COMMISSION

COMMISSION DECISION

of 13 December 2000

on the State aid implemented by Germany for SKET Walzwerkstechnik GmbH (aid C 70/97 (ex NN 123/97))

(notified under document number C(2000) 4189)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/798/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 and having regard to their comments,

Whereas:

1. **PROCEDURE**

(1) By letter dated 16 November 1996 Germany notified restructuring aid for SKET Walzwerkstechnik GmbH, Magdeburg, to the Commission pursuant to Article 93(3) (now Article 88(3)) of the EC Treaty. By letter dated 27 November 1996 the Commission requested additional information. Germany replied by letters dated 13 January, 30 January and 7 March 1997. A meeting between the Commission and the German authorities was held on 1 July 1997 to discuss the case. As part of the aid had already been paid out, the case was registered under number NN 123/97.

(2) On the basis of the information submitted by Germany, the Commission decided to initiate proceedings under Article 93(2) (now Article 88(2)) of the EC Treaty and to call on Germany to submit all the information necessary to assess the case as it had doubts as to the compatibility of the aid with the common market.

(3) The decision was communicated to Germany by letter dated 10 November 1997 [1] and was published in the *Official Journal of the European Communities* [2]. The Commission changed the case number accordingly to C 70/97. In addition, interested third parties were invited to submit comments within a month of publication.

(4) On 6 February 1998, 27 May 1998, 19 January 1999, 1 February 1999, 11 March 1999, 24 June 1999, 19 July 1999, 9 September 1999, 20 October 1999, 17 January 2000 and 20 April 2000 Germany sent information in response to the initiation of proceedings. Moreover, two more meetings were held on 26 July 1999 and 21 October 1999 to give the German authorities the opportunity to discuss the case.

(5) No third party submitted comments.

2. **THE FACTS**

(6) SKET Walzwerkstechnik GmbH (SKET WT) is based in Magdeburg, Saxony-Anhalt, Germany. In 1998, it had a workforce of […] (*) and a turnover of approximately […] *. It designs and then arranges manufacture and installation of complete, custom-made steel rolling mills worldwide. It took over the engineering design activities of the failed conglomerate SKET SMM.

[1] Commission letter D(97) 9271.
[2] OJ C 118, 17.4.1998, p. 5.
(*) Business secret.

(7) In April 1998, SKET WT was privatised to Münchmeyer Petersen GmbH & Co. KG (MPC) on the basis of an open and unconditional tender. The company cannot be considered to be an SME, as the criterion of independence is not met [1]. The current measures have to be seen in the context of the privatisation and are designed to support the restructuring of SKET WT.

(8) Saxony-Anhalt is a region with a high level of unemployment. The region is eligible for regional aid pursuant to Article 87(3)(a) of the EC Treaty.

(9) SKET WT belongs to the family of 'SKET companies' which originate from the collapse of the large industrial conglomerate SKET Schwermaschinenbau Magdeburg GmbH (SKET SMM). In March 1995, the Commission began a formal investigation into the restructuring aid for SKET SMM [2]. SKET SMM was never privatised and filed for bankruptcy in October 1996 after the restructuring plan had failed. In November 1996 and January 1997, Germany informed the Commission that it intended to continue certain activities of the bankrupt SKET SMM through new legal persons which were set up taking over the assets and activities of the failed predecessor company. On 26 June 1997 the Commission adopted the negative final Decision 97/765/EC [3] with regard to the aid for SKET SMM.

(10) In 1998 and 1999 the Commission approved aid for four of the SKET spin-off companies, the 'baby SKETs' [4]. For that purpose, the Commission had accepted in all these 'baby SKET' cases that the successor companies to SKET SMM were new undertakings clearly distinct from the failed SKET SMM. Therefore there had been no question of making them liable for aid to SKET SMM. This also applies to SKET WT.

2.1. **The investor**

(11) Under the privatisation contract of April 1998 the shares of SKET WT were transferred by the BvS to MPC. This company is active in several markets worldwide including […] *. It has no manufacturing capacity, a worldwide workforce of […] * (excluding SKET WT) and approximately DEM […] * in turnover.

2.2. **The privatisation**

(12) At the time of the privatisation of SKET WT, the investor was chosen following an international call for tender. The search for an investor was conducted by the West Merchant Bank, a subsidiary of the Westdeutsche Landesbank. Over a period of several months, the bank had contact with about 350 interested parties and started negotiations with three of them.

