Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and other interested parties concerning aid for Graphischer Maschinenbau GmbH, Berlin, Germany

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

1. INTRODUCTION

By letter dated 21 January 1998, received on 22 January 1998, your authorities provided notification pursuant to Article 93(3) of the EC Treaty of your intention to grant restructuring aid amounting to DEM 9,31 million to Graphischer Maschinenbau GmbH (GMB), Berlin, a subsidiary of Koenig & Bauer-Albert AG (KBA), Würzburg. On 23 February 1998, the Commission asked your authorities for additional information on how the total restructuring costs amounting to DEM 20 million were made up and KBA's precise share in this amount. Your authorities answered by letter dated 17 March 1998, received on the same day. However, the Commission expressed doubts as to the effective volume of KBA's share in the restructuring aid and requested further information by letter dated 26 March 1998. The Commission's doubts concerned in particular KBA's taking over of the operating losses of DEM 6,558 million incurred by GMB in 1996 and 1997 and of all the costs for the partial closure in 1997 that occurred prior to the notification to the Commission. The notification was completed accordingly by letter dated 30 April 1998, received on May 1998.

By letter dated 28 May 1998, the Commission requested more detailed information with regard to the underlying assumptions, especially as regards the stark sales prospects in the sector and GMB's viability and as regards KBA's share in the anticipated overall costs. The Commission also requested precise information on the breakdown of costs for new product development in the parent company and the corresponding technical measures. However, in their letter of 18 June 1998, received on the same day, your authorities did not provide the information requested. The abovementioned problems were discussed at a meeting between representatives of your authorities and Commission officials on 1 July 1998.

2. GENERAL DESCRIPTION

2.1. The recipient

GMB is a manufacturer of newspaper printing machinery and is based in Berlin-Spandau (West), an area eligible for regional assistance under Article 92(3)(c). According to the annual statement of accounts on 31 December 1997, the workforce currently numbers 99 (as against 144 in 1996). GMB is a subsidiary of KBA, Würzburg, which is primarily a manufacturer of printing machinery. KBA has a workforce of 6,262 and, in 1997, had an annual profit of DEM 1,260 million. KBA is a large firm within the meaning of the Commission Recommendation of 3 April 1996. For this reason, GMB must also be deemed to be a large firm, since it does not meet the independence criterion set out in Article 1(3) of the Annex to the Commission Recommendation.

According to your authorities, KBA and GMB are linked to one another by a control and profit-transfer agreement.

The information presented shows that, in 1997, GMB had a turnover of DEM 22,7 million, compared with DEM 32,7 million in 1996 and DEM 41,5 million in 1995. Turnover is thus on a continuing downward trend. Operational losses amounted to DEM 3,734 million in 1996 and DEM 2,839 million in 1997 (including DEM 1,500 million for the proposed social plan). The figures show clearly that the firm is in difficulty.

Because of the continuing operating losses over recent years, GMB is threatened with closure, which would
mean the dismissal of 99 employees. As stated in your communication of 30 April 1998, 45 jobs have already been lost as a result of the partial closure in 1997. The parent company had already intended in November 1996 to close GMB on 30 June 1997, but eventually decided to allow part of the production plant in Berlin to continue to operate, provided that State aid was made available.

According to your authorities, although GMB is in principle competitive in printing machinery manufacture, it degenerated during the period before the opening of the border into an extended workbench. Furthermore, from the end of 1993 to 1995, there was a decline in demand on the German market, resulting in fiercer competition and ultimately in drastic price reductions.

2.2. Restructuring plan

The restructuring programme drawn up by KBA as from 24 February 1997 and completed on 1 September 1997 covers the period 1997-98. During this period, the proposed measures were to lead to optimum operating size, improved organisation and lower costs and, in particular, to the establishment of the ability within the KBA group to produce machine parts (roller bearers) which had previously been procured from other firms. Since GMB does not have its own development department, the design and development of these parts are being handled by the parent company in Würzburg.

The costs of the restructuring measures are estimated at DEM 10.680 million (1997-98) (1). KBA will contribute its own resources to the restructuring plan, in the form of the takeover of operating losses incurred by GMB in the past and expected to be incurred in 1998 and 1999, including social plan expenditure for 1997 (see balance sheet), adjustment for inventory clearance (see item 9 of the restructuring programme of 24 February 1997) and costs incurred during the partial closure in 1997 of a total amount of DEM 12,250 million: [...] (1).

In the provisional profit and loss plan which was attached as an annex to your communication of 17 March 1998 and which was based on the abovementioned restructuring measures, it is assumed that losses will decrease during the restructuring period. Losses amounting to DEM 2,839 million are shown for 1997, and these are expected to decline to DEM 1,483 million in 1998 and DEM 175,000 in 1999, while a profit of DEM 520,000 is expected to be achieved in the year 2000. In addition, the restructuring measures are expected to bring about a lasting increase in annual turnover to DEM 36 million as from the year 2000.

3. DESCRIPTION OF THE AID

According to information provided by your authorities, the estimated total costs of the restructuring process, including measures relating to skills, geographical and organisational restructuring, extension of the product range and increasing the vertical range of manufacture (DEM 10,680 million) and the losses so far incurred and expected in the coming years (DEM 12,250 million) amount to DEM 22,930 million (ECU 11,58 million).

The Land of Berlin is offering to grant restructuring aid to GMB in the form of an allocation of DEM 9,310 million (ECU 4,7 million) (2). The payments are to be spread over a period of four years and to be made available in instalments of DEM 5 million (1998), DEM 2,5 million (1999) and DEM 1,81 million (2000). As your authorities have pointed out, the proposed allocation of DEM 9,310 million must be paid back if the restructuring measures are not fully implemented. According to your authorities, the allocation is secured by a land charge and a debt acknowledgement on the part of KBA. The granting of the restructuring aid is, moreover, contingent on GMB maintaining its workforce at 99 employees until the year 2006.

4. ASSESSMENT

The German authorities notified the planned State aid in accordance with Article 93(3) of the EC Treaty and thus fulfilled their obligation to notify individual cases of aid where no approved aid scheme exists. The Commission notes that this is the first time the firm has applied for restructuring aid.

This State support is quite clearly provided from State resources. The State support serves to keep a firm in difficulty in business and could therefore have adverse effects on the position of competitors from other Member States on the market for printing machinery. That market is international, and EU manufactures are in competition with one another for customers within and outside the EU. Consequently, the State support may distort competition or threaten to distort it and affect trade between Member States. The planned State support therefore constitutes State aid within the

(*) Confidential information.

(*) In your notification, item 10 shows an amount of DEM 9,13 million, but adding up the three amounts gives a total of DEM 9,310 million.
meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA agreement.

The planned aid measure amounting to some DEM 9,310 million is not based on an approved aid scheme and must therefore be notified individually. The German authorities have complied with this obligation under Article 93(3) of the EC Treaty.

Under the Community guidelines on State aid for rescuing and restructuring firms in difficulty (\(^1\)), the Commission regards the derogation provided for in Article 92(3)(c) of the EC Treaty as the only basis on which any such aid can be deemed compatible with the common market. The Commission also considers that restructuring aid can help to promote economic activity without trade being affected in a way that runs counter to the common interest, provided the conditions set out in point 3 of the guidelines are met. Those conditions require the Commission to check in particular whether the restructuring will restore the long-term viability and health of the firm within a reasonable time scale, whether the aid will create undue distortions of competition and whether it is in proportion to the restructuring costs and benefits.

In the light of the above principles, the Commission has considered whether the State aid can be classified as genuine restructuring aid:

The Commission has reached the following findings:

1. Your authorities presented preliminary profit and loss accounts up to the year 2000. However, the assumptions are not satisfactorily supported by clear sales prospects in the relevant sectors. GMB will manufacture special machine parts as a supplier to KBA. The market forecasts are based on the turnover forecasts of KBA, which were not submitted to the Commission. The Commission requested your authorities to present the balance sheets of the firm up to the year 2000 together with precise sales forecasts both for current products and for newly developed products.

2. The focus of the restructuring plan is the establishment of a manufacturing ability for special machine parts (roller bearers). The development of these parts will take place in the parent company’s production facilities. The estimated costs of this work are very high and, measured against GMB’s expected annual turnover of DEM 36 million as from the year 2000, not justified. Furthermore, your authorities did not submit any precise breakdown of the costs to the Commission. Nor did your authorities present any technical description of the concept being drawn up in Würzburg on the basis of which it could be assessed whether this activity is caught by the provision of the Community framework on State aid for research and development (\(^2\)). For this reason, your authorities are requested to send the Commission the above-mentioned precise breakdown of costs and the technical description.

3. KBA intends to sell the know-how for the above-mentioned special machine parts to GMB. The Commission assumes that the parent company is primarily interested in ensuring that the manufacture of special machine parts is carried out by the group itself in one of its operating plants. There is no need to sell the know-how to GMB, which could manufacture the new products on a licensing basis, as is usual within a group. Manufacture on a licensing basis would substantially reduce GMB’s liquidity requirement and the amount of State aid needed.

4. Your authorities have not produced any evidence that the development of new products is absolutely necessary for the restructuring of GMB.

5. The contribution of KBA, the parent company, consists primarily in the taking-over of the losses incurred since 1996 until GMB reaches the break-even point in the year 2000, and also in the taking-over of the costs which were incurred during the partial closure of the firm. According to your authorities, on the basis of the existing control and profit-transfer agreement between GMB and the parent company KBA, KBA is required to take over GMB’s losses. Accordingly, losses which are already covered by KBA, including costs connected with the partial closure in 1997, cannot be accepted as the parent company’s contribution to GMB’s restructuring.

6. In the light of the above considerations, the Commission takes the view that the planned restructuring allocation of DEM 9,310 million is not in proportion to the eligible costs and in addition may not be of benefit only to a firm in difficulty within the meaning of the guidelines on rescue and restructuring, but may also benefit the parent company.

\(^1\) OJ C 283, 19.9.1997.

\(^2\) OJ C 45, 17.2.1996.
7. As regards the requirement that the allocation must be repaid if the restructuring measures are not implemented in all respects and if the number of employees does not remain at 99 until the year 2006, your authorities informed the Commission that the allocation is secured by a land charge and also by a debt acknowledgment on the part of KBA. However, no evidence has been provided on KBA's actual obligation.

5. CONCLUSION

It has not so far been demonstrated that all the restructuring measures are necessary in each case or that the State aid is limited to the necessary amount. This means that, on the basis of the current facts, your authorities have not made it clear that the State aid and the restructuring programme for the firm meet the conditions laid down in the Community guidelines for firms in difficulty.

Pursuant to Article 93(3) of the EC Treaty, if the Commission considers that a plan to grant or alter aid is not compatible with the common market having regard to Article 92, the Commission shall without delay initiate the procedure provided for in Article 93(2). The Commission would accordingly inform the German authorities that it has decided to initiate proceedings pursuant to Article 93(2) of the EC Treaty.

The Commission hereby calls upon German authorities to submit their comments and any relevant information within one month of receiving this letter. If no reply, or no satisfactory reply, has been received by the end of that period, the Commission is entitled, in accordance with its powers recognised by the Court of Justice (judgment of 14 February 1990, point 22, Case C-301/87) to take a final decision on the information available.

The Commission would remind you of the suspensory effect of Article 93(3) of the EC Treaty and would draw your attention to the communication published in the Official Journal of the European Communities C 318 of 24 November 1983, in which it was made clear that any aid granted unlawfully, i.e. without prior notification or before the Commission has taken a final decision, may have to be recovered from the recipients under the procedure provided for in Article 93(2) of the EC Treaty.

The Commission hereby requests the German authorities to inform the recipient firms without delay of the initiation of proceedings and of the fact that they may have to repay any aid unlawfully received.

The Commission will be publishing a notice in the Official Journal of the European Communities inviting other Member States and interested parties to submit their comments. Interested third parties in the EFTA countries will be informed by publication of a notice in the EEA Supplement to the Official Journal and the EFTA Supervisory Authority will be informed by receiving a copy of this letter.

The German authorities are therefore requested to inform the Commission within ten working days of the date of this letter whether it contains any confidential passages that should not be published. Your authorities must in each instance clearly set out the specific reasons for this. If the Commission does not receive a reasoned request within the period set, it will assume that you agree to the publication of this letter in full.

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

European Commission,
Directorate IV/H/2,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels;
Fax (32-2) 296 98 16.

The comments will be communicated to the German Government.