

COMMISSION DECISION

of 25 November 1998

on State aid granted by Germany to Draiswerke GmbH

(notified under document number C(1998) 3800)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/275/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(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 those provisions,

Whereas:

1. PROCEDURE

By letter dated 30 August 1996, Denmark informed the Commission of State aid which, according to an article appearing in the *Frankfurter Allgemeine Zeitung* of 8 August 1996, was apparently being granted to the firm Draiswerke GmbH, Mannheim. By letter dated 26 September 1996, the Commission asked Germany for its comments. Germany replied by letter dated 18 February 1997 and confirmed that several transactions involving public funds had taken place. The Commission took the view that these transactions might contain State aid that was not covered by an approved aid scheme. The matter was therefore registered on 19 March 1997 as 'unnotified aid'. By letter dated 21 March 1997, the Commission asked Germany to supply the information necessary for the assessment of restructuring aid. Germany replied to this request on 2 June 1997. The Commission requested further information by letter dated 18 July 1997, since some important details had not been supplied. In its letter of 8 September 1997, Germany indicated that some of the information previously submitted had been revised, and

reference was made to a further transaction. By letter dated 26 January 1998, the Commission asked Germany to clarify these points. Germany replied to this request by letter dated 16 February 1998.

By letter dated 25 March 1998, the Commission informed Germany that it had decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of the unnotified measures.

A Commission notice to this effect was published in the *Official Journal of the European Communities*⁽¹⁾. The Commission called on interested parties to submit their comments. The Commission received no comments from interested parties.

2. DETAILED DESCRIPTION OF THE MEASURES

The company was in severe liquidity difficulty in 1996. The Mannheim city authorities arranged negotiations between banks and the owners to keep the firm in business. The parties involved decided to adopt restructuring measures and thus averted the initiation of bankruptcy proceedings. In its decision to initiate Article 93(2) proceedings, the Commission noted the following measures:

- (a) In August 1996, the Mannheim city authorities put up a loan of DEM 0,8 million (ECU 0,4 million) for ten months at an interest rate of 5 %.
- (b) On 21 August 1996, the Landeskreditbank Baden—Württemberg (hereinafter referred to as 'LAKRA') put up a 50 % deficiency guarantee in respect of DEM 6 million (ECU 3 million). This was originally scheduled to expire on 30 June 1997, but was extended on 27 June 1997 for a further year until 30 June 1998. The guarantee was subject to a one-off fee of 1 % and an annual charge of 0,5 % of the outstanding guarantee amount.
- (c) The public bank Sparkasse Mannheim granted loans secured by the abovementioned guarantees. These took the form of an overdraft facility of DEM 4 million (ECU 2 million) at an initial interest rate of 8 % (currently 8,25 %) and a guarantee loan of DEM

⁽¹⁾ OJ C 207, 3.7.1998, p. 14.

2 million (ECU 1 million) at an interest rate of 1 %. These loans were originally scheduled to expire on 30 June 1996, but were subsequently extended until 30 June 1998. Sparkasse Mannheim was not one of the firm's previous lenders.

- (d) In August 1996, the Mannheim city authorities purchased a 5 944 m² plot of land from the former shareholders' private estate. The former shareholders injected the proceeds from the sale, totalling DEM 1,2 million (ECU 0,6 million), into the firm as a final contribution to restructuring.

In its decision to initiate proceedings, the Commission took the view that, on the basis of the information provided, Germany had not demonstrated that the restructuring measures fulfilled the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽²⁾ (hereinafter referred to as the 'guidelines'). The Commission took the preliminary view that the loan granted by the Mannheim city authorities and the guarantee granted by LAKRA constituted State aid within the meaning of Article 92 of the EC Treaty and that these transactions were unlawful since Germany failed to notify them in accordance with Article 93(3) of the EC Treaty. Furthermore, the Commission considered that the loan granted by the Sparkasse Mannheim and the transfer price for sale of land might contain State aid elements.

3. COMMENTS FROM GERMANY

Germany submitted its comments on the Commission's decision to initiate proceedings by letter dated 17 July 1998.

Germany pointed out that it had already submitted a report by Deutsche Gesellschaft für Mittelstandsberatung mbH ('DGM'), which had been drawn up in August 1996. Germany explained that the restructuring programme was designed to demonstrate the company's ability to achieve a successful restructuring. Furthermore, Germany provided details on a more comprehensive restructuring plan drawn up on 16 December 1996, a comprehensive business plan drawn up by Draiswerke on 20 May 1998, the 1997 annual statement of accounts of Draiswerke, monthly cash-flow forecasts, profit-and-loss-account forecasts and balance-sheet forecasts for the years 1998 to 2001. Germany takes the view that the restructuring plan is now realistic and coherent.

Germany forwarded letters from Draiswerke's banks, namely Deutsche Bank (4 June 1998), Dresdner Bank (12 June 1998) and Sparkasse Mannheim (19 June 1998). In

their letters, the banks gave a favourable opinion on Draiswerke's prospects.

Germany pointed out that the loan of DEM 0,8 million (ECU 0,4 million) granted by the Mannheim city authorities, which had a maturity of 10 months, had been repaid with interest on schedule at the end of May 1997. Germany argued that, although the company was in difficulty, the amount of the loan could not be regarded as State aid. Any benefit by way of interest savings were covered by the *de minimis* rule.

Germany stated that the granting of the guarantee by LAKRA was covered by the guidelines on the grant of guarantees to business by the Land of Baden-Württemberg (*Richtlinien für die Übernahme von Bürgschaften des Landes Baden-Württemberg für die gewerbliche Wirtschaft*). Germany submitted the detailed workforce figures for the years 1996 to 1998 and showed that, at the time the guarantee was extended, Draiswerke GmbH had 279 employees, which is below the 300 threshold above which Germany had undertaken to notify guarantees individually.

Germany explained that Draiswerke had engaged the M & A firm B. Metzler to find investors. Germany forwarded a report which had been drawn up by B. Metzler on 23 June 1998. Germany pointed out that a new investor would be beneficial to the company's restructuring, but stressed that this was not a condition *sine qua non*.

Germany provided a letter from Sparkasse Mannheim, dated 16 June 1998, in which the bank stated that it had acted in accordance with the 'market economy investor principle' in providing loans to Draiswerke.

Germany took the view that the transfer price for the sale of the land did not contain State aid elements and provided as evidence an estimate of the Mannheim District Land Valuation Committee (*Gutachterausschuss für die Ermittlung von Grundstückswerten des Stadtkreises Mannheim*).

Germany also submitted, as part of its comments, a statement made by Draiswerke on 30 June 1998 to the effect that it was convinced that the restructuring would be successful.

4. ASSESSMENT

The Commission assessed the case in the light of the information sent to it by Germany by letter dated 17 July 1998.

⁽²⁾ OJ C 368, 23.12.1994, p. 12.

4.1. The recipient

The firm Draiswerke GmbH is situated in the *Land* of Baden-Württemberg, outside an assisted area. In 1996, Draiswerke employed an average of 334 workers and had a turnover of DEM 55 million (ECU 27,5 million) and an end-of year balance sheet total of DEM 41 million (ECU 20,5 million). According to the definition set out in the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽³⁾, the company was a large enterprise due to the fact that its workforce exceeded the threshold of 250 employees. The former shareholders, all members of the same family, sold their shares to the company's employees in 1996.

Draiswerke manufactures special machinery in two product areas: dispersion and micro-wet-milling and machinery for mixing and reaction purposes. The firm supplies the chemical, coating, food, paper, pharmaceutical, detergent and ceramic industries.

In the first half of 1996, it recorded heavy losses. Its main lender lost confidence in the firm and, on 31 July 1996, called in its loan. As a consequence, another credit institution also called in its loan, and Draiswerke became insolvent. Accordingly, at that time, Draiswerke was a company in difficulty.

4.2. State aid

Draiswerke operates in two sub-sectors of the special machinery industry, in which there are a number of competitors within the EEA. In the product area of dispersion and micro-wet-milling, which accounts for approximately 60 % of the company's total turnover, Draiswerke's main competitors are the Swiss company Bühler AG and the German company Erich Netzsch GmbH & Holding KG. Both competitors have subsidiaries in several Member States. The second product area, machinery for mixing and reaction purposes, accounts for 40 % of the company's turnover. Draiswerke's main competitor in this product area is the German company Gebrüder Lodige Maschinenbau GmbH, which has also subsidiaries in several Member States.

The loan granted by the Mannheim city authorities and the guarantee granted by LAKRA were provided by government bodies. Both measures were therefore financed through State resources. The loan and the guarantee were provided with the intention of enabling the ailing firm to remain in business. These measures therefore placed Draiswerke in a more favourable position than

its competitors. Both State measures are therefore liable to affect the economic position of its competitors in other Member States. Accordingly, the loan granted by the Mannheim city authorities and the guarantee granted by LAKRA distort or threaten to distort trade between the Member States and constitute State aid within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

The Mannheim city authorities did not grant their restructuring loan to Draiswerke under an approved scheme. The Commission cannot agree with Germany's view that the amount of the loan does not constitute State aid and that any benefit by way of interest saving is covered by the *de minimis* rule. In line with long-standing Commission practice, the loan's face amount of DEM 0,8 million (ECU 0,4 million) must be regarded as State aid since the company is in difficulty and would not have been able to raise the loan on financial markets. In accordance with the Commission notice on the *de minimis* rule for State aid⁽⁴⁾, the amount of DEM 0,8 million (ECU 0,4 million) exceeds the *de minimis* threshold of ECU 100 000 over a three-year period. Moreover, the Commission would remind Germany that the loan must be cumulated with other restructuring measures, notably the guarantee granted by LAKRA. Accordingly, Germany should have notified the loan to the Commission pursuant to Article 93(3) of the EC Treaty. Germany failed to comply with this requirement. The measure was accordingly unlawful.

The State-owned bank LAKRA provided the guarantee under the Guidelines on the grant of guarantees to business by the *Land* of Baden-Württemberg. That scheme was approved by the Commission by letter of 5 June 1984. In the context of proceedings in Case C 57/86, Germany undertook, by letter dated 6 February 1987, to notify individually any guarantee granted under this scheme to firms in difficulty with more than 300 employees. According to the company's annual report, Draiswerke had 334 employees in 1996. The Commission should therefore have been informed of the guarantee pursuant to Article 93(3) of the EC Treaty. When LAKRA granted an extension of the guarantee in June 1997, the number of employees was 279 — below the threshold of 300. However, the extension of the duration of the guarantee is linked to the initial granting of the guarantee in 1996, when Draiswerke had more than 300 employees. The Commission cannot therefore share Germany's view that the extension of the guarantee by LAKRA was

⁽³⁾ OJ L 107, 30.4.1996, p. 4.

⁽⁴⁾ OJ C 68, 6.3.1996, p. 9.

covered by the guidelines on the grant of guarantees to business by the *Land* of Baden-Württemberg. Consequently, the extension also required individual notification pursuant to Article 93(3) of the EC Treaty. Germany failed to comply with these requirements. The initial provision of the guarantee and the extension were accordingly unlawful.

Germany stated that Sparkasse Mannheim and Draiswerke's two other banks, Deutsche Bank and Dresdner Bank, formed a banking consortium. The provision of loans was made under the condition that all three banks act unanimously. Thus, Sparkasse Mannheim provided the loans only on condition that the other two banks agreed to re-open their credit lines. Furthermore, Sparkasse Mannheim continued to provide loans only if the other banks extended their credit lines and Draiswerke's prospects justified the provision of further funds to Draiswerke⁽⁵⁾. Moreover, Sparkasse Mannheim and the other two banks based the granting of their loans on the restructuring plan drawn up by Draiswerke and the business consultant firm DGM⁽⁶⁾. Furthermore, Sparkasse Mannheim has a representative on the supervisory board of Draiswerke, which allows it to have a sound knowledge of the company's financial and strategic position. Finally, the loans provided by Sparkasse Mannheim were secured by the guarantee granted by LAKRA. In the light of the above, the Commission concluded that the financing activities of Sparkasse Mannheim were consistent with the market economy investor principle and did not constitute State aid within the meaning of Article 92 of the EC Treaty.

Germany provided evidence that the transfer price of DEM 1,2 million (ECU 0.6 million), which the Mannheim city authorities paid for the 5 944 m² plot of land to the former shareholders, was based on an estimate of the Mannheim District Land Valuation Committee. The Commission reviewed their estimate and verified that it was carried out in line with the rules generally applicable for land valuation. Moreover, the valuer took the lower and more prudent gross rental value (*Ertragswert*) instead of the asset value (*Sachwert*). Taking into account these aspects, the Commission concluded that the price corresponds to the market price and does not contain State aid elements within the meaning of Article 92 of the EC Treaty.

⁽⁵⁾ In their letters, Draiswerke's banks gave a favourable opinion on the firm's prospects.

⁽⁶⁾ As is explained later, the Commission considers that the restructuring plan is a feasible, coherent and far-reaching plan and that it is designed to restore the firm's long-term viability within a reasonable time scale.

4.3. Exemptions

Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement lay down the principle that aid having the characteristics specified therein is incompatible with the common market. Article 92(2) and (3) of the EC Treaty and Article 61(2) and (3) of the EEA Agreement list exemptions under which aid may be found compatible with the common market. The Commission examined whether State aid of DEM 3,8 million (ECU 1,9 million), namely the DEM 0,8 million (ECU 0,4 million) loan of the Mannheim city authorities and the 50 % guarantee of LAKRA for DEM 6,0 million (ECU 3,0 million), could be deemed compatible with the common market under one of these exemptions.

The exemptions set out in Articles 92(2) of the EC Treaty and Article 61(2) of the EEA Agreement do not apply, since the aid is not aid having a social character granted to individual consumers, nor does it serve to make good the damage caused by natural disasters, nor is it granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

The exemptions set out in Article 92(3)(a) of the EC Treaty and Article 61(3)(a) of the EEA Agreement and the regional aspect of the exemptions provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement are not relevant, since the firm is located outside an assisted area.

As far as the exemptions provided for in Article 92(3)(b) of the EC Treaty and Article 61(3)(b) of the EEA Agreement are concerned, the Commission found that the measure in question does not fulfil the criteria which the Commission usually applies to projects of common European interest and that the aid was also not intended to remedy a serious disturbance in the economy of a Member State.

The exemptions provide for in Article 92(3)(d) of the EC Treaty and Article 61(3)(d) of the EEA Agreement similarly do apply, since the aid is not designed to promote culture and heritage conservation.

Consequently, only the first part of the exemptions provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement might apply, if the aid contributes to the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest.

4.4. Community guidelines

Draiswerke is a company in difficulty. The loan granted by the Mannheim city authorities and the guarantee provided by LAKRA constitute restructuring aid. The Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁷⁾ set out the conditions under which restructuring aid may be considered compatible with the common market.

Under the guidelines, restructuring must take place in the context of a feasible, coherent and far-reaching plan designed to restore a firm's long-term viability within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. Restructuring plans must take account of, *inter alia*, the circumstances giving rise to the firm's difficulties, market supply and demand for the relevant products as well as their expected development and the specific strengths and weaknesses of the firm. They should allow an orderly transition of the firm to a new structure that gives it viable long-term prospects and will enable it to operate on the strength of its own resources without requiring further State assistance.

Restructuring usually involves the reorganisation and rationalisation of the firm's activities on to a more efficient basis typically involving the withdrawal from activities that are no longer viable or are already loss-making, the restructuring of those existing activities that can be made competitive again and, possibly, the development of or diversification into new viable activities. Financial restructuring usually has to accompany the physical restructuring.

According to Section 3 of the Community guidelines, the Commission has to examine whether the restructuring satisfies the following conditions in particular: first, it must restore the long-term viability of the company within a reasonable timescale; secondly, undue distortions of competition through the aid must be avoided; thirdly, the aid must be in proportion to the restructuring costs and benefits.

4.5. Long-term viability

By letter dated 17 July 1998, Germany submitted a realistic, coherent and far-reaching restructuring plan, drawn up by Draiswerke and the business consultant firm DGM. The restructuring programme takes account of the circumstances giving rise to the firm's difficulties, notably an unfavourable cost-structure, insufficient cost-transparency and an unsound financial position.

In order to improve its cost-structure, Draiswerke had primarily to reduce staff costs, which were almost 50 % of turnover in 1996. As provided for in the restructuring

plan, Draiswerke's employees agreed to a significant reduction in wages per hour. Draiswerke also reduced its workforce by 62 persons. As a result, wage costs were DEM 5,2 million (ECU 2,6 million) lower in 1998 than in 1996, a reduction of 18 %. In addition, Draiswerke took a number of measures to improve the efficiency of its production process.

