COMMISSION DECISION

of 24 April 2002

on the State aid implemented by the Federal Republic of Germany for companies on the Wörth Industrial estate

(notified under document number C(2002) 1482)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/784/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:

I. PROCEDURE

(1) By letter dated 28 September 2000, the Directorate-General for Competition sought information from Germany on the aforementioned aid measure; Germany replied on 8 November 2000. The Commission requested additional information on 10 January 2001; Germany replied on 30 January 2001.

(2) On 25 July 2001 the Commission decided to open the formal investigation procedure. By letters dated 16 August and 29 August 2001, Germany submitted its comments on the opening of the procedure. The Commission requested further information by letter dated 25 October 2001; Germany replied on 19 November 2001.

The Commission received comments on the opening of the procedure from the United Kingdom on 5 November and 19 December 2001. The comments were forwarded to the relevant departments in Germany which replied on 23 November and 28 January 2002. The Commission requested clarification of a number of matters from the United Kingdom by letters dated 20 November 2001 and 16 January 2002. The United Kingdom replied by letters dated 19 December 2001 and 11 February 2002.

II. DESCRIPTION OF THE BENEFICIARIES AND THE ALLEGED AID MEASURE

(3) The district of Germersheim and the local regional development agency (*Strukturentwicklungsgesellschaft für das Gebiet des Landkreises Germersheim* mbH) have together set up a land development company (Industriepark Wörth *GmbH* - IPW). The object of the company is to develop a new industrial park on an land adjoining a DaimlerChrysler production plant.

(4) IPW has invested DEM 6,6 million in the construction of commercial premises on the land, which are rented out to three automotive suppliers to DaimlerChrysler (MAGNA Seating Systems GmbH, Grammer AG, Fritzmeier Composite). Germany stated that the suppliers had not requested any investment aid.

(5) According to Germany, the rental prices on the industrial estate are DEM 9,00 per m^2 for production/storage areas and DEM 12,00 per m^2 for office premises.

III. GROUNDS FOR INITIATING THE INVESTIGATION PROCEDURE

(6) The Commission had doubts as to whether the rental agreements between IPW and the suppliers correspond to 'normal market conditions'. The fact that the district of Germersheim has a majority holding in IPW suggests that the suppliers were offered preferential conditions since the public shareholders in IPW naturally have an interest in attracting companies to the region. Moreover, it is assumed that the main objective of the IPW project is to ensure that DaimlerChrysler suppliers move to the Wörth industrial estate.

[1] OJ C 280, 4.10.2001, p. 2.

(7) For want of more detailed information, the Commission could not ascertain either whether the rent paid by the suppliers corresponds to the rent asked for similar premises, as the German Government claims. Moreover, the Commission has not received sufficient evidence to conclude that IPW's shareholders make profits as a result of the project. Therefore, the Commission was concerned that the project might involve State aid in the form of preferential rental terms and might be incompatible with the common market.

IV. COMMENTS FROM GERMANY

(8) Germany maintains that the rents on the industrial estate are in line with normal market rates. To support this view, it presented several documents.

(9) Two estate agents confirm that plots on similar industrial estates have been rented out in the same area at DEM 5 to DEM 7,5 per m^2 (EUR 2,56 to EUR 3,83 per m^2) for production/storage premises and at DEM 7,5 to DEM 9,5 per m^2 (EUR 3,83 to EUR 4,86 per m^2) for office premises. A survey by the local economic promotion agency (*Wirtschaftsförderung Südpfalz des Landkreises Germersheim*) of the conditions on which commercial premises are currently being offered shows that the rent per m^2 for office premises is at most DEM 12 (EUR 6,14) and that for storage premises DEM 10 (EUR 5,11). Adverts in the real estate section of a local newspaper quote rents of under DEM 5 per m^2 (EUR 2,56 per m^2) for storage premises and DEM 10 per m^2 (EUR 5,11 per m^2) for office premises.

(10) A letter to one of the companies that has moved to the industrial estate (Grammer Wörth GmbH) shows that the rent at its previous location was DEM 7 per m^2 (EUR 3,58/m^2), which is lower than the rent it pays on the industrial estate. DaimlerChrysler AG confirmed that it rents out plots on its own production site next to the industrial estate at a price of DEM 8,83 per m^2 (EUR 4.51 per m^2).

(11) According to Germany, the documents show that the rents on the Wörth industrial estate are at the upper limit of rents on comparable sites in the region. Any benefit for companies moving to the industrial estate in the form of rents lower than market rates could therefore be ruled out. Germany also submitted the profit forecasts given in the business plan and a copy of the shareholder contract.

V. COMMENTS FROM INTERESTED PARTIES

(12) The United Kingdom submitted on behalf of the Northern Ireland Industrial Development Board a statement to the effect that the rents at Wörth would seem to be very low compared with those for commercial premises in Northern Ireland.

(13) In its reply to the objections by the United Kingdom, Germany indicated that the figures indicated for Northern Ireland might be annual rents, whereas the information provided by Germany to the Commission concerned monthly rents.

(14) In its letter dated 11 February 2002, the United Kingdom withdrew its earlier comments as they were based on a misinterpretation of information. Following the clarification, it stated that there was nothing to indicate that the rents at Wörth distorted competition relative to the rents for similar premises in Northern Ireland.

VI. ASSESSMENT OF THE MEASURE

(15) The industrial estate is rented out by a land development company which is owned by the public authorities and is therefore a public investor. In order to determine whether the rental conditions for the suppliers contain elements of State aid within the meaning of Article 87(1) of the EC Treaty, the Commission looked into whether the rents are non-discriminatory and correspond to market rates and whether a return on invested capital is generated.

(16) With respect to the conditions of access to the park, the German authorities confirmed that, generally speaking, any interested company can move to the industrial estate.

(17) The Commission compared the rents payable by the companies on the Wörth industrial estate with the normal market rents for similar locations in the region. The rents for similar storage/production sites in the region vary between some DEM 5 per m^2 (EUR 2,56 per m^2) and DEM 10 per m^2 (EUR 5,11 per m^2) while those for office premises vary between DEM 7,5 per m^2 (EUR 3,83 per m^2) and DEM 12 per m^2 (EUR 6,14 per m^2) for office premises.

(18) Accordingly, the Commission considers that the rents payable on the Wörth industrial estate of DEM 9 per m^2 (EUR 4,6 per m^2) for production premises and DEM 12 m^2 (EUR 6,14 per m^2) for office premises can be considered to be normal market rents which correspond to rents for similar locations in the region. On the basis of the business plan provided by the German authorities, it also notes that the project generates a positive net return for IPW and its shareholders.

VII. **CONCLUSION**

(19) The Commission finds that the rental conditions described above correspond to market conditions and do not therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The rental conditions for the Wörth industrial estate correspond to 'normal market conditions' and do not therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 24 April 2002.

For the Commission

Mario MONTI

Member of the Commission