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State Aids

This issue is largely, but not exclusively, devoted to current problems in the field of state aids to trading bodies. Most people can probably agree on two fundamental propositions governing the grant of state aids. First, in a free market, granting state aids to individual traders almost always results in a distortion of competition. Second, there may be some cases in which an economic consideration, such as the need to help industrial development in a backward region, overrides the benefits of free competitive conditions.

Yet substantial aids are given by the Member States to individual corporations, whose economic role is to provide goods and services, make a profit, attract investment and compete with other traders. If a corporation succeeds in carrying out this role efficiently, it does not need state aids. If it fails to carry out this role efficiently, it does not deserve state aids. The military maxim, "never reinforce failure", surely has its economic counterpart. Nevertheless, the volume of state aids in the European Union is still immense, as the article and accompanying tables show on pages 210 to 214 of this issue.

One of the obvious reasons for the granting of state aids is local political gain. Even the countries most committed to free and competitive trading conditions have their "pork-barrel" politicians, whose popular support may wane dramatically if local industries are closed and unemployment spreads. They can be forgiven (up to a point) for pressing public authorities either to make funds available, or to reduce tax burdens, for industries teetering on the brink of bankruptcy. A related reason for granting state aids is local, or national, prestige. For national and provincial governments, it is unthinkable that a prestigious national or local corporation should go under: there is a reminder of the Credit Lyonnais case in the Berlin Bank case described in this issue (see page 208).

Several of the elements explaining, though hardly justifying, state aids are present in the cases reported in this issue. Relatively few cases reach the Court of Justice. One of the exceptions is the subject of a recent statement by the Commission: it concerns the German Government's failure to execute a Commission Decision declaring aid to Erba Lautex illegal. As the firm went bankrupt, in spite of aid amounting to DM 120m, a new company, Neue Erba Lautex, was formed and has itself received further state aid. The Commission has decided to take Germany to Court and to treat "the two legal entities as forming a single economic unit". On the face of it, the Commission has a good case.

However, the Commission is still too accommodating; and it can also have a hard task sometimes when it tries to ensure recovery of state aid paid illegally, as the report on the Belgian Mirabel case shows (see page 215). Perhaps, with more transparency and more of what the Commission gamely calls "peer pressure" from other Member States, improvements in national state aid policies will begin to make themselves felt. ■

DOMINANT POSITION (PC SYSTEMS): THE MICROSOFT (II) CASE

Subject: Dominant position
Abuse of dominant position
Licensing

Industry: Personal computer operating systems
(Some implications for other industries)

Parties: Microsoft Corporation

Source: Commission Statement IP/01/1232, dated 30 August 2001

(Note. In our August, 2000, issue, we carried a report on the first Statement of Objections sent to Microsoft by the Commission. This is a second Statement of Objections; it has been merged with the first. The case is another in the series of cases involving European anti-trust control over American corporations.)

The Commission has informed Microsoft Corporation that it believes that the United States software company may have violated European anti-trust rules by using illegal practices to extend its dominant position in the market for personal computer operating systems into the market for low-end server operating systems. Low-end server systems are cheaper servers usually used as file and print servers as well as Web servers. In a Statement of Objections, the Commission also alleges that Microsoft is illegally tying its Media Player product with its dominant Windows operating system. This Statement of Objections supplements one sent to the company a year ago and adds a new dimension to the Commission's concerns that Microsoft's actions may harm innovation and restrict choice for consumers. A Statement of Objections is a formal step in European ant-itrust proceedings and does not prejudge the final outcome.

The Commission's action follows an extensive investigation into Microsoft's Windows 2000 operating system, which was launched in February 2000. Microsoft may have an overwhelmingly dominant position in the market for personal computer (PC) operating systems and also has a very significant market share in the market for low-end server operating systems. Most PCs today are embedded into networks which are controlled by servers, with interoperability - the ability of the PC to talk to the server - providing the basis for network computing.

To enable alternative server software to interoperate in the prevailing Windows PC and server environment, technical interface information must be known. Without such information, alternative server software would be denied a level playing field, as it would be artificially deprived of the opportunity to compete with Microsoft's products on technical merits alone. The Commission believes that Microsoft may have withheld from vendors of alternative server software key interoperability information which they need to enable their products to "talk to"

Microsoft's dominant PC and server software products. Microsoft may have done this through a combination of refusing to reveal the relevant technical information, and by engaging in a policy of discriminatory and selective disclosure on the basis of a "friend-enemy" scheme.
Furthermore, the Commission believes that Microsoft may have reinforced this strategy of extending its dominance from the PC to the server through the operation of an abusive licensing policy for Windows 2000. Under the Microsoft scheme, if customers choose not to use an all-inclusive Microsoft scenario for PCs and servers, but decide to use competing server products, they are forced to bear a double cost. The effect of this policy may be to drive customers artificially towards Microsoft server products, reducing choice to the detriment of the final customer.

Media player

Finally, the Commission also believes that Microsoft may have acted illegally by incorporating its new Media Player product into its Windows PC operating system. Media players are software products which allow consumers to see and hear audio and video files without lengthy download times on their PCs. These innovative products are developed and manufactured by several companies, including Microsoft itself. However, Microsoft's ties its Media Player to its ubiquitous Windows operating system, a channel of distribution which is not available to competing vendors of media players. Microsoft may thereby deprive PC manufacturers and final users of a free choice over which products they want to have on their PCs, especially as there are no ready technical means to remove or uninstall the Media Player product. Competing products may therefore be *a priori* put at a disadvantage which is not related to their price or quality. The result is a weakening of effective competition in the market, a reduction of consumer choice, and less innovation.

According to the Commission, server networks lie at the heart of the future of the Web and every effort needs to be made to prevent their monopolisation through illegal practices. The Commission also wants to see undistorted competition in the market for media players. These products will not only revolutionise the way people listen to music or watch videos but will also play an important role with a view to making Internet content and electronic commerce more attractive. The Commission is determined to ensure that the Internet remains a competitive marketplace to the benefit of innovation and consumers alike.

Microsoft has about two months to reply in writing to the supplementary statement which is now merged with the existing procedure triggered by a Sun Microsystems complaint. This was the origin of the first statement of objections of 3 August 2000. As part of the procedure, Microsoft will have the right of access to the file compiled by the Commission and can also request an oral hearing to present its case. The first statement of objections focused on discriminatory licensing and refusal to supply software information to allow for the interoperability of rival server products with older versions of Microsoft's Windows operating systems. ■

PRICING POLICY (COMPACT DISCS): THE BERTELSMAN CASE

Subject: Pricing policy

Industry: Compact Discs

Parties: Bertelsmann Music Group
EMI
Sony Music
Universal Music
Warner Music

Source: Commission Statement IP/01/1212, dated 17 August 2001

(Note. In this case, the mountain has given birth to a mouse. There is a widespread feeling among consumers that CD prices in Europe are excessively high, especially when compared with the corresponding prices in the United States. This feeling may be unfounded; but the Commission's statement, reproduced below, does not give great confidence that the position has been fully explored. Essentially, the Commission is saying that, while some relatively minor changes have been made in the practices of the companies concerned, both the changes and any residual problems are national in character and that any further investigations which may be needed should be carried out by the national authorities. The Commission self-righteously claims that reference back to national authorities is in line with its policy of decentralization of competition policy; but this would not be the first time it has pleaded subsidiarity when it has been confronted with an awkward case.)

In January of this year, the Commission opened five separate investigations into the vertical relationships between the five major record companies and their retailers. The investigation focussed on allegations of retail price maintenance by the "majors" through the use of contracts with retailers where co-operative advertising arrangements were linked to minimum advertised prices. The Commission's investigation found that three of the "majors" were including minimum advertised prices in certain of their co-operative advertising agreements in Germany. These companies have subsequently ended these activities. The investigation also uncovered a limited practice by one of the "majors" in Italy that could have the effect of maintaining retail prices.

As the possible infringements were confined to the territory of single Member States, and in line with the Commission's policy of decentralising the enforcement of competition law in appropriate cases, the Commission is informing the relevant national competition authorities of the results of its inquiry. The national authorities can then determine whether or not further investigation or action at the national level is appropriate.

The Commission notes that the UK's competition authority, the Office of Fair Trading has opened an investigation into allegations that the "majors" are restricting the import of CDs into the United Kingdom, in an attempt to maintain high retail prices in the UK. This inquiry is different and separate from the Commission's inquiry.

The Commission is therefore suspending its inquiry. Given the high degree of concentration in the industry, the Commission will continue to keep the industry under close scrutiny: the Commission's inquiry may be re-opened if additional information comes to light in relation to this or similar practices.

The CD pricing investigation is separate from the investigation into DVDs, which is continuing. In the latter case, the Commission is investigating whether the DVD regional coding system is compatible with EC competition rules. The Commission is concerned that this system prevents EU consumers from benefiting from a broader choice of DVD titles and potentially cheaper prices. In this context, all aspects relating to the establishment and the ongoing operation of the system are being examined. Having sent requests for information to all companies concerned by the system, the Commission is currently reviewing the first batch of material.

The inquiry followed a similar inquiry in the United States, where the Federal Trade Commission found widespread use of minimum advertised prices linked to co-operative advertising funds. ■

FIAT / Montedison

This is an odd case, in that it is concerned mainly with the electricity market in Italy, but involves a large number of partners whose interests are in motor vehicles, electricity and banking. The Commission has cleared the acquisition by the Fiat Group of sole control of Italy's energy company Montedison and its subsidiaries Edison and Sondel. The Commission's investigation has shown that the takeover will not adversely affect competition in the Italian electricity market since, at this stage, Montedison will be controlled by Fiat and the latter has only a small activity in the electricity sector. However, in the event of Electricité de France (EdF) acquiring joint control of Montedison, the Commission will have to examine the case again. Fiat SpA is a diversified industrial group active mainly in the manufacture and sale of automobiles, commercial vehicles and agricultural and construction machinery; it has a small presence in the Italian electricity generation market through its subsidiary Fiat Energia SpA. Montedison SpA is active in a number of economic sectors, including the food industry, chemicals and the electricity sector. Italenergia SpA is a company set up by the FIAT Group, EdF and a group of Italian banks for the purpose of acquiring exclusive control of Montedison. (Source: Commission Statement IP/01/1229, dated 28 August 2001)

STATE AIDS (MOTOR VEHICLES): THE DAIMLERCHRYSLER CASE

Subject: State aids

Industry: Motor vehicles

Parties: DaimlerChrysler AG
Mitsubishi Motors Corporation

Source: Commission Statement IP/01/1071, dated 25 July 2001

(Note. Two value judgments have to be applied to individual state aid cases in the motor vehicle industry. The first is whether the Commission is fairly and correctly applying the principles set out in the so-called "framework" document, which sets out the policy for assessing state aids in this industry. The second is whether the framework policy itself is soundly based: this goes much further than the assessment of an individual case. In the present case, the Commission needs more information before it can apply the two main criteria of assessment: that is, as the background note attached to the Commission statement points out, the "necessity" for the aid and the "proportionality" of the proposal.)

The Commission has decided to launch a thorough investigation into regional aid totalling €63.8 million which Germany plans to grant to DaimlerChysler AG and Mitsubishi Motors Corporation. The Commission has so far not been able to establish whether the planned aid meets the requirements of the specific state aid framework policy for the automobile sector. It is asking Germany to provide within one month all the necessary information for the assessment of the case.

In March 2001 the German authorities notified their plans for granting regional aid of an amount of €63.8 million (net present value) for an investment in Kölleda, Thuringia. The project concerns the setting up of a new greenfield engine production plant with a total investment volume of around €243.91 million (net present value: €220.43 million). The project is expected to create approximately 500 new jobs.

The recipient of the aid would be DaimlerChrysler AG. With the foundation in 2003 of a new joint venture company of DaimlerChrysler AG and Mitsubishi Motors Corporation, which will drive the engine production plant, all investments and aid will be fully transferred to this new company. The engines are produced for a planned joint DaimlerChrysler/Mitsubishi car platform for small passenger cars, which is planned to be produced in the Nedcar-plant in Born/Netherlands for the European markets and in a Mitsubishi plant in Japan for the Japanese and Asian markets.

DaimlerChrysler has assessed different alternative sites and the best alternative location to Kölleda would be an investment in Nyergesujfalu, Hungary. A final decision as to the site of production has not yet been taken.

The information so far provided by Germany in this complex case was not sufficient to demonstrate that the planned aid is in line with the principles contained in the framework policy for aid to the motor vehicle industry, in particular as regards the proportionality of the aid, as calculated in the cost/benefit analysis, and the effects on the production capacity of the group.

The Commission has thus decided to open the formal State aid investigation procedure in order to give Germany as well as all interested third parties the possibility to submit comments.

Background

According to the Community framework policy for state aid to the motor vehicle industry, the Commission must ensure that any aid granted in this sector is both necessary and proportional.

