ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
1 August 2003 *

In Case T-198/01 R [II],

Technische Glaswerke Ilmenau GmbH, established in Ilmenau (Germany), represented by G. Schohe and C. Arhold, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by V. Di Bucci and V. Kreuschitz, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

supported by

Schott Glas, established in Mainz (Germany), represented by U. Soltész, lawyer,

intervener,

APPLICATION for extension of the suspension of the operation, ordered in the present case by order of the President of the Court of First Instance of 4 April 2002, of Article 2 of Commission Decision 2002/185/EC of 12 June 2001 on State aid implemented by Germany for Technische Glaswerke Ilmenau GmbH (OJ 2002 L 62, p. 30),

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES,

makes the following

Order

Facts and proceedings

1 On 12 June 2001 the Commission adopted, in relation to the aid to which it gave the reference C 19/2000 and which was described in a formal investigation

procedure opened on 4 April 2000 pursuant to Article 88(2) EC, Decision 2002/185/EC on State aid implemented by Germany for Technische Glaswerke Ilmenau GmbH (OJ 2002 L 62, p. 30, 'the contested decision'). Having expressly waived in that decision its right to examine all other aid potentially incompatible with the common market which was granted to the applicant and included in the measures notified by Germany on 1 December 1998, the Commission concentrated on one of those measures, namely the waiver of the purchase price of DEM 4 million (EUR 2 045 168, 'the payment waiver') payable by Technische Glaswerke Ilmenau ('TGI') to the Bundesanstalt für vereinigungsbedingte Sonderaufgaben ('the BvS') pursuant to an agreement of 26 September 1994 ('asset deal 1').

2 According to the contested decision, the payment waiver was not consistent with the conduct of a private investor. The decision finds that the waiver constitutes State aid incompatible with the common market within the meaning of Article 87(1) EC, which could not be the subject of prior authorisation under Article 87(3) EC (Article 1). Consequently the decision requires Germany to recover the aid (Article 2).

3 By application lodged at the Registry of the Court of First Instance on 28 August 2001, the applicant brought an action for the annulment of the contested decision.

4 By letter of 17 September 2001, the Commission refused the German Government's request, in a letter of 23 August 2001, to suspend recovery of the amount waived.

5 By letter of 2 October 2001, the BvS sent the applicant a copy of the Commission's letter of 17 September 2001 and gave it formal notice to repay, by 15 October 2001, the sum of DEM 4 830 481.10 (EUR 2 469 785.77), which was

the amount of the disputed aid plus interest amounting, according to its own calculations, to DEM 830 481.10 (EUR 424 618.24). The BvS, taking formal note that the applicant had informed it of its intention to bring an action before the Court of First Instance for the suspension of the operation of the contested decision, also stated that, in order to avoid prejudging the outcome of that action, it would not insist on recovery of the disputed aid before the court hearing the application for interim measures had given a ruling.

6 By separate document lodged at the Registry of the Court of First Instance on 15 October 2001, the applicant brought an action under Articles 242 EC and 243 EC for the suspension of the operation of Article 2 of the contested decision.

7 By order of 4 April 2002 made in the present case (Case T-198/01 R *Technische Glaswerke Ilmenau* v *Commission* [2002] ECR II-2153, 'the original order'), the President of the Court of First Instance ordered, pursuant to point 1 of the operative part of the order, the suspension of the operation of Article 2 of the contested decision until 17 February 2003 ('the original suspension'). Point 2 of the operative part made the suspension subject to the fulfilment of three conditions by the applicant.

8 The main facts of the present case preceding the application for interim measures are summarised in paragraphs 7 to 21 of the original order, and a more detailed summary of the contested decision is given in paragraphs 22 to 27 of that order. The proceedings before the President of the Court of First Instance which gave rise to the order are described in paragraphs 36 to 47.

9 By letter of 3 July 2001, the Commission opened a second formal investigation procedure pursuant to Article 88(2) EC, which was given reference C 44/2001. The second investigation was limited to an examination of, first, the novation of the bank guarantee for the balance of the purchase price fixed by asset deal 1,

secondly, the grant of the loan by Thüringer Aufbaubank ('TAB') and, thirdly, the postponement of the due date for payment of the said balance in 2003. These measures, which were provisionally deemed to be aid incompatible with the common market, were described in the notice published in the *Official Journal of the European Communities* of 27 September 2001 (Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid measure C 44/2001 (ex NN 147/98) — Aid in favour of TGI — Germany (OJ 2001 C 272, p. 2)).

10 By order of 15 May 2002 of the President of the Fifth Chamber (Extended Composition) of the Court of First Instance, the undertaking Schott Glas was granted leave to intervene in support of the form of order sought by the defendant institution in the main proceedings in the present case.

11 In accordance with the original order, the Berlin accountants Pfizenmayer & Birkel delivered a third report (the first two reports having been delivered in the original procedure in the present proceedings for interim measures) on TGI's financial situation. This third report deals with the situation as at 1 July 2002 ('the 2002 interim report') and was lodged at the Registry of the Court of First Instance on 5 August 2002 and sent by the Court to the Commission on 7 August 2002.

12 On 2 October 2002, on the completion of the second formal procedure, the Commission adopted Decision C(2002) 2147 final on State aid granted by Germany in favour of TGI ('the second decision'). Article 1 of the second decision stated that Germany had granted the applicant State aid incompatible with the common market. The aid in question comprised the novation of the bank guarantee and the loan from TAB of DEM 2 000 000 (EUR 1 015 677). Article 2 of the decision required Germany to recover the amount of the aid from the applicant immediately.

13 The original order was upheld on appeal by order of the President of the Court of Justice of 18 October 2002 in Case C-232/02 P(R) *Commission* v *Technische Glaswerke Ilmenau* [2002] ECR I-8977.

14 In accordance with the original order, the applicant repaid the BvS the sum of EUR 256 000 on 16 December 2002, proof of payment being given by documents lodged at the Registry of the Court of First Instance on 23 December 2002.

15 By application lodged at the Registry of the Court of First Instance on 18 December 2002, the applicant brought an action for the annulment of the second decision.

16 On 31 December 2002 the applicant also reduced the amount of the TAB loan to a balance of approximately EUR... [1] by an early repayment.

17 On 28 January 2003 Pfizenmayer & Birkel delivered a fourth report on the applicant's financial situation, again by virtue of the original order, as at 31 December 2002. A copy was lodged by the applicant at the Registry of the Court of First Instance and sent to the Commission on 31 January 2003 ('the 2002 final report').

18 On being requested, on 3 February 2003, to submit comments on this report, the Commission submitted its comments on 11 February 2003 ('the comments on the 2002 final report').

1 — Confidential information not disclosed.

19 By document lodged at the Registry of the Court of First Instance on 14 February 2003, TGI applied for the suspension of the operation of Article 2 of the second decision (Case T-378/02 R *Technische Glaswerke Ilmenau* v *Commission*).

Procedure

20 The applicant, considering (by virtue of the facts summarised in paragraphs 11, 14 and 17 above), that it had fulfilled all its obligations under point 2 of the operative part of the original order, applied to the President of the Court of First Instance, by document lodged on 17 February 2003, for an extension of the original suspension until the Court had given a final ruling on the main application ('the application for extension'). So far as urgency is concerned, this application is based on a fifth report by Pfizenmayer & Birkel, dated 7 February 2003, on the applicant's financial situation at that date (Annex 2 to the application, 'the fifth Pfizenmayer report').

21 By order of 18 February 2003, made pursuant to the second subparagraph of Article 105(2) of the Rules of Procedure of the Court of First Instance, the President of the Court decided to order the provisional extension of the original suspension until he had given a ruling on the substance of the present application for extension.

22 Following the receipt on 27 February 2003 of a letter from the intervener concerning the status of its intervention in the present proceedings for interim measures, the Registrar of the Court wrote to the principal parties and the intervener to confirm that, in view of the order of 15 May 2002 of the President of the Fifth Chamber (Extended Composition) and the ancillary nature of the present proceedings, the intervener should be deemed to be an intervener in the present proceedings also.

23 The Commission lodged its written observations on the application for extension on 12 March 2003.

24 By letter of 17 March 2003 and a further letter of 20 March 2003, the applicant requested, pursuant to Article 116(2) of the Rules of Procedure, that certain passages of the application for interim measures, certain annexes and certain passages of other annexes to that application, together with certain other documents in the file, be treated as confidential in relation to the intervener. The applicant also lodged a non-confidential version of the documents in question.

25 Non-confidential versions of the said documents were served on the intervener by the Court Registry and the intervener raised no objections or observations in that connection.

26 As the Commission had, in its written observations, in effect called into question the trustworthiness of the declaration on honour made by Mr and Mrs Geiß on 8 October 2001 (Annex 9 to the present application for interim measures), the President of the Court requested the applicant, by letter of 18 March 2003, to lodge documents concerning their income for the period from 1 January 1994 to 28 February 2003, including, in particular, statements of all their private bank accounts and any relevant reference to their assets.

27 On 3 April 2003 the applicant lodged the documentation requested by the letter of 18 March 2003 relating to the assets of Mr and Mrs Geiß, in confidential and non-confidential versions.

28 The parties presented oral argument to the Court and replied to the President's questions at the hearing on 11 April 2003. As there were no objections by the

defendant or the intervener, the President decided to allow the applicant's request for confidential treatment in relation to the intervener.

29 Following the hearing, the President asked the applicant, by letter from the Registrar of 16 April 2003, to give written replies to certain questions.

30 The applicant replied on 8 May 2003 ('the reply to the questions'). It also requested the confidential treatment in relation to the intervener, pursuant to Article 116(2) of the Rules of Procedure, of certain passages in the reply and the documents annexed thereto, of which a non-confidential version was lodged at the Court Registry at the same time.

31 By letter of 13 May 2003, the intervener raised objections to certain deletions in the non-confidential version of the reply to the questions.

32 The applicant lodged observations on the intervener's objection by letter of 22 May 2003.

33 On 23 May 2003 the Commission lodged its observations on the reply to the questions ('the Commission's additional observations'). By letter of the same date, it waived any observations on the intervener's objection concerning the applicant's request for the confidential treatment of the said reply.

34 By letter of 3 June 2003, the applicant submitted a request for confidential treatment, in relation to the intervener, of certain particulars in the Commission's additional observations. It also lodged a non-confidential version of that document at the Court Registry.

35 By letter of 5 June 2003, the intervener, while maintaining its objection of 13 May 2003 to the deletions in the non-confidential version of the reply to the questions, indicated that it had no objection to the deletions concerning the non-confidential version of the Commission's additional observations lodged by the applicant.

36 By letter of the next day, the intervener waived its objections to the deletions concerning the non-confidential version of the reply to the questions. It also stated that the written observations which it had lodged on 3 June 2003 on the said reply could henceforward be regarded as final, notwithstanding its abovementioned objection of 13 May 2003.

Law

37 By virtue of Articles 242 EC and 243 EC in conjunction with Article 225(1) EC, the Court of First Instance may, if it considers that circumstances so require, order the suspension of the operation of the contested act or prescribe the necessary interim measures.

38 Article 104(2) of the Rules of Procedure provides that an application for interim measures is to state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case (*fumus boni juris*) for the interim measure applied for. Those conditions are cumulative, so that an application for interim measures must be dismissed if any one of them is not fulfilled (order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK* v *Commission* [1996] ECR I-4971, paragraph 30; order of the President of the Court of First Instance in Case T-237/99 R *BP Nederland and Others* v *Commission* [2000] ECR II-3849, paragraph 34, and the original order, paragraph 50). Also, where appropriate, the court hearing the application for interim measures shall weigh up the interests involved (order of the President of the Court of Justice in Case C-445/00 R *Austria* v *Council* [2001] ECR I-1461, paragraph 73, and the original order, paragraph 50).

39 Under Article 107(3) of the Rules of Procedure, even though an order for interim measures takes effect until final judgment is delivered, it may nevertheless fix a date on which the interim measure is to lapse (see to that effect the order of the President of the Court of Justice in Case 160/84 R *Oryzomyli Kavallas and Others* v *Commission* [1984] ECR 3217, paragraph 9, and the original order, paragraph 51).

