

# COMMISSION

## COMMISSION DECISION

of 3 July 2001

on the State aid implemented by Germany for KHK Verbindetechnik GmbH Brotterode

(notified under document number C(2001) 1781)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/71/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

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

Whereas:

### I. PROCEDURE

- (1) By letter from Germany dated 14 June 1999, the Commission was informed that Germany had implemented aid for KHK Verbindetechnik GmbH Brotterode ('KHK'). By letters dated 8 October 1999, 20 December 1999, 13 January 2000, 27 March 2000 and 3 July 2000, Germany provided the Commission with further information.
- (2) By letter dated 17 October 2000, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*. <sup>(2)</sup> The Commission invited interested parties to submit their comments on the aid.

- (4) The Commission received comments from interested parties. It forwarded them to Germany, which was given the opportunity to react.

### II. DETAILED DESCRIPTION OF THE AID

#### 1. The company

- (5) The company was established in 1996, when the receiver sold the assets of a company in bankruptcy, Metallverarbeitung Brotterode GmbH ('MVB') <sup>(3)</sup>.
- (6) The bankruptcy proceedings in respect of MVB were effectively opened on 1 July 1996. The receiver continued production while seeking a new investor. Negotiations were entered into with six candidates. Finally, only one of them — comprising four private persons, three of them employed by MVB — was chosen as the best bidder. These private investors founded the new company KHK Verbindetechnik GmbH Brotterode (KHK). KHK acquired some of MVB's production facilities by means of an asset deal. MVB's assets, in particular the necessary buildings and machinery, were sold to KHK by the receiver for DEM 1,2 million.

<sup>(1)</sup> OJ C 27, 27.1.2001, p. 30.

<sup>(2)</sup> See footnote 1.

<sup>(3)</sup> In the Commission decision initiating the formal investigation procedure, it is stated in paragraph 3 that the aid linked to the first privatisation is compatible with the common market since it complied with the Treuhand regimes and aid schemes approved by the Commission. Therefore, only aid linked to the second privatisation is assessed in the decision. See footnote 1.

- (7) The company is situated in Brotterode, Thuringia, which is an assisted area within the meaning of Article 87(3)(a) of the EC Treaty. KHK is a small to medium-sized enterprise (SME) active in the manufacture of radiator supports, step irons used for climbing masts and ball-ended anchors used for transporting prefabricated concrete units.

## 2. The restructuring

- (8) The restructuring plan consists of the following:
- (a) concentration of activities in one location;
  - (b) modernisation of the production plant;
  - (c) automation of the production process;
  - (d) substantial reduction in the number of employees;
  - (e) reduction of the product range and limitation to products generating a positive cash flow;
  - (f) development of a new product line.
- (9) MVB consisted of five separate production sites dispersed throughout the town of Brotterode. KHK bought one of the existing production halls together with the adjoining land. Production facilities were transferred to the single production site. KHK invested in automating the various production lines. Production was computerised. Subsequent transformation works created an energy supply separate from the other parts of MVB, together with a separate heating system.
- (10) KHK has successfully continued two product lines out of the three originally taken over from MVB: radiator supports and step irons. The product line of pneumatic tools was discontinued. In 1998 KHK introduced the production of ball-ended anchors used for transporting prefabricated concrete units. The company sells its entire output to German wholesale customers.
- (11) When it was declared bankrupt in 1996, MVB employed 48 people and had a turnover of DEM 3,515 million. KHK employed 18 people when it started up in 1996. In 2000 27 people were employed and, with a balance sheet totalling DEM 180 000, KHK achieved a turnover of DEM 4,6 million.
- (12) The restructuring period was notified as being 1996 to 1999 and the total cost of the restructuring plan DEM 2,291 million.

Item	Price
Purchase price for the assets out of the bankruptcy	DEM 1 222 000
Investments	DEM 419 000
Inventory build-up	DEM 350 000
Liquidity during start-up period	DEM 300 000
Total	DEM 2 291 000

- (13) The public funding for the project is as follows:

Recourses from the joint federal/Länder programme (approved scheme) <sup>(1)</sup>	DEM 344 000
Investment allowances (approved scheme) <sup>(2)</sup>	DEM 39 000
SME programme <sup>(3)</sup>	DEM 140 000
Subsidy for personnel costs <sup>(4)</sup>	DEM 130 000
Conditionally repayable BvS (Bundesanstalt für vereinigungsbedingte Sonderaufgaben) loan	DEM 960 000
Total	DEM 1 613 000

<sup>(1)</sup> Twenty-sixth framework plan, State aid N 123/97, Commission authorisation of 30 July 1997 (joint federal/Länder programme).

<sup>(2)</sup> Special tax depreciation 1997 to 1999, State aid NN 47/94.

<sup>(3)</sup> SME programme for Thuringia, State aid N 480/94.

<sup>(4)</sup> Under Section 10 of the Social code (*Sozialgesetzbuch*) III, approved by the Commission on 8 December 1997, State aid NN 107/97.

- (14) The investor contribution as notified to the Commission is as follows:

Paid-in capital upon incorporation of KHK	DEM 50 000
Current-account credit facility (private bank)	DEM 213 000
Investment loan (private bank) <sup>(1)</sup>	DEM 415 000
Total	DEM 678 000

<sup>(1)</sup> Investment loan from Deutsche Bank, 100% refinanced by the Kreditanstalt für Wiederaufbau (KfW) under its ERP reconstruction programme, State aid N 563/c/94, approved by the Commission on 1 December 1994.

(15) With the DEM 960 000 loan KHK bought MVB's assets. Subsequently, a private bank granted the company a DEM 213 000 current-account credit facility (with a ceiling of DEM 300 000) and a DEM 415 000 investment loan. Both credit lines are backed by the same collateral, namely the personal guarantee of the investors, a mortgage on the premises of the company amounting to DEM 715 000, a transfer of title on machines, installations and inventory, and a transfer of accounts receivable on clients. The investment loan is also secured up to 80 % (DEM 332 000) by a public deficiency guarantee by the Bürgschaftsbank Thüringen <sup>(4)</sup> and 100 % refinanced by the Kreditanstalt für Wiederaufbau (KfW) under an approved ERP reconstruction programme scheme <sup>(5)</sup>.

(16) In its decision opening the procedure, the Commission doubted whether the DEM 415 000 investment loan could be considered in full as an investor contribution within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(6)</sup> ('the guidelines') since it was secured, in addition to the collateral provided by the investor/company, by a public guarantee of 80 % of the amount (DEM 332 000). It was also noted that the loan was refinanced by the KfW under its ERP programme, an aid scheme approved by the Commission, and that the company assets used as collateral for the loans were acquired mainly through the State aid received.

(17) In addition, the Commission also doubted whether the DEM 213 000 current-account credit facility was granted under market conditions and could therefore be considered an investor contribution within the meaning of the guidelines since it was secured by assets bought with State aid.

(18) For the reasons set out above, the Commission had doubts whether the investor contribution to the restructuring could be considered significant within the meaning of the guidelines and hence whether the aid could be regarded as being in proportion to the restructuring costs and benefits.

### III. COMMENTS FROM INTERESTED PARTIES

(19) The Commission received comments from KHK, which stressed that the restructuring plan had been fully carried out and that the company's results in 2000 were better

<sup>(4)</sup> Bürgschaftsrichtlinie Aufbaubank Thüringen, State aid N 117/96, approved by the Commission on 27 December 1996.

<sup>(5)</sup> Investment loan from Deutsche Bank, 100% refinanced by the Kreditanstalt für Wiederaufbau (KfW) under its ERP reconstruction programme, State aid N 563/c/94, approved by the Commission on 1 December 1994.

<sup>(6)</sup> OJ C 368, 23.12.1994, p. 12.

than expected, with a turnover of DEM 4,6 million and a balance-sheet total of DEM 180 000. Without the financial support from the BvS and the Land of Thuringia, however, it would not have been possible to establish the company and consequently all jobs would have been lost. The company's shareholders were committed to carrying on the activities successfully and had also committed themselves financially by providing personal guarantees for the company.

### IV. COMMENTS FROM GERMANY

(20) Germany stated that the Commission's doubts about the two credit lines were based on the fact that the company assets used as collateral for the loans had been purchased at least partly with the aid granted to KHK. According to Germany, the Commission concluded that using the assets purchased by State aid as collateral for a loan from a commercial bank had the effect that the loan contained aid elements as well. This would lead to inadmissible double counting of the aid, resulting in inadmissibility of the conclusion itself. For example, the BvS loan would be considered once as ad hoc aid with a 100 % aid intensity and once as an aid element contained in the commercial loan.

(21) According to Germany, irrespective of the inadmissibility or otherwise of the above conclusion, the Commission should in such a case also define the amount of the aid element. It would be virtually impossible to determine what proportion of the financial resources used for buying the assets employed as collateral stemmed from State aid. There was no formula that would help to quantify the possible aid element in the loan and so this did not lead to a practicable solution.

(22) Germany stressed that the Commission's conclusion did not take into account the fact that the objective, and very essence of the aid, was to enable the beneficiary to take part in commercial business under market conditions. The continued existence of the aid in the economic development of the company was therefore inherent in the aid in question. The Commission's conclusion would result in a situation where the aid intensity would be increased by every economic event that could somehow be related to the originally granted aid.

(23) Moreover, Germany stressed that the Commission should also take into account the fact that the loans were also secured by the personal guarantee of the investors, a transfer of title on inventory and a transfer of accounts receivable on clients. Therefore

the purchasing of assets with aid should not lead to a finding that loans secured by these assets contained further aid elements.

- (24) As regards the DEM 415 000 investment loan, Germany stated that, in its opinion, the aid element contained in this loan amounted at most to the 80 % of the loan guaranteed by the *Land*, i.e. DEM 332 000.
- (25) As regards the DEM 213 000 operating loan, Germany stated that Deutsche Bank AG was a private bank and the loan had been granted under market conditions. It should therefore be considered an investor contribution in accordance with the Commission's practice. Germany pointed out that the maximum amount of the credit line was DEM 300 000, the interest rate was 9 % and the loan was secured by the personal guarantee of the investors (DEM 417 000), a mortgage on the company's premises (DEM 715 000), a transfer of title on machines, installations and inventory, and a transfer of accounts receivable on clients. According to Germany, these conditions corresponded to market conditions.
- (26) In addition, Germany explained that the credit line of at most DEM 300 000 granted to KHK by Deutsche Bank should be considered an investor contribution in its entirety. So far, the company had drawn only DEM 213 000, but it could not be ruled out that the company might need to resort to the remaining DEM 87 000 owing to unexpected liquidity needs. The full amount of DEM 300 000 was in any case available to the company. The total amount of the restructuring costs for the company should therefore be considered to be DEM 2,378 million.
- (27) The final point raised by Germany in its comments related to the size of the company and the area concerned. Germany stressed that KHK was an SME and a management buy-out by former employees of the company. The company was situated in an assisted area within the meaning of Article 87(3)(a) of the EC Treaty characterised by high unemployment. The investment in KHK permanently secured 24 jobs in the region and thereby contributed to its economic development.

#### V. ASSESSMENT OF THE AID

- (28) Pursuant to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to

distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. According to the established case-law of the Court of Justice and the Court of First Instance of the European Communities, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

- (29) The Commission notes that the notified aid is being granted through State resources to an individual company, thereby favouring it by reducing the costs it would normally have to bear if it wanted to carry out the notified restructuring project. Moreover, the recipient of the aid, KHK, produces metal components that are subject to trade between Member States. The aid in question therefore falls within the scope of Article 87(1) of the EC Treaty.

#### 1. Restructuring aid

- (30) The notified project is concerned with restructuring the company in line with the restructuring plan submitted by the investors. The Commission notes that restructuring aid for firms in difficulty must be assessed pursuant to the guidelines.
- (31) The Commission notes that, in order to make the restructuring possible, the newly incorporated company KHK took over assets from MVB. The assets of MVB were sold under an open bidding procedure governed by the rules of German insolvency law. From the information provided in the notification, the Commission can conclude that the assets of MVB were sold to the highest bidder at their market price.
- (32) In general, a newly founded company cannot be considered a company in difficulty. However, on account of the exceptional transformation process in the new *Länder*, the Commission has agreed to apply the guidelines to '*Auffanglösungen*'<sup>(7)</sup> (arrangements whereby companies are offered a new chance) provided that the operation is not a mere sale of individual assets and that

<sup>(7)</sup> See approvals by the Commission dated 16 April 1997 and 30 April 1997: State aid N 874/96 and NN 139/96 in favour of UNION Werkzeugmaschinen GmbH — letter D/3428 dated 2 May 1997; State aid N 892/96 in favour of FORON Haus- und Küchentechnik GmbH — letter D/4047 dated 28 May 1997. This approach is now confirmed by point 7, footnote 10, of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2): 'The only exceptions of this rule are any cases dealt with by the *Bundesanstalt für vereinigungsbedingte Sonderaufgaben* in the context of its privatisation remit and other similar cases in the new *Länder*, involving companies emerging from a liquidation or a take-over of assets occurring up to 31 December 1999.'

the activity of the company in bankruptcy is continued. Applying the guidelines to such companies can be justified in the light of the problems in the new *Länder* in general and of the company in particular.

(33) KHK is situated in the new *Länder*. The sale comprised all assets of the former MVB, which were necessary for the production lines taken over. The financially viable activities of MVB were continued. Consequently, the asset deal constitutes a genuine '*Auffanglösung*' and the measures in favour of KHK can be regarded as restructuring aid.

(34) The Commission notes that on 9 October 1999 new Community guidelines on State aid for rescuing and restructuring firms in difficulty entered into force<sup>(8)</sup>. According to point 101 of these guidelines, the Commission examines the compatibility of non-notified aid on the basis of the new guidelines if some or all of the aid is granted after their publication and on the basis of the guidelines in force at the time the aid is granted in all other cases. Since all aid in the present case was granted before the new guidelines entered into force, the aid is assessed in the light of the 1994 guidelines<sup>(9)</sup>.

(35) According to the guidelines, the Commission considers that rescue and restructuring aid may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the common interest within the meaning of Article 87(3)(c) of the Treaty if the conditions laid down in the guidelines are met.

(36) The Commission notes that, of the total of DEM 1 643 000 of public contributions notified for the second restructuring, DEM 653 000 is aid granted on the basis of approved schemes. Therefore, this aid is considered to be existing aid within the meaning of Article 1(b)(ii) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(10)</sup>, and its compatibility with the common market does not therefore need to be assessed by the Commission in this decision. However, the DEM 653 000 of existing aid is taken into account in assessing the proportionality of the aid pursuant to point 3.2.2(iii) of the guidelines.

(37) According to the guidelines the aid must be in proportion to the restructuring costs and benefits. Point 3.2.2(iii) of the guidelines stipulates that the aid needs to be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Aid beneficiaries should make a significant contribution of their own to the restructuring plan.

(38) In the Commission decision opening the procedure, the Commission doubted whether the two credit lines granted to the company by Deutsche Bank could be considered an investor contribution since they were secured by assets bought with State aid. Therefore, the Commission had doubts as to whether the investor contribution could be considered significant within the meaning of the guidelines.

## 2. Investment loan of DEM 415 000

(39) In the decision opening the procedure, doubts were raised as to whether the DEM 415 000 investment loan could be considered an investor contribution since it was secured, in addition to the collateral provided by the investor/company,<sup>(11)</sup> by a public deficiency guarantee of 80 % of the amount (DEM 332 000). In addition, the loan was refinanced under an approved aid programme.

(40) The Commission notes that the public guarantee was granted under an approved guarantee scheme<sup>(12)</sup>. According to the provisions of this scheme, guarantees to companies in difficulties can reach an aid intensity of 100 %. It is noted that, in its comments on the opening of the procedure, Germany changed its position as set out in the notification by stating that the aid element of the loan in question amounted to a maximum of 80 % of the loan amount, i.e. DEM 332 000. Germany counted only the remaining DEM 83 000 as an investor contribution.

(41) In view of this and given the fact that KHK was a company in difficulties when the loan was granted and the public guarantee was required by the bank granting the loan, the Commission is of the opinion that the public guarantee of 80 % of the loan, representing an amount of DEM 332 000, is to be regarded as aid.

<sup>(8)</sup> OJ C 288, 9.10.1999, p. 2.

<sup>(9)</sup> See footnote 6.

<sup>(10)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(11)</sup> Personal guarantee of the investors, mortgage on the premises of the company, transfer of title on machines, installations and inventory, and transfer of accounts receivable on clients.

<sup>(12)</sup> Bürgschaftsrichtlinie Aufbaubank Thüringen, N 117/96.

- (42) In addition to the guarantee, it is also noted that, even if the loan is provided by a private bank, it is refinanced by the KfW under its ERP reconstruction programme. This programme is an approved aid scheme. The scheme provides loans at lower interest rates to individuals for the takeover of companies provided that the continuation of the companies' activities is thereby ensured and that the individuals concerned would otherwise not have the necessary financial resources available.
- (43) The Commission notes that the loan was granted for 12 years (1997 to 2009). The interest rate is 5 % per annum until 31 March 2007. The loan is to be paid back in equal instalments over the period 2000 to 2009. It is noted that the reference rate for March 1997 when the loan was granted was 6,86 %. Since the company was at the time a company in difficulties and since a condition of the loan according to the approved scheme was that no other financing should be available, it is assumed that no bank would have been willing to grant an equivalent loan to the company under market conditions.
- (44) For this reason, since comparison with a market rate is not possible, the comparison is made between the granted interest rate of 5 % and the reference rate of 6,86 % + 4 % in accordance with the Commission notice on the method for setting the reference and discount rates<sup>(13)</sup>. The difference between these rates, 5,86 %, is considered aid to the company for the 20 % of the loan not covered by the guarantee. When calculated for the loan period and discounted to its 1997 value, the aid resulting from the subsidised interest rate amounts to DEM 24 966.
- 3. Current-account credit facility of DEM 213 000 (with a ceiling of DEM 300 000)**
- (45) In its decision opening the procedure, the Commission raised doubts as to whether the DEM 213 000 current-account credit facility was granted under market conditions and could therefore be considered an investor contribution since it was secured by assets bought with State aid.
- (46) The Commission notes that, when assessing whether a loan is granted on market terms, it normally looks at the conditions of the loan and the situation from the point of view of the bank granting the loan. Provided that the bank is a private bank, the interest rate corresponds to market terms, the securities correspond to the normal practice of the bank and those securities are provided by the beneficiary of the loan, the Commission concludes that the loan is granted on market terms.
- (47) The Commission notes that companies normally use their assets/future business income as collateral for commercial loans. This is the most common form of collateral and banks also require it. Without using their business assets as security, further financing of business activities, investments, etc. would not be possible.
- (48) The Commission also notes that in previous cases falling under the guidelines it has approved the use of State aid for buying the assets of the company in difficulties<sup>(14)</sup>. It acknowledges Germany's comment that the objective, and very essence, of the restructuring aid is to enable the beneficiary to take part in commercial business under market conditions. It also acknowledges the fact that companies normally use their assets, claims, etc. as collateral for continuous commercial financing of their operations and/or loans needed for further investments.
- (49) For these reasons, the Commission considers that the fact that assets bought with State aid have been used as collateral for a loan is not sufficient as such to lead to the conclusion that the loan was not granted under market conditions and therefore contains an aid element.
- (50) The Commission notes that, in addition to the real estate and machinery, the credit is also secured by a transfer of claims and unsold products to the bank and by a personal guarantee of the four shareholders. The interest rate is 9 %. Therefore, there are no indications in the terms of the credit line that the credit was not granted under market conditions. Consequently, the Commission considers it to be commercial financing within the meaning of the guidelines.
- (51) In addition, the Commission notes Germany's comment to the effect that the current-account credit facility with a ceiling of DEM 300 000 granted to KHK by Deutsche Bank should be considered an investor contribution in its entirety since, even if the company has so far drawn only DEM 213 000 of it, the full amount of DEM 300 000 is available to the company and was granted to it by the bank for the liquidity needs of the restructuring process.

<sup>(13)</sup> OJ C 273, 9.9.1997, p. 3.

<sup>(14)</sup> Sysma Antriebstechnik GmbH (State aid N 220/98), FINOW Rohrleitungssystem- und Anlagenbau (State aid NN 3/98), Schiess Wema GmbH (State aid NN 68/98), Auerbach Maschinenfabrik GmbH (State aid NN 46/98) and Thüringer Pianoforte GmbH (State aid N 18/2000).

(52) The Commission notes that the notified restructuring plan provided for a total restructuring cost of DEM 2 291 000. A restructuring plan must set forth all the costs of the restructuring and indicate how these costs are to be allocated between the public authorities and the beneficiary of the aid. In the notification containing this allocation, only DEM 213 000 of the current-account credit line was indicated as an investor contribution. Given that a change to the restructuring plan can be considered only under specific circumstances and that the restructuring period ended in 1999, the Commission considers that there are no grounds for retroactively changing the notified restructuring plan. Therefore, the total of DEM 2 291 000 is considered to be the total cost of the restructuring and DEM 213 000 is considered to be the investor contribution consisting of the current-account credit line from Deutsche Bank towards the financing of that cost.

#### 4. Proportionality of the aid

(53) In the light of recitals 39 to 52, the Commission notes that the public financing of the restructuring is considered to be as follows:

##### Public financing (in DEM):

Recourses from the joint federal/Länder programme (approved scheme) <sup>(1)</sup>	DEM 344 000
Investment allowances (approved scheme) <sup>(2)</sup>	DEM 39 000
SME programme <sup>(3)</sup>	DEM 140 000
Subsidy for personnel costs <sup>(4)</sup>	DEM 130 000
BvS loan repayable under certain conditions	DEM 960 000
Public guarantee of 80% of the investment loan <sup>(5)</sup> and an interest subsidy <sup>(6)</sup>	DEM 356 966
Total	DEM 1 969 966

<sup>(1)</sup> Twenty-sixth framework plan, State aid N 123/97, Commission authorisation of 30 July 1997 (joint federal/Länder programme).

<sup>(2)</sup> Special tax depreciation 1997 to 1999, State aid NN 47/94.

<sup>(3)</sup> SME programme Thuringia, State aid N 480/94.

<sup>(4)</sup> Under Section 10 of the Social code (Sozialgesetzbuch) III, approved by the Commission on 8 December 1997, State aid NN 10797.

<sup>(5)</sup> Approved scheme, State aid N 111/96, approved by the Commission on 1 December 1996.

<sup>(6)</sup> ERP reconstruction programme, approved scheme N 563/c/94, approved by the Commission on 1 December 1994.

(54) The Commission notes that the DEM 356 966 of aid resulting from the public guarantee and the interest subsidy is based on approved aid schemes. Therefore, these aid measures are considered existing aid within the meaning of Article 1(b)(ii) of Regulation (EC) No 659/1999 and their compatibility with the common market does not therefore need to be assessed by the Commission in this Decision. However, these existing aid measures are taken into account in assessing the proportionality of the aid pursuant to point 3.2.2(iii) of the guidelines.

(55) Considering that the aid element of the DEM 415 000 loan amounts to DEM 356 966, it has still to be assessed whether the remaining DEM 58 034 can be considered an investor contribution within the meaning of the guidelines.

(56) The guidelines state that aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources or from external commercial financing. The notion of 'external commercial financing' has been interpreted in the Commission's practice as being equivalent to financing under market conditions.

(57) The Commission notes that in the present case several aid elements are present in the same loan. If the Commission were to assess the loan with only a public guarantee or with only an interest subsidy present, the assessment could lead to the conclusion that the part of the measure not covered by public resources and for which the risk is covered by the private bank/other collateral would be considered an investor contribution, provided that the other conditions of the loan corresponded to market conditions.

(58) In the present case, however, the above conclusion cannot be reached. Firstly, for the part not covered by the guarantee, market conditions do not obtain because the interest rate is subsidised by the State. Secondly, after having considered the aid element of the interest subsidy, the rest of the loan cannot be regarded as being subject to market conditions owing to the public guarantee.

(59) For these reasons, the Commission is of the opinion that the combined effect of the various aid elements prevents the remaining amount of DEM 58 034 from being considered financing under market conditions.

(60) In the light of recitals 55 to 59, the Commission notes that the investor contribution to the restructuring is as follows:

##### Investor contribution:

Paid-in capital upon incorporation of KHK	DEM 50 000
Current-account credit facility	DEM 213 000

- (61) The Commission notes that the aid intensity of the restructuring is 86 % and the investor contribution 11,5 %<sup>(15)</sup>.
- (62) The Commission notes that KHK is an SME currently employing 27 people in an assisted area. In line with its previous practice, the Commission has approved aid to SMEs with a correspondingly high investor contribution in cases concerning eastern German companies<sup>(16)</sup>. In these cases the aid granted had a limited liquidity effect which prevented the companies from receiving surplus cash that could be used to fund aggressive, distortive behaviour towards competitors. In addition, the investors had themselves contributed to the restructuring with their own private property.
- (63) In the present case, most of the aid (DEM 1,01 million) is provided under approved schemes. The ad hoc aid, a conditionally repayable loan of DEM 960 000, was used to purchase the company's assets. The aid thereby had a limited liquidity effect. In addition, the two credit lines granted to the company have been secured by personal guarantees of the four investors. The investors have therefore contributed to the restructuring with their own private property.
- (64) For these reasons, the Commission considers that the beneficiary contribution can be considered significant within the meaning of the guidelines. It therefore takes the view that the aid fulfils the condition in point 3.2.2(iii) of the guidelines, according to which the aid must be in proportion to the restructuring costs and benefits.

## VI. CONCLUSION

- (65) The Commission finds that Germany has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty. However, it notes that, since the aid complies with the 1994 Community guidelines on State aid for rescuing and restructuring firms in difficulty, it is compatible with Article 87(3)(c) of the EC Treaty,

HAS ADOPTED THIS DECISION:

### *Article 1*

The State aid which Germany has implemented for KHK Verbindetechnik GmbH Brotterode, amounting to EUR 491 000 (DEM 960 000), is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

### *Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 3 July 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*

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<sup>(15)</sup> The remainder of the loan, DEM 58 034, representing 2,5 % of the restructuring costs, is considered neither an investor contribution nor aid.

<sup>(16)</sup> Cases NN 131/96 GMB Magnete Bitterfeld (12 %), NN 61/98 Stahl- und Maschinenbau Rostock (12 %) and C 27/98 Draiswerke (11 %).