

COMMISSION DECISION

of 16 May 2006

on State aid C 26/2004 (ex NN 38/2004) implemented by Germany for Schneider Technologies AG

(notified under document number C(2006) 1857)

(Only the German text is authentic)

(Text with EEA relevance)

(2007/56/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Additional information was submitted on 6 February 2006, registered as received on 7 February 2006.

Having regard to the Treaty establishing the European Community, and in particular 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 ⁽¹⁾ pursuant to the provisions cited above and having regard to their comments,

Whereas:

II. DESCRIPTION

1. THE BENEFICIARY

I. PROCEDURE

- (1) On 24 March 2003, the Commission received a complaint concerning a number of alleged state aid measures in favour of Schneider Technologies AG ('Schneider AG'). The complainant, Gebrüder Schneider GmbH & Co. KG, is a holding company which held the shares in Schneider AG and which is owned by two Schneider brothers.
- (2) On 14 July 2004, the Commission initiated the formal investigation procedure with respect to three loans granted by the Bayerische Landesanstalt für Aufbaufinanzierung (Bavarian State Institute for Development Financing — 'LfA') and two grants from the Bayerische Forschungstiftung (Bavarian Research Foundation — 'BFS') for research and development ('R&D'). The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* on 22 February 2005 ⁽²⁾. The Commission invited interested parties to submit comments on the suspected aid. No such third party comments were submitted ⁽³⁾. Germany's response to the initiation of the formal investigation procedure was submitted by letters dated 16 and 24 September 2004, registered as received on the same respective days.
- (3) The Commission requested further information on 6 September 2005, which Germany submitted by letter dated 5 October 2005, registered as received on 6 October 2005.

- (4) Schneider AG, a large undertaking, was a German producer of colour television sets headquartered in Türkheim, Bavaria. In addition to its manufacturing activities, the company had embarked in the 1990s on an ambitious project concerning the development of a laser display technology which was expected to deliver sharper images, higher brightness, unlimited screen size and flexibility in terms of projection surface. Between 2000 and 2002, these two main areas of activity were allocated to two newly created subsidiaries of Schneider AG: Schneider Electronics AG ('SE'), which continued the television set production, and Schneider Laser Technologies AG ('SLT').
- (5) The LfA, a public bank having as its object the promotion of regional economic development, had held shares in Schneider AG since 1998. In 1999/2000, the LfA was the biggest shareholder, holding 35,6 % of the shares. Lehman Brothers, a private investment bank, held 26,6 %, Gebr. Schneider GmbH & Co. KG 14,6 % and other private investors 23,2 %.
- (6) At that time, the market had high expectations of Schneider AG's future success as a result of its leading role in laser display technology. Between 1998 and 2000, Schneider AG's share price increased almost tenfold, and between 1999 and 2000 it increased by about two and a half times. This positive view of the company's future was shared by the second biggest investor, Lehman Brothers, as evidenced by a study issued in April 2000 which explained that break-even in the field of production of consumer electronics was expected by the end of 2000, whereas break-even in laser display technology was expected for Q4 of 2001. Lehman Brothers bought [...] (*) shares from the LfA between mid-1999 and mid-2000.

⁽¹⁾ OJ C 46, 22.2.2005, p. 12.

⁽²⁾ See footnote 1.

⁽³⁾ Some submissions received during and after the period concerned cannot be considered formal comments (being mainly unrelated press articles without further comments and an offer to provide case-related consultancy services to the Commission without any actual comments).

(*) Business secret

- (7) However, the companies did not perform as expected. SE produced television sets of a lower quality range and could not compete with low-price products imported mainly from Asia. Since no income could be derived from the television set business, Schneider AG ran out of funds needed by SLT to continue its laser technology activities, which progressed much more slowly than originally expected. A first prototype was available only in May 2000, much later than scheduled, and it was suitable only for industrial use. By 2002, the company had not succeeded in developing a product suitable for the private consumer, the actual economic aim of SLT.
- (8) In March 2002, three separate sets of insolvency proceedings were initiated in respect of Schneider AG and its two subsidiaries. The insolvency administrator sold the assets of Schneider AG and SE to the Chinese electronics company TCL, and the assets of SLT to Jenoptik Laser, Optik, Systeme GmbH ('LOS'). TCL and LOS had made the highest respective offers.

2. THE FINANCIAL MEASURES

- (9) In its decision to initiate the procedure, the Commission expressed doubts as to the compatibility of the following two sets of measures.

2.1. THE THREE LFA LOANS

- (10) The three LfA loans were part of a package agreed in autumn 1999 between the LfA, Lehman Brothers, the complainant and a pool of banks. Germany explained that, in 1998, the company had to face losses because the attempt to increase sales of television sets through the specialised retail channel had failed. The management therefore decided to restructure the company and to reinforce the OEM (original equipment manufacturer) business. Liquidity was needed to finance the restructuring, prefinance the production for large-scale orders and cover the losses.
- (11) The first LfA loan ('loan 1') amounted to EUR 2,1 million and was granted in September 1999. The interest rate was [...] %. The second loan ('loan 2') amounted to EUR 5,1 million and was also granted in September 1999. The interest rate was [...] %. The third loan ('loan 3') amounted to EUR 5,6 million, was granted in February 2000 and the interest rate was [...] %. The first two loans were granted for a duration of one year, while loan 3 was granted until 31 December 2001, i.e. for almost two years.
- (12) In September 2000, the first two loans were prolonged until 30 September 2002, i.e. by two further years, and the interest rates were increased for loan 1 to [...] %, and for

loan 2 to [...] %. In December 2000, loan 3 was also prolonged until 30 September 2002 and the interest rate was increased to [...] %.

- (13) Loan 1 was secured by several collateral items such as a charge on land, the cession of receivables and a product property transfer by way of security. These collateral items were ranked below the securities granted to the pool banks, whose loans had been granted earlier. Loans 2 and 3 were not secured by any collateral. Germany explained that securities had been replaced by a higher interest rate. The actual value of securities for the LfA as a shareholder was very limited because it was likely that the shareholder loan would be treated as equivalent to a capital injection under German law (Section 30 of the Law concerning Companies with Limited Liability).
- (14) The contributions by the private parties to the package were as follows:
- (a) Lehman Brothers first injected EUR 25 million into the firm at the end of 1999 to purchase the shares in SLT until then held by Daimler Chrysler and (ii) was lead investor in a further capital increase in February 2000 by an additional EUR 46 million for the financing of the further development of the laser business.
- (b) The pool of private banks had granted Schneider AG a credit line of EUR 31 million in 1998. The agreed interest rate was [...] %. This credit line was expressly upheld in September 1999 as part of the package. In addition, the pool banks accepted a short-term exceeding of the credit line up to EUR [...]. In the same month, the pool leader increased its interest rate to [...] %. Germany explained that it had no information as to any deviation by the other pool banks from the originally agreed interest rate of [...] %.
- (c) The complainant provided a shareholder loan amounting to EUR 7,7 million on the same conditions as the pool banks.

2.2. THE R&D SUBSIDIES

- (15) In 1994 and 1997, the BFS provided two grants to Schneider AG totalling EUR 9 050 121,88. ⁽⁴⁾

Project 1 ('Laser-Display-Technologie')

- (16) The first subsidy amounted to EUR 6 498 468,68. ⁽⁵⁾ It was granted on 16 December 1994 with the aim of co-financing the 'Laser-Display-Technologie' project ('project

⁽⁴⁾ Including a grant for the 'blue laser' project carried out by the University of Würzburg.

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1'). The aid was disbursed in several instalments over the lifetime of the project, i.e. between January 1995 and June 1997. Eligible costs amounted to EUR 12 484 972,74, while the aid intensity amounted to 48,9 %.

- (17) Project 1 focused on creating the bases for new working methods for the projecting of large, high-resolution colour images for different applications and the scientific and technological bases for the individual components of the future system.
- (18) The following project costs were taken into account when granting the aid: (*)

Project element	Cost in EUR
Personnel costs (incl. travelling expenses)	4 304 566,36
Other operating expenses (material and supplies)	4 399 666,63
Cost of instruments and equipment	667 235,91
Cost of research by third parties	2 296 459,41
Additional overheads	817 044,43
Total costs	12 484 972,74

- (19) Germany has confirmed that the costs were incurred directly as a result of the research project.
- (20) In accordance with the grant agreements, the results of the project were presented to a broad public and made generally available.
- (21) The BFS also financed 100 % of a 'blue laser' research project carried out by the University of Würzburg. The project costs were EUR 0,26 million. At the BFS's request, project 1 and the 'blue laser' project were associated with each other in the expectation of a mutual know-how exchange.

Project 2 ('Laser-Display-Technologie — Systemintegration und Prototypen')

- (22) The second grant amounted to EUR 2 551 653,20 and was awarded on 23 July 1997. It was intended to finance the project 'Laser-Display-Technologie — Systemintegration und Prototypen' ('project 2'), which followed project 1. The aid was disbursed in several instalments over the project's lifetime, i.e. between April 1997 and September 1999. The planned eligible costs amounted to EUR 5 103 293,22, with the result that the aid intensity amounted to 50 %.
- (23) Project 2 concerned further elaboration on the results of project 1 and the attempt to integrate the individual key

components into an overall system. It comprised studies into image production with picosecond impulse lasers, laser resistance of the individual components and basic research into the miniaturisation of monochrome laser systems.

- (24) The following project costs were taken into account when granting the aid:

Project element	Cost in euro
Personnel costs	2 584 273,68
Other operating expenses (material and supplies)	1 061 850,98
Cost of research by third parties	1 123 308,26
Additional overheads	817 044,43
Total costs	5 103 293,22

- (25) Germany has confirmed that the costs were incurred directly as a result of the research project.
- (26) In accordance with the grant agreements, the results of the project were presented to a broad public and made generally available. Upon request, user rights had to be granted at market rates.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (27) As regards the three loans, the Commission expressed its initial view that they probably fulfilled the market economy investor test. However, more detailed information was missing in order to enable the Commission to finalise its assessment. The Commission further doubted that the R&D grants for the two laser technology projects were compatible with the state aid rules.

IV. COMMENTS FROM THIRD PARTIES

- (28) No comments were submitted by third parties.

V. COMMENTS FROM GERMANY

- (29) In its comments on the initiation of the formal investigation procedure, Germany argued that the loans did not constitute state aid because they fulfilled the market economy investor test.
- (30) As regards the R&D grants, Germany expressed the opinion that both projects qualified as industrial research and that their subsidisation to the tune of up to 50 % of the eligible

(*) The table contains only the costs of the research carried out by Schneider AG, and not the EUR 0,26 million grant for the 'blue laser' project carried out by the University of Würzburg and associated with the Schneider project at the BFS's request.

cost was therefore compatible with the state aid rules applicable to R&D grants at the time the respective aid awards were made. With regard to project 2, Germany emphasized that the title of the project — ‘system integration and prototypes’ — was misleading and that the project had the aim of further deepening research into individual components of the project.

VI. ASSESSMENT

1. THE LFA LOANS

1.1. STATE AID

- (31) Pursuant to Article 87 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 shall, in so far as it affects trade between Member States, be incompatible with the common market. In order to determine whether shareholder loans granted by a public authority constitute state aid within the meaning of Article 87 of the EC Treaty, it is necessary to consider whether in similar circumstances a market economy investor might have provided loans on conditions comparable to the ones granted by the public authority.
- (32) The Commission considers that there are strong indicators that the three loans did not constitute state aid because the market economy investor test is fulfilled. The information available to the Commission indicates that granting loans to Schneider AG with interest rates of between [...] %, [...] % and [...] % (Commission reference rate 4,76 %), later increased to [...] %, [...] % and [...] % (Commission reference rate 5,7 %), was not economically irrational in the given circumstances of 1999/2000. The trust of the market in future profits by Schneider AG, mainly through a leading position in the laser technology business, is evidenced for instance by the almost tenfold increase in the price of Schneider shares between 1998 and 2000 and by the very favourable study by the strategic investment bank Lehman Brothers, which purchased an additional [...] shares in Schneider AG during that period. In July 2000, about 50 % of the capital was held by about 40 strategic investors. Secondly, compared with the behaviour of the private shareholder Lehman Brothers, the behaviour of the LfA was much more cautious. Lehman Brothers increased the capital of Schneider AG by EUR 25 million in December 1999 and was lead investor in the EUR 46 million capital increase of February 2000. Apart from contributing about EUR 8,74 million to the February capital increase (which was already accepted as complying with the market economy investor test in the decision to initiate the procedure), the LfA provided a further EUR 12,8 million only in the form of a reimbursable loan with interest. Thirdly, the LfA interest rates were higher than the rates of the pool banks, both at the time of the original grant of the loans (September 1999 and February 2000) and at the time of the loans’ prolongation (September and December 2002).
- (33) Nevertheless, some doubts persist as to the nature of the loans. Due to the role of the LfA in promoting the regional economy and on the basis of the information currently available, the Commission cannot exclude that the purpose of the investment was to bridge a difficult period for Schneider AG and to save jobs in the region. Further, it is unclear whether the higher interest rates were sufficient to compensate for the lack of collateral. Schneider AG was in a difficult financial situation at the time the loans were granted and it was not impossible that the laser technology might fail. But the question whether the increased interest rates were sufficient to counterbalance this risk is difficult to assess.
- #### 1.2. DECISION WITHOUT OBJECT
- (34) The Commission is of the opinion that the question whether the LfA loans qualified as state aid can be left open. Even if they had to be considered incompatible state aid, a negative decision ordering the aid’s recovery would be without object since there is no undertaking existing any more which would have benefited, either directly or indirectly, from the alleged state aid.
- (35) The formal beneficiary of the loans was Schneider AG. SE and SLT were created only after the loans had been granted, but there is no reason to exclude that they benefited from the loans. The insolvency proceedings against the three Schneider companies were initiated in March 2002, and all three companies were liquidated. The loan debt was included in the insolvent estate.
- (36) The three companies’ assets were sold by the insolvency administrator, under the supervision of the insolvency courts. The Commission considers that the market price was paid for the respective assets, as a result of which the benefit of the aid was not passed on to any of the purchasers.
- (a) The assets owned by Schneider AG at the time of its liquidation consisted of trade marks. After a worldwide search for potential investors through an M&A consultant, the insolvency administrator sold the trade marks to the Chinese consumer electronics producer TCL for a purchase price of EUR 3,48 million. At the same time, a second consultant had been asked to value the trade marks. He received several offers which were significantly lower than that made by TCL. The Commission therefore considers that the trade marks were sold at their market price.
- (b) SE’s assets, consisting of the television production line and stocks, were sold by the insolvency administrator to TCL for a total purchase price of EUR 5 745 480. According to the information submitted by Germany, the insolvency administrator had conducted extensive discussions with a number of potential investors. However, there was very limited interest in purchasing

a television set production line tailor-made for Schneider AG which was already several years old, and no interest at all in the stock of television sets for which no guarantee and no service could be provided. TCL made the highest bid and is therefore considered to have paid the market price.

- (c) As regards SLT, the insolvency administrator had commissioned an M&A consultant who sent the purchase documentation to about 150 potential investors. In-depth discussions took place with a number of potentially interested parties. However, owing to technical problems linked to the development of the laser display technology, the actual interest turned out to be very limited. No higher bid than the one by LOS was submitted, not even when an attempt was made to sell the existing patents and the registrable patents separately. SLT's assets were sold in a two-step procedure ⁽⁶⁾ to LOS for a total purchase price of EUR 6 025 000. The Commission therefore considers that the market price was paid also for the assets of SLT.

2. THE R&D PROJECTS

2.1. STATE AID

- (37) Public funding is provided by the *Land* of Bavaria through the BFS. It thus stems from state resources and is imputable to the State. The funding of the part of project 1 which was carried out by SLT and of project 2 provided an advantage to Schneider AG. Since consumer electronics are traded between Member States, the measure threatens to distort competition and affects trade between Member States. The subsidisation of projects 1 and 2 therefore constitutes state aid.
- (38) As regards the financing of the 'blue laser' project which was carried out by the University of Würzburg, the Commission considers that the public funding does not qualify as state aid. The project concerned fundamental research which was designed to generally increase scientific and technical knowledge. According to point 2.2 of the 1986 Community framework for state aid for research and development ⁽⁷⁾ (applicable in 1994 at the time of grant), the funding of fundamental research is not normally considered state aid. 'However, in exceptional cases where such research is carried out in or for particular firms, the Commission cannot rule out the possibility that the aid does fall within Article 92(1) [now 87(1)]'. This is not such

a case. In particular, the project was not carried out for Schneider. The funding request had been made independently by the University of Würzburg and the grants were disbursed directly to the university. Germany informed the Commission that the results of the university's research were not relevant for Schneider AG, which had its own scientific approach to solving the issues related to the blue laser. Schneider AG continued its research and development activities independently of the blue laser project and did not use the results of the university's project for its own technical solution. The association of both projects had been done by the BFS in the hope of synergies which did not take place.

2.2. DEROGATION UNDER ARTICLE 87(3) OF THE EC TREATY

- (39) The R&D grants fall to be assessed under the Community framework for state aid for research & development ('R&D framework') of 1986 ⁽⁸⁾ and 1996 ⁽⁹⁾, which allows state aid for fundamental research, (basic) industrial research and precompetitive development.

Project 1

Stage of R&D — Aid intensity

- (40) Project 1 can be qualified as a project of basic industrial research within the meaning of Annex 1 to the R&D framework of 1986 ⁽¹⁰⁾. The research activities were focused on acquiring, through original theoretical and experimental work, entirely new knowledge in the field of the projecting of large, high-resolution colour images for different applications and on elaborating the scientific and technological bases for the individual components of a future laser display system.
- (41) The BFS subsidised the project to the tune of 48,98 %, i.e. below the ceiling of 50 % allowed for basic industrial research.

Incentive effect

- (42) The Commission considers that the R&D aid had an incentive effect because the project would not have been carried out without public support. The project involved a very high technical and economic risk and the technology was very innovative: it required very basic research and a high amount of input. This was confirmed by an external study commissioned by the BFS before deciding on the aid

⁽⁶⁾ As a first step, a joint venture was set up to which SLT's assets were transferred. LOS owned 60 % and the insolvent estate 40 % of the joint venture. The purpose of this intermediate step, which lasted one year, was to try to find a strategic investor who would purchase the 40 % owned by the insolvent estate. No such investor was found, and LOS was able to acquire 100 % ownership.

⁽⁷⁾ OJ C 83, 11.4.1986, p. 2.

⁽⁸⁾ See footnote 8.

⁽⁹⁾ OJ C 45, 17.2.1996, p. 5.

⁽¹⁰⁾ In Annex 1 to the R&D framework of 1986, basic industrial research is defined as 'original theoretical or experimental work whose objective is to achieve new or better understanding of the laws of science and engineering as they might apply to an industrial sector or the activities of a particular undertaking'.

grant. The consulted experts were of the opinion that, in view of the high complexity and the demanding overall aim of the project, it could only be carried out if substantial support was provided. The highest technical risk was estimated to be the exact reproduction of the image. The experts further confirmed that this completely new technology contained a high number of single issues which could only be tackled through an intensive, concentrated and financially well-equipped R&D project.

Project 2

Stage of R&D — Aid intensity

- (43) As regards project 2, Germany claims that the project must also be qualified as a project of industrial research⁽¹¹⁾. Germany argues that, despite the misleading subtitle of the project ('Systemintegration und Prototypen'), the activities carried out during the project were such as to fall under the above definition. Germany explained that the aim of the project was to further elaborate on the individual components of the technology. Therefore, in the eyes of the BFS, the project was entirely classified as industrial research. Furthermore, the first prototype was developed a couple of months after the end of project 2 and the prototype was for professional use and not for consumer use, which had been the aim of the project. The actual precompetitive research was carried out only after project 2 and without further public funding.
- (44) The Commission is more convinced that the project should rather be qualified as a project of precompetitive development⁽¹²⁾ — at least partially. Pursuant to points 5.5 and 5.9 of the R&D framework of 1996, the funding would be limited to 25 %, or would have to represent the weighted average of the permissible aid intensities. The Commission considers that the integration of individual components into an overall system could fall under the definition of precompetitive development. Furthermore, the first prototype was finalised just a few months after the end of project 2, which is an indicator that the project was aimed at the creation of an initial prototype.
- (45) However, a further analysis of the question would be without object since any incompatible aid would not distort the market any more. The R&D grants were provided to Schneider AG. SE and SLT were set up only later. It is highly

unlikely that the television set producer SE benefited from the R&D aid for research into laser technology, which was entirely spent in the approved manner. SLT might have benefited from the aid. However, the companies have since been liquidated, the R&D grants were included in the insolvent estate⁽¹³⁾ and the assets were sold at their market price (see paragraph 36).

Incentive effect

- (46) The Commission considers that the technological and economic risk of project 2 was still very high and that SLT would not have been in a position to carry out the project without the support of the BFS. Like the first project before it, the second project had a highly innovative character and required a significant amount of input.

VII. CONCLUSION

- (47) The Commission concludes that the R&D aid for project 1 amounting to EUR 6 498 468,68 and 50 % of the R&D aid for project 2, i.e. EUR 1 275 826,60, were compatible with the Community's state aid rules.
- (48) As regards the three loans totalling EUR 12,8 million and 50 % of the R&D aid for project 2, the Commission considers that the information available is not sufficient for it to reach a conclusive assessment. However, the decisive questions as to whether the loans constituted state aid and how far project 2 was a project of industrial research can be left open. Any incompatible state aid could not be recovered since, following the liquidation of all actual or potential beneficiaries and the sale of their assets at their market price, the aid would no longer distort the market.

The Commission accordingly concludes that the formal investigation procedure initiated under Article 88(2) of the EC Treaty in respect of the three loans and part of project 2 no longer serves any purpose,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted to Schneider AG, Türkheim, in the amount of EUR 6 498 468,68 for the research project 'Laser-Display-Technologie' and in the amount of EUR 1 275 826,60 for the

⁽¹³⁾ After it became clear that the assets of SLT would be sold outside Bavaria, one of the formal preconditions for the grants was no longer fulfilled.

⁽¹¹⁾ In Annex 1 to the R&D framework of 1996, industrial research is defined as 'planned research of critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services'.

⁽¹²⁾ In Annex 1 to the R&D framework of 1996, precompetitive development is defined as 'the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation'.

R&D project 'Laser-Display-Technologie — Systemintegration und Prototypen' is compatible with the common market.

Article 2

The formal investigation procedure is closed in so far as it concerned the loans from the Bayerische Landesanstalt für Aufbaufinanzierung totalling EUR 12,8 million and the grant of EUR 1 275 826,60 for the R&D project 'Laser-Display-Technologie — Systemintegration und Prototypen'.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 May 2006.

For the Commission
Neelie KROES
Member of the Commission