As for necessity, the aid recipient must clearly prove that it has an economically viable alternative location for its project. In other words, the project must be "mobile" and the aid necessary for its realisation at the location for which it is planned.

To assess the proportionality of the aid, a cost-benefit analysis is carried out. This compares the costs, which an investor would bear to carry out the project in the region in question, with the costs for an identical project in the alternative location. It thus becomes possible to determine the specific regional handicaps of the project. The aid may neither exceed the regional aid ceiling applicable to new investments in that area nor the regional handicap calculated in the cost benefit analysis (CBA). ■

Shell / DEA

The Commission has referred to the German Competition Authority the examination of the impact on the downstream market for oil products of a proposed joint venture between Deutsche and RWE-DEA. At the same time, the Commission has also taken the view that the deal's effects on the petrochemicals sector require further review and has started an in-depth investigation. Dutch-British Royal Dutch/Shell (Shell) is one of the world's biggest oil groups: in Germany, Shell is active through its wholly-owned subsidiary Deutsche Shell GmbH. DEA Mineralöl is a 100% subsidiary of RWE AG, the parent of a group of multi-utility companies, ranging from water treatment to chemicals. Shell and DEA propose to combine their downstream oil and petrochemicals business in a joint venture, which will not include the parent companies' upstream activities in the oil or natural gas sectors. The agreement also envisages Shell taking sole control of DEA from 1 July 2004 at the latest. (Source: Commission Statement IP/01/1222, dated 23 August 2001)

STATE AIDS (BANKING): THE BGB CASE

Subject: State aids

Industry: Banking

Parties: Bankgesellschaft Berlin AG

Source: Commission Statement IP/01/1072, dated 25 July 2001

(Note. This decision is a return to the bad old days when governments bailed out banks which had made serious commercial errors in their investment policy, particularly in the real property sector. There were several cases of this kind in the wake of the recession at the beginning of the 1990s, when there was at least some colour to the argument that exceptional economic circumstances had created an unforeseeable decline in the real property market. As the Commission points out, aid to a bank is justified "in exceptional cases"; but the report below does not spell out, at any rate in convincing detail, what the exceptional circumstances were here. On another page of this issue, the Commission points out that state aids in the service sectors are still unacceptably high; the present case will add to the figure for the current survey period.)

The Commission has approved an application by the German Government in respect of rescue aid of some €2 billion to be granted by the Province of Berlin to Bankgesellschaft Berlin AG (BGB), with a view to enabling it to restore in the short term its pre-crisis solvency ratio of 9.7%. The aid had become necessary following substantial losses by BGB above all in the real estate sector, which caused its equity capital to fall below the statutory solvency ratio of 8%; otherwise, the Federal Banking Supervisory Office would have had to intervene. Approval for the rescue aid has been given after the Federal Banking Supervisory Office had made its position clear regarding the amount of capital needed to keep BGB in business in the short term and after the Federal Government had undertaken to present to the Commission within six months a comprehensive restructuring plan for BGB.

BGB is a listed company active internationally whose main shareholders are the Province of Berlin (56.6%), Norddeutsche Landesbank (20%) and the Parion insurance group (7.5%). It came into existence in 1994 as a result of the merger of several credit institutions owned at the time by the Province of Berlin and was the tenth-largest credit institution in Germany with a balance-sheet total of around €200 billion and a workforce of some 17,000. The BGB group includes among others the Landesbank Berlin, the Berlin-Hannoversche Hypothekenbank AG (BerlinHyp), Berliner Sparkasse and Berliner Bank.

At the end of June the Federal Government formally notified the Commission of the rescue aid, which comprises a memorandum of understanding and the

planned capital injection of some €2 billion, to be decided on by the general meeting at the end of August.

The memorandum of understanding represents a commitment vis-à-vis the Federal Banking Supervisory Office and ranks, therefore, as a guarantee. The fruitless search for other investors shows that the action of the Province of Berlin does not correspond to that of a market-economy investor.

Particularly in view of the urgent nature of the decision, the Commission, in assessing the need for a capital injection, has relied crucially on the position adopted by the Federal Banking Supervisory Office vis-à-vis the Commission, in which it is clearly stated that there is no alternative to a capital injection to keep BGB in business until the restructuring plan has been vetted. As regards the amount of the capital injection, it is stated that the pre-crisis solvency ratio of 9.7% must be restored in order to rectify the loss of confidence in the markets and to guarantee BGB's survival. On account of the clear position taken by the Federal Banking Supervisory Office, the Commission has approved the amount needed to restore the pre-crisis solvency ratio. The amount is provisionally put at some €2 billion. In the banking sector, capital injections are admissible as rescue aid in exceptional cases.

Approval of the rescue aid is based on the Federal Government's undertaking to present to the Commission within six months a comprehensive restructuring plan for BGB. The approval is, in principle, valid only for that six-month period. Provided that the Federal Government does present a comprehensive restructuring plan within six months, this period will be extended until the Commission's definitive decision in the matter.

Once it has received the restructuring plan, the Commission will vet it and, if necessary, initiate infringement proceedings. As part of such proceedings, the Commission will examine the amount of aid necessary to restore long-term viability and will decide which measures are necessary to offset as far as possible any distortion of competition. In the case of a negative decision, the Commission may order BGB to repay (some of) the capital to the provincial authorities. ■

Südzucker / St Louis Sucre

The Commission has decided to initiate a detailed second-stage investigation into the planned merger between Südzucker AG, Mannheim/Ochsenfurt, Germany, and France's Saint Louis Sucre SA. Current information suggests that there are serious concerns, particularly in relation to Südzucker's strong position in all sectors of the sugar market in Belgium and southern Germany. The company operates mainly in southern and East Germany, Belgium, Austria and Eastern Europe. St Louis Sucre operates mainly in France and Eastern Europe. (Source: Commission Statement IP/01/1223, dated 23 August 2001)

STATE AIDS: COMMISSION SURVEY

Subject: State aids

Industry: All industries

Source: Commission Statements IP/01/1032 and 1033, dated 19 July 2001; Ninth Survey on State aid in the European Union; Scoreboard on State Aid

(Note. In its commendable desire to encourage transparency in the overall levels and Community control of state aids, the Commission has produced a mass of information: a Register, a Survey and a Scoreboard. Between them, these documents convey a picture of a slow decrease in the huge overall figure for state aids in the European Union, at present running at about €90 billion. An interesting feature of the survey is that, of the total figure for state aid, only €28 billion is aid for manufacturing: a far higher proportion is aid for services. It follows that service industries are well advised to be vigilant about the state aids which their competitors may be receiving.)

The Commission has adopted its Ninth Survey on State aid in the European Union, which updates previous data with figures for 1997 to 1999. Although indicating that levels of state aid are still high, the continuing decreases show that progress is being made in the right direction. During 1997-1999 the overall level of aid has decreased to an annual average of €90 billion compared with €102 billion in the previous reporting period 1995-1997. The survey covers all sectors of the economy but analyses in particular the manufacturing sector, which absorbed around €28 billion a year alone.

According to the Commission, there is still room for manoeuvre to reduce aid further. The Commission strongly supports the Member States in their quest to reduce overall amounts of aid, in line with the Stockholm European Council's conclusions of spring 2001. Member States should continue to make all efforts to carefully rethink their aid spending. Every single reduction of aid clearly reduces the distortion of competition in the Internal Market and increases the benefits of Economic and Monetary Union. The Commission intends to maintain strict state aid control as a priority.

Manufacturing Aid

While the €28 billion spent in this sector are less than the €36 billion in the preceding period from 1995 to 1997, the overall decrease is not spread evenly among the Member States but still depends mainly on Italy and Germany. In both Member States aid amounts fell substantially. In Belgium, Greece, Spain, Luxembourg, the Netherlands and the United Kingdom, levels of aid to manufacturing also dropped but were offset by increases in other Member States (see Table 1).

Substantial differences between individual Member States remain. Aid levels in relation to value added are highest in Greece and lowest in the United Kingdom and Portugal. A comparison shows that, in Greece, aid as a percentage of value added is over seven times higher than in the United Kingdom. Member States like Sweden, the Netherlands, the United Kingdom or Portugal have maintained their low levels of aid, whereas Italy, Germany and Spain are rapidly reducing their aid levels.

Development of overall aid

As regards the overall national state aid to the economy shown in Table 2, the fifteen Member States spent on average €90 billion per year for state aid purposes during the period 1997 - 1999. The decrease of €12 billion in comparison with the previous reporting period covering 1995 to 1997 is mainly a result of reductions in aid to manufacturing, transport and agriculture. Smaller reductions can be observed in aid to coal mining contrasting with the increases in aid awarded to the service sector.

The Survey also reveals that, Member States considerably reduced the amounts of aid granted on an ad hoc basis, that is, awarded to specific companies outside horizontal, regional or sectoral aid schemes. This ad hoc aid still accounted for an annual average of €7.5 billion during the period 1997 to 1999: it was mainly for the purpose of rescuing or restructuring ailing companies. Because these aids seriously distort competition, they are strictly controlled.

Further action by the Commission

The findings of this Ninth Survey on State aid underline the need for continuing strict control and increased transparency. The Commission is taking action along the following lines.

Increasing transparency

The state aid register, which is available on the Competition Directorate General's Internet site (http://europa.eu.int/comm/competition), now ensures user-friendly access to the relevant figures.

Publicising the Commission's state aid decisions

The State aid Scoreboard, which is published simultaneously with the Survey and available on the same internet site, further improves transparency in the field of state aid policy and reinforces the process of peer review between Member Sates.

Modernising the state aid control rules

In the beginning of the year the Commission implemented new block exemptions in the field of state aid (one for training aid and another for state aid to small and medium-sized companies) facilitating and accelerating administrative procedures.

Enforcing state aid control in states seeking to join the European Union

The Commission currently evaluates enforcement of the state aid control provisions in the candidate countries with a view to the accession negotiations in the competition field.

Recovering illegal aid more speedily

Particular importance will be attached to a more speedy recovery of aid, which the Commission has declared incompatible with EC state aid rules.

Table 1: State aid to the manufacturing sector

Annual averages 1995-1997 and 1997-1999

	In % of value added	In € per person employed	In € million			
	1995-1997	1997-1999	1995-1997	1997-1999	1995-1997	1997-1999
Austria	1,4	1,3	685	696	473	478
Belgium	2,1	1,7	1237	1003	826	657
Denmark	2,6	2,6	1429	1453	642	655
Germany	3,4	2,4	1592	1211	13144	9808
Greece	5,5	4,3	1093	876	677	537
Spain	2,5	1,7	841	567	2117	1548
Finland	1,7	1,6	937	968	394	424
France	1,9	2,0	1090	1235	4141	4651
Ireland	1,3	2,0	1075	1683	263	477
Italy	5,0	2,7	2025	1108	10350	5694
Luxembourg	2,3	2,1	1464	1380	48	45
Netherlands	1,1	1,0	561	530	595	571
Portugal	0,9	0,9	185	193	183	192
Sweden	0,9	1,0	490	557	364	418
United Kingdom	0,7	0,6	357	322	1558	1408
EU 15	2,6	1,9	1193	916	35775	27563

Source: European Commission

[Table 2 is on the following page]

Table 2: Overall national aid in the European Union

Annual averages 1995-1997 and 1997-1999 in € billion

	1995-1997	1997-1999
Overall national aid	*102*	90
of which:		
- Agriculture	*15,2*	14,0
- Fisheries	*0,3*	0,3
- Manufacturing	*35,8*	27,6
- Coal Mining	*8,2*	7,6
- Transport	*35,4*	32,0
Of which rail transport	*33,7*	*31,5*
- Services	*5,0*	5,4
- Employment	*0,8*	0,9
- Training	*1,7*	2,2

Scoreboard on State Aid

The Commission has unveiled the new State Aid Scoreboard. Following the opening of the State Aid Register earlier this year, the Scoreboard is the second of two new transparency instruments being developed by the Commission in the area of state aid policy. The Scoreboard is a source of information on the state aid situation in the European Union and on the state aid control activities of the Commission. Available on the home page of the Competition Directorate General's Internet site (cited above), the Scoreboard consists of five parts: an overview of state aid in the European Union over the last ten years, a forum for Member States to present their own State aid policy, the Member States' compliance with state aid rules, trends in current state aid policy and the effects of state aid on the Internal Market.

The first part of the present Scoreboard shows state aid expenditure in the Union and in each Member State expressed as a percentage of GDP. The shares of aid in the Union are then given according to the main purposes pursued: fostering horizontal objectives like research and development, small and medium-sized enterprises or training; helping agriculture and fisheries; assisting the transport sector; aiding other specific sectors like coal mining, shipbuilding or steel production; supporting regions that lag behind.

The second part provides seminal ideas for a Member State forum offering information on their state aid policy and levels of transparency. It should act as a catalyst for discussion between Member States.

In the third part, an indication of Member States' success in complying with state aid rules is given in order to identify problems and therefore indicate where improvements might be necessary. In addition, information on the recovery of illegally granted state aid is included.

With a view to identifying possible areas where future action by the Commission under state aid rules might be desirable, the fourth part of the Scoreboard highlights the amounts of aid granted by the Member States for different objectives and specific sectors. The Member States are encouraged to discuss certain spending trends and patterns and ascertain their impact on the functioning of the Internal Market.

The final part of the Scoreboard attempts to trigger a discussion on the relationship between the state aid situation, as it prevails in the Member States after control by the Commission, the functioning of the Internal Market and the success of the economic reform process. In doing this, the Scoreboard goes beyond competition issues as such.

Future Development

The Scoreboard will be developed gradually in response to the needs of its various future user groups. It will be based on a core set of indicators that will, over time, demonstrate long-term policy shifts and state aid spending patterns. These core indicators will be accompanied in each Scoreboard by series of other indicators that will focus on certain topics for deeper analysis. The Scoreboard will also add value to other Commission documents in particular the proposals for Broad Economic Policy Guidelines, Structural Indicators and Benchmarking Enterprise Policy. ■

"Le Levant"

The Commission has decided to declare non-notified state aid by France to the investors of the ship "Le Levant" to be incompatible with the common market. The Commission does not consider that the vessel will contribute in any significant way to the development of Saint-Pierre-et-Miquelon, situated in the North Atlantic Ocean close to Canada, and that therefore the conditions for granting development aid are not fulfilled. As the unlawful aid, which was in the form of tax breaks for the investors of the ship and has a calculated aid intensity of 34%, has already been granted, it must be recovered. The Commission considers that the investors, as the direct beneficiaries and current owners of the ship, should repay the aid. The firm, Compagnie des Îles du Levant (CIL), operates the ship, which it will also eventually own.

(Source: Commission Statement IP/01/1073, dated 25 July 2001)

STATE AIDS: THE MIRABEL CASE

Subject: State aids
Recovery of illegal state aids

Industry: All industries

Parties: Commission of the European Communities
Kingdom of Belgium

Source: Judgment of the Court of Justice of the European Communities, dated

3 July 2001, in Case C-378/98, (*Commission of the European Communities v Kingdom of Belgium*)

(Note. This case illustrates well the difference between the "difficulty" experienced by a Member State's government in seeking the recovery of state aids declared illegal in a Commission Decision and the "absolute impossibility" of recovering the aid. Only the latter circumstance can be offered as a defence by the Member State concerned. In the present case, the Belgian Government had introduced a scheme, known as the Mirabel Scheme, for the reduction of social security contributions by undertakings employing manual workers. Since it was general and automatic, that measure was not deemed to constitute a prohibited form of state aid. However, it was followed by Mirabel bis and Mirabel ter, which extended the concession to undertakings facing competition from abroad. This was clearly illegal under the EC rules on competition. The Belgian Government therefore introduced Mirabel quarter in an attempt to rectify the position; but it failed to recover the amounts in question. Hence the present action.)

1. By application lodged at the Court Registry on 21 October 1998, the Commission of the European Communities brought an action pursuant to the second sub-paragraph of Article 93(2) (now Article 88(2)) of the EC Treaty for a declaration that, by failing to adopt within the periods prescribed the measures necessary to recover from the beneficiary undertakings the aid provided for under the Maribel bis/ter scheme which was declared unlawful and incompatible with the common market by Commission Decision 97/239/EC of 4 December 1996 concerning aid granted by Belgium under the Maribel bis/ter scheme, notified to it on 20 December 1996, the Kingdom of Belgium has failed to fulfil its obligations under the fourth paragraph of Article189 (now Article 249) of the EC Treaty and Articles 2 and 3 of the said decision.

Legal and factual background: Facts leading to Decision 97/239

2. In Belgium the "Maribel Scheme" introduced by the Law of 29 June 1981 laying down the general principles of social security for wage earners had accorded a reduction in social security contributions to undertakings employing manual workers. Since it was general and automatic, that measure was not

deemed to constitute aid falling within the scope of Article 92(1) (now, after amendment, Article 87(1)) of the EC Treaty.

3. The Royal Decree of 14 June 1993 amended that scheme with effect from 1 July 1993, introducing the Maribel bis scheme. This provided that the reduction in social security contributions would be increased where the employer carried on his principal activity in one of the sectors most exposed to international competition.

4. By Royal Decree of 22 February 1994, which introduced the Maribel ter scheme, the reduction in social security contributions was again increased, with effect from 1 January 1994. Its scope was also extended, first, with effect from 1 January 1994, to international transport, and second, with effect from 1 April 1994, to air and sea transport and to transport-related activities.

5. Since the Belgian Government did not give the Commission prior notice of the measures which made up the Maribel bis and Maribel ter schemes (Maribel bis/ter scheme), the Commission initiated the procedure provided for in the first paragraph of Article 93(2) of the Treaty. Following that procedure, on 4 December 1996, the Commission adopted Decision 97/239, which it notified to the Kingdom of Belgium on 20 December 1996.

6. In Article 1 of Decision 97/239, the Commission declared the increased reduction in social security contributions in respect of manual workers granted under the Maribel bis/ter scheme to employers who carry on their principal activity in one of the sectors most exposed to international competition incompatible with the common market.

7. Under the first sentence of Article 2 of Decision 97/239, "Belgium shall take appropriate measures to terminate forthwith the granting of the increased reductions in social security contributions ... and shall recover the illegal aid from the beneficiary undertakings".

8. Article 3 of Decision 97/239 provides that "Belgium shall inform the Commission of the measures it has taken to comply with this Decision within two months of the date of its notification".

9. By application lodged at the Court Registry on 19 February 1997, the Kingdom of Belgium asked the Court to annul Decision 97/239. By judgment of 17 June 1999 in Case C-75/97, *Belgium v Commission*, the Court dismissed that application.

[Paragraphs 10 to 19 cover the steps taken by the Kingdom of Belgium following Decision 97/239 and the discussions that took place before this action was lodged. Paragraphs 13 and 14 are quoted here, as they illustrate the difficulties experienced by the Belgian government and the government's proposal for a flat-rate scheme of repayment. Paragraphs 15 and 16, not quoted here, refer to the Belgian government's request, and the Commission's general agreement, that the de minimis principle should be applied.]

13. The Belgian Government referred to difficulties such as the disappearance or bankruptcy of some undertakings, the merging of the reductions in contributions under the Maribel bis scheme with those under the Maribel ter scheme, the need to take account of the various forms of financing to which the undertakings would have been entitled if they had not benefited from those reductions, the difficulties of calculation linked to the possible deduction of further reductions in contributions provided for under the Maribel quater scheme from the sums to be reimbursed, the large number of beneficiary undertakings for which the reductions would have had to be calculated, for each quarter, on the basis of the number of workers employed and, in substance, the high cost and unacceptable burden of work that such a recovery operation would entail for the competent authorities.

14. The Belgian Government maintained that it was necessary to resort to a flat-rate calculation of the amount of aid to be recovered.

[Paragraphs 20 to 22 concern the continuation of discussions after this action was lodged and, in particular, the Belgian Government's proposals to change the Maribel rules.]

23. Some details of those rules have, however, been contested by the Commission, which indicated to the Belgian Government that changes would be required. Disagreement seemed to persist in particular on one aspect of the application of the *de minimis* rule and on the allegedly ambiguous nature of the Law inasmuch as it appeared to allow the undertakings concerned a double tax deduction on the sums to be repaid.

Substance

The relevant date for purposes of a declaration of infringement

24. The means of redress provided for by the second subparagraph of Article 93(2) of the Treaty is merely a variant of the action for a declaration of failure to fulfil Treaty obligations, specifically adapted to the special problems which State aid poses for competition within the common market (see Case C-301/87, *France v Commission (Boussac Saint Frères)*, paragraph 23).

25. In the context of proceedings under Article 169 of the EC Treaty (now Article 226 EC), the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (see, for instance, Case C-58/99, *Commission v Italy*, paragraph 17).

26. Because the second paragraph of Article 93(2) of the Treaty does not provide for a pre-litigation phase, in contrast to Article 169 of the Treaty, and therefore the Commission does not issue a reasoned opinion allowing Member States a certain period within which to comply with its decision, when the former

provision is applied the reference period can only be that provided for in the decision failure to implement which is denied or, where appropriate, that subsequently fixed by the Commission.

27. With regard to the period prescribed in this case, Article 3 of Decision 97/239 allows a period of two months from the date of its notification for the Belgian Government to inform the Commission of the measures taken to comply with that decision, including the measures taken for the purpose of recovering the aid granted. After long discussions between the parties on the difficulties experienced by the Belgian Government, in its letter of 4 May 1998 the Commission fixed a new period expiring a fortnight after the date of that letter.

28. In view of the difficulties in fact encountered and given the case-law concerning the duty imposed on the Member States and the Community institutions to cooperate genuinely with each other (see Case C-261/99, *Commission v France*, paragraph 24), it cannot be disputed that the period fixed in Article 3 of Decision 97/239 was replaced by that which resulted from the letter of 4 May 1998. That latter date must be regarded as the pertinent one and it must be held that initiatives and measures taken by the Belgian authorities after the date when that period expired cannot be taken into consideration.

The supposed impossibility of recovering the amounts granted

29. It is not disputed that the Belgian authorities did not recover the aid unlawfully paid under the Maribel bis/ter scheme within the prescribed period, as defined in paragraph 28 of this judgment.

30. According to consistent case-law, the only defence available to a Member State in opposing an application by the Commission under Article 93(2) of the Treaty for a declaration that it has failed to fulfil its Treaty obligations is to plead that it was absolutely impossible for it to implement the decision properly (see Case C-348/93, *Commission v Italy*, paragraph 16; Case C-280/95, *Commission v Italy*, paragraph 13; and *Commission v France*, cited above, paragraph 23).

31. The fact that a Member State can only plead in its defence against such an action that implementation was absolutely impossible does not prevent a State which, in giving effect to a Commission decision on State aid, encounters unforeseen and unforeseeable difficulties or becomes aware of consequences overlooked by the Commission, from submitting those problems to the Commission for consideration, together with proposals for suitable amendments to the decision in question. In such cases, the Commission and the Member State must, by virtue of the rule imposing on the Member States and the Community institutions a duty of genuine cooperation which underlies, in particular, Article 5 (now Article 10) of the Treaty, work together in good faith with a view to overcoming the difficulties while fully observing the Treaty provisions and, in particular, the provisions on aid (see Case 94/87, *Commission v Germany*, paragraph 9; *Commission v Italy*, cited above, paragraph 17; Case C-404/97, *Commission v Portugal* , paragraph 40; and *Commission v France*, cited above, paragraph 24).

32. The condition of absolute impossibility is not satisfied where the defendant government merely informs the Commission of the legal and practical difficulties involved in implementing the decision, without taking any step whatsoever to recover the aid from the undertakings in question, and without proposing to the Commission any alternative arrangements for implementing the decision which would have enabled the alleged difficulties to be overcome (see *Commission v Germany*, cited above, paragraph 10; Case C-183/91, *Commission v Greece*, paragraph 20; and *Commission v Italy*, cited above, paragraph 14).

[Paragraphs 34 to 39 set out the arguments of the parties.]

Assessment by the Court

40. It should be borne in mind that the Court held, in paragraph 90 of the *Belgium v Commission* judgment cited above, that, despite the undeniable existence of difficulties, there was nothing to show that it was absolutely impossible for recovery of the aid in question to be carried out and that that was already the case when the Commission adopted Decision 97/239.

41. In this case, as the Advocate General noted in point 25 of his Opinion, the Belgian authorities in practice confined themselves to raising the difficulties of a technical and administrative nature which such recovery presented; those difficulties resulted essentially from the large number of undertakings concerned and from the need to determine the amount of aid - for each quarter - on the basis of the number of workers actually employed in those undertakings.

42. In connection with that type of difficulty, in a similar case the Court dismissed the argument that the large number of undertakings concerned could result in absolute impossibility (Case C-280/95, *Commission v Italy*, cited above). The Court pointed out in particular, at paragraph 23 of that judgment, that even if recovery of the tax credit did present difficulties from an administrative point of view, that fact was not such as to enable recovery to be deemed to be technically impossible.

43. Up to the relevant date for a finding of infringement, the Belgian Government had taken no steps towards recovering the aid from the undertakings concerned. It does not, however, appear to have been absolutely impossible to begin by recovering aid from certain undertakings chosen in compliance with the principle of equal treatment, while safeguarding the undertakings concerned from the disadvantages resulting from the particularities of the Belgian social security system.

44. It must also be noted that the Kingdom of Belgium did not cooperate sufficiently with the Commission in order to find a solution to the problem of the recovery of the aid in question.

45. The Belgian Government did, it is true, propose a set-off model based essentially on a flat-rate calculation of the amounts to be paid by each undertaking.

46. Nevertheless, the Commission was well-founded in its observation that the proposal to make a flat-rate calculation of the aid to be recovered was formulated in vague terms.

[Paragraphs 47 to 50 elaborate the point that the Commission's observation was well-founded.]

51. Given the absence of Community provisions relating to the procedure for recovering undue payments, the recovery of unlawfully paid aid must in principle take place in accordance with the relevant procedural provisions of national law (see Case C-24/95, *Alcan Deutschland*, paragraph 24). The Member State is therefore in the best position to determine the appropriate means for such recovery.

52. In the circumstances, the Commission cannot be said to have failed to cooperate. Moreover, the Commission accepted application of the *de minimis* rule without any delay and stated on several occasions during the negotiations that it was ready to accept a concrete proposal based on a flat-rate calculation. It therefore applied itself to active cooperation by accepting the few proposals made which were acceptable.

53. It follows from all the foregoing considerations that, by failing to adopt within the period prescribed the measures necessary to recover from the beneficiary undertakings the aid provided for under the Maribel bis/ter scheme which was declared unlawful and incompatible with the common market by Decision 97/239, the Kingdom of Belgium has failed to fulfil its obligations under the fourth paragraph of Article 189 of the EC Treaty and Articles 2 and 3 of the said decision.

[Paragraph 54 covers the question of costs.]

Court's Ruling

The Court hereby:

1.Declares that, by failing to adopt within the period prescribed the measures necessary to recover from the beneficiary undertakings the aid provided for under the Maribel bis and Maribel ter schemes which were declared unlawful and incompatible with the common market by Commission Decision 97/239/EC of 4 December 1996 concerning aid granted by Belgium under the Maribel bis/ter scheme, the Kingdom of Belgium has failed to fulfil its obligations under the fourth paragraph of Article 189 of the EC Treaty (now the fourth paragraph of Article 249 EC) and Articles 2 and 3 of the said decision;

2.Orders the Kingdom of Belgium to pay the costs. ■

COMPLAINTS (BROADCASTING): THE TF1 CASE

Subject: Complaints
State aids
Admissibility

Industry: Broadcasting
(Implications for other industries)

Parties: Television Francaise 1 SA (TF1)
Commission of the European Communities
Republic of France (Intervener)
Kingdom of Spain (Intervener)

Source: Judgment of the Court of Justice of the European Communities, dated 12 July 2001, in Joined Cases C-302/99 P and C-308/99 P, (*Commission of the European Communities v Television Francaise 1 SA*)

(Note. This slightly odd case is worth reporting briefly – it has been extensively edited - as a reminder of two principles of law. The first is that, where the Court decides that there is no need to give judgment in an action which has ceased to have any purpose, it is not necessary for it to examine the admissibility of that action; paragraph 28 of the judgment. The second is that, where all the other pleas put forward in an appeal have been rejected, any plea challenging the decision of the Court of First Instance on costs must be rejected as inadmissible by virtue of the second paragraph of Article 51 of the EC Statute of the Court of Justice, which provides that no appeal shall lie regarding only the amount of the costs or the party ordered to pay them; paragraph 31 of the judgment.)

1. By application lodged at the Court Registry on 10 August 1999, the Commission of the European Communities brought an appeal (Case C-302/99 P) pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 3 June 1999 of the Court of First Instance in Case T-17/96 *TF1* v *Commission*, (hereinafter "the judgment under appeal").

2. By application lodged at the Court Registry on 13 August 1999, the French Republic brought an appeal (Case C-308/99 P) pursuant to Article 49 of the EC Statute of the Court of Justice against that same judgment.

The background to the action and the judgment under appeal

3. It is apparent from the judgment under appeal that, on 10 March 1993 the applicant at first instance, Télévision Française 1 SA (hereinafter "TF1"), a private television broadcasting channel, submitted a complaint to the Commission concerning the methods used to finance and operate the France-Télévision public broadcasting channels. It is common ground that that complaint

expressly referred to infringement of Article 85 (now Article 81), Article 90(1) (now Article 86(1)) and Article 92 (now, after amendment, Article 87) of the EC Treaty.

4. By letter of 3 October 1995, TF1 formally requested the Commission and, in so far as was necessary, gave it formal notice to define its position and act upon the submissions set out in the complaint of 10 March 1993.

5. By letter of 11 December 1995, the Commission informed TF1 that its enquiries into TF1's complaint were still in progress.

6. On 2 February 1996, TF1 brought an action before the Court of First Instance pursuant to the third paragraph of Article 175 (now Article 232) of the EC Treaty seeking a declaration that, by not defining its position on the complaint which it had submitted to the Commission, the latter had failed to fulfil its obligations under the Treaty and, in the alternative, pursuant to the fourth paragraph of Article 173 (now, after amendment, the fourth paragraph of Article 230) of the EC Treaty seeking annulment of the purported decision rejecting the applicant's complaint, set out in a letter from the Commission of 11 December 1995.

7. During the course of those proceedings, the Commission placed before the Court a copy of its letter of 15 May 1997 sent to TF1 pursuant to Article 6 of Commission Regulation EEC/99/63 of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation 17, in which it informed TF1 that, on the basis of the information in its possession, it was unable to uphold TF1's complaint in so far as it alleged infringement of Articles 85 and 86 (now Articles 81 and 82) of the EC Treaty. The Commission invited TF1 to submit its comments within two months of 15 May 1997, adding that, having considered the allegation of infringement of Article 90 of the Treaty, it had been unable to establish that the matters complained of amounted to an infringement.

8. The Court of First Instance held, at paragraph 57 of the judgment under appeal, that TF1's action, in so far as it was directed against the Commission's failure to act pursuant to Article 90 of the Treaty, was admissible.

9. The Court also considered, at paragraphs 99 to 103 of the judgment under appeal, to what extent the Commission's letter of 15 May 1997 constituted the definition of a position, within the meaning of the second paragraph of Article 175 of the Treaty, putting an end to the Commission's inaction and rendering the action devoid of purpose in so far as it concerned the Commission's alleged failure to act pursuant to Article 90 of the Treaty.

10. At paragraph 103 of the judgment under appeal, the Court concluded that the letter did constitute the definition of a position and that there was therefore no longer any need to adjudicate the claim for a declaration of failure to act in so far as a declaration was sought that the Commission had unlawfully failed to act pursuant to Article 90 of the Treaty.

11. Furthermore, at paragraph 110 of the judgment under appeal, the Court held that, pursuant to Article 87(4) of the Rules of Procedure of the Court of First Instance, the French Republic would bear its own costs. It also ordered the French Republic to bear the costs incurred by TF1 as a result of its intervention.

