

II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 20 April 2011

on suspected aid to the company Trèves C 4/10 (ex NN 64/09) implemented by the French Republic*(notified under document C(2011) 2585)***(Only the French text is authentic)****(Text with EEA relevance)**

(2011/676/EU)

THE EUROPEAN COMMISSION,

8 January 2010. Following this meeting, the French authorities provided additional information by e-mail dated 15 January 2010.

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By means of various articles appearing in the press in spring 2009, it came to the Commission's attention that the company Trèves would appear to have benefited from an investment amounting to EUR 55 million by the Fonds de Modernisation des Equipementiers Automobiles (Fund for the Modernisation of Automobile Parts Manufacturers) (below: 'FMEA'). The Commission sent the French authorities requests for information on this subject by letters dated 5 May 2009, 11 June 2009, 10 July 2009 and 4 November 2009. The French authorities replied to these requests by letters (or e-mails) dated 5 June 2009, 23 June 2009, 18 August 2009, 18 November 2009 and 23 December 2009.

(2) Moreover, at the request of the French authorities, a meeting was held at the Commission's offices on

(3) By letter dated 29 January 2010, the Commission notified France of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (below: 'TFEU') concerning the FMEA investment and a plan to reschedule Trèves' tax and social security debts (also referred to as the 'debt settlement plan') authorised by the French administration. France communicated its comments concerning the initiation of the formal investigation procedure on 25 March 2010.

(4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the measures in question.

(5) The Commission received comments on this subject from the following interested parties: the Italian Republic, the company Trèves, the PSA Peugeot Citroën group, the Renault group, one of Trèves' competitors wishing to remain anonymous and the FMEA ⁽³⁾. The Commission forwarded these comments to France, giving it the opportunity to comment on them, and received its comments by letter dated 5 October 2010. A meeting was also held with the French authorities on 18 November 2010. Finally, additional information was forwarded to the Commission by e-mails dated 21 December 2010 and 22 February 2011.

⁽¹⁾ OJ C 133, 22.5.2010, p. 12.

⁽²⁾ See footnote 1.

⁽³⁾ The comments of interested parties are summarised in Section III.

II. DESCRIPTION OF THE MEASURES UNDER INVESTIGATION

- (6) Before describing the measures under investigation, it is appropriate to present the Fonds Stratégique d'Investissement (Strategic Investment Fund) (below: 'FSI'), the FMEA and CDC Entreprises (the FMEA management company) (point II.1 below) and the company Trèves and the measures taken in relation to it (point II.2 below). Finally, the reasons will be set out leading to the initiation of the formal investigation procedure regarding the FMEA investment and the tax and social security debt rescheduling plan (point II.3 below).

II.1. The FSI, the FMEA and CDC Entreprises

- (7) On account of the crisis which started in 2008, France established the Strategic Investment Fund (below: 'FSI') to bolster its economy. Shortly afterwards, the FSI, in partnership with the PSA Peugeot Citroën group (below: 'PSA') and the Renault group (below: 'Renault'), set up the FMEA. Whereas the object of the FSI is to intervene in any type of enterprise, whichever the economic sector concerned, the FMEA intervenes only in favour of automobile parts manufacturers.

FSI

- (8) The Strategic Investment Fund, with capital of EUR 20 billion, was set up by the French Government in December 2008 to meet the capital requirements of undertakings deemed to boost the growth and competitiveness of the French economy. According to its managers, the FSI invests only in undertakings which offer good prospects of growth and competitiveness for the French economy.
- (9) The FSI is 49 % owned by the French Government and 51 % by the Caisse des Dépôts et Consignations (below: 'CDC'). The CDC and its subsidiaries constitute a public group serving the general interest and economic development⁽⁴⁾ of France; its managers are appointed by decree.
- (10) The FSI Board of Directors is chaired by the Director-General of the CDC and, in addition to its Chairman, comprises six directors, of whom one represents the CDC, two represent the State (the Director-General for State Holdings and the Director-General for Enterprises) and three represent the interests of undertakings (the company directors of SCOR, Essilor and Artémis).

FMEA

- (11) The FMEA is a venture capital mutual fund, the object of which is to promote the emergence of competitive automobile parts manufacturers capable of offering their

customers research and development capacity and strong international support. It makes investments of up to a maximum of EUR 60 million, for the exclusive benefit of its subscribers, alone or together with other private investors or other funds.

- (12) The FMEA was established (on 25 March 2009) under the plan to support the motor vehicle industry, announced by the President of the French Republic on 4 December 2008. Its capital of EUR 600 million is funded by the FSI (EUR 200 million), PSA (EUR 200 million) and Renault (EUR 200 million).

- (13) The FMEA is managed by CDC Entreprises, a subsidiary of the CDC. Investment decisions are therefore taken by CDC Entreprises.

- (14) The FMEA has a selection committee and an investment committee, which are responsible for preparing files before investments are made by the management company CDC Entreprises. The three investors, PSA, Renault and the FSI, are represented equally on these committees.

- (15) According to the FMEA organisational rules, the selection committee must be consulted by the management company concerning the strategic nature of investment projects. Its advisory opinions are not binding on the management company. They are adopted by a two-thirds majority.

- (16) The investment committee must be consulted prior to each investment or divestment carried out or concerning any derogation from the investment policy criteria and rules. When pronouncing on an investment or divestment project, its opinions too are adopted by a two-thirds majority and are not binding on the management company. However, if one of the three investors votes against, the opinion given will be considered as a negative opinion. In this case, the investment or divestment project is returned to the selection committee.

CDC Entreprises

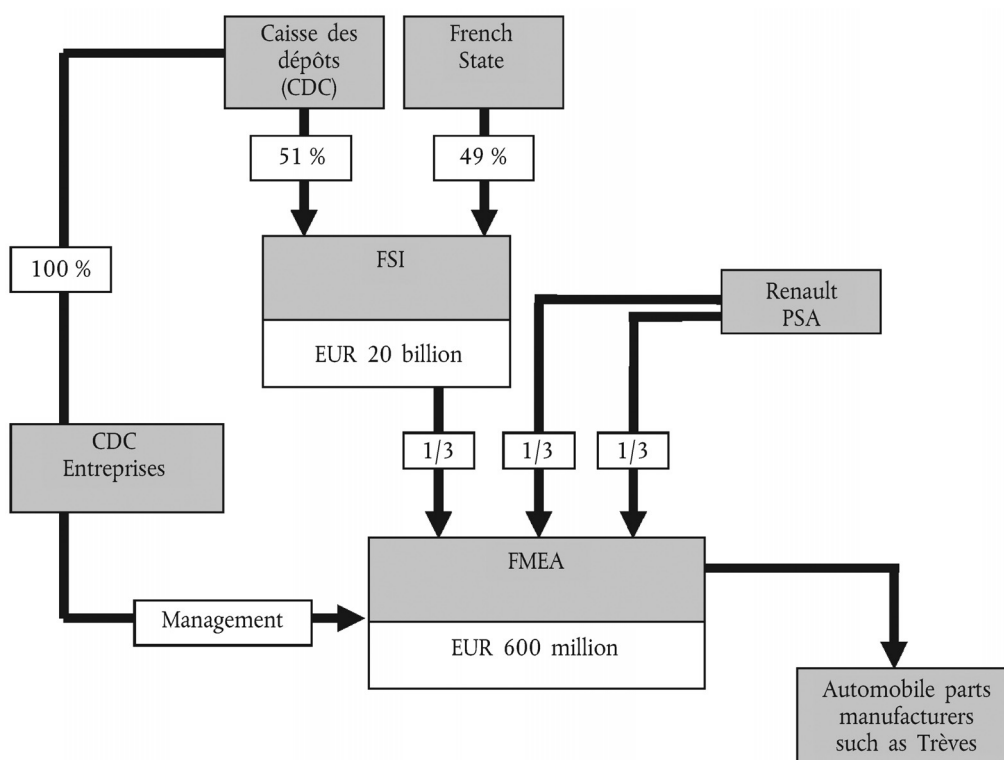
- (17) CDC Entreprises plays a key role in venture capital in France. It is required to comply with all the rules laid down by the Financial Markets Authority regarding third-party asset management and especially the rules relating to independence concerning choice of investments and prevention of conflicts of interests. CDC Entreprises' management activities include FSI's investments in unlisted SMEs and investments on behalf of the CDC and other investors.

⁽⁴⁾ Article L518-2 of the French Monetary and Financial Code.

- (18) CDC Entreprises is a full subsidiary of the CDC. The Chairman and Managing Director of CDC Entreprises are appointed by its Board of Directors, the members of which are appointed by the CDC.
- (19) CDC Entreprises has concluded an assistance and advice agreement with the FSI, under which a dedicated FSI team assists CDC Entreprises in preselection of investment projects (including feasibility and risk assessment studies, study and assistance in the implementation of these interventions) and monitoring the investments made.
- (20) The organisation and functioning of the FMEA committees mean that CDC Entreprises alone has the authority to commit the FMEA. The decisions taken by the committees are not binding on the management company (apart from derogations from the investment policy criteria and rules and the management of conflicts of interests, which are not relevant in the present case). The French authorities specified that, to date, CDC Entreprises has never deemed it appropriate to take investment decisions contrary to the opinion of the committees.
- (21) Figure 1 below summarises the links between the French State, the CDC, CDC Entreprises, the FSI, the FMEA, PSA and Renault.

Figure 1

Links between the French State, the CDC, CDC Entreprises, the FSI, the FMEA, PSA and Renault



II.2. The company Trèves and the measures taken in relation to it

- (22) Trèves is a company specialising in car interior components. Trèves employed about 6 500 persons before the current restructuring plan was implemented (the restructuring plan concerns 1 300 persons). It is structured around three areas of activity: noise insulation ⁽⁵⁾, seats and components, and textiles. The company owned 9 factories (2 have now been closed) and is established in 14 countries (including Spain, the United Kingdom, Portugal, Slovenia and the Czech Republic). 40 % of its turnover comes from France. Its main customers are Renault, Peugeot SA, Volkswagen, Nissan and Toyota.

⁽⁵⁾ Car Interiors and Acoustics, Carpets and Soundproofing (HAPP).

(23) Shortly before the outbreak of the crisis in 2008, Trèves was starting to reap the benefits of a first restructuring plan launched in 2005 aiming to reduce the workforce and rationalise production capacity. When the crisis arose, Trèves decided to modify and extend its restructuring plan and expressed the wish to conduct discussions with its lenders under a conciliation procedure ⁽⁶⁾.

(24) A conciliation protocol was therefore concluded on 25 May 2009 between the Trèves shareholder (the holding company 'Severt', the sole shareholder), the companies of the Trèves group, the lenders (i.e. the banks) and the FMEA. This protocol is based on the implementation of a restructuring plan (this plan is described in Section V.1.1).

(25) The financing of the restructuring plan was estimated at EUR [110-140] (*) million. Under this plan, the various parties entered into the commitments described in the protocol of 25 May 2009.

Contribution of the company, its banks and its customers

(26) Manufacturers Peugeot and Renault committed to contributing EUR 33,3 million under the financing [...].

(27) The Trèves group committed to doing its utmost to generate a sum during 2009 corresponding to [5-20] % of the cash resource requirements, i.e. EUR [5-30] million.

(28) The banks granted a new bank loan of EUR [10-30] million. The banks also granted a consolidation loan amounting to EUR [30-60] million to repay the existing short-term loans (EUR [0-20] million) and medium-term loans (EUR [30-40] million). The new loan and the consolidation loan must be repaid in full by [...] 2014.

FMEA contribution and public contribution

(29) The FMEA invested EUR 55 million in the company. Of this sum, EUR [40-50] million was in the form of debt securities providing access to capital (i.e. convertible bonds with adjustable parity), bearing a fixed coupon of [> 8] %. In parallel, EUR [5-15] million came from a

capital increase (subscription of new ordinary shares), thereby providing the FMEA with a [< 50] % holding in Trèves' capital.

(30) The public creditors authorised a tax and social security debt settlement plan amounting to EUR 18,4 million [...]. This plan consists in rescheduling the repayment of Trèves' tax and social security debts, together with the payment of penalties and interest on arrears.

II.3. Reasons for initiating the procedure

(31) The financing of Trèves' restructuring plan is based on the investment of new funds to a total of EUR [100-120] million (this amount does not include the consolidation loan). Of this amount, EUR 55 million is contributed by the FMEA. To this is added the tax and social security debt settlement plan amounting to EUR 18,4 million. In its decision to initiate the formal investigation procedure, the Commission expresses its doubts as to whether these latter two measures should not be categorised as State aid within the meaning of Article 107(1) TFEU.

(32) As regards the FMEA investment, the Commission points out that several factors seem to indicate that this investment is of state origin. At first sight, this investment appears to have been made from state resources and to be imputable to the State ⁽⁷⁾. The Commission's doubts are based in particular on observation of the functioning of the FSI, the FMEA and CDC Entreprises described above.

(33) The Commission then expresses its doubts about compliance with the criterion of the private investor operating in a market economy through this investment. In particular, the Commission was unable to establish with certainty, in the light of the situation in both the motor vehicle sector and the company which was experiencing certain financial difficulties ⁽⁸⁾, firstly, that the assumptions of the restructuring plan were credible, realistic and prudent, secondly, that the valuation of Trèves prior to the investment was prudent and, thirdly, that the prospect of an internal rate of return

⁽⁶⁾ The purpose of the conciliation procedure is to conclude an amicable agreement between a business manager and his creditors (public and private) with a view to establishing payment deadlines and/or debt remission (Article 611-7 of the French Commercial Code).

(*) Covered by business secrecy.

⁽⁷⁾ According to established case-law (see in particular the Court of Justice judgment in Case C-305/89 *Italy v Commission* [1991] ECR I-1603, paragraph 13), no distinction should be drawn between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State to administer the aid. European law cannot permit the rules on State aid to be circumvented merely through the creation of autonomous institutions charged with allocating aid. However, as the Court affirmed in its judgment of 16 May 2002 (C-482/99 *France v Commission*, known as 'Stardust Marine', [2002] ECR I-4397), for measures to be capable of being categorised as aid within the meaning of Article 107(1) TFEU, they must, first, be granted directly or indirectly through state resources and, second, be imputable to the State.

⁽⁸⁾ Trèves' financial difficulties at the end of 2008 were primarily a fall in turnover (EUR [650-700] million, i.e. [20-25] % compared with 2007) and a loss of EUR [40-50] million at the end of the financial year.

(below: 'IRR') of [$> 12\%$] ⁽⁹⁾ was to be considered sufficient in view of the risk assumed by the FMEA.

(34) As regards the tax and social security debt settlement plan, the Commission wonders whether the French authorities acted like a private creditor placed in the same conditions and seeking to recover sums due to it. The Commission was not in possession of all the information enabling it to conclude that the public creditors, by virtue of the conciliation protocol of 25 May 2009, were in a position at least as favourable as Trèves' private creditors (i.e. the banks) which also agreed to reschedule their claims by granting a consolidation loan. The Commission therefore expresses doubts about compliance with the principle of the private creditor operating in a market economy through the tax and social security debt settlement plan.

(35) Finally, if the two measures mentioned above were to be categorised as State aid, the Commission points out in its decision to initiate the procedure that their compatibility could be examined on the basis of the Commission guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁰⁾ (below: 'the guidelines'). However, the Commission asserts that, at this stage, it is unable to establish with certainty that all the conditions provided for by the guidelines are met.

III. COMMENTS FROM THIRD PARTIES

The Trèves group

(36) The Trèves group communicated its comments to the Commission by letter dated 2 July 2010. In its opinion, the terms and conditions of the FMEA investment in the Trèves group and the implementation of the tax and social security debt rescheduling plan are not covered by Article 107(1) TFEU.

(37) Firstly, the Trèves group points out that the argument of the imputability of the aid to the State is unfounded because, through the FMEA, the Trèves group opted for a commitment with two motor vehicle manufacturers of international dimension which account for [$> 50\%$] of its turnover. Furthermore, it contests the Commission's analysis that the company had to call on state resources as, on the one hand, the FMEA resources, in its view, come from private operators and, on the other hand, the participation of other private investors in the financing of the company (the banks), proves that it was capable of financing itself on the market.

⁽⁹⁾ In the decision to initiate the procedure, the IRR mentioned is [$> 15\%$]. This is explained as follows: the expected IRR from the FMEA investment is [$> 15\%$]. However, to be on the safe side, the FMEA applies a discount of [...] % to the EBITDA (see footnote 11) of the financial year 2011. After discount, the IRR is [$> 12\%$], which is used as reference rate of return in this decision. The IRR of [$> 15\%$] mentioned in the decision to initiate the procedure was an average rate: between the rate of [$> 15\%$] without discount and the rate of [$> 12\%$] with discount.

⁽¹⁰⁾ OJ C 244, 1.10.2004, p. 2.

(38) Secondly, the Trèves group categorically refutes the Commission's analysis of the economic situation of the company Trèves between 2005 and 2008. In its opinion, the Commission confuses the general crisis in the motor vehicle sector in 2008 with the individual situation of the company, which recorded an uninterrupted, substantial increase in its turnover between 1999 (EUR [500-700] million) and 2004 (EUR [900-1 100] million). This rise was in fact checked by the crisis which hit the motor vehicle sector in the second half of 2008. The object of the restructuring plans of 2005 and 2009 was not to remedy liquidity problems, but consisted in rationalising the company's production capacity in order to relaunch the company in a difficult economic climate and not to ensure its survival, as evidenced by the rising trend in Trèves' EBITDA ⁽¹¹⁾ between 2005 and 2007 and the recovery in its results from 2009.

(39) Furthermore, the Trèves group challenges the importance which the Commission attributes to the declarations by the French Minister for Industry that if the State had not intervened, Trèves would have filed a petition in bankruptcy. A subjective political declaration pronounced in a tense social climate has no relevance to the assessment of the real economic and financial situation of an undertaking.

(40) Consequently, the FMEA investment in the company Trèves was undeniably prudent, both financially and industrially. The company recalls that the FMEA was not the only investor, but that several other potential investors came forward and private partners entered into commitments alongside the FMEA. Contrary to what the Commission seems to assume, there is no contradiction between the financial logic and the industrial logic of the FMEA investment. According to the Trèves group, the fact that a manufacturer holds a participating interest in one of its suppliers for the purpose of strengthening their industrial ties and obtaining a financial benefit from its growth is current practice in the motor vehicle sector.

(41) Thirdly, the Trèves group pays particular attention to compliance with the principle of the prudent investor operating in a market economy. The terms of the investment are not only very strict, but also advantageous for the FMEA. Furthermore, in 2008-09, the company Trèves had key strengths at its disposal to ensure its rapid return to profitability (establishment and growth in emerging countries, diversification of its portfolio of manufacturer customers, marked focus on research and development). Taking account of these strengths, Trèves' industrial and financial restructuring plan was drawn up on the basis of prudent and reasonable forecasts after a detailed audit of the company's situation. Finally, the good results recorded by Trèves in 2009-10 demonstrate the prudent nature of the investment.

⁽¹¹⁾ Abbreviation for 'earnings before interest, taxes, depreciation, and amortisation'.

(42) Finally, the Trèves group considers that, if the FMEA investment were to come under Article 107(1) TFEU, this aid would be compatible with the guidelines, as the company's long-term return to viability is ensured and the restructuring of Trèves does not give rise to any distortion of competition and is accompanied by compensatory measures already implemented in part ([...], reduction in production capacity, reduction in workforce and finally the share in funding the restructuring of Trèves allegedly of state origin remains confined to the strict minimum of the restructuring costs).

(43) As regards the tax and social security debt rescheduling plan, the Trèves group considers firstly that it respects the principles of the private creditor operating in a market economy and that the Commission cannot presuppose that any categorisation as aid adopted would in fact preclude the possibility of a prudent rescheduling plan on the part of the financial authorities. The rescheduling plan provides for penalties and surcharges for late payment, an interest rate higher than the statutory rate which a private creditor could expect, first-ranking mortgages [...] and the co-existence of the intervention by the public authorities with that of private creditors.

The FMEA

(44) The FMEA forwarded its comments to the Commission by letter dated 22 June 2010. The FMEA rejects the categorisation of its investment in the company Trèves as State aid, on account of its autonomy firstly in the choice of its investments and secondly in the approach adopted to achieve its objectives.

(45) The FMEA emphasises the fact that its intervention decisions are entirely independent. This autonomy results not only from its status, but also from its governance. The FMEA, as a venture capital mutual fund, has a management company which in turn is subject to the rules of third-party asset management. The statutory independence of the management company in the choice of its investments, as it acts in accordance with the proprietary interest of the subscribers, contributes to ensuring the autonomy of the FMEA at the investment decision stage. As regards the FMEA advisory committees, the opinions of the selection committee and the investment committee can be adopted only with the approval of one of the two manufacturers. The management company, CDC Entreprises, has so far never departed from the opinions given by the committees. Consequently, the influence of the private investors, i.e. Renault and Peugeot, is predominant in the selection and definition of the investment projects.

(46) Moreover, the FMEA investment in Trèves illustrates the FMEA investment policy, which gives preference to undertakings with strong innovative capacity and strong potential for growth and profitability in the automobile parts manufacturers sector. Trèves is a leading European parts manufacturer which for that matter was

of interest to [...] other private funds. The distinct improvement in the company's results from 2010 shows the reality and relevance of the restructuring plan presented by Trèves. The temporary difficulties experienced by the company on account of the economic and financial crisis also enabled the FMEA to negotiate an investment on terms providing a very high level of protection.

(47) The FMEA consequently considers that its investment cannot be categorised as State aid.

The Renault group

(48) Renault forwarded its comments to the Commission by letter dated 6 July 2010. First of all, it challenges the Commission's assertions that its subscription to the FMEA is linked to the loan granted to it by the State in April 2009. The company recalls that when the Fund was set up on 20 January 2009⁽¹²⁾, it had no information about a possible future loan granted by the State to manufacturers. The object of the loan granted to it in April 2009 was to finance the general needs of the undertaking arising from the contraction in the financial markets during the fourth quarter of 2008 and the first quarter of 2009.

(49) Furthermore, Renault's subscription to the FMEA was justified for economic, industrial and financial reasons: it is in fact strategically and financially essential for Renault to consolidate its supply on a permanent basis by relying on sound, competitive suppliers, while at the same time expecting a return on its financial investment. The FMEA in this way enables Renault to invest in undertakings which are absolutely essential for the sector, such as Trèves, which remains a key supplier for the European motor vehicle industry. Consequently, the FMEA interventions follow the same approach as that adopted by Renault, which is itself a prudent investor operating in a market economy.

(50) Finally, Renault unreservedly endorses the FMEA's comments, presented in response to the Commission's decision to initiate the formal investigation procedure, on its role in the governance of the FMEA, how the FMEA operates, its autonomy and that of its management company in relation to the public authorities.

The Peugeot group

(51) PSA forwarded its comments to the Commission by letter dated 6 July 2010. According to PSA, the FMEA investment in Trèves is not only profitable, but also in keeping with its economic and strategic interests.

⁽¹²⁾ It should be recalled here that the FMEA was legally established only on 25 March 2009, the date of signature of the rules governing the Fund by the subscribers and the date of the subscription of the first tranche by these investors. In fact, however, the Fund started work at the end of January while its establishment was still in progress.

(52) PSA's participation in the FMEA is part of the joint wish of the manufacturer and the Fund to invest in strategic undertakings with strong innovative capacity, capable of ensuring security of supply and optimum consolidation of the automobile parts manufacturers sector. Furthermore, PSA considers that the FMEA investment meets its profitability requirements in the light of the risk assumed.

(53) Finally, PSA emphasises the lack of conditionality between its decision to participate in the FMEA and the conclusion of a loan agreement for EUR 3 billion between the French State and the manufacturer in March 2009.

One of Trèves' competitors

(54) By letter dated 23 June 2010, one of Trèves' competitors, which wishes to remain anonymous, forwarded its comments to the Commission. This competitor endorses the Commission analyses described in the decision to initiate the procedure of 29 January 2010. It considers in fact that Trèves was experiencing economic difficulties before the start of the economic crisis and therefore is not eligible to benefit from measures under the temporary Community framework. Moreover, irrespective of Trèves' economic situation, the State aid from which it could benefit must be accompanied by substantial compensatory measures, on account of the very significant negative effects on competition. In fact aid with the sole aim of maintaining an undertaking artificially in existence in a sector experiencing long-term structural overcapacity is unjustified. It considers that Trèves should be obliged to limit its presence on the markets by selling subsidiaries or by reducing its activities drastically and contributing more from its own resources to its restructuring.

The Italian Republic

(55) The Italian Ministry of Economic Development forwarded its comments to the Commission by letter dated 15 June 2010. It endorses the Commission's 'arguments' ⁽¹³⁾ on two fundamental points: the FMEA investment is undoubtedly State aid on account of the decisive presence of public funds and this type of aid is intended to support undertakings which, before the second quarter of 2008, were encountering difficulties within the meaning of the guidelines.

IV. COMMENTS FROM FRANCE

(56) By letter dated 25 March 2010, the French authorities forwarded their comments to the Commission in response to the initiation of the formal investigation procedure on 29 January 2010.

(57) In their opinion, the terms and conditions of the FMEA investment in Trèves do not fall within the scope of Article 107(1) TFEU, as the investment was not financed by state resources, but by funds of predominantly private origin and not imputable to the State. Even if the FMEA resources were to be considered state resources or the investment decision were to be imputable to the State, the French authorities consider that this investment displays all the characteristics of a prudent investment in a market economy. Furthermore, they also consider that the rescheduling of the tax and social security debt authorised by the public creditors meets the criteria of the private creditor seeking to recover the sums due to it.

(58) The French authorities point out that the FMEA investment in no way involved the transfer of state resources within the meaning of the 'Stardust Marine' case-law ⁽¹⁴⁾. Concerning the share of the manufacturers PSA and Renault (2/3), the FMEA funds are purely private; concerning the share of the FSI (1/3), these funds, although public in origin, are not under the permanent control of the State. The FSI, created according to the private investment fund model, is constituted in the form of a joint stock company (*société anonyme*) in competition with other private investment funds. It makes long-term investments with profitability as their objective.

(59) Furthermore, on account of its status and operating procedures, the FMEA management company, CDC Entreprises, is not under the surveillance of the public authorities. On account of its status, it is legally independent of the CDC and invests for the exclusive benefit of its subscribers, in competition or together with private investors. CDC Entreprises therefore manages FMEA's funds entirely independently. As regards the investment in Trèves, it followed the FMEA selection and investment committee recommendations without any state intervention. Consequently, the French authorities conclude on the one hand that the resources invested are not state resources in so far as they are not constantly under public control and therefore available to the national authorities and, on the other hand, that the decision to invest is not imputable to the State as CDC Entreprises is acting only in the exclusive interest of the FMEA subscribers and totally independently.

(60) As regards the conformity of the FMEA investment with the principle of the prudent investor operating in a market economy, the French authorities recall that FMEA's investment policy gives preference to viable projects of strategic interest to the motor vehicle sector, with strong growth and strong innovative capacity. In the case of Trèves, the investment was made on the basis of a realistic, rigorous business plan, validated by several private analysts. In addition, the acquisition of the FMEA's participating interest in

⁽¹³⁾ It should be recalled here that, in its decision to initiate the procedure, the Commission confines itself to expressing doubts.

⁽¹⁴⁾ Court of Justice judgment in Case C-482/99 *French Republic v Commission* [2002] ECR I-4397.

Trèves' capital and the subscription to convertible bonds with adjustable parity occurred at the same time as other private investments and under the same conditions (*pari passu* investments). According to the French authorities, these factors are sufficient to establish that the investment is in conformity with market practices.

- (61) As regards the application of the principle of the private creditor operating in a market economy, the French authorities consider that authorisation of Trèves' tax and social security debt rescheduling plan is in keeping with the idea underlying the application of this criterion, i.e. that the public creditor, like the private creditor, must seek to recover the sums due to it by a debtor experiencing financial difficulties. The French authorities specify firstly that no remission of tax or social security debts was granted to the Trèves group. They consider that the two basic elements allowing the assessment of the private creditor principle, i.e. the presence of penalties and supplements for late payment and the interest rate charged, are observed in this case. In fact, the rescheduling plan provides for interest and penalties for late payment, defined prior to the agreement on the rescheduling plan and taken into account in the calculation of the monthly instalments payable by Trèves. Furthermore, this is in accordance with Article 1153 of the Civil Code, which provides that, in the absence of a contractual term, lateness in payment of a sum due to a private creditor gives rise to the imposition of the payment of interest on arrears at the statutory rate. This rate was 3,79 % in 2009, the year when the rescheduling plan was drawn up. The annual interest over the total duration of the rescheduling plan is approximately [5-10] %. In the alternative, the French authorities recall that, at the same time as the tax and social security debt rescheduling plan, the lending banks of the Trèves group granted a rescheduling of their own liabilities through a consolidation loan. Trèves' private creditors therefore also granted payment facilities to ensure the repayment of their claims.
- (62) The French authorities find firstly that the majority of the comments received confirm that the FMEA investment in Trèves cannot be categorised as State aid. Consequently, the French authorities will make no further comments on this subject.
- (63) On the other hand, concerning the comments presented by the Italian authorities and the anonymous company presenting itself as one of Trèves' competitors, the French authorities wish to communicate the following comments to the Commission.
- (64) The French authorities find that the Italian authorities confine themselves to asserting that the FMEA investment in Trèves must be categorised as State aid on account of the 'decisive role' played by public resources. This assertion is not substantiated by any demonstration or justification.

- (65) Still according to the French authorities, the company competing with Trèves also presumes, without proving it, the existence of State aid which would be incompatible with the guidelines and with the temporary framework adopted by the Commission in December 2008 in the context of the economic and financial crisis. The factors relied upon by this company are either entirely inaccurate or taken out of context and therefore interpreted in an erroneous and biased manner.

V. ASSESSMENT OF THE MEASURES UNDER INVESTIGATION

- (66) When the Commission investigates a national measure, it must first examine whether this measure can be categorised as State aid within the meaning of Article 107(1) TFEU. Once this categorisation has been established, the Commission can then assess the extent to which this measure can be considered compatible with the common market on the basis of the derogations permitted by the TFEU to the principle of prohibition of State aid. If the measure under investigation does not constitute State aid, the examination of the compatibility of the aid is not applicable.

V.1. Evaluation of the presence of State aid within the meaning of Article 107(1) TFEU

- (67) Article 107(1) of the TFEU provides that: 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'
- (68) This provision mentions the criteria according to which a national measure can be categorised as State aid. As the Court of Justice recalls in its judgment of 15 June 2006, these criteria are 'the financing of that measure by the State or through State resources, the existence of a benefit for an undertaking, the selective nature of the said measure, and its effect on trade between Member States and the distortion of competition resulting therefrom' ⁽¹⁵⁾.
- (69) These criteria are cumulative and must therefore all be satisfied in order for it to be possible to categorise a measure as State aid. Consequently, as soon as the Commission establishes that one of these criteria is not satisfied, it can assert with certainty that the measure under investigation does not constitute State aid within the meaning of Article 107(1) TFEU.

⁽¹⁵⁾ Court of Justice judgment of 15 June 2006 in Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* [2006] ECR I-5293, paragraph 28.

V.1.1. The FMEA investment of EUR 55 million

- (70) As regards the FMEA investment in Trèves amounting to EUR 55 million, it should first be verified whether the criterion of benefit is met.

Benefit

- (71) According to settled case-law⁽¹⁶⁾, a contribution of funds to an undertaking does not constitute State aid if this contribution is made in circumstances which would be acceptable for a private investor operating in the normal conditions of a market economy ('criterion of private investor operating in a market economy').
- (72) In this respect, assuming that the FMEA will sell its participating interest in Trèves during 2012, the internal rate of return ('IRR') calculated by the FMEA on the basis of its investment is [$> 12\%$] per year. This rate represents the pre-tax rate of return on the entire FMEA investment, i.e. both the direct capital injection of EUR [5-15] million and the contribution in the form of debt securities giving access to capital (convertible bonds with adjustable parity) amounting to EUR [40-50] million.
- (73) Consequently, with a view to assessing whether the criterion of the private investor operating in a market economy is respected, the Commission must reach a decision on the following questions:
- (a) Is Trèves' restructuring plan, the basis for the FMEA's commitment, credible and realistic?
 - (b) Was the Trèves group valued appropriately before the FMEA capital injection of EUR [5-15] million?
 - (c) Were the assumptions of the restructuring plan underlying the IRR reasonable and realistic at the time of the FMEA investment?
 - (d) Is an expected IRR of [$> 12\%$] sufficient?

⁽¹⁶⁾ According to the General Court, 'it is necessary to determine whether, in similar circumstances, a private investor of a dimension comparable to that of the bodies managing the public sector could have been prevailed upon to make capital contributions of the same size, having regard in particular to the information available and foreseeable developments at the date of those contributions. In addition, although the conduct of a private investor with which the intervention of the public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy – whether general or sectoral – and guided by prospects of profitability in the longer term', General Court judgment of 21 May 2010 in Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04 *France and others v Commission*, not yet reported paragraph 216. See also the following Commission communications: Application of Articles 87 and 88 of the EC Treaty to public authorities' holdings, *EC Bulletin* No 9-1984; Commission Communication to the Member States. Application of Articles 87 and 88 of the EC Treaty and Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

- (74) The Commission will add considerations relating to the structure of the FMEA investment and the sharing of the capital gain to the replies to questions b) and d) respectively.

- (75) The replies given to these questions will enable the Commission to determine whether the FMEA acted under similar conditions to those that a private investor would have required whose investment presents a risk arising from both the situation in the motor vehicle sector at the time of the investment and that of the undertaking which was experiencing certain financial difficulties.

Concerning the credible and realistic nature of the restructuring plan

- (76) As already indicated in recital 23, shortly before the outbreak of the financial and economic crisis of 2008, Trèves was starting to reap the benefits of a first restructuring plan, launched in 2005, aiming to cut the workforce and to rationalise production capacity⁽¹⁷⁾. When the crisis occurred, Trèves decided to modify and intensify its restructuring plan.
- (77) In this way, from the end of summer 2008, Trèves gave fresh impetus to its restructuring plan and at the end of December 2008, i.e. several months before the conciliation protocol of 25 May 2009, the following results could already be observed:
- a significant reduction in overhead costs: the measures taken in this respect allowed a reduction of [20-30] % in the total amount of Trèves' actual overhead costs in the last 4 months of 2008 compared with the 2008 budget forecast,
 - a hefty reduction in stocks: the cost of stocks fell by [30-40] % during the second half of 2008, from EUR [20-80] million in June to EUR [0-60] million in December,
 - control of tangible investments: these were reduced by [40-50] % in 2008 compared with the 2008 budget forecast,
 - a cut in the workforce: the group's workforce in France was cut by [10-20] % during 2008 alone ([...] employees in France in December 2008 compared with [...] employees in January 2008).

⁽¹⁷⁾ In fact, following a fall of [6-8] % between 2005 (EUR [900-950] million) and 2006 (EUR [800-850] million), Trèves' turnover recovered by [4-7] % from 2007 (EUR [850-900] million). Its profitability also recovered significantly since its EBITDA rose to EUR [50-60] million in 2007, or by [...] % compared with 2006 (EUR [30-40] million) and by [...] % compared with 2005 (EUR [40-50] million).

- (78) At the beginning of 2009, Trèves then drew up more formally a new version of the restructuring plan, with the assistance of the independent consultancy firm [...]. This firm in particular confirmed the amount of cash resource requirements considered necessary to finance the plan (EUR [110-140] million, see recitals 25 *et seq.*).
- (79) Firstly, it must be stressed that the forecasts for future turnover appearing in the restructuring plan seem to be credible and realistic. In fact, the estimate of orders from manufacturers on which these forecasts are based had been revised substantially downwards. For example, the volumes expected for 2009 are [15-25] % below their 2008 level. On the other hand, the forecasts are consistent with those drawn up at the same time by motor vehicle sector analysts (the company JD Power, for example) concerning the expected recovery of the sector and its configuration by the year 2011. Trèves therefore estimated its future turnover on the basis of a prudent, sound estimate of volumes. The plan remains prudent concerning the trend in the sector and counts on a level of activity in 2011 [...] than the sales recorded in 2008.
- (80) Secondly, the plan introduces a significant reduction in costs. This reduction is achieved, *inter alia*, by boosting the efficiency of the workforce and by cutting operating costs [...] ⁽¹⁸⁾ [...]. The reduction in costs is also based on a sizeable reduction in the workforce (the restructuring involves a total of 1 300 persons).
- (81) On the basis of these measures, the restructuring plan provides for:
- a return to breakeven from 2010, with a pre-tax result of EUR [0-10] million, a positive cash flow of EUR [0-10] million and an EBITDA of EUR [40-70] million,
 - a pre-tax result of EUR [10-30] million from 2011, with a cash flow of EUR [10-30] million and an EBITDA of EUR [50-80] million.
- (82) It should be noted that, before committing itself, the FMEA itself instructed the firm [...] to conduct a full audit, between mid-March and end-April 2009, of Trèves' situation (due diligence exercises). The FMEA teams themselves also analysed and confirmed the restructuring plan.
- (83) Moreover, in the context of its restructuring, Trèves undertakes to dispose of its [...] activity, taking into account the industrial and social balances relating to this operation and seeking to contribute to the competitiveness of the industrial plant and processes of the new Trèves group.
- (84) In the light of the factors above, the Commission concludes that the restructuring plan on which the FMEA based its investment in Trèves can be considered credible and realistic.
- Regarding the valuation of Trèves before the FMEA investment and the structure of this investment
- (85) Trèves' equity prior to the FMEA investment was valued at EUR [15-40] million. On this basis, the FMEA acquired [< 50] % of Trèves' equity through a capital increase of EUR [5-15] million. The Commission has to check that this valuation is appropriate and prudent in the light of the situation of the undertaking at the time.
- (86) Several methods exist for estimating the value of the equity of an undertaking ⁽¹⁹⁾. One method often used is that of the multiple of the EBITDA. It allows the value of the equity of an undertaking for year X to be assessed by multiplying the EBITDA of year X by a factor (the multiple) considered to be appropriate for the sector and subtracting the net debt from the result.
- (87) Another method is discounted cash flow analysis. The undertaking's nominal free cash flows for the coming years are discounted at the weighted average cost of capital, or WACC) and the net debt is subtracted from the value obtained.
- (88) A third method is that of the multiple of turnover. It allows the value of an undertaking's equity in year X to be assessed by multiplying the turnover of year X by a factor (the multiple) considered to be appropriate for the sector and subtracting the net debt from the result.
- (89) To value the company Trèves prior to its investment, the FMEA used the discounted cash flow analysis and the multiple of turnover methods. In fact, since Trèves did not have a positive EBITDA at the end of 2008, the first method mentioned, i.e. the multiple of the EBITDA, was not practicable.
- (90) On the other hand, the method of the discounted cash flow analysis was possible and allowed the prospects of return to profitability to be taken into account, which results in the integration in the valuation of the beneficial effects expected from the improvement in the performance of the undertaking. The multiple of turnover method was also used as a precaution and for confirmation.

⁽¹⁸⁾ [...].

⁽¹⁹⁾ By definition, the value of the equity of an undertaking is equal to the value of the undertaking minus the net debt.

- (91) As regards the method of the discounted cash flow analysis of the undertaking, the sectoral capital cost or WACC, integrating the specific sectoral risk, was estimated at 12 %. The FMEA then calculated a more prudent WACC of [> 12] % by integrating the additional specific risk premiums associated with the dimension of the undertaking and the non-liquid nature of the investment. It finally adopted a WACC of [> 12] % to take account of the additional risk associated with the turnaround (i.e. restructuring) of the undertaking. The long-term value of the undertaking (known as the terminal value) is calculated on the basis of the 2011 results. The FMEA therefore established the value of the equity of the Trèves group at EUR [15-40] million.
- (92) As regards the multiple of turnover method, the multiple adopted and applied to the end-2008 turnover was [0-1]. This multiple corresponds to the multiples observed on the market for comparable undertakings at the time of the transaction. It should be pointed out that in late 2008 and early 2009, these multiples reached historically low levels on account of the financial and economic crisis which greatly affected the motor vehicle manufacturing sector and the automobile parts manufacturers (in fact the long-term average of the multiple of turnover for the automobile parts manufacturers is set at 0,51). On the basis of a multiple of [0-1], the value of Trèves' equity stands at EUR [15-40] million.
- (93) Therefore, even though the multiple of [0-1] is a multiple which has to be considered to be historically weak, the FMEA adopted the value based on this multiple and not that resulting from an average long-term multiple or a multiple smoothed over several years. Likewise, the FMEA did not adopt the valuation resulting from the discounted cash flow analysis either. As a result of the above, the valuation of Trèves' equity before the FMEA made its investment is appropriate and prudent. It is in fact at the low end of the interval calculated according to the discounted cash flow analysis method and the stock market multiples. A valuation undertaken in this context is a favourable factor for the private investor, as it tends to strengthen the prospects of a capital gain in the perspective of valuation multiples returning to their average historical levels.
- (94) Furthermore, it should be recalled that the FMEA investment is not confined to a capital contribution of EUR [5-15] million providing it with [< 50] % of the Trèves group shares. The FMEA also contributed EUR [40-50] million in the form of debt securities giving access to capital (convertible bonds with adjustable parity), bearing interest of [> 8] % p.a. This is a sophisticated structure which a private investor would have demanded in a sector such as the motor vehicle subcontracting sector. In fact, the presence of a significant quantity of convertible bonds, with parity varying in accordance with the performance of the company, is one of the control mechanisms with the greatest possible incentive effect.
- (95) The mechanism put in place by the FMEA is the following. The convertible bonds can be redeemed through the issue of new Trèves company shares. The parity is determined in 2011 by attaining a gross operating surplus margin of [...] %. If this threshold is reached, the FMEA will obtain [...] % of the equity by redeeming bonds. If this threshold is not reached, redemption of the bonds would lead to the FMEA holding [...] % of equity. It is therefore in the interests of the Trèves managers to ensure that this gross operating surplus margin is achieved [...]. There is therefore strong convergence in the interests of the financial investor and those of the manager shareholders in maximising the value of the company on exit.
- Regarding the assumptions justifying an IRR of [> 12 %]
- (96) The approach generally adopted by a private investor consists in assessing the annual internal rate of return arising from the investment project under consideration. With a view to calculating the annual IRR of an investment in an undertaking, it is appropriate to determine the value of the equity of this undertaking at the time when the profitability is expected.
- (97) As has already been indicated in recitals 85 to 87, several methods are available for determining the value of an undertaking. To assess the value of the undertaking prevailing in 2012, the year when the FMEA could dispose of its participation⁽²⁰⁾, the FMEA used the method of the multiple of the EBITDA. This method is often used in the industrial sector with a view to providing for the exit terms for a capital or quasi-capital investor. Furthermore, by calculating the expected return on the basis of the EBITDA, the FMEA takes as a basis a pertinent measure for the recovery of the undertaking which must be achieved between its investment (25 May 2009) and the end of 2011. In addition, by adopting the EBITDA forecasted for 2011 and not the – higher – EBITDA forecasted for 2012, the FMEA adopts a prudent approach consisting of verifying that the undertaking is making a satisfactory recovery in a reasonably short period (just over 2½ years).
- (98) Consequently, in the case in point, the IRR calculated by the FMEA is based on three assumptions mentioned in the restructuring plan. Firstly, the Trèves group should achieve an EBITDA of EUR [50-80] million at the end of 2011. Secondly, the value of Trèves at the end of 2011 is determined on the basis of a multiple of the EBITDA of [1-6]. Thirdly, the net debt is estimated at EUR [50-150] million at the end of 2011. The Commission must in this way determine whether these three assumptions are to be considered as credible and realistic at the time when the FMEA investment was made.
- ⁽²⁰⁾ The potential disposal by the FMEA of its holding in 2012 is a working hypothesis with a view to assessing the return on the investment as it would stand in 2012, on the basis of the 2011 results. According to the shareholder agreement, the FMEA is totally free to retain or dispose of its holding in the first [...] years of its investment. [...] Furthermore, be that as it may, the sharing of the capital gain in the event of possible disposal of the company is favourable to the FMEA (see recitals 110 and 111 of this Decision).

- (99) Firstly, as regards the EBITDA value for 2011, it should be emphasised that this forecast is based on the implementation of the restructuring plan. As explained in recitals 76 *et seq.*, this plan can be considered to be credible and realistic. Therefore, it should be recalled that the reduction in costs is primarily implemented by boosting labour efficiency and cutting operating costs thanks, in particular, [...]. The reduction in costs is also based on a sizeable reduction in the workforce (the restructuring involves a total of 1 300 persons).
- (100) Secondly, the EBITDA multiple used ([1-6]) to determine the value of the undertaking corresponds to the average multiple for the sector calculated over the period 2000-09 ([1-6]), minus, as a precaution, the standard deviation associated with the context of the turnaround of the company. This multiple is slightly higher than the multiple of the sector at the time of the investment (about 4,2). Nevertheless, it is sufficiently prudent to take a figure of [1-6] as a basis for the valuation at the end of 2011, in view of the foreseeable recovery in the ratio, and for that matter this recovery already having made a good start at the time of the investment ([1-6] in December 2008 as opposed to [1-6] in May 2009). This multiple also seems to be particularly prudent in the light of the long-term forecasts for the sector indicating multiples of between [1-6] and [1-6].
- (101) Thirdly, the forecasts drawn up in April 2009 showed an improvement in the net debt, which was to fall from EUR [100-200] million at end-2008 to EUR [100-200] million at end-2010 (it had deteriorated previously, increasing from EUR [100-200] million at end-2005 to EUR [100-200] million at end-2008). In view of the aggregate level of the forecasted EBITDA for the period 2009-11, the absence of significant additional costs associated with tangible and intangible investments and the absence of additional provisions to cover the restructuring costs, the forecast of a reduction of EUR [0-30] million seems prudent.
- (102) In the light of the above, it is appropriate to conclude that the calculation of the IRR at the time of the investment is based on reasonable assumptions.
- Regarding the acceptability of an IRR of [$> 12\%$] and the sharing of the capital gain
- (103) As regards the question whether the IRR referred to of [$> 12\%$] is acceptable in the light of the risk entailed in the investment, the Commission makes the following comments.
- (104) Firstly, it should be recalled that the calculation made on the basis of the information set out in recitals 97 to 100 in reality results in an IRR of [$> 15\%$]. However, in the interests of safety and prudence, the FMEA applied a discount of [...] % to the EBITDA forecasted for 2011. Consequently, the IRR of [$> 12\%$] adopted for the purposes of the present analysis is an IRR resulting from a pessimistic scenario regarding the development of the undertaking. In fact, as has already been indicated, the base scenario results in an IRR of [$> 15\%$] whereas an optimistic scenario (EBITDA exceeded by [...] %) results in an IRR in the region of [$> 20\%$].
- (105) At present, it should be pointed out that, in view of the non-liquid nature of the transaction, it is not possible to refer to comparable quoted prices (for example for subordinated loans) at the time of the FMEA investment to assess whether the level of the forecasted IRR is appropriate. On the other hand, several factors presented below allow the 'minimum' IRR of [$> 12\%$] adopted by the FMEA in May 2009 to be assessed.
- (106) It should be pointed out firstly that the returns on investment observed in the automobile subcontracting sector are often low. In fact, in the 5 years before the crisis of the second half of 2008, the average IRR amounted to 8,5 % ⁽²¹⁾. Nevertheless, professional investors have often invested in this sector, aware of the potential gain linked to the low valuation of the undertakings in this sector [compared with other sectors]. In this way, in 2006, exceptional IRRs were to be found (exceeding 20 % per year over 3 years) for investors having invested during the market trough in 2003.
- (107) Consequently, in order to exceed the average returns observed, a professional investor must rely on in-depth knowledge of the market, which is the case for the FMEA, and provide for a participation structure enabling it to optimise its return, which is also the case for the FMEA investment (see the considerations concerning the structure of the investment in recitals 94 and 95 and the sharing of the capital gain in recitals 110 and 111).
- (108) Secondly, the French authorities invoke a study by the AFIC (French Venture Capital Association), which follows the performance trend of the venture capital sector in France. This study is based on data communicated by more than 120 structures managing more than 500 investment funds. The work of the AFIC shows a net performance of between 14,1 % for end- 2007 and 10,8 % for end-2008 (the closest date to the FMEA investment) for 'development capital'. Development capital is the relevant subdivision of venture capital from the point of view of the FMEA investment policy (acquisition of minority holding and injection of fresh capital). After taking account of the cost of remuneration of the management company, estimated at a maximum of [...], the target IRR to be attained to be able to produce a 'market' performance is between 12 % and 15 %.
- ⁽²¹⁾ This measure is undertaken on the basis of a significant stock market price index of the main automobile parts manufacturers. If the crisis is included, the average IRR for the 5 years preceding 1 December 2009 slumps to 4,7 %.

- (109) Finally, the parameters available at the time of the investment enable a weighted average capital cost ('WACC') to be determined on the basis of the CAPM⁽²²⁾ and adapted to the motor vehicle sector in France, integrating the additional specific risk premiums associated with the dimension of Trèves and the non-liquid nature of the investment. In view of these additional factors inherent in the risk premium, the corresponding WACC is estimated at [> 12] % at the time of the investment, raised to [> 12] % by the FMEA (see recital 91). It must be borne in mind that the WACC is the minimum rate of return required by the providers of capital of an undertaking (shareholders and creditors) to finance investment projects. The WACC calculated for Trèves therefore gives a significant indication regarding the acceptability of a 'minimum' IRR of [> 12] %⁽²³⁾.
- (110) Moreover, it should be emphasised that Trèves' capital gain will not be shared between the FMEA and the historical shareholder according to their respective share in Trèves' capital. In fact, assuming an exit in [...], the shareholder agreement specifies that the first EUR [...] million of the value of the company will be allocated in full to the FMEA (first tranche). Then, the proceeds from the sale amounting to between EUR [...] million and an amount equal to that of the FMEA investment capitalised at [...] % per year is shared between the FMEA ([...] %) and the historical shareholders ([...] %) (second tranche). Finally, the FMEA receives [...] % of the proceeds of the sale beyond this threshold and the historical shareholders [...] %.
- (111) This agreement on the sharing of the capital gain provides protection for the FMEA. In fact, the FMEA in this way receives a significant guarantee that an IRR of [> 12] % on its investment will rapidly be attained (this rate corresponds to the WACC of Trèves presented above). Secondly, this agreement is a strong incentive for the historical shareholder and the company managers to achieve, and even exceed, the objectives of the restructuring plan, with this plan resulting in an IRR of [> 12] %, [> 15] % or [> 20] % for the FMEA, depending on the scenario.
- (112) Consequently, it results from the findings above that the estimated IRR of [> 12] % was reasonable at the time of the investment and acceptable in the light of the risk it entails.

⁽²²⁾ Capital asset pricing model.

⁽²³⁾ The WACC calculated is based on the debt costing [0-10] % and equity [10-20] %. In view of the composite structure of the FMEA investment (capital contribution and convertible bond contribution), it is inappropriate to assess this investment by giving priority to either the cost of the debt or the cost of the equity. It is observed, for example, that the FMEA claim from the debt securities is preferential (preference of new money). In addition, in relation to the new credit facility amounting to EUR [10-30] million granted by the banks, the FMEA negotiated a '*pari passu*' position for a significant proportion of the debt securities, i.e. covering a tranche of EUR [10-20] million. The level of the WACC therefore seems the best indicator. Be that as it may, it should be pointed out that the cost of equity amounting to [10-20] %, which in any case cannot be adopted as such for the reasons mentioned above, is lower than the IRR of [> 15] % expected in the base scenario which constitutes the return required by the FMEA.

Conclusion concerning the criterion of benefit

- (113) Having analysed the Trèves restructuring plan, its valuation prior to the FMEA investment, the structure of this investment, the assumptions underlying an IRR of [> 12] % and the appropriateness of this IRR, especially in the light of the shareholder agreement provided for regarding the sharing of the capital gain, it should be pointed out that the FMEA operated under conditions similar to those that a private investor would have required in respect of an investment presenting a risk associated with both the situation of the motor vehicle industry at the time of the investment and that of the company, which was experiencing certain financial difficulties. In other words, the FMEA investment amounting to EUR 55 million respects the criterion of the private investor operating in a market economy. Therefore it does not confer any benefit on Trèves.

V.1.2. The tax and social security debt rescheduling plan

- (114) The French authorities authorised Trèves' tax and social security debt rescheduling plan for an amount of EUR 18,4 million. The Commission first wishes to examine the criterion of benefit in relation to this measure.

Benefit

- (115) According to the Commission's decision-making practice and case-law, a debt rescheduling agreement by a public creditor is not State aid if it has acted like a private creditor which 'seeks to recover sums due to it and which, to that end, concludes agreements with the debtor, under which the accumulated debts are to be rescheduled or paid by instalments in order to facilitate their repayment'⁽²⁴⁾.
- (116) For Trèves' public creditors, the debt rescheduling plan is a better solution than enforced recovery. In fact, in the case of forced recovery, the public creditors, in the light of the company's general level of debt, would have recovered only part of their non-preferential claims. On the other hand, by authorising the rescheduling, first-ranking mortgages [...] (Article [...] of the conciliation protocol of 25 May 2009) were established with a view to guaranteeing the tax and social security debts. These assets are identified in Annex 7 to the protocol. At 31 December 2008, their net accounting value was EUR [25-35] million. The volume of the collateral established in favour of the public creditors therefore covers over 140 % of the amount of their claim, which comprises the principal (EUR 18,4 million), penalties for late payment and interest on arrears (see recital 117).

⁽²⁴⁾ Court of Justice judgment of 29 April 1999 in Case C-342/96 *Spain v Commission*, known as 'Tubacex', [1999] ECR I-2459.

- (117) Moreover, Trèves' public creditors will receive interest. In fact, the amount of EUR 18,4 million was supplemented by penalties for late payment of EUR [1-2] million and interest on arrears of EUR [1-2] million, with the sum being repayable in full between [...] and [...] in monthly instalments of EUR [...]. The addition of penalties and interest on arrears amounts to EUR [2-4] million, i.e. [10-20] % of the principal, which represents annual interest of about [0-10] % over the weighted average duration of the rescheduling plan. This rate was from the start higher than the rates granted by the financial institutions for the loans granted to Trèves under the conciliation protocol of 25 May 2009, for both the new credit and the consolidation loan ⁽²⁵⁾.
- (118) In this respect, it should also be emphasised that the commitment of the public creditors occurred at the same time as a major commitment by the banks (consolidation loan of EUR [30-60] million and new credit facility of EUR [10-30] million). Moreover, the conciliation protocol explicitly indicates that the securities granted to the banks are second-ranking [...], which means that these creditors cannot call upon any security until the first-ranking public creditors have all been repaid in full.
- (119) In addition, no tax and social security debt remission was granted to the Trèves group.
- (120) Finally, the French authorities confirmed that the current rescheduling plan did not constitute an extension or modification of a previous plan.
- (121) Consequently, it results from the above that Trèves' tax and social security debt rescheduling plan was authorised by the French authorities on the basis of the assumptions, deemed to be credible, which underlie the restructuring plan (see Section V) and subject to terms and conditions which are acceptable to a private creditor operating in a market economy under the same circumstances.

V.2. Conclusion regarding the assessment of the presence of State aid within the meaning of Article 107(1) TFEU

- (122) In the light of the factors set out in Section V.1., it appears that neither the FMEA investment amounting to EUR 55 million or the tax and social security debt rescheduling plan amounting to EUR 18,4 million confer a benefit on the Trèves group. Consequently, these measures do not constitute State aid within the meaning of Article 107(1) TFEU.

VI. GENERAL CONCLUSION

- (123) After having carried out a detailed investigation of the measures in question, the Commission finds that they do not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The two measures taken in relation to the company Trèves, consisting of an investment by the Fonds de Modernisation des Equipementiers Automobiles (Fund for the Modernisation of Automobile Parts Manufacturers) (FMEA) amounting to EUR 55 million and a tax and social security debt rescheduling plan amounting to EUR 18,4 million authorised by the French Republic, do not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 20 April 2011.

For the Commission
Joaquín ALMUNIA
Vice-President

⁽²⁵⁾ However, these rates are established by adding a margin based on the EURIBOR rates, which are floating rates. Consequently, comparison with the fixed rate of [0-10] % is not entirely relevant, even though since 25 May 2009 the rates granted by the banks have never exceeded [0-10] %.