II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 October 1994

concerning the grant of State aid by France to the Bull group in the form of a non-notified capital increase

(C33/93 (ex NN 32/93))

(Only the French text is authentic)

(Text with EEA relevance)

(94/1073/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area and, in particular, Article 62 (1) (a) thereof and Protocol 27 thereto,

Having given notice in accordance with Article 93 of the Treaty to interested parties to submit their comments and having regard to those comments,

Whereas:

I

Groupe Bull ('Bull') is a manufacturer of diversified computing products having its head office based in France. In addition to its manufacturing operations Bull also provides software and maintenance services to its clients.

At present the majority of Bull's share capital is held either directly or indirectly, through France Télécom, by the French State. A minority participation in the group's share capital is owned by the private sector represented by NEC and IBM.

The Commission has taken several recent decisions concerning Bull: the first, in 1992, being a final decision pursuant to Article 93 (2) of the Treaty (1), which considered capital injections amounting to FF 4 billion to contain aid but that this aid was compatible with the common market. This decision also assessed aid of FF 2,68 billion, granted for research and development, and found it to be similarly compatible. It should be noted that this decision is currently subject to appeal, as concerns the capital injections, at the Court of Justice of the European Communities (2). Subsequent decisions have been taken in connection with the present programme of recapitalization: in 1993 the Commission initiated the Article 93 (2) procedure (3) in connection with an advance on a future capital injection, amounting to FF 2,5 billion. Then, in January 1994, the procedure was extended (4) to include a further capital increase amounting to FF 8,6 billion of which FF 5,5 billion was paid in December 1993.

(1) OJ No C 244, 23. 9. 1992, p. 2.
(2) Case C-367/92.
(3) OJ No C 346, 24. 12. 1993, p. 4.
(4) OJ No C 80, 17. 3. 1994, p. 4.

II

Bull remains one of the larger traditional, broad-based computer companies, manufacturing proprietary systems, involved with open systems and distributing micro-computers, being ranked number 13 in the world according to the Datamation 100 Survey published in June 1993. However, it has been equally affected by the falling turnover and poor results as have been seen by other major, traditional, broad-based manufacturers in the industry.

The adverse financial and commercial position of these companies is reflected by the fact that the computer sector is going through a phase of accelerated technical and commercial development thereby necessitating restructuring. Prices are falling dramatically, consumption and production are slowing and the market is becoming fragmented into many segments. Downsizing and the standardization of products have intensified competition and reduced margins. Many of the major, traditional manufacturers have suffered losses during 1992, and are trying to shift their activities from manufacturing to software and services, being areas that still display high growth rates.

However, it should be noted that extensive changes have taken place in the realm of information technology in recent years. Companies have invested large sums to design products that will, in due course, have an effect on many sectors. This trend is partly explained by technological progress as much as by the demise of the former borders between telecommunications and electronic data processing (EDP). New applications like inter-active video games and teleshopping symbolize the emerging multi-media world which is based on a wide range of technologies and where computers are sold as consumer products. Products that were formerly available only to large companies are now accessible by smaller industrial users and, importantly, a large market of private consumers has developed.

The various information technologies are converging and EDP is moving towards a standardization of product resulting in mass produced standard systems. However, the value added by the hardware producers is decreasing due to strong pressure from components suppliers; therefore, added value lies increasingly in software and services. To react to the erosion of their core business manufacturers have tried to cut costs and to diversify and it is only now, with certain companies, that this solution is working.

III

Following press reports, in February 1993, relating to an advance on a future capital injection amounting to FF 2,5 billion for Bull, the Commission addressed a request for information to the French authorities. This request was followed by a series of letters, between the French authorities and the Commission, which resulted in the Commission establishing that no restructuring plan had been adopted by Bull's majority shareholders on which to base their investment in the form of an advance on a future capital injection.

Accordingly, given that the Commission concluded that illegal aid was present in the transaction and that no grounds, given the absence of a final, approved restructuring plan, could be found for its compatibility with the Treaty, the Commission decided to initiate the Article 93 (2) procedure on 6 October 1993. This decision was forwarded to the French authorities by letter dated 16 November 1993 and published in the *Official Journal of the European Communities* (1). Subsequently, in a letter dated 6 December 1993 the French authorities informed the Commission that the French State, together with France Télécom, had decided to invest, in addition to the advance of FF 2,5 billion, a further FF 8,6 billion in Bull. Furthermore, it was stated that part of this amount would be paid immediately to Bull thereby infringing the procedural requirements of Article 93 (3); this measure must therefore be classified as illegal.

Accordingly, on 26 January 1994 the Commission adopted two further decisions concerning Bull. The first decision extended the Article 93 (2) procedure in respect of the capital increase of FF 8,6 billion: this decision was forwarded to the French authorities by letter dated 8 February and published in the *Official Journal of the European Communities* (2).

The second decision ordered the French authorities to refrain from granting further aid to Bull, and specifically FF 2,5 billion which was believed to be outstanding for payment from the amount of FF 8,6 billion. This decision was sent to the French authorities by letter dated 8 February 1994 and was published in the *Official Journal of the European Communities* as Decision 94/220/EC (3).

The French authorities responded to the second decision in a letter dated 25 February confirming that they would not proceed with further payments until the Commission had reached a decision thereon.

In a letter dated 8 March 1994 the French authorities responded to the questions raised by the Commission in the opening and extension of the Article 93 (2) procedure submitting, in addition, a final restructuring plan. The

(1) See footnote 3, p.1.
(2) See footnote 4, p. 1.
(3) OJ No L 107, 28. 4. 1994, p. 61.

Commission raised a series of questions on these documents in May 1994 to which the French authorities replied in June 1994. A meeting was held in July between the Commission and the French authorities and Bull where several further issues and questions were raised. An answer to the Commission's questions was received in August.

During July 1994 the Commission appointed an independent consultant to assess Bull's restructuring plan: this work was carried out during August and September and a final report issued in mid September. This report was submitted to the French authorities by letter dated 20 September 1994 who confirmed that they had no comments to make on the report on 21 September 1994.

IV

Within the framework of the Article 93 (2) procedure comments were submitted by the UK Government to both the opening and the extension of the procedure. These comments were submitted to the French authorities by letters dated 14 March and 26 May 1994. A response dated 28 March 1994 was received to the letter dated 14 March 1994; no reply was sent in respect of the second letter.

In principle the UK Government supported the Commission's position and considered that the aid should not be used to fund acquisitions or be granted to a company operating in a market in overcapacity. The French authorities responded stating that they did not share the UK Government's analysis of the capital injection or market and, specifically, that Bull's acquisition of Packard Bell was part of a strategy to improve its micro-computer business.

V

Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement state that 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 the Member States and the Contracting Parties be incompatible with the common market and the Agreement. In addition, in assessing whether a capital injection constitutes aid, it must be assessed whether or not the State's action is in accordance with that of a market economy investor.

In order to improve transparency and to assist in ascertaining whether the behaviour of the State is akin to that of a market economy investor (an approach adopted by the Court of Justice on a number of occasions) (1), the Commission has adopted two communications: one dated 17 September 1984 concerning public authorities' holdings in company capital (2) and another in 1993 covering public undertakings in the manufacturing sector (3). This guidance requires a consideration of whether, in general terms:

- the enterprise's financial position is sound,
- the participation of any private shareholder takes place in proportion to its shareholding and whether such a shareholding is economically significant,
- the structure and volume of the company's debts can allow a normal return (in dividends or capital gains) in a reasonable time from the injected capital,
- the enterprise is able to raise similar funding on the capital markets given the enterprise's cash flow, and
- the present value of expected future cash flows from the intended project exceed the new outlay,

to ascertain whether or not a capital injection includes an aid element.

However, in order to make these assessments it is necessary, at the outset, to determine the date on which the decision was made to undertake the investment. The advance on a future capital injection of FF 2,5 billion was paid to Bull during February 1993 and the decision to invest a further FF 8,6 billion was taken by the French authorities in December 1993. Therefore, it is necessary to consider Bull's financial position at these points in time to assess whether a market economy investor would have made the same decision as the French State.

At the end of 1992, being the latest point at which historic financial information would have been available before the decision to invest was taken, Bull had experienced three years of falling sales, having seen its consolidated turnover reduced from FF 35 billion in 1990 to FF 30 billion in 1992, being a fall of some 14 %. Furthermore, operating losses (i. e. revenues less all costs except net financial charges) had been incurred in each of the years 1990, 1991 and 1992 and, similarly, Bull's net result (both before and after restructuring provisions) had been negative during this period, the group having earned its last net profit in 1988. It should also be noted that Bull has not paid dividends since its acquisition by the State and given the level of losses, it cannot be supposed that an increase in the value of the company's shares has taken place.

(1) For example Joined Cases C-296 and C-318/82, Netherlands and Leeuwarder Papierwarenfabriek BV v. Commission [1985] ECR, p. 809; Case C-323/82, SA Intermills v. Commission [1984] ECR, p. 3809; Case C-234/84, Belgium v. Commission [1986] ECR, p. 2263 (Meura).

(2) Bulletin EC No 9-84.

(3) OJ No C 307, 13. 11. 1993. p. 3.

Bull's cash flow generated by its operations was not sufficient to meet its investment needs during the period 1990 to 1992; consequently, for this period Bull had to resort to capital injections to meet its financing requirements and to reduce the high level of borrowings reached in 1990. Whilst the Commission did not consider Bull's capital injection of 1990 it has to be recalled that the majority of the capital injected in 1991 and 1992 came from the State and was considered to be State aid.

By way of comparison IBM, which was profitable in 1990, incurred a net loss in both 1991 and 1992. However IBM generated a cash surplus from operations sufficient to cover investment needs in both 1990 and 1992 and only had to resort to borrowings for this purpose in 1991. Similarly DEC, which was profitable in 1990, but was loss making in 1991 and 1992, generated a sufficient cash surplus from operations in both 1990 and 1991 to cover investment needs but had to raise other finance for this purpose in 1992.

