JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

19 October 2005 *

In Case T-324/00,

CDA Datenträger Albrechts GmbH, established in Albrechts (Germany), represented by T. Schmidt-Kötters and D. Uwer, lawyers, with an address for service in Luxembourg,

applicant,

supported by

Federal Republic of Germany, represented by W.-D. Plessing and T. Jürgensen, acting as Agents, and R. Bierwagen, lawyer,

intervener,

v

Commission of the European Communities, represented by K.-D. Borchardt and V. Kreuschitz, acting as Agents, and C. Koenig, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

supported by

ODS Optical Disc Service GmbH, established in Hamburg (Germany), represented by I. Brinker and U. Soltész, lawyers, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of Commission Decision 2000/796/EC of 21 June 2000 on State aid granted by Germany to CDA Compact Disc Albrechts GmbH, Thuringia (OJ 2000 L 318, p. 62),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Third Chamber, Extended Composition),

composed of J. Azizi, President, R. García-Valdecasas, J.D. Cooke, M. Jaeger and F. Dehousse, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 5 May 2004,

gives the following

Judgment

Legal context

1 Article 87 EC provides:

'1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

...'

2 Article 88 EC provides:

'1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is

being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

...'

3 Under Article 5 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1):

'1. Where the Commission considers that information provided by the Member State concerned ... is incomplete, it shall request all necessary additional information. Where a Member State responds to such a request, the Commission shall inform the Member State of the receipt of the response.

2. Where the Member State concerned does not provide the information requested within the period prescribed by the Commission or provides incomplete information, the Commission shall send a reminder, allowing an appropriate additional period within which the information shall be provided.

...'

4 In addition, Article 6 of Regulation No 659/1999 provides:

'1. The decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure and shall set out the doubts as to its compatibility with the common market. The decision shall call upon the Member State concerned and upon other interested parties to submit comments

within a prescribed period which shall normally not exceed one month. In duly justified cases, the Commission may extend the prescribed period.

...'

5 Under Article 10 of Regulation No 659/1999:

'1. Where the Commission has in its possession information from whatever source regarding alleged unlawful aid, it shall examine that information without delay.

2. If necessary, it shall request information from the Member State concerned. ... Article 5(1) and (2) shall apply mutatis mutandis.

3. Where, despite a reminder pursuant to Article 5(2), the Member State concerned does not provide the information requested within the period prescribed by the Commission, or where it provides incomplete information, the Commission shall by decision require the information to be provided (hereinafter referred to as an "information injunction"). The decision shall specify what information is required and prescribe an appropriate period within which it is to be supplied.'

6 Article 13(1) of Regulation No 659/1999 provides:

'The examination of possible unlawful aid shall result in a decision pursuant to Article 4(2), (3) or (4). In the case of decisions to initiate the formal investigation

procedure, proceedings shall be closed by means of a decision pursuant to Article 7. If a Member State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.'

7 Article 14 of Regulation No 659/1999 provides:

'1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a "recovery decision"). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.

2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.

Without prejudice to any order of the Court of Justice of the European Communities pursuant to Article [242 EC], recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Community law.'

8 In addition, Article 16 of Regulation No 659/1999, entitled 'Misuse of aid', states:

'Without prejudice to Article 23, the Commission may in cases of misuse of aid open the formal investigation procedure pursuant to Article 4(4). Articles 6, 7, 9 and 10, Article 11(1), Articles 12, 13, 14 and 15 shall apply mutatis mutandis.'

9 Finally, in 1994, the Commission adopted Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 1994 C 368, p. 12), amended in 1997 (OJ 1997 C 283, p. 2) ('Guidelines on aid for rescuing and restructuring').

Facts

10 By Decision 2000/796/EC of 21 June 2000 on State aid granted by Germany to CDA Compact Disc Albrechts GmbH, Thuringia (OJ 2000 L 318, p. 62; 'the contested decision'), the Commission ruled on the legality of the financial aid granted by various German public entities from 1991 to 1995 for a plant manufacturing compact discs ('CDs') and CD accessories, established in Albrechts, Thuringia ('the Albrechts CD plant').

A — *General context*

11 In the contested decision, the Commission distinguished between three phases: first, the start-up phase of the undertaking, second, the undertaking's restructuring phase and, lastly, the acquisition of some of the undertaking's assets by the company MediaTec Datenträger GmbH ('MTDA').

1. The undertaking's start-up phase (1990 to 1992)

12 The contested decision indicates that the Albrechts CD plant was created by a joint venture agreement concluded on 20 February 1990 between, on the one hand, the VEB (nationally owned) Kombinat Robotron, established in Dresden, Saxony ('Robotron'), and, on the other, the company R. E. Pilz GmbH & Co. Beteiligungs KG ('PBK'), a company forming part of the Pilz Group established in Kranzberg, Bavaria ('the Pilz Group'). Robotron held a two-thirds share in the capital of the joint venture, then called 'Pilz & Robotron GmbH & Co. Beteiligungs KG' ('the joint venture'), with the remaining one-third held by PBK. The joint venture was set up for the purpose of manufacturing CDs, CD boxes and accessories. Mr Reiner Pilz, Managing Director of the Pilz Group, also ensured the management of the plant (recital 11 of the contested decision).

13 In order to achieve its corporate objective, on 29 August 1990 the joint venture and Pilz GmbH & Co. Construction KG ('Pilz Construction'), a company belonging to the Pilz Group, signed a general contracting turnkey agreement for the construction of a CD production plant for an all-inclusive price of DEM 235.525 million, plus lot development costs of DEM 7.5 million (recitals 12 and 20 of the contested decision).

14 Under an additional contract dated 26 May 1992, the partners in the joint venture agreed to expand manufacturing capacity for CDs and CD boxes. An all-inclusive price of DEM 39 million for all deliveries and services was agreed (recital 22 of the contested decision).

15 In order to finance those investments, the joint venture, Robotron and PBK borrowed the necessary funds from a bank consortium. Those bank loans were partially or totally covered by guarantees from the Treuhandanstalt ('the THA'), a public body responsible for financing the privatisation of undertakings in the former German Democratic Republic and from the *Land* of Bavaria. Moreover, the *Länder* of Thuringia and Bavaria, the latter through the Bayerische Landesanstalt für Aufbaufinanzierung ('the LfA'), the Bavarian body charged with the financing of infrastructures, granted investment subsidies and allowances to the joint venture.

16 During the start-up phase of the Albrechts CD plant, ownership of the shares in the capital of the joint venture changed hands several times. First, when Robotron was wound up by the THA in 1992, the shares in the joint venture held by the company were taken over by PBK. Subsequently, PBK, in turn, transferred almost all of the shares held by it in the joint venture to the company Pilz GmbH & Co. Compact Disc KG ('Pilz Compact Disc'), another company belonging to the Pilz Group, so that the joint venture became a subsidiary of the latter company. Lastly, on 24 November 1992, following that transfer and the transfer of its head office to Albrechts, the joint venture operated under the name Pilz Albrechts GmbH ('PA'). Immediately after that transfer, it was integrated into the Pilz Group's central cash-management system (recitals 13 and 14 of the contested decision).

2. Restructuring phase (1993 to 1998)

17 The CD production plant commenced operations in 1993. From the outset, it encountered major difficulties and became heavily indebted (recital 15 of the contested decision).

18 In order to remedy the situation, a restructuring agreement was concluded on 7 March 1994 by the Pilz Group (including PA), the banks and the public bodies (the THA, the LfA, the Thüringer Industriebeteiligungsgesellschaft ('the TIB') and the Thüringer Aufbaubank ('the TAB')) which had participated in the financing for the establishment of the Albrechts CD plant. Under that agreement, a large portion of the bank loans which had been granted for the purpose of building the CD production plant was partially or totally paid off. Moreover, under the restructuring agreement, the shares in PA were acquired by TIB — 98% of the shares — and TAB — 2% of the shares — with retroactive effect from 1 January 1994, with the result that PA no longer belonged to the Pilz Group. From October 1994, the company also underwent a name change and subsequently operated under the name CDA Compact Disc Albrechts GmbH ('CD Albrechts') (recitals 15 and 17 of the contested decision). In 1994 and 1995, the TAB and the LfA granted several rounds of credit to CD Albrechts.

19 It was also in 1994 that the German authorities noticed that a large part of the financial assistance which had been granted to finance the establishment of the Albrechts CD plant had been misused, particularly in the central cash-management system in the Pilz Group, for the benefit of the other companies in the group. Moreover, on 25 July 1995, insolvency proceedings were initiated in respect of the

assets of all the companies in the Pilz Group. Lastly, Mr Reiner Pilz has been sentenced to prison for fraudulent bankruptcy and other offences (recital 16 of the contested decision).

3. Acquisition of certain assets by MTDA

20 With effect from 1 January 1998, MTDA, a wholly-owned subsidiary of the TIB whose main centre of activities is the production of high-performance data-storage media, in particular recordable CDs (CD-ROMs) and DVDs, acquired some of the assets belonging to CD Albrechts, namely fixed and current assets, short-term usable assets, technical know-how and marketing organisation (recital 18 of the contested decision).

21 At the time of that acquisition, CD Albrechts changed its name to LCA Logistik Center Albrechts GmbH ('LCA'), whilst MTDA changed its name to CDA Datenträger Albrechts GmbH ('CDA'). LCA continued to own the land on which the company operated, the existing buildings, the technical infrastructure and the logistical installations. Moreover, LCA and CDA concluded an agreement on the exchange of services, which provides, first, for a lease contract with an annual rent of DEM 800 000 and, second, for a service contract worth around DEM 3 million a year, depending on the volume of business (recital 19 of the contested decision).

22 On 22 September 2000, LCA asked to be put into liquidation as part of bankruptcy proceedings.

B — *Administrative procedure*

23 In response to reports in the press that the German authorities had granted aid for the establishment of the Albrechts CD plant, in October 1994 the Commission asked the Federal Republic of Germany to provide it with information on that aid. An intense exchange of correspondence ensued, and various meetings were held between the German authorities and the Commission (recitals 1 to 3 of the contested decision).

24 By letter of 17 July 1998, the Commission informed the Federal Republic of Germany of its decision to initiate the formal investigation procedure provided for under Article 88(2) EC with regard to that aid ('the decision to initiate the procedure'). A list of questions being put to the German authorities was enclosed with that letter. The decision to initiate the procedure was published in the *Official Journal of the European Communities* of 15 December 1998 (Commission notice pursuant to Article [88(2) EC] to other Member States and interested parties on aid for setting up CD Albrechts GmbH, Thuringia, former Pilz Group, Bavaria (OJ 1998 C 390, p. 7)).

25 The German authorities reacted to the decision to initiate the procedure by sending various letters containing additional information. A number of meetings were again held between the German authorities and representatives of the Commission.

26 However, considering that the information provided by the German authorities did not provide satisfactory answers to its questions, the Commission, by letter of 22 July 1999, set a deadline of 31 August 1999 for answers to its questions. After having requested an extension of that deadline by letter of 28 July 1999 and after having had another meeting with representatives of the Commission on 23 September 1999 in Brussels, the German authorities provided supplementary information.

27 After expiry of the time-limit laid down in the decision to initiate the procedure, the companies CDA and Point Group Ltd, a competitor of CDA, informed the Commission that they were interested parties and submitted observations.

28 On 21 June 2000, the Commission closed the procedure by adopting the contested decision.

C — *Finding of facts and legal assessment*

29 The Commission made separate assessments of the aid granted by the Federal Republic of Germany during the start-up phase, the restructuring phase and, lastly, the acquisition of certain assets of CD Albrechts by MTDA.

1. Financial aid granted by the Federal Republic of Germany during the start -up phase

30 In the contested decision, the Commission identified five types of financial measures granted during the start-up phase. In a synoptic table in recital 32 of the contested decision, it described them as follows:

	Measure	Amount (DEM million)	Recipient	Granted by	Date	Legal basis
1	100% deficiency guarantee, initially 80% guarantee covering DEM 52.7 million	54.7	PBK	LfA	1991	Law on the assumption of guarantees and sureties of the Free State of Bavaria
2	Investment grants and allowances	19.42	Joint venture	LfA	1991/1992	Joint scheme for improving regional economic structures, Investment Allowance Law
3	Waiver	3.0	PBK	LfA	1994	None
4	100% guarantee	190.0	Robotron AG, joint venture	THA	199[2]	THA scheme
5	Investment grants and allowances	63.45	Joint venture, from 24.11.1992, PA	Thuringia	1991 to 1993	Joint scheme for improving regional economic structures, Investment Allowance Law
Total		330.57				

31 It is apparent from the table, first, that in 1992 the THA provided a 100% guarantee worth DEM 190 million which covered most of the bank loans granted to Robotron and to the joint venture. According to the Commission, that guarantee must be considered to be State aid which is incompatible with the common market because it was not granted in accordance with the conditions laid down in the aid schemes approved by the Commission by letter SG(91) D/17825 of 26 September 1991 ('the first THA scheme') and by letter SG(92) D/17613 of 8 December 1992 ('the second THA scheme'), respectively. It considers, however, that of the DEM 190 million initially covered, only the amount of DEM 120 million actually paid out by the THA as part of the guarantee should be recovered.

32 Second, the Commission found that, until 31 December 1993, the *Land* of Thuringia had granted to the joint venture, then to PA, under the Investitionszulagengesetz (Investment Allowance Law) and the 20th and 21st Rahmenpläne der Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftstruktur (framework programmes adopted, for 1992 and 1993, pursuant to the Law of 6 October 1969 on the joint scheme for improving regional economic structures ('the GA scheme')), investment subsidies and allowances totalling DEM 63.45 million. In the Commission's view, however, that regional aid was granted wrongly under the joint scheme and the Investment Allowance Law and, therefore, since it is incompatible with the common market, it must be repaid. In the light of the decision taken by the *Land* of Thuringia to order the recovery of DEM 32.5 million, the Commission considers that DEM 30.95 million must still be recovered.

33 Third, the Commission found that, in 1991 and 1992, the *Land* of Bavaria had, through the LfA, granted the joint venture investment subsidies and allowances totalling DEM 19.42 million. Because those grants and allowances were misused for the benefit of companies in the Pilz Group, the Commission considers that they were granted wrongly under the GA scheme and the Investment Allowance Law. It is thus, in the Commission's view, aid which is incompatible with the EC Treaty.

34 Fourth, the Commission found that the *Land* of Bavaria had established, pursuant to the Richtlinien für die Übernahme von Staatsbürgschaften im Bereich der gewerblichen Wirtschaft (Guidelines for the granting of State guarantees in industry and commerce, published in Notice No L 6811-1/7-43358 of the Bavarian Ministry of Finance of 7 August 1973 ('Guidelines for the granting of guarantees by the *Land* of Bavaria')), a guarantee, changed from 80% to 100%, on the loans totalling DEM 54.7 million ultimately obtained by PBK. According to the Commission, the German authorities, despite the request for information contained in the decision to initiate the procedure, did not provide sufficiently detailed particulars to dispel its doubts as to the legality of the operations relating to the guarantee provided by the *Land* of Bavaria (the LfA). Moreover, given that the aid in question was not used to finance investment but was misused, it found that that guarantee constituted unlawful aid.

35 Fifth, the Commission took the view that LfA's waiver of the debt of DEM 3 million which had arisen for PBK due to the payment of that amount to the banks pursuant to the guarantee referred to in paragraph 34 was State aid. In its view, that aid is incompatible with the common market because it was granted without a legal basis.

36 In the light of those findings, the Commission concluded that, during the start-up phase of the Albrechts CD plant, the Federal Republic of Germany had granted, contrary to Article 88(3) EC, State aid totalling DEM 260.57 million. That aid comprised aid measures from the *Land* of Thuringia totalling DEM 63.45 million, from the LfA totalling DEM 77.12 million (DEM 54.7 million in the form of a guarantee, DEM 19.42 million in the form of investment allowances and DEM 3 million in the form of debt waivers) and from the THA totalling DEM 120 million.

37 According to the Commission, that aid is incompatible mainly because it conferred an advantage on the companies belonging to the Pilz Group and was therefore misused within the meaning of Article 88(2) EC.

2. Financial measures granted during the restructuring phase

38 In the contested decision, the Commission identified and classified as aid 12 financial measures granted during the undertaking's restructuring phase. In a synoptic table contained in recital 39 of the contested decision, those measures are presented as follows:

	Measure	Amount in DEM million	Recipient	Granted by	Date	Legal basis
1	Loan	25.0	PA	TAB	October 1993	None
2	Loan	20.0	PA	TAB	March 1994	None
3	Purchase price	3.0	PBK	TIB	March 1994	None
4	Grant	12.0	PA	TIB	March 1994	None
5	Shareholding	33.0	PA	TIB (98 %) TAB (2 %)	March 1994	None
6	Loan	2.0	PA	LfA	March 1994	None
7	Shareholder's loan	3.5	PA	TIB	April 1994	None
8	Loan	15.0	Pilz Group	LfA	June 1994	None
9	Loan	15.0	CD Albrechts	TAB	October 1994	None
10	Loan	7.0	CD Albrechts	LfA	December 1994	None
11	Loan	9.5	CD Albrechts	TAB	January 1995	None
12	Interest	21.3			since the end of 1993	
Total		166.3				

39 First, the Commission found that, in October 1993, the TAB had granted PA a loan of DEM 25 million in order to cover that company's liquidity shortfalls, but that those funds had accrued directly to the other companies in the group through the Pilz Group's central cash-management system.

40 Second, the Commission found that, in March 1994, the TAB had granted PA a credit of DEM 20 million to enable it to repay the loan which had been secured by the THA, but that those funds had also accrued directly to the companies belonging to the Pilz Group through the central cash-management system.

41 Third, the Commission found that, in March 1994, the TIB had paid PBK DEM 3 million for the purchase of shares in PA held by PBK.

