II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 28 July 1999
on State aid granted by the Federal Republic of Germany to Pittler/Tornos Werkzeugmaschinen GmbH

(notified under document number C(1999) 3025)

(Only the German text is authentic)

(Text with EEA relevance)

(2000/211/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular Article 88(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 the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 10 April 1997, Germany notified the restructuring of Pittler/Tornos Werkzeugmaschinen GmbH (Pittler/Tornos) to the Commission pursuant to Article 88(3) of the EC Treaty. By letters of 28 May and 5 August, the Commission asked some additional questions that were answered by letters dated 9 July and 17 September. Further information was provided on 27 October.

(2) By letter dated 17 December 1997, the Commission informed Germany of its decision to initiate proceedings under Article 88(2) of the EC Treaty. When initiating the proceedings, it left open the overall amount of aid received by Pittler/Tornos because the information provided by Germany on this matter was inconsistent and because it was not clear whether some of the aid measures had been implemented under approved schemes or whether additional aid would be granted in future.

(3) The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities* ([1]). The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from one interested party. These were forwarded to Germany, which responded to them by letter dated 2 February 1999 (received on 4 February).

(5) By letters of 29 December 1998 (received on 5 January 1999) and 4 May 1999 (received on 5 May), Germany provided additional information.

([1]) OJ C 361, 24.11.1998, p. 4.

(6) By letter of 25 May, the Commission asked for further information on the exact amount of aid granted. Germany replied by letters of 1 July (received on 2 July) and 20 July (received the same day).

II. DETAILED DESCRIPTION OF THE AID

A. **Description of Pittler/Tornos**

(7) Pittler/Tornos is active in the field of multi-spindle lathes. These are used to produce high-precision metal parts for industries such as motor vehicle manufacturing.

(8) Pittler/Tornos is an SME with 130 employees (in 1996) situated in the new German Land of Saxony, an area characterised by high unemployment and eligible for regional aid. In 1996 it had a turnover of almost DEM 9 million. It was privatised on 9 August 1991. On 1 November 1995 the local court (*Amtsgericht*) in Leipzig initiated *Gesamtvollstreckun* insolvency proceedings against Pittler/Tornos. On 1 January 1996 the new firm Pittler/Tornos Werkzeugmaschinen was founded as the *Auffauggesell-schaft*.

(9) In the course of 1998 negotiations were launched with a potential new investor who planned to draw up a restructuring plan by the end of March 1999. The BvS (successor to the Treuhand privatisation agency) estimated that the new firm would need additional aid of up to DEM 9,3 million in this connection. Moreover, it seemed necessary to waive existing claims and to issue guarantees of DEM 28,9 million. By letter of 4 May 1999, Germany informed the Commission that the potential investor had decided not to take over Pittler/Tornos and that the firm therefore had to apply for insolvency proceedings to be initiated.

B. **Description of the restructuring**

(10) No coherent financial restructuring plan has been submitted since no private investor was found for Pittler/Tornos. Germany has merely described several restructuring measures but has not indicated the costs which these measures would entail.

(11) By letter dated 1 July 1999, Germany submitted the following list of financial measures taken to provide Pittler/Tornos with a new chance:

Aid mesures	Amount approved (DEM)	Amount paid (DEM)	Year
Loan form the BvS	4 000 000	4 000 000	1995
Liquidity grant from the BvS	3 000 000	3 000 000	1996
Loan from the Sächsische Landesbank [1]	22 000 000	20 000 000	1996/97
Dormant equity holding	2 200 000	2 200 000	1996
Funds under the joint Federal Government/ Länder scheme	2 969 000	1 816 000	1997
Investment allowance	42 280	42 280	1996/97
Waiver of land charge by the *Land* of Saxony	1 800 000	1 800 000	1999

[1] This loan was secured in part by the Guarantee Regulation (*Bürgschaftsrichtlinie*) of the *Land* of Saxony and by a land charge in favour of the BvS (see below).

C. **Market analysis**

(12) Pittler/Tornos operates in the machine tools (metalworking) sector. The recession which bottomed out in 1993 hit manufacturing in the EU particularly hard. Shrinking profits and overcapacity induced a slump in investment, and machine tool suppliers in the EU suffered the most severe recession since the Second World War. In 1994, in the wake of the general recovery of the European

economy, new orders for machine tools booked by most European producers grew at double-digit rates, and this dynamic growth continued until mid-1995. Average annual growth in production is estimated to have been between 5 % and 10 % in 1996. It was assumed that the basic economic conditions would remain favourable beyond 1996, and that the demand for machine tools would expand in the medium term [2].

(13) The machine tool industry in the EU has long been an important player in world trade. In spite of emerging new competitors, such as the Japanese during the 1970s and 1980s and the Asian NICs during the 1980s and 1990s, the fifteen Member States of the EU have successfully maintained their share of international trade. From a global perspective, the EU is the most important producer of machine tools, accounting for 38 % of production in 1995. In second place is Japan with 25 %, well ahead of the United States with 13 %. The EU is the largest single market for machine tools. Foreign manufacturers, with a market share of around one fifth, face no major trade barriers. Nevertheless, the fifteen Member States consistently show a significant trading surplus in machine tools with the rest of the world. Given the size of the internal market, the 38 % export ratio is considerable and reflects the industry's international competitiveness [2].

(14) Machine tools for metalworking are produced all over Europe, with some degree of regional concentration in a few countries. Firms in this sector are generally SMEs. In terms of average production capacity, Pittler/Tornos is rather small compared with its main competitors. Mechanical engineering firms, the motor vehicle industry and manufacturers of electrical appliances are the sector's main customers. In the case of Pittler/Tornos, they include Volkswagen, Ford and various suppliers to the motor vehicle industry.

III. **COMMENTS FROM INTERESTED PARTIES**

(15) By letter of 7 December 1998 (received on 10 December), the Commission was sent comments on the initiation of proceedings by one interested party (Alfred H. Schütte GmbH & Co KG Werkzeugmaschinenfabrik). The comments concentrated on two main arguments. The first refers to the decline and overcapacity of the multi-spindle lathes market, the second to the overindebtedness of Pittler/Tornos, its obsolete technology and its inability to survive under normal competitive conditions.

IV. **COMMENTS FROM GERMANY**

(16) Germany's comments focus on three main arguments. Firstly, it states that, at the beginning of 1998, a third party showed interest in buying Pittler/Tornos, which was the only producer able to offer a product line similar to that of the complainant and therefore able to compete with it. Secondly, it contests the third party's assertion that the multi-spindle lathes market is suffering from overcapacity and decline. In its view, multi-spindle technology has a high degree of productivity and hence substantial cost advantages, while the difficulties referred to by the third party are mainly a result of the recession which the mechanical engineering sector experienced between 1991 and 1994. Thirdly, it disputes the third party's assertion concerning large-scale redundancies and the resultant loss of know-how within Pittler/Tornos, pointing out that the firm cooperates on specific RTD programmes with its main suppliers of components and aggregates, with the Technical University of Dresden, with the firm Mannesmann, with the Fehland development office and with the firm Sandvik.

V. **ASSESSMENT**

A. **Amount of aid to be authorised**

(17) The question arises as to which of the restructuring measures listed above (Section II.B) constitute aid within the meaning of Article 87(1) of the EC Treaty and which have been taken under approved schemes.

[2] Panorama of EU industry 1997, NACE 29.4.

(18) The dormant equity holding (DEM 2,2 million), the funds granted under the joint Federal Government/Länder scheme (DEM 2,969 million) and the investment allowance (DEM 42 280) have been granted on the basis of approved schemes [3] and do not have to be authorised individually in this decision.

(19) The questions arise as to whether the guarantees and securities for the DEM 22 million loan from the Sächsische Landesbank (partly secured by a *Land* guarantee) should be regarded as aid and whether they need to be approved in this decision. In 1996 an initial DEM 12 million loan was granted by the Sächsische Landesbank. It was originally secured by a *Land* guarantees [4] (65 %) and a land-charge transfer from the BvS to the Sächsische Landesbank (35 %). In 1997 it was planned to increase the loan by DEM 10 million (it was in fact increased by only DEM 8 million) and the security ratio changed: 80 % (i.e. DEM 17,6 million) was now secured by the *Land* guarantee scheme and 20 % (i.e. DM 4,4 million) by the land charge.

(20) Germany claims that part of the loan (80 %, i.e. DEM 17,6 million) was secured by a guarantee granted on the basis of an approved scheme [5]. In its decision on aid measure No E 16/94, the Commission specifies the conditions ('appropriate measures') under which the guarantees by the *Land* of Saxony can be granted [6]. The decision states that only guarantees to large firms have to be notified individually. Therefore, it would seem that guarantees for SMEs like Pittler/Tornos were, at that time, covered by an approved scheme (N 73/93, together with E 16/94). However, the conditions state that a guarantee may be granted only on the basis of a coherent restructuring plan that will lead to long-term viability (point 4) or only if the prospects of a successful restructuring are proportional to the risk associated with the guarantee and if the secured loans will be repaid within a specified period, assuming a normal economic development of the firm (point 5). However, neither of these conditions was met in the case of Pittler/Tornos: the firm had to apply at the end of 1995 for insolvency proceedings (*Gesamtvollstreckung*) to be initiated, and no private investor could be found during the period for which the loans and guarantees were granted. It was therefore highly doubtful whether the firm's long-term viability could be restored and the loan repaid. This is illustrated by the fact that, at the time the loan and guarantee were granted, the firm was making heavy losses (1995: loss of DEM 10 484 245 with a turnover of DEM 8 803 105; 1996: loss of DEM 6 193 000 with a turnover of DEM 13 282 000). Under these conditions, repayment of a DEM 22 million loan and a DEM 17,6 million guarantee was more than uncertain, and the risk associated with the guarantee was not proportional to the prospects for a successful restructuring. Consequently, even though guarantees for SMEs under the Guarantee Regulation of the *Land* of Saxony were not notifiable, the guarantees to Pittler/Tornos totalling DEM 22 million were not covered by the approved scheme (N 73/93, together with E 16/94) and, hence, are subject to individual authorisation in the context of this decision [7].

(21) The rest of the loan (20 %, i.e. DEM 4,4 million) was secured by a land-charge transfer from the BvS to the Sächsische Landesbank. Since this measure did not take place under an approved scheme, it

[3] These schemes are: the Regulation on the granting of assistance from the Consolidation Fund of the *Land* Saxony for the restructuring of small and medium-sized industrial firms (*Richtlinie über die gewährung von Mitteln aus dem Konsolidierungsfonds des Freistaates Sachsen zur Umstrukturierung kleiner und mittlerer Unternehmen der gewerblichen Wirtschaft*) (N 117/95, N 767/95) and the 25th General Plan for the joint/Federal Government/*Länder* scheme for improving regional economic structures (*25. Rahmenplan Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur*) (C 37/96 (ex N 186/96)).

[4] Guarantee Regulation of the *Land* of Saxony (*Bürgschaftsrichtlinie des Freistaates Sachsen für die Wirtschaft, freien Berufe und die Land- und die Forstwirtschaft*) (N 73/93, together with E 16/94 and C 19/95).

[5] See footnote 4.

[6] These were proposed by the Commission to Germany, which did not raise any objections (letter EB 2 - 702002 - EB 2 715065/2/8 of 23 February 1995, received on 24 February). The criteria are irrelevant to this decision (points 4 and 5 of the conditions).

[7] When the proceedings were initiated, the Commisson expressed reservations about whether the granting of guarantees was consistent with the conditions of the approved scheme (the Guarantee Regulation of the *Land* of Saxony). The assessment as to whether the granting of guarantees meets the conditions of scheme N 73/93, together with E 16/94, overlaps with the assesment to be made in this decision of the aid on the basis of the guidelines on State aid for rescuing and restructuring firms in difficulty (see Section V.B below), since the conditions of approval are partly the same. Particularly relevant in this context are the criteria that 'the plan must restore the firm to competitiveness within a reasonable periods' and 'the restructuring plan must be considered capable of putting the company into a position of covering all its costs including depreciation and financial charges' (Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 368, 23.12.1994, p. 12, point 3.2.2(i). These criteria are analysed in detail below and were not - as indicated above - met in the case of Pittler/Tornos when the guarantee was granted.

also constitutes aid to be assessed in this decision. Consequently, all the securities for the loan from the Sächsische Landesbank (DEM 22 million) constitute aid within the meaning of Article 87(1) of the EC Treaty and require approval under this decision.

(22) The waiver of the land charge by the *Land* of Saxony (DEM 1,8 million) must be viewed together with the DEM 22 million loan from the Sächsische Landesbank. As stated above, the loan was secured by a *Land* guarantee (DEM 17,6 million) and by a land-charge transfer from the BvS to the Sächsische Landesbank (DEM 4,4 million). By reducing the security requirements for its loans, the Sächsische Landesbank increased the possibility that other financial institutions would grant loans to Pittler/Tornos. As a result, DEM 1,8 million of the loans granted by the Sächsische Landesbank were no longer secured. This amount must be regarded as aid within the meaning of Article 87(1) of the EC Treaty since Pittler/Tornos had to be classified at the time as a firm in difficulty and since it was therefore doubtful that the loans would be repaid ([8]).

(23) Consequently, this decision must examine the compatibility of the following *ad hoc* aid measures with the common market:

(DEM)

Loan from the BvS	4 000 000
Liquidity grant from the BvS	3 000 000
Loan from the Sächsische Landesbank	22 000 000
Waiver of land charge by the *Land* of Saxony	1 800 000
Total	30 800 000

B. **Aid derogations**

(24) The new aid from the BvS and the *Land* of Saxony was notified as restructuring aid. The Commission must therefore consider in particular the derogation provided for in Article 87(3)(c) of the EC Treaty with regard to 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not affect trading conditions to an extent contrary to the common interest', given that the predominant purpose of the aid in this case is the restructuring of a firm in difficulty. Such aid may be considered compatible with the common market if the criteria laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([9]) are met.

(25) When it comes to applying the restructuring guidelines, one problem is that they are usually not applied to newly established firms that take over or rent the assets of a firm in respect of which liquidation proceedings have been initiated. However, exceptions are made in the case of firms in the new *Länder* such as Pittler/Tornes since the transition from a planned to a market economy poses special problems, a typical example being their low level of equity capital. These problems can justify the classification of new firms as firms 'in difficulty'. Given this special situation and the particular role of the BvS in this restructuring process, aid to firms which take over other firms in respect of which liquidation proceedings have been initiated can, in certain cases, be regarded as restructuring aid. In such cases, the private investors which take over the newly established firm must contribute substantially to its restructuring. However, in the case of Pittler/Tornos, no investor has yet been found. It is therefore doubtful whether the aid granted to Pittler/Tornos can be regarded as restructuring aid within the meaning of the Community guidelines. These doubts are reinforced when the guidelines are examined.

([8]) According to point 2.3 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, the Commission presumes that State aid is involved 'where funding is provided or guaranteed by the State to an enterprise that is in financial difficulties'. As the Sächsische Landesbank is State-owned, this presumption applies to the unsecured loans totalling DEM 1,8 million.

([9]) See footnote 7.

(26) If the Commission is to approve the aid on the basis of those guidelines, the relevant restructuring plan must meet the following conditions:

Restructuring plan and restoration of viability

(27) The *sine qua non* of any restructuring plan is that it must restore the long-term viability and health of the firm within a reasonable time-scale and on the basis of realistic assumptions as to its future operating conditions. The plan must restore the firm to competitiveness within a reasonable period. To fulfil the long-term viability criterion, the plan must be considered capable of putting the company into a position of covering all its costs, including depreciation and financial charges. In principle, aid may be granted only once.

(28) As stated above, no financial restructuring plan has been submitted for Pittler/Tornos. The restructuring measures described in the notification are very general and not coherent. Although it seemed to have developed a competitive product (with the 'renaissance' of multi-spindle lathes, the general market conditions seem to have improved), the firm has not derived any trading profit from its development. This is illustrated by the fact that the firm made significant losses of DEM 10 484 245 (with a turnover of DEM 8 803 105) in 1995 and DEM 6 193 000 (with a turnover of DEM 13 282 000) in 1996 ([10]). The fact that a firm such as Pittler/Tornos has not yet found a strategic investor shows that there were serious doubts concerning its long-term viability. These problems were discussed when the investigation was launched and were confirmed by the firm's eventual insolvency in May 1999.

(29) Given the extremely poor performance of Pittler/Tornos in 1995 and 1996 (as mentioned above, no figures are available for 1997 and 1998), it was very doubtful in that period whether the firm would be able to cover all its costs (including depreciation and financial charges). For example, it seemed unlikely that Pittler/Tornos was in a position to repay the loan from the Sächsische Landesbank (partly secured by a *Land* guarantee) within a stipulated period since its financial situation was such as to require further state-financed loans rather than to enable it to repay past loans. Moreover, further aid was granted in order to keep a failing business afloat.

(30) The Commission concludes from this that the restructuring plan is insufficient to restore the firm's long-term viability and that the firm itself is no longer viable. The restructuring plan was not capable of putting the firm into a position of covering all its costs, including depreciation and financial charges. Consequently, this condition of the guidelines is not met.

Aid in proportion to the restructuring costs and benefits

(31) 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 outside financing.

(32) No private investor has contributed to the restructuring of the firm. The insolvency administrator can hardly be considered a private investor within the meaning of the guidelines. As confirmed in Germany's notification, the role of the administrator is simply to continue operations until a private investor has been found. Since, therefore, no contribution has been made by a private investor, this condition of the guidelines is not met.

VI. **CONCLUSIONS**

(33) It has to be concluded that no coherent restructuring plan has been provided for Pittler/Tornos and that its long-term viability is not secured. Accordingly, the aid is comparable with a purely provisional financing measure designed to keep an insolvent firm in business. This is no longer justifiable.

([10]) The definitive financial results for 1997 and 1998 were not submitted to the Commission. In view of the firm's insolvency in 1999 and the successive increases in the loan from the Sächsische Landesbank and other aid measures, there are sufficient grounds for assuming that the firm's business situation has not improved in the interim.

(34) As several conditions of the guidelines are not met, the derogation provided for in Article 87(3)(c) cannot be applied. The Commission finds that Germany has unlawfully granted aid totalling DEM 30,8 million in breach of Article 88(3) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid totalling EUR 15 747 789,94 (DEM 30,8 million) which Germany has granted to Pittler/Tornos Werkzeugmaschinen GmbH is incompatible with the common market pursuant to Article 87(1) of the EC Treaty.

Article 2

1. Germany shall take the necessary measures to recover the aid referred to in Article 1 from the recipient.

2. Recovery shall be effected in accordance with the rules and procedures of German law. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the net grant equivalent of regional aid.

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, 28 July 1999.

For the Commission

Mario MONTI

Member of the Commission