

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 June 1986

concerning aid which the Belgian Government has granted to a ceramic sanitary ware and crockery manufacturer

(Only the French and Dutch texts are authentic)

(86/366/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 in accordance with the above Article to interested parties to submit their comments and having regard to those comments,

Whereas :

I

By Decisions of 16 February 1983 and 24 October 1984 the Commission found that the Bfrs 475 million and Bfrs 83 million in aid granted without prior notification in 1981 and 1983 to a ceramics manufacturer at La Louvière in the form of subscriptions of new capital was incompatible with the common market and therefore had to be withdrawn. These Decisions gave rise to Cases 52/84 and 40/85 before the Court of Justice and have not yet been implemented.

The Commission, having learnt of the Belgian Government's intention to provide the firm in question with fresh support, again through the agency of its regional authorities, in the form of a subscription of Bfrs 295,3 million of new capital, informed the Belgian Government by letter dated 14 June 1984 that the support had to be notified under Article 93 (3) of the EEC Treaty and asked it to effect such notification within a period of 15 days.

The Belgian Government answered the Commission's request by telexes dated 29 June and 19 July 1984, informing it of its decision to participate in a 295,3

million capital increase, planned but not yet carried out, by the firm. It stressed that it was at the Commission's express request that the notification was being made, as in its view the share purchase was not an aid within the meaning of Article 92 of the EEC Treaty and was therefore not subject to the prior notification obligation laid down in Article 93 (3) of the EEC Treaty. The capital increase was intended to enable the firm to undertake investments mainly in the crockery division.

The Commission decided on 23 August 1984 to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the aid proposal. It considered that the financial support in question constituted an aid within the meaning of Article 92 (1) of the Treaty and that the aid did not appear to satisfy the conditions necessary for application of one of the exceptions contained in Article 92 (2) and (3), and gave the Belgian Government notice, by letter dated 27 August 1984, to submit its observations.

II

The Belgian Government answered the Commission's letter by telex dated 26 September 1984, in which it repeated its opinion that the share purchase in question constituted, not a State aid, but a decision comparable to that of a private shareholder, in view of the substantial costs that would be incurred if the firm were to close. It pointed out that the capital increase plan aimed primarily to finance investment in the sanitary ware division, involving no increase in capacity, and that the firm's overall operating results had improved considerably.

By letter dated 22 March 1985 the Belgian Government announced that the regional authorities had decided, on 16 January 1985, to wind up the firm and that as a result the Bfrs 295,3 million capital increase had not taken place.

Within the framework of the consultation of other interested parties, the Governments of four other Member States, three national industrial federations, one European federation and two firms in the same industry indicated that they shared the Commission's concern about aid granted in Belgium to the firm in question and underlined the serious distortions of competition that stem from the Belgian Government's repeated aid awards, since they enable the firm concerned to sell its products on any terms.

III

The provision of public funds to companies in the form of subscriptions of new capital may involve elements of State aid. The company in the present case was handicapped by its financial position and by the current overcapacity in the crockery and ceramic sanitary ware industry, which made it unlikely that it would be able to raise on the private capital market the finance necessary for its survival.

The firm made substantial losses for a number of years : Bfrs 134 million in 1979, Bfrs 243 million in 1980, Bfrs 302 million in 1981, Bfrs 168 million in 1982 and Bfrs 98 million in 1983. These losses represented respectively 23, 39, 45, 20 and 11 % of its turnover in those years. The firm's accumulated arrears to the social security fund also increased between 1979 and 1983 from Bfrs 120,8 million to 248,5 million. If the Bfrs 475 million granted in 1981 and the Bfrs 83 million granted in 1983 had been withdrawn as ordered by the Commission in its Decisions of 16 February 1983 and 24 October 1984 respectively, the firm's financial position would have been even worse.

In these circumstances, a capital injection, whether directly or indirectly out of public funds, provided the firm with financial resources which did not at all correspond to its credit rating on the private capital market.

Although the Belgian Government claimed in its letter of 22 March 1985 that the Bfrs 295,3 million capital increase had not taken place and that the regional authorities had decided to wind up the firm, the Commission has discovered that an advance of Bfrs 104 million on that amount was in fact paid to the firm in 1984, enabling it to continue manufacturing and selling crockery and sanitary ware until its sanitary ware division was taken over in

August 1985 by a new legal entity set up in March 1985 on the regional authorities' behalf. This advance, which was never mentioned in the correspondence from the Belgian Government but whose existence is confirmed by the annual report of the Wallonia Regional Investment Corporation for 1984, kept the firm going artificially for several months and hence constitutes rescue aid.

The firm used to be the largest of the three Belgian sanitary ware producers. Its sales amounted to 6 111 tonnes in 1979, 6 289 in 1980, 6 544 in 1981, 7 386 in 1982, 7 733 in 1983 and 7 601 in 1984, of which 57,7, 61,5, 71,2 74,3, 79,3 and 76 % respectively was exported. It had a share of the Belgian market varying between 20 and 25 % and its exports accounted for 7,9, 9,3, 12,3, 14,9 and 15,2 % respectively of all intra-Community trade in the sector in question between 1979 and 1983.

In 1983, according to the firm's own figures, it supplied 7 % of the Dutch market and 6 % of the German market in sanitary ware, selling 15 % of its output in the Netherlands, 46 % in Germany, 10 % in France, 3 % in the United Kingdom and 5 % in eleven other countries. Its exports outside the common market were minimal.

The average export prices charged by the firm were invariably lower than the average prices of all Belgian sanitary ware exports and all intra-Community trade between 1979 and 1983 in sanitary ware, reaching 78 to 82 % of the Community level and 80 to 85 % of the Belgian level.

Exports of sanitary ware (NIMEXE code 69.10-10) from the Belgium-Luxembourg Economic Union to the other Member States have increased considerably since 1979, although the market, suffering the effects of the downturn in the building industry, has stagnated. They came to 8 650 tonnes in 1979, 9 339 in 1980, 10 556 in 1981, 11 042 in 1982, 14 090 in 1983 and 14 110 in 1984, or 19,4, 22,4, 27,8, 29,9, 34,8 and 35,1 % respectively of all intra-Community trade in sanitary ware (in terms of weight).

The Commission has no data on production, sales, exports and prices of the firm's crockery.

BLEU exports of crockery (NIMEXE codes 69.11 and 69.12) to the other Member States between 1979 and 1984 remained static at 5 to 6 000 tonnes a year, or about 5 % of intra-Community trade.

In view of the above, the aid in question, which undoubtedly favoured the firm concerned, has affected trade between Member States and threatened to distort competition in the common market within the meaning of Article 92 (1) of the Treaty.

Article 92 (1) provides that aid meeting the criteria laid down therein is in principle incompatible with the common market. The exceptions provided for in Article 92 (2) are not applicable in this case because of the nature of the proposed assistance, which is not directed towards such objectives.

Article 92 (3) of the Treaty lists the aid which may be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community as a whole and not of a single Member State. In order to ensure the proper functioning of the common market, and having regard to the principle embodied in Article 3 (f) of the Treaty, the exceptions provided for in Article 92 (3) must be construed narrowly when any aid scheme or any individual award under a general scheme is scrutinized.

In particular, they may be invoked only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the objectives of the said exceptions.

To apply the exceptions where there is no such compensating benefit or where the aid is not necessary for the attainment of one of those objectives would be to give unfair advantages to the industries of certain Member States by improving their financial position and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest within the meaning of Article 92 (3).

The Belgian Government has been unable to give, or the Commission to discover, any justification for a finding that the aid in question falls into any of the categories of exception provided for in Article 92 (3).

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes or facilitates the development of certain areas, the La Louvière area, though eligible under the Belgian regional aid scheme, on account of its poor socio-economic situation, is not one where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 92 (3) (a), and the Belgian aid award does not have the requisite features of aid to facilitate the development of certain economic areas within the meaning of Article 92 (3) (c), inasmuch as it is not conditional on initial investment or job creation as explained in the 1979

Commission communication on the principles of coordination of regional aid systems⁽¹⁾.

Nor, of course, has the aid measure the features of a 'project of common European interest' or of a project likely to 'remedy a serious disturbance' in the Belgian economy, so as to qualify for the exception in Article 92 (3) (b). Belgium belongs to the central regions of the Community, which do not have, by Community standards, the most severe economic and social problems and in which there is a greater danger than elsewhere of a competitive bidding-up of aid and of aid affecting trade between Member States.

As to the exception in Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities', the situation of the crockery and ceramic sanitary ware industry, and particularly the overcapacity that exists in that industry in the Community, suggests that to preserve capacity artificially through aid is against the common interest. This holds true even if, without such aid, the firm concerned might have had to close.

The Belgian Government has produced no cogent evidence to support its case.

In its message of 19 July 1984, it maintained firstly that the Bfrs 295,3 million capital injection would enable the firm to undertake mainly rationalization investments which would lead to no increase in production capacity and would be centred on the crockery division, and secondly that it was essential to the firm's survival. Subsequently, in its telex of 26 September 1984 it contended, firstly, that the capital injection would be used primarily to finance rationalization investments in the firm's sanitary ware division involving no capacity increase and would be made with a view to the firm's modernization and possible splitting up, and, secondly, that closure was the alternative to making available the extra money needed for the modernization drive.

Quite apart from the inconsistencies between them, these arguments do not convince the Commission that the Bfrs 295,3 million in aid does not adversely affect trading conditions to an extent contrary to the common interest. The Belgian Government's plan to give the recipient firm Bfrs 295,3 million in the form of a subscription of new capital therefore does not qualify for application of any of the exceptions provided for in Article 92 (3) of the Treaty.

Lastly, as regards the advance payment of Bfrs 104 million made unlawfully in 1984, this aid enabled the recipient firm to carry on its ceramic sanitary ware operations until they were taken over by the new legal entity in August 1985.

⁽¹⁾ OJ No C 31, 3. 2. 1979, p. 9.

It also enabled it to continue its crockery production until the decision was taken to wind the firm up in January 1985. Crockery sales continued even after that date.

The recipient firm's operations have already been maintained artificially for a number of years by repeated government subsidies. Like that aid, the Bfrs 104 million advance does not, for the reasons given above, qualify for application of any of the exceptions provided for in Article 92 (3).

Although the recipient firm has since been wound up, the Commission considers that the adoption of a final negative decision regarding the two aid measures in question is necessary. This Decision fulfils in particular the requirement that the Bfrs 104 million in aid unlawfully granted but recovered and that competing firms' rights be protected in so far as they have suffered loss or damage as a result of the infringement of the Treaty's provisions on State aid,

HAS ADOPTED THIS DECISION:

Article 1

The aid in the form of a subscription of Bfrs 295,3 million of new capital in a firm manufacturing crockery and ceramic sanitary ware situated at La Louvière and currently in liquidation is incompatible with the common

market within the meaning of Article 92 of the EEC Treaty. Belgium may not put the said aid proposal into effect.

Article 2

Belgium shall recover the advance of Bfrs 104 million unlawfully paid to the firm in 1984 within the limits of the possibilities afforded by the firm's liquidation.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 10 June 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission