COMMISSION DECISION

of 20 July 1999

concerning presumed aid allegedly granted by France to Sécuripost

[notified under document number C(1999) 2537]

(Only the French text is authentic)

(Text with EEA relevance)

(1999/676/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

I. Facts and procedure

(1) The judgment of the Court of First Instance (CFI) of 28 September 1995 in Case T-95/94 [1] annulled the Commission decision of 31 December 1993, by which it had declared that various measures affecting the French post office's subsidiary Sécuripost, a firm operating on the market for the secure transportation of moneys, and about which a complaint had been lodged by the Chambre syndicale nationale des entreprises de transport de fonds et de valeurs (Sytraval) and by Brink's France SARL (Brink's) did not constitute state aid within the meaning of Article 87 (formerly Article 92) of the Treaty. The Commission brought an appeal against this judgment but this was dismissed in its entirety by the Court of Justice on 2 April 1998 in Case C 367/95P [2]. The Court acknowledged that the pleas put forward by the Commission in support of its appeal were partly founded. However, it also held that the contested decision was marred by deficiencies in the reasons given which were in themselves sufficient to justify its annulment.

(2) It should be noted that the original complainants (Sytraval and Brink's) did not take part in the appeal.

(3) The file which is the subject of the present decision concerns the measures taken by the French State, either directly or through the post office, to assist Sécuripost prior to its transfer to the private sector, authorised by the French Government in 1993. On account of an inadequate statement of reasons on a number of points, the Court of First Instance judgment annulled the Commission decision of 31 December 1993 finding that no state aid was involved. Consequently, the Commission initiated the procedure under Article 88(2) (formerly Article 93(2)) of the Treaty in respect of the measures concerned by those points, so as to examine them in the light of Articles 87 and 88 of the Treaty and to decide whether they were compatible with the common market.

(4) The decision initiating the procedure was published on 22 October 1996 in the *Official Journal of the European Communities* [3], giving notice to the other Member States and interested parties to submit their comments on the measures concerned to the Commission within one month of the date of publication.

(5) In that decision, the Commission called on the French authorities to provide, *inter alia*, all the data on the aspects highlighted by the Court of First Instance and to send any other information and observations they considered relevant in the light of the Sytraval judgment in order that the Commission could assess the measures in question pursuant to Articles 87 and 88 of the Treaty.

(6) The French authorities were informed of the Commission decision to initiate the procedure by letter of 26 June 1996. By letter of 12 September 1996, they sent the Commission a note providing a range of information on the points raised by it when it initiated the procedure. Additional information was provided, at the Commission's request, in a number of subsequent letters. The last of these letters reached the Commission on 28 October 1998.

(7) The complainants did not intervene during the procedure and did not submit any comments. No other interested party or Member State besides France submitted comments.

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[1] [1995] ECR II-2651.
[2] [1998] ECR I-1719.
[3] OJ C 311, 22.10.1996, p. 12.

II. **The measures concerned**

(8) The points in the Commission decision of 31 December 1993 which were raised by the Court of First Instance related to the following measures.

(a) *Secondment of officials to Sécuripost*

(9) The Court of First Instance held that the fact that the officials seconded to Sécuripost by the post office may at any time be reassigned to the department originally employing them if staff reductions prove necessary in the undertaking to which they are seconded, without that undertaking having to pay in such circumstances any compensation for redundancy whatsoever, constitutes an objection to which the Commission did not respond, resulting in an inadequate statement of reasons.

(b) *Absence of contributions by Sécuripost to unemployment insurance funds*

(10) The Court of First Instance concluded that, on this point, the reasons given in the contested decision were inadequate in so far as the Commission acknowledges that 'no contributions need to be made to unemployment insurance funds in respect of the employment of officials on secondment, since their employment is guaranteed by their status as officials'. Since it did not explain why this difference between the system applicable to Sécuripost and that applicable to its competitors did not constitute aid, the Commission's statement of reasons was inadequate.

