II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 July 1996

concerning State aid that the City of Mainz, a local authority of the Federal Republic of Germany, has granted to Grundstücksverwaltungsgesellschaft Fort Malakoff Mainz mbH & Co. KG, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG

(Only the German text is authentic)

(Text with EEA relevance)

(96/631/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof;

Having given notice, in accordance with Article 93 (2) of the EC Treaty, to the other Member States and third parties concerned to submit their comments,

Whereas:

I

On 21 December 1994 the Commission, after having received detailed complaints from external sources, decided to initiate the procedure under Article 93 (2) of the EC Treaty with regard to a land-sale agreement between the City of Mainz and Grundstücksverwaltungsgesellschaft Fort Malakoff Mainz mbH & Co. KG, a real-estate holding of Siemens AG/Siemens Nixdorf Informationssysteme AG. It concluded that the terms and conditions of the agreement might contain State aid elements incompatible with the common market. The German Government was informed about the decision by letter dated 23 January 1995. The German authorities were requested to provide further information concerning the details of the case and to submit an expert valuation by the date of the sales contract of the site in question. On 19 April 1995, the German Government informed the Commission that such expert valuation was in preparation and that it would submit its comments in substance once the expert valuation was available.

On 5 May 1995, the decision to initiate the procedure was published in the Official *Journal of the European Communities* [1], with the request to other Member States and other interested parties to submit their comments. No such comments were received.

On 10 July 1995, the German Government submitted the expert valuation with some additional comments. On 9 October 1995, the case was, amongst other issues, the subject of a meeting between representatives of the Commission and the German Government. On 17 January 1996, the Commission transmitted a list of questions concerning the details of the expert valuation, and in particular their calculation concerning the economic relevance of some provisions of the sales contract. By letter dated 18 March 1996, the German authorities proposed to discuss these questions in a meeting with representatives of the administration of the City of Mainz, the land valuers and representatives of the Commission. This meeting was held on 26 March 1996 in Bonn. It was agreed that the German authorities would submit additional comments and information regarding the questions which could not be solved during that meeting in writing. The German Government sent its additional comments and information on 23 May 1996.

[1] OJ No C 113, 5. 5. 1995, p. 17.

II

By contract dated 24 February 1992, the City of Mainz acquired a site of 24 212 m² in the inner area of Mainz, close to the Rhine, from the *Land* of Rheinland-Pfalz which had used it for the barracks of one of its riot police units. The City of Mainz, as part of a general policy to render the inner area of the town more attractive, preferred to have the riot police unit moved to another area.

The City of Mainz acquired the site at a price of DM 33 950 000 (DM 1 402,20 per m²). This price was based on a valuation carried out by the Staatsbauamt Mainz-Süd on 8 July 1980, namely 12 years before the date of the purchase contract. The price was calculated on the basis of a value of the land of DM 10 895 400 (DM 450,00 per m²) and a value of the buildings of DM 23 054 600. According to the sales contract the ownership of the land was to be transferred by mid-1994.

The contract between the City of Mainz and the *Land* Rheinland-Pfalz stipulates that the transfer of the site to the City of Mainz is agreed to enable the City of Mainz to sell the land, after removal of the existing buildings, to Siemens AG or Siemens Nixdorf Informationssysteme AG or to related enterprises, under the following terms and conditions:

— the final purchaser has to accept contractually the obligation to construct office and business buildings for a distribution and training centre of Siemens AG and/or Siemens Nixdorf Informationssysteme AG and shall be liable to pay a contractual penalty of DM 7 million should this obligation not be fulfilled,

— the final purchaser has to let the built-up site for a minimum period of 15 years to Siemens AG, Siemens Nixdorf Informationssysteme AG or connected firms, which have to run a taxable business ('Gewerbesteuer') for the benefit of Mainz,

— the final purchaser shall be liable to pay an increased purchase price for the site which shall correspond to the actual market value of the site at the date of the purchase contract, but at least DM 40 million, half of which is to be transferred by the City of Mainz to the *Land* of Rheinland-Pfalz, should the latter provision not be fulfilled, or only partially so,

— the latter obligation shall be covered by a maximum-sum mortgage.

The main part of the said area together with other sites already belonging to the City of Mainz were sold to Grundstücksverwaltungsgesellschaft Fort Malakoff Mainz mbH & Co. KG, a real-estate holding of Siemens AG/Siemens Nixdorf Informationssysteme AG (hereinafter referred to as 'Fort Malakoff'), by contract likewise dated 24 February 1992. The whole area comprises 22 010 m² and was sold for DM 13 528 650 (DM 614,66/m²).

The purchase contract between Fort Malakoff and the City of Mainz honours the obligations accepted by the City of Mainz *vis-à-vis* the *Land* Rheinland-Pfalz:

— Fort Malakoff is obliged to construct office and business buildings with 25 000 m² usable floor space, a 800-car parking garage for a distribution and training centre of Siemens AG/Siemens Nixdorf Informationssysteme AG that is to be created. The construction must be terminated at the latest five years after the conclusion of the purchase agreement, namely in February 1997,

— if the construction is not terminated on time, or if Fort Malakoff concludes a sales contract with a third party, the City of Mainz has the right to claim retransfer of the site, secured by a priority notice of conveyance in the *Land* Title Register, and a compounded indemnification of DM 7 million,

— Fort Malakoff is further obliged to let the built-up site no later than one year after completion of the buildings, for a minimum period of 15 years to Siemens AG, Siemens Nixdorf Informationssysteme AG or related enterprises, where these enterprises have to run a taxable business,

— in case the latter provision is not or only partially fulfilled, Fort Malakoff has to pay the difference between the purchase price agreed and the actual market value of the site at the time of sale, but at least DM 40 million covering also the abovementioned indemnification of DM 7 million,

— this potential claim of the City of Mainz was secured by a first priority maximum-sum mortgage of DM 40 million to be registered in the *Land* Title Register, the mortgage being subordinated, however, to financing debts of up to a maximum of 50 % of the costs of construction plus the purchase price.

The purchase price for the site was payable at the date of the transfer of ownership, set at 1 January 1995. There is no agreement covering interest to be paid for the intervening period.

III

The German Government is of the opinion that the terms and conditions of the land-sale agreement between the City of Mainz and Fort Malakoff does not contain elements of State aid.

They stress that the purchase price the City of Mainz paid to acquire the land (DM 1 402,20/m²) is of no relevance to the value of the site that was sold to Fort Malakoff because it acquired a built-up site and sold an empty site while the City decided to bear the costs of the dismantling of the riot police barracks, pursuing public interest for city development.

The independent group of land valuers in the City of Mainz, instructed by the City of Mainz on 14 February 1995 'to examine whether the purchase price for the site to be valued contains undue State aid elements', provided a valuation of the market value of the site in question on the date of the conclusion of the sales contract and gave its expert opinion as to the economic relevance of the different particular provisions of the purchase contract. The German Government submitted this valuation and emphasized that it shared the view of the experts concerning the economic relevance of these provisions.

The experts came to the following conclusions:

— the market value of the empty site, established on the basis of purchase prices agreed for comparable sites in the area of Mainz, was at the date of the conclusion of the sales contract DM 969 per m^2,

— certain disadvantages of the location of the site as compared to other sites were identified and it was noted that, contrary to the compared sites, the purchaser would have to take several measures to drain ground water, as the site in question is close to the Rhine. The calculated disadvantages were valued at DM 58 per m^2. This figure was corrected to DM 59 per m^2 after the discussion of 26 March 1996.

— the costs of dismantling the remaining buildings (the site was sold as undeveloped and the costs of cleaning the site were to be borne by the City of Mainz) were valued at DM 44 per m^2,

— the obligation on the part of the purchaser to erect a certain type of building in a predefined period was valued at DM 158,50 per m^2;

— the provision that the purchaser would have to pay the purchase price only after transfer of ownership was calculated to be an advantage for the purchaser, worth DM 131 per m^2,

— the obligation on Fort Malakoff to rent out the built-up site to Siemens AG and/or Siemens Nixdorf Informationssysteme AG to be used for a training centre for a minimum period of 15 years was considered to have no effect on value ('wertneutral') for the purchaser. The experts were of the opinion that such provisions are normally balanced by a rent contract which the purchaser concluded before acccepting such provision and that there was no economic disadvantage for the purchaser in such obligation. This was held true also for the obligation to pay the difference between the agreed purchase price and the market value as at the date of the contract, but at least DM 40 million, if the obligation is not fulfilled because also this provision is under normal circumstances backed in the rent contract concluded before.

— the contract between the City and Fort Malkoff provided for the obligation of the purchaser to pay the difference between the agreed purchase price and the market value at the date of the contract. It was further agreed that this potential claim should be set at a lump-sum of DM 40 million, but that this amount might ultimately be higher if land valuers appointed by the parties were to value the land at more than DM 53 528 million. The contract further provided for the obligation on the part of the purchaser to secure this potential claim by a first priority maximum-sum mortgage of DM 40 million to be registered in the *Land* Title Register. The mortgage was to be registered at first priority, but it was agreed that it might be subordinated to mortgages to cover up to 50 % of the costs of the construction of the planned buildings plus the purchase price. This obligation to provide security by way of mortgage, however, was considered to represent a disadvantage to the purchaser which would, according to the experts, under general market practices need to be balanced by a lower purchase price. Owing to the maximum-sum mortgage, the costs for the financing of the real estate project would increase because it would not be possible to offer creditors a first-ranking mortgage covering more than 50 % of the costs for the construction plus the purchase price. Thus, the interest rate for loans would be higher or the purchaser would have to use more of his own capital. The disadvantage of this provision, calculated on the basis of the normal fee for a bank guarantee (1,2 %), replacing the first-ranking mortgage, was calculated at DM 5 416 792, i.e. DM 246 per m^2.

The market value of the site was consequently calculated as follows:

'normal' market value	DM 968,00/m^2
— *minus* costs for drainage and disadvantages of the location	− DM 59,00/m^2
— *minus* costs for dismantling of buildings	− DM 44,00/m^2
— *minus* obligation to erect the buildings	− DM 158,50/m^2
— *plus* advantage of later payment of the purchase price	+ DM 131,00/m^2
— *minus* disadvantage related to the obligation to secure the obligation to pay the difference between the purchase price agreed and the market value by a mortgage	− DM 246,00/m^2
'special' market value	= DM 591,50/m^2

The experts concluded that the purchase price agreed (DM 13 528 650 = DM 614,66/m²) would therefore not be lower than the 'special' market value of the site.

Regarding the 'normal' market value of the site, established by the valuers on the basis of sales of comparable sites in Mainz without taking into account the various particular provisions of the sales contract between the City of Mainz and Fort Malakoff, the German Government is of the opinion that it should, owing to the status and competence of the independent committees of land valuers, in general not be contested. As concerns the opinion of the valuers regarding the particular contractual conditions of the sales contract, the German authorities expressly endorsed the calculations and argumentation of the experts.

Regarding the obligation to erect a certain building on the site within a defined period in time, the German Government is of the opinion that the provision is unusual because under normal market conditions the seller is not interested in ensuring any specific use of the site sold. In the present case, the City of Mainz, having certain experiences with other sites in the inner city which remained empty for a longer period of time, wanted to impose this obligation to avoid having an empty site for possibly a longer period which would disturb its plans for city development. The economic disadvantge related to this provision should, according to the German authorities, be balanced by a lower purchase price.

Regarding the disadvantage related to the obligation to secure the obligation to pay the difference between the purchase price agreed and the market value by a mortgage, the German Government is of the opinion that this obligation should be seen in relation to the limited financial standing of Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG which is a limited partnership (KG), the personally liable partner being a private limited company (GmbH) with a nominal capital of only DM 50 000.

IV

According to Article 92 (1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

In the present case the question of the existence or not of State aid within the meaning of Article 92 (1) of the EC Treaty centres on whether the terms and conditions of the sale of the site to Fort Malakoff by the City of Mainz depart from normal commercial practice and criteria to such an extent as to constitute State aid (see Commission Decision 92/11/EEC [1] and Decision 92/465/EEC [2].

In general, the Commission is of the opinion that the market value of a site that public authorities intend to sell may best be established by an open and unconditional bidding procedure in which all potential buyers have the chance to submit their bids and after which the best or only bid is honoured or by an adequate effort to sell the site at best market conditions (see Commission Decision of 13 October 1993 ('Fresenius') [3]).

In cases where the public authorities decide not to apply such a procedure and decide to sell a site to a given investor and to establish the price to be paid after this choice, the Commission is of the opinion that the market value of the site in question should be established by independent land valuers using general and well-accepted methods for establishing the market value/purchase price of the land to be sold on the basis of the terms and conditions of sales of comparable sites during the recent past and other generally accepted market indicators.

In the present case, the German authorities did not choose any of those procedures when concluding the land sales contract with Fort Malakoff. Therefore, the Commission, in its decision to initiate the procedure pursuant to Article 93 (2) of the EC Treaty, requested the German Government to submit an expert valuation establishing the market value of the site in question at the date the sales contract was concluded.

The Commission shares the view of the German authorities that the price at which the city of Mainz acquired the site from the *Land* Rheinland-Pfalz is not necessarily the market value of the site as it was sold to Fort Malakoff. The site was acquired built-up and was sold without buildings. Therefore, the property sold was different from the property acquired, and a different valuation does not indicate that the sale was not at market value. The City as the owner of the site acquired from the *Land* has the right (§ 903 BGB) to dismantle the buildings so as to be able to sell an empty site, even if the value of its property is thereby reduced. Public authorities may take such decisions for reasons, for example, of urban development and planning, and they are in general not to be contested by the Commission (Article 222 of the EC Treaty).

[1] OJ No L 6, 11. 1. 1992, p. 36.
[2] OJ No L 263, 9. 9. 1992, p. 15.
[3] OJ No C 21, 25. 1. 1994, p. 4.

However, it is to be noted that in the present case both the *Land* Rheinland-Pfalz and the City of Mainz were, at the time of concluding the contracts, apparently of the opinion that the purchase price agreed was lower than the market value of the site. In the contract between the *Land* and the City as well as in the contract between the City of Mainz and Fort Malakoff it is stipulated that the final purchaser, Fort Malakoff, would have to pay the difference between the purchase price agreed and the actual market value of the site at the date of the contract. The fact that they agreed on a lump sum of DM 40 million to be paid notwithstanding the possible later valuation of the site does indeed indicate that they believed the sale price to be far below the actual market value. The reason for this opinion, which is now superseded by the land valuers' expert report, might have been that the standard land-value map (Bodenrichtwertatlas) for Mainz showed a standard value for mixed/core areas (Misch/Kerngebiete MI/MK, §§ 6, 7 BauNVO) of up to DM 3 000 per m^2. Although the site in question was not located in an area formally marked as a mixed/core area, its characteristics and environment were very close to the legal description of this kind of area. This amount gives a notion of the magnitude which might have been taken into consideration regarding the real market value of the site in question.

The experts instructed by the City of Mainz were asked 'to examine whether the purchase price for the site to be valued would include undue State aid elements'. The Commission is of the opinion that independent expert valuers are competent to establish the general market value of the site in question but are not competent to establish whether a given land-sale agreement would represent State aid or not. However, the arguments and calculations of the experts regarding the 'special' market value, i.e. the economic relevance of particular provisions of the sales contract between the City of Mainz and Fort Malakoff were expressly shared by the German authorities and may therefore be considered as the opinion of the German authorities.

In general, it is to be noted that the 'general' market value of the site was established by the experts at DM 968 per m^2. The amount of DM 59 per m^2 which was deducted by the experts with regard to certain disadvantages of the location of the site in question and the necessity of a special drainage and the amount of DM 44 per m^2 deducted with regard to the costs of the dismantling of some remaining buildings are regarded to be part of the general valuation of the experts concerning the particular site in question, so that the 'standard' market value of the site, which would be the purchase price to be expected under normal commercial practice and criteria, is to be considered as DM 865 per m^2.

The sales contract between the City of Mainz and Fort Malakoff deviates in some points from normal commercial practice and criteria. The Commission, considering the arguments and calculations of the German Government as explained above, is of the opinion that certain obligations and provisions of the sales contract would under normal market conditions indeed be of some influence on the purchase price.

First, Fort Malakoff is obliged to erect a stated building on the site within a defined time-span. Such an obligation is unusual because under normal market conditions the seller is not interested in ensuring any particular use for the site sold. In the present case, the City of Mainz, having had experience with other sites in the inner city which had remained empty for a fairly long period of time, wanted to impose this obligation so as to avoid having an empty site for possibly a long period which would disturb its plans for city development. The independent valuers calculated the economic disadvantage of this contractual provision at DM 158,50 per m^2.

Secondly, the contract between the City and Fort Malakoff provides, according to the German Government and the experts, for an unusual time lapse between the date of the contract and the envisaged transfer of ownership. This particular provision in favour of the purchaser should be balanced by an increase of the purchase price. The independent valuers calculated the economic advantage of this contractual provision at DM 131 per m^2.

Taking these two points into account at the rates calculated by the experts the 'special' market value of the site sold under these conditions would have to be established at (DM 865 minus DM 158,50 plus DM 131) DM 837,50 per m^2.

As regards the provision of the contract whereby Fort Malakoff would have to lease the buildings to be erected for at least 15 years to Siemens AG/Siemens Nixdorf Informationssysteme AG, which would have to use them to run a taxable business the German authorities, referring to the land valuers' report, are of the opinion that this obligation would under normal commercial conditions not be balanced by a lower purchase price because every purchaser would already have a contract with the intended user of the buildings before accepting such a condition. Should the contractor of the purchaser break the tenancy contract, the purchaser would have a valid claim to cover his costs and expenses arising from the non-fulfilment of the obligation *vis-à-vis* the City. This accounts, according to the German Government, also for the obligation to pay the indemnification in the form of the increased purchase price.

The obligation to secure the potential claim to pay the difference between the purchase price agreed and the market value by a mortgage if the provision concerning the use of the buildings is not fulfilled, however, is regarded by the German authorities as representing a financial burden which under normal market conditions would be balanced by a lower purchase price. The fact

that the purchaser would not be able to offer the site at its full value as security for loans to be taken up for the construction of buildings is a financial disadvantage which would, according to the German Government, under normal commercial practices be balanced by a reduction of the purchase price calculated on the basis of the normal costs for a bank guarantee to replace the mortgage that would otherwise be possible.

It is true that a building developer would, when concluding a land purchase contract, only accept a condition that imposes the letting of the developed site to a given party and the particular use of the buildings by his client if he has a valid agreement with this intended final user ensuring him of fulfilment of such condition. Also, the obligation to pay the difference between the market value of the site in question and the purchase price agreed if the condition is not fulfilled, does not represent a particular burden, because this potential debt is covered by the claim of the developer *vis-à-vis* his client. The Commission therefore shares the position of the German Government that such a condition does not represent a particular burden to be balanced by a reduced purchase price.

The Commission, however, does not agree with the German Government's position that the obligation to grant a security by way of a mortgage to cover the potential claim is an exceptional burden which would, under normal commercial terms and practices, justify a lower purchase price. Under normal commercial practices any potential claim of an amount that is not obviously minor compared to the financial standing of the potential debtor is expected to be effectively secured. It is true that the financial reliability of a private limited company (GmbH), which is the personally liable partner in a GmbH & Co. KG (limited partnership), is relatively low when the nominal capital is limited to the legal minimum of DM 50 000. The economic disadvantage of this construction in relation to the expectation of third parties to receive valid securities to cover potential claims, however, is, under normal commercial practices, to be borne by the party using it, not its contractors.

When a limited partnership buys an unmortgaged piece of land and uses this newly acquired property to provide security for potential debts, this possible post-purchase use of the site represents merely an exploitation of the full value of what was bought. The fact that it is used to secure a potential claim of the initial seller and previous owner of the land is nothing unusual, e.g., to the use for securing claims of any third party. The intended or agreed use of property after sale to provide security for claims does not under normal commercial practices influence the purchase price to be paid for acquisition of this property. A potential obligee does, under normal commercial practices, not bear the costs of securing his claim.

It seems inconsistent to conclude on the one hand that the obligation to pay the difference between the market value and the purchase price where the buildings to be erected on the site are not used for at least 15 years as the Siemens' training centre, is irrelevant to the value for the purchaser and therefore of no influence on the 'special' market value of the site, whilst postulating on the other hand that the mere securing of this potential debt has to be balanced by a reduction of the purchase price calculated on the basis of the price to obtain a bank guarantee at the same value.

In addition it is to be noted that the provision obliging Fort Malakoff to provide security by way of a mortgage for the potential claim dependent on Siemens' using the built-up site for at least 15 years to run its taxable business is designed to yield a tax income for the City of Mainz (Gewerbesteuer). The effective securing of a potential claim to pay the market value if that condition is not fulfilled serves the purpose of keeping the future tax payer in the city for a relatively long period.

When assessing whether in the present case the State acted in line with a normal market investor's behaviour, the future possibility of tax receipts cannot be taken into account. Also in cases where the State sells its own property the terms and conditions should be in line with the normal behaviour of a private investor that does not have the particular position of the State with his responsibilities regarding public interest and his corresponding right to collect taxes [1]. A normal private investor is not interested in how the purchaser would use the land and in particular would not be interested in whether the particular use chosen by the purchaser would create future tax income for the community where the site in question is located. A private seller of real estate would not accept a reduction of the purchase price to balance a contractual condition designed to attract and to keep a taxpayer in a given city.

Therefore, the proposed reduction of the 'special' market value related to the mortgage agreed is not acceptable. The 'special' market value, established by independent land valuers on the basis of the conditions of sales of other comparable sites in Mainz and taking into account the unusual time lapse between the date of the contract and the envisaged transfer of ownership (both factors accounting for a net DM 27,50 per m^2), is therefore to be considered at DM 837,50 per m^2, i.e. DM 18 433 375 for the entire site of 22 010 m^2. The purchaser, Fort Malakoff,

[1] See judgment of the Court of Justice of 14 September 1994 in Cases C-278/92, C-275/92 and C-280/92, *Spain* v. *Commission*, [1994] ECR I, p. 4103, paragraph 22.

paid only DM 13 528 650, i.e. DM 4 904 725 less than the market value of the site on the date of the contract.

Consequently, it is to be concluded that the terms and conditions of the land sales agreement between the City of Mainz and Fort Malakoff depart from normal commercial practice and criteria to such an extent as to constitute State aid totalling DM 4 904 725 within the meaning of Article 92 (1) of the EC Treaty.

State aid which distorts or threatens to distort competition by favouring certain undertakings is, in so far as it affects trade between Member States, incompatible with the common market and therefore prohibited. The present aid, favouring a certain undertaking, Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG, a 100 % subisidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG, threatens to distort intra-Community competition in the sector of commercial data processing hardware and software, facing a fierce intra-Community competition due to a constant decrease of prices, a rapid evolution of technologies and the related need for high investments in R&D and new production facilities. The aid reduces the costs for Siemens AG/Siemens Nixdorf Informationssysteme AG to set up, by its real-estate holding Fort Malakoff, its new training centre offering software training and other user training specific to its data processing products for employees of its clients. To provide such training is a normal element of the effective marketing of integrated data processing solutions in the commercial sector, such as to banks, insurance companies, etc. It is irrelevant whether Siemens might have considered setting up a new training centre only in Germany for the German-speaking employees of its clients because its European competitors would also have to bear comparable costs — or buy services from third providers of specific training — to compete effectively on, or to penetrate into, the relevant market in the German-speaking part of the Community.

The aid is to be considered as an *ad hoc* investment aid, aimed at reducing the costs for the investment in the new training centre of Siemens in Mainz. The aid was granted outside the scope of general investment aid schemes. Irrespective of whether this *ad hoc* aid may be regarded as contributing towards the development of the region, it is to be noted that Mainz is not located in an area recognized as falling under Article 92 (3) (a) or (c), so that the aid cannot be considered compatible with the common market under the notion of regional investment aid.

The aid identified does not fulfil the conditions for the exceptions under Article 92 (2) (a) to (c) of the EC Treaty: it is not a social aid granted to certain consumers, but an investment aid designed to attract an investor to a particular city. It is neither related to disasters or other exceptional occurrences nor is it related to the former division of Germany.

Furthermore, the aid does not promote the execution of a project of common European interest. The fact that a training centre of a provider of integrated data-processing solutions is located in a certain city is not of common European interest. The aid is also not designed to remedy a serious disturbance in the economy of a Member State. Therefore the derogation under Article 92 (3) (b) of the EC Treaty does not apply either. Nor does it promote cultural activities or the preservation of the cultural heritance (Article 92 (3) (d) of the EC Treaty).

V

It is concluded that the findings of the land valuers and the arguments of the German Government are accepted, but not the assertion that the obligation to provide security for the potential claim to pay the difference between the market value and the purchase price would, in normal commercial transactions, have to be balanced by a lower purchase price.

'normal' market value	DM 968,00/m²	accepted
— *minus* costs for drainage and disadvantages of the location	– DM 59,00/m²	accepted
— *minus* costs for dismantling of buildings	– DM 44,00/m²	accepted
— *minus* obligation to erect the buildings	– DM 158,50/m²	accepted
— *plus* advantage of later payment of the purchase price	+ DM 131,00/m²	accepted
— [*minus* the disadvantage related to the obligation to secure the obligation to pay the difference between the purchase price agreed and the market value by a mortgage	– DM 246,00/m²]	not accepted
'special' market value	= DM 837,50/m²	

The 'special' market value of the site is to be considered as DM 837,50 per m^2, i.e. DM 18 433 375 for the entire site of 22 010 m^2. Fort Malakoff, the land agency of Siemens, paid only DM 13 528 650, i.e. DM 4 904 725 less than the market value of the site on the date of the contract.

It is therefore concluded that the sale of the site in Mainz to Fort Malakoff, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG, at a purchase price below the market value, represents State aid totalling DM 4 904 725 within the meaning of Article 92 (1) of the EC Treaty, which cannot be deemed compatible with the common market.

The aid should be recovered. Repayment shall be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, running from the date of which the aid was granted, i.e. the transfer of ownership of the site from Mainz to Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG,

HAS ADOPTED THIS DECISION:

Article 1

The sale of a site in Mainz to Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG, at a purchase price below the market value, represents State aid totalling DM 4 904 725 within the meaning of Article 92 (1) of the EC Treaty. The aid is illegal since it has been granted in breach of Article 93 (3) of the EC Treaty. Furthermore, the aid is incompatible with the common market since it does not meet the conditions for the exceptions provided for in Article 92 (2) and (3) thereof.

Article 2

Germany shall recover the aid from the recipient company. Repayment shall be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, running from the date on which the aid was granted.

Article 3

Germany shall inform the Commission, within two months of being notified of this Decision, of the measures taken to comply therewith.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 July 1996.

For the Commission

Karel VAN MIERT

Member of the Commission