COMMISSION DECISION

of 20 July 1999

on State Aid granted by Germany to SKET Maschinen- und Anlagenbau GmbH

(notified under document number C(1999) 2538)

(Only the German version is authentic)

(Text with EEA relevance)

(2000/75/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of 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 [1] pursuant to Article 88(2) of the EC Treaty and Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2],

Whereas:

I

(1) SKET Maschinen- und Anlagenbau GmbH ('SKET MAB') is an economic successor to SKET Schwermaschinenbau Magdeburg GmbH, Magdeburg ('SKET SMM'). On 15 March 1995 the Commission decided to initiate the formal investigation procedure in respect of State Aid granted to SKET SMM [3]. The proceedings also concerned SKET SMM subsidiaries Entstaubungstechnik Magdeburg GmbH, Magdeburg ('ETM') and Drahtziehmaschinenwerk Grüna GmbH, Chemnitz ('DZM'). SKET SMM had received the aid in question before, and in the course of, its privatisation and restructuring. Prior to that, SKET SMM had already been granted aid to which the Commission had not objected (NN 46/93 and NN 95/93). The proceedings were given the number C 16/95.

(2) On 30 July 1996 the Commission decided to extend the C 16/95 proceedings to include the State Aid paid since the date of the initiation decision and not covered by that decision [4]. The investors (Oestmann & Borchert Industriebeteiligungen GbR) had withdrawn from the restructuring plan at the end of 1995, and the Commission had been notified of a new plan with additional aid measures. The new plan envisaged, *inter alia*, setting up several successor companies to operate the profitable parts of SKET SMM which could be salvaged from the bankrupt company. SKET MAB was one of these successor companies.

(3) In October 1996 SKET SMM was forced to file for *Gesamtvollstreckungsverfahren* proceedings (insolvency proceedings in the new *Länder*). The plan which had formed the subject of the initial decision of 30 July had not restored SKET SMM to viability. On 26 June 1997 the Commission adopted the negative final Decision 97/765/EC [5] with regard to the aid for SKET SMM. The insolvency proceedings did not apply to the two subsidiaries ETM and DZM, which were transferred to the *Bundesanstalt für vereinigungsbedingte Sonderaufgaben* ('BvS' — the Federal Office for Special Unification-related Tasks). Decision 97/765/EC terminated case C 16/95 only in respect of that part of SKET SMM which was covered by the insolvency proceedings. The case was therefore split into three separate parts as follows: C 16A/95 for SKET SMM, C 16B/95 for ETM and C 16C/95 for DZM.

(4) To reflect the new reality that SKET SMM's successor companies were taking independent courses of action, each of them was allocated a different case number. SKET MAB was given the number NN 122/97. This decision relates only to SKET MAB.

(5) On 21 October 1997 the Commission decided to initiate the Article 88(2) procedure in respect of aid granted to SKET MAB, and the file was given the number C 69/97. By letter dated 10 November (SG(97) D9269) the Commission advised the German authorities of its decision. The letter was published in the *Official Journal of the European Communities* on 14 March 1998 [6]. Although interested parties were invited to submit comments, none were received.

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[1] OJ C 79, 14.3.1998, p. 4.
[2] OJ L 83, 27.3.1999, p. 1.
[3] OJ C 215, 19.8.1995, p. 8; OJ C 298, 9.10.1996, p. 2.
[4] OJ C 298, 9.10.1996, p. 2.
[5] OJ L 314, 8.11.1997, p. 20.
[6] OJ C 79, 14.3.1998, p. 4.

(6) By letter dated 2 April 1998 (registered as received by the Commission on the same date), the German authorities advised the Commission that SKET MAB had been privatised and provided some details of the privatisation. By letter dated 25 May (registered as received by the Commission on the same date), the German authorities replied to the Commission's letter of 11 May and provided additional details on SKET MAB's privatisation. The Commission sent final questions on 29 October together with an information injunction. A meeting took place on 14 December between representatives of the Federal Government, the investors and the Commission to discuss the proposed answers. It emerged from this meeting that the description of the restructuring plan submitted by the German authorities did not tally with the plan approved by the investors. By letter dated 28 January 1999 (registered as received by the Commission on 29 January), the German Government submitted a redrafted restructuring plan. The German authorities submitted further information on 1 February (registered as received by the Commission on 5 February) and 16 April (registered as received by the Commission on 19 April).

II

(7) SKET MAB's problems derive from the nature of SKET SMM, from which it emerged. SKET SMM was a conglomerate designed to operate in a centralised command economy. Attempts to privatise it as a single company when the economic environment was transformed into a competitive market were hampered by its cumbersome, fragmented organisational structure. Restructuring of the conglomerate in its entirety began early on but had not been completed when the Commission reached its negative decision on the various aid schemes for SKET SMM notified in 1994. The measures also concerned the potentially profitable components of the conglomerate, including the heavy machinery manufacturing operation. By the time SKET SMM filed for insolvency proceedings in October 1996, the German authorities had modified their original strategy and had resolved to extract the potentially profitable activities from the conglomerate and to continue operating them as smaller, autonomous economic units.

(8) In order to achieve this, the BvS set up a commercially inactive coordinating company, SKET Management- und Vertriebsgesellschaft GmbH ([7]) ('SKET MuV'), to supervise the restructuring and preparation for privatisation of five commercially autonomous companies, also owned by the BvS. All were small- or medium-sized enterprises. SKET MuV, acting on the instructions of the BvS, was entrusted with finding investors and negotiating the privatisation of the five salvaged companies. The last of the five companies was privatised in April 1998 and the process of dismantling SKET MuV GmbH began. The five salvaged businesses are:

— SKET MAB,

— SKET Walzwerkstechnik GmbH ([8]),

— SKET Ölsaatentechnik GmbH (later renamed Cimbria SKET GmbH) ([9]),

— SKET Maschinenbau-EDV GmbH ([10]),

— SKET Verseilmaschinenbau GmbH ([11]).

(9) In addition to the above there are two subsidiaries, ETM ([12]) and DZM ([13]), which were transferred to the BvS before insolvency proceedings were instituted against SKET SMM.

III

(10) SKET MAB is based in Magdeburg, Saxony-Anhalt, Germany. In 1997 it employed some 115 persons, had a turnover of DEM 39 million and a balance sheet total of DEM 54 million. It manufactures heavy machinery of all types to order. Under the proposed restructuring plan it will gain additional downstream operations relating to wind turbine production.

(11) SKET MAB was registered as a company in the Magdeburg trade register on 8 November 1996 with a share capital of DEM 50 000. The BvS was the sole shareholder. On 22 November SKET MAB entered into an agreement with the liquidator of SKET SMM to take over that company's machinery and plant.

(12) Under the privatisation contract of January 1998 two investors, the Enercon Group, acting through Aloys Wobben, and the LMB Group, acting through Heinz Buse, each acquired 50 % of the shares in SKET MAB.

(13) The Enercon Group is a business group comprising companies owned by Aloys Wobben, in particular Enercon GmbH, a company based in Lower Saxony,

([7]) State aid NN 67/97.

([8]) State aid C 70/97.

([9]) Aid to this firm was approved by the Commission in April 1999 (Case NN 125/97).

([10]) Aid to this firm was approved by the Commission in May 1998 (Case NN 126/97).

([11]) Aid to this firm was approved by the Commission in November 1998 (Case C 72/97).

([12]) State aid C 16B/95.

([13]) Aid to this firm was approved by the Commission in May 1998 (Case C 16C/95).

Germany, as well as associated companies. The group develops, manufactures and installs wind turbines worldwide. The Enercon Group is not a SME; in December 1998 it had 1 200 employees and its 1997 turnover amounted to DEM 396 million. Enercon has become a world market leader in the wind turbine market and has the largest market share in Germany.

(14) The LMB Group is a business group comprising companies owned by Heinz Buse, in particular Logauer Maschinenbau GmbH and associated companies. Heinz Buse is the majority shareholder (75%) in Logauer Maschinenbau GmbH, a company based in Lower Saxony, Germany. It produces general purpose machinery (i.e. the same market as SKET MAB) and supplies the Enercon Group with parts for wind turbines. It is not a SME. In 1997 it had a turnover of DEM 88 million.

IV

(15) On 16 January 1998 a contract was concluded for the sale of shares in SKET MAB between the BvS as vendor and Aloys Wobben and Heinz Buse as purchasers. The sale took the form of an open invitation to tender. After a list of investors had been drawn up by the West Merchant Bank and the privatisation notice had been published in the press, documentation was sent to 44 potential investors. Of those, only eight applied. The investors' bid was the best submitted.

(16) The purchase price of DEM 1 was paid to the BvS. The investors took over a bank guarantee of DEM 5 million from the BvS. The contract featured penalty clauses concerning the number of employees at SKET MAB and the site location. The contract also contained restrictions on profit withdrawals from SKET MAB by the buyers. The Enercon Group also agreed to include two new units in SKET MAB. Although these units were to have a distinct legal status, they would form an integral part of SKET MAB's operations.

V

(17) One of the problems faced by the unit which was eventually to become the legally distinct SKET MAB company was its integration into a large and cumbersome conglomerate, SKET SMM, which was designed to operate in a centrally planned economy. This was reflected in SKET SMM's internal business organisation as well as in its physical infrastructure. Because it also took social policy objectives into account, SKET SMM was grossly overstaffed from a market economy perspective. In addition, the unit which was eventually to become SKET MAB suffered from general neglect and underinvestment. Externally, SKET SMM's integration into and dependency on other centrally planned economies meant that SKET SMM and then SKET MAB sales were disrupted when those economies were subsequently transformed into market economies, with turnover suffering as a result.

(18) In view of the above, one of the key steps in the restructuring involved identifying the core, profitable activity of heavy machinery manufacturing within SKET SMM and then extracting it from the old operation together with the relevant assets and re-establishing it as a going concern. This entailed not only creating a new legal entity, SKET MAB, but also eliminating dependency on other SKET operations, so that future relations between SKET SMM's successor companies would be based on market principles. It also meant creating separate physical infrastructure for SKET MAB and concentrating activities on the smallest site required. The workforce also needed to be reduced. In addition, various measures had to be undertaken to remedy underinvestment. In order to preserve the goodwill associated with the SKET name in the traditional sales areas, certain heavy machinery contracts awarded previously to SKET SMM had to be honoured. At the same time, a new customer base had to be developed for SKET MAB. Following privatisation in the Enercon and LMB Groups, the final phase of the restructuring saw SKET MAB established as a commercial joint venture of its parent companies.

(19) SKET's economic integration into the Enercon Group involved setting up two new operations: Rotorblattfertigung GmbH ('Roma'), which makes wind turbine rotors, and Generatorenfertigung und Assembly GmbH ('Gema'), which produces and assembles generators. These will enhance SKET MAB's traditional operations by providing it with downstream capabilities in relation to the wind-turbine market. These capabilities do not involve an expansion of SKET MAB's capacity. Although forming an integral part of SKET MAB in economic terms, these new operations have been given a distinct legal personality for reasons of product liability and protection of industrial know-how. The operations are physically so integrated into SKET MAB's production process that it would be difficult for them to be sourced from third parties. The Enercon Group provided training in order to familiarise SKET MAB personnel with the new operations.

(20) Economic integration into the LMB Group will benefit SKET MAB by providing access to managerial know-how. Heinz Buse is personally involved in SKET MAB's day-to-day operations.

(21) In addition to the reorganisation arrangements described above, provision had to be made for SKET MAB's capital and financing requirements between the time when it was extracted from SKET SMM and privatisation.

(22) The restructuring plan is to be implemented between 1996 and 1999. According to the German authorities, it will be completed on time.

(23) The total cost of restructuring SKET MAB is DEM 83,1 million, broken down as follows:

(a) DEM 4 million to keep machine production operations running when they were part of the failed SKET SMM;

(b) financing of working capital and capital assets for SKET MAB: DEM 43,7 million;

(c) pre-financing for completion of contracts: DEM 3,7 million;

(d) financing of SKET MAB's post-privatisation restructuring: DEM 15,1 million;

(e) finance to set up the new Roma and Gema downstream operations: DEM 14,7 million;

(f) training for SKET MAB employees: DEM 1,9 million.

(24) Under the restructuring plan, the firm should be restored to profitability in 1999 (see key data in the following table). The 1999 figures are based on projections made at the time of privatisation.

(in DEM)

	1997	1998	1999 (Plan)
Turnover	39 680 000	45 618 000	66 441 000
Material costs	28 170 200	28 590 000	23 850 000
Personnel costs	12 140 277	15 999 000	27 400 000
Depreciation	1 450 500	2 947 200	4 521 000
Operating result	– 1 249 677	– 1 218 800	5 071 000
Profit/loss	– 2 226 277	– 3 760 000	5 291 000

NB: This chart contains only a selection of key data and the columns are not arithmetically complete.

(25) It should be noted that the projected growth in turnover is reflected in SKET MAB's order book and is based on the investors' involvement. For example, the proportion of turnover from wind turbine production currently amounts to 45 % for 1999. In addition, SKET MAB's order book clearly shows that its economic future no longer depends upon contracts from other SKET SMM successor companies. Higher personnel costs reflect increased activity and the acquisition of the Roma and Gema downstream operations. The downturn in material costs reflects SKET MAB's ability to negotiate supply contracts on more favourable terms. The two parent companies, Enercon and LMB, which operate in different markets, are profitable, expanding concerns and have cooperated together for more than twelve years.

VI

(26) The aid package as notified by the German authorities on privatisation amounted to DEM 57,8 million. The Commission has established that the investors were also granted DEM 3,9 million for the period 1998 to 2000

under an approved aid scheme (27th outline programme for the joint Federal Government/*Länder* scheme for improving regional economic structures). The Commission does not need to reassess this measure but will include the amounts in the evaluation of proportionality.

(27) This concerns the following aid measures:

Source	Type	DEM
BvS	Grant to finance working capital and capital assets	40 000 000
BvS	Grant for the purchase of stocks	3 700 000
BvS	Loan for SKET SMM's heavy machinery manufacturing operations and subsequent waiver of repayment	4 000 000
BvS	Grant for final restructuring costs	10 100 000
		57 800 000

(28) In addition, a contract pre-financing grant of DEM 3,6 million was repaid by the investors as part of the privatisation. The original aid package as notified in July 1997 amounted to DEM 79,2 million.

(29) There is no additional aid component to be taken into account, since the Enercon and LMB groups were selected as investors in SKET MAB following an open and unconditional invitation to tender, with the best bid being chosen.

(30) The investor contribution amounts to DEM 25,3 million, broken down as follows:

Application	DEM
Investment in SKET MAB	5 000 000
Training costs for SKET MAB employees	1 900 000
Loan repayments plus interest	3 700 000
Investments (Roma and Gema operations of SKET MAB)	13 000 000
Start-up costs (Roma and Gema operations of SKET MAB)	1 700 000
	25 300 000

VII

(31) The traditional relevant market on which SKET MAB operates is that for the manufacture of made-to-order heavy machinery, of which a significant part (45% of orders in 1999) is the wind turbine market as a result of the company's integration into Enercon and of the Roma and Gema operations. Accordingly, the restructured SKET MAB is also active on the market for rotor and turbine assembly.

(32) As far as its general activity is concerned, SKET MAB's customers are firms and technical operations in various branches of industry requiring the manufacture of components or complete plants on the basis of plans, designs and specifications. At present, the firm is mainly active on the German market, and it faces stiff competition from low-wage countries such as Poland and the Czech Republic. However, there is a growing demand for quality and just-in-time production of complex plants on site, and this market segment is growing in importance. SKET MAB has therefore focused on this segment, in which quality, service, logistics and working to deadlines are key factors. The conditions of the market on which SKET MAB operates is determined by demand on downstream markets. On the basis of the information available to it, the Commission has no grounds to change the view it held when it initiated the formal investigation procedure, namely that the market on which SKET MAB operates is not affected by structural overcapacity.

(33) One such downstream market is the wind turbine market, for which SKET MAB (including Roma and Gema) will produce in particular. Wind power in Europe began in the mid-1970s in the wake of the oil crisis. The industry went through a slump in the mid-1980s, with low energy prices prompting intensified efforts to reduce costs and improve operating efficiency. In recent years the wind power market has recorded very significant growth, with large markets developing in Denmark and, more recently, Germany, which is now the largest market in the EU and indeed in the world. The outlook for this market is very positive. Electricity generation from wind power is expected to grow rapidly as technological advances and lower costs make it increasingly competitive with mainstream power-generation technologies ([14]). The Commission has found no evidence of structural overcapacity on this market.

(34) With regard to the new activities developed by Gema and Roma, given that there is no structural overcapacity on the wind turbine market, upstream markets, such as

([14]) Panorama of EU industry 1997, I-50.

that for the production of parts for the wind turbine market, are also unlikely to suffer from overcapacity.

VIII

(35) The formal investigation procedure was initiated in respect of the original aid package to SKET MAB because of the Commission's doubts concerning the compatibility of the aid as restructuring aid with the common market. In particular, on the basis of the information provided, the Commission held that the restructuring plan was too vague as regards the restructuring measures and associated costs. The financial data provided was also insufficient and it was not clear whether the company could be turned into a profitable business within a reasonable period of time. The lack of information on the development of SKET MAB's capacity also meant that it was hard to identify the impact of the aid on its competitors. The lack of information on the restructuring measures and their cost meant that it was also difficult to determine whether the aid was limited to the minimum necessary for the restructuring. The lack of a private investor interested in taking over SKET MAB when the formal investigation procedure was initiated increased the Commission's doubts.

IX

(36) The above aid measures are caught by Article 87(1) of the EC Treaty for the following reasons.

(37) SKET MAB is a company operating in a relevant market which extends across Member States, and therefore trade between Member States is affected. Aid by its very nature tends to distort competition. The aid awarded to SKET MAB by the German authorities are therefore caught by Article 87(1) of the EC Treaty. Article 87(2) and (3) of the Treaty provide for the possibility of exempting aid caught by Article 87(1). For the reasons set out below, the sole basis for exempting the restructuring aid to SKET MAB, a firm in difficulty, is Article 87(3)(c).

(38) The aid was granted to a company which the BvS had founded when insolvency proceedings were initiated against another economic entity. Although operating via the legal person of SKET SMM GmbH, the latter entity was in reality a cluster of diverse economic operations which had been undergoing restructuring over several years. The new SKET MAB company is a continuation of part of SKET SMM's heavy machinery operations. The BvS strategy, as modified, was to provide the new company with capital and resources in order to privatise it on a stand-alone basis. The distinguishing feature of this arrangement is that SKET SMM GmbH, which had been in continuous state ownership since 1990, could never have been privatised as a single or group economic unit. These circumstances distinguish the present case from those rescue companies (*Auffanggesellschaften*) created in the wake of the winding-up of a company which had already been privatised.

(39) When it acquired legal personality, SKET MAB, the heavy machinery manufacturing operation, was not viable as an independent firm. As noted above, SKET SMM's heavy machinery operation was not founded and operated as a distinct business, but was designed to function in a command economy. The resulting problems led to the eventual collapse of SKET SMM. Unless the potentially viable operations could be extracted from SKET SMM for further restructuring as independent concerns, the successor operations would continue to face the same problems. The aid granted to SKET MAB, which took over parts of the assets and resources of a bankrupt company, may be treated as restructuring aid. This is justifiable both in view of the particular historic and economic circumstances of the companies, which were obliged to readjust rapidly from a centralised economic system to a market system, and in view of the role played by the BvS (successor organisation to the *Treuhandanstalt*) in this re-adjustment.

(40) In the light of the above, the Commission takes the view that the exemption provided for in Article 87(3)(c) of the EC Treaty is relevant. In order to meet the requirements for exemption under this Article, the aid must satisfy the criteria set out in the guidelines on state aid for rescuing and restructuring firms in difficulty ([15]).

(41) The Commission considers that rescue and restructuring aid may contribute to the development of economic activities without adversely affecting trade against the Community interest if the conditions set out in Section 3 of the guidelines are met, and it will therefore authorise such aid under those conditions. Where the firms to be rescued or restructured are located in assisted areas, the Commission will take regional considerations under Article 88(3)(a) and (c) into account as described in paragraph 3.2.3 of the guidelines.

([15]) OJ C 368, 23.12.1994, p. 12.

(42) The measures to be considered are those notified by the German authorities in 1998, amounting to DEM 57,8 million, together with the loan for pre-financing contracts amounting to DEM 3,6 million plus interest, which were repaid by the investor on privatisation and were intended as restructuring aid.

X

(43) To meet the criteria in the guidelines, all restructuring plans must restore companies in difficulty to long-term viability within a reasonable time scale and on the basis of realistic assumptions.

(44) The problems faced by the operation which was eventually to become SKET MAB and the measures required to address them are outlined above. The pre-privatisation measures addressed some of those problems and the post-privatisation measures tackle the remainder, including integration into the parent companies. Dependency on other SKET SMM successor companies was ended and SKET MAB gained access to new geographic and product markets. The two investor groups are successful operations which also have a good record of working together. SKET MAB's economic performance is in line with the projections made at the time of privatisation. The investing companies have already made an impact on SKET MAB's order books and the restoration of liability within a reasonable timescale seems realistic.

(45) The Commission concludes that this criterion of the guidelines has been met.

XI

(46) A further condition under the guidelines for restructuring aid to be acceptable is that the aid must not give rise to undue distortion of competition.

(47) In the case of structural excess of production capacity on the relevant market, the guidelines require the aid recipient to reduce capacity on a permanent basis. Where there is no structural excess of production capacity no reduction is required, but a capacity increase is not normally allowed.

(48) As noted above, the Commission has no evidence that the relevant sectors, the heavy machinery manufacturing operation, of which the wind turbine market forms a sub-part, suffer from a structural excess of production capacity, and therefore SKET MAB is not required to reduce its capacity on a permanent basis. However, it has downsized its premises and workforce as part of the restructuring arrangements. In addition, SKET MAB's existing machine production capacity did not expand when Gema and Roma were set up. The two new operations are downstream of this activity and are necessary components of successful integration into Enercon and thus crucial to SKET MAB's return to viability.

(49) The notice published in the *Official Journal of the European Communities* setting out the letter to the German authorities called on interested parties such as competitors to submit their comments. No replies were received.

(50) Although SKET MAB is to be run as a joint venture by the Enercon and LMB groups, these groups are not active on the same markets and the agreement between them as described by the German authorities will not otherwise distort competition in the common market.

(51) The Commission concludes that the aid to SKET MAB will not result in undue distortion of competition.

XII

(52) A further condition under the guidelines for restructuring aid to be acceptable is that the amount and intensity of the aid must be limited to the strict minimum needed for restructuring and must be related to the benefits anticipated from the Community's point of view. Investors are also expected to make a significant contribution to the restructuring plan from their own resources.

(53) In this case, the total aid package from the BvS amounts to DEM 57,8 million. This amount comprises a loan of DEM 43,7 million from the BvS to purchase working and investment capital and to build up stocks of components and acquire equipment from SKET SMM. A further element of the package consists of a loan of DEM 4 million granted by the BvS to the administrator. SKET MAB has also received a loan of DEM 10,1 million to continue restructuring. The DEM 3,99 million granted under the joint Federal Government/*Länder* scheme must be added to the total amount of new aid for the purpose of assessing whether the aid is in proportion to restructuring costs and benefits.

(54) Although the purchase price was only DEM 1, the investors committed themselves to providing DEM 5 million for the restructuring of SKET MAB. They will finance training for SKET MAB employees to the tune of DEM 1,9 million. They agreed to repay a loan of

DEM 3,6 million granted to SKET MAB and associated interest of DEM 100 000. Since the restructuring plan involves expanding SKET MAB by adding the Roma and Gema operations, the investors' commitment to these operations must also be taken into account. The investors will put DEM 13 million into Roma and Gema and will finance the start-up costs of DEM 1,7 million. The investors' contribution to the restructuring is therefore DEM 25,3 million, or DEM 21,31 million, taking into account the DEM 3,99 million in joint Federal Government/*Länder* funds granted to the investors.

(55) The total restructuring costs therefore amount to DEM 83,1 million, of which private investors have contributed about 25 %. The investors' contribution may therefore be regarded as reasonable.

(56) In view of the above, the Commission concludes that the concerns it expressed when it initiated proceedings have been addressed, and that the criterion concerning proportionality of aid has been complied with.

XIII

(57) A further condition of the guidelines is that the restructuring plan submitted to and accepted by the Commission must be fully implemented and any obligations laid down by the Commission decision must be discharged. Otherwise, unless the original decision is amended following a new notification from the Member State, the Commission will take steps to require the recovery of the aid. Important parts of the restructuring plan, such as the setting-up of Roma and Gema, have already been implemented. The investors have undertaken to implement the remaining components within two years. As stated above, the two investor groups have a long history of cooperation, so there is little reason to assume that they will dissolve the joint venture. In addition, the German Government has provided assurances that all possible measures will be taken to ensure that the plan is carried out. The Commission therefore concludes that this part of the guidelines has also been complied with.

XIV

(58) The Commission finds that Germany has unlawfully implemented the aid measures detailed above in violation of Article 88(3) of the EC Treaty. However, in view of the above, the Commission concludes that, in so far as these measures comply with the guidelines on restructuring aid, they are compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The measures which Germany has implemented for SKET MAB, Magdeburg and the heavy machinery manufacturing operation of SKET SMM amounting to DEM 57,8 million are compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement. The relevant aid comprises:

(a) a grant by the BvS to finance working capital and capital assets (DEM 40 million);

(b) a grant by the BvS for the building-up of stocks (DEM 3,7 million);

(c) a loan for the heavy machinery manufacturing operation of SKET SMM and the waiver of repayment (DEM 4 million);

(d) a grant for the final phase of restructuring (approximately DEM 10,1 million).

Article 2

The loan of DEM 3,6 million which Germany granted to SKET MAB and which was repaid by the investors in SKET MAB is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

Article 3

Germany shall submit a detailed annual report on implementation of the restructuring plan.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 July 1999.

For the Commission
Karel VAN MIERT
Member of the Commission