(c) *Placing of premises at Sécuripost's disposal*

(11) The Court of First Instance held that 'Sécuripost's premises are made available to it within the framework of the special system of precarious occupancy, and that, in its decision, the Commission provided no details regarding either the rents actually charged to Sécuripost, or those which Sécuripost's competitors have to pay for comparable premises'. The Commission did not therefore compare the rents actually charged to Sécuripost and those payable by its competitors for comparable premises, which the Court of Justice considered to be a manifest error of assessment.

(d) *Maintenance of Sécuripost vehicles by SNAG*

(12) The Court of First Instance held that the fact that SNAG (the post office's workshop and garage service) uses an invoicing system similar to that used by private garages was insufficient to rule out the presence of state aid under the Treaty.

(13) It reproached the Commission for not having examined whether or not the rates charged disclose the existence of state aid. Its judgment calls for a comparison of the rates charged by SNAG and the rates charged by private garages for similar services. The Court of Justice confirmed the CFI's analysis, considering that the Commission had committed a manifest error af assessment.

(e) *Loan of FRF 15 million granted to Sécuripost for the financial year 1989*

(14) The Court of First Instance considered inadequately reasoned the Commission's statement that the loan was granted within the framework of a global agreement between the companies in the Sofipost group and that the interest rate applied was half a percentage point higher than the bank base rate.

(15) The Court of First Instance explained that 'the fact that the transaction was of a commercial nature is not in itself sufficient to show that it does not amount to state aid within the meaning of Article 92 of the Treaty, since such a transaction may none the less be effected at a rate which gives Sécuripost a special advantage by comparison with its competitors'.

(16) The Commission should therefore have examined whether the rate applied was in line with the market rate and, since it did not do so, the Court of Justice considered that it had committed a manifest error of assessment.

(f) *Rates charged by Sécuripost to the post office*

(17) The Court of First Instance reproached the Commission because it had 'merely compared the prices charged with the provision of services to the post office and to Casino, (...) the comparison was based solely on the information relating to 1993, and (...) no attempt was made to justify or clarify it.... Furthermore, there was a steady fall in the rates charged by Sécuripost to the post office between 1987 and 1993, in accordance, in particular, with the framework agreement between the post office and Sécuripost of 30 September 1987, thus further magnifying the differences cited by the applicants'. In addition, 'In the absence of any details regarding the rates charged by Sécuripost to the post office and to other customers in 1987, 1988, 1989, 1990, 1991 and 1992, the Court considers that it does not have at its disposal the requisite information enabling it to review the validity of the contested decision...'. The Court of Justice confirmed this analysis, considering that the Commission had committed a manifest error of assessment on this point.

III. **The information provided by the French authorities**

(a) *Secondment of officials to Sécuripost*

(18) The French authorities maintain, first of all, that recruitment of officials gave rise to an overall additional cost, between 1988 and 1991, of some (...) compared with what would have been the situation if Sécuripost had taken on employees on private-law contracts only. This was because of the much higher salaries paid to the seconded officials than would have been paid to staff employed on contracts subject to private law (for example, in 1990 the average monthly salary exclusive of social security contributions paid to an official working for Sécuripost as a transporter of moneys was (...) as opposed to (...) paid to a Sécuripost transporter of moneys employed under a private-law contract).

(19) As regards the cost of reassigning to their original department officials seconded by the post office to Sécuripost, the French authorities explained that such reassignment gave rise to payment by Sécuripost to the officials concerned of a reintegration indemnity following the breaking of the secondment contract. This indemnity was intended to compensate for the difference between the salary paid to the reassigned official during the period between the date of his actual reassignment and the date originally set for the end of the secondment, on the one hand, and the remuneration he would have been paid if he had remained on secondment at Sécuripost until that original date, on the other. Officials seconded from the post office to Sécuripost (secondment was due to last five years) were paid higher salaries during their secondment and the termination of their employment with Sécuripost therefore gave rise to compensation for the early cessation of these more favourable conditions.

(20) The indemnity paid, on the basis of an agreement negotiated with the unions as part of the redundancy programme, was between (...) and (...) per reassigned official, depending on the date of reassignment. On average, it amounted to (...) per reassigned official.

(21) If Sécuripost, instead of parting with the officials reassigned to the post office, had laid off private-sector employees, it would have had to make redundancy payments. The French authorities calculated the theoretical redundancy payment which Sécuripost would have had to make. The calculation was based on the law applicable to Sécuripost in this respect, i.e. the rules laid down in the collective agreement for the transport sector and the redundancy programme drawn up by Sécuripost. On the basis of the average salary of an official employed by Sécuripost and the rules deriving from the collective agreement, the redundancy payment for an employee on a private-law contract would have been (...). Sécuripost paid a total of (...) to the 235 officials reassigned before 30 June 1991, whereas the total amount in redundancy compensation which would have had to be paid to employees subject to private law but on the same salaries as the officials would have run to (...) × 235 or around (...). The cost to Sécuripost of compensating the officials for their reassignment was therefore higher than the cost it would have incurred if it had made redundancy payments to employees subject to private law.

(22) Furthermore, the French authorities point out that the redundancy payments which Sécuripost would have had to make to employees on private-law contracts were calculated on the basis of the salaries of the seconded officials and that the amounts would have been significantly lower if they had used a lower salary, in line with salaries actually paid to private-sector employees, given the reality of the labour market.

(b) *Absence of contributions to unemployment insurance funds*

(23) The French authorities confirmed that Sécuripost did not have to pay into unemployment insurance funds for the seconded officials since their employment was guaranteed by their status as officials. However, they pointed out that seconded officials are generally subject to social security contributions at higher rates than those applicable to private-sector employees, with the disparity in the rates of employer's contributions in respect of officials and in respect of private-sector employees growing from 1,31 % in 1988 to 7,47 % in 1992. In particular, the rate for contributions to the civil servant's superannuation fund, which correspond to retirement contributions for employees, is considerably higher than the rate applied to private-sector employees.

(24) The French authorities calculated that the extra cost of employers' contributions linked to the employment of officials between 1988 and 1991 totalled (...).

(c) *Placing of premises at Sécuripost's disposal*

(25) The French authorities gave various explanations regarding the circumstances in which Sécuripost was able to rent all or part of its premises from the post office between 1988 and 1992.

(26) First of all, Sécuripost's renting of premises from the post office was a temporary solution and it soon looked for other premises as alternatives to those it was renting from the post office. Of the premises Sécuripost rented for its use, the proportion rented from the post office accounted for 93 % of total rented surface area in 1988, but this had fallen to only 7 % in 1992. The French authorities explained that Sécuripost rapidly gave up the premises rented from the post office because they did not, generally speaking, correspond to its particular business requirements.

(27) The French authorities note in particular that the average surface area of premises rented by Sécuripost from the post office was small (62 m² in 1988), while the premises which Sécuripost subsequently rented on the private market had a significantly larger surface area (324 m² on average in 1992). They also note that the premises were generally dilapidated and unsuitable for the use to which Sécuripost wished to put them. The French authorities gave several specific examples where Sécuripost had rented premises from the post office which were clearly unsuitable for its needs, whether owing to their size, location or fittings.

(28) The French authorities also pointed out that the premises rented by Sécuripost from the post office were public property and had therefore been rented out in accordance with the specific rules governing public property. In particular this meant that Sécuripost was authorised to occupy the premises on a precarious and revocable basis only. The rent for occupying public property is set by the Ministry for Economics and Finance and is calculated using a fixed rate, determined by comparison with the rental value of comparable private property, and a variable rate, determined according to the specific advantage which the occupant gains by occupying the property.

(29) As regards the premises rented by Sécuripost from the post office, the rental charge took the form of a rent set by agreement between the post office and Sécuripost. Since the file dates back such a long way, the French authorities were not able to find all the rental contracts drawn up between the post office and Sécuripost over the period under consideration. None the less, they were able to provide clarification of the rents charged for 43 premises throughout France.

(30) Using this sample, the French authorities sought to compare the rents Sécuripost paid to the post office with those which it would have had to pay for comparable property on the private market. The comparaison was based on the *Cote annuelle des valeurs vénales immobilières au 1er janvier 1988* [4] (annual rating of monetary values of property at 1 January 1988): this publication gives a band of rental values for new and old, renovated and non-renovated property for each French town. It also applies a weighting to assess the rental value of certain types of property (garage, car parks, etc.). The French authorities deducted 25 % from the rental value calculated using the Callon rating for the property that Sécuripost rented from the post office. They explained that a deduction of this size was common practice on the property market in the case of precarious occupancy contracts. According to the information provided by the French authorities, when the value of the property rented by Sécuripost is calculated using the Callon property rating and after reducing the rate by 25 % to take account of the precarious nature of the occupancy agreements, the market price of the 43 premises used in the sample is, on the whole, close to the rent paid by Sécuripost.

(d) *Maintenance of Sécuripost vehicles by SNAG*

(31) The French authorities confirmed that the invoices issued by SNAG for the repair and maintenance of Sécuripost's heavy goods vehicles were based on the rates charged by the dealer network of Renault Véhicules Industriels (RVI), both as regards the hourly rate and the time invoiced. As for the rates, the French authorities compared the reference rates for charging for labour in respect of the repair and maintenance of heavy goods vehicles used in 25 large garages in France (e.g. in Paris, Bordeaux and Orléans). The reference rates are used throughout the heavy goods vehicle maintenance and repair sector in France, including in the private sector. The data provided by the French authorities show that, for the period 1988 to 1992, the average rates that SNAG charged Sécuripost were not significantly different from the rates that RVI charged its own customers.

(e) *Loan of FRF 15 million granted to Sécuripost for the financial year 1989*

(32) The French authorities explained that Sofipost, a post office holding company, granted a loan of FRF 15 million to Sécuripost. It was a short-term loan granted for the period from 21 December 1989 to 23 October 1990. The interest rate applied was:

— 0,55 percentage point above the three-month PIBOR [5] or 11,36 %, in 1989,

— 0,60 percentage point above the three-month PIBOR, or 10,96 %, in 1990.

(33) This rate is highter than the cost of borrowing outside the group borne by Sofipost (i.e. the refinancing rate granted to Sofipost by the banks, which means that Sofipost made a profit by lending on these terms to its subsidiary) and highter than the average intra-group lending rates used by some of the major French commercial and industrial groups. The French authorities explained that the special auditors' reports of various French groups for the year 1989 show that intra-group loans are common practice. These reports also reveal wide disparities in the rates used within different groups (e.g. 5 % for Eurocom as opposed to 15,34 % for BSN). In some groups, loans are granted interest-free or the rate is dependent on the performance of the subsidiary receiving the loan. The rate

[4] Editions Callon, 1988.

[5] The PIBOR (Paris Inter-Bank Offered Rate) is the money market rate, i.e. the annual rate at which banks are prepared to lend to one another for a period of three months. It is calculated on a daily basis by the French Banking Association as the arithmetic mean of the rates reported by 14 representative institutions on the Paris market.

granted to Sécuripost is therefore at the top end of the range of the intra-group lending rates recorded in 1989.

(f) *Rates charged by Sécuripost to the post office*

(34) The French authorities confirmed that Casino was the only Sécuripost customer which could be compared with the post office in that both served a wide geographical area extending across France, and submitted a detailed comparison of the rates charged to the post office and to Casino. The comparison referred to 1993, because the Casino contract had been won in June 1992 as a result of a competitive bid.

(35) The French authorities also explained that, as opposed to what was stated by the Court of First Instance, the rates charged to the post office did not fall steadily but that, on the contrary, the rates charged in 1993, which had been in force since 1 January 1992, were higher than the previous rates, applicable since May 1989. Consequently, using the 1993 rates as a basis for comparison could not help but accentuate any difference between the rates charged by Sécuripost to the post office and the market rates applicable during the period 1989 to 1993.

(36) Before rising in 1989, the rates charged by Sécuripost to the post office had fallen between 1987 and 1989. However, the French authorities pointed out that prior to 1989 Sécuripost had no private customers, and that it was only from 1990 onwards that Sécuripost recorded any significant turnover with its private customers. They also provided the Commission with the delivery rates charged by Sécuripost to major customers other than the post office (and Casino) between 1990 and 1992. These customers were classified by geographical area (urban, suburban, rural) so as to enable a comparison to be made with the rates charged for the post office.

(37) The pricing systems used for the post office and Casino are not identical. For the post office, Sécuripost introduced a pricing system with rates differentiated according to geographical area (urban, suburban, rural). However, the contract with Casino was based on a standard national rate which in 1993 was FRF 163 per delivery.

(38) In order to make a useful comparison between the rates charged to the two customers, the rates for the post office were applied to Casino's delivery structure. This gives a rate of FRF 180,61 per delivery, compared with the standard national rate of FRF 163 offered by Sécuripost to Casino. If we imagine the rates charged by Sécuripost to the post office being applied to Casino, this would increase the charge per delivery by FRF 17,61.

(39) However, the French authorities consider that this difference of FRF 17,61 (or about 11 % of the rate charged to Casino) is largely justified by the extra costs arising from the specific constraints imposed on Sécuripost by the post office.

(40) There are four technical constraints affecting a contract for the transportation of moneys: journey time (dependent on the distance of the collection/delivery site from the central depot and on traffic density), security constraints (number and status of personnel, type of van), operating constraints (e.g. closing time of collection/delivery sites, need to pass by the Banque de France) and other constraints (e.g. national coverage).

(41) The French authorities analysed and compared the contracts which Sécuripost had with the post office and with Casino in the light of the above constraints.

(42) As regards journey time, the French authorities explained that the average distance between sites was 9,91 km for deliveries made on behalf of the post office and 5,08 km for those made on behalf of Casino. Taking account of the standard time spent at each site and of the average speed at which vans travel in urban, suburban and rural environments, the number of sites visited per hour is 3,4 for the post office, as compared with 4,9 for Casino.

(43) As regards security constraints, the post office imposed some which were not imposed under the contracts with Casino. The main requirements were: three security guards to accompany the consignment [6] specific procedures for gaining access to post office premises, and approach and radio procedures. However, the French authorities were not in a position to quantify the effect of these constraints.

(44) As regards operating constraints, the post office imposed a complex route, and waiting times at post offices could be long and were not necessarily always charged for. On the other hand, a standard contract such as that concluded with Casino stipulated an

[6] The French authorities explained that a Decree of 13 July 1979 required the presence of three security guards for any transportation of moneys exceeding FRF 20 000. In its internal rules, the post office adopted a lower threshold: FRF 50 000 and then FRF 100 000.

automatic charge if the waiting time exceeded 10 minutes. In this connection, it should be remembered that unavailable periods added up to 130 minutes for the post office and 30 minutes for Casino. Thus, in a standard eight-hour day, a van on a post-office route has only five hours 50 minutes in which to complete invoiceable journeys, while a van on a standard route such as in the case of Casino will have seven hours 30 minutes.

(45) Other constraints were the obligation to provide a service throughout France and the long payment periods, whereas private customers observed usual market practice. These constraints were not quantified by the French authorities.

(46) It follows that, taking account only of the constraints on journey time and operation, the number of deliveries per day which could be carried out on average by Sécuripost for the post office was (5 h 50 × 3,40), or 19,8 while for Casino it was (7h 30 × 4,9), or 36,75. The number of deliveries which could be made per day for Casino was thus 85 % higher than that for the post office. Furthermore, the average amount charged by Sécuripost for a delivery on behalf of the post office, weighted for the geographical distribution of post establishments, was FRF 264, as opposed to the standard national rate of FRF 163 charged to Casino. By multiplying the number of deliveries per day by the rate charged per delivery, we can calculate the daily income generated by a van working on a post office route as (FRF 264 × 19,8), or FRF 5 227, while a van on a Casino route will bring in an average income of (FRF 163 × 36,75), or FRF 5 990. Consequently, Sécuripost did not overcharge for its services to the post office relative to a comparable customer such as Casino, given the specific constraints imposed by the post office for transporting moneys on its behalf, even though only some of those constraints have been taken into account.

IV. **Assessment**

(47) The Commission examined the information and data provided by the French authorities. It also conducted its own investigations into certain points. On this basis, it considers that the measures concerned do not constitute state aid within the meaning of Article 87 of the Treaty.

(48) In particular, the Commission considers that employing seconded officials did not confer any advantage on Sécuripost. The reassignment to the post office of seconded officials did not confer any advantage on Sécuripost because the amount paid in compensation to the officials when they were reassigned earlier than planned was slightly higher than what would have been paid in compensation if these employees had been recruited by the company as private-sector employees, even without taking account of the fact that employees subject to private law would have earned lower salaries than the officials, these salaries forming the basis for calculating redundancy payments. Moreover, the comparative study of employers' social security contributions for private-sector employees and for officials which the French Government carried out shows that, far from constituting state aid, employing officials entailed extra expense for Sécuripost.

(49) The information provided on the rents paid by Sécuripost for the 43 premises throughout France shows that the rents were generally similar to and, on average, higher than the market rate, taking account of the deduction for the precarious nature of the occupancy contracts drawn up between the post office and Sécuripost. The sample of 43 premises used by the French authorities represents a total surface area of 3 170 m^2; or 35 % (in terms of surface area) of all the premises rented by Sécuripost from the post office in 1988. From the sample we see that the average rent charged for the premises rented by Sécuripost from the post office was (...) in 1988[7]. If we calculate the market value of this sample, and taking account of the deduction applicable on the basis of the precarious nature of the occupancy contracts signed by Sécuripost and the post office, we obtain a market value of (...) in 1988, which is lower than the average rent paid by Sécuripost for the same sample.

(50) The Commission arranged for an expert report to be carried out in order to ascertain whether the deduction applied was really justified: the conclusions of this report show first of all that, since the premises rented by the post office to Sécuripost were public property, they had to be rented on a precarious basis. The report also concludes that, while the precarious nature of a rental contract does not necessarily or automatically justify a deduction by comparison with the market value, the usual practice is to apply reduced rents to precarious private lettings.

(51) Consequently, the French authorities correctly showed that the rents paid by Sécuripost to the post office for 43 of the premises rented were in line with the market value for the rented property. Given that this sample of 43 premises is evenly spread throughout France and represents a significant share of all premises rented between 1988 and 1992 by Sécuripost from the post office, the Commission considers that the French authorities have given sufficient justification to show that the rents paid by Sécuripost to the post office were in line with the market values of the rented property and therefore that no state aid is involved.

(7) This year was taken as the reference year: as explained above, Sécuripost quickly found alternative premises to those rented from the post office after 1988.

(52) As regards vehicle maintenance, the Commission considers that the comparison with RVI rates is appropriate. The RVI network is a benchmark on the market in terms of the network size and market share [8]. The Commission made a statistical comparison of the rates charged by SNAG for vehicle maintenance and the rates charged by RVI. Overall, the rates are generally very similar throughout France: on average, at national level, the gap between the rates never exceeded 4 % over the reference period. On average, between 1988 and 1993, two of the reference rates used were very slightly lower for SNAG than for RVI, although the difference was not greater than 1,5 % and the third rate used was slightly higher for SNAG than for RVI (difference of 1,65 %). These differences in the rates are practically insignificant and lower than the statistical spread observed; the Commission therefore considers that SNAG invoiced Sécuripost for vehicle maintenance at the market rate and therefore that no state aid was involved.

