

COMMISSION DECISION

of 13 December 1994

on the proposal of the United Kingdom to award aid to Carpets International (UK) plc
(formerly Abingdon Carpets plc), Gwent

(Only the English text is authentic)

(Text with EEA relevance)

(94/1071/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement establishing the European Economic Area and, in particular, subparagraph (a) of Article 62 (1) thereof,

Having, in accordance with the abovementioned Articles, given notice to the parties concerned to submit their comments to it,

Whereas:

I

By letter dated 23 September 1993, pursuant to Article 93 (3) of the EC Treaty and the Code on aid to the synthetic fibres industry⁽¹⁾, the United Kingdom authorities notified the Commission of a proposal to award aid retrospectively to Abingdon Carpets plc in support of a completed investment programme costing approximately £ 4 900 000 (ECU 6,39 million) in a new facility for the production of polypropylene bulked continuous filament (hereinafter PP-BCF) yarn on the company's site in Crumlin, Gwent. The yarn is processed by the company to produce carpets. The company was acquired by Shaw Industries Inc in September 1993 and, on 1 January 1994, the business together with that of Kosset Carpets Ltd was transferred to Carpets International (UK) plc (hereinafter CIP), a new wholly owned subsidiary of Shaw Industries Inc.

The proposed aid would be awarded in the form of a grant of £ 750 000 (ECU 0,98 million) under the *Regional Development Grant* (hereinafter RDG) scheme which was approved by the Commission in 1984.

It should be noted that the company applied for assistance on 29 March 1988 and that, under the terms of the RDG scheme, applicants could undertake the

investments for which they had applied for aid before receiving approval from the UK authorities. The proposal was the subject of correspondence between the Commission and the UK authorities in September 1990 and, in December 1991, between the Commission and the company. However, as noted above, the UK authorities did not formally notify a proposal to award aid to the company until 23 September 1993.

The Commission decided on 14 December 1993 to open the procedure provided for in Article 93 (2) in respect of the proposed aid.

In taking this decision, the Commission considered that, on the information provided by the UK authorities, the proposed aid would be likely to distort competition and affect trade among Member States to an extent contrary to the common interest because it would result in an increase in the production capacity of the aid beneficiary and, therefore, could not conform with the Code under which aid could be authorized only if it would lead to a significant reduction in the production capacity of the aid beneficiary. Accordingly, the proposed aid appeared to be incompatible with the common market.

By letter dated 27 January 1994, the Commission informed the United Kingdom that it had decided to open the procedure provided for under Article 93 (2) in respect of the proposal to award aid to CIP. Other Member States and interested parties were informed by publication of the letter in the *Official Journal of the European Communities*⁽²⁾.

II

By letter dated 7 March 1994, the United Kingdom submitted comments under the procedure.

The UK authorities argued that the Commission should assess the proposed aid against the terms of the version of the Code in force at the time the investment was undertaken, i.e. the 1987 to 1989 Code⁽³⁾, because the investment was carried out in 1988, and not against the

⁽¹⁾ OJ No C 346, 30. 12. 1992, p. 2 and OJ No C 224, 12. 8. 1994, p. 4.

⁽²⁾ OJ No C 79, 16. 3. 1994, p. 8.

⁽³⁾ OJ No C 183, 11. 7. 1987, p. 4.

terms of the current version of the Code, which came into effect on 1 January 1993. In support of this contention, the UK authorities cited the Commission's decision to authorize a proposal to award aid to Crimpfil plc.

Moreover, the UK authorities stated that it would be technically very difficult and uneconomic to adapt the equipment concerned to produce anything other than PP-BCF yarn, and explained the problems that would be encountered if it were attempted to produce polypropylene staple fibre on the machinery or to convert to the production of polyester or nylon yarn. Furthermore, they stated that the company had no intention of producing anything other than PP-BCF yarn and that it was prepared to give an undertaking to that effect, which the UK authorities would in turn be willing to monitor.

The UK authorities stated that statistics on the market for PP-BCF yarn were not available but pointed to evidence of rapid growth in both this market and the market for polypropylene staple fibre with PP-BCF production within Western Europe forecast to grow by 6% annually over the period to 1996.

Production of PP-BCF yarn in Western Europe

1993 to 1996

(*'000 tonnes*)

1993	1994	1995	1996
175	186	197	209

Source: ICI 'Propathene' Business Plan, 1994.

The UK authorities also recalled that they had previously supplied the Commission with statistics showing that in 1989, when the company had started to produce PP-BCF yarn as a result of the investment in question, demand in Western Europe for PP-BCF for the production of tufted carpets exceeded production capacity by 11 400 tonnes. The UK authorities quoted sources indicating that there would be continuing undercapacity for the production of PP-BCF yarn within Europe, and they noted that there had recently been extensive investment in PP-BCF yarn conversion equipment especially in Belgium and the other Benelux countries. Furthermore, they argued that, as the Code existed primarily to address problems of overcapacity, it should not be applicable to proposals to award aid in sub-sectors of the synthetic fibres industry where demand exceeded capacity and where the balance was satisfied by imports.

By investing to enable it to produce PP-BCF yarn with the required characteristics, CIP had been able progressively to reduce its imports of the yarn from the United States of America, previously the only source of

the required type of PP-BCF yarn which was not available from any Community supplier. As the capacity resulting from the investment in question had replaced imports, the proposed aid would not have any adverse effect on intra-EEA trade in PP-BCF and, in any case, the UK authorities considered that CIP's share of the market was insufficiently large to affect intra-EEA trade significantly.

The UK authorities further stated that there were environmental advantages as a result of greater use of polypropylene filament yarn in 'all-in-one' carpet production, for example, whereas the coloration of some fibres consumed significant quantities of energy and resulted in heavy discharge of aqueous effluent, no such effluent was generated in the coloration of polypropylene filament yarn. Furthermore, by enabling the company to optimize colours and exploit the yarn's blending potential, the investment had brought about a significant amount of innovative product development and 'contributed to R&D in Europe'.

To date, the investment had created 122 new jobs (50 directly and 72 indirectly), as opposed to the 97 new jobs (33 directly and 64 indirectly) that had been created when the UK authorities notified the proposed aid to the Commission. A further 11 new jobs would be created during 1994. The investment was located in Crumlin, Gwent, within the Merthyr and Rhymney travel-to-work area, an area defined as a Development Area under the terms of the RDG scheme which was authorized by the Commission as compatible with the common market under Article 92 (3) (c). The area is also eligible for support under Objective II of the Structural Funds and has one of the worst records for employment in Wales and in the United Kingdom as a whole, having suffered significantly from the run-down of the coal and steel industries of South Wales which were once the main employers in the area. Taking account of the investment in question, the level of unemployment in the travel-to-work area had improved to 14% from 17,1% in March 1988 when the company applied for the aid, compared with the most recent estimates for Wales, 10,1%, and the United Kingdom as a whole, 9,9%.

The UK authorities stated that the project had therefore had a 'significant impact' on the area, and commented that diversification and investment in other industries had been essential in helping the area to recover and in building a self-sustaining economy.

III

In commenting under the Article 93 (2) procedure, the International Rayon & Synthetic Fibres Committee (hereinafter CIRFS) opposed the aid on the grounds that it would not conform to the Code and that, because PP-BCF yarn and polyamide bulked continuous filament (hereinafter PA-BCF) yarn were in competition in certain markets, the creation of new capacity for the production

of PP-BCF yarn would have an impact not simply on other producers of the yarn, but also on producers of PA-BCF for which the average capacity utilization rate of existing EEA producers in 1993 was approximately 76%. CIRFS also commented that, although CIP's product was an improvement on earlier generations of PP-CF, the technical characteristics of CIP's product and production processes could not be regarded as unique. Finally, CIRFS commented that there had been recently a significant increase in capacity within the EEA to produce PP-BCF yarn with further increases under way and planned that would result in 'substantial overcapacity'.

The Federation of Danish Textile and Clothing Industries (hereinafter FDTCI) also opposed the proposed aid and claimed that, as it would not be difficult to adapt the machinery concerned to produce ordinary polypropylene filament yarn, the investment would in effect result in an increase in capacity within the EEA for the production of such yarn, for which there was in their opinion already overcapacity. FDTCI claimed that the proposed aid would therefore have an adverse effect on other producers of polypropylene filament yarn and on Danish carpet manufacturers with whom CIP competed in the tufted carpets market.

The European Association for Textile Polyolefins (hereinafter EATP) stated that, in their opinion, there was undercapacity for the production of PP-BCF while demand was high, mainly because of the Russian market for carpets, although it was not certain that this demand would continue at its present high level. This had resulted in significant levels of investment in PP-BCF within the Community, which were being or had been undertaken without State aid and would increase capacity and result in overcapacity before the end of 1994.

However, the British Polyolefin Textiles Association supported authorization of the proposed aid and, in particular, the view expressed by the UK authorities that it should be assessed against the terms of the 1987 to 1989 Code as in force when the company made the investment for which it had sought retrospective assistance.

By letter dated 3 May 1994, the comments submitted under the procedure were sent to the UK authorities, which replied by letter dated 19 July 1994. The UK authorities repeated the regional benefits of the investment in question. They also emphasized that, in their opinion, it was not currently economically feasible to convert the equipment to produce PA-BCF and reiterated the readiness of the company to give an undertaking to that effect and the UK authorities' readiness to monitor such an undertaking. Furthermore, they dismissed the view that PP-BCF and PA-BCF were in competition for certain end-uses and explained why the two types of fibre should be considered complementary in terms of styling. Finally, they noted that CIRFS and EATP had confirmed the current undercapacity for the

production of PP-BCF within Europe and remarked that this undercapacity had been even more marked at the time CIP carried out the investment in question.

IV

In opening the Article 93 (2) procedure on the proposed aid to CIP, the Commission stated that it accepted 'that, without the necessary technical specifications having been made before the manufacture of the equipment, equipment used to produce PP-BCF yarn could not be used to produce polyamide or polyester yarn'. In commenting under the procedure, the UK authorities described in detail why the equipment concerned could not easily be adapted to produce polypropylene staple fibre or converted to produce polyester or polyamide, but did not offer any evidence to refute the Commission's view that the machinery concerned could be adapted relatively easily to produce polypropylene filament yarn generally, stating only that there were 'marked differences' between PP-BCF and other types of polypropylene filament yarn.

The Commission has never asserted that the machinery concerned could be used to produce PA-BCF or polyester BCF yarn or polypropylene staple fibre, nor has it ever doubted that there are 'differences' between PP-BCF and other types of polypropylene filament yarn. Accordingly, and in the absence of any evidence or arguments to the contrary, the Commission remains of the opinion that, as stated in the opening of the procedure, 'it is relatively easy to adapt such equipment, without the need for prior specifications, to produce polypropylene filament yarn'. However, given that the company would be prepared to give an undertaking that it will only produce PP-BCF on the machinery concerned, and that the UK authorities would be prepared to monitor such an undertaking, the Commission is prepared to assess the proposed aid as being in support of capacity to produce PP-BCF yarn only. As PP-BCF has other end-uses than in the production of tufted carpets, it would be wrong solely to focus on trade in PP-BCF for use in that sector.

There is trade in PP-BCF yarn between Member States and within the EEA (approximately 45 000 tonnes in 1992) so that, by favouring CIP, the proposed aid would strengthen its position compared with other producers that have to adapt to change either without aid or with aid that has been authorized as compatible with the common market and, since 1 January 1994, the functioning of the EEA Agreement. The size of CIP's share of the market for PP-BCF and the extent to which they export to other countries within the EEA is irrelevant to the question of whether or not any aid to the company would have an effect on intra-EEA trade. Because the proposed aid would mean that CIP had been able to carry out the investment in question without

having to bear the full cost and because more than one company is active in the relevant market, it undoubtedly constitutes aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement, and threatens to distort competition and affect trade among the Member States.

The proposed aid was properly notified to the Commission in accordance with Article 93 (3) and the current version of the Code on aid to the synthetic fibres industry.

The Commission was thus able to formulate its views and assess the proposed aid.

Article 92 (1) lays down the principle that, except where otherwise allowable, 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 among Member States, incompatible with the common market. However, Article 92 (2) and Article 92 (3) describe the circumstances in which such aid is or may be allowed.

Article 92 (2) specifies certain types of aid that are compatible with the common market. Because of the character, location and purpose of the aid in question, none is applicable.

Article 92 (3) specifies aid that may be compatible with the common market. Compatibility must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market and, taking into account the principles of Article 3 (g), the exceptions to the principle of Article 92 (1) set out in Article 92 (3) must be construed narrowly when scrutinizing any aid scheme or individual award.

In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not contributing to such an objective or where aid was not necessary to that end would give an unfair advantage to certain Member States' industries or undertakings, whose financial positions would merely be bolstered, thereby affecting trading conditions among Member States and distorting competition.

The exception provided for in Article 92 (3) (a) relates to aid intended to promote the economic development of certain areas. As the standard of living in the Merthyr

and Rhymney travel-to-work-area is not abnormally low nor is there serious underemployment within the meaning of Article 92 (3) (a), it is not applicable in this case.

The exception provided for in Article 92 (3) (b) relates to aid intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of any Member State. The UK authorities have not put forward any substantive arguments to this effect, or argued that the aid should be considered compatible with the common market by virtue of this exception, other than to assert, without reference to Article 92 (3) (b), that the project 'contributed to R&D in Europe' because it had enabled CIP to optimize the use of colour and exploit the potential for blending yarns, resulting in two of its products becoming market leaders. This is not sufficient justification for the Commission to conclude that the project is 'an important project of common European interest'. Furthermore, there is not 'a serious disturbance in the economy' of the United Kingdom. Therefore, the exception provided in Article 92 (3) (b) is not applicable.

The exception provided for in Article 92 (3) (c) relates to aid intended to facilitate the development of certain economic areas or activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

By creating at least 122 jobs, the investment in question has facilitated the development of the Merthyr and Rhymney travel-to-work area, an area eligible for regional aid by virtue of Article 92 (3) (c). The intensity and other aspects of the proposal to award aid retrospectively to CIP under the RDG scheme in the form of a grant of approximately £ 750 000 (ECU 0,98 million), calculated as 15 % of the capital expenditure on new assets, are in accordance with the terms on which the scheme was approved by the Commission in 1984.

However, the sectoral effects of regional aid to the synthetic fibres industry have to be controlled even for the most underdeveloped areas of the Community — which do not include the Merthyr and Rhymney travel-to-work area — and the aid in question has therefore to be examined in the framework of the Community interest.

Since 1977, the conditions under which aid may be awarded to the synthetic fibres industry have been prescribed by a Code whose terms and scope are periodically revised, most recently in 1992.

The UK authorities have asserted that the proposed aid should be assessed against the 1987 to 1989 Code, which was in force on the date that company made the

investment in question. In making this assertion, they cited the Commission's decision to authorize a notified proposal to award aid retrospectively under the RDG scheme in support of investments by Crimpfil Ltd, a synthetic fibres producer located in the same area as CIP.

In assessing the proposal to award aid retrospectively to Crimpfil Ltd, the Commission decided that on the date the company carried out the investments in question — and, by doing so, became entitled to the aid subject to authorization by the Commission — none of the investments came within the scope of the version of the Code then in force.

In the current case, it has never been suggested that the proposed aid to CIP does not come within the scope of the current Code nor even that it did not come within the scope of the 1987 to 1989 Code as in force on the date that the company made the investment in question. Therefore, the investment programme concerned did and does come within the scope of the Code and the UK authorities were required to seek authorization. However, although there were informal contacts with the Commission in 1990 and 1991, the UK authorities did not notify the proposed aid until 23 September 1993. The proposal has therefore to be assessed in the light of the current Code which has been in force since 31 December 1992.

The current Code requires the notification of any proposal to award aid, in whatever form, to synthetic fibres producers by way of support for such activities and, since the introduction of the Code, it has been interpreted consistently as applying to all proposals to award such aid regardless of whether the support for production would be direct or indirect, i. e. of activities downstream of production such as the processing or commercialization of fibres and yarns produced within the EEA by the aid beneficiary or an affiliated company in order to produce secondary or final products. However, the Code states that 'In the case of aid coming under the frameworks on State aid for research and development and in environmental matters, the substantive examination of the aid schemes notified will be carried out applying the provisions of those frameworks'.

The UK authorities stated that there were environmental advantages in the increased use of PP-BCF, mainly resulting from the 'concepts of "all-in-one" material carpet production. Mechanical recycling, without segregation, into secondary converted products is much easier and energy recovery through combustion would help in the incineration of hazardous materials. In addition, no aqueous effluent is generated in producing coloured polypropylene yarn which is achieved by the direct addition of encapsulated pigments'. However, the UK authorities have never asserted that the proposed aid should be assessed against the terms of the Community

Guidelines on State aid for environmental protection⁽¹⁾, nor have they asserted that the availability or amount of the proposed aid was in any way determined by the environmental characteristics of either the product or the production process.

Similarly, and as noted above, the UK authorities stated that the project 'contributed to R&D in Europe' because it had enabled CIP to optimize the use of colour and exploit the potential for blending yarns, resulting in two of its products becoming market leaders. Accordingly, an integral part of the project was the 'significant amount of product development' involved. However, the UK authorities have never asserted that the proposed aid should have been assessed against the terms of the Community Framework for State Aids for research and development⁽²⁾, nor, on the evidence submitted by the UK authorities, would the Commission be justified in concluding that the proposed aid should be assessed against the Framework.

Therefore, the proposed aid in support of the investment programme by CIP must be assessed against the current version of the Code on aid to the synthetic fibres industry.

The Code sets out the criteria to be applied when the Commission scrutinizes such proposals and, among other matters, specifies that the authorization of investment aid is in all cases conditional on a significant reduction in the production capacity of the prospective recipient, and that companies should finance from internal resources any investments in expanding or maintaining capacity that they consider necessary to adapt their production to market trends and technological developments. The investment in question concerns the installation of new production capacity, and the UK authorities informed the Commission that the consequent increase in capacity would not be more than offset by any contemporaneous reductions in capacity within the EEA by either CIP or the group to which the company now belongs. Therefore, the proposed aid does not fulfil the fundamental requirement of the Code that it must lead to a net reduction in capacity.

As the Commission stated in opening the Article 93 (2) procedure on the proposed aid to CIP, the Code states that, while the Commission is generally sympathetic to investment aid awarded to overcome the structural handicaps of the Community's less-favoured regions, the requirement of a significant reduction is absolute and paramount to all other considerations. Accordingly, when the Commission assesses whether or not a proposal to award investment aid to a company would lead to a significant reduction in production capacity, it takes account of the specifics of the proposal, including the

⁽¹⁾ OJ No C 72, 10. 3. 1994, p. 3.

⁽²⁾ OJ No C 83, 11. 4. 1986, p. 2.

volume and location of the investment in question. However, the Code states clearly that where, as in the current case, a company would increase or maintain its capacity, the Commission will take an unfavourable view of the proposal.

Similarly, in assessing whether or not a significant reduction in production capacity would be made in the production capacity of the prospective aid beneficiary, the Commission will consider the trend of the average rate of capacity utilization for the specific fibre or fibres concerned and the state of the market for the final product in question; but such consideration of these aspects of the case is without prejudice to the requirement in the Code that there must be a reduction.

Therefore, as the Code does not allow aid in support of the production of fibres covered by the Code to be exempted from the need to conform to the Code on the grounds that current or future demand for a specific fibre exceeds current supply, the Commission does not, in assessing the proposed aid to CIP, need to take a view on whether demand for PP-BCF exceeds production capacity within the EEA and is likely to continue to do so for some time, or if it is likely that capacity will soon exceed demand.

It should be noted that, if the Code were to allow aid in support of the production of fibres on the grounds that there was or was likely to be undercapacity within the EEA, that situation would be likely to be transformed rapidly into one of overcapacity. This is why the Code requires that producers of synthetic fibres producers adapt to change in demand either without the benefit of aid or with aid that has been authorized by the Commission as compatible with the common market and the functioning of the EEA Agreement. In this context, the Commission notes that the UK authorities and two of the interested parties that commented under the Article 93 (2) procedure stated that there had recently been numerous investments in new capacity for the production of PP-BCF yarn, all of which have to proceed either without aid or with aid authorized by the Commission.

Furthermore, as noted in the notice of the opening of the Article 93 (2) procedure, the Commission's decision to authorize a proposal to award aid to Filature du Hainaut on the grounds that the final product would result in the creation of entirely new markets is irrelevant to the assessment of the proposed aid to CIP because, in the earlier case, the proposed aid was assessed against an earlier version of the Code which, unlike the current Code, did not expressly limit authorization to proposals that would lead, *inter alia*, to a significant reduction in capacity of the aid beneficiary. Therefore, although the UK authorities have asserted that CIP's final product, a carpet produced from PP-BCF yarn with particular qualities of stain-resistance and wool-like appearance, is 'an innovative new product', the Commission does not need to take a view on whether or not CIP would compete exclusively with other manufacturers of carpets

produced from PP-BCF or with manufacturers of carpets made from any other fibre whose production comes within the scope of the Code such as PA-BCF. In any case, on the evidence presented to the Commission by the UK authorities, it is evident that CIP is not the only EEA-based manufacturer of carpets produced from PP-BCF nor was it so at the time the investment was carried out. Therefore, there can be no question of an entirely new market's having been created as was so in the case of the proposed aid to Filature du Hainaut.

By favouring CIP so that its market position was no longer determined by its own efficiency, financial strength and power and, thereby, increasing the difficulties of other synthetic fibres producers that adapt to change without aid or with aid authorized as compatible with the common market, the proposal to award aid in support of the production of PP-BCF cannot be regarded as likely to facilitate a development that, from the Community's perspective, would be sufficient to counteract the resulting distortion of trade.

Therefore, while the proposed aid would, within the meaning of Article 92 (3) (c), facilitate the development of the Merthyr and Rhymney travel-to-work area, it would adversely affect trading conditions to an extent contrary to the common interest and the conditions which have to be fulfilled in order to apply the exception provided in Article 92 (3) (c) are not fulfilled.

The exception provided for in Article 92 (3) (d) relates to aid intended to promote culture or heritage conservation. Because of the nature of the project, this exception is not applicable.

In view of all the foregoing considerations, the proposed aid in support of the investment by CIP in new capacity for the production of PP-BCF does not meet the conditions which must be fulfilled in order to apply any of the exceptions set out in Article 92.

The aid is therefore incompatible with the common market and incompatible with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The proposed aid, totalling approximately £ 750 000, which the United Kingdom authorities propose to award Carpets International (UK) plc (formerly Abingdon Carpets plc) under the *Regional Development Grant* scheme in support of the production of polypropylene

bulked continuous filament yarn at its site in the Merthyr and Rhymney travel-to-work area, Gwent, is incompatible with the common market within the meaning of Article 92 of the EC Treaty and with the functioning of the EEA Agreement, and cannot, therefore, be paid.

Article 2

The United Kingdom shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 13 December 1994.

For the Commission
Karel VAN MIERT
Member of the Commission