

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 July 1986

on a proposal by the Belgian Government to grant aid for investments by a flat-glass producer at Auvelais

(Only the Dutch and French texts are authentic)

(86/593/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 Belgian Law of 17 July 1959 introducing and coordinating measures to encourage economic expansion and the creation of new industries, and the royal decree of 17 August 1959⁽¹⁾ implementing it, introduced general measures to assist the Belgian economy in the form, *inter alia*, of interest rebates on loans raised to pay for investments, government guarantees covering loans contracted by enterprises with banks giving entitlement to a rebate, and exemption for five years from land tax.

When it examined the Law in accordance with the procedure laid down in Article 93 (1) and (2) of the EEC Treaty, the Commission found that it constituted a general aid scheme as it contained no sectoral or regional objectives. Since the scheme applied to all investments, making no distinction between enterprises, regions or sectors, it could not qualify for application of any of the exceptions provided for in Article 92 (3) (a) or (c) of the EEC Treaty. Without such detailed information, the Commission was

unable to assess the scheme's effects on trade between Member States and on competition, or, more especially, its compatibility with the common market.

The Commission has decided to authorize such general aid schemes where one or other of the following two conditions is met: either the Member State concerned notifies to the Commission a plan for regional or sectoral application, or alternatively, where this is not considered feasible, it notifies significant individual awards.

Under Commission Decision 75/397/EEC⁽²⁾, the Belgian Government is required to notify the Commission, giving it time to state its view in advance, of all significant individual awards under the Law of 17 July 1959, introducing and coordinating the measures to encourage economic expansion and the creation of new industries, so that the Commission may decide whether they are compatible with the common market.

II

By letters dated 5 April and 25 July 1984, the Belgian Government informed the Commission, in accordance with that procedure, of its intention to grant, under the Law of 17 July 1959, aid towards investments by a flat-glass producer at Auvelais, in the province of Namur.

The investments relate to the renovation of two float-glass production lines aimed at improving energy use and incorporating technical developments without any increase in optimum capacity. Their total amount is estimated at 2 043,8 million Belgian francs. They include the complete rebuilding of the furnaces, modernization of the rest of the two production lines, and investments to increase cold-glass productivity.

⁽¹⁾ *Moniteur belge*, 29. 8. 1959.

⁽²⁾ OJ No L 177, 8. 7. 1975, p. 13.

The proposed aid would take the form of an interest subsidy of 4 % for five years on two-thirds of the investment and exemption for five years from land tax, representing a net grant equivalent of 4,8 %. In justification of its proposal, the Belgian Government pointed to the improved energy use and the firm's continuing competitiveness in the European market due to the investments, and emphasized the social aspect in the form of the setting-up of a job-creation fund for which the producer has assumed responsibility in order to assist in the relocation of some of its employees who have been made redundant.

III

After an initial scrutiny of the notification, the Commission concluded that the aid proposals could not be considered compatible with the common market on the ground that they would distort competition and affect trade between Member States to an extent contrary to the common interest, owing notably to the vulnerability of the flat-glass sector and the Commission's view that the renovation of a float line is in principle a replacement investment. The exceptions provided for in Article 92 of the Treaty did not, therefore, seem to be applicable, the notification being such that the Commission was unable to check whether certain aspects of the investments might justify part of the proposed aid. The Commission decided to initiate the procedure provided for in the first subparagraph of Article 93 (2) and, by letter dated 10 September 1984, gave notice to the Belgian Government to submit its observations on, among other things, the energy question and the innovative nature of the technology employed.

After two bilateral technical meetings, the Belgian Government, by letter dated 21 December 1984, submitted its observations under the said procedure. It argued that, although the entire expenditure incurred by the producer in rebuilding its two furnaces was motivated by its desire to save energy and hence ensure the profitability of its plant, a sum of 625,143 million Belgian francs represented the extra cost of the technological innovations incorporated in the new furnaces compared with conventional plants. These concerned more particularly the burner collars, the hearths and the electric boosts in the melting zones, the restricted openings/mixers, aspects of the rebuilding of the regenerators and innovations in the conditioning zones. The Belgian Government also stressed the risk the producer had taken in building furnaces of an entirely new design, the success of which would benefit the European glass industry as a whole, and again emphasized the compensating benefits granted by the firm to its workforce.

By letter dated 13 June 1986, the Belgian Government sent additional observations to the Commission. It stated, among other things, that the letter of 21 December 1984 constituted an amendment to the notification of the aid

scheme; the aid would be limited to an interest subsidy of 4 % for five years on 625,143 million Belgian francs and a corresponding exemption from land tax for five years, giving a net grant equivalent of 2,5 % of the total investment. It considered that these specific investments constituted a pilot project on a Community scale and requested that a decision be taken on the amended notification at the earliest opportunity.

In the context of the consultation of other interested parties, the Governments of two Member States, an industry federation and a manufacturing group in the same sector indicated that they shared the Commission's concern about the planned assistance.

IV

The interest subsidy and the exemption from land tax proposed by the Belgian Government constitute aids within the meaning of Article 92 (1) of the EEC Treaty because they would enable the recipient firm to be relieved, by means of State resources, of part of the cost of the investment which it would normally have to bear.

According to the information in the Commission's possession, there were in the Community of Ten at the end of 1984 25 flat-glass float lines and seven drawn flat-glass production plants, plus another two float lines and four drawn-glass plants in Spain and Portugal.

For its part, Belgium has four float lines and one drawn-glass plant.

The two float lines belonging to the Belgian producer concerned have a joint optimum capacity of 360 000 tonnes a year, or approximately 7 % of installed capacity in the Community; its effective production represents approximately 40 % of Belgian basic flat-glass production.

Flat glass is traded between Member States and there is competition between the various producers. The Belgian producer in question exports about 40 % of its production to the other Member States and 14 % to non-member countries, the remainder being sold or processed in Belgium. Exports of flat glass (SITC 66440) from the Belgo-Luxembourg Economic Union to the other Member States amounted to 413 000 tonnes in 1982, 447 000 tonnes in 1983 and 481 000 tonnes in 1984, whereas imports fell from 126 000 tonnes in 1982 to 114 000 in 1983 and 92 000 in 1984. In this context it should be noted that Luxembourg has one float line.

The flat-glass industry is in difficulties owing to stagnant demand and under-utilization of capacity, and these have had an adverse effect on company finances and led to job cuts and plant closures. The Belgian producer in question has been accumulating losses since 1980. The *Groupeement Européen des Producteurs de Verre Plat* (GEPVP) estimates that overcapacity in Western Europe amounted to some 400 000 tonnes in 1984.

For these reasons, by Decision 84/497/EEC⁽¹⁾, the Commission found that aid proposed by the Netherlands Government for the setting-up of a new flat-glass production plant in the Netherlands was incompatible with the common market and should therefore not be granted.

Consequently, the aid proposed by the Belgian Government would affect trade between Member States and distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring both the firm concerned and Belgian flat-glass production.

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.

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 EEC Treaty are inapplicable in this case in view of the nature and objectives of the proposed aid.

Article 92 (3) of the EEC Treaty lists those aids 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 fact of a single Member State. In order to ensure the proper functioning of the common market and take 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 in examining any aid scheme or any individual aid award.

In particular, they may be applied only where the Commission establishes that, without the aid, the free play of market forces would not by itself induce potential recipients to act in such a manner as to contribute to the attainment of one of the objectives sought.

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).

In view of the above, the proposed aid does not fall within any of the categories of exception provided for in Article 92 (3).

As to the exceptions provided for in Article 92 (3) (a) and (c) concerning aid to promote or facilitate the develop-

ment of certain areas, it should be noted that the standard of living in no part of Belgium is abnormally low and that there is no serious underemployment there within the meaning of the exception provided for in subparagraph (a); as far as the exception in subparagraph (c) is concerned, the Auvélais area in the province of Namur where the producer in question is located has not been included among those requiring special regional aid. Belgium forms part of the Community's central regions, that is, those which are not suffering, in a Community context, from the most serious social and economic problems, but where there is a real risk of an upward spiral of aids and where any aid is likely, more than elsewhere, to affect trade between Member States.

As to the exceptions provided for in Article 92 (3) (b), it is clear that the aid is intended neither to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Belgian economy.

As to the exceptions provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, the periodic renovation of a float line, which must be carried out every six to nine years, must in principle be considered a replacement investment the cost of which is an element of the operating costs. It is perfectly normal and in the interests of the producer itself that it should use the most modern and economic techniques and materials in order to reduce its running costs, including energy consumption. Consequently, aid for the periodic renovation of a float line does not satisfy the requirements of the development of the sector concerned without adversely affecting trading conditions to an extent contrary to the common interest within the meaning of paragraph 3 (c) of Article 92. This holds true all the more when there is overcapacity in that sector and remains valid even where the firm concerned makes an exceptional effort to help its former employees by, for example, setting up a job-creation fund.

The information furnished by the Belgian Government, under the terms of the procedure, concerning the technical innovations incorporated in the rebuilt furnaces was examined by the Commission with particular care. According to the Belgian Government, these elements cost 625,143 million Belgian francs, or 31 % of the total investment. The Commission also took note of the applicability of these elements to the group's other plants, and of their accessibility to other groups in the flat-glass industry.

The Commission is in favour of every endeavour to bring about further reductions in energy consumption within the Community. However, it takes the view that industry itself is the first to gain from any reduction in its energy, and hence production, costs. Investment undertaken with this object in view at the time of the periodic renovation of a production plant is therefore normally effected without the need for incentives in the form of aid. The

⁽¹⁾ OJ No L 276, 19. 10. 1984, p. 37.

correctness of this argument is manifest in the present case since the rebuilding of two furnaces at Auvelais in 1970 and 1976 has led to energy savings of about 25 % — in an industry in which the share of energy costs in the gross value of products exceeds 8 %. In view of the energy price terms available to the investor at the time of his decision to invest, the overinvestment bound up with the implementation of the abovementioned technical innovations could be expected to yield a profit.

It must be concluded from this that even the specific elements of the investment aimed at conserving energy, mentioned by the Belgian Government in the course of the procedure, do not justify the award of State aid.

Consequently, the Belgian Government's amended aid scheme does not satisfy the conditions necessary for the application of one of the exceptions set out in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The Belgian Government shall refrain from implementing its proposal, notified to the Commission by letters

dated 5 April and 25 July 1984, and amended by letters dated 21 December 1984 and 13 June 1986, to grant aid under the Law of 17 July 1959 towards investments effected at Auvelais by a flat-glass producer.

Article 2

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

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 29 July 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission