II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 25 September 2007

on measure C 45/06 (ex NN 62/A/06) implemented by France in connection with the construction by AREVA NP (formerly Framatome ANP) of a nuclear power station for Teollisuuden Voima Oy

(notified under document number C(2007) 4323)

(Only the French version is authentic)

(Text with EEA relevance)

(2008/281/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments [1] pursuant to the provisions cited above and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 11 October 2004, registered as received by the Commission on 15 October 2004, Greenpeace submitted to the Commission a complaint concerning the granting by Compagnie française d'assurance pour le commerce extérieur (hereinafter Coface) of a guarantee in respect of the exportable French portion of the services provided by Framatome ANP to the Finnish company Teollisuuden Voima Oy (TVO). Framatome ANP has since been renamed AREVA NP [2].

(2) The Commission registered the complaint under registry No CP 201/2004 on 29 October 2004.

(3) By letter of 4 November 2004 (ref. D/57822), the Commission asked the French authorities for information on the guarantee. The French authorities provided the information by letter of 10 December 2004, registered as received by the Commission on 13 December 2004.

(4) By letter of 14 December 2004, registered as received by the Commission on 16 December 2004, the European Renewable Energies Federation asbl (EREF) submitted to the Commission a complaint challenging the conformity with Community law of the arrangements for constructing, financing and operating TVO's new nuclear power station. It claims that, in addition to the Coface guarantee, the financing offered by Bayerische Landesbank (BLB) and by AB Svensk Exportkredit (SEK) also constitutes aid.

(5) The Commission registered the State aid aspects of this complaint under registry No CP 238/2004 on 21 December 2004. To a large extent, it then examined the two complaints jointly since complaint CP 238/2004 covers the same ground as complaint CP 201/2004.

[1] OJ C 23, 1.2.2007, p. 11.

[2] To facilitate understanding of the decision, the current name 'AREVA NP' will be used, even for the period preceding the change of name.

(6) By letter of 15 February 2005 (ref. D/51174), the Commission asked the German authorities for information on the measures referred to in the complaints. The German authorities provided the information by letter of 16 March 2005, registered as received by the Commission on 17 March 2005.

(7) By letter of 26 May 2005 (ref. D/54101), the Commission asked the French authorities for information on the measures referred to in the complaints. The French authorities provided the information by letter of 26 July 2005, reigstered as received by the Commission on 27 July 2005.

(8) By letter of 7 June 2005 (ref. D/54366), the Commission asked the Finnish authorities for information on the measures referred to in the complaints. The Finnish authorities provided the information by letter of 8 July 2005, registered as received by the Commission on 11 July 2005.

(9) By letter of 8 June 2005 (ref. D/54377), the Commission asked the Swedish authorities for information on the measures referred to in the complaints. The Swedish authorities provided the information by letter of 7 July 2005, registered as received by the Commission on 18 July 2005.

(10) On 2 September 2005 a meeting took place between the Commission and EREF.

(11) By letter of 18 November 2005, registered as received by the Commission on 22 November 2005, EREF provided the Commission with additional details regarding its complaint of 14 December 2004, including in particular details regarding the State aid referred to in complaint CP 238/2004.

(12) By letter of 9 December 2005 (ref. D/59668), the Commission asked the Swedish authorities for additional information on the measures referred to in the complaints. The Swedish authorities provided the information by letter of 6 April 2006, registered as received by the Commission on 10 April 2006.

(13) By letter of 13 January 2006 (ref. D/50295), the Commission asked the French authorities for additional information on the measures referred to in the complaints. The French authorities provided the information by e-mail of 20 February 2006, registered as received by the Commission on 21 February 2006 and supplemented by an e-mail of 10 March 2006, registered as received by the Commission on 13 March 2006.

(14) The French authorities provided the Commission with additional information on the measures referred to in the complaints by an e-mail of 5 April 2006, registered as received by the Commission the same day.

(15) By letter of 4 May 2006, registered as received by the Commission on 12 May 2006, Greenpeace provided the Commission with additional information on complaint CP 201/2004.

(16) On 4 July 2006 a meeting took place between the Commission, the French authorities and representatives of a bank, AREVA NP and TVO at which the French authorities provided documents on the measures referred to in the complaints.

(17) By letter of 18 July 2006, registered as received by the Commission on 25 July 2006, EREF provided further details regarding complaint CP 238/2004 and called on the Commission to take a decision in the matter.

(18) On 7 September 2006 the Commission grouped together the two complaints under registry No NN 62/06. On 20 September 2006 it split the case into two [3] subcases, NN 62/A/06 and NN 62/B/06. Case NN 62/A/06 covers the aspects of the complaints that relate to the Coface guarantee, while Case NN 62/B/06 covers the aspects of complaint CP 238/2004 that relate to the credit facility involving BLB and the bilateral loan provided by SEK (complaint CP 201/2004 does not cover these aspects).

(19) On 24 October 2006 the Commission took a decision in each of the two cases. In the first decision [4] it took the view that the measures covered by Case NN 62/B/06 did not constitute aid. It then informed France of its decision to initiate the procedure provided for in Article 88(2) of the EC Treaty in respect of the Coface guarantee, with Case NN 62/A/06 being renumbered C 45/2006. This measure is the subject matter of the present decision, which terminates formal investigation procedure C 45/2006.

[3] This was necessary as some of the measures concerned France while others concerned Germany and Sweden. Some confidential information was provided, especially on the French part of the file, and could not be communicated to the other Member States. Moreover, the Commission was ready to take a definitive decision on the German and Swedish part of the file on completion of the preliminary investigation, whereas a formal investigation procedure had to be launched for the French part.

[4] C(2006) 4963 final (OJ C 23, 1.2.2007, p. 5).

(20) By letter of 14 November 2006, registered as received by the Commission on 16 November 2006, the French authorities asked the Commission to extend the deadline for submitting their comments. By letter of 30 November 2006, the Commission granted an extension. The French authorities submitted their comments by letter of 22 December 2006, registered as received on 4 January 2007.

(21) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ([5]) on 1 February 2007. The Commission called on interested parties to submit their comments on the measures in question. It received comments from 10 interested parties. It forwarded them to France by letter of 23 March 2007 (ref. D/51341), giving the latter the opportunity to comment. After requesting an extension of the deadline set, the French authorities submitted their comments by letter of 11 May 2007, registered as received on 14 May 2007.

2. **DESCRIPTION**

2.1. **The Olkiluoto 3 project**

(22) At present, Finland has four nuclear reactors. Two of them, owned by the company Fortum, are situated in Loviisa, while the other two, owned by TVO, are in Olkiluoto.

(23) TVO is a non-profit company which supplies electricity to its shareholders at cost price. Its capital is divided into several tranches, each corresponding to a power station or group of power stations. Possession of part of a tranche of TVO capital confers the right to buy an equivalent fraction of the production of the corresponding power station or stations at cost price.

(24) VTO's shareholders are essentially energy and industrial enterprises that are large consumers of electricity.

(25) TVO, which already owns two nuclear reactors, has a shareholding in a coal-fired power station and operates a wind farm, is currently having a third nuclear reactor built at the Olkiluoto site, to be known as 'Olkiluoto 3'.

(26) The entity responsible for constructing Olkiluoto 3 is a consortium comprising Siemens and AREVA NP, itself a subsidiary of AREVA and Siemens, which hold 66 % and 34 % respectively of the capital. The consortium was selected by TVO following an invitation to tender launched in September 2002. On 15 October 2003 TVO informed the AREVA NP/Siemens consortium that it was the preferred bidder. The construction contract was signed on 18 December 2003. According to the information received by the Commission, alongside the consortium selected, […] (*) had participated in the invitation to tender.

(27) Olkiluoto 3 will be the first of a new generation of European pressurised-water reactors (EPRs), with a planned capacity of 1 600 MW. According to the initial planning, the reactor was to come on stream in 2009 but, since the construction work is behind schedule, it is planned to come on stream at the end of 2010/beginning of 2011.

2.2. **Financing**

(28) TVO is using several sources of financing for Olkiluoto 3, which will cost more than EUR 3 billion.

(29) Firstly, TVO's shareholders have agreed to increase TVO's capital (own funds) by an amount equivalent to some [15-30] % of the project cost by creating a specific tranche of shares for the new reactor. Secondly, a subordinated loan equivalent to [0-15] % of the total cost will be provided by the shareholders. In addition to this financing provided by the shareholders when the investment contract was signed in December 2003, TVO arranged a credit facility with a syndicate of international banks and a series of bilateral loans. Most of this debt financing was then refinanced by means of a loan guaranteed by Coface in March 2004, a new credit facility concluded in June 2005 and a number of new bilateral loans.

2.2.1. *The credit facility*

(30) The facility (credit facility) is for EUR 1,35 billion.

(31) The credit facility was granted to TVO by a banking syndicate in which BLB, BNP Paribas, JP Morgan, Nordea and Svenska Handelsbanken were the mandated lead arrangers. By letter of 11 November 2003, these five banks each undertook to provide, if necessary, up to EUR 500 million, representing EUR 2,5 billion in total. In the course of the syndication process, other banks participated in the credit facility. On 17 December 2003 the credit facility was signed by 12 banks participating on equal terms.

([5]) See footnote 1.

(*) Information covered by professional secrecy.

(32) The credit facility comprises two tranches, with a respective maturity of five and seven years. It carries a EURIBOR-indexed variable interest rate. The five-year tranche offers a spread of […] basis points (bps) above EURIBOR for the first three years, with a step-up of […] bps for the years […]. The seven-year tranche offers a spread of […] bps for the first three years and then a step-up of […] bps for the years […] and […] bps for the years […]. The loan is not backed by any public guarantee.

(33) The contract between VTO and the banks that was signed on 17 December 2003 was initially for EUR 1,95 billion. In March 2004 this amount was reduced to EUR 1,35 billion after TVO had been granted the Coface-guaranteed loan described in Section 2.2.2.

(34) In June 2005, alongside other financing, TVO concluded a new EUR 1,6 billion credit facility on the back of more favourable market conditions, paying an average spread of only […] bps above EURIBOR for this seven-year facility. Since it had met its initial Olkiluoto 3-related disbursements out of the other sources of financing described in this section, and in particular the shareholder funds, TVO in the end never had to call on the credit facility concluded in December 2003 and thus terminated it.

(35) On 11 June 2004 the Commission gave a positive opinion in accordance with Article 43 of the Euratom Treaty in which it concluded that the industrial project in question contributed to improving the security and diversity of supply at both regional and European level and that all aspects of the investment were consistent with the objectives of the Euratom Treaty.

2.2.2. *The loan guaranteed by Coface*

(36) This is a EUR 570 million credit facility ('the guaranteed loan', the word 'loan' having been selected to avoid any confusion with the credit facility referred to in Section 2.2.1) and granted by the same mandated lead arrangers as those referred to in paragraph 31, excluding the bank […].

(37) The loan principal will be gradually drawn down by TVO over a five-tear period, with the sums borrowed over time matching the payments to be made by TVO to AREVA NP. Repayment of the loan will be in the form of constant six-monthly repayments of the principal. It will begin six months after the last disbursement and will be spread over 12 years. The average duration of the loan as calculated by the French authorities is 8,92 years.

(38) The interest rate payable to the banks is variable and indexed to EURIBOR. The loan offers the banks a spread of […] bps above EURIBOR.

(39) The loan is backed by a guarantee granted by Coface as part of its export credit insurance activities on behalf of the French State. The insurance has been taken out by the banks and the insured parties are the banks, with Coface insuring 95 % of the loan amount. For this insurance Coface charges a flat-rate premium of [2,5-3,5] % for each payment, the total premiums payable to Coface thus amounting to EUR [14,25-19,95] million. The premium is charged to the banks, which in turn charge it to TVO, in addition to the interest rate referred to in paragraph 38.

(40) The French Export Credit and Guarantee Commission (CGCCE), which was responsible for deciding whether or not the guarantee should be provided, delivered a positive decision on 17 November 2003. Coface promised to provide a guarantee on 1 December 2003. The guaranteed loan was concluded on 25 March 2004.

(41) France gave notification of the guarantee to the participants in the Arrangement on Officially Supported Export Credits concluded within the OECD (the OECD Arrangement) on 20 November 2003. It should be pointed out that the transaction in question was not challenged by any of the participants to the OECD Arrangement.

2.2.3. *The bilateral loans*

(42) In addition to the credit facility, when the investment decision was taken, TVO contracted a number of bilateral loans with various other financial bodies totalling EUR […] million. One of the loans was contracted with SEK for an amount of EUR 100 million (see the decision in Case NN 62/B/06).

2.2.4. *Synopsis of the financial package and the chronology of events*

(43) The following table gives the breakdown of the financing for the Olkiluoto 3 project as at 25 march 2004:

Table 1

Breakdown of the financing for the Olkiluoto 3 project (as at 25 March 2004)

Source of financing	amount (EUR)	Proportion of project cost
Increase in capital of TVO	[…] million	[15-30] %
Subordinated shareholder loan	[…] million	[0-15] %
Credit facility	1,35 billion	approx. 42 %
Loan guaranteed by Coface	570 million	approx. 18 %
Bilateral loans	[…] million	[15-30] %
Total	> 3 billion	100 %

(44) The following table gives the chronology of events:

Table 2

Project schedule (main stages 2002-04)

Date	Event
Before September 2002	Selection by TVO of the nuclear reactor for the power station (procedure for obtaining the corresponding permits)
September 2002	Launch of the tender invitation (the criteria for assessing the bids set out in the tender documents do not include the provision of financing by the bidders)
March 2003	Receipt of the bids by TVO and start of the assessment procedure
May-June 2003	Alongside and independently of the assessment procedure, TVO asks the bidders to comment on the possibility of obtaining an export credit as an alternative source of financing
August-September 2003	TVO launches an invitation to tender for banks interested in providing a EUR 2.5 billion syndicated loan
15 October 2003	The AREVA NP/Siemens consortium is notified by TVO of its 'preferred bidder' status

Date	Event
11 November 2003	Commitment by five banks to provide up to EUR 2,5 billion
1 December 2003	Following the positive decision by the CGCCE of 17 November 2003, Coface issues the promise of a guarantee to AREVA NP in respect of a EUR 570 million export credit
17 December 2003	Signing of the EUR 1,95 billion syndicated credit facility (with no Coface guarantee) to cover total financing needs with the support of shareholders and the other bilateral loans
18 December 2003	Signing of the commercial contract between TVO and the AREVA NP/Siemens consortium for the construction of the nuclear power station
End December 2003-January 2004	TVO begins discussions with the banks on the terms and conditions of an export credit
4 February 2004	The terms and conditions of an export credit are agreed on by TVO and the banks (in particular, fixing of the bank spread)
25 March 2004	Signing of the EUR 570 million loan guaranteed by Coface and subsequent reduction of the syndicated credit facility to EUR 1,35 billion

3. **GROUNDS FOR INITIATING THE PROCEDURE**

(45) In its decision of 24 October 2006, the Commission examined for the first time whether the measure constituted aid within the meaning of Article 87(1) of the EC Treaty. The decision ascertained in detail whether or not an advantage was conferred. The Commission noted that the insurance premium of [2,5-3,5]% charged by Coface could not be compared directly to a market rate since no insurer seemed to offer this type of financial product. However, as the public guarantee was for a loan, it seemed that the total cost of the guaranteed loan — defined as the sum of the interest paid and the guarantee premium — could be compared with that which would have had to be borne by the borrower if there had been no public guarantee. On the basis of a comparison of the total cost of the guaranteed loan with the cost of the credit facility described in Section 2.2.1, the latter being regarded as a market rate, the Commission came to the preliminary conclusion that the guaranteed loan did not seem to reduce the financial charges that the borrower would normally have had to bear. It would seem, therefore, that no advantage was conferred on TVO. The Commission would though point out that this preliminary conclusion is based on a certain number of assumptions. And so it was unable to rule out at that stage any possibility that the measure constituted aid and it decided to allow France and the interested parties to comment on the methodology used and on the assumptions on which the Commission based its analysis of the existence of an advantage.

