COMMISSION

COMMISSION DECISION

of 13 May 1998

on aid granted by Germany to Herborn und Breitenbach GmbH (ex-Drahtziehmaschinenwerk Grüna GmbH)

(notified under document number C(1998) 1687)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/225/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),

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

Having given the interested parties, pursuant to those Articles, a period in which to submit their comments [1],

Whereas:

I

On 15 March 1995 the Commission decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of State aid for SKET Schwermaschinenbau Magdeburg GmbH, Magdeburg (SKET SMM) [2]. The proceedings also concerned the SKET SMM subsidiaries, i.e. Entstaubungstechnik Magdeburg GmbH, Magdeburg (ETM) and Drahtziehmaschinenwerk Grüna GmbH, Chemnitz (DZM). The aid in question had been received by SKET SMM before, and in the course of, its privatisation and restructuring. Previously, SKET SMM had already received aid, to which the Commission had not objected (NN 46/93 and NN 95/93). The proceedings were given the number C 16/95.

On 30 July 1996 the Commission decided to extend the C 16/95 proceedings to the State aid paid since the initiation decision, which was not covered by that decision [3]. The investors (Oestmann & Borchert Industriebeteiligungen GbR) had withdrawn from the restructuring plan at the end of 1995, and a new plan with additional aid had been notified.

In October 1996, SKET SMM was forced to file for a 'Gesamtvollstreckungsverfahren' (GV) (bankruptcy proceedings in the new *Länder*). The plan which was the subject of the initiation decision of 30 July 1996 had thus not been able to restore SKET SMM to viability. On 26 June 1997 the Commission adopted the negative final Decision 97/765/EC [4] with regard to the aid for SKET SMM. The GV does not apply to the two subsidiaries ETM and DZM, which were transferred to the Federal Office for Special Unification-related Tasks (the BvS). Decision 97/765/EC terminated Case C 16/95 in respect only of that part of SKET SMM which was covered by the GV. The case was therefore split into three separate parts, as follows: C 16a/95 for SKET SMM, C 16b/95 for ETM and C 16c/95 for DZM. In 1995 DZM merged with a west German company and trades today as Herborn & Breitenbach GmbH, Chemnitz (H&B). This Decision refers only to H&B.

[1] OJ C 215, 19. 8. 1995, p. 8.
[2] OJ C 215, 19. 8. 1995, p. 8 and OJ C 298, 9. 10. 1996, p. 2.
[3] OJ C 298, 9. 10. 1996, p. 2.
[4] OJ L 314, 18. 11. 1997, p. 20.

By letters dated 13 January 1997 (registered on 14 January) and 6 August 1997 (registered on 7 August), Germany informed the Commission that H&B had been transferred to the BvS and notified the aid granted to H&B since the initiation of the GV concerning SKET SMM. The second letter presented the restructuring plan, which had again been adapted to H&B's new situation. By letter dated 30 October 1997, Germany notified the conditions of the H&B privatisation agreement and the changes to the August 1997 restructuring plan.

II

On 24 March 1995 and 12 April 1995 SKET SMM acquired from Kolbus GmbH & Co. KG, under the direction of the investors Oestmann & Borchert Industriebeteiligungen (which withdrew from the privatisation project at the end of 1995), all the shares of H&B Beteiligungsgesellschaft GmbH and H&B GmbH & Co. KG. The combine merged with the subsidiary, DZM, and, under the name H&B, remained a subsidiary of SKET SMM until 31 December 1996. H&B was transferred, in its condition at that time (i.e. with debts), to the BvS by agreement dated 16 January 1997.

West Merchant Bank, which had been charged by the BvS with finding an investor, had by 1 May 1997 received four bids in response to an open tender in the course of which 112 firms throughout the world had been contacted. Negotiations were begun with two of the bidders and, taking account of the business plan, job maintenance guarantees and financial indicators, the best offer was selected. The option of dissolving the company, which would probably have entailed lower costs than a sell-off with accompanying financial measures, was not considered in the selection process. In accordance with the general principles applied by the Commission in its assessment of company privatisations ([5]), the privatisation of H&B thus contains aid.

The investor selected, Mr Henrich, is a natural person with experience in the wire-drawing machine industry. In 1994 he sold his family firm manufacturing such machines to a financial investment holding company, the EIS Group, after he had been a manager of that company for four years. Mr Henrich still has a contract of employment with the EIS Group, which agreed to the acquisition of H&B. On 24 September 1997 the investor took over H&B, assuming, first, 50 % of the management and then, on 1 January 1998, 100 %. He will also assume the position of chairman of the supervisory board of the Cable and Wire Division of the EIS Group, which consists of holdings in three companies. In this way, the investor supplies contacts and potential synergies as well as knowledge of the business.

The structure of the H&B combine is as follows:

(a) Herborn & Breitenbach GmbH, Chemnitz (ex-DZM), with a share capital of DEM 1 million. At the same time, the company is a general partner in H&B GmbH & Co. KG, Herborn. It has 107 employees, and its business is the planning, design and production of wire-drawing machines;

(b) Herborn & Breitenbach GmbH & Co. KG, Herborn (Hessen), with a limited liability capital of DEM 6 million and a general-partner capital of DEM 0,1 million. The firm has 78 employees, and its business is planning, design and production;

(c) Herborn & Breitenbach Beteiligungs GmbH, Unna (North Rhine-Westphalia), wholly owned by Herborn & Breitenbach GmbH, Chemnitz. Its capital is DEM 0,1 million. The company acts as a simple shell company without a specific object. It has no employees.

H&B's business is the sale, design, production, installation, testing and maintenance of wire-drawing machines at both the Chemnitz and Herborn sites. The machines are intended for very different branches of industry, for example, automobiles, structural steelwork, shipbuilding, construction, energy supply, telecommunications and lightbulb manufacture.

The investor's restructuring plan is aimed in short at protecting market share and reducing production costs. H&B was already in the restructuring phase when it was bought up by the investor; the latter intends to continue the firm's efforts and contribute his own contacts. It is planned:

(a) to maintain the two production sites of Herborn and Chemnitz. To reduce costs, however, the division of tasks will be clarified and rationalised: R&D, manufacturing and assembly in Chemnitz; administration, sales and customer demonstration in Herborn;

(b) to streamline the product range, so as to reduce the cost structure;

(c) to adapt machines to customer requirements (R&D);

(d) to concentrate more on after-sales service in view of the large stock of used DZM and H&B machines;

(e) to develop the production of spare parts and package deals for the modernisation and inspection of machines;

(f) to increase outsourcing, which the company already uses;

([5]) See the Twenty-third Report on Competition Policy, 1993, points 402-3.

(g) to cut jobs. The investor, however, has kept all 186 current jobs for the time being and has guaranteed to keep 150 of them, of which 90 in Chemnitz and 60 in Herborn. The guarantee is valid for the next three years. He also guarantees that production will continue at the Chemnitz site for a further two years with at least 25 jobs. The job guarantees are backed by contractually agreed fines.

H&B must protect its market shares (in Germany, Europe, the CIS, South-East Asia and the United States), initially by using the investor's contacts and business know-how but also through a programme for reducing costs and modernising the product range. The investor believes considerable synergies can be obtained from cooperating with other firms (chairmanship of the supervisory board of the Cable and Wire Division of the EIS Group).

In the past, DEM 16,5 million was invested in particular in the improvement of existing buildings and the modernisation of technical plant. For the next three years, the investor has guaranteed investment of approximately DEM 0,5 million a year (contractual fines).

According to the latest turnover forecasts, the combine will probably achieve a pre-tax profit for the year in 1999 [. . .] (6).

III

H&B remained in the SKET combine until 1997 and received restructuring aid on several occasions. In point of fact, the difficulties which SKET SMM was faced with (and which led to a 'Gesamtvollstreckung') delayed the restructuring of H&B.

The aid disbursed to H&B had been granted under successive restructuring plans. H&B was part of the SKET combine, and the plans provided for the restructuring of the group as a whole. After H&B was transferred to the BvS and hence split off from the combine, the plans for the company became significantly more precise. It was only then that the sale of the separate company was contemplated. Today, H&B has been privatised, and a restructuring plan with new financial indicators, adapted by the investor (see section II), has been examined by the Commission.

For clarity's sake, only those financial measures are listed which were actually implemented in the past or are provided for, in connection with privatisation, in the current plan (7). The following measures are concerned:

1. 1990 to 91: granting of special-purpose allocations (redundancy programme) amounting to DEM 1,4 million.

2. 1993: DEM 26,5 million in interest-free loans and waived claims, of which:

   (a) interest-free loans granted by the BvS (DEM 13,9 million), to repay inherited credits from before 1 July 1990;

   (b) a second loan from the BvS (DEM 4,5 million), to redeem inherited credits from before 1 July 1990;

   (c) interest-free credit from the BvS (DEM 1,7 million) to repay the interest on inherited loans;

   (d) waiver of claims (DEM 4,6 million) in connection with the discharge of equalisation liabilities;

   (e) waiver of interest (DEM 0,9 million) in connection with these liabilities.

   The above credits and waiver of claims, totalling DEM 26,5 million, were transformed on 31 December 1994 into grants (DEM 15,9 million) and the formation of capital reserves (DEM 5,6 million plus DEM 5 million) via SKET SMM.

3. 1996: DEM 11 million in loans, of which:

   (a) the granting of a loan of DEM 3,2 million to repay inherited credits from before 1 July 1990 via SKET SMM. The BvS will pay this amount to the bankruptcy trustee;

   (b) a DEM 5,4 million loan from the BvS (DEM 2,2 million for financing orders via SKET SMM (the BvS repays the bankruptcy trustee), DEM 2,1 million for maintaining liquidity and DEM 1,1 million for discharging liabilities to suppliers);

   (c) settlement by the BvS, in the form of an interest-free shareholder loan, of a customer payment (DEM 2,4 million) erroneously made to SKET SMM.

   At the end of 1996, H&B's liabilities amounted to DEM 38,9 million (DEM 26,5 million in loans which were transferred into non-repayable grants, DEM 11 million in loans and DEM 1,4 million in special-purpose allocations). In addition, there were guarantees of DEM 15 million on the following terms: 0,25 % per half year (1 January and 1 July), charged on the financing advanced by the BvS, and 0,5 % on the moneys retained by the bank, plus the conditional financing of DEM 1,377 million.

4. 1997: Privatisation (conditions of the privatisation agreement)

   The BvS releases H&B from all inherited debts and gives grants for the completion of restructuring.

(6) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.
(7) See footnotes 1 and 2

(a) Obligations of the seller (BvS):

(i) waiver of claims in respect of loans amounting to DEM 11 million (conversion into non-repayable grants);

(ii) waiver of claims in respect of the shareholder loan of DEM 3 million granted in 1997 (in connection with the GV of SKET SMM);

(iii) payment of a non-repayable restructuring grant of DEM 4 million (in two parts of DEM 2 million each, on 1 January and 30 June 1998) in order to maintain liquidity and finance investment;

(iv) share in the costs of eliminating inherited burdens (from before 1 July 1990) in excess of DEM 2 million, up to a ceiling of DEM 4 million;

(v) assumption of the possible risk of a repayment claim from the tax authorities, which could amount to DEM 0,3 million.

(b) Obligations of the investor:

(i) purchase price of DEM 0,25 million;

(ii) assumption of called guarantees of DEM 3,3 million in his own name and provision of guarantees totalling DEM 9 million;

(iii) assumption of an irrevocable, absolute guarantee, without time limit, of DM 3,0 million to the benefit of the BvS. From 30 August 1998 the guarantee is reduced by DEM 0,5 million annually, if the seller has met its contractual obligations;

(iv) assumption of the elimination of inherited burdens up to DEM 2 million (above this figure, the BvS assumes 80 % of the costs up to a ceiling of DEM 4 million);

(v) contractual guarantees with penalties attached: implementation of a DEM 1,5 million investment by 30 June 2000, maintenance of jobs at the Chemnitz site (90 persons for three years), and maintenance of the Chemnitz production site with 25 jobs guaranteed for a further two years;

(vi) the investor, H&B GmbH and H&B GmbH & Co. KG have undertaken not to make profit distributions or withdrawals (whether open or disguised) until 2 December 2002.

IV

As part of the C 16/95 proceedings the Commission received observations from third parties, including one German competitor's comments which related directly to H&B. These concerned the takeover of H&B by SKET SMM (the competitor itself is supposed to have been interested in a takeover) and the sale of products by H&B, apparently on terms below the market price level.

These remarks were communicated to Germany by letter dated 19 November 1996. The German authorities replied by letter dated 6 January 1997 (registered on 7 January under reference A/30033) with regard to H&B, giving detailed explanations. Thus the German competitor had, through a lawyer, already in 1995 raised its objections with the Commission, claiming that there was a problem of price dumping at DZM. Even at this stage, the German authorities could show that the competitor concerned enjoyed genuine opportunities on the market and that DZM's prices were not below the market price level.

With regard to the takeover of H&B by SKET SMM and the competitor's purchasing intentions, which are supposed to have been ignored in order to favour SKET SMM, Germany explained that the competitor had not been excluded from the privatisation negotiations but was considered to have withdrawn of its own accord.

V

The aid which DZM/H&B has received was granted from 1991. This consists first of all of aid granted during the period of validity of the Treuhand arrangements (NN 108/91, E 15/92 and N 768/94). The Treuhand arrangements applied up to 1 January 1996. Under these, the financing of firms was covered by the Treuhandanstalt (THA), if certain threshold values for the number of employees and the level of the aid were met. DZM/H&B could not, as a subsidiary of SKET SMM, be covered by these arrangements, since SKET SMM exceeded the maximum threshold values for the number of employees and the level of aid. The aid granted to the company, therefore, had to be notified to the Commission and examined by it separately.

The financing measures granted or planned (see section III) involve a total of DEM 50,2 million. In addition, the BvS has made available guarantees of DEM 3,3 million for financing the company's business activity.

Of these financial measures, DEM 28,2 million may be regarded, in accordance with the decisions on the Treuhand arrangements, as not constituting State aid within the meaning of Article 92(1) of the EC Treaty. This sum comprised DEM 24,2 million for the financing of inherited credits and a maximum of DEM 4 million for costs associated with the possible elimination of inherited burdens.

The aid to be examined here thus amounts to DEM 22 million, a figure which breaks down as follows:

(a) 1990 to 91: DEM 1,4 million in special-purpose allocations (financing of the redundancy programme);

(b) 1993: DEM 5,5 million in waived claims relating to equalisation liabilities (including interest);

(c) 1996: DEM 7,8 million in loans converted into non-repayable grants;

(d) 1997: DEM 3 million in loans for financing business activity, converted on privatisation into non-repayable grants;

(e) 1997: DEM 4 million in non-repayable restructuring grants;

(f) DEM 0,3 million for the assumption of possible tax liabilities.

In addition, there are the guarantees made available in recent years by the BvS (provision of DEM 15 million, of which only DEM 3,3 million has actually been called).

The notified aid for DZM/H&B is intended for the restructuring of the company and must satisfy the tests set out in point 3.2 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [8] of 1994 (the Guidelines).

The aid in question (i.e. the loans) was for the most part originally granted at a time when DZM/H&B was part of the SKET combine, one of the largest industrial groups on the territory of the new *Länder*. The difficulties of the combine, whose privatisation had proved to be impossible because of its cumbersome structure, and the associated GV have adversely affected the viability of DZM/H&B, which in 1990 and 1991 was still making a profit. In 1992 the results were negative [. . .], then they slowly improved [. . .], becoming positive in 1995 [. . .] but negative again in 1996 [. . .](*). A probable factor in the improvement of the results in 1995 was the merger of DZM with the H&B combine. The collapse of the result in 1996 is linked to developments at SKET SMM, which ultimately led to the opening of the GV in October 1996. H&B's results for 1997 continue to be influenced by this (see section II).

While the Treuhand arrangement applied, H&B received aid in 1990 to 1991 (financing of the redundancy programme) and 1993 (waiver of equalisation liabilities). The purpose of this aid was to make it possible to start restructuring the company. The THA, and later the BvS, were not responsible, moreover, for the ultimate restructuring of the companies. Their task was to prepare the companies for privatisation. The ultimate restructuring was a matter, therefore, for the investor. Undoubtedly, what distinguishes this company is that its parent, SKET SMM, could not be successfully privatised. During this period, DZM/H&B was integrated into the restructuring plans of the entire SKET group.

At the end of 1995 the investors, Oestmann & Borchert, withdrew from the privatisation plans for SKET SMM. Following this breakdown, the group's restructuring plan had to be adapted to the new situation by the Roland Berger consultancy. This plan still had the objective of restructuring the group as a whole.

After the GV against SKET SMM was initiated in October 1996 and H&B was transferred, H&B received further aid. This was partly to make it possible to finance orders which had been paid to SKET SMM as the parent company, and to repay loans which SKET SMM had granted to H&B. These amounts had been claimed for the bankrupt estate by the liquidator when the GV proceedings were initiated. The aid likewise provided the company with necessary liquidity and enabled it to pay suppliers (see section III, point 3).

Following the transfer of ETM and H&B to the BvS, the purpose of which was to prevent the two companies from being counted in the bankrupt estate, the plan for H&B was again revised. H&B had to overcome the difficulties which its parent's GV created for its business activity.

After the privatisation, Germany renotified the restructuring plan as amended by the investor, which however contained lower amounts of aid than before, since a private investor had not previously been involved.

The first condition of the Guidelines is the preparation of a plan which will make it possible in the long term for the company to return to profitability and viability without additional aid.

The forecasts of turnover and costs seem reasonable, and the results will probably be positive in 1999. The restructuring includes internal measures to reorganise production and redistribute tasks at the two sites. The investor contributes contacts and a considerable knowledge of the industry (see section II). Under the plan, the firm can meet all its costs. The plan will probably permit the company, under the conditions laid down, to return to viability (a positive pre-tax result is achieved from 1999).

[8] OJ C 368, 23. 12. 1994, p. 12.

The Guidelines also require firms operating in industries where there is excess capacity to reduce their capacity in proportion to the aid received.

H&B operates in the mechanical engineering industry, or more precisely in the manufacture of cable-spinning and wire-drawing machines. In this particular sector there are no signs of excess capacity. Growth declined generally in the mechanical engineering industry in the Community in 1996, but is now noticeably accelerating again (9). The industry was radically restructured in the Community and has gained in importance in eastern Europe as a result of the upturn in various countries and in Asia. The upturn in the United States is also producing an important market. Apart from Germany and the Community, the markets for H&B cable-spinning and wire-drawing machines are the United States and South-East Asia. Furthermore, H&B is traditionally represented in the countries of eastern Europe, where signs of an economic recovery can be observed. In addition, H&B ranks as a medium-sized firm.

A third criterion in the Guidelines is proportionality between the costs and benefits of recycling. The amount of aid must be limited to the strict minimum for financing the restructuring.

The aid which H&B has received since 1991 was limited to the financing of demand, in order to be able to maintain the firm as a going concern. The total involved is DEM 22 million, plus DEM 3,3 million in guarantees called. In 1996 it was necessary to cover claims and liabilities and to meet the demand for liquidity. In 1997 it was a question of finding the liquidity necessary for business activity and of funding investment. The total of DEM 4 million in non-repayable grants is allocated in tranches and paid out only if an audit shows they will be used in accordance with the objectives. The guarantees are being assumed by the investor. The BvS is assuming responsibility for possible claims for the recovery of tax of DEM 0,3 million.

The investor's contribution in this case to the restructuring costs (DEM 5,25 million, plus the provision of guarantees up to DEM 9 million) consists in particular in the payment of the purchase price of DEM 0,25 million, the assumption of an irrevocable, joint and several guarantee, without time limit, of DEM 3 million and of called guarantees of DEM 3,3 million, and the provision of additional guarantees (up to DEM 9 million overall). The investor, Mr Henrich, is contributing, as well as his personal commitment, considerable know-how and contacts in the industry concerned. He has also given a guarantee that he will implement investment, preserve jobs and maintain the Chemnitz site.

The Guidelines require the restructuring plan to be carried out in full. If it is not, the Commission may take measures calling for the aid to be repaid. Since the German authorities are the Commission's interlocutors in this examination of State aid, the Commission has noted their assurance that they will see the plans are properly implemented. The Commission is requesting that annual reports be submitted, so that it can itself monitor the implementation of this restructuring plan.

VI

In view of the foregoing, the Commission finds that the restructuring aid to Herborn & Breitenbach GmbH, Chemnitz (ex-Drahtziehmaschinenwerk Grüna GmbH) may be regarded as compatible with the common market, provided that it satisfies the conditions set out in the Guidelines on State aid for rescuing and restructuring firms in difficulty,

HAS ADOPTED THIS DECISION:

Article 1

The State restructuring aid granted to Drahtziehmaschinenwerk Grüna GmbH, now Herborn & Breitenbach GmbH, Chemnitz, is compatible with the common market in accordance with Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement. The aid concerned comprises:

(a) the special-purpose allocations for financing the redundancy programme (DEM 1,4 million);

(b) the waived claims relating to equalisation payments from 1993, (DEM 4,6 million, plus DEM 0,9 million in interest);

(c) the shareholder loans granted in 1996 and subsequently converted into non-repayable grants (DEM 7,8 million);

(9) See *Panorama of EU Industry,* 1997, vol. 2.

(d) the loan converted into a grant and the non-repayable grants (totalling DEM 7 million);

(e) the assumption of possible tax liabilities (DEM 0,3 million);

(f) the provision of guarantees (DEM 15 million), of which DEM 3,3 million has actually been called prior to their assumption by the investor.

Article 2

In accordance with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (1994), Germany shall submit a detailed report every year on the implementation of the restructuring plan.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 May 1998.

For the Commission

Karel VAN MIERT

Member of the Commission