

**COMMISSION DECISION**  
**of 17 October 2001**  
**on the State aid implemented by Germany for MESAcon Messelektronik GmbH**

*(notified under document number C(2001) 3065)*

**(Only the German text is authentic)**

**(Text with EEA relevance)**

(2002/378/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,

Whereas:

**I. PROCEDURE**

- (1) By letter dated 22 December 1999 and received on 10 January 2000, the Commission was informed that Germany had implemented the aid for MESAcon Messelektronik GmbH, Dresden. The questions asked by the Commission in its letter of 26 January 2000 were answered by letter of 8 March 2000, registered as received on 9 March. The Commission asked further questions in its letter of 19 April 2000, which was answered on 5 June.
- (2) By letter dated 27 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 aid of DEM 2,25 million for MESAcon Messelektronik GmbH, Dresden.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* <sup>(1)</sup>. The Commission invited interested parties to submit their comments on the aid. It received no comments from interested parties.
- (4) Germany's response to the decision to initiate the formal investigation procedure was submitted by letter of 19 December 2000, received on the same day. Further information was received on 10 January 2001. Following questions put by the Commission on 4 April 2001, Germany provided further information by letter of 31 May 2001, registered as received on the following day.

**II. DESCRIPTION**

**A. The undertaking**

- (5) MESAcon Messelektronik GmbH, Dresden (hereinafter MMED) is the second hive-off vehicle (Auffanggesellschaft) of the former Messelektronik Dresden (hereinafter MED). MMED is a firm of engineering consultants specialising in the development of radiometric and laser-optic measurement systems mainly for the steel and aluminium industries.
- (6) MMED was created on 3 December 1997 by Mr Riegel, who acquired the assets of the bankrupt Neue Messelektronik Dresden (hereinafter NMED), which was itself a hive-off vehicle of MED.

<sup>(1)</sup> OJ C 37, 3.2.2001, p. 29.

- (7) MMED currently employs some 20 people. In 2000 it achieved a turnover of DEM 4,1 million and held assets of DEM 2,8 million. Its sole shareholder is Mr Riegel. The employees are silent partners in the company with an interest in 10 % of its profits.
- (8) The company is located in Dresden, Saxony, an assisted area under Article 87(3)(a) of the EC Treaty with an unemployment rate of 15 %.

#### **B. The restructuring**

- (9) Having been part of a planned economy, MED was short of capital and had inadequate management and a deficient economic structure. These problems were inherited by NMED. Since neither MED nor NMED underwent a substantial restructuring process, some of these structural deficiencies were passed on to MMED.
- (10) The first restructuring measures were carried out in December 1997, when MMED was founded. Restructuring continues until December 2001. However, according to Germany, most of the restructuring measures have already been implemented and the main intention is simply to consolidate the restructuring in 2002.
- (11) The plan was to transform MMED into a firm of engineering consultants concentrating on design, with production being closed down and fixed costs reduced. This transformation from a production company to a firm of engineering consultants meant the cessation of the main activity of NMED and a change of policy towards customised production, with the workforce being retrained and a distribution network being set up to serve MMED's new customers.
- (12) Firstly, as part of the restructuring, all activities were concentrated at a single site. This was accomplished as early as February 1998.
- (13) Secondly, research and development measures were necessary to ensure long-term viability in the areas of density and level measurement techniques. In the area of density measurement, MMED has developed a new isotope system to replace the one created by MED. In addition, specific software was devised for application in this area. The new systems are designed as modules which are assembled according to the client's needs. As regards level measurement techniques, no technology was available to the hive-off vehicle in this area. MMED developed its own system as well as specific probes (potash probes).
- (14) Thirdly, it was necessary to develop technical systems for measuring surface roughness; this required substantial investment as well as research and development measures in order to ensure that the firm's new policy would be successful.
- (15) The ordering and delivery system also had to be adapted to the new customised policy. Distribution is organised in cooperation with LDV-Systeme, which sells and distributes MMED's products in western Europe, South Africa and North America. The experience of the former employees of NMED allows MMED to continue its activities in eastern Europe and distribute LDV-Systeme's products in this market. As a result of this cooperation, distribution costs should be reduced and the product markets for MMED should expand.
- (16) Finally, the company needed to increase its working capital to be able to meet pending and future orders.
- (17) The overall costs of the restructuring were initially estimated at DEM 4,436 million. This amount originally included several research and development measures, most of which were not directly linked to the main restructuring objective but formed part of a parallel research and development

project. This project was started in 2000, once the situation of the company had stabilised and the most urgent restructuring measures had been implemented. Measures under this parallel project have been excluded from the restructuring costs since they do not relate to restructuring <sup>(2)</sup>.

- (18) The revised overall restructuring costs amount to DEM 3,721 million and are summarised in the table below.

Table 1

<i>(DEM million)</i>	
Restructuring measures	Costs
Investment in plant and machinery	0,733
Research and development	0,458
Technical development	1,574
Working capital	0,956
Total	3,721

### C. The financial commitment to the restructuring

- (19) The overall restructuring costs were jointly financed by the investor and the public authorities.
- (20) Measure A: investment grants and investment premiums totalling DEM 0,320 million granted by the *Land* of Saxony to cover part of the investment in plant and machinery. These measures originally amounted to DEM 0,419 million but this figure was reduced to respect the maximum aid intensities provided for in the schemes under which they were granted.
- (21) Measure B: a subordinated loan of DEM 1,016 million at an interest rate of 8,5 % granted on 27 August 1998 by the Stadtparkasse Dresden. Originally, DEM 1,5 million was promised but, in the end, this amount was reduced by DEM 0,484 million. Part of the loan was intended to cover investment in plant and machinery and part was to be used for project development. The Kreditanstalt für Wiederaufbau (KfW) guaranteed 85 % of the risk of default, i.e. DEM 0,864 million, through a refinancing loan to the Stadtparkasse Dresden. The Federal Government itself assumed 75 % of the risk of default on the refinancing loan from the KfW.
- (22) Measure C: a loan of DEM 0,65 million granted on 20 November 1998 by the BvS (successor to the Treuhand privatisation agency) to cover part of the investment. If the Commission decision is positive, the loan will be converted into a grant.
- (23) Measure D: a further Stadtparkasse Dresden loan of DEM 1,1 million granted in 1998. This consisted of a credit line of DEM 0,5 million, which was made available on 9 September 1998, and an additional DEM 0,6 million, which was disbursed on 1 December 1998. DEM 1 million of this loan is covered by the investor's personal guarantee and the remainder by a subsidiary guarantee (80 %) from the Bürgschaftsbank Sachsen.
- (24) Measure E: Federal Government grants totalling DEM 0,138 million for research and development.
- (25) As well as his personal guarantee for DEM 1 million of the loan under Measure D, the investor was to provide a further cash amount of DEM 0,1 million from his own resources (measure F). Lastly, according to the information provided by Germany, DEM 0,397 million was to be contributed as future cash flow (Measure G).

<sup>(2)</sup> These research and development projects are financed by the firm itself and by the Federal Government under approved aid schemes.

- (26) The overall financing of the restructuring is shown in Table 2, which also indicates the person/body ultimately responsible for paying for the measures described above.

Table 2

(DEM million)			
Measure	Origin	Form	Amount
A	Land	Investment grants	0,152
		Investment premiums	0,168
B	KfW	Refinancing loan on 85 % of a subordinated loan of DEM 1,016 million granted by the Stadtspar-kasse Dresden (*)	0,864
	Stadtsparkasse Dresden	15 % of a subordinated loan of DEM 1,016 million	0,152
C	BvS	Loan/grant	0,650
D	Investor	Personal guarantee	1,000
	Bürgschaftsbank Sachsen	Subsidiary guarantee (80 %)	0,080
	Stadtsparkasse Dresden	Remaining risk of default on a loan of DEM 1,100 million	0,020
E	Federal Government	R & D grants	0,138
F	Investor	Cash	0,100
G	Firm	Cash flow	0,397
Total			3,721

(\*) The risk of default on 75 % of this amount, i.e. DEM 0,647 million, is assumed by the Federal Government.

#### D. Market analysis

- (27) MMED develops, manufactures, tests and markets radiometric and laser-optic measurement equipment. Its radiometric systems are used to measure density and coating thickness, surface, roughness, level, density and potash density as well as length, velocity and flatness. Its laser-optic systems measure surface roughness. These systems are intended mainly for the steel and aluminium industries. MMED is also diversifying its products to serve, among others, the wood and plastics industries.
- (28) The production value of measuring equipment (NACE 33.2) in the EU totalled almost EUR 40 billion in 1998. This was a sizeable increase on 1993, when the industry experienced a deep recession. From 1994 onwards, production recovered. The largest producer in the EU is Germany, with a 27,7 % share of total EU output <sup>(3)</sup>. However, in order to be able to benefit from the improved market conditions, EU producers must continue to keep production costs low, while investing sufficient resources to new technology and product development so that they can compete with manufacturers in Japan and the United States.
- (29) In its decision to initiate the formal investigation procedure, the Commission noted a steady increase in apparent consumption over the period 1995 to 1998 which did not, however, fully meet demand. The information available provided some indications of a reduced level of economic activity. However, there was no conclusive evidence of this. Several competitors reported growth for the year 2000 and remain optimistic for the future.

<sup>(3)</sup> 'Panorama of EU Industry 1999', Chapter 12, p. 325.

- (30) The Commission also noted that the market for measurement systems is an extremely segmented market covering a wide range of technologies and customers. It considered that MMED's reference markets are the production of measurement systems for the steel and aluminium industries. It noted that the metal industry as a whole faces broad competition from substitute materials and that the steel industry suffers from chronic overcapacity<sup>(4)</sup>. Germany explained that this was the reason why MMED had diversified its products to cover other industries as well. None the less, it also pointed out that the steel industry needs increasingly sophisticated measurement equipment in order to be able to modernise and restructure. There was therefore an increasing need for more reliable, more accurate and more rapid analysis. The Commission noted that the aluminium industry was experiencing growth as a result of the increased recycling of metals, especially in the transportation and packaging sectors.
- (31) It can therefore be concluded that the sector is very dynamic but that there is keen competition which compels firms to make large investments if they are to come to terms with the requisite specialisation.

### III. REASONS FOR THE INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

- (32) On 27 October 2000 the Commission initiated the formal investigation procedure in respect of the financial measures for MMED. It was unable to establish whether MMED was a small or medium-sized enterprise (SME), took the view that the financial measures in its favour constituted aid within the meaning of Article 87(1) of the EC Treaty and doubted whether they were compatible with the common market.
- (33) On the basis of the information received, it could not be ruled out that, at the time when the aid was granted, management or corporate relationships existed with the former Mesacon Gesellschaft für Messtechnik mbH Dortmund. In addition, the information was insufficient to be able to determine whether LDV-Systeme GmbH, TSI Inc. and MMED operated together as a single economic entity.
- (34) The Commission took the view that aid for MMED totalling DEM 2,25 million should be assessed as ad hoc aid under Article 87(3)(c) of the EC Treaty and the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the guidelines')<sup>(5)</sup>. On the basis of the information at its disposal, the Commission doubted whether the criteria laid down in the guidelines had been met. The restructuring measures described by Germany seemed insufficient to be described as a viable restructuring programme. On the basis of the information submitted, the Commission was unable to judge whether MMED's expected financial results were realistic or whether the company would be able to operate in the market on the strength of its own resources. Nor could it rule out the possibility that the aid would lead to undue distortions of competition. Lastly, the Commission was unable to state for certain that the aid was restricted to the strict minimum needed to enable restructuring to be undertaken and was in proportion to the overall restructuring costs.
- (35) The Commission received no comments from interested parties.

### IV. COMMENTS FROM GERMANY

- (36) In its response to the decision to initiate the formal investigation procedure, Germany clarified the firm's SME status and pointed out that, apart from cooperation in product distribution, no other management or corporate relationships existed with the former Mesacon Gesellschaft für Messtechnik mbH Dortmund. That company had been wound up and part of its workforce incorporated into LDV-Systeme GmbH, which develops and distributes laser-optic measurement systems. Some of the assets of Mesacon Gesellschaft für Messtechnik mbH Dortmund were bought by TSI Inc., an American competitor, and part of the TSI workforce also joined LDV-Systeme GmbH. However, Germany demonstrated that these companies do not operate together.
- (37) Germany also submitted extensive information on the restructuring plan, as described in Section II.B.

<sup>(4)</sup> Commission Decision of 26 November 1997, Case IV/36.069 Wirtschaftsvereinigung Stahl (OJ L 1, 3.1.1998, p. 10).

<sup>(5)</sup> 1994 guidelines (OJ C 368, 23.12.1994, p.12). See also the 1999 Community guidelines on State aid for rescuing and restructuring firms in difficulty (Notice to Member States including proposals for appropriate measures) (OJ C 288, 9.10.1999, p. 2).

## V. ASSESSMENT OF THE AID

- (38) MMED is a recently established hive-off vehicle that continues the activities and has taken over the assets of a company which was declared insolvent and retained all its liabilities. According to the information provided by Germany, NMED and MMED, the two hive-off vehicles of the former MED, were not established as subsidiaries of the companies declared insolvent. They were both sold off by their respective administrators in bankruptcy to different investors. For these reasons, the present assessment is limited to the public-sector measures in favour of MMED.
- (39) The information submitted after the initiation of the formal investigation procedure has dispelled the Commission's doubts as to whether MMED, LDV-Systeme GmbH and TSI Inc. formed a single economic entity. The Commission has therefore concluded that MMED is an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises<sup>(6)</sup>.

## A. Aid within the meaning of Article 87(1) of the EC Treaty

- (40) At the time when the relevant financial measures were granted, MMED was short of capital, was in a loss-making situation and had lost the confidence of its traditional customers following the insolvency proceedings. The company was therefore in difficulty.
- (41) As already stated in the decision to initiate the formal investigation procedure, with the exception of DEM 1 million of the loan under Measure D, which was personally guaranteed by the investor, the remaining financial measures in favour of MMED qualify as aid within the meaning of Article 87(1) of the EC Treaty. These measures were granted through State resources and conferred advantages on the company in difficulty which it would not have received from a private investor. Since there are competitors on the MMED product market in Europe and since there is trade, the aid threatens to distort competition in the common market and to affect trade between Member States.

## (a) Existing aid schemes

- (42) As stated in the decision initiating the formal investigation procedure, the grants under Measure A were based on schemes approved by the Commission<sup>(7)</sup>. According to the information available, these regional investment aid measures respect the maximum limits and conditions laid down by the Commission in its decision approving the schemes, on the basis of which the aid was granted. As stated in the decision initiating the formal investigation procedure, these measures constitute an existing aid scheme which does not need to be reassessed by the Commission.
- (43) The research and development grants under Measure E were also awarded under aid schemes approved by the Commission<sup>(8)</sup>. Although the Commission was informed of the grants only after initiating the formal investigation procedure, it has verified that the conditions of those schemes have been complied with, in particular as regards the maximum aid intensities and the aggregation rules. On the basis of the information available, these grants constitute existing aid which does not need to be reassessed by the Commission.
- (44) The amount of aid in question must be taken into account when evaluating whether the aid measures, taken as a whole, are in proportion to the objective they purportedly pursued.

<sup>(6)</sup> OJ C 213, 23.7.1996, p. 4.

<sup>(7)</sup> 26. Rahmenplan der Gemeinschaftsaufgabe zur Förderung der Investitionen (C 52/97, ex N 123/97) and Investitionszulagegesetz 1999 (N 702/97, SG (98) D/12438). Measures under this law qualify as regional investment aid under Article 87(1) of the EC Treaty and were approved by the Commission on the basis of the derogation in Article 87(3)(a).

<sup>(8)</sup> Innovationskompetenz mittelständischer Unternehmen (N 357/98, SG(98) D/8229, 2 October 1998) and Programm zur Förderung der Forschung, Entwicklung und Innovation in KMUs und externen Industrieforschungseinrichtungen in den neuen Bundesländern (N 331/96, SG (97) D/482, 23 January 1997).

(b) *Ad hoc aid*

- (45) The Measure B subordinated loan of DEM 1,016 million from the Stadtsparkasse Dresden, guaranteed by a refinancing loan from the KfW, was said to have been granted under an approved aid scheme to promote research and development by SMEs<sup>(9)</sup>. As stated in the decision to initiate the formal investigation procedure, the relevant aid scheme does not explicitly provide for the granting of subordinated loans from State resources to companies in difficulty; in addition, the maximum coverage of the risk of default allowed by the scheme is exceeded by 10 %. On the basis of the information available, the Commission therefore maintains its view that the terms of the relevant aid scheme were manifestly not respected and that the full amount of DEM 1,016 million must be assessed as new aid.
- (46) As stated in the decision to initiate the formal investigation procedure, the Measure C BvS loan of DEM 0,65 million is also regarded as ad hoc aid since there is no approved legal basis for it.
- (47) As stated in the decision to initiate the formal investigation procedure, the risk of default on the Measure D DEM 0,1 million loan was covered by an 80 % subsidiary guarantee from the State-controlled Bürgschaftsbank Sachsen and by the Stadtsparkasse Dresden at its own risk. In view of the firm's difficulties when the loan was granted and taking into account the absence of private securities and the existence of a State guarantee, this amount is regarded as aid. Since there is no approved legal basis for it, it must be assessed as ad hoc aid.

**B. Derogation under Article 87(3)(c) of the EC Treaty**

- (48) The aid to MMED totalling DEM 1,766 million must be assessed as ad hoc aid. Article 87(1) of the EC Treaty declares that State aid granted to specific undertakings which distorts or threatens to distort competition is, in so far as it affects trade between Member States, incompatible with the common market. Such aid is generally incompatible with the common market unless it falls within the scope of the derogations in either Article 87(2) or (3) of the EC Treaty.
- (49) The derogations in Article 87(2) do not apply in the present case because the aid does not have a social character, is not granted to individual consumers, does not make good the damage caused by natural disasters or exceptional occurrences and is not granted to the economy of certain areas of the Federal Republic of Germany affected by its division.
- (50) Under Article 87(3)(a) and (c), certain forms of aid may be exempted. In the present case Article 87(3)(c) is relevant because the main objective of the aid is not regional development but the restoration of the long-term viability of a firm in difficulty. Accordingly, the Commission may permit State aid granted to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (51) In its guidelines<sup>(10)</sup> the Commission spelled out the preconditions for a favourable assessment. Since the relevant ad hoc restructuring aid was disbursed before October 1999, it will apply the guidelines of 23 December 1994<sup>(11)</sup>. It considers that none of the other sets of Community guidelines could apply in the present case.

<sup>(9)</sup> Beteiligungskapital für kleine Technologieunternehmen (N 582/97, SG (97) D/9490, 14 November 1997).

<sup>(10)</sup> See footnote 6.

<sup>(11)</sup> Point 7.5 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 9 July 1999 states: 'The Commission will examine the compatibility with the common market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the Treaty: (a) on the basis of these guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Communities*...' (OJ C 288, 9.10.1999, p. 2).

(a) *Company in difficulty*

- (52) In general, a newly founded company cannot be considered a company in difficulty within the meaning of the abovementioned guidelines. However, because of the exceptional process of transformation in the new *Länder*, the Commission is provisionally continuing to apply the guidelines in the case of *Auffanglösungen* (i.e. the creation of a new enterprise subsequent to insolvency proceedings — *Gesamtvollstreckung*) if the activity of the previous company is continued and individual assets are not simply sold. These tests are met in the case of MMED <sup>(12)</sup>.
- (53) MMED was in a loss-making situation when it was set up. Activities had to be concentrated at a single site and the firm's plant and machinery needed to be replaced and modernised so that it could compete on the market. Moreover, NMED's traditional line of business had proved not to be viable, with the result that MMED had to be converted into a firm of engineering consultants; this could be achieved only by means of restructuring. Furthermore, Germany states that without joint action, including intervention by the BvS, the firm would have been unable to obtain any external bank financing. MMED ranked therefore as a company in difficulty when the relevant ad hoc aid was granted.

(b) *Restoration of long-term viability*

- (54) The granting of restructuring aid requires a realistic, coherent and far-reaching restructuring plan capable of restoring the long-term viability of the firm within a reasonable timescale. The precise timescale for the restructuring is particularly important. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring. According to the information provided by Germany, it was only NMED's profitable business activities that were taken over by NMED.
- (55) In its decision to initiate the formal investigation procedure, the Commission expressed doubts as to whether the few measures described by Germany could amount to a restructuring plan that would lead to long-term viability. In response to that decision, Germany submitted exhaustive information on the restructuring measures undertaken by the firm (see Section II.B). The Commission takes the view that the restructuring measures constitute a viable restructuring programme within the meaning of the guidelines.
- (56) In addition, Germany has provided up-to-date figures which forecast moderate but realistic growth in turnover and profit (Table 3) <sup>(13)</sup>.

Table 3

(DEM million)

	1997 (*)	1998 (*)	1999 (*)	2000	2001
Turnover	[...] (**)	[...]	[...]	[...]	[...]
Expenditure on materials	[...]	[...]	[...]	[...]	[...]
Expenditure on staff	[...]	[...]	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]	[...]	[...]
Other costs	[...]	[...]	[...]	[...]	[...]
Pre-tax result	[...]	[...]	[...]	[...]	[...]

(\*) Consolidated figures.

(\*\*) Business secret.

- (57) According to the latest data submitted by Germany, the breakeven point was achieved in 1999, one year earlier than originally predicted. The Commission notes that, although the firm's operating results are very close to original expectations, the forecasts for the individual items have changed. Germany explained that the accounting method had to be changed to comply with the specifications of the *Land* of Saxony. In addition, most of the investment took place in 1998 and 2000, leading to higher depreciation and poorer results. It was during 2000 that the bulk of the restructuring was

<sup>(12)</sup> See also footnote 10 to the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 9 July 1999 (OJ C 288, 9.10.1999, p. 2).

<sup>(13)</sup> Table 3 is a summary of the profit and loss account. Not all items have been included.



completed, and this meant that the company concentrated more on restructuring than on selling its products. In addition, some of the orders received that year <sup>(14)</sup> could not be met until 2001. The turnover figures for 2000 are therefore lower than originally forecast. However, on this point, Germany states that the orders received for this year already cover some 80 % of the expected turnover.

- (58) The latest financial figures confirm that MMED has overcome its initial difficulties. The financial results allow it to cover all costs including depreciation. The Commission considers that the revised figures reflect the fact that MMED operates on a market on which keen competition allows only moderate profit margins for SMEs. It also notes that the turnover for the year 2001, when the restructuring will be concluded, is largely secured. Consequently, it takes the view that viability will be restored by the restructuring and that the firm will be able to compete in the marketplace on its own merits.

