The Commission has sent the Austrian Government the following letter, informing it that it has decided to initiate proceedings pursuant to Article 93(2) of the EC Treaty.

‘CASE HISTORY’

In April 1996, press reports indicated that the Austrian authorities were to provide investment and infrastructural aid to Siemens for the conversion of its semiconductor fabrication site in Villach to the production of power semiconductors. Aid of ECU 27 million was foreseen for an investment and infrastructure project at the Villach site, located in a non-assisted area, for a project of total cost ECU 350 million.

In May 1996, the Austrian authorities were requested by the Commission (letter dated 13 May 1996) to provide full information regarding the press reports alleging State aid to Siemens. By letter registered 26 June 1996, the Austrian authorities notified an aid package of ECU 27 million on eligible costs of ECU 102.5 million, comprising ECU 25.5 million for R&D, and some ECU 1.7 million for environmental and training measures. The aid proposal coincides with the aid amount of ECU 27 million reported in the Austrian press.

Questions were posed by the Commission to the Austrian authorities by letters of 26 June 1996 and a meeting took place with the Austrian authorities and Siemens representatives on 27 September 1996 where the Commission clearly indicated that the aid proposal did not appear to be in conformity with the criteria set out in the guidelines for R&D and environmental aid. In particular, doubts were expressed regarding the “precompetitive development activity” nature of the R&D work proposed, the incentive effect of the aid, and the necessity for the aid. Additional information was received from the Austrian authorities by letter registered 10 January 1997 and further clarification was requested by the Commission by letters dated 17 February 1997, 2 May 1997 and 6 August 1997. The Austrian authorities responded by letters registered 24 March 1997, 16 June 1997 and 10 September 1997.

By letter dated 10 November 1997, the Commission requested additional information. By letter registered 24 November 1997, the Austrian authorities raised objections to the questions posed, stating their intention to put into effect the aid measure and invoking the Lorenz procedure. The Commission responded by letter dated 1 December 1997, maintaining its request for additional information and objecting to the implementation of the proposed aid measure prior to a Commission decision being taken.

THE COMPANY

Siemens Bauelemente OHG (75% stake Siemens AG, Germany; 25% stake Siemens AG, Austria) is part of the Siemens Semiconductor Group and operates a semiconductor chip manufacturing plant in Villach, producing a range of semiconductor integrated circuits which generate sales of about ECU 220 million annually. The site is currently being developed as a new centre of competence in power semiconductors.

In late 1994, the Semiconductor Group merged two separate business fields, discrete power semiconductors and power ICs (integrated-circuits), into a single unit known as Power Semiconductors. The aim was to pool resources and know-how, focus on mainstream technologies, exploit synergies, and simplify customer access to automotive and industrial electronics. In the summer of 1995, Siemens’ board reportedly sanctioned an ECU

(2) “Innovative power semiconductors for automotive and industrial electronics”, Components XXX, No 5, 1995 (Siemens).
A 1.600 million European investment plan including investing an additional ECU 260 million in Villach to develop the site as a competence centre for power semiconductors (1). On 10 June 1996, the cornerstone was laid for a new clean room (due for completion in 1997) to form the core of the centre of competence in power semiconductors. Power semiconductors from Villach are for use in automotive electronics, industrial drives, transportation systems and communications. Power semiconductors already account for half the total production capacity currently available in Villach, and this share is to rise to more than 80 % by the year 2000 (2). Over the next few years, the Power Semiconductors Business Unit expects numerous innovations and ongoing developments to fuel annual market growth of 20 % in power ICs and 17 % in MOS power transistors (2).

THE AID PROPOSAL

The Austrian Government has notified planned research and development, environmental and training aid to Siemens Bauelemente OHG under Section 1b(1) of the Guarantees Act (approved by ESA on 28 December 1994, doc. No 94-18539 I). The proposal is to grant State aid of ECU 27 million on eligible costs of ECU 102.5 million, comprising ECU 25.5 million for R & D, and some ECU 1.7 million for environmental and training measures. As well as federal assistance, there is also Land and municipal assistance foreseen. It has not been clearly established if this proposed aid is part of, or in addition to, the aid proposal notified by the Austrian authorities.

The technical description of the project entitled “Power semiconductors produced with 6” (150 mm) technology”, said to be of duration October 1995 to October 1998, is described by the Austrian authorities in broad and non-specific terms. No details are provided as to specific objectives, the results to be achieved, nor the specific deliverables and milestones.

In broad terms, a power semiconductor can be viewed as a black box that is placed between a power source and any load to which power flow must be controlled. The most unusual features of power semiconductors is their ability to operate at high voltages and sometimes huge current levels that are required in a range of product areas.

As regards discrete power semiconductors, these can be operated from mains voltage(s) and are used in many industrial applications like the powering of machine tools, pumps, air conditioning, lifts and robots and increasingly in industrial drive systems (like trams, fork-lift trucks). As regards smart-power ICs (power device functions are merged with logic on a single chip), the main applications are in automotive electronics (for example airbags, ABS, air-conditioning systems).

The project for which the Austrian authorities propose to grant R & D aid appears to be mainly concerned with upgrading an existing 125 mm wafer production line to 150 mm production (while reducing wafer thickness to 0.1 mm for special uses). Further work on power semiconductor technology (to be implemented in 150 mm production) is also envisaged along the following lines:

(a) improving the performance characteristics of existing discrete power components produced at the Villach site (MOS power transistors, insulated gate bipolar transistors, power switching diodes);

(b) the further development of Siemens’ smart power IC technology.

According to the Austrian authorities, the work programme when finished will result in complete products and processes. Nevertheless, the Austrian authorities claim that the work qualifies as being mostly “precompetitive development activity” (allowable for funding up to 25 % points aid intensity) with a small part qualifying as “industrial research” according to the WTO definitions of research (Community framework for research and development, Annex I, Official Journal of the European Communities C 45, 17 February 1996); the project is therefore claimed to be eligible for public funding in excess of 25 % aid intensity.

The proposed environmental aid of ECU 1.24 million (on costs of ECU 4.2 million) is said to be for exhaust air cleaning, waste-water recycling, waste recycling and energy conservation going beyond legal requirements.

The proposed training aid of ECU 0.42 million (on costs of ECU 1.7 million) is linked to the use of the new 150 mm equipment to be partly carried out at the equipment suppliers’ premises, with additional training for the rapid implementation of the equipment at the Villach site.

(*) “Cornerstone laid in Villach, Austria”, Components XXXI, No 3, 1996 (Siemens).
(*) “Innovative power semiconductors pack punch into systems”, Components, No 3, March 1996 (Siemens).
The total (eligible) cost breakdown of the project for which aid is proposed is given as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Cost (ECU million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>36.8</td>
</tr>
<tr>
<td>Materials</td>
<td>22.9</td>
</tr>
<tr>
<td>Supplies</td>
<td>8.8</td>
</tr>
<tr>
<td>Equipment</td>
<td>24.4</td>
</tr>
<tr>
<td>Other</td>
<td>3.6</td>
</tr>
<tr>
<td>Training</td>
<td>1.8</td>
</tr>
<tr>
<td>Environmental</td>
<td>4.2</td>
</tr>
<tr>
<td>Total</td>
<td>102.5</td>
</tr>
</tbody>
</table>

**APPRAISAL**

The present notification of State aid is within the scope of Article 92(1) of the EC Treaty in that it benefits a major producer of discrete power semiconductors and power ICs (integrated-circuits) in a highly competitive market, thereby having the potential to affect trade between Member States. European companies in the area of power semiconductors include ABB, Alcatel Mietec, Philips and Siliconix (Temic).

It must be demonstrated that the project to be aided falls within the WTO definition of “precompetitive development activity” (Community framework for research and development, Annex I) as claimed by the Austrian authorities. The Community framework for research and development (Official Journal C 45, 17 February 1996) places particular importance on the incentive effect when aid is given to a large company for close-to-the-market research (Article 6(5) R&D framework). It must be demonstrated that the planned aid will induce firms to pursue research which they would not otherwise have pursued (Article 6(2) R&D framework), as well as to demonstrate that the aid is necessary as an incentive, and is on no account operating aid (Article 6(3), R&D framework).

As regards the nature of the R & D project:

“Precompetitive development activity” excludes the creation of an initial prototype which can be used commercially (directly), demonstration or pilot projects that can be converted or used for industrial applications or commercial exploitation, as well as routine or periodic changes made to products and other operations in progress, even if such changes represent improvements (Annex I, R & D framework, Official Journal C 45, 17 February 1996).

According to the broad and non-specific technical description of the project given by the Austrian authorities, the work described corresponds to the evolution of products and processes to be used in production, to the upgrading of existing production lines, and to the transfer of technologies to Villach from other Siemens’ sites.

Indeed, the cost elements have not been justified as being eligible R & D costs (Annex II, R & D framework). The Austrian authorities state that the same equipment will be used for R & D as for production, indicating that the work described may be more closely linked to industrial product and process implementation and optimisation. Moreover, the total (eligible) costs for materials and supplies (which have not been specified) of ECU 31.7 million are extremely high for an R & D project, corresponding more to the costs of commercial product and process development.

Given this background, the aid proposal cannot be described as “precompetitive development activity” within the meaning of State aid guidelines even at the start of the project in October 1995, referring rather to the periodic changes made to products, manufacturing processes and production lines.

As regards the incentive effect of the proposed R & D aid:

The technology development in this field is due largely to advances in new device types, for example, insulated gate bipolar transistors (IGBTs) or new general capabilities made possible by equipment advances derived from the CMOS mainstream (memory/logic) semiconductor industry.
For example, as regards trends in new device types, the Siemens subsidiary EUPEC GmbH is developing IGBTs for currents above 600 A. New modules with currents of 1 200 A and higher are being developed on the basis of second-generation IGBT chips fabricated in Villach.

As regards smart power IC, there are several process technologies in existence, developed by combining different semiconductor process technologies. For example, Siemens has already developed several smart power process technologies including the SPT 75 (Siemens Power Technology) process (see footnote 5) and the SPT 170 process (Siemens, Villach), International Symposium on Power Semiconductor Devices, 1995.

The trends described above have been ongoing since at least the early 1990s, tending to take place essentially simultaneously to suit a particular product or business requirement.

Given this background, the Austrian authorities have not justified how the proposed aid could induce the company to pursue research which they would not otherwise have pursued (Article 6(2) R & D framework).

As regards the necessity for the aid

The Commission calls on Member States when notifying R & D aid to demonstrate that the aid is necessary (Article 6(3) R & D framework). In the summer of 1995, Siemens' board reportedly sanctioned an ECU 1 600 million European investment plan for power semiconductors. On 10 June 1996, the cornerstone was laid for a new clean room (due for completion in 1997) to form the core of the centre of competence in power semiconductors. The project was notified on 26 June 1996, after construction of clean room facilities had begun, and almost a year after the announcement of the Siemens investment plan.

It seems that Siemens decided to invest in the Villach site for strategic business reasons, without the guarantee of receiving State aid. The aid proposal corresponds rather to operational aid for a costly project in a non-assisted area. According to the Austrian authorities, the work described in the aid proposal is well-advanced at the present time, though the stage of the work at the time of the notification remains to be established.

For the reasons given above, the Austrian authorities have not demonstrated the necessity for the aid.

CONCLUDING REMARKS

On the basis of the above assessment, the Commission has serious doubts at this stage as to the compatibility of the proposed State aid with the common market within the meaning of Article 92(3) of the EC Treaty. Specifically, the Austrian authorities have not demonstrated the incentive effect of the proposed R & D aid, not demonstrated that the aid is necessary, and not demonstrated that the project is eligible for funding as “precompetitive development activity”. For the environmental and training aid proposals, these have to be assessed against the criteria mentioned above.

The Commission has therefore decided to open the procedure under Article 93(2). The Commission hereby gives the Austrian Government the opportunity to present, within one month of the receipt of this letter, any comments and further relevant information.

The Commission reminds the Austrian authorities that under Article 93(3), the Member State concerned shall not implement the proposed aid until the procedure allowed for in Article 93(2) has resulted in a final
decision. Any recipient of an aid granted illegally, i.e., without the Commission’s having reached a final decision, may have to refund the aid, conforming to the procedures and stipulations of Austrian legislation, including interest calculated using the reference rate for regional aid, beginning from the date on which the aid was granted.

If the authorities are of the opinion that this letter contains confidential information which should not be published, they should inform the Commission within a period of 15 working days.

The Commission hereby informs the Austrian Government that it will publish this letter as a notice in the Official Journal of the European Communities giving other Member States and interested parties notice to submit comments, and in the EEA supplement to the Official Journal, giving interested parties in the EFTA-States similar notice to submit comments. The ESA will be informed in accordance with Protocol 27 of the EEA Agreement.

The Commission hereby gives formal notice to the other Member States and interested parties to submit their comments on the measures in question within one month of the date of publication of this notice to:

European Commission,
DG IV.G.5,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be communicated to the Austrian Government.

Notice of the expiry of certain countervailing measures
(98/C 203/08)

The Commission gives notice that the countervailing measures mentioned below will shortly expire.

This notice is published in accordance with Article 18(4) of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (1).

<table>
<thead>
<tr>
<th>Product</th>
<th>Country(ies) of origin or exportation</th>
<th>Measure</th>
<th>Reference</th>
<th>Date of expiry</th>
</tr>
</thead>
</table>