COMMISSION DECISION

of 13 July 1988

concerning aid provided by the United Kingdom Government to the Rover Group, an undertaking producing motor vehicles

(Only the English text is authentic)

(89/58/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice in accordance with the above Article to interested parties to submit their comments,

Whereas :

I

By letter of 14 March 1988 from its Permanent Representative the United Kingdom Government notified the Commission of its intention to provide new capital to the Rover Group in the context of the sale of the remaining car and jeep businesses of the group to British Aerospace. This notification followed a statement to the United Kingdom Parliament on 1 March 1988 that British Aerospace had declared its interest in acquiring the Government's shareholding in the company and it expected that negotiations on an exclusive basis would be concluded by 30 April.

On 29 March 1988 the Commission decided to initiate the procedure laid down in Article 93 (2) of the EEC Treaty in respect of the notified aid plan of the United Kingdom Government. Given that the new capital injection would be used to reduce the financial burden and the debt repayment obligations of Rover Group, the Commission considered that it conferred a competitive advantage on Rover Group *vis-à-vis* other Community car manufacturers. Thus, the proposed measure contained aid elements falling under Article 92 (1) of the EEC Treaty. Moreover, the aid element of the assistance measure was not contested by the United Kingdom Government.

The main reasons for opening the procedure were the danger of distortion of competition given the sensitivity of the motor vehicle industry, the absence of any figure for the proposed debt write-off and the lack of information concerning additional restructuring efforts.

By letter dated 30 March 1988 the Commission gave the United Kingdom Government notice to submit its comments. In accordance with Article 93 (2) of the EEC Treaty, the other Member States and third parties were also given notice to submit their comments.

II

The United Kingdom authorities presented their comments under the procedure by letters dated 29 April, 18 May, 26 May, 6 June, 14 June, 7 July and 12 July 1988 providing detailed information on the precise terms of the agreement, on the restructuring efforts to be undertaken by Rover Group in the future, on the group's activities, its financial and fiscal situation and its future prospects.

In particular, the United Kingdom authorities communicated the following principal terms of the sales agreement which was reached on 29 March 1988 :

— the United Kingdom Government intends to make a capital injection of £ 800 million into Rover Group to eliminate the company's indebtedness,

— British Aerospace would immediately thereafter pay £ 150 million to the United Kingdom authorities for their 99,8 % shareholding in Rover Group,

— British Aerospace would meet all costs of future restructuring in Rover Group,

— Rover Group would not use more than £ 500 million of its current level of £ 1 600 million trading tax losses and these trading tax losses will remain within Rover Group,

— the parliamentary assurances given by successive United Kingdom Governments in relation to Rover Group's obligations have been substantially modified, and would not cover new obligations incurred by Rover Group after completion of the sale,

— the United Kingdom authorities indicated that they would not give any of the warranties that might be expected in such a sale, save for formal warranties to the title to the Government shareholding,

— British Aerospace would undertake not to on-sell the Austin Rover and/or Land Rover businesses, nor their trademarks, for the next five years. Should one of these events occur, British Aerospace would have to pay a penalty of up to £ 650 million to the United Kingdom Government.

It was furthermore agreed that the sale would come into effect after its approval by the Commission of the European Communities and by British Aerospace's shareholders.

In the light of experience gathered during a similar exercise in 1986 the United Kingdom authorities concluded that it was not appropriate to hold a public auction for Austin Rover open to all parties. They stated that in reaching this conclusion they took full account of the commercial advice submitted by the Rover Group board that the business might not survive such an auction and they considered an unsolicited expression of interest made by British Aerospace in acquiring the whole of the Government's shareholding in the Rover Group.

Although British Aerospace was given a period of exclusive negotiation, the United Kingdom authorities made clear that if any other party made an offer it would be considered before final decisions were taken on the British Aerospace offer. According to the United Kingdom authorities, before entering into contract with British Aerospace, a number of confidential expressions of interest by third parties were received but none amounted to a specific offer.

The corporate plan 1988 to 1992 foresees investments and restructuring costs totalling £ 1 553 million. In addition, a considerable reduction is planned in assembly and component capacities for Austin Rover in order to increase productivity and capacity utilization. The plan envisages a global capacity reduction in vehicle assembly and components of some 30 % which will almost entirely resolve the present overcapacity of some 35 %. As concerns Land Rover, no additional capacity cuts are foreseen other than the ones already undertaken during 1985 and 1986.

The arguments put forward by the United Kingdom authorities in support of their aid proposal concerning the Rover Group can be summarized as follows:

— the proposed aid is consistent with the objective of creating a more competitive structure for the vehicle industry in the Community and in its view is in line with Community objectives and policy in this sector,

— the aid is directly linked to the United Kingdom authorities' objective of returning all the Rover Group's operation to the disciplines of the market,

— without the capital injection the sale of the Group would be prevented given that without the elimination of its heavy accumulated debt, the Group could not be sold. The sale would contribute to the wider restructuring of the industry in Europe, not only as presently foreseen but also in the future, in accordance with the discipline of the open market,

— the fact that the buyer is not a competitor preserves competition between European and other vehicle manufacturers by not reducing their number,

— the proposed sale of the Group to British Aerospace would complete the United Kingdom Government's withdrawal from direct involvement in vehicle manufacture and would eliminate any need for future State participation in the financing of the Rover Group,

— according to the United Kingdom authorities, the price paid by British Aerospace was the result of a normal process of negotiation and represents a reasonable acquisition price. In determining the price the following issues were considered. The risk inherent in acquiring the business is considerable given that the company has a long history of loss-making and has only just reached profitability at operating level. Cash-flow is expected by British Aerospace to remain negative for several years. At the same time, the company operates in a mature industry with underlying global overcapacity on world level and is subject to intense competition. Rover Group has yet to complete its reorientation towards specialized manufacture of quality cars, and will not have a suitable model range for some years. Furthermore, the sale excludes any warranties which in a conventional sale of a business the seller would be expected to assume and British Aerospace has in addition agreed to retain the core businesses for five years. Finally, account had to be taken of the substantial potential benefits which British Aerospace has foregone as a result of the agreed capping of tax losses and reliefs accumulatd by Rover Group. The capital injection of £ 800 million is designed in a way that if British Aerospace did not meet the above conditions, Rover Group would become liable to pay to the United Kingdom Government up to a maximum of £ 650 million.

Two other Member States and several third parties concerned submitted observations under the abovementioned procedure.

III

The proposed sale of Rover Group to British Aerospace constitutes the final withdrawal of the United Kingdom Government from the motor vehicle industry. Since 1975 when the British authorities acquired a majority shareholding in British Leyland Motor Corporation, £ 2 910 million has been injected in the form of equity capital in British Leyland Public Limited Company, which changed its name to The Rover Group plc in 1986. The present decision has to be seen in the context of previous Commission Decisions on State aid proposals for the Rover Group (ex British Leyland).

By its Decision of 5 June 1975 the Commission did not raise any objections to the proposal of the United Kingdom Government to grant £ 900 million to British Leyland between 1975 and 1978 in the form of £ 200 million share capital, £ 200 million financial guarantees and £ 500 million in the form of long-term loans. The aid measures supported a restructuring plan which would reduce BL's installed car capacity to its current production level as laid down in the Ryder Report. The notification of the aid plan also mentioned that a further £ 500 million of loans would be needed for the period 1978 to 1981. Through biannual reports the restructuring efforts and the aid provisions were monitored by the Commission.

By its Decision of 22 June 1978 the Commission did not raise any objections to the modifications of the original restructuring plan adopted in 1975 by which the timing of the payments and the type of assistance changed. Of the total figure of £ 1 billion of long-term loans, £ 450 million would be provided in the form of new capital in 1978. The change in the aid measures was made by the United Kingdom authorities in view of the decline of British Leyland's share of the United Kingdom market. The general objectives of the 1978 corporate plan were not different from the original 1975 programme.

By its Decision of 24 March 1980, the Commission did not raise any objection to the additional modifications of the original restructuring plan adopted in 1975 by which the type of assistance changed and the amount was slightly increased. The United Kingdom Government injected £ 300 million new equity capital of which £ 225 million corresponds to the remaining balance of the £ 1 billion budget fixed in 1975 and an additional aid of £ 75 million.

By its Decision of 28 July 1981 the Commission authorized the provision of £ 990 million equity capital in support of the corporate plan 1981 to 1985. Of the amount £ 610 million was earmarked for the loss-making activities of the company and £ 130 million for social measures. In the new plan a considerable reduction of vehicle capacity was foreseen including several closures. Through biannual reports the restructuring measures, the aid provisions and the volume of investment notified was monitored by the Commission.

By its Decision of 10 January 1985 the Commission announced that the United Kingdom Government would not contribute to British Leyland the remaining £ 10 million capital foreseen in 1981 and, at the same time, an additional proposal of £ 100 million to cover new capital reductions in the truck business was withdrawn.

By its Decision of 18 March 1987 the Commission approved a capital injection of £ 680 million to Rover Group in order to facilitate the privatization of the truck and bus subsidiaries. The aids covered past and future restructuring costs of both businesses which included a substantial capacity reduction for buses and trucks. Through quarterly reports this restructuring is being monitored by the Commission.

IV

The former British Leyland Group, which last made profits in the financial year 1975/76, owned at that time 68 manufacturing facilities in the United Kingdom, 37 in the car business, 12 in the commercial vehicle business and 19 in special products. British Leyland also wholly or partly owned 26 manufacturing plants overseas, making a total of 94 manufacturing plants throughout the world.

Since then, in accordance with the subsequent corporate plans many plants have been closed during the late 1970s and early 1980s. From its original employment of 170 000 only some 45 000 jobs could be maintained. The reduction of employment is not only due to closures and rationalization of remaining plants. In fact the United Kingdom Government has decided to return the whole of the Group to the private sector. After the disposal of overseas participations and non-car businesses in the United Kingdom, the luxury car division Jaguar Cars was sold in 1984 to the private sector. In 1987 the commercial vehicles business and the parts service and component business were privatized. In total, since 1978, some 46 of the Group's businesses have been sold. This restructuring was taken into account by the Commission in its approval of the various aid measures.

The Group's position in the European car market has decreased accordingly. In 1974 the Group sold 468 000 cars in the United Kingdom market which corresponds to a market share of 32,7 %, and exported 361 000 cars. In 1987 Rover Group sold 297 000 cars in the United Kingdom market which corresponds to a market share of 14,7 % and exported 143 000 cars.

At present, Rover Group consists of two main businesses, i.e. the car business, Austin Rover, and the jeep business, Land Rover, which together in 1987 realized a total turnover of some £ 3 billion. The Group still holds minority participations in six former subsidiaries, the most important of which is a 40 % participation in DAF BV. The manufacturing structure of the businesses is as follows: car assembly takes place at Cowley and Longbridge, car bodywork at Swindon, car engines are produced at Drews Lane and Longbridge and car gearboxes at Llanelli and Longbridge. Jeeps and jeep components are manufactured at Solihull. In 1987, during which Rover Group obtained its best production and sales result of the 1980s, the overall capacity utilization in the abovementioned plants did not exceed 60 %.

The Rover Group produces currently in its car division nine different car models of which five are jointly developed with Honda. The Honda-Austin Rover cooperation has developed steadily since the first agreement was concluded in late 1979. Production of jointly developed models accounts for 29 % of Austin Rover production. Of this proportion 1,4 % or 6 700 cars were Honda label cars. The proportion of jointly developed models in total car production will rapidly increase with the next year's introduction of the R8/Honda Concerto. As a result, the proportion of Honda label cars will increase from 1,4 to 8 % in the early 1990s.

