Commission Decision of 20 December 2006 on State aid C 12/05 (ex N 611/03) which Germany is planning to implement for e–glass AG (notified under document number C(2006) 6587) (Only the German version is authentic) (Text with EEA relevance) (2007/656/EC)

COMMISSION DECISION

of 20 December 2006

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(Text with EEA relevance)

(2007/656/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty[(1)], and in particular Article 9 thereof,

Having called on interested parties to submit their comments pursuant to those provisions[(2)] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 15 December 2003, registered as received on 18 December 2003, Germany notified the Commission of planned investment aid for e-glass AG, Osterweddingen, (N 611/03) in accordance with the notification requirement laid down in the 1998 multisectoral framework on regional aid for large investment projects (hereinafter referred to as the 'MSF 1998')[(3)]. On 23 January and 27 February 2004, the Commission requested additional information. Germany provided the requested information by letters dated 13 February 2004, registered as received on the same day, and 4 March 2004, registered as received on the same day.

(2) On 20 April 2004 the Commission approved, under reference C(2004) 1350 final, the aid intensity for e-glass AG notified under the MSF 1998.

(3) By letter dated 25 October 2004, registered as received on 26 October 2004, Germany informed the Commission that part of the information on the owners of e-glass AG in the initial notification was incorrect and asked the Commission for an amendment of the decision of 20 April 2004.

(4) By letter dated 8 February 2005, registered as received on 9 February 2005, Germany submitted additional information.

(5) By letter dated 24 February 2005, reference D/51447, the Commission gave Germany the opportunity to comment on the Commission's intention of revoking its decision of 20 April 2004 by initiating the formal investigation procedure. Germany submitted its comments by letter dated 4 March 2005, registered as received on 8 March 2005.

(6) By letter dated 20 April 2005, reference C(2005) 1114 final, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid for e-glass AG. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*[4]. The Commission called on interested parties to submit their comments.

(7) Germany submitted its comments by letter dated 7 June 2005, registered as received on 9 June 2005.

(8) The Commission received comments from interested parties by letters dated 3 October 2005, registered as received on 4 October 2005, 7 October 2005, registered as received on 10 October 2005, and 10 October 2005, registered as received on the same day. The Commission forwarded the comments to Germany, which was given the opportunity to react. The comments from Germany were received by letter dated 22 November 2005, registered as received on 25 November 2005.

2. DESCRIPTION OF THE AID MEASURE

(9) Germany intends to provide regional investment aid to the limited company e-glass AG (e-glass) for the setting-up of a new plant for the production of raw float glass in Saxony-Anhalt, Germany.

2.1. The recipients and the change in ownership structure

(10) The object of e-glass, according to its articles of association, is ‘the manufacture, processing and distribution of flat glass of all types’.

(11) The following shareholder structure was notified on 15 December 2003:

— Luxfinpart S.A., Luxemburg, with a [...][5] % stake,

— Semco Glaskooperation GmbH (Semco), Germany, with a [...] % stake,

— Mr Heckmann, lawyer, acting as trustee for a German firm (trustor), with a [...] % stake.

Luxfinpart S.A., founded in 1997, is a holding company for which the notified project seemed to represent a purely financial investment at the time of notification.

Semco, founded in 1997, processes float glass. The shareholders are Sawatzki GmbH & Co. Vermögensanlage KG and Hermann Schüler GmbH & Co. KG, each with a [...] % holding.

The trustor is a [...] which processes and refines glass and float glass. The trustor's shares are [...] or held by [...].

(12) By letter dated 25 October 2004 Germany informed the Commission of incorrect information in the notification as regards one of the owners of e-glass and its activities in the float glass market[(6)].

(13) By letter dated 8 February Germany informed the Commission of a change in the ownership structure of e-glass, which took effect on 21 December 2004. The Commission was informed that Luxfinpart S.A. had sold its share in e-glass to Glas Trösch Holding GmbH, Bad Krozingen, Germany (Trösch). Trösch additionally bought [...] resulting in a [...] % share in e-glass.

(14) Trösch is the German holding company of the Trösch group, which has its headquarters in Bern (Switzerland). Trösch is the majority owner of Euroglas S.A., Hombourg (France), and Euroglas GmbH, Haldensleben (Germany). The Trösch group produces float glass and is also active in the processing of float glass.

(15) The lawyer Mr Heckmann who was acting as a trustee for a German firm transferred his shares to AD Augento GmbH, Stuttgart (Germany) (AD-GmbH) with effect from 21 December 2004. [...][(7)].

(16) Following the transaction on 21 December 2004, the ownership structure of e-glass is now as follows:

—	Trösch	[...] %
—	[...]	[...] %
—	Third owner (shares held in a trusteeship by AD-GmbH)	[...] %

2.2. The project

(17) The project is being carried out in Sülzetal-Osterweddingen, an assisted area under Article 87(3)(a) of the EC Treaty. The regional aid ceiling is 28 % gross or, in exceptional cases, 35 % gross for large firms[(8)]. The start of the investment project was 15 April 2003. The project was scheduled to end on 31 December 2005. The application for the granting of aid was submitted before the start of the project.

(18) The purpose of the project was the construction of a new plant for the production of raw float glass. Float glass is by far the most common type of flat glass. Other flat glass categories include patterned glass, mirror glass and sheet glass. Float glass has a share of over 80 % of total flat glass production worldwide[9]. Within the EEA, the share of float glass is probably well over 80 %. The market for float glass is generally divided into two levels, namely the production of unprocessed float glass (level 1) and the processing of float glass (level 2).

(19) To produce unprocessed float glass, a continuous ribbon of glass is first produced, with molten glass being floated on molten tin. This produces absolutely flat glass surfaces. After cooling, the glass is cut and is then ready for sale. Float glass is usually further processed and is then used wherever flat glass is required, essentially in the building industry and the motor vehicle industry.

(20) The new plant will be e-glass's first production site. Production was planned to start in [...], and the plant was to become fully operational in [...]. Once the start-up period has been completed in [...], annual capacity is expected to be approximately [...] tonnes (gross) of raw float glass.

