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Information and Notices

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([1]) Text with EEA relevance

I

(Information)

COMMISSION

Ecu [1]

26 April 1996

(96/C 124/01)

Currency amount for one unit:

Currency	Amount	Currency	Amount
Belgian and Luxembourg franc	39,2774	Finnish markka	6,05045
Danish krone	7,36915	Swedish krona	8,48272
German mark	1,91140	Pound sterling	0,826923
Greek drachma	303,869	United States dollar	1,24700
Spanish peseta	158,369	Canadian dollar	1,69592
French franc	6,44762	Japanese yen	132,581
Irish pound	0,800591	Swiss franc	1,54329
Italian lira	1953,75	Norwegian krone	8,20402
Dutch guilder	2,13948	Icelandic krona	83,9606
Austrian schilling	13,4489	Australian dollar	1,57649
Portuguese escudo	195,492	New Zealand dollar	1,82044
		South African rand	5,55851

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

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[1] Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).
Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).
Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).
Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).
Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).
Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Communication of Decisions under sundry tendering procedures in agriculture (cereals)

(96/C 124/02)

(See notice in Official Journal of the European Communities *No L 360 of 21 December 1982, page 43)*

Standing invitation to tender	Weekly invitation to tender	
	Date of Commission Decision	Maximum refund
Commission Regulation (EC) No 1089/95 of 15 May 1995 opening an invitation to tender for the refund or the tax for the export of barley to all third countries (OJ No L 109, 16. 5. 1995, p. 16)	25. 4. 1996	ECU 7,50/tonne (*)
Commission Regulation (EC) No 1090/95 of 15 May 1995 opening an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries (OJ No L 109, 16. 5. 1995, p. 19)	—	No tenders received
Commission Regulation (EC) No 1091/95 of 15 May 1995 opening an invitation to tender for the refund for the export of rye to all third countries (OJ No L 109, 16. 5. 1995, p. 22)	25. 4. 1996	ECU 37,94/tonne
Commission Regulation (EC) No 430/96 of 8 March 1996 opening an invitation to tender for the refund or the tax for the export of common wheat to all third countries except Algeria, Morocco and Tunisia (OJ No L 60, 9. 3. 1996, p. 10)	25. 4. 1996	Tenders rejected
Commission Regulation (EC) No 591/96 of 2 April 1996 opening an invitation to tender for the refund or the tax for the export of durum wheat to all third countries (OJ No L 84, 3. 4. 1996, p. 28)	25. 4. 1996	ECU 0,50/tonne (*)
Commission Regulation (EC) No 604/96 of 3 April 1996 opening an invitation to tender for the refund or the tax for the export of common wheat to Algeria, Morocco and Tunisia (OJ No L 86, 4. 4. 1996, p. 20)	—	No tenders received
Commission Regulation (EC) No 2428/95 of 16 October 1995 on an invitation to tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries (OJ No L 249, 17. 10. 1995, p. 19)	—	No tenders received
Commission Regulation (EC) No 2429/95 of 16 October 1995 on an invitation to tender for the refund on export of wholly milled round grain rice to certain third countries (OJ No L 249, 17. 10. 1995, p. 22)	—	No tenders received
Commission Regulation (EC) No 2430/95 of 16 October 1995 opening an invitation to tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries (OJ No L 249, 17. 10. 1995, p. 25)	25. 4. 1996	ECU 354,00/tonne

(*) Minimum export tax

STATE AID

C 27/95 (ex NN 45/95)

France

(96/C 124/03)

(Text with EEA relevance)

(Articles 92 to 94 of the Treaty establishing the European Community)

Commission notice pursuant to Article 93 (2) of the EC Treaty to the Member States and interested parties concerning the proposal of the French Republic to award aid to the Beaulieu Group in support of the company's planned investment in new capacity for production of carpet webbing and carpets, to be located in Maubeuge, Nord-Pas-de-Calais

By the letter reproduced below, the Commission informed the French Government that it had decided to close the Article 93 (2) procedure opened on 26 April 1995.

'On 26 April 1995, the Commission decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty on the aid that the French Government was proposing to award Beaulieu Group in support of an investment in two new factories to manufacture carpets and carpet backing from polypropylene bulked continuous filament (PP-BCF) yarn, to be located at Maubeuge, Nord-Pas-de-Calais.

In taking this decision, the Commission noted that, as the PP-BCF yarn would be supplied from newly installed capacity belonging to Beaulieu Group, the proposed aid would be by way of indirect support for the production of PP-BCF yarn. As the proposed aid would not lead to a significant reduction in capacity, it did not conform with the Code on aid to the synthetic fibres industry (1). Therefore, it appeared to be incompatible with the common market and the functioning of the EEA Agreement. In addition, the Commission noted that the proposed aid might also come within the scope of the Community framework for aids to the textile industry (2).

Finally, the Commission also noted that, in considering the compatibility of any aid to Beaulieu Group, it would take into account its Decisions 84/111/EEC and 84/508/EEC, dated 30 November 1983 (3) and 27 June 1984 (4) respectively, by which it had decided that aid awarded by Belgium to Beaulieu Group in 1983 was incompatible with the common market, and should be recovered. Until Belgium complied with these Decisions, which is not yet the case, the incompatible aid would continue to give Beaulieu Group an unjustified advantage over its competitors.

By letter dated 28 June 1995, the Commission informed France that it had decided to open the procedure provided for in Article 93 (2) of the EC Treaty in respect of the aid that the French authorities was proposing to award to Beaulieu Group. Other Member States and interested parties were informed by publication of the letter in the *Official Journal of the European Communities* (5).

By letter dated 31 July 1995, the French Government reiterated that aid had not been awarded to Beaulieu Group in support of its new facility for the production of PP-BCF yarn, currently under construction in Douvrin, Nord-Pas-de-Calais. Moreover, there was not yet any formal proposal to award aid to Beaulieu Group in support of an investment in two new factories for the manufacture of carpets and carpet backing to be located at Maubeuge, Nord-Pas-de-Calais, because the company had not formally applied for aid. The French Government repeated earlier assurances that, if such an application were received, it would be considered in the light of the relevant Community rules and regulations.

However, by letter dated 27 October 1995, the French Government informed the Commission that Beaulieu Group now no longer had any intention of undertaking its originally planned investment project at Maubeuge, Nord-Pas-de-Calais. The French Government undertook to inform the Commission if, at any time, Beaulieu Group were to revive its original plan and State aid was likely to be involved.

By letter dated 29 November 1995, submitted under the Article 93 (2) procedure, Beaulieu Group stated that, although it had at one time been interested in locating an investment project at Maubeuge, Nord-Pas-de-Calais, the project was no longer being considered.

(1) OJ No C 346, 30. 12. 1992, p. 3. The period of validity of the current Code was subsequently extended to 31. 3. 1996 — see OJ No C 224, 12. 8. 1994, p. 4 and OJ No C 142, 8. 6. 1995, p. 4.

(2) Communication to Member States dated July 1971 (SEC(71) 363 final), and letter to Member States SG(77) D/1190 dated 4. 2. 1977 and Annex (Doc. SEC(77) 317, 25. 1. 1977).

(3) OJ No L 62, 3. 3. 1984.

(4) OJ No L 283, 27. 10. 1984.

(5) OJ No C 284, 28. 10. 1995, p. 8.

Comments were also received under the Article 93 (2) procedure from the British Polyolefin Textiles Association, the International Rayon & Synthetic Fibres Committee, the British Carpet Manufacturers' Association, the European Association for Textile Polyolefins, the Austrian Textile Industries' Association, the Government of the Netherlands. All of these interested parties supported the Commission's action in initiating Article 93 (2) proceedings with respect to the aid that the French Government was proposing to award to Beaulieu Group.

One other party submitted comments, but did so outside the timescale specified in the published notice of the initiation of the procedure.

By letter dated 12 January 1996, the comments submitted under the procedure were sent to the French Government, which did not comment.

The French Government has stated that it does not at this time have any intention to award aid to Beaulieu Group in support of its originally planned investment in two new factories for the manufacture of carpets and carpet backing on a site at Maubeuge, Nord-Pas-de-Calais. Beaulieu Group has confirmed that it is not at this time pursuing the originally planned investment project.

Accordingly, the Commission does not have to assess the compatibility of any such aid with the common market and the functioning of the EEA Agreement. Therefore, it is obliged simply to close the Article 93 (2) proceedings opened in 1995.

If Beaulieu Group were to decide to invest in new facilities to manufacture carpets and carpet backing on a site located in Nord-Pas-de-Calais or elsewhere, and if there were a proposal to award aid in support of that investment, the Commission would of course have to consider whether or not such aid conformed with the Code on aid to the synthetic fibres indsutry and the Community Guidelines on aid to the Textiles Industry. The Guidelines state, among other matters, that aid will not be authorized if it would lead to an increase in capacity and that aid to create additional capacity in those sectors of the textile and clothing industry where there is excess structural capacity or persistent stagnation of the market must be avoided. In considering the compatibility of such aid with the common market and the functioning of the EEA Agreement, the Commission would also take all the relevant factors into account including, where relevant, the circumstances already considered in Decisions 84/111/EEC and 84/508/EEC, and the obligations that those Decisions imposed on Belgium.

In the light of the above, the Commission has decided to close the Article 93 (2) procedure initiated in 1995 on the aid that your Government was at that time proposing to award to Beaulieu Group in support of an investment in two new factories to manufacture carpets and carpet backing, which were to have been located at Maubeuge, Nord-Pas-de-Calais.

The Commission advises your authorities that the other Member States, EFTA States and other interested parties will be informed of this decision by the publication of this letter in the *Official Journal of the European Communities* and the EEA Supplement of the Official Journal.'

STATE AID

C 60/95 (NN 169/95)

Austria

(96/C 124/04)

(Text with EEA relevance)

(Articles 92 and 94 of the Treaty establishing the European Community)

Commission notice pursuant to Article 93 (2) of the EC Treaty to other Member States and other parties concerned regarding aid granted by the Austrian government to Head Tyrolia Mares, in form of capital injections

By means of the letter reproduced below, the Commission informed the Austrian Government of its decision to open the procedure.

'1. **Background**

On 26 June 1995 the Commission received a letter from a French producer of articles for winter sport (skis, ski boots, ski bindings), containing a request for the Commission to investigate into alleged State aid granted to the Austrian company Head Tyrolia Mares (HTM) by its shareholder, the public holding Austria Tabakwerke (AT).

Since April 1995 the press has been reporting on rescue-packages granted by AT to HTM, to compensate the high losses incurred over the last three years. In particular, two AT's decisions to provide new capital to HTM were reported in April and August 1995, the latter decision to be actually implemented by means of several injections over the years 1995 to 1997. In September the press further reported that an Agreement had been reached between AT and an international group of investors to privatize HTM.

On 8 August 1995 the Austrian authorities sent a letter to the Commission informing it of AT's intention to inject öS 1 500 million (ECU 113 million) into HTM, claiming this to be a mere commercial investment and refuting the unfavourable reactions of the media.

The Commission sent a letter to the Austrian government on 1 September 1995 in which it requested detailed information on the alleged aid measures, on HTM's commercial and financial situation, on all restructuring measures undertaken or planned and on the company's future plans and forecasts.

The Austrian government replied with a letter dated 21 September 1995. A first meeting with Austrian representatives was held on 27 September 1995.

Two further complaints were received by the Commission from Austrian competitors of HTM on 6 and 16 October 1995. Both asked the Commission to investigate into the financial support granted to HTM by its public shareholder AT. Also, a subject interested in the acquisition of HTM submitted its observations on the matter to the Commission with four communications dated 4, 10, 18 October and 8 November 1995 and in a meeting held on 23 October 1995, claiming that AT rejected its offer without sufficient justification. The Commission met one complainant on 29 November 1995, who submitted that he had never been invited to participate in the acquisition of HTM, neither were his manifestations of interest in that sense taken into account by AT.

The Austrian authorities and AT/HTM's representatives, assisted by their consultants, submitted further elements and explanations through several communications dated 6, 11, 13, 20, 25, 30, 31 October 1995 as well as in the course of meetings with Commission officials held on 27 September, 11 and 18 October, and 7 and 21 November 1995. Thereby the Commission obtained a global picture information on:

— the structure and activity of AT and HTM,

— the alleged aid measures,

— AT's plan for HTM's privatization and the preliminary sale contract agreed with an international group of investors, and

— HTM's restructuring plan set up by the buyer.

With a telefax dated 30 November 1995 the Austrian government asked the Commission for all injections effected by AT into HTM during 1995 and planned up to and including June 1996 to be authorized as rescue aids, after having been converted into shareholder loans, bearing commercial interests at a rate of 7,78 % per year.

2. **Austria Tabakwerke and Head Tyrolia Mares**

HTM is the holding company of a group operating in the manufacturing and marketing of sports articles, mainly for winter sports, tennis and diving. In 1994 the group had a turnover of about US $ 447 million (ECU 590 million), almost totally realized in the United States of America, Japan and Western Europe. In June 1995 the group employed about 2 700 workers.

AT, the Austrian State tobacco monopoly (100 % owned by the Ministry of Finance), acquired in 1993 the controlling stake of HTM held by Swiss, US and Japanese investors. This diversification move, which resembles those of other tobacco-related holding companies such as Philip Morris or Amer Group, was prompted by the tobacco market decline and by the expected ban on the tobacco monopoly once Austria entered the EEA.

At the time of its acquisition, HTM was burdened with a high indebtedness level, owing to two recent leveraged buy out operations, so that the acquisition price was very low (US $ 20 million — ECU 17,5 million). For the same reason HTM was immediately recapitalized with US $ 100 million (ECU 88 million) — this measure being a condition provided by the sales-contract — and received in addition a shareholder loan of DM 85,25 million (ECU 46,5 million).

In spite of the announced rationalization, diversification and new investment programmes, the HTM group incurred heavy losses in 1993 and 1994. For 1995 forecasts show a considerable negative operating margin, — 13 % on the group turnover. Negative results are mainly due to the sharp decline in the world ski market (ski demand reduced by 45 % in the last five years), and to the highly negative performances of some activities such as sportswear and golf equipment. High financial charges and some restructuring and extraordinary items further depress the financial performance.

In January 1995 AT required the assistance of the merchant bank SBC Warburg in elaborating a plan for HTM's turnaround. In March 1995 Warburg was entrusted to develop a project for HTM privatization. In June Warburg started a selection procedure of potential buyers for HTM, by sending letters to some 40 candidates.

In order to avoid HTM being declared insolvent, AT was forced to inject a further öS 400 million (ECU 31 million) in April 1995 and to convert its loan of 1993 into new equity.

In July 1995 a restructuring plan was drafted, that should allow HTM to return to viability and be profit-making by 1997. This plan foresaw the concentration on the core businesses of ski/bindings/boots, tennis and diving, and the abandonment of golf, sportswear and sportshoes (excl. tennis shoes). To finance this plan and to counter a new insolvency procedure, AT's shareholder, the Ministry of Finance, decided in August 1995 to allow the granting of further capital to HTM of up to öS 1 500 million (ECU 116 million). The recapitalization was scheduled in various tranches, to be paid in 1995, 1996 and 1997. öS 373 million were paid to HTM in August and September. AT adopted the restructuring plan and in parallel continued the search for a buyer for the group. Also, in connection with AT's decision and on condition that AT would carry out the restructuring plan, agreement was reached with the main banks financing HTM, which accepted to write off part of their outstanding debt (öS 430 million) and to reschedule their debts and waive part of the interest (öS 200 million).

At the same time, AT's top management resigned, and two Finance Ministry's officials were appointed to fill the management posts. In September 1995 the restructuring option was abandoned in favour of the immediate sale, due to the dramatic deterioration of HTM's situation, as the new management of AT claimed not to have the necessary skills to manage HTM, and also because a long restructuring process would oblige the Austrian government to postpone the planned privatization of AT, or would prejudice its profitability, by reducing the price offered by the market.

In September 1995 AT's Board of Directors decided, on Warburg's advice, to accept the preliminary offer of a group of international investors led by Johan Eliash (from now on Eliash), and to negotiate an immediate privatization of the whole HTM.

The share purchase agreement with Eliash foresees a sale price of öS 10 million (ECU 0,75 million) and a capital grant to HTM of öS 1 190 million (ECU 90 million) by AT, to be paid according to the following schedule: öS 400 million at 30 September 1995 (öS 373 million actually paid in August and September), 250 at 31 December 1995, 250 at 30 June 1996, 145 at 31 December 1997 and 145 at 31 March 1998. Eliash will

commit itself to inject a further öS 300 million (ECU 22,5 million) in HTM in 1998. In addition, AT will receive 15 % of any capital gain that Eliash will realize when and if he decides to sell HTM or HTM's parts to third acquirors, by mean of either sale of shares or public offering. Finally, Eliash will keep the Austrian sites open for at least three years, and maintain an employment level in the production site in [...] ([1]) of [...] of the current employment level and in the production sites of [...] and [...] of [...] of the current employment level.

The bank agreement on debt write-off and rescheduling became void as a consequence of the new developments on the matter, and new negotiations were started.

In summary the measures undertaken by AT in favour of HTM are following:

— capital injection April 1995: öS 400 million

— capital grant at the sale to Eliash: öS 1 190 million

Total amount: öS 1 590 million (ECU 121 million)

Furthermore, under the new ownership, HTM will keep the benefit of the tax credits attached to the past losses, which will be carried forward. As at 31 December 1994 these losses have been estimated at approximately US $ 370 million (ECU 280 million) for the whole group.

In the last week of November the Commission was informed that the lender banks had again agreed to confirm their contribution, slightly reduced, for HTM's restructuring under the new ownership, by means of the debt write-off (öS 391 million), debt rescheduling and interest waiving (öS 200 million). The new agreement foresees an additional injection by Eliash of öS 25 million, on top of the öS 10 million provided by the sale agreement.

3. **Behaviour of AT**

AT, the Austrian State tobacco monopoly, is owned 100 % by the Ministry of Finance. The Austrian authorities claim that AT has always acted independently of the government and that therefore its choices regarding HTM have always been taken on a purely commercial basis, aiming at maximizing profit minimizing losses. Evidence was submitted that the Finance Minister, at the time of the HTM acquisition, expressed his worries about the operation.

Also, they argue that AT has constantly been profit-making and has always provided dividends of a minimum of 14 % of the stockholding capital to its shareholder over the last decade. Only in 1994 did it incur a substantial loss, owing to HTM's negative results.

AT's core activity (still the only one apart from the sports sector and some real estate business) is the management of the tobacco monopoly in Austria. Complying with the Community legislation, this market was liberalized starting from 1 January 1995, apart from certain activities, such as distribution, where AT retains special rights.

The Austrian authorities, in order to demonstrate AT's "commercial" behaviour with respect to HTM, in particular as regards its disposal for a substantially negative sale price, have submitted to the Commission evidence of similar operations undertaken by private corporations. Examples are Trygg-Hansa (a Swedish leading insurance group), which withdrew from a loss-making involvement in the US insurer, Home holding; Hanson (an Anglo-American conglomerate), which decided a demerger of 34 small US subsidiaries; AEG (the German electronics arm of the Daimler-Benz group), which divested some business in the context of a thorough restructuring process; Eemland (Dutch-registred consortium of international investors), which decided to sell Wilkinson Sword, the razor and toiletries company, with a debt-free balance sheet; Schörghuber (German group operating in the real estate investments and the breweries sector), which sold the controlled construction company Heilit & Woerner at a symbolic price while providing a final contribution to its equity.

Also, the Austrian authorities stressed that the sale to Eliash was the more favourable solution for AT and the Austrian government. Apart from AT's claiming not to have sufficient managerial capacities to restructure HTM, such a restructuring would need an additional öS 300 million funding by AT (the part to be injected by Eliash under the purchase agreement), without giving sufficient prospects of this money being recovered as an increased capital value of HTM after restructuring.

([1]) Confidential.

The option to liquidate HTM is also considered less favourable by AT, particularly owing to the claimed high risk of AT being called in as responsible for HTM liabilities. The possible amount of these liabilities, which are very difficult to estimate, would be higher than the "cost" of the sale to Eliash. In addition, such a decision would affect the image of AT, at least causing an increase in the interest charges requested by the banks on their lendings to the AT group, estimated at [...] over the next three years.

Also, both options to restructure or liquidate HTM would entail a delay in AT's privatization, estimated at 2¾ years, causing a loss to the Austrian State of [...].

Finally, the Austrian authorities submitted that the readiness of the banks to write off part of their loans, which represents a significant part of the funding required for HTM rescue and restructuring, constitutes a substantial private contribution in the global investment. Thus the funding decided by AT should be regarded as normal market economy investor practice. A list of the borrowing banks, including their outstanding position towards HTM, was therefore submitted to the Commission. At the Commission's request, details of the shareholders of the banks were also submitted.

4. **Competitive position, industrial and financial situation of HTM**

The HTM group consists of five main operations: Head, Tyrolia, Mares, Brixia and Head Sportswear. Head manufactures and markets tennis, squash and racquetball racquets, tennis shoes, alpine skis and equipment and golf equipment. Tyrolia manufactures and markets alpine skis, ski bindings, ski boots and cross-country ski bindings and shoes. Mares manufactures and markets skin and scuba diving equipment. Brixia manufactures and markets ski boots and hiking boots (brandnames San Marco and Munari). Head sportswear designs, produces and distributes sportswear bearing the brandnames Head and Tyrolia. HTM also sells tennis balls and related accessories under the Penn brand and acts as the Italian distributor for Puma footwear and Uvex eyewear.

Operations are located in the United States and in Europe (Germany, Austria, Italy and Estonia). The Austrian production sites are located in Kennelbach (536 employees), Hörbranz (279), Schwechat (395) and Neusiedl (80).

In 1994, HTM's turnover was US $ 447 million (around ECU 590 million). The different products break down as follows:

- Tennis 16,2 %
- Skis 13,6 %
- Ski bindings 21,9 %
- Ski boots 9,3 %
- Diving 9,6 %
- Sportswear 15,9 %
- Sport and trekking shoes 9,3 %
- Golf 1,9 %
- Others 2,3 %.

As for the geographical areas, in 1994 HTM sold 27,4 % of its turnover in the USA and Canada, 22,1 % in Japan and around 45 % in Western Europe (Germany 13,2 %; Italy and Spain 10,6 %; Austria 7,8 %; France 4,4 %).

In the main sectors of its activity, HTM held in 1994 the following market shares and ranked amongst its competitors as follows:

	World market share %	Ranking	Main competitors
Alpine skis (Head/Tyrolia)	11	3	Rossignol, Atomic, Salomon
Ski bindings (Tyrolia)	32	2	Salomon, Marker
Ski boots (San Marco/Munari)	11	4	Nordica, Salomon, Rossignol
Tennis equipment	18	3	Wilson, Prince
Diving equipment (Mares)	11	1	US Divers, Scubapro

On the European market, HTM holds approximately the same rankings, excluding tennis, where Head is market leader (18,8 %).

The following table presents the economic and financial situation of HTM, giving a picture of the negative evolution of the group's performance.

(millions of US $)

HTM group	1991	1992	1993	1994	1995 (estimated) (¹)
Turnover	346	372	376	447	420
Operating profit	[...]	[...]	[...]	[...]	[...]
Net result	(10)	(25)	(19)	(48)	(149)
Total assets	453	453	511	561	562
Banks borrowing	355	369	302	378	308
Equity (incl. shareholder loan)	1	0	133	87	148
Equity injections by AT			150		151

1995: 1 US $ = öS 10,5.

(¹) Figures include: provisions for restructuring costs; an assumed debt forgiveness by the banks of US $ 60 million, which is reflected in an increase in the equity; value of equity injection includes present value of payments 1996-1998.

The expected massive net loss for 1995 includes a number of non-recurring charges and costs for the ongoing restructuring. Roughly it breaks down as follows:

Writedown golf, sportswear, others:	[...]
Operational restructuring:	[...]
Unshipped sales Japan/USA	[...]
Interest expense	[...]
"Adjusted" operating loss	[...]
Total loss 1995	149

The capital injections made by AT have allowed HTM to offset a major part of the losses incurred, to re-establish the equity capital at a positive level and to be relieved partially from an unsustainable level of indebtedness.

5. **Market situation and trend**

All traditional markets where HTM operates, apart from diving, which shows a substantial growth, have been going through a difficult period since the end of the 1980s, suffering from the sharp decline in demand at world level.

Ski alpine

It is a mature market suffering from substantial overcapacity. Japan and USA are the biggest markets. World sales dropped by 45 % in the last five years and are expected to stabilize at a level of about five million pairs, mainly due to the ageing of the skiing population, environmental concerns, competition from snowboards and other form of winter tourism. Prices are stagnant and weak and are not expected to grow. Some attractive niches and some emerging markets may offer some scope for growth, but in general, the market trend is towards concentration on a few big producers.

Ski bindings

The same situation as in the ski market. In the absence of new technologies, such as the use of electronics, which are not expected in the short term, bindings will become more of a commodity to be sold in "sets" with the skis, with little differentiation between brands.

Ski boots

This market is developing in parallel with skis and bindings.

Tennis

The market has been in decline since 1991, world sales having dropped by about 34 % to 8 million units, owing to the trend in the young generation towards more fashionable sports and the drifting of the aged popu-

lation to other sports such as golf. The total market is expected to further decline, with specific geographic regions still having potential for growth. Average prices are likely to decline further, and only a successful product differentiation could allow producers to maintain or increase their prices. The general trend is towards global products and concentration on the global tennis companies.

Diving

The market has enjoyed steady growth, particularly since the early 1990s, and is expected to continue growing at a rate of 3-4 % over the next few years.

6. **Restructuring of HTM**

A comprehensive business plan for the turnaround of HTM, including the necessary restructuring and financial measures, was submitted to the Commission. The plan was developed by Eliash together with the management of HTM, with the assistance of SBC Warburg, M & C Saatchi and Gutmann & Cie.

The strategic objective is the return to HTM's basic activities, centered in particular, in the near term, on the brand Head, on marketing activities, and on the US market. Once restructuring is completed, long-term objectives include extending activities by entering new products and new geographical areas. The restructuring plan foresees as a final objective the offering of part of HTM's equity on the stock market, expected during 1998.

This restructuring plan is based on the following cornerstones:

— re-dimensioning of production capacity in the winter sports lines (skis, boots, bindings) and in racquets to reflect the decline in the market. This includes use of outsourcing and the transfer of labour-intensive manufacturing processes to East European locations to bring down manufacturing costs,

— phasing-out of unprofitable product lines and reduction of stock keeping,

— rationalization of the sales and administrative organization including the merger of principal legal entities,

— development and installation of a logistics system to facilitate the centralized control of inventory management, inventory and shipping.

As regards the main individual products, the following action is envisaged:

Ski production (Kennelbach)

The company's current capacity is [. . .] skis per year. It is planned to phase out certain production lines in the 1996/97 season. This will enable capacity to be reduced by [. .] (1) skis a year, mainly by discontinuing those processes which utilize sandwich and PU-cap sandwich technology. In addition, an already approved project to build up PU-cap technology manufacturing by [. . .] units will not be carried out. Accordingly, HTM will scrap some of its equipment.

At the same time, the site's headcount will be reduced by [. . .] ([. . .] direct labour).

The plan for 1996/97 envisages sales of about [. . .] skis (570 000 in 1995), operating profit before fixed costs being expected to be about [. . .] of turnover.

HTM's strategy will mainly be based on the brand Head, which relies on high technology standards and is strong in the high performance segments.

Binding production (Schwechat)

The plant will be scaled back from its current capacity of [. . .] bindings to about [. . .] (2). The assembly operation in Neusiedl will be terminated. In addition, tooling will be outsourced. A number of machines will become redundant and will be scrapped or sold. The process will lead to a total reduction of about [. . .] of the workforce ([. . .] direct labour).

Sales are envisaged at [. . .] units in 1996 (1 352 000 in 1995), increasing to [. . .] in 1997. Operating margin before fixed costs is expected to be [. . .].

Tyrolia will rely on its strong position in technology, focusing on the high performance segments, to be consistent with Head's brand image and to benefit from higher margins.

Boot production

Key actions are a reorganization and restructuring of the plant in Estonia and measures to improve productivity. Sales are expected at [. . .] pairs in 1996 (654 000 in

(1) — 25 %.
(2) — 42 %.

1995), increasing to [...] in 1998. Operating profit before fixed costs is forecast at about [...].

Racquet production (Hörbranz)

The manufacturing operations will be reorganized, partly by the ongoing change-over from conventional techniques to thermo-diffusion technology, and partly through upgrading and increased utilization of the plant in Budweis, CFR. The thermo-diffusion technology will provide cost savings and reduce environmental problems.

The production capacity in Budweis will go up from currently [...] to [...] (1) racquets. In Hörbranz, the production will be scaled back from [...] to [...] (2). In all, capacity will be reduced by about [...] units (— 12 %).

This new production set-up will allow important cost savings. Specifically, the direct labour force will be reduced by [...].

Head's high technology will be expanded, through the new Twin Tube technology, which allows better performances, lower manufacturing costs and higher sales prices. A strong marketing policy is envisaged, especially in the USA, which is regarded as a key market.

The plan envisages sales at [...] units in 1996 (804 000 in 1995), increasing to [...] in 1998. Operating profit before fixed costs is forecast at [...] of turnover.

Diving equipment production

No significant restructuring is planned in this profit-making branch. Sales are expected at [...] in 1996 (US $ 48 million in 1995), increasing to [...] in 1998. Operating profit before fixed costs is forecast at about [...].

(1) + 85 %.
(2) — 44 %.

Other products

The loss-making marketing activity of golf articles was halted in 1995.

Similarly, the loss-making marketing activity of Head Sportswear in USA was discontinued in 1995. HTM continues to operate a sportswear business in Europe, which is expected to grow in 1996-98 from [...] to [...], with an operating profit before fixed costs of around [...] of turnover.

Streamlining of sales organization and administration

The primary objective is to rationalize the sales organisation and the administrative functions. Interventions will be concentrated in merging entities and improving procedures and electronic systems. In addition, capacity reductions, elimination of marginal lines and reductions of stock keeping units will allow the elimination of portions of selling, general and administration expenses.

Overhead headcount reduction in various European countries is forecast at 164 employees.

Cost of restructuring

The forecast cost of the restructuring action is of US $ 62 million (ECU 50 million). Main cost items are the closure of the golf business, the licensing of the sportswear and the capacity closures and reorganization of the facilities in Kennelbach, Schwechat and Hörbranz, including severance pay for the personnel made redundant.

Financial forecasts

The following table shows the global financial forecasts for the HTM group, up to 1998, based on the implementation of the restructuring programme:

(millions of US $)

HTM group	1995	1996	1997	1998
Turnover	420	361	393	415
Operating profit	[...]	[...]	[...]	[...]
Net result	(149)	(23)	1	20
Operating cash flow	[...]	[...]	[...]	[...]
Free cash flow	[...]	[...]	[...]	[...]
Total assets	562	471	442	414
Banks borrowing	308	262	227	176
Equity (incl. shareholder loan)	148	128	131	151
Equity injections by AT	151			

1995: 1 US $ = öS 10,5.

7. **Assessment**

7.1. *Existence of aid*

The Commission applies the private investor test in order to assess whether funds injected by the State into an undertaking constitute market risk capital, which a private investor would also make readily available, or State aid [1].

As was stated above, the Austrian authorities claim that AT has always acted independently of the government. Moreover, they stress that AT has constantly been profit-making and has always provided dividends to its State shareholder over the last decade, except in 1994, where it incurred a substantial loss, owing to HTM's poor results. It is added that in 1995 HTM's losses will increase substantially, AT's results are therefore expected to be [...] negative.

The Commission observes that AT is a 100 % State-owned undertaking. The members of its administrative board are appointed by its public shareholder, the Ministry of Finances. Its capital constitutes public property, which, consequently, may be considered as falling within the concept of State resources under Article 92 (1) of the EC Treaty if their use and allocation are not determined solely on the basis of market economy criteria [2].

AT's successful activities allowed a regular distribution of dividends to the State from the monopoly tobacco business. The dividends distributed were part of the net profit realized, while the remaining part was retained as equity reserves. Retained profits, as well as the whole of AT's equity capital, must be employed on the basis of strict market economy principles. Otherwise State aid is involved.

In the case of a profitable State-owned undertaking such as AT, the investment of its capital as a grant to HTM, without any prospects of return, will result in a reduced future level of AT's profits (dividends plus retained profit, i.e. a reduced level of return on the State's stake in AT. Such a lack of return is a direct granting of State resources in favour of HTM.

In addition, it is noted that AT's core activity is the management of the tobacco monopoly in Austria. AT's positive results are therefore not surprising. Although this market was liberalized (not completely) starting from 1 January 1995, it is clear that the investments in HTM have been financed by proceeds from the tobacco monopoly. The Commission considers that cross-financing from a State-owned protected sector to a loss-making one may involve State aid, especially if — as it

(1) Commission Communication on the application of Articles 92 and 93 of the EC Treaty and of Article 5 of the Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ 307, 13. 11. 1993, p. 3).

(2) See Case C-303/88, Italy v. Commission, [1991] ECR I-1433; see also Case C-305/89, Italy v. Commission, [1991] ECR I-1603.

appears in the HTM case — it cannot be justified as stemming from a strategic plan of long-term profitability, nor as involving a net benefit to the AT group as a whole.

Also, certain decisions with regard to HTM appear to be related to considerations that cannot be regarded as normal for a market economy investor. The final decision to sell with a "dowry" instead of liquidating or restructuring HTM seems mostly related to the need to privatize quickly AT, which is a government choice and not a private investor's one. Neither can the constraint to keep HTM's Austrian units going for the next three years be considered as a private investor choice as it seems, rather a clause to safeguard its activities in Austria.

The April injection of öS 400 million was made with the sole purpose of avoiding HTM's becoming insolvent, independently of a restructuring plan or other operations intended to solve HTM's poor situation, which were apparently only being studied. It was a sudden, substantial rescue measure undertaken by AT after HTM's accounts deterioration had become unsustainable. In this respect, it is true that the Court recognized, in the ENI/Lanerossi case [1], that a mother company may, for a short period of time, bear the losses of a subsidiary, for reasons such as the likelihood of an indirect material profit, the desire to redirect the activities of the group, e.g. by ensuring the winding-up of a subsidiary in a proper and less costly way, and the desire to protect the group's image, with the possibility of obtaining a profit at least in the long term. It seems, however, that a private investor should and would have acknowledged HTM's real situation well before. He would presumably have intervened at a much earlier stage, thus avoiding the loss caused by delayed action.

The August and September injections, totalling a further öS 400 million, were also made with the only purpose of rescuing HTM from insolvency. Also, they are part of the "dowry" that AT is to pay as part of the conditions for the sale to Eliash, i.e. a capital grant without any prospect of positive return.

Capital injections and compensation of losses in connection with the privatization of a company are generally considered as State aid when they are not compensated by the sale price received by the State, in which case the final financial balance of the operation would be positive. In the HTM case, the sale price is insignificant compared to the capital injections/grants provided/to be provided by AT, so that the final sale value is highly negative. Also, AT's right, provided by the share purchase agreement, to receive 15 % of any capital gain that Eliash will realize in case of a future sale of HTM seems, at the present stage, not likely to materialize at a relevant level. In fact, according to the financial plan, HTM's equity forecast for 1998 approximately equalizes the current level, i.e., no capital gain is expected to arise in the next three years.

As was mentioned above, the Austrian government is of the opinion that the intended capital grant of öS 1,190 million, as well as the preceding cash injections, correspond to the normal behaviour of a private market investor in a comparable situation and does therefore not constitute State aid. It stresses that the time elapsing between the first rescue injection and AT's decision to divest HTM is relatively short (less than six months), and argued that such a period was appropriate and necessary to elaborate a proper plan for a HTM and finally to decide to sell it. Nevertheless, it seems that AT could and should have intervened at a much earlier stage in HTM in order to avoid the accumulation of huge losses and the costly decision it is obliged to take now.

Also, the Austrian authorities claim that similar painful decisions are sometimes taken by private holding companies as well, which may decide to sell their ailing subsidiaries at a negative price. Some of these cases were submitted to the Commission. While some of these examples can be taken as proof that "negative price" sales of public undertakings should not automatically be interpreted as State aid, they are not sufficient to eliminate the presumption of aid in the HTM case. In fact, on the basis of the few elements submitted, they seem to refer to operations taking place under substantially different circumstances from those obtaining in the case in question. In the case of Trygg-Hansa, the holding company sold a loss-making subsidiary operating in the same sector — insurance — to a competitor, also taking into consideration the possible development of a broader business collaboration with it. Hanson decided to demerge 34 small subsidiaries by putting them in a company whose equity was distributed to Hanson's shareholder, maintaining therefore a link with them. AEG, the holding of a group in serious financial difficulties, divested some businesses in the framework of a comprehensive and coherent industrial restructuring which involved the whole group structure. In any case no precise information is given of AEG's disposal of subsidiaries at a negative price. Eemland's decision to sell Wilkinsons with a debt-free balance, while Eemland's shareholder shared its financial

(1) Case C-303/88, Italy v. Commission, [1991] ECR I-1433.

liabilities between them, seems the operation that most resembles that of AT. However, the sale seems to depend on other factors as well, such as the need to comply with an antitrust authorities' order to Gillette (operating in the same business as Wilkinson) to end its involvment in Eemland on the ground that it was anti-competitive.

In this respect the HTM case presents some similarities to the Neue Maxhütte Stahlwerke case, which was recently the subject of a Commission decision [1]. The Bavarian government intended to inject a final capital provision into the company at the same time of its sale for a symbolic price, arguing this would be the behaviour of a private market investor ready to bear such a "negative" price on the basis of considerations such as the group's reputation, its social responsibility and its standing in the market. In this case the Commission decided that the net loss of the operation constituted State aid, precisely because the Bavarian government did not receive any economic advantage, even in the long term, and furthermore did not undertake to minimize the possible economic disadvantage.

The Austrian authorities took from the Neue Maxhütte Stahlwerke decision another case of a private undertaking, Schörghuber group/Heilit & Woerner Bau AG, claiming it to resemble to the HTM case. Schörghuber (operating in the real estate investment and development business and breweries sector) decided to terminate the holding in Heilit & Woerner (a construction undertaking), and to leave the construction sector in general. Heilit & Woerner was sold to another construction company for a symbolic price while Schörghuber provided a final contribution to its equity of DM 50 million (ECU 26.3 million). The Commission maintains that the circumstances under which this operation took place are substantially different to the HTM case, in particular as regards the relationship between the divested business and the remaining, "core" business of the group (such a relationship does not exist in the AT/HTM case). Therefore the doubts concerning the "private" nature of AT's behaviour cannot be eliminated by this comparison.

The Commission is of the opinion, which differs from that of the Austrian authorities, that the sale of HTM is not the choice with the lowest cost for AT, at this stage.

The Commission understands that the capital injection of öS 400 million of April 1995, although in its view it had occurred too late, was a provisional measure in order to find a solution for HTM. The decision to sell HTM and to grant a "dowry" of öS 1 190 million is a measure meant to produce a final solution to HTM's financial difficulties. Here again the Austrian authorities invoke the similarity of HTM to the above listed examples of private undertakings, which decided to sell at negative price instead of liquidating their subsidiaries. Here again, for the same reasons expressed above, the Commission cannot retain these arguments as a proof of the "private" character of AT's behaviour. On the contrary, the Commission believes that AT is not behaving here in the way a market economy investor would do, in particular as regards the final choice between selling and liquidating HTM. The Commission recalls that the Tribunal of First Instance ruled, in the Hystasa Imepiel Intelhorce case [2], that a private shareholder pursuing long-term profitability would not accept, after the company has been loss-making for years, to effect a capital injection which is more expensive than a liquidation of the assets and which does not have any prospect of a return, even in the long term, being related to the sale of the company.

[...] that allowing HTM to go bankrupt will cause much greater losses, entailing significant financial risks due to possible actions by HTM lending banks and other creditors against AT. Several documents have been submitted to support this argument. However, in the Commission view, having regard to all different sources of possible liabilities for AT and taking into account the opinions of lawyers and analysts consulted by AT on the matter, it remains highly questionable whether these costs would run to as much as [...].

AT argues that other costs must be taken into account in the event of HTM being put into liquidation, particularly those relating to the negative effects on the group's image and to the loss of credibility, which would cause a substantial increase in the financial charges for the group. Apart from the correctness of the estimate of [...], which can be questioned, some general observations can be made. The existence of "image" costs does not seem convincing for this case, given AT's

(1) OJ No L 253, 21. 10. 1995.

(2) Joined cases C-278/92, C-279/92, C-289/92, Spain v. Commission, [1994] ECR 4103.

intention fully to divest its sports sector, cutting any industrial, commercial and financial link with it. Therefore no spill-over effect can be expected from this decision on other group's activities to justify "image" considerations. A loss of credibility seems reasonable if AT group were to continue to operate or maintain some interests in the same sector, or in similar sectors where HTM operates. As this is not the case, it remains questionable whether HTM's sale at a negative price affects AT's image less than its liquidation would.

The additional consideration that AT's privatization project would be postponed, also causing a financial loss to the State estimated at [. . .], cannot be accepted. In the three cases of liquidation, internal restructuring and privatization, the final loss is to be borne by AT. Therefore the value of AT as at the end of 1996 will in any case be reduced by this loss, not changing significantly with respect to the three options (the value of AT's capital is estimated at öS 11,5 billion; the cost of HTM's operation, even assuming the worst scenarios pictured by AT, could only range between 1,2 and 2,0 in the different options). The Austrian authorities argue that a delayed privatization would cause a loss of 7 % in terms of interest rates on the amount privatized. This is only true if AT, excluding HTM, will not be able to produce profits at the same level. If, as the Austrian authorities argue, there is no reason to expect the profitability of AT, excluding HTM, to change substantially with respect to the past, it will naturally exceed 7 %. Therefore no significant loss can arise to the State through the delaying of AT's privatization.

In more general terms, the question remains open whether such considerations can be regarded as normal for a private investor. If the private investor test is applied to AT's behaviour, it cannot take into account considerations linked to the privatization of the holding company, as these would not concern any private holding company in a comparable situation.

On the other hand, if the private investor test is applied directly to the Austrian government, being AT and HTM's ultimate shareholder, the Commission believes again that it failed to intervene at a much earlier stage in order to avoid a such a strong depreciation of its investment.

In any case, even if all the above amounts are added together, the sum remains lower than the total funding provided by AT for HTM. It is therefore doubtful that the sale to Eliash would be the cheapest solution for AT.

As regards the participation of the banks in the rescue of HTM, the Commission observes that 70 % of the write-off of öS 630 million would be given by publicly controlled banks, such as, for the major part, Creditanstalt (48,6 % of the share capital, but 70 % voting rights in the hands of the Austrian State) and Bank Austria (20 % Austrian State plus 46 % indirectly guaranteed by the municipality of Vienna). The Commission can therefore not conclude, at this stage, that the operation at present involves a significant private participation. The write-offs in question may contain State aid elements.

Several circumstances confirm the presumption that other considerations than commercial ones, such as the said future prospects for the privatization of AT, or the need to safeguard its activities in Austria, have played an important role in this decision.

It is disputable whether the final decision to select Eliash's offer was based on transparent and open criteria only, and whether this offer was economically the best for AT. HTM's sale is being made after negotiations with a limited number of selected bidders, while the Commission has been made aware of other interested parties, including one complainant, which could result in purchase offers for HTM at a "less negative" price for AT.

Moreover, the amount of the capital grant of öS 1,190 million could be related to the conditions contained in the sale agreement with Eliash, and particularly the preservation of Austrian sites. Should this condition be withdrawn, HTM's value might increase, reducing the final loss to AT and the amount of the aid. [. . .] that AT is obliged to impose such a condition in order to avoid the risk of being pursued by HTM's creditors after the sale. They also claim that the same conditions were imposed by the previous owner when it sold HTM to AT. However, the question remains open whether such clauses, especially those referring to the maintenance of employment, can be related to these grounds. Should, on the contrary, a safeguard of the activity level in some Austrian sites be the real purpose of the clause in question, part of the injection should be considered as State aid for the maintenance of activities in Austria. This should be therefore regarded and assessed, as regards its compatibility with the common market, under the relevant rules.

In conclusion, the conditions as presented above, under which capital has been and will be injected into HTM, create the strong impression that this financing involves State aid. This aid falls under Article 92 (1) of the EC Treaty, since it is provided through State resources, i.e., AT's assets, and affects trade in the common market for

the sports articles concerned, in which there is intense intra-community trade.

7.2. *Compatibility of aid*

The State aid cannot at the present stage be exempted under Article 92 (3) of the EEC Treaty. Given the nature of the aid, which is a capital injection for loss-compensation and restructuring costs, it can only be examined under paragraphs (a) and (c) of Article 92 (3) of the EC Treaty.

However, the aid involved in the capital injections into HTM cannot qualify as promoting the economic development of the regions referred to in Article 92 (3) (a) of the EC Treaty, since HTM has operations in various regions and the aid cannot be considered in relation to either investment or job creation. In fact, only HTM's small bindings assembly operation in Neusiedl is located in an Article 92 (3) (a) EC region; this operation, according to the plan, is to be halted.

Nor does the nature of the aid justify, at this stage, the conclusion that it facilitates the development of the economic activity or economic areas concerned without adversely affecting trading conditions to an extent contrary to the common interest. Indeed, by its nature, the aid concerned must be regarded as being intended to rescue and restructure a company in difficulty. The Commission has since long established the criteria that need to be fulfilled in order for this sort of aid to be exempted under Article 92 (3) of the EC Treaty (1).

In practice, for the Commission to approve *ad hoc* aid to a company in difficulty, its restructuring must satisfy the following basic conditions: first of all, it must restore the long-term viability of the company within a reasonable time; in addition, it must avoid unduly distortion competition; finally, it must be in proportion with the restructuring costs and benefits and must be kept to a strict minimum. Only if these basic requirements are fulfilled may the effects of the aid be considered to be not contrary to the common interest within the meaning of the Article 92 (3) (c) exemption.

On this basis the documentation and the restructuring plan presented by the Austrian authorities have been examined by the Commission, particularly with regard to such elements as the restoration of the viability of the company, the evolution of its competitive position on the market and the reduction in its capacity and workforce, the proportionality of the aid to the restructuring and the contribution of the beneficiary of the aid to the financing of the restructuring plan, and the plans for the company's privatization.

The Commission takes note that the plan provides for a significant effort towards HTM's restructuring and financial streamlining, and that the information submitted seems to allow a positive evaluation as concerns HTM's turnaround.

However, the Commission still needs to improve its information about the eventual outcome of the plan, in particular by giving to the complainants, other interested parties and the market in general the opportunity to comment on it, with express reference to questions such as the real prospects of the company in terms of viability, the degree to which competition would be distorted as a consequence of the aid and the need for the level of aid proposed.

In detail, the Commission requires more evidence of the correctness of the market assumptions and of the industrial, commercial and financial choices on which HTM's forecasts for the next years are based. Also, further elements of analysis are needed as concerns the real effect of the capacity reductions provided under the plan on intra-community trade in the product concerned. Finally, the Commission has to ascertain that the aid is kept to the strict minimum or whether a solution with a lower aid level and therefore a lower distortion of competition is possible.

The Commission recalls that, according to the above mentioned Community guidelines on State aid for rescuing and restructuring firms in difficulty, in order for the aid to qualify for an exemption under Article 92 (3) of the EC Treaty, "if aid is used to write off debts resulting from past losses, any tax credit attaching to the losses must be extinguished, not retained to be offset against future profits or sold or transferred to third parties, as in that case the firm would be receiving the aid twice".

Following the conversion of the amounts injected during 1995 and to be injected according to the sale agreement until June 1996 into shareholder loans bearing commercial interest (rate 7,78 % per year), the Commission considers that those sums amounting to öS

(1) Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ No C 368, 23. 12. 1994, p. 12).

1 273 million qualify for exemption, as a rescue aid for a firm in difficulty, under Article 92 (3) (c) of the EC Treaty. They are in line with the provisions of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

They are finalized to maintain the position of a firm facing a substantial deterioration in its financial position, which is reflected in an acute liquidity crisis and a risk of technical insolvency, pending an analysis of the circumstances and a definition of an appropriate plan to remedy the situation.

As per their form, the measures respond to the condition laid down by the guidelines. They consist of liquidity help in the form of loans bearing commercial interest rates; they are restricted to the amount needed to keep a firm in business; they are paid for the time needed finally to define the restructuring and privatization plan, including its approval by the Commission; they are warranted on the grounds of serious social difficulties (HTM's bankruptcy would have serious consequences for its 2 700 employees); they have no undue adverse effects on the industrial situation in other Member States (as they are kept to the strict minimum in order to avoid HTM's insolvency. and may therefore not finance aggressive, market-distorting practices).

The amount of restructuring aid subject to the present decision to open the Article 93 (2) EC procedure remains unchanged by the decision to authorize rescue aid, as the latter will have either to be transformed into grants/injections or, being a loan, to be repaid to the lender once the Commission has taken a final decision closing the procedure.

8. **Conclusion**

On the basis of the above arguments and facts, the Commission has decided to open a procedure under Article 93 (2) of the EC Treaty regarding the financing of HTM group by its public shareholder AT, including the capital injections of öS 400 million effected in April 1995 and of öS 1 190 million, partly made already, provided for by the sale agreement with Eliash.

Moreover, the Commission has decided to approve the granting of rescue aid in the form of loans at market conditions as proposed by the Austrian authorities and mentioned above, for a total amount of öS 1 273 million, of which öS 773 million have already been received by HTM.

Under the procedure, the Commission gives hereby the Austrian Government the opportunity to present, within one month from the notification of this letter, its comments as well as any information relevant to the assessment of the aid.

The Commission would remind the Austrian Government that when aid is paid unlawfully, that is without prior notification to, and before a final decision by the Commission pursuant to Article 93 (3) of the EC Treaty, it may have to be recovered from the recipient firm if it is found to be partially or wholly incompatible with the common market, as is stipulated in the Commission's communication published in the *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3.

The annulment of unlawfully received aid involves repayment in accordance with the procedures and provisions of Austrian Law, with the interest starting to run on the date on which the unlawful aid was granted, at a rate corresponding to the reference rate used for regional aid. This measure is necessary to remove all the financial benefits that the firm receiving the unlawful aid has unduly enjoyed from the date on which the aid was paid.

The Commission also requests the Austrian Government to notify the recipient undertaking, the HTM Group, of the initiation of the procedure without delay and to inform it that it may have to repay any aid unduly received.

The Commission is, by means of publication of the present letter in the *Official Journal of the European Communities,* also giving notice to the other Member States and third parties to submit, within one month as of publication, their comments on the measures in question.

In this respect the Austrian government is invited, within 15 days from receipt of this letter, to submit to the Commission the information contained therein which it considers commercially sensitive.'

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

European Commission,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be communicated to the Austrian government.

Non-opposition to a notified concentration

(Case No IV/M.699 — Tomkins/Gates)

(96/C 124/05)

(Text with EEA relevance)

On 4 March 1996, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EC) No 4064/89. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page).

— in electronic form in the 'CEN' version of the CELEX database, under document number 396M0699. CELEX is the computerized documentation system of European Community law; for more information concerning subscriptions please contact:

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II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on access to the groundhandling market at Community airports (1)

(96/C 124/06)

(Text with EEA relevance)

COM(96) 75 final — 94/0325(SYN)

(Submitted by the Commission pursuant to Article 189a (2) of the EC Treaty on 12 March 1996)

(1) OJ No C 142, 8. 6. 1995, p. 7.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Whereas the Community has gradually introduced a common air transport policy with the aim of completing the Internal Market in accordance with Article 7a of the Treaty;	Whereas the Community is gradually introducing a common air transport policy with the aim of completing the internal market in accordance with Article 7a of the Treaty in order to promote enduring economic and social progress;
Whereas the Internal Market comprises an area free of internal frontiers in which the free movement of goods, persons, services and capital is assured;	Whereas the internal market comprises an area free of internal frontiers in which the free movement of goods, persons, services and capitals must be assured; whereas convergence towards social progress should be ensured;
Whereas in its Communication of June 1994 'The Way Forward for Civil Aviation in Europe' the Commission indicated its intention to take an initiative before the end of 1994 in order to achieve market access for groundhandling services at Community airports and whereas the Council in its Resolution of 24 October 1994 has confirmed the need to take account of the imperatives linked to the situation of airports when effecting the opening of the market;	Whereas in its communication of 1 June 1994 'The Way Forward for Civil Aviation in Europe' the Commission indicated its intention to take an initiative before the end of 1994 in order to achieve market access for groundhandling services at Community airports, and whereas the Council, in its Resolution of 24 October 1994, has confirmed the need to take account of the imperatives linked to the situation of airports when effecting that opening of the market;
	Whereas in its resolution of 14 February 1995 on civil aviation in Europe, Parliament restated its concern to take account of the impact of access to the groundhandling market on employment and safety considerations at Community airports;
Whereas the same transparency requirements must apply to users and in particular users who have attained a significant volume of traffic at an airport and wish to provide groundhandling services to third parties;	Whereas the same transparency requirements must apply to users who have attained a significant volume of traffic at an airport and wish to provide groundhandling services to third parties, and to providers of services;

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Whereas for the same reasons Member States must retain the power to lay down and apply the necessary rules for the proper functioning of the airport infrastructure; whereas these rules must, however, comply with the principles of objectivity, transparency and non-discrimination;	Whereas, for the same reasons, Member States must retain the power to lay down and apply the necessary rules for the proper functioning of the airport infrastructures; whereas these rules must, however, comply with the principles of objectivity, transparency and non-discrimination;
	Whereas, in order to avoid the risk of social dumping Member States should guarantee an adequate level of social protection for the staff of those companies providing groundhandling services;
Whereas access to airport installations must be guaranteed to suppliers wishing to provide groundhandling services and to carriers wishing to self-handle to the extent necessary for them to exercise their rights;	Whereas access to airport installations must be guaranteed to those suppliers who are authorized to provide groundhandling services and to those carriers who are authorized to self-handle to the extent needed for them to exercise their rights;

Article 1

Definitions

ORIGINAL PROPOSAL	AMENDED PROPOSAL
For the purposes of this Directive:	For the purposes of this Directive:
6. 'managing body of the airport' means body which by national law or regulation has as its objective the management of the airport infrastructures, the coordination and control of the activities of the different operators present in the airport or airport system concerned;	6. 'managing body of the airport' means public or private legal body, which by national law or regulation is responsible for managing one or several airports and for coordinating and monitoring the activities of the various operators at that or those airports;

Article 3

Managing body of the airport

ORIGINAL PROPOSAL	AMENDED PROPOSAL
1. Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of these shall be considered part of the managing body for the purposes of this Directive.	1. Where, at an airport or in an airport system, several bodies are responsible for managing and performing airport activities or services, each of these shall comply with this Directive.

Article 4

Unbundling

ORIGINAL PROPOSAL	AMENDED PROPOSAL
1. Where the managing body of an airport provides groundhandling services it must unbundle the management and accounts of its groundhandling activities from its other activities.	1. Where the managing body of an airport, a user or provider of services provide groundhandling services, they must in accordance with the commercial practices applying, unbundle the management and accounts from their other activities.

ORIGINAL PROPOSAL

2. Similarly, a user who in the previous year has carried in excess of 25 % of the freight or passengers recorded at an airport may not provide groundhandling services to third parties at that airport without unbundling the management and accounts of the transport activity from the supply of groundhandling services to third parties.

3. An independent examiner must check that the unbundling is carried out as required under points 1 and 2 of this Article.

He shall in particular check the absence of any financial flow from other activities to those of groundhandling.

He shall have at all times access to the accounts of the undertaking. He shall report to the Commission at least once a year and each time he ascertains a failure to maintain the mandatory unbundling.

AMENDED PROPOSAL

Deleted

2. An independent examiner appointed by the Member State, must check that the unbundling is carried out as required under paragraph 1.

He shall, in particular, check the absence of any financial flow from other activities to those of ground-handling.

He shall have at all times access to the accounts of the undertaking. He shall report to the Commission at least once a year and each time he ascertains a failure to maintain the mandatory unbundling.

Article 5

The users' committee

ORIGINAL PROPOSAL

1. Twelve months at the latest following the entry into force of this Directive, Member States shall introduce the measures necessary to set up a committee of users' representatives for each of the airports referred to in the second subparagraph of Article 2 (1).

AMENDED PROPOSAL

1. Twelve months at the latest following the entry into force of this directive, Member States shall ensure that the Committee of Users' Representatives is set up for each of the airports referred to in the second subparagraph of Article 2 (1).

Article 6

Groundhandling for third parties

ORIGINAL PROPOSAL

2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:

— baggage handling,

— ramp handling,

— fuelling,

— freight and mail handling.

AMENDED PROPOSAL

2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:

— baggage handling,

— air side operations,

— fuelling,

— freight and mail handling,

— aircraft cleaning,

— the carriage of passengers, baggage and freight between the aircraft and any other point at the airport.

Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL

Article 7

Self handling

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. ...	2. ...
Member States may reserve the right to self-handle to a limited number of users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.	Member States may reserve the right to self-handle to at least two users for each category of service, provided that they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

Article 8

Centralized infrastructures

ORIGINAL PROPOSAL	AMENDED PROPOSAL
1. Without prejudice to the application of Articles 6 and 7, Member States may reserve the technical management of the centralized baggage sorting, de-icing, water purification and fuel distribution infrastructures either for the managing body of the airport or for another body. They may make it obligatory for suppliers of groundhandling services and self-handling users to use these infrastructures.	1. Without prejudice to the application of Articles 6 and 7, Member States may reserve the technical and operational management of the centralized package sorting, deicing, water purification, fuel distribution infrastructures either for the managing body of the airport or for another body. They may make it obligatory for suppliers of groundhandling services and self-handling users to use these infrastructures.

Article 9

Exemptions

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	1. Where specific constraints of available space or capacity so warrant, the Member State in question may decide
	(a) unchanged;
	(b) unchanged;
	(c) unchanged;
	(d) to prohibit self handling for the categories of groundhandling service referred to in Article 7 (2) or to restrict these to a single user.
2. All exemptions decided by virtue of point 1 must:	2. All exemptions decided by virtue of point 1 must:
(a) specify the category or categories of services for which the exemption is granted and the technical constraints which justify it;	(a) specify the category or categories of service for which the exemption is granted and the specific space or available-capacity constraints which justify it;
	(b) unchanged.

ORIGINAL PROPOSAL	AMENDED PROPOSAL

Article 11

Consultations

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Member States shall take the necessary measures to organize a compulsory consultation procedure between the managing body of the airport, the Users' Committee and the undertakings providing services. This consultation shall cover, *inter alia,* the price of those services which have been exempted by the Commission pursuant to Article 9 of this Directive as well as the organization of the provision of these services. Such consultation shall be organised at least once every year.	Member States shall take the necessary measures to organize a compulsory consultation procedure between the managing body of the airport and the Users' Committee and the undertakings providing services. That consultation shall cover, *inter alia,* the price of those services which have been exempted by the Commission pursuant to Article 9 as well as the organization of the provision of the services, where it is covered by the payment exacted by the airport for access to the airport installations in order to perform groundhandling operations. Such consultation shall be organized at least once every year.

Article 12

Approval

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. Approval may be withheld only if the supplier does not meet, for reasons of his doing, the criteria referred to in paragraph 1.	2. Approval may be withheld only if, for reasons of his doing, the supplier does not meet the criteria referred to in paragraph 1.
The grounds for withholding approval must be communicated to the supplier concerned.	The grounds for withholding approval must be communicated to the supplier concerned and to the airport management body.

Article 13

Rules of conduct

ORIGINAL PROPOSAL	AMENDED PROPOSAL
1. A Member State may withdraw its approval of a supplier or prohibit a user from self-handling if that supplier or user fails to comply with the rules imposed upon him to ensure the proper functioning of the airport.	1. Unchanged.
The rules must embody the following principles:	
(a) they must be applied in a non-discriminatory manner to the various suppliers and users;	(a) unchanged;
(b) they must relate to the intended objective;	(b) unchanged;
(c) they may not in practice reduce market access or the freedom to self-handle to a lesser degree than that provided for in this Directive.	(c) unchanged;

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	(d) the security checks carried out on the staff of a service provider shall comply with the national regulations and be approved during the selection procedure;
	(e) the staff employment conditions shall comply with the regulations in force.
	2. Unchanged.

Article 14

Access to installations

ORIGINAL PROPOSAL	AMENDED PROPOSAL
3. Access to airport installations for suppliers of groundhandling services and users wishing to self-handle may give rise to the collection of a fee intended to cover the costs which this access occasions for the airport and reflecting the level of the costs. This fee must be determined according to objective, transparent and non-discriminatory criteria.	3. Access to airport installations for suppliers of groundhandling services and users wishing to self-handle may give rise to the collection of a fee. This fee must be determined according to objective, transparent and non-discriminatory criteria.

Article 19

Implementation

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1996. They shall immediately inform the Commission thereof.	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1996. They shall immediately inform the Commission thereof.
	Unchanged.

Article 20

Entry into force

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Unchanged.
	Article 20a
	Without prejudice to the implementation of the provisions of this Directive and while complying with the social provisions of the EC Treaty and of the regulations deriving therefrom, Member States may take the measures needed in order to ensure compliance with the standards in force and the upholding of employees' social rights.