In order to improve its cost-transparency, Draiswerke significantly upgraded its cost accounting and cost control methods. As a result, Draiswerke also gave up producing turn-key plants, reduced the range of products and decided to concentrate more on the company's core business.

The restoration of the company's financial position was primarily financed by the former shareholders, the employees and measures taken by the company. The former shareholders issued a letter of subordination for a shareholders' loan of DEM 7,2 million (ECU 3,6 million) at the beginning of August 1996. At the same time, Gustav Eirich KG, which is owned by the former shareholders, issued a letter of subordination for a loan of DEM 2 million (ECU 1 million). Finally, the former shareholders issued a letter of subordination for a Loan of DEM 2 million (ECU 1 million). Finally, the former shareholders injected the proceeds from the sale of land, totalling DEM 1,2 million (ECU 0,6 million), into the firm as a final contribution to restructuring. In November 1996, the employees provided the company with a subordinated and interest-free loan of DEM 746 000 (ECU 373 000). Draiswerke was also able to reduce its accounts receivable from sales and services from DEM 17,8 million (ECU 8,9 million) at the end of 1996 to DEM 9,3 million (ECU 4,6 million) at the end of 1997. The value of stocks was reduced from DEM 6,5 million (ECU 3,2 million) to DEM 3,5 million (ECU 1,7 million) in the same period. Finally, the Mannheim city authorities provided a loan of DEM 0,8 million (ECU 0,4 million) and LAKRA provided the 50 % guarantee for DEM 6,0 million (ECU 3,0 million).

The restructuring was also accompanied by a shareholder change. Draiswerke's employees took over the firm for DEM 1 from the former shareholders. Two new executive directors with experience in restructuring measures were appointed. The management board and the new shareholders of Draiswerke decided to find a strategic investor. Draiswerke entrusted the task of finding an investor to the company B. Metzler GmbH. The Commission takes note of the fact that, according to Germany, a new investor would help the company's strategic position, but is not a condition *sine qua non* for a successful restructuring.

⁽⁷⁾ See footnote 2.

The Commission examined the forecasts for the balance sheets, profit-and-loss accounts and cash flow figures, which were drawn up for the period until the year 2001, to assess whether the restructuring measures would result in the restoration of Draiswerke's viability. The Commission notes that the forecasts are presented in detail with statements on the underlying assumptions. In line with its strategy of abandoning loss-making activities and concentrating on the company's core business, Draiswerke reduced its output in 1997 by more than 10 % compared with the previous year. The Commission notes that, despite the reduction in output, the operating result was already positive in 1997. The net result in that year was negative because of physical restructuring measures amounting to DEM 4,7 million (ECU 2,4 million). According to the plan, Draiswerke will turn around its profitability in 1998. In 1998, Draiswerke is expected to achieve a DEM 1,2 million (ECU 0,6 million) positive result on ordinary activities (2,2 % of turnover). According to the forecasts, Draiswerke will increase its profits to DEM 8,8 million (ECU 4,4 million) in the year 2001 (12,8 % of turnover). This figure implies that the company will be highly profitable and competitive in the year 2001.

Draiswerke's forecasts expect an increase in turnover of on average 9 % a year until the year 2001 and a continuous reduction of staff expenditures to 35 % of turnover in the year 2001, with all other cost items remaining stable. Accordingly, the restructuring will be effected mainly by a reduction in staff expenditures, already under way, and improvements in the production process. The

Commission considers these assumptions optimistic but achievable. The Commission also notes that Draiswerke provided a detailed geographical breakdown of turnover for both business areas and showed that it has significantly reduced its turnover expectations in Asia as a result to the prevailing economic crisis and currency depreciations.

The company will still have negative equity capital in 1998. However, according to Germany, from a going-concern perspective, the company has considerable hidden reserves of DEM 16,8 million (ECU 8,4 million), as confirmed by the accountancy firm Schitag Ernst & Young. Draiswerke did not therefore have to initiate bankruptcy proceedings. Moreover, according to the plan, Draiswerke will retain its future profits. This policy will result in an increase in equity capital to DEM 15,4 million (ECU 7,7 million) (37,7 % of the balance-sheet total) by the year 2001. The forecasts indicate that Draiswerke does not plan significant investments until the year 2001. Draiswerke would therefore be able to reduce its liabilities and to achieve a sound financial position in the year 2001.

The Commission takes the view that the forecasts indicate that Draiswerke has viable long-term prospects and is able to operate on the strength of its own resources without requiring further state assistance.

The following tables summarise the main factors in the Commission's analysis:

Profit and loss account (in DEM thousands)	1996	1997	1998	1999	2000	2001
Total operating income	56 476	50 557	52 900	59 250	62 750	68 750
Operating result	-2 417	412	2 048	4 007	7 152	9 516
Result from ordinary activities	-3 204	-4 260	1 208	3 107	6 352	8 816

Balance sheet (in DEM thousands)	1996	1997	1998	1999	2000	2001
Capital stock	2 931	-1 392	-350	1 150	6 700	15 400
Liabilities	38 176	29 441	34 750	31 050	28 700	25 500
Balance sheet total	41 107	28 049	34 400	32 200	35 400	40 900

The Commission notes that Draiswerke has committed itself to implementing the restructuring plan.

The Commission also notes that Draiswerke's banks, namely Deutsche Bank, Dresdner Bank and Sparkasse Mannheim, have given a favourable opinion as to Draiswerke's prospects and expressed their readiness to provide loans to it.

4.6. Avoidance of undue distortions of competition through the aid

The Commission has examined whether measures have to be taken to off-set adverse effects of the restructuring aid on competitors.

The restructuring aid in the form of a loan granted by the Mannheim city authorities and the guarantee granted by LAKRA may generate two different distortive effects. First, the aid affects the market, since Draiswerke is still in business. Secondly, the restructuring aid may reduce Draiswerke's financial expenditure.

As to the first effect, the Commission has reviewed the market data available to it and the market report provided by Germany. As regards the first product area dispersion and micro-wet-milling — market demand is expected to expand over the coming years. As regards the second product area — machinery for mixing and reaction purposes — market demand is highly dependent on investment by the chemical industry, and there are therefore good growth prospects here as well. No excess capacity was evident in either of the two product areas. This view is also underlined by the fact that the Commission has not received any comments from third parties. As was stated in point 3.2.2(ii) of the Community guidelines, where there is no structural excess of production capacity in a relevant market in the Community served by the recipient, the Commission will normally not require a reduction of capacity in return for the aid.

Moreover, the Commission notes that Draiswerke has abandoned some activities and reduced its product range. Account must also be taken of the fact that Draiswerke, which is at present an SME, holds a small market share in the relevant market and that its main competitors, namely Bühler AG, Erich Netzsch GmbH & Holding KG and Gebrüder Lödige Maschinenbau GmbH, are far larger than Draiswerke in terms of turnover and staff.

As to the second possible effect, the Commission notes that Draiswerke paid 5 % interest on the 10-month DEM 0,8 million (ECU 0,4 million) loan granted by the Mannheim city authorities. This interest rate was below the 6,7 % reference rate for Germany in 1996. The advantage to Draiswerke from the lower interest rate on the loan granted by the Mannheim city authorities would thus amount to DEM 11 000 (ECU 5 500). Even if the Commission were to compare the interest rate on the loan with the higher 8,25 % interest rate charged by Sparkasse Mannheim, the advantage in terms of reduced

financial expenditures is still small (DEM 21 000 or ECU 10 500).

As to the 50 % guarantee provided by LAKRA, the Commission notes that Draiswerke paid a one-off fee of 1 % and an annual charge of 0,5 % of the outstanding guarantee amount. The 0,5 % fee can be compared with the 1 % interest rate on the DEM 2 million (ECU 1 million) guarantee loan which Sparkasse Mannheim provided to Draiswerke. Since LAKRA and Sparkasse Mannheim share the risk equally, the Commission assumes that the LAKRA fee is 0,5 % below the market rate. This results in an advantage to Draiswerke of DEM 50 000 (ECU 25 000) over the guarantee's duration of 22 months.

The amount of the loan of DEM 0,8 million (ECU 0,4 million) and the guarantee amount of DEM 3 million (ECU 1,5 million) (50 % of DEM 6 million) constitute State aid, since the company is in difficulty and would not have received the loan and the guarantee on the financial market. However, the Commission takes the view that the advantages conferred by the loan and the guarantee in the form of reduced financial charges are small (0,1 % of turnover) and will not noticeably affect the company's operating costs or its profitability. Moreover, there is no evidence of excess capacity, the company's market share is small, and it has abandoned some of its activities. The Commission therefore considers that no measures are necessary to offset adverse effects of the aid on competitors.

4.7. Aid in proportion to the restructuring costs and benefits

The Commission has examined whether the aid was limited to the minimum needed for the company's restructuring.

The restructuring aid helped to ease Draiswerke's shortage of liquidity, triggered by heavy losses in previous years. In 1995, Draiswerke recorded a loss on its ordinary activities of DEM 8,9 million (ECU 4,4 million) (18 % of turnover). In 1996, it recorded a loss of DEM 1,9 million (ECU 1,0 million) (3,3 % of turnover). In 1997, it disclosed a loss of DEM 4,3 million (ECU 2,2 million), mainly because of physical restructuring costs of a similar amount. The losses reduced Draiswerke's liquidity by approximately DEM 14 million (DEM 7,0 million) over the period from 1995 to 1997.

The Commission's assessment of cash-flow calculations and balance-sheet forecasts shows that the DEM 0,8 million (ECU 0,4 million) loan granted by the Mannheim city authorities and the 50 % guarantee provided by LAKRA for the DEM 6 million (ECU 3 million) credit line made available by Sparkasse Mannheim did not lead to a cash surplus, but were limited to the amount needed to keep Draiswerke in business and enable it to finance the necessary restructuring measures. The Commission notes that Draiswerke benefited from the DEM 0,8 million (ECU 0,4 million) for only ten months and reimbursed the loan in June 1997 at a time when the company's financial position was still very weak; for instance, the company had still a negative equity capital. The guarantee, which was provided until June 1998, was necessary to obtain interim finance for its ordinary activities on the financial markets. This was a precondition for remaining in business.

The Commission takes into account the fact that the restructuring aid was accompanied by significant contributions by the former shareholders (DEM 10,4 million, or ECU 5,2 million) and the new shareholders (DEM 746 000, or ECU 373 000). It notes that, at the beginning of August 1996, the former shareholders issued a letter of subordination for a shareholders' loan of DEM 7,2 million (ECU 3,6 million) and that Gustav Eirich KG, which is also owned by the former shareholders, issued a letter of subordination for a loan of DEM 2 million (ECU 1 million). Furthermore, the former shareholders injected the proceeds from the sale of land, totalling DEM 1,2 million (ECU 0,6 million), into the firm as a final contribution to restructuring. In November 1996, the employees, who are the new shareholders, provided the company with a subordinated and interest-free loan of DEM 746 000 (ECU 373 000). The employees also agreed to significant wage reductions and to staff cutbacks that resulted in staff costs being DEM 5,2 million (ECU 2,6 million) lower in 1998 than in 1996.

Accordingly, the Commission considers that the State aid measures were in proportion to the restructuring costs and to the contributions of the shareholders.

5. CONCLUSIONS

The Commission considers that the loan and the guarantee were granted unlawfully in breach of Article 93(3) of the EC Treaty. However, the Commission takes account of the fact that Draiswerke was receiving restructuring aid for the first time and that the loan granted by the

Mannheim city authorities and the guarantee provided by LAKRA meet the conditions laid down in the Community guidelines for firms in difficulty, namely that the restructuring aid will restore the long-term viability of the company within a reasonable timescale, avoids undue distortions of competition and is in proportion to the restructuring costs and benefits.

The Commission therefore concludes that the State aid contributed to the development of economic activities without adversely affecting trading conditions to an extent contrary to the common interest. The Commission has therefore decided that the State aid can be deemed compatible with the common market under the first part of the exemptions provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

The Commission requests Germany to provide detailed annual reports in order to demonstrate that the restructuring plan is being implemented properly,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany granted to Draiswerke in the form of a DEM 0,8 million (ECU 0,4 million) loan provided by the Mannheim city authorities and the 50 % guarantee provided by LAKRA is compatible with the common market.

Article 2

Germany shall submit detailed annual reports to the Commission in order to demonstrate that the restructuring plan is being implemented properly.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 25 November 1998.

For the Commission

Karel VAN MIERT

Member of the Commission