(53) The Commission considers that the terms of the FRF 15 million loan are in line with the terms on which commercial relations between a parent and its subsidiary within a private group are normally conducted. The rate is higher than both the PIBOR and the cost of borrowing outside the group by Sofipost. Sécuripost therefore paid a mark-up to this financial holding company of the post office. In addition, the rate used is towards the top of the band of rates for intra-group loans established on the basis of the annual auditors' reports for 1989. Sofipost's behaviour can therefore be compared with that of a private holding company acting in accordance with market conditions.

(54) As regards prices charged, the Commission considers that the comparison with Casino is the only one which is wholly relevant. Before 1992 Sécuripost did not have any other customers comparable to the post office in terms of the geographical spread of deliveries. In addition, the application of the 1993 prices was cautious since they had been increased by comparison with the preceding period (1989 to 1992). Using the 1993 prices as a basis for comparison was bound, therefore, to accentuate any difference between the rates Sécuripost charged the post office and the market rates between 1990 and 1993. The Commission considers that the statistical comparison carried out by the French authorities, which takes into account only some of the constraints, shows that the rates Sécuripost charged its parent company between 1990 and 1993 were not excessive but were comparable to the rates charged to other customers, bearing in mind the constraints mentioned above. The constraints imposed by the post office and the corresponding charges give a daily income per van lower than that earned with Casino. An analysis of the rates Sécuripost charged customers other than Casino between 1990 and 1992 also confirm that the prices the post office was charged were not excessive: applied to an equivalent geographical structure, the charges for the post office were, taking the average for the period 1990 to 1992, only 0,4 % higher than the charges for these other customers. Sécuripost therefore received no state aid in connection with the invoicing of deliveries for the post office between May 1990 and 1993.

(55) During the years 1987 to 1989 Sécuripost did not register any significant turnover from business with customers other than the post office, and the French authorities were not able to provide data for comparison between the market rates and the rates used by Sécuripost in its business with the post office. None the less, using the charges reported by the French authorities for customers other than the post office for the period 1990 to 1992 the Commission extrapolated the market rates for 1987 to 1989: this gives, for a geographical spread of deliveries equivalent to that of the post office, an estimated market rate of around FRF 248 per delivery. This estimated rate cannot be directly compared to the rate Sécuripost charged the post office because it is extrapolated from rates applied between 1990 and 1992 to customers spread over a smaller geographical area than that covered by the post office. Moreover, since this estimated rate was extrapolated to the period 1987 to 1989 from rates which Sécuripost charged customers other than the post office between 1990 and 1992, it is not appropriate to analyse the annual differences between the extrapolated rate and the rate applied to the post office: only an analysis of the average difference observed over the period 1987 to 1992 between the rate (extrapolated or real) applied by Sécuripost to customers other than the post office and the rates applied to the post office can produce a valid conclusion. That difference was around 5 %. Given the specific constraints imposed for deliveries on behalf of the post office, this difference is not excessive: the Commission therefore considers that the level of the rates Sécuripost charged the post office between 1987 and 1989 did not constitute state aid,

HAS ADOPTED THIS DECISION:

Article 1

The measures taken in respect of Sécuripost and covered in the Commision decision to initiate the procedure [9] namely the secondment of post office officials to Sécuripost, the

[8] 1992 statistics compiled by the French vehicle manufacturers union, the DAFSA study of April 1994 and the June 1996 edition of *Transport Magazine*.

[9] OJ C 311, 22.10.1996, p. 12.

absence of contributions by Sécuripost to unemployment insurance funds, the placing of post office premises at Sécuripost's disposal, the maintenance of Sécuripost vehicles by the Service National des Ateliers et Garages des PTT (SNAG), the granting of a loan of FRF 15 million by Sofipost (a post office holding company) to Sécuripost for 1989 and the rates charged by Sécuripost to the post office, do not constitute state aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 20 July 1999.

For the Commission

Monika WULF-MATHIES

Member of the Commission