(13) Finally the negotiations with MPC were successful and SKET WT was privatised to the MPC in April 1998 because the company offered the best know-how and the most convincing plan as regards guarantees of investment and employment. Specifically, MPC guaranteed employment of 100 persons in SKET WT until 31 December 2002 and promised an investment of DEM 12,2 million from its own resources, also until 31 December 2002. The employment guarantee is subject to a penalty of DEM 5 000/person and the investment obligation to a penalty of 100 % of the non-invested amount. The privatisation contract also prohibits the investor from withdrawing from the site before 31 December 2001. If this obligation is not fulfilled, it is penalised to the tune of DEM 3 000/person. Moreover, the investor committed itself not to withdraw profits from SKET WT until 2003. In addition, MPC was the only company which accepted to complete 'old contracts' taken over from SKET SMM totalling DEM 48,4 million. The other interested parties had asked for a bigger contribution from the BvS.

(14) In the context of the privatisation, MPC paid a purchase price of DEM […] * and provided a loan for an amount of DEM […] *. Moreover, MPC undertook to make a cash contribution of DEM […] * to finance the investments while it also took over a bank guarantee for an amount of DEM […] *. To that must be added an amount of DEM […] * to finance the costs of capacity reduction. As a result of this financial injection the initial investor contribution will amount to DEM 36,2 million. It has to be noted that, in addition to this amount, MPC will gradually take over from the State the responsibility on a phased basis for the financial guarantees up to 2003 totalling DEM 55 million.

(15) The BvS undertook to waive a loan of DEM 26,5 million and to provide a grant of DEM 25 million. Moreover, it granted DEM 8,1 million to the bankruptcy administrator to enable him to preserve the rolling mill operation within SKET SMM prior to extraction and transfer to SKET WT. Additionally, it provided credit facilities totalling DEM 35 million. To that must be

[1] As MPC is a fairly large company and thus not an SME, it does not qualify as an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises; see Commission recommendation of 3 April 1996 (OJ C 107, 30.4.1996, p. 4).
[2] OJ C 215, 19.8.1995, p. 8 and OJ C 298, 9.10.1996, p. 2.
[3] OJ L 314, 8.11.1997, p. 20.
[4] SKET Maschinenbau-EDV GmbH (NN 126/97) approved in May 1998; SKET Verseilmaschinenbau GmbH © 72/97) approved in September 1998; Cimbria SKET GmbH (NN 125/97) approved in May 1999; SKET Maschinen- und Anlagenbau GmbH © 69/97) approved in July 1999.

added a bridging loan of DEM 25 million to prefinance financial measures of the Land on basis of the 'Rahmenrichtlinie des Landes Sachsen-Anhalt' [1]. SKET WT is also receiving DEM 48,4 million to complete 'old contracts' taken over from SKET SMM. In this respect the BvS had guaranteed the fulfilment of the SKET SMM contracts to third parties.

2.3. **The restructuring plan**

(16) The problems of SKET WT are those of the rolling mill operation of SKET SMM, from which SKET WT has derived its workforce, assets and a major part of its order book. The problems of the rolling mill operation of SKET SMM were primarily bad management and overstaffing. Additionally, the company depended on unstable and deteriorating geographic markets and neglected industrial property rights and know-how.

(17) The restructuring plan dates back to 1997, but was revised at the time of privatisation in April 1998. It related to the privatisation and foresees a number of measures to improve the performance of SKET WT on the market:

(a) to extract the rolling mill operation from SKET SMM and to operate it as a purely engineering operation. Additionally it is planned to provide the company with capital and financial resources to allow trading activities;

(b) to finance the development of its industrial property and know-how;

(c) to reduce material costs by offering products on a modular basis;

(d) to cut personnel costs by reducing staff levels continuously so that on completion of restructuring there will be a workforce of 95 employees left;

(e) to make use of the financial power and connections brought in by MPC, to allow SKET WT to penetrate new and more stable geographic markets. MPC's trading activities in related product markets areas […] * mean that SKET WT, even where it remains in unstable markets, can enter into 'bartering agreements';

(f) to solve the quality problems the company was facing;

(g) to reinforce the sales department to improve the marketing strength of the company;

(h) to reinforce the R & D department and to reorganise the data-processing department;

(i) to acquire new machinery;

(j) to improve after-sales service.

(18) The restructuring period covers the time span 1997 to 2003. As a direct result of the implementation of the restructuring plan, the following synergy effects may be expected:

(a) better buying conditions because of the integration of SKET WT into the MPC group and subsequently better terms and conditions in financing and assurance;

(b) joint after-sales service network with MPC;

(c) joint marketing with MPC;

(d) extension of the product range offered by the group;

(e) improvement of the quality level of the products of the company.

2.4. **The financial measures**

(19) The BvS and the Land of Saxony-Anhalt will take the following financial measures in the context of the privatisation:

Table: Public financial measures to assist SKET WT

(DEM million)

Measure	Source	Amount	Total
Grant — capital	BvS	25,0	
Shareholder loan and waiver	BvS	26,5	
Grant to administrator of SKET SMM	BvS	8,1	
Credit facilities	BvS	35,0	
Bridging credit 'Rahmenrichtlinie des Landes Sachsen-Anhalt'	BvS + Land	25,0	

[1] cf. Programme approved by the Commission under N 413/91, amended in 1994 by Decision E 5/94, which adapted the scheme to the guidelines for rescue and restructuring.

(DEM million)

Measure	Source	Amount	Total
Completing of 'old contracts' of SKET SMM	BvS	48,4	
Less current purchase price paid by MPC	MPC	[...] *	
Lee guarantee taken over by MPC	MPC	[...] *	
Lee guarantee taken over by MPC	MPC	[...] *	
Total			143,5

(20) The investor committed himself to the following financial measures in the context of the privatisation:

Table: Private financial measures to assist SKET WT

(DEM million)

Measure			
Private loan	MPC	[...] *	
Additional investment — future		[...] *	
Investment for capacity reduction		[...] *	
Purchase price paid by MPC	MPC	[...] *	
Guarantee taken over by MPC	MPC	[...] *	
Guarantee taken over by MPC	MPC	[...] *	
Total			36,2

(21) To that must be added DEM 12,2 million cash flow of SKET WT, which is also to be considered as part of the restructuring costs. These costs therefore amount to a total of DEM 191,9 million [1].

Table: The total costs of the restructuring

Restructuring step	Cost in DEM million
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
[...] *	[...] *
Total	191,9

[1] DEM 143,5 million + DEM 36,2 million investor contribution + DEM 12,2 million cash flow of the company.

(22) SKET WT is also to receive DEM 48,4 million from the BvS for completing contracts taken over by SKET WT from SKET SMM ('old contracts') (already included in the above table). SKET SMM entered into contracts with various third parties to supply them with services and goods. The performance of these SKET SMM contracts was backed by guarantees given by the BvS to these third parties.

(23) In its negative Decision 97/765/EC concerning SKET SMM, the Commission found that the company had been awarded incompatible aid, and it also found that a number of the SKET SMM contracts were distortive of competition. After SKET SMM went bankrupt, the third parties were left with the unfulfilled SKET SMM contracts and the BvS was left with its liabilities under the guarantee contracts.

(24) The potential exposure of the BvS under the guarantee contracts was DEM 135,5 million. With the agreement of the third parties and administrator in bankruptcy, all of whom had an interest in minimising their losses after the collapse of SKET SMM, the BvS, in order to escape paying the full amount under the guarantee contracts, agreed to pay SKET WT DEM 48,4 million to finish the outstanding work under the SKET SMM contracts.

(25) According to the arguments put forward by the German authorities, this was cheaper than getting other third parties to complete the SKET SMM contracts. They argued that the fulfilment of the guarantee contracts given by the BvS on behalf of SKET SMM to the third parties, whose purpose was to ensure that the third parties were covered by any failure by SKET SMM to perform the contracts, would result in higher expenditure than paying SKET WT to complete these contracts. The BvS payment to SKET WT for completing the remaining contracts was the cheapest option available. In January 2000, Germany submitted an expert's report to support this assertion that this sum covered SKET WT's costs of completing the old contracts. Therefore, according to the German authorities, the BvS behaved as a private investor would have and the payments to SKET WT should not be considered aid.

3. COMMISSION DECISION TO INITIATE PROCEEDINGS UNDER ARTICLE 88(2) OF THE EC TREATY

(26) In its decision to initiate proceedings under Article 93(2) (now Article 88(2)) of the EC Treaty, the Commission expressed doubts as to the compatibility with the common market of the aid which was not notified and unlawfully disbursed before it had taken a decision. It enjoined Germany to submit all the information necessary to enable the Commission to assess the case.

(27) The main reason for the initiation of the proceedings was the lack of information and the insufficient contribution of the private investor. Additionally, the Commission had doubts concerning the long-term viability of the company. Germany also submitted imprecise information about the aid measures, which made it impossible for the Commission to assess whether the aid was proportional to the costs and benefits of the restructuring and to what extent the aid for SKET WT would lead to a distortion of competition. Moreover, Germany was requested to clarify the taking over of the fulfilment of the old contracts of SKET SMM by SKET WT.

4. COMMENTS FROM INTERESTED PARTIES

(28) The Commission received no comments from interested parties on the initiation of proceedings.

5. COMMENTS FROM GERMANY

(29) In a number of answers in response to the proceedings of 21 October 1997, the German authorities provided information on the long-term viability of SKET WT, on the possible distortion of competition and clarified the investor contribution. Moreover, they commented on the fulfilment of the old contracts.

6. **ASSESSMENT**

(30) SKET WT designs and arranges the production by third parties of steel rolling mills. SKET WT is mainly active on the European and world market, […] *. The most important markets for SKET WT are […] *. On these markets there is a trend towards greater investment in new or updated machines. There seems to be no overcapacity. SKET WT's direct competitors are four large groups and 12 to 15 small companies specialising in niche products. However, in initiating the proceedings, the Commission did not find that there was any excess capacity on the market. There is no reason to believe that this situation has changed [1].

(31) It can thereby be stated that intra-Community trade in the sector in question is considerable and that trade between Member States is likely to be affected by aid measures.

(32) Consequently, the individual measures have to be examined under Article 87(1) of the EC Treaty, because the funds are derived from State resources and therefore threaten to distort competition, affect trade between Member States and confer an advantage on the investors who will not have to cover expenses they otherwise would have to bear themselves.

(33) SKET WT is to receive in total DEM 143,5 million from State sources. The following financial measures are covered by programmes.

(34) A bridging loan of DEM 25 million under the guarantee programme of the Land of Saxony-Anhalt [2]. The aid measures comply with the conditions of these schemes and are therefore covered. Although the measures are not reassessed by the Commission, their amounts will be taken into account in assessing the proportionality of the aid measures (see recitals 51 to 57).

(35) The following financial measures were not covered by programmes.

(36) DEM 48,4 million relates to the old contracts awarded to the former SKET SMM. This sum is to be treated in its entirety as aid as SKET WT received it from the BvS to finance the completion of several contracts of SKET SMM. The argument put forward by Germany that the BvS behaved as private investor because the payment to SKET WT for completing the remaining contracts was the cheapest option available cannot be accepted. All of these contracts were concluded at unrealistic prices. SKET SMM was a company in difficulties and had received large amounts of State funds to finance these contracts. These contracts would never have existed without aid to SKET SMM, whose existence was entirely due to State aid. For this reason all the SKET SMM contracts distorted competition. These contracts remain distortive because other operators on this market, competitors of SKET WT, would have demanded higher prices for completing these orders. Therefore the payment of DEM 48,4 million to SKET WT should be considered to be aid and included in the assessment, even if the option to award the completion of the contracts to SKET WT was the cheapest for the BvS. However, the aid for these contracts can be accepted as part of the restructuring plan.

(37) This amount and the balance of DEM 70,1 million fall to be assessed as ad hoc restructuring aid.

(38) Consequently, the recipient benefits from aid measures in the context of the privatisation totalling DEM 143,5 million [3] awarded by the BvS and the Land of Saxony-Anhalt, of which DEM 118,5 million [4] are the subject of the Commission's present assessment.

It has to be examined whether the aid measures fall under the derogation provided for in Article 87(3) of the EC Treaty.

[1] See *Panorama for European Industry 1999*, which predicts moderate growth for the years ahead.
[2] cf. Programme approved by the Commission under N 413/91, amended in 1994 by Decision E 5/94, which adapted the scheme to the guidelines for rescue and restructuring.
[3] DEM 48,4 million + DEM 70,1 million + DEM 25 million.
[4] DEM 48,4 million + DEM 70,1 million.

(39) The aid measures provided by the BvS and the Land of Saxony-Anhalt were notified as restructuring aid given in order to restore the viability of an undertaking in difficulty. The Commission therefore gives particular attention to the derogation provided for in Article 87(3)(c) of the EC Treaty, 'aid to facilitate the development of certain economic activities, where such aid does not affect trading conditions to an extent contrary to the common interest', since the predominant objective of the aid is the restructuring of a firm in difficulty. Such aid may be considered compatible with the common market if the criteria in the guidelines on State aid for rescuing and restructuring firms in difficulty [1] (guidelines) are met. The Commission also takes account of the fact that the new Länder in Germany belong to the assisted areas under Article 87(3)(a) of the EC Treaty, where the standard of living is abnormally low and where there is a high unemployment rate [2].

(40) Restructuring aid demands first of all the implementation of a sound restructuring plan. The restructuring must restore the long-term viability of the companies in question and avoid undue distortions of competition. The restructuring programme should contribute to the overall improvement of the market situation and act as sufficient counterweight to the distortive effect of the aid awarded. The amount and intensity of the aid must be limited to a strict minimum during the restructuring phase and the costs to which the aid relates must not exceed the expected benefit.

6.1. **Restructuring plan**

(41) The sine qua non of all restructuring plans is that they must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. In principle, no repetitive aid may be given [3].

(42) The investor's restructuring plan anticipates offsetting the market collapse […] * through access to new markets (Central and South America) in order to guarantee the long-term viability of SKET WT. The information on projected financial performance for the restructured SKET WT envisages a restoration of long-term profitability without State support in 2003.

Table: The financial situation of SKET WT will improve according to the following plan [1]:

(DEM million)

	1997 actual	1998 actual	1999 provisional	2000 plan	2001 plan	2002 plan	2003 plan
Turnover	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *
Material costs	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *
Personnel costs	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *
Operating result	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *
Annual result	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *	[...] *

[1] This chart contains only a selection of key data and the columns are not arithmetically complete.

The trend of these figures is consistent with the expected completion of the old contracts. […] *.

[1] OJ C 368, 23.12.1994, p. 12.
[2] N 464/93, letter of 22 April 1994 SG(94) D/5633; N 613/96, letter of 23 January 1997 SG(97) D/488.
[3] Point 3.2 of the 1994 guidelines. These guidelines remain applicable by virtue of point 101 of the 1999 guidelines on State aid for rescuing and restructuring of firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(43) The restructuring plan envisages a number of internal measures. Firstly the extraction of the rolling mill operation from SKET SMM and organising it as a pure engineering operation is likely to free SKET WT from the burden of the past. As the company will now be able to choose freely amongst different suppliers and will not be forced to use SKET SMM as provider, as in the past, it will be much more flexible on the market.

(44) Additionally, the provision of the company with capital and financial resources will enable trading activities by making use of the financial power and connections brought in by MPC. These connections will also allow SKET WT to penetrate new and more stable geographic markets.

(45) The reinforcement of the R & D department will be supported by the development of SKET WT's industrial property and know-how.

(46) SKET WT has also taken effective measures to improve its product quality. The plan also entails the reinforcement of the sales department and the acquisition of new machinery. Moreover, the complete reorganisation of the company, including the reduction of material costs as well as personnel costs, will improve its competitiveness. All these measures included in the restructuring plan will enhance the company's presence on the market.

6.2. **Adverse effects on competitors**

(47) A further condition of aid for restructuring is that measures are taken to offset as far as possible adverse effects on competitors. Otherwise aid would be contrary to the common interest and not eligible for exemption pursuant to Article 87(3)(c) of the EC Treaty.

(48) SKET WT has a small share of some […] * of the European and of the worldwide market. The guidelines require that a company which is operating in a sector with overcapacity has to cut its capacity in the relevant sector. As established in the market analysis, no structural overcapacity seems to exist in the sector. However, SKET WT as an engineering design operation is reducing its capacity up to the year 2003 in the framework of the restructuring by roughly […] * in man-hours. Consequently, undue distortion of competition through the aid can be considered as being offset.

(49) Finally, it should be noted that SKET WT remains a relatively small player in the market. Additionally, the company does not plan to increase its turnover substantially in the course of the restructuring.

(50) The condition in the guidelines relating to possible adverse effects on competitors therefore seems to be met.

6.3. **Limitation of the aid to the strict minimum**

(51) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources.

(52) As shown in the tables, SKET WT is receiving DEM 118,5 million in aid in the context of the privatisation (excluding aid from approved programmes). It is also necessary to include the DEM 25 million aid based on the guarantee programme of the Land of Saxony-Anhalt [1]. All in all, DEM 143,5 million [2] in aid has to be taken into account for the proportionality analysis.

[1] cf. Programme approved by the Commission under N 413/91, amended in 1994 by Decision E 5/94, which adapted the scheme to the guidelines for rescue and restructuring.
[2] DEM 25 million + DEM 118,5 million.

(53) The contribution of the investor amounts to DEM 36,2 million of its own funds for restructuring of SKET WT, which constitutes approximately 19 % of the total restructuring costs of DEM 191,9 million ([1]). The investor is therefore covering a substantial part of investment expenses involved in the restructuring. This shows clearly its commitment and the fact that it is willing not only to take part but also to assume the risk of the restructuring. This commitment is also underlined by the employment and investment guarantees given by the investor. The analysis of the aid measures shows that they are proportional to the costs and advantages of restructuring. Given the quite specific purpose of the amount and the limitation of aid for the practical needs of the company, the aid will not be of such a nature that it gives the company a surplus of liquidities, allowing it to pursue an aggressive price policy on the market. The total amount of aid is restricted to the minimum necessary in order to ensure the restructuring and the return to long-term viability of the company.

(54) As stated by the German authorities, the financing of the completion of the 'old contracts' will be monitored by an independent auditor to see that only the costs related to these are covered. This also will make sure that all payments of the BvS in this respect are only used for that purpose.

(55) It should also be noted that the investor contribution will increase gradually. On completion of the restructuring in 2003, MPC will have taken over additional financial measures (guarantees) totalling DEM 55 million from the BvS.

(56) However, in view of the above, the Commission can conclude that the condition as regards limiting the aid to the strict minimum appears to be fulfilled.

(57) According to Germany the expected cash flow of DEM 12,2 million for the period […] * should also be considered part of the investor contribution. However, as this cash flow is to be realised mainly on the basis of aid measures in the past and is not yet generated, it is still conditional. Although the expected cash flow will reduce the need for financing the restructuring of the company, the Commission cannot take 'cash flow' into account as an element of the investor contribution.

7. **CONCLUSION**

(58) It must be noted that Germany did not comply with Article 88(3) of the EC Treaty in granting aid C 70/97 prior to the Commission's approval. However, the Commission takes account of the fact that the measures for SKET WT should restore the beneficiary's viability and do not unduly distort competition. The condition regarding a sufficient investor contribution can also be considered as being fulfilled. Moreover, the enterprise is situated in an area eligible for aid under Article 87(3)(a) of the EC Treaty.

(59) In view of the information provided by Germany, the Commission is now able to conclude that the main questions on account of which the proceedings were initiated seem to be answered. As regards the viability of the company, the implementation of the measures included in the restructuring plan is likely to guarantee the return of the company to long-term viability. In addition, the distortion of competition is limited considering that the relevant market (rolling mills) seems not to suffer from overcapacity and that the beneficiary is reducing capacity. Moreover, the Commission has noted that the investor raised its contribution substantially, thereby showing its commitment to the restructuring of the company and reflecting its willingness to expose itself to entrepreneurial risk. The Commission can also accept the argument put forward by the German authorities that the fulfilment of the old contracts of SKET SMM by SKET WT has been the most economical solution for the State, but considers the measures to complete the contracts still to be aid.

([1]) See table in recital 21.

(60) Consequently, the problems on account of which the proceedings under Article 88(2) of the EC Treaty were initiated can be deemed to be solved. The Commission can therefore conclude that the aid measures to assist SKET WT now comply with the guidelines, provided that the restructuring plan is fully implemented. The execution of the plan will be monitored via annual reports communicated by Germany to the Commission.

(61) The aid can therefore be exempted under Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for SKET Walzwerkstechnik GmbH, Magdeburg, amounting to EUR 70 million (DEM 143,5 million) is compatible with the common market within the meaning of Article 87(1) of the Treaty, subject to the conditions set out in Article 2.

Article 2

1. The restructuring plan must fully be implemented. All possible measures shall be taken to ensure that the plan is put into effect.

2. Germany shall submit an annual report to the Commission on the implementation of the restructuring plan.

3. If the conditions set out in paragraphs 1 and 2 are not fulfilled, the exemption can be withdrawn.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 December 2000.

For the Commission

Mario MONTI

Member of the Commission