(46) As for the compatibility of any aid, the Commission would comment that, if some particulars suggest compatibility on the basis of Article 87(3)(c) of the EC Treaty, others seem to point in the opposite direction. The compatibility of any aid cannot, therefore, be presumed *a priori*.

(47) Since there can be no ruling out the possibility that the measure constituted aid and since, if this were the case, it was not certain that the measure would be compatible, the Commission decided to initiate the formal investigation procedure.

4. **COMMENTS BY INTERESTED PARTIES**

(48) By letter of 2 January 2007, TVO sent its comments to the Commission. It stated that the decision to initiate the procedure contained a number of factual errors and suggested some corrections. It also took the view that some of the assessments made by the Commission were based solely on a certain number of hypothetical suppositions and were speculative in nature. As to the existence

of any advantage, TVO, referring back to the Commission's preliminary assessment, pointed out that the loan guaranteed by Coface was more expensive than the credit facility and the other sources of financing available at the time. It opted nevertheless for the guaranteed loan because of its longer period to maturity and because it reduced the amounts lent by the banks, thus making the amounts not lent available for future financing needs ([6]). TVO therefore considered that the Commission should come to the conclusion that the guarantee did not constitute aid within the meaning of Article 87(1) of the EC Treaty.

(49) By letter of 1 March 2007, Greenpeace, which was the first to submit a complaint when the present procedure was initiated (see Section 1), set out its comments, recalling that export aids within the Community had always been prohibited so that, in its opinion, the Commission should take a negative decision on the measure in question, with the aid being recovered. The letter did not comment on the preliminary analysis in the decision initiating the procedure as to the existence or otherwise of an advantage.

(50) By letter also dated 1 March 2007, EREF, which was the second complainant at the time (see Section 1), set out its comments. In its view, it was clear that the granting of an export credit for intra-Community exports constituted unlawful State aid. EREF referred back to the arguments contained in its letter of 18 November 2005 and asked that that letter be included in the file relating to the present procedure.

(51) For EREF, Coface's involvement in the financing of the project gives a strong signal to private banks that they should participate too since, in its view, the Coface guarantee mitigates the risk for the banks involved in the financing and reduces the amount of own funds mobilised by the banks for the loans in question. By lowering the risks borne by the banks, the Coface guarantee would be an incentive for them to grant reduced-rate loans to TVO. The advantage conferred by the guarantee would, therefore, be greater. EREF considers that the structure of the project financing might collapse if Coface were to withdraw its guarantee. It asked the Commission to take a look at all the contractual relationships between the parties and at the negotiating process that led to these contracts being concluded.

([6]) The original text reads as follows: 'TVO selected the facility on the basis that it had slightly longer maturity profile and it saved some room from banks for future financing needs.'

(52) Apart from the general points summarised in paragraph 51, EREF's letter does not comment on the preliminary analysis in the decision to initiate the procedure as to the existence or otherwise of an advantage.

(53) In addition to the three letters mentioned in paragraphs 48, 49 and 50, the Commission received comments from six Member States — the Netherlands, Sweden, Finland, the Czech Republic, Austria and Germany — and from the Chairman of the Council Export Credits Group ([7]). The Member States concerned do not comment on the specific features of the case but criticise the Commission for initiating the Article 88(2) procedure in respect of an export credit and for taking the view that such a measure may constitute incompatible State aid. They consider that export credits are governed by the OECD Arrangