COMMISSION

COMMISSION DECISION
of 13 February 2001
on the State aid implemented by the Netherlands for SCI-Systems

(notified under document number C(2001) 402)

(Only the Dutch version is authentic)

(Text with EEA relevance)

(2001/517/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

(1) In November 1997 SCI-Systems Netherlands BV (hereinafter referred to as 'SCI') selected the 'Internationaal Bedrijvenpark Friesland' (hereinafter referred to as 'IBF'), a business park in Heerenveen (province of Friesland), as the site to build a factory for the assembly of desktop personal computers (hereinafter referred to as 'PCs') for Hewlett-Packard.

(2) By letter dated 3 March 1998 (registered on 11 March 1998 under A/32006), a private third party alleged that aid going beyond the Commission-approved regional aid scheme ('Investeringspremieregeling' (IPR) [2]) had been granted. The regional authorities had allegedly promised additional ad hoc aid in order to attract the investment project to Heerenveen in the face of strong competition from other potential sites in the Netherlands. By letters of 20 March 1998 (D/51297) and 28 October 1998 (D/54393), the Commission requested additional information from the Dutch authorities. By letters dated 19 May 1998 (registered on 25 May 1998 under A/33974), and 4 January 1999 (registered on 6 January 1999 under A/30095) the Dutch authorities provided that information. The third party provided more information and sent newspaper articles concerning the case by letters of 10 October 1998 (registered on 6 November 1998 under A/38015) and 15 January 1999 (registered on 20 January 1999 under C00231).

[1] OJ C 144, 22.5.1999, p. 4.
[2] The scheme is now called 'Besluit Subsidieregeling Regionale Investeringsprojecten'.

(3) By its Decision of 6 February 1999, the Commission issued an 'Italgrani' injunction ([3]) with respect to aid granted under the IPR scheme and initiated the procedure in Article 88(2) of the EC Treaty in respect of several further ad hoc aid measures. By letter dated 9 March 1999 (D/01700), it informed the Netherlands of the Decision. The Decision was published in the *Official Journal of the European Communities* ([4]). The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received two comments from interested parties (letter of 1 June 1999, registered on 8 June 1999 under A/34233, and letter of 7 June 1999, registered on 11 June 1999 under A/34377). By letter of 28 June 1999 (D/62723), it forwarded them to the Netherlands, which was given the opportunity to react. The Netherlands reacted to the initiation of the procedure by letter dated 13 April 1999 (registered on 14 April 1999 under A/32920). It sent its views on the comments from third parties by letter of 2 August 1999 (registered on 3 August 1999 under A/36064). One of the third parties sent further information by letter of 18 June 1999 (registered on 24 June 1999 under A/34661).

(5) As important information was still missing, the Commission, by letters of 20 October 1999 (D/64378), 15 May 2000 (D/52950), 14 September 2000 (D/54696) and 4 October 2000 (D/55028) requested further information. The Dutch authorities asked for successive deferments by letters of 3 November 1999 (registered on 5 November 1999 under A/38403), 14 December 1999 (registered on 17 December under A/39869) and 30 October 2000 (registered on 3 November 2000 under A/39018); this was granted by letters of 15 November 1999 (D/64719), 10 January 2000 (D/50073) and 23 November 2000 (D/55817). The Dutch Government replied by letters of 24 January 2000 (registered on 26 January 2000 under A/30682), 14 June 2000 (registered on 3 July under A/35437), 6 December 2000 (registered on 11 December 2000 under A/40422) and 2 February 2001 (registered on 2 February 2001 under A/30985). Further clarification was given at meetings on 5 January 2000 and 5 December 2000. The third party sent further information by letters of 21 March 2000 (registered on 28 March 2000 under A/32654), 4 May 2000 (registered on 18 May 2000 under A/34095), 28 June 2000 (registered on 10 July 2000 under A/35646) and 12 September 2000 (registered on 19 September 2000 under A/37630).

2. **DETAILED DESCRIPTION OF THE MEASURES**

2.1. **The beneficiary company**

(6) SCI is an international diversified electronic components manufacturer and contracts its services to companies such as Hewlett-Packard and Apple Computers. It provides subassemblies that are used in the computer, telecommunications, medical, consumer and defence markets. In addition, it builds hundreds of finished products including PCs, video terminals, communication systems for military aircraft and Internet TV set-top boxes ([5]). SCI was chosen by Hewlett-Packard as a partner to produce its PCs in the Netherlands. Hewlett-Packard is one of the world's largest computer organisations ([6]).

(7) The new SCI plant in Heerenveen was expected to produce PCs by the end of 1999. Pending completion of the new plant, SCI began production of PCs in temporary factory facilities in Leek (about 30 kilometres from Heerenveen).

2.2. **Investment aid**

(8) By letter dated 9 December 1998, the Dutch Ministry of Economic Affairs granted investment aid equivalent to 20 % of eligible investment costs, subject to a ceiling of EUR 5,67 million (NLG 12,5 million), to SCI under the IPR scheme. At the time, the expected investment costs were put at EUR 31,1 million (NLG 68,5 million ([7])), comprising the construction of a factory and distribution centre for PCs in Heerenveen.

([3]) Decision 91/474/EEC of 16 August 1991 (OJ L 254, 11.9.1991, p. 14).
([4]) OJ C 144, 22.5.1999, p. 4.
([5]) www.sci.com
([6]) www.hp.nl.
([7]) The investment costs were originally estimated in US dollars. At the time that the subsidy application under the IPR scheme was being processed in September 1998, the exchange rate was USD 1 for NLG 1,96.

(9) The Dutch authorities confirmed that the aid was granted in conformity with the IPR scheme. The Commission had approved this scheme ([8]). The maximum aid intensity under it is equal to the regional aid ceiling of 20 % gross grant equivalent. The final decision on eligible costs, on which the exact amount of the subsidy is based, will be taken one year after completion of the project. The current expectation is that actual investment costs will be significantly lower than originally notified. The Dutch authorities explained that the new estimate amounts to EUR 18 million (NLG 40 million). On the basis of the 20 % ceiling, the subsidy under the IPR scheme would be reduced to no more than around EUR 3,6 million (NLG 8 million). As part of the normal procedures, the firm's declaration on eligible costs will be accompanied by a declaration of an independent accountant. The final declaration will be verified by the accountancy department in the Ministry of Economic Affairs ([9]). The Dutch authorities have indicated their willingness to communicate the final decision in due course.

(10) The Dutch authorities have informed the Commission that all cost items in the budget are eligible investment costs under the IPR scheme and that the aid ceiling of the scheme is being respected. They confirmed that cost elements such as central facilities and computers were in line with the IPR scheme and with the internal guidelines on the application of the scheme, which are based, among other things, on past case-law with respect to the scheme. As to the relatively high cost of the warehouses, the Dutch authorities informed the Commission that this was due to the specific nature of the firm. Being a contract manufacturer, the logistic chain and its computerisation are of great importance.

(11) With respect to the cost of infrastructure, the Dutch authorities have confirmed on the basis of original documentation that there is no double counting with land development costs paid by the IBF, the entity responsible for developing the infrastructure in order to make the industrial land accessible and to provide services such as sewerage, electricity infrastructure, public landscaping, etc. IBF's updated 1999 operating budget shows that the infrastructure costs amounted to EUR 9,1 million (NLG 20,1 million). According to the Dutch authorities, the annual reports of IBF and all its requests for advances under the ERDF subsidy arrangements (all accompanied by the accountant's declarations) show that these costs include only the costs for infrastructure outside the boundaries of the individual plot acquired by SCI, that they do not relate to SCI's own site and that there is no double counting with declarations under the IPR scheme.

2.3. **The '2 000 Jobs' programme**

(12) SCI is the main beneficiary of the '2 000 Jobs' programme ('2000 — Banenplan' ([10])), which was drawn up by the regional employment office ('Regionaal Bureau voor de Arbeidsvoorziening Friesland', hereinafter referred to as 'RBA') and provides comprehensive arrangements for the long-term unemployed and other disadvantaged groups. Vacancies at firms that invest in Friesland (either new projects or investments in major extension schemes) are notified to the local employment offices. As part of their normal activities, these offices look out for job-seekers and ensure that they receive the necessary training and/or possess the required experience. In order to secure employment for a job-seeker, a direct wage subsidy can be granted.

(13) The '2 000 Jobs' programme was approved and financed by the province of Friesland. It covers only that province and has a total budget for the period 1998 to 2000 of EUR 18.6 million (NLG 41 million), of which EUR 11,2 million (NLG 24,8 million) for the direct wage subsidies. The programme started in March 1998 and is an extension of the previous '700 Jobs' programme, dating from 1997. The RBA is responsible for its implementation. For years, unemployment in Friesland had been some 3 % higher than the national average. This gap narrowed to about 2 % in 1997. However, the proportion of long-term unemployed has risen above 60 %.

([8]) Letter of 19 October 1995 (SG(95) D/12907). Modifications were approved by letter (SG(97) D/8903) of 29 October 1997.

([9]) The Dutch authorities also explained why a maximum aid intensity of 40 % was mentioned in the publicly available information on the IPR, whereas the regional aid ceiling was 20 %. The 40 % maximum could apply to part of the cost in cases of cumulation with other subsidies, e.g. certain general tax investment premiums that were available in the 1980s. Such a subsidy normally related to only part of an investment project. For the overall investment project the 20 % ceiling applies. The provision regarding the 40 % maximum aid intensity was scrapped in 1999 as it was no longer relevant.

([10]) The number refers to the number of jobs to be created, and not to the year 2000.

(14) Part of the normal administrative procedure is an advance agreement between RBA and the new or expanding firm on the planned use of the scheme. The agreement between the RBA and SCI was signed on 3 November 1998. It was agreed that SCI would recruit a maximum of 1 200 unemployed under the scheme, for which SCI would be entitled to direct wage subsidies totalling not more than EUR 7 620 000 (NLG 16 800 000). The definitive subsidy will be determined on the basis of the actual number of job-seekers recruited in line with the criteria of the jobs programme. SCI receives EUR 4 900 (NLG 10 800), EUR 6 500 (NLG 14 400) or EUR 8 200 (NLG 18 000) per job-seeker recruited. The lowest figure applies to 'normal' job-seekers, the second figure applies to unemployed persons from minority groups or handicapped people, women re-entering the labour market, young unemployed and 'phase 2' and 'phase 3' unemployed (out of work for six and nine months respectively), and the maximum figure applies to the long-term unemployed (out of work for more than one year). The subsidy is tied strictly to the person formerly registered as 'job-seeker' and is conditional on that person being employed for at least twelve months and for a minimum of eighteen hours a week in a structural job. The duration of the agreement is from May 1998 to May 2001. Advance payments were made up to 80 % of the maximum subsidy: EUR 2,3 million (NLG 5 107 180) in 1998 and EUR 3,8 million (NLG 8 332 830) in 1999.

(15) However, the actual amount of aid will be significantly lower than the maximum agreed upon. Up to and including September 2000, only 954 individuals were taken on in line with the criteria of the jobs programme ([11]). Moreover, many of these remained in their jobs for less than one year: SCI will be entitled to subsidies for only 252 of them, giving a total subsidy of EUR 1,7 million (NLG 3,7 million). The definitive subsidy will be determined only after the final declaration in May 2002 at the latest. Given these facts, the Dutch authorities gave an undertaking that combined aid under the IPR scheme and the jobs programme ([12]) will not exceed 20 % of the eligible cost base (see 55). Some of the advance payments have already been recovered. The remaining unlawfully granted aid will be recovered accordingly.

(16) In its Decision of 6 February 1999 initiating proceedings under Article 88(2) of the EC Treaty, the Commission doubted whether the direct wage subsidies could be considered to be a general measure, as claimed by the Dutch authorities. Since the programme applied only to companies in Friesland, this seemed not to be the case. Moreover, it seemed that SCI would be the main beneficiary, whereas the earlier 700 jobs programme had been intended mainly for small and medium-sized enterprises.

2.4. **Price of the land**

(17) SCI bought land from IBF, a publicly owned company set up to develop the business park. In order to guarantee the 'green' and 'high-quality' nature of the business park, IBF required that only 70 % of the land be used for buildings and service roads. The planned investment by SCI thus required a site covering 14 hectares. However, the land use plan, by which the province of Friesland determines how the area may be developed, sets the maximum percentage of land to be used for buildings at 15 % and the maximum percentage for service roads at 10 % of the remaining land. At the request of SCI and IBF, the municipality exercised its powers to raise these percentages to 30 % and 20 % respectively, with a combined percentage of 40 %. In order to raise this combined percentage to 70 % (40 % for building and 30 % for service roads), the province would have to change the land use plan. The relevant procedures would take considerable time and, for political and legal reasons, the outcome is uncertain. Thus, in order to comply with the current land use plan, SCI had to be the legal owner of 24 hectares.

(18) For this reason, SCI bought 24 hectares from IBF ([13]) and at the same time sold back 10 hectares to IBF. The reassignment of the 10 hectares to IBF has to be carried out within four weeks of the land use plan being changed. Both the sale and the buy-back were conducted at a price of EUR 2,27 per square metre (NLG 5 per square metre), giving total amounts of EUR 544 000 (NLG 1,2 million) and EUR 227 000 (NLG 500 000) respectively, excluding value added tax. The selling price and the buy-back price were paid on the same day.

([11]) This number includes 391 long-term unemployed, 105 young job-seekers and 246 job-seekers belonging to minority groups; 701 of them are men and 253 are women.

([12]) This includes a further aid element in the advance payments: SCI received advance payments up to 80 % of the maximum aid it would be entitled to receive. Any amount that is unduly paid will be reimbursed, but the scheme does not specify an interest payment on these amounts.

([13]) This is 244 190 m^2, according to the second land evaluation report.

(19) The price of EUR 2,27 per square metre was determined according to a land price estimate made on 18 May 1998 by an asset valuer. In order to allay the Commission's doubts, the Dutch authorities commissioned another asset valuer to provide a second evaluation. This second evaluation, dated 7 April 1999, arrived at a similar price of EUR 2,54 (NLG 5,60) per square metre.

(20) In its Decision of 6 February 1999, the Commission raised doubts as to the methodology used in the first evaluation report. These doubts concerned in particular the small proportion of the land that would actually be paid for, the adjustment for the cost of preparing the land and the way in which positive factors, such as the proximity of motorways, were taken into account. On the basis of the original costs incurred by IBF in developing the business park, the Commission had calculated a much higher price (EUR 24,8 per square metre or NLG 54,7). The price of EUR 2,27 per square metre seemed rather to correspond to the estimated price of the undeveloped land in 1996. Furthermore, the legal status of the buy-back contract was unclear.

2.5. **Aid for temporary production facilities, security and transport (SEBB Fund)**

(21) Although the construction of the factory in Heerenveen had not yet started, SCI wanted to begin production straightaway. The public development company for the north of the Netherlands ('Noordelijke Ontwikkelingsmaatschappij', hereinafter referred to as 'NOM') helped SCI to find a suitable factory site in Leek, some 30 kilometres from Heerenveen. NOM had rented (part of) the site as from December 1997. In order to rent out the building for production purposes, it invested EUR 270 000 (NLG 600 000) in renovation work. The lessor of the remaining part of the building invested the same amount, giving total renovation costs of EUR 540 000 (NLG 1,2 million). NOM charged SCI a total rent of EUR 749 000 (NLG 1,65 million) for the period from May 1998 to February 2000 (NLG 75 000 per month), when SCI moved to its new location in Heerenveen. For the same period NOM paid total rent to the owner Brivec BV of EUR 880 000 (NLG 1 939 496). The difference is EUR 131 000 (NLG 289 496. The monthly payment for energy was EUR 11 300 (NLG 25 000).

(22) NOM obtained financing for these expenditures from the socio-economic budget for industrial environment policy ('sociaal-Economisch budget voor bedrijfsomgevingsbeleid', hereinafter referred to as the 'SEBB fund'). The fund was set up by the province of Friesland in December 1998 with a budget of EUR 4,5 million (NLG 10 million). It was regarded as an additional instrument for strengthening the regional investment climate, paying particular attention to the creation of employment for the very low-skilled.

(23) In its Decision of 6 February 1999, the Commission asked for further information on the temporary production facility, including any contracts between the public authorities and the company.

(24) The SEBB fund was also used to finance transport for SCI's employees between Heerenveen and the location of the temporary production facilities in Leek. The cost of public transport would be an obstacle for the unemployed benefiting from the jobs programme. Therefore, NOM commissioned a public transport company to provide transport for SCI's new employees free of charge. The cost of this amounted to EUR 812 000 (NLG 1 789 017), excluding VAT. The SEBB fund covered these expenses for NOM. This transport service required hardly any additional public transport since existing public transport connections were used.

(25) NOM also paid for the security services for the production facility during the period that SCI rented it. The total costs amounted to EUR 353 000 (NLG 778 552), excluding VAT.

(26) Newspaper articles referred to aid to cover the cost of moving SCI's activities from Leek to the new factory in Heerenveen. However, the Commission has not found any evidence that any such expenses were financed by the SEBB fund or through other State resources.

2.6. **Accommodation for staff**

(27) The municipality of Heerenveen paid EUR 100 000 (about NLG 220 000) for accommodation for five expatriate SCI staff members who were transferred to Heerenveen during the initial phase of the project. A higher amount of EUR 159 000 (NLG 350 000) had originally been indicated.

3. COMMENTS FROM INTERESTED PARTIES

(28) Following publication of the decision initiating the procedure [14], the Commission received two comments. Both parties wished to remain anonymous.

(29) The first comment provided further details of expenditure by the SEBB fund. It was explained that an amount of EUR 2,7 to 3,2 million (NLG 6 to 7 million) was allocated to NOM, which would ensure that SCI would incur only very low costs or no costs at all for its temporary facility in Leek. The amount in question was to be used for rent and energy payments, security around the facility and the cost of transport of personnel to and from the facility.

(30) The second comment concerned the following.

(31) Allegedly, according to the land use plan and the implementation details attached to it, all firms would have to pay EUR 6,8 (NLG 15) per square metre for 'energy connection'. SCI was exempted from this charge, unlike the other firms that moved to the industrial park.

(32) SCI did not pay transfer tax ('overdrachtsbelasting') on the land transaction with IBF, as would normally be the case.

(33) Doubts were expressed about the independent nature of the asset valuer and about certain elements of the land evaluation.

(34) A copy of a newspaper article [15] was provided in which it was alleged that SCI received employment aid under the jobs programme for the recruitment of workers who already had jobs. This would be in breach of the conditions of the jobs programme.

(35) Finally, a copy of another newspaper article [16] was provided that commented on the concern of the province of Friesland that the aid ceiling for the investment might be exceeded. In this connection, the same party sent in a second letter containing a report on a meeting of the Friesland Provincial Executive illustrating that concern.

(36) The interested parties are not competitors of SCI or HP.

4. COMMENTS FROM THE NETHERLANDS

4.1. Employment aid

(37) First of all, the Dutch authorities stressed the importance of rising employment and pointed out that the employment situation in Friesland was seriously lagging behind the overall employment trend for the Netherlands. In 1997 unemployment stood at 5,5 % in the Netherlands but at 7,5 % in Friesland. The growth of employment was distinctly lower and the level of education is below the national average. More than 60 % of the unemployed were low-skilled. The proportion of long-term unemployed had risen to 65 %. This situation called for a special approach.

(38) The Dutch authorities considered the jobs programme to be a general measure that does not constitute aid within the meaning of Article 87(1) of the EC Treaty since the subsidy is granted automatically for each job created in Friesland and since the amount of subsidy per job created is determined according to objective criteria. SCI happens to be the main and by far the most important user of the employment scheme. However, it is not the only beneficiary. The RBA has agreements with two other firms regarding access to the jobs programme. It used to have contacts with several other parties. The available budget of EUR 18,6 million (NLG 41 million) largely exceeds the planned subsidies for SCI. Moreover, the RBA would have no discretionary powers with respect to the application of the scheme.

[14] OJ C 144, 22.05.1999.
[15] *Het Financieele Dagblad*, 29.5.1999.
[16] *Leeuwarder Courant*, 1.6.1999 and 3.6.1999.

(39) The Dutch authorities also explained that the jobs programme provided almost the same incentives as those available to firms under the Law on the mobilisation of jobseekers ('Wet Inschakeling Werkzoekenden', hereinafter referred as the 'WIW" ([17]). This national employment scheme was considered to be a general measure. Under it, a firm is eligible for a maximum of EUR 7 700 (NLG 17 000) per work-experience job provided for long-term, young or handicapped unemployed persons. SCI would have qualified for subsidies under this scheme but, since no cumulation with employment subsidies under the '2 000 Jobs' programme is allowed, it did not avail itself of the WIW. The Dutch authorities also pointed to the Law on reduction of contributions ('Wet Vermindering Afdrachten', hereinafter referred to as the 'WVA'). This is a tax measure to promote the employment of the long-term unemployed via a similar level of benefits. It provides for a maximum exemption from social security contributions of EUR 8 168 (NLG 18 000) over a four-year period for each full-time job-seeker who is taken on (EUR 2 092 or NLG 4 610 per calendar year) ([18]).

4.2. **Price of the land**

(40) The Dutch authorities explained that, under Dutch law, sale and assignment are two different legal events. The buy-back is unconditional and legally binding on the parties, whereas the assignment of the land is conditional on the land use plan being changed. Provided that the plan is changed, the assignment will take place within four weeks. This will complete the full transaction. If the plan is not changed by 1 January 2008, both SCI and IBF can cancel the buy-back contract. In this case SCI will have to buy 'again' the 10 hectares in order to satisfy the conditions of the land use plan. SCI and IBF will have to agree a new price for this transaction.

(41) The Netherlands maintained that both land valuations met the conditions of the Commission's communication on public land sales. The calculated prices should therefore be taken as the market price.

(42) The Dutch authorities explained that IBF received subsidies from the municipality, the province, the North Netherlands Cooperation Agency ('Samenwerkingsverband Noord Nederland'), which is responsible for the financial resources of the Integral Structural Plan for the North Netherlands ('Integraal Structuurplan Noord-Nederland') and the European Regional Development Fund ('Objective 5b' programme). According to them, these subsidies were used only for general public infrastructure within the business park and could not be considered to be State aid under Article 87(1). The Dutch authorities indicated their willingness to ensure that an independent asset valuer verifies IBF's final statement so as to make sure that IBF did not incur costs for the land bought by SCI or receive any subsidies for that purpose.

(43) As regards the exemption for energy connection, mentioned in one of the third-party comments, the Dutch authorities maintained that SCI was responsible for all the infrastructure on its own premises while IBF was responsible for the infrastructure necessary to make the site accessible.

(44) With respect to transfer tax, the Dutch authorities declared that, on the basis of Article 15(1)(a) of the Law on taxation of legal transactions ('Wet op belastingen rechtsverkeer'), SCI was exempt because it paid VAT (17,5 %) on the transaction. SCI had to pay VAT because the land was considered to be building land following the demolition of the existing buildings (Article 11(1)(a) of the VAT Law). Under current tax legislation, it can deduct this tax payment in the normal way.

([17]) Kamerstukken II, 1996-97, 25122, No 3. Article 5 WIW allows municipalities to grant subsidies to employers to provide work-experience jobs 'werkervaringsplaatsen' for the long-term or young unemployed. Conditions for such a subsidy are similar. Thus, the employment contract for such a job must have a minimum duration of six months. The maximum subsidy applies to contracts of 12 months. If the duration is shorter, the subsidy is fixed at a correspondingly lower level.

([18]) The RBA undertook that, of all the persons it referred to SCI for recruitment or work procurement, at least 150, or 12,5 % of the total, would comply with the criteria laid down in the WVA. One of these criteria is that the long-term unemployed should be offered a contract for at least 12 weeks and for at least 15 hours a week. The WVA applies only to employment of persons under a certain wage threshold. The objective therefore was to realise a total benefit of EUR 1,2 million (NLG 2,7 million) out of WVA exemptions. At its request, SCI received 28 declarations allowing deduction of wages tax. The Dutch authorities do not know whether SCI, actually made use of these declarations. Cumulation with subsidies under the WIW or the '2 000 Jobs' programme is allowed. The Commission has confirmed that the scheme can be considered as a general measure and not as aid within the meaning of Article 87(1) of the EC Treaty, e.g. in its decision to initiate the procedure of Article 88(2) in the case of aid to Reebok (OJ C 233, 14.8.1999, p. 42).

4.3. **Aid for temporary facilities; SEBB fund**

(45) The Dutch authorities commented on the existence and use of the SEBB fund.

(46) NOM had rented out the facilities in Leek because of the increased demand for temporary and suitable production facilities. The rent charged by NOM was based on a valuation by an independent asset valuer who carried out comparisons with other recent rental and sales contracts for production facilities in the region. The valuer also mentions the recent renovation and the favourable technical properties of the building, the available parking area and the relatively large size of the plot, all factors that result in there being scant demand for such buildings. The Dutch authorities also compared this rent with the rent paid by firms that use other parts of the building. Whereas SCI's rent is about EUR 27 (NLG 60) per square metre, another firm pays EUR 19 (NLG 42) per square metre and two other firms pay EUR 25 (NLG 55) per square metre. These two firms rent a much smaller part of the building than the other firm. Finally, the Dutch authorities explained that, as SCI had now moved to Heerenveen, the facilities had been offered to three other firms who were considering the offer. They did not indicate whether one of those firms had actually started to rent (some of) the facilities.

(47) The investment by NOM and by the lessor of the other part of the building in Leek were general maintenance costs. They were obliged to make this investment on the basis of Article 1586 of Chapter 7A of the Civil Code, which stipulates that the lessor is obliged to keep the building in a condition such that it can serve the purposes for which it is rented out. As the rent is based on an evaluation made by an independent valuer, the Dutch authorities considered that the investments could not contain State aid. A further argument in support of this view is that the building is available to all firms on similar conditions. As such, NOM is actively looking for other firms to rent the temporary facility.

(48) The cost of transporting personnel between Leek and Heerenveen must be viewed as aid to private individuals. All obstacles facing the long-term unemployed that would benefit from the jobs programme had to be eliminated. As these individuals would normally have scant financial resources, the cost of transport could easily deter them from applying for a job in Leek. The transport initiative would also dovetail very well with the provincial policy of promoting the use of public transport. Finally, SCI has no obligation to provide any kind of public transport for its personnel, either under the relevant collective bargaining agreement for the sector or under the individual employment contracts.

(49) The Dutch authorities took the view that the payments for security measures do not constitute State aid because otherwise NOM would be liable to claims by SCI in the event of theft. In addition to what is mentioned above, Article 1586 of Chapter 7A of the Civil Code stipulates that the lessor is obliged to ensure 'quiet enjoyment' ('rustig genot') of the building for as long as it is rented out. Without the security measures, the building would not be fit for the purposes for which it was to be rented out and nor would it comply with the 'quiet enjoyment' requirement. As the assembly of computers require stocks of considerable value, the security risks were considered to be substantial. NOM would have the same obligation towards any other firm and so the security measures are also to be considered a general measure.

4.4. **Accommodation for staff**

(50) The Dutch Government held that the aid for the accommodation of five expatriate HP-SCI staff members employed in Heerenveen during the initial phase of the project should be considered *de minimis* aid ([19]).

4.5. **Reaction to the comments from third parties**

(51) With respect to the comments from third parties, the Dutch authorities made the general observation that there were indications that the comments were not submitted by competing firms or by buyers of comparable or other business parks. Those parties could not therefore be considered interested parties within the meaning of Article 1(h) 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 ([20]). The specific comments referred to above were also made.

([19]) Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996, p. 9).
([20]) OJ L 83, 27.3.1999, p. 1.

5. ASSESSMENT OF THE MEASURES

5.1. The '2 000 Jobs' programme

5.1.1. *State aid within the meaning of Article 87(1)*

(52) As the direct wage subsidies under the jobs programme are available only in the province of Friesland, the measure specifically favours firms in (or near) this province. The specific nature of the aid also derives from the fact that only firms that make new investments or carry out major extension schemes are eligible for the subsidies. Furthermore, the arrival of SCI coincided with the transition from the old '700 Jobs' programme to the '2 000 Jobs' programme. The latter is more generous. Although there are objective reasons for (some of) the differences, this is unlikely to be a mere coincidence. As the scheme is financed through State resources and as the products of the beneficiaries are normally traded (for SCI's products this certainly is the case), the aid is likely to affect trade between Member States and thus falls within the definition of Article 87(1) of the EC Treaty. The Commission regrets that the Dutch authorities have failed to comply with the requirement to notify the aid granted to SCI under the jobs programme on the basis of Article 88(3) of the EC Treaty.

5.1.2. *Assessment*

(53) The direct wage subsidy granted to SCI under the jobs programme is linked to its investment since aid under the scheme is granted only to firms that invest in Friesland for the first time and firms that invest in substantial extension schemes. This means that the Commission has to assess the subsidy as investment aid under the guidelines on national regional aid [21] (hereinafter referred to as the 'regional aid guidelines') and not under the guidelines on aid to employment [22]. The relevant regional aid ceiling for the province of Friesland has been set at 20 % gross grant equivalent.

(54) The wage subsidies are combined with investment aid granted under the IPR, as described in section 2.2. Paragraphs 4.18 to 4.21 of the regional aid guidelines stipulate how such cumulation of aid is to be assessed.

(55) As the definitive subsidies still have to be determined, the amount of the investment and employment aid is as yet unknown. It will certainly exceed the amount that results from applying the regional aid ceiling (20 % gross grant equivalent) to the investment costs still to be determined, even if the cost of purchasing the land (see recitals 9 and 62) were to be included in the eligible cost base. The amount might also exceed the amount that results from application of the regional aid ceiling to the expected wage cost of the individuals taken on, calculated over a period of two years. The investment was originally expected to create 1 200 jobs. The current estimate, however, is 700 jobs. As the average monthly gross wage costs are put at EUR 1 967 (NLG 4 335), the eligible cost base would be EUR 33 million (NLG 72,8 million), resulting in an aid ceiling of EUR 6,6 million (NLG 14,6 million). As described in recital 15, the Dutch authorities have undertaken to limit the combined investment and employment aid to the ceiling of 20 % of the eligible cost base calculated in this way [23]. Accordingly, the Commission concludes that the employment aid covered by this undertaking is compatible with the common market. Since the definitive subsidies have not yet been determined and since the jobs created have to be maintained for five years, the Commission requests detailed reports on the implementation of the investment project and the subsidies granted.

[21] OJ C 74, 10.3.1998, p. 9.
[22] OJ C 334, 12.12.1995, p. 4. Paragraph 10 of these guidelines explains that aid to employment as covered by these guidelines is aid not linked to investment.
[23] Including the aid element in the advance payments; see footnote 12.

5.2. **The land sale**

5.2.1. *The aid element in the land price*

(56) Sales of land and buildings by public authorities may contain State aid within the meaning of Article 87(1) of the EC Treaty for the buyers. The Commission communication on State aid elements in sales of land and buildings by public authorities sets out a general approach that is to be used to establish whether there is such an element of State aid ([24]). The Commission will assess the present case in the light of this communication.

(57) In accordance with point 3(a) of the communication, public authorities may have an independent evaluation of the land price carried out prior to the sale negotiations in order to establish the market value. The market price thus established is the minimum purchase price that can be agreed without granting State aid. The Commission established that a first evaluation, dated 18 May 1998, was carried out after negotiations had started. In November 1997 SCI had already published its decision to set up the facility in Heerenveen and the public authorities initially indicated a price of EUR 1,36 (NLG 3) per square metre. Moreover, the Commission found that the price of EUR 2,27 (NLG 5) per square metre, which was established by the first evaluation, cannot be taken as the market price. On the basis of the considerations below, the Commission takes the view that this evaluation significantly underestimates the value of the land that will be used as a green area and the expected increase in value due to the change of the land use plan.

(58) Moreover, point 2(d) of the communication states that the primary cost to the public authorities of acquiring land and buildings is an indicator for the market value. In this case, the 'cost price' amounts to EUR 7,42 (NLG 16,36) per square metre ([25]).

(59) The price of EUR 2,54 (NLG 5,60) per square metre, as calculated in the second evaluation, cannot be readily accepted as a market price either. Since the plot sold to SCI is relatively large, there are no comparable land sales in the area around Heerenveen and thus no comparable land prices. Therefore the valuer made a theoretical calculation of the benefits that would accrue to a commercial developer if the land were sold in smaller plots (for which comparable prices do exist). As the land sold to SCI was not in a comparable state, several 'adjustments' are made resulting in a net sales value for 24 hectares of EUR 620 318 (NLG 1 370 000), corresponding to the price of EUR 2,54 per square metre.

(60) The Commission, however, considers that the 'market price' is not the price such a commercial developer would be willing to pay, but rather the price for which such a commercial developer would be willing to sell the same plot to a buyer such as SCI. This means that certain deductions should not be included in the calculation since a commercial developer will pass on these costs to its clients. Moreover, the calculation should take into account the expected rise in value due to the planned change in the land use plan.

(61) An exploratory memo from the municipality of Heerenveen contains several remarks about the necessary procedures for changing the land use plan ([26]). It concludes that the change will still allow for a low density rate for buildings and a green, park-like setting. It expects that no new environmental impact report will be necessary, although the traffic noise aspect may alter this conclusion. It does not mention any other specific risks and concludes that the change could be approved in two

([24]) OJ C 209, 10.7.1997, p. 3.

([25]) In this case, such an indicative cost price can be calculated on the basis of the cost of buying 60 hectares of land. IBF bought 80 hectares, for which the adjusted budget for 1998 indicated a cost of NLG 13 090 000. An area of 20 hectares was necessary for infrastructure. The cost for the remaining 60 hectares amounts to 60/80 NLG 13 090 000 = NLG 9,8 million, which corresponds to a price of NLG 16,36 per square metre. The infrastructure cost, i.e. EUR 9,1 million (NLG 20,1 million) according to IBF's 1999 updated operating budget, need not to be taken into account.

([26]) Gemeente Heerenveen 00-22-03/03-05-00, 'Verkennende notitie mbt de mogelijkheden en consequenties van een herziening van het bestemmingsplan voor het IBF'.

years' time. In their letter of 6 December 2000, the Dutch authorities, however, explained that in 1998 there was still a legal case before the Council of State involving IBF as such. This case was decided only in January 1999. In November 2000 the municipality of Heerenveen still had to take the formal decision on the proposed change. Even in the best-case scenario, the Dutch authorities argued, the change in the land use plan would not have legal validity before 2005/2006. It was for that reason that in 1998 no commercial developer would anticipate such a change. The Commission concludes that in 1998 there must have been considerable uncertainty regarding the future change in the land use plan.

(62) On the basis of the second evaluation report, the Commission was able to calculate a range from EUR 6,58 to EUR 14,51 per square metre ([27]) at which a theoretical developer would be willing to sell the plot to a buyer such as SCI. The cost price of EUR 7,42 per square metre is at the low end of the indicated range, implying rather high uncertainty regarding the change in the land use plan. Under these circumstances, the Commission can, as specified in point 2(d) of its communication on public land sales, use the primary cost as an indicator of the market value. The value of the 14,4 hectares of land bought by SCI is therefore EUR 1,07 million (NLG 2 359 000). Since SCI paid EUR 318 000 (NLG 700 000), the aid element in the transaction amounts to EUR 753 000 (NLG 1 659 000).

(63) This calculated market price of EUR 7,42 per square metre seems reasonable even though it is below the price of EUR 12,25 (NLG 27) per square metre, which was the break-even price for IBF to run in 1998. As SCI is an important 'launching customer', this is not surprising. Moreover, the break-even price takes into account the whole business park, including infrastructure costs. Even if higher market prices are to be expected in the future, it is equally true that until November 2000 no other firm has built new premises on the IBF business park. This confirms the difficulty of attracting major investments to the northern part of the Netherlands, something also indicated by the small number of investments in other main industrial estates such as that at Eemshaven.

(64) The calculated market price of EUR 7,42 per square metre can be considered to be a price including the cost of energy connection. As described in recital 29, this cost amounted to EUR 6,81 (NLG 15) per square metre, but IBF exempted SCI. The fact that IBF has borne the cost of energy connection only beyond SCI's plot and that SCI has borne the full cost of energy connection on its plot, as stated by the Dutch authorities (recital 42), is not relevant as these costs must be seen as the buyer's contribution to the general infrastructure. However, such a levy is in itself not able to raise the market price.

(65) With respect to the evaluation of the land transaction, the Dutch authorities have shown that, contrary to what a third party suggested, the fact that SCI did not have to pay transfer tax is consistent with Dutch tax legislation. Accordingly, no aid element results from this.

(66) The sale and buy-back of 10 hectares does not in itself contain an aid element, as both are conducted at the same price. However, if the land use plan is not changed, SCI will have to buy 'again' the 10 hectares from IBF. The Commission would remind the Dutch authorities that, in this case, the appropriate market price has to be applied.

(67) The Commission concludes from the above that the aid element in the land transaction between IBF and SCI amounts to EUR 753 000 (NLG 1 659 000).

([27]) This latter figure may be somewhat too high as no distinction is made between land to be used for building and land to be used for service roads. The 70 % limit for combined building and service roads comprises a relatively low 40 % for buildings and a high 30 % for service roads. In the case of SCI, however, the Commission considers this distinction to be of only minor importance: as SCI needs a substantial parking area, the combined maximum of 70 % can be taken as the binding requirement for its plans.

5.2.2. *Compatibility with the common market*

(68) Since this is an ad hoc measure, the derogation in Article 87(3)(c), provided for in the regional aid guidelines, does not apply unless it can be shown that there is still an equilibrium between the resulting distortion of competition and the advantages of the aid in terms of the development of a less-favoured region. This is not the case: the assembly of computers is an internationally competitive sector and the decision to invest in Heerenveen was preceded by fierce competition from other municipalities in the Netherlands. Most (if not all) components will be supplied by firms in other regions and, to a large extent, the activities require only low-skilled labour. Moreover, the Dutch authorities did not provide any arguments to support such a view. The Commission has examined whether other derogations such as those in Article 87(2) and (3) of the EC Treaty apply to the aid element in the land sale. The derogations in Article 87(2) could serve as a basis for considering the aid to be compatible with the common market. However, the case does not concern aid that (a) has a social character, being granted to individual consumers, (b) makes good the damage caused by natural disasters or exceptional occurrences and (c) is required in order to compensate for the economic disadvantages caused by the division of Germany. Not applicable either are the derogations in Article 87(3)(a), (b) and (d) of the EC Treaty, which refer to promotion of the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to projects of common European interest and to the promotion of culture and heritage conservation.

(69) As far as the derogation in Article 87(3)(c) of the EC Treaty is concerned, namely aid to facilitate the development of certain economic activities or of certain economic areas, this exemption does not apply, as described above. Moreover, the aid was not linked to objectives in connection with R & D, the environment or investment by SMEs.

(70) Neither did the Dutch authorities attempt to justify the aid on the grounds already enumerated.

(71) Therefore, the Commission concludes that the aid element in the land sale is not compatible with the common market.

5.3. **Temporary factory facilities, security and transport (SEBB fund)**

5.3.1. *Rent for the temporary factory facilities*

(72) The evaluation report on the rent for the temporary production facilities has a number of serious shortcomings. Firstly, it bases the 'market rent' on comparisons with rents in recently concluded contracts in the larger towns in the provinces of Groningen and Drenthe. Many of these towns, however, would not be a serious option for SCI as they would be too far from Heerenveen. The fact that NOM opted for a location that required substantial upgrading before it could be used by SCI is an indication of a shortage of suitable temporary factory facilities. It is also surprising that rents in the province of Friesland were not taken into account. Secondly, the report does not take into account the rent that NOM pays itself. For these reasons, the Commission can not rely on the outcome of the exercise being a market price.

(73) The comparison with the rent paid by the other firms in the same building is not particularly helpful either. In three cases, the rent per square metre is lower than the rent paid by SCI, but the Dutch authorities did not calculate the rent paid by the other three firms. They, in fact, pay a higher rent. Moreover, the current owner of the part of the building concerned indicates that these rents were set

by the former owner in a manner not consistent with the market since as all these firms had to pay for the necessary adaptations of the rented facilities themselves. One of them paid EUR 360 000 (NLG 800 000) in this connection. However, all of these comparisons are distorted by the qualitative differences between the rented facilities and the differing contract specifications, e.g. the period for which the contract is concluded.

(74) There is hardly any time lag between the agreements on the rent paid by NOM to Brivec and the rent charged to SCI. NOM started to rent the facilities in December 1997, when SCI had already opted for Heerenveen, whereas the evaluation report calculates the rent as from 26 January 1998. The Dutch authorities also stressed that there could be no State aid element in favour of Brivec, as NOM had an interest in negotiating the lowest possible price. Therefore, the Commission considers the price paid by NOM itself to be the market price, implying a State aid to of up EUR 131 000 (NLG 289 496) for SCI.

(75) The investment by NOM of EUR 272 000 (NLG 600 000) in the temporary facility cannot be regarded as a normal market transaction. On the contrary, the Dutch authorities have confirmed that NOM invested in this temporary production facility because of the perceived shortage on the market for such facilities. However, since SCI moved to its new location, NOM has not (yet) been able to rent the facilities to another firm. The Commission doubts therefore whether there is a real shortage of temporary facilities, at least those with such a relatively large surface area. Moreover, NOM should undertake such activities only when it can expect a normal market rate of return. Either NOM should have increased the rent by a corresponding amount or SCI should have paid for the upgrading itself in the same way as the other firms in the building. This has not been the case. Being financed by the SEBB fund, the full amount must be considered as state aid within the meaning of Article 87(1) of the EC Treaty.

(76) Both the aid element in the rent and the aid for the upgrading of the facility must be considered as individual ad hoc measures. For the same reasons as with the aid element in the land price, described in recitals 68 and 69, none of the derogations in Article 87(2) or (3) applies.

(77) The Commission verified the actual cost of energy and concludes that this corresponds to the monthly payment of EUR 13 000 (NLG 25 000) and does not contain any element of State aid.

5.3.2. *Security of the temporary facility*

(78) With respect to the security costs borne by NOM, the Commission again analyses what a commercial lessor acting under market economy conditions would have done. In this matter, it cannot agree with the explanation given by the Dutch authorities. Even if NOM had to pay these security costs to meet damages by SCI, a commercial lessor would pass these costs on to the firm that rented the facility or would not let the facility at all since this would represent a serious loss. Accordingly, the Commission concludes that the full amount of the security costs, i.e. EUR 353 000 (NLG 778 552), constitutes State aid within the meaning of Article 87(1) of the EC Treaty. It must be considered to be an individual ad hoc measure. For the same reasons as with the aid element in the land price, described in paragraphs 68 and 69, none of the derogations in Article 87(2) or (3) applies.

5.3.3. *Transport costs*

(79) The Commission agrees with the Dutch authorities that the free transport benefited the individual employees directly. SCI had no obligation to provide such public transport, either under the relevant collective bargaining agreement or under the individual contracts with its employees.

(80) Even if payment of the transport costs cannot be regarded as a normal cost for SCI, the Commission still has to investigate whether there might be any indirect benefits to the firm. For instance, it might have been more difficult to recruit the new employees without providing free transport. However, given the rather short distance involved, the temporary nature of the production site, the relatively high unemployment in Friesland and the fact that many of the beneficiaries were formerly unemployed individuals recruited via the jobs programme, any such indirect benefit seems negligible. The Commission therefore concludes that the transport costs borne by NOM do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

5.4. **Accommodation for staff**

(81) The municipality of Heerenveen paid EUR 100 000 (about NLG 220 000) for the accommodation of staff. The Dutch authorities have never denied the aid character of this measure, but they claim that this subsidy is below the *de minimis* threshold. This can be accepted on condition that the Dutch authorities comply with all the conditions of the *de minimis* rule, including those on cumulation with other *de minimis* aid.

6. **CONCLUSIONS**

(82) The investment aid under the IPR scheme, which will probably be fixed at around EUR 3 600 000 (NLG 8 000 000), is granted in accordance with the regional aid scheme approved by the Commission. The aid is therefore considered to be existing aid.

(83) The investment project of SCI is situated in a region that is eligible for regional aid under Article 87(2)(c), with an aid ceiling of 20 % gross grant equivalent. The Dutch authorities have given a commitment that the aid intensity of the IPR scheme and the wage subsidies will not exceed this ceiling. Given the current estimates regarding the size of the investment and the number of jobs created, the combined aid under the IPR scheme and the jobs programme will probably be limited to about EUR 6 600 000 (NLG 14 600 000). If the IPR aid amounts to EUR 3 600 000, the wage subsidies will be limited to some EUR 3 000 000 (NLG 6 600 000). The Commission considers that the wage subsidies under the '2 000 Jobs' programme, as limited by the undertaking of the Dutch authorities, are compatible with the common market.

(84) The following measures constitute State aid within the meaning of Article 87(1) of the EC Treaty and are not compatible with the common market: aid element in the land price EUR 753 000 (NLG 1 659 000), aid in the rent for the temporary facilities EUR 131 000 (NLG 289 496), aid in connection with NOM's investment in the temporary facility EUR 272 000 (NLG 600 000), security measures for the temporary facility EUR 353 000 (NLG 778,552). The Commission finds that the Netherlands has unlawfully implemented these aid measures in breach of Article 88(3) of the EC Treaty.

(85) The transport costs for SCI's employees for the journey to and from the temporary facility in Leek, i.e. EUR 812 000 (NLG 1 789 017), does not constitute aid within the meaning of Article 87(1) of the EC Treaty. The aid for staff accommodation, i.e. EUR 100 000 (NLG 220 000), remains below the *de minimis* threshold.

(86) If aid is incompatible with the common market, the Commission must, pursuant to the judgment of the Court of Justice in Case 70/72 ([28]), upheld in its judgments in Cases 310/85 ([29]) and C-5/89 ([30]), require the Member State to recover from the recipient all aid granted unlawfully. This measure is necessary in order to restore the previous situation by removing all the financial benefits which the firm receiving the unlawful aid has improperly enjoyed since the date on which the aid was paid. Recovery of the incompatible and unlawful aid is an obligation imposed on the Commission by Council Regulation (EC) No 659/1999.

(87) Recovery must be effected without delay and in accordance with the procedures of Dutch law provided that they allow the immediate and effective execution of the Commission decision. The aid to be recovered includes interest from the date on which it was granted until the date of its recovery. Interest is calculated on the basis of the commercial rate, with reference to the rate used for calculating the grant equivalent of regional aid,

([28]) Case 70/72 *Commission* v *Germany* [1973] ECR 813.
([29]) Case 310/85 *Deufil* v *Commission* [1987] ECR 901.
([30]) Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437.

HAS ADOPTED THIS DECISION:

Article 1

Tie transport service for SCI's employees to and from the temporary facility in Leek does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

The aid under the '2 000 Jobs' programme, which the Netherlands has implemented in favour of SCI and which is limited by the undertaking of the Dutch authorities, is compatible with the common market in so far as the combined amount of aid under the IPR scheme and the jobs programme does not exceed the regional aid ceiling of 20 % gross grant equivalent. The Netherlands shall ensure that, with the final declaration of eligible costs, the ceiling of 20 % will not be exceeded.

Article 3

The aid element in the land price, the aid in respect of the rent charged for the temporary facility and the investment by NOM in the temporary facility, and the aid in connection with the security measures for the temporary facility are incompatible with the common market.

Article 4

1. The Netherlands shall take all necessary measures to recover from the beneficiary the aid referred to in Article 3 and unlawfully made available to the beneficiary.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 5

The Netherlands shall strictly monitor the progress of the investment project and shall provide the Commission with reports concerning the definitive subsidy under the IPR scheme, the actual number of employees eligible for the subsidy and the associated wage costs, and the definitive subsidy granted under the '2 000 Jobs' programme and concerning the maintenance of the jobs created for a period of five years as from the completion of the investment project. With respect to the aid for the accommodation of staff, the Dutch authorities shall comply with the conditions of the *de minimis* rule, notably those on cumulation with other *de minimis* aid.

Article 6

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

Article 7

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 13 February 2001.

For the Commission

Mario MONTI

Member of the Commission