Bull's debts at the end of 1992, after allowing for the above capital injections, whilst lower than in the previous two years, still amounted to over FF 10 billion being some 27 times shareholders' funds (i. e. share capital and retained results). Similarly, Bull's financial charges were some 5 % of turnover in 1992 and were not covered by operating profits, showing that the group had failed to earn sufficient profits to cover interest costs on borrowings. This had also been the situation in both 1991 and 1990.

As regards the subsequent decision to invest FF 8,6 billion the French authorities would have had available Bull's results for the six months to 30 June 1993 and a good indication of the results for the year to 31 December 1993.

The half year results to June 1993 show a fall in sales (when compared to the first half of both 1991 and 1992); an operating loss 50 % higher than that for the first six months of 1992 had been incurred and the net loss was higher than that of the previous corresponding period. In addition, interest charges were not covered by operating profits, due to the loss being incurred and debts, despite the advance on a capital injection, were not significantly reduced because of the continued level of losses.

Similarly, by considering Bull's financial statements for the year ended 31 December 1993 it is apparent that sales had fallen further from 1992 levels and that an operating loss had been incurred, being higher than in both 1991 and 1992. Again financial charges were not covered by operating profits (due to the loss) and whilst indebtedness was reduced to some FF 4,5 billion this was made possible by the capital injections paid during 1993 amounting to FF 6,1 billion.

Given the recent financial performance of Bull, its falling sales, operating losses and high level of indebtedness it is not believed that its financial position was sound at the date of the investment decisions. Moreover, considering the structure and volume of Bull's debts it is not believed, taking due account of historic and future performance, that an adequate return could be expected, at the date of investment, from the injected capital in a reasonable time. Finally, it is not considered that Bull, on the basis of its cash flow, would have been able to raise similar amounts of funding on the capital markets.

The communication of 17 September 1984 concerning public authorities' holdings in company capital states that State aid is not present in a capital injection when both the public and private shareholders contribute in proportion to their shareholdings; however the private investor's shareholding must have economic significance.

Prior to the payment of the advance of FF 2,5 billion, the NEC and IBM shareholdings in Bull totalled 10,1 % of the share capital. Neither company was invited by the French Government to participate in making the advance to Bull but both were informed that they could take part in a subsequent capital increase.

As regards the capital increase of December 1993 it should be noted that IBM did not participate, thereby seeing its stake in Bull diluted from 5,68 % to 2,1 % — a reduction of 63 %. On the other hand NEC maintained its shareholding of 4,4 % by investing FF 379 million. Accordingly, it is necessary to consider whether this shareholding is 'economically significant' and to consider the monetary value of the shareholding which may be seen from the point of view of either NEC or Bull.

This capital injection by NEC represents some 3 % of the total current injections and NEC's total investment in Bull, since becoming a shareholder, accounts for some 4 % of the total capital injections made to the group. Whilst these amounts are significant in themselves, the relative amounts are small in comparison to the total. Similarly, the amounts are small for NEC: at its 1992 financial year and NEC had financial asset investments of

FF 14 billion; during its 1992 financial year NEC invested FF 12 billion in fixed and financial assets. It would not therefore appear that FF 379 million was a significant investment for NEC to make.

In addition it must not be forgotten that NEC has a broader interest than other market economy investors in continuing to invest in Bull being the access such an investment brings to the French and European markets especially that of public procurement.

Therefore it is not considered that NEC's investment in Bull is economically significant and therefore this investment does not detract from the aid nature of the State's capital injections.

Finally, it is necessary to consider a net present value analysis of the capital injections. This analysis is based on the financial projections provided by the French authorities for Bull for 1994 and 1995; a period considered, by the French State, to be sufficient to judge Bull's financial viability.

Before proceeding with any analysis based on value or discounted value it is to be noted that at 31 December 1992 Bull had total shareholders' funds (including the advance of FF 2,5 billion) amounting to FF 375 million. At the end of the restructuring process and after the further injections by the State of FF 8,6 billion, Bull has projected total shareholders' funds of FF [. . .] (1) billion, i. e. an erosion of some FF [. . .] billion, being most of the second capital injection.

By taking account of Bull's value at 31 December 1992, its net cash flows in 1993, 1994 and 1995 the capital injections during this period and the value of Bull at 31 December 1995, it would appear that the internal rate of return generated by these financial flows is insufficient to convince a market economy investor operating in normal conditions to undertake such a transaction.

Therefore, on the basis of these tests it is apparent that both the advance and the capital injection, made, or to be made, by the French State and France Télécom for the benefit of Bull contain aid within the meaning of Articles 92 (1) of the EC Treaty and 61 (1) of the EEA Agreement.

The French authorities argue that the capital injections do not contain aid to Bull because:

— of the three options available to the State shareholder, namely liquidation, sale or recovery measures, the latter option would most probably protect the value of the State's investment,

— the actions of the minority shareholders supported the State's decision, and

— the action of the State was comparable to that of shareholders of other large information technology groups in difficulty.

The French authorities claim that the cost of either liquidating or the net cost to the State of liquidation, after disposing of Bull's viable business segments, would exceed the amount of the capital injection. Therefore, as the amount of the capital injection was lower than both these amounts, injecting funds to permit restructuring was the correct economic decision.

A shareholder in a company, limited by shares, is responsible, normally in law and always in economics, to the amount of his subscribed share capital. Consequently in a liquidation the shareholders' exposure is limited to this amount. In arriving at a liquidation value for Bull the French authorities have assumed that the French State, as shareholder, will be accountable for the total of Bull's debts both as shown on the balance sheet and as contracted to off-balance sheet. This approach is mixing the State's roles of owner/shareholder and as a body responsible for social policy.

From an economic standpoint and as supported by the Court of Justice in its judgment of 14 September 1994 (2), it is clear that the State's involvement is limited to its share capital and in the words of the Advocate-General 'if the company's liabilities exceed its assets, its creditors would not have been able to call upon the Patrimonio del Estado (the State) to make good the difference'.

As the French authorities have calculated that the sale of Bull's viable parts would exceed the legal cost of redundancies, and the immediate cost of running Bull down, it is considered that it is erroneous to include the whole of Bull's other liabilities (especially as none are covered by State guarantees) in calculating a liquidation cost and to compare this to the cost, by way of a capital injection, of a restructuring. Such an analysis would not be carried out by a market economy investor who would simply compare the diminution of value that would be incurred by losing the share capital in a liquidation with the cost of restructuring. Therefore, it is considered that this analysis may be discounted.

Furthermore, it is considered that even if a responsibility exceeding the nominal shareholders' liability is imposed by national courts, as is claimed by the French authorities in this case, then the fact that Bull was not restructured or liquidated at an earlier point in time is contrary to the

(1) [...] indicates business secrets.

(2) Joined Cases C-278/92, C-279/92 and C-280/92, Imepiel and Intelhorce, paragraph 22, not yet published.

behaviour of a market economy investor. Such an investor would have taken appropriate action once it became clear that liabilities were arising that put his limited liability in doubt. Therefore if national law establishes such an unlimited guarantee, governments must take account of this fact and act as market economy investors in their investment decisions. The Commission's position in such cases has been clearly established in Decisions 92/329/EEC (1) and 94/259/ECSC (2), and in its communication in the EFIM case (3).

The actions of Bull's minority shareholders have already been dismissed above: it is, however, to be reiterated that it is not considered that the shareholding of NEC is economically significant and that the continuing investment was motivated by market access reasons; moreover, it should be remembered that IBM did not participate in the transaction.

The fact that Bull has raised debt funding in 1992 and 1993 does not detract from this analysis. As no details of either the lender, the length of the loans or the applicable interest rate is given it is not possible to conclude that these transactions indicate that aid is not being granted to Bull.

Turning to consider the actions of the shareholders of companies in a position similar to Bull, the French authorities make reference to Siemens (SNI), Olivetti and AT&T and point out that, in the case of SNI, its parent company has supported it financially despite a recurring high level of losses. Furthermore, as regards Olivetti funds have been raised on the stock exchange and that DEC has participated in this increase. Finally, as concerns AT&T it is stated that AT&T has continued to support its information technology business even going as far as acquiring the loss making NCR.

Several points require further consideration. As regards SNI the capital injected by Siemens in 1990 at current exchange rates, amounts to some FF [. . .] billion: Bull has received over FF 15 billion to restructure since 1991. Whilst Siemens has lent a further FF [. . .] billion to SNI to restructure, this money, as a loan, can be recovered. Moreover, it must be remembered that SNI is a larger company, in terms of turnover, than Bull, and therefore may cost proportionately more to restructure. In addition, as SNI does not make publicly available its full financial results, it is not possible to ascertain to what extent SNI's losses may be due to restructuring costs. Furthermore, the behaviour of Siemens with respect to SNI is based on an industrial rationale as SNI forms a complementary part of a larger electrical, electronic and consumer goods conglomerate.

SNI accounted for only some 16 % of Siemens' turnover in 1991 with the greatest segment of sales (33 %) coming from industry, automation and transport. Due to the group's diversified structure, which also includes electrical components, energy and medical divisions, there is an economic rationale in having a computer company within the group. The fact that SNI can draw on Siemens' components division and then sell products to the captive automation and components division supports the argument that SNI is retained for strategic reasons.

Similarly, Olivetti has raised some FF 1 billion by way of a rights issue, again a far smaller amount than that given to Bull and Olivetti raised this sum on the back of a more successful trading performance than Bull. In addition despite the participation of DEC in this original transaction it should be noted that DEC is currently in the process of withdrawing from Olivetti.

Finally, as regards AT&T, whilst it has supported its own information technology business, and that of NCR, it would not appear that it has called upon its shareholders for funding but instead has relied on internally generated monies to undertake the restructuring of the group.

Therefore, the actions of the French State in respect of Bull can be distinguished from these cases on three grounds: first, the size of external capital injections (if any at all) in these cases must be contrasted with that of Bull. Secondly, in the case of SNI and AT&T, at least, the fact of industrial synergy must not be omitted, something which is lacking in the case of Bull. Thirdly, AT&T and Olivetti have generated operating profits in recent years to fund their restructuring themselves which Bull has been unable to do.

Furthermore, it must also not be forgotten that a number of computer companies, being competitors of Bull, for example IBM, whilst loss making have restructured without the help of their shareholders. These companies have, in general, only incurred net losses as the result of restructuring provisions: they were profitable at the operating level.

Finally it should be noted that the French authorities have submitted a net present value analysis which shows

(1) OJ No L 183, 3. 7. 1992, p. 30.
(2) OJ No L 112, 3. 5. 1994, p. 64.
(3) OJ No C 75, 17. 3. 1993, p. 2.

that an internal rate of return of some [...] % is generated on the capital injections. This calculation is erroneous for the following reasons:

— the calculation ignores the recapitalization by France Télécom. As a public undertaking this company's capital injection should be taken into account,

— in determining the cash flow, the analysis assumes that the State has to meet the whole of Bull's liabilities on liquidation. As discussed above, on economic grounds, this is inappropriate.

Therefore, its is considered that this calculation may be discounted.

In summary the arguments advanced by the French authorities do not point to the conclusion that the French State and France Télécom have acted as market economy investors in their recapitalization of Bull. Therefore, as concluded above, the capital injections amounting, in total, to FF 11,1 billion by the French State and France Télécom are considered to contain aid within the meaning of Articles 92 (1) of the EC Treaty and 61 (1) of the EEA Agreement. However it also became apparent during this analysis that the payment of the advance on a future capital injection appeared to be an intention of the French Government to grant rescue aid whilst the capital injection, on the other hand, was in the nature of restructuring aid.

VI

Bull operates in several distinct areas being those of proprietary computers (GCOS 7 and GCOS 8), open systems and business software (Unix), personal computers (ZDS), systems integration and services.

In 1993 and 1992 Bull's sales of equipment amounted to FF 15 billion and FF 16 billion respectively and its rental and service income to FF 13 billion and FF 14 billion respectively. This sales revenue may be analysed as follows:

	1993		1992	
	FF billion	%	FF billion	%
Western Europe	20	71	22	73
North America	6	21	6	20
Rest of the world	2	8	2	7
	28	100	30	100

It is understood that some 50 % of Bull's sales in western Europe take place in France.

Data for the size of the European market in 1992 (as set out in the Commission's Panorama of Industry 1994) indicate that the total market size was some FF 260 billion. Alternatively for the EEA as a whole (for 1993) the Yearbook of World Electronics Data indicates a market of some FF 375 billion for EDP equipment; finally, the 1993 IDC Worldwide Black Book indicates a western European market size of FF 660 billion for 1992 and FF 718 billion for 1993.

Bull, with sales of some FF 20 billion in western Europe, of which some FF 10 billion are exported from France, is therefore involved in trade between the Member States and the Contracting Parties. Consequently any aid to Bull would be capable of distorting trade within the meaning of Articles 92 (1) of the EC Treaty and 61 (1) of the EEA Agreement.

VII

Whilst Articles 92 (1) of the EC Treaty and 61 (1) of the EEA Agreement lay down the general incompatibility of State aid, certain derogations from this general incompatibility are contained in Articles 92 (2) and (3) and 61 (2) and (3) respectively. In this case the aid does not have a regional dimension as none of the French mainland can benefit from a derogation pursuant to Articles 92 (1) (a) or 61 (3) (a) respectively. Similarly, the aid does not have any regional specificities and, as it is believed that none of Bull's continuing, major plants are located in regions falling under the regional derogation of Articles 92 (3) (c) and 61 (3) (c) respectively the aid cannot benefit from this derogation.

Therefore, the Commission believes that the aid can only be considered for the derogation provided for in Articles 92 (3) (c) and 61 (3) (c) respectively being aid to facilitate the development of certain economic activities, where such aid does not affect trading conditions to an extent contrary to the common interest.

The Commission has recently adopted revised guidance (Community guidelines on State aid for rescuing and restructuring firms in difficulty (Notice to the Member States)) concerning the circumstances under which it may be prepared to permit State aid to allow undertakings to restructure both physically and financially.

Restructuring usually involves one ore mor of the following elements: the reorganization and rationalization of the firm's activities on to a more efficient basis typically involving the withdrawal from activities that are no longer viable or are already loss-making, the restructuring of those existing activities that can again be made competitive and, possibly, the development of or diversification to new viable activities. Financial restructuring usually has to accompany the physical restructuring. Restructuring plans take account of, *inter alia*, the circumstances giving rise to the firm's difficulties, market supply and demand for the relevant products as well as their expected development and the specific strengths and weaknesses of the firm. They allow an orderly transition of the firm to a new structure that gives it viable long-term prospects, producing an adequate return on the injected capital, and will enable it to operate on the strength of its own resources without requiring further State assistance.

It is considered that aid for restructuring may contribute to the development of economic activities without adversely affecting trade against the Community interest if certain conditions are fulfilled.

