COMMISSION DECISION

of 16 December 1998

on German aid in favour of Addinol Mineralöl GmbH i.GV and the newly established separate hive-off vehicle Addinol Lube Oil GmbH & Co. KG

(notified under document number C(1998) 3867)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/647/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the provision cited above and having regard to their comments,

Whereas:

I

By decisions of 20 November 1996 [1] and 4 June 1997 [2], the Commission approved rescue aid for Addinol Mineralöl GmbH (hereinafter referred to as Addinol Old). By letter of 4 September 1997, the Commission requested further details after press articles had referred to rumours concerning Addinol Old's privatisation. The German authorities replied by letter of 1 October 1997. During a visit by Commission representatives to Berlin on 12 December 1997, representatives of the German Government and the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) answered questions arising from recent press reports. Following the talks in Berlin, the German authorities communicated additional information regarding new aid measures of DEM 59 900 000 and a restructuring plan by letter of 18 February 1998.

On the basis of the information at its disposal, the Commission decided on 25 February 1998 to open proceedings under Article 93(2) of the EC Treaty because of doubts as to the compatibility with the common market of the aid measures. The decision and the grounds therefor were communicated to Germany in a letter of 17 March 1998, the contents of which were published in the *Official Journal of the European Communities* [3]. The Commission accordingly changed the case number to C 18/98. In addition, interested third parties were invited to submit comments within a month of publication.

By letter of 2 April 1998, registered on 3 April 1998, and by letter of 15 April 1998, registered on 16 April 1998, Germany responded to the Commission's letter of 17 March 1998. By letter of 23 April 1998, the Commission requested supplementary information. Germany answered by letter dated 8 May 1998, registered on 11 May 1998. At a meeting on 13 May 1998 between representatives of the Commission and the Federal German Government, further information was provided by the German Government. Additional questions were sent to the German Government on 15 June 1998 and the answers were sent by the German Government on 29 June 1998, registered on the same day. Germany sent further answers on 13 July 1998. The Commission asked further questions on 4 August 1998. These questions were answered by a letter dated 14 August 1998, registered on 17 August 1998, and a letter dated 18 August 1998, registered on 28 August 1998. Finally, the Commission put questions to Germany on 7 September 1998 which were answered on 18 September, registered on the same day, and on 30 September 1998, registered on 1 October 1998. Germany provided additional information on 1 October 1998 (registered on 2 October 1998), on 16 October 1998 (registered on 19 October 1998), on 28 October 1998 (registered on 29 October 1998) and on 4 November 1998 (registered the same day).

In response to the opening of the procedure, Fina Deutschland GmbH (Fina) submitted comments on 16 July 1998. On 4 August 1998, the Commission put questions to Fina. The questions were answered by letter of 26 August 1998, registered on the same day.

By letter dated and registered on 20 July 1998, Germany declared they did not require a translation of the letter from Fina and by letter dated 10 August 1998, registered on 11 August 1998, Germany gave its comments to the letter from Fina.

According to information available to the Commission, part of the aid (loans of DEM 7 000 000) has already been granted although no decision has yet been taken by the Commission regarding its compatibility with the common market.

II

Addinol Old was set up on 1 June 1990 after the splitting-up of the former State enterprise VEB Hydrierwerk Zeitz. The

[1] State aid measure N 783/96, letter of 4 December 1996.
[2] State aid measures N 225/97 and NN 70/97, letter of 20 June 1997.
[3] OJ C 186, 16.6.1998, p. 7.

privatisation took place in 1994 (the privatisation contracts were signed on 2 May 1994 and 16 August 1994), and the enterprise was taken over by IUG (Innovative Umwelttechniken GmbH).

Addinol Old comprised Addinol Mineralöl GmbH and the two subsidiaries Addinol Vertriebs GmbH and Addinol Dienstleistungs GmbH.

On 23 October 1997, Addinol Old petitioned for the opening of bankruptcy proceedings (Gesamtvollstreckung). A separate hive-off vehicle (Auffanggesellschaft) was set up under the name of Schmieröl Krumpa GmbH & Co. KG on 15 December 1997. It was later renamed Addinol Lube Oil GmbH & Co. KG (hereinafter: Addinol Lube). The Auffanggesellschaft took over part of the stocks of Addinol on 16 December 1997. The Auffanggesellschaft will take over the necessary assets (premises, equipment) and the subsidiary Addinol Dienstleistungs GmbH from the administrator of Gesamtvollstreckung. Addinol Lube is owned by an investment company, BVT Holding GmbH & Co. KG (24 % of the shares) and three managers (76 % of the shares), Mr Wildegger, Mr Streletz and Dr Koehn. The Auffanggesellschaft is an SME.

Addinol Old was active in the lubricants sector. Its main products were oils of all kinds, particularly base oils, oils for private cars and diesel motors, and hydraulic transmission oils. The Auffanggesellschaft, Addinol Lube, only blends and sells lubricating oils; it does not refine oil any longer. Addinol Old had a turnover in respect of lubricating oil of DEM 43 945 000 in 1997. Around 70 % of the turnover was achieved in Germany, almost 20 % of the turnover was made in Estonia. In 1997, Addinol Old had more than 500 employees. Addinol Lube has today 75 employees (12 in the subsidiary Addinol Mineralöl Marketing OÜ in Estonia) and forecasts a turnover of around DEM 36 000 000 in 1998. Addinol is located in the German State of Sachsen-Anhalt.

III

Addinol received several aid measures in the past.

In the framework of the privatisation, Addinol Old received a grant of DEM 91 700 000 from BvS to cover losses in the period 1994 to 1996. The *Land* Sachsen-Anhalt took over a 100 % guarantee for an investment loan of DEM 40 000 000 as well as the costs for the removal of burdens of the past from the time before 1 July 1990 (DEM 220 600 000 of old debts, incurred before 1 July 1990, were waived; DEM 25 000 000 of old debts remained as an obligation within the company). In its decision of 5 June 1997, the Commission found that all these measures were covered by Treuhand regimes ([4]).

Due to difficulties encountered by Addinol Old, BvS granted rescue aid of DEM 10 000 000 in the form of a loan with a 7 % interest rate and a term until 30 April 1997. Addinol Old suffered an acute liquidity crisis in the autumn of 1996, and as of the end of 1996 BvS was searching for a new investor. The term of the first rescue loan had to be extended and a further rescue aid measure was needed as the search for an investor took longer than anticipated. The second aid measure authorised comprised loans totalling DEM 18 000 000 (with 7 % interest rate, to be paid back by 30 June 1997) of which just DEM 12 000 000 was actually paid out.

In the context of the restructuring, Addinol Old and Addinol Lube will receive new aid measures totalling DEM 59 900 000 in the form of grants. The BvS will provide DEM 29 950 000 and the *Land* Sachsen-Anhalt will provide DEM 29 950 000. Since DEM 12 850 000 of the DEM 29 950 000 provided by the *Land* Sachsen will be financed by funds under the approved regional aid scheme Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftstruktur (GA-Mittel), the total amount of aid measures for the Auffanglösung notified and to be authorised by the Commission amounts to DEM 47 050 000. This amount includes a DEM 3 000 000 loan (financed 50 % by BvS and 50 % by the *Land* Sachsen-Anhalt) to the Gesamtvollstreckungsverwalter that was already paid out in December 1997 and that was mentioned in the opening of the procedure.

The DEM 59 900 000 aid measures will be spent on the following purposes:

— DEM 28 600 000 investment financing,

— DEM 10 700 000 loss compensation,

— DEM 5 000 000 losses of old blending facilities during transitional period (1998),

— DEM 4 300 000 working capital,

— DEM 11 300 000 closure of old plant.

The DEM 5 000 000 for losses of the old blending facilities until the new blending facility is constructed and the DEM 11 300 000 for the closure of the old plant will be paid to Addinol Old. The rest of the DEM 59 900 000 will be paid to the Auffanggesellschaft (Addinol Lube).

By letter of 18 September 1998, Germany informed the Commission that more aid is needed in order to finance the losses of the old blending facilities. Therefore, the Leuna Werke GmbH, which is owned by BvS, waived DEM 9 300 000 claims against Addinol Old. It has not been decided yet if the Leuna Werke GmbH will be compensated by BvS or the *Land* Sachsen-Anhalt. This DEM 9 300 000 was no part of the opening procedure and is not the subject of this decision. By letter dated 4 November 1998, the notification of this additional aid was withdrawn.

([4]) See decisions of the Commission with regard to the aid regimes of the Treuhandanstalt NN 108/91, E 15/92 and N 768/94.

IV

As mentioned above, one comment on the opening of the procedure was received by the Commission.

Fina is a subsidiary of the Petrofina Group. It is based in Frankfurt am Main and mainly active on the markets for the supply, sale and marketing of refined fuels and the markets for production, sale and marketing of lubricant products, including both retail sales through service stations and sales to industrial and commercial customers, in Germany. Fina is also active in the marketing of petrochemicals and related products. In 1997, its turnover was DEM 2 743 000 000 and its profits were DEM 1 700 000. In 1997, Fina employed 249 persons, against 275 in 1996.

Fina has submitted that the market of lubricants, in which Addinol Lube is operating, is facing a significant decline. According to Fina, the market was down 4,4% in terms of volume during the first four months of 1998. Furthermore, Fina considers Addinol Lube to be a local player which has no access to new technologies and therefore will not be able to compete on a technology intensive and international market. Another problem for Addinol Lube will be that no partner with industrial experience is involved in the restructuring plan. Finally, Addinol Lube depends mostly on third parties for its raw materials while its main competitors are vertically integrated.

According to Fina, prices of Addinol were up to 20% lower on certain deals than competitors. They alleged that this cost advantage was achieved by aggressive marketing policies that were financed by aid measures, in particular the rescue aid measures of DEM 28 million. As a result of this aid, Addinol Lube had a cost advantage which has enabled the company to double its market share during the 1994 and 1998 period. However, even upon request, no proof could be provided for this claim by Fina. Fina fears that the new restructuring measures of DEM 59 900 000 will mean a continuation of the market distorting strategy followed by Addinol Lube. Furthermore, Fina considers that the market of blending and additives products is in overcapacity. Finally, Fina considers that a subsidy of DEM 60 million is likely to severely distort the market since the total turnover of Fina on the lubricants market is some DEM 70 million.

Fina mainly states in this respect that the investor contribution to the restructuring plan is too low.

Fina concludes from this that the criteria laid down in the Community rescue and restructuring Guidelines are not fulfilled and that the restructuring aid for Addinol Lube should not be authorised.

In a letter dated 10 August 1998, Germany responded as follows to the comments made by Fina: Addinol Lube will be viable in the future and will have access to raw materials (such as base oil) from the refinery Koramo Kolin AG in the Czech Republic. Germany refutes the argument that only companies that are vertically integrated can be successful on the market. Addinol Lube has international alliances for technological cooperation and has substantial exports. As regards the partner with industrial experience, the German authorities claim that the three investors are former managers of the company and that the customers of Addinol Lube are the industrial partners. Germany also refutes Fina's argument that Addinol Old had aggressive marketing on the basis of subsidised prices. The same will be true for Addinol Lube in the future. With regard to the alleged doubling of market share, Germany provided data according to which the market share of Addinol Old on the German market declined from 4,51% in 1995 to 4,24% in 1997. In some segments, Addinol Old was able to increase market share, e.g. in the motor oil segment from 2,69% to 3,3%. Germany asserts that there were no price dumping practices as Addinol has also lost some customers in the period in which the alleged distortion of competition has taken place. Furthermore, the State aid measures do not distort competition as the market shares of Addinol Lube in Germany and internationally are insignificant. Finally, Germany states that the aid was restricted to the minimum needed for restructuring.

Germany has stressed in several other letters that the investor contribution can be considered significant.

V

In its opening of procedure, the Commission raised various doubts as regards the two already approved rescue aid measures and the new aid measures in the context of the Auffanglösung.

(a) **Approved rescue aid measures**

Since the Guidelines for rescue and restructuring (OJ C 368, 23.12.1994) state that rescue aid should be in principle a one-off operation and Addinol Old has already twice received rescue aid, the Commission expressed its doubts that the rescue aid paid and authorised in 1996 and 1997 was compatible with the common market. The Commission argued further that Germany breached assurances given at the time of the Commission's second decision, namely that they would not provide the firm with any further rescue aid. Germany had in fact granted additional aid (DEM 3 000 000 by BvS/*Land* Sachsen-Anhalt) to the Gesamtvollstreckungsverwalter of Addinol Old in December 1997.

(b) **New aid measures**

With regard to the new aid measures of DEM 59 900 000, the Commission expressed its doubts that:

— the restructuring plan will enable the firm to be viable in the long term,

— the aid provided is limited to the strict minimum needed,

— the investors' contribution can be considered significant.

VI

At the time of the approval of the first (November 1996) and second aid measure (May 1997), BvS and *Land* Sachsen-Anhalt believed that the respective rescue aid measures could save the company and avoid bankruptcy. The Commission has no evidence that it was foreseeable at these two respective points in time that Addinol Old would have to initiate bankruptcy proceedings in December 1997.

The second package of rescue aid measures was approved by the Commission after Germany had assured the Commission that it would refrain from any future granting of rescue aid. In the opening of procedure it was found that this assurance had been broken by Germany since Addinol Old received a loan of DEM 3 000 000 after the initiation of bankruptcy proceedings in December 1997. In its answer to the opening of proceedings, Germany argues that the DEM 3 000 000 was in fact not rescue aid but pre-financed restructuring aid. It is used for the continuation of the production of the old blending facilities. The amount of DEM 3 000 000 is included in the overall aid amount of DEM 59 900 000 for Addinol Lube. This argument seems plausible since the restructuring plan was already developed and finished in October 1997 and the Auffanggesellschaft was established in December 1997. It was imperative for the creation of the new company that Addinol Old continued production in order not to lose customers. In December 1997, the restructuring concept of the consultants Arthur D. Little was already finished and as can be seen from the restructuring plan (see below for more details), DEM 5 000 000 is reserved for the continuation of operations of the old blending facilities. It is necessary to continue the production of the old blending facilities until the new blending facilities are constructed (by about the end of 1999 according to the restructuring plan). The DEM 3 000 000 paid out in December 1997 is part of this amount and constitutes restructuring aid.

The Commission had opened procedures against the already approved rescue aid measures because it suspected that further rescue aid had been given. As analysed above, the DEM 3 000 000 that was paid out in December 1997 constitutes pre-financed restructuring aid. Therefore, Germany has kept its promise not to grant further rescue aid. Accordingly, the doubts concerning the repetitive award of rescue aid measures, which were the sole reason for opening the procedure against the old rescue aid, have been resolved by Germany.

However, it has to be pointed out that Germany did not await the Commission's approval before paying out the DEM 3 000 000 and thus breached its obligations under Article 93(3) of the EC Treaty.

Germany has claimed back the paid out parts of the two rescue aid measures from the administrator of bankruptcy proceedings.

VII

The aid measures for Addinol Old and Addinol Lube must be regarded as aid within the meaning of Article 92 of the EC Treaty. Since they were granted through State resources by a Member State, they distort or threaten to distort competition by favouring certain undertakings and they affect trade between Member States.

The new aid measures provided by BvS and *Land* Sachsen Anhalt were notified as restructuring aid. Therefore, the Commission considers in particular the derogation as provided for in Article 92(3)(c) of the EC Treaty, 'aid to facilitate the development of certain economic activities, where such aid does not affect trading conditions to an extent contrary to the common interest' since the predominant objective of the aid is the restructuring of a firm in difficulty. Such aid may be considered compatible with the common market if the criteria of the Community Guidelines on state aid for rescuing and restructuring firms in difficulty (the Guidelines) are met.

The problem with applying the guidelines is that they are usually not applied to newly founded companies (Auffanglösung) that are taking over or renting the assets of the company for which liquidation proceedings have been initiated. However, exceptions are made in favour of companies in the new German *Länder* since the transition from a planned economy to a market economy poses special problems. The low amount of equity capital is a typical example for problems of companies in transition like Addinol Lube. These problems may justify treating new firms as companies in difficulties. Considering this special situation and the special role of BvS in this transition process, aid to companies who take over companies for which liquidation procedures have been initiated can in certain cases be regarded as restructuring aid. In these cases, the private investors who take over the newly founded company must contribute substantially to the restructuring.

If the Commission is to approve the aid on the basis of the restructuring Guidelines for Addinol Old and Addinol Lube, a restructuring plan will need to satisfy certain conditions:

Restructuring plan and restoration of viability

All restructuring plans must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. In principle, no repetitive aid may be given.

Germany has provided a detailed restructuring plan prepared by the consultants Arthur D. Little for Addinol Lube. The core of the plan is that Addinol Lube ceases to refine oil itself and focuses on the blending of high-quality lubricants, particularly motor oils. For this purpose, a completely new oil-blending plant will be built (investment costs of DEM 28 600 000). In order not to lose customers, Addinol Lube will use the blending facilities of Addinol Old until the construction of the new blending plant is completed. Afterwards the productions facilities of Addinol Old will be completely dismantled and irreversibly closed. The operations of Addinol Lube differ substantially from Addinol Old since Addinol Lube does not refine oil any more. The projected profit and loss account for the years 1998 to 2002 forecasts profits from the year 2001 onwards.

The oil needed as input will be delivered from the refinery Koramo Kolin AG. Koramo Kolin AG has developed high-quality base oils that are the basis for Addinol Lube's specialty oils. By focusing on blending and closing down the old refinery, the company will focus on its core competencies and reduce the high costs that were caused by the unprofitable refining activities.

One of the main assumptions of the restructuring plan is that Addinol Lube will be able to increase turnover by roughly 70% between 1998 and 2002. This turnover increase is a central point in the restructuring plan developed by Arthur D. Little and is an essential condition for Addinol Lube to reach long-term viability. Germany argues that this increase is feasible for various reasons, in particular:

1. Addinol Lube is operating in profitable niches in the lubricant market;

2. Addinol Lube is known for its high-quality products and its reliability and has strong expertise in developing, producing and selling high-quality lubricants;

3. once the aid for the new company is approved, the uncertainty of suppliers and customers will diminish and Addinol Lube will be able to acquire more customers. A lot of contracts in the past (e.g. with […] (*)) could not be concluded due to the uncertain future of the company and customers' fear of losing a supplier;

4. the strong growth of turnover of Addinol Old's products in Estonia also indicates that the company has a promising export potential.

According to the restructuring Guidelines, the improvement in viability must mainly result from internal measures contained in the restructuring plan and may only be based on external factors such as price and demand increases over which the company has no substantial influence, if the market assumptions made are generally acknowledged.

Germany confirms that the market for lubricant oils in Germany declined by 3,8% in the first four months of 1998, compared to 1997. These rather pessimistic prospects as regards the planned turnover increase in these markets are confirmed by an evaluation of industry experts within the Commission. They describe the motor oil markets as being mature markets with low profit margins. According to information by the Wood Mackenzie European Downstream Oil Service of February 1998, the lubricant market will shrink in OECD countries between 1996 and 2005 by 6%. Therefore, the restructuring plan is based on external factors and those external factors are not generally acknowledged.

Even if one disregards the fact that it is formally not possible to explain the return to viability by external factors, the chances of Addinol Lube increasing turnover as planned are very low.

1. The market for motor oils that accounts for more than 50% of the turnover ([5]) of Addinol Lube shrank by 10,5% in Germany between April 1997 and April 1998. The restructuring plan explicitly foresees that the turnover increase by Addinol Lube will be achieved mainly by an increase of 72% in the motor oil market. One of the problems of this particular market seems to be that the time span between one oil change and the next for cars is getting longer and longer due to the improved quality of the oils. Therefore, the negative growth rates seem not just to reflect a seasonal phenomenon but more a structural problem of the market. Germany argues that only some niches in the motor oil segment in which Addinol Lube is not operating are in decline. However, it was unable to demonstrate that Addinol Lube is operating in high growth segments in the motor oil market and other lubricant markets. It merely plans to do so in the future. Therefore, the implicit argument of Germany that Addinol is mainly operating in profitable market niches is not convincing.

2. It is not enough for a company to have good-quality products and to have strong expertise in research and development. Addinol Lube is competing with major industrial groups, like Shell, Exxon and Mobil, who are all capable of producing high-quality products. Therefore, the qualities attributed to Addinol Lube can be considered to be a condition *sine qua non* to compete on the market at all.

3. It is likely that Addinol Lube would receive more orders if the legal uncertainty as regards the company's future was resolved. However, legal certainty with respect to a company is also just a prerequisite to compete on the

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in brackets and marked with an asterisk.

([5]) This refers to the time span between 1998 and 2002 in which Addinol, according to the restructuring plan, stops refining and selling base oil.

market and does not support the assumption of a 70% turnover increase in a mature or declining market.

4. As regards the export potential of the company, Germany argues that 40% of the current turnover of Addinol Lube is achieved by exports, particularly via its subsidiary (Addinol Mineralöl Marketing OÜ) in Estonia. According to Germany, these countries have double digit growth rates (it was not specified in which market segments these growth rates were achieved). However, the possibility of achieving substantial increases in market shares, even in Eastern Europe, was doubted by Commission experts. There are already major international and local competitors on these markets. Furthermore, Addinol Lube points out that its products are also represented in Russia at Lukeoil gas stations. Due to the crisis in Russia, the company acknowledged that it was not possible to increase turnover on the Russian market in the second half of 1998. Given the current perspectives of the economic situation in Russia it is very unlikely to make substantial turnover increases in the future in this market. The same rather pessimistic considerations apply to Addinol Lube's efforts to enter other markets, e.g. in Asia. Therefore, the expected sales increase will most likely not be accounted for by export activities.

There are other indications that the long-term viability is very questionable.

1. As will be shown in more detail below, the investors are contributing DEM 5 000 000 to the restructuring costs of DEM 64 900 000. Since the aid has to be restricted to the minimum needed, the Commission has to assume that Addinol Lube has undertaken all efforts to increase its contribution to the restructuring plan and has particularly tried to get additional financial resources from private banks or other private investors. Considering the fact that Addinol Lube has not had to take over the debts of the old company and that it is receiving DEM 59 900 000of State aid, it is difficult to see why the company is not able to raise more private capital than DEM 5 000 000. Even the general reluctance of private banks in eastern Germany to give loans cannot explain the unwillingness to grant financial support. A profit-oriented investor like a bank would always finance investment with a promising outlook. Comparable cases in the new German *Länder*show that banks give credit to companies, even companies in difficulties ([6]). The apparent unwillingness of private banks and other financial institutions to provide more money can be considered as a sign that they have doubts as regards the future prospects of the company.

2. The restructuring plan is highly leveraged on State aid which means that if any unforeseen difficulties arise, the likelihood of further aid is rather high. Taking that into account together with the previous history of the firm, the Commission doubts whether the principle 'one time last time' can be assured.

An updated assessment of the restructuring plan by Arthur D. Little on 16 October 1998 does not change this picture. The uncertainty as regards the turnover increase is confirmed by this study: Arthur D. Little argues that Addinol Lube is too focused on the motor oil business where market prospects are bad. The turnover increase that was realised in 1998 is partly due to special circumstances that will not repeat themselves. First, Addinol Lube sold the remaining oil from the old refinery. Secondly, a special turnover effect resulted from the unforeseen effect that Addinol sold base oil from Koramo Kolin AG to third parties. All in all, these special effects account for DEM 13 100 000 turnover of which DEM 4 800 000 comes from the selling of base oils of Koramo Kolin AG. Arthur D. Little assessed that, without those special effects and on the basis of the whole year 1998, the updated financial data are more or less the same as were originally foreseen in the restructuring concept. Therefore, the basic assumptions described above are still valid and the turnover increase of 70% still has to be achieved to its full extent by Addinol Lube. The study by Arthur D. Little does not say anything about the chances of Addinol Lube achieving this turnover increase.

The fact that Addinol Lube did not have losses in 1998 is also due to the fact that it could benefit from special effects, like the selling of the remaining oil reserves of the Leuna refinery. It is no proof that Addinol Lube is already profitable again.

The updated assessment also includes information according to which Addinol Lube has achieved a 12% cost reduction in the purchase of material. On this basis, one could argue that the turnover increase is not necessary anymore. However, part of this cost reduction (e.g. oil input from the remaining reserves of the Leuna refinery) is also just temporary.

Given this background, it is confusing that Arthur D. Little states at the end of its assessment that the blending concept is still a plausible and sound strategy for the development of Addinol Lube. However, that does not dispel the concerns of the Commission as regards the turnover increase. The study, as well as all the other information provided by Germany, does not provide convincing arguments or strong indications that Addinol Lube is realistically able to achieve that increase. Such arguments and indications are necessary since the planned development is contrary to the current market

([6]) For example, in the case of Blema Kircheis, NN 157/97.

assumptions. Even on the basis of all the information in the modified assessment by Arthur D. Little, the Commission considers that the return to long-term viability is not secured.

The Commission concludes that this condition of the Guidelines is not satisfied.

Aid in proportion to the restructuring costs and benefits

The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources, or from external commercial financing.

As can be seen from the table below, the sum of finances granted to Addinol Lube and Addinol Old in the framework of the restructuring plan is equal to the sum needed for restructuring ([7]):

Finances	DEM million	Restructuring measures	DEM million
Grants by *Land* Sachsen-Anhalt (includes DEM 12,85 million GA-Mittel)	29,95	Continuation of old blending facilities for a limited period	5
Grants by BvS	29,95	Investment	28,6
		Losses until 2002	10,7
		Working capital	4,3
		Dismantling of the old refinery of Addinol Old	11,3
Equity capital of investors	1	Equity capital	1
Capital contribution of investors	4	Sales price for assets, including the price for Addinol Dienstleistungs-GmbH	4
Total	64,9		64,9

The overall restructuring costs amount to DEM 64 900 000 of which DEM 53 600 000 is reserved for the Auffanggesellschaft (Addinol Lube) and DEM 11 300 000 is reserved for Addinol Old. The amount of DEM 11 300 000 will be spent on the closure and dismantling of the old refinery and blending facilities. Germany argues that due to environmental regulations it is necessary to dismantle the old facilities. The production facilities (both the refinery and the blending facilities) of Addinol Old will be irreversibly closed. The DEM 53 600 000 for the Auffanggesellschaft includes the DEM 5 000 000 that is paid to Addinol Old. However, this amount is reserved for the continuation of the old blending facility until the new blending facility is constructed and completely operational (end of 1999) and must therefore be attributed to Addinol Lube ([8]). The new investors are contributing DEM 5 000 000 to the Auffanggesellschaft, therefore the investor contribution amounts to 9,3%.

The investors committed themselves to the following obligations: to keep 40 jobs until 31 December 2002 (the penalty for non-compliance being DEM 4 170 per month per job), to keep the company in operation at least until 31 December 2002 (the penalty for non-compliance being 20% of the amount they received from the state) and the obligation to pay to the State 80% of the profits made by selling the company (before 21 December 2002).

Germany argues that not just 63 jobs at Addinol Lube will be secured through the granting of State aid but 250 jobs in the region. The region Merseburg in which Addinol Lube is located suffers from very high unemployment (27%), even compared to other regions in the new German *Länder*. The region Sangershausen which is located next to the region Merseburg suffers from the highest unemployment rate in the new German *Länder*(28,4%). Therefore, Germany argues that the State aid to Addinol Lube will also help to create high-value jobs which will alleviate the structural problems in the region to a certain extent.

This investor contribution of 9,3% is extremely low, especially if one considers that the company has received various aid measures in the past. Even if one takes into account that the investors holding the majority of the shares (76%) are private persons, clearly a 9,3% investor contribution cannot be considered significant. Addinol Lube is an Auffanggesellschaft which does not have to bear the old debts and losses of Addinol Old. It is a new company for which the State is financing a completely new DEM 28 600 000 production facility. Yet, Addinol Lube is not able to attract more capital from banks or other financial institutions.

By letter of 4 November 1998, Germany announced that the investors are planning to increase their contribution to DEM 5 000 000. The aid from Germany would be reduced by the same amount. The new contribution will be financed or guaranteed by Philips Industrial Electronics which is to build the new blending facility. Philips still needs to decide internally

([7]) In the notification and in the opening of procedure, the restructuring concept was envisaged to be DEM 60 900 000. The State aid measures amounted to DEM 59 900 000 and the investor contribution to DEM 1 000 000. The investors have since decided to contribute DEM 4 000 000 more.

([8]) A contract (*Sanierungsvereinbarung*) was concluded between BvS, Addinol Old and Addinol Lube. It deals with the modalities of the aid payments and the obligations of the investors. In the framework of this contract, the Gesamtvollstreckungsverwalter of Addinol Old will contribute DEM 3 500 000 to the dismantling of the old production facilities.

on this contribution. As no definitive commitment has been made so far, this amount cannot be included in the investor contribution. This kind of last-minute action is also not credible since Addinol Lube has had plenty of time in the past to increase that contribution. Germany also informed the Commission that Addinol Lube will receive a loan of DEM 500 000 from […] (*)for the purchase of inputs for the period until the Commission approval of the aid. After the approval by the Commission, that amount could be increased. The contribution from […] (*)can hardly be considered a contribution to the restructuring plan since it merely constitutes short-term financing and is not included in the financial restructuring plan. For example, no State aid measure was reduced in return.

In its letter of 16 October, Germany included a report of the consultant Arthur D. Little with a modified assessment of the restructuring plan of Addinol Lube. According to that report, Addinol will not need a loss compensation of DEM 10 700 000 but significantly less. Germany has however not reduced the aid measures. In the restructuring plan, no maximum amount of loss compensation was fixed that would be adapted to the actual losses incurred. Therefore, the Commission has to assume that a higher loss compensation is paid by Germany than actually needed. The aid is not restricted to the minimum needed.

The Commission concludes that this condition of the Guidelines is not satisfied.

Since two of the conditions of the Guidelines are not fulfilled, the derogation under Article 92(3)(c) of the EC Treaty cannot be applied to the aid measures of DEM 59 900 000 for Addinol Old and Addinol Lube. Germany did not await the Commission's approval before paying out part of the aid and thus failed to comply with its obligations under Article 93(3) of the EC Treaty. This applies to the abovementioned DEM 3 000 000 to Addinol Old and the further DEM 4 000 000 to Addinol Old which was paid out in April 1998 in the form of an interest-bearing loan,

HAS ADOPTED THIS DECISION:

Article 1

1. The rescue aid from Germany in favour of Addinol Mineralöl GmbH i.Gv. of DEM 22 000 000 notified on 28 October 1996 and 9 April 1997 is compatible with the common market.

2. The restructuring aid planned by Germany in favour of Addinol Mineralöl GmbH i.Gv. and Addinol Lube Oil GmbH & Co. KG of DEM 40 050 000 notified on 1 October 1997 and 18 February 1998 is incompatible with the common market.

3. The restructuring aid from Germany in favour of Addinol Mineralöl GmbH i.Gv. and Addinol Lube Oil GmbH & Co. KG of DEM 7 000 000 notified on 1 October 1997 and 18 February 1998 is incompatible with the common market.

Article 2

1. Germany shall take the necessary measures to recover from the respective real and final recipients the aid referred to in Article 1(3) and unlawfully made available to them.

2. Recovery shall be effected in accordance with the procedures and provisions of German law. The sums to be recovered shall bear interest from the date on which they were made available to the recipients. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aids.

Article 3

Germany shall inform the Commission, within two months following notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 December 1998.

For the Commission

Karel VAN MIERT

Member of the Commission