Rover Group is increasingly dependent on Honda for its components' supply. Honda currently supplies Austin Rover with two types of engine. From 1989 onwards, the new Honda engine plant at Swindon will supply some 70 000 additional engines for the R8/Honda Concerto.

As concerns the state of technology, considerable amounts have been invested by Rover Group to modernize its car assembly lines, especially in Longbridge. The automation of the jeep assembly lines is much less pronounced and can be called semi-manual manufacturing. As regards Austin Rover's components, at least part of the production is outdated, e.g. certain engines and transmission series are respectively 36 and 29 years old.

V

In its examination of the compatibility with the common market of the proposed public intervention in support of Rover Group, the Commission has verified to what extent these measures contain aid elements under Articles 92 and 94 of the EEC Treaty.

The proposed debt write-off of £ 800 million which Rover Group would obtain once the take-over from British Aerospace takes place would discharge the Group of its financial charges and debt repayments which it normally would have to pay over the coming years. Given that the acquisition price of £ 150 million which the buyer is prepared to pay is inferior to the proposed capital injection, British Aerospace would acquire Rover Group for a negative price. Under normal market conditions it is excluded that a private shareholder would provide a sum for debt write-off of his company which would exceed the acquisition price. Under the circumstances of the present case, the debt write-off proposed by the United Kingdom Government would give Rover Group a competitive advantage in relation to other Community car manufacturers. Assuming that the proposed acquisition price reflects fairly the real net worth of the company in the market, it is concluded that the capital injection in the form of a debt write-off as proposed constitutes aid under Article 92 (1) of the EEC Treaty. It should be noted that already in the notification of the proposed measure the United Kingdom Government did not dispute the aid element of the debt repayment.

The United Kingdom Government has committed itself not to grant any further discretionary aid to Rover Group in the future apart, as communicated by the United Kingdom Government in the course of the procedure, from its intention to support a part of Rover Group's investments (some £ 843 million) to be realized in assisted areas with regional grants in the framework of the Regional Selective Assistance Scheme. Despite the fact that the regions in which these investments will take place are eligible for regional aid up to the ceiling of 20 % net grant equivalent, as approved by the Commission in 1984, the United Kingdom authorities have nevertheless committed themselves to limit the regional assistance to £ 78 million.

The aids to be provided to Rover Group affect trade between Member States because there is intensive intra-Community trade for all products manufactured by the Rover Group. In fact, for passenger cars in 1987 trade between Member States amounted to 5,33 million units, of which 152 000 units were exported from the United Kingdom to the other Member States. In 1987, Rover Group exported 116 000 vehicles to other Member States, i.e. 22 % of its total vehicle production in the United Kingdom.

According to the United Kingdom Government the proposed capital injection of £ 800 million corresponds to 99,9 % of the net financial debt of Rover Group at the moment of its acquisition. The 1987 consolidated balance sheet of Rover Group shows a net indebtedness of £ 585,8 million at 31 December 1987. According to the United Kingdom Government, this sum does not represent the true indebtedness of Rover Group's continuing businesses. The sum of £ 585,8 million has to be augmented by £ 139,3 million in order to take account of the restructuring costs which will arise in Rover Group's former commercial vehicle activities over the next years. The Commission accepted in its Decision of 18 March 1987 that before these restructuring costs arise it would be appropriate for the Rover Group to use the money temporarily to reduce the debt of the remaining businesses. As shown in the quarterly monitoring reports prepared for the Commission, at 31 December 1987, Rover Group remained committed to apply £ 139,3 million towards this restructuring and this sum was thus depressing the true level of Rover Group's overall indebtedness. In this connection it should be noted that the closure of three commercial vehicle plants is scheduled to take place later in 1988.

The inclusion of this item takes the Rover Group's overall indebtedness at 31 December 1987 to £ 725,1 million. In order to arrive at the real level of indebtedness at the moment of sale, the United Kingdom authorities claimed that the costs of the strike at Solihull, Land Rover amounting to £ 25 million and the increase in debt in the first half of 1988 mostly due to interest charges estimated at £ 51 million should be taken into account for the debt calculation. The indebtedness of the Group at the moment of its acquisition would therefore be £ 801,1 million.

However, the Commission concluded after close scrutiny that the above debt calculation is incorrect in that the following items included in the calculation of the United Kingdom authorities cannot be considered as true financial debt but as working capital:

(i) Advances from associated finance company: £ 155,8 million

(ii) Accruals falling due after more than one year: £ 25,1 million

(iii) Land Rover strike: £ 25 million

(iv) Increase in debt first half 1988: £ 26 million.

The above items add up to a total of £ 231,9 million so that the Commission considers the total net financial debt of Rover Group to be £ 569,2 million. In arriving at this conclusion, the Commission has taken into account the following considerations:

(i) This facility is designed to finance stocks of finished vehicles during the period between dispatching a vehicle on consignment to a distributor and the moment of its sale. This finance is provided by an associate company called Wholesale Vehicle Finance Ltd (WVF), 20 % owned by Rover Group and 80 % by Lombard North Central.

Up to the financial year 1986, this item was listed in the statutory accounts of Rover Group as a credit item in the valuation of stocks. With effect from the 1987 accounts Rover Group's auditors, Coopers & Lybrand, agreed that it would be appropriate to show the finance provided through WVF as a separate item in the listing of creditors falling due within one year. It has to be noted that Rover Group is not obliged to list this item as a borrowing. Practice in this respect varies among United Kingdom companies.

In this respect the Commission considers that this item represents a clear-cut financing of working capital because it constitutes financing of stocks.

(ii) The main element in the provision for long-term accruals are the liabilities linked to guarantees offered on cars sold in the United States, given the longer guarantee periods required on the United States market. Similar guarantees covering less than one year for sales of cars elsewhere are not considered by Rover Group's auditors as financial debt. Therefore, the Commission has concluded that these accruals constitute a normal operating cost.

(iii) Direct and indirect costs arising from the strike at the beginning of 1988 should not be considered as financial debt but as an ordinary operating cost. Moreover, the United Kingdom authorities have provided evidence on Land Rover sales during the first four months of 1988, which show that the sales were not affected, given that they were higher than the corresponding sales in 1987. The immediate effect of the strike was mitigated by selling out of stocks which produced a financial benefit to the company through the reduction of stocks and their cost.

(iv) The increase in debt during the first half of 1988 due to interest charges on £ 800 million debt for £ 41 million and £ 10 million actual liabilities in creditors and accruals form only part of the half-year result. According to the United Kingdom authorities Rover Group will have an operating profit of £ 30 million in 1988. In addition, exceptional profits are expected from sales of assets as well as profits from subsidiaries during this period. Furthermore the negative impact of interest payments on profits seems overestimated as in the first half of 1987, when debt was considerably higher, interest payable less interest receivable corresponded to £ 32,2 million.

The Commission has received evidence that the debt situation has significantly deteriorated during the first half of 1988. However, in the light of the above, the Commission is willing to accept an additional £ 25 million as part of the real debt level at the end of 1987 which corresponds to the interest payments on financial debt of £ 404 million paid during the first half of 1988 (excluding the restructuring provisions of £ 139,3 million).

This brings the estimated net indebtedness at 30 June 1988 to £ 569,2 million, which includes £ 139,3 million future restructuring costs in the former commercial vehicle business of Rover Group.

In conclusion, the Commission considers that the proposed £ 800 million debt write-off contains £ 231,9 million working capital which cannot be considered as financial debt. This is in contrast to the letter of 29 April 1988 in which the United Kingdom authorities claimed that the capital injection relates entirely to Rover Group's indebtedness and does not provide any working capital. Provisions of working capital through aid correspond clearly to operating aid. In this context it is an established policy by the Commission not to accept any operating aid because a company's normal and day-to-day business must entirely be financed from resources other than through aid. This is especially so since any State assistance benefiting from such operation has particularly negative effects on competition because it confers a direct and immediate cost advantage *vis-à-vis* its competition while at the same time it does not meet any criteria set out in Article 92 (3) (c) of the Treaty. This is particularly the case for operating aid in sectors such as automobiles which are sensitive at Community level.

Having established the real net financial debt at £ 569,2 million, the Commission considered that under normal market economic conditions, there is no conclusive reason why the write-off, of the totality of these debts is indispensable in order to sell the company to a private investor. In this respect it should be noted that the audited net worth of the Group at the end of 1987 which corresponds to the net book value of the assets minus the net borrowings was established at £ 333,7 million. However, according to estimates established by the Commission and several outside experts, the real net worth of the company is by far inferior to this amount taking into account that negative cash flows will occur during the next years and that the company's operation in the future bears significant business risks.

It is also important to note that the company is currently not excessively indebted. The debt-turnover ratio of Rover Group being approximately 18 % is comparable to several other Community car manufacturers.

VI

Article 92 (3) of the EEC Treaty lists those forms of aid which may be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community as a whole and not of a single Member State.

In order to safeguard the proper functioning of the common market and taking into account the principles of Article 3 (f), the exceptions from the principle of Article 92 (1) as set out in Article 92 (3) must be construed narrowly when an aid scheme or any individual aid award is scrutinized.

In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to the attainment of one of the said objectives.

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes or facilitates the development of certain areas, the application of the aid measure cannot benefit from the exception provided for in Article 92 (3) (a) since the standard of living is not abnormally low, nor is there serious underemployment in the regions concerned in this case. Nor does the aid measure incorporate the requisite features of aid to facilitate the development of certain economic areas within the meaning of Article 92 (3) (c). Although some of Rover Group's production plants are located in assisted areas, the proposed aid to write off £ 800 million debt will not be awarded under the United Kingdom regional aid system and the United Kingdom Government has in fact not attempted to justify the aid in question on regional grounds.

As regards the exemptions provided for in Article 92 (3) (b), it results from the foregoing that the aid in question was not intended nor suited to promote the execution of an important project of common European interest or to remedy a serious disturbance of the United Kingdom economy. Furthermore, the United Kingdom Government has not invoked this.

With regard to the exception provided for in paragraph 3 (c) of Article 92 of the EEC Treaty in favour of 'aid to facilitate the development of certain economic activities', the Commission may consider certain restructuring aid to be compatible with the common market if a number of criteria are fulfilled [1].

The criteria must be viewed in the light of the two principles of Article 92 (3) (c), i.e. the aid must be necessary for the development of the sector from a Community standpoint, and must not alter trading conditions to an extent contrary to the common interest [2].

These criteria were systematically verified in order to assess the compatibility of the elimination of total debt established by the Commission at £ 569,2 million.

(i) Sectoral aid should be limited to cases where it is justified by circumstances in the industry concerned. Aid should lead to a restoration of long-term viability by resolving problems rather than preserve the status quo and put off decisions and changes which are inevitable.

(1) Eight Competition Report, point 176.
(2) See Court of Justice, Judgment of 17. 9. 1980, Case 730/79, Phillip Morris [1980] ECR, 2671.

The European automobile industry is currently operating at very high levels of capacity utilization and virtually all car manufacturers are back in profit. This is the result of two consecutive years, i. e. 1986 and 1987, with record car sales in Europe and of the restructuring efforts undertaken by several manufacturers. However, the risk of a re-emergence of overcapacity in the Community cannot be ruled out in the medium term, given the expansion plans announced by several producers, increasing Japanese penetration both in terms of direct imports and inward investment and increasing opportunities for imports from third countries with undervalued currencies. Moreover, at world market level there is currently an overcapacity of several million cars per year.

Therefore, a restructuring plan by a Community car manufacturer which aims at a considerable reduction of capacities contributes to reducing the danger of future surplus capacity problems in the sector.

The corporate plan presented by Rover Group and approved by British Aerospace covers the period 1988 to 1992 and foreshadows a substantial reduction in car assembly and component capacities in the order of 30 %. The central objective of the plan is to transform Rover Group in the medium term from a volume producer to a specialist producer offering a limited range of upper-market models containing higher value added and profit margins. Should Rover Group succeed in establishing itself in this promising new market niche and assuming the continuation of its joint venture with Honda in product development, it should be able to restore its long term viability. As the restructuring involves a number of measures in a variety of activities, the time required is considerable and is comparable to the efforts already undertaken by other groups in the sector.

(ii) Unless granted over relatively short periods, aids should be progressively reduced and clearly linked to the restructuring of the sector concerned.

The proposed measure of debt write-off is presented as the last discretionary aid which the United Kingdom Government is to award to Rover Group. Indeed, the United Kingdom Government has undertaken not to award any further discretionary aid to Rover Group in the future apart from the abovementioned amount of regional assistance. From the acquisition by British Aerospace onwards, the restructuring efforts and any other operating costs of the enterprise will be entirely covered from the company's cashflow, external sources and British Aerospace.

It also has to be taken into account, that part of Rover Group's current debt is due to unaided restructuring efforts undertaken outside the commercial vehicle businesses during the year 1986/87 which amounted to £ 40 million and included capacity reductions.

The proposed aid is clearly linked to the restructuring of Rover Group over the years to come given the written commitment of British Aerospace towards the United Kingdom authorities to execute the corporate plan 1988 to 1992.

(iii) The intensity of aid should be proportionate to the problem it is designed to resolve so that distortions of competition are kept to a minimum.

A provision of £ 569,2 million for debt write-off can be regarded as excessive when seen in relation to the restructuring and investment costs of £ 1,553 million between 1988 and 1992. The aid would correspond to 36,7 % of the total restructuring cost (1). However, the intensity of aid to be awarded in relation to the total cost of the restructuring plan should be in proportion to the problems the plan will resolve, e. g. the degree of overcapacity in the company which is to be eliminated through reduction of capacity. Therefore, the Commission cannot accept that the total indebtedness of Rover Group amounting to £ 569,2 million be written off. Moreover, this would place the company in a far more favourable financial position than most of its Community competitors who have to carry a considerable level of debt. Without aid, the buyer would therefore have to take over the complete financial debt of £ 569,2 million. However, the Commission acknowledges to some extent the commercial risks advanced by the United Kingdom authorities that British Aerospace assumes with the takeover, and takes into account the considerable investment and restructuring costs which Rover Group has to undertake and to which British Aerospace has publicly engaged to contribute. Therefore, the Commission considers that a minimum amount of £ 100 million should be taken over by British Aerospace which represents 17 % of the £ 569,2 million financial debt as established by the Commission and is commensurate with the commercial risks to be borne by the new owner. This would reduce the original proposal of £ 800 million debt write-off to £ 469 million.

(1) Given that the aid is in form of debt write-off, the calculation of a net grant equivalent in relation to future investments is not applicable.

The debt write-off of £ 469 million corresponds to 30 % of the total restructuring cost and is therefore more in line with the reduction of capacity pursued by Rover Group.

In the Commission's view such a reduction of the debt written off is necessary to ensure that intra-Community trade is not affected in a way contrary to the common interest and that consequently any distortions of intra-Community competition remain limited. The future distortion of competition will also be limited by the fact that Rover Group will try to become a specialist producer and retire gradually from the volume car market. Forecasts foresee a significantly stronger demand for upper market models than for volume cars.

However, the Commission considers that trade would not be distorted by the use by British Aerospace of the capital tax advantages of Rover Group. Therefore the Commission does not object to a transfer of capital tax benefit from Rover Group to British Aerospace within the limits of the United Kingdom tax legislation.

(iv) Industrial problems and unemployment should not be transferred from one Member State to another.

The implementation of the Rover Group corporate plan will not give Rover Group the possibility of increasing its market share and will not have adverse effect on the utilization of capacity by other Community car manufacturers. The aid to Rover Group should therefore not lead to job losses in other Member States.

In conclusion, the aid in the form of a debt write-off of £ 469 million to be awarded to Rover Group in the case of its sale to British Aerospace at a price of £ 150 million should lead to the restoration of the company's viability and, through the proposed restructuring, will contribute to the avoidance of structural problems which the Community motor vehicle industry may face in the near future. For these reasons the Commission considers that the aid facilitates the development of the sector concerned at Community level without adversely affecting trading conditions to an extent contrary to the common interest.

The limitation of the trade-distorting effect of the aid depends, however, largely on the future restructuring being carried out within the anticipated period. Moreover, in the framework of the 1987 Decision of the Commission regarding the restructuring of Rover Group's former commercial vehicle businesses, three production plants should be closed this year. Thus, it is necessary to ensure that the aid to the Rover Group does not distort competition in one or more of the markets in which it is present and does not adversely affect trading conditions within the Community to an extent contrary to the common interest. Consequently, if the Commission considers that the exception under Article 92 (3) (c) is applicable to the aid to be granted to Rover Group, its authorization is only valid if certain conditions are respected in order to assure that trading conditions are not altered to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The aid to Rover Group amounting to £ 800 million is notified to the Commission in the form of a capital contribution aiming at a debt write-off to be awarded in 1988 in the framework of its acquisition by British Aerospace is compatible with the common market pursuant to Article 92 (3) (c) up to a maximum amount of £ 469 million, provided that the United Kingdom Government:

1. does not alter the proposed terms of sale as communicated to the Commission and in particular:

   — the acquisition price paid by British Aerospace will be £ 150 million,

   — British Aerospace will bear all future restructuring costs,

   — Rover Group will not use more than £ 500 million of its current £ 1 600 million trading tax losses and these trading tax losses will remain within Rover Group,

   — British Aerospace cannot on-sell the core businesses of Rover Group within the next five years without incurring a penalty of up to £ 650 million,

   with the exception of the amount of debt write-off which must be limited to £ 469 million;

2. ensures that the aid will be used exclusively for the repayment of financial debts of Rover Group;

3. refrains from granting any further aid in the form of capital contributions and any other form of discretionary aid to the Rover Group with the exception of a regional grant not exceeding £ 78 million in support of the future investment plan of Rover Group up to 1992. This may only be awarded in so far as the investment plan as communicated to the Commission is fully realized;

4. ensures that British Aerospace completes the Rover Group corporate plan by the end of 1992 in accordance with the details communicated to the Commission;
5. ensures that any underspending or overevaluation on any of the debt items communicated to the Commission is repaid to the United Kingdom Government no later than on the completion of the corporate plan;
6. ensures that Rover Group shall, once it has passed into private ownership, no longer benefit from the parliamentary assurances given in relation to its obligations taken over by the purchaser and, moreover, refrains from guaranteeing new obligations incurred by Rover Group after completion of the sale.

Throughout the implementation of the corporate plan the United Kingdom Government shall provide the Commission with a half-yearly report on Rover Group's trading performance, capacity changes, production, pricing policy and intra-Community exports by product as well as a detailed survey of all restructuring measures undertaken in the previous six months.

Article 2

The remaining part of the notified aid to Rover Group in the form of a capital contribution amounting to £ 331 million constitutes State aid which is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and shall therefore not be awarded.

Article 3

The United Kingdom shall inform the Commission of the measures taken to comply with this Decision within two months from its notification.

Article 4

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 13 July 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission