COMMISSION DECISION

of 20 April 2004

on the aid implemented by France in favour of the Coopérative d'exportation du livre français (CELF)

(notified under document number C(2004) 1361)

(Only the French text is authentic)

(Text with EEA relevance)

(2005/262/EC)

THE COMMISSION OF THE EUROPEAN COMMUNTIES,

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

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

Having called on interested parties to submit their comments in accordance with the above Articles ([1]), and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By judgment of 28 February 2002 ([2]), the Court of First Instance of the European Communities annulled the last sentence of the Article 1 of Commission Decision 1999/133/EC of 10 June 1998 concerning State aid in favour of the Coopérative d'exportation du livre français (CELF) ([3]), which stated that:

> 'The aid granted to CELF for the handling of small orders of books in the French language constitutes aid within the meaning of Article 92(1) of the EC Treaty. As the French Government failed to notify the aid to the Commission prior to its implementation, the aid has been granted unlawfully. It is, however, compatible aid as it satisfies the conditions for derogation under Article 92(3)(d) of the Treaty' ([4]).

(2) The judgment followed a long procedure, the principle stages of which are set out below.

A. *FIRST STAGE OF THE PROCEDURE*

(3) By letter dated 20 March 1992, the Société internationale de diffusion et d'édition (SIDE), which presented itself as 'a French firm that exports books and has to compete with a publishers' cooperative receiving State aid' ([5]), drew the Commission's attention to aid measures for promotion, transport and marketing granted by the French authorities to CELF, which aid had not been notified to the Commission's services in advance in breach of Article 93(3) (now Article 88(3)) of the Treaty.

(4) By letter dated 2 April 1992, the Commission pointed out to the French authorities that any plans to grant or alter aid must be notified in advance to its services and asked the said authorities to inform it about the nature and purpose of the aid measures referred to by SIDE.

(5) By letter dated 29 June 1992, the French authorities confirmed to the Commission the existence of grants to CELF. They explained that the measures were designed to make French literature and language known in non-French-speaking countries and that Celf had been asked to manage three schemes of ad hoc aid designed to facilitate access by readers in far-off places to French books.

(6) By letter dated 7 August 1992, the Commission confirmed to SIDE the existence of aid to CELF, explained its purpose and informed the company that the measures in question had not been notified. It stated, however, that the disputed aid did not seem likely to adversely affect trade between Member States. SIDE was accordingly asked to submit its comments.

(7) By letter dated 7 September 1992, SIDE informed the Commission that it intended to object to the discriminatory nature ([6]) of the measures and the consequences for intra-Community trade, without however disputing the cultural objective of the Ministry of Culture, which was to see the spread of the French language and French literature.

([1]) OJ C 366, 5.12.1996, p. 7.
([2]) Case T — 155/98 *Société internationale de diffusion et d'édition (SIDE)* v *Commission* [2002] ECR II-1179.
([3]) OJ L 44, 18.2.1999, p. 37.
([4]) The underlined sentence is the one annulled by the Court.
([5]) Extract from the letter from SIDE dated 20 March 1992.
([6]) SIDE mentions in particular that the Ministry of Culture refused it access to the aid granted to CELF.

(8) Having assessed the disputed measures, the Commission did not endorse SIDE's objections and considered, by Decision dated 18 May 1993 ([7]), that, given the special nature of competition in the book trade and the cultural purpose of the aid schemes in question, the derogation provided for in Article 92(3)(c) (now Article 87(3)(d)) of the Treaty applied to them.

(9) SIDE, by application dated 2 August 1993, filed an action for annulment of the Decision with the Court. By judgment of 18 September 1995 ([8]), the Court partially granted SIDE's request, annulling the Commission Decision of 18 May 1993 but only as regards certain measures in favour of small orders.

(10) The Court also upheld the following three aid schemes administered by CELF on behalf of the State:

(a) subsidies for air freight or airmail;

(b) the *Page à page* programme ([9]) (aid for the dissemination of French-language books in the countries of central and eastern Europe);

(c) Programme Plus (university textbooks in French for students in sub-Saharan Africa).

(11) The Court held that the Commission had obtained sufficient information on the three schemes to justify the finding that the impact of their operation on the rules of competition was negligible. The Court pointed out in particular that it was possible for any operator meeting the specific conditions of the schemes to apply to CELF for a grant. It stated that SIDE had not provided any evidence to show that the granting of aid under the three schemes was likely to affect trade between Member States.

(12) The Court concluded that the Commission was able to adopt a favourable decision concerning the three aid schemes administered by CELF and that it could therefore reject SIDE's arguments as unfounded.

(13) The Court stated that 'as regards the cultural purpose of the aids at issue, it is common ground that the aim of the French Government is the spread of the French language and French literature'. The Court also found that the information available to the Commission when it adopted its Decision of 18 May 1993, including the facts contained in the letter from SIDE's board, dated 7 September 1992, was capable of supporting its assessment that that aim was a real and proper one. Accordingly, it felt bound to conclude that determining the cultural aim of the aid at issue did not pose any particular difficulties for the Commission and that it was not necessary for it to obtain further information in order to accept that their purpose was cultural.

(14) As regards the compensation granted exclusively to CELF for small orders, the Court found, however, that the Commission should have thoroughly examined the conditions of competition in the sector concerned before expressing an opinion on the compatibility of the measures with the common market.

(15) It concluded (paragraph 76 of the judgment) that the Commission should have initiated the inter partes procedure provided for by Article 93(2) (now Article 87(2)) of the Treaty and that the Commission Decision of 18 May 1993 should be dissolved, 'in so far as it concerns the aid granted exclusively to CELF for the purpose of offsetting the extra cost involved in handling small orders of French-language books placed by booksellers established abroad'.

B. *SECOND STAGE OF THE PROCEDURE*

(16) By Decision dated 30 July 1996, the Commission decided, in accordance with the Court's judgment of 18 September 1995, to initiate a formal investigation into the aid in question. The decision to initiate was published in the *Official Journal of the European Communities* ([10]). Interested third parties were invited to submit their comments, and these were received in December 1996 and January 1997.

(17) Following this examination, the Commission adopted a new, positive Decision: Decision 1999/133/EC.

(18) On 28 September 1998, SIDE applied to the Court to annul the last sentence of Article 1 of the Decision 1999/133/EC.

(19) The seven grounds of annulment cited by SIDE were as follows:

(a) procedural defect;

(b) inadequate reasoning;

(c) factual error;

(d) manifest error of assessment;

([7]) Decision NN 127/92 Aid to exporters of French books (OJ C 174, 25.6.1993, p. 6).

([8]) Case T-49/93 *Société internationale de diffusion et d'édition (SIDE)* v *Commission* [1995] ECR II-2501.

([9]) Which subsequently became the programme *A l'est de l'Europe*.

([10]) See footnote 1.

(e) breach of the principle of non-discrimination;

(f) breach of former Article 92(3)(d) (now Article 87(3)(d)) of the Treaty;

(g) the disputed Decision is inconsistent with former Articles 85 and 86 (now Articles 81 and 82) of the Treaty.

(20) By judgment dated 28 February 2002, the Court annulled the last sentence of Article 1 of the said Decision on the basis of the 'manifest error of assessment', without considering it necessary to examine the other grounds cited in the action.

(21) Having stressed the principles stemming from Community case-law on the degree of product interchangeability, the Court considered that the Commission should have carried out the necessary checks to obtain the relevant data to enable it to distinguish the export agency market from that for the export of French-language books in general.

(22) The Court found that by failing to carry out such a check the Commission committed a manifest error of assessment in selecting the export market for French-language books in general as the reference market, when it was established that the contested aid was intended only for export agencies.

(23) The Court concluded that under these conditions the Commission was not able to assess appropriately the effects of the contested aid on the relevant market and therefore annuls the last sentence of Article 1 of Decision 1999/133/EC on this basis.

(24) The French authorities applied to the Court of Justice of the European Communities on 8 September 1998 for Decision 1999/133/EC to be annulled, since it had set aside the application in the case in point of Article 90(2) (now Article 86(2)) of the Treaty. According to France, the disputed aid was intended to offset the costs of a service of general economic interest which had been assigned to CELF by the Ministry of Culture.

(25) The French Government argued that under Article 92 and Article 93(2) and (3) (now Article 87 and Article 88(2) and (3)) of the Treaty, contrary to an existing aid, a new aid cannot be implemented before it has been declared compatible with the common market, except where the eligible undertaking qualifies for the derogations provided for in Article 90(2). France defended the view that the obligation of suspension was 'necessarily' inapplicable in the case of aid allocated to an undertaking responsible for administering a service of general economic interest.

(26) The Court, in its judgment of 22 June 2000 [11], rejected the French claim without going into the substance of the case, having stressed the importance of the safeguard mechanism introduced by the last sentence of Article 93(3) (now Article 88(3)) of the Treaty. It stated that the fact that a Member State considers an aid to be compatible with the common market does not entitle it 'to defy the clear provisions of Article 93 of the Treaty'.

(27) Consequently, the Court rejected the French action and confirmed that the obligation of prior notification and the suspensive effect attaching to it are applied in an inseparable manner, since the fact that an aid may be covered by Article 86 of the EC Treaty has no bearing on the obligation to notify.

(28) Lastly, SIDE lodged a complaint on 5 October 1999 with the Commission against CELF for restrictive practice and abuse of a dominant position under Articles 81 and 82 of the Treaty. SIDE also mentioned France as responsible under Article 10 of the Treaty, since it had encouraged the said anti-competitive practices.

(29) This matter is being treated separately by the competent services of the Commission.

C. *THIRD STAGE OF THE PROCEDURE*

(30) Following the partial annulment of Decision 1999/133/EC, the Commission asked the French authorities and SIDE by letters dated 14 June 2002 to give their views on the reasons for the annulment of the decision and, in particular, on the aspects relating to the relevant market.

(31) The French authorities were asked to comment in particular on the special features of the CELF offer compared with those of other market operators, including SIDE.

(32) SIDE was asked to comment in particular on the notion of small orders and to indicate any special feature its offer might have compared with CELF's and those of the other market operators.

(33) By letter dated 8 July 2002, SIDE asked for an extension in which to reply, which it was granted by letter dated 25 July 2002. The French authorities, which were to meet the Commission's services on 17 July 2002, also asked for an extension for their reply by letter dated 10 July 2002. This was granted by letter dated 1 August 2002.

[11] Case C-332/98 *France* v *Commission* (Aid for the Coopérative d'exportation du livre français (CELF)) [2000] ECR I-4833.

(34) SIDE sent its reply to the Commission by letter dated 12 August 2002. The French authorities sent their reply by letter dated 17 September 2002.

(35) Having asked SIDE, by letter dated 19 September 2002, to say whether its reply contained confidential information, and having obtained a negative reply on 30 September 2002, the Commission, by letter dated 17 October 2002, sent SIDE's reply together with its annexes to the French authorities for comment. It also asked them some further questions on this occasion.

(36) By letter dated 30 October 2002, the Commission also asked SIDE some further questions, to which the company replied by letters dated 31 October 2002 and 9 December 2002. SIDE informed the Commission, by letter dated 23 December 2002, following the Commission's request of 16 December 2002, that its replies contained no confidential information and could be sent to the French authorities for comment.

(37) In the meantime, since the French authorities had not replied within the time limit, the Commission was obliged to send them a reminder by letter dated 27 November 2002. By letter dated 19 December 2002, the French authorities again requested the Commission for an extension.

(38) On 9 January 2003, the Commission sent SIDE's reply of 23 December 2002 to the French authorities for comment. By letter dated 17 January 2003, the French authorities replied to the Commission's questions of 17 October 2002.

(39) By letter dated 4 February 2003, the French authorities asked the Commission for a further extension (concerning the request for comments on SIDE's second reply, dated 23 December 2002). By letter dated 11 February 2003, the Commission granted the requested extension in part. By letter dated 11 March 2003, the French authorities sent their reply to the Commission.

(40) In the meantime, SIDE was received by the Commission's services at its request and was able to explain its view of the case from the beginning at a meeting held on 4 March 2003.

II. DESCRIPTION OF THE MEASURES IN QUESTION: AID AIMED AT MAINTAINING A PARTLY NON-PROFITABLE ACTIVITY

(41) The Ministry of Culture decided in 1980, in accordance with the general policy guidelines of the French Government on promoting books and literature in French, to grant aid to export agencies accepting any type of order, irrespective of the amount and whether it was profitable. The measures were introduced to alleviate the effects of market failure and to foster the 'small non-profitable orders' activity in the export agency market.

(42) The French authorities explain that small bookshops, established in basically non-French-speaking areas, and sometimes difficult of access and/or remote, were experiencing serious supply difficulties, since their orders could not be met by the traditional distribution channels when the quantities of books ordered were insufficient or when the unit price of the books ordered was not high enough to make the service profitable.

(43) The operating grants in question were intended to encourage firms to approach such customers (bookshops, not final consumers), whom it had not been possible to serve under a 'normal' commercial relationship based solely on profit.

(44) The aid in question was designed therefore to allow export agencies to meet all orders from booksellers established abroad in basically non-French-speaking areas, irrespective of amount, profitability and destination. The aim was to ensure, as part of France's policy of supporting cultural diversity, the optimum distribution of books in the French language, thus promoting the dissemination of French literature throughout the world.

(45) The aid mechanism chosen by the French authorities, the Small Orders programme, consisted in an operating grant intended to offset the extra cost of handling small orders of FRF 500 (i.e. approximately EUR 76) or less.

(46) Two other funding systems, direct aid to booksellers and direct aid to publishers, had been considered but had finally been rejected, as they were thought by the French authorities to be less efficient and more costly. The system challenged by SIDE had seemed the most rational economically and the safest as regards the use of public funds.

(47) Under the Small Orders programme, the undertaking receiving the grants had to promise to provide the Book and Reading Directorate in the Ministry of Culture with all information concerning the general activity of the firm (overall turnover, financial accounts, provisional budgets, copies of the proceedings validating these figures, the auditor's report where appropriate, and a summary salary scale), and any documents relating to the activity to be subsidised, in particular the grant utilisation account, substantiating that the services giving rise to the grant awarded the previous year had been carried out.

(48) In practice, only one firm, CELF, had qualified under the Small Orders programme. Every year it had to justify the extra costs incurred by the small orders service in support of its application for a grant for the following year ([12]).

(49) Specifically, one quarter of the grant awarded the previous year was paid at the start of the year, the balance being awarded in the autumn, after the authorities had examined the provisional budget of the recipient firm and the changes recorded in the first part of the financial year.

(50) It was agreed that if the amount of aid was not fully utilised, the balance would be deducted from the planned grants for the following year.

(51) It should be explained that the aid was abolished in 2002 (see Annex I, table showing the trend of aid granted since 1980, in euro).

III. COMMENTS FROM SIDE AND INTERESTED THIRD PARTIES

A. *REASONS FOR SIDE'S INTERVENTION*

(52) The object of SIDE ([13]), under Article 2 of its articles of association, is: 'the sale in France and abroad of books, newspapers and magazines and all cultural products, publishing, the setting-up or acquisition and running of any similar business and, more generally, any industrial, commercial or financial operation, whether in movable or immovable assets, that can be linked directly or indirectly to the object of the company or is likely to facilitate its expansion or development'.

(53) By letter dated 20 March 1992, SIDE lodged a complaint ([14]) with the Commission, following a refusal by the Ministry of Culture to grant it the aid described in Part II.

(54) Basically, SIDE is asking the Commission to take a decision putting an end to the distortions of competition which it is suffering from on the market for the export of French-language books, the disturbances complained of being caused by the aid granted exclusively to CELF.

(55) SIDE states that it refused to be granted the disputed aid, which it had been offered by the Ministry of Culture at a meeting held on 26 September 1996. It explains that it could not accept this late offer, which was made suddenly after the judgment of the Court of First Instance on 18 September 1995. It did not wish to benefit from a programme whose compatibility with Community law might be questioned by the Commission. It also explained that the offer had been made simply to get it to undertake to terminate the proceedings which it had itself initiated.

(56) SIDE also says it was convinced that the activity of export agent did not require any aid. It therefore challenges the need for the Small Orders programme. However, it no longer rules out all possibility of using it in future, 'so that its business can be run on a level playing field', but only assuming that a mechanism which is clearly compatible with the Treaty rules is adopted by the French authorities.

(57) SIDE states that 'on the export agency market, operators whose turnover is basically generated by intermediaries such as bookshops and not end-users are regarded as "general" exporters'. The only general agencies, in its view, are CELF and SIDE. It also explains that there are exporting booksellers, who sell direct to end-users.

(58) At a meeting on 4 March 2003, SIDE informed the Commission that it operates basically in western Europe. It also operates in the markets of eastern Europe, but not widely on account of the programme *A l'est de l'Europe* ([15]), from which CELF benefits. It also operates in North America and South-East Asia. It used to operate in Argentina, before the current crisis hit that country. It explained that it did not want to operate in Africa, since there are few interested customers in those territories, particularly in sub-Saharan Africa. It does not operate either in countries not covered by Coface ([16]).

([12]) In addition, the Ministry of Culture attended CELF's board meetings and general meetings as an invited observer.
([13]) A family company founded in 1980.
([14]) See recital 3.
([15]) The Commission states that the programme makes it possible to grant discounts on list prices to booksellers. CELF takes part on the same basis as other operators; export agency is not involved in this case.
([16]) Insurance undertaking covering export payment risks. SIDE refuses to deliver to countries that are not covered.

(59) SIDE disputes the French authorities' argument that large orders are profitable, whereas 'small orders' are not, which is the reason why they have to be subsidised in order to be met. It even adds, lastly, that small orders overall are more profitable to process than larger ones.

(60) The notions 'small orders' and 'profitability thresholds', it explains, are arguments put forward by the French Government to try and justify the aid granted specifically for the operation of CELF under the cover of aid for processing small orders of French books for abroad, when in fact it is just a simple operating aid.

(61) SIDE maintains there is no profitability threshold for the type of activity concerned. Economies of scale can of course be achieved when several copies of the same title are ordered at once. This is why its scale of discounts provides for an additional discount of 5 % for each order of 10 copies or more.

(62) It states that the processing cost and profitability for all orders are the same, since only the number of order lines entered by one person in one day and the quantity of books for each line are significant. The total amount of the invoice issued has no influence on costing the service. A person entering 1 000 lines in one day takes exactly the same time as an order from a customer containing two or 100 lines, the only difference being that the customer has to be identified for each order from a different customer, which only takes a few seconds. The amount of turnover generated during a given period does not depend, therefore, on the number of customers but only on the number of lines entered during that period.

(63) SIDE also states that, just like CELF, it accepts all orders sent to it whatever their amount, the solvency of the customer being its only selection criterion.

(64) Some orders, however, may contain requests for works that are not listed and consequently require special searches; this type of order accounts for about 4,5 % of its business.

(65) SIDE therefore considers that the aid granted to CELF for processing small orders enables that organisation to offer customers particularly attractive discounts, which SIDE cannot do itself.

(66) Apart from challenging the principle that there are extra costs which justify the aid in question, SIDE highlights certain errors in the data from CELF's cost accounts, produced by the French authorities and used by the Commission in support of Decision 1999/133/EC. Thus it rejects the idea that there are extra costs associated with the tele-transmission of small orders, as identified in Decision 1999/133/EC. It also points out that some of the data taken from CELF's cost accounting, relating to social security contributions, are different to those pertaining to the same item in the firm's financial accounts, and that therefore the CELF accounting data notified by the French authorities are not relevant.

(67) SIDE explains that it chose to include in its public listings only those publishers which offer the most attractive discounts. It adds that its list of publishers is much more restricted than CELF's, because it is not able to offer attractive discounts for all publishers, unlike CELF, which can do so as a result of the aid it receives and the special relations it maintains with publishers.

(68) SIDE points out that it suffered a loss, since some of its customers switched from its services to CELF, which, on account of the aid it receives and the accommodating attitude of the publishers, offers particularly attractive discounts ([17]). It considers that by this means CELF acquired a dominant position on the export agency market.

(69) It explains that it is now suffering another kind of loss resulting from the changes to the pricing policy of CELF, which it has been applying 'for at least two years terms that discourage small accounts' ([18]), ([19]). Now that CELF only receives a symbolic part of the disputed grants, and especially since they were completely abolished in 2002, small accounts are requesting SIDE's services. This new demand causes further loss for the company, 'since the most interesting customers are also those who have a large volume of orders'.

(70) SIDE concludes that 'the policy thus being conducted by CELF is obviously in total contradiction with its statement that its supposed public service task, which in its view and that of the French Government justifies the aid it receives, obliges it to treat all orders and all customers the same'.

([17]) For this purpose, SIDE produces in particular a document entitled 'Determination of the losses suffered by SIDE on account of the grants paid by the Ministry of Culture to CELF between 1 April 1980 and 31 March 1996'.

([18]) That is, 2000 to 2002, the period between the start of significant reductions in grants and their abolition.

([19]) SIDE produced in particular a letter from CELF dated 18 March 2002, informing a German customer of a change in its general conditions of sale for 'small accounts', the effect of which was an increase in charges.

(71) In support of its claims, SIDE produces two external reports from 1996, the first by the Fondation nationale des sciences politiques and the second by the Cour des comptes (Court of Auditors).

(72) The report of the Fondation nationale des sciences politiques, entitled 'La diffusion assistée du livre scientifique et universitaire français' (Assisted marketing of French scientific and academic books) and published in November 1996, concerns a particular segment of the market. According to SIDE, although outside the scope of the present proceedings, the document contains particularly significant information, which should have been taken into account by the Commission in Decision 1999/133/EC when assessing the legality of the aid in question.

(73) SIDE also produces a report by the Cour des comptes, published in October 1996, criticising generally the policy of the Ministry of Culture on grants and focusing more specifically on certain programmes financed by the Ministry, including programme *Page à page*, administered by CELF.

(74) SIDE raises other, more specific questions. It objects to a recapitalisation of CELF by the Government in 1980, which it considers tantamount to rescue aid. It believes that CELF was recapitalised a second time in 1993, also a State aid, through the Association pour le développement de l'édition française (ADEF). Finally, it mentions the advantages to CELF of being entrusted with the 'management of public programmes', and a whole set of specific advantages linked to the firm's special relations with the public authorities.

B. *COMMENTS FROM INTERESTED THIRD PARTIES*

(75) Following publication in the *Official Journal of the European Communities* ([20]) of the initiation decision of 30 July 1996, and even before then, several interested third parties made their views known ([21]).

(76) Mr Van Ginneken ([22]), in his comments of December 1996, explains in his capacity as a wholesale exporter of French books to non-French-speaking countries that 'CELF had already set itself the task ([23]) of becoming a profitable exporting wholesaler itself, which conflicted with the object of its foundation, namely as a service organisation'.

(77) He also mentions the problems of a possible agreement between CELF and the publishers, the latter in part being members of CELF ([24]). He objects to a 'manifestly unjust' situation, in which private initiative as represented by wholesale exporters is harmed.

(78) Hexalivre, a company exporting French books ([25]), submitted comments on 23 December 1996, also signed by Mr Van Ginneken, its chairman, as a bookseller whose customers are 'institutions' established abroad. It stated that CELF's business, whose object was to supply booksellers abroad, should not in principle interfere with its own. It argues that ultimately the grant in question benefits 'a private company supported by the government and tending as far as possible towards a monopoly'.

(79) Mr Fenouil, for Lavoisier Tec et Doc, a former collaborator of CELF, publisher and exporting bookseller specialising in scientific and technical works, does not dispute, in comments dated 7 January 1997, the appositeness of the aid granted to CELF from 1980, and even mentions 'unconditional support up to 1994 ([26])'. However, he does take issue with CELF's diversification ([27]), which he says was financed by means of the disputed grants. He also states that 50 % of the orders handled by his company are small orders of less than FFR 500. Lastly, Mr Fenouil 'calls for a return to normal conditions of competition in exports, involving the abolition of aid not based on a genuine public service mission or an indisputable cultural objective which cannot be achieved by existing means'.

(80) Mr de la Rochefoucauld, for '*Aux amateurs de livres international*', submitted comments dated 2 January 1997. He objects to, and regrets, the fact that CELF can serve foreign libraries and/or institutional customers while receiving grants for meeting the needs of another market. He would like CELF to limit its sales to foreign booksellers only, ignoring all other customers. He considers that the compensatory grant enabled CELF to give its customers an extra discount of three percentage points. For him 'the aid is a hypocrisy', he is 'astonished that the aid can be more than 60 % of the amount of the orders in question'. He concludes that the aid serves to expand CELF's commercial activities, and considers therefore that it should be divided 'between the bookshops concerned in proportion to their turnover in third countries' and that CELF should be prohibited from supplying customers other than booksellers established abroad.

([20]) See footnote 1.

([21]) It will be noted that two of the intervening third parties were bought up by CELF, Mr Van Ginneken also intervening on behalf of Hexalivre in 1996.

([22]) Former multiple representative of CELF, whose relations with the company 'terminated on a sour note'. He was bought up by CELF.

([23]) In 1996 to 1997.

([24]) It will be noted that the Commission was able to establish that CELF's collaborators on average numbered about a hundred, while the market comprises several thousand publishers.

([25]) Hexalivre was bought in 1998 by a subsidiary of CELF, which itself has since been bought by CELF.

([26]) Commission's italics.

([27]) According to Tec et Doc, CELF should limit its activities to the export agency business and not get involved in the export of scientific books.

(81) The Syndicat national des importateurs et exportateurs de livres (SNIEL) points out in its comments of 31 December 1996 that SIDE's remarks about CELF were not considered sufficiently credible for it to join its court action initially. It does object, however, to the fact that CELF, from 1996, was able to operate in 'areas where it was not originally planned that it should operate' ([28]), and considers that it developed these activities as a result of the compensatory grants received, which it regards as too high.

(82) Similarly, SIDE, in its comments of 6 January 1997, stated that '(…) even supposing that small orders are commercially significant, it has become apparent very quickly that CELF has not confined itself to this allegedly non-profitable activity'.

(83) CELF, which likewise submitted comments as a third party, disputes the complainant's allegations and produces several letters from publishers expressing satisfaction with its services.

IV. **COMMENTS FROM THE FRENCH AUTHORITIES**

(84) The French authorities state that for a long time small orders were handled by the companies Hachette and Messageries du Livre. These firms acted as distributors for numerous publishing houses which did not have suitable distribution structures for ad hoc small orders and/or did not want to develop them.

(85) CELF, bringing together various operators in the publishing world, was set up in 1977, initially in the form of an open-end cooperative, to offset the perceived failure of the export agency market at a time when Hachette and Messageries du livre had decided to abandon that activity as unprofitable ([29]). Its capital, initially FRF 50 000, was increased subsequently to FRF 80 500. From 1979, CELF encountered substantial financial difficulties, which were expected however, since the two companies which previously administered the activity had preferred to withdraw from a market they considered unprofitable. The profession, publishers, the Syndicat national de l'édition (SNE) and the public authorities considered that CELF's activity should be maintained in any event, to ensure the optimum marketing of French-language books abroad. Since no other operator seemed prepared to provide the service, it was decided in 1980 that CELF would be restructured and recapitalised.

([28]) Small orders, according to SNIEL, account for 6 % of CELF's business, which means, according to this union, that 'CELF conducted 94 % of its business in areas where it was not originally planned that it should operate'.

([29]) A letter from the Syndicat national de l'édition dated 18 July 1980 submitted by the complainant confirms this.

(86) The French authorities state that, in the circumstances, CELF was transformed into a closed-end cooperative society in public limited company form. Its capital was increased from FRF 80 500 to FRF 1 280 500. One half of the recapitalisation was provided by the shareholders, and the other by ADEF ([30]), an association financed by the State. ADEF was dissolved in 1994; its shares were assigned free of charge to SNE, itself a collaborator of CELF.

(87) France states that CELF has remained, to this day, a cooperative society in public limited company form, which operates using its own funds. It is a structure that has always been open to all, there being no nationality requirement in order to become a shareholder. The only obligation has always been to have 'an activity somehow linked to the export of French books'. Thus publishers of French-language works established in another Member State can join the cooperative without any problem and benefit from its action ([31]).

(88) CELF's object, under Article 3 of its articles of association, is to 'process directly orders for abroad ([32]) and the overseas territories and departments of books, brochures and any communication media and, more generally, to perform any operations aimed in particular at increasing the promotion of French culture throughout the world, using the above media. To this end, the cooperative will carry out all industrial, commercial or financial operations to achieve its object. Given the particular object of the cooperative, no natural or legal person may become or remain a shareholder, if they do not carry on a business somehow linked to the abovementioned export operations'.

(89) The French authorities explain that, at 6 November 2002, CELF had 76 cooperative shareholders, who are mainly, though not entirely, publishers. Each shareholder has one vote at the general meeting, irrespective of the size of its stake. The interprofessional nature of the company has provided a guarantee of transparency, concern for the collective interest and the sound administration of the grant awarded.

([30]) The association brought together a number of publishers whose aims were to increase the presence of French books abroad and to support investment for exporting publishers. It received assistance from the State through the Book and Reading Directorate in the Ministry of Culture.

([31]) Only one foreign firm is currently a member of CELF: Casterman, whose registered office is in Belgium. It is a French subsidiary of Flammarion, itself a subsidiary of the Italian company Rizzoli.

([32]) Prior to a discussion at the general meeting on 29 June 1994, CELF's articles of association referred explicitly to "small orders". What was then Article II stated that "the Cooperative's object is to process directly or facilitate the processing of small orders for abroad and the overseas territories and departments, (…)".

(90) The main players in the marketing of books are as follows:

(a) publishers, which 'produce' the books;

(b) marketers, whether integrated into publishing houses or not, which ensure the commercial promotion of books to retailers or certain large institutional users;

(c) distributors, whether integrated or not into publishing houses, which ensure the logistics of the publishers' marketing; they receive their orders from booksellers, certain large institutional users or diversified intermediaries and obtain their supplies from publishers;

(d) wholesalers, which are not always involved in the distribution channels and who are intermediaries between distributors and retailers or certain large institutional users;

(e) export agencies, which deal only with retailers and not the end-user.

(91) France explains that on-line bookshops must now be included among the players present on the market and must also be considered as potential competitors of the export agencies. It is, however, unable to supply data on the market shares held by these new entrants ([33]).

(92) The French authorities explain that the variety of the players present on the market must make it possible to market and promote books to all types of public, irrespective in principle of their geographic location, since the Small Orders programme has provided an appropriate remedy for the deficiencies of the complex mechanism for marketing books.

(93) The French authorities transmitted certain information on the global market for the export of French-language books. This illustrates CELF's commercial policy, which gives preference, in line with its articles of association and the commitments given to the French authorities, to those areas where publishers are not very present.

(94) Thus Table 1 shows that CELF is not very active in those areas where publishers are very active and that, conversely, it is active in those areas where publishers are not very active.

Table 1

Comparative geographic distribution of the turnover of French language publishing and CELF, and CELF's share of the global market for the export of French language books

Regions concerned	Publishing	CELF	CELF's share
European Community	38,2 %	20,23 %	0,97 %
North America	17,4 %	6,03 %	0,64 %
Non-Community Europe	16 %	1,11 %	0,13 %
Overseas departments and territories	8,4 %	0,87 %	0,19 %
Asia	3,7 %	19,9 %	9,95 %
French-speaking Africa	5,5 %	11,58 %	3,85 %
Maghreb	4,4 %	28,43 %	11,84 %
Near and Middle East	2,3 %	1,09 %	0,87 %
Eastern Europe	2 %	2,21 %	2,03 %
Latin America	1,5 %	7,6 %	9 %
West Indies	0,32 %	0,7 %	4,27 %
Non-French-speaking Africa	0,16 %	0,21 %	2,47 %
	100 %	100 %	

([33]) Market not identifiable from customs statistics.

(95) The French authorities point out that the Small Orders programme was not designed as an aid specifically for CELF, but as a scheme of support for the marketing of French-language books, it being possible to use the channels of other operators that might respond to the same type of order.

(96) They explain that the structural change to CELF, which occurred in 1980, was accompanied by a decision to grant aid under the Small Orders programme. They confirm that, in practice, CELF was the only general operator to receive the grants in question ([34]), since no other operator (apart from SIDE, 12 years after the launch of the programme) applied, even when the programme was known to the profession.

(97) France does not dispute that the Ministry of Culture refused to grant the aid to SIDE ([35]) in 1991, since the firm did not meet the conditions of transparency required to qualify for the said aid and refused to be bound by the constraints inherent in their award. Furthermore, France points out that the Ministry of Culture approached SIDE in 1996 to offer it the aid, but the company refused it.

(98) The French authorities point out that one of the objectives of French cultural policy is to ensure the marketing of French-language works throughout the world. This objective must be understood as a public service task. Which is why the French authorities maintain that the Commission should analyse the measures in question under Article 86(2) of the Treaty.

(99) France points out that CELF was set up, and then allocated the disputed grants, at a time when the economic operators responsible for this activity had decided to withdraw from the market. If the disputed measures had not been put into effect, the marketing of French-language books to small bookshops established in often remote areas, where demand is slight in terms of turnover and volume, would have clearly been penalised.

(100) The French authorities consequently decided to implement the disputed programme, so that all orders can be met, including non-profitable orders for French-language works, under the same conditions as for larger orders.

(101) France asserts that the Ministry of Culture provided 'its assistance for the operational costs of CELF's public service associated with small orders' and that consequently CELF was entrusted with a genuine public service task.

(102) In support of their claim, the French authorities sent the Commission several instruments:

(a) Decree No 82-394 of 10 May 1982 on the organisation of the Ministry of Culture stresses its role in the 'influence of French culture and French art in the free dialogue of world cultures';

(b) Decree No 93-797 of 16 April 1993 on the powers of the Minister for Culture and the French-speaking World, which provides that 'the Minister for Culture and the French-speaking world (…) shall implement, jointly with the other Ministers concerned, the measures introduced by the Government to ensure the influence of French culture and the French language in the world';

(c) the orders on the organisation of the Book and Reading Directorate, the latest of which dates from 1996, based on the said decrees, which set out the tasks of the Ministry of Culture in relation to the export of books.

(103) The French authorities state that it is on the basis of these instruments that the Book and Reading Directorate concluded annual agreements with the partners responsible for implementing measures arising out of the Government's cultural policy. The agreements define the aims of the collaboration between the Ministry and the bodies it subsidises, and the obligations of the parties.

(104) The French authorities explain that, every year, the Ministry of Culture concluded with CELF ([36]) an agreement entrusting it with the performance of a public service task which consisted in 'meeting any order for French-language works from foreign bookshops, irrespective of the amount'.

(105) The French authorities also explain that, however the reference market is defined, SIDE and CELF are not in competition for low-volume orders.

(106) In particular they highlight the contradiction in SIDE's case: while claiming to work with the same type of customers as CELF and that it treats all its customers in the same way 'irrespective of the amount of their orders', SIDE gives a discount of less than five percentage points on orders of less than 10 copies.

(107) They consider that the significant 'penalty' which SIDE applies to low-volume orders of less than 10 copies is evidence that small orders are not a priority target for the company, unlike orders which allow it to achieve considerable economies of scale, such as those placed by institutional customers.

([34]) Some firms, Servedit for French-speaking Africa from 1988 to 1993, and the Ecole des Loisirs, in 1995, for the countries of the Mediterranean basin, managed to qualify for aid of the same kind but in specialist sectors.

([35]) The only other company to have applied.

([36]) Until 2001, since the grant was abolished from 2002.

(108) The fundamental difference in commercial strategy is clear in particular from the average number of books per line and per invoice, which is much higher for SIDE than for CELF.

(109) The French authorities state that CELF must be able to offer its customers a comprehensive list of publishers in return for the aid granted to it, even if this is not compensated as such by the aid from the Small Orders programme, since the policy objective of the Ministry of Culture is to market books in French as widely as possible. They point out that hundreds of publishers on CELF's list are in fact very small publishers, associations or miscellaneous bodies which are almost unheard of ([37]) and whose publishing activity is not likely to generate large, profitable orders. By offering such an expanded list of publishers, CELF is promoting diversity. It must accordingly be sourced from a very large number of suppliers for amounts which are often very small, which in turn forces it to manage numerous small publisher accounts without this being compensated by aid of any sort.

(110) Small publisher accounts are economically less profitable, since unlike large publishers they don't offer very favourable terms. For its part, SIDE applies a commercial policy that gives priority to the more popular publishers, which are likely to generate large orders. The French authorities explain that, consequently, a distinction should be drawn between 'small accounts' and 'small orders'. The notion 'small orders' suits the description of the disputed 'programme' of course, but it does not sufficiently capture the counterpart of 'small customer accounts', namely 'small supplier accounts'.

(111) The award of grants is of course based on the extra costs generated by small orders, but the beneficiary operator is also subject to obligations which are not, properly speaking, 'compensated'.

(112) The French authorities state that compensatory aid was allocated to CELF to offset the additional expenses generated by small orders, the threshold for which had been set empirically at FRF 500. The threshold was a reference figure which did not mean that each order between FRF 0 and 500 had to be at the breakeven point. Some orders of FRF 500 might be profitable, others not. It all depended on the number of titles and books included, the nature of the books, the reliability of the order placed, depending on whether the customer was eligible or not for the Coface guarantee, and the means of and time required for payment.

(113) The French authorities explain that what was certain, however, was that the FRF 0 to 500 order market was not profitable overall and would not, in principle, have been covered by an operator which had taken only economic criteria into account. They base this argument on a cost analysis for the reference year 1994.

(114) As tables 2a and 2b show, the French authorities explain that in recent years, and in particular since they started to run down their financial commitment in 1996 to 1997, CELF has been forced to diversify by developing a profitable customer base made up of large bookshop accounts and institutional customers such as libraries, universities and cultural centres. At the same time, while 'small account' turnover and the number of customers have declined, there has been an increase in CELF's turnover overall. The French authorities confirm consequently that processing small orders has acted as a brake on CELF's business.

Composition of CELF's turnover

Table 2a — Example of Germany

GERMANY 3,4 % of CELF's turnover represents 27,2 % of active small customer accounts			
	1999	2000	2001
Turnover	FRF 2 331 713	FRF 2 548 430	FRF 2 906 533
Number of customers	593	561	444
Turnover < FRF 5 000	480	462	344
Turnover < FRF 10 000	47	35	38
Turnover + FRF100 000	0	2	4

([37]) For example, Ensemble baroque Limoge; monastère Sainte Madeleine.

Table 2b — European Community

Customer accounts, European Community			
	1999	2000	2001
Turnover	FRF 15 253 754	FRF 14 241 785	FRF 14 436 006
Number of active customers	1 567	1 440	1 249
Turnover < FRF 5 000	1 059	950	782
Turnover < FRF 10 000	162	154	139
Turnover + FRF 100 000	19	15	18

V. **ASSESSMENT**

(115) CELF and SIDE are two competing undertakings established in France which are active, in particular, as agencies for the export of French-language books ([38]). This activity consists in the marketing of books in French ([39]) in order to meet orders from small retailers (small bookshops or institutions such as libraries or universities), principally in non-French-speaking countries and areas. For areas such as Belgium, Canada and French-speaking Switzerland, books are marketed by the publishers themselves or through distribution networks, the volume of the market being sufficiently large for firms to invest in integrated distribution networks. This type of service makes it possible to ensure the optimum marketing of many works.

(116) SIDE and the French authorities are agreed that the agent collates individual small orders which it would be too expensive for publishers and traditional distributors to handle. This service enables customers, whether they are booksellers or institutions, to avoid having to contact a multitude of suppliers.

(117) At the same time, the orders are sent to the publishers and/or distributors, which thus have a single point of delivery: the agent. Through this type of service, therefore, they also save time and money by not having to maintain relations with several customers, which are assumed to be very scattered geographically.

(118) Export agents are thus essential service providers for channels exporting books to countries where demand is irregular, fragmented and/or low-volume. Using the services of an export agent is therefore often the only way for a buyer (never the final customer) established in a non-French-speaking country to place and receive its orders. The service of the agent makes it possible to reduce the fixed costs associated with processing each order.

([38]) CELF is an agent only for books in French; this is not the case with SIDE, which also handles books in foreign languages.

([39]) Contrary to that of SIDE, CELF's activity is exclusively devoted to exports.

(119) In the case in point, it is established that the French authorities implemented the disputed Small Orders programme in order to assist, within the export agency market, small orders of less than or equal to FRF 500, regarded in principle as non-profitable. It is appropriate to examine, therefore, whether this programme, which was not notified and of which CELF was in practice the only beneficiary, was compatible with the Treaty.

A. *APPLICABILITY OF ARTICLE 87 OF THE TREATY*

1. THE MEASURES IN QUESTION ARE AID WITHIN THE MEANING OF ARTICLE 87(1) OF THE TREATY

(120) Article 87(1) of the Treaty lays down that 'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market'.

(121) The measure in question gives CELF an advantage, since it is a grant designed to reduce the cost of small orders. This point, moreover, was never disputed by the French authorities.

(122) It is financed from budgetary resources administered by the Book and Reading Directorate in the Ministry of Culture, i.e. from State resources.

(123) It is intended for book agents and, in practice, has only benefited CELF. It is therefore selective.

(124) As to whether the measure affects trade between Member States and distorts competition, the Commission has taken account of the following.

(125) The aid is granted to French agents who export books in the French language principally to non-French-speaking countries. The French agents are therefore competing, at least potentially, with other agents for the export of French-language books established in other French-speaking countries of the Community (principally Belgium and Luxembourg). It should be mentioned, however, that given the considerable difference between the volume of French-language books exported to non-French-speaking countries from France and the volume exported from Belgium and Luxembourg, the distortion of competition on the market as a result of aid is by nature very limited.

(126) The aid may also give rise to a distortion of competition and affect trade by having induced effects on the other activities of CELF. However, these seem confined to marketing abroad, and CELF's website ([40]) clearly states that the company does not sell in France or to individuals. The aid in question was granted to CELF under the Small Orders programme, which was designed to ensure that all orders from foreign bookshops located in non-French-speaking territories can be met, irrespective of the amount. The Commission notes that the disputed mechanism was able to benefit buyers and publishers of French-language books, since the former could enjoy affordable prices and the latter's sales were facilitated. Such an effect on trade, however, is extremely indirect and, all things considered, very limited, given the low substitutability between books in French and other languages.

(127) In these circumstances, the aid granted to CELF is State aid within the meaning of Article 87(1) of the Treaty, since it meets the four conditions of aid. It should also be mentioned, however, that the impact on trade and the distortion of competition as a result of the measure are very small.

(128) It must be stressed that Member States are obliged to inform the Commission, in sufficient time, of any plans to grant aid, in accordance with Article 88(3) of the Treaty.

(129) The French Government did not notify the programme in question or the aid to CELF for processing small orders, before it granted them. The aid was thus granted unlawfully.

(130) Moreover, since the Court of First Instance partly annulled the Commission Decision of 18 May 1993, and subsequently Decision 1999/133/EC, which authorised the aid granted to CELF, the aid which was granted to CELF for processing small orders is still unlawful.

([40]) www.CELF.fr.

(131) It should now be examined whether one of the derogations provided for in Article 87(2) and (3) was applicable in this case, so that the measure in question could have been exempted from the general prohibition in Article 87(1).

2. ASSESSMENT OF THE MEASURES IN THE LIGHT OF ARTICLE 87(2) AND (3) OF THE TREATY

(132) The Commission notes that the derogations in Article 87(2) of the Treaty are not applicable in this case, since the measures in question were manifestly not intended to achieve the objectives defined therein. Nor did the aid satisfy the tests for the derogation in Article 87(3)(a) of the Treaty, since it was not intended to promote the development of areas eligible for the provision. The derogation provided for in Article 87(3)(b) concerning the promotion of the execution of an important project of common European interest cannot be applied in this case either, since the measure in question was not intended to promote that type of project. Since the aid was not intended either to remedy a serious disturbance in the French economy, the derogation in the second part of Article 87(3)(b) is not applicable either in the case in point. Lastly, Article 87(3)(c), concerning the facilitation of the development of certain economic activities or certain economic areas cannot be relied on, since the aid did not pursue regional or horizontal objectives and the Commission considers that the provision cannot be used in this case for sectoral purposes.

(133) However, under Article 87(3)(d), 'aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest' may be considered to be compatible with the common market.

(134) It is established that the cultural objective of the aid in question, recognised early on by the complainant ([41]) was acknowledged by the Commission in its Decision of 18 May 1993, confirmed by the Court of First Instance in its judgment of 18 September 1995, confirmed again in Decision 1999/133/EC, and not called into question in the CFI's annulment decision of 28 February 2002.

(135) This objective is clearly affirmed by the French Government, which wanted to conduct a proactive policy aimed at promoting the worldwide marketing of French-language works. The desire is part of an increasing trend to safeguard and encourage cultural diversity at international level.

([41]) Letter from SIDE's board to the Commission dated 7 September 1992.

(136) The Commission has already expressed its views on this topic in its communication to the Council and the European Parliament entitled: 'Towards an international instrument on cultural diversity' ([42]). It considers that cultural diversity has become one of the major issues of the international debate taking place among international and regional organisations, which makes it possible to answer growing concerns of civil society and governments regarding the preservation of cultural diversity as a common heritage of populations.

(137) The preservation and promotion of cultural diversity are among the founding principles of the European model. They are incorporated in the Treaty, in Article 151(1), which states: 'The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore', or again in Article 151(4), which states: 'The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures'.

(138) The Treaty requires the Community and the Member States to promote cultural diversity in their international relations as a contribution to a world order based on sustainable development, peaceful coexistence and dialogue between cultures. By fostering and financially supporting the marketing of French-language works, the French authorities have implemented a cultural policy which meets the objectives laid down in the Treaty.

(139) Accordingly, the Commission considers that the aid which was granted to CELF by the French authorities for marketing French-language works, irrespective of the amount of the order, was pursuing a cultural objective as understood in the Treaty.

3. COMPATIBILITY OF THE AID WITH COMMUNITY LAW

(140) Under Article 87(3)(d) of the Treaty, aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest may be compatible with the common market.

a. ***Preliminary remarks by the Commission on the comments of third parties***

(141) The Commission notes that the third parties which expressed their views, following publication of the decision to initiate the proceeding, are not, except for SIDE and CELF, export agents but rather providers of specialist 'wholesale' services. None of the intervening third parties states that it had applied to the Ministry of Culture for the aid in question.

(142) It is clear from several of the third-party comments that the mechanism of assistance set up by the French authorities was not, at least initially, called into question by those members of the profession who expressed their views.

(143) The Commission would also observe that the complainant, like the third parties, was fully aware of the aid which CELF had been granted since it was set up in 1980. It was only in 1991 ([43]) that SIDE asked the Ministry of Culture to grant it the aid as well, the Commission being informed of the case only several months later, in March 1992.

(144) The Commission notes that the third-party comments are basically critical of CELF's policy of diversification ([44]). CELF is accused of having gone, over a period of time and with the complicity of the publishers that granted it preferential discounts, into markets other than that for which it was originally set up, i.e. the small orders market.

(145) It is clear from the documents supplied that, when it was set up, CELF served bookshops only. It is only later, during the 1990s, that it started to canvas other types of customer. However, nothing indicates that CELF financed the diversification of its business from the disputed grants, indeed the opposite is the case, since the purpose and effect of the grants was to compensate only the extra costs generated by small orders, as is shown in recital 198 et seq.

(146) Some third parties, exporting wholesalers or exporting booksellers, point out that the aid was not appropriate for satisfying demand, though no relevant information in support of these claims was produced.

(147) Lastly, some third parties claimed that CELF benefited from the privileged relations it maintained with certain public organisations, such as France édition. Hexalivre, in particular, criticised the attitude of France édition, which, it said, had given CELF special treatment by allowing it access to its stand at international fairs, which it refuses to do for Hexalivre.

(148) The Commission has been able to establish, as the documents communicated by the French authorities testify, that CELF, which is a member of France édition, paid both for the space rental on France édition's stand and for the catalogues it ordered from that organisation. In any event, as the French authorities have noted, this type of relation in no way concerns the public authorities.

([42]) COM(2003) 520 final.

([43]) Letters from SIDE, dated 22 May and 4 June 1991.

([44]) See recital 81.

(149) However, as these factors did not figure in the decision to initiate proceedings of 30 July 1996, they have no bearing on the 'small orders' problem. Consequently, the Commission will not give an opinion on this question in the present proceedings.

(150) The French authorities are also accused of favouring CELF through public procurement. These claims relate in particular to the assistance granted for implementing the 'Nouveautés' programme administered by the Ministry for Foreign Affairs and the impact of orders placed by associations linked to that Ministry and the Ministry for Cooperation (such as the Association pour le développement de la pensée française (ADPF) and the Association pour le développement de l'enseignement et de la culture en Afrique et à Madagascar (Audecam).

(151) As these factors did not figure in the decision to initiate the proceeding of 30 July 1996, they have no bearing on the problem of small orders. Consequently, the Commission will not give an opinion on this question in the present proceedings.

(152) Lastly, SIDE objects to 'the complex bundle of aid benefiting not only CELF but also various organisations bringing together, like CELF, publishers and public authorities in the greatest obscurity' and the cultural policy of the public authorities generally.

(153) In support of its claims, SIDE produces in particular a report by the Cour des comptes from November 1996. The Commission notes that the report basically contains general criticisms of the way cultural aid was awarded in France. It contains nothing about the aid granted to CELF for the processing of small orders. CELF is mentioned, but only in connection with the programme *Page à page* and the Programme Plus operation, which were approved by the Court of First Instance in its judgment of 18 September 1995 ([45]).

(154) In the circumstances, the Commission considers that the conclusions of the Cour des comptes' report are not likely to help its assessment in these proceedings. In any event, SIDE's general criticisms of French cultural aid policy were not included in the decision to initiate proceedings of 30 July 1996 with regard to the Small Orders programme. Consequently, the Commission will not give its views on this question in these proceedings.

b. ***Reply concerning SIDE's related claims***

(155) In the first stage of the aid procedure, SIDE raised certain specific questions about the recapitalisation of CELF and the advantages it would receive from 'administering public programmes'. SIDE also challenged a whole series of specific advantages, linked to the preferential relations which CELF allegedly maintains with the public authorities.

Recapitalisation of CELF in 1980

(156) It will be noted that CELF's capital was raised in 1980 from FRF 80 500 to FRF 1 280 500. The operation was financed by ADEF to the tune of 50 % and by the (private) shareholders of CELF, also to the tune of 50 %.

(157) The main objective of ADEF, which brought a number of publishers together, was to promote the presence of French books abroad and to support investments made by publishers or exporters. The Association received a public grant from the Ministry of Culture.

(158) Having analysed the documentation submitted by the French authorities, the Commission has reached the conclusion that the disputed capital increase did not constitute State aid but simply the acquisition of a holding. It is not, and cannot be, disputed that private investors participated in setting up the company in its present form. The Ministry of Culture, did not contribute to CELF's capital, and ADEF, an association that is admittedly financed in part by the state, always acted like a private investor in a market economy. ADEF's subscription fully satisfies point 3(2)(iii) of the Commission's notice on the application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings ([46]). Accordingly, the transaction contained no element of State aid within the meaning of Article 87(1) of the EC Treaty.

(159) Moreover, the recapitalisation had already taken place more than 10 years before SIDE sent its first letter to the Commission, dated 20 March 1992, and before the Commission asked the French authorities for information by letter dated 2 April 1992. Consequently, and in accordance with Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([47]), the Commission could not, if appropriate, order the recovery of the capital increase, even if State aid were involved.

Recapitalisation of CELF via ADEF in 1993

(160) SIDE also objects to aid which was granted to CELF in 1993 via a sale of shares in ADEF to SNE, which is a collaborator of CELF.

([45]) See recital 10.

([46]) Bulletin of the European Communities, 9-1984.

([47]) OJ L 83, 27.3.1999, p. 1.

(161) In its comments of 5 December 2003, SIDE remarked to the Commission that, in accordance with the written evidence it had deposed at the hearing on 4 July 2001, the Commission should give its opinion on the aid which, according to SIDE, had been granted to CELF when ADEF was wound up in June 1993.

(162) The Commission notes that this point was not covered by the decision to initiate proceedings of 30 July 1996. Consequently, it will not give its opinion on the question under the present proceedings.

Advantages to CELF associated with the 'administration of public programmes'

(163) SIDE explains that CELF has been able to maintain its presence in the market and continue to grant the same type of discount to its customers after the abolition of the Small Orders programme, since it continues to receive many public grants through programmes such as *A l'est de l'Europe*, which superseded the programme *Page à page*, or Programme Plus, to which constantly increasing funds are allocated.

(164) It should be pointed out that these programmes, which had already been approved by the Commission in its decision of 18 May 1993, were also confirmed by the CFI in its judgment of 18 September 1995 ([48]).

(165) It follows that these aspects were not reported in the decision to initiate proceedings of 30 July 1986. Consequently, the Commission will not give an opinion on this question in the present proceedings.

c. ***The aid for small orders was not such as to adversely affect trading conditions and competition in the Community to an extent that is contrary to the common interest***

(i) *A mechanism intended to promote an activity abandoned by the publishing trade*

(166) The Small Orders programme was designed in 1980 by the Ministry of Culture, at a time when the industry (Groupe Hachette and Messageries du livre) wanted to quit the export agency market. The disputed mechanism was introduced to encourage operators to become involved in the market, so that all orders for French-language books from bookshops in non-French-speaking areas could be met.

(167) The Commission finds firstly, in agreement with some of the comments from third parties intervening in the proceedings, that the Small Orders programme, which was in fact launched when CELF was set up in its current form, was known to practitioners, which at least initially welcomed it ([49]), or at the very least did not call it into question, without however applying for it themselves.

(168) SIDE maintains, for its part, that the Small Orders programme was reserved exclusively for CELF. The rejection it received from the Ministry of Culture in 1991, in its view, confirmed this. At the same time, SIDE did not dispute that its application for aid was justified by its own refusal to accept the transparency requirement for eligibility.

(169) In 1996, following the annulment of the Commission Decision of 18 May 1993, the Ministry of Culture, wanting to put an end to the proceedings, pointed out to SIDE that the scheme of aid for small orders was not reserved for CELF. By letter dated 3 September 1996, the Ministry offered the company a meeting to examine whether it was able to provide, in the same conditions of transparency, the same services as CELF.

(170) At a meeting held on 26 September 1996, SIDE's managers refused the proposal which was made to them. They told the Ministry of Culture that they refused to benefit from a programme whose compatibility with Community law could be called into question by the Commission.

(171) In support of its claims, SIDE produces a report by the Fondation Nationale des Sciences Politiques, basically criticising the decision of the French authorities not to pay grants direct to booksellers. The Commission would point out in this respect that national authorities are free to choose the form of subsidy which seems to them to be best suited to the objectives they are pursuing, subject to respecting the relevant Community law. In any event, the Commission stresses that the document produced is not relevant and notes that its authors themselves take a critical view of their own assessment ([50]).

(172) Lastly, SIDE maintains that the aid was inappropriate. The Commission would emphasise in this respect that the beneficiaries of the aid were obliged to process all orders of less than FRF 500. This ensured that French-language books could reach all bookshops, including the smallest in far-off countries, even if they only needed a few books, often published by different publishers. This was not guaranteed by SIDE, which, as has already been stated, did not supply all countries.

(173) In light of the above, the Commission finds that the Small Orders programme was, in principle, accessible to any firm applying, provided it accepted the conditions according to which the aid was granted. It also notes that, from 1996, SIDE made it clear that it did not want to qualify for the programme. In the circumstances, the Commission considers that the disputed aid was not discriminatory and that it was necessary for the achievement of the objectives pursued by the French authorities.

([48]) See recital 10.
([49]) At least until 1991. See recital 79 et seq.
([50]) Page 163 of the report transmitted by SIDE.

(174) In any event, the Commission considers that, even assuming the aid in question could have been regarded until 1996 as being exclusively reserved for CELF, it was for the French authorities to assess what measures were the most appropriate and useful for optimum attainment of the objective pursued, since the aid did not exceed what was necessary for achieving that objective, as will be shown below.

(ii) *Examination by the Commission, based on the figures supplied by the French authorities and the complainant*

The export agency market for French-language books

(175) As part of their export agency activity, CELF and SIDE distribute books in non-French-speaking countries and territories. In French-speaking countries, such as Belgium, Canada and Switzerland, the local market is covered by large publishers through their subsidiaries or representatives.

(176) The export agency has only a very marginal role, therefore, in the markets which are the main outlets for books in French, i.e. the three countries mentioned above.

(177) It is established that CELF was set up, at the end of the 1970s, to remedy the failures of a market abandoned by firms in the industry because it was not profitable, and that the disputed aid was intended to support a manifestly non-profitable segment of the agents' activity.

(178) In Decision 1999/133/EC, the Commission defined the market on which it had examined the effects of the disputed aid as being the market for the export of French-language books 'in general'. The Court of First Instance, following the arguments developed by SIDE, criticised that analysis and considered that the Commission had made a manifest error of assessment in that the export of French-language books and the export agency business for French-language books were not substitutable, but distinct markets, the latter being a submarket of the former.

(179) Without questioning the CFI's assessment, the Commission would observe that the evidence produced during the examination of the case, both by the SIDE ([51]) and by the national authorities, shows that the mechanisms for marketing French-language books abroad are very varied ([52]), complimentary, and sometimes substitutable, since export agency is one of several existing systems.

(180) The Commission notes that SIDE and the French authorities appear to agree that it is not always easy to define exactly the various markets in the book marketing sector.

(181) SIDE states in its most recent comments that general agents like itself and CELF are present on the national market in question. Other operators, which it defines in some cases as agents and in others as exporting bookshops ([53]), also sell, marginally, direct to end-users and would be competing very marginally with the two general agents.

(182) The French authorities share SIDE's analysis in part, while stating that the exporting booksellers to whom the complainant refers are in reality specialised agents. They have added to the list of potential competitors a number of bookshops which meet, even on an occasional basis, orders from foreign booksellers. France explains that on-line book shops should now be included among the competitors of the general agents, which the Commission considers to be relevant, even if accurate volume data for this segment, which has been created by the use of new technology, are still unavailable.

(183) It should be noted that SIDE sent the Commission certain figures purporting to show the 'dominant position' of CELF ([54]) on the submarket concerned.

(184) As was pointed out in recital 29, the Commission will not give its opinion in this decision about SIDE's complaint based on Articles 81 and 82 of the Treaty, since this question is the subject of a separate examination. It should be noted in this respect that a preliminary letter conveying the Commission's preliminary intention to reject the complaint was sent to SIDE on 7 August 2003.

(185) However, without prejudging the final position it takes in the other half of the dossier, the Commission would point out that CELF, an interprofessional firm, was set up, which on the basis in particular of third parties' comments is not disputed, to remedy the failings of a market abandoned by the industry. Thus it is not surprising that the market shares held by the firm are very large.

([51]) SIDE itself refers, in several of its written comments, to aid for the export of books.

([52]) See recital 90.

([53]) Letters dated 7 September 1992 and 9 December 2002 relating to Aux amateurs du livre international.

([54]) CELF's share of the market is alleged to have risen from 86,60 % in 1992 to 92,75 % in 2001, which would mean that the amount of aid has no effect on CELF's position, since the aid it was granted fell steadily after 1996 to 1997.

(186) The Commission considers that CELF's position on the market in question, still has no direct bearing on the granting of the aid. The Commission is solely concerned to check the compatibility of the aid on the export agency market under Article 87(3)(d) of the Treaty.

Relevance of the notion 'small orders' in connection with the export agency business

(187) The book export agency business consists in meeting orders that are not very large. The market was abandoned at the end of the 1970s by publishers and traditional distributors because it was not profitable enough. In any event, therefore, the export agency business concerns small orders.

(188) SIDE and the French authorities agree as to the definition of the service involved. However, their positions diverge when it comes to identifying, on the export agency market, 'lesser' orders (e.g. an order for an inexpensive work by an African bookshop), which generate extra costs so that the service cannot be profitable.

(189) The Ministry of Culture fixed the amount for 'small orders' which should be subsidised at a threshold of FRF 500 (EUR 76,22). The French authorities have always explained that certain orders of less than FRF 500 might be profitable, whereas others, above that amount, might not be. The objective was to find an economically acceptable solution, so that operators would want to assume orders that had been abandoned because they were not profitable enough.

(190) The Commission asked the complainant and the French authorities to explain the problems of the business's profitability. In particular it asked them to describe the different tasks which the service involved, so as to determine, where appropriate, the origin of the extra costs to be compensated.

(191) The French authorities and SIDE agree overall as to what constitutes the processing of orders, described in Annex III by SIDE and not disputed by the French authorities.

(192) Their differences, therefore relate basically to the profitability of the services. For SIDE, all orders are profitable, irrespective of their nature. For the French authorities, some services are clearly not profitable, which justifies the aid granted.

(193) In this respect, the Commission notes certain statements of SIDE, which, taken together, may seem contradictory. As with the following: 'the best customers are those with a large volume of orders' and 'small orders are overall more profitable to process than larger ones'.

(194) The Commission noted that SIDE and CELF did not seem to be talking necessarily about the same type of customer. More specifically, SIDE is interested in the institutional customer, while CELF gives priority to booksellers. SIDE disputes this point. However, it did not want to provide the Commission, as it was asked to, with clarification of its types of customer. The complainant has simply observed, in its written comments, that between 1991 and 2002 it had 1 308 customers and that it served the same type of customer as CELF.

(195) To check the relevance of the contradictory comments supplied, the Commission has drawn up the following comparative tables 3a, 3b and 3c on the basis of data supplied by SIDE and the French authorities:

Table 3a

(in EUR)

1999	SIDE	CELF small orders	CELF without small orders	CELF Total
Turnover	818 297	329 204	10 027 299	10 358 503
Number of invoices	2 187	9 688	13 210	22 898
Number of lines	27 470 /27 978	21 978	263 080	285 058
Number of books	88 163	26 996	575 593	602 589

(in EUR)

1999	SIDE	CELF small orders	CELF without small orders	CELF Total
Number of customers ([55])	Not disclosed	2 171	718	2 889
Average number of lines per invoice	13,07	2,26	20	12
Average number of books per line	3,21	1,22	2	2
Average number of copies per invoice	40,84	2,79	44	28
Average price of each copy sold	9,09	12,19	17	17
Average value of a line	29,17	14,98	38	38
Average value of a customer account	Not disclosed	151,84	13 968	3 585

Table 3b

2000	SIDE	CELF small orders	CELF without small orders	CELF Total
Turnover	1 021 831	301 604,53	11 151 915	11 480 519
Number of invoices	2 069	8 763	12 565	21 448
Number of lines	29 006	20 387	258 124	278 511
Number of books	102 229	25 229	586 643	610 872
Number of customers	Not disclosed	2 007	631	2 638
Average number of lines per invoice	14,97	2,32	20	13
Average number of books per line	3,52	1,24	2	2
Average number of copies per invoice	52,75	2,87	46	28
Average price of each copy sold	9,87	11,95	19	19
Average value of a line	29,17	14,79	43	41
Average value of a customer account	Not disclosed	15 028	17 684	4 344

Table 3c

2001	SIDE	CELF small orders	CELF without small orders	CELF Total
Turnover	905 077	275 068	12 817 252	13 092 330
Number of invoices	2 137	7 702	12 195	19 897
Number of lines per invoice	23 990	17 681	256 019	273 700
Number of books	105 518	21 853	590 278	512 129
Number of clients	Not disclosed	1 659	835	2 494

([55]) The Commission regrets that SIDE did not want to produce any data about the number of its customers and the average value of a customer account.

2001	SIDE	CELF small orders	CELF without small orders	CELF Total
Average number of lines per invoice	11,23	2,30	21	14
Average number of books per line	4,27	1,24	2	2
Average number of copies per invoice	47,97	2,84	48	31
Average price of each copy sold	8,66	12,59	22	21
Average value of line	37,73	15,56	50	48
Average value of a customer account	Not disclosed	16 580	15 360	5 250

(196) The Commission finds that the figures in tables 3a, 3b and 3c show that, while CELF, disregarding what it considers 'small orders', sells an average number of books per invoice comparable to SIDE's (44 as against 41 in 1999, 46 as against 43 in 2000 and 48 as against 48 in 2001), it also meets a large number of particularly small orders (less than three books on average, with an average value of approximately EUR 35): 9 688 orders in 1999, 8 763 in 2000 and 7 702 in 2001. It follows that, overall (the column headed CELF Total) the number of books per order is clearly much lower for CELF than for SIDE: 28 as against 41 in 1999, 28 as against 53 in 2000 and 31 as against 48 in 2001.

(197) It is apparent from the foregoing, that CELF's business is characterised in particular by a large number of very small orders (fewer than three books on average and about EUR 35), which clearly distinguishes it from SIDE and possibly justified granting the aid in question.

Examination of the factors giving rise to the aid: the extra costs associated with the Small Orders programme

(198) Having established the relevance of small orders as a criterion for justifying the granting of the aid, the Commission analysed the cost accounting data supplied by the French authorities. The accounting figures justify the extra costs incurred by CELF in the small orders segment. The information communicated by the French authorities to the Commission concern 1994, a year in which CELF received a grant of FRF 2 000 000 (EUR 304 900) from the Ministry of Culture.

(199) The Commission's examination concerns the cost accounting information on the costs of small orders with a value of less than FRF 500. The Commission noted the explanations provided by the French authorities, which indicate that the FRF 500 threshold chosen for defining a 'small order' was determined empirically ([56]).

(200) The French authorities suggested that it could be shown that the processing of small orders clearly involve evident extra costs. The evidence for this is a cost analysis based on the information for reference year 1994 in the following table.

Type of order	Small orders	Other	Total
Turnover (*)	2 419 006	48 148 971	50 102 869
Number of invoices	9 725	10 947	20 672
Number of books	24 933	442 740	467 673

(*) In French francs.

(201) As described in detail in Annex III, processing an order requires that several tasks be carried out:

(a) receipt of the bookseller's form;

(b) coding the order;

(c) inputting the order;

(d) dispatch of the order to the publisher;

(e) receipt of the books;

(f) allocation of space (compartment) to each customer for storage of the books ordered;

(g) packaging.

([56]) See recitals 112 and 113.

(202) The analytical approach of the accounts makes it possible to record all the flows relating to the above operations. An invoice of FRF 100 generates as much work, in principle, as an invoice for FRF 10 000.

(203) The French authorities' explanations enabled the Commission to estimate the costs and allocate them to the tasks associated with processing an order. The profitability of an order depends, in particular, on the type and number of books concerned, the accuracy of the information supplied on the order form and the difficulty of executing the order, it being possible to consider 20 % of CELF's orders and 4,5 % of SIDE's as difficult to carry out ([57]). In addition, orders with a value of less than FRF 500 concern, in 67 % of cases, publishing houses of a craft industry type ([58]). Lastly, processing small orders involves administering a large number of small accounts.

(204) Costs will be higher for small orders, since the operator handling them will have to repeat the same physical operations for each order, irrespective of the amount. A firm processing several small orders will have to provide an organisation that can cope with the greater number of separate processing stages and, hence, the extra costs involved.

(205) The French authorities explain that a coefficient was applied to each type of operation. To this end, account was taken of the various tasks involved in each of the operations as described in Annex IV.

(206) On the basis of the information supplied by France, the Commission is able to conclude that for 1994 the costs of processing small orders were FRF 4 446 706. Turnover in orders of less than FRF 500 was FRF 2 419 006. The aid for the same year amounted to FRF 2 000 000. The operating loss was consequently, FRF 27 700.

Turnover	FRF 2 419 006
Grants	FRF 2 000 000
Total income	FRF 4 419 006
Processing costs	– FRF 4 446 706
Operating result	– FRF 27 700

(207) As a result, the Commission concludes that the aid of FRF 2 000 000 did not overcompensate the costs of processing of small orders.

(208) To check the relevance of the information supplied for the reference year 1994, the Commission asked the French authorities to supply further information concerning the processing of small orders by CELF for other periods. The supporting documents and explanations sent by France for other financial years show that the structure of small orders (turnover compared with the number of small orders, the quantity of books ordered, the number of invoices relating thereto, and the number of customers and order lines) remained stable from one year to another. In the circumstances, the Commission considers that the data for 1994 can reasonably serve as a reference for the Commission's assessment.

(209) The Commission was also able to verify from the agreements it was sent that any excess amount was deducted from the aid paid the following year. It was not possible therefore for the aid to finance other commercial activities of CELF, contrary to the claims of SIDE and several intervening third parties.

(210) The aid was allocated annually on the basis of accounting information supplied by CELF, including grant utilisation accounts, justifying the extra costs incurred through the Small Orders programme; the aid, therefore, was not liable to be used for other purposes than those for which it was granted.

Assessment of the errors identified by SIDE

(211) In its most recent comments, SIDE informed the Commission that the accounting information supplied by the French authorities to the Commission, in the second stage of the proceedings, as evidence of extra costs contained certain errors. The French authorities were informed of this and submitted the appropriate explanations to the Commission.

(212) SIDE observed that the French authorities had switched the percentages of tele-transmitted orders with those for orders sent in on paper. The Commission was able to verify that the financial incidence of the switch amounted to EUR 0,24 per book for the cost of a small order. The difference is not such as to call into question the compensation mechanism presented by France.

(213) As regards the variations in turnover which SIDE identified in the first accounting information produced by France, the Commission confirms that the French authorities themselves made the necessary corrections as soon as the proceeding was initiated in 1996, and that consequently the claims made in SIDE's most recent comments are without foundation.

([57]) Percentages communicated by the French authorities in CELF's case, and by SIDE itself.

([58]) In principle, large publishing houses generate bigger orders; these often involve the marketing of works intended for the general public, which are generally sold in large quantities.

(214) The variation in the other figures is explained by the fact that, in one case, reference is made to the proceeds of selling the books alone (FRF 2 284 536), whereas, in the other, the figure communicated (FRF 2 535 818) is the proceeds for the books and incidental services (packaging, insurance and transport).

(215) SIDE also thought that it could identify certain 'distortions' between the financial accounting and the cost accounting of wages and salaries. The French authorities stated that these differences are due to the fact that certain taxes are not included in the social security contributions given in the tax forms but are levied directly on the wages. The Commission was able to check the accuracy of this explanation from the accounting documents sent to it.

(216) The Commission considers, therefore, that SIDE's additional comments, on the inaccuracy of the accounting data transmitted by the French authorities when the proceedings were initiated in 1996, do not call into question the Commission's assessment of the relevance of the accounting data justifying the compensation for the extra costs generated by small orders.

Additional constraints on CELF

(217) The Commission found, on the basis of the analysis of the documents produced by the complainant itself, that CELF's list was much larger than SIDE's ((3 000 publishers offered by CELF, as opposed to 200 offered by SIDE).

(218) The Commission took note of this factor (which is not taken into account in the calculation of the extra costs) and observes that CELF's wider list meets the requirements of the Ministry of Culture that French-language books should be marketed as widely as possible. The list offered by SIDE which stipulates, however, that it can meet all types of demand, does not take account, quite legitimately, of this cultural objective.

(219) The French authorities add that CELF was often forced to take financial risks. Thus it continued to provide its services in certain high-risk countries such as Algeria or, more recently, Argentina. It was also able to provide services in certain countries not covered by the Coface guarantee.

(220) SIDE sticks quite legitimately with its commercial choices and states that it does not want to operate in difficult areas such as sub-Saharan Africa or in countries not covered by Coface. It states that these are decisions that are part of a firm's commercial development strategy and that, for its part, it has made other choices.

(iii) *Examination by the Commission of the customer transfers objected to by SIDE*

Transfers of customers from SIDE to CELF

(221) The Commission found that SIDE's claims concerning customer transfers were without foundation, on the basis of an analysis of the explanations and documents produced by SIDE itself.

(222) Thus the Commission asked SIDE to justify the customer transfers from which it claimed to have suffered as a result of the advantageous discounts which 'only CELF' was able to offer due to the aid it had received. SIDE accordingly produced a very long document ([59]), whose data could not be used by the Commission in the form presented, in particular because the said transfers were not absolutely apparent from it. The Commission asked SIDE for further explanations on this point, and the firm was able in particular ([60]) to state that one customer, the Librairie Française de Milan, had gradually switched its custom to CELF in 1987 to 1988, since CELF had offered it more attractive discounts.

(223) The French authorities pointed out in reply that the Italian market was known for its competitive nature and that, in addition, the increase in CELF's turnover from the said bookshop only became significant in 1999, i.e. well after the period mentioned by SIDE.

(224) The Commission found that the other examples quoted by SIDE were not more relevant ([61]). Thus one of the bookshops cited by SIDE, Grupodis in Madrid, was never a major customer of CELF's, and the Japanese bookshops cited are in fact large-account customers who are not concerned by the small orders segment of the market.

(225) The list of discounts communicated by SIDE did not show that the discounts it offers are less attractive than those offered by CELF. Thus, of the 28 publishers which SIDE selected to illustrate its claim, the Commission finds that SIDE offers more attractive discounts in 16 cases, as opposed to 12 for CELF ([62]). The difference is even greater, if one takes into account the extra five percentage points discount granted by SIDE for orders of more than 10 copies per title, since in that case CELF offers better discounts for only six publishers as opposed to 22 by SIDE.

(226) The Commission considers, therefore, that customer transfers from SIDE to CELF, due supposedly to the more attractive discounts offered by CELF to its customers as a result of the aid it had received, cannot be established in reality.

([59]) *'Détermination des préjudices subis par la SIDE du fait des subventions versées par le ministère de la culture au CELF entre le 1er avril 1980 et le 31 mars 1996'*. (Determining the losses suffered by SIDE on account of the grants paid by the Ministry of Culture to CELF between 1 April 1980 and 31 March 1996).

([60]) Five other examples are given by SIDE.

([61]) The French authorities do not endorse the other examples given by SIDE.

([62]) SIDE's initial presentation on the discounts referred to the list of discounts granted by CELF on the public price in France (inclusive of all tax), whereas export sales are made on the basis of a price exclusive of tax. It is on the basis of a list of prices corrected accordingly that the comparison is now made.

Transfer of customers from CELF to SIDE

(227) As was noted in recital 69, in a letter dated 12 August 2002 to the Commission, SIDE claims that CELF had been applying dissuasive conditions for small accounts for at least two years. SIDE points out that 'this policy also only increases the distortion of competition suffered by SIDE, since in the circumstances some former customers of CELF's which have small accounts are now turning to SIDE (…). However, for SIDE, obviously, the best customers are those which have a large volume of orders (…)'.

(228) The Commission finds, firstly, that the pricing changes objected to ([63]) occurred during the period when the aid in question had been abolished and/or very significantly reduced, i.e. when CELF had to find alternative solutions in order to continue to try to meet the small orders which it was sent.

(229) The Commission compared ([64]) the figures on the two undertakings and finds that there is nothing in them to confirm the remarks of SIDE concerning the recent customer transfers to which it objects. The Commission finds no increase in the number of invoices drawn up by SIDE: they were 2 187 in 1999, and 2 137 in 2000. As to the number of customers, the Commission would point out that it cannot make a comparison because it was not able to obtain data from SIDE.

(230) The Commission cannot identify, either, any factors which show that the number of small orders met by SIDE has increased now that CELF no longer receives any aid. On the contrary, the figures supplied by SIDE show that the average number of books per invoice increased from 40,31 in 1999 to 49,38 in 2001, whereas the shift in customers from CELF to SIDE, if confirmed, would have resulted in a decline in the average number of books per invoice.

(231) The Commission notes, finally, that the average number of books sold per line by SIDE is again greater than the average sold by CELF, for the whole of its activity, not just small orders. Consequently, the abolition of the aid did not involve redeploying customers from CELF to SIDE.

(232) In any event, in the analysis of State aid, only distortions of competition caused by that aid are relevant, not the effects of reducing and/or abolishing the aid, regarded as negative by SIDE.

Conclusions of the Commission regarding customer transfers

(233) In light of the data communicated by SIDE and the French authorities, the Commission considers that the only visible consequences of abolishing the aid are a reduction in the turnover from small orders met by CELF and a significant reduction in the number of its customers (-17,34 % between 1999 and 2001), as table 5 below shows:

Table 5 — Trend of activity in small orders and small accounts

Information supplied by the French authorities

Year	Turnover small orders (euros)	Trend	Number of customers	Trend
1999	329 204		2 171	
2000	301 605	- 8,38 %	2 007	-7,55 %
2001	275 068	- 8,80 %	1 659	-17,34 %

(234) The Commission also considers that SIDE's comments contradict its own statements to the effect that only the number of lines inputted by the service provider ought to be taken into consideration, and that the total amount of the order has no effect in terms of profitability. If this were the case, SIDE would have no reason to think that the alleged transfer of CELF customers to its services (which, moreover, is not clear from the figures provided) increases the distortion of competition suffered by SIDE ([65]). Furthermore, the Commission notes that SIDE would seem to contradict itself, when it states in a note dated 9 December 2002, that '(…) small orders are overall more profitable to process than large orders'.

([63]) CELF's pricing changes are not disputed by France, which stated that CELF had had to suddenly review its 'small accounts' prices following the reduction of the aid.

([64]) See also tables 3a, 3b and 3cC.

([65]) Commenting on this point, SIDE explained that 'clearly, the best customers are those which have a large volume of orders — not because the others would not be profitable, but simply because, like any commercial firm, it is always preferable to have customers that generate a large volume of business'.

(235) Table 6, compiled by the Commission from data communicated by the French authorities and by SIDE, shows that there is no automatic link between the variation in SIDE's turnover and the variation in the grants received.

Table 6

Reference year	Aid granted to CELF	Variation in SIDE's turnover	Aid
1990	304 900	—	—
1991	373 500	+	+
1992	422 280	-	+
1993	382 650	+	-
1994	304 900	-	-
1995	304 900	-	=
1996	304 900	-	=
1997	243 920	-	-
1998	182 940	+	-
1999	121 960	-	-
2000	60 980	+	-
2001	38 110	-	-
2002	0	-	0

(236) The figures supplied by CELF and by SIDE enabled the Commission to establish that the level of aid granted to CELF had no automatic impact on the business and results of SIDE, the only other general agent in the market ([66]). For instance, over several years, SIDE's turnover fell even though the aid granted to CELF was declining.

(237) The Commission observed that a visible, significant consequence of abolishing the aid to CELF on the market was a fall in its small orders turnover and a decline in the number of its small accounts.

(238) The Commission finds, on the basis of the figures supplied, that, without the aid, some of the orders no longer appear to be met by CELF, though SIDE does not benefit from the observed disaffection.

(239) The Commission also observes that for the period 1994 to 2001, the grants awarded did not cover the entire deficit under the Small Orders programme and accounted for a relatively small proportion of CELF's total turnover: from 3,95 % in 1994 to 0,29 % in 2001 ([67]).

([66]) For the record, the Commission would point out that ad hoc aid of the same type as that at issue was paid to two other firms: Servedit and l'École des Loisirs.

([67]) See also Annex II in this respect.

(240) In light of all the factors examined above, it is clear that the disputed aid concerns a very marginal share of the export agency business, which would obviously not have been performed without the aid in question. The Commission has also established that the aid granted by France did not over-compensate the costs inherent in the activity in question.

(241) The Commission would also point out, as was mentioned in recital 132 et seq., that the effect on trade and the distortion of competition at Community level are very limited in this particular case. These factors have to be taken into account by the Commission when it assesses the compatibility of the aid with Article 87(3) of the Treaty, as the Court of First Instance clearly stated in *Ladbroke Racing Ltd* ([68]).

(242) Consequently, the aid granted to CELF under the Small Orders programme was not such as to affect competition and trade to an extent contrary to the common interest. The action taken by the French authorities was proportional to the objective pursued, and simply made it possible for some of the demand, which would not otherwise have been met, to be met by the service provider without worrying about profitability.

([68]) Case T-67/94 [1998] ECR II — 1, in particular paragraphs 150 to 162.

B. *APPLICABILITY OF ARTICLE 86(2) OF THE TREATY*

1. POSITION OF THE FRENCH AUTHORITIES

(243) The French authorities argue, as they did in 1998 ([69]) that CELF was entrusted with a public service task and that, consequently, the disputed measures must be assessed in the light of Article 86(2) of the Treaty, which states that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

(244) In this connection, the French authorities submitted several instruments ([70]) which, in their view, confirm that the task entrusted to CELF was a service of general economic interest.

(245) The French authorities stated, on the basis of these instruments, that the Book and Reading Directorate had concluded with CELF, until 2001, annual agreements defining the objectives of the collaboration between the Ministry and CELF and the respective obligations of the parties.

(246) The French authorities submitted several of these agreements. Article 1 of the first of these, dated 25 April 1991, specifies that 'the Ministry shall provide its assistance for the combining of small orders of books by CELF intended for abroad (…)'. Another agreement, dated 23 October 1997, mentions, it would seem, for the first time, that 'the Ministry shall provide its assistance for the operating costs of CELF's public service associated with small orders'. The agreements concluded subsequently, until 2001, are identical except for the amount of aid granted.

2. ASSESSMENT BY THE COMMISSION

(247) The Commission has already concluded in this Decision that the aid granted to CELF is State aid within the meaning of Article 87(1) of the Treaty and that it is compatible with the common market under Article 87(3)(d). Consequently, in accordance with the case law of the Court of Justice ([71]), there is no need for the Commission to assess further the subsidised activities of CELF in the light of Article 86(2) of the Treaty. The Court confirmed this position in its judgment of 22 June 2000 ([72]), the Court having concluded that even aid justified on the basis of Article 86(2) must be notified to the Commission. It is therefore not necessary to determine whether the aid to CELF is also justified under Article 86(2) of the Treaty.

(248) The Commission notes that, in the meantime, in *Altmark* ([73]) the Court clarified the conditions in which a grant to an undertaking responsible for administering a service of general economic interest does not constitute State aid. The Commission finds that in the case in point these conditions are not satisfied. It considers, first, that the condition set out in paragraph 89 of *Altmark* has not been met, since the legal basis of the aid does not expressly concern CELF. It also considers that paragraph 90 of the said judgment, which concerns the establishment in advance of the parameters on the basis of which the compensation is calculated, has not been observed either, even if overall the aid has not exceeded the amount necessary to compensate for the costs of processing small orders.

VI. **CONCLUSION**

(249) In view of the above, it is clear that the aid in question meets the requirements of Article 87(3)(d) of the Treaty, in that it is proportional to the cultural objective pursued. The Commission found that the aid was not such as to affect trade and competition in the Community to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The aid to the Coopérative d'exportation du livre français (CELF) for processing small orders of French-language books, implemented by France between 1980 and 2001, is aid that is caught by Article 87(1) of the EC Treaty. Since France failed to notify the aid to the Commission before implementing it, the aid was granted unlawfully. It is, however, compatible with the common market under Article 87(3)(d) of the Treaty.

([69]) See recital 24.
([70]) See recital 102.
([71]) Case C-387/92 *Banco Exterior de España v Ayuntamiento de Valencia* [1994] ECR I-877.
([72]) See recital 24 et seq.
([73]) Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehsgesellschaft Altmark GmbH* [2003] ECR I-7747.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 20 April 2004.

For the Commission
Mario MONTI
Member of the Commission

ANNEX I

Table showing the trend of aid granted since 1980, in euro

1980	91 470
1981	91 470
1982	205 510
1983	164 640
1984	137 200
1985	141 780
1986	248 490
1987	214 950
1988	213 430
1989	259 160
1990	304 900
1991	373 500
1992	422 280
1993	382 650
1994	304 900
1995	304 900
1996	304 900
1997	243 920
1998	182 940
1999	121 960
2000	60 980
2001	38 110
2002	0

ANNEX II

Decline in the compensation for CELF's expenses

Information supplied by the French authorities

Year	Amount of aid (euro)	Total charges	Percentage covered
1994	304 900	683 788	44,59 %
1995	304 900	697 177	43,73 %
1996	304 900	624 206	48,85 %
1997	243 920	680 023	35,87 %
1998	182 940	664 783	22,63 %
1999	121 960	635 577	19,19 %
2000	60 980	572 670	10,65 %
2001	38 110	509 048	7,49 %
2002	0	0	0

ANNEX III

Processing orders

Information extracted from SIDE's comments

New customer

(a) Dispatch to the buyer of a file containing:
   — the general conditions of sale (e-mail, fax or mail)
   — request to open an account (e-mail, fax or mail)

(b) After receipt of the request to open an account, check on the customer's solvency at Coface

(c) If there is no problem, an account is opened for the customer

(d) If there is a problem, the customer can only be served 'pro forma', (i.e. after payment of an estimate)

Customer holds an account

(a) Identification of the customer (in particular from his account number)

   Inputting of the item ordered (searching among 640 000 titles, including books, audio cassettes, audio CDs and CD-ROMs)

   Inputting: once the item has been identified, the quantity, order date and customer reference are keyed in, and the inputting validated
   — If other order lines have to be inputted, the operation is repeated
   — The method of dispatching orders can be altered to suit the customer's wishes

(b) If the work ordered is not in the database
   — The item is inputted manually:
     the title, name of author, ISBN, publisher and supplier are given

(c) Each order for a book automatically generates a 'supplier' order

(d) Special software automatically transmits orders to suppliers who have the right equipment and are, hence, listed

(e) Order forms are then printed automatically and sent by fax, mail or messenger to the suppliers concerned

ANNEX IV

Breakdown of CELF's cost-accounting items — 1994

based on information supplied by the French authorities

Figures (Francs and euro)

	FRF	EUR
Cost of purchasing books	**2 068 293**	**315 309**
— Purchase	2 026 011	308 863
— Transport and messengers	42 282	6 446
Staff costs	**1 670 963**	**254 737**
— Reception (of works), direct labour	217 641	33 179
— Packaging, direct labour	53 409	8 142
— Sales department, direct labour		
— Area 1	149 770	22 832
— Area 2	157 627	24 030
— Area 3	49 390	7 529
— Wages and salaries, General Services	1 022 285	155 846
— Wages and salaries, Marketing	20 841	3 177
Overheads	**518 926**	**79 110**
— Packaging consumed	14 770	2 252
— Administrative supplies	183 784	28 018
— Freight out	148 056	22 571
— Commission on sales	36 540	5 570
— Telephone, telex	29 103	4 437
— Collection charges	26 294	4 008
— Loan repayment insurance	20 929	3 191
— Depreciation of tangible fixed assets	20 609	3 142
— Other	38 841	5 921
Individual, indirect fixed charges	**188 524**	**28 740**
— Trade tax	14 064	2 144
— Charges to provisions	51 890	7 911
— External services	66 828	10 188
— Exceptional charges	46 733	7 124
— Other	9 009	1 373
Total cost	4 446 706	677 896

Exchange rate: EUR 1 = FRF 6,55957

Comments and explanations

1. *Purchasing and transport (including messengers) costs*. The cost was calculated taking into account the total cost of these activities allocated according to the number of books, i.e. FFR 38 795 874 (EUR 5 914 393). This amount is divided by the number of books to obtain the unit cost per book. The total number of books sold by CELF in 1994 was 467 673, so the unit cost per book is FFR 82,95 (EUR 12,65). To determine what was the purchasing and transport cost to be allocated to small orders, the unit cost per book is multiplied by the number of 'small orders' books, giving a total of FFR 2 068 293 (EUR 315 309).

2. *Staff costs*. A coefficient of 3 (based on the number of books) was applied to this item, as the reception of small orders gives rise to difficulties peculiar to this category. The reception of works from large publishers or distributors is computerised using the EAN code, which makes recognition of the work by optical scanning possible. Conversely, works published by small publishers often do not contain a bar code, which means that manual recognition is necessary.

   Large publishers delivered to Parisian customers for a contribution to the transport costs fixed by the trade association, which is FFR 0,75/kg, whereas the price paid messengers is FFR 6,5/kg for the packages used for works from small distributors. As invoices to foreign booksellers are flat-rate, that source of supply means a reduction in margins.

   Giving small orders a coefficient of 3 thus makes it possible to include an appropriate charge for their processing in the cost accounting.

3. *Packaging*. The direct labour is taken into account on the basis of the number of books.

4. *Sales department*. The cost of direct labour was calculated by applying a coefficient of 3, since small orders involve more onerous processing as regards sales administration. The differences of treatment make it possible to include the appropriate charge for their processing in the cost accounting.

   Additional explanations on coding the order. If there are difficulties with coding orders, further work is needed. The work has to be carried out irrespective of the amount of the order.

   In addition, research is required before an order can be inputted: ISBN, publishers' catalogues, various data bases, check on the availability (or not) of the work, check on the match between order and publisher. Difficulties associated with the quality of the order form, in particular in identifying the order, will give rise to extra costs. Such difficulties often occur in the case of small orders. Large bookshops, which have a considerable turnover with CELF, are generally large-scale firms that use high-performance tools to enable them to rationalise their management, and in particular to transmit standardised orders, i.e. ones containing clear identification features. Among CELF's customers are numerous small bookshops, whose activity does not always allow modern international business resources to be used. Thus orders coming from this type of establishment are sometimes difficult to decipher and only include some of the information necessary for meeting the order, which means extra work and, hence, extra cost.

5. *Wages and salaries, general services* (management, IT, switchboard, accounting, marketing, cleaning). The costs are allocated according to the number of books, except for accounting where the criterion is the number of invoices.

6. *Overheads (packaging consumed, freight out and depreciation of tangible fixed assets)*. Costs are calculated on the basis of number of books.

7. *Overheads (administrative supplies)*. Costs are calculated on the basis of the number of invoices.

8. *Overheads (commission on sales and loan repayment insurance)*. Costs are calculated on the basis of turnover.

9. *Overheads (telephone, telex and collection charges)*. A coefficient of 2,5 is applied, since telephone costs vary in accordance with many factors, in particular customer replies and publisher searches. These costs concern several operations, including reception of the order form from the bookseller, coding the order, inputting the order and accounting, whose purpose is to record all the flows relating to the operations described.

10. *Trade tax and charges to provisions*. Costs are calculated on the basis of turnover. *External services* (e.g. rents, travel and promotion costs, etc.) and exceptional charges. Costs are calculated on the basis of the number of books.