II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 May 1997

on the aid granted by Germany to Bremer Vulkan Werft GmbH

(Only the German text is authentic)

(Text with EEA relevance)

(97/616/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,

After giving notice to the parties concerned, in accordance with the abovementioned Article, to submit their comments,

Whereas:

I

By letter dated 1 August 1996 the Commission informed Germany of its decision to open the procedure pursuant to Article 93 (2) of the Treaty in respect of contract-related aid granted to Bremer Vulkan Werft GmbH in respect of the construction of the cruise vessel Costa I.

The Commission's decision to open the procedure was published in the *Official Journal of the European Communities* [1], inviting other Member States and interested third parties to submit their comments on the matter.

The German Government gave its reaction by letters of 26 November 1996, 13 January 1997, and 12 March 1997, registered on the same day.

No other Member State nor any interested party submitted comments to the Commission.

By letter of 12 August 1996 the Commission informed Germany of its decision to open the procedure pursuant to Article 93 (2) of the Treaty in respect of contract-related aid intended for Bremer Vulkan Werft GmbH in respect of the construction of two container vessels.

The Commission's decision to open the procedure was published in the *Official Journal of the European Communities* [2], inviting other Member States and interested third parties to submit their comments on the matter.

The German Government gave its reaction by letters of 13 January 1997, 4 March 1997, and 14 March 1997, of which the latter was registered on 17 March 1997.

One Member State submitted comments to the Commission.

II

1. The cruise vessel Costa I

In April 1994 the Italian shipping company Costa Crociere and Bremer Vulkan Werft GmbH (hereinafter referred to as 'BVW' or 'the Yard') signed the contract for the construction of a cruise vessel on which the Yard started working in June 1994. Delivery was planned for the end of July 1996. The contract value amounted to

[1] OJ C 290, 3. 10. 1996, p. 10.

[2] OJ C 330, 5. 11. 1996, p. 6.

DM 602,219 million at the time. The financial crisis of BVW which started in the autumn of 1995 and culminated in bankruptcy in May 1996 exacerbated the situation further, as subcontractors dropped out or required prepayment of their contracts. As a result, the Yard had a cash loss of more than DM 100 million in connection with this new building contract.

The *Land* of Bremen provided a first construction-financing guarantee in 1994 for an amount of DM 200 million as collateral for a commercial bank loan of DM 440 million. A supplementary guarantee on an amount of DM 40,7 million followed in 1995 to back a loan for the financing of cost increases.

Other contract-related aid in the form of a grant totalling DM 40,6 million has been committed out of the 'competition-aid *(Wettbewerbshilfe)* scheme'.

From a letter of the German Government dated 10 April 1996 the Commission learnt that the *Land* of Bremen had declared its preparedness to provide a loan of DM 72,075 million, in order to cover the additional costs attributable to the compromise reached with creditors. According to the German Government, the granting of the loan at an interest rate of 4,851 % was necessary to secure completion of the ship, as otherwise the *Land* of Bremen would have had to honour the guarantees up to the amount of DM 260,7 million. It was further argued that the banks had agreed to provide at the same time DM 120 million for completion of the ship, which they would recover at delivery.

The Commission pointed out that according to the revised contract data the contract-related aid even without the loan in question would amount to an intensity of 9,52 % of contract value before aid. That percentage would increase substantially on account of the envisaged loan.

The Commission would not accept without question the argument that the *Land* of Bremen had acted in a similar way to the commercial banks, which had provided fresh funds as well. The loans of the banks were secured in such a way as to be fully paid off through the sale of the ship. To the knowledge of the Commission, there are no comparable collaterals for the loan provided by the Bremen Government. The Commission therefore had to categorize the entire loan as State aid.

Hence the total of the aid provided for this contract substantially exceeded the ceiling of 9 %, and therefore the aid could not be regarded as being consistent with Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding [1], as last amended by Regulation (EC) No 1904/96 [2].

2. The container vessels

Contract-related aid in favour of BVW for the construction of two medium-sized (2 700 TEU) container vessels (Nos 110 and 111) on which work started in 1995 and which were originally to be delivered in late 1996 and late 1997 respectively, led to the opening of the procedure.

At the time, the contract price for each of the ships was DM 84,6 million.

The *Land* of Bremen agreed in principle to take over two financing guarantees in favour of BVW, to run during the construction period, to secure the advance payment and interim payments of the shipowner.

In addition, competition aid amounting to DM 4,9 million had already been committed for each of the contracts.

The guarantees of the *Land* and the *Wettbewerbshilfe* form contract-related production aid which had to be assessed pursuant to Article 4 of Directive 90/684/EEC, according to the Commission in its decision to open the procedure. The planned guarantees covered 100 % of the advance and interim payments of the shipowner. However, as was decided by the Commission on 28 February 1996 (aid No 108/96 concerning the *Land* of Bremen), a construction guarantee may cover no more than 80 % of the amount of the loan to be secured.

Furthermore, the sales proceeds from the vessels did not even cover the cost of production, and the resulting heavy losses were to be met out of the company's residual assets. The Commission therefore doubted whether the financial arrangements for the contracts, and in particular the substantial State guarantees, could be considered compatible with the common market.

III

The Government of one of the Member States, via its Permanent Representation, provided the Commission with its observations in respect of the procedure concerning the two container vessels.

It shared the Commission's doubts as to the compatibility of the aid. It argued that the aid could only be regarded as compatible with the common market in the event of a full or partial closure of the Yard. A reduction of capacity only, whilst the Yard continued its activities, would not be sufficient.

[1] OJ L 380, 31. 12. 1990, p. 27.
[2] OJ L 251, 3. 10. 1996, p. 5.

IV

As regards the Costa I, the German Government communicated to the Commission a calculation of costs and prices, together with a financial review.

They reveal that the difference between income from the vessel (the contract price of DM 632,419 million plus the competition aid of DM 40,6 million totalling DM 673,019 million) and the costs of DM 791,569 million amounts to DM 118,55 million. The major part of this loss on the contract was financed by the *Land* of Bremen by way of a credit provided by Hibeg GmbH and amounting to DM 100,25 million. This amount had to be repaid by the Yard at the time of delivery of the vessel or by 1 August 1996 at the latest. However, the credit has not been repaid by the Yard and consequently Hibeg has requested the administrator in bankruptcy to recognize the credit as a liability and to have it entered in full on the list of creditors' claims. According to the German Govenment, there is still a chance that Hibeg will receive a partial repayment in the course of the winding-up procedure.

Germany also requested the Commission to treat the aid that exceeded the ceiling for contract-related aid as closure aid within the meaning of Article 7 of Directive 90/684/EEC.

With regard to the two container vessels, Germany likewise proposed that the State aid to the Yard be treated as closure aid within the meaning of Article 7 of Directive 90/684/EEC.

The German Government notified the Commission of the following aids:

— for the container vessel numbered 110, a guarantee for an amount of DM 37,90 million plus interest to cover the advance and interim payments by the shipowner over the period from January to May 1997 and competition aid amounting to DM 3,794 million.

  Total construction costs for this vessel stand at DM 88,60 million, paid for by the shipowner (DM 54,25 million) and by the Yard's administrator in bankruptcy (DM 34,35 million). By 31 December 1996 the administrator had already invested DM 50,10 million. He is to receive in May 1997, upon delivery of the vessel, a refund of DM 15,75 million, which limits his contribution to DM 34,35 million. The competition aid will also be paid to the administrator and will therefore effectively further reduce his contribution, by the amount given above,

— for the vessel numbered 111 the advance and interim payments by the shipowner over the period January to May 1997 amount to DM 32,50 million. A guarantee is proposed to cover these payments. Furthermore, a bank loan is necessary to cover residual construction costs. The amount of this loan is DM 31,60 million, and a guarantee is proposed for this sum as well. The loan will be reimbursed in August 1997 upon delivery of the vessel. Finally, the German Government proposes to grant competition aid amounting to DM 3,794 million.

