member States.

When applying the principles set out above in its examination of individual cases of application of general aid systems, the Commission must be satisfied that there exists on the part of the particular beneficiary a specific compensatory justification in that the grant of aid is required to promote the attainment of one of the objectives set out in Article 92 (3). Where such evidence cannot be provided and especially where the aided investment would take place unmodified, it is clear that the aid does not contribute to the attainment of the objectives specified in the exemptions but serves to increase the financial power of the undertaking in question.

In the case in question there does not appear to be such a compensatory justification on the part of the undertaking benefiting from the aid.

The Belgian Government has not been able to provide, nor has the Commission found, any evidence which establishes that the proposed aid meets the conditions justifying one of the exemptions provided for in Article 92 (3) of the EEC Treaty.

Furthermore, notwithstanding the fact that Belgium is experiencing a high rate of unemployment, with the result that the Commission has granted an exemption to a scheme of aids to employment on the grounds that a serious disturbance exists in the Belgian economy, it does not follow that every other aid of whatever nature proposed by the Belgian Government may automatically benefit from one of the exemptions specified in Article 92 (3), since each aid notified must be considered on its own merits in the light of the specific criteria laid down.

As far as the exemptions set out in Article 92 (3) (a) and (c) are concerned in respect of aids designed to promote or facilitate the development of certain areas, it is the case that the Antwerp area continues to enjoy a better socio-economic situation than that of other regions in Belgium ; to the extent to which the general problem of unemployment also exists in Antwerp, it is already provided for under the general scheme to promote employment and there is, therefore, no reason to grant a further exemption in respect of this aid on the grounds that it will promote or facilitate the development of that area, a purpose moreover for which this aid was not intended.

As regards the exemptions provided for in Article 92 (3) (b), this investment would be brought about in any event by normal market forces. There is nothing peculiar to the investment in question to qualify it as a project of common European interest or as one designed to remedy a serious disturbance in the economy of a Member State which merits exemption under Article 92 (3) (b) from the provision laid down in Article 92 (1) on the incompatibility of aids.

Finally, as regards the exemption under Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities', an examination of the situation on the polyether-polyol market indicates that market forces should be sufficient in themselves, without public assistance, to ensure the normal development of that activity. Furthermore, the bulk of the output will be exported to other Member States and consequently there is a risk that granting the assistance will adversely affect trade to an extent contrary to the common interest.

The industry is one in which production capacity is being utilized to a proper extent ; any assistance creating further capacity is likely to have an adverse effect on existing capacity, reducing the profitability of firms in the industry, including those in other Member States.

The firm in question regards the investment as a normal extension of the Antwerp plant, forming part of the overall strategy of the group to which it belongs.

In view of the above, the aid proposal by the Belgian Government does not meet the conditions necessary to benefit from any of the exemptions set out in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The Kingdom of Belgium shall refrain from implementing its proposed scheme, notified to the Commission by telex dated 18 January 1979, to grant the aids provided for by the Law of 17 July 1959 'to encourage economic expansion and the creation of new industries' for certain investments by a chemical firm located in Antwerp.

Article 2

The Kingdom of Belgium shall inform the Commission within two months of the date of notification of this Decision of the measures which it has taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 December 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission