II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 October 1997

concerning aid granted by France to Thomson SA and Thomson Multimedia

(Only the French text is authentic)

(Text with EEA relevance)

(98/183/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, in accordance with the abovementioned Articles, given the interested parties notice to submit their observations,

Whereas:

I. INITIATION OF PROCEEDINGS UNDER ARTICLE 93(2) OF THE TREATY

By letter dated 10 February 1997 the Commission informed the French authorities of its decision to initiate proceedings [1] under Article 93(2) of the EC Treaty in respect of measures to assist Thomson SA and Thomson Multimedia. The measures include the recapitalisation of Thomson SA, the parent of the public group Thomson, notified by the French authorities in October 1996 and amounting to some FRF 11 billion. By letter sent on 12 December 1996 to the Commission, the Finance Minister, Mr Arthuis, stated that the planned recapitalisation of Thomson SA would essentially benefit its consumer electronics subsidiary, Thomson Multimedia and would not affect is other large subsidiary, Thomson CSF, an industrial electronics group present in the defence sector which the French authorities undertook to privatise rapidly. Thomson Multimedia, a leading consumer electronics group, has experienced a series of shortfall years since the early 1990s, resulting in accumulated losses which totally used up the group's own capital.

The Commission had taken the view, in accordance with the principle of a private investor operating in a market economy which it applies in such cases that, in the absence at that stage of financial forecasts indicating that the invested capital would yield a return at market rates, a private investor would not have recapitalised the company; it could therefore be concluded that the measures in question were likely to contain elements of State aid. Since the compatibility of the measures with the Treaty could be considered only under the exemption provided for in Article 92(3)(c) as they were intended to assist a firm in difficulty, their compatibility should be assessed under the Community guidelines on rescue and restructuring aid for firms in difficulty [2]. On that basis, the Commission asked the French authorities in its Notice initiating the proceedings to submit a restructuring plan for Thomson Multimedia establishing the viability of the firm.

The Notice also concerned the transfer to the State of shares in Crédit Lyonnais held by Thomson SA at a price likely to contain aid elements. The Commission had

[1] OJ C 90, 20. 3. 1997, p. 3.

[2] OJ C 368, 23. 12. 1994, p. 12.

examined the price at which the shares in Crédit Lyonnais (CL) held by Thomson SA (3,01 % of CL's capital) had been repurchased by the State in an agreement dated 20 May 1996 for FRF 306,7 per share. It should be remembered [1] that, as the Crédit Lyonnais ordinary share is not quoted on the stock exchange, the underlying security taken as a reference for the valuation of the transaction was the investment certificate (IC) and that, traditionally, a share has a greater parity rate premium compared with an IC (ICs do not carry any voting rights). The Commission questioned the level of the 30 % OS (ordinary shares) premium over the IC in this transaction, and considered that the rate used for the IC (rate of 31 December 1995: FRF 235) did not appear to be justified, the transaction having been concluded on 20 May 1996 after a sharp fall in the IC (to FRF 164), or a loss in value of 30 %.

The Commission considered that the measures in question were likely to contain elements of aid and that, if so, their compatibility with the Treaty could be determined only under the procedure in Article 93(2) of the Treaty.

II. BACKGROUND TO THE NOTIFIED MEASURES

Thomson is a worldwide electronics group present in the consumer and industrial electronics industry, especially the defence industry. The State has a majority holding (76 %) in the parent company, Thomson SA, while France Telecom, a public enterprise, holds some 20 %. The remaining 4 % is held by several minority shareholders. Thomson SA wholly owns Thomson Multimedia, the entity which combines the consumer electronics activities, and holds a 58 % majority stake in Thomson CSF, which heads the industrial electronics businesses and achieves a large proportion of its turnover in the military defence sector. The remaining shares in Thomson CSF (42 %) are held by members of the public and are quoted on the stock exchange. It is also worth noting that, until 1996, the Thomson group was a major shareholder in Crédit Lyonnais with a stake of about 20 %, of which 3,01 % was owned via the holding company, Thomson SA.

Thomson Multimedia (known as Thomson Consumer Electronics until 1995) comprises some fifty companies in the consumer electronics industry. It is the fourth-largest group in its field in the world, and second in Europe. Thomson Multimedia, which acquired the US manufacturer RCA from General Electric in 1987, is the market leader in the US with some 20 % of the market. At the end of 1996, the group employed some 49 000 persons and turned over some FRF 39,3 billion. Its products are marketed under a variety of names (Thomson, RCA, GE, Proscan, Telefunken, Ferguson, Nordmende, Saba). Despite acknowledged technological know-how, the group suffered in the 1990s from inadequate industrial competitiveness, essentially because its production plants were widely scattered. At the same time its trading positions in Europe were being eroded. In a market that had reached maturity, on which the leading producers were engaged in a price war, the group's industrial and commercial fragility caused considerable losses, generally in excess of FRF 1 billion a year since 1992, and even higher in 1996. As own capital had been completely used up by the losses, the group's net position became negative in 1995, reaching − FRF 2,8 billion in 1996. The restructuring measures taken were wholly inadequate to restore profitability. In the circumstances, without vigorous restructuring accompanied by recapitalisation, the group should be wound up. Thomson Multimedia has been able to survive until now only because of its ability to borrow from its parent, Thomson SA, which acted as its banker. Such growing recourse to indebtedness, which totalled FRF 16,1 billion by the end of 1993, far from resolving the structural causes of the crisis, on the contrary aggravated them by postponing their effects and placing increasingly heavy financial burdens on the firm.

The parent Thomson SA was seriously affected by the position of its subsidiary Thomson Multimedia, as it has no manufacturing base itself and acts purely as a financial holding company. Thus the group's own capital fell, owing to the aggregate losses of its subsidiaries, from nearly FRF 8 billion in 1990 to almost − FRF 3,7 billion at the end of 1995, thus making recapitalisation or winding-up necessary. As the Commission stressed in its Notice initiating proceedings, without a public shareholder able to mobilise considerable capital, Thomson would finally have lost all access to loans on the market by 1994 when the group's capital became negative, and the company would have had to be wound up.

III. REPLY FROM THE FRENCH AUTHORITIES

By letter dated 6 March 1997, the French authorities provided the Commission with the restructuring plan for Thomson Multimedia requested by the Commission and their justification for the measures objected to by the Commission in the proceedings under Article 93(2) of the Treaty. They replied to additional questions sent by the Commission on 2 April 1997 by two letters dated 26 May and 2 September 1997.

[1] OJ C 90, 20. 3. 1997, p. 7.

(i) **Transfer to the State of the Crédit Lyonnais shares held by Thomson SA**

In its reply, France emphasised the following points. The CL shares, which are not quoted on the stock exchange, were repurchased by the State from Thomson SA on the basis of a 30 % premium on the rate of the Crédit Lyonnais investment certificate at 31 December. The French authorities justified the increase in value by the need to close Thomson's accounts for 1995 with a definitive transaction or irrevocable commitment to buy. On that basis, a provision corresponding to the loss in value incurred by Thomson on the sale of the shares was entered into the accounts for 1995. The French authorities also pointed out that the price was arrived at through direct negotiation between the two parties and was based on several reference values. In addition to the value of the IC, these included the price/earnings ratio in relation to the net assets per CL share which, on the basis of the transfer price of FRF 306,7 per share, amounted to 66 % at 31 December 1995, compared with an average of 80 to 100 % for comparable French banks. They also pointed out that the Crédit Lyonnais capital increases in September 1993 and July 1994 had been carried out at far higher prices (FRF 880 and FRF 774 per share respectively), albeit in circumstances that had since altered. France considered that the IC share premium (30 %, or the relationship between FRF 306,7 and the IC rate of FRF 235 at 31 December 1995) was lower than the premium applied to the two transactions referred to above (40 to 45 %) and the premium applied to comparable firms (43 to 56 %). In their letter of 2 September 1997 the French authorities also stress that, whilst the IC rate was FRF 164 on 20 May, the day the transaction was concluded, it was FRF 209 on 12 April 1996 when the agreement was concluded between the State and Thomson and FRF 190 and 17 April, the day the transaction was made public.

(ii) **Recapitalisation of Thomson SA and Thomson Multimedia**

By letter dated 6 March to the Commission, the French authorities communicated a restructuring plan for Thomson Multimedia for the period 1997 to 1999. The plan covers a number of aspects relating to the restoration of the firm's viability.

Reduction of debt and financial charges

The recapitalisation of Thomson Multimedia which, it seems, will involve almost the entire amount injected into Thomson SA (FRF 10 866 million of FRF 11 billion earmarked for Thomson SA), will allow full restructuring of the balance sheet: debts will be reduced by FRF 9,3 billion as from 1997. Although the group's net position is negative at present, it will return to a level of FRF 7 billion after recapitalisation, the ratio of own-cpaital to debt returning to 50/50. Thomson Multimedia will, by reducing indebtendness, achieve savings in financial charges of several hundred million French francs a year. Net financial charges, which were FRF 1 319 million in 1996, would return to a level (still high) of FRF 887 million in 1999, giving a saving of some FRF 430 million.

Recovery of revenue from intellectual property from 1999

When Thomson purchased RCA from General Electric (GE) in 1987, it waived its revenue from patents and licences until 31 December 1998. The waiver covers all patents acquired from GE and those registered since then by Thomson Multimedia (in other words, the bulk of its current revenue from intellectual property). The subsidiary holding the patents, RCATL, produced net income of US$ [. . .] (*) in the United States in 1995, or some FRF [. . .]. According to the authorities, the impact of that revenue returning to Thomson Multimedia has been estimated at FRF 950 million in 1999.

Restructuring plan provides for a 20 % reduction in the group's workforce in the period 1996 to 1998

The plan involves shutting down nine industrial plants throughout the world, one R&D unit, a commercial unit and large cutbacks in the sales force. A total of 10 640 persons are affected. The measures chiefly affect the United States (relocation of North American production to Mexico) and Asia (relocation from Singapore to Thailand and from Malaysia to the Philippines). In Europe, production will be reorganised. The R&D activities in Strasbourg will be transferred to Rennes. Plants belonging to the group in Germany will be shut down and production be transfered to Angers (France). Other activities will be shifted from Angers to Tarancón (Spain), and from Tarancón to Poland where a new factory is being built. The aim of the reorganisation is for production plants to specialize in product lines. Once the industrial restructuring is completed, top-of-the range and wide-screen television sets will be produced in Angers, mid-range products in Spain and low-range in Poland.

(*) In the published version of this Decision, some information has been omitted on grounds of confidentiatility.

According to the French authorities, the largest part of the total cost of the plan relates to measures to compensate the workforce. The company estimates that the savings to be achieved by the plan will total FRF 950 million from 1999. In view of the fact that all the costs of the plan have already been provided for in the accounts (in 1995 and in particular FRF 1,2 billion in 1996), the savings will have their full effect on the firm in 1999. In view of the savings already produced by the plan in 1997 and 1998, the firm will have completely amortised the cost of restructuring by the first half of 1999.

Table A

(in million FRF)

Restructuring 1996-98	Workforce	Cost	Impact on 1999 result
Europe (2 plants, 1 R&D, unit, sales forces)	1 104	592	348
US (6 plants, sales forces)	4 300	722	552
Asia (2 plants)	5 236	124	50
Various		149	
Total	10 640	1 587	950

Surge in sales of new digital products

The new digital products (chiefly digital decoders and the Digital Video Disc (DVD)), a field where Thomson Multimedia considers it has a technological lead that places it in a favourable position, accounted for only very small share of activity in 1995 (FRF 2,9 billion, or 8 % of turnover). According to preliminary data from France for the end of 1996 and early 1997, a 40 % increase in sales of these products was forecast, with the new products accounting for almost 19 % of sales by early 1998, according to Thomson Multimedia forecasts. Then in spring 1997 the firm adjusted the optimistic forecasts downwards.

Note should also be taken, in the light of the 1996 to 1999 forecasts on which the plan is based, of a fifth very important element that is to contribute to the firm's profitability, namely, a predicted sharp increase in turnover, including turnover in the traditional core products (colour televisions and video recorders), although at a slower rate. The forecasts predicted unchanged market shares for the group in the US and the reacquisition of market shares in Europe which, from some 14 % in 1990 (share of colour TV market), had fallen to about 11 % by 1996. The group's forecasts relied on a return to a share of the European market previously held in the early 1990s.

Table B

Thomson Multimedia — forecast activity and result

(in millions of FRF)

	1996	1997	1998	1999
Consolidated turnover	39 284	42 024	44 314	46 692
Gross margin	7 378	7 914	8 833	10 310
Operating result	– 153	134	756	1 994
Financial result	– 1 319	– 1 031	– 868	– 887
Current result	– 1 472	– 897	– 112	1 108
Firms equity accounted	3	6	6	6

(in millions of FRF)

	1996	1997	1998	1999
Restructuring	− 1 195			
Other exceptional factors	− 17	− 20	− 21	− 21
Result before tax and distribution to employees	− 2 861	− 911	− 127	1 093
Tax	− 54	− 50	− 100	− 700
Net result	− 2 735	− 961	− 227	393
Net position	− 2 820	7 085	6 858	7 251
Net debt	16 174	6 916	7 577	7 339
Apparent profitability	unknown	− 13,6 %	− 3,3 %	5,4 %

Source: French authorities and Thomson Multimedia, three-year forecasts produced end 1996.

On the basis of the four principal recovery factors described above, Thomson Multimedia, it is claimed, would return to profitability from 1999 onwards, according to the timetable set out above (Table B). The current operating result (before financial charges) would rise in 1999 from 1,7 % to 4,3 % of turnover, owing to the recovery of the income from the group's intellectual property transferred from 1988 to 1998 to General Electric. The net result after tax would be very slightly positive in the last year of the plan (0,8 % of turnover and about 5 % of own funds).

The French authorities have described the financing plan for the firm over the period of the plan as follows: self-financing will cover some 90 % of 'current' financing requirements (excluding restructuring and liquidation of indebtedness). The balance and non-current requirements will be financed from the capital increase. The injection of FRF 10 866 million into Thomson Multimedia will take place in three stages in the period concerned: balance of current requirements, or FRF 732 million, including investments not covered by self-financing (1997 and 1998), restructuring, namely FRF 1 305 million and lastly, the largest amount, FRF 8 829 million, applied to debt reduction.

In reply to a question put by the Commission when it initiated these proceedings concerning measures to offset, if necessary, any distorting effects of the aid in question, France considered that the recapitalisation of Thomson Multimedia would not entail any distoring effects. In support of this claim, France took the view that the group's market shares would on average remain at their present level; that the privileged investments would constitute productive and replacement investments rather than investments to expand capacity; and that, as soon as it was privatised, Thomson Multimedia would no longer have easy access to loans to finance aggressive tactics.

France considered, when it notified the transaction in October 1996, that it was the most economical solution for the State inasmuch as, without recapitalisation, the firm would have to be wound up. For that reason, France had considered that it was not State aid. The authorities had estimated that insolvency would cost between FRF 20 billion and FRF 25 billion, that is to say, at least twice the cost of the proposed recapitalisation. When it initiated the proceedings, the Commission challenged the argument and the figures, in particular because the latter made the public shareholder responsible for the social costs and all the liquidation debts; France defended the allocation of the liquidation debts on the basis of precedents in French case-law which establish the liability of the public shareholder for liquidation debts of public undertakings.

Lastly, by letter dated 17 September 1997, the Minister for Economic, Financial and Industrial Affairs informed the Commission of the commitments France was prepared to make with a view to the adoption of a decision, as set out in Article 1(3) of this Decision.

IV. **OBSERVATIONS OF INTERESTED PARTIES**

The Commission received two observations from interested parties following publication in the *Official Journal of the European Communities* of the notice initiating the procedure.

By letter dated 18 April to the Commission, Philips took the view that there was surplus production capacity in Europe and worldwide for televisions and video recorders. World production capacity for televisions, according to the firm, amounted to 121 million units a year in 1995, with annual sales of 103 millions units. The figures from

the same source for video recorders were 67 million and 50 million units respectively. Philips considered that capacity increases should not be supported in these areas but that, on the contrary, it was necessary to encourage measures to cut and rationalize production in Europe.

By letter dated 16 April 1997 the Fédération Générale des Mines et de la Métallurgie (FGMM), a French trade union affiliated to the CFDT union, expressed support for the principle of a capital injection not linked to a redundancy plan. The FGMM considered in particular that the recapitalisation as it stood was the result of previous commitments made by the public shareholder, which had not in the period 1988 to 1991 provided the financial resources to back its industrial decisions and its plans for external growth.

V. ASSESSMENT OF THE AID MEASURES

(i) Transfer to the State of the Crédit Lyonnais shares held by Thomson SA

The Commission noted the reply from the French authorities concerning the increase in the value of the Crédit Lyonnais shares to FRF 306,7 at the time of their purchase by the State from Thomson. The Commission also studied an expert's report prepared in November 1996 on the price of the transaction, in accordance with the agreement between the State and Thomson signed on 20 May. [. . .] before materially concluding the transaction in early 1997 ([1]), for the State to recognise that the transaction was detrimental to its financial interests and that it should be reviewed, an action within its power since it has a direct majority holding in Thomson SA (76 %), and hence has complete control over the firm. It should also be noted that, in the report, the expert considered that the share premium of 30 % in relation to an IC was reasonable in the present case.

The Commission cannot agree with the reasons given by France for taking 31 December 1995 as the date for establishing the value of the underlying security (the Crédit Lyonnais IC). The date may if necessary be used, as was pointed out by France, to close the accounts for 1995 and establish the value of the shares held by Thomson SA in Crédit Lyonnais. However, it is not justifiable for a transaction signed on 20 May 1996, as the rate of the security had meanwhile dropped by 30 %, probably because of information on the real position of Crédit Lyonnais had reached the financial markets. The French authorities stressed in their letter of 2 September 1997 that when the negotiations between Thomson and the State ended, the rate of the Crédit Lyonnais IC was FRF 209, whereas by the time the transaction was announced on 17 April 1996, the closing price was FRF 190 (a drop of 11 % and 19 % respectively against the rate on 31 December 1995). It should be remembered, however, as the Commission pointed out in its Notice, that at the time of the transaction the public shareholder had been, according to information in the possession of the Commission, fully aware of the deteriorating situation at Crédit Lyonnais, which had subsequently necessitated the urgent measures notified to the Commission in September 1996. It was already in a position to recognise that the real value of the Crédit Lyonnais security was liable to be lower than the figure arrived at on the basis of the IC rate of the time and, especially, that the 30 % share premium was excessive. The Crédit Lyonnais IC price fell sharply in the weeks following the transaction, to below FRF 120 by the end of June 1996 (compared with FRF 164 on 20 May). The Commission notes, finally, that the arguments of the French authorities concerning the value of the Crédit Lyonnais share in relation to the IC are in contradiction with the total liability they attribute to the public shareholder for the liquidation debts of public undertakings (see section III above). If that line of reasoning is pursued, the value to the State of a holding in a public company in as precarious a situation as Crédit Lyonnais in the spring of 1996 should have been zero or in any case less than the value of an IC, where the exposure of holders is less extensive, being limited to the value of their securities.

It would thus seem that, in this transaction, the State endeavoured to protect Thomson SA interests rather than its own, proprietary interests (in the strict sense of the term). In any event, in order to establish a normal value for the transaction, the Commission considers that it is necessary at the very least to use as a basis for calculation the IC rate on 20 May 1996 when the transaction was concluded (namely FRF 164), which then fell by 30 % in relation to the rate on 31 December 1995. Even if one accepts the method used by the authorities, as well as the level (subject to reservations) of the 30 % share premium agreed by the parties and endorsed by the expert's report, the rate places a value on Crédit Lyonnais of FRF 11,2 billion (. . .).

As was stated in the initiation of proceedings, the measures are liable to affect trade which accounts for some 50 % of output in the European consumer electronics industry, and may distort competition. In so far as the concept of State aid covers not only positive measures such as the grants themselves but also measures which by various means, reduce the charges usually borne by a firm's budget and thus, without being subsidies in the strict sense of the term, are of the same nature and have identical effects, it must be concluded that Thomson SA directly benefited (from the transfer of its 3,01 % capital

([1]) As an interim measure, the Commission having in the meantime initiated the present proceedings on 18 December 1996, the authorities placed in February 1997 the funds involved in the transaction in a blocked account.

holding in CL) from State aid of FRF 145,6 million. The aid benefited Thomson SA. It does not give the State any rights or financial return, so that the loss of financial revenue to the State amounts to a non-repayable grant. As it was not notified to the Commission, it is unlawful. As it was not jsutified by a restructuring plan of Thomson SA, it cannot be regarded as compatible with the Treaty under the exemption in Article 92(3)(c) — the only exemption possible for the measures in question, as the Commission stated in its Notice initiating the proceedings.

(ii) **Capital injection of some FRF 11 billion into Thomson SA — Recapitalization of Thomson Multimedia**

Distortions of competition. Effect on intra-Community trade

The market for consumer electronics is becoming increasingly globalized and dominated by Korean and Japanese producers. The Japanese are world leaders (Sony and Matsushita being the foremost groups in the world), with an output value three times greater than that of the Community ([1]). Their dominance is visible in world trade: Community exports to Japan and Korea totalled only ECU 74 million and 24 million in 1994, compared with imports of ECU 3 390 million and 750 million respectively. Despite an improvement in extra-Community exports in 1993 and 1994, the trade balance of the European Union is still structurally in deficit (ECU 10 to 13 billion). The tendency to relocate plants to countries with low labour costs is strong, and countries such as Thailand and China have become major producers. The three main European producers are, in descending order, Philips, Thomson Multimedia and Nokia. The electronics market, which has reached maturity (almost 100 % of homes have a television), is expanding slowly, its survival chiefly depending in the next few years on the arrival on the market of new digital products such as decoders or digital video discs (DVD).

Table C

(% of market total)

	Colour televisions 1994	Video recorders 1994
Net Community production	73 %	61 %
Extra-EU imports	27 %	44 %

Source: Panorama of EU Industry 1997.

The Commission has taken note of the comments made by Philips to the effect that there are production overcapacities in Europe and worldwide for colour televisions and video recorders. The capacity take-up rates in question, namely 85 % for colour televisions and 75 % for video recorders, are not exceptionally low, but can create real tension, in particular if a manufacturer decides to increase capacity or deliveries on a regional market the size of Europe. In any case, Philips' comments were not disputed by the French authorities, which received them from the Commission under the present proceedings. In view of the low capacity utilisation rate for the products regarded by Thomson Multimedia as the 'core of its range', the argument of the authorities that competition is not distorted by the notified capital injection is contradicted by the firm's own forecasts. The first task is to separate television sets from video recorders.

The forecasts submitted by Thomson Multimedia predicted gains in market share on the European colour television market, chiefly in top-range products (Thomson Multimedia predicts that it will only retain its present market shares in the US, whilst in Asia they will remain marginal). Such gains in Europe, which in 1996 accounted for 11 % of the market for colour televisions, the firm's leading product, should enable it to recover its 1994 market share — over 13 % by 1999. In a market with capacity difficulties and a slow annual growth rate in Europe of 19-20 million television sets, the gains are liable to aggravate the difficulties in using existing capacity experienced by Thomson Multimedia's competitors in Europe by transferring some of the firm's problems to its competitors. A further drawback is that the sale of any of the firm's television divisions in Europe will show a loss until 1999 at the firm cannot combat the erosion of its market shares without incurring losses on sales. On that basis, and with regard to that product line in particular, the Commission considers that implementation of the plan presented by France would have the effect of causing major distortions of competition.

The picture is very different for video recorders where, despite the lower capacity take-up rate (75 %, according

([1]) From *Panorama of Community Industry,* 1997, Vol. II, 1994 data. Japanese production was ECU 130 billion in 1994, against Community production of ECU 44,5 billion.

to Philips), the restructuring plan should not lead to competitive tensions. Thomson Multimedia plans simply to maintain its market share in this sector at 1996 levels, that is to say, at about 8,5 % in Europe and about 20 % in the US. In addition, it subcontracts a large part of its VCR sales, and hence is not responsible for any overcapacity in that area.

It should also be pointed out that Community trade in consumer electronics, which is considerable even before implementation of the restructuring plan, as it accounted for some 50 % of Community production, should be strengthened by the plan. Once the plants at Celle and Hanover in Germany have been closed, the firm plans to regroup its Community television manufacturing plants in France and Spain. Each plant will specialize in one product line, up-market television sets being produced at Angers (France) and mid-range products in Tarancón (Spain). The move by Thomson Multimedia towards specialized plants in Europe should, in relation to the position prior to the restructuring plan, lead to an increase in intra-Community trade, even after the factory in Poland, which is to produce the down-market televisions and is in the process of being built, has come on stream.

State aid features

According to the market economy investor principle, and in so far as the measures in question affect trade and distort or threaten to distort competition, the Commission takes the view, set out in its Notice to Member States ([1]), that capital injections in public undertakings contain elements of State aid if, in similar circumstances, a private investor would not, in view of the expected return, have undertaken such an investment.

The restructuring plan, including the most recent version of spring 1997, anticipates a return to equilibrium only by 1999. The forecast net result for Thomson Multimedia in 1999, which will be very slightly positive, is very much lower than the expected losses for 1997 and 1998. In addition, when the State injects the capital in 1997, it must extinguish the earlier losses producing the currently negative net positions of both Thomson Multimedia (− FRF 2,8 billion by 31 December 1996) and Thomson SA. The result is that, throughout the period covered by the plan, the return on the capital invested by the public shareholder is considerably below zero: at the end of the plan (end 1999), the net position of Thomson Multimedia will, according to its forecasts, total FRF 7 250 million. On the basis of a recapitalisation of Thomson Multimedia of FRF 10 886 million, the public shareholder will thus have consented to an undiscounted loss of FRF 3,6 billion on its injection. Discounted at a rate of 15 % ([2]), the capital loss would be even higher. The Commission considers that the negative return on invested capital clearly indicates that a private investor would not in similar circumstances have agreed to such a capital injection and that the measures in question accordingly constitute State aid as they affect trade and are liable to distort competition.

The French authorities also pointed out to the Commission that the transaction was due to the deferral of a recapitalisation decided on in 1987 when the electronics firm RCA was acquired in the US, and was the action of a prudent shareholder. They claim that the banks agreed to act as intermediaries because of their confidence that the State would, even with a delay, honour its commitment to recapitalise. The Commission notes that according to other data sent by France, part of the present recapitalisation will not be earmarked for debt reduction. Even if the new capital were to be allocated in full to reducing indebtedness (due to deferred recapitalisation), the transaction would nevertheless continue to constitute State aid, as a private shareholder would have required a far greater return on capital invested than repayment of the firm's debts. As the firm has been unable since 1987 to repay its growing debts without drawing on its own funds, a return on own funds equal to or less than the debts but with a much higher rate of return would *a fortiori* have been completely impossible in the period 1987 to 1996, all other things being equal. *Ex post,* it does not seem that the 'deferred' investment reflects the behaviour of a prudent investor. Nor have the authorities presented any information on the extent to which, *ex ante* (meaning, from the standpoint of the information available in 1987, in particular the activity and result forecasts drawn up at the time), such an investment appeared to be compatible with the actions of private investor in a market economy. As a result, the fact that the recapitalisation (or part of it) was deferred does not alter its character as State aid.

([1]) OJ C 307, 13. 11. 1993, p. 3.

([2]) A discount rate of 15 % was used at the end of 1996 by the bank advising the authorities in the valuation of Thomson Multimedia.

The Commission notes the example of French case-law presented by the authorities which establish the liability of the public shareholder for liquidation debts over and above any capital contributions to the firm. The Commission and the Court of Justice of the European Communities have in similar cases [1] already rejected the argument extending the responsibility of the State as shareholder for the liabilities arising from a liquidation beyond its share in a company's capital, on the ground that such an extension of responsibility is tantamount to confusing the State's roles as shareholder and those as the body responsible for social policy. In the hypothesis presented by France, the case-law in question does not affect the aid content of such a transaction as the public shareholder, which was aware of this case-law on the basis of the 1985 law on the rehabilitation and statutory liquidation of firms [2], should long ago have taken the measures currently under examination, as well as steps to restructure or wind up the firm at the start of the 1990s. It therefore failed in this instance to act like a prudent shareholder or investor in a market economy, as was requried by the applicable principle referred to above. Apart from this point, the Commission also considers that the authorities have not furnished any proof under the 1985 Law, that the public shareholder could be equated with a *de jure* or *de facto* manager of the company [3]. If that were so, a *de facto* manager would be responsible for the firm's liquidation debts in the event of mismanagement and for the financial consequences of mismanagement. Lastly, the Commission notes that, even if all these unproven elements were established, it would not enable the French State to side-step the application of Article 92 of the Treaty without contradicting the legal principle that a person may not found an argument on his own mistakes.

In view of the nature of the aid, which is aimed at facilitating implementation of the restructuring plan of a firm in difficulty, it would seem, as was indicated at the initiation of the proceeding, that no exemptions other than that in Article 92(3)(c) are applicable in this case. As the transaction in question contains substantial aid components, it is necessary in order to establish its compatibility with the Treaty to determine whether the measures in question qualify for the only possible exemption in this case, namely that under Aricle 92(3)(c) and, in so far as the measures are aimed at assisting a firm in difficulty, their compatibility must be assessed under the sepcific rules on restructuring aid.

The Commission guidelines on State aid for rescuing and restructuring firms in difficulty provide that, in order for such aid to be compatible with the Treaty, several conditions must be satisfied: the aid must be linked to a restructuring plan aimed at restoring the firm's long-term viability within a reasonable time-scale and on the basis of realistic assumptions as to its future operating conditions. The firm must thus obtain a minimum return on capital such that, once restructred, it will not require further assistance from the State and will be able to compete in the market place on its own merits. In addition, measures must be taken to offset, as far as possible, adverse effects on competitors; the aid must be proprotionate to the costs and benefits of restructuring and, lastly, the plan must be implemented in full, taking account of any obligations imposed by the Commission.

In order to determine whether the measures to assist Thomson Multimedia presented by the French authorities satisfy those conditions, the Commission sought the services of an independent consultant (hereinafter referred to as 'the consultant') who, with the full cooperation of the French authorities and the firm, carried out an analysis in April/May 1997 of the restructuring plan for Thomson Multimedia. The Commission has forwarded the conclusions of the consultant's report to the French authorities, which have not contested them.

Feasibility of the plan

According to the initial assumptions of the 1997 to 1999 plan submitted by the French authorities to the Commission in March 1997, which extended the three-year plan for 1996 to 1998 drawn up by the firm at the end of 1996, turnover would rise strongly. It would increase from FRF 39,3 billion in 1996 to FRF 46,7 billion in 1999, giving a growth of 6 % per annum over the period (see Table B). At constant figures, taking account of the extra turnover generated by the recovery of revenue from patents and licences, turnover would have gained 16 % over three years — about 5 % per annum. The predicted growth was especially high in view of the fact that prices for the group's leading consumer electronics products are falling owing to the price war between manufacturers. With regard to the new digital products (digital decoders and DVDs), the growth initially forecast by the company was much higher, in the region of 40 % per annum in 1997-98.

[1] Cf. in particular Commission Decision 94/1073/EC concerning Bull, OJ L 386, 31.12.1994, p. 1, and the judgment of the Court of Justice in Joined Cases L-278/92, L-279/92 and L-280/92 *Hytasa* ECR I-4103 *et seq.*, paragraph 22.

[2] Law of 25 January 1985 on the statutory rehabilitation and liquidation of firms, Articles 179 and 180, Journal officielle de la republique française, 26 January 1985.

[3] Reference may be made to the comments of Professor Guyon in the 'Versailles Court of Appeal' case of 29 November 1990, D 1991, p. 133, stating that the fact that the State appoints one or several members of a company's management board is not sufficient to make it a '*de facto* manager'.

The Commission expressed doubts as to whether those forecasts were realistic, and questioned France on the price assumptions used for the Thomson Multimedia forecasts. By letter dated 26 May 1997 to the Commission, France stated that the forecasts had been based on current prices, and thus took account of price reductions of 3 to 8 % per annum on television sets and video recorders, and far greater reductions for the new digital products. In view of the constant fall in prices, it would seem that the expected increase in turnover was particularly ambitious, reflecting a real level of growth of two decimal points. According to the authorities, however, the increase in turnover would not be due to a higher volume of sales but to the group's shift to the top-range products. France also informed the Commission that the company's forecast sales of new digital products had been revised downwards at the beginning of 1997.

The Commission questioned France about the consequences in terms of result that would ensue from a freeze at present levels of the group's share of the market for its core products, or from a postponement of the development of new digital products for a year. According to the French authorities, such a scenario would result in a annual decline in turnover of FRF 1,1 billion by 1999 and a fall in profits of some FRF 200 million.

The consultant considered that, overall, the price assumptions were realistic and accordingly modified them only slightly. On the other hand, the consutlant's analysis casts doubt on the reliability of the turnover predictions, for several reasons. The firm's commercial position is weak in the regions of strong growth, Asia and Eastern Europe. Nor should further significant growth be expected in the USA in the period 1997-99, in view of the predicted maintenance of market share and the downward revision made in early 1997 of the forecasts for the new digital products. In Europe, the predictions concerning the recovery of market share for its core products appear to be very unrealistic owing to Thomson Multimedia's very weak trading position. The firm has been weakened in Europe by the fragility and dispersal of its brands (Brandt, Saba, Telefunken, Nordmende, Feguson), none of which is capable of competing with leaders such as Sony or Philips. The firm's commercial strategy is aimed at rationalising its brands by reducing their number and promoting the Thomson brand in particular. However, the commercial repositioning is only partially underway, Thomson having only a very small market share, of 1 % or less, in the United Kingdom, Germany and Italy, and is not backed by advertising expenditure comparable to that of its competitors. The Commission considers that account should also be taken of the fact that repositioning on one or two brands is a lengthly process which is liable initially to result in the loss of additional market shares. In addition, the production-market link in Europe is highly inadequate, with production reacting to market information far too slowly (three months on average for Thomson Multimedia agaisnt three to five weeks for its main competitors).

These factors prompted the consultant to review the sales forecasts for Thomson Multimedia worldwide, in the USA and, in particular, in Europe. Instead of consumer electronic sales (excluding television tubes) of FRF 22,7 billion in the USA and FRF 12,3 billion in Europe by 1999, the revised figures are FRF 22,2 billion and FRF 10,1 billion respectively. In Europe, the main difference in relation to the company's forecasts concerns the predicted sales of television sets, the market share remaining at the 1996 level (some 11 %) instead of the recovered share predicted by the company. At consolidated level, the group's turnover would rise to FRF 43,3 billion in 1999 — FRF 3 billion less than was predicted in the most recent version of the firm's plan. The revised figure, however, still predicts a growth of 10 % over the three years of the plan, or a little over 3 % a year. In real terms, taking account of price reductions averaging over 5 % a year in the consumer electronics sector, the revised scenario is still, in the opinion of the Commission, an ambitious aim for a group whose market shares have been eroded in the last two years.

Viability of Thomson Multimedia

As the Commission indicated in the initiation of proceeding, Thomson Multimedia would have been unable, without the security offered by a public shareholder, to cope with the constant deficits experienced in the 1990s and the accumulation of debt, reaching some FRF 16 billion by the end of 1996. Thomson Multimedia and its parent would gradually have lost their access to the financial market and would today be completely excluded in view of the group's negative net result (FRF 2,8 billion of deficit for Thomson Multimedia at the end of 1996).

The capital injection of some FRF 11 billion notified by France is not in itself sufficient to restore the viability of the group: an overall calculation shows that, even by reducing indebtedness by an amount corresponding to the projected recapitalization, the firm will save some FRF 700 million a year, or considerably less than the deficit recorded in 1996 in respect of both the current result (− FRF 1,5 billion) and the net result (− FRF 2,7 billion in 1996, taking account of large provisions for restructuring). As a result, the viability of the company can be established only by taking account of the commercial and industrial aspects of the firm's restructuring plan.

In order to identify the level of profitability at which Thomson Multimedia can be considered viable, the Commission takes two factors into account. The first step is to verify that the firm's rate of return is considerably higher than the cost of indebtedness, otherwise the debt/equity ratio will be negative and the firm will be unable to finance itself through indebtedness without jeopardizing its profitability, as the preceding years have shown. France informed the Commission that the interest rate used to calculate the marginal impact of any variation in indebtedness was 6,5 % over the life of the restructuring plan. But this is not sufficient, as Thomson Multimedia is obliged to reduce its debts and secure a normal return on own funds in order to attract risk capital, which implies a risk premium, given the position of the firm, based on the rate of interest on the indebtedness. The documents communicated by France to the Commission on the discount rate applied to the valuation of Thomson Multimedia by the merchant banks advising the Treasury and Thomson in 1996 show that the rate was of the order of 15 %. The Commission would therefore be entitled to expect the firm to show a rate of return (return on equity) in the region of the 15 % target by the end of the restructuring plan submitted by the French authorities. In any event, in order to guarantee long-term viability, the rate would have to be at the top end of a range starting at 6,5 % (the cost of indebtedness) and rising to the target 15 % (the cost of own funds, according to the advisory banks). In view of strong competition in the consumer electronics markets, the price war being waged between the leading manufacturers and the need for considerable financial resources to invest in the new generations of products, only a high level of profitability will ensure the long-term viability of the firm, even in adverse market conditions.

From an industrial standpoint, it would seem that the group's lack of competitiveness is related to three main factors: (i) high labour costs in the USA and Europe compared with Asian producers; (ii) the large number of production plants, resulting in insufficient runs to amortize fixed costs; (iii) too many range references. The measures taken under the restructuring plan presented to the Commission are aimed at remedying the situation. The closure of Thomson Multimedia plants in the US and Canada is underway and production capacity is being concentrated in Mexico. In Europe, the decision has been taken to close the Celle and Hanover sites in Germany, production being gradually transferred to Angers in France and Tarancón in Spain. The Commission attaches considerable importance to such measures being prepared and concluded, when they become unavoidable, in a context of real social consultation, and notes that according to the information sent by France, an agreement with the trade unions was concluded in April in Germany. A similar protocol of agreement was signed in January with the union at the Prescott plant in Canada, and social consultation is underway with the workforce of the plants to be closed in the United States. The Commission also notes that the plants at Celle and Hanover were located in the region of Hanover which is not eligible for regional aid under Article 92(3)(a) and (c), and that the French authorities state that those plants did not benfit from State aid.

According to the data submitted by the French authorities, the social plan involving 10 640 employees wills produce an overall cut in the group's workforce of 4 000 persons, taking account of recruitment predictions, in particular at the production plants to which other production divisions will be transferred in part. This accounts for a 12,3 % reduction in the overall workforce in three years. In view of the estimated increase in turnover (3 % a year according to the Commission's consultant), and assuming that the share of added value in turnover remains stable, apparent productivity (value of output, excluding the effects of volume) would rise by some 7 % a year. The Commission notes that such objectives are ambitious but there is no evidence that they will enable Thomson Multimedia to reach the productivity levels of its competitors. In the opinion of the consultant, the margin gained on production costs under the plan would be competely absorbed by 1999 by the fall in prices. The consultant considered, however, that taken as a whole, the industrial plan submitted by the firm and the French authorities would produce an industrial structure capable of putting the group on the same footing as its chief competitors, and that the rationalisation of product ranges would improve the performance of production units in their area of specialisation.

The industrial structure should, in the opinion of the consultant, be capable of withstanding a pessimistic outlook which could jeopardize the group's production schedule: thus if the group sells 600 000 fewer television sets in Europe and Asia than planned (meaning 20 % below the plan), it would not have to review its industrial organization. The flexibility of the television production plants, especially in Europe where the commercial risks are highest, would make it possible to avoid an additional

restructuring plan owing to the ratio of variable to fixed costs, the flexibility of the Tarancón plant in Spain and the ability of management to adapt the capacity of the plant being build in Poland to meet production trends. Such flexibility and the high variable costs in relation to fixed costs would allow the company if necessary to reflect only a small part of any foreseeable loss in turnover in its result.

The precariousness of the recovery plan mapped out for Thomson Multimedia is, however, evident in the activity forecasts: activity in the television sector (excluding sales of tubes) is expected to remain in deficit until 1999, both in the US and in Europe. In the US, the loss would be offset by 1999 by the results obtained for other products, in particular the range of new digital products. This would not be the case in Europe, which is predicted to be loss-making overall. It is only at the consolidated level, taking account on the one hand of the margins obtained on tube sales (Thomson Mutlimedia sells about half its output of cathode ray tubes for television sets to other manufacturers), and on the other hand of the recovered income from licences and patents, that Thomson will be able to show a profit in 1999.

The firm provided the consultant with a new scenario drawn up in the spring of 1997 on the basis of a downward correction of some of its sales projections. The new scenario introduces a substantial change in the returns expected after 1997. An analysis of the changes in relation to the plan initially submitted in March to the Commission calls for several comments. First, Thomson Multimedia, concluding that the initial forecasts for 1997 had already become unattainable, corrected them sharply downwards: turnover falls in value by 2,6 % instead of the expected increase of 7 % a swing of nearly 10 % against projections. The radical downward revision in the first year of the plan confirms the precariousness of the projections and introduces an element of doubt concerning 1998 and 1999, as the risk of divergence from initial projections increases with time.

Secondly, although the firm has not taken account of the fragility of the projections and corrected all the sales projections downwards, it nevertheless predicted a recovery in 1998 and 1999, characterised by a 10 % increase in turnover in each of the two years, to make up the loss of growth in 1997. The volume growth of sales could thus be far higher than these figures, judging by the predicted 5 % reduction a year in the group's prices. In a market that has reached maturity and where growth is slow, the forecasts for 1998 and 1999 are not, in the opinion of the Commission, realistic.

Table D

Variations on restructuring plan projections

INITIAL PROJECTION

(million FRF)

	1996	1997	1998	1999
Turnover	39 284	42 024 (+7 %)	44 314 (+5,4 %)	46 692 (+5,4 %)
Operating results		134	756	1 994
Net result after tax		− 961	− 227	393

THOMSON MULTIMEDIA'S CORRECTED SCENARIO

(million FRF)

	1996	1997	1998	1999
Turnover	39 284	38 257 (− 2,6 %)	42 068 (+ 10 %)	46 029 (+ 9,4 %)
Provision for general liabilities		− 190	− 297	− 784

NB: the abovementioned provision for general liabilities is already included in the operating result predicted by the firm and should therefore not be deducted from it. According to the firm the results are not affected by the revised sales projections because of an even greater reduction in charges; they are therefore in line with the intial projections.

CONSULTANT'S SCENARIO

(million FRF)

	1996	1997	1998	1999
Turnover	39 284	37 785 (– 2,6 %)	39 965 (+ 5,7 %)	43 344 (+ 8,4 %)
Operating result		55	303	1 440
Net result before tax		– 1 070	– 570	530

NB: in the consultant's scenario, the margin includes a provision for the firm's general liabilities. The variants introduced by the consultant (see Table C) introduce an additional corrective amount, which is therefore set off not against the provision but the result.

Thirdly, the firm has included in its revised projections an overall provision for general liabilities ('risk assessment') which is to increase from FRF 190 million in 1997 to FRF 784 million in 1999. This provision was integrated upstream of the forward operating result, which has not been altered. Neither Thomson nor the French authorities have clearly indicated the parameters for the savings achieved, in relation to the plan submitted in March to the Commission, which would enable the result initially forecast to be maintained with a provision of this size. However, in view of the considerable risk of slippage from projections described above, the overall provision appears to be justified, as a precautionary measure.

The projection drawn up by the consultant includes his own variants (see Table E) on the Thomson Mutlimedia projection. It retains the provision for general liabilities as the projection is a mid-range forecast and a margin of safety is thus prudent. In addition, in so far as the firm's forecast activity from 1997 has had to be revised downwards, the consultant considered it advisable to retain the provision. In view of all these factors, the net result before tax would be FRF 530 million in 1999, or 7,6 % of equity at that time. Although such a rate of return is still not very high, it is higher than the minimum needed to deal with the group's indebtedness and guarantee the viability of the firm in the short term, but is insufficient, before the additional undertakings given by the French authorities (see below), to demonstrate its long-term viability. The projected result is not, despite the sharp downward revision of projected turnover, as severe as might have been expected. The moderate correction is explained by the predominance of variable costs over fixed costs which, below a given threshold, means that only a minor fraction of the profit lost on sales is deducted from the margin. If, however, sales fell considerably below the projected level, the variation in the result could be far more sensitive to the variation in turnover, as that would imply a review of the industrial structure.

Table E

Variations on the company plan

(million FRF)

	Variation in turnover	Variation of operating result
	Impact 1999	Impact 1999
Sales Europe	– 2 118	– 488
Sales US	– 778	– 69
Total impact	– 2 896	– 557
Additional opportunities:		
Rationalization of product range		+ 35
Reduction of the *frozen zone* (production-market time-lag)		+ 50

The consultant concluded on that basis that the firm would have difficulty in withstanding an economic reversal or the financing of more sustained expansion. Although the competitors of Thomson Multimedia are also experiencing problems with profitability — although less severely owing to the fall in prices — the leading consumer electronics firms are all part of multinational groups present in other sectors, with a total turnover of FRF 200 to 400 billion (five to ten times the turnover of Thomson Multimedia) and the capacity to cushion fluctuating consumer electronics sales and margins owing to their diversification. As long as Thomson Mutimedia remains isolated, it will have difficulty in withstanding crises on the market and, indeed, in investing in order to benefit fully from the development opportunities offered by new products.

On the basis of the forecast results, the fragility of which is demonstrated by the slippage that already occured at the beginning of 1997, and which are therefore to be treated with caution, the Commission considers that the long-term viability of Thomson Multimedia, as an independent firm, was not fully established by the restructuring plan submitted to the Commission in March 1997, prior to the additional undertakings given by the French authorities by letter of 17 September 1997 (see below). It should be noted that, although provision has already been made for the costs of the restructuring plan in the 1996 accounting year, the firm will continue to show a loss in 1997 and 1998; the return to profitability in 1999 will still be insufficient to give the firm effective, long-term autonomy in terms of margins and self-financing. Additional internal restructuring will therefore be necessary in order to provide lasting viability. The cost of the extra measures, aimed at improving long-term profitability, could again burden the short-term profitability of Thomson Multimedia. In those circumstances, the Commission takes the view that only one or two solid industrial partners, bringing industrial or commercial synergies to Thomson Multimedia's core products and providing the right conditions for the internal consolidation, are likely to ensure the long-term viability of the firm. Such parnerships will enhance the value of the group's existing distribution networks, in particular in areas where it is well known, such as North America. They could also enable Thomson Multimedia to offer new products and services without having to bear the full development costs and to find new commercial outlets for its existing products and improve the return on investments. By thus increasing added value without injecting fresh capital it should, over the period of the restructuring plan, be possible to increase the group's margins appreciably, especially its rate of return in relation to capital. It would thus attain the normal level of return expected by a prudent investor and would pursue the debt reduction started by the present recapitalisation. The undertaking given by France concerning partnerships, as set out in point (a) of Article 1(3) of this Decision, helps to dispel the doubts previously raised by the Commission as to the long-term viability of the firm. The Commission also notes that the fact that the French authorities have confirmed that they view the recapitalisation notified to the Commission as a capital injection in full and final settlement and do not plan to grant any further aid reflects their confidence in the viability of Thomson Multimedia after recapitalisation.

Prevention of undue distortions of competition

In view of the abovementioned distortions of competition in sales of colour television sets in Europe, the plan presented by the French authorities, which forecasts the recapture of market shares in this area, is liable to heighten tension on this market and fails to provide for measures taken by competitors to counter any distortions of competition they may suffer. Accordingly, the plan cannot be accepted as it stands and Thomson Multimedia must limit its share of the market for colour televisions in Europe. The Commission takes the view, on the basis of the work carried out by the consultant, that limiting the firm's market shares on the market for colour television in Europe is not only necessary but also more realistic and is, account being taken of the production flexibility for colour televisions, more compatible with the viability of the firm. The Commission also considers that limiting market shares is the most appropriate method in this particular case of avoiding undue distortions of competition whilst maintaining the necessary flexibility to take account of market trends, owing to the possibility of subcontracting the manufacture of television sets to other companies.

The Commission takes note of the new undertakings given by the French authorities in the letter dated 17 September 1997 from the Minister for Economic, Financial and Industrial affairs, as set out in point (b) of Article 1(3) of this Decision. It considers that, by freezing Thomson Multimedia's share of the coulour television market in the Community at 10 %, which is 1 % less than the lowest historical level reached by the group in 1996, the distoring effects of the aid will be significantly offset.

Proportional nature of the aid

According to the forecasts submitted by the French authorities by letter of 26 May, the balance sheet in 1999 will be composed of FRF 8,2 billion of own capital and a

net indebtedness of FRF 8,6 billion — a ratio of net indebtedness to own funds that is close to one. On the basis of the downward correction calculated by the Commission's consultant which predicts greater losses in 1997-98 and lower profits in 1999, the ratio is closer to 1,25 in 1999, indicating a balance-sheet structure with relatively little elasticity.

As a result, the capitalisation of Thomson Multimedia will continue to be unfavourable in comparison with its main competitors in 1999. The recapitalisation measures notified by France will thus not have the effect of giving Thomson Multimedia surplus financial resources in relation to its main competitors. Furthermore, the firm is contributing with all the financial means at its disposal to the financing of the restructuring plan; it has already made provision for the main industrial costs in its accounts for 1996 before it could benefit from the fresh capital injection by the State. In the period 1997-99, self-financing will cover all the firm's investment requirements and 35 % of total financial requirements (including debt reduction amounting to FRF 9 billion), the borrowing requirement (65 %) being covered by the recapitalisation of some FRF 11 billion. The Commission also considers that the aid is limited to the minimum strictly necessary: the net result before tax would be reduced by FRF 65 million for each billion not injected, which would place the firm even further away from its targets, in terms of margins. The solution to an improvement in the financial structure of Thomson Multimedia does not, however, lie in additional funding, which would redude its profit-captal ratio owing to the poor operating margins. The answer lies more in structural measures enabling margins to increase as debt is reduced.

VI. CONCLUSIONS

At the end of the proceedings initiated on 18 December 1996 in respect of the recapitalization of Thomson SA, which is intended to benefit Thomson Multimedia, and the transfer to the State of shares in Crédit Lyonnais held by Thomson SA, the Commission came to the following conclusions:

1. Transfer to the State of the Crédit Lyonnais shares held by Thomson SA

The over-value assessed at 30 % of the price paid by the State for the Crédit Lyonnais shares held by Thomson SA constitutes aid of FRF 145,6 million. The unnotified aid, confirmed by the authorities on 20 May 1996 when the agreement between the State and Thomson was signed, precedes the restructuring plan for Thomson Multimedia notified to the Commission in October 1996. From the point of view of the State, it constitutes an irrecoverable loss of earnings. The aid was eligible only for the exemption in Article 92(3)(c), the one possible derogation for the measures in question. However, France failed to provide the Commission with any reasons why the latter should conclude that the aid, at the time it was agreed, was compatible with the Treaty under the exemption in question. The illegal aid is thus also incompatible with the Treaty.

2. Recapitalization of Thomson SA and Thomson Multimedia

Thomson Multimedia, the recipient of a capital injection of some FRF 11 billion in Thomson SA notified by the French authorities would appear to be in a precarious situation even by 1999 when the recapitalisation and the restructuring plan are completed. The group has considerable advantages notably technological skills, which place it in a favourable position with regard to the arrival on the market of new digital products. The firm, however, will still be incurring losses in 1999 on its main product (television sets), and is particularly vulnerable in Europe, where its commercial position is insecure. The industrial restructuring and reorganisation are necessary but there is no certainty that they will suffice to restore long-term viability. Further gains in productivity will have to be identified. In view of these factors, the profitability that can reasonably be expected will have difficulty in ensuring the group's long-term viability if the firm does not conclude solid partnerships providing Thomson Multimedia with the industrial and commercial synergies it needs to withstand strong international competition on the consumer electronics market. The Commission regards such partnerships as an essential condition to its conclusion that Thomson Multimedia will be viable. In view of the undertaking given by the French authorities that such partnerships will be entered into before the end of 2 000, the Commission can conclude that such viability exists.

The Commission considers that the projections contained in the initial restructuring plan concerning the group's colour television sales in Europe are not only intrinsically unrealistic but are incompatible with the common market in as much as they predict that market shares will be regained, in a loss-making situation. This would not be possible without the notified aid. In a market with a current capacity take-up level of about 85 %, the introduction of such a strategy would result in significant distortions of competition. The objectives therefore need to be revised downwards, taking account of the most recent undertakings given by the French authorities that the share of the television market held by Thomson Multimedia will be limited to a maximum of 10 % of the Community market for televisions.

In view of the foregoing, and provided that the recent undertakings given by France, as set out in Article 1(3) of this Decision, are fully implemented, the Commission considers that the aid contained in the notified recapitalization of some FRF 11 billion qualifies for exemption under Article 92(3)(c) of the Treaty and Article 61(3)(c) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

1. The assistance granted by France to Thomson SA in the form of an overvalued price for the acquisition from the latter of a 3,01 % capital holding in Crédit Lyonnais constitutes State aid within the meaning of Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement. The aid is illegal and is incompatible with the common market within the meaning of Article 92(2) and (3) of the Treaty and Article 61(2) and (3) of the EEA Agreement.

2. The capital injection of FRF 11 billion into Thomson SA, for the benefit of Thomson Multimedia, constitutes aid within the meaning of Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement. The aid is compatible with the common market and with the EEA Agreement by virtue of Article 92(3)(c) of the Treaty and Article 61(3)(c) of the EEA Agreement, provided that France fulfils the undertakings set out in paragraph 3 and the conditions described in paragraph 4.

3. France hereby gives the following undertakings:

(a) by the end of 2 000, Thomson Multimedia shall conclude strategic partnerships on an industrial basis with a view to strengthening its viability and ensuring its long-term development in its present areas of specialisation and in growth sectors;

(b) Thomson Multimedia shall, until 31 December 2000, limit its share of the market for television sets to a maximum of 10 % within the Community; in order to maintain profitability, the group shall take all the necessary steps to reflect this commitment in the development of its production plant, as regards both existing and planned capacity. With regard to television sets in the United States of America, and other group products in Europe and the United States, the group shall rigorously restrict any increase in market share during the period 1996-98 to the objectives defined in the recovery plan presented to the Commission;

(c) within the next few months, Thomson Multimedia shall, in addition to the industrial recovery plan, take steps to improve its commercial policy and brand policy along the lines advocated by the Commission consultant;

(d) the Commission shall receive a six-monthly report on the implementation of the recovery plan and on compliance with the abovementioned undertakings.

In addition, the French Government shall confirm that it views the recapitalisation notified to the Commission as a capital injection to settle all outstanding accounts and that it does not therefore plan to grant any further aid in future (with the exception of aid in the Community interest such as research and development aid); in the event of unforeseeable circumstances justifying a capital contribution on terms satisfying a prudent investor, the French Government shall inform the Commission thereof in advance and shall comply with the relevant provisions of the Treaty.

4. To ensure that the aid is compatible with the common market, the French Government shall comply with the following conditions:

(a) Thomson SA shall allocate the entire sum intended for its recapitalisation to the recapitalisation of Thomson Multimedia and shall use the aid only for the purposes defined in the plan;

(b) Thomson Multimedia shall carry out the restructuring measures in the 1997-99 plan submitted to the Commission and shall not alter the conditions set out therein, after taking account of the conditions imposed by this Decision, without seeking the prior approval of the Commission;

(c) the French authorities shall provide the Commission each year with the social accounts of Thomson SA and Thomson Multimedia;

(d) the undertaking to limit shares of the market for television sets purusant to point (b) of paragraph 3 means limiting the share to 10 % by value of the market for televisions in the Community;

(e) monitoring of the undertaking given in point (d) of paragraph 3 shall cover all the group's products worldwide throughout the period of the restructuring plan and, as regards television sets in the Community, until 31 December 2000. It shall include production trends, sales and market shares held by Thomson Multimedia in Europe and worldwide; it shall include indicators comparing the prices of its main products in relation to those of its competitors in Europe. Such monitoring shall be carried out on the basis of specifications on which the Commission shall be consulted, and shall be entrusted to an independent expert appointed to that end in agreement with the Commission;

(f) the French authorities shall inform the Commission in detail of any changes affecting Thomson SA and Thomson Multimedia;

(g) save in unforeseeable exceptional circumstances occurring outside the firm, the recapitalization shall be granted to Thomson Multimedia as a full and final payment; the French authorities shall not grant any further aid to that firm in the future (with the exception of aid in the Community interest such as research and development aid);

(h) the carry-over of losses giving entitlement to tax credits shall comply with point 3.2.2(c) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty. In particular, members of the Thomson SA group may not benefit from the carry-forward of tax losses prior to 1997 incurred by Thomson Multimedia in the amount of the tax losses covered by the capital increase notified to the Commission.

Article 2

France shall require the repayment from the blocked account opened for the purpose of the present transaction of the excess value amounting to FRF 145,6 million corresponding to the element of State aid contained in the proceeds of the transfer to the State of the Crédit Lyonnais shares held by Thomson SA, namely 3,01 % of the capital or FRF 482 million. The *pro rata* financial income generated by the excess value on the blocked account shall also be recovered.

Article 3

France shall inform the Commission of the measures it has taken to comply with this Decision within two months of its notification.

Article 4

This Decisision is addressed to the French Republic.

Done at Brussels, 1 October 1997.

For the Commission

Karel VAN MIERT

Member of the Commission