  By 31 December 1996 the administrator had invested DM 13,90 million in the construction of this vessel. Total costs are DM 90,60 million, of which the shipowner pays DM 54,25 million and the administrator contributes DM 29,65 million. The competition aid of DM 3,794 million will reduce his contribution by the same amount. The difference between cost and income, DM 6,70 million, will be borne by the *Land* of Bremen.

It is claimed by Germany that the completion of both vessels is closely linked, in the sense that non-completion of vessel No 111 could have had serious consequences for vessel 110. Not only would it probably have led to problems with the workforce, of which approximately half is working on vessel No 110, but also with subcontractors who calculated their prices on work on two ships. Apart from the DM 14 million already spent on No 111, the administrator in bankruptcy has already awarded work contracts of around some DM 20 million on this vessel. A roughly equal value of contracts was placed for No 110. According to Germany, the non-completion of vessel No 111 could have resulted in damages amounting to over DM 100 million should vessel No 110 not have been completed either, in consequence.

The German Government further announced the total closure of Bremer Vulkan Werft GmbH i.K. after the completion of the two vessels and some work on vessel No 108 (the hull of the former Costa II, which was sold to a new owner) around August 1997.

The closure will be in accordance with Article 7 of Directive 90/684/EEC. This means a closure of not less than five years. If, after a period of five years but before the 10th anniversary of the closure, Germany wishes to reopen the closed Yard, it must obtain the Commission's prior approval. Germany is entitled to grant social aid pursuant to Article 7 of Directive 90/684/EEC once it has received the consent of the Commission.

The administrator in bankruptcy is currently engaged in selling the shares in Bremer Vulkan Marineschiffbau GmbH, a subsidiary of Bremer Vulkan Verbund AG, together with a dock owned by the Yard, to Friedrich Lurssen Werft GmbH. Germany, on behalf of the administrator in bankruptcy, has given assurances that this dock will only be used for activities not qualifying as shipbuilding activities pursuant to Directive 90/684/EEC. The dock is to be used by Friedrich Lurssen Werft GmbH for building naval vessels and yachts, which fall outside that Directive.

V

Germany has asked the Commission to regard the aid to the Costa I and the aid for vessels Nos 110 and 111 as closure aid pursuant to Article 7 of Directive 90/684/EEC.

The Commission accepts the closure of Bremer Vulkan Werft GmbH i.K. as a total closure within the meaning of Article 7 of Directive 90/684/EEC.

Article 7 of Directive 90/684/EEC stipulates that aid to defray the normal costs resulting from the partial or total closure of shipbuilding or ship repair yards may be considered compatible with the common market provided that the capacity reduction resulting from such aid is of a genuine and irreversible nature.

In order to ensure the irreversible nature of aided closures, the Member State concerned must see to it that the closed shipbuilding facility remains closed for a period of not less than five years. Article 7 (2) of Directive 90/684/EEC gives a non-exhaustive list of the costs eligible for closure aid, namely, an illustration of the normal costs resulting from the partial or total closure of a shipbuilding yard.

Other costs not mentioned explicitly in Article 7 (2) of Directive 90/684/EEC can also be considered to be eligible as aid, so long as they are normal costs resulting from the closure of the Yard. In view of the need to organize an orderly closure of the Yard, taking account of the many suppliers and sub-contractors involved, and since a substantial part of the construction has already been carried out and furthermore a substantial number of supply and service contracts involve third parties for their performance, the Commission recognizes that an effort must be made to contain the social and economic damage resulting from the closure and that the costs of completing the vessels are therefore normal costs resulting from the closure.

The amount and intensity of the aid is justified by the fact that the costs towards which the aid is given are entailed entirely by the closure of the Yard. The aid therefore facilitates the complete withdrawal from shipbuilding activities and is limited to the completion of the vessels.

In the two decisions to open the procedure the Commission had already indicated that the aid ceiling might be exceeded for the completion of the last vessels in the event of total closure, in order to effect an orderly closure and to avoid subsequent insolvencies among subcontractors. A precedent in this respect is the Commission's decision in aid No 272/87 (closure of the French yard La Ciotat) in which it approved aid to complete ships already under construction as closure aid within the meaning of Article 7 of Directive 90/684/EEC.

Bremer Vulkan Werft GmbH i.K. is to be closed around August 1997, upon delivery of the vessels. This closure is of a genuine and irreversible nature. Germany has committed itself to this through its willingness to accept the conditions of Article 7 of Directive 90/684/EEC, including closure for not less than five years.

According to the Yard itself, its total capacity amounts to 225 000 cgt. While this figure may represent the maximum attainable capacity rather than the actual use made, it is clear that the closure of the Yard will result in a substantial reduction of German shipbuilding capacity.

At the moment some 1 050 workers are still engaged in the work on vessels Nos 110 and 111. In order to facilitate an orderly termination of work and to avoid social unrest in the region of Bremen, already heavily affected by the process of laying off workers due to the bankruptcy of Bremer Vulkan Verbund AG, a continuation of work for some months is called for. Furthermore, a sudden halt to the work on the two vessels would almost certainly lead to serious material and financial consequences for many subcontractors.

The orderly withdrawal was also in view at the time the loans totalling DM 100,25 million for Costa I were granted. Without the loans a sudden collapse of the Yard with all its attendant consequences for the workforce and subcontractors would have occurred as the vessel would not have been completed. This would have led to cancellation of the order by the shipowner and the *Land* of Bremen would have had to honour the guarantees to which it had already committed itself.

Even the fact that the dock is likely to be sold to Friedrich Lurssen Werft GmbH does not change the principle that the capacity reduction will be genuine and irreversible. The dock will only be used for naval shipbuilding and for yachts — activities not falling within the scope of Directive 90/684/EEC.

As the closure of the Bremer Vulkan Werft GmbH i.K. is recognized as a total closure within the meaning of Article 7 of Directive 90/684/EEC, it is, in the case of the Costa I, no longer necessary to distinguish exactly between contract-related production aid and closure aid, as the aid described under IV is considered to be closure aid in so far as it exceeds the aid ceiling for contract-related aid.

The observations of the Member State given under III endorses the Commission's decision, inasmuch as it has contended that the aid can indeed be regarded as compatible in the case of a total closure,

HAS ADOPTED THIS DECISION:

Article 1

1. The loans granted by the *Land* of Bremen amounting to DM 100,25 million, which were made available to offset losses on the cruise vessel Costa I, are to be considered State aid within the meaning of Article 92 (1) of the EC Treaty.

2. The guarantees amounting to DM 220 million and DM 40,7 million, as well as the grant of DM 40,6 million, are likewise to be considered State aid within the meaning of Article 92 (1) of the EC Treaty.

3. The State aid mentioned in paragraphs 1 and 2, is approved, up to the permitted maximum, as contract-related production aid within the meaning of Article 4 of Directive 90/684/EEC; the remaining balance is approved as closure aid within the meaning of Article 7 of the said Directive.

Article 2

1. The guarantee given by the *Land* of Bremen, amounting to DM 37,9 million and the grant of DM 3,794 million in respect of container vessel No 110 is to be considered State aid within the meaning of Article 92 (1) of the EC Treaty.

2. The State aid mentioned in paragraph 1 is approved as closure aid within the meaning of Article 7 of Directive 90/684/EEC.

Article 3

1. The guarantees given by the *Land* of Bremen, covering DM 32,5 million and DM 31,6 million, as well as the grant of DM 3,794 million and the defraying of losses of DM 6,70 million financed by the *Land* of Bremen in respect of container vessel No 111, is to be considered State aid within the meaning of Article 92 (1) of the EC Treaty.

2. The State aid mentioned in paragraph 1 is approved as closure aid within the meaning of Article 7 of Directive 90/684/EEC.

Article 4

Germany shall comply with its commitment to close Bremer Vulkan Werft GmbH i.K. at Vegesack immediately after completion of vessels Nos 110 and 111 and termination of the work on vessel No 108.

Germany shall inform the Commission of the exact closure date. Should closure not have taken place by the end of August 1997, it shall likewise inform the Commission, giving reasons for the delay.

Germany shall adhere fully to the conditions laid down in Article 7 of Directive 90/684/EEC.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 May 1997.

For the Commission

Karel VAN MIERT

Member of the Commission