12. By the judgment under appeal, the Court of First Instance:
1.[Declared] that the Commission [had] failed to fulfil its obligations under the EC Treaty by failing to adopt a decision concerning the part of the complaint lodged by Télévision Française 1 SA on 10 March 1993 concerning State aid;
2.[Held] that there [was] no need to adjudicate on the allegation that the Commission [had] failed to act pursuant to Articles 85 (now Article 81 EC) and 90 (now Article 86 EC) of the EC Treaty;
3.[Declared] the action inadmissible in so far as it [was] directed against the Commission's failure to act under Article 86 of the EC Treaty (now Article 82 EC);
4.[Held] that there [was] no need to adjudicate on the alternative claim for annulment;
5.[Ordered] the Commission to bear its own costs together with those incurred by the applicant, with the exception of the costs incurred by the applicant as a result of the intervention of the French Republic;
6.[Ordered] the French Republic to bear its own costs, together with the costs incurred by the applicant as a result of its intervention.

Procedure before the Court of Justice

13. By its appeal, the Commission challenges the judgment under appeal in so far as it was held therein that TF1's action was admissible to the extent that it was directed against the Commission's failure to act pursuant to Article 90 of the EC Treaty. It thus asks the Court:
-to set aside the judgment under appeal in so far as it was held therein that TF1's action was admissible to the extent that it was directed against the Commission's failure to act pursuant to Article 90 of the Treaty;
-to declare TF1's action inadmissible in so far as it is directed against the Commission's failure to act pursuant to Article 90 of the Treaty;
-to order TF1 to pay the costs of the proceedings before the Court of Justice and to give a new ruling on the costs of the proceedings before the Court of First Instance, limiting the order against the Commission so that it is commensurate with the outcome of the present appeal.

[Paragraphs 14 to 20 set out the respective claims of the parties and the circumstances in which the Republic of France and the Kingdom of Spain were admitted as interveners.]

The appeals against the finding that TF1's action, in so far as it is directed against the Commission's failure to act pursuant to Article 90 of the Treaty, is admissible

21. In support of its appeal against the second paragraph of the operative part of the judgment under appeal, by which the Court of First Instance necessarily,

albeit implicitly, acknowledged the admissibility of TF1's action in so far as it was directed against the Commission's failure to act pursuant to Article 90 of the Treaty, the French Government submits that that paragraph must be read in the light of the grounds of the judgment, which are indispensable to understanding the precise meaning of the ruling in the operative part.

22. According to the French Government, both the second paragraph of the operative part and, in so far as may be necessary, paragraphs 48 to 57 of the grounds of the judgment under appeal confirm that it wholly failed in its submissions on the point, within the meaning of Article 49 of the EC Statute of the Court of Justice, and that, consequently, it ought to be allowed to contest that part of the judgment at first instance by means of an appeal.

23. The Commission also asks for the judgment under appeal to be set aside to the extent that TF1's action for failure to act pursuant to the third paragraph of Article 175 of the Treaty was thereby held to be admissible.

24. On this point, it should be observed that, pursuant to the first paragraph of Article 49 of the EC Statute of the Court of Justice, an appeal may be brought before the Court of Justice against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

25. In the present case, the final decision for the purposes of the provision of the EC Statute of the Court of Justice just mentioned, and the one to which the French Government explicitly refers in its appeal, namely the second paragraph of the operative part of the judgment under appeal, is the Court of First Instance's ruling that there was no need to adjudicate on the allegation that the Commission had failed to act pursuant to Article 90 of the Treaty

26. The grounds on which that ruling is based are set out in paragraphs 99 to 103 of the judgment under appeal, which explain that the claim of failure to act ceased to have any purpose once the Commission expressed its position.

27. Those grounds alone provide a sufficient legal basis for the decision of the Court of First Instance and thus, in any event, any errors in the grounds of the judgment under appeal concerning the admissibility of TF1's claim of failure to act, as alleged by the Commission and the French Republic, have no effect on the operative part of that judgment.

28. Indeed, it is clear from the consistent case-law of the Court of Justice that, where the Court decides that there is no need to give judgment in an action which has ceased to have any purpose, it is not necessary for it to examine the admissibility of that action (see, in particular, the judgment in Joined Cases C-15/91 and C-108/91, *Buckl and Others* v *Commission*, paragraphs 14 to 17, and the order of 10 June 1993 in Case C-41/92, *Liberal Democrats* v *Parliament*, paragraph 4).

29. It follows from this that the plea whereby the Commission and the French Republic challenge the second paragraph of the operative part of the judgment under appeal is inoperative, and in this regard their appeals must be dismissed.

The plea raised by the French Republic challenging the sixth paragraph of the operative part of the judgment under appeal

30. The French Republic asks for the sixth paragraph of the operative part of the judgment under appeal whereby the Court of First Instance ordered it to bear its own costs together with those incurred by TF1 as a result of its intervention to be set aside.

31. In this connection, suffice it to say that, according to settled case-law, where all the other pleas put forward in an appeal have been rejected, any plea challenging the decision of the Court of First Instance on costs must be rejected as inadmissible by virtue of the second paragraph of Article 51 of the EC Statute of the Court of Justice, which provides that no appeal shall lie regarding only the amount of the costs or the party ordered to pay them (see, in particular, the judgment in Case C-396/93 P, *Henrichs* v *Commission*, paragraph 66, and the order of 13 December 2000 in Case C-44/00 P, *Sodima* v *Commission*, paragraph 93).

[Paragraphs 32 to 34 are concerned with costs, which are dealt with below.]

Court's Ruling

The Court hereby:
1. Dismisses the appeals;
2. Orders the Commission to pay the costs of Case C-302/99 P;
3. Orders the French Republic to pay the costs of Case C-308/99 P;
4. Orders the Kingdom of Spain to bear its own costs in both actions. ■

Producers of Plastic Film

Following journalists' enquiries, the Commission's spokesman for competition policy has confirmed that, on 22 August 2001, Commission inspectors and officials from national competition authorities began simultaneous surprise inspections at the premises of six European producers of plastic film in Austria, Denmark, the Netherlands, Italy, Sweden and the UK. The purpose of these inspections was to uncover evidence of suspected price fixing in the European market for plastic film used in the industrial and agricultural sectors. Customers for these products are present in the following market sectors: Food & Drink; Packaging; Farming; Agricultural Merchants; Horticultural; Building products and Chemicals, among others. The Commission's investigation is at a preliminary stage and does not prejudge the final outcome. (Source: Commission Memorandum MEMO/01/287, dated 5 September 2001)