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97/238/EC: Commission Decision of 2 October 1996 concerning aid granted by the French State to the audiovisual production company Société française de Production (Only the French text is authentic) (Text with EEA relevance)

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Text

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Text

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COMMISSION DECISION of 2 October 1996 concerning aid granted by the French State to the audiovisual production company Société française de Production (Only the French text is authentic) (Text with EEA relevance) (97/238/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62 (1) (a) thereof,

Having given the parties concerned notice to submit their comments, in accordance with the abovementioned articles (1),

Whereas:

THE AID CONCERNED

I

This Decision relates to aid of FF 1 110 million granted to Société française de Production (SFP) in the period from 1993 to 1996. FF 860 million of this was paid in 1993 and 1994 and FF 250 million was added in February 1996.

DESCRIPTION

II

Competitors claimed to suffer from low prices charged by SFP as a result of the aid and lodged a complaint with the Commission on 7 April 1994. The Commission wrote to the French authorities on 22 June 1994 requesting information. After a meeting with Commission representatives on 12 September 1994, the French authorities replied by letter dated 21 October 1994 to the Commission's questions regarding the compatibility of the aid with the common market.

The Commission's doubts nevertheless persisted, especially since no ground could be seen for exempting the aid under Article 92 (3) (c) and (d), and, in addition, because an adequate restructuring plan for the company had not been submitted to the Commission.

These doubts led the Commission to initiate proceedings under Article 93 (2) of the EC Treaty by decision of 16 November 1994. This decision was communicated to the French Government by letter of 1 December 1994. The letter invited the French Government to submit its comments on the Commission's doubts regarding the compatibility of the aid, to present a complete and realistic restructuring plan, and to undertake that no further public financing would be supplied to SFP without the Commission's prior permission (letter published in the 1995 Official Journal referred to in footnote (1)).

The letter in which the French Government undertook not to grant any further aid without the Commission's approval was sent on 16 December 1994. The French authorities submitted their comments by letter dated 16 January 1995.

No comments from other Member States or other interested parties were received by the Commission following the initiation of proceedings.

Subsequently, meetings between Commission representatives and the French authorities were held on 21 December 1995 and 15 February 1996 to discuss the measures the French authorities planned to take regarding SFP and to stress the need for a restructuring plan. The intention of the French Government is to privatize SFP while at the same time restructuring the company.

At the meeting on 15 February 1996, the French delegation produced [. . .] (2) on SFP's actual financial situation and its privatization prospects. [. . .] confirms SFP's problematic financial situation with annual losses of more than FF 100 million, the continued need for financial aid and the need for restructuring.

At that meeting, as at the preceding meeting on 21 December 1995, the French authorities informed the Commission representatives that a new capital injection would be necessary in order to meet SFP's immediate financial needs. A letter from the French Government on 19 February 1996 formally announced new aid of FF 250 million. The Commission extended the proceedings to include this amount by decision of 15 May 1996, which was communicated to the French Government by letter of 4 June 1996 (letter published in the 1996 Official Journal referred to in footnote (1)).

According to the timetable presented by the French authorities at the meeting held on 15 February 1996, parliament was to vote on the necessary privatization law in April 1996 and the transfer of ownership was to take place at the end of June or beginning of July 1996. The French authorities thought it would be possible to present a restructuring plan immediately after parliament's adoption of the privatization law in April 1996. Additional details on the privatization of SFP were provided in a letter which the French authorities sent to the Commission on 27 February 1996.

More than 18 months have passed since the initiation of proceedings, and the Commission representatives have reminded the French authorities on several occasions of their obligation to present a restructuring plan. It clearly informed them at the meeting on 15 February 1996 that it would wait no longer than until the end of April 1996 for the submission of a restructuring plan and that otherwise a negative decision would be taken.

That deadline passed four months ago and the plan has not yet been submitted to the Commission. From the fax sent by the French Government to the Commission on 1 July 1996 on the progress of the restructuring, it can be concluded that such a plan is far from ready since it will not be available before the end of September 1996. By letter dated 29 August 1996 the French authorities provided information on an offer for the take-over of SFP. The offer contains a proposal from the bidder to reorganize SFP, but the French authorities did not indicate whether the French Government intended to accept this bid and whether it thus will be taken into consideration. This proposal can therefore not be regarded as the necessary restructuring plan.

III

The aid concerned has to be seen in the overall context of the development of the audiovisual market in France.

In 1974, the national radio and television broadcasting company ORTF was split up: television production was taken over by the newly-established company SFP and broadcasting by several other organizations. However, SFP continued to enjoy a protected position on the French audiovisual market. At the moment, SFP is 100 % controlled by the French State [. . .].

SFP consists of a holding company and three operational subsidiaries: studios, video and productions. The holding company (with 67 staff) was set up in 1994. It supplies some services (legal advice, staff management) to the other divisions.

The studios subsidiary (a wholly-owned subsidiary) provides a whole range of services associated with the production of shows, games and advertising for television. It comprises the following departments (situation at the end of 1995):

- 'show, games; advertising`: eight staff to liaise with customers,

- 'filming`: 334 staff; supplies, mainly to television companies, film crews and film equipment,

- 'sets`: 54 staff; produces the sets for television programmes; several fixed sets are made available to producers or broadcasters for the production of television shows,

- 'management of operations` and 'functional services`: 111 staff; (these departments coordinate the different skills required for production and provide general services within Studios,

- 'France costumes`: 12 staff; provides costumes for television and film production.

The video subsidiary specializes in the broadcasting of large (sports) events which require a large fixed and mobile filming capacity. It does also filming work for the Studios subsidiary. It comprises two departments:

- 'equipment`: 213 staff (1993 figure); supplies film crews and film equipment,

- 'post production video`: 63 staff (1993 figure); edits the video work.

The third subsidiary is productions: 43 staff (1993 figure). It (co-)produces programmes or television channels and cinema movies. Its two departments are 'cinema` and '15-30 productions`.

IV

In 1986 free competition was introduced for audiovisual production. SFP was not used to operating in a competitive environment; it lost turnover and got into financial difficulties. That resulted in drastic cuts in staffing, from the 2 515 employees in 1985 to 1 056 at the end of 1995. Turnover in 1995 was FF 646 million.

The losses made since 1986 have been offset by the State and the other public shareholders. The total amount of public aid granted since 1986 is more than FF 2 billion.

For the period from 1986 to 1990, an initial aid operation involved the payment of a total of FF 940 million, while a second operation, carried out in 1991, resulted in the payment of an additional FF 320 million, giving a total of FF 1 260 million (ECU 194 million). The Commission approved the first aid by decision of 27 February 1991 and the second one by decision of 25 March 1992.

The French authorities stated, when the 1992 decision was adopted, that that would be the last aid operation. However, despite their declarations, the French authorities continued to provide financial support to the company as, notwithstanding the optimistic forecasts regularly made on its situation, it proved incapable of adapting sufficiently to competition.

That led to a third aid operation under which the State granted the company another FF 460 million in 1993 and FF 400 million in 1994, a total of FF 860 million (ECU 132 million). The Commission initiated proceedings in respect of that aid by decision of 16 November 1994.

The fourth and most recent aid operation amounting to FF 250 million (ECU 39 million) was announced by the French authorities on 16 February 1996. The Commission extended the proceedings to include this new aid by decision of 15 May 1996.

The total aid for the company during the period from 1986 to 1996, including the most recent aid operation, stands at FF 2 370 million (ECU 365 million).

V

When the first aid operation (1986-1990) was carried out, it was argued by the French authorities that the company would regain its financial equilibrium in 1992 on the basis of a restructuring plan for the years 1990 and 1991, approved by the SFP shareholders on 13 June 1990. That plan was based, firstly, on the hypothesis that SFP would be able to restore its position on the market and increase its turnover, and, secondly, on measures intended to reorganize the company, reduce its fixed costs (in particular through staff cutbacks and the sale of part of its fixed assets) and seek partners for some of its activities.

The second aid operation (1991) was necessary because the results achieved by the 1990 plan were disappointing. Turnover did not develop as expected because of lower than expected demand for the services provided by SFP. The staff cutbacks were implemented, but they do not seem to have been sufficient. Sales of the fixed assets and partnerships could not be achieved.

The new restructuring plan submitted provided for continued efforts to achieve reorganization, through a further reduction in fixed costs (the renegotiation of staff working conditions was also included under this heading) and the conclusion of partnerships. A return to financial health was promised for 1994.

According to the French authorities, the third aid operation (1993-94) was necessary in order to allow the company to honour its debt servicing and meet the costs of lay-offs and for the coverage of the cash-flow lacking because of the delay in the sale of fixed assets. The French Government predicted that financial equilibrium would be restored by the end of 1995. However, the adjustment efforts required of the company are still slow to produce results: staff levels and salaries are still too high and must both be reduced. [. . .]. The search for partners has so far proved fruitless. Several of the old problems have therefore still not been solved and further reorganization is necessary.

Press reports suggest that SFP made a loss of FF 270 million in 1995 on a turnover of FF 646 million.

The Commission decision of 25 March 1992 clearly indicated that the second aid operation was to be the last. The aid currently being examined, which has actually been paid, is therefore a clear breach of the undertaking given by the French State that the second aid operation would be the last one.

POSITION OF THE FRENCH GOVERNMENT

VI

The French Government believes that the aid is compatible on three grounds:

- restructuring measures are being undertaken. As indicated above, the measures comprise the same actions and pursue the same objectives as when the Commission authorized the previous aid,

- the aid paid serves to offset SFP's high costs and does not enable it artificially to undercut market prices;

- the audiovisual production markets are for linguistic reasons national markets. SFP operates mainly on the French market and its competitors are French companies. In the opinion of the French authorities, the aid does not therefore affect trade between Member States.

ASSESSMENT

VII

The financial aid was decided on and paid without prior notification of the Commission and is therefore illegal.

The Commission has to address the following questions:

- Do the financial contributions provided by the State constitute aid within the meaning of Article 92(1) of the Treaty? For that they must:

- be granted by a Member State or through State resources,

- distort or threaten to distort competition by favouring certain undertakings or the production of certain goods,

- affect trade between Member States.

- Does the aid qualify for one of the derogations provided for in Article 92, and in particular Article 92 (3) (c) or (d)?

The financial contributions paid by the French State are to the sole benefit of Société française de production (SFP) to the exclusion of other companies and favour that enterprise compared to its competitors. A private investor would not have agreed to a third and fourth financial intervention without firm prospects of profitability. In this context it is irrelevant whether the contribution by the public shareholders took the form of a grant or a share capital operation ('capital injection`). In the latter case, it has to be noted that, although as from 1990 it was predicted that the company would recover rapidly, the company continued to show a deficit in 1995, even with the previous aid operation, and that there are no signs of any improvement. The restructuring measures referred to by the French Government (see point V) are not sufficient:

- the public-sector collective wage agreement should no longer be applied since at present SFP does not have a competitive wage-cost structure; however, it is doubtful whether a new wage agreement can be concluded,

- attempts to find partners for the various activities are proving much more difficult than expected,

- moreover, the proper restructuring plan the Commission asked for when proceedings were initiated has still not been submitted by the French authorities, while the measures proposed and implemented so far are not sufficient to ensure the company's viability; the aid therefore amounts to operating aid, which cannot be authorized.

VIII

The Commission considers that the aid affects trade between Member States within the meaning of Article 92 (1). According to the French Government, only a limited part of SFP's production (10 % of video production) is intended for the international competitive market. This does not, however, alter the fact that the financial aid places SFP in a better position to market its services in other Member States or the States which are parties to the EEA Agreement and that the aid makes it more difficult for the services provided by foreign audiovisual companies to penetrate the French market.

It must also be borne in mind that a European market for television and film productions exists. This takes the form of co-productions by European producers and the broadcasting of audiovisual productions in countries other than the country of production. This is especially the case for the French market where the French Government pursues an active policy of dissemination of French productions to other countries.

Even though cultural and linguistic diversity plays a part in market partitioning and only 20 % of European films find a market beyond their national frontiers (3), the substantial support granted to SFP helps to reinforce this partitioning. As indicated above, the aid reduces the scope for productions from other Member States to be sold in France.

The aid must therefore be regarded as being caught by Article 92 (1) of the Treaty. That analysis is not affected by the argument that the financial contributions do not serve to cover operating costs due to prices which are abnormally low or lower than market prices for which no evidence has been given by the French Government. Even if that were the case, the fact remains that, as acknowledged by the French authorities, the purpose of the aid is to maintain on the market cost-inefficient suppliers who are ill-adapted to competition. The aid enables them artificially to maintain their activity, market share and employment levels to the detriment of other players in the market.

Furthermore, no public-service obligation relating to the promotion of culture and conservation of cultural heritage, which might possibly have justified State support, can be adduced in respect of the services provided by SFP.

IX

The derogations provided for in Article 92 (2) and Article 92 (3) (a) and (b) are not relevant in this case. The Commission has thus examined whether the aid is eligible for one of the derogations provided for in Article 92 (3) (c) and (d).

The aid is intended to ensure SFP's survival. The Commission has adopted guidelines (4) setting out the conditions governing application of the Article 92 (3) (c) derogation to aid for firms in difficulty. The guidelines specify a number of criteria which the aid must fulfil:

- the aid must be linked to a restructuring/recovery programme submitted in all relevant detail to the Commission and capable of restoring the long-term viability and health of the firm within a reasonable period,

- the measures proposed must distort competition as little as possible and must be in line with the common interest. There must be an effect on the recipient's market position which offsets the distortive effect on competition to a reasonable extent,

- the aid must be limited to the strict minimum required.

