

# COMMISSION

## COMMISSION DECISION

of 10 June 1998

concerning State aid in favour of *Coopérative d'exportation du livre français*  
(CELF)

(notified under document number C(1998) 1728)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/133/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 given the parties concerned the opportunity to submit their comments, in accordance with Article 93,

Whereas:

### I. ANNULMENT OF THE CELF DECISION

On 18 September 1995, the Court of First Instance (hereinafter 'the Court'), in its judgment, Case T-49/93, *SIDE v. Commission* (1), partly annulled a Commission decision of 18 May 1993 which had authorised aid granted by the French Government to exporters of French-language books. The Court annulled the decision in so far as it concerned aid granted to *Coopérative d'Exportation du Livre Français* (CELF) to offset the extra cost involved in handling small orders placed by foreign booksellers.

### II. PROCEEDINGS PRIOR TO THE COURT ACTION

On 20 March 1992, *Société Internationale de Diffusion et d'Édition* (SIDE), a competitor of CELF's and the party which subsequently brought the Court action, wrote to the Commission asking whether aid granted to and by CELF had been notified in accordance with Article 93(3) of the Treaty.

By letters dated 2 April 1992 and 23 February 1993 the Commission asked the French Government to provide information on the measures in respect of CELF. By letter dated 29 June 1992 and fax dated 19 April 1993 the French authorities sent the Commission information concerning CELF.

On 7 August 1992 the Commission wrote to SIDE confirming that the aid had not been notified, and requesting it to send the Commission any further information which it considered relevant. By letter dated 7 September 1992 SIDE submitted information to the Commission.

On 18 May 1993 the Commission decided to raise no objection to the aid. On 27 May the Commission wrote to SIDE to inform it of this decision. By letter of 10 June the Commission informed the French Government that the aid had been authorised under the exemption provision in Article 92(3)(c) of the Treaty.

### III. MAIN FINDINGS OF THE COURT OF FIRST INSTANCE

On 2 August 1993 SIDE applied to the Court of First Instance for the annulment of the decision taken by the Commission. SIDE put forward three pleas in support of its claims. The Court upheld one of these, alleging breach of Article 92(3), and accordingly annulled the relevant parts of the Commission's decision on procedural grounds.

(1) [1995] ECR II-2501.

In the contested decision, the Commission applied the derogation under Article 92(3)(c), on the basis of the cultural aim of the schemes involved and the special situation with respect to competition in the book sector. The Court therefore considered, first, whether the Commission had been able to establish that the objective pursued by the French authorities was in fact cultural and, second, whether it had carried out an economic analysis of the sector enabling it to conclude that the aid did not affect conditions of competition and trade to an extent contrary to the common interest.

As regards the purpose of the aid, the Court accepted that the Commission was legitimately satisfied that the objective was a cultural one. On the second point, however, the Court found that the information on which the Commission based its analysis of the compatibility of the aid with the common market was inadequate.

The Court concluded that the Commission should have initiated proceedings under Article 93(2) in order to allow all parties concerned to make their views known, so as to ensure that it was aware of the essential aspects of the matter before it took a decision, and could ascertain whether its assessment, which gave rise to serious difficulties, was correct.

#### IV. PROCEEDINGS UNDER ARTICLE 93(2) OF THE TREATY

Before considering whether or not to initiate inquiry proceedings the Commission wrote to the French authorities, on 17 October 1995, asking them to inform it of any changes they might have made to the aid granted to CELF in the light of the judgment delivered by the Court. The French authorities replied by letter dated 5 December 1995, stating that no changes had been made to the aid arrangements.

On 7 June 1996 a meeting took place between SIDE and the Commission. On 28 June SIDE submitted further information to the Commission that it considered relevant to the case.

On 30 July 1996 the Commission decided to open proceedings pursuant to Article 93(2) of the Treaty against the aid. It informed the French Government of that decision by letter dated 21 August.

In reply to a French Government letter of 23 September 1996 the Commission agreed, by letter dated 1 October, to allow further time for a response to the decision.

On 13 October 1996 SIDE wrote to the Commission explaining that it had brought an action before the Paris Administrative Court seeking to have the compensatory

subsidy for small orders abolished and the sums paid so far reimbursed.

The Commission notice asking interested parties to comment on the case was published on 5 December 1996<sup>(2)</sup>. During December 1996 and January 1997 the Commission received submissions from several parties, most of whom opposed the aid granted to CELF (see section VII). The Commission passed on those observations to the French Government in a letter of 15 April 1997. In a letter dated 6 January 1997 SIDE had complained of the slowness of the procedure at national level and asked the Commission to take urgent measures requiring the French Government to 'suspend forthwith the payment of all aid for the export of books and all aid that is liable to distort competition on the export agency market, regardless of who is the official recipient, and to order that the aid granted unlawfully since 1980 be repaid'.

In letters dated 2 July and 25 July 1997 SIDE drew the Commission's attention to the fact that the French authorities were still aiding CELF unlawfully, and complained at the slowness with which the French Government was responding to the observations submitted by interested parties.

The French Government replied to the Commission's decision to open proceedings in a lengthy letter dated 12 December 1996, and to the submissions by interested parties in another extensive letter dated 1 October 1997. A meeting between representatives of the Commission and the French authorities took place on 29 October 1997. Following those discussions, the French Government submitted further information and observations to the Commission in letters dated 30 October and 21 November 1997.

By letter dated 19 December 1997 SIDE sent the Commission a copy of the rejoinder it had lodged that month in its proceedings at national level against the French State concerning the aid granted illegally to CELF. On 10 February 1998 the Commission received a copy of the French Government's rejoinder in the same case.

On 13 February 1998 Commission representatives met representatives of the French authorities and of CELF to discuss the question of the proportionality of the aid in more detail.

By letter dated 5 March 1998 the French authorities submitted further information, relating in particular to the compensatory nature of the aid. By faxes dated 26 March and 10 April CELF provided the Commission with

<sup>(2)</sup> OJ C 366, 5. 12. 1996, p. 7.

updated information on the extra costs of handling small orders and on the compensatory nature of the aid to the Commission. By fax dated 17 April the Ministry of Culture likewise provided additional information. Finally, by fax dated 19 May, the French authorities again supplied further information to the Commission.

## V. FOUNDATION AND OBJECTS OF CELF AS A COOPERATIVE SOCIETY

*Coopérative d'Exportation du Livre Français*, trading as *Centre d'Exportation du Livre Français* (CELF), is a cooperative society in public limited company form (*société anonyme coopérative*) whose object, according to its present statutes, is 'directly to handle orders from abroad or the overseas territories and departments for books, brochures and all communications media, and more generally to carry out any transactions for the purpose, in particular, of furthering the promotion of French culture throughout the world by means of the abovementioned media'.

Most of the 101 members of CELF are publishers established in France, although membership is open to anyone engaged in the publication or distribution of French-language books, irrespective of their place of establishment. CELF distributes books commercially, mainly in countries and areas that are not French-speaking, since in French-speaking areas, particularly Belgium, Switzerland and Canada, that task is performed by the distribution networks set up by publishers (see section X for an analysis of the market).

The French Government states that prior to the setting up of CELF small orders were in many cases handled as part of the international activities of Hachette, the structure for which was established between the wars when distribution networks had not yet been developed. These activities were loss-making, however, and Hachette decided to end them in 1976. CELF was founded in 1977. In 1979 it was in financial difficulties, and booksellers, publishers, the *Syndicat National de l'Édition* and the public authorities reached agreement that it should be preserved, particularly because the handling of small orders was felt to be a service of general economic interest and no other economic operator was willing to undertake it. Thus the grant of compensatory subsidies towards the handling of small orders began in its present form only in 1980.

CELF currently carries on the following activities:

- dissemination (*diffusion*) is a more recent activity, in which CELF offers publishers the equivalent of an export structure. This allows publishers to be represented in geographical areas which they regard as less important without having to run the risks normally associated with exporting,
- CELF administers State-supported public programmes, such as the handling of small orders and certain aid schemes; the Court accepted that these could be authorised on the ground that they did not affect trade between Member States,
- the '*Cézame*' CD-ROM is a new activity which is not supported by the State. In 1996 CELF decided to launch a CD-ROM for use by booksellers. It enables them to order books on line from CELF or any other supplier.

## VI. THE AID GIVEN TO CELF TOWARDS THE HANDLING OF SMALL ORDERS

The operating subsidy granted to CELF is intended to offset the extra cost involved in handling small orders from booksellers abroad. It enables CELF to meet orders which publishers or their associated distributors do not consider it profitable to satisfy, given the increased transport costs and the total value of the order involved. Consequently, the grant of that subsidy helps to spread the French language and to propagate French-language literature.

According to the French Government, other possible ways of achieving the objectives pursued by means of the subsidy granted to CELF, such as granting aid direct to the many bookshops concerned, or to the publishers and distributors who would undertake to fill such small orders, were thought to be too costly and likely to create problems of supervision. The solution adopted was the one which appeared to be the most rational in economic terms, the safest in terms of the use of public money and the least disruptive for distribution channels. It consists of administering the scheme at the export agent level by offsetting the extra expense involved in handling booksellers' small orders through provision of a specific subsidy from the Ministry of Culture.

Among the various operators involved in the distribution of books, agents (*commissionnaires*), who deal only with retailers or organisations but not with the final consumer, enable orders which publishers or their distributors consider unremunerative to be satisfied. The agent collects orders, each inconsiderable in itself, from different customers and approaches the publisher or distributor, who thus needs to deliver to only one place. If the customers are booksellers or institutions which wish to place orders for works from different publishers, the agent makes up the respective packages and thus spares

his customers the need to place multiple orders with many different suppliers. On account of the fixed costs for handling each order, an agent's involvement makes it possible to make savings at both the distributor level and the customer level, which makes it economically worthwhile.

In practice the aid is granted in the following way. Booksellers who need small quantities of works published by different publishers place their orders with CELF, which then acts as export agent. The subsidy is specifically designed to make it possible to meet orders to the value of less than FRF 500, excluding costs of carriage, which are considered to be below the break-even point. One quarter of the amount of subsidy granted during the previous year is disbursed at the beginning of the year, the balance being granted in autumn, after the public authorities have examined CELF's operational estimates and the fluctuations in the first part of the financial year. Within three months of the end of the financial year, an account showing how the subsidy has been used must be forwarded to the Ministry of Culture and French Language.

The amount of aid budgeted is normally FRF 2 million per year. However, the unused balance, if any, is set off against the sum to be granted in the subsequent year. The aid amounted to FRF 2 million in 1990, FRF 2,4 million in 1991, FRF 2,7 million in 1992 and FRF 2,5 million in 1993. The aid actually used in 1992 was FRF 1,7 million, rather than the budgeted estimate of FRF 2,7 million. The same trend has continued in subsequent years: in 1994 and 1995 the aid amounted to some FRF 2 million, so that for the years 1992 to 1995 the average was FRF 2,0675 million (FRF 1,77 million in 1992, FRF 2,5 million in 1993). In 1996, the amount of the aid again totalled FRF 2 million. Once again, however, the level of small orders was somewhat lower that year, and CELF received only FRF 1,6 million in 1997.

According to the French authorities, the handling of small orders requires a series of manual tasks and procedures, and this makes such operations more costly than large orders. The average value of the orders is low, and the additional costs mean that handling them is largely an unprofitable business. The French authorities have submitted a calculation of the extra costs, based on a cost accounting system which ascertains the costs of the specific operations involved in the handling of small orders. These operations are explained below.

The handling of a small order begins with the receipt of an order sent by a bookseller. When the order is received, the customer's details are checked (for example to identify the bookseller, to ensure that he is solvent, and to establish whether or not he is insured). CELF carries out these checks systematically, regardless of the value of the order. In the case of small customers the checks usually have to be carried out more often, and are consequently more time-consuming.

A search is then made in which the ISBN numbers of the books ordered are identified, the books are found in publishers' catalogues and databanks (such as Électre, Cézame and Minitel), and their availability is verified. The precision of the information in the order form and the provenance of small orders are important here. Large publishing houses have automated systems for placing orders; they use modern facilities which enable CELF to identify the material ordered easily. But the majority of CELF's customers are small booksellers, and this increases the workload, even though the proportion of CELF's turnover accounted for by small orders is only 4,8 %. Book searches and books out of print entail additional costs to CELF.

The order is sent to a publisher either electronically (via Édilectre or Allegro<sup>(3)</sup>) or on paper. Orders sent to large publishers such as Point Seuil, Folio Gallimard or Hachette pose no particular problems. But most orders are sent to small publishers and cannot be dealt with electronically. CELF states that the additional costs are particularly apparent here, since small orders are often for books published by publishers operating in a structure which requires special treatment. Of all small orders, 67 % are handled without the use of automated transmission. Terms of payment also depend to a great extent on the size of the publisher. For instance, small publishers tend to require payment immediately.

As regards transport costs, large publishing houses currently charge FRF 0,75 per kilogram for delivery to customers in Paris, a price agreed in the trade. Books from small distributors are delivered by express parcel services at FRF 6,5 per kilogram, and by the post office at FRF 24 per kilogram. The charges invoiced to foreign booksellers are fixed on a global basis, and according to the French Government this reduces margins on the handling of their orders.

Each delivery has to be carefully wrapped, and a detailed invoice has to be made out in triplicate, one copy being attached to the parcel, one being sent to the customer by post, and one being retained for accounting purposes.

<sup>(3)</sup> Books published by large publishing houses can be recognised automatically by optical scanning using the EAN code.

Finally, CELF's accounts department has to register all the operations referred to above. The French Government points out here that the registration of an invoice with a value of FRF 100 involves the same amount of work as the registration of one with a value of FRF 10 000 or more.

In terms of statistics, the French Government submits that the year 1994 provides an illustration of the normal level of small orders handled. In that year, the number of invoices for small orders was 9 725, or 47 % of the total number of invoices issued by CELF, which was 20 672. These small orders were placed by 1 848 customers, and amounted to 19 761 items and 24 933 books ordered. Turnover deriving from invoices with a value of less than FRF 500 totalled FRF 2,28 million. This amounted to only 4,83 % of the CELF's total turnover<sup>(4)</sup>.

On the question of the profitability of small orders, the French Government accepts that some orders falling below the FRF 500 threshold may be profitable while others are not. The profitability of an order depends on the type and number of books involved and the precision of the information supplied on the order form. The French authorities maintain, however, that orders of FRF 500 or less, to all of which CELF is required to respond, are generally unprofitable. The French authorities arrived at this threshold on the basis of objective considerations: on economic criteria alone, orders between FRF 0 and FRF 500 will not be profitable overall to a private operator; orders under FRF 500 are mainly for books published by publishers who do not use automated systems (67 %); and the handling of small orders up to FRF 500 means that small accounts have to be managed. On purely economic grounds an agent would not handle such orders. The French authorities base this argument on their cost accounting analysis.

Type of order	Number of books	Total cost (¹)	Unit cost (¹)
Other orders	442 740	53 666 275	121,21
Small orders	24 933	4 485 354	179,90
Total	467 673	58 151 629	124,34

(¹) Before the breakdown of non-attributable costs related to small orders.

In 1994 the number of books sold in response to small orders was 24 933. Earnings from small orders amounted to FRF 2,5 million, i.e. FRF 100,2 per book sold. The total cost of handling small orders was FRF 4,48 million, i.e. FRF 180 per book. Comparing the two figures, the loss per book incurred in the handling of a small order can be estimated at  $100,2 - 179,6 = \text{FRF } 79,4$ . On average a small order is for 2,56 books, so that the average loss per order is  $79,4 \times 2,56 = \text{FRF } 203,2$ . The French Government notes that these figures are the same as those which the authorities submitted to the Court of First Instance in April 1995.

The table below presents an overall analysis of the coverage of extra costs by the aid granted to CELF. The result obtained from the cost accounting gives a surplus of about FRF 50 000. It is important to note, however, that revenues totalling some FRF 44 000 are not directly related to the small order activity of CELF but were nevertheless included for reasons of transparency<sup>(5)</sup>. That sum has accordingly been deducted from the total result, thereby giving a pre-tax result of some FRF 5 600 which is directly attributable to small orders.

<sup>(4)</sup> CELF has submitted a list containing information on all orders for the year 1994 (showing such things as bookseller, country, number of invoices of FRF 500 or less, number of items ordered, number of books ordered, value in FRF, number of items supplied, etc.).

<sup>(5)</sup> According to CELF, these revenues are related to other activities of CELF, in particular to the 'Plus' programme.

According to the French Government, this result indicates that the amount of the subsidy to offset the additional cost of handling small orders is correctly evaluated. In this respect the French authorities point out that if, following ex-post checking of the activity of CELF, it emerges that the subsidy paid was too high, the excess is either set off against the subsidy for the following year or repaid, and that the subsidy is allocated in accordance with strict rules and in an endeavour to achieve full transparency.

*(in FRF)*

Overview of the coverage of extra costs by the aid	Amount
Turnover on small orders of less than FRF 500 <sup>(1)</sup>	2 419 455
Other earnings	55 247
Subsidy	2 000 000
<b>Total turnover (I)</b>	<b>4 474 702</b>
Purchases of books, including transport	2 106 939
Staff costs	1 670 963
Overheads	660 719
<b>Total costs (II)</b>	<b>4 438 621</b>
<b>Operation result (III) = (I) - (II)</b>	<b>36 082</b>
<b>Non-recurring net items (IV)</b>	<b>14 383</b>
<b>Pre-tax result from small order activity (III) + (IV) (cost accounting)</b>	<b>50 465</b>
of which: items not directly related to small orders	44 822
<i>Pre-tax result directly attributable to small orders</i>	<i>5 643</i>

<sup>(1)</sup> Including packaging, insurance and transport.

#### VII. OBSERVATIONS SUBMITTED TO COMMISSION IN THE ARTICLE 93(2) PROCEEDINGS

In the course of the Article 93(2) proceedings various economic operators made submissions to the Commission; these are discussed further in sections XI and XIII.

The *Syndicat national des importateurs et exportateurs de livres* ('SNIEL') considered that the handling of small orders covered by the compensatory subsidy was CELF's sole object; it produced estimates showing that these small orders averaged FRF 300 in amount, and made up about 6 % of CELF's turnover, which in its view meant that 94 % of CELF's turnover was accounted for by an activity which CELF ought not to be pursuing.

SNIEL believed that the compensatory subsidy was too high, first because the total was close to the turnover achieved through small orders, whereas 'it seems impossible that the costs arising out of these small invoices should amount to FRF 3 million (amount of operating subsidies + estimated margin)'; and second because the

FRF 500 threshold which was used to define 'small' orders was too high, when the proportion of some operators' orders which was for higher amounts was only 50 %. SNIEL did not call into question the principle of aid for non-profitable orders, but nevertheless considered that CELF was using the subsidy to pursue other activities for commercial purposes.

The exporting bookseller *Aux Amateurs de Livres International*, which supplies to university libraries, argued that it contributed to the spread of French culture and the French language without public support. It took the view that the compensatory subsidy, which it said accounted for some 3 % of CELF's turnover, allowed CELF to grant an additional discount of three percentage points to its customers. It pointed out that CELF now supplied libraries itself, and argued that CELF could not therefore any longer receive a subsidy for small orders placed by book-sellers.

*Aux Amateurs de Livres International* also stated that the subsidy was 'a piece of hypocrisy'; it was 'amazed that the subsidy can amount to more than 60 % of the amount of the orders involved'. It took the view that the aid promoted the development of CELF's business activities. It concluded that the scheme should be stopped, that aid already disbursed should be refunded, that the aid should be divided 'between the booksellers concerned in proportion to their turnover on business with third countries', and that CELF should be prohibited from supplying to anyone but foreign booksellers.

Hexalivre, which is likewise a bookseller whose clientele consists of institutional customers established abroad, took the view that CELF, whose task was to supply booksellers abroad, ought not in principle to be interfering with Hexalivre's own business. The subsidy, according to Hexalivre, was given to a 'private company supported by the public authorities and as near as possible approaching a monopoly position'. But the facts of the situation were a different matter, Hexalivre maintained, 'firstly because of a clear restrictive agreement among the various bodies subsidised for the purpose of disseminating and distributing French books abroad, and secondly because of direct intervention by the authorities in our business'.

Mr Van Ginneken, manager of Hexalivre, submitted separate observations on behalf of a second company which bears his name and which operates broadly as an exporting wholesaler; he began by setting out a background summary of his relations with CELF, having previously been one of its representatives. Mr Van Ginneken expressed surprise that he could have been given an incentive (*commissionné*) for sales involving small orders, since CELF was receiving a subsidy.

Mr Van Ginneken criticised the 'permanent ambiguity' of CELF. He criticised the publishing houses' stakes in CELF, since he argued that this induced them to give preferential treatment to it, notably by establishing permanent CELF offices. He took the view that its position as an administrator of public programmes gave it an advantage, even if some of the programmes had been transferred to other operators.

Lavoisier/Tec et Doc, a scientific and technical publisher and exporting bookseller, whose manager is also chairman of SNIEL, and which is one of the shareholders in CELF, took the view that CELF was intended to operate only as an export agent for foreign booksellers, and not to supply institutional customers. Stressing that publishers had been asked to grant their best terms and

conditions to CELF, Tec et Doc presented information to show that the terms and conditions that CELF in turn offered to foreign booksellers were not particularly advantageous. Tec et Doc took the view that CELF was exploiting its image of being 'the preferential partner of publishers and the public authorities', which it used in its business, and that it took advantage of the preferential terms and conditions of publishers to supply institutional customers.

Tec et Doc did not call into question the purpose of the subsidy, but considered that the FRF 500 threshold for small orders was not justified. On the basis of estimates showing that these sales accounted for between 3 % and 6 % of turnover, i.e. between FRF 1 500 000 and FRF 3 million, Tec et Doc argued that aid amounting to between FRF 2 million and FRF 2 400 000 was disproportionate, unless productivity was particularly low. Tec et Doc considered that a proportion of small orders of 3 % to 6 % was not in any way an intolerable burden<sup>(6)</sup>. Tec et Doc stated that about 50 % of the orders it received were 'small' orders. On the basis of the orders sent to it by CELF over a two-month period, Tec et Doc concluded that CELF received few small orders.

Tec et Doc called for 'the re-establishment of conditions of normal competition in exports, in particular by abolishing aid which is not based on a genuine public-service task or a clear cultural objective that cannot be achieved by existing means'.

SIDE began by arguing that within the book exports market there was an export agency submarket on which it was in competition with CELF. While it acknowledged that export agents generally handled books published in their own country, it took the view that the market nevertheless had a Community dimension. CELF had built up a conventional export agency business, with small orders accounting for only 3 % of its turnover, and its public-service task was nowhere clearly identified.

SIDE argued that the Commission's inquiries ought to cover not just the compensatory subsidy for small orders but also 'the whole complex of aid granted not only to CELF, but also to various bodies which, like it, group together publishers and the public authorities in a highly opaque manner'. As far as the other bodies were concerned, SIDE took the view that all the state measures to assist exports of French books distorted competition on the export agency market.

SIDE denied that the aid was aid for the propagation of culture. Firstly, it argued, the concept of small order made no sense to an export agent, who in the nature of things handled small orders without any need for a subsidy. The profitability of the business had to be seen in overall

<sup>(6)</sup> The French Government observes here that what is in fact involved is 3 % to 6 % of turnover, and not 3 % to 6 % of orders. Almost 50 % of the orders are small orders.

terms, not in terms of the individual value of each order. The FRF 500 threshold applied by the French authorities was arbitrary. The aid was consequently operating aid. The French Government had never indicated the legal basis on which the aid was based, still less the criteria applied in granting it. SIDE considered that the aid granted to CELF was incompatible with the common market. The aid granted to other operators, which had been referred to by the French Government during the proceedings, was in no way comparable.

CELF cited various letters from publishers expressing their satisfaction with CELF's performance and with the mechanism at issue.

#### VIII. ARGUMENTS PRESENTED BY THE FRENCH AUTHORITIES

In its letter informing the French Government of the initiation of proceedings, the Commission noted that the objective of the aid was amongst those which could qualify for exemption from the ban on aid laid down in Article 92(1) of the Treaty. The aid had a clear cultural purpose, covered by Article 92(3)(d), in that its object was to spread the French language and to propagate French-language literature.

However, the Commission wondered whether, despite the objective pursued, the impact of the aid on competition might not be such as to affect trade to an extent contrary to the common interest. The Commission referred both to the impact on book publishing itself and to the impact on the various operators distributing and exporting books. The Commission did point out, however, that constraints of language and culture might limit intra-Community trade in books, and that this would reduce the impact on trade between Member States.

On competition in publishing, the French Government points out that the book trade is distinguished by a very low degree of product substitutability, since the contents of each title are specific to that title. There is some product substitutability only in limited subcategories of books, generally of a technical nature and very rarely literary. At Community and international level, substitutability is even smaller, owing to language barriers. There is genuine competition between books only where the distinctive qualities of the author's writing are of little importance and the books are published in the same language.

Given its objective, the aid can affect competition only in respect of books published in the French language. However, as the Commission is aware, the CELF aid mechanism is open to any French-language book, regardless of the country in which it is published, and regardless

of whether or not the publisher is a CELF shareholder. And because of the way it is designed the mechanism by which the aid is granted does not affect the four countries in which competition between French-language works is greatest, and which represent the bulk of the market, namely France, Belgium, Switzerland and Canada. The impact on competition between publishers is consequently very marginal.

On competition in the distribution and export of books, the French Government stresses that the mechanism is not in any way likely to affect the business of publishers distributing their own works or of ordinary distributors. Because they are so small, the orders to which the aid relates are never handled by such operators, and in any event the aid benefits them indirectly, since it is to them that CELF turns to obtain its supplies. Any competitive impact which the aid may have therefore arises only in respect of operators engaged in the export agency business.

The orders which the mechanism is intended to render feasible are outside the normal market, even if in individual cases an individual operator may accept them. They account for only a very small proportion of an export agent's turnover (less than 5 % in the case of CELF in 1994, even though it has the aid mechanism to support it). Thus the aid does not significantly reduce the level of sales by operators in the relevant segment. It should also be borne in mind that for most of CELF's competitors, exporting French-language books on an agency basis is merely one activity amongst others; they all have another clientele (such as institutions for example), or sell other books (SIDE acknowledges that only 50 % of its turnover derives from French-language works), or carry on another business (such as a conventional bookshop). Above all, the system is open to any operator who accepts a sufficient degree of transparency.

The French Government therefore considers that, in the light of the objective pursued, the impact of the aid on competition cannot be regarded as affecting trading conditions to an extent contrary to the common interest. On the contrary, the aid promotes trade between French-speaking Member States and non French-speaking Member States in the relevant field.

In reply to the allegations put forward by third parties, the French Government argues that CELF was indeed initially assigned the task of handling small orders placed by foreign booksellers, but that this did not preclude it from diversifying its activities into other areas like any other economic operator. When granting the aid, the public authorities have taken account of the fact that CELF's main business is that of an export agent, and this

fact has satisfied them that it is in a position to carry out the task of supplying to small foreign bookshops. This does not, however, prevent CELF from carrying on other activities, provided that they do not obstruct its public service function.

The French Government takes the view that the aid is indispensable and proportionate to the performance of a task in the public interest<sup>(7)</sup>. That task could not be performed without the aid, whose purpose is to make up the losses on unprofitable orders. The French Government therefore considers that the aid falls within the scope of Article 90(2) of the Treaty, and is not caught by Article 92(1), as the Commission concluded in the case of the local tax exemption given to the French post office in consideration of the requirement that it operate throughout the country.

The French Government also contends that even if CELF's main business is that of an export agent, there is no reason why it should not meet orders from final consumers such as libraries. This general business must not prevent it from carrying out the public service entrusted to it by the authorities, which is the handling of small orders from booksellers. Public support for the handling of small orders is designed to facilitate the circulation of publications in French and to consolidate the retail network of bookshops selling French-language books abroad.

CELF provides its services to final consumers, if they so wish, when the local distribution networks are limited. CELF began to supply libraries two years ago, with the agreement of the publishers. For instance, CELF has supplied to Algerian university libraries and the national library of Algeria. CELF was responding to demand from libraries, and was not competing with local booksellers, since in 1994 and 1995 private enterprises in Algeria were not permitted to import.

The French authorities state that if the aid mechanism is found to be compatible with the common market they propose to issue a call for tenders following which the obligation to meet small orders would be entrusted to an export agent in accordance with the criteria already applied at present. While the amount of the aid may change, the mechanism would remain largely as it is now and as it was described to SIDE by the authorities at a meeting on 24 September 1996.

Interested operators would accordingly have to provide at least the following information:

<sup>(7)</sup> The French Government points out once more that the use made of the subsidy is monitored *ex post*, with any amounts not used being deducted from the subsidy for the following year.

- data on turnover (total turnover and sales of French-language books abroad), broken down by country,
- the number of French-language books sold country by country,
- the number of small orders already being fulfilled, and the number it is proposed to fulfil with the support of the State,
- precise figures for the losses made on the handling of small orders, the number of publishers concerned, and the degree of openness to other French-language publishers.

To ensure proper supervision, tenderers would also have to agree to certain procedures of control:

- accounts showing the use made of the subsidy, with supporting documents, would have to be submitted within three months of the end of the relevant year, along with a detailed report on the operation, including a financial statement,
- the report would be distributed to the trade as a whole; confidential information on business secrets might be blanked out if necessary,
- without prejudice to control measures applicable to the use of public funds, the successful tenderer would have to allow the public authorities access to documents, and especially accounting documents, showing that the operations towards which the subsidy was granted were being carried out.

The French authorities state that until now there has been no need to advertise the terms of participation in the support mechanism because the scheme has been open to any economic operator wishing to take part on the same conditions as CELF. Furthermore, the SIDE/CELF case is widely known in the trade, and any interested operator could have approached the French authorities.

## IX. APPLICATION OF ARTICLE 92(1) OF THE TREATY

Intra-Community competition in the book trade is subject to constraints imposed by language and culture. However, it would be wrong to say that there is no competition at all. Books aided through various schemes may be in competition with books on the same subject or in the same category for which no aid has been awarded. This may happen in fiction, non-fiction or any other category. Aid to promote the publishing, distribution or marketing of certain books can consequently have an effect, albeit limited, on intra-Community competition. Furthermore, such aid may have an effect, not only on competition in the sale or export of books, but also on the

business of other players in the market, such as export agents, publishers with their own export channels, and distributors acting for publishers on a contractual basis.

The aid is granted to CELF to enable it to handle small orders from foreign booksellers. The Commission accepts that the mechanism may be beneficial to buyers of the books, since they do not have to pay the full price, and also to publishers of French-language books, since it boosts their sales; but the Commission takes the view that it is CELF who is the main beneficiary, especially as other export agents who distribute French-language books do not receive such aid towards their small orders.

The subsidy granted to CELF therefore constitutes State aid within the meaning of Article 92(1) of the Treaty.

In the course of the proceedings before the Court, SIDE raised the question of infringement of Articles 85 and 86 of the Treaty; if the Commission should decide to consider CELF's conduct in the light of those provisions, it will do so as a separate matter<sup>(8)</sup>. This Decision is concerned only with the compatibility of the support mechanism with Article 92 of the Treaty.

Article 93(3) of the Treaty requires Member States to notify the Commission of planned aid measures prior to their implementation. The French Government did not notify the aid for the handling of small orders by CELF before putting it into effect, so that the aid was granted unlawfully. Since in *SIDE v. Commission*, the Court partly annulled the Commission's decision of 18 May 1993 approving the aid granted to CELF, the aid given for the handling of small orders by CELF remains illegal<sup>(9)</sup>.

Given that the aid is within the scope of the general ban on State aid in Article 92(1) of the Treaty, the Commis-

sion must determine whether or not it qualifies for exemption under any of the derogations in Article 92(2) and (3).

The derogations in Article 92(2) do not apply, because the measures do not pursue any of the objectives listed there. The aid does not satisfy the definition in Article 92(3)(a), as it is not intended to promote regional development in areas eligible for aid under that clause. The first part of Article 92(3)(b) allows 'aid to promote the execution of an important project of common European interest'; this does not apply to the aid to CELF, which is not intended to promote the execution of such a project. Nor is it designed 'to remedy a serious disturbance' in the French economy, so that it does not qualify for exemption under the second part of Article 92(3)(b) either. Article 92(3)(c) is not applicable because the aid is not intended 'to facilitate the development of certain economic activities or of certain economic areas'.

In *SIDE v. Commission*, as already indicated, the Court accepted that the objective pursued by the French Government in granting the aid to CELF was a cultural one, in that the aim was the spread of the French language and French literature (paragraph 62 of the judgment). The Commission would emphasise that is so provided that the aid is used only for the handling of small orders, and does not serve to cross-subsidise other commercial activities carried on by CELF. But if that is so, the only derogation possible is that under Article 92(3)(d), under which 'aid to promote culture and heritage conservation' may be considered to be compatible with the common market 'where it does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest'.

If the Commission is to conclude that the aid granted to CELF for the handling of small orders qualifies for exemption under Article 92(3)(d) of the Treaty, it must establish that it pursues a genuine cultural objective, and then that it does not affect trading conditions and competition to an extent that is contrary to the common interest. An assessment of the relevant market is given in section X, and section XI considers the aid mechanism in terms of the proportionality of the aid, the objective pursued, and its effect in a Community context.

<sup>(8)</sup> In the case of *La Poste* (State aid measure No NN 135/92, France), the Commission likewise considered the application of Articles 92 and 90(2) separately from that of Articles 85 and 86.

<sup>(9)</sup> The Court upheld the Commission's decision in so far as it authorised aid to CELF for administering public programmes, that is to say aid other than that for the handling of small orders, on the ground that it did not constitute State aid caught by Article 92(1) because it had no effect on trade between Member States; these measures are not considered here and are outside the scope of the State aid rules.

## X. ANALYSIS OF THE MARKET IN BOOKS

The Commission has analysed the detailed information that the parties have submitted to it regarding conditions on the market in books. The analysis has been complicated by features specific to the sector. Developments in the book, magazine and newspaper trade depend on a complex interplay of different factors. For private consumers these include economic and social aspects such as demographics, education, leisure trends, the number of public libraries, and purchasing power. The European printing and publishing industry is more a collection of national industries than an integrated European industry, as can be seen from the small proportion of turnover accounted for by exports. A further barrier to the 'Europeanisation' of the industry is the multiplicity of languages in use across the Community<sup>(10)</sup>.

What has to be established in this case is whether the impact of the aid on competition and intra-Community trade is such as to distort competition to an extent contrary to the common interest. The question is, in other words, whether CELF gains an undue advantage *vis-à-vis* other operators exporting French-language books abroad, be it other export agents, distributors or publishers. For the purposes of this Decision, an assessment has to be made of any effect of the aid on the segment of the book market made up of orders of French-language works with a value of no more than FRF 500.

In its decision to initiate these Article 93(2) proceedings, the Commission referred to the potential impact of the

aid on book publishing itself and on the various operators distributing and exporting books.

It is manifest that there is trade in books between Member States, and on the market in books CELF is in competition with other operators exporting French-language books abroad. According to figures published by the Syndicat National de l'Édition<sup>(11)</sup>, the total annual turnover of the book sector in France in 1993 amounted to FRF 14 192 million. The relative share of exports of French books to the Community that year totalled 7,8 %, out of which almost half went to Belgium. The share of exports to European countries outside the Community was 2,9 %.

In 1994, the last year for which the Syndicat National de l'Édition has produced statistics, total exports of books from France amounted to FRF 2 978 501 000. CELF had a turnover of FRF 50 million, i.e. about 1,7 % of the total. Small orders of less than FRF 500 accounted for less than 5 % of CELF's turnover (FRF 2,3 million out of a total of FRF 50 million), equal to 0,08 % of exports of books from France.

Data on exports of books, brochures, leaflets and similar printed material from France to other Community Member States, taken from sources other than the *Syndicat National de l'Édition*, is summarised in the table below. These figures likewise show that the bulk of French exports go to Belgium (and Luxembourg).

Exports<sup>(1)</sup> from France to the other Community countries, 1993-96

Country	(in ECU thousand)			
	1993	1994	1995	1996
Belgium/Luxembourg	88 465,75	98 392,47	112 953,67	115 192,55
Netherlands	12 305,33	9 866,07	12 745,27	12 914,60
Germany	30 966,57	35 623,91	30 944,99	27 992,26
Italy	10 440,52	15 023,02	12 375,61	13 246,71
United Kingdom	13 218,16	16 994,67	17 800,70	19 278,79
Ireland	305,93	341,61	475,28	2 669,94
Denmark	1 103,78	880,79	874,53	1 505,46
Greece	2 483,90	2 122,86	2 279,57	2 452,32
Portugal	2 707,45	3 056,24	2 919,62	3 052,68

<sup>(10)</sup> European Commission, *Panorama of EU Industry — 1997*.

<sup>(11)</sup> Syndicat National de l'Édition, *L'Édition de livres en France — Statistiques 1993*.

*(in ECU thousand)*

Country	1993	1994	1995	1996
Spain	9 555,04	11 709,49	12 796,60	14 474,82
Sweden	1 412,99	1 083,82	1 721,06	3 116,54
Finland	431,30	281,18	1 398,26	803,28
Austria	1 329,44	1 710,14	1 288,18	1 267,96
Total Community	143 759,59	161 462,36	179 628,35	189 975,65

(<sup>1</sup>) Books, brochures, leaflets and similar printed material (CN code 4901).

Source: Eurostat (Comext database)

According to the French Government, the distribution of books has to satisfy a number of different needs, depending on the type of customer, who may be a middleman or a final consumer (e.g. a wholesaler, a conventional bookseller, a private consumer, or an institutional customer). The diversity is a reflection of cultural and technical needs, and is influenced by economic conditions. The distribution and marketing of scientific books for university purposes, for example, differs from that of art books aimed at specific readerships or of fiction sold in bookshops. Without government intervention the market alone would not be able to meet all the various needs; supply would be limited to the most profitable business, and the promotion of culture would suffer.

According to the French Government, the main players in the distribution of books are: (i) publishers; (ii) promoters (*diffuseurs*), whether or not integrated into a publishing house, engaged in the commercial promotion of books among retail booksellers and some large institutional consumers; (iii) distributors, whether or not integrated into a publishing house, engaged in the physical distribution of books; they receive orders from booksellers, certain large institutional customers and various intermediaries, and are supplied by the publishers; and (iv) wholesalers, who do not always play a part in the distribution network, and who act as intermediaries between distributors and retail booksellers and large institutional customers. A distinction has to be made between: (v) export agents (*commissionnaires*), who serve retail booksellers and not final consumers; (vi) booksellers mainly serving large institutional customers direct; and (vii) retail booksellers serving the traditional final consumers, whether private or commercial (this category includes both ordinary booksellers and large self-service stores).

In addition, there are some distribution networks in which sales take less traditional forms, such as book clubs, mail-order retail, and direct sales by publishers to final consumers.

SIDE gives a similar description of the French book trade, but puts more emphasis on the distinction between the domestic market and the export market. It argues that CELF, like SIDE, is engaged in exporting books from France. Among operators active in the exporting country (in France, that is to say the domestic market), SIDE distinguishes between the following categories:

- publishers or publishing houses with their own export structure, such as Gründ, Picard or Vrin, themselves export the books they publish. There are also publishing groups, such as *Groupe Hachette* and Gallimard, which channel the exports of several publishing houses through distributors such as *Hachette Livre Diffusion Internationale*, which belongs to *Groupe Hachette*. *Hachette Livre Diffusion Internationale* exports not only books published by Hachette or by Fayard, which is part of the Hachette group, but also books published by Ramsay, for example, or by Calmann-Lévy, which do not belong to the Hachette group,
- distributors are not integrated into publishing houses; their business is to distribute and export books produced by publishers with whom they have concluded agreements (examples are Distique and Diff-edit),
- export agents (*commissionnaires*) market, in other words sell and supply, books from all publishers. The service provided by the export agent begins with orders received from booksellers, schools or institutions abroad. The agent sorts orders for books published by different publishing houses. He does not keep a stock; he buys from French-language publishers or distributors. He then sorts the books by customer, and sends the customer the invoice and the books ordered.

According to SIDE, the advantage to the customer of using the services of an export agent is that the customer is spared the necessity of making separate orders in order to buy 20 books, say, from 15 publishers; this job is done by the agent. The customer saves time and money as a

result of such things as lower transport costs. Without export agents small orders would be too great a burden on publishers, who are unable to handle them properly owing to their rigid structures. Many publishers consequently require a minimum turnover before they will open an account. If the customer has not got an account with the publisher the publisher invoices the customer before supplying the goods ordered, which makes the handling of orders even more cumbersome and costly.

The export agent sends the order to the publisher after having assembled all the small orders, which enables the publisher to meet the order. The system means that customers residing abroad are not required to make one or several payments in advance, as they would be otherwise.

SIDE states that the clientele of export agents are comprised of booksellers, schools, and institutions such as university libraries, government departments and the like, who are final consumers of books. Export agents supply all types of book published in France and in print, including art books or technical publications, and also out-of-print books no longer available from publishers.

SIDE considers that it does business in the same sub-sector as CELF. The names of the export agents operating in France are listed below, with what SIDE considers to be their main business. They can be differentiated from each other by the type of customer they serve and by the types of book they sell.

- *Aux Amateurs de Livres International* supplies all books available from French publishers, and sells to university libraries,
- CELF exports French-language books, mainly to foreign booksellers,
- Eska and Lavoisier are primarily technical publishers who export scientific and technical works to institutions abroad, mainly university libraries,
- SFL is mainly a wholesaler for the region of Paris; unlike other export agents, it keeps its own stock,
- SIDE exports French books in print, and re-exports British books and distributes them in France. SIDE exports mainly to foreign booksellers,
- Touzot is a publisher specialised in exporting its own publications and out-of-print books,
- Van Ginneken specialises in art books. Van Ginneken exports only books available from certain art publishers. As an export agent it supplies institutions and booksellers abroad with books obtainable from the same publishers.

According to SIDE, the export market, that is to say the countries importing books from France, can be divided into French-speaking areas and non-French-speaking areas. The book trade in French-speaking areas resembles the domestic market. All major publishers have branches or representatives covering the local French-speaking markets in Belgium, Switzerland, Canada etc. The role of the export agent is very limited. But this is so only in Belgium, Switzerland and Canada. In other French-speaking countries export agents specialised in supplying institutions do have a significant role to play in the market.

In the French-speaking areas of Belgium, Switzerland and Canada, the operators on the market comprise (i) local distributors, (ii) local wholesalers, (iii) retailers (bookshops and self-service stores), (iv) institutions (libraries, schools and government departments), and (v) clubs, mail-order retailers and direct sales agents.

SIDE states that in countries which are not French-speaking the presence of publishers is limited. A major role is consequently played by export agents in general, and those supplying booksellers in particular.

According to the French Government, the export agency market represents only a marginal proportion of the main markets for French-language books<sup>(12)</sup>, namely France, Belgium, Switzerland and Canada, and exports from France outside these geographic markets amounted to FRF 1 506 514 000 in 1994, of which CELF had a share of about 3,25 %. If one takes account of the share of Belgian, Swiss and Canadian French-language books exported to countries other than France, Belgium, Switzerland or Canada, which amounts to about FRF 521 million, CELF's share falls to 2,47 %. Small orders of less than FRF 500 handled by CELF account for 0,074 % of total French-language book exports to countries other than France, Belgium, Switzerland and Canada.

However, the French Government doubts whether an export agency market for French-language books can be defined in anything more than purely theoretical terms.

In the first place, the product sold is not specific to export agents.

Secondly, even when the four main French-speaking countries are excluded, exports of French-language books to other countries are obviously not all handled by export

<sup>(12)</sup> On these markets, almost all orders from booksellers are sufficiently large to be placed directly with publishers and conventional distributors.

agents. An appreciable proportion of orders from such countries are sufficiently large to be placed directly with conventional distributors, and do not involve export agents. This is clearly illustrated in a table submitted to the Commission which compares total French exports to the leading 50 importing countries with CELF's exports to those same countries<sup>(13)</sup>.

The table is based on figures compiled by the *Syndicat National de l'Édition* for the year 1994. The French authorities have compiled a table showing the data alongside figures for the volume of exports by CELF to the same countries in the same year.

These figures show that although CELF is a major export agent the proportion of French-language book exports to any one country which it accounts for is at best only 20,7 %, in the case of Japan; its share usually varies between less than 1 % and 5 %. For example, it is 1,03 % in the case of Germany, 0,88 % in the case of the United States, and 2,73 % in the case of Mexico. Some foreign booksellers place orders sometimes direct with conventional distributors and sometimes with export agents, depending on the size of the order. Nor can the clientele be considered to constitute a specific market, except perhaps in the case of very small booksellers.

Lastly, operators acting as export agents, other than CELF, do not confine themselves to the business of supplying French-language books solely to foreign booksellers. Some, such as SIDE, usually supply institutional customers (*Alliance française* and libraries), others operate in France itself, and none of them are limited to exporting French-language books.

The French authorities believe, therefore, that it is not possible to compile data on an export agency market for French-language books in the strict sense. Even if one were to carry out an individual survey of all the operators who state that they carry on this business, it is unlikely that their cost accounting would always be sufficiently precise to pinpoint it.

The French authorities have been able to provide the Commission only with export turnover figures for operators established in France who are known to deal with the type of order normally placed with export agents. The French Government believes it is possible to use this

parameter to estimate the impact of the aid on CELF's competitors. The competitive impact on the activity of such operators must be assessed in terms of the whole of their export business, which forms a coherent whole centring, in different forms, on sales of books abroad.

#### Export turnover in 1995

<i>(in FRF million)</i>	
Export agents	Export turnover
Amateurs de Livres International	17,2
Boussac/LSA	16
CELF	55
Hexalivre/Van Ginneken	14,5
Lavoisier	3,6
Le Livre Français	17,7 <sup>(1)</sup>
Office du Livre	4,2
SIDE	26,8
SFL	9,3
Sous la Lampe	0
Touzot	20,2

<sup>(1)</sup> 1994 figure.

Sources: infogreffe/euridile.

France has a limited number of operators known to deal in export agency business (ten or so), but, with the exception of CELF, such operators handle few orders of less than FRF 500, which are not profitable economically, and, as indicated earlier, much of their business is with institutional customers<sup>(14)</sup>.

For a more precise idea of CELF's competitors a proportion of exports by some French booksellers and some publishers' export departments must be included. This is because large booksellers specialising in the sale of French-language works and located in major European cities are for the most part supplied direct by French publishers or by booksellers in France.

<sup>(13)</sup> The table covers the west European countries, North America, numerous African countries (in most of which French is spoken) and other countries around the world (such as Japan, Brazil, Mexico and Russia).

<sup>(14)</sup> It sometimes happens, exceptionally, that CELF supplies customers who are not dealers, either because there is no local dealer, or for the account of publishers who pass on to CELF specific orders which they receive.

Taking account of these factors, the overall annual turnover of all those competing on the market may be estimated at some FRF 200 million. This estimate is based on a number of indices. CELF's share of the total amounts to about 25 %. The share of small orders handled by CELF accounts for 0,75 % of the total.

Looking at the Community in isolation, CELF's turnover amounts to some FRF 12 million, i.e. 24 % of its total turnover. Of the total turnover of French operators engaged in export agency business with the Community countries, those exports are estimated to account for some 55 %, i.e. around FRF 110 million. CELF's turnover within the Community is equivalent to only 10,9 % of the total turnover of such operators.

As regards the competitive situation, the following should be noted:

- the proportion of French-language works published outside France and benefiting from the support mechanism may be estimated at between 3 % and 4 %. The French Government emphasises that it is natural for booksellers situated abroad to turn as a rule to distributors and export agents in the publishing country rather than in some other country. However, it may be noted that in 1994 exports of French-language books from the main countries in which they are published were as follows: from France, FRF 2 978 million; from Belgium, some FRF 524 million; from Switzerland, some FRF 376 million; and from Canada, some FRF 315 million,
- it is not possible to determine the breakdown between the relative shares of French book exports handled by export agents and by publishers or their distributing subsidiaries, for the reasons set out earlier,
- in 1994 the proportion of total exports of books in French which went to French-speaking countries was 60,4 % (60,9 % in 1993). The proportion of exports by CELF which went to French-speaking countries was 16,1 % (13,6 % in 1993).

#### XI. ANALYSIS OF THE COMPATIBILITY OF THE AID UNDER ARTICLE 92 OF THE TREATY

##### Proportionality of the aid

The Commission has analysed the extensive material submitted to it by the French Government regarding the way in which the aid is used to cover the extra costs, giving special attention to the cost accounting system. The accounting system allows costs to be estimated and

apportioned between the various steps in the handling of an order (see section VI). The French Government has taken 1994 as the reference year for quantifying the extra costs. In order to verify the reliability of the analysis submitted by the French authorities, the Commission requested supplementary information on the handling of small orders by CELF for other periods too. The French Government submitted material for a number of other financial years showing that the level of turnover from small orders, the number of books ordered, the number of invoices, the number of customers and the number of items ordered remained more or less the same from year to year.

The information submitted by the French authorities to the Commission is therefore sufficient to allow an estimate to be made of the extra costs really incurred by CELF as a consequence of the handling of orders up to FRF 500. Since the aid covers only the additional costs related to such orders, with any excess being deducted from the aid for the following year, it does not serve to finance other commercial activities carried on by CELF, as was alleged by several interested parties.

##### Criteria governing the aid mechanism

SIDE alleges that the aid mechanism has been reserved exclusively to CELF, and questions the criteria according to which aid is granted. The Commission does not share SIDE's view of the matter, for the following reasons.

First of all, the refusal to allow SIDE access to the aid mechanism in 1991 was quite legitimate, since SIDE did not offer the transparency required, being unable to provide data on orders on a country-by-country basis. The authorities in the Member States are free to determine the criteria for the granting of aid aimed at a given objective, always provided that the aid is compatible with Article 92 of the Treaty. This is true especially of supervisory measures taken to ensure that the aid is genuinely used for the purpose for which it is granted, as is the case here.

Secondly, SIDE was offered the opportunity to benefit from the aid on the condition that it complied with the rules of the support mechanism.

Thirdly, two other operators have received aid similar to that given to CELF for the handling of small orders. The fact that the aided activities were confined to certain geographic areas and certain types of book is not the decisive point. What is more important is that they

complied with the rules of the support mechanism, in particular by providing transparent accounts. SIDE argues that the aid granted to Servedit and École des Loisirs is in no way comparable to that granted to CELF. While the aid given to these operators may have been limited to certain geographical areas or to specific types of printed matter, the Commission finds that it was designed to offset the additional costs involved in handling small orders, and consequently disagrees with SIDE.

### The cultural nature of the aid mechanism

The statement that the aid is for the propagation of culture has been contested by some of the interested parties, including SIDE. As noted earlier, the Court accepted that the aid was of a cultural nature. The Commission takes the view that the only exemption clause under which the aid given to CELF for the handling of small orders can be authorised is that in Article 92(3)(d). This states that aid to promote culture and heritage conservation may be considered compatible with the common market where it does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

On the basis of the information supplied to it by the French authorities, the Commission concludes that the objective of the aid is indeed a cultural one. CELF supplies any book available in the French language. The Commission accepts the French Government's argument that the French language is being promoted here, since the support mechanism is specifically designed to enable customers abroad to obtain books published in French. Books published in other languages do not qualify, so that it is only the French language that is promoted. Secondly, small orders can be for specialised books or works of literature such as poetry, novels, essays and art books. Thus the nature of the books comprised in small orders also clearly shows the cultural dimension of the aid. It should be pointed out that text books for schools are ordered in large quantities for each school year, and therefore fall outside the support mechanism for small orders.

### The aid in the Community context

CELF is indeed the main beneficiary of the aid, as noted above. However, the aid is granted only to offset the additional costs relating to its small order business. CELF handles books essentially for countries and areas which

are not French-speaking. In French-speaking countries such as Belgium, Switzerland and Canada, the major publishers serve the local market through their own branches or representatives. Export agents consequently play only a limited role on the main markets for French-language books, that is to say in the three countries just mentioned. Of total exports from France to these countries in 1994, CELF's share was only 0,2 %.

The Commission notes that there is no adverse effect on competition on the market as a result of the existence of CELF; books published by publishers who are members of CELF can be ordered through channels other than CELF, and in particular through other export agents. To be able to order books from CELF it is not necessary to be a member. CELF handles orders for books in the same way regardless of the publisher; it does not matter whether or not the publisher is a member of CELF. Booksellers are free to choose their supply channels. CELF deals with every order it receives.

The aid granted to CELF relates to a segment outside the conventional market, namely that of orders of less than FRF 500. The French authorities maintain that this FRF 500 threshold has been arrived at by reference to objective criteria. Only 2 % of CELF's turnover derives from books published in other Member States, specifically Belgium. The main effect that the support mechanism has in terms of competition is its effect on competition with other operators engaged in the distribution of French-language books. A customer will normally turn to a distributor established in the same country rather than elsewhere. In view of these considerations, and especially as the aid is proportionate and covers only the additional costs related to the handling of small orders by CELF, the impact of the aid is not contrary to the common interest.

### Conclusion

The Commission accordingly draws the following conclusion regarding the aid granted to CELF for the handling of small orders.

The aid granted to CELF for the handling of small orders is compatible under Article 92(3)(d), because it pursues a cultural objective: it promotes culture and heritage conservation without affecting trading conditions and competition in the Community to an extent that is contrary to the common interest.

## XII. APPLICATION OF ARTICLE 90(2) OF THE TREATY

The Commission has thus concluded that the aid to CELF constitutes State aid within the meaning of Article 92(1) of the Treaty, and that it is compatible with the common market under Article 92(3)(d). In accordance with the case-law, therefore<sup>(15)</sup>, there is no need for the Commission to consider CELF's State-aided activities in the light of Article 90(2), since the application of Article 92 does not obstruct the performance by CELF of the task of handling small orders, an activity for which it receives aid from the State.

The Commission would point out, nevertheless, that for an undertaking to be regarded as entrusted with the operation of a service of general economic interest within the meaning of Article 90(2), it must have been so entrusted by an act of public authority<sup>(16)</sup>. The act in question need not necessarily be a legislative measure or regulation; it may take the form of a concession governed by public law<sup>(17)</sup>.

According to the French authorities, the legal basis for the aid can be found in the Order (*arrêté*) of 9 May 1995 on the organisation of the Directorate for Books and Reading and the Orders (*décrets*) made under the Finance Acts to apportion the appropriations managed by the Ministry of Culture. Article 5 of the Order on the organisation of the Directorate for Books and Reading states that 'The Department for the Book Trade (*département de l'économie du livre*)... shall seek to stimulate the presence abroad of French-language books and of the French-speaking world'. The Commission considers that the French Government has failed to demonstrate that the service performed by CELF in handling small orders is based on any legal or administrative act, since the acts referred to are concerned with the book sector in general; they do not refer to CELF, and do not relate directly to it.

Moreover, it has to be said that the arguments submitted by the French authorities in support of the application of Article 90(2) are contradictory: they claim that the aid mechanism is open to other operators, and not exclusively reserved to CELF, while at the same time maintaining that the aid is being given to CELF because it performs a public service obligation of general economic interest.

<sup>(15)</sup> Judgment of the Court of Justice in Case C-387/92 *Banco Exterior de España v. Ayuntamiento de Valencia* [1994] ECR I-877, paragraph 21.

<sup>(16)</sup> Judgments of the Court of Justice in Case 127/73 *BRT v. SABAM and NV Fonior* [1974] ECR 313, paragraph 20, and in Case 66/86 *Ahmed Saeed Flugreisen and Others v. Zentrale zur Bekämpfung Unlauteren Wettbewerbs* [1989] ECR 803.

<sup>(17)</sup> Judgment of the Court of Justice in Case C-159/94 *Commission v. France* [1997] ECR I-5815, paragraph 66.

## XIII. OTHER ISSUES RAISED DURING THE ARTICLE 93(2) PROCEEDINGS

The French authorities point out that in the course of the Article 93(2) proceedings numerous questions or affirmations have been put forward which fall outside the scope of proceedings of that kind. The main objective of these proceedings has indeed been to establish whether the support mechanism under which CELF receives aid for the handling of small orders is compatible with the Treaty; but the Commission would observe that it did not rule out the possibility of examining other questions relating to CELF as well. When the Commission decided to initiate the inquiry proceedings, it made reference to several issues brought to its attention by SIDE regarding CELF and its operations<sup>(18)</sup>. As these are not linked directly to the support mechanism as such, they and other related issues raised by interested parties are considered separately below.

In 1980 CELF was recapitalised: its capital was increased from FRF 80 500 to FRF 1 280 500. Half the cost of the operation was borne by the Association pour le Développement de l'Édition Française ('ADEF'), and half by CELF's shareholders, which were private undertakings. ADEF was an association set up by a number of publishers; its main objective was to stimulate the presence of French-language books abroad and to support investments carried out by publishers or exporters. It received public assistance from the Ministry of Culture. ADEF was dissolved in 1994, and its shares in CELF were transferred to Syndicat National de l'Édition (SNE). SNE is entitled to transfer them to new members of CELF if the occasion arises. The members of CELF have remained the same: publishers, distributors and SNE. The Commission has analysed the material submitted to it by the French Government, and concludes that the increase in CELF's capital did not constitute State aid, but merely the acquisition of a shareholding, since private investors also took part. The French authorities were consequently acting in accordance with the market economy investor principle. The transaction did not, therefore, comprise any state aid component within the scope of Article 92(1) of the Treaty.

It has been alleged that CELF derives an advantage from administering public programmes; at present CELF is responsible only for the 'Plus' programme and for the 'À l'Est de l'Europe' programme, successor to the 'Page à Page' programme. In its judgment in *SIDE v. Commission* the Court upheld the Commission's initial approval of the aid CELF received for the administration

<sup>(18)</sup> See footnote 2, at point 9.

of these programmes, on the ground that it was outside the scope of Article 92(1) of the Treaty, and the Commission sees no reason to address this issue further.

It has also been alleged that CELF derives an advantage from its relationship with public bodies such as France Édition. Hexalivre, for instance, criticises the attitude of France Édition, which it claims gives preferential treatment to CELF, in particular by granting it access to its stand at international fairs, while refusing such access to Hexalivre. The Commission observes that CELF, which is a member of France Édition, pays for such services, for example by renting space at the stand, as shown by the supporting documents supplied. CELF has also paid for catalogues ordered from France Édition.

In response to these allegations regarding CELF's relations with France Édition and Centrale de l'Édition, and its commercial relations with publishers, the French Government argues that the public authorities are not involved: these are bilateral relationships that have no connection with any cultural policy measures taken by the authorities. The Commission concludes that CELF has not here received benefits in kind within the scope of Article 92(1), because it has paid for the services provided to it by France Édition.

It has also been alleged that the public authorities favour CELF through public orders. These allegations relate in particular to support given for the implementation of a programme known as 'nouveauautés', which was administered by the Ministry of Foreign Affairs, and to orders placed by associations connected with that Ministry and with the Ministry of Cooperation, such as the Association pour le Développement de la Pensée Française ('the ADPF') and Audecam. The main objective of the ADPF is to ensure a regular supply to the libraries of the French cultural institutes situated abroad on behalf of the Ministry. CELF is one distributor among others used by the ADPF.

Hexalivre criticises the ADPF for giving preferential treatment to CELF as compared with its competitors. Hexalivre cites the example of an order placed by the cultural department of the French Embassy in Morocco, traditionally a customer of Hexalivre, which, after approaching the

ADPF, was referred to CELF, which in turn passed the order to Hexalivre. The Commission is satisfied that the French authorities in no way sought to favour CELF to the detriment of other suppliers. On the contrary, since CELF passed on the order to Hexalivre, the latter cannot claim to have lost it. The Commission, therefore, takes the view that this falls outside the scope of Article 92(1) of the Treaty.

Finally, SIDE has criticised 'the whole complex of aid granted not only to CELF, but also to various bodies which, like it, group together publishers and the public authorities in a highly opaque manner', and the authorities' cultural policy in general; the French Government replies that the authorities publish numerous documents every year, including answers to parliamentary questions, informing the public of the activities of the responsible Ministry. Thus the authorities seek transparency rather than opacity,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid granted to CELF for the handling of small orders of books in the French language constitutes aid within the meaning of Article 92(1) of the EC Treaty. As the French Government failed to notify the aid to the Commission prior to its implementation, the aid has been granted unlawfully. It is, however, compatible aid as it satisfies the conditions for derogation under Article 92(3)(d) of the Treaty.

*Article 2*

This Decision is addressed to the French Republic.

Done at Brussels, 10 June 1998.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*