COMMISSION DECISION

of 16 November 1999

on aid granted by France to Gooding Consumer Electronics Ltd in connection with the purchase of the former Grundig plant at Creutzwald

(notified under document number C(1999) 4230)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/425/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, in accordance with the abovementioned Articles, given the parties concerned notice to submit their comments,

Whereas:

I. PROCEDURE

(1) Following the publication of various articles in the press, the Commission's attention was drawn to the aid which the French authorities were planning to grant to the former Grundig plant in Creutzwald which had recently been acquired by Gooding Consumer Electronics Ltd (hereinafter GCE).

(2) The information sent by the French authorities at the Commission's request between 16 June 1994 and 29 March 1995 and the documents attached to the letter of 5 January 1995 confirmed that some of the aid had been granted. There are two aid packages: one for research and development (R&D) and one for restructuring (also referred to as back-up aid):

(a) the first package totalled FRF 10 million (ECU 1,52 million), granted under the 'electronics industry' scheme approved by the Commission [1];

(b) the second totalled FRF 36 million (ECU 5,5 million), of which FRF 24 million was provided by the State and FRF 12 million by the regional authorities. In both cases, the aid was granted on an ad hoc basis.

(3) The purchase of the former Grundig plant by GCE was part of a takeover plan which was initiated on 30 March 1994 and had two objectives: to restructure the firm, known as Gooding Electronique SA (hereinafter GESA), and restore its long-term viability. The guidelines for action put forward by the buyer focused on (i) reorienting production (quality mono television sets and introduction of satellite receiver technology, a market with rapid growth potential), (ii) establishing a degree of production security through orders guaranteed by the former shareholder Grundig, (iii) reducing output and employment, (iv) acquiring a very popular brand under which it could sell a large proportion of its own products and (v) creating a distribution and manufacturing network — original equipment manufacturing (OEM).

(4) In 1994, GESA employed 350 persons, i.e. 38 % fewer than the 562 employees of the former Grundig plant.

(5) After restructuring and in order to rationalise the investment, GESA cut capacity to some 300 000 television sets a year against the 578 000 sets produced by Grundig in 1990/91. GCE/GESA were operating on a European market with an estimated output, according to a market study communicated by the French authorities, of 16,7 million colour television sets in 1993. Thus their market share at the time was some 1,74 %. In the same year, demand in the same European market accounted for 21,5 million sets.

(6) On 3 and 25 July 1995, the French authorities informed the Commission that GESA had filed for bankruptcy on 22 June 1995. Other data on the position of the firm and on the compulsory administration and winding-up proceedings subsequently reached the Commission, most recently on 20 October 1997.

(7) On several occasions throughout the examination of this case, the French authorities asked the Commission to take account of recent developments in the legal proceedings before it decided to initiate proceedings under Article 88(2) of the Treaty as such a decision 'could make it more difficult for the firm to recover'.

(8) GESA was granted an observation period of six months, renewable several times, by the Metz Regional Court (Tribunal de grande instance), in accordance with Law No 85/98 of 25 January 1985 on compulsory administration and winding-up proceedings. On 16 April 1997, France informed the Commission that, on 21 February

[1] The Commission decision was communicated to the French authorities by letter of 1 December 1986.

1997, the Regional Court had declared GESA bankrupt. The order was suspended when a buyer, Cofidur, offered to purchase the company. The Court then allowed GESA's assets to be transferred to Cofidur, which set up a new company, Continental Edison which, according to the French authorities, is a completely new company with no attachments to the past.

(9) On 25 June 1997, France informed the Commission that it planned to grant fresh aid to Cofidur, the firm that had acquired GESA's assets. Following its examination of the aid, the Commission decided on 25 February 1998 to initiate proceedings under Article 88(2) of the Treaty ([1]).

(10) On the same day, the Commission decided to initiate proceedings under the same provision in respect of the aid to GESA referred to above. France was informed of this decision by letter of 22 April 1998 ([2]) published in the *Official Journal of the European Communities* on 11 June 1998 ([3]). The Commission gave interested parties notice to submit their comments on the aid in question, but no replies were received either from Member States or from other parties.

II. OBSERVATIONS UNDER THE ARTICLE 88(2) PROCEDURE

Reasons given by the Commission for initiating proceedings

(11) The reasons why the Commission decided to initiate proceedings are as follows:

(a) There was no indication that the transaction proposed by GCE complied with the Community guidelines on state aid for rescuing and restructuring firms in difficulty ([4]) (hereinafter referred to as the 'Community guidelines') as there was no evidence that the restructuring plan submitted could ensure the long-term viability of the firm within a reasonable time. The Commission was doubtful as to the realistic nature of certain assumptions concerning future operating conditions and the formation of the forward accounts, which could call into question the positive results which the firm was expected to achieve at the end of the restructuring. In view of the doubts, it was not possible to conclude that the forward accounts for the next three years and the liquidity forecasts and financing plan communicated by the French authorities were reliable.

(b) No evidence had been provided that competition would not be distorted on the market segment in which GESA had planned to operate, i.e. quality mono television sets with screens in the 37 to 55 cm range, as production was set to double before the end of the restructuring plan.

(c) The failure to complete the restructuring plan owing to serious problems with the supply of components and other difficulties encountered by GESA. The Commission, unlike France, regarded these difficulties as internally generated, i.e. caused by the firm. Furthermore, there was still some doubt as to the shareholder's real intention to carry out the recovery plan it had devised. The doubt was confirmed by the fact that the aid of FRF 10 million granted under the 'electronics industry's' scheme was not paid because of the failure to provide the competent authorities with the necessary administrative certificates, although the research work had been undertaken.

(d) The financial position of the CGE group, a GESA shareholder, appeared not to have been examined in detail by the French authorities. The fact that GCE had in fact ceased to exist could also indicate that it did not have the necessary financial stability. The cessation of business implied that the conditions required by the Community guidelines were unlikely to be satisfied in the future.

Comments presented by the French authorities

(12) By letters of 20 May and 18 June 1998, France forwarded its comments to the Commission.

(13) Firstly, it rejected the Commission's doubts concerning the forecasts on which the firm's return to viability was based. The forecasts were not unrealistic, as the niche for small screens was set to expand owing to the gradual increase in the number of television sets per household. Furthermore, the strategy was that Asian imports would be partially replaced by GESA's products in response to specific demand from large-scale distributors.

(14) According to the French authorities, the increase of over 80 % in turnover between 1994 and 1996 is explained by the very low initial turnover (1994) in comparison to Grundig's output. They also pointed out that GESA had not been handicapped by a lack of orders but by the difficulty of honouring them owing to external difficulties during that period. The difficulties had been caused by a shortage of cathode ray tubes following an industrial accident at one of GESA's main suppliers.

([1]) OJ C 198, 24.6.1998, p. 12.
([2]) SG(98)D/3213.
([3]) OJ C 179, 11.6.1998, p. 9.
([4]) OJ C 368, 23.12.1994, p. 12.

(15) The predicted cuts in production costs at GESA were based on the development of the new G 1000 chassis which, as it is highly integrated and flexible, can be adjusted easily to the various European standards. The predictions were also based on the existence of an efficient, highly automated production plant capable of manufacturing a more integrated chassis than those of its Asian competitors in this segment of the market.

(16) Lastly, in order to benefit fully from such automation, production output must be considerable. This proved impossible, because of component supply problems and because the Continental Edison brand could not be used. The French authorities stated that other consumer electronics firms had also decided in the same period to increase their European output of similar products by cutting their imports from Asia.

(17) France rejected the Commission's arguments that the aid could have distorted competition between Community producers. GESA was not aiming for the segment occupied by the leading European brand manufacturers (with the exception of products made for Grundig); its target was, on the contrary, the market for bottom-of-the-range products essentially imported from Asia and produced only on a small scale in the Community.

(18) France disputed the finding that its authorities had not sufficiently examined the financial position of the GCE group, little known in France at the time of the takeover because of its medium size and its absence from the French market. It stated that it had on the contrary undertaken the necessary investigations to ensure that GCE was viable. According to those investigations, the UK company had a good reputation, based in particular on its position in a cutting-edge market (satellite receivers in particular), the personal reputation of the group's head and principal shareholder and its business connections with the Grundig group.

(19) On the other hand, France shared the Commission's doubts concerning the intentions of the GCE shareholders to complete the recovery plan they had devised. The shareholders had failed to honour all their commitments, e.g. their promise to diversify production at Creutzwald. The transfer of the production of satellite receivers was an important part of the plan as it was to have brought a significant amount of business to the plant.

(20) The behaviour of the shareholders also had the effect of limiting the resources available to the firm as it made it impossible to pay the R&D aid and the bank loans, thus depriving the firm of FRF 53 million. Even more seriously, it is suspected that funds may have been misappropriated.

(21) In short, France stresses that the difficulties encountered by the firm are rooted in the exceptional and unpredictable nature of the shareholders' conduct and that a combination of unfavourable events (taken separately, these are ordering errors and shortages of certain electronic components and cathode ray tubes) multiplied the effect of each of these unpredictable events and handicapped GESA in particular. The failure of the restructuring plan could therefore be attributed to outside factors.

III. **ASSESSMENT OF THE AID**

(22) The back-up aid granted to GESA constitutes State aid within the meaning of Article 87(1) of the Treaty as it enabled the recipient to undertake restructuring without bearing the full costs as any other firm in the market would have had to do.

(23) Furthermore, as stated in the initiation of proceedings, there is fierce competition in the European television set industry which is caused by continual price cuts and a large number of sets imported from third countries. According to the data in the Commission's possession, France's share of intra-Community trade in colour televisions averaged 18,7 % in 1992 and 19,05 % in 1993, before falling to 15,7 % in 1996. The balance of intra-Community trade in France was in deficit throughout the period 1992 to 1996, with the exception of 1993 when a slight surplus was recorded.

(24) The Commission regrets that France failed to notify the restructuring aid in time for it to submit its comments in accordance with Article 88(3) of the Treaty. By failing to notify the measure, France did not comply with its obligations under the Treaty. It again failed to comply with those obligations when it decided to pay the promised aid without awaiting the Commission's decision on compatibility. The aid in question is therefore unlawful.

(25) The aid is not compatible with the common market under the exceptions provided for in Article 87(2) of the Treaty as it is not aid having a social character, granted to individual consumers, and it is not intended to make good damage caused by natural disasters or exceptional occurrences. Nor can the aid be exempted under Article 87(2)(c).

(26) The aid cannot be considered compatible under Article 87(3)(a), (b) and (d) as it is not intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment within the meaning of Article 87(3)(a), in accordance with the Commission communication on the

method of application of Article 92(3)(c) to national regional aid [1]. Nor is the aid intended to promote an important project of common European interest or to remedy a serious disturbance in the economy of a Member State or to promote culture and heritage conservation.

(27) Assessment of the compatibility of the aid must therefore be confined to the exception provided for in Article 87(3)(c), in the light of the relevant Community guidelines.

(28) According to those guidelines, the Commission considers that the aid can contribute to the development of economic activity without affecting trade to an extent contrary to the general interest, provided certain conditions are met. If the Commission is to approve aid, the restructuring plan must satisfy all the general conditions, in particular the return to long-term viability, there must be no undue distortions of competition, the aid must be proportionate to the costs and benefits of restructuring and the plan must be implemented in full.

(29) Proceedings were initiated because, on the basis of the information supplied to the Commission, certain conditions laid down in the Community guidelines had not apparently been satisfied.

(30) As a preliminary comment, the three-year restructuring plan, initiated when CGE acquired the Grundig plant on 30 March 1994, was never completed, as is clear from the bankruptcy petition lodged on 22 June 1995. However, according to the French authorities, the fact that GESA became bankrupt a little more than one year after launching the restructuring plan is not proof that the operating forecasts and forward accounts were unrealistic at the time the aid was granted. The Commission must therefore examine the relevance of the plan in the light of the requirements of the guidelines at the moment when the decision to invest in the former Grundig plant was presented to the French authorities by the purchaser.

The existence of a restructuring plan based on realistic assumptions of a return to viability

(31) According to the authorities, GESA's return to long-term viability within a reasonable time was based on realistic forecasts. Turnover, according to the Commission when it initiated proceedings, was expected to rise by over 80 % between 1994 and 1996. That trend, according to the French authorities, was based on a very modest reference figure, i.e. a very low initial production level compared with that of the former Grundig plant.

(32) GESA's initial production capacity was reduced to 300 000 sets a year, the orders placed by Grundig accounting for all GESA's output in 1994, i.e. 160 000 sets and various sub-assemblies. Because production was being redirected towards smaller sets, the plan provided for an increase in volume in the following years in order to meet demand in that segment.

(33) The Commission notes that this production increase was a key factor in the viability of the project, as the automation of the production process required high output levels in order to be profitable. Furthermore, even if it had been possible to double production in two years, it would have reached the same level as Grundig before it left the site, i.e. some 500 000 sets in 1992 to 1993 (and nearly 600 000 the previous year); furthermore, the small screens' sector is a far more promising sector than that in which Grundig was operating (large screens).

(34) The reasons given by the French authorities for the strategy of penetrating the small-screen market, still in the middle of a price war between the leading manufacturers that had started in the early 1990s, was the general tendency for households to have more than one set. This market trend for the period 1993 to 1995 was confirmed by the 1997 Panorama of European Union Industry, which found that a majority of sales consisted of replacement sets or second sets.

(35) The strategy adopted by GESA was based on specific demand from large-scale distributors seeking local sources with flexible production facilities for good quality, competitive televisions, whether own-brand or not, to take the place of bottom-of-the-range sets from Asia. According to the information supplied by France, the distributors were anxious to find substitutes for the products in question, which were not always reliable and hence entailed high after-sales costs, and with lead times no longer suited to the fluctuations in demand.

(36) As this demand came specifically from the major distributors and hence constituted a significant outlet (one third of the market in 1993), it was reasonable to anticipate a surge in sales. It should also be noted that, in 1993, the production of small television sets accounted for only half of European demand in this market (4,1 million sets produced, compared with demand in the region of 8,3 million) [2], as most European imports fell into this segment.

[1] OJ C 282, 26.10.1995, p. 11.

[2] *Source*: Grundig.

(37) The same strategy was adopted by several medium-sized European producers, for instance Kasui in France, Mivar, Formenti or Imperial in Italy and Elbe in Spain. It must therefore be concluded that the choice made by GESA does not appear to be unusual as it is shared by other similar-sized producers in other Member States.

(38) The merits of the strategy became rapidly apparent as GESA won over the major European distributors with, on the one hand, its G 100 range with a highly integrated, reliable chassis which could be adapted to the European standards and, on the other, by its ability to respond rapidly to demand on a market that had become very seasonal. Thus it was not a lack of orders which handicapped the firm but the difficulty of honouring the orders owing to supply problems.

(39) When it initiated proceedings, the Commission noted that GESA had planned to produce sets at particularly competitive prices, comparable to those from Asian imports. The Commission expressed doubts about the firm's ability to achieve a level of prices, especially as regards labour costs, comparable to those of imports.

(40) The French authorities' reply was that the aim of the firm was not to achieve production costs identical to those of Asian producers as major distributors, which traditionally seek low prices, specifically accept a relative surcharge for European products whose higher quality and ease of supply give them the same margins as those obtained on imports. The reduction in the number of sets returned for after-sales servicing and the ability to respond to a highly cyclical pattern of demand whilst at the same time cutting safety stocks help to offset a slightly higher purchase price.

(41) In addition, the reduction in GESA's production costs was based on the development of the new G 1000 chassis and on the existence of a highly automated production line which would therefore be capable of producing a more integrated chassis than the Asian competitors in this market. Naturally, in order to benefit fully from such automation and thus cut labour costs, it was desirable to achieve a high output. This proved impossible owing to the supply difficulties referred to above.

(42) In view of the foregoing, the Commission considers that the assumptions underlying the forward accounts were indeed realistic estimates based on the exploitation of a new and growing niche in the market concerned. Furthermore, the anticipated recovery of the firm over three financial years was coherent and sufficiently progressive and based on structural improvements (diversification into growth sectors, installation of new technology by the buyer, reduction in labour costs in relation to turnover, continued investment in research and development) to be feasible and ensure viability. Thus the operating result should have improved to 5,2 % of turnover before tax at the end of the restructuring and 1.4 % net of tax.

(43) Furthermore, the financial account predicted that, by the end of restructuring in 1996, the liquidity position would be healthy and cashflow distinctly positive. The debt/net worth ratio would level out after rising, due to the investments, in the first years of the restructuring. The return on own funds would be in the region of 15 % by the end of the restructuring.

(44) It should also be added that the 1994 financial year closed with a positive net result, whereas the restructuring plan had forecast a negative result. This was achieved solely as a result of the orders Grundig had undertaken to place with GESA.

(45) Thus the criterion of a return to viability contained in the Community guidelines is satisfied by the plan presented by the buyer of the former Grundig plant.

Prevention of undue distortions of competition

(46) As the Commission noted when it initiated the procedure, it was possible, especially in view of the cost-cutting objectives, that GESA's output would replace that of the other Community producers rather than imports from third countries. It could thus not be ruled out that the aid might distort competition.

