II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 3 February 1999
on State aid which Germany is planning to introduce for Graphischer Maschinenbau GmbH, Berlin

(notified under document number C(1999) 327)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/690/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to those provisions,

Whereas:

1. **Procedure**

By letter dated 21 January 1998, Germany notified the Commission of restructuring aid for Graphischer Maschinenbau GmbH, Berlin (GMB). By letters dated 17 March, 30 April and 18 June 1998, it provided the Commission with further information.

By letter dated 17 August 1998, the Commission informed Germany that it had decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of the aid.

The Commission decision to initiate proceedings was published in the *Official Journal of the European Communities* [1]. The Commission called on interested parties to submit their comments on the aid.

The Commission has received no comments from interested parties.

2. **Detailed description of the measures**

The *Land* of Berlin is offering restructuring aid to GMB in the form of a grant of DEM 9,31 million (EUR 4,76 million) spread over the period from 1998 to 2000. The estimated total costs of the restructuring process amount to DEM 22,93 million (EUR 11,72 million) and include measures relating to skills, the restructuring of production layout and organisation, a change in the product range and an increase in the vertical range of manufacture as well as the losses so far incurred, and those expected in the coming years.

GMB is a manufacturer of newspaper printing machinery parts and is based in Berlin-Spandau (West), an area eligible for regional assistance under Article 92(3)(c). The workforce currently numbers 99 (as against 144 in 1996). GMB is a subsidiary of Koenig & Bauer-Albert AG, Würzburg (KBA), which is primarily a manufacturer of printing machinery. KBA is a large firm within the meaning of the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises [2]. For this reason, GMB must also be deemed to be a large firm, since it does not meet the independence criterion set out in Article 1(3) of the Annex to the recommendation.

[1] OJ C 336, 4.11.1998, p. 13.

[2] OJ L 107, 30.4.1996, p. 4.

Figures such as the continuing downward trend in turnover and the operating losses recorded in 1996 and 1997 show clearly that the firm is in difficulty. The restructuring programme drawn up by KBA on 24 February 1997, completed on l September 1997, covers the period 1998 to 2000. During this period, the proposed measures are to lead to optimum operating size, improved organisation and lower costs and, in particular, to the restructuring of GMB to enable the KBA group itself to produce machine parts (roller bearers) which had previously been procured from other firms. Since GMB does not have its own development department, the design and development of those parts are being handled by the parent company in Würzburg. The granting of the restructuring aid is, moreover, contingent on GMB's maintaining its workforce at 99 employees until the year 2006.

KBA will contribute its own resources, amounting to a total of DEM 12,25 million, to the restructuring plan, in the form of the takeover of operating losses incurred by GMB in the past and expected to be incurred in 1998 and 1999, including social plan expenditure for 1997, adjustment for inventory clearance, and costs incurred during the partial closure in 1997. The restructuring measures are expected to decrease the losses in 1998 and 1999, while a profit of DEM 520 000 is expected for the year 2000. In addition, the above measures should result in an increase in annual turnover to DEM 36 million as from 2000.

In its examination of the case on the basis of the notification, the Commission had doubts as to the compatibility of the proposed grant with the derogation provided for in Article 92(3) of the EC Treaty. At that stage of the investigation, it was not evident whether the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [1] could be applied to GMB, on the grounds that:

— the assumption that long-term viability can be restored is not satisfactorily supported either by GMB's trial balance sheets up to the year 2000 or by clear sales prospects in the relevant sectors,

— the costs estimated by KBA in Würzburg for the development of special machinery parts are very high and, measured against GMB's expected annual turnover as from the year 2000, not justified,

— the parent company, KBA, is primarily interested in ensuring that the manufacture of special machinery parts is carried out within the group itself, with the result that there is no need to sell the know-how to GMB, which could manufacture the new products as a licensee, as is usual within a group,

— no evidence has been produced to show that the development of new products is absolutely necessary for the restructuring of GMB,

— the contribution of KBA, the parent company, consists primarily in the taking-over of the losses incurred since 1996 until GMB reaches break-even point in the year 2000. However, KBA is required to take over GMB's losses under the existing control and profit-transfer agreement, which means that losses incurred before the notification and already covered by KBA cannot be accepted as a contribution by KBA to GMB's restructuring. In addition, the planned restructuring grant of DEM 9,31 million is not in proportion to the eligible costs and may not be of benefit only to a firm in difficulty within the meaning of the Guidelines on rescue and restructuring aid, but may also benefit the parent company.

3. **Comments from Germany**

By letter dated 25 September 1998, Germany submitted its comments with regard to the grounds for initiating proceedings.

Before the restructuring, the subsidiary company GMB served as an extended workbench within the KBA group and its different production sites in Frankenthal, Radebeul, Trennfeld, and Kusel [2]. None of the products was manufactured exclusively in Berlin, but manufacture also took place at other KBA production sites. This overlap in capacity within the KBA group made GMB a crisis-prone company from 1993 onwards, when demand in the printing machinery sector fell drastically. Overstaffing, together with falling demand, led to rapidly mounting losses which threatened GMB's viability. The parent company, KBA, had already intended in November 1996 to close GMB on 30 June 1997, but eventually decided to allow part of the production plant in Berlin to continue to operate, provided that state aid was made available.

The focus of the restructuring plan is the establishment of the ability within the KBA group to produce machinery parts (roller bearers (*Rollenwechsler*), cooling rollers (*Kühlwalzen*), drawing rollers (*Einzugswerke*)). Those machinery parts are independent modules of any web-offset press and represent less than 10 % of the total price of the printing machinery. Roller bearers, cooling rollers and drawing rollers would be in direct competition with other firms' products, possibly including those distributed by KBA.

A prerequisite for the plan's success is the supply of competitive, economical and innovative products and their rapid introduction on the market. Due to the current structure, GMB is unable to develop such products on a short-term basis. Thus the restructuring plan involves recourse to the development and construction capacities of KBA in Würzburg, while future modifications and adaptations would be carried out in Berlin. However, Germany emphasises that the development activities undertaken in Würzburg, in the absence of appropriate capacities in Berlin, will benefit only GMB as an independent profit centre and supplier for the abovementioned modules. As from 1999, GMB will manufacture only improved products and will stop the manufacture of any products that were manufactured before the restructuring of the company.

[1] OJ C 283, 19.9.1997, p. 2.

[2] KBA in figures, http://.kba-print.de

In addition to the previously presented preliminary profit and loss accounts up to the year 2000, Germany provided as part of the proceedings GMB's planned balance sheets from 1997 up to 2000. The figures in the planned balance sheets show a slight decrease in the balance sheet and generally sound finances.

To support the assumptions, Germany presented market studies for 1997, 1998, 1999 and 2000 on KBA and GMB's shares of world-market turnover for web-offset presses for newspapers, commercial web-offset presses, web-fed rotogravure presses and roller bearers/web-offset presses. The figures reveal a steady increase in GMB's turnover for roller bearers, amounting to DEM 85 million in 1997, DEM 110 million in 1998, DEM 140 million in 1999 and DEM 160 million in the year 2000. GMB's percentage share of the total production of this product within KBA will rise from 61 % in 1997, to 74 % in 1998, 87,5 % in 1999 and 90 % in 2000.

No sales forecast is provided for the other two modules, drawing rollers and cooling rollers, which GMB will continue to manufacture and further develop at its own site.

With regard to the estimate of DEM 6,075 million for the development of more competitive products, Germany considers the Commission's doubts concerning the ratio between cost and GMB's expected annual turnover of DEM 36 million as from the year 2000 to be unjustified. Experience shows that the lifetime of newly developed products is usually seven years. Expenditure has therefore to be spread over this period which would lead to an annual burden of DEM 868 000. More against the abovementioned expected turnover in the year 2000, this would amount to 2,4 % a year, or 3,5 % if the costs for analytical revision are added to the above cost estimate. Such a ratio is considered extremely low in the mechanical engineering industry.

Notwithstanding the 'creation of new products' previously mentioned to the Commission, the activities carried out in Würzburg do not meet the definitions either of applied research and development or of basic industrial research, laid down in Annex I to the Community framework on state aid for research and developments [1]. The work is based on technical knowledge available within KBA, focusing in particular on the use of standard-sized rollers for paper rolls of different widths as well as the use of new, economical and handy components.

The main point of the restructuring plan is the future independent ability of GMB within the KBA group to produce roller bearers, drawing rollers and cooling rollers. Expenditure in relation to these newly designed products, in particular roller bearers, is incurred exclusively for the benefit of GMB, which will purchase the know-how from KBA. Germany considers irrelevant the question whether the know-how should be purchased or the new products manufactured on a licensing basis. It argues that, in the latter case, a licence fee would have to be calculated that would cover all costs incurred during the development and construction and take into account a realistic lifetime for the products. Any doubts as to GMB's liquidity are rejected on the grounds that the notified aid does not aim at removing liquidity problems, but at facilitating the restructuring of the company.

As regards KBA's contribution from own resources, and in particular the taking-over of the losses incurred since 1996 and 1997, the control and profit-transfer agreement between KBA and GMB requires the taking-over of GMB's losses. However, the agreement does not specify any period of notice of termination. Thus, as from the crisis meeting held in February 1996, KBA could have terminated the agreement immediately. Furthermore, the entitlement to take over the losses arises at the date of presentation of the balance sheet. The balance sheet for the financial year 1996 was presented on 22 April 1997, well after the establishment of the restructuring plan within the framework of the 'alliance for work' (*Bündnis für Arbeit*) signed in February 1997.

Germany considers that more importance should be attached to the question of why and on what scale the company's losses came about than to the question of the requirement that losses be taken over. If GMB had been closed down on 30 June 1997, as originally planned, with the resultant termination of the control and profit-transfer agreement between KBA and GMB, KBA would not have had to take over the total losses incurred in 1996 and 1997, namely the costs of social measures and closure. The bulk of the costs were due to the restructuring and the outage period required by the conversion of the production layout. Those costs exceed significantly those that would have been incurred for the planned closing down of GMB on 30 June 1997 [2].

The assessment of the proposed aid of DEM 9,31 million for GMB and whether it is proportional to the eligible costs should take into account the contribution of the company from its own resources as well as the specific situation of west Berlin. Against the background of the decision to close down GMB and in view of the significant restructuring costs, on the one hand, and taking into account the specific regional situation of west Berlin and in particular the situation in the manufacturing industry, on the other, Germany considers that the contribution of KBA is in proportion to the restructuring costs. Furthermore, the proposed restructuring aid will not benefit KBA itself. Without the promised grant of restructuring aid, GMB would have closed down on 30 June 1997. Following the decision to continue the business despite GMB's significant losses, KBA took a considerable risk and took over costs exceeding the amount of the restructuring aid. From KBA's point of view, there was no need to preserve a small production site in Berlin with special competence within the group. Any production site within the KBA group would have been able to establish the ability to manufacture the products in question. Furthermore, the necessary expenditure would have been significantly below the restructuring costs incurred for GMB.

[1] OJ C 45, 17.2.1996, p. 5.

[2] The costs incurred for partial closure amount to DEM 2,518 million and social costs to DEM 1,500 million, according to the balance sheet for 1997.

The security for the grant by a land charge amounting to DEM 9,31 million is confirmed and the notarial record is attached to the German letter as evidence.

According to the German communication, the proposed restructuring aid may at most affect trade marginally but should not distort competition to an extent contrary to the common interest. GMB will be by far the smallest supplier of roller bearers. Other suppliers belong to international and financially strong groups. The main competitor in the roller bearer sector, Stork-Contiweb, is, via the Heidelberger Druckmaschinen AG, a subsidiary of RWE. Another competitor, Vits Maschinenbau GmbH, Langenfeld, is part of Deutsche Babcock AG.

The granting of restructuring aid would allow GMB to operate as a competent and competitive supplier on the market for roller bearers, drawing rollers and cooling rollers. GMB's market position would intensify the competition on the relevant market, where there are no excess capacities. The notified restructuring aid aims at restoring the viability of GMB and will not create excess capacities, within either GMB or KBA.

4. **Assessment of the aid**

Restructuring aid for GMB is provided from state resources and serves to keep in business a firm experiencing difficulties. It could therefore have adverse effects on the position of competitors from other Member states on the market for printing machinery. That market is international, and Community manufacturers are in competition with one another for customers within and outside the Community. Consequently, the state support may distort competition or threaten to distort it and affect trade between Member states. The planned state support therefore constitutes State aid within the meaning of Article 92(1) of the EC Treaty because it enables the recipient company to carry out restructuring without having to bear the costs in full as any other firm in a normal market situation would have to do.

The State aid is not covered under approved or existing aid schemes and must therefore be notified individually pursuant to Article 93(3) of the EC Treaty. Germany has complied with this notification requirement.

Article 92(1) of the EC Treaty lays down the principle that aid having the characteristics specified therein is incompatible with the common market. Article 92(2) and (3) of the EC Treaty lists exemptions under which aid may be found compatible with the common market.

The exemptions provided for in Article 92(2) of the EC Treaty do not apply since the aid is not aid having a social character granted to individual consumers, nor does it serve to make good the damage caused by natural disasters, nor is it granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

Similarly, the exemptions laid down in Article 92(3)(a) do not apply, since the aid does not promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Nor can the derogation provided for in Article 92(3)(b) apply, since the aid is not intended to promote an important project of common European interest or to remedy a serious disturbance in the economy of a Member state. Nor does the derogation laid down in Article 92(3)(d) apply, since the aid is not intended to promote culture and heritage conservation.

Restructuring aid may be deemed compatible with the common market only under the exemption provided for in Article 92(3)(c) if such aid can help to promote economic activity without trade being affected in a way that runs counter to the common interest, provided that the conditions set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty are met. In this context, the application of the exemption must be examined on the basis of the frameworks and guidelines in which the Commission set out clearly its interpretation of the exemption in question.

The Community guidelines on State aid for rescuing and restructuring firms in difficulty, laying down the conditions under which restructuring aid can be considered compatible with the common market, are the applicable legal basis in the present case. Under these guidelines, restructuring must take place in the context of a feasible, coherent and far-reaching plan to restore a firm's long-term viability within a reasonable timescale on the basis of realistic assumptions as to its future operating conditions. Restructuring plans take account, *inter alia*, of the circumstances giving rise to the company's difficulty, market supply and demand for the relevant products as well as their expected development and the specific strengths and weaknesses of the company. They allow an orderly transition of the company to a new structure that gives it viable long-term prospects and will enable it to operate on the strength of its own resources without requiring further state assistance.

Restructuring usually involves the reorganisation and rationalisation of the firm's activities on to a more efficient basis typically involving the withdrawal from activities that are no longer viable or are already loss-making. In addition, those existing activities should be restructured that can be made competitive again and, possibly, new viable activities should be developed or diversified into. Financial restructuring usually has to accompany the physical restructuring.

According to Section 3 of the Community guidelines, the Commission has to examine whether the restructuring meets the following requirements: first, it must restore the long-term viability of the company within a reasonable timescale, secondly, the aid must not result in undue distortion of competition, thirdly, the aid must be in proportion to the restructuring costs and benefits, fourthly, the restructuring plan must be fully implemented, fifthly, detailed annual reports must be submitted to the Commission in order to monitor the implementation, progress and success of the restructuring plan.

4.1. *Restoration of long-term viability*

By letter dated 21 January 1998, Germany submitted a restructuring plan drawn up by KBA to keep GMB in business. By letters dated 17 March and 30 April 1998, Germany completed the notification providing in particular detailed preliminary profit-and-loss accounts and the balance sheets for the financial years 1996 and 1997. During the proceedings, Germany submitted planned balance sheets from 1997 up to the year 2000. The restructuring plan takes account of the circumstances giving rise to the firm's difficulties, notably its unfavourable operating size and cost-structure, unsound financial position and the duplication of capacity within the KBA group in relation to the range of products manufactured by GMB and at other KBA production sites. The Commission notes at the outset that the group is committed to implementing the restructuring plan.

In order to adjust its coststructure, GMB had primarily to reduce staff expenditure. Staff costs were almost 35 % of turnover in 1996. As a result of the partial closure in mid-1997, 45 jobs were cut and the workforce reduced from 144 to 99 employees. As provided for in the restructuring plan, GMB's employees agreed to relinquish the contractual wage increase of 1,5 % in 1997 and to accept wage cuts and the waiving of welfare benefits under the 'alliance for work' (*Bündnis für Arbeit*), leading to a cost reduction of DEM 150 000 per year on a permanent basis. Comparing the profit-and-loss accounts for 1996 and 1997, the cost reduction for staff represents in total DEM 3,991 million or 33 %. According to the preliminary accounts, the costs will further decrease in 1998 and 1999 by DEM 1,148 million compared to 1997, while in 2000 they are expected to reach about the same level as in 1997.

Cost reductions of approximately 10 % will also be achieved in the field of assembly and engineering by optimisation of the production process as well as constructive simplification. Interest and miscellaneous costs are expected to decrease, whereas the expenditure for material will be lowered by a further 2 % through more favourable purchase prices. The preliminary profit-and-loss accounts show, however, a steady increase in this expenditure between 1997 and 2000 in line with the expected increase in turnover. Accordingly, the restructuring will be to a large extent achieved by the already implemented reduction in staff costs and improvements in the production process.

The restructuring focuses on the supply of improved and innovative products and their rapid introduction on the market. These products will exclusively be manufactured by GMB, thus avoiding the current duplication of capacity within the KBA group.

The restoration of the company's financial position is primarily financed by the parent company through the taking-over of GMB's losses incurred since 1996 until the company reaches the break-even point to be expected in the year 2000. As from that year, profits are forecast to rise to DEM 520 000.

The Commission examined the forecast balance sheets, profit-and-loss accounts and cash-flow figures, which were drawn up until 2000, to assess whether the restructuring measures would result in the restoration of GMB's viability. The Commission notes that the forecasts were presented in detail with statements on the underlying assumptions. The implementation of the restructuring concept required a completely new factory layout geared to modern production conditions for the three aggregates. Further productivity gains are expected from the subsequent introduction of group work.

The Commission considers that the decisive restructuring measure is GMB's concentration on the manufacture of only three machinery parts, namely roller-bearers, cooling rollers and drawing rollers and, in particular, in the introduction of the revised, more competitive roller-bearers for web-offset presses and rotogravure presses, whose development is to be undertaken by KBA. The Commission notes that loss-making products will be abandoned. The distribution of the improved machinery parts by the parent company, coupled with the capacity reduction at other KBA production sites for these parts, and their incorporation into KBA printing machinery, offer GMB reliable sales potential.

According to Germany, the indispensable rapid marketing of the innovative products can be achieved only with the help of the development and construction capacities of KBA in Würzburg.

GMB expects an increase in turnover of 30,9 % in 1998, 15,8 % in 1999 and 4,7 % in 2000. The Commission notes that the significant increase in turnover in 1998 compared with 1997 is due to the losses incurred during the outage period in 1997 when the conversion of the production layout started.

The Commission considers these assumptions optimistic but achievable. The Commission also notes that KBA provided a detailed geographical breakdown of turnover for 1997, 1998, 1999 and 2000 in the business areas of KBA and GMB. The Commission notes further that GMB's share within the KBA group for improved roller bearers will rise steadily from 61 % in 1997 to 90 % in 2000, resulting in a turnover increase from DEM 85 million in 1997 to DEM 140 million in 2000.

GMB's balance sheet for 1997 as well as the forecast balance sheets up to the year 2000 still reveal a positive equity capital amounting to DEM 6 million. However, the existing control and profit-transfer agreement between KBA and GMB required the parent company to take over GMB's losses and therefore allowed the equity capital to remain positive.

Apart from the cost for developing and improving the products to be manufactured by GMB, thus establishing a manufacturing ability for these parts in Berlin, and other restructuring costs, neither the restructuring programme nor the forecasts indicate that GMB plans significant investments until the year 2000. GMB should therefore be able to achieve a sound financial position in the year 2000.

The following tables summarise the most important aspects of the Commission analysis:

(in 1 000 DEM or EUR)

Profit and loss account	1997 (1)		1998		1999		2000	
	DEM	EUR	DEM	EUR	DEM	EUR	DEM	EUR
Turnover	22 691	11 602	29 700	15 185	34 400	17 588	36 000	18 407
Staff expenditure	7 968	4 074	6 820	3 487	6 820	3 487	7 400	3 784
Operating result	– 2 744	– 1 403	– 1 383	– 707	– 76	39	620	317
Profit/loss	– 2 839	– 1 452	– 1 484	– 759	– 176	90	520	266

(1) Budget year closed on 31 December 1997.

(in 1 000 DEM or EUR)

Balance sheet	1997 (1)		1998		1999		2000	
	DEM	EUR	DEM	EUR	DEM	EUR	DEM	EUR
Equity capital	6 000	3 068	6 000	3 068	6 000	3 068	6 000	3 068
Creditors	7 382	3 774	7 400	3 784	7 000	3 579	6 500	3 323
Balance sheet total	16 464	8 418	16 500	8 436	16 000	8 181	15 500	7 925

(1) Budget year closed on 31 December 1997.

The Commission takes the view that the forecasts show that GMB has viable long-term prospects and is able to operate on the strength of its own resources without requiring further state assistance.

4.2. *Avoidance of undue distortions of competition through the aid*

The Commission examined whether measures have been taken to offset adverse effects of the restructuring aid on the competitors and whether the aid can be deemed eligible for exemption pursuant to Article 92(3)(c). It has first to be noted that GMB is based in Berlin-Spandau (west), an area eligible for regional assistance under Article 92(3)(c).

The restructuring aid in form of a grant from the Berlin authorities may generate distortive market effects since GMB is still in business.

The Commission reviewed the market data available and the market report provided by Germany to assess whether there is a structural excess of production capacity in the relevant market.

The market for printing machinery is closely linked to the printing and publishing sector. This sector was growing until the end of the 1980s, reached maturity and, since the beginning of the 1990s, production has gradually slowed down. The traditional forms of reproduction also constitute a mature market with modest growth potential. The sector is in a process of constant restructuring because of the need to adapt to information and telecommunication technology developments that threaten the prospects for the paper-based printing industry. Apparent consumption and Community production, expressed in current prices, increased by 67 to 68 % between 1985 and 1994. The growth in global consumption slowed down in 1992 by about 1 % and dropped by 2,7 % in 1993, although it rose again by 2 % in 1994. Production followed similar trends, but the recovery in 1994 came to an end in 1995 and production has since then been stagnating (1).

(1) *Panorama of EU Industry*, European Commission, Volume 2, 1997.

According to Germany, demand fell between 1993 and 1995 on the German market for printing machinery. The turnover of the three main producers declined within this period by 13 %, resulting in price decreases and substantial job cuts of 2 500 employees (9,3 %). However, recent figures show that production in this sector increased by 4,9 % in 1996 compared with 1995, and by a further 11,2 % in 1997 compared with 1996. The capacity utilisation ratio in this sector was 89,1 % in 1996 and 89,4 % in June 1997 ([1]).

KBA's market forecasts for 1998 until the year 2000 assume a steady growth of production in the relevant segments of the world market. Furthermore, Germany reports that there is no overcapacity on this market.

Pursuant to point 3.2(ii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the industry serving the relevant market in the European Community by irreversibly reducing or closing capacity. A reduction or closure is irreversible when the relevant assets are scrapped, rendered permanently incapable of producing at the previous rate, or permanently converted to another use.

The Commission notes that the restructuring plan of GMB is primarily based on a new, more efficient factory layout as well as on a change in the range of products. The manufacturing and assembling of parts of the existing products will either be reduced or, if they have been loss-making, abandoned. The parts abandoned by GMB have been increasingly manufactured at the parent company's production sites in Würzburg and Frankenthal in order to increase their own capacity utilisation ratio.

The Commission notes further that GMB will concentrate on the manufacture of only three machinery parts, which will be incorporated into KBA printing machinery, thus replacing, to a large extent, products supplied by outside manufacturers, but will still remain in competition with those suppliers. The machinery parts in question are used in web-offset presses and rotogravure presses and together represent less than 10 % of the total value of a printing machine. KBA's market share in these printing machinery segments amounted in 1997 to 9 % and 20 % respectively of the world market.

The Commission takes note that no structural excess of production capacities exists on the relevant market. Moreover, the Commission notes that GMB has abandoned certain activities and has reduced its product range. In addition, the forecast turnover for the improved products will grow at the same rate as the world market sales prospects. The Commission also takes acccount into account that GMB is the smallest supplier of roller bearers and that other suppliers belong to international and financially strong groups. In accordance with point 3.2(ii) of the Community guidelines, where there is no structural excess of production capacity in a relevant market in the Community served by the recipient, the Commission does not normally require a reduction of capacity in return for the aid.

Accordingly, since there is no evidence of excess capacity, since GMB's market shares are relatively small and since the production of the products is redistributed within the KBA group and therefore does not increase the capacity, the Commission does not see any need for measures to be adopted to offset adverse effects of the aid on competitors.

4.3. *Aid in proportion to the restructuring costs and benefits*

The Commission examined whether the aid was limited to the minimum needed for the company's restructuring.

The Commission takes account of the fact that the restructuring aid of DEM 9,31 million was accompanied by significant contributions by KBA of DEM 12,25 million in order to write off GMB's operating losses incurred since 1996 until GMB reaches the break-even point in the year 2000.

First, the Commission summarised KBA's own-resources contribution to the restructuring plan as follows: [...] (*).

As to the cost taken over by KBA as the company's own-resources contribution to the restructuring plan, the Commission notes that the losses in 1996 and 1997 and the costs of the partial closure in mid-1997, amounting to DEM 9,091 million, were incurred before the date of notification of the restructuring aid, 21 January 1998.

Furthermore, the Commission would point out that, pursuant to the existing control and profit-transfer agreement between KBA and GMB, KBA is required to take over the losses incurred by GMB. However, the Commission notes that the agreement could have been cancelled by KBA after the crisis meeting in February 1996, since it does not provide for any period of notice of termination. The Commission also notes that in November 1996 KBA proposed closing down GMB on 30 June 1997, in which case the agreement would have been terminated before the closure and GMB would not have been entitled to take over the operating losses incurred in 1996 and 1997 or the costs arising from the closure.

The Commission has also takes note of the 'alliance for work' (*Bündnis für Arbeit*) signed in February 1997 on the basis of the restructuring plan. Finally, the Commission has taken into consideration that the costs incurred in 1997 are caused by the restructuring and the outage period due to the conversion of the production layouts and range of products.

([1]) VDMA (Verband Deutscher Maschinen- und Anlagenbau e. V.) 9.7.1998.

(*) 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.

In view of the fact that there was no actual obligation on KBA to take over the operating losses incurred in 1996 [1] and 1997 and taking into account the fact that the restructuring costs exceed the costs which would have been incurred for the planned closing-down of GMB, the Commission considers that KBA contributed DEM 12,25 million to the restructuring of GMB.

The following table summarises the total amount of contributions to the restructuring:

Contribution to the restructuring	in 1 000 DEM	in 1 000 EUR	%
1. Grant of the *Land* of Berlin = total State aid	9 310	4 760	40,6
2. Total contribution of KBA	12 250	6 260	53,4
3. Contribution GMB/KBA	1 370		6,0
Total 1 + 2 + 3	22 930	11 720	100

Secondly, the Commission compared the company's contribution from its own resources with the estimated restructuring costs, which is summarised in the following table:

(in 1 000 DEM)

Estimated costs (in 1 000 DEM)	Würzburg	Berlin	Total
[...] *	[...] *	[...] *	[...] *
Total (1 + 2)	4 875	18 055	22 930

The Commission notes that the total costs for restructuring the company amount to DEM 22,93 million (EUR 11,72 million), including DEM 12,25 million to cover the operating losses, social-plan costs and adjustment costs taken over by KBA, and DEM 10,68 million for the introduction of improved products and the new factory layout. The Commission also takes note of the costs for the design and development of the new products as well as analytical improvement for existing products that were incurred in both Würzburg and Berlin. Finally, the Commission notes that the parent company will sell the know-how for the innovative products, designed and developed in Würzburg for their exclusive manufacture in Berlin, to GMB. In this context, the Commission also takes into consideration the fact that neither the definition of applied research and development nor that of basic industrial research laid down in Annex I to the Community framework on state aid for research and development is applicable to the activities carried out in Würzburg.

The Commission also takes note of the detailed cost breakdown and of the detailed technical description and data relating to the activities carried out in Würzburg, attached to the German comments. The Commission also notes that the expenditure for the development of the new products is spread over a lifetime of seven years, as is usual in mechanical engineering manufacturing, giving an annual burden of DEM 868 000 and, measured against the expected turnover of DEM 36 million in 2000, a share of 2,4 % per year. The Commission takes into account Germany's assurance that the parent company's activities amounting to 15 000 man/hours at DEM 175 (DEM 2,625 million) for the development and a further DEM 500 for the production of the prototype of the roller-bearer (web-offset presses) and to 10 000 man/hours at DEM 175 (DEM 1,75 million) for the revision and standardising of the roller bearer (rotogravure presses) will benefit GMB alone.

Germany did not provide an exact timetable to show whether the development costs occurred after the notification of the restructuring aid. However, the Commission has noted that the improved roller-bearer (Type 'Pastomat RC') has been mass-produced by GMB since the end of 1997, resulting in a first commercial success for the restructuring plan. It can therefore be concluded that a significant part of the development expenditure had already taken place before January 1998.

Furthermore, approximately 80 % of the costs for design and development of the new products were incurred in the parent company's development and construction facilities in Wurzburg (and Frankenthal according to the communication of 25 September 1998). It has to be noted that neither Würzburg nor Frankenthal is located in areas eligible for regional assistance pursuant to Article 92(3)(c). The Commission

[1] The balance sheet for 1996 was, as usual, presented in April (1997), i.e., after the conclusion of the 'alliance for work' in February 1997 on the basis of the restructuring plan.

notes that GMB's capacities would not have allowed for developing, on a short-term basis, the requisite competitive and innovative products and that GMB therefore had to have recourse to KBA's capacities. However, the Commission considers that the parent company was, in any case, interested in supplying improved machinery parts to be incorporated into its printing machinery. Therefore, the development costs of DEM 4,875 million incurred in Würzburg/Frankenthal, and already to a large extent disbursed before the notification, may be assumed to have benefited the KBA group, although the improved machinery is manufactured by GMB, thereby providing GMB with its own area of competence within the KBA group. Finally, the Commission would point out that the purchase price to be paid by GMB for the know-how in these products, which according to Germany has been 'calculated in order to cover all costs incurred during development and construction', will to a certain extent offset KBA's development costs.

The following table summarises the total eligible costs, the amount of contributions from the company's own resources and compares the costs eligible for restructuring aid against the amount of State aid:

Cost/Contribution	Measure	in 1 000 DEM	Contribution in %
1. Costs	Restructuring costs incurred in Berlin	5 805	32
	Taking over of losses, partial-closure costs, adjustment for inventory clearing	12 250	68
Total eligible cost		18 055	100
2. Contribution	KBA	12 250	
	GMB/KBA	1 370	
Total own resources		13 620	75}
3. State aid		9 310	52}
Development costs to be deducted from State aid		4 875	27
Eligible State aid amount		4 435	25

Taking into account the above calculations, GMB would evidently receive an amount of DEM 22,93 million, including DEM 13,62 million from own resources and DEM 9,31 million from public resources. In order to keep the contributions to the minimum needed for the company's restructuring, the proposed state aid of DEM 9,31 million should be reduced by the development costs amounting to DEM 4,875 million, that is to say, by the amount by which the eligible restructuring costs of DEM 18,055 million are exceeded. The viability of GMB will not be affected by this reduction since the costs have to a large extent already been incurred and since KBA, which is not a firm in difficulty, is the main beneficiary of the activities carried out at its own production site. The measure does not therefore provide any additional incentive, whereas the abovementioned costs are independent from the restructuring of GMB itself and the measure serves the restructuring of the KBA group.

Accordingly, the Commission considers only the amount of DEM 4,435 million to be the minimum needed and in proportion to the eligible restructuring costs of DEM 18,055 million and to the contribution from own resources of DEM 13,62 million.

4.4. *Full implementation of the restructuring plan and observance of conditions*

According to point 3.2(iv) of the Community guidelines, the restructuring plan submitted to the Commission must be fully implemented by the aid recipient who must also discharge any other obligations laid down by the Commission decision.

The Commission notes that the restructuring aid is granted for a period of three years (1998 to 2000) and that payments will be spread over this period. The Commission further notes that the proposed grant will have to be reimbursed in the event that the restructuring measures are not fully implemented. The Commission has also noted that GMB is bound by a collateral security amounting to DEM 9,31 million according to the notarial act referenced No 568/1997 of 13 November 1997.

4.5. *Monitoring and annual report*

The Commission has taken note that Germany will provide the Commission with an annual report.

5. **Conclusions**

Germany notified the proposed State aid according to Article 93(3) of the EC Treaty and therefore complied with its obligation to notify individually in the absence of an approved aid scheme. The Commission also notes that it is the first time that GMB, a company in difficulty, has applied for restructuring aid.

The Commission takes into account that the State aid in the form of a grant partly meets the conditions laid down in the Community guidelines for firms in difficulty, notably in that the restructuring aid restores the long-term viability of the company within a reasonable timescale and avoids undue distortion of competition. However, the aid is not within the minimum needed for the company's restructuring in that the proposed grant exceeds the eligible costs by DEM 4,875 million. The Commission considers that only a grant amounting to DEM 4,435 million rather than DEM 9,31 million complies with the requirements laid down in point 3.2.(iii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

The Commission has concluded that the State aid measures contribute to the development of certain activities that do not adversely affect trading conditions to an extent contrary to the common interest. The aid is therefore compatible with the common market to the extent of the amount specified.

Consequently, Germany is authorised to provide aid amounting to DEM 4,435 million (EUR 2,268 million) to GMB,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to grant to Graphischer Maschinenbau GmbH, Berlin, in the form of a grant amounting to DEM 9,31 million, is compatible with the common market within the meaning of Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement only to the extent of DEM 4,435 million.

The amount of planned aid in excess of DEM 4,435 million may not be granted.

Article 2

Germany shall provide the Commission with detailed annual reports in order to demonstrate the due implementation of the restructuring plan.

Article 3

Germany shall inform the Commission, within two months of 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, 3 February 1999.

For the Commission

Karel VAN MIERT

Member of the Commission