In this context it should be noted that the Commission has recognized in the White Paper on Growth, competitiveness and employment that with an imminent information society and with the emergence of information highways, it is in the Community's and the EEA's interests to meet new challenges in these areas. This is because the first economies which successfully complete this change will hold significant competitive advantages. Therefore, whilst Bull does not operate specifically in telecommunications, aid to establish a viable and competitive information technology industry, as long as any competitor operating in the EEA is not unduly disadvantaged by the aid, could be said to facilitate economic development from the standpoint of the Community.

It must not be forgotten that both the advance and the capital injection are linked to a restructuring plan (*le plan de restructuration*) which has been approved by Bull's majority shareholders and which was submitted to the Commission in March 1994. The French authorities stress that this plan has for its objectives the rectification of Bull's financial results within two years and the restoration of its viability, which should permit its privatization as soon as possible.

(a) *Restoration of viability*

Whilst the goal of any restructuring plan is to restore the undertaking's long-term viability and health within a reasonable time scale, it is also necessary to ensure that the aid related thereto is in proportion to the restructuring costs and its benefits and that the proposed restructuring plan is implemented in full.

Bull's restructuring plan provides for the restructuring of the group into seven operating divisions segregated by business type; the restructuring of these operations and specifically the micro-computer and open systems and software businesses; reductions in the labour force; the closing of factories and the sale of certain activities. The main thrust of the plan is to reduce Bull's cost structure by a reduction in the number of employees, by the rationalization of its factories, and their capacity, and by the sale of marginal operations.

The cost of these actions was estimated at FF [. . .] billion of which FF [. . .] billion are met by the current recapitalization, the balance having already been provided in accordance with the 1992 restructuring (*plan de mutation*). The balance of the recapitalization will be employed in reducing Bull's third-party indebtedness. It is estimated that these measures would improve Bull's operating margin by FF [. . .] billion in 1995.

Whilst these restructuring measures themselves generate cumulative cost reductions of FF [. . .] billion during the period 1992 to 1995, of which FF [. . .] billion relate to distribution and administration costs, FF [. . .] billion to research and development charges and FF [. . .] billion to gross margin improvements, it is also necessary to add the continuing improvements due to the 1992 *plan de mutation*. The 1992 plan adds further savings, resulting from the reduction in the number of employees, of FF [. . .] billion together with other variable cost reductions amounting to a further saving of FF [. . .] billion.

Consequently, the total cost reduction foreseen for 1995, in comparison to 1992, amounts to FF [. . .] billion.

However this saving must be reduced because of the effects of inflation, lower external financing for research and development programmes and the reduced capitalization of software development expenses. Therefore the net saving is forecast to amount to FF [. . .] billion. This improvement is, however, attenuated by the fact that sales values are expected to decrease and, with them, gross margin.

Bull's sales, in total, are forecast to fall from FF 30 billion in 1992 to FF [. . .] billion in 1995, a reduction of [. . .] %. However, within this total hardware sales will reduce by [. . .] % during this period whilst software, maintenance and service revenues by [. . .] %. In terms of gross margin an overall fall of [. . .] % is predicted, this has to be split between hardware, where an overall reduction of [. . .] % is incurred and software, maintenance and services where a fall of [. . .] % is foreseen. As the result of the expected increased competitiveness of the market Bull's gross margin is forecast to be [. . .] % in both 1994 and 1995 whereas in 1992 a margin of 37 % was achieved. The negative effect of the reduction in turnover and gross margin amounts to FF [. . .] billion thereby reducing the impact, at an operating level, on the profit and loss account to FF [. . .] billion.

These measures are forecast to return all operating divisions to a profit, except for [. . .], for which further measures are anticipated, and which will still break-even, by the end of 1995. The net result will be improved by the impact of the debt reduction, reducing financial charges by FF [. . .] billion, and because of the fact that Bull will not have to make further restructuring provisions.

In addition the Commission has considered the debt/equity ratio for Bull during the restructuring period. From a level of 27 at the end of 1992 this ratio was 4 at the end of 1993 (after the capital injections that are classified as aid above) and is forecast to improve to [. . .] at the end of 1995.

Consequently, at the end of its restructuring process Bull is expected to be profitable at both the operating and net result levels but with a reduced operating capacity. However, little flexibility is permitted by these forecasts to allow for unforeseen events.

The rationalization of Bull's factories has resulted in the closure of Villeneuve d'Ascq in France and [. . .] in the United States: these actions will lead to some [. . .] job losses of which half will be in France. In total Bull foresees some [. . .] redundancies during the period 1993 to 1995 being some [. . .] % of the workforce at 31 December 1992. In addition a further [. . .] jobs will be lost at Bull's partners and through natural wastage. About 40 % of these cuts will be in administration with the balance of the cuts being shared equally between research and development, manufacturing and services.

Bull's greatest loss-making division, ZDS, is addressed specifically by the restructuring plan which has led to Bull ceasing the final assembly of micro-computers and has given rise to the partnership arrangement with Packard Bell. Under this agreement Packard Bell will complete the final assembly of desk-top computers and all lap-top computers will be sourced from Asian suppliers. The advantages of the partnership are twofold. First, given Packard Bell's distribution network, ZDS and Packard Bell have increased their chance to reach a critical mass in order to compete in a market where a high sales volume is crucial for success but they need further size in order to succeed fully. Secondly, only with a high sales volume can the amount of gross profit be generated (given that gross margins are low and compressed because of competition) to finance the necessary research and development to continue product innovation.

It is apparent that ZDS has considerably reduced its losses as the result of these measures; however, it is also considered that ZDS has not yet reached a critical mass to compete successfully, in the long term, with major competitors. Therefore, it is important that the forthcoming privatization of Bull ensures that, if ZDS is retained, suitable synergies are built up between the purchaser and ZDS.

Bull has also experienced serious problems in its [. . .] business. In addition to the original restructuring plan, a second wave of restructuring (as identified in the independent consultants' report referred to above) has started in August 1994 and it is important, if this division is to be returned to financial health, that this process is continued in accordance with an accelerated procedure.

It is possible to ascertain the impact of the restructuring plan to date by an examination of Bull's financial performance for the six-month period to 30 June 1994; for example salary costs in the first six months of 1994 when compared to the previous year have fallen by FF 259 million and non-salarial variable costs have been reduced by FF 623 million.

The results of the first six months to 30 June 1994 are set out in the summary below; these results are shown before further restructuring reserves (amounting to FF 700 million) in 1994. No such reserve took place in the first six months of 1993.

	Six months to 30 June 1993 (FF million)	Six months to 30 June 1994 (FF million)	Year to 31 December 1995 (FF million)
Sales	12 478	13 847	[. . .]
Gross margin	4 127	4 105	[. . .]
Research and development	1 252	1 006	[. . .]
Administration	4 083	3 532	[. . .]
Operating margin	(1 208)	(433)	[. . .]
Financial costs, etc.	772	409	[. . .]
Net result	(1 980)	(843)	[. . .]

Consequently it can be seen that despite a growth in sales, which if repeated in the second six months of the year would lead to Bull exceeding its 1994 forecast, the gross margin has deteriorated as predicted. Notwithstanding this a reduction in administration costs has resulted in an improvement in the operating margin. These figures are believed to be indicative of the success of Bull's restructuring.

The independent consultants' report has also concluded that Bull's restructuring plan will return the group to viability in its current diversified form. However, it is also apparent from the report that, in order to achieve the necessary size and to return to long-term sustainable viability, Bull's privatization is a necessary condition in order to enable the group, through a private industrial partnership, to attain the necessary increase in scale, to refocus its strategy and to give customers and personnel confidence in its future.

In fact the consultants conclude that privatization in the very short term is the key to Bull's turnaround because it would:

— send clear signals that Bull wished to survive to its employees, clients and partners,

— end strategic uncertainties,

— reinforce some business units,

— allow for continued turnaround and cost reduction.

The consultants conclude that if Bull wishes to remain a broad-based computer group, both manufacturing goods and providing services, privatization is necessary and should take place before 31 December 1995. Only if this occurs can Bull, in such a format, be returned to long-term viability.

The Commission shares the consultants' views that Bull has the need of a strong industrial partner to support its [. . .] and [. . .] divisions and thereby remain a broad-based computer group. However, the Commission also recognizes the effect of Article 222 of the EC Treaty and Article 125 of the EEA Agreement whereby the rules governing the system of property ownership cannot be prejudiced and, therefore, the Commission appreciates that it cannot request or oblige the privatization of Bull. However it is also apparent that the French Government itself wishes to privatize the group and has made this fact known to the Commission.

In this respect it should be noted that the French Government has already included Bull on its list of privatization candidates in its Law No 93—923 concerning privatization; in addition, it should be noted that the current restructuring has been geared to the privatization of the group and that legal and procedural steps have been taken to enable the privatization to proceed.

The French authorities have confirmed, in a letter dated 6 October 1994, that such a privatization, reducing the State's direct or indirect shareholding (including voting power) to below 50 % of Bull's capital is a priority and will be carried out as soon as possible. Furthermore, the French authorities have stated, in both the restructuring plan and in a meeting on 26 September 1994, that this is the last payment to be made to Bull.

The Commission concurs with the report of the consultant and considers that in order for Bull to be viable, in its current form, a major industrial partner must be found before 31 December 1995. However it must be noted that should the maintenance of Bull in its current form not be required, or should a major industrial partner not be found by this date, then the independent consultants have identified a second scenario which may arise.

This second scenario assumes that Bull becomes a 'downstream' operator i. e. concentrating on services close to the customer. In this case both [. . .] and [. . .] would be sold, together with marginal manufacturing operations, but such an option would also entail drastically reduced overheads. In such a case, if Bull was reduced to the level of a service company partnership is not necessarily believed to be crucial for long-term viability. However such a development would affect the Commission's view of the case.

Therefore on the basis that Bull continues to be a broad-based computer producer, which will rapidly find an industrial partner, the Commission considers that Bull will be returned to sustainable financial viability on the basis of its 1993 restructuring plan together with the additional measures put in motion in August 1994.

(b) *Common interest*

A further condition of aid for restructuring is that measures must be taken to offset, as far as possible, adverse effects on competitors.

The Commission has come to the conclusion that whilst most major computer companies operating in the EEA are suffering from financial difficulties these problems are caused by rapid change in the industry and not by excess production capacity. However, it must not be forgotten that Bull derives a major part of its revenues from services, which is an expanding market, and that any aid may effect competing providers of similar services.

Even if there is no structural excess production capacity, the Commission must be satisfied that the aid will not enable the beneficiary to increase production capacity except in so far as is essential for restoring viability, without thereby unduly distorting competition. To ensure such is the case the Commission may impose any necessary obligations or conditions on the beneficiary.

As a consequence of closing factories and reducing personnel, Bull will reduce its industrial capacity (in terms of hours) from [. . .] billion in 1992 to [. . .] billion in 1995: utilization will increase from [. . .] % to [. . .] % during the same period.

During this period Bull foresees a reduction in the value of total hardware sales despite increases in the sales value derived from Unix systems and micro-computers. In addition, in value terms, software and maintenance sales will be reduced during the same period whilst services increase by 14 %. However, the reduction in software and maintenance is greater than these increases, leading to an overall reduction in non-manufacturing sales by value.

The French Government has provided estimated market data extracted from the 1993 IDC Worldwide Black Book. This shows that the world market, in value terms, will increase during 1994 and 1995 and that, during the same period, Bull's share of the world market will fall. Similarly, in the western European market, Bull's share is forecast to fall 3,9 % in 1993 to [. . .] % in 1995 with a market growth of 5 % per annum.

In addition, it should be noted that Bull is engaged in the process of disposing of several peripheral activities, namely [. . .]. The disposal of these operations would limit further the distortive effect of Bull's aid.

Finally, the Commission has considered whether the aid is in proportion to the restructuring costs and its benefits. As stated above the aid is used both to finance Bull's restructuring and to repay its debts.

As regards the financing of the restructuring, the pay-back period arising from the improved results of Bull is satisfactory. This means that the cost of any rationalization is covered by resulting cost savings in a relatively short time. However, this analysis does not detract from the overall aid nature of the recapitalization. As regards the write-off of debts, it would appear that Bull's level of indebtedness at the end of its restructuring is comparable to that of its main competitors. However, its financial charges will still be at a level which could place Bull at risk. Consequently it would appear that the amount of the aid does not exceed what is strictly necessary.

On 19 September 1994, is was ammounced that Bull was to dispose of certain of its North American operations to Wang for an amount of $ 135 million in cash and bonds and $ 25 million in Wang shares. This money will be used by Bull to settle outstanding obligations in respect of pension funds and property leases in the United States of America and, therefore, it can be said that Bull has used its own resources, albeit to a limited extent, to finance its restructuring.

However, it would also appear that the aid contained in both the advance and the capital increase paid to Bull in 1993 of FF 8,6 billion has, in the main (some FF 7 billion) been used to extinguish the group's accumulated losses. As stated in the restructuring guidelines if aid is used to extinguish accumulated losses the tax credits relating thereto should be eliminated and not retained to be offset against future profits or sold or transferred to third parties. Therefore, such tax credits should be extinguished in order to prevent the group receiving aid a second time.

In the light of the above it is considered that the aid contained in both the advance on a capital injection and in the capital injection itself facilitate the economic development of the computer industry in the Community and the EEA. This aid does not distort trade to an extent contrary to the common interest.

VIII

In the light of the above the aid contained in the advance of FF 2,5 billion and the capital injection of FF 5,5 billion, paid in February and December 1993 respectively, and the amount of aid of FF 3,1 billion still to be granted, may benefit from the exemption provided for in Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement, provided certain commitments are fulfilled,

HAS ADOPTED THIS DECISION:

Article 1

The aid contained in the advance granted to Bull in February 1993, amounting to FF 2,5 billion, in the capital injection of December 1993, amounting to FF 5,5 billion and to be granted to Bull in 1994, amounting to FF 3,1 billion, is compatible with the common market and the EEA Agreement in accordance with Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement, provided that the French authorities respect the following commitments:

(a) that the various measures, including the sale of [...], set out in the restructuring plan (*le plan de restructuration*), is completed in accordance with the timetable therein;

(b) that the restructuring of the [...] division as proposed in August 1994 and as detailed [...] is carried out;

(c) that the aid is used only for the purposes set out in the plan;

(d) that the Commission is informed of the progress being made in respect of both these restructuring plans, by means of reports setting out the situation of the restructuring and the use to which the aid is put at the 31 December 1994 and at the 30 June and 31 December 1995. These reports are to be submitted by the end of the month following these dates;

(e) that further aid is not paid to Bull except in conformity with Community law;

(f) that in the framework of the envisaged privatization, an industrial partner will acquire a significant amount of the shares of Bull or, should this partnership not be achieved, Bull will dispose of all its activities in [...] within a period that would guarantee the return to long-term viability of the group;

(g) that the Commission is informed of the details of the envisaged privatization process (at (f)), in advance of its being put into operation.

Article 2

The carry forward of any losses must be effected in conformity with paragraph 3.2.2 (iii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

Article 3

France shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with Articles 1 and 2.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 12 October 1994.

For the Commission

Karel VAN MIERT

Member of the Commission