(47) The Commission concludes, however, that, rather than targeting the market niche held by the European manufacturers of premium brand products, with the exception of the products made for Grundig, GESA was targeting the market for bottom-of-the-range products mainly imported from Asia. Furthermore, the work subcontracted by Grundig was to remain relatively stable over time. Rather than seeking to achieve the same production costs as those of Asian producers, GESA was hoping for comparable costs, given the difference in quality of its products.

(48) The demand for GESA's products from the major distributors is explained by quality and not by the possible influence of aid on the final selling price. As the major distributors were clearly prepared to pay more for better quality products, it is reasonable to conclude that GESA's output would have replaced imported goods rather than those of other European competitors. Indeed, no competitors have complained to the Commission during the proceedings that the aid to GESA was financing a strategy which could injure them.

(49) It would have been logical for that trend to continue in view of the gap of over 4 million small sets between European demand and European production. According to the information sent by France, other major consumer electronics manufacturers such as Sanyo or Sharp decided during the same period to increase European output of similar products by reducing their imports from low-wage Asian countries in order to benefit from the competitive advantage of highly automated production tools, better quality, as well as to avoid customs duties and anti-dumping charges.

(50) In view of the fact that the planned increase in output of this type of product was not likely to be at the expense of Community production but would instead partially replace third-country imports, the Commission considers that the condition requiring the avoidance of undue distortion of competition has been met.

(51) The Commission also notes that the plant's production capacity was reduced very significantly after it was sold. Given the planned increase in output, it could not be ruled out that production capacity would also increase. However, in accordance with the Community guidelines, the Commission considers that the available data do not justify imposing a capacity cut at the end of the restructuring because, when the restructuring plan was drawn up, there was no structural overcapacity on the market targeted by GESA, according to a market study provided by the French authorities.

Aid in proportion to costs

(52) Under the Community guidelines, the aid must be proportionate to the costs and benefits of restructuring. In particular, the aid recipients should make a considerable contribution to the restructuring plan from their own resources or through outside finance obtained at market rates. In the present case, the aid totals FRF 46 million, of which FRF 10 million is granted under the 'electronics industry' scheme approved by the Commission. In addition, the financing of the acquisition was based on capital of FRF 80 million provided by GCE and FRF 75 million for the financing of the earlier social plans. The total financing for the transaction was thus FRF 201 million. The restructuring aid amounts to 18 % of that total. The public contribution appears to be proportionate to the total financing of the acquisition, to which private firms made a substantial contribution.

Full implementation of the restructuring plan

(53) According to the French authorities, the fact that GESA was wound up on 22 June 1995 does not affect the assessment of the compatibility of the State aid granted in 1994. As the Community guidelines also require the entire restructuring plan to be carried out, it is necessary to consider why GESA was unable to complete the plan.

(54) The Commission notes that several factors hampered the execution of the plan, namely, the impossibility of filling orders owing on the one hand to a shortage of electronic components and cathode ray tubes and, on the other, to difficulties relating to the marketing of the Continental Edison brand.

(55) The Commission considers, following explanations provided by the French authorities, that component supply problems arising less than a year after the purchase of the plant can to some extent be regarded as external to the firm and unforeseeable as they result from the supply problems encountered by one of its main suppliers, Thomson, which suddenly interrupted its supplies of cathode ray tubes. Because of the importance of the component, which accounts for one third of the total cost, and its technical link with the electronic chassis which means the supplier cannot be changed rapidly, the break in supply caused a sharp fall in GESA's output. The French authorities also point out that competitors were no better able to cover the risk of shortages, notably Daewoo, which set up a television set plant in the Moselle at the same time as GESA.

(56) On the other hand, the Commission regards, the 'ordering errors' made by the firm as being endogenous, i.e. as being the responsibility of the shareholders, as acknowledged by the French authorities when the aid in question was examined. The errors had a multiplier effect on the abovementioned shortage.

(57) GESA was unable to use the Continental Edison brand, a very well-known brand name which would have allowed a large proportion of its output to be sold. This was due to the length of the negotiations between GESA and the former owner of the brand, Thomson SA. The disagreement concerned the number of sets that GESA would have marketed under the name. When it initiated proceedings the Commission pointed out that the negotiation of this type of clause was standard practice and was therefore predictable. Whilst France acknowledged this, it considered it was most unusual for the difficulty of the negotiations in question to have constituted a pretext for the former owner to delay signing the contract for several months. Furthermore, the misuse of the clause by another party was not foreseeable. The negotiations started only after GESA was wound up in August 1995, i.e. when its position was already compromised. However, the Commission considers that GCE did not make a real effort to conclude the negotiations on the use of the Continental Edison brand name in time.

(58) Lastly, the failure by the prospective buyer to keep the promises made at the time of the restructuring proposal limited the resources available to the firm. The shareholders did not diversify business in the plant or transfer production of satellite receivers to Creutzwald. Moreover, the failure to provide documentary evidence prevented payment of the R&D aid (FRF 10 million) authorised under a scheme approved by the Commission, although the investment had been made. There is also the fact that the shareholders, by refusing to present the group's consolidated financial positions, caused the banks to withhold loans totalling FRF 53 million provided for in the financing plan. In the opinion of the Commission, it is not the alleged insolvency of GCE Ltd which caused GESA to file for bankruptcy but the parent company's failure to present its consolidated financial position.

(59) The financing plan and the restructuring thus depended on the shareholders fulfilling their commitments. The French authorities also suspect that fraud has taken place and have opened a judicial inquiry. According to press reports at the time, considerable financial resources were moved from GESA to companies in the GCE group. According to the same sources, the judicial authorities are also examining the use of public money received by GESA.

(60) France confirms the doubts expressed by the Commission when initiating the proceedings concerning the real intention of GCE shareholders to carry out the plan they had put forward. The conduct of the shareholders, whether due to internal or external factors or not, was completely unpredictable and ruined any possibility that the plant would survive, in spite of the wishes of the French authorities themselves. The shareholders' conduct is thus the key factor which explains why the restructuring plan was not carried out in full.

(61) In that context, the French authorities assured the Commission that they conducted the necessary investigations to determine the true position of GCE. According to those investigations, there had been no signs in business circles, especially among firms specialising in this area, that GCE was in difficulty. It seems that GCE had a good reputation, based chiefly on its position in a developing market, the personal reputation of its managing director and principal shareholder and its business connections with the Grundig group.

(62) However, the doubts already expressed by the Commission when initiating the proceedings as to whether there was any real intention of completing the plan put forward have been confirmed by the irregular conduct of GESA's main shareholder, the GCE group.

IV. **CONCLUSIONS**

(63) In view of the foregoing, the Commission concludes that the plan to restructure GESA was credible, based on realistic assumptions as to future operating conditions and capable of restoring long-term viability. On the other hand, the implementation of the restructuring plan was a failure which forced the firm to file for bankruptcy. The causes of this can to some extent be found in external factors such as accidental interruptions of supply, but chiefly in the failure of the new owner to fulfil undertakings given on financing and diversification of production. This constitutes a failure to satisfy one of the general conditions of the Community guidelines on restructuring aid, namely full implementation by the firm of the restructuring plan.

(64) Consequently, for the reasons given above, the aid of FRF 36 million granted by the French authorities to GESA does not qualify for exemption under Article 87(3)(c) of the Treaty, pursuant to the Community guidelines.

(65) If aid proves incompatible with the common market, the Commission is required, under the judgments given by the Court of Justice in Case 70/72 [1], upheld in Case 310/85 [2] and in Case C-5/89 [3], to require the Member State to recover from the recipient all aid granted unlawfully. This measure is necessary in order to revert to the previous situation by removing all the financial benefits which the firm receiving the unlawful aid has improperly enjoyed since the date on which the aid was paid.

(66) The aid must be repaid in accordance with the procedure laid down by French law. The aid includes interest calculated from the date on which it was granted to the date on which it is actually recovered. Interest is calculated on the basis of the commercial rate, with reference to the rate used to calculate the grant equivalent of regional aid,

HAS ADOPTED THIS DECISION:

Article 1

The state aid totalling FRF 36 million granted by France to Gooding Electronique SA is incompatible with the common market.

[1] Commission v Germany [1973] ECR 813.
[2] Deufil v Commission [1987] ECR 901.
[3] Commission v Germany [1990] ECR I-3437.

Article 2

1. France shall take the necessary steps to recover from the recipient the aid referred to in Article 1 which has already been unlawfully paid.

2. The aid shall be recovered forthwith in accordance with the procedures of national law, insofar as they permit the immediate and effective enforcement of this Decision. The aid to be recovered shall include interest calculated from the date on which the aid was granted to the date on which it is recovered. The interest shall be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 16 November 1999.

For the Commission

Mario MONTI

Member of the Commission