(21) Eligible costs are EUR 121 million, broken down as follows:

Item	***Eligible costs in EUR***
Land	[...]
Buildings	[...]
External facilities	[...]
Installations, machines	[...]
Intangibles (software)	[...]
Total	121 000 000

(22) According to the notification, the project will help to create 186 direct jobs, including ten traineeships. It is also expected to help create 358 indirect jobs in the assisted region itself and in adjacent assisted areas (at NUTS level II).

2.3. Aid intensity

(23) Germany is asking for approval of aid having a gross intensity of up to 35 % of the total eligible costs of EUR 121 million.

2.4. Aid measures

(24) The aid to e-glass consists of the following:

— An investment grant on the basis of the joint Federal Government/*Länder* scheme for improving regional economic structures *(Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur')* in conjunction with the 32nd outline plan of the joint Federal Government/*Länder* scheme *(32. Rahmenplan der Gemeinschaftsaufgabe*). The 32nd outline plan, in its relevant provisions, is identical to its predecessor, the 31st outline plan, which was approved by the Commission until the end of 2006[10],

— An investment premium on the basis of the Investment Premium Law 1999 (*Investitionszulagengesetz 1999*), approved by the Commission for the production or purchase of economic goods, both completed before 2005 and linked to an initial investment project[11]. Germany had reserved for itself the use of a potential successor scheme to the Investment Premium Law 1999,

— A guarantee for a bank loan, based on an aid scheme approved in 1991[12].

(25) Germany has confirmed that the conditions of the approved regional aid map and of the abovementioned approved aid schemes[13] will be complied with.

3. INITIATION OF THE PROCEDURE

3.1. The incorrect information

(26) By letter dated 25 October 2004, Germany reported to the Commission that part of the information in the original notification on the owners of e-glass was incorrect. Germany and the management of e-glass claim not to have been aware of this situation before the Commission adopted its decision.

(27) The new information concerns one of the owners of e-glass (Luxfinpart S.A.) and its activities in the processing market (level 2). The initial notification specified three owners, two of them already active in the processing market (level 2), whereas the third owner was considered only a financial investor (Luxfinpart S.A.), active neither in the raw float glass production market (level 1) nor in the processing market (level 2). The correct information submitted by Germany by letter dated 25 October 2004 was that at the time of the notification the three owners of e-glass were all active in the processing market (level 2).

(28) Since March 2003 Luxfinpart S.A. had had a commercial relationship with [...].[...] is active in the processing of float glass (level 2). [...] bore the economic risk of Luxfinpart's share in e-glass. At the same time [...] undertook the contractual obligation to buy [...] % of the output of e-glass.

3.2. Consequences of the incorrect information for the assessment

(29) In the initial decision of 20 April 2004, the relevant market was defined as being the market for raw float glass (level 1). Although two out of the three owners of e-glass were active in the processing market (level 2), Germany provided evidence that allowed the Commission to conclude that the analysis could be limited to the level 1 market.

(30) The Commission had copies of draft contracts between e-glass and an independent customer. The contract with the independent customer demonstrated that this customer had the same terms and conditions as the owner-customers. Therefore, it was concluded that there was equal treatment between owner-customers and other customers active in the downstream market, with the result that the aid would have no impact on the processing markets and that there was no need for the Commission to include the processing market (level 2) in the definition of the relevant market. In addition, it was argued that the production (level 1) and processing (level 2) markets would follow the same development since raw float glass is the main input factor used in the processing market.

(31) The information provided by Germany on 25 October 2004 showed, however, that the abovementioned sample contract was not from an independent customer as stated in the notification, but was actually a contract with one of the (indirect) owners of e-glass at the time of the notification, namely [...], which is active in the float glass processing market (level 2).

Therefore, the conclusion that the aid would not have any distorting impact on the processing market (level 2) and that the Commission therefore did not have to assess the development of the processing market could no longer be upheld. The new information means that the processing market (level 2) needs to be included in the Commission's assessment of the compatibility of the aid measure.

(32) As the incorrect information had an influence on the reasons for defining the relevant market(s) and therefore influenced the competition factor and thus the maximum allowable aid intensity under the MSF 1998, the incorrect information is to be seen as a determining factor for the decision within the meaning of Article 9 of Regulation (EC) No 659/1999.

(33) Article 9 of Regulation (EC) No 659/1999 stipulates that ‘the Commission may revoke a decision … after having given the Member State concerned the opportunity to submit its comments, where the decision was based on incorrect information provided during the procedure which was a determining factor for the decision. Before revoking a decision and taking a new decision, the Commission shall open the formal investigation procedure pursuant to Article 4(4). …’.

(34) Before revoking the original decision, which was based on incorrect information that was a determining factor for the decision, and taking a new decision, the Commission opened the formal investigation procedure — in accordance with Article 9 of Regulation (EC) No 659/1999 — on 20 April 2005.

4. COMMENTS FROM INTERESTED PART IES

(35) Following the invitation to submit comments pursuant to Article 88(2) of the Treaty, the Commission received comments from three competitors.

(36) The first interested party, Saint-Gobain, was of the opinion that the Commission could not ignore market developments that were known by it at the time of the adoption of a decision on the compatibility of state aid under Article 87 of the EC Treaty and the MSF 1998. Consequently, in the current formal investigation proceedings, the Commission could not simply base its assessment on the average annual growth of apparent consumption in the period 1997 to 2002. Saint-Gobain stated that, in view of the incorrect information provided in the notification, the Commission should, from today's perspective, consider the time period 1999-2004 as the decisive period for the assessment of the intensity of the state aid.

(37) According to Saint-Gobain, the average annual growth rate of apparent consumption of raw float glass over the last five years was negative (1999-2004: -0,62 %), and the market should therefore be defined as an 'absolutely declining market' within the meaning of point 7.8 of the MSF 1998.

(38) Saint-Gobain was also of the opinion that, even at the time of the decision of 20 April 2004, the Commission should have taken into account forward-looking growth estimates of apparent consumption, especially if they indicated a significant change in the average annual growth of apparent consumption. It pointed out that the Commission itself requests the notifying Member State to provide estimates and forecasts on the development of the apparent consumption of the product(s) concerned in the three financial years following the notification (see point 5.4.2 in Section 5 of the Annex to the MSF 1998).

(39) Saint-Gobain argued that the relevant market should include the market for processed glass (level 2). However, according to Saint-Gobain, only a sub-market of the overall processed glass market was relevant in this case. Saint-Gobain made an initial distinction between the markets for automotive glass and general trade glass (building glass), because it claimed that the production technology for automotive glass, the customer base and the way automotive glass was put on the market were totally different from that in the construction sector. It then further divided the building glass sector into four separate markets: (i) sealed units (double or multiple glazing); (ii) toughened glass (safety glass); (iii) laminated glass (safety glass); and (iv) silvered glass (mirrors). As glass consumption for sealed units (double glazing), in terms of volume, amounted to approximately 80 % of float glass used in general trade (non-automotive applications), Saint-Gobain claimed that the main relevant product market in this case was the market for sealed units.

(40) As to the geographic scope of the above-mentioned markets, Saint-Gobain argued that the markets for silvered glass (mirrors) and laminated glass should be considered to be Community-wide. However, for the other product markets, in particular toughened glass and sealed units, no clear indications for

a Community-wide market seemed to exist. Such markets rather appeared to involve national or even regional markets, essentially due to higher transport costs. At current prices for double glazing, the high cost would no longer allow long-distance transport, and — as far as Saint-Gobain was aware — all glass producers supplied sealed units to customers at a distance of approximately 250 to 300 km from the processing plant. Saint-Gobain therefore argued that the market for sealed units in particular should be considered to be national or even regional in scope.

(41) Saint-Gobain also commented on the assessment of the forecasts of the number of new jobs created by the investment. It pointed out that the planned float glass plant in Osterweddingen would be situated 40 km from an already-existing float glass plant in Haldensleben operated by Euroglas. One of the three shareholders in Euroglas was Trösch. Because of the possible synergies between these two plants and due to the fact that the new e-glass plant was equipped with the most modern technology, Saint-Gobain argued that e-glass was likely to be able to operate its plant with fewer than 120 employees (including trainees).

(42) The second interested party, […][(14)], submitted updated figures for the information on the market for raw float glass (Community-wide, volume and value) used by the Commission in its decision of 20 April 2004. It also argued that the market situation in Germany should be taken into consideration by the Commission. It therefore provided figures on the volume and value of total consumption of raw float glass in Germany (2001-2004).

(43) The second interested party was also of the opinion that, although it was extremely difficult to obtain recent figures on the volume or value of the consumption of processed glass in the Community, such figures reflected the trend in the raw float glass sector. It emphasised that, since all raw float glass was processed, the trend reflected by the data provided for the raw float glass sector should be similar to that of the processed glass market, and that the fluctuation in imports and exports of processed glass into and from the Community could be ignored.

(44) The second interested party also commented on the Commission's assessment of the capital-labour factor. It pointed out firstly that the construction of a similar float plant by Trösch in Hombourg, France, had created 168 new jobs. Secondly, it argued that Trösch would be able to provide administrative, technical, commercial and other services, management support and training to e-glass. Therefore, the number of new jobs created by the e-glass project would be even lower than 168.

(45) The third interested party, Pilkington, commented on the reference period to be taken into account for the calculation of the competition factor. It argued that the Commission was not continuing the original investigation, but was now carrying out a new investigation. At the same time, the Commission was

obliged to take account of the latest available data. Therefore the five-year period to be taken into account was the period 1999 to 2004.

(46) Pilkington also argued that the relevant product market was processed glass for general trade and not for automotive applications. Of this latter market, insulating glass units constituted by far the largest element. According to Pilkington, the relevant geographic market for processed glass (level 2) in this case was not Community-wide, but was confined to Germany (or at most to Germany and its immediately adjacent territories).

5. COMMENTS FROM GERMANY

(47) Germany commented by letter dated 7 June 2005, registered as received on 9 June 2005, on the decision to initiate the procedure.

(48) As regards the relevant time period for the analysis, Germany supported the Commission's opinion as stated in the decision of 20 April 2005 that the data from 1997 to 2002 needed to be taken into account as these data represented the most recent data available at the time of the notification.

(49) Germany suggested separating the level 2 market in safety glass (ESG and VSG), multiple-walled glass and technical glass. Safety glass (ESG and VSG) was used in the automotive industry and the construction sector, multiple-walled glass mainly in the construction sector. As all three shareholders in e-glass produced safety glass (ESG and VSG) and multiple-walled glass for the construction sector, only these sub-markets should be regarded as relevant. In addition, they provided information on the supply-side substitutability of these products.

(50) Germany was of the opinion that the level 2 market in safety glass (ESG and VSG) and multiple-walled glass was EEA-wide. In addition, it provided information on the positive development of this market during the years 1997 to 2002.

(51) By letter dated 22 November 2005, registered as received on 25 November 2005, Germany submitted comments on the reactions of the competitors of e-glass. It stressed that the reference period 1997 to 2002 had to remain unchanged as only information available at the time of the notification could be taken into account. In opening the formal investigation procedure, the Commission was continuing an assessment that had been started following the notification in December 2003.

(52) Germany provided some information on the development of the raw float glass market in the years 2003 and 2004 which underlined the positive development of this market. It also showed that the main producers of float glass were planning to increase their production capacity, which supported the positive view on the market.

(53) As regards the market for processed glass (level 2), Germany remained of the opinion that this market did not need to be included in the analysis. It argued that a very high share of the raw float glass would be directly sold into the market and the shareholders of e-glass would procure the raw float glass at market rates. As a consequence, the aid would not have any impact on the level 2 market.

(54) Concerning the definition of the relevant market, Germany argued against the view that only multiple-walled glass would form the relevant market and stressed that the relevant market was EEA-wide and should include safety glass (ESG and VSG) as well as multiple-walled glass.

(55) Germany also provided information on the transport costs of raw float glass and processed float glass. The percentage share of transport costs was higher for raw float glass than for processed glass due to the higher price of processed glass. This meant an EEA-wide market definition. In addition, Germany suggested that the distribution areas of the production facilities for processed glass in the EEA overlapped, which pointed to the conclusion that the market was EEA-wide.

(56) Germany commented on the competitors' view that the capital-labour factor needed to be adjusted since Trösch could exploit synergies between the e-glass production site and other factories of the group in the area. In particular, Germany argued that since Trösch was only one of three shareholders that were all competitors in the market for processed glass, it was not possible to generate these synergies. In addition, it provided information on the correct estimation of the number of staff and argued that comparisons between factories as carried out by competitors were not correct and led to wrong conclusions.

6. ASSESSMENT OF THE AID

6.1. Preliminary remarks

(57) On 20 April 2004 the Commission approved the aid intensity for e-glass as notified by Germany on 15 December 2003. Since, after the decision was taken, Germany informed the Commission of incorrect information in the original notification and since this information was a determining factor for the decision, the Commission decided on 20 April 2005 to initiate the formal investigation procedure with a view to revoking the original decision of 20 April 2004 and issuing a new decision.

(58) The decision of 20 April 2004 contains a complete assessment of the notification. This assessment is taken over in the present Decision except for those parts which need to be corrected because of the information sent by Germany on 25 October 2004 and formed part of the decision of 20 April 2005.

Applicable guidelines

(59) Germany notified the aid to e-glass on 15 December 2003, and this notification was registered as received on 18 December 2003. Point 40 of the 2002 Multisectoral framework on regional aid for large investment projects[(15)] (MSF 2002) stipulates that a project has to be assessed in the light of the criteria applicable at the time of notification: '…, the provisions of this framework will be applied as from 1 January 2004. The previous multisectoral framework will remain applicable until 31 December 2003. However, notifications registered by the Commission before 1 January 2004 will be examined in the light of the criteria in force at the time of notification.' In the light of the above, for the assessment of the aid to e-glass the criteria laid down in the MSF 1998 apply.

Relevant facts

(60) This assessment will take into account the facts, figures and situations as they existed at the time of the notification on 15 December 2003.

(61) The Commission has to take an ex-ante decision on the basis of estimates of future perspectives and market figures. The Member State also has no other information available to decide on the aid than the facts, figures and situations as they exist at the time of the notification. The aid intensities are not adapted afterwards if some years later — ex-post — figures show that the market has, for example, turned out differently. Although in the present case the Commission has to take a decision two and a half years after the original notification took place, it must nevertheless base its assessment on the facts and situations which existed at the time of notification.

(62) The reference period in the decision of 20 April 2004 was the years 1997 to 2002. Competitors of e-glass suggested that the reference period for the analysis should be adjusted to take more recent data into account that is now available. Since some time has elapsed between the original notification and the current Decision, situations might have changed, markets might have developed and facts concerning the project might have turned differently than was originally planned. For the reasons stated above, this cannot be taken into account by the Commission in its assessment.

6.2. Existence of aid under Article 87(1) of the EC Treaty

(63) The present aid measure was granted by a Member State and through state resources within the meaning of Article 87(1) of the EC Treaty (see point 2.4 of this Decision). The aid will confer an advantage on e-glass as it would otherwise have had to bear the entire costs of the investment on its own. As a significant volume of the float glass is transported across international borders, there exists international trade in the float glass market. Therefore, financial advantages conferred on the company may distort competition in a way that may affect trade between Member States. Consequently, within this assessment, the Commission considers that the notified measure constitutes state aid to e-glass within the meaning of Article 87(1) of the EC Treaty.

6.3. Notification requirement

(64) Since the criteria set out in point 2.1(i) of the MSF 1998 apply, the aid project must be notified and the maximum allowable aid intensity must be determined in accordance with the MSF 1998. The Commission notes that the aid is based on three regional aid schemes already approved by the Commission. It is therefore not *ad hoc* aid within the meaning of the third paragraph of point 2 of the guidelines on national regional aid[16] whose basic compatibility with the common market must be examined individually. The Commission's examination requirement here is confined to the compatibility of the notified aid intensity of 35 % gross under the criteria set out in the MSF 1998.

6.4. Assessment under the MSF 1998

(65) The maximum aid intensity allowed for projects under the MSF 1998 has to be determined in accordance with the maximum aid ceiling applicable to regional aid in the assisted area concerned at the time when the aid is notified.

(66) In the case of Sülzetal-Osterweddingen, where e-glass is located, the regional aid ceiling is 28 % gross for large companies. However, if certain conditions are met, the regional aid ceiling may be increased to 35 % gross. Upon application by a *Land*, and with approval of the Joint Task Sub-Committee (*Unterausschuss der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur' (GA)*), in justified exceptional cases measures which are structurally particularly effective in relation to the location of undertakings may receive the higher aid intensity. According to the information provided by Germany, these conditions are met, since the Sub-Committee approved the application of Saxony-Anhalt on 23 July 2003[17].

(67) Consequently, a regional aid ceiling of 35 % gross applies in this instance. In calculating the maximum aid intensity allowed for the relevant project, this regional aid ceiling must be adjusted in accordance with the provisions of the MSF 1998 to take account of various coefficients that result from the application of three assessment factors, namely the competition factor (T), which takes account of the situation in the relevant product market, the capital-labour factor (I) and the regional impact factor (M).

6.4.1. The competition factor

Defining the relevant product market — preliminary remarks

(68) The approval of aid to firms in industries with structural overcapacity poses particular risks of distorting competition. Any increase in capacity that is not offset by a capacity reduction elsewhere makes the problem of structural overcapacity more acute. Consequently, in determining the competition factor, the Commission must examine whether the planned project is being carried out in an industry or branch of industry in which there is structural overcapacity.

(69) According to point 7.6 of the MSF 1998, the relevant product market(s) compromises the products envisaged by the investment project and, where appropriate, its substitutes considered by the consumer (by reason of the products' characteristics, their prices and their intended use) or by the producer (through flexibility of the product installations).

(70) Float glass is by far the most common form of flat glass. Since, because of its specific manufacturing process and its product qualities, float glass cannot be replaced either on the supply or on the demand side by other types of flat glass (e.g. sheet glass, patterned glass or mirror glass), the market for float glass must be regarded as a separate product market[(18)]. This product market is in turn divided into two levels that must be assessed separately from one another, namely the production of unprocessed float glass (level 1) and the processing of float glass (level 2)[(19)].

(71) The Commission's analysis in the decision of 20 April 2004 led to the conclusion that in this particular case solely the market for raw float glass (level 1) needs to be assessed[(20)]. Due to the incorrect information on the ownership structure, this conclusion cannot be upheld and the processing market (level 2) needs to be included in the definition of the relevant markets since the aid could distort competition at this level also.

(72) In the following section the market for raw float glass (level 1) is first assessed, followed by an assessment of the market for processed float glass (level 2).

Analysis of the market for raw float glass (level 1)

Preliminary remark

(73) The assessment of the market for raw float glass (level 1) as described in the original decision of 20 April 2004 was not called into question and not part of the decision of 20 April 2005 initiating the procedure. The following part is therefore a reproduction of the assessment that was carried out and described in the decision of 20 April 2004.

The relevant geographic market definition for raw float glass (level 1)

(74) Point 7.6 of the MSF 1998 states that the relevant geographic market comprises usually the EEA or, alternatively, any significant part of it if the conditions of competition in that area can be sufficiently distinguished from other areas of the EEA. Where appropriate the relevant market may be considered to be global.

(75) Because of the relatively high costs of transporting raw float glass[(21)], the sales markets of the individual production plants do not cover the whole of the EEA. Rather, they take the form of concentric circles round the relevant production site whose radius is determined by the economically viable transport distance, which as a rule is not more than 500 to 1 000 km for transport by road, this being the form of transport most frequently used. However, since there are now more than 50 production sites operated by European float

glass manufacturers throughout the EEA, and since consequently their sales markets overlap, they jointly cover the whole of the EEA.

(76) In order to determine whether, on the basis of this geographic overlapping of individual markets, similar conditions of competition also exist in the various areas of the EEA, the Commission examined whether separate markets exist on which separate prices have been able to develop independently from the other sales markets, or whether pricing in the EEA follows a uniform basic pattern. On the basis of the Eurostat statistics available, the Commission compared prices per tonne in the main float-glass-producing Member States, namely in France, Germany, Italy, the United Kingdom and Spain in the period 1997 to 2002 and in Belgium (due to missing data) in the period 1999 to 2002. The figures show that prices for raw float glass in the individual Member States show a high degree of correlation in the period 1997 to 2002. This parallel trend in prices indicates that purchasers of raw float glass have sufficient scope to switch to producers in other Member States — a clear indication of a single geographic market.

(77) Conclusion: The Commission concludes that the geographic market for raw float glass is the EEA as a whole[(22)].

Determining the competition factor for the raw float glass market (level 1)

(78) The lowest level of the NACE classification corresponding to the production of raw float glass is NACE class 26.11 ‘manufacture of flat glass’. Raw float glass accounts for well over 80 % of total flat glass production in the EEA and can therefore be regarded as representative of NACE class 26.11. However, capacity in the flat glass sector is measured by reference to exploitable (saleable) capacities[(23)]. This measurement method is not comparable with the measurement of capacity in manufacturing industry as a whole.

(79) Consequently, the Commission takes the view that the situation regarding capacity for the raw float glass market cannot be taken into consideration in assessing the competition factor[(24)].

(80) Point 3.4 of the MSF 1998 provides that, in the absence of sufficient data on capacity utilisation, the Commission will use the figures on apparent consumption in order to determine whether the investment is taking place in a declining market. The market for the product in question is deemed to be declining if, over the last five years, the average annual growth rate of apparent consumption of the product in question is more than 10 % below the annual average of EEA manufacturing industry as a whole, unless there is a strong upward trend in the relative growth rate of demand for the product. An absolutely declining market is one in which the average annual growth rate of apparent consumption over the last five years is negative.

(81) The Commission has the following data on apparent consumption of raw float glass for the period 1997–2002:

Market for raw float glass in the Community	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**Average annual growth rate**
Total consumption in volume terms (million tonnes)[a]	6,937	7,334	7,716	7,677	7,509	7,599	1,84 %
Average price per tonne (in EUR)[b]	293,87	285,2	291,79	333,26	349,15	346,92	
Total consumption in value terms (EUR million)	2 038,6	2 091,7	2 251,5	2 558,4	2 621,8	2 636,2	5,28 %

a Source: CPIV (*Comité Permanent des Industries du Verre de l'Union Européenne*).

b Source: Eurostat/Comext intra-EU trade statistics.

(82) In the period 1997-2002, the average annual growth rate of EEA manufacturing industry as a whole was 4,8 %. The threshold below which, pursuant to point 7.8 of the MSF 1998, a declining market must be assumed to exist is accordingly 4,4 %. The European raw float glass market had an average annual growth rate in value terms of 5,28 % over that period and is therefore well above the EEA average[(25)]. The Commission also examined, on the basis of the available Eurostat/Comext intra-Community trade data, whether the trend of apparent consumption of raw float glass in value terms in the individual Member States confirmed this result and found that it did so.

(83) The positive trend of the raw float glass market is reflected in the conduct of the producers, since, on the European market, which is concentrated on a few large float glass producers[(26)], investment has been carried out in new production plant in recent years in France (2001 — Pilkington/Interpane), in Belgium (2001 — Glaverbel/Scheuten) and in Italy (2002 — Sangalli)[(27)].

(84) Conclusion: The Commission therefore concludes that the market for raw float glass is not a declining market and that the competition factor pursuant to point 3.10.1(iv) of the MSF 1998 must be put at 1,0.

Analysis of the market for processed glass (level 2)

Products concerned

(85) According to point 7.6 of the MSF 1998, the relevant product market(s) comprises the products envisaged by the investment project and, where appropriate, its substitutes considered by the consumer (by reason of the products' characteristics, their prices and their intended use) or by the producer (through flexibility of the product installations).

(86) The market for processed glass (level 2) needs to be further subdivided in order to identify the products concerned and to define the relevant market in this case. Two broad categories can be clearly distinguished which are not substitutable from the consumer or producer point of view: automotive glass and building glass[(28)]. These two products form two separate product markets since production technology, customer base as well as marketing strongly differ. The market for building glass can then be subdivided into the following sub-markets: (i) multiple-walled glass (sealed units); (ii) toughened glass (ESG — safety glass); (iii) laminated glass (VSG — safety glass); and (iv) silvered glass (mirrors).

(87) Safety glass (ESG and VSG) and multiple-walled glass are substitutes from the supply side as the manufacturers can adjust the production to the different products within a short time frame and without significant cost. According to Germany, around 70 to 80 % of the processed glass for the building industry is produced by manufacturers that offer the two products, safety glass and multiple-walled glass, at the same time. It is also important to note that safety glass can serve as a final product but also as an input product for the production of multiple-walled glass. In addition, sales and distribution of safety and multiple-walled glass for the building industry are often done simultaneously.

(88) On this basis, it would be erroneous to conclude that the relevant product market should be limited to sealed units only as competitors suggested in their comments.

(89) The Commission notes that all three shareholders in e-glass produce safety glass (VSG and ESG) and multiple-walled glass for the building industry but do not manufacture technical glass or glass for the automotive industry.

(90) Conclusion: The Commission concludes that the relevant product market is a sub-group of the level 2 market, namely safety glass (VSG and ESG) and multiple-walled glass for the construction industry, with the following PRODCOM codes: 26121230 (toughened safety glass, n.e.c.), 26121270 (laminated safety glass, n.e.c.) and 26121330 (multiple-walled insulating units of glass).

The relevant geographic market definition for the processed glass market (level 2)

(91) Point 7.6 of the MSF 1998 states that the relevant geographic market comprises usually the EEA or, alternatively, any significant part of it if the conditions of competition in that area can be sufficiently distinguished from other areas of the EEA. Where appropriate the relevant market may be considered to be global.

(92) Germany suggests that, like the market for raw float glass (level 1), the market for processed float glass (level 2) has to be considered to be EEA-wide.

(93) Competitors of e-glass suggest in their comments that the market for processed glass (level 2) is national or even regional in scope as high transport costs would not allow for wider distribution.

(94) According to evidence provided by Germany, the customer base of e-glass's shareholders for the relevant market as defined in paragraphs 85 to 90 is larger than national or regional and covers various areas of the EEA[(29)].

(95) Sales markets form concentric circles around the different production sites and, despite relatively high transport costs, processed glass is transported over a long distance[(30)]. These concentric circles overlap each other and cover jointly the whole EEA. Furthermore, there are no different technical standards or regulatory barriers to trade for processed glass (level 2) within the EEA territory and about 20 % of the German production is imported.

(96) In line with previous merger and state aid decisions, the Commission considers that, like the market for raw float glass (level 1), the market for processed float glass (level 2) has to be seen as EEA-wide.

(97) In state aid case *Pilkington/Interpane* (N 291/2000), SG(2000) D/106264 of 17 August 2000, the Commission concluded that the market for VSG and coated class including insulating glass is EEA-wide.

(98) In the merger case IV/M/1230 *Glaverbel/PPG*, paragraph 16 states: 'In respect of general trade in the *Pilkington-Techint/SIV* case the Commission left the precise definition of the geographic market open. In particular, on silvered and laminated glass the Commission noted that these products were transported over long distances by the large producers. Therefore, the parties hold that there is a strong argument for defining these markets EU-wide as well. The parties submit that the same conclusion is valid for toughened glass and sealed units as all major producers are operating at least on an EU-wide basis and market conditions in the different Member States are sufficiently homogeneous. The Commission's investigation in the present case has confirmed that the markets for silvered glass (mirrors) and laminated glass are EU-wide. For the other product markets in the general trade segment the results are not so clear'.

(99) Therefore, defining the geographic market for level 2 as national, as suggested by Pilkington in its comments, would be contradictory to its own statement in response to the investigation of the merger case.

(100) *Conclusion:* The Commission concludes that the geographic market for processed glass (level 2) in the form of safety and multiple-walled glass for the building sector is the EEA as a whole. The Commission has no reason to conclude that the market for processed glass should be differently defined in geographic terms than the market for raw float glass.

Determining the competition factor for the processed glass market (level 2)

(101) The Commission notes that data on capacity utilisation for the level 2 market are not available or do not exist. The necessary information on the (yearly) production volume and the (yearly) maximum production capacity in the EEA of the factories processing raw float glass in the form of safety glass and multiple-walled glass for the construction industry is not available — either from Eurostat or research institutes or from sector associations.

(102) Consequently, the Commission takes the view that the situation regarding capacity for processed glass in the form of safety glass and multiple-walled glass for the construction industry cannot be taken into consideration in assessing the competition factor.

(103) As stated in paragraph 80, point 3.4 of the MSF 1998 provides that, in the absence of sufficient data on capacity utilisation, the Commission will use the figures on apparent consumption in order to determine whether the investment is taking place in a declining market. According to point 7.8 of the MSF 1998, the market for the product in question is deemed to be declining if, over the last five years, the average annual growth rate of apparent consumption of the product in question is more than 10 % below the annual average of EEA manufacturing industry as a whole, unless there is a strong upward trend in the relative growth rate of demand for the product. An absolutely declining market is one in which the average annual growth rate of apparent consumption over the last five years is negative.

(104) The Commission has the following data on apparent consumption in value for the reference period 1997 to 2002 (*source*: COMEXT/Eurostat):

Market for processed float glass (level 2) in EURPRODCOM	**1997**	**2002**	**Compound average annual growth rate (1997-2002)**
26121230 (toughened safety glass, n.e.c.)	807 949 414	1 272 280 870	9,51 %

a No data available for Ireland, Greece, Austria, Luxembourg, Iceland and Norway.

26121270 (laminated safety glass, n.e.c.)	717 692 284	1 085 038 665	8,62 %
26121330 (multiple-walled insulating units of glass)	2 171 614 199	3 090 852 791	7,31 %[a]

a No data available for Ireland, Greece, Austria, Luxembourg, Iceland and Norway.

(105) Germany has submitted volume data from the industry association CPIV[(31)], which show that the market for safety glass (ESG and VSG) and multiple-walled glass grew by 5,54 % during the reference period 1997 to 2002. These volume data have been converted into turnover figures by using price information from the beneficiary as far as available as well as price estimates. The compound average annual growth rate in value terms calculated is 7,6 % for the reference period 1997 to 2002. This figure is in line with the COMEXT/ Eurostat data shown above.

(106) The annual average growth rate of the apparent consumption in value terms for all relevant products (safety glass in the form of VSG and ESG as well multiple-walled glass) individually but also together as reflected in the table above lies above[(32)] the average annual growth rate of EEA manufacturing industry for the same time period, which was 4,8 %.

(107) *Conclusion:* The Commission therefore concludes that the market for processed glass as defined above is not a declining market and that the competition factor pursuant to point 3.10.1(iv) of the MSF 1998 must be put at 1,0.

(108) The assessment of the processing market (level 2) together with the analysis of the market for raw float glass (level 1) shows that these markets have developed in the same direction during the reference period 1997 to 2002, namely with a growth rate above the average growth rate of manufacturing industry. The Commission notes that for both markets (level 1 and level 2) the competition factor is set at 1,0, which also means that the competition factor for the project as a whole is set at 1,0[(33)].

6.4.2. The capital-labour factor

Preliminary remark

(109) The assessment of the capital-labour factor as described in the original decision of 20 April 2004 was not called into question and not part of the decision of 20 April 2005 initiating the procedure. The following part is therefore a reproduction of the assessment that was carried out and described in the decision of 20 April 2004.

Assessment

(110) The capital-labour factor of the MSF 1998 aims to adjust the admissible maximum aid intensity in favour of projects which contribute effectively and more positively to reducing unemployment through the creation of a relatively higher number of new jobs or the safeguarding of existing jobs.

(111) According to the information provided by Germany, the project will create 186 long-term jobs, broken down as follows:

Activity field	**Direct jobs**
Administrative	3
Commercial	4
Production — management	8
Production –mixture/cullet	11
Production — hot end	27
Production — bath/annealing lehr/cold end	31
Production — cutting	1
Production — storage/distribution	44
Production — quality/laboratory	9
Technical services	38
Apprenticeships	10
Total	186

(112) These estimates are based on a comparison with another plant in Saxony-Anhalt which has already been operating for at least six years and whose float glass division, with a production of [...] tonnes gross a day, employs 187 persons (excluding trainees) at the moment of notification. E-glass, with a production of [...] tonnes gross a day, will have a somewhat smaller number of jobs than the comparison plant, since in the case of e-glass certain areas (security) will be outsourced and since the most modern technologies will be used. The Commission considers these figures plausible.

(113) Eligible investment costs of EUR 121 million for the creation of 186 jobs give a figure of EUR 650 538 per job. In accordance with point 3.10.2 of the MSF 1998, the capital-labour factor must therefore be put at 0,8.

6.4.3. The regional impact factor

Preliminary remark

(114) The regional impact factor as described and assessed in the original decision of 20 April 2004 was not called into question and not part of the decision of 20 April 2005 initiating the procedure. The following part is therefore a reproduction of the assessment that was carried out and described in the decision of 20 April 2004.

Assessment

(115) The regional impact factor takes account of the beneficial effects of new investment on the economy of the assisted region. The Commission considers that job creation can be used as an indicator of a project's contribution to the development of a region. Investment, including capital-intensive investment, may create indirect jobs in the assisted region concerned and in any adjacent assisted region, with job creation in this context referring to jobs created directly by the project or by first-tier suppliers and customers.

(116) The project will contribute to the creation of indirect jobs in the following areas:

Field of activity	**Claimed indirect jobs**	**LOI**[a]	**To be recognised**
Raw material production — soda	24	24	24
Raw material production — sand	10	8	8
Raw material production — dolomite	2	2	2
Raw material production — limestone	2	2	2
Raw material production — cullet	20	15	15
Raw material transport — sand, limestone and soda	29	29	29
Raw material transport — remainder	8	8	8
Float glass transport	81	81	81

a Letters of intent from the firms contacted are available, specifying the long-term jobs expected to be created.

Further processing (small firms)	30	6	6
Operation and maintenance of the supply facilities — nitrogen, hydrogen	5	—	5
Operation and maintenance of the supply facilities — electricity, natural gas (municipal plants)	3	—	3
Waste disposal	12	12	12
Packaging producers	28	28	28
Servicing, spare parts, maintenance, repair (machinery, production plant, cranes, pumps, heating, ventilation and sanitary equipment, electronics, air conditioning, transport, vehicles)	60	60	60
Permanent painting work	1	—	1
Maintenance/ servicing of computers, communications equipment and industrial TV technology	8	8	8
Cleaning services	5	—	5
Cleaning/upkeep of external facilities, winter service	6	5	5

a Letters of intent from the firms contacted are available, specifying the long-term jobs expected to be created.

Guards/security	12	7	7
Canteen	2	2	2
Suppliers of replacement and expendable parts	10	—	0
Total	358	297	311

a Letters of intent from the firms contacted are available, specifying the long-term jobs expected to be created.

(117) As regards the areas for which the contacted firms provided letters of intent, the Commission recognises the figures specified in such letters of intent (a total of 297 jobs).

(118) In the case of 24 other jobs, no letters of intent have been provided. However, the explanations and figures given by Germany for these jobs appear convincing. Only as regards the area 'Suppliers of replacement and expendable parts' are there doubts: the ten jobs claimed here seem to the Commission to be too high, since the supply of spare parts seems already largely covered by the 60 jobs specified under the heading 'Servicing, spare parts, maintenance, repair …'. The Commission therefore includes only 14 of the total of 24 jobs not covered by letters of intent, giving a total of 311 indirect jobs which can be recognised.

(119) The Commission therefore concludes that, compared to the 186 directly created jobs, there will be a high degree of indirect job creation (more than 100 %). Pursuant to point 3.10.3(i) of MSF 1998, the regional impact indicator is therefore 1,5.

6.4.4. Maximum authorised aid intensity

(120) In the light of the above and on the basis of the figures provided by Germany, the MSF 1998 formula for calculating the maximum aid intensity for this project is: 35 % gross x 1,0 x 0,8 x 1,5 = 42 % gross, limited by the regional aid ceiling of 35 % gross.

(121) The aid intensity of up to 35 % gross of eligible investment costs which Germany proposes to grant to e-glass is consequently compatible with the maximum aid intensity calculated on the basis of the MSF 1998.

7. CONCLUSION

(122) The notified aid intensity of up to 35 % gross which Germany proposes to grant to e-glass AG meets the conditions that allow it to be regarded as compatible with the multisectoral framework on regional aid for large investment projects (1998),

HAS ADOPTED THIS DECISION:

Article 1

The Decision adopted on 20 April 2004 in case N 611/2003 is hereby revoked.

Article 2

The state aid of up to 35 % gross of eligible expenditure for e-glass, notified to the Commission by Germany on 15 December 2003, is compatible with the common market pursuant to Article 87(3)(a) of the EC Treaty.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 2006.

For the Commission

Neelie KROES

Member of the Commission

(**1**) OJ L 83, 27.3.1999, p. 1, Regulation as amended by the 2003 Acts of Accession.

(**2**) OJ C 220, 8.9.2005, p. 3.

(**3**) OJ C 107, 7.4.1998, p. 7.

(**4**) See footnote 1.

(**5**) Business secret

(**6**) For details see chapter 3.1.

(**7**) [...]

(**8**) Commission decision of 2.4.2003 in state aid case N 641/2002 concerning the German regional aid map (OJ C 186, 6.8.2003, p. 18).

(**9**) According to the study *Pilkington and the flat glass industry 2003*, published by one of the leading float glass producers, Pilkington plc, some 35 million tonnes of flat glass were produced worldwide in 2002, with float glass accounting for some 29 million tonnes of this total.

(**10**) Commission decision of 1.10.2003 in state aid case N 642/2002 (SG(2000) D/232040 of 2.10.2003).

(**11**) Commission decision of 9.12.1998 in state aid case N 702/1997 (SG(98) D/12428 of 31.12.1998), of 28.2.2001 in state aid case C 72/1998 (SG(2001) D/286551 of 2.3.2001) and of 10.12.2003 in state aid case N 336/2003 (SG(2003) D/233359 of 11.12.2003).

(**12**) *Programm für unmittelbare Bürgschaften des Bundes und der Länder in den neuen Bundesländern und Berlin Ost*, N 297/1991, SG(91) D/1344 of 15.7.1991, E 24/1995, SG(96) D/5500 of 18.6.1996, and SG(98) D/54570 of 11.11.1998.

(**13**) All the German aid schemes approved by the Commission contain a stipulation that at least 25 % of total eligible costs must not contain any aid element.

(**14**) In its comments, this competitor requested anonymity.

(**15**) OJ C 70, 19.3.2002, p. 8.

(**16**) OJ C 74, 10.3.1998, p. 9.

(**17**) See minutes of the 255th meeting of the Joint Task Sub-Committee.

(**18**) See Decision 94/359/EC in merger case *Pilkington-Techint/SIV*, paragraph 11 (OJ L 158, 25.6.1994, p. 24), and the decision of 7.8.1998 in merger case *Glaverbel/PPG*, paragraphs 7 to 12 (OJ C 282, 11.9.1998, p. 2).

(**19**) See footnote 17: Decision 94/359/EC, paragraph 13, and the decision in merger case *Glaverbel/PPG*, paragraphs 7 to 12.

(**20**) The reasons behind this conclusion are outlined above under 3.2.

(**21**) According to the study *Pilkington and the flat glass industry 2003*, transport costs generally account for 10 % of total costs.

(**22**) The Commission came to the same conclusion in the following decisions: merger case *Pilkington-Techint/SIV* (see footnote 18 above), paragraph 16; State aid case *Sangalli Manefredonia Vetro* (Commission decision of 26.7.1999, OJ L 137, 8.6.2000, p. 1), paragraphs 32 et seq.; State aid case *Pilkington/Interpane* (Decision of 26.7.2000 in N 291/2000, SG(2000) D/106264 of 17.8.2000), section 4.4.2; State aid case *Glaverbel Kavala* (No N 553/1999 of 26.7.2000, SG(2000) D/106281 of 17.8.2000), paragraph 58.

(**23**) The European Association of Flat Glass Manufacturers, the GEP-VP (*Groupement Européen des Producteurs de Verre Plat*), assumes an effective maximum capacity of 90 % of maximum melt capacity.

(**24**) The Commission came to a similar conclusion in section 4.4.3. of its decision in state aid case *Pilkington/Interpane*, and in paragraph 51 of its decision in state aid case *Glaverbel Kavala*; see footnote 21 above.

(**25**) The Commission uses for the comparison the growth rate of the raw float glass market in value terms as the comparator (the development of manufacturing industry as a whole) is measured in volume terms evaluated with the relevant prices for the individual products — meaning that the growth rate is conceptually based on value figures.

(**26**) According to estimates in the 2002 and 2003 studies entitled *Pilkington and the flat glass industry,* 90 % and 91 % of total European capacity in 2002 and 2003 respectively was accounted for by five companies (Saint-Gobain, Pilkington, Asahi (Glaverbel), Guardian and Sisecam).

(**27**) *Pilkington and the flat glass industry* studies 2002 and 2003. Figures are not available for earlier years.

(**28**) This differentiation is in line with the definition of the relevant market in the state aid decision of 17.8.2000 in the *Pilkington/Interpane* case (N 291/2000).

(**29**) The Commission received copies of invoices indicating to which location in the EEA processed glass was delivered.

(**30**) Competitors of e-glass referred in their comments to transport distances of around 250 to 300 km.

(**31**) Comité Permanent des Industries Du Verre de L'Union Européenne.

(**32**) The positive development of the market for safety glass (ESG and VSG) and for multiple-walled glass for the construction sector can be explained by several factors. In particular, new forms of architecture (e.g. facades made of glass) but also energy-saving programmes are key factors.

(**33**) Germany has confirmed that the market share of e-glass together with its shareholders is in none of the relevant markets above 40 %. Therefore, point 3.6. of the MSF 1998 does not apply.