

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 June 2000

on the State aid implemented by Germany in favour of Wildauer Kurbelwelle GmbH

(notified under document number C(2000) 1660)

(Only the German text is authentic)

(Text with EEA relevance)

(2000/698/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 10 November 1997, registered on 11 November 1997, Germany notified the restructuring of Wildauer Kurbelwelle GmbH to the Commission according to Article 88(3) of the EC Treaty. By letters dated 5 December 1997 the Commission asked supplementary questions. The German Government replied by letters dated 11 February 1998. As part of the measures have already been paid out, the case has been registered as NN 18/98.
- (2) On the basis of the information submitted by Germany, the Commission decided on 7 April 1998 to open proceedings under Article 88(2) of the EC Treaty because it had doubts about the compatibility of the aid measures with the common market.
- (3) The decision was communicated to Germany by letter dated 26 May 1998 ⁽¹⁾, published in the *Official Journal of the European Communities* ⁽²⁾. The Commission accordingly changed the case number to C 30/98. In addition, interested third parties were invited to submit comments within a month of publication.

⁽¹⁾ Letter D/4128 of the Commission.

⁽²⁾ OJ C 377, 5.12.1998, p. 7.

- (4) On 16 October 1998, 25 January 1999, 24 June 1999, 6 July 1999, 30 August 1999, 20 and 23 September 1999, 19 October 1999, 2 and 12 November 1999 Germany sent information in reply to the opening of proceedings.
- (5) No third party submitted comments.

2. THE FACTS

- (6) Wildauer Kurbelwelle GmbH (WKW) is active in the field of crankshafts and forging (drop forge). The crankshafts produced by the company are used in ship engines and in the energy sector. The company specialised in the forging of heavy metal parts. WKW is a company with 293 employees situated in Wildau in Brandenburg, Germany. In 1996, it had a total turnover of approximately DEM 42 million.
- (7) Brandenburg is a region characterised by a high degree of unemployment. The region is eligible for regional aid under Article 87(3)(a) of the EC Treaty,
- (8) On 5 August 1997 the company was privatised after an open, unconditional tender to Georgsmarienhütte GmbH (GMH). The current measures have to be seen in the context of the privatisation and are used to support the restructuring of WKW. In the privatisation contract, the investor took over a guarantee to keep at least 262 employees until 2002 and to invest at least DEM 31 million.

2.1. Restructuring plan

- (9) The restructuring plan related to the privatisation foresees a number of measures to improve the performance of WKW on the market:
 - (a) the formation of a strategic network together with VSG Energie- und Schmiedetechnik GmbH (VSG), Hattingen, west Germany ⁽³⁾. VSG who, like WKW, is in the business of crankshafts will shift its production of crankshafts to WKW and will substitute it by pre-forms, which will be delivered to this company;
 - (b) the conclusion of a cooperation agreement with National Forge (NFC), a major US producer of crankshafts ⁽⁴⁾;
 - (c) the solution to quality problems the company was facing. Prior to the take-over by GMH, WKW had lost clients because of unsatisfactory product quality ⁽⁵⁾;
 - (d) the reinforcing of the sales department to improve the marketing strength of the company;
 - (e) the use of the investor's know-how of the market;
 - (f) the reorganisation of the company;
 - (g) the acquisition of new machinery.
- (10) the restructuring period covers the time span from 1998 to 2001. As a direct result of the implementation of the restructuring plan the following synergy effects should be expected:
 - (a) better buying conditions because of the strategic network of WKW with VSG and subsequently better terms and conditions in financing and insurance;
 - (b) joint marketing;
 - (c) extension of the product range offered by the group;
 - (d) working groups inside the steel group ensure exchange of knowledge;
 - (e) personal exchanges in the framework of traineeships lead to higher qualification.

⁽³⁾ Detailed information about this network was received from Germany on 12 November 1999.

⁽⁴⁾ This agreement covers the joint marketing efforts of WKW and NFC in different worldwide markets and defines the leading marketing responsibilities of either company. It also foresees that NFC supplies WKW with semi-produced crankshafts.

⁽⁵⁾ Improvement of product quality is confirmed by quality audits made by well-known companies in this field such as MAN, MaK, Deutz, Deutsche Bahn AG.

2.2. The financial measures

- (11) The BvS and the *Land* Brandenburg will take the following financial measures in the context of the privatisation:

Table: Financial measures in favour of WKW in the context of the restructuring

Financial measures in million DEM	BvS	<i>Land</i>	Total
Waiver of repayment	0,730		0,730
Grant for cash-losses (1997)	13,214		13,214
Grant for cash-losses (1998)	3,895		3,895
Grant for cash-losses (1999): 'financial gap'	10,000		10,000
New GA-measures for investment (*)		13,722	13,722
Investitionszulage (*)		1,831	1,831
Investment contribution BvS	6,735		6,735
Total	34,574	15,553	50,127

(*) Approved programmes.

- (12) The financial measures also include measures by the BvS notified early in July 1999 to cover additional losses of DEM 15 million ('financial gap') ⁽⁶⁾. The losses are intended to be partly covered by the BvS by an amount of DEM 10 million and an additional investor contribution of GMH of DEM 5 million. According to the German Government, the reason for these additional losses is the continuing uncertainty of WKW's future. The transfer of machines from VSG to WKW could not take place before the Commission's approval of the aid measures, causing a delay in the implementation of the restructuring plan. Clients were therefore hesitant to make orders in view of WKW's uncertain future.
- (13) Besides these measures, BvS partly pre-finances for an amount of DEM 8,5 million measures on the basis of the Joint programme (GA measures) ⁽⁷⁾ of DEM 13,722 million to be received by WKW. It also guarantees for an amount of DEM 2 million a bank-loan to pre-finance the Investitionszulage of DEM 1,831 million.
- (14) In addition to these measures the BvS awarded:
- (a) two guarantees of an overall amount of DEM 6 million granted in 1996 and 1997 and
 - (b) an increase in equity capital of DEM 2,45 million granted in 1994/1995. This makes a total of DEM 8,45 million.

Taking into account these supplementary financial measures the BvS grants a total of DEM 53,524 million ⁽⁸⁾ to the company, whereas the amount provided by the *Land* Brandenburg is DEM 15,553 million. The total amount is DEM 69,077

⁽⁶⁾ This additional loss cover is already included in all the tables in this notification.

⁽⁷⁾ See Regional aid programme approved by the Commission under N 123/97, letter of the Commission of 18 August 1997, SG(97) D/7104.

⁽⁸⁾ DEM 34,574 million investment/cash losses + DEM 2,0 million prefinancing Investitionszulage + DEM 8,5 million prefinancing GA-measures + DEM 8,45 million guarantees/equity capital.

- (15) In the context of the privatisation, GMH paid a sales price of DEM 100 000 and took over bank liabilities of the WKW for an amount of DEM 7,794 million. GMH also took over a bank guarantee for an amount of DEM 500 000. Furthermore, the investor was to make a cash contribution of DEM 3 million to finance the investments. According to information received on 3 September 1999 from Germany, GMH is willing to provide an additional investor contribution of DEM 5 million in cash to finance the financial gap of DEM 15 million. As a result of this financial injection the investor contribution will amount to DEM 16,394 million.

Table: Overview of the financing of the restructuring

(in million DEM)	
	Financing
Financial measures of the BvS:	
a) pre-financing Investitionszulage	2,000
b) guarantees/equity capital	8,450
c) pre-financing GA-measures	8,500
d) Investment/cash losses	34,574
Subtotal measures BvS	53,524
Financial measures of the Land:	
a) GA-measures	13,722
b) Investitionszulage	1,831
Subtotal measures Land	15,553
Total financial measures by the State	69,077
Investor contribution ⁽¹⁾	16,394
Total restructuring costs	85,471

⁽¹⁾ According to the German Government the cash flow of DM 19,149 million (from the period 2000 to 2002) should also be considered as investor contribution.

- (16) Apart from the present measures, WKW has received the following amounts before its privatisation.
- (a) GA measures amount of DEM 7,77 million awarded in 1994 and 1995;
 - (b) the BvS waived an amount of DEM 2,369 million intended to create jobs according to Article 249h of ArbZG and which is covered by an approved programme ⁽⁹⁾. According to this regime, companies who promote jobs receive a pre-financed amount to support such measures,
 - (c) loans awarded by the BvS of DEM 44,152 million, a waiver of interest on these loans DEM 1,081 million and waiver of loans of DEM 18,602 million.
- (17) WKW will spend a total of DEM 44,437 million of the restructuring costs for investment, the difference will be used for loss coverage, pre-financing, guarantees and equity capital.

⁽⁹⁾ Arbeitsförderungsgesetz: programme approved by the Commission under the NN 117/92, letter of the Commission of 13 January 1995, SG(95) D/341.

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

- (18) In its decision to initiate proceedings under 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.
- (19) The main reason for the opening of the proceedings were the doubts the Commission had concerning the long-term viability of the company. In particular, the assumptions concerning the future turnover increase in the crankshaft sector fed these doubts. Furthermore, the German Government submitted imprecise information about the aid measures before privatisation, which made it impossible for the Commission to assess whether the aid was proportional to costs and benefits of the restructuring and to what extent the aid in favour of WKW would lead to a distortion of competition. Moreover, the German Government was requested to clarify the role of Groditzer Stahlwerke GmbH (GSW) in the envisaged network of WKW and VSG.

4. REACTION OF THIRD PARTIES

- (20) The Commission received no comment as a reaction to the opening of procedure from interested parties.

5. REACTION OF THE GERMAN AUTHORITIES

- (21) In several answers to the proceedings of 7 April 1998 the German authorities provided information on the long-term viability of WKW and clarified the amount of aid granted before the privatisation. They also showed that the supply links between WKW, VSG and GSW were not very close.

6. ASSESSMENT

- (22) Although WKW had essentially a regional orientation, because the company was mainly active in Germany, the restructuring of the company is changing the situation. The planned figures show an increased export activity of the company towards the world market. Exchanges between Member States are likely to be affected by aid measures, because intra-Community trade in the sector in question is considerable.
- (23) Consequently, the individual measures have to be examined under Article 87(1) of the EC Treaty, because the funds are from State resources. They threaten to distort competition, to affect trade between Member States and to convey an advantage to the investors who will not have to cover those expenses they otherwise would have to carry themselves.

6.1. Financial measures before the privatisation

- (24) The following financial measures awarded before the privatisation of the company are covered by programmes:
- (a) The Article 249h ArbFG-measures to create jobs are under an approved programme⁽¹⁰⁾. According to this programme, companies who promote jobs receive a prefinanced amount to support such measures. If the company uses the measures in accordance with the programme, these do not have to be reimbursed. They are not considered aid since any company can benefit from them. According to information from the German Government, WKW has used these measures in accordance with the conditions of the programme and therefore the pre-financed amount did not need to be reimbursed. Consequently, the waiving of a payback is covered by the programme and does not constitute aid in this context.
- (b) The BvS provided loans of DEM 44,152 million, a waiver of interest of DEM 1,081 million and a waiver of bank guaranteed loans for an amount DEM 18,602 million. As the granting of the loans had been approved under the Treuhand regime, because the company was already in difficulty, the possibility of the conversion of these loans into subsidy had been envisaged as

⁽¹⁰⁾ See footnote 9.

from that moment. The aid intensity was therefore considered as reaching a 100 % because the financial measures were granted to a company in difficulty. Thus the current loan waiver cannot be regarded as additional aid but is to be considered as already covered by this Treuhand regime ⁽¹¹⁾. Consequently these measures do not constitute aid to be approved in this context and have not to be taken into account for the proportionality analysis.

- (25) The GA measures ⁽¹²⁾ of DEM 13,722 million and the investment grant of the *Land* of DEM 1,831 million, have to be considered as aid measures to be taken into account for the proportionality analysis but are covered by regional aid schemes formerly approved by the Commission ⁽¹³⁾.
- (26) The loan of DEM 8,5 million of the BvS was used partly to pre-finance the GA-measures of DEM 13,722 million. This amount does not seem to constitute State aid under Article 87(1) EC since it is secured by a first-rate bank guarantee of the investor and it will have to be reimbursed as soon as the GA measures are available.
- (27) GA measures ⁽¹⁴⁾ of DEM 7,77 million awarded in 1994 and 1995, have to be considered as aid measures although they are covered by regional aid schemes formerly approved by the Commission. Although these measures are not re-assessed by the Commission, they will be taken into account for assessing the proportionality of the aid measures (see below) because they were not covered by the Treuhand regimes.
- (28) The following aid measures were not covered by programmes and should therefore be regarded as aid under Article 87(1) EC to be taken in account in the present analysis:
 - (a) two guarantees for an overall amount DEM 6 million since they were granted in 1996 and 1997 when the Treuhand regimes were no longer applicable;
 - (b) an increase in equity capital of DEM 2,45 million granted in 1994/1995 since the Treuhand regimes only allowed the payment of loans and guarantees before privatisation;
 - (c) the investment aid of the BvS of DEM 34,574 million;
 - (d) the guarantee of the BvS to pre-finance the investment grant of the *Land* for an amount of DEM 2 million; this guarantee to secure financing of the Investitionszulage seems to be State aid under Article 87(1) EC since no securities seem to be provided by the investor for this measure and the German Government does not indicate if and when this guarantee will be terminated.
- (29) Therefore, the recipient benefits from aid measures in the context of the privatisation totalling DEM 60,577 million ⁽¹⁵⁾ awarded by the BvS and the *Land* of which DEM 45,024 million ⁽¹⁶⁾ is subject to the Commission's present assessment.

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

6.2. The new aid measures

- (30) The new aid measures provided by the BvS and the *Land* Brandenburg were notified as restructuring aid given in order to ascertain the restoration of viability of an undertaking in difficulty. Therefore, the Commission considers in particular the derogation as foreseen by Article 87(3) EC '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

⁽¹¹⁾ See case N 522/97.

⁽¹²⁾ See footnote 7.

⁽¹³⁾ See point 18(i) of Annex to Commission communication about regional State aid rules (OJ C 31, 3.2.1979, p. 9).

⁽¹⁴⁾ See footnote 7.

⁽¹⁵⁾ DEM 34,574 million + DEM 2 million + DEM 2,45 million + DEM 6 million + DEM 13,722 million + DEM 1,831 million.

⁽¹⁶⁾ DEM 34,574 million + DEM 2 million + DEM 2,45 million + DEM 6 million.

market if the criteria of the Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁷⁾ (Guidelines) are met. The Commission also takes into consideration that the new *Länder* in Germany belong to the assisted areas relevant to Article 87(3)(a) EC, where the standard of living is abnormally low and where there is a high unemployment rate ⁽¹⁸⁾.

- (31) 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 counterpart 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 benefit therefrom.

6.2.1. Restructuring plan

- (32) 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 ⁽¹⁹⁾.

Table: Financial development expected for WKW ⁽¹⁾

(in million DEM)						
	1997 ⁽²⁾	1998	1999	2000	2001	2002
Turnover	43,406	[...] ^(*)	[...]	[...]	[...]	[...]
Material costs	24,900	[...]	[...]	[...]	[...]	[...]
Personal costs	24,049	[...]	[...]	[...]	[...]	[...]
Depreciation	7,589	[...]	[...]	[...]	[...]	[...]
Operating result	- 22,181	- [...]	- [...]	- [...]	+ [...]	+ [...]
Net final result	- 19,126	- [...]	- [...]	- [...]	[...]	[...]

(*) Business secret.

⁽¹⁾ Table is arithmetically incomplete. Only the most important figures are given.

⁽²⁾ Actual figures, 1998 provisional

- (33) The restructuring plan envisaged a number of internal measures. WKW is planning to improve its competitiveness by forming a strategic network together with VSG and a cooperation agreement with NFC. Moreover, it has taken effective measures to improve its product quality. The plan also entails the reinforcement of the sales department, the acquisition of new machinery and shift of production, resulting in investments of over DEM 44 million. All these measures foreseen in the restructuring plan will improve the company's presence on the market.

⁽¹⁷⁾ OJ C 368, 23.12.1994, p. 12.

⁽¹⁸⁾ N 464/93, letter of 22 April 1994 SG(94) D/5633; N 613/96, letter of 23 January 1997 SG(97) D/488.

⁽¹⁹⁾ Point 3.2 of the guidelines. These guidelines remain applicable by virtue of point 101 of the guidelines on State aid for rescuing and restructuring of firms in difficulty (communication to the Member States, OJ C 288, 9.10.1999, p. 2).

- (34) As concerns the turnover development, which can be considered to an extent as an external factor for the company it should be noted that the turnover of the crankshaft business is to increase from DEM [...] (*) million to DEM [...] (*) million between 1998 and 2001. Turnover of the forging business is expected to grow in the same period from DEM [...] (*) million to DEM [...] (*) million. However, according to the guidelines, the improvement in viability must mainly result from internal measures contained in the restructuring plan. The turnover increase in the crankshaft unit was one of the major questions raised in the opening of proceedings. The question should therefore be answered as to how this increase is to be achieved and whether it can be considered as realistic.
- (35) As argued by the German Government, a turnover increase of DEM [...] (*) million, in the crankshaft unit will be mainly achieved by a transfer of the crankshaft production of VSG (another company of the GMH) to WKW, which is supposed to come into effect in 1999. VSG had a turnover of DEM [...] (*) million in 1997/1998 ⁽²⁰⁾ and WKW of over DEM [...] (*) million before it was taken over by GMH ⁽²¹⁾. VSG and WKW together therefore had a total turnover of DEM [...] (*) million in the crankshaft sector in 1997.
- (36) WKW assumes that an increase in turnover with their own customers by another DEM 3 to DEM 4 million should be feasible taking into account the relatively low turnover at present. A turnover increase of DEM 3 million should be achieved from the customers of VSG. That means that WKW expects a total turnover increase of DEM 6 million to DEM 7 million, i.e. approximately 5 %/year in relation to the joint turnover in 1997. Orderbook information received shows a solid increase of firm orders in the first six months 1999 for VSG and WKW ⁽²²⁾. It seems therefore plausible that the planned turnover growth can be achieved.

Table: Turnover increase of WKW and VSG in the crankshaft production

[...]

- (37) Turnover in the forging unit is planned to increase DEM [...] (*) million from DEM [...] (*) million in 1998 to DEM 12 million in 2001, i.e. 12 %/year. It is foreseen that of this DEM 12 million, new customers will generate DEM 3 million, while existing clients will increase their orders by DEM 9 million. The German Government quotes declarations of intent by reputable customers to make orders ⁽²³⁾ and to form a partnership concerning the joint development of forged heavy metal parts as soon as the approval of the aid package by the Commission has been achieved.
- (38) It should be taken into account that turnover in the forging unit shrank in the last three years due to the problems the company was facing. However, the overall situation in the industrial sector as such has improved and is to have a positive impact on the production of WKW. Added to that experts expect a continued recovery of the forging market from the crisis in 1993/1994. The prospects show an increase in production of 2 to 3 % for the coming years until 2001.

It seems therefore to be realistic that the company can achieve the planned turnover increase in the forging business.

(*) Business secret.

⁽²⁰⁾ 1995: DEM [...] million; 1996: DEM [...] million.

⁽²¹⁾ 1995: DEM 17,5 million; 1996: DEM 17 million; 1997: DEM 16 million; 1998: DEM 13,8 million.

⁽²²⁾ Increase of total of firm orders of DEM [...] million to DEM [...] million of VSG and WKW in this time period.

⁽²³⁾ These presumptions are supported by letters of intent from well-known customers.

- (39) In the original notification of the restructuring plan it was envisaged that WKW, VSG and GSW form the 'steel group' of GMH. The German authorities were asked to clarify the role of GSW in the context of the opening of proceedings. After the final negative decision against GSW in July 1999, the Commission had doubts about the impact on WKW (e.g. material supply more expensive). According to the German authorities there will be no direct impact, as the different companies in the GMH holding sell their products to other subsidiaries within the holding at market prices. Therefore they would buy their material from any producer outside the holding on the condition that it is the cheapest. Moreover, as GSW's share of [...] (*) % (based on the planned material costs of 1999) as a supplier to WKW was relatively modest, it will be rather easy to find substitution for its supplies on the market.
- (40) Regarding the links between the different companies within the GMH group the German Government submitted information of the existing supply links as well as financial links.
- (41) As to the supply links between GMH and WKW, GMH only delivers customary steel which is then refined according to the different specifications (crankshafts, forged metal parts). However, these deliveries do not include semi-manufactured crankshafts. Furthermore it should be noted that the value of the steel supply from GMH to WKW decreased in the period 1998 to 1999.
- (42) As to the supply links between VSG and WKW, the increase of the purchase amount from DEM [...] (*) million to DEM [...] (*) million can be explained by the shift of the crankshaft production of VSG to WKW foreseen in the restructuring plan. This shift is preceded by the supply of semi-manufactured crankshafts which consequently is reflected by the increase in value.
- (43) The German Government claims that no further financial links between the different companies exist, except the already mentioned supply links. WKW is not part of GMH's cash-management system and operates at arm's length basis. Spillover of aid seems therefore to be excluded ⁽²⁴⁾. On this basis it appears that the role of GSW and the other companies within the GMH group has been clarified.

6.2.2. *Adverse effects on competitors*

- (44) 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) EC.
- (45) Concerning the crankshaft sector the demand for crankshafts in the shipbuilding sector and energy generating market has declined during the 1990s and it seems that the market suffers from overcapacity. The Guidelines require that a company, which is operating in a sector with overcapacity, has to cut its capacity in the respective sector. However, WKW is reducing capacity until the year 2000 in its crankshaft production in the framework of the restructuring by roughly 19 % in man-hours and by 22 % in machine-hours. Consequently, as already concluded in the opening of proceedings, undue distortion of competition through the aid can be considered as being compensated.
- (46) As stated in the market analysis no structural overcapacity seems to exist in the forging sector. There may be some problems locally but the European forging industry as a whole is expanding. However, it should be noted that in the restructuring period the company is also to reduce its capacity in the forging production unit by 13,3 % in machine-hours.
- (47) Finally, it should be noted that even with the planned increase in turnover WKW remains a relatively small player in both the crankshaft and the forging markets.
- (48) The stipulation in the guidelines regarding adverse effects on competitors therefore seems to be upheld.

(*) Business secret.

⁽²⁴⁾ The information contained in recitals 40, 41 and 42 was confirmed by a recent report (July 1999) from an independent accountancy firm Societ ts Treuhand GmbH, Osnabr ck, submitted to the Commission.

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

- (49) 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.
- (50) As shown in the tables, WKW receives DEM 50,127 million aid measures in the context of the privatisation (including aid from approved programmes). Additionally it receives a guarantee of DEM 2,0 million to pre-finance the Investitionszulage. To that should be added the DEM 8,45 million which is not covered by Treuhand regimes. It is also necessary to include the DEM 7,77 million in GA measures because it was not covered by the Treuhand regimes granted before the privatisation in the calculation of the proportionality. All in all, DEM 68,347 million ⁽²⁵⁾ in aid has to be taken into account for the proportionality analysis.
- (51) The contribution of the investor amounts to DEM 16,394 million of his own funds for restructuring of WKW, which constitutes approximately 19,5 % of the total restructuring costs and other financial measures of DEM 84,741 million ⁽²⁶⁾ to be taken in account for the proportionality analysis. The investor covers therefore a substantial part of the investment expenses of restructuring. This shows clearly his commitment and the fact that he is willing not only to take part but also to assume the risk of the restructuring. This commitment is also reinforced by the employment and investment guarantees given by the investor. The analysis of the aid measures showed 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 makes available to the company a surplus of liquidities allowing 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 the long-term viability of the company.
- (52) According to the German Government the expected cash flow of DEM 19,149 million for the period 2000 to 2002 should also be considered as part of the investor contribution. However, as this cash flow is mainly to be realised on the basis of aid measures in the past and is not yet generated, it is therefore still conditional. Although the expected cash flow will reduce the need for financing the restructuring of the company, the Commission cannot take the cash flow into account as an element of the investor contribution in the context of the present proportionality analysis.
- (53) However, in view of the above information the Commission can conclude that the condition as regards limiting the aid to the strict minimum appears to be fulfilled.

7. CONCLUSION

- (54) It must be noted that Germany did not comply with Article 88(3) EC in according the aid C 30/98 prior to the Commission's approval. However, the Commission takes into account that the measures in favour of WKW should restore the beneficiary's viability and that the enterprise is situated in an area eligible for aid under Article 87(3)(a) EC.
- (55) In view of the response given by Germany, the Commission is now able to conclude that the main reasons for which the procedure was opened seem to be answered. As regards the viability of the company, the increase in turnover is explained for an important part by the shift of production from VSG to WKW and by measures to improve the company's presence on the market. Therefore the turnover increase can now be considered realistic. In addition, the distortion of competition is limited considering that only one of the relevant markets (crankshafts) seem to suffer from overcapacity and that the beneficiary is reducing capacity in both production units. Moreover,

⁽²⁵⁾ DEM 34,574 million + DEM 2 million + DEM 2,45 million + 13,722 million + DEM 1,831 million + DEM 7,77 million.

⁽²⁶⁾ Aid of DEM 68,347 million and investor contribution of DEM 16,394 million.

the Commission has noted that the investor raised its contribution substantially, thereby showing his commitment to the restructuring of the company and reflecting his willingness to expose him to entrepreneurial risk. Taking into account the results of the above findings, the problems for which the procedure of Article 88(2) EC was opened seem to be solved. Therefore the Commission can conclude that the aid measures in favour of WKW now comply with the guidelines, if the restructuring plan is fully implemented and the investor is bound to his obligations. The execution of the plan will be monitored via annual reports communicated by Germany to the Commission.

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

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Germany has implemented in favour of Wildauer Kurbelwelle GmbH amounting to EUR 22,5 million (DEM 45,024 million) is compatible with the common market within the meaning of Article 87(1) of the EC Treaty, if the conditions in Article 2 are fulfilled.

Article 2

1. The restructuring plan must be fully implemented. All possible measures will be taken to ensure that the plan will be realised.

The investor must be contractually bound to his obligations, including his commitment to provide a contribution of DEM 5 million in cash to finance the financial gap of DEM 15 million and other financial measures of DEM 11,394 million to finance the restructuring.

2. The execution of the plan will be monitored via annual reports communicated by Germany to the Commission.
3. If the conditions of this Article are not fulfilled, the derogation can be withdrawn.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 June 2000.

For the Commission

Mario MONTI

Member of the Commission