*(c) No undue distortion of competition*

- (59) Restructuring must include measures to offset, as far as possible, adverse effects on competitors. Otherwise, aid would be contrary to the common interest and ineligible for exemption pursuant to Article 87(3)(c) of the EC Treaty. Where an objective assessment of the demand and supply situation shows that there is no structural overcapacity in a relevant market in the European Union served by the recipient, a reduction in capacity is not needed. In determining how the continued existence of MMED would affect the market and competitors, the output of the company and the fact that the aid is granted in an assisted area in accordance with Article 87(3)(a) have to be taken into consideration.
- (60) On the basis of the information available, the Commission is of the opinion that there is no conclusive indication of overcapacity in the market on which MMED operates. It therefore concludes that there is no need for any reduction in capacity.
- (61) Moreover, the Commission takes into account that MMED is not a manufacturing company but a small firm of engineering consultants that designs different measurement systems according to its clients' needs. Its production is therefore determined by demand. Germany has informed the Commission that MMED currently has a workforce of 19 full-time employees and one part-time employee, i.e. fewer than the original 22 employees taken over by the hive-off vehicle.
- (62) In view of the fact that MMED is a small enterprise situated in an assisted area under Article 87(3)(a) of the EC Treaty, the Commission concludes that there will be no adverse effects on competitors.

*(d) Aid in proportion to the restructuring costs and benefits*

- (63) The aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the overall restructuring costs. In addition, the beneficiary must make a significant contribution to the restructuring costs. Moreover, the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.
- (64) In the case of MMED, the aid amounts to DEM 2,224 million. The Commission notes that the total amount of aid is less than was originally planned when the formal investigation procedure was initiated and that 20 % of this aid is covered by approved aid schemes. Moreover, Measures A and D were divided into payment tranches to counterbalance any possible distortive effects.
- (65) The total costs of restructuring MMED are estimated at DEM 3,721 million. According to the information provided by Germany, the investor's contribution to restructuring consists of:
- a DEM 1 million loan granted by the Stadtparkasse Dresden and personally guaranteed by Mr Riegel. Under the terms of this preference guarantee, the investor is prohibited from disposing of his personal goods,

<sup>(14)</sup> Orders for the year 2000 totalled DEM 4,742 million.

- a cash amount of DEM 0,1 million brought in by the investor,
- a cash flow at first estimated at DEM 0,667 million and subsequently at DEM 0,397 million, as a contribution from the firm. As stated in the decision to initiate the formal investigation procedure, these internally generated financial measures cannot be regarded as a significant contribution within the meaning of the guidelines because, directly or indirectly, they are attributable largely to public intervention in favour of MED, NMED and, finally, MMED. Moreover, in the absence of evidence that this cash flow has actually been generated and forms part of the reserves, expected future income cannot be considered a significant contribution within the meaning of the guidelines.

- (66) The Commission has therefore reached the conclusion that the investor's contribution amounts to DEM 1,1 million, equivalent to 29,56 % of the overall restructuring costs. Bearing in mind that MMED is an SME and its investor has committed his private property, it can be said that the investor's own contribution should be rated as significant in this case.
- (67) For a company of MMED's size, the amount of aid should be regarded as limited. It serves mainly to finance investments and to develop new research, essential for the company to operate successfully in the market. It can therefore be said that the amount of the aid is limited to the strict minimum and that it is in proportion to both the investor's own contribution and the benefits to be expected from the restructuring.

*(e) Full implementation of the restructuring plan*

- (68) A company in receipt of restructuring aid must fully implement the restructuring plan that was submitted to and accepted by the Commission. Germany states that the restructuring plan has been largely implemented and undertakes to report on its full implementation.

**VI. CONCLUSION**

- (69) The Commission finds that Germany has unlawfully implemented the aid in question in breach of Article 88(3) of the EC Treaty. However, for the reasons set out above, it considers that the aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which Germany has implemented for Mesacon Messelektronik GmbH, amounting to DEM 1,766 million (EUR 0,908 million), is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 October 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*

---