

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 28 April 1993

COMMUNICATION FROM THE COMMISSION

Request for Council assent and consultation of the ECSC Committee,
pursuant to Article 95 of the ECSC Treaty, concerning a
draft Commission Decision

**Privatisation of "Sächsische Edelstahlwerke GmbH",
Freital/Sachsen (former GDR)**

Privatisation of "Sächsische Edelstahlwerke GmbH",
Freital/Sachsen (former GDR)

Communication from the Commission to the Council of Ministers

I. HISTORY

a) By communication dated 18 January 1993, the German authorities notified to the Commission pursuant to Article 6 of Decision No 3855/91/ECSC of 27 November 1991 (Steel Aids Code) the aid measures associated with the sale by Treuhandanstalt of the ECSC steel undertaking "Sächsische Edelstahlwerke GmbH" in Freital/Sachsen (SEW Freital), to the West-German steel undertaking "Boschgotthardshütte O. Breyer GmbH", Siegen (BGH).

By communications of 25.01.1993, of 11.02.1993 and of 18.03.1993, the German Government provided further information.

b) In their notification, the German Government requested the Commission to propose a decision for the assent of the Council of Ministers, thereby referring to the procedure provided by Article 95 ECSC for aids not covered by the Steel Aids Code.

II. THE COMPANY

The SEW Freital was founded in the 19th century and is located in Sachsen, one of the new German Bundesländer. Its installations comprise at present an electric arc furnace and two hot-rolling mills (280 and 450 mill) for production of long products.

As per 1.09.1992, the company (incl. subsidiary) employed 2,166 persons, coming down from 5,533 on 1.7.1990.

Its crude steel capacity amounts to 300,000 t/y and has not been changed since 1989.

At present, the company's hot-rolling capacity attains 340,000 t/y, and has been maintained at this level since before 1989. In 1989 and 1990, 230,000 t/y of this capacity concerned light sections, 90,000 t/y heavy sections and 20,000 t/y wire rod.

Production of hot-rolled products amounted before unification (1990) to 295,000 t in 1989 and about 325,000 t in 1988 and before. In 1990, production decreased to about 170,000 and decreased further in 1991. This evolution was due to dramatically changed market conditions in the Community and the East-European countries.

SEW Freital produces ECSC products, in particular ingots, semi-finished products (blooms, sheet bars and billets) and rolled merchant bars (rounds, flats, squares and hexagonals). Non-ECSC production comprises forged products such as forged bars, sheets and crude rolls, all of which are produced at the Freital plant. A subsidiary located in Lugau produces bright steels, wire and cold-rolls for rolling plates, all of which equally are non-ECSC products.

In the last three years, production was as follows:

ECSC products (in 000 t)

1990*)	1991	1992	
- ingots ¹⁾	-	-	-
- hot-rolled semi-finished products	16.6	6.1	7.1
- hot-rolled merchant bars ²⁾	<u>53.5</u>	<u>28.6</u>	<u>30.5</u>
Total	70.1	34.7	37.6

1) crude steel products, which were entirely used in production of the semi-finished and finished products.

2) bars and light sections, all of which are long products

For the same periods, turnover amounted to:

ECSC products (in million DM/MECU)

1990*)	1991	1992	
- ingots:	-	-	-
- hot-rolled semi-finished products	9.2 / 4.5	7.3 / 3.7	8.5 / 4.4
- hot-rolled merchant bars	<u>50.8 / 24.8</u>	<u>48.6 / 24.3</u>	<u>51.9 / 26.6</u>
Total	60.0 / 29.3	55.9 / 28.0	60.4 / 31.0

Non-ECSC products (in million DM/MECU)

1990*)	1991	1992	
- forged products	20.1 / 9.8	22.9 / 11.5	11.6 / 5.9
- bright steels	18.6 / 9.1	31.6 / 15.8	22.5 / 11.5
- cold-rolls	<u>5.1 / 2.5</u>	<u>3.2 / 1.6</u>	<u>8.3 / 4.3</u>
Total	43.8 / 21.4	57.7 / 28.9	42.4 / 21.7
Total turnover:	103.8 / 50.6	113.6 / 56.8	102.8 / 52.7

*) 2nd half 1990

The shares of turnover in ECSC products amounted to 58% in 1990, 49% in 1991 and 59% in 1992.

In September 1992, the executive board of Treuhand advocated the liquidation of the company, despite interest by two investors in taking over the company. This proposal was in particular based on a calculation demonstrating higher costs for Treuhand involved in the privatisation than in liquidation.

However, the Land of Sachsen, in order to avoid the liquidation of the undertaking, expressed its willingness to contribute to the privatisation costs by an amount of 36 mio DM as, according to a consultant's report, the company was considered as viable. On 23.09.1992, Treuhand's supervisory board finally decided against the liquidation and in favour of the privatisation of the company.

III. PRIVATISATION PROCEDURE

a) Tender procedure

The undertaking was offered for sale through usual procedures known to the Commission, such as Hoppenstedt's list of firms, firms exchange, btx, BC-Net etc.

Five applicants demonstrated an interest in the acquisition of SEW Freital, namely

- Thyssen Edelstahlwerke AG
- Boschgotthardtshütte O. Breyer GmbH
- DSW-Remscheid GmbH
- Neue Maxhütte GmbH
- Rosenstock Betriebsführungsgesellschaft GmbH.

Following talks between Treuhandanstalt and those five applicants, concrete contractual negotiations were led from January to October 1992 with only three of them:

- Boschgotthardtshütte
- DSW-Remscheid
- Rosenstock BFG

DSW-Remscheid withdrew its offer on 26.08.1992, and Rosenstock BFG was not able to present a reliable financial concept. Consequently, Boschgotthardtshütte remained as sole bidder.

b) Agreements between seller and acquirer

The purchase contract was signed on 23.12.1992, but inter alia subject to approval by the Commission. Through this contract, SEW Freital has been taken over by SEW Edelstahl GmbH & Co. Holding which is entirely owned by Boschgotthardtshütte O. Breyer GmbH (BGH), which is entirely privately owned.

1) Commitments of acquirer

The acquirers take over the following:

- a) the subscribed capital of SEW of 250,000 DM (128,000 ECU). This capital has been established in the DM-Eröffnungsbilanz by THA.

- b) 2,166 employees currently with the company, whereof guaranteed employment on a permanent basis amounts to 760 from 1.1.1993 on and 1,110 after 1.1.1995 until at least 31.08.1995. This employment guarantee is penalized with 30,000 DM (15,400 ECU) per not-employed person to be paid to THA. The employment of a further 350 persons, who shall be employed above all with environmental works, from 1.1.1993 and during the interim period until 1.1.1995 is subject to an agreement on ABS/ABM-measures still under negotiation.
- c) the commitment to invest a guaranteed amount of 170 mio DM (87 MECU) over four years; while the planned investments amount to 250 mio DM. These investments are subject to a penalty payment to Treuhand equalling 50% of those investments not carried through or commenced until 31.12.1996;

d) land as follows:

- | | |
|----------------------------|-------------|
| 1. operating land: Freital | 681,000 m2 |
| Lugau | 190,000 m2. |

This land is part of the undertaking's assets.

2. Additionally, the acquirer has an option to take over - partly or entirely - 154,000 m2 of land, whereupon it can decide after the market value has been established; a respective report by an independent consultant is in preparation. For any of this land taken over, the company has to pay a separate price according to the market value. The part of such land not purchased by the company will remain with THA.

If either operating land (under 1.) or such land purchased by the company at the market price (under 2.) is sold to third parties before end 1995, the company has to pay any resulting extra-revenues to THA. These extra-revenues can result from the land sold at a higher price than that established as per 31.12.1991 (the basic value). In any case, THA will obtain at least the market value.

3. Furthermore, the acquirer is taking over 170,000 m2 of non-operating land partly contaminated with substantial environmental damage. This land, once the market value is determined by an independent consultant, is going to be retransferred to THA, pursuant to the sale contract.

- e) Costs resulting from the repair of environmental damage are principally borne by THA following the 90/10 rule pursuant to which the acquirer's share in these costs is generally limited to 10%. In the present case, the acquirer's commitment is limited independently of the actual amount to 7 mio DM (3.6 MECU).

The purchase price was: 2.0 mio DM (1.0 MECU).

2) Commitments of seller (THA)

THA undertakes the following commitments:

- a) to honour all liabilities of the company accumulated up to 1.7.1990 including interest and other charges accrued and accruing up to their final repayment:

amount: 226 mio DM
plus : 28 mio DM (interest and other accrued charges)
254 mio DM (130 MECU)

- b) to redeem all bank loans of the company (which are so far guaranteed by the THA), insofar effectively utilised, which have been accumulated since 1.7.1990 and up to 31.12.1992; and all other liabilities accrued before 1.1.1993; these are in particular trade creditors, guarantee claims and liabilities from pensions.

amount: up to 189 mio DM (97 MECU)

- c) to pay a non-repayable amount to the acquirer for maintenance and repair of installations:

amount: 42 mio DM (22 MECU)

- d) to guarantee an amount of 33.8 mio DM of trade debtors and 64.0 mio DM of stocks as per 1.1.1993, totalling 97.8 mio DM. If the established value is less on 1.1.1993, THA has to pay the difference. On the other hand, the acquirer will have to pay any positive difference; ie in case the total exceeds 97.8 mio DM. The contractual commitment of THA is however limited to 9 mio DM, whereas the German Government is expecting that the difference will not exceed 7 mio DM.

max. amount: 9 mio DM (4.6 MECU)

- e) to pay all social charges (until final release and social plan) related to employees not taken over under the guarantee provision (see 1) b)) by the company. As per 1.9.1992, the company employed 2,166 persons including 15 in subsidiaries. Since a number of 1,110 guaranteed, 1,056 employees will have to be paid by THA.

amount: 34 mio DM (17 MECU)

- f) to pay charges for repair of environmental damage on operating land:

amount: 17 mio DM (9 MECU)

3) Comparison between privatisation and liquidation costs

a) THA committed itself, accordingly to the abovementioned purchase contract, to take over the following amounts, equalling costs to THA of privatisation:

- Social costs for 1,056 employees from 1.1.1993 on, as the case may be, increased by 350 employees whose employment does not fall under the guarantee provision	34 mio DM	(17 MECU)
- Debt cancellation		
as per 1.7.1990	226 mio DM	
+ interest and other accrued charges	<u>28 mio DM</u>	
	254 mio DM	(130 MECU)
from 1.7.1990 to 31.12.1992 (incl. other liabilities)	189 mio DM	(97 MECU)
- Repair and maintenance of installations	42 mio DM	(22 MECU)
- Other contingencies		
- from assets	max. 7 mio DM ¹⁾	(4.6 MECU)
- environmental costs	up to 17 mio DM ²⁾	(8.7 MECU)
Total costs of privatisation to be deducted (purchase price):	543 mio DM <u>2 mio DM</u>	(278 MECU) (1 MECU)
Net costs of privatisation	<u>541 mio DM</u>	(277 MECU)

1) see under III.2) d) (7 mio DM represents maximum amount which can reasonably to be expected not to be exceeded.)

2) This amount assumes costs of 40.0 mio DM based on an estimate, whereof THA is to take over, after advance contribution of the acquirer of 1 mio DM, 90% equalling 35 mio DM, which may be shared between the Land of Sachsen and THA, resulting in a share of about 17 mio DM for each.

b) Compared with this the costs of liquidation, which would have had to be borne by THA, are estimated as follows:

- Costs for social plan for 2.166 employees	24 mio DM ³⁾	(12 MECU)
- Debt cancellation		
- as per 1.7.1990	226 mio DM	
plus interest and charges	<u>28 mio DM</u>	
	254 mio DM	(130 MECU)
- from 1.7.1990 to 30.09.1990	137 mio DM	(70 MECU)
- Operational loss (incl. costs for the liquidation and other liabilities)	45 mio DM	(23 MECU)
- Costs for dismantling of installations	100 mio DM	(51 MECU)
- Costs for environmental repair	<u>45 mio DM⁴⁾</u>	(23 MECU)
Total expenses	605 mio DM	(310 MECU)
From this amount, estimated revenues from sale of assets have to be deducted	<u>100 mio DM</u>	(51 MECU)
Net costs of liquidation	<u>505 mio DM</u>	(259 MECU)

It results from this that privatisation costs to THA (541 mio DM) exceed liquidation costs (theoretically to be borne by THA) by the amount of about

36 mio DM (19.5 MECU)

which corresponds to the amount which will be covered by the Land of Sachsen.