The Commission asked for an adequate reorganization plan in its decision of 16 November 1994 initiating proceedings in respect of the third aid operation. Following the decision, the French authorities submitted on 16 January 1995, 15 February 1996 and 29 August 1996 [. . .] concerning SFP's situation and the reorganization efforts undertaken. [. . .] have to be examined in order to assess whether they contain sufficient information to be regarded as the required restructuring plan.

[. . .] mainly repeat what the French Government previously communicated to the Commission in respect of the first two aid operations. The 16 January 1995 [. . .] describes the company's poor financial situation and the need to reduce staff, review working conditions, sell off part of the fixed assets and establish partnerships so as to transfer some of its activities. However, the [. . .] does not present any credible arguments to suggest that the company can satisfactorily carry out the necessary measures, that such measures will sufficiently contribute to the viability of the firm, that they will distort competition as little as possible and that the aid is confined to the strict minimum required. The [. . .] cannot therefore be considered to be the required restructuring plan.

The 15 February 1996 [. . .] is [. . .] and was presented by the French authorities as a restructuring plan. [. . .] SFP's current financial situation and discusses considerations regarding the privatization of SFP. [. . .] that staff costs are still excessive and that turnover is not under control. This explains why the financial equilibrium which the 16 January 1995 document predicted for 1995 has still not been achieved and is an illustration of the fact that most of the measures envisaged have not been implemented. [. . .] a restructuring plan must accompany the bids of third parties who are interested in a take-over of the company.

By letter of 29 August 1996 the French authorities transmitted information concerning an offer for the take-over of SFP. That offer contains a proposal from the bidder on the reorganization of SFP, but the French authorities did not indicate whether the French Government intended to accept that bid and whether it was thus going to be taken into consideration. The proposal cannot therefore be regarded as the necessary restructuring plan.

The conclusion is that more than 18 months have passed since the initiation of proceedings and that, although the Commission representatives have reminded the French authorities on several occasions of their obligation to present a restructuring plan, the plan is still not forthcoming. It was therefore expressed clearly at the meeting of 15 February 1996 that the Commission would wait no longer than until the end of April 1996 for the submission of a restructuring plan and that otherwise a negative decision would be taken. This deadline passed five months ago and the plan has not yet been submitted to the Commission.

Without an adequate restructuring plan, the loss-making situation will persist and the aid will therefore rank as operating aid (see point VII). Such aid cannot be allowed under Article 92 (3) (c) (concerning aid to facilitate the development of certain economic activities or of certain economic areas).

It must be concluded that the aid is intended to ensure the survival of SFP and is in the nature of operational aid; no factors have been put forward by the French Government which would permit the view to be taken that the purpose of the aid is to promote culture and heritage conservation within the meaning of Article 92 (3) (d).

In addition, owing in particular to its negative effects on the partitioning of European markets, a factor which the Commission regards as one of the main handicaps of the European film and television programme industry, the aid is not likely to contribute to the Community objective of developing a competitive European industry on the world market. This finding is reinforced by the fact that the aid will not restore SFP's viability. Article 92 (3) (d) does not therefore provide a basis for authorizing the aid to SFP. The consequences of not granting the aid, namely a further decline in SFP's situation to the benefit of more competitive (French) companies, do not therefore provide an appropriate basis for invoking Article 92 (3) (d).

The conclusion must be that the aid is incompatible with the common market since there are no grounds for applying one of the derogations provided for in Article 92 (2) or (3).

X

Since the French Government did not notify the aid measure in advance, the Commission was not able to submit its comments on it before it was implemented. The grant and payment of aid without prior notification constitute an infringement of Article 93 (3) of the Treaty. The aid of FF 1 110 million is therefore illegal and, since it is also incompatible, it should be paid back by the recipient,

HAS ADOPTED THIS DECISION:

Article 1

The aid of FF 1 110 million granted by the French authorities in the period from 1993 to 1996 to SFP is illegal since it was awarded in breach of the procedure provided for in Article 93 (3). The aid is also incompatible with the common market.

Article 2

The French Government shall recover from SFP the amount of FF 1 110 million referred to in Article 1, together with interest covering the period from the date when the illegal aid was granted to the date of repayment. The interest rate shall be the reference interest rate for France used by the Commission in assessing the aid element in regional investment aid.

Article 3

The French Government shall inform the Commission within two months of the notification of this Decision of the measures taken to comply with it.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 2 October 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

(1) OJ No C 80, 1. 4. 1995, p. 7 and

OJ No C 171, 15. 6. 1996, p. 3.

(2) Confidential.

(3) Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union - Green Paper, COM(94) 96 final of 6 April 1994.

(4) Community guidelines on State aid for rescuing and restructuring firms in difficulty, (OJ No C 368, 23.12.1994).

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