42 Fourth, the Commission found that, in March 1994, the TIB had made a grant in the form of a DEM 12 million contribution to PA's capital reserve.

43 Fifth, the Commission found that, in March 1994, the TIB and the TAB had acquired 98% and 2%, respectively, of the shares in PA, worth a total of DEM 33 million.

44 Sixth, the Commission found that, in March 1994, the TIB had granted a shareholder's loan of DEM 2 million to PA.

45 Seventh, the Commission found that, in April 1994, the TIB had granted a shareholder's loan of DEM 3.5 million to PA.

46 Eighth, the Commission found that, in June 1994, the LfA had granted an operating loan of DEM 15 million to the Pilz Group, which was intended as a bridging loan to cover the period up until such time as an investor willing to buy the Albrechts CD plant was found.

47 Ninth, the Commission found that, in October 1994, the TAB had granted a loan of DEM 15 million to CD Albrechts. It observed that, although the funds had been paid to CD Albrechts, they had been used to provide services to the companies in the Pilz Group, services for which they never paid, so that they had received an advantage.

48 Tenth, the Commission found that, in December 1994, the *Land* of Bavaria had, through the LfA, granted a fresh DEM 7 million loan to CD Albrechts.

49 Eleventh, the Commission found that, in January 1995, the TAB had granted a DEM 9.5 million loan to CD Albrechts.

50 Twelfth, the Commission found that, according to the information from the German authorities, PA and CD Albrechts had received advantages in the form of interest totalling DEM 21.3 million in the period from the end of 1993 to 1998.

51 According to the Commission, the 12 financial measures described above, totalling DEM 166.3 million, must be considered to be unlawful State aid which is incompatible with the common market. To the extent that those measures conferred an advantage on the TIB and the TAB after those bodies had assumed economic responsibility for the Albrechts CD plant, they could be approved by the Commission only on the basis of Article 87(3)(c) EC and in accordance with the Guidelines on aid for rescuing and restructuring. The Commission is also of the view that it is obvious that the aforementioned measures do not comply with those guidelines, since the information it has does not establish that they were granted as part of a viable restructuring plan containing concrete internal measures enabling the Commission to find that the undertaking's long-term profitability and viability has been restored within a reasonable time. In addition, no private investor has emerged who is willing to acquire the current companies LCA and CDA, so that, without private investment, it is not possible to determine whether the aid is proportionate to the restructuring costs.

3. Recovery of the aid

52 Acting pursuant to Article 14(1) of Regulation No 659/1999, the Commission decided that the Federal Republic of Germany had to demand repayment of the aid found to be unlawful and incompatible with the common market which was paid out both during the start-up phase and during the restructuring phase of the Albrechts CD plant.

53 The Commission also stated that, in order to ensure compliance with its decision and eliminate all distortion of competition, it had to, if necessary, require that the procedure for recovering the aid not be limited to the initial recipient of that aid, but be extended to any undertaking carrying on its activities using the transferred means of production. It stated that, in order to determine whether an undertaking is actually carrying on the activities of the initial recipient of the aid, it took account of a certain number of elements, including the subject-matter of the transfer, the

purchase price, the identity of the partners and owners of the former undertaking and of the investor, the date of completion of the transfer and the commercial nature thereof. It took the view that, in the present case, LCA and CDA were definitely benefiting from the aid which had previously been granted to PBK, the joint venture and PA because they were using the assets and infrastructure of those undertakings in order to carry on their activities. Accordingly, it decided that that aid had to be repaid by LCA, CDA and any other undertakings to which the assets of the joint venture, PA or PBK had been or would be transferred, as they fell to be considered as 'recipients' of that aid.

4. Operative part of the contested decision

54 In the light of those assessments, the Commission adopted the following decision:

'*Article 1*

1. DEM 260.57 million of the aid granted to [PBK, the joint venture and PA] by [the Federal Republic of] Germany for the establishment, operation and consolidation of the CD plant in Albrechts (Thuringia) was used elsewhere within the Pilz Group.

This amount consists in DEM 63.45 million from the [*Land* of] Thüringen, DEM 77.12 million [from] the [LfA] and DEM 120 million from the [THA].

The wrongful use constitutes a misuse of aid within the meaning of Article 88(2) [EC] and the aid is therefore incompatible with the [EC] Treaty.

2. The aid totalling DEM 166.3 million for the restructuring of [CD Albrechts] is incompatible with the provisions of the EC Treaty pursuant to Article 87(1) thereof.

Article 2

1. [The Federal Republic of] Germany shall take the necessary measures to recover from the respective beneficiaries the aid referred to in Article 1 and unlawfully made available to them.

2. Recovery shall be effected in accordance with the procedures of national law. The sums to be recovered shall bear interest from the date on which they were made available to the beneficiaries until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

3. For the purposes of this Article the term "beneficiaries" shall include CDA ... and LCA ... as well as any other undertaking to which [PBK's], the [joint venture's] and [PA's] assets and/or infrastructure have been transferred or will be transferred in such a way as to evade the consequences of this Decision.

...'

Procedure and forms of order sought by the parties

55 By application lodged at the Registry of the Court of First Instance on 16 October 2000, CDA brought an action for annulment of the contested decision. That action was registered under number T-324/00.

56 By order of 28 May 2001 of the President of the Third Chamber, Extended Composition, of the Court of First Instance, the Federal Republic of Germany was granted leave to intervene in support of the forms of order sought by CDA, whilst ODS Optical Disc Service GmbH ('ODS'), a competitor of CDA, was granted leave to intervene in support of the forms of order sought by the Commission.

57 ODS and the Federal Republic of Germany lodged their statements in intervention on 29 August and 3 September 2001 respectively. On 24 October 2001, CDA and the Commission lodged their observations on the statements in intervention lodged by ODS and the Federal Republic of Germany.

58 By order of 30 September 2002, the Court of First Instance (Third Chamber, Extended Composition) decided to stay the proceedings pending the judgment of the Court of Justice in Joined Cases C-328/99 and C-399/00 *Italy and SIM 2 Multimedia* v *Commission*. In the light of the judgment delivered on 8 May 2003 in those joined cases, the Court of First Instance asked the parties for their observations on the consequences for the present case. Those observations were lodged on 23 and 24 June 2003.

59 Upon receiving the report of the Judge-Rapporteur, the Court of First Instance asked the parties for their comments on the appropriateness of joining the present action with the action brought by the *Land* of Thuringia and registered at the Court of First

Instance under number T-318/00, the subject -matter of which is the same. After the observations of the parties had been received, the cases were joined by order of 8 March 2004, for the purposes of the hearing and the judgment.

60 Upon receiving the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure and, by way of measures of organisation of procedure as provided for in Article 64 of the Rules of Procedure of the Court of First Instance, asked the parties to produce certain documents and to reply to some written questions.

61 The parties presented oral argument and replied to the questions put by the Court at the hearing on 5 May 2004.

62 By order of 23 July 2004, Cases T-318/00 and T-324/00 were disjoined for the purposes of the judgment.

63 CDA claims that the Court of First Instance should:

— annul Articles 1 and 2 of the contested decision;

— in the alternative, annul Articles 1 and 2 of the contested decision in so far as the Commission declares that the aid is incompatible with the EC Treaty and orders the recovery of that aid from CDA and any other undertaking to which the assets and/or infrastructure of PBK, of the joint venture or of PA will be transferred;

— order the Commission to pay the costs, except for the costs incurred by the intervener, ODS, which should be borne by the latter itself.

64 The Federal Republic of Germany, intervener, claims that the Court of First Instance should:

— annul the contested decision.

65 The Commission, supported by ODS, contends that the Court of First Instance should:

— dismiss the action;

— order CDA to pay the costs.

Law

I — *Preliminary observations*

66 In support of its action, CDA puts forward several pleas in law alleging, respectively, breach of the rights of the defence; infringement of the obligation to state reasons; incorrect findings of fact; breach of the principle of sound administration taken together with Article 287 EC; infringement of Articles 87(1) EC and 88(2) EC, and of

their implementing provisions; ultra vires action by the Commission; infringement of the fourth paragraph of Article 249 EC; infringement of the right to property; breach of the principle of proportionality; and, lastly, breach of the principle of legal certainty and of a 'principle of certainty'.

67 In its application (points 2 to 5), CDA explains that its claim for annulment is directed primarily against the recovery order contained in Article 2 of the contested decision in so far as it orders the Federal Republic of Germany to recover the aid described in Article 1 from CDA and any other undertaking to which the assets and/or infrastructure of PBK, of the joint venture or of PA have been or will be transferred.

68 The Court of First Instance will therefore examine, first, the pleas put forward by CDA in order to demonstrate the unlawfulness of Article 2 of the contested decision and, in particular, the plea alleging infringement of Article 87(1) EC and Article 88(2) EC.

II — *The plea alleging infringement of Article 87(1) EC and Article 88(2) EC*

A — *Arguments of the parties*

69 CDA, supported by the Federal Republic of Germany, maintains that the Commission infringed Article 87(1) EC and Article 88(2) EC in so far as, under

Article 2(1) and (3) of the contested decision, it requires the Federal Republic of Germany to recover the aid from LCA, CDA and any other undertaking 'to which [PBK's], the [joint venture's] and [PA's] assets and/or infrastructure have been transferred or will be transferred in such a way as to evade the consequences of [the] Decision'.

70 It claims, in essence, that the Commission cannot require the Federal Republic of Germany to recover aid from undertakings which have not benefited by the aid at issue. It points out, firstly, that the aid was diverted, to a large extent, for the benefit of the companies within the Pilz Group; secondly, that, as the Commission found in recital 103 of the contested decision, MTDA, which became CDA, did not receive aid in connection with the takeover of the assets of CD Albrechts, which became LCA, since it paid a price in line with the market; and, thirdly, that part of the aid was paid directly to the Pilz Group.

71 In addition, CDA submits that the Commission cannot require the recovery of aid from third parties merely by alleging circumstances constituting evasion. It points out, first, that the Commission cannot order recovery from a third party without proving that that third party has benefited from the aid. In addition, it submits that the objective criteria on which the Commission bases a finding of evasion — what is transferred, the purchase price, the identity of the shareholders or owners of the original undertaking and of the buyer, the date on which the transfer takes place and its commercial character — which are set out in recital 118 of the contested decision, were not satisfied in the present case.

72 The Commission, supported by ODS, disputes all CDA's arguments seeking to demonstrate that it infringed Article 87(1) EC and Article 88(2) EC by requiring the Federal Republic of Germany to recover the aid from LCA, CDA and any other

undertaking to which the joint venture's assets or infrastructure have been or will be transferred so as to evade the consequences of the contested decision.

73 It explains, first of all, in general terms, its view regarding the determination of the persons required to repay aid in the event of a transfer of the shares in the recipient company or of its assets. In that regard, it begins by observing that the question does not pose particular problems in the event of a transfer of the shares, since the recipient company continues to exist, only its ownership being altered. In the Commission's view, it is clear from the case -law that, in such a case, the obligation to repay rests with the company which received the aid or with its successors, irrespective of the changes which have taken place in the ownership structure and of any account taken of the obligation of recovery in deciding on the conditions of sale. It points out that, by continuing to pursue the subsidised activity, that company continues to derive an advantage from the aid, thus perpetuating the distortion of competition. Secondly, the Commission submits that there are no additional difficulties where the assets of the recipient company are transferred to undertakings belonging to the same group. It contends that, in such a case, in addition to the recipient company, the undertakings within the group — which, as a result of the transfer of those assets, have been in a position to benefit from the favourable effects arising from the aid, by securing an economic advantage from it — will be required to repay the aid. Moreover, as regards the sale to third -party undertakings of the recipient company's assets, the Commission makes a distinction based on whether those assets were sold separately or 'en bloc'. According to the Commission, if the assets are sold separately, at the market price, the buyers are not required to repay the aid since, as a result of the separate sale of the assets, the subsidised activity disappears, the aid granted before the transfer of the assets being, therefore, more likely to disadvantage the recipient company's competitors. By contrast, the Commission submits that the situation is different if the assets are sold 'en bloc' in such a way as to enable the buyer to continue the recipient company's business. In the Commission's view, in that situation, continuation of the subsidised business is likely to perpetuate the distortion of competition, so that particular vigilance becomes necessary in order to prevent the transfer of the recipient company's assets from giving rise to a substantial evasion of the obligation to repay by 'sheltering' the

assets sold. The Commission contends that such evasion cannot be ruled out when, as well as taking place at the market price, the transfer 'en bloc' of the recipient company's assets is effected by way of an unconditional procedure which is open to all that company's competitors.

74 In the light of those principles, the Commission submits that it was fully entitled to require the recovery of the aid from LCA and CDA, since:

— CDA is continuing the economic activities of the initial recipient of the aid by using the 'contaminated' production facilities which it took over within the group of linked undertakings under the control of the TIB;

— CDA and LCA continue to benefit from the aid unlawfully granted to the joint venture — and to its successors — in that the distortion of competition caused by the granting of that aid continues to produce its effects for CDA and LCA;

— the purchase price totalling DEM 35.3 million, settled by assuming liabilities (recital 102 of the contested decision), in any case remained within one and the same group of undertakings, on account of the control exercised by the TIB over both CDA and LCA;

— in the case of an economically integrated group of undertakings, taking account of the purchase price would be contrary to its duty to prevent evasion of its decisions and with the duty of Member States to ensure compliance with the obligations imposed by the Commission's decisions (recitals 118 and 119 of the contested decision).

75 Finally, the Commission contends that CDA is wrong when it argues that the Commission cannot require the recovery from CDA and LCA of the aid which was paid directly to the Pilz Group or diverted for its benefit. It points out that that aid reached the field of activity of the joint venture or its successors, even though, subsequently, it was immediately diverted in order to benefit the other companies in the Pilz Group. In the Commission's view, it is immaterial in that regard that the aid did not actually benefit the joint venture. It points out that, in the judgment in Case C-24/95 *Alcan Deutschland* [1997] ECR I-1591, the Court of Justice held that the plea that the gain has ceased to exist does not constitute a valid reason for opposing recovery of the aid. The Commission submits that the Court's reasoning is capable of being applied to circumstances such as those of the present case, where the mechanisms for transferring assets within a group of undertakings are virtually designed to eliminate the gain on the part of the initial recipient of the aid. In the Commission's view, in such circumstances, the plea that the gain has ceased to exist cannot be taken into account, and the unlawful advantage is, on the contrary, to be attributed to the undertakings within the group which originally received the aid of which they were the intended recipients. Similarly, the Commission submits that the TIB and the linked undertakings cannot rely on that plea either, since the diversion of the aid by the Pilz Group is also attributable to the joint venture and its successors.

B — *Findings of the Court*

76 As a preliminary observation, it should be pointed out that, under Community law, if the Commission finds that aid is incompatible with the common market, it may require the Member State to recover that aid from the recipient (Case 70/72 *Commission* v *Germany* [1973] ECR 813, paragraphs 13 and 20, and Case C-277/00 *Germany* v *Commission* [2004] ECR I-3925, paragraph 73).

77 Removing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful and seeks to re-establish the previous situation (*Germany* v *Commission*, cited in paragraph 76 above, paragraph 74).

78 That objective is attained once the aid in question, increased where appropriate by default interest, has been repaid by the recipient or, in other words, by the undertakings which actually benefited from it (see, to that effect, Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraphs 57 and 60). By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored (Case C-350/93 *Commission* v *Italy* [1995] ECR I-699, paragraph 22).

79 Consequently, the main purpose of the repayment of unlawfully paid State aid is to eliminate the distortion of competition caused by the competitive advantage afforded by the unlawful aid (*Germany* v *Commission*, cited in paragraph 76 above, paragraph 76).

80 The lawfulness of the recovery order in Article 2 of the contested decision must be examined in the light of those general considerations.

81 In that regard, it is necessary to examine separately the lawfulness of that order in so far as it requires the recovery of the aid from LCA, on the one hand, and from CDA, on the other. It is not disputed that, in contrast to LCA, which must be regarded as the direct successor of the joint venture and PA, that is not so in the case of CDA. In the contested decision, the extension of the repayment order to include CDA was based on the existence of circumstances constituting evasion.

82 So far as the recovery of aid from LCA is concerned, CDA claims that that order is unlawful, since it includes both aid which was paid directly to the Pilz Group and aid which, although paid to the joint venture and PA, was diverted for the benefit of that group.

83 In that regard, as is apparent from the tables contained in recitals 32 and 39 of the contested decision, the aid referred to in Article 1 of that decision does in fact include a number of aids which were paid directly to the Pilz Group and to PBK, an undertaking belonging to that group. That is, in particular, the case with the aid granted to PBK in the form of the guarantee furnished by the *Land* of Bavaria (the LfA) amounting to DEM 54.7 million, the aid granted to PBK in the form of the waiver of claim amounting to DEM 3 million, the aid granted to PBK in the form of the purchase price for the shares in PA amounting to DEM 3 million and the aid granted to the Pilz Group in the form of the DEM 15 million loan.

84 As regards the first two measures, it is common ground that, although paid directly to PBK, those measures were intended to finance the construction of the Albrechts CD plant, so that, leaving aside the diversion of those measures for the benefit of other undertakings within the Pilz Group, the Commission was, in principle, right in ordering the recovery of the amounts involved from LCA (see, to that effect, Case C-457/00 *Belgium* v *Commission* [2003] ECR I-6931, paragraphs 55 to 62).

85 As for the purchase price of DEM 3 million and the DEM 15 million loan, that aid was paid directly to the Pilz Group and was not intended for the restructuring of the joint venture and PA. The latter undertakings cannot therefore be regarded as having actually benefited from that aid. That conclusion is not altered by the fact that, as the Commission stated in recital 37 of the contested decision, the DEM 15 million loan was intended as a bridging loan to the Pilz Group until a buyer was found for PA. Apart from the fact that the Commission has provided no evidence in support of that assertion, it is not established that PA was actually afforded an advantage by that aid.

86 Consequently, in so far as it orders the recovery from LCA of the aid referred to in Article 1, including the aid granted to PBK in the form of the purchase price of DEM 3 million and the aid granted to the Pilz Group in the form of the DEM 15 million loan, Article 2 of the contested decision is not in accordance with the principles governing the recovery of unlawful State aid.

87 Next, it is necessary to examine CDA's argument that the recovery order is unlawful in so far as it relates to aid which, although intended for the joint venture and PA, was diverted for the benefit of the undertakings within the Pilz Group.

88 In that regard, it must be observed that the contested decision contains a large number of findings relating to the diversion, for the benefit of the Pilz Group, of the aid referred to in Article 1 of the contested decision. Thus, it is apparent from, inter alia, recitals 27, 33, 38 and 63 to 75 of the contested decision that a large proportion of the aid granted for the establishment, consolidation and restructuring of the Albrechts CD plant was diverted for the benefit of the undertakings within that group. It is also apparent from those findings that the diversion of the aid was effected by overinvoicing for services provided in connection with the establishment of the plant, via the central cash-management system existing within the Pilz Group, and by non-payment of goods supplied and services provided by the joint venture and by PA for the benefit of the Pilz Group.

89 Similarly, the indictment issued by the Public Prosecutor's Office at the Landgericht Mühlhausen, which was produced by the German authorities during the administrative procedure, contains a number of particulars from which it is possible to determine, at least approximately, the scale of the diversion of aid for the benefit of the Pilz Group. Contrary to what the Commission contends, the mere fact that that indictment relates to unlawful conduct committed in connection with the award of investment grants and allowances from the *Land* of Thuringia does not, as such, support the conclusion that the particulars contained in it are irrelevant to the assessment which the Commission is required to make. That indictment contains, inter alia in the description of the various mechanisms used in connection with the fraud and with the valuation of the investments which were undertaken, precise and relevant information for assessing the scale of the diversion.

90 In those circumstances, it must be held that, at least when adopting the contested decision, the Commission had at its disposal a body of valid and consistent evidence that the joint venture and PA did not actually benefit from a large proportion of the aid intended for the establishment, consolidation and restructuring of the Albrechts CD plant. In addition, that evidence made it possible to determine, at least approximately, the scale of the diversion.

91 It is true that, as the Commission asserts, the file does not show that the German authorities provided precise information regarding the part of the aid which was diverted for the benefit of the Pilz Group.

92 However, it must be stated that, although it had the means to do so (see, to that effect, Joined Cases C-324/90 and C-342/90 *Germany and Pleuger Worthington* v *Commission* [1994] ECR I-1173, paragraph 29), it is not apparent from any of the documents in the file that the Commission asked the German authorities to provide it with precise information in that respect. However, as is apparent from the decision to initiate the procedure, the Commission had known, at least since 1997, about the diversion of a large proportion of the aid. Consequently, it cannot argue that, in the light of the information at its disposal when it adopted the contested decision, it was entitled to require the recovery from LCA of the aid referred to in Article 1, so far as concerns those measures which it knew — or which it could not but have known — had not benefited the joint venture and PA.

93 Similarly, the Commission's argument that the scope of the recovery order in Article 2 of the contested decision is justified on the ground that the joint venture and its successors belong to a group of linked undertakings within which there are internal mechanisms for transferring assets must be rejected. Apart from the fact that the joint venture formed part of the Pilz Group only during the period from October 1992 to the end of December 1993, it is clear from the findings set out in the

contested decision that, in this case, the transfer mechanisms existing within that group were used only to the detriment of that venture and not for its benefit. It cannot therefore be claimed that, on the ground that it belonged to that group, the joint venture actually benefited from aid of which it was not the recipient.

94 Consequently, in so far as it orders the recovery from LCA of the aid referred to in Article 1, by including in it aid from which, as is established, that undertaking did not actually benefit, Article 2 of the contested decision is not in compliance with the principles governing the recovery of unlawful State aid.

95 Next, in so far as Article 2 of the contested decision orders the recovery of the aid referred to in Article 1 from CDA, it is apparent from the decision that the Commission based its assessment mainly on the existence of an intention to evade the consequences of that decision, an intention which, in the Commission's view, stems objectively from the fact that CDA derives benefit from the aid which had previously been granted to PBK, the joint venture, PA and CD Albrechts, in so far as it uses the assets of those undertakings and also continues their business (recitals 118 and 120 of the contested decision).

96 That argument cannot be accepted.

97 Admittedly, as is indeed apparent from the exchange of correspondence between the German authorities and the Commission during the administrative procedure, the transfer of part of the assets from LCA to CDA was intended to rescue that part of LCA's operation by affording it an opportunity to develop free from the legal and economic uncertainties which threatened LCA's survival. Similarly, various

arguments put forward by the Commission and ODS in these proceedings support the conclusion that, as a result of the transfer of assets, CDA is in fact continuing the business of the joint venture, PA and CD Albrechts.

98 However, that fact does not, as such, prove the existence of an intention to evade the effects of the recovery order in this case.

99 That conclusion is all the more compelling since, as stated in recital 103 of the contested decision, a purchase price in line with the market was paid by CDA for the takeover of LCA's assets, and therefore that transaction does not entail CDA's retaining the actual benefit of the competitive advantage connected with the receipt of the aid granted (see, to that effect, *Germany* v *Commission*, cited in paragraph 76 above, paragraph 92).

100 In such a situation, it cannot be held that, as the Commission contends in its written pleadings, as a result of the takeover of assets by CDA, LCA remains like an 'empty shell from which it is not possible to secure repayment of the unlawful aid'.

101 In the light of the fact that, in this instance, LCA has been in liquidation since the initiation of insolvency proceedings in October 2000, it should be recalled that, according to the case-law concerning undertakings in receipt of aid which have become insolvent, restoration of the previous situation and removal of the distortion of competition resulting from aid unlawfully paid may, in principle, be achieved by the registration as one of the liabilities of the undertaking in liquidation of an obligation relating to repayment of the aid concerned, except in so far as that aid has

benefited another undertaking. According to that case -law, such registration would be sufficient to ensure the implementation of a decision ordering the recovery of State aid incompatible with the common market (see, to that effect, Case 52/84 *Commission* v *Belgium* [1986] ECR 89, paragraph 14, and Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraphs 60 and 62).

102 Also, CDA and the Federal Republic of Germany have stated, without being contradicted by the Commission, that, firstly, only part of the assets were sold to CDA — fixed and current assets, technical know-how and marketing organisation — and that, secondly, proceeding in that way made it possible to obtain a higher sum than would have been obtained by selling the assets in question separately.

103 That conclusion is not altered by the fact that the purchase price was paid in the form of an assumption of liabilities. It must be pointed out that that form of payment did not have any adverse effects on the position of the creditors, since the reduction in the company's assets was offset by an equivalent reduction in its liabilities. Moreover, during the hearing, CDA stated, without being contradicted in that regard by the Commission, that the value of the fixed assets belonging to LCA is relatively high, so that it cannot be considered that, as a result of the takeover of part of its assets by CDA, that undertaking became an 'empty shell'.

104 The reference by the Commission to recital 118 of the contested decision does not invalidate that analysis. In that recital, the Commission sets out, in a general and illustrative manner, the criteria which it applies when determining whether a specific transaction conceals facts constituting evasion. However, that passage does not contain any application of those criteria to this case.

105 Consequently, it must be concluded that, in the light solely of the findings of fact set out in the contested decision, the Commission was not entitled to conclude that there was an intention to evade the effects of the recovery order in this case.

106 As for the other matters of fact alleged by the Commission in its written pleadings and at the hearing, it is sufficient to state that they do not appear anywhere in the contested decision and that, consequently, they cannot be relied upon in order to justify the extension of the recovery order to include CDA.

107 For the sake of completeness, the Court is of the view that those various matters do not prove the existence of facts constituting evasion in this case.

108 In that regard, the Commission's contention that the takeover of assets by CDA does not reflect any economic logic must be rejected. During the administrative procedure, the German authorities and CDA stated on a number of occasions that the takeover of part of LCA's assets by CDA reflected such a logic. Although 'the commercial character of the transfer [of assets]' is one of the aspects which it takes into account in determining the existence of facts constituting evasion (recital 118 of the contested decision), the Commission does not bring to light in the contested decision any consideration capable of invalidating the position of the German authorities and CDA.

109 Similarly, it must be pointed out that the mere fact that LCA and CDA were managed by the same person at the time of the takeover of assets in January 1998

and that, since that transaction, CDA has portrayed itself on the market as the successor of the joint venture and PA does not support the conclusion that the takeover of LCA's assets was intended to evade the recovery order in Article 2 of the contested decision. Those factors are not sufficient to demonstrate that CDA acted with the intention of preventing the implementation of the contested decision.

110 Finally, the Commission's contention that the takeover 'en bloc' of LCA's assets did not take place following an open and transparent procedure, and that some of LCA's competitors were thus excluded from purchasing the assets with which that company carried out the subsidised activities, must be challenged. On the contrary, the contested decision, certain documents in the file and the statements made by the *Land* of Thuringia and CDA at the hearing on 5 May 2004 all show that the takeover of LCA's assets by CDA did not take place immediately, but was preceded by unsuccessful attempts to sell the whole of LCA to third parties, including the parent company of the intervener ODS (see, to that effect, *Germany* v *Commission*, cited in paragraph 76 above, paragraph 95).

111 In the light of the foregoing, it must be concluded that the Commission has not established the existence of a transaction intended to evade the consequences of the contested decision, capable of justifying an obligation on CDA to repay the unlawful aid granted to the joint venture and its successors.

112 Consequently, in so far as it orders the recovery from CDA of the aid granted to PBK, the joint venture, PA and CD Albrechts, the contested decision is not in compliance with the principles governing the recovery of unlawful State aid.

113 A similar conclusion must apply in so far as Article 2 of the contested decision orders the recovery of the aid referred to in Article 1 from any other undertaking to which [PBK's], the [joint venture]'s and [PA's] assets and/or infrastructure have been transferred or will be transferred in such a way as to evade the consequences of this Decision'. It is sufficient to state that the extension of the recovery order to include those undertakings is based on the same grounds as the extension of that order to include CDA.

114 In the light of all the foregoing, this plea must be upheld.

115 In the light of all the foregoing, Article 2 of the contested decision must be annulled in so far as it orders the recovery of the aid referred to in Article 1 of the contested decision from CDA and LCA and from any other undertaking to which the assets or infrastructure of PBK, of the joint venture or of PA have been or will be transferred in such a way as to evade the consequences of that decision.

116 In those circumstances, there is no further need to consider the other pleas put forward by the applicant in order to establish the unlawfulness of the recovery order in Article 2 of the contested decision.

117 In addition, it must be pointed out that CDA's action is directed primarily, as is apparent in particular from points 2 to 5 of the application, against the contested decision in so far as, under Article 2(3), it extends the order for recovery of the aid to include CDA and other undertakings to which the assets and/or infrastructure of PBK, of the joint venture or of PA have been or will be transferred. However, since the operative part of the contested decision is annulled in that respect, it is no longer necessary to rule on all the pleas put forward by CDA concerning Article 1 of the contested decision.

Costs

118 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by CDA.

119 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the Court may order an intervener to bear its own costs. In the present case, the Federal Republic of Germany and ODS are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

hereby:

1. Annuls Article 2(3) of Commission Decision 2000/796/EC of 21 June 2000 on State aid granted by Germany to CDA Compact Disc Albrechts GmbH, Thuringia;

2. **Declares that there is no longer any need to adjudicate on the remainder of the application for annulment;**

3. **Orders the Commission to bear its own costs as well as those incurred by CDA Datenträger Albrechts GmbH and orders the Federal Republic of Germany and ODS Optical Disc Service GmbH to bear their own costs.**

Azizi García-Valdecasas Cooke

Jaeger Dehousse

Delivered in open court in Luxembourg on 19 October 2005.

E. Coulon J. Azizi

Registrar President

Table of contents