3) The difference in social costs assumed in the case of privatisation, on the one hand, and of liquidation, on the other hand, is principally due to different assumptions about the period within which the employees would have to be paid by THA until their final release. In the liquidation case, a 3-months interim period has been assumed during which the liquidation would have been implemented, whereas in the case of privatisation individual deadlines are generally longer, and costs include payment for apprentices, with the consequence that THA would have been charged with lower costs than in the privatisation case.

4) This amount assumes, as compared to the case of privatisation, that land can only be sold if it is entirely cleaned from environmental damage and redeveloped; the respective amount is therefore estimated somewhat higher than for the privatisation.

IV. RESTRUCTURING MEASURES

1) Investments

The acquirer plans to invest into the following production facilities for ECSC products:

a) Installations and equipment for crude steel production	amount: 45 mio DM	(23 MECU)
b) Hot-rolling installations (whereof the rolling-mill which replaces the two existing rolling-mill will be put at the company's disposal from BGH for free)	amount: 60 mio DM	(31 MECU)
c) Installation for hot-treatment and adjustment	amount: 65 mio DM	(33 MECU)
d) other investments (environmental protection measures)	amount: 40 mio DM	(21 MECU)
Total:	<u>210 mio DM</u>	(108 MECU)

Furthermore, investments totalling 40 mio DM (21 MECU) are envisaged for the non-ECSC sections. Of the total of 250 mio DM (128 MECU), 170 mio DM (87 MECU) are guaranteed under penalization.

2) Regional investment aids

The German Government has informed the Commission in its notification of this privatisation, that the company envisages to apply for regional investment aids on the planned investment costs in ECSC production of 210 mio DM, in particular:

- an investment subsidy of max. 23%,
amount: 47.8 mio DM (24.5 MECU)
- a tax allowance for investment of 8 and 5%, respectively,
estimated (max.) amount: 12.8 mio DM (6.6 MECU)
- a Federal guarantee of up to 80% of the investment loans of 100.8 mio DM (51.7 MECU). The aid intensity resulting from this guarantee is calculated at 3.4%.

These investment aids have been separately notified to the Commission pursuant to Article 6 of Decision No 3855/91/ECSC (Steel Aids Code) by communication dated 6.4.1993 (registered by the Commission on 7.4.1993).

Since these aids which might be covered by the Steel Aids Code are an integrated part of the total aid package, they are presented to the Council of Ministers under the present Communication.

In this notification, the German Government informed the Commission that the company will apply for these aids also for its non-ECSC investments. The subsidy amounts to 9.2 mio DM (4.7 MECU) and the tax allowance to 2.4 mio DM (1.2 MECU). These aids will be subject to a separate Commission decision under Articles 92 and 93 EEC.

3) Employment

As per 1.7.1990, the company employed 5,533 persons, whose number has been already reduced to 2,166 (incl. subsidiaries) as per 1.09.1992. The investment plan envisages a further reduction to 760 from 1.1.1993, and to 1,110 from 1.1.1995 until at least 31.08.1995.

Consequently, employment will be reduced as a result of restructuring by more than 50% on the basis of the guaranteed employment from 1.1.1995 on and up to until 31.08.1995 at least, and even by 65% given the lower guaranteed employment from 1.1.1993 on.

Pursuant to information obtained by the company 50 - 60% (approximately 1,100 - 1,300) of staff is (and will be) employed in its ECSC activities.

4) Effects on production capacity

The production capacity of the undertaking will develop as follows:

At current, the company's hot-rolling capacity attains 340,000 t/y, and has been maintained at that level since before 1989. Its crude steel capacity has not been changed since 1989. The envisaged investments will inter alia lead to a substantial reduction in hot-rolling capacity to 150-180,000 t/y, ie by 47 to 56% of original capacity, accompanied by a reduction in crude steel capacity by 33% to 200,000 t/y, and in capacity for rolled semi-finished products by 58% to 150,000 t/y (for details see following table).

in 000 t/y	original capacity (1990)	envisaged capacity reductions	remaining capacity
<u>ECSC products</u>			
- Ingots ⁺⁾	300	100	200
- rolled semi-finished products	360	210	150
- hot-rolled finished products	340	160	180 ^{*)}
+) crude steel products			
*) 150-180			
<u>Non-ECSC products</u>			
- forged products	45	5	40
- bright steel	60	35	25
- cold-rolls	<u>5</u>	<u>3</u>	<u>2</u>
Total:	110	43	67

5) Effects on production

The undertaking's plans on production entail a gradual increase in production from 1993 on, attaining 159,000 t in 1997, whereof about two thirds will be ECSC products (for details see following table).

The planning on production and supply of SEW Freital is as follows:

<u>In t/y</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>ECSC products</u>					
- ingots ¹⁾	6,500	8,500	10,700	-	-
- rolled semi-finished products	10,500	15,500	19,800	22,000	22,000
- hot-rolled finished products ²⁾	<u>11,000</u>	<u>16,000</u>	<u>65,000</u>	<u>80,000</u>	<u>80,000</u>
	28,000	40,000	95,500	102,000	102,000
1) crude steel products, will be entirely ceased from 1996 on					
2) long products					
<u>Non-ECSC products</u>					
- forged products	3,300	4,400	16,000	38,000	38,000
- bright steel/drawn wire	4,200	13,400	15,300	17,200	18,000
- cold-rolls	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
	8,500	18,800	32,300	56,200	57,000
Total ECSC and non-ECSC production	<u>36,500</u>	<u>58,000</u>	<u>127,800</u>	<u>158,200</u>	<u>159,000</u>
(whereof ECSC products)	(77%)	(68%)	(75%)	(64%)	(64%)

6) Overall ECSC production capacity in the former GDR

On the basis of the updated and confirmed information as provided by the German authorities, the evolution of production capacity on the territory of the former GDR is as follows:

Capacity (in 000 t/y)	1990 (1.7)	end of 1994 or later	reduction by
- crude steel	7,710	5,277	32%
- hot-rolled finished products	5,193	3,837 ³⁾	26%

3) Excluding the case where a new capacity is to be created in the EKO Stahl plant and equally excluding the proposed capacity reduction in the present case SEW Freital. If the capacity increase of 865 t/y associated with the EKO-Stahl plan is included, the overall capacity reduction in the former GDR for the period end of 1994 as compared to 1 July 1990 would diminish to 9.2%.

V. MARKET SITUATION

After the boom of 1989-90 the steel industry is currently going through the most difficult period since the beginning of the 80s. This is due to the general slowdown in the economy, with a slow but constant decrease of demand for steel and increasing oversupply, accompanied by a collapse in prices. Compared to 1989, prices have been reduced by 20% on average (30% for certain long products). In addition to these internal factors the international market and the exchange rate of the dollar are still non-satisfactory, there is pressure from imports, in particular from Eastern Europe and a trade dispute with the USA affecting 50% of EC exports to that market. All of these factors combine to aggravate the financial situation of almost all steel companies in the Community.

Unless the measures are taken to bring about a better balance between supply and demand, an increase in the price level cannot be expected. Consequently companies must devise their strategies so as to take account of relatively high supplies and depressed prices and to reduce their costs so as to remain competitive. In order to achieve this objective, particular attention will have to be paid to the level of production capacity and ways of adapting it to demand.

Analysis carried out by the Commission, with two scenarios, shows that overcapacity in hot-rolled finished products can be estimated between 19.2mt and 25.1mt by 1995 (11%-15%). For crude steel excess capacity has been estimated between 31.8mt and 43.2mt (16-22.6%).

Excess capacity for long products is estimated at 14mt equalling 20-25%, and overcapacity for light sections amounts to 7-8mt equalling 20-25% of total capacity.

The Commission - in agreement with the industry - has charged an independent personality (Mr Braun) to identify in collaboration with the industry measures of capacity closures. His report as presented to the Commission identifies 8.5 million t of crude steel capacities and 6.5 million t of hot-rolling capacities (whereof 3 million t of flat and 3.5 million t of long products) as "acquired" closures (ie closures that have already taken place), as well as 17 million t of crude steel capacities and 11 million t of hot-rolling capacities (whereof 9 million t of long products) as "potential" closures, the definitive plans of which are to be presented by 30.9.1993, and implementation of which is to be provided by the steel undertakings by end of 1994.

The closures required for a durable recovery of the sector are estimated by the Commission at a minimum of 30 million t of crude steel and 19 million t of hot-rolled products.

VI. Appraisal

In determining whether the Commission should make a proposal under Article 95 ECSC, the Commission needs to establish:

- a) whether and to what extent the proposed financing of the privatisation and the restructuring constitutes State aids and whether these aids are compatible with the Steel Aids Code;

- b) if it is stated that the privatisation and restructuring involve aid not compatible with the Steel Aids Code, whether there are adequate counterpart measures, particularly in the form of reduction of capacity in hot-rolled finished products, commensurate with the amount of aids involved and having regard to the prevailing market situation, in order to ensure that the aids do not distort competition in the Community to an extent contrary to the common interest, and therefore can justify a proposal from the Commission to the Council on the basis of Article 95 ECSC.

A) Aids involved

- 1) In conformity with all its previous decisions in THA cases, the Commission does not consider that the writing-off of debts accumulated until 1.7.1990 constitutes an aid falling under the EEC or ECSC Treaty. Similarly, the aid for repair of environmental damage caused before that date is also not taken into consideration for the purpose of this exercise. The respective amounts are 254 mio DM (130 MECU) and 17 mio DM (9 MECU).
- 2) Investment aids amounting to 60.6 mio DM (31 MECU) plus Federal guarantee - see under IV.2) - may be allowed under the Steel Aids Code, given that the regional investment aids to be applied for could be considered under the Steel Aids Code, since they will be granted under general regional investment aid schemes the extension of which to the ECSC steel industry in the territory of the former GDR has been approved by the Commission. Equally, their aid intensity remains below the 35% maximum ceiling allowed for and they are accompanied by an reduction of overall production capacity in the territory of the former GDR. However, since these aids are an integrated part of the total aid package, they are presented to the Council of Ministers under the present Artikel 95 proposal.
- 3) All other aid measures involved are to be covered by the present Article 95 ECSC derogation procedure. The following measures are concerned:
 - a. The social charges for 1.056 employees to be taken over by THA. A proportion of the costs may be covered by Community assistance under Article 56 of the ECSC Treaty and a proportion would be compatible with the Steel Aids Code. The remaining charges would be taken over by THA. These proportions remain to be determined, depending on the company's and THA's application for EC funds. In any case the maximum amount that could be taken over by THA cannot exceed 34 mio DM (17 MECU);

The cost of 350 workers to be included in the ABS measures is not considered as an aid.

The Commission was informed of the ABS measures by a communication of the German Government in September 1991. The ABS structures aim at mitigating the social effects of redundancies. ABS societies constitute structures financed by the state and the labour administration in order to convert under certain conditions (training, new qualifications etc.) workers made redundant and temporarily employ them in small works of public interest, ie cleaning, dismantling, gardening etc. These measures were not considered as constituting a state aid as no economic advantage is provided to the undertaking shedding of these workers.

- b. the amount of debts accumulated between 1.7.1990 and 31.12.1992 totalling 189 mio DM (97 MECU);
- c. the amount of 42 mio DM (21.5 MECU) which THA will pay to the company for repair and maintenance of installations;
- d. the amount of up to 9 mio DM (4.6 MECU) by which THA guarantees the valuation of certain assets, although also the acquirer is obliged to pay to THA any positive difference between the market value of the assets and the estimated 97.8 mio DM.

It results from this that SEW Freital receives Article 95 ECSC relevant public aids in connection with the privatisation totalling 274 mio DM (140 MECU) whereof an undetermined, but not insignificant part is related to the non-ECSC steel activities of the company representing 40-50% of turnover, and further regional investment aids totalling 72 mio DM (37 MECU), whereof 60.6 mio DM (31 MECU) are related to ECSC and 11.6 mio DM (5.9 MECU) to non-ECSC production.

The assessment of the aid to the non-ECSC activities will be made by the Commission under its powers pursuant to Article 92 of EEC Treaty, thereby having regard to the outcome of the present Article 95 ECSC procedure and the restructuring effort undertaken in the area of non-ECSC steel-making

B) Viability

- 1) The acquirer of SEW Freital, the BGH O. Breyer GmbH, is an independent company owned by the family Breyer with two plants located in Siegen. BGH is specialised in production of special steels, in particular INOX. The production includes ingots up to 25 t, semis for forging and rolling and merchant bars. The non-ECSC products concern tubes, rolling steels, forged pieces and products for mechanical engineering. Further, it is specialised in non-ECSC activities of milling and turning and drilling.

The size of SEW Freital provides the advantage of producing special steel products in small quantities, combined with short-term delivery. After the restructuring the undertakings will produce and sell above all those special steel products which are offered by the big Community producers only to a limited extent. These are, in particular, materials which are not produced in large volumes or the production and manufacturing of which causes difficulties for big plants. Further these concern products the sizes and volumes of which cannot be supplied by the big plants at short-term delivery. By the restructuring, it will be possible for the undertaking to produce small quantities of round and flat steel corresponding to the needs of its clients. This flexibility will, together with the fact that 50 to 60% of the undertaking's production shall be supplied to BGH, while for the remainder, deliveries will go to existing clients from different sectors above all in Germany, plays an important role for the company's future viability even under difficult general market conditions.

The two undertakings are active in a very particular market, about 70% of turnover is realised in Germany. Their clients are in particular drilling, electrical power plants and food (automatic distribution). This market is not affected by the structural crisis in the Community and has a positive outlook (annual growth rate of 3%).

The Commission therefore is of the opinion that the acquirer's restructuring plan is likely to ensure the company's viability in the future without further aid.

- 2) Furthermore, the Commission is putting importance to the fact that a private investor after an open and unconditional bidding procedure has demonstrated his willingness to assume the risk for the company's future viability without further aid than those covered by the purchase contract. The open tender procedure for the sale of the company to a private investor has assured that the aid is strictly limited to what is necessary for taking over the company and its restructuring.

C) Capacity reductions

The Commission considers that the aids involved in the privatisation and the restructuring of the steel undertaking SEW Freital can be justified by the restructuring effort proposed.

Indeed,

- the Freital plant is to reduce its hot-rolling capacity by at least 160,000 t/y (47%), and its crude steel capacity from 300,000 t/y to 200,000 t/y (33%). These capacity reductions will be of a genuine and irreversible nature and are taking place in a sector suffering from substantial excess capacities in the Community, and are consequently considered as contributing to the required global effort for reducing capacities;
- the capacity reduction will be accompanied by a substantial reduction in employment by 49% from 1.1.1993 on, as compared to 1.9.1992.

The Commission believes that the relatively significant reduction of the undertaking's existing capacity of 47% in hot-rolled finished products and employment by 49% constitutes a sufficient justification for the aids involved, given the presently very grave market situation of the Community's steel industry as a whole. In the Commission's view, the proposal of the German Government is well balanced and contributes in an appropriate way to the global effort of reducing capacities and reestablishing the sector's competitiveness.

It should be noted that the capacity reduction concerned in this particular case has not been considered for the overall reduction in steel-making capacity required for the former GDR, which is serving as counterpart for regional investment aid under Article 5 of the Steel Aids Code.

VII. Commission's proposal

In the light of the above appraisal of the privatisation and restructuring of SEW Freital, the Commission proposes to the Council to give its unanimous assent to aids up to a maximum of 346 mio DM (177 MECU).

These aids are accompanied by a substantial reduction in the undertaking's production capacity of hot-rolled finished products by at least 160,000 t/y equalling 47%, by a reduction of crude steel capacity from 300,000 t/y to 200,000 t/y. Equally, these capacity reductions will be accompanied by a considerable reduction in employment by about 50%.

The Commission therefore takes the view that the aids proposed should be authorized subject to the following conditions:

- that the capacity reductions proposed, ie from 340,000 t/y original capacity to max. 180,000 t/y as well as the reductions in crude steel capacity and in capacity for semi-finished products, equalling a reduction by at least 160,000 t/y or 47%, shall be of a genuine and irreversible nature;
- that the installations closed must not be sold for subsequent use in Europe;
- that the Commission's decision, as is usual in such cases, will provide for verification to check the implementation of the restructuring, ie the dismantling of the old capacities and the creation of the new hot-rolling capacity limited to max. 180,000 t/y.

The Commission will pursuant to Article 95 ECSC also consult the Consultative Committee on its proposal.