COMMISSION

COMMISSION DECISION

of 19 July 2000

on State aid granted by Austria to Lenzing Lyocell GmbH & Co KG

(notified under document number C(2000) 2454)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/102/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 pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE AND BACKGROUND

(1) In several letters and at various meetings in 1994 and 1995, Austria informed the EFTA Surveillance Authority and the Commission that it intended to grant State aid to the company Lenzing Lyocell GmbH & Co KG, Heiligenkreuz (LLG). LLG forms part of the Austrian Lenzing Group, one of the world's largest producers of viscose fibres. Beginning in 1995, LLG established a new production plant at the Business Park Heiligenkreuz-Szentgotthard (Business Park) to manufacture Lyocell, a new type of man-made staple fibre, produced from natural cellulose in wood pulp. Only Lenzing AG and the British chemicals group Courtaulds plc [2] have patent rights to produce this fibre. The Business Park is a cross-border project between Austria and Hungary. LLG is situated in the Province of Burgenland, Austria's only Article 87(3)(a) region. Investment costs amounted to EUR 138 million.

(2) Austria intended to provide investment aid of up to 40 % of eligible costs on the basis of the previously approved regional aid scheme N 589/95. In response to Austria's written request of 30 August 1995, the Commission informed Austria by letter of 5 October 1995 that if grants were provided under this approved regional scheme, no individual notification would be required. The Commission also reminded Austria that it had to inform the Commission in due time before providing any State guarantees.

(3) By letter dated 21 April 1997, Austria forwarded to the Commission application forms for ERDF co-financing on two large-scale investment projects at the Business Park, carried out by the companies Business Park Heiligenkreuz (BPH) and Wirtschaftspark Heiligenkreuz Servicegesellschaft mbH (WHS). In these documents, Austria stated that the interest of LLG had had an important impact on the development activities in the Business Park by BPH. Furthermore, Austria stated that WHS would invest in a utility centre to provide basic process utilities, such as electricity, process steam, fresh water, cooling water, compressed air, and waste-water treatment primarily to LLG. Austria also indicated that the Province of Burgenland would have to provide grants to WHS to cover expected negative cash flows resulting from the supply of infrastructure service at prices guaranteed over a period of 30 years.

(4) The Commission started to re-investigate the case and informed Austria by letter dated 23 December 1997 that it had transferred the case to the NN-register for non-notified State aid. Further meetings and correspondence failed to clarify the Commission's concerns. Austria argued that a number of aid measures would be covered by approved or existing aid schemes.

[1] OJ C 9, 13.1.1999, p. 6.
[2] In July 1998 Courtaulds plc became part of Akzo Nobel, an international pharmaceuticals, coatings, chemicals and fibres company based in the Netherlands.

(5) On 14 October 1998, the Commission decided to initiate the formal investigation procedure under Article 88(2) of the EC Treaty on the following measures and informed Austria by letter of 29 October 1998:

(a) state guarantees for grants and loans totalling EUR 50,3 million;

(b) low land prices of EUR 4,4 per m^2 for 120 hectares of industrial land;

(c) price guarantees for basic process utilities (electricity, gas, water, etc.) over a period of 30 years.

(6) In the same letter, the Commission called on Austria to provide all necessary information to enable an assessment to be made of a number of measures which Austria claimed were covered by existing or approved schemes.

(7) The Commission's decision was published in the *Official Journal of the European Communities* ([3]). The Commission received five sets of comments from interested parties which it passed on to Austria. The comments, all negative, were submitted by three competitors, one fibre association and the Permanent Representation of the United Kingdom to the European Union.

(8) By letters of 15 March and 16 and 28 April 1999, Austria replied to the Commission's letter of 29 October 1998. From these replies it became clear that several of the aid measures were not covered by any approved or existing scheme. The Commission thus had to assess these measures as new aid directly under the provisions of Article 87 of the EC Treaty. Furthermore, environmental aid seemed not to have been granted under correct application of Austria's Environmental Aid Act ([4]). As the preliminary examination also led to serious doubts about the compatibility of these aid measures with the common market, the Commission decided on 23 June 1999 to extend the formal investigation procedure to the following measures:

(a) ad-hoc investment aid of EUR 0,4 million for the land purchase;

(b) ad-hoc equity participation of EUR 21,8 million over 30 years and a 1 % p.a. return;

(c) company-specific infrastructure connections involving an unknown aid amount;

(d) environmental aid of EUR 5,4 million, possibly granted in incorrect application of the Environmental Aid Act.

(9) The decision to extend the formal investigation procedure was published in the *Official Journal of the European Communities* ([5]) and interested parties were invited to comment. The Commission received three sets of comments from interested parties, namely from two industrial associations which commented favourably on the aid measures, and from the United Kingdom Permanent Representation, which took a negative view.

(10) Austria replied by letter of 4 October 1999 and, after another meeting with Commission staff on 8 December 1999, provided further information by letters of 25 February and 27 April 2000.

(11) In addition to the aid for the measures referred to in points 5, 6 and 8, for which the Commission initiated the formal investigation procedure, LLG had been granted further financial measures. These concerned EUR 24,7 million in grants by the Province of Burgenland, of which EUR 14 million were granted according to the regional aid scheme 'Burgenland investment allowance programme' approved under number N 589/95. Moreover, EUR 12,6 million were granted under the Federal Labour Act to train new personnel. Finally, a grant of EUR 0,8 million for training is considered a general measure, not constituting aid. In its decisions to initiate and to extend the formal investigation procedure, the Commission noted that the total amount of all the aid measures appeared to exceed the regional aid ceiling of 40 % net grant equivalent.

2. **DESCRIPTION OF THE FINANCIAL MEASURES**

(12) *Measure 1: State guarantees for grants and loans of EUR 50,3 million*

In its decision to initiate the procedure, the Commission doubted that LG had paid commercial rates for several guarantees and that they were provided under approved or existing schemes. By letters of 15 March 1999 and 24 February and 27 April 2000, Austria reported the following facts on committed state guarantees for grants and loans:

([3]) See footnote 1.
([4]) *Bundesgesetzblatt* No 185/1993.
([5]) OJ C 253, 4.9.1999, p. 4.

(a) on 2 July 1996 the Stte-owned Wirtschaftsservice Burgenland AG (hereinafter WiBAG) granted LLG on the basis of an approved scheme [6] a guarantee for an European Recovery Programme (ERP) loan of EUR 14,5 million. This guarantee runs until the end of 2004, covering two linearly degressive amounts of outstanding credit;

(b) on 28 June 1996 a consortium of commercial and public banks including Erste Bank and Hypo-Bank Burgenland AG provided a guarantee for an ERP loan of EUR 21,8 million which, like the guarantee referred to in (a), runs until the end of 2004;

(c) on 18 October 1996 WiBAG provided a guarantee for a EUR 1,4 million loan that had been granted from the ERP Fund to LLG as an interest subsidy. The guarantee applies only in the event that LLG does not fulfil its contractual obligations in connection with the subsidy;

(d) on 17 December 1996 WiBAG provided a guarantee to the Federal Ministry of Labour and Social Affairs for EUR 10,35 million that the latter ministry had granted to LLG;

(e) on 23 December 1996 and 8 July 1997 WiBAG provided another guarantee to the Federal Ministry of Labour and Social Affairs for EUR 2,25 million that the ministry had disbursed in connection with EU co-financing for regional aid.

(13) *Measure 2: Low prices of EUR 4,4 per m² for 120 hectares of land*

The Province of Burgenland made commitments in a contract (Burgenland Vertrag), signed on 21 March 1995 by the Province of Burgenland and 14 June 1995 by LLG. One of several aid measures in the contract concerns the commitment to offer to LLG at least 100 hectares of land appropriate for the intended industrial use of LLG and not costing more thap EUR 44 per m². In a side-letter, the Province of Burgenland undertook to provide more land under the same conditions.

(14) By letter dated 19 September 1995, Austria stated that LLG on 29 May 1995 bought 120 hectares of land directly from several private landowners for EUR 4,4 per m². In documents submitted on 21 April 1997, Austria stated that, at the Business Park, BPH planned to sell land with railway access for EUR 32,5 per m² and land without railway access for EUR 25,3 per m². The Commission therefore had serious doubts whether the land price of EUR 4,4 per m² could be considered a market price.

(15) By letter of 15 March 2000, Austria clarified that at the beginning of the contract negotiations between LLG and the private owners all land was designated as agricultural land in the land destination plan (Flächenwidmungsplan). However, at the date of signature, i.e. 29 May 1995, the designation had been changed to industrial use. LLG bought the Land completely undeveloped and had to arrange all the necessary onsite infrastructures itself.

(16) *Measure 3: Fixed prices over 30 years for basic process media*

In point 6 of the side-letter to the Burgenland Vertrag, the Province of Burgenland undertook to provide LLG with basic process media, i.e. electricity, process-steam, process-water, cooling, pressurised air, water treatment and waste disposal. The Province of Burgenland guaranteed fixed prices for all these services for a period of 30 years, the prices being geared to the average electricity price in the EU.

(17) Austria explained that such price guarantees were necessary at the time when the Business Park was only just being developed, but that in any case the prices represented market prices. In particular, Austria took the view that the basic process utilities would be delivered by private undertakings and should therefore be considered market prices.

(18) In its decision of 14 October 1998 initiating the formal investigation procedure, the Commission requested evidence that the prices were market prices, in particular because it had the following indications to the contrary:

(a) a private utility would not have entered into a contract to provide basic process utilities at fixed prices over 30 years, when at the same time LLG had the option to terminate the contract already after five years;

[6] Notified under N 542/95: Richtlinie betreffend die Ubernahme von Burgschaften fair Kredite and Darlehen gemäß dem Gesetz vom 24. März 1994, *Landesgesetzblatt* No 33/1994, über Maßnahmen zur Gewährleistung der wirtschaftlichen Entwicklung im Burgenland, Landes-Wirtschaftsförderungsgesetz 1994-WiföG.

(b) in its ERDF cofinancing application, Austria had indicated that the Province of Burgenland would have to provide grants to the utility operator WHS to cover expected negative cash flows from the provision of basic process utilities to LLG.

(19) The Commission asked Austria to provide proof that LLG was paying commercial prices to WHS, including depreciation for fixed capital costs of the utility centre. Similar evidence was requested for the waste-water treatment plant operated by the Abwasserverband Bezirk Jennersdorf.

(20) By letter of 25 February 2000, Austria submitted a declaration by LLG that it was waiving all price guarantees for all basic process media.

(21) *Measure 4: Ad-hoc investment aid of EUR 0,4 million for the land purchase*

As specified in Article 2 point 2.2 of the Burgenland Vertrag, the Province of Burgenland granted EUR 0,4 million in aid for the acquisition of land. The sum was transferred to LLG on 16 October 1995.

(22) By letter of 15 March 1999, Austria stated that it had granted the aid as ad-hoc aid, and not under any approved or existing aid scheme. Austria also declared that the aid was investment aid and was justified by its regional objective as described in the Burgenland Vertrag. In its decision of 23 June 1999 to extend the formal investigation procedure, the Commission requested further justification of the regional significance of the investment aid which LLG had received for the acquisition of land.

(23) *Measure 5: Ad-hoc equity participation of EUR 21,8 million over 30 years and a 1 % annual return*

On 28 June 1995 and 13 July 1995, WiBAG and LLG signed a contract on a dormant equity participation (echte stifle Beteiligung), whereby WiBAG provided capital of EUR 21,8 million. The participation procures WiBAG a 1 % annual return on its invested capital. As specified in the most recent side-contract, WiBAG will ask for a market-oriented return after expiry of the 30 years. The dormant partnership capital thus resembles a soft loan with a 30-year maturity. Austria stated that, due to the abnormally low return on investment, it was clear that WiBAG did not act as a market-economy investor.

(24) In its letter of 15 March 1999, Austria stated that this participation was not granted under any existing or approved aid scheme. As explained in its decision of 23 June 1999, the Commission therefore examined the aid as ad hoc aid under the provisions of Article 87 of the EC Treaty. It is not clear from the equity participation contract that the capital provided had an investment purpose. Moreover, the Commission noted that no investment costs or investment-timetables had been fixed as a precondition for the capital injection. Finally, the Commission considered the regional justification of the aid to be insufficient.

(25) *Measure 6: Company-specific infrastructure connections of an unknown aid amount*

In Article 4 of the 'Burgenland Vertrag', the Province of Burgenland undertook to build the infrastructure for supplying LLG with electricity, process-water, telecommunications, water treatment and waste disposal and to provide access to the site with appropriate road and railway facilities. The Province of Burgenland was to pay for this infrastructure development. BPH developed and paid for the infrastructure at the Business Park. It provided access to LLG's site with roads, railway, water supply, sewage treatment, electricity, natural gas and telecommunications. Companies in Austria are usually required to pay a fee for State-provided infrastructure developments.

(26) Austria consistently argued that this infrastructure investment did not constitute state aid to LLG as any company at the Business Park could take advantage of the infrastructure. The Commission held that, as evident from Austria's letter dated 21 April 1997, the development of the Business Park took into account specific requirements of LLG and that, for example, the railway access to LLG's site could be used only by LLG. The Commission therefore held that LLG benefited from company-specific infrastructure connections. Austria also argued that BPH was a private investor. The Commission requested evidence of this.

(27) Finally, Austria claimed that LLG was simply benefiting from its geographic proximity to the place where the infrastructure was in any case being developed for the Business Park. In its decision of 23 June 1999, the Commission had already pointed out that, from the descriptions provided on the connections and taking account of the current information on the establishment of other companies, there was no basis to conclude that the measures were general measures for the Business Park.

(28) *Measure 7: Environmental aid of EUR 5,4 million*

By letter dated 11 January 1996, the State-owned Österreichische Kommunalkredit AG (ÖKK) stated that it was providing on behalf of the Federal State an environment-related investment grant of EUR 5,4 million on environmentally related investments of EUR 11,1 million. The aid was provided under Article 12(5) of the Environmental Aid Act (Umweltförderungsgesetz) and the corresponding scheme of 1993 (Förderungsrichtlinien). The Act and the scheme were notified to the EFTA Surveillance Authority as existing aid, registered under N 93/148, and were in force at the time the granted was provided in 1996.

(29) The aid was provided in two instalments. The first instalment amounted to EUR 1,9 million and included 50 % cofinancing by the ERDF for research and development activities. The second instalment amounted to 36 million. Austria had provided a list of eligible cost items for investments in machinery and process units. The aid intensity amounts to 50 % for pilot projects. In its decision of 23 June 1999, the Commission endorsed this classification as pilot project.

(30) In its decision of 23 June 1999, the Commission expressed the following doubts as to the correct application of the existing aid scheme:

(a) the environmental scheme stipulates that eligible projects must relate to production methods for the reduction of pollution. The Commission asked Austria to provide evidence for such pollution reduction potential of the particular investment, i.e. the environmental benefit that can be attributed to it;

(b) in providing evidence of the environmental benefit of the LLG production process as compared with traditional viscose production processes, Austria would have to demonstrate why specific items were considered eligible for environmental aid and what were their eligible costs.

3. ASSESSMENT OF THE AID MEASURES

(31) *Measure 1: State guarantees for grants and loans of EUR 50,3 million*

Austria has stated that the EUR 14,5 million guarantee that WiBAG granted to LLG was granted on the basis of an approved guarantee scheme ([7]). The main condition of this scheme is the required innovative character of the new investment. As Austria has demonstrated that the investment concerns an innovative product and an innovative production process, the Commission considers this condition and other conditions of the scheme fulfilled. The measure is therefore existing aid.

(32) In order to determine whether the regional aid ceiling has been complied with, the Commission calculates the aid equivalent of the guarantee. The Commission bases its calculation on the price the creditor would have to pay under normal market conditions for a similar guarantee. By means of declarations from the private bank Oberbank, Austria has provided evidence that a 0,625 % annual fee would have been a market price for such a guarantee for LLG. In view of this, and in view of the decreasing amounts to be covered, the Commission calculates the aid equivalent to amount to EUR 0,47 million.

(33) Regarding the guarantee on a loan of EUR 21,8 million granted by a consortium of commercial and public banks, Austria has made it clear that LLG pays commercial rates, i.e. 0625 % annually, as stated in paragraph 32. The Commission therefore considers no State aid to be involved.

(34) The guarantee that WiBAG granted to the ERP covers a grant of EUR 1,4 million. In its letter of 15 March 1999, Austria explained that this guarantee merely concerns cession of right between ERP and WiBAG in case LLG does not fulfil important contractual obligations. Austria has made it clear that this is a standard clause in grant contracts. Austria also explained that the guarantee provided by WiBAG had not been a precondition for the ERP grant. The Commission therefore takes the view that what is involved is simply the cession of rights to reclaim the subsidy between two state institutions. As this guarantee does not commit State resources or confer a benefit on LLG, the Commission considers this guarantee not to constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(35) The two guarantees WiBAG provided to the Federal Ministry of Labour and Social Affairs covering EUR 10,35 million and EUR 2,25 million also concern cessions of rights between two State institutions. For the same reasons as those set out for the measure above, the Commission does not consider them State aid.

([7]) See footnote 6.

(36) *Measure 2: Low prices of EUR 4,4 per m² for 120 hectares of land*

Presenting the contracts and statements of the main sellers, Austria provided conclusive evidence that the company acquired the land directly from private individuals for a price that was at least twice the level for comparable farmland. The individuals had not received any other benefits from state resources or LLG. Some other owners had refused to sell.

(37) The Commission noted the change in the land destination plan from agricultural use to industrial use. Austria declared that the change of designation took place before LLG and the private sellers signed the purchase contracts. Austria also pointed out that the LLG plot, although legally speaking not part of the Business Park, was part of the same overall Business Park concept and BPH had at the same time paid the same price for all the land in the Business Park.

(38) From the above elements the Commission concludes that LLG did not benefit from any company-specific, State measure or received any transfers of State resources. There is therefore no State aid element hidden in the land price of EUR 4,4 per m² paid by LLG.

(39) In drawing this conclusion the Commission also had regard to its assessment of the fact that future companies in the Business Park could acquire developed land at a price at least six times as high as that paid by LLG. Austria responded by emphasising that LLG had acquired its land undeveloped and had paid all the development costs itself. Austria also presented calculations, the investment plan and balance sheets of the park developer BPH. These calculations showed that the price difference can be almost fully explained by the development costs BPH incurred for the plots. The remaining price difference can be explained by costs for infrastructure connections of the individual plots in the Business Park. As future purchasers of land would have to pay for these connections while LLG did not have to pay for any connections to infrastructure, the Commission had also queried this point (see measure 6, recitals 58 to 60). However, Austria agreed to make LLG pay a major share of the infrastructure connection costs for the Business Park. Consequently, there remain no unexplained cost differences between the land purchase price of LLG and the considerably higher price that BPH planned to charge for other developed plots of land.

(40) *Measure 3: Fixed prices over 30 years for basic process media*

In its decision of 14 october 1998, the Commission requested evidence that the prices for services were market prices. Such prices would in particular have to cover the costs for depreciation of investments in fixed capital incurred by WHS in setting up the utility centre and by Abwasserverband Bezirk Jennersdorf (ABJ) for constructing the waste-water treatment plant.

(41) Austria has provided the following evidence:

(a) a detailed model calculation carried out by a renowned energy provider, showing that the prices for basic process media agreed with WHS are higher than if LLG had, with the help of this energy provider, built the utility centre itself. According to this calculation, WHS charges LLG prices that are about 5 % higher than would have been the costs of self provision;

(b) WHS operates an up-to-date energy-efficient combined heat and power plant whose costs in general compare rather favourably with other energy and process media providers. As in such a plant different media are simultaneously generated, it is not easily possible to compare prices for individual media with those of other providers. Prices can, however, be compared with a comparable media centre at Lenzing AG, the parent company of LLG. Internal calculations show that the same mix of media would be available at considerably lower costs at the main location at Lenzing, outside Burgenland;

(c) comparisons with other waste-water treatment plants showed that the waste-water treatment price of EUR 0,5 per m³ represents a normal market price. Austria also demonstrated that full costs of the treatment plant, including full depreciation for investments, would be less than EUR 0,4 per m³. The price structure can be regarded as normal in the waste-water sector. In addition to these cost-covering prices and so as to remove any remaining doubts on possible state aid, Austria confirmed in writing that LLG was now prepared to pay a further EUR 0,3 million in connection costs for surface water drainage;

(d) on 25 February 2000 LLG declared in writing that it was waiving all price guarantees for all basic process media. This removed any aid element that might be inherent in the 30 year price guarantee as stipulated in the 'Burgenland Vertrag'. LLG paid the market prices referred to above already before the date of this waiver.

(42) As Austria demonstrated that LLG has paid and will pay prices for basic process media that are higher than would have been the cost of self provision, that these prices are higher than those at other company locations and that the prices cover the full costs of provision, including depreciation on investments, the Commission accepts Austria's argument that price guarantees were necessary only because at the time LLG decided on its investment, there was no infrastructure at all in place. Since furthermore these price guarantees have been waived, the Commission considers that the contracts between WHS and LLG, and between the ABJ and LLG, contain no element of State aid. Finally, in view of the evidence provided, the Commission sees no need to further assess Austria's argument that the media providers are private companies and act as such.

(43) *Measure 4: Ad-hoc investment aid of EUR 0,4 million for the land purchase*

In its letter of 15 March 1999, Austria states that the aid was granted as ad hoc regional investment aid. New aid is notifiable pursuant to Article 88(3) of the EC Treaty. Austria thus failed to fulfil its Treaty obligation by granting the aid without prior approval of the Commission.

(44) Where new individual aid is granted, the Commission has to assess its compatibility with the common market directly in the light of Article 87 of the EC Treaty. Article 87(1) stipulates that, save as otherwise provided in the EC Treaty, any aid granted by a Member State or through State resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(45) The ad hoc grant of investment aid provides a benefit to LLG helping it to significantly reduce its investment costs. The aid thus has a significant and sustained positive impact on LLG's financial position. In the area of Lyocell production, Akzo Nobel, an international pharmaceuticals, coatings, chemicals and fibres company based in the Netherlands is LLG's main competitor. In addition, LLG might also be in competition to a number of other fibre producers situated in several Member States. The overall fibre market suffers from overcapacity. The stated measures, therefore, may be liable to affect the economic position of competitors from other Member States. Consequently, the measures constitutetate aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, as they may distort or threaten to distort competition and affect trade between Member States.

(46) Article 87 of the EC Treaty allows exemptions from the principle of incompatibility of State aid with the common market. Under Article 87(2) of the EC Treaty, certain types of aid are compatible with the common market. However, the aid in question neither (a) has a social character, granted to individual consumers, nor (b) does it make good the damage caused by natural disasters or exceptional occurrences, nor (c) is the aid granted to the economy of certain areas of the Federal Republic of Germany. Nor does the exemption provided for in Article 87(3)(b) EC Treaty for projects of common European interest apply.

(47) Article 87(3)(c) of the EC Treaty contains an exemption for aid that favours the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Such aid is governed by specific Community guidelines. However, the Commission considers that none of the Community guidelines, such as those for rescue and restructuring, for research and development, for the environment, for small and medium-sized enterprises and for employment and training, could apply.

(48) Austria stated in its letter of 15 March 1999 that the aid has a regional objective for the Province of Burgenland. The EC Treaty establishes an exemption for regional aid under Article 87(3)(a), stating that aid may be considered compatible with the common market if it promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. For initial investment aid, point 4.4 of the relevant Community guidelines on national regional aid sets out the conditions for a possible exemption ([8]). As the Court of Justice established in the Hytasa case, the Commission has to assess such aid as to its fulfilment of the requirements of regional aid under Article 87(3)(a) and prohibit the aid if it considers it incompatible with the common market.

([8]) OJ C 74, 10.3.1998, p. 9.

(49) By letter of 4 October 1999, Austria provided further evidence on the regional significance of the aid and made it clear that the aid was granted as part of the overall package of the 'Burgenland Vertrag'. As such, there is a clear link between the purpose of this regional investment aid and the eligible costs and the envisaged investment timetable that were provided earlier. The 'Burgenland Vertrag' also describes the regional significance of the aid. By letter of 4 October 1999, Austria provided further information on the regional significance of the aid and on the proportionality of the aid package to any anticipated distortion of European competition. In particular Austria emphasised the difficult economic situation in the Province of Burgenland (Süd-Burgenland) where the project will lead to the creation of 150 new permanent and highly skilled jobs. The investment is also expected to generate catalytic effects for the region by attracting other companies to settle in the region and by the indirect employment created in the region, mainly with suppliers and customers.

(50) Austria believes the competition impact will be very limited. In its view, no unnecessary production capacity will be created by LLG, because the product Lyocell is sold as a new product for which the market outlook is favourable. For this reason, there are also no overcapacities in Europe on the market for Lyocell fibres.

(51) As regards the regional significance of the aid, the Commission has now sufficient information to assess the regional importance of LLG's project for the Province of Burgenland, in particular as the link between investment costs and the regional objective has been clarified by Austria.

(52) Regarding the competition impact, the Commission has to consider in this particular case whether Lyocell and viscose fibres belong to two distinct product markets or the same product market. As the development trend and market products for Lyocell are quite different from the general downward trend of the overall viscose fibres market, and since they must therefore be regarded as separate markets, the Commission concluded that the competition impact of LLG's investment will be relatively small. The Commission noted already in its Decision of 23 June 1999 that Austria considered the product market for Lyocell fibres to be distinct from the general viscose fibres market. This appraisal was confirmed by the comments received from interested parties. In addition, the Commission also referred in the abovementioned Decision to its similar conclusions in its Decision of 30 June 1998 in the merger case IV/M.1182 Akzo Nobel/Courtaulds [9]. Taking into account the fact that the product qualities of Lyocell are viewed as different by customers and considering also the significantly higher prices (about twice as high) for Lyocell (and Tencel) fibres as compared to normal viscose fibres, the Commission considers, for the purpose of this case, the two product markets to be sufficiently distinct to regard the competition impact as relatively limited.

(53) In view of the above assessment and since land is eligible under the guidelines on national regional aid (point 4.8), the Commission can approve this ad hoc regional investment aid provided that the overall level of aid stays below the regional aid ceiling for the Province of Burgenland, 40 % net grant equivalent (see assessment in recitals 54 to 66).

(54) *Measure 5: Provision of equity capital of EUR 21,8 million*

By letter of 15 March 1999, Austria confirmed that the capital participation had not been granted under any approved aid scheme. In its decision of 23 June 1999, the Commission determined the aid character of the measure, which was to be regarded as a soft loan. Following Austria's written declarations that market rates will have to be charged after the 30 year time period, this soft loan has a 30-year maturity and confers a 1 % return on capital to WiBAG.

(55) With regard to measure 5, Austria provided by letter of 4 October 1999 further evidence on the regional importance of the aid and made it clear that the aid was granted as part of the overall package of the Burgenland Vertrag. As such, the purpose of this regional investment aid is clearly linked to the eligible costs and the envisaged investment timetable that were provided earlier. With regard to measure 5 the Commission therefore endorses the regional justification of this equity capital provision.

(56) The Commission has satisfied itself that the measure is permissible as eligible costs under the guidelines on national regional aid. As specified in the Burgenland Vertrag, the capital was used for investment in plant and machinery. The Commission therefore regards the regional nature of the aid as justified.

(57) Austria claims that the aid equivalent of the equity capital is EUR 12,3 million, calculated by applying market interest rates. However, the Commission has published reference interest rates it uses when calculating ex-ante the grant equivalent of such an interest

[9] OJ C 265, 22.8.1998, p. 28.

subsidy scheme for loans ([10]). The reference rates are supposed to reflect the average level of interest rates charged, in the various Member States, on medium and long-term loans (five to 10 years) backed by normal security. The equity measure, however, covers a 30-year period. The Commission considers it reasonable and appropriate, on the basis of its experience, to use current interest rates for the remaining 25 years in order to make the relevant period as short as possible, and to use for the past years the reference rate in force at the date the aid was granted. Accordingly, the grant equivalent of the aid is EUR 15,38 million.

(58) *Measure 6: Company-specific infrastructure connections of an unknown aid amount*

By letter of 27 April 2000, Austria presented new agreements between LLG and BPH, as well as between LLG and WHS, under which LLG will participate in the infrastructure costs that were incurred in providing connections. Under these agreements, LLG will pay a total of EUR 0,7 million for roads, waste-water treatment facilities, electricity, gas and other pipes from the utility centre, water provision and fire protection facilities. This, according to Austria, represents 24 % of the overall costs for these infrastructure facilities in the Business Park. In addition to these costs, LLG will in future itself bear further costs of EUR 2,4 million to develop the infrastructure connections on its own plot. Finally, LLG will pay for the railway link a fee of EUR 0,3 million over 15 years.

(59) From its assessment of these contracts and the complete information, provided partly in the form of an independent report, on the finances of the developers WHS and BPH, the Commission concludes that, since it is now paying for the connections, LLG does not benefit from any specific infrastructure development at the Business Park. In this assessment the Commission has considered Austria's argument that LLG was the site's first and lead investor. Therefore granting favourable conditions to the company would be in the commercial interest of both BPH and WHS. These claims were substantiated by financial data and the original argumentation documents at the time of setting up the park.

(60) The Commission concludes that there is no element of State aid involved in the provision of infrastructure by WHS and BPH to LLG.

(61) *Measure 7: Assessment of the environmental aid of EUR 5,37 million*

In order to consider the approved Environmental Aid Act correctly applied, the Commission had to check that the investment to be aided was clearly for 'production methods for the reduction of pollution' (Herstellungsmaßnahmen zur Verringerung von Umweltbelastung), as stipulated in Article 23(1)(1), in conjunction with Article 1(1) of the corresponding aid guidelines. Austria reiterated in its reply of 4 October 1999 that the environmental benefit of the specified equipment could be demonstrated only in comparison with the old Viscose production process.

(62) Austria argues that the new Lyocell process is a product innovation. As such, there is no other measure for comparison than the closest possible predecessor process, which is the regular viscose production process. Austria further holds that the assessment according to the Environmental Aid Act does not have to be based on a comparison of the final products and their relevant markets, but allows focusing on the production process for the closest possible alternatives. In support of this argumentation, Austria has provided further evidence on the application of this scheme. By letter of 25 February

([10]) See Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

2000, Austria provided as further support all the documents underpinning the decision of the ÖKK.

(63) The Commission also requested further information on the eligible costs, their clear attribution to certain equipment parts, the environmental potential of this equipment, and the avoidance of any double counting with other eligible costs, including the questions on simultaneous research and development financing. By letter of 4 October 1999, Austria clarified the exact costs of the eligible items and ruled out the possibility of any double counting in relation to research and development aid provided by EU cofinancing. The attribution of eligible cost items is now, after finalisation of the investment, clearly demonstrable.

(64) Regarding the environmental potential of the investment, Austria provided further clarification by letter of 4 October 1999. This included statements that, with these eligible equipment parts, LLG was going beyond minimum specifications in pursuit of additional environmental benefits. Furthermore, by letter of 25 February 2000, Austria provided an expert opinion detailing the environmental potential of the relevant equipment items, also in quantitative terms. The Commission regards this expert opinion as further evidence of the high additional environmental contribution of the investment.

(65) The Commission concludes that Austria has established that, in this instance, the viscose production process constitutes the next best alternative for environmental benefit comparison purposes. Considering the new information on eligible costs and the environmental potential of these cost items, the Commission concludes that Austria has correctly applied the approved environmental aid scheme N 93-148. The Commission can thus calculate the aid intensity to be 50 % of eligible costs for a pilot project, and considers this aid existing aid.

(66) *Calculation of the overall aid intensity*

The Commission had to verify that the overall amounts of regional investment aid granted to LLG would not exceed the maximum allowable aid ceiling for regional aid in the Province of Burgenland. This ceiling at the time the aid was granted was 40 % net grant equivalent. For the purposes of this assessment, the Commission also took account of the other measures to assist the company detailed in paragraph 11. Discounted in time, the Commission determines investment aid of EUR 54,9 million gross, which, after taxes, represents a net grant equivalent of EUR 39,7 million. Relative to eligible costs of EUR 108,7 million, this aid represents an aid intensity of 37 %, i.e. below the regional aid ceiling of 40 %.

(67) In the case of the environmental aid of EUR 5,37 million on eligible costs of EUR 10,74 million, the maximum aid intensity of 50 % admissible for pilot projects under the environmental aid scheme N 93-148 is complied with.

4. **CONCLUSION**

(68) Measures 1(b) to (e), 2, 3 and 6 are not considered to be State aid within the meaning of Article 87(1) of the EC Treaty. Measures 4, 5 and 7 are ad hoc regional investment aid. Measures 1(a) and 7 are existing aid as they represent correct application of approved aid programmes. The Commission considers the proposed investment aid of EUR 54,9 million (EUR 39,7 million net) on eligible costs of EUR 108,7 million and the environmental aid of EUR 5,37 million to be compatible with the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Austria has granted to Lenzing Lyocell GmbH & Co KG (LLG), Heiligenkreuz, through the provision of guarantees amounting to EUR 35,80 million (a guarantee by a consortium of commercial and public-sector banks amounting to EUR 21,8 million and three guarantees by the Wirtschaftspark Heiligenkreuz Servicegesellschaft mbH (WHS) amounting to EUR 1,4 million, EUR 10,35 million and EUR 2,25 million) and through a land price of EUR 4,4 per m^2 for the acquisition of 120 hectares of industrial land, through fixed-price guarantees by the Province of Burgenland for the provision of process utilities and through the provision of aid of an unknown amount in the form of the creation of company-specific infrastructure does not constitute aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

The aid which Austria has granted to LLG through the provision of a guarantee amounting to EUR 14,5 million by WiBAG complies with the guarantee guidelines approved by the Commission under number N 542/95.

The environmental aid amounting to EUR 5,37 million complies with the environmental aid guidelines approved by the Commission under number N 93/148.

Article 3

The individual aid which Austria has granted in the form of aid amounting to EUR 0,4 million for land acquisition and in the form of equity capital amounting to EUR 21,8 million is compatible with the common market.

Article 4

This Decision is addressed to the Republic of Austria.

Done at Brussels, 19 July 2000.

For the Commission

Philippe BUSQUIN

Member of the Commission