The requests for confidential treatment of 8 May and 3 June 2003

40 In its requests, the applicant refers to Article 116(2) of the Rules of Procedure. In view of the waiver of objections to the plea of business secrecy with regard to some of the information eliminated by the applicant in its additional requests for confidential treatment of 8 May and 3 June 2003, the President considers that those requests may, with one exception, be allowed. Regarding the name of the firm of chartered accountants, and that of the responsible expert in that firm,

who submitted reports on behalf of TGI in the present case, it is clear that this information cannot be considered a business secret of the applicant. In any case, their names are now in the public domain as a result of the original order, which has now been published in the *Reports of Cases of the Court of Justice and the Court of First Instance* and posted on the Court internet site, without the applicant raising the slightest objection.

41 It follows that this application must be dismissed.

Prima facie case

42 The Commission no longer disputes that a prima facie case exists.

43 As the favourable assessment by the President of the Court regarding this condition in the original order has been upheld in the mean time by the order in *Commission* v *Technische Glaswerke Ilmenau*, cited above (see paragraphs 54 to 79 of the said order) and there has been no change in circumstances which would change that assessment [see, to that effect, the order in Case C-440/01 P(R) *Commission* v *Artegodan* [2002] ECR I-1489, paragraphs 61 to 64], it must be concluded that the said condition is still fulfilled in the present case.

Urgency

Arguments of the parties

44 The applicant claims that, in essence, notwithstanding the positive change in TGI's financial situation (its turnover having increased by...% in 2002), it is clear that it could not repay the contested aid without becoming insolvent, particularly within the period allowed by the BvS in its letter of 2 October 2001. This is borne out by the 2002 interim and final reports and by the fifth Pfizenmayer report. TGI's financial performance since the adoption of the contested decision shows that the Commission's assertion, in response to the original application for interim measures, that the applicant would become insolvent even if the operation of the contested decision were suspended, is manifestly erroneous.

45 In its observations on the 2002 final report, the Commission makes certain reservations as to the relevance of the report regarding TGI's financial situation at 31 December 2002, which was presented by the TGI directors and accompanied the 2002 final report when it was lodged.

46 In its written observations, the Commission merely alleges, in essence, that Mr Geiß, the principal owner and director of TGI, has the means of repaying the contested aid and therefore the application for extension is not urgent. The Commission observes that as, according to the observations submitted by Germany in the new formal procedure, Mr Geiß waived a director's bonus of DEM 1 000 000 as from 1997, he should have received a bonus of that amount for several years after the formation of the applicant company in 1994. Therefore he ought himself to be in a position to advance to the applicant the amount to be repaid by virtue of the contested decision. In any case, he could at least obtain a

personal loan from a private bank on market terms so as to repay the balance of the TAB loan.

47 The Commission reiterated this submission, with the intervener's support, at the hearing. The intervener observed that, for the purposes of German insolvency law, payment is not impossible where a debtor can obtain a bank loan as a result of a guarantee. The Commission raised the question of why the applicant had never tried to obtain damages in respect of its supposed civil law claim against the Land of Thuringia. A director of a company such as the applicant is required to assert such claims, which could even be sold to a bank or charged in return for a loan. Therefore the applicant cannot really claim that it is short of cash. The Commission adds, in its written observations, that the applicant could plead a right of retention ('Zurückbehaltungsrecht') under Paragraph 273(1) of the German Civil Code against a potential demand by TAB for repayment on the basis of its loan. In any case, TAB, in seeking repayment, would be acting in accordance with the rules of a market economy and would not, in view of the amount of the loan already repaid, risk the applicant's insolvency.

48 In its additional observations, the Commission maintains that the replies to the questions show a manifest contradiction between, on the one hand, the applicant's position for the purpose of the present application for extension and of the application for interim measures against the second decision in Case T-378/02 R and, on the other hand, the position adopted in the main proceedings in that case, with regard to the true value of the guarantee given by Mr Geiß in the agreement governing the TAB loan. If, as stated in the reply to the questions, the guarantee has no value of its own, TGI cannot in substance claim in Case T-378/02 R that the loan was granted on market terms. According to the Commission, this contradiction affects the urgency of the application for extension and also that of the application for interim measures in that second case. Moreover, the letter from TAB annexed to the said reply contradicted the applicant's assertion concerning the guarantee. Finally, Mr Geiß, who, according

to the documents lodged on 3 April 2003, had received remuneration of EUR ... between 1994 and 2003, could hardly have failed to build up his own capital.

49 More generally, the Commission, with the support of the intervener, contends that the applicant contradicts itself in claiming that it is a viable undertaking and, at the same time, that it cannot repay the amount which is the subject of the payment waiver.

Findings of the President of the Court

50 First of all, it is necessary to reiterate the legal findings in paragraphs 96 to 99 of the original order.

51 With regard, first, to the Commission's reservations in its observations on the 2002 final report, the mere fact that the applicant chose to annex to that report, which was required to be lodged by the conditions governing the grant of the original suspension, another report by the directors of the applicant company cannot affect the relevance of the information provided by the 2002 final report. The President of the Court observes that, in its observations, the Commission does not dispute the substance of the assessment of the applicant's financial situation in the 2002 final report. In view of the Commission's objection to the directors' report, for determining the present application for extension the President will take account only of certain figures in that report which are expressly confirmed either in the 2002 final report or the fifth Pfizenmayer report.

52 The 2002 final report and the fifth Pfizenmayer report show that the applicant's available resources at 31 December 2002 amounted to only EUR ..., after the repayment of EUR 256 000 to the BvS, the reconstruction of the second furnace at the very high cost of EUR ... and the early payment in favour of TAB following the adoption of the second decision. This situation, far from contradicting the applicant's assertion that TGI's financial situation was progressing favourably, shows that, were the original suspension to be extended, the applicant would not become insolvent before the judgment in the main proceedings is given, that is to say, in all probability early in 2004.

53 The 2002 interim and final reports and the fifth Pfizenmayer report confirm that the reconstruction of TGI has been substantially implemented since the original order. To begin with, the second Pfizenmayer report had forecast that TGI would have a positive balance of only EUR 15 850 in 2002 (original order, paragraph 103). Secondly, TGI has very clearly increased the production of complete products, which led to an increase in turnover of EUR ... in 2002 (that is to say, an increase of...% by comparison with 2001). Even though this development was not taken into account, the 2002 final report shows that the increase in turnover for each group of products comparable with those made in previous years is of the order of EUR ..., namely ...%. To this must be added an expanding order book which was quantified at EUR ... million at the end of 2002.

54 It follows that the applicant has shown with a sufficient degree of probability that it will survive at least until the judgment in the main proceedings. On the other hand, the immediate implementation of the contested decision will shortly, if not immediately, imperil its existence, as stated by the abovementioned accountants' and other reports.

55 The Commission and the intervener claim, parallel with their observations in Case T-378/02 R concerning the application for suspension of the operation of Article 2 of the second decision, that the condition of urgency is not now met in the present case, mainly on the ground of the disclosures concerning the remuneration received by Mr Geiß since 1994 and the fact that on 26 February and 3 March 1998 he gave a personal guarantee to secure the loan from TAB, amounting to DEM 2 000 000 (EUR 1 015 677).

56 However, it is clear from the declaration on honour made by Mr and Mrs Geiß on 8 October 2001, and supported by the documents produced to the Court on 4 April 2003, that the personal assets of the owners of TGI are very modest. It is therefore unlikely that any other bank would grant them a loan to enable them to repay the balance of the sum which is the subject of the payment waiver and which amounts to EUR ... (according to the fifth Pfizenmayer report and taking account of the payment of EUR 256 000 on 16 December 2002, in accordance with the conditions of the original suspension).

57 Regarding the Commission's real doubts as to the completeness of that documentation by reason of the fact that, in the light of the remuneration received by Mr Geiß from TGI since 1994, he had not been able to build up his own capital, it is sufficient to observe that the said documentation and the accompanying notes by Mr Pfizenmayer in his report of 26 March 2003 show no reason to question the reliability of the information contained in the documents. It is clear that Mr Geiß's remuneration, compared with the average salary of the directors of a Germany company of that size, was modest. Like the other directors and employees of TGI, he gave up some income, such as the Christmas bonus, in order to ease the company's cash flow problems. With regard to his other income not originating from TGI, it consists mainly of the relatively small German retirement pensions which Mr Geiß receives from Germany. Mr and Mrs Geiß's bank statements for 1999, 2000, 2001, 2002 and as at 28 February 2003

manifestly bear out the applicant's claim that the assets of the owners of TGI are indeed limited.

58 In those circumstances it is not for the President of the Court to speculate as to the apparent inability of Mr and Mrs Geiß to make bigger savings since 1994, as the Commission would have hoped, in view of its insistence on referring to the existence of hidden assets belonging to the owners of TGI, particularly Mr Geiß.

59 In addition, the mere fact that TAB does not appear to consider the guarantee given by Mr Geiß of no value certainly does not prove that he has considerable capital. It probably shows that the bank wishes to emphasise that Mr Geiß is personally liable for the repayment of the TAB loan.

60 With regard to the alleged obligation to sue the Land of Thuringia for damages, said to exist by the Commission and the intervener, it must be observed that this presupposes the existence of a right in favour of TGI and a direct connection between a breach of that right by the Land of Thuringia and the costs paid in advance by the applicant in 1998. According to the applicant, obtaining the loan from TAB meant that it had the best possible compromise in the very difficult circumstances in which it found itself in 1998. In any case, it is by no means certain that bringing an action of the kind envisaged by the Commission and the intervener would be sufficient, given the fragile cash situation in which TGI still finds itself, to avoid insolvency if the present application is dismissed. The President of the Court considers it unlikely that a claim by TAB for repayment of the loan would be suspended or dismissed by a German court by reason only of a possible right of retention under Paragraph 273(1) of the German Civil Code,

which could be claimed by TGI on the basis of the alleged obligation to TGI of the Land of Thuringia.

61 Consequently it must be concluded that the condition of urgency remains fulfilled in the present case. It is therefore necessary to weigh up the interests involved.

Weighing-up of interests

62 The applicant pleads the same interests as those to which it referred in the application for interim measures (see paragraphs 110 and 111 of the original order). It contends that, as the circumstances have not fundamentally changed in the mean time, the weighing-up of interests should lead to the same conclusion. With regard to the intervener's interest, the applicant alleges that the intervener obtained much larger subsidies than any the applicant may have received, both in the early 1990s, when Jenaer Glaswerk was privatised, and more recently. In support of the latter claim, TGI alleges that the intervener received government aid from the Land of Thuringia totalling EUR 80 500 000 in 2002 for the construction of a factory there.

63 At the hearing the applicant stated, in reply to a question from the President of the Court, but still denying that an additional payment in favour of the BvS was necessary, that, in view of the improvement in its financial situation in 2002 and its prospects for 2003, it could consider the possibility of paying an additional sum of EUR 256 000 within a reasonable period, over and above the repayment of the balance of the TAB loan.

64 In its replies to the questions, the applicant confirms that possibility. In view of the updated examination of the state of its finances at 24 April 2003, it forecasts that it will have available funds totalling EUR ... at 31 December 2003. It adds that this forecast takes account of a modification (in particular, the postponement of the repair to the roof of the fourth furnace in 2004) in certain investments deemed necessary by the fifth Pfizenmayer report and of a first repayment, planned for 31 December 2003, of EUR ... relating to the balance of the purchase price laid down by asset deal 1. Therefore, if it had to pay a further EUR 256 000 to the BvS, it would then have only EUR ... available in cash. It followed that the additional payment of such an amount would be the maximum effort which could be envisaged, otherwise the applicant would run a serious risk of insolvency.

65 In its additional observations, the Commission defends the position it took at the hearing, which is that in the present case there are no longer any exceptional circumstances for the purposes of paragraph 116 of the original order. In this connection the Commission stresses that the aid in question in the two cases considered together, taking account of interest, is now appreciably more, in relation to the total aid of DEM 67 425 000 (EUR 34 473 855) received by TGI, than 6% of that total taken into account by the President of the Court in that order. Furthermore, 10 undertakings present in the applicant's market could profit from the repayment of the aid in question. Finally, the Commission observes, with the support of the intervener, that, in the sector of the production of goods competing with TGI products, the intervener is more or less comparable in size to the applicant.

66 The President of the Court considers that, in accordance with the considerations set out in paragraphs 115 to 117 of the original order, and in view of TGI's financial forecasts up to 31 December 2003, there are also exceptional and highly specific circumstances in the present case which tend to favour an extension of the provisional measures.

67 That conclusion is in no way affected by an overall consideration of the amount of the contested aid in the two cases, which remains very small in relation to the total aid received by TGI, to which no objection has been raised by the Commission. Regarding the intervener's position, although its intervention has demonstrated in more detail the respective sizes of Schott Glas and TGI in the relevant glassware sector, the fact remains that the former is part of a group which has a much larger turnover than the applicant. As the applicant's cash situation is still insecure, it is unlikely that it will have resources which would enable it to act in such a way as to distort competition, such as an aggressive pricing policy, as alleged by the Commission and the intervener. Furthermore, it would appear that the latter has very recently received a very large subsidy, apparently approved by the Commission, from the Land of Thuringia, whereas the disputed aid in these proceedings and in Case T-378/02 R dates back to 1998.

68 However, in view of the Community interest in actually recovering State aid, including aid for restructuring, which is in principle granted to undertakings in economic difficulty, suspension of the complete implementation of the contested decision until judgment is given in the main proceedings cannot be justified. Finally, the applicant has not opposed such a restriction. It therefore proposes, in the reply to the written questions, to produce a new, detailed financial report after payment of a maximum additional amount of EUR 256 000 by 31 January 2004. The report will examine the possibility, depending on the applicant's then cash situation, of making a further additional payment to the BvS.

69 It follows that the grant of limited provisional measures is justified in the very special circumstances of the present case and is an adequate response to the need to ensure effective provisional legal protection.

70 While respecting the general interest in the recovery as soon as possible of State aid which is found incompatible with the common market and is ordered to be recovered, the suspension of the operation of Article 2 of the contested decision should be extended until 17 February 2004.

71 The said extension must be made subject to the following conditions: first, the four conditions set out in paragraph 2 of the operative part of the order made today in Case T-378/02 R must be fulfilled by the applicant, in particular with regard to the dates stated therein; second, the applicant must, not later than 31 December 2003, repay to the BvS an additional sum of EUR 256 000 and within a week of making that payment and by 7 January 2004 at the latest must lodge at the Registry of the Court of First Instance and at the Commission written proof of that repayment; third, the applicant must, by 6 February 2004, lodge at the Registry of the Court of First Instance and at the Commission a detailed report by a chartered accountant on its financial situation as at 31 December 2003 and, in particular, on the additional sum which it would be able to pay by 30 June 2004, should the judgment in the main proceedings not be given by that date.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The suspension of the operation of Article 2 of Commission Decision 2002/185/EC of 12 June 2001 on State aid implemented by Germany for Technische Glaswerke Ilmenau GmbH is extended until 17 February 2004.**

2. The suspension is subject to the following conditions: first, the four conditions set out in paragraph 2 of the operative part of the order made today in Case T-378/02 R must be fulfilled by the applicant, in particular with regard to the dates stated therein; second, the applicant must, not later than 31 December 2003, repay to the Bundesanstalt für vereinigungsbedingte Sonderaufgaben an additional sum of EUR 256 000 and within a week of making that payment and by 7 January 2004 at the latest must lodge at the Registry of the Court of First Instance and at the Commission written proof of that repayment; third, the applicant must, by 6 February 2004, lodge at the Registry of the Court of First Instance and at the Commission a detailed report by a chartered accountant on its financial situation as at 31 December 2003 and, in particular, on the additional sum which it would be able to pay by 30 June 2004, should the judgment in the main proceedings not be given by that date.

3. The costs, including those of the intervener, are reserved.

Luxembourg, 1 August 2003.

H. Jung

Registrar

B. Vesterdorf

President