

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 May 1989

on aid granted by the Italian Government to the newsprint industry

(Only the Italian text is authentic)

(90/215/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

The Ente Nazionale per la Cellulosa e per la Carta (ENCC) is a corporation under public law consisting of all producers of paper and cellulose as well as undertakings using cellulose in Italy. It was founded by Law No 1453 of 13 June 1935.

The ENCC has the statutory task of promoting the development of cellulose production in Italy; of facilitating the production and use of national raw materials for the production of cellulose; of organizing the production and sale of paper; of collecting and providing information concerning the production of cellulose and paper.

In order to achieve these objectives, the ENCC aids silviculture and paper-making research and afforestation; the ENCC also channels aid to publishers, notably to the press, linked — *inter alia* — to their consumption of newsprint.

The ENCC's activities are partly financed by means of levies charged on home-produced cellulose and on certain types of paper and board, as well as on similar imported

products, and partly by means of funds provided directly by the Italian Government, which are earmarked for publishers.

The modalities of the aid measures granted through the ENCC have repeatedly been altered. The Commission only accepted these alterations after having verified their compatibility with the common market.

Thus, in November 1974, the Commission closed the procedure provided for in Article 93 (2) of the EEC Treaty with respect to the ENCC's interventions after having been assured by the Italian Government that aid to the consumers of Italian newsprint and of newsprint imported by the ENCC would also be granted to publishers who import newsprint directly from other Member States; that no aid would be granted for publications in other languages than Italian, if such publications were to be exported; that research in paper-making would no longer be financed by means of the yield of the levy on imports from other Member States.

On 16 June 1976 the Commission took a final Decision 76/574/EEC⁽¹⁾ on a new aid scheme in favour of the press (Law No 172 of 6 June 1975) demanding that the Italian Government publish that these aids are granted, regardless of whether the publisher purchases the paper from the ENCC or imports it directly.

In November 1983 the Commission decided to close the Article 93 (2) procedure which it had opened in April 1982 with respect to yet a new aid scheme in favour of publishers operated via the ENCC (Law No 416 of 5 August 1981). The procedure was closed further to the Italian Government's statement that aid measures for

⁽¹⁾ OJ No L 185, 9. 7. 1976, p. 32.

newsprint production in southern Italy had not been included in the law and that aid measures in favour of cultural publications were subject to restrictions, which would prevent any alteration of trading conditions in the Community to an extent contrary to the common interest.

The Court of Justice gave preliminary rulings relating to the compatibility with the EEC Treaty of the Italian levies on cellulose and paper and the aid measures financed by means of these levies on 19 June 1973 (*Capolongo versus Maya*, Case 77/72), on 18 June 1975 (*IGAV versus ENCC*, Case 94/74) and on 22 March 1977 (*Ianelli & Volpi versus Meroni*, Case 74/76).

II

By letter dated 2 February 1987 the Italian Government informed the Commission pursuant to Article 93 (3) of the EEC Treaty of its intention to renew and modify Law No 416/81, which had expired on 31 December 1985. Without awaiting the Commission's approval, the Italian Government adopted the successor scheme as Law No 67/87 on 25 February 1987. Additional information regarding the new scheme was provided to the Commission by letter dated 4 May 1987. After a first scrutiny the Commission doubted the compatibility with the common market of the new law for three reasons: Article 8 (12) of Law No 67/87 permitted the ENCC to substitute quantities of newsprint for up to 30 % of the subsidies to the press; the ENCC had allegedly been subsidizing transport costs of the Italian manufacturer of newsprint, *Cartiera di Arbatax* in Nuovo province, Sardinia, and this operating aid could continue under Law No 67/87; the buying and selling of newsprint by the ENCC's subsidiary *SIVA* would allegedly cost Lit 14,5 billion in 1986 and Lit 28 billion in 1987 and part of these sums could favour the Italian newsprint industry.

Consequently the Commission feared that Law No 67/87 in favour of publishers in Italy could contain elements of State aid in favour of Italian newsprint producers as well and therefore decided to initiate the procedure provided for in Article 93 (2). The Italian Government was informed of this decision by letter dated 6 July 1987 and was invited to submit its observations, as well as specific information concerning the ENCC's interventions on the newsprint market, within the framework of the procedure.

The Italian Government submitted its observations by letter dated 3 November 1987. Regarding Article 8 (12) of Law No 67/87 the Italian Government did not agree with the Commission's view that the possibility for the ENCC to substitute quantities of newsprint for part of the subsidies to the press could affect trade between Member

States. Nevertheless, in order to remove any doubts the Commission might still have, the Italian Government would instruct the ENCC to refrain from using the opportunity offered by Article 8 (12) of Law No 67/87; the said opportunity had so far not been used. With respect to the alleged agreement between the ENCC and *Cartiera di Arbatax*, the Italian Government stated that this convention no longer existed. With respect to the ENCC's interventions on the market for newsprint, the Italian Government confirmed that these had amounted to Lit 14,5 billion in 1986 and were expected to amount to Lit 21 billion in 1987. The legal basis of these interventions was however not Law No 67/87 but Law No 1453/35 and a Presidential Decree dated 18 April 1979.

The Italian Government failed to provide the whole of the specific information the Commission had requested in its letter of 6 July 1987.

Within the framework of the Article 93 (2) procedure observations were also submitted by, among others, the government of a third country with which the Community has a free trade Agreement. This government claimed that the ENCC procured newsprint from the national industry at higher prices than the ones paid for newsprint imported from other Member States and at much higher prices than those applied by certain non-EEC suppliers.

In view of these new allegations and of the still missing information on the ENCC's buying and selling of newsprint the Commission, by telex dated 29 January 1988, repeated its earlier requests to be informed on all aspects of the ENCC's interventions on the newsprint market, as well as on the repartition of the yield of the levies on paper and cellulose between the ENCC's various activities. The Commission also invited the Italian Government to comment on the alleged high prices paid by the ENCC to Italian newsprint manufacturers, as stated by the EFTA third country in its complaint.

The Italian Government replied by telex dated 25 April 1988 that all information requested by the Commission regarding Law No 67/87 had already been provided and that Law No 67/87 was the only scheme against which the procedure provided for in Article 93 (2) had been initiated. The observations of the third country mentioned by the Commission bore no relation to this scheme, according to the Italian Government.

The Commission decided on 22 June 1988 to close the Article 93 (2) procedure regarding Law No 67/87, considering that its three objections to this law had been met by the Italian Government: the possibility of substitution of quantities of newsprint for subsidies to the press by the ENCC provided for in Article 8 (12) of the law had never been used and would not be used in the future either; the agreement between the ENCC and *Cartiera di Arbatax*

had been discontinued; the ENCC's buying and selling of newsprint was not financed by means of Law No 67/87.

At the same time the Commission decided to initiate a new Article 93 (2) procedure regarding the alleged aid elements in favour of the Italian newsprint industry contained in the ENCC's interventions on the newsprint market, interventions based on Law No 1453/35 and the Presidential Decree of 18 April 1979. By letter dated 7 July 1988 the Italian Government was invited to submit its observations within the framework of the procedure and notably to provide proof that the ENCC's interventions had not favoured Italian producers of newsprint. The Commission also requested data regarding the levies on cellulose, paper and cardboard and the use of the yield of these levies by the ENCC and regarding the ENCC's interventions on the newsprint market.

III

The Italian Government submitted observations within the framework of the procedure by letter dated 24 November 1988, according to which the ENCC had indeed paid higher prices for Italian-produced newsprint in 1987 than for newsprint from other Member States and much higher than for newsprint imported from third countries.

As these figures did not allow for an exact calculation of the total amount of aid provided to the Italian manufacturers of newsprint, the Commission requested, by letter dated 4 January 1989, that the Italian Government complete the data provided, notably the amounts of Italian, Community and third-country newsprint bought by the ENCC in 1987, as well as the corresponding data on prices and amounts for 1985 and 1986.

Not having received any reply, the Commission sent a reminder letter to the Italian Government on 1 March 1989, in which it announced that a final decision would be taken on the basis of the information in its possession if the Italian Government did not provide all the necessary data within two weeks. The Italian Government provided part of the missing data in a letter dated 14 March 1989, however not the separate quantities of Italian, Community and third-country newsprint bought

by the ENCC in 1985, 1986 and 1987, but only the total quantities.

In the context of the consultation of other interested parties within the framework of the procedure, the Governments of two other Member States and a manufacturer of newsprint in a third Member State submitted information.

IV

The use of public funds in a Member State to finance an agency which buys and sells newsprint on behalf of the domestic press contains elements of State aid in favour of the newsprint manufacturers in the Member State concerned, if this agency gives preferences to domestically produced rather than imported newsprint, be it in terms of quantities or prices.

Although the Italian Government failed to provide all the information requested by the Commission, the available evidence shows that the ENCC, through its subsidiary SIVA of which it is the majority shareholder, does indeed give preference to Italian newsprint.

In 1984 the ENCC bought 81 417 tonnes of Italian and 6 279 tonnes of imported newsprint; in 1985 it bought 74 082 tonnes of Italian and 20 119 tonnes of imported newsprint; in 1986 it bought 145 098 tonnes of Italian newsprint and 27 405 tonnes of imported newsprint. Italian newsprint thus accounted for 85 % of the ENCC's purchases from 1984 to 1986.

In 1987 the ENCC bought 221 024 tonnes of newsprint, the origin of which is not stated in the information provided by the Italian Government. On the basis of the available data on prices and quantities it would seem that these 221 024 tonnes are almost entirely of Italian origin.

The amount of Italian newsprint purchased by the ENCC represented 39 % of Italian production in 1984, 42 % in 1985, 68 % in 1986 and approximately 85 % in 1987, whereas the total amount of newsprint purchased by the ENCC represented 25 % of Italian consumption in 1984, 25 % in 1985, 37 % in 1986 and 43 % in 1987.

As regards the prices the ENCC pays for Italian, Community and third-country newsprint, the Italian Government provided the following data (prices in lire per kilogram):

Year	Kind of newsprint (g/m ²)	Origin		
		Italy	EEC	Others
1985	45	802	800	721
	48	764	675	668
1986	45	827	676	723
	48	772	—	—
1987	45	820	763	696
	48	756	—	—

No newsprint of 48 g/m² of non-Italian origin was bought by the ENCC in 1986 and 1987. Newsprint of 45 g/m² constituted 88 % of the quantities bought by the ENCC in 1985, 95 % in 1986 and 98 % in 1987.

The newsprint was sold to the Italian press for a uniform price of Lit 830 per kilogram in 1985, Lit 805 per kilogram in 1986 and Lit 790 per kilogram in 1987 for newsprint of 45 g/m². For newsprint of 48 g/m² these prices were Lit 795 per kilogram, Lit 766 per kilogram and Lit 756 per kilogram respectively.

The Commission draws the following conclusions: the ENCC has become more important over the years as a provider of newsprint to the Italian press; the ENCC mainly and increasingly buys Italian newsprint; the ENCC pays higher prices to Italian newsprint manufacturers than to their competitors in other Member States and in third countries.

Consequently the Italian Government grants aid to the domestic newsprint industry by means of the ENCC.

The Commission estimates that the Italian newsprint industry received an aid of some Lit 900 million in 1985, Lit 21 billion in 1986 and Lit 12 billion in 1987; the total aid in these three years amounted to approximately Lit 34 billion (ECU 23 million). This sum does not include the additional advantage the Italian newsprint manufacturers have, as they can sell the bulk of their production to one single purchaser.

V

The aid to the Italian newsprint industry results from a misuse of the aid scheme in favour of silvicultural and paper-making research, afforestation and publishers, to which the Commission did not object in 1974.

VI

There is competition between manufacturers of newsprint in the Community and there is trade in newsprint between Member States, even though the Community as a whole imports more than half of the newsprint it needs from third countries.

Intra-Community trade in newsprint represented 17 % of Community production in 1984; 17,6 % in 1985; 19,4 % in 1986; 21,6 % in 1987. Italian newsprint manufacturers participate in intra-Community competition.

According to the data collected annually by the European Confederation of Pulp, Paper and Board Industries, Cepac, Italy produced 207 000 tonnes of newsprint in 1984, 178 000 tonnes in 1985, 212 000 tonnes in 1986 and 242 000 tonnes in 1987, representing some 10 % of

Community production and some 4 % of Community consumption. By far the largest manufacturer of newsprint in Italy is Cartiera di Arbatax, which has a productive capacity of some 200 000 tonnes per year.

Italy exported 29 000 tonnes of newsprint in 1984, 28 000 tonnes in 1985, 11 000 tonnes in 1986 and 28 000 tonnes in 1987, mainly to the USA.

In 1984 Italy imported 177 000 tonnes of newsprint, of which 62 000 tonnes (35 %) from other Member States; in 1985 232 000 tonnes, of which 85 000 tonnes (37 %) from other Member States; in 1986 imports amounted to 268 000 tonnes, of which 104 000 tonnes (39 %) from other Member States; in 1987 Italy imported 303 000 tonnes of newsprint, of which 125 000 tonnes (41 %) from other Member States.

VII

Where financial assistance from the State strengthens the position of certain enterprises compared with that of others competing with them in the Community, it must be deemed to affect those other enterprises.

Consequently, the aid which the Italian Government grants to its domestic newsprint industry affects trade between Member States and distorts or threatens to distort competition within the meaning of Article 92 (1).

Article 92 (1) provides that, in principle, any aid fulfilling the criteria set out therein is incompatible with the common market.

The exceptions to this principle set out in Article 92 (2) of the Treaty are inapplicable in this case in view of the nature and objectives of the proposed aid.

VIII

Article 92 (3) of the Treaty lists the aid which may be considered compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community as a whole and not in that of a single Member State. In order to ensure the proper functioning of the common market and taking into account the principles laid down in Article 3 (f) of the Treaty, the exceptions to the principle of Article 92 (1) set out in paragraph 3 of that Article must be interpreted strictly when any aid scheme or any individual aid award is examined.

In particular, they may be applied only where the Commission establishes that, without the aid, market forces alone would be insufficient to induce potential recipients to act in such a manner as to contribute to the attainment of one of the objectives sought by the exceptions in Article 92.

To apply the exceptions to cases which do not contribute to the attainment of such an objective, or where the aid is not essential to that end, would be tantamount to granting undue advantages to the industries or firms of certain Member States, the financial position of which would be bolstered, and might affect trade between Member States and distort competition without this being justified in any way by the common interest within the meaning of Article 92 (3).

The Italian 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).

IX

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, it should be noted that the Italian Government has not advanced any considerations of a regional nature for the grant of the aid in question.

Regarding the exception provided for in Article 92 (3) (a) ⁽¹⁾ in favour of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, the Commission is aware of the fact that the largest Italian manufacturer of newsprint Cartiera di Arbatax is located on the Island of Sardinia, which meets these definitions. Even though the Commission as a matter of principle does not consider operating aids compatible with the common market, it decided on 2 March 1988 by Decision 88/318/EEC ⁽²⁾ to apply the exemption in Article 92 (3) (a) to Law No 64/86, which provides for special interventions in the Mezzogiorno for, *inter alia*, aids to alleviate the transport costs of Sardinian companies.

Consequently, the disadvantages which Cartiera di Arbatax faces due to its location in Sardinia are offset by a specific aid scheme and there is no regional justification for additional aid in the form of the purchase of this company's products at inflated prices by the ENCC.

The application of the exemption laid down in Article 92 (3) (c), in favour of aid to contribute to the development of certain economic areas, does not appear relevant in this case, as it is the Commission's well-established policy only to apply this exception to aid linked to investments or job creation in certain less-favoured regions where such aid can be justified. The aid granted to the Italian newsprint industry is linked neither to investments nor to job

creation but only to the amounts of paper sold to the ENCC.

As regards the exceptions provided for in Article 92 (3) (b), the aid in favour of the Italian newsprint industry is intended neither to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Italian economy; neither has the Italian Government advanced any arguments in favour of a possible application of these exceptions.

As regards the exceptions provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission considers that aid in the form of the purchase of increasing quantities of Italian newsprint by the ENCC at inflated prices does not facilitate the development of the domestic newsprint industry, but merely serves artificially to preserve the *status quo* in this sector. Such operating aid enables Italian manufacturers to postpone necessary adaptations, which would have allowed them to compete on equal terms with manufacturers in other Member States and in third countries.

The Commission also considers that aid which determines quantities sold and sales prices distorts competition and affects trade to a much larger extent than e.g. investment aid. Such operating aid in favour of the domestic newsprint industry therefore adversely affects trading conditions to an extent contrary to the common interest.

X

Conclusion

As set out in I of this Decision, the Commission has dealt with successive specific aid schemes in favour of Italian publishers, all of which were operated by the ENCC, a public corporation with the statutory task of promoting the interests of forestry and the cellulose and paper industry in Italy. The Commission notably needed to ensure that these aid schemes did not contain provisions which could favour the domestic paper industry.

The Commission now notes that misuse by the ENCC of aid schemes in favour of the Italian press — in order to favour the Italian paper industry as well — does take place; the special position of the ENCC *vis-à-vis* the paper industry makes this possible.

The aid awarded by the Italian Government to the Italian newsprint industry within the framework of the application of Law No 1453/35 and of the Presidential Decree dated 18 April 1979 — in the form of acquisitions of increasing amounts of domestically produced newsprint

⁽¹⁾ Method for application of Article 92 (3) (a) and (c) to regional aid: OJ No C 212, 12. 8. 1988, p. 2.

⁽²⁾ OJ No L 143, 10. 6. 1988, p. 37.

by the ENCC, as well as in the form of artificially high purchase prices in comparison with the market price — is incompatible with the common market. By granting this aid, the Italian Government has misused the aid scheme financed by means of levies, to which the Commission decided not to object in November 1974. Where the Commission finds that aid is being misused, it decides that the State concerned shall abolish or alter such aid,

HAS ADOPTED THIS DECISION :

Article 1

The aid awarded by the Italian Government to the Italian newsprint industry within the framework of the application of Law No 1453/35 and of the Presidential Decree dated 18 April 1979 — in the form of acquisitions of increasing amounts of domestically produced newsprint by the ENCC, as well as in the form of artificially high purchase prices in comparison with the market price — is

incompatible with the common market and therefore must be abolished from the date of notification of this Decision.

Article 2

The Italian Government shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to comply herewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 3 May 1989.

For the Commission

Leon BRITTAN

Vice-President
