II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 8 September 1999
on aid granted by France to Stardust Marine

(notified under document number C(1999) 3148)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/513/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 given interested parties notice to submit their comments in accordance with the abovementioned Articles,

Whereas:

I

PROCEDURE PROVIDED FOR IN ARTICLE 88(2) OF THE TREATY.

(1) The pleasureboat chartering firm Stardust Marine (hereinafter Stardust) is a former subsidiary of Crédit Lyonnais which was transferred in 1995 to Consortium de Realisations (CDR), a hive-off vehicle for the non-performing assets of Crédit Lyonnais. In June 1997, the Commission learnt, through a complaint from a competitor, that Stardust had been recapitalised by CDR then sold to FG Marine in circumstances challenged by the complainant, who had submitted a higher bid. Following an exchange of correspondence with the authorities and a meeting between the Commission and the Treasury on 10 October 1997, the Commission informed the authorities by letter of 8 December 1997 that it had initiated the procedure under Article 88(2) of the Treaty. The authorities replied by letter of 9 February 1998, attaching a file comprising the information requested by the Commission in its letter initiating the procedure. Following publication of the Commission notice in the *Official Journal of the European Communities* [1], the Commission received a letter dated 7 May 1998 from JMT et Associés, a company owned by the former head of Stardust. The complainant also submitted a further file to the Commission on 8 December 1998. The Commission forwarded the information to the French authorities who replied by letters of 14 October 1998 and 17 February 1999. Following two meetings between the Commission, the Treasury and CDR on 5 May and 28 May 1999, the French authorities sent two further letters to the Commission dated 1 and 8 June 1999.

[1] OJ C 111, 9.4.1998, p. 9.

(2) In its letter initiating the procedure, the Commission considered that the following transactions might contain aid:

— two injections of capital into Stardust by the Crédit Lyonnais holding company, which owned Stardust, Altus Finance, in 1994 and 1995, totalling FRF 153,6 million,

— two capital injections into Stardust by CDR totalling FRF 348,5 million, in 1996 and 1997,

— the terms on which Stardust was privatised, which could have entailed aid to the buyer, FG Marine.

(3) The Commission also noted when it initiated the procedure that other transactions, such as loans or advances on current account granted to the firm by Crédit Lyonnais up to 1995 might also include elements of State aid and would if necessary be examined under the present procedure.

II

ASSISTANCE GRANTED TO STARDUST AND ITS PRIVATISATION

(4) Stardust specialises in boat charters, especially pleasure boats, marinas and brokerage and commercial agency activities for new or second-hand sailing vessels. Its main business is bareboat (crewless) charters, using multi-owner yachts which it manages. Set up in 1989 in order to operate and manage large charter yachts, it benefited from the opportunities offered by the 1986 'Pons' law authorising tax-exempt investments in the French overseas territories and departments, where a large part of its fleet is located.

(5) The involvement of Crédit Lyonnais initially took the form of loans and guarantees granted by the bank SBT-Batif (a Crédit Lyonnais subsidiary). Stardust had been controlled since 1994 by Crédit Lyonnais through its subsidiary Altus Finance and it was part of the Crédit Lyonnais assets transferred to CDR under the 1995 hiving-off plan in view of their poor quality and expected losses. It is worth noting that, as a CDR subsidiary, Stardust was still, until its privatisation, part of the Crédit Lyonnais group after 1995, as CDR remained wholly owned by Crédit Lyonnais until the end of 1998, and was not consolidated because Crédit Lyonnais was not held liable for its losses, which were charged to the State. The Crédit Lyonnais management, however, ceased to play any direct part in the management of Stardust after its transfer to CDR because of the deliberate total separation of management between CDR and Crédit Lyonnais, in accordance with Commission Decision 95/547/EC of 26 July 1995 giving conditional approval to the aid granted by France to the bank Crédit Lyonnais ([2]).

(6) In 1996, Stardust employed about 160 persons and had total net balance-sheet assets of approximately FRF 360 million ([3]). It achieved a turnover of FRF 178 million in 1995/96 (the financial year ending on 30 June 1996), incurring a considerable loss of FRF 147 million, of which FRF 72 million was due to exceptional factors. That loss, which exceeded turnover and followed a significant loss in the preceding year (FRF 362 million), produced a critical situation resulting in negative equity (FRF 350 million at 30 June 1996) and net position, from which very large off balance-sheet commitments in respect of the owners of boats being operated still had to be deducted. A firm in such a position should have been wound up or, if there were any reliable prospects of a return to viability, recapitalised provided that it could actually produce an acceptable return for its shareholders.

([2]) OJ L 308, 21.12.1995, p. 92.
([3]) Figures as at 30 June 1996 (end of financial year)

(7) According to information submitted by the French authorities before this procedure was initiated, CDR increased Stardust's capital in two stages since the Commission approved the plan to grant aid to Crédit Lyonnais by Decision 95/547/EC. The first increase, of FRF 259,5 million, was decided at the extraordinary general meeting on 26 June 1996, and was paid in two instalments, in June 1996 (two thirds) and in March 1997 (the remaining third) respectively. A second capital increase, of FRF 89 million, followed an extraordinary general meeting on 5 June 1997. CDR was the sole subscriber for the two capital increases, which thus totalled FRF 348,5 million. It should be noted that neither of the two transactions was notified to the Commission, which was not informed either that the two extraordinary general meetings were being held or of their results.

(8) According to the French authorities, the two transactions supplemented two capital increases which, prior to the transfer of Stardust to CDR and before the adoption of Decision 95/547/EC, had been subscribed by Altus Finance through debt conversion in October 1994 and April 1995 respectively, amounting to FRF 156,3 million. Neither transaction was notified to the Commission at the time. Furthermore, it would seem that, according to information submitted to the Commission by the French authorities, other financial support measures for Stardust may have included aid components such as loans from companies in the Crédit Lyonnais group and an interest-free shareholder's advance on current account in June 1995.

(9) Following the last recapitalisation in June 1997, CDR sold its holding in Stardust, i.e. 99,99 % of the equity, to F.G. Marine, for FRF 2 million. The sale took place without any open call for tenders. According to the French authorities, the procedure consisted in contacting some 20 potential buyers. Of these, seven sought access to the file. Three expressed an interest in buying individual assets. Three others eventually made real, documented bids for the capital of Stardust. According to the French authorities, Stardust was sold to the highest bidder, F.G. Marine, its bid being some FRF 40 million higher than the next best offer sought by the advisory bank.

(10) The Commission considered when it initiated the procedure that the sale of Stardust had not complied with the principles ensuring an open, transparent and non-discriminatory procedure, as defined in its Twenty-third Competition Report [4], and that the presence of aid could not be ruled out. It was also necessary to consider why the authorities had rejected the unsolicited acquisition bid of FRF 15 million submitted by the complainant in spite of the fact that the bid was much higher than the successful bid by FG Marine. The scope of this procedure therefore includes an examination of the conditions in which Stardust was privatised.

III

REPLY FROM THE AUTHORITIES

(11) In their reply of 8 February 1999, the French authorities considered that the Stardust transactions carried out by Altus Finance before the stock transfer to CDR were consistent with normal investor principles and that, as they were covered by Decision 95/547/EC on Crédit Lyonnais, they did not contain any aid. The authorities considered that the recapitalisation by CDR after Stardust had been hived off complied with Decision 95/547/EC.

(12) They also pointed out that the recapitalisations of Stardust by CDR, which consisted in the conversion of debt into capital, did not result in further contributions of funds and that CDR had carried out that transaction in precisely the same spirit as a private investor. CDR had, according to the French authorities, endeavoured to minimise the cost of the transaction to the public purse.

[4] Twenty-third Competition Report, point 403, p. 276. The principles referred to by the Commission in the Report had already been notified to the French authorities in a letter from the Director-Genral for Competition on 14 July 1993.

(13) As they had already stated before the procedure was initiated, the authorities justified the recapitalisations by CDR on the ground that the costs of winding up Stardust would have been very much higher. In support of that argument, they presented the following breakdown of the insolvency costs which CDR would have borne:

— loss of FRF 228 million in CDR claims on Stardust,

— loss of FRF 180 million in CDR claims on the charterboat investors and of FRF 60 million in claims on co-owners of boats managed by Stardust,

— loss of guarantees totalling FRF 172,2 million from contracts with charter investors whose bonds were transferred to CDR.

(14) The authorities also considered that winding up the firm would, in practice if not legally, have deprived CDR of any prospect of recovery in the 15 or so legal proceedings underway either directly or indirectly against the former head and shareholder of Stardust, Mr Tissier. In support of that statement, they pointed out that it was necessary to preserve the collective memory of the firm in order to improve the chances of a favourable outcome to the ongoing legal disputes.

(15) The authorities considered that the recapitalisations of Stardust were justified by the first signs of its recovery. They also stated that, even if the Commission concluded that the capital injections constituted aid, the aid would satisfy the conditions for compatibility with the common market contained in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([5]). In their opinion, the measures were tied to a restructuring plan aimed at restoring the long-term viability of the firm, the transaction had not led to distortions of competition contrary to the common interest and the aid, if any, was in proportion to the costs and benefits of the restructuring.

(16) They also once again described the conditions under which Stardust had been sold to FG Marine and their view that the sale had taken place under normal tendering procedures, in which any major operator in the sector had been able to participate. They recalled the direct approach taken by CDR to potential purchasers, previously notified by them and included by the Commission in its notice initiating this procedure, which had resulted in 20 contacts made by the bank advising CDR, some ten of which were with foreign firms or French subsidiaries of foreign-owned groups. The authorities claimed that the criteria for the sale conformed to normal market practice, and that the selling price was not the sole criterion, in view of such off balance-sheet items as guarantees or court case risks. The authorities considered that there was a link which constituted if not collusion, at the very least an objective alliance of interest between the Stardust competitor who complained to the Commission and the former head of the firm, Mr Tissier. They considered that that interest was not Stardust's but was aimed on the contrary at removing it from the market.

(17) The authorities provided details concerning the dates relating to the sale: the deadline for submitting bids set by the bank advising CDR was 19 February 1997; a protocol of sale (subject to Ministerial authorisation) had been concluded with the buyer on 6 March 1997 and an authorisation request sent to the Ministry of Economic and Financial Affairs by CDR on 12 March. The complainant sent a preliminary letter with a view to submitting a bid only on 2 April. On 4 April the complainant's legal adviser sent the Ministry in question a letter stating that he had been briefed fo investigate what action should be taken in view of Stardust's commercial behaviour; according to the French authorities, this was evidence of the complainant's hostile aims. The Ministry gave its authorisation on 14 April and the complainant's bid in figures was sent to CDR only on 16 April 1997, linked to conditions currently contested by the complainant (recapitalisation of the firm).

([5]) OJ C 368, 23.12.1994, p. 12.

(18) The French authorities also argued that the terms of a letter sent on 14 July 1993 by the Commission's Director-General for Competition could not constitute new obligations and therefore considered that the reference to that letter in the notice initiating this procedure ([6]) was not relevant to an examination of the privatisation transactions. They considered that the assumption by the Commission that transactions which, moreover, constitute normal business practice, are unlawful, was contrary to Article 295 of the Treaty.

(19) The French authorities also argued that the various transactions referred to in this procedure had not given rise to any State aid and that therefore, contrary to the conclusion drawn by the Commission in its notice initiating this procedure, they were not subject to the notification requirement provided for in Article 88(3) of the Treaty.

IV

COMMENTS FROM INTERESTED PARTIES

(20) The Commission received comments as part of this procedure from JMT et Associés, a firm set up by the former head of Stardust, Mr Tissier, who had been removed from the management of Stardust by CDR in 1995 and is a party in several legal disputes with CDR and Stardust. In particular, he has challenged the manner in which Stardust was privatised, which he regards as discriminatory, and has sent several documents to the Commission in support of his assertion (see section V(iii)).

(21) On 8 December 1998 the Commission also received further comments from the complainant which it forwarded to the French authorities, who replied by letter of February 1999. The comments also contain further information concerning the circumstances in which the firm was privatised, which are described below.

V

ASSESSMENT OF THE AID

(i) Financing of Stardust by the Crédit Lyonnais group prior to the hive-off to CDR

(22) Firstly, any aid included in the financing granted prior to 1995 to Stardust by the Crédit Lyonnais group through its holding company Altus was not authorised by Commission Decisions 95/547/EC of 26 July 1995 and 98/490/EC of 20 May 1998 on aid granted by France to Crédit Lyonnais: the beneficiary is Stardust and not the bank. The fact that any such aid subsequently entailed losses for Crédit Lyonnais which were covered by the State under the bank's rescue and restructuring plan does not cancel out its definition as aid to Stardust, Crédit Lyonnais not being the body which benefited from the aid to Stardust but that through which the aid was granted ([7]). The Commission cannot be regarded as having approved aid of which it was unaware: the Crédit Lyonnais proceedings resulting in the Decisions of July 1995 and May 1998 concerned aid to the bank and the consequent distortions of competition created in the banking sector. Furthermore, the measures in question must be analysed in the context in which they were granted and not *ex post*: even if Crédit Lyonnais had not experienced the difficulties which prompted the two Commission Decisions, the assistance it had granted previously to firms like Stardust would still constitute aid.

([6]) See footnote 4.
([7]) According to the case-low on State aid, the resources of a public undertaking like Crédit Lyonnais are State resources within the meaning of Article 87 of the Treaty.

(23) The distortions which might be caused by such aid and which must accordingly be examined concern Stardust and affect the pleasure boat sector. It is therefore necessary to distinguish clearly between aid to Stardust prior to 1995 and aid approved for Crédit Lyonnais. That is why the Commission included in its notice initiating the present procedure an examination of capital injected prior to 1995 by Altus Finance (the Crédit Lyonnais holding company), pointing out that Court of Justice case-law consistently held that aid should be examined according to its effects.

(24) The Commission cannot therefore accept the argument of the French authorities that the measures taken prior to 1995 were covered by Decision 95/547/EC concerning Crédit Lyonnais.

(25) In order to determine whether the financing received by Stardust comprises aid elements, the Commission does not examine the current position, where it is very clear that the result of the financing is negative, but rather the context in which the financing was granted by Crédit Lyonnais before 1995. Since the start of the partnership between the Crédit Lyonnais subsidiary, SBT (which became CDR-Créances after its transfer to the hive-off) and Stardust, the bank became the latter's sole banker. The partnership took a number of forms, including direct and indirect loans, in particular financing granted by SBT to investors wishing to acquire shares in boats managed by Altus, or in the form of guarantees for those investments. That practice entailed a considerable amount of risk, as SBT bore all the banking exposures and a large part of the firm's off balance-sheet exposures. It exposed SBT in regard not only to Stardust but also to the co-owners of the boats being managed. That risk would have led to a conflict of interest in the event of a termination of the management contracts as a result of insolvency. In the event of a dispute between shareholders, creditors and boat owners, SBT, the firm's creditor and the boat owners' guarantor, would have lost twice over. As a result it adopted a headlong policy of permanent support in order to avoid the consequences of Stardust's bankruptcy. This is confirmed by the fact that, according to the French authorities themselves, under French law, the position of sole banker inherited by CDR required Crédit Lyonnais and its successor CDR to make good any deficiency in assets in the event of the liquidation of the firm.

(26) Such behaviour is not consistent with the normal prudential practice of a banker, which would require Crédit Lyonnais to limit its exposure on the firm and, as soon as the first warning signs appeared, to make provision for exposures and seek to reduce or even close its position. Analysis of its actions reveals that the opposite occurred, Stardust's difficulties having led Crédit Lyonnais to increase its exposure on Stardust, essentially because of the conflict of interest situation in which it had placed itself. The continual and unfailing nature of the support it gave indicates that it is not a case of an isolated error of management on the part of the bank but of a consistent and deliberate policy of boosting Stardust's growth on more favourable financial terms than it would have obtained from private banks in the market. Until the end of 1994, the constant assistance was reflected in the confidence displayed by the bank towards Stardust and its management.

(27) It must be concluded that the continual assistance provided by Crédit Lyonnais to Stardust, even before the 1994 recapitalisation, was not consistent with the financing which would have been granted by a private bank operating in a market economy. In order to determine whether such financing from public resources contains aid, the Commission applies the market economy investor principle ([8]) and concludes that State aid is involved if that principle is not satisfied, i.e. if a private investor operating under identical conditions would not have granted such financing to the firm. The support provided went beyond the normal prudence required of a banker and constitutes aid because the public resources used to that end by Crédit Lyonnais constituted State resources within the meaning of Article 87 of the Treaty.

([8]) See in particular Commission communication to the Member States (OJ C 307, 13.11.1993, p. 3).

(28) TABLE 1

TRENDS OF STARDUST'S ACTIVITY AND RESULTS ([1])

(million FRF)

	31.12.1993	31.12.1994	31.12.1995	31.12.1996	30.6.1997
Holding in Stardust	8	44	156	324	496
Percentage	27 %	52 %	83 %	99 %	
Current account			127		
Loans to Stardust	320	410	225	228	0
Subtotal	328	454	508	552	496
Off-balance-sheet commitments	42	117	162	181	181
Unpaid contributions of capital				83	
Total	370	571	670	816	677

([1]) Until the end of 1998, CDR was wholly owned by Crédit Lyonnais.

Source: French authorities

(29) The French authorities also provided the Commission with an extract from the 'major risks' register of the Altus Finance group relating to the Stardust case. According to the extract, the Altus Finance's exposure, totalling FRF 775 million at 31 December 1994 was even higher than the amount indicated above in Table 1 owing to the extensive off balance-sheet exposures relating to Stardust in addition to the claims and liabilities set out in Table 1. The balance sheet total at 31 December 1994 is not known as the accounts for the financial year were closed on 30 June 1995. At that date, the balance sheet total was FRF 359 million as against FRF 334 million at 31 December 1993. It would thus seem that Crédit Lyonnais' exposure in respect of Stardust was in any case at least double its balance sheet total.

(30) According to the information communicated by the French authorities, all CDR's claims at 30 June 1995, amounting to FRF 348 million (i.e. almost the same as the FRF 352 million at 31 December 1995 referred to in Table 1), pre-dated Stardust's hive-off. The first capital injection by Crédit Lyonnais through Altus took place in October 1994 and consisted in incorporating into the firm's capital claims totalling FRF 37 million held by Crédit Lyonnais through SBT. That capital increase followed a loss-making financial year in 1993. In view of the seriousness of the situation, the accounts were not closed on 31 December 1994 and the year was prolonged by six months until a loss of over FRF 300 million, including FRF 200 million by way of exceptional loss, was incurred.

(31) The authorities stated that the capital increase had been granted to Stardust as part of the plans of the former management and Swedish American Lines (SAL): on the basis of business plans prepared by a firm of consultants, ASA, when Jet Sea and ATM were acquired (plans communicated to the Commission), Stardust's profitability prospects were good. However, according to the French authorities, its situation 'declined in 1994, the year in which Mr Tissier continued with the very risky diversification operations'. Furthermore, as stated by the French authorities, 'the former management (i.e. before the new management was put in place by CDR in 1995) had not developed the necessary commercial strategy and structural rationalisation to ensure profitable operation of the fleet'. The French authorities also pointed out that, when Altus acquired control of Stardust at the end of 1994, an ongoing audit was already pointing to the need for provisioning of some FRF 203 million which was subsequently charged to the accounts closed on 30 June 1995 and further added to the firm's losses. They concluded in a letter to the Commission dated 17 February 1999 that it was indeed Stardust's former management that had caused its losses and necessitated the recapitalisations.

(32) Thus, in the opinion of the authorities, the company was poorly managed before 1995, despite the optimistic forecasts made at the time. The Commission also notes that Stardust was already in a critical state in 1994 (see Table 2), as revealed in the audit carried out at the end of 1994, that the additional assistance from the banks and the capital injections had no prospect, given the firm's critical position, of providing a return acceptable to a private investor and that most of the amounts provided would very probably not be repaid. There are therefore no grounds for considering that the additional exposure taken on the firm, in the form of loan increases (of over FRF 100 million, see Table 1) and a capital injection in 1994 corresponded to the normal behaviour of a private investor.

(33) At meetings held in Brussels on 5 and 28 May 1999 and in a letter dated 1 June 1999, the French authorities again rejected the notion that the transaction could constitute aid; in their view it was fully justifiable at the time, applying the market economy investor criterion, on the bais of Stardust's ambitious business plan and the good market prospects for pleasure boats. The Commission cannot accept this argument: at the meetings, it stressed that as far as it was aware no private banker or any risk capital company acting in the manner described above would have taken risks in respect of a single company which were more than double its balance sheet total, even if the firm had been profitable and well run. When the Commission asked the French authorities to give examples of comparable risk-taking by a prudent investor in support of their argument, they were unable to do so.

(34) The letter from the French authorities of 1 June 1999 stated in particular that the disastrous outcome on a financial level of the commitments entered into by the Crédit Lyonnais group was due to fraud in connection with:

— the acquisition of Jet Sea in 1993, where the number of boats proved to be 30 and not 170, resulting in an action before the Florida Court of Appeal,

— an agreement with a Swedish-American company, SAL, which proved to be no longer a subsidiary of Carlson Radisson hotels as stipulated in the partnership agreement with Stardust, so that it proved impossible to perform the agreement,

— [...] (*).

On that basis and as a result of false balance sheets, the authorities concluded that the bank had been seriously misled and that Stardust had not been the actual recipient of the assistance granted.

(35) Whilst it would not challenge the possibility of such fraud, it is not for the Commission to decide on the materiality of the injury suffered by Stardust but, if appropriate, for the national courts. Even if fraud were to be proved, it would not alter the Commission's opinion that the transactions in question contain aid: even if the fraud increased the losses incurred by Crédit Lyonnais and then CDR on Stardust, it does not alter the imprudent nature of the financing made available by Crédit Lyonnais to Stardust. When Crédit Lyonnais took risks in the form of loans and guarantees more than twice the amount of the balance sheet total of Stardust, it was laying itself open not only to the normal financial difficulties of a firm, due for instance to a market reversal, but also to exceptional events, such as this type of fraud.

(36) Neither is the fact that State resources may have helped to cover the losses caused by such fraud a reason for concluding that the resources do not constitute aid: in normal business life, firms must cope on their own with the financial consequences of such events on their own resources and have only the courts to turn to in order to be compensated for the fraud. Any non-repayable State resources granted to avoid such consequences constitute aid which reduces the charges, even exceptional charges as outlined above, normally affecting the profit or loss of a firm.

(*) Business secret.

(37) The resources granted by Crédit Lyonnais, a public undertaking, through its subsidiaries SBT and Altus are State resources within the meaning of Article 87(1) of the Treaty. The Commission does not normally have any reason to consider that, where Crédit Lyonnais granted financing, it automatically constitutes aid. Most of the bank's actions, before and after 1995, are not, despite the serious difficulties it experienced, regarded as aid and are in principle a response to commercial market logic aimed at achieving a margin contributing to its profits, even if the investments subsequently proved to have resulted in losses. The Commission describes such measures as State aid only when it can be established, as in this case, on the basis of specific facts, that the measures seen in their context fail to comply with the market economy investor principle.

(38) Thus, in addition to the aid granted in the form of a debt-equity swap, it can be concluded from the foregoing that aid is contained in the financing in the form of guarantees (granted to Stardust and its customers) and the loans which increased Crédit Lyonnais' financial exposure in regard to Stardust to considerably more than its balance sheet total. The capital injection in October 1994 of FRF 44,3 million thus accounts for only a fraction of the aid included in the financing granted to Stardust by Crédit Lyonnais, the balance of which was subsequently transferred to CDR (i.e. to the State, as it is liable for CDR losses under the arrangements for the equity loan granted by EPRF (public financing and development establishment)) after Stardust was hived off to CDR in 1995. In view of Stardust's financial position at the end of 1994, the financial risks taken by Crédit Lyonnais and the estimated losses reported following the audit at the end of 1994 justifying fresh provisions of over FRF 200 million, it could already be predicted at the end of 1994 that the deferred cost of such aid would total hundreds of millions of francs.

(ii) **Aid to Stardust granted by Crédit Lyonnais but subsequently charged to CDR, and identified during the Stardust hive-off from 1995 to 1997.**

(39) As the Commission stressed in its Decision 98/490/EC on aid granted to Crédit Lyonnais 'CDR's resources are State resources within the meaning of Article 92 [9] of the Treaty', not only because CDR is the wholly-owned subsidiary of a public undertaking but also because it is financed by a participating loan guaranteed by the State and because its losses are borne by the State. The Commission notes that such transactions do not qualify for any derogation exempting them from the obligations arising out of Articles 92 and 93 of the Treaty, and in particular that the French authorities and CDR cannot be exempted from such obligations under Decision 95/547/EC or under this Decision. It should be noted that CDR's operations with regard to its subsidiaries are deemed not to include any aid component only if they conform with the market economy investor principle and that any injection of funds (or abandonment of claims) complies with this principle. In its communication to the Member States [10] concerning the principles to be applied to determine whether public intervention should be regarded as aid, the Commission considers that injections of capital into public undertakings contain elements of State aid if, in similar circumstances, a private investor, in view of the expected return on the contribution of funds, would not have made the capital injection in question. In a letter dated 16 October 1997 addressed to the Minister for Economic, Financial and Industrial Affairs, Mr Van Miert pointed out that CDR operations involving a recapitalisation of its assets, a sale at a loss or a cancellation of debt were likely to include aid and should be notified to the Commission. Similarly, sales of CDR assets other than by open, transparent tendering procedures must also be notified to the Commission. Only operations definitely below the *de minimis* aid threshold of ECU 100 000 are exempt from this obligation [11].

(40) CDR's measures to recapitalise Stardust should for the reasons set out above be examined as such and cannot be deemed approved under the bank's rescue and restructuring plan, which relates solely to aid granted to Crédit Lyonnais itself.

[9] On 1 May 1999, Article 92 of the EC Treaty became Article 87 of the EC Treaty, as amended by the Amsterdam Treaty, and Article 93 became Article 88.
[10] OJ C 307, 13.11.1993, p. 3.
[11] OJ L 221, 8.8.1998, p. 41.

(41) In its notice initiating this procedure, the Commission stated, on the basis of the information in its possession, that the capital injection of FRF 112 million at the beginning of 1995 had been subscribed by Altus. However, in their reply to the Commission of 8 April 1998, the French authorities stated that it was not Altus but CDR that had subscribed the second capital increase. The capital was injected in April 1995 following the transfer of Stardust to CDR and the administrative board's removal of the former head of the firm. The recapitalisation of FRF 112 million was subscribed in full by CDR, the entire funds being allocated to repayment of the outstanding exposure of SBT Batif (Crédit Lyonnais group) in respect of Stardust. According to the authorities, the second recapitalisation was carried out as part of a plan to cut overheads and refocus Stardust on its basic business, i.e. the marketing and managing of boats, assisted by efficient management tools. According to the authorities, the plan would have resulted in a return to profitability within two years. However, they provided the Commission only with a later plan dated February 1996, i.e. nearly a year after the recapitalisation in question.

(42) In addition, in July 1995 CDR blocked an interest-free current account of FRF 127,5 million owed by Stardust to CDR. This transformation of a debt into a current account, allowing a reduction in the firm's operating costs by relieving it of the financial charges resulting from that debt was, in the context in which it was granted and in the light of Stardust's critical financial position, a measure containing additional aid equivalent to the financial products thus waived by CDR. In view of the lack of a restructuring plan, it has all the characteristics of operating aid. As it was converted into capital the following year (see below), the aid identified by the Commission in connection with the temporary advance is constituted by the reduction in financial charges associated with the advance throughout its duration.

(43) The third recapitalisation of Stardust was decided at the general meeting on 25 June 1996, in view of the closure of Stardust's financial year on 30 June 1996. The closure of the accounts for 1995 to 1996 revealed a considerable loss of FRF 147 million (following record losses of FRF 360 million in 1994 to 1995), i.e. more than three quarters of the turnover of some FRF 178 million in 1995 to 1996 (see Table 2). CDR subscribed FRF 250,5 million, of which two thirds, or FRF 167,8 million, were released immediately through incorporation of the current account line of FRF 127,5 million opened in July 1995, and FRF 40,3 million obtained by converting Stardust's debt to SBT Batif, which had also been transferred to CDR with the hive-off. According to the authorities, the third recapitalisation is based on a new business plan which the management drew up in February 1996 and communicated to the Commission (see section VII(ii)).

(44) The fourth recapitalisation of Stardust took place before its transfer and was approved on 5 June 1997, the same date that the extraordinary shareholders' meeting also approved the sale of Stardust to FG Marine. The recapitalisation, involving FRF 89,5 million, also took the form of the conversion of debts owed to CDR and also did not call for fresh investment by CDR. As the French authorities informed the Commission, the amount of the injection was dictated by the negative value of Stardust, confirmed by the negative price offered by the purchaser, prior to the recapitalisation.

(45) It is difficult in the present case to assess the economic rationality of CDR's behaviour in the light of the market economy investor principle applied by the Commission for capital injections into public undertakings. As the independent expert stated in the report commissioned when the firm was privatised, 'as the firm has made a loss in the last three years, none of the methods designed to produce a return to profitability in relation to capital invested is applicable to the present case'. The

expert also stated that 'as the capital to be invested would not produce operational equilibrium before two financial years at the earliest, the loss of earnings should be included in the estimated two years of theoretical losses, i.e. FRF 40 million'. The expert, who presented his report on 11 March 1997, i.e. three months before the last recapitalisation, concluded that the firm's negative net position called for a recapitalisation, and that the firm had a negative value at 31 December 1996 of FRF 182 million.

(46) The Commission has taken note of the arguments put forward by the French authorities as part of this procedure, namely, that CDR's exposure in respect of the transaction was considerably greater than its exposure as a shareholder and, at 31 December 1996, also included:

— exposure in its capacity as Stardust's banker in respect of debts of FRF 228 million transferred by Crédit Lyonnais to CDR at the same time as the holding in Stardust,

— exposure in respect of claims on investors in boat shares totalling FRF 180 million and loans totalling FRF 60 million in respect of co-owners of boats managed by Stardust,

— exposure in respect of guarantees given for contracts between Stardust and investors in boat shares totalling FRF 172,2 million.

(47) Thus, if all CDR's direct and indirect commitments towards Stardust, as listed by the French authorities, are added up, they amount to the very large total of FRF 1 048 million at 31 December 1996 comprising FRF 816 million in direct commitments (of which FRF 552 million by way of securities and loans and FRF 181 million by way of guarantees) and FRF 232 million in indirect commitments in respect of commercial transactions entered into by Stardust. This over-exposure, compared with only FRF 273 million at 30 June 1996, highlights the risk taken by Crédit Lyonnais in respect of Stardust before it was transferred to CDR, a risk which goes well beyond any prudential consideration of risk limitation which would normally be applied by a banker.

(48) The reason given by the French authorities for maintaining Stardust in operation despite its losses rather than winding it up was the very special situation whereby CDR was both a shareholder (99,9 %), sole banker, and guarantor for the counter-guarantees given to the investors in the boats. If Stardust had been wound up, CDR would not only have been required to make good the deficiency in the assets but would have had to honour all the guarantees given by the bank to the investors. The authorities pointed out that the direct and indirect commitments which are the cause of CDR's losses in this area already existed when Stardust was hived off by Crédit Lyonnais, and insisted that the recapitalisations of Stardust had not resulted in any fresh capital availability. They concluded that CDR's management of the case had helped to limit losses, compared with a total cost of liquidation estimated at FRF 915 million, excluding redundancy costs, by the expert appointed for the privatisation of Stardust.

(49) The Commission acknowledges the merits of the reasons for taking the banking and off balance-sheet risks into account in the calculation of the economic rationality of the decisions taken by CDR. It also notes that the expert referred to above pointed out in his report 'that it was hard to see any alternative to petitioning for liquidation, in view of the performance obligations arising out of the contracts with the investors', of which there were over 1 000 and in respect of which the commitments entered into by Stardust had been guaranteed by CDR. In addition, CDR had direct claims on the boat investors, which had been contracted by Crédit Lyonnais but managed by Stardust and were estimated at FRF 180 million in the expert's report.

(50) The Commission acknowledges that, if viewed as an isolated act, the measures taken by the State through CDR could, as soon as Stardust was hived off in 1995, to some extent be regarded as constituting sound management, aimed at minimising losses and safeguarding the interests of the State. In order for the arguments put forward by CDR and the French authorities to be substantiated, it would have been necessary to show that the State endeavoured to maximise the proceeds of the sale of the firm and that the sale was open, transparent and non-discriminatory (see section V(iii)), i.e. the amount of the last recapitalisation, which was dependent on the sale price, taking into account the negative value of the firm before recapitalisation which resulted from the bids, would be fully justified and very clearly not include any aid to the purchaser. However, even if that hypothesis were to prove the case, proper management of the business by CDR as a prudent investor would not rule out the State aid content of the Stardust measures.

(51) In its assessment of the measures, the Commission takes account of the continuous nature of the State's assistance to Stardust (of which the last five years are summarised in Table 1), which the hiving-off of Stardust to CDR cannot interrupt as though nothing had happened before 1995. If all it took for a transaction to be regarded as not including aid was for a State to grant (in this case, through Crédit Lyonnais before 1995) unnotified and unlawful aid in the form of high-risk loans or guarantees, including loans or guarantees on third parties (the co-owners and investors in the boats), to an unprofitable company and then, following the latter's transfer to a hive-off structure like CDR, for the State to grant the firm a debt write-off in the form of a capital conversion, where there is evidence that the conversion is non-repayable and unremunerated as it is intended to make good a deficit, then Member States could easily grant aid and avoid the consequences of Article 87 of the Treaty and the Commission controls provided for by the Treaty.

(52) Without the constant support of Crédit Lyonnais and then CDR (it should be noted that CDR was a wholly-controlled, unconsolidated subsidiary of Crédit Lyonnais until the end of 1998), Stardust would have been liquidated and disappeared from the market, its assets and market shares taken over by its competitors. The expert's report referred to above, which the French authorities communicated to the Commission, notes in this respect that 'the support of its principal shareholder allowed the company to stay in business despite a difficult financial situation'. That support was unfailing and continuous, both before and during Stardust's hive-off to CDR.

(53) Whilst the conversion of Stardust's debts to CDR into capital may have been fully justified at the moment of the transaction, it is in effect the final materialisation of aid which ended a long-term process of support first granted years before, well before the hiving-off to CDR. When it initiated this procedure, the Commission emphasised that 'it would seem that, according to information submitted to the Commission by the authorities, other financial support measures for Stardust may have included aid components such as loans from companies in the Crédit Lyonnais group' and it therefore included them in the matters covered by this procedure.

(54) As already stated (section V(i)), however, the financial assistance granted by Crédit Lyonnais to Stardust before the latter was transferred to CDR in 1995 failed to comply with the criteria which would have been applied by a market economy investor and therefore constitutes aid. Such aid from Crédit Lyonnais forms part of a number of high-risk transactions engaged in by Crédit Lyonnais which caused the serious crisis that forced the State to undertake the operation to rescue and restructure Crédit Lyonnais which the Commission approved in Decision 95/547/EC of 26 July 1995, the Decision of 25 September 1996 and Decision 98/490/EC of 20 May 1998. As the Commission noted in Decision 98/490/EC, 'there are grounds for believing that, if CL had not

enjoyed the total and permanent implicit or explicit backing of the State, it would not have embarked on its risky policy in the first place'. The fact that a bank like Crédit Lyonnais granted such financial support through its subsidiaries SBT Batif and Altus is not, therefore, a sign that the various loans and guarantees constituted normal market-economy banking practice. On the contrary, the Commission has good reason to consider, on the basis of the foregoing, that the loans and guarantees were not prudent, and that this was the reason why the Crédit Lyonnais group was the only bank that had taken such a position on a badly run and inherently risky business, when private banks had steered clear of the affair.

(55) It must therefore be concluded that the debt to capital conversions which CDR granted to Stardust constitute aid, although they did not, as pointed out by the authorities, result in new allocations of funds or in an increase in the nominal exposure of CDR in respect of Stardust in terms of assets. They represent, in fact, deferred payments of aid included in the earlier support provided by Crédit Lyonnais for Stardust's expansion.

(56) Furthermore, according to the authorities, the 'anomalous' sections of Stardust's business activities, stemming from former diversifications, had been acquired by CDR, thus relieving Stardust before its privatisation of its least profitable and highest-risk assets. They included the two boats 'Class America' and 'Friday Star', as well as the legal disputes resulting from the former relationship with Jet Sea and the dispute with the former chairman and the companies associated with him. [...].

(57) The French authorities therefore estimate the total cost of dealing with the case at FRF 557.9 million, from which only FRF 2 million should be deducted, incurred in privatising the firm. The cost includes losses on bonds and capital injections and the risks inherent in the assets acquired by CDR from Stardust, estimated at FRF 61,1 million.

(58) The Commission concludes that the non-repayable capital injections by CDR after the hive-off are the deferred cost of the aid granted for several years to Stardust by the State in the form of assistance for Crédit Lyonnais.

(iii) **Possibility of aid during the privatisation of Stardust**

(59) The authorities stressed the adequacy of the guarantees given, through the monitoring of the transactions in question by the Privatisation Committee, the Treasury and the Advisory Monitoring Committee for CDR. This, however, is clearly not the conclusion that can be drawn from the opinion of the Inspectorate-General of Finances in a report quoted by *Le Monde* in November 1997, which the authorities refused to communicate to the Commission. According to the extracts quoted by *Le Monde*, which the authorities have not denied, the report states that 'investigation of the sale procedures have revealed several anomalies which should have been avoided by CDR and which throw doubt on the equal treatment of competitors'.

(60) Whatever the quality of the regulatory framework for monitoring privatisations in France and CDR's own control structure, which are not among the matters covered by this Decision, the transaction in question must be examined as such and judged on the basis of documentary evidence in order to verify that the privatisation procedure was open, transparent and non-discriminatory and did not give rise to any additional aid to the firm or its purchaser. In order to examine the conditions in which Stardust was privatised, the Commission took a factual approach, strictly limited to the case in question.

(61) As it stated in its notice initiating this procedure, in order to determine whether a privatisation includes aid, the Commission applies general principles developed over the years on the basis of individual cases and set out in its Twenty-Third Report on Competition Policy for 1993 ([12]). It also specifically reminded the French authorities of these principles in a letter from the Director-General for Competition of 14 July 1993. According to the letter, the sale of certain public undertakings may comprise elements of State aid which must be notified in advance under Article 88 of the Treaty.

([12]) See foonote 4.

(62) The principles set out in the letter are as follows:

(a) the presence of aid is ruled out and notification is not required if the following conditions are fulfilled:

— the sale takes place by competitive, unconditional tender, in accordance with non-discriminatory and transparent procedures and conditions,

— the firm is sold to the highest bidder, and

— bidders are given enough time to prepare their bid and receive all the necessary information to carry out a proper valuation of the assets;

(b) on the other hand, the following sales must be notified in advance in accordance with Article 88(3) of the Treaty as they are likely to contain elements of State aid:

— all sales carried out by restricted procedure or between individuals,

— all sales preceded by the writing-off of debt by the State, other public undertakings or bodies,

— all sales preceded by the conversion of debt into equity or capital increases,

— all sales on conditions that would not be acceptable to private investors operating in a market economy.

(63) In the present case, the Commission notes that in the transfer:

— there was no open, transparent and unconditional invitation to tender or examination of tenders, which would, *inter alia*, have involved publishing a notice of sale of the firm and an identical timetable for all interested parties,

— the firm was not sold to the highest bidder, the complainant having offered FRF 15 million, i.e. FRF 13 million more than the successful FG Marine bid,

— CDR sought bids by direct invitation to selected individuals, without any public invitation to tender,

— the sale was preceded by a conversion of debt into capital.

(64) These elements do not *ex ante* constitute proof but rather a presumption of aid, and should therefore have been notified, as stated in the above letter. The terms of the letter from the Director-General for Competition of 14 July 1993 objected to by the French authorities do not impose any new obligations on the authorities, they simply require, as provided for in the general rules on State aid, that where there is doubt as to the existence of aid, the transaction must be notified to the Commission. As the authorities were aware of the Commission's position following their receipt of the letter in question, they must have been aware that there were doubts as to the presence of aid in the transaction and should therefore have notified it to the Commission. This was not done despite an accumulation of such doubts. The Commission notes that the principles referred to above which it applies do not discriminate against public undertakings in a manner that is contrary to Article 295 of the Treaty, as the French authorities believe, but on the contrary are aimed at preventing discrimination which benefits public undertakings being sold or the purchasers of such undertakings which, where they are privatised, are private firms.

(65) In order to determine whether the assumption that the purchaser has benefited from aid, as stated in the notice initiating this procedure, is confirmed by the facts, the Commission takes account of the following elements.

(66) First, the reason for CDR's refusal to consider the bid submitted by the complainant — the fact that it had missed the deadline — cannot be accepted: the deadline of 19 February communicated by CDR's advisory bank to the potential bidders could at the most be binding only on them. In view of the fact that at least one bid was received from a firm not included among those selected in advance, it seems clear that the restricted and unpublished invitation to tender between individuals was manifestly inadequate, that the pre-selection of potential buyers did not cover the full range of potential bidders and that the invitation to tender should have been disseminated more widely and published with the date of closure for bids, so that all interested parties, whether or not individually approached, enjoyed identical opportunities to be informed and to meet deadlines. It should also be noted that if, as the authorities state, the French yachting world might indeed have been aware of the impending sale, it is doubtful whether this was true of the other Community countries or outside the yachting world.

(67) As the Commission pointed out in its notice initiating this procedure, in such cases of privatisation, it is not for the public sellers or its representatives to decide *a priori* on the size of the potential buyers' market and thereby rule out certain potential buyers. The fact that the bid accepted by CDR in fact comes from a financial group which set up an ad hoc company, FG Marine, to acquire Stardust shows that the prospecting for potential buyers should have been extended well beyond yachting circles and that, by limiting prospecting to seven financial investors outside yachting circles, CDR and its advisory bank directly ruled out other potential buyers.

(68) Second, some of the buyer's shareholders were part of Stardust's management, in particular the person formerly responsible for the Stardust dossier within the holding company, Altus, who in 1995 became the chairman of the firm under its new shareholder, CDR. The management of the firm clearly concluded an agreement with an investor (the Christian Paillot group) for the acquisition of Stardust. To that end, a suitable new company was set up, FG Marine, which brought together the majority shareholders of the Christian Paillot group and minority interests such as those of the Stardust management. The firm was thus acquired by a bid submitted both by the majority financial group within the buyer and by Stardust's management in its capacity as a minority shareholder in the new FG Marine.

(69) The Commission notes that CDR did not regard this situation as constituting a conflict of interest liable to affect the choice of buyer. On the contrary, in an internal note of 14 May 1997 sent to the Commission by the former head of the firm as part of this procedure, CDR indicated not only that it had been aware since December 1996 that the management had a stake in the capital of the proposed buyer but also that it had regarded this as perfectly normal. The question arises, however, as to the advantages which may have been derived by the buyer from the detailed knowledge of Stardust held by its management, which it had joined in order to submit a bid. It can thus be assumed that it was not dealt with on the same footing as the other bidders.

(70) At a meeting with the French authorities and CDR, the latter considered that it was common practice for the management of the firm being sold to acquire a stake in the purchasing firm. In support of their claim, the authorities forwarded to the Commission on 1 June 1999 letters from prospective buyers containing their bids for the firm in question and stating that they planned to give the management of the firm being acquired a stake in their equity. However, the Commission notes that, according to the information submitted by the authorities, FG Marine was the only bidder for Stardust in which the latter's management already had a stake when the bids were tendered. The other bids at that stage had simply proposed to give the management a stake in the buyer's equity.

(71) CDR should have taken steps to avoid such a conflict of interests. In transactions of this nature, it is conceivable and even normal for management to acquire a holding in the company being sold and this is a proven method of ensuring the presence, motivation and cohesion of an executive team whose departure could constitute a major factor in loss of value, especially in the case of a small or medium-sized firm. On the other hand, the acquisition by management of a stake in the purchaser's equity should normally be ruled out in the period preceding privatisation owing to the inequalities it is liable to introduce between bidders (which does not rule out subsequent acquisition of a holding). Several firms which did not lodge complaints in this case nevertheless expressed irritation with CDR, in particular as regards the precipitate nature of the procedure and the limited amount of information made available to them as a result of the conditions in dispute.

(72) Third, the independent expert appointed during the privatisation produced a report only on the bid from FG Marine. It stated 'we have not analysed any of the other bids '. Thus he did not in particular examine the other elements of the other bids of decisive importance even to CDR and the authorities, such as the off balance-sheet risks and the guarantees linked to the transaction. If price is not the only consideration in examining an offer and selecting a buyer, as claimed by the authorities

as the justification for rejecting the higher bid in terms of price submitted by the complainant to CDR, the Commission does not understand why the independent examination of the transaction was limited solely to the bid from FG Marine. The Commission notes that the expert report was available by 11 March, i.e. before the complainant's bid was submitted to CDR, but this does not explain why the three other bids received by CDR before the expert's investigation were not examined by that expert.

(73) Fourth, according to an internal CDR memo dated 24 April 1997 communicated by the complainant to the Commission and forwarded to the authorities, the fact that Stardust's development relied on the tax exemption granted under the Pons Law justified a procedure that gave priority to French competitors. The memo concludes on this subject 'In the circumstances, it would seem that a French solution should be preferred to a foreign solution '. This is one of the reasons given by CDR in the memo to explain why two competitors, Moorings and Sunsail, had deliberately not been contacted. The memo thus clearly establishes that some of the basic provisions of the Treaty were infringed in this transaction. By letter dated 1 June 1999, the French authorities denied that Moorings had been excluded from the invitation to tender for those reasons and provided the Commission with a letter dated 8 December 1997 from a director of Moorings which clearly stated that the acquisition of Stardust had been considered and then rejected by Moorings. The Commission has taken note of the letter but emphasises that the authorities have not challenged the authenticity of the CDR memo in question.

(74) In view of the presumption of aid referred to above, the Commission concludes that the procedure failed to comply with the requirements of openness, transparency and non-discrimination. The bid from FG Marine therefore benefited from discriminatory conditions.

(75) The Commission also took note of the complainant's argument that the sale should be declared null. FG Marine, created in order to acquire Stardust, was in fact still being set up when the sale protocol was concluded on 6 March 1997 and when the Finance Ministry gave its approval on 14 April. It was only when it was legally registered in the commercial and companies register on 26 May 1997 that Stardust was able to hold its extraordinary general meeting in June 1997 at which its sale to FG Marine, preceded by a recapitalisation of FRF 89 million, was finally approved. The extract from the register also shows that FG Marine started business on 15 April 1997. As a result, the legal validity of the sale protocol concluded on 6 March with a firm in the process of being set up and not yet legally registered is being disputed by the complainant.

(76) In their letter of 1 June 1999 the French authorities pointed out that, under French law, the actions of a company in the process of being set up are valid from the moment when the funds constituting the initial capital have been deposited in a bank together with draft articles of association, and that this was the case on the date on which the sale protocol was signed, i.e. 6 March 1997. They also provided the Commission with documentary evidence of their claim. The Commission cannot at this stage draw any conclusions on the basis of the complainant's argument: its duty to monitor State aid pursuant to the Treaty does not include deciding on the lawfulness of the sale, which is a job for the French courts.

(77) The Commission is unable to confirm, however, whether the procedure, despite its discriminatory nature and lack of transparency, eventually resulted in aid. The fact that the complainant bid FRF 15 million, i.e. FRF 13 million more than the buyer, is not enough to establish without a doubt that aid has been granted in the form of the difference in the amounts of the two bids.

(78) The Commission does not deny that, as stressed by the French authorities, factors other than price, such as guarantees or off balance-sheet risks, may be taken into account by private shareholders when a firm is being sold, so that the fact that the successful bid was not at face value the highest one is not in itself irrefutable evidence of aid, as the concept of the highest bid can be interpreted more broadly to take account of differences in off balance-sheet risks between bids. It also notes that the report by the independent expert concerning the privatisation of Stardust concluded that its value after a capital increase of FRF 90 million would still be negative, at FRF – 29 million, whereas the final sale price was positive, i.e. FRF 2 million. Finally, in view of the data supplied by the French authorities, although the effect of the sale on the off balance-sheet risks borne by the purchaser is difficult to quantify, it is nevertheless potentially very much greater than the difference of FRF 13 million between the two bids, chiefly because CDR continued to act as guarantor for the boat investors after the sale.

(79) According to the French authorities, different legal risks, relating to the many legal proceedings instituted by CDR and Stardust against the former head of the firm, Mr Tissier, would have been involved if the complainant had acquired Stardust. CDR had certain reasons for believing that if the complainant had acquired the firm, it would have been necessary to reassess the legal risks and their financial consequences for the seller, CDR, after the sale. The Commission notes that Article 5.3 of the sale protocol signed on 6 March 1997 stipulates that the benefit of all proceedings between the firm and its former head (and the natural persons and offshore companies with which he is connected) will belong to the seller (CDR). The latter was therefore justified in taking into account the off balance-sheet elements connected with the risks and benefits of the litigation when selecting the best offer.

(80) The Commission examined the other guarantees given by the seller to the buyer in connection with the sale, in particular the guarantees on the firm's accounts, and considers that they are consistent with the normal conditions of sale applied by a private operator and are aimed at limiting the uncertainties facing the buyer.

(81) It is not for the Commission to determine the relevance as such of CDR's rejection of the complainant's bid for Stardust. However, the reasons given by CDR to the complainant for rejecting the bid were not related to the (possibly justified) risks involved but rather to the fact that a deadline had been passed, an unfounded argument as no deadlines had been published in advance. Nor can the Commission accept the French authorities' argument that the complainant allegedly had hostile intentions aimed at removing Stardust: the fact that a buyer acquires a firm and its assets is without prejudice to the future legal forms in which the assets will be managed or sold. Thus any requirement that a firm be run in its existing form introduces a condition which may be discriminatory.

(82) The discriminatory nature of the privatisation procedure shows that the State did not endeavour to obtain the highest price for the firm. In view of the procedural errors referred to above, the Commission is unable to conclude that the price at which Stardust was sold was the market price, allowing the full potential of the firm to be realised and clearly not including any aid to the purchaser. The Commission notes, however, that bidders for companies may themselves enhance the value of factors subject to considerable uncertainty such as off balance-sheet risks or the value of intangibles such as goodwill, and may include upgrading factors that are specific to them, for example commercial synergies with their own activities. These are factors which an *ex ante* calculation cannot take into account. In view of the uncertainty as to the market price that would have resulted from an open, transparent and non-discriminatory procedure, and in view of the lack of such procedure, the Commission is unable to conclude, despite the procedural errors identified, that the buyer benefited from aid in the form of the sale price.

(iv) **Conclusions regarding the type and amount of aid in the measures in question**

(83) The constant assistance granted to Stardust by the State through the Crédit Lyonnais group and then through CDR contains aid in the form of the financial conditions which are not consistent with the normal actions of a private investor operating under market economy conditions. The aid was granted by Crédit Lyonnais and CDR throughout the expansion of Stardust and then during the very serious crisis it experienced from 1993 to 1996. The failure of the financing to comply with the market economy investor principle prior to the hive-off lies in the extraordinarily high level of exposure incurred by Crédit Lyonnais, and then by CDR, in respect of Stardust, in the form of claims and off balance-sheet commitments exceeding FRF l billion, taking account of the financing granted to Stardust customers, i.e. about three times the total assets of the firm at the end of 1996. The final aid granted to Stardust was contained in the capital injected by Crédit Lyonnais and CDR. The aid, in non-adjusted value terms at the date of payment, amounts to:

— FRF 44,3 million, the first recapitalisation of Stardust by Altus Finance in October 1994,

— a reduction in financial charges from July 1995 to June 1996 relating to the advance on current account of FRF 127,5 million granted by CDR to Stardust. The advance having subsequently been converted into capital, the date on which the recapitalisation in question was granted must be regarded as the same as that of the advance on current account as, given the position of Stardust, it was already clear in July 1995 that CDR would not be able to recover the advance,

— FRF 451,8 million ([13]) constituting the three recapitalisations of Stardust by CDR from 1995 to 1997, from the hive-off to privatisation.

(84) The total non-adjusted (at the dates of payment) value of the aid is thus estimated at FRF 496,3 million. The value adjusted to October 1994, when the first recapitalisation examined in this decision took place, and resulting from the aid granted previously ([14]) by Crédit Lyonnais, is FRF 450,4 million. The recapitalisations were the last transactions carried out by the State, ending the long-term assistance granted to Stardust (and constituting sunk costs, given that the privatisation of Stardust earned only FRF 2 million), and they therefore constitute the aid content of that assistance.

VI

DISTORTION OF TRADE BETWEEN MEMBER STATES

(85) As the Commission noted in its notice initiating this procedure, the market for pleasureboat charters, the chief activity engaged in by Stardust, is a market where companies throughout the European Community are in competition, and one which has become increasingly internationalised through the rise in international tourism. Certain firms are present in a number of countries, chiefly in the Mediterranean and the French Antilles. Boat charterers are of various geographic origins. According to the letter from the French authorities dated 8 June 1999, only 14 % of Stardust's customers come from France, while 44 % come from the rest of Europe (the remaining 41 % coming from the rest of the world), which is evidence of the size of Community trade in relation to turnover for a firm such as Stardust. It should also be noted that, without the aid from Crédit Lyonnais and CDR, Stardust would have had to be wound up and a number of its Community competitors could have benefited from the market shares thus released and taken over its assets, thus consolidating their position on the French and European boat charter market.

([13]) The amount includes the advance on current account of July 1995, subsequently transformed into capital, so that these two elements cannot be included in the calculation of total aid.

([14]) In view of the length of time Crédit Lyonnais granted aid to Stardust before it was hived off, the notional reference date taken by the Commission to calculate the discounted value of the aid is 30 October 1994 (the first recapitalisation examined was in October 1994), at the reference rate of the time, i.e. 8,93 %. According to the authorities, 1994 is the last year in which Crédit Lyonnais commitments to Stardust increased.

(86) It is clear from the foregoing that the measures in question hampered or were liable to hamper trade within the Community. In view of the aid contained in the measures, it must be concluded that the transactions examined are caught by Article 87(1) of the EC Treaty as they contain State aid which distorts or threatens to distort competition to an extent liable to affect intra-Community trade. All these measures should have been notified to the Commission under Article 88(3) of the Treaty and, in view of the failure to do so, are unlawful.

VII

COMPATIBILITY OF THE AID WITH THE TREATY

(87) As the Commission pointed out in its notice initiating this procedure, the measures in question do not constitute aid of a social character, granted to individual consumers, or aid to promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a Member State.

(88) As it does not constitute aid intended or granted to facilitate the development of certain French regions or aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, the exemptions provided for in the second part of the first sentence of Article 87(3)(a) and (c) are not applicable.

(89) On the basis of the information provided by the French authorities, only the exemption provided for in the first part of the first sentence of Article 87(3)(c) could possibly be applied to the aid granted before 1995 by Crédit Lyonnais and the aid granted by CDR after Stardust was hived off up to its privatisation.

(i) Compatibility of the aid contained in the recapitalisations of Stardust prior to its transfer to CDR

(90) The aid granted by Crédit Lyonnais to Stardust until 1995 should be examined in the context of the latter's rapid expansion in the early 1990s. Its turnover, with the input from Crédit Lyonnais, doubled between 1992 and 1993, then doubled again from 1993 to 1994 (it totalled some FRF 190 million in 1994, but an 18-month accounting year gives a figure of FRF 292 million to June 1995). This fourfold increase in two years was not achieved through self financing, given the poor results in 1992 and the losses in 1993 and 1994, but solely as a result of the financial assistance from the group's only financier, Crédit Lyonnais, with its ever-expanding commitments and exposure. The extraordinarily favourable terms of the financing provided by Crédit Lyonnais, which even included granting guarantees and loans to Stardust customers, the management of which was entrusted to Stardust, boosted its expansion. The Crédit Lyonnais financing allowed Stardust to acquire competing firms and increase its market shares. Thus Stardust, from being a small firm at the beginning of the 1990s with a marginal role (it was established in 1989), managed, despite its poor performance, to become one of the leaders in the industry, not only at European level but also worldwide.

(91) Its expansion went hand in hand with external development operations. In 1992, Stardust took over the business management section of ATM, a company managing and selling a fleet of 150 bareboats. In 1993, a bankrupt ATM was acquired together with another bankrupt company, Jet Sea. As a result of the two transactions, Stardust became responsible for managing 180 boats and seven marinas. The expansion was accompanied by a prestige campaign involving the firm in the marketing of two French boats for the 1994 America Cup. Stardust undertook to buy back the two boats after five years for 40 % of their value, i.e. FRF 32 million.

(92) Stardust proved unable to cope with such rapid expansion and the prestige marketing. Its losses, according to the French authorities, are due chiefly to:

— losses connected with Stardust's initial activities relating to the sale and management of 'Scorpio' class boats, due partly to the taking of ill judged risks [...],

— poor commercial strategy and inappropriate management,

— one-off exceptional events such as the losses due to the America Cup, estimated by the French authorities at FRF 45 million.

(93) TABLE 2

TRENDS OF STARDUST'S ACTIVITY AND RESULTS

(million FRF)

	31.12.1990 (11 months)	31.12.1991 (12 months)	31.12.1992 (12 months)	31.12.1993 (12 months)	30.6.1995 (18 months)	30.6.1996 (12 months)	30.6.1997 (12 months)
Turnover	10,4	25,9	53,2	117,5	291,7	178,4	134,9
Operating result	0,7	4,1	9,9	6,7	– 110,7	– 43,4	– 21,9
Financial result	– 0,3	– 2,7	– 6,8	– 18,1	– 49	– 30,2	– 6,6
Exceptional result	– 0,2	– 0,2	– 0,2	– 3,7	– 199,9	– 71,9	52,7
Net result	0,3	0,4	2,1	– 15,9	– 361,2	– 146,9	24,1

Source: French authorities

(94) The extremely serious situation created by the losses not only completely absorbed the firm's own funds but, given the virtual state of bankruptcy in which it found itself, meant it was insolvent with regard to its sole banker, Crédit Lyonnais. Instead of drawing the appropriate conclusions and closing its positions on Stardust with a loss, Crédit Lyonnais committed itself even further, granting new loans in 1994 and, in the 18-month financial period comprising 1994 and the first half of 1995, converting amounts owed to a CL subsidiary, SBT Batif, into shares in the Crédit Lyonnais holding company, Altus Finance. The transaction enabled Stardust to avoid bankruptcy but tied it even more tightly to Crédit Lyonnais. Without a restructuring plan, it was in practice simply postponing due dates, given the extent of the losses generated by poor management of the firm and its lack of profitability. Thus the aid content of the financing granted by Crédit Lyonnais was considerably greater than the recapitalisation at the end of 1994, whilst the cost of writing off the losses in the form of the aid to Stardust was in practice postponed and transferred to the State when Stardust was hived off to CDR in early 1995.

(95) To assess the compatibility of the measures with the Treaty, it should be noted that the aid actually preceded the recapitalisations from 1994 to 1997, which in effect constitute the deferred payment of the aid elements they contained, and that it essentially takes the form of the imprudent financing of Stardust by Crédit Lyonnais during its period of accelerated growth in 1992 to 1994. As stated above, the only possible exemption applicable to the measures in question is the provision in Article 87(3)(c) of the Treaty concerning rescue and restructuring aid.

(96) In this case, however, far from being used to restructure Stardust, the aid essentially had the effect of speeding up its growth and its acquisition of increasingly large shares of the market. According to the business plan drawn up by the consultancy firm ACA in October 1993 and forwarded by the French authorities to the Commission as part of this procedure, the aim was to make Stardust the leader on the European market for small cruise boats. The plan saw the 1993 to 1994 growth as the 'take-off' period which would be followed by stable growth as from 1995. This would entail an increase in the fleet from 218 boats in 1993 to 355 in 1996, accompanied by an increase in their value and unit capacity and the distribution of several hundred boats to marinas in major tourist areas throughout the world — the Antilles, Polynesia, the Mediterranean and the Indian Ocean — with a mainly European and North American clientele, the target being a turnover in excess of FRF 300 million in 1996, against some FRF 50 million in 1992. The October 1993 plan thus does not have the characteristics of a restructuring plan, with a period of austerity to allow the internal recovery of the firm and reduce the distortions of competition caused by the aid. It is on the contrary an ambitious growth plan aimed at establishing this SME as one of the leading pleasureboat businesses in the world.

(97) It is clear from the foregoing that the aid granted by Crédit Lyonnais during the growth period in question in the form of high-risk financing and subsequently, after 1994, by Crédit Lyonnais and CDR in the form of recapitalisations for the reasons given above cannot be regarded as aid for the restructuring or rescue of Stardust. On the contrary, the aid had a maximum distorting effect as it was aimed at speeding up the growth of the firm through the acquisition of competitors and market shares, which enabled it to quadruple its turnover from 1992 to 1994.

(98) Accordingly, the aid in question, which is unlawful as it was not notified, is not compatible with the common market.

(ii) **Compatibility of the aid contained in the recapitalisations of Stardust and the asset-carrying by CDR following the hiving-off of Stardust**

(99) The French authorities pointed out to the Commission that Stardust had started showing signs of a return to profitability and balanced operation predicted for the financial year 1997/98. They stressed that the restructuring undertaken by the new management put in place by CDR in 1995 was beginning to have an effect. They set out the restructuring measures implemented by the management which were intended to allow the firm to return to profitability in 1997/98 and on the basis of which the buyer had taken its decision.

(100) The arguments presented by the French authorities call for the following comments by the Commission. Firstly, apart from the uncertainty regarding the circumstances surrounding the last recapitalisation, which is inseparable from the amount of the successful bid made under the procedural conditions described above, the Commission acknowledges that CDR appears to have managed the business in accordance with criteria designed to counteract the consequences of the imprudent commitments entered into by Crédit Lyonnais and limit the losses to the State. The considerable cost of the operation to the State appears to be due chiefly to the imprudent management of the business by Crédit Lyonnais in the years before Stardust was hived off.

(101) The Commission, as stated above in its assessment of the aid content of the measures in question, considers that the cause of the aid under examination is not the action takn by CDR so much as the imprudent support provided by Crédit Lyonnais for Stardust before it was hived off. The aid was committed well before the State was compelled to write off its losses on the transaction through CDR. As in the case of the aid in the form of guarantees, the event giving rise to the aid is not the act of payment by the State (or, for guarantees, the implementation of the guarantee) but the original

act itself (in the case of guarantees, the granting of the guarantee). The fact that the Commission assesses the aid granted to Stardust on the basis of the costs of the recapitalisation and of the repurchase of assets, chiefly borne by CDR, does not therefore mean that the financial assistance granted previously to Stardust by Crédit Lyonnais does not constitute aid. As has already been stated, the assistance granted by Crédit Lyonnais had reached unreasonable proportions, considerably exceeding the total balance sheet of the firm even before Stardust was transferred to CDR.

(102) CDR was thus faced with such a compromised situation that, even if the privatisation procedure had been open, transparent and non-discriminatory, the balance after hiving off Stardust could only have been very negative. The aid content of such imprudent assistance was only very partially borne by Crédit Lyonnais with the 1994 recapitalisation, i.e. FRF 44,3 million, or less than 10 % of the total aid, the final settlement having been delayed and charged directly to the State when the bank's non-performing assets were hived off to CDR. It can thus be seen that there is a considerable discrepancy between the period when the aid started to be granted, before 1995, and the final identification in 1997 of losses enabling the transaction to be terminated and the exact amount of aid included in the financial measures granted by Crédit Lyonnais to be determined.

(103) Consequently, the steps taken by CDR to recapitalise Stardust and repurchase the risk assets should not in this case be assessed on the basis of the restructuring plan drawn up by Stardust's new management in February 1996 but, like the 1994 recapitalisation, in the context in which the aid was in fact initially granted to Stardust, in particular in 1992, 1993 and 1994. As stated above, however, the 1994 recapitalisation does not meet any of the conditions allowing it to be considered compatible with the common interest. The same is therefore true of the deferred aid borne by CDR.

(104) It should also be noted that the French authorities did not provide the Commission with any restructuring plan for the beginning of 1995 so that it could assess the compatibility with the Treaty of the April 1995 recapitalisation of FRF 112 million. They simply provided, in their reply of 9 February 1998, an *a posteriori* justification of the measures taken at the time by Stardust's new management. The restructuring plan they communicated to the Commission in the course of this procedure is dated February 1996. As a result, the restructuring measures were taken late, in a very different context in this particular case, from the aid granted in the early 1990s by Crédit Lyonnais which had enabled a small firm to become a leader in the pleasureboat industry, a position it still holds even after the restructuring measures in question.

(105) The authorities also attached to their letter of 2 June 1999 an undated document presented as a restructuring plan implemented in the summer of 1995. It is quite clear, however, on the basis of the data provided, that the document postdates 1995. The plan refers to measures taken to restore the firm's viability. It does not, however, alter the conclusion that the aid granted to Stardust is incompatible with the Treaty inasmuch as its strategy provides for a greater presence in Europe and considerable expansion of the business, without providing for any measures to offset the distortion caused by the aid to Stardust.

(106) Alternatively, even if the compatibility of the aid granted by CDR were to be assessed without regard to the position prior to 1995, when the aid was actually granted, (this being the usual method of assessing aid even if payment is in instalments) ([15]). The Commission nevertheless considered whether the aid could not be regarded as compatible with the common market.

([15]) See judgment of the Court of First Instance in Ducros, case T-149/95 [1997] ECR II-2031, paragraph 66.

(107) According to the February 1996 business plan submitted to the Commission by the French authorities, which they claim served as the basis for subsequent recapitalisations, Stardust was to concentrate on its basic activity, i.e. bareboat charters. A considerable expansion in this activity was predicted, by means of a 'top down' recovery strategy involving an increase in the bareboat fleet from 189 units at the end of 1994 to 264 by the end of 1996. The other activities would be correspondingly reduced. The plan also provided for a sharp cut in the firm's assets and turnover, which was to fall from FRF 208 million to FRF 162 million from 1995 to 1997, or a 22 % reduction. The activity most affected was boat sales, down from FRF 175million to FRF 63 million. On the other hand, however, the most profitable activity, bareboat charters, was to expand appreciably, from FRF 44 million to FRF 99 million. Thus the firm's turnover in 1997 after the cutbacks remained some two and a half times greater than its 1992 level, whereas the aid granted by Crédit Lyonnais to Stardust was in fact granted from the beginning of the period (see Section V).

(108) The aid in question made it possible, throughout the period in which it was granted, for Stardust to expand considerably, despite the restructuring measures and reduction in activity that were eventually introduced. The growth, as shown in a memo from the French authorities of 8 June 1999, allowed Stardust's turnover to increase far more rapidly than those of its two main competitors, Moorings, which remained stable over the period, and Sunsail, which doubled its turnover in the period, i.e. a considerably smaller increase than that of Stardust. Stardust's performance during that period, given that it was an unprofitable and poorly managed company, can be explained by the exceptionally high level of aid it received. Without that aid, it would have been wound up the day after its real position was revealed by the audit at the end of 1994 and it would have disappeared from the market.

(109) Even if such a plan had restored the firm's viability and limited aid to the strict minimum, it would not, in view of the considerable amounts of aid in question, amounting to almost three times the annual turnover in the financial year 1995/96, be compatible with the rules on restructuring aid which call for measures to counteract the distortions of competition caused by the aid. The restructuring measures eventually adopted appear simply to have been strictly necessary to restore viability, in particular by limiting the fixed assets and the risks in the boat sales sector. None of them appears to have gone beyond the strict minimum, nor did they include elements aimed at compensating competitors for the distortions caused by the aid to the strategic core of the firm's business, bareboat charters.

(110) The ambitious plan to refocus the firm on its bareboat charter business was applied fairly consistently. According to the most recent data from the French authorities, the number of annual weeks of bareboat charters invoiced by Stardust rose from 1 890 in the financial year 1993 to 2 794 in the financial year 1995/96 and 3 971 in 1997/98, the target for 1999 being 4 800 weeks, i.e. an overall increase of 2,5 compared with 1993. Throughout the period under examination (1992 to 1997), during which Crédit Lyonnais started granting aid to Stardust to speed up its development, the firm's turnover rose from FRF 53 million to some FRF 135 million.

(111) The French and European competitors of Stardust, especially those with a strong presence in the same bareboat charter business, were unable to benefit in any way from this plan, indeed, they were prejudiced by the aid granted to Stardust to assist it to refocus on that particular branch of its business in which it expanded very rapidly. As stated above, Stardust customers have very varied geographic origins, 44 % being European (outside France), 14 % French and the others being located in the rest of the world, chiefly the United States. These elements confirm the sensitivity of the measures to assist Stardust and their potential effect on competition both in France and in the rest of the Community. Instead of offering measures to counteract the distortions caused by the aid, the restructuring measures adopted by the new management of Stardust with the support of its shareholder thus in practice resulted in a considerable growth in Stardust's activities in the strategic business on which it was concentrated.

(112) It must therefore be concluded from this examination that, even if the assistance granted by CDR to Stardust in the period 1995 to 1997 could be examined *ex post* on the basis of the February 1996 plan, it does not satisfy the criteria of the framework on restructuring aid for firms in difficulty.

(113) The aid granted to Stardust cannot therefore be regarded as compatible with the common interest.

VIII

CONCLUSIONS

(114) The assistance in the form of financing and bank guarantees granted by the State to Stardust through the Crédit Lyonnais group and then CDR contains elements of aid. The measures are unlawful as they were not notified. The aid took the form of non-repayable financing in the form of a recapitalisation by Crédit Lyonnais, followed by an advance on current account and recapitalisations in the form of debt write-offs by CDR, the shareholder which succeeded Crédit Lyonnais, after Stardust was hived off in 1995. The aid in question amounts to a non-adjusted nominal total of FRF 496,2 million. The discounted value at 31 October 1994 is FRF 450,4 million.

(115) The only possible exemption for such aid under Article 87(3)(c) is not applicable as it is not restructuring aid but aid which, in the context in which it was granted, was designed to permit and support the rapid growth of an unprofitable firm and which had a distorting effect that is not compatible with the common interest.

(116) Furthermore, Stardust was privatised in circumstances which did not meet the requirements of transparency, openness and lack of discrimination which would have ruled out all possibility of aid and enabled a market price to be established. The Commission notes that elements determining the price may include off balance-sheet risks, so that the complaint lodged by a competitor having submitted a bid to CDR that was on the face of it higher than the successful bid for Stardust is not in itself sufficient evidence that the transaction involved aid to the buyer. In view of the off balance-sheet risks and the uncertainties relating to the market value of the firm which could have emerged from an open, transparent and non-discriminatory procedure, the Commission concludes that no additional aid was granted to the firm or its buyer in connection with the privatisation.

(117) As the aid in question is incompatible, it must be recovered by the State, either direct or through CDR, whose losses are borne by the State through the equity loan guarantee scheme offered by EPFR (public financing and development establishment). These recovery arrangements are also applicable to FRF 44,3 million of aid injected into Stardust by Crédit Lyonnais in October 1994. Crédit Lyonnais has already been compensated for the losses incurred through that transaction when Stardust was transferred to the hive-off vehicle and it is therefore for the State, which in the end bears the relevant costs, to recover the aid granted to Stardust. The recovery by Crédit Lyonnais of any part of the FRF 44,3 million would run counter to the obligation to limit aid to it under its restructuring plan. As the plan approved by the Commission in May 1998 made no provision for additional resources from firms such as Stardust to which the bank may have granted aid, Crédit Lyonnais must not benefit from such recovery.

(118) The identification and recovery of aid to Stardust do not affect the amount of aid to Crédit Lyonnais authorised by Decisions 95/547/EC, and 98/490/EC: the authorised level of aid does not change. Any reduction or increase in the amount of aid actually received by Crédit Lyonnais owing to the aid recovered from Stardust by CDR does not affect the amount authorised by the Commission in its Decision 98/490/EC on aid granted by France to Crédit Lyonnais which takes account, as explained in that Decision ([16]), of the uncertainties regarding aid to Crédit Lyonnais: the aid granted to Stardust, not exceeding an undiscounted total of FRF 0,5 billion, is not likely to affect the provision for uncertainty and prudence of FRF 45 billion taken into account by the Commission in its Decision 98/490/EC. Similarly, pursuant to that Decision, which also takes account of the constraint of the bank's liability and of limiting aid to the minimum necessary, the obligations of the Member State relating to the counter-concessions required in the form of sales of assets and closures of activities of the bank remain the same,

HAS ADOPTED THIS DECISION:

Article 1

The capital increases of FRF 44,3 million injected into Stardust Marine in October 1994 by Altus Finance and FRF 112 million injected by CDR in April 1995, the advance on current account of FRF 127,5 million granted by CDR from July 1995 to June 1996, the recapitalisations of FRF 250,5 million in June 1996 and of FRF 89 million in June 1997 by CDR constitute State aid within the meaning of Article 87(1) of the Treaty. The aid, amounting to a discounted value at 31 October 1994 of FRF 450,4 million, cannot be declared compatible with the common market under Article 87(2) and (3) of the Treaty and with Article 61(2) and of the EEA Agreement.

Article 2

France shall require Stardust to repay to the State or to CDR the sum of FRF 450,4 million corresponding to the State aid content of the measures in question, discounted to 31 October 1994. The amount to be repaid shall bear interest from that date, at the reference rate established by the Commission for the calculation of the net grant equivalent of aid in France.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 8 September 1999.

For the Commission

Mario MONTI

Member of the Commission

([16]) OJ L 221, 8.8.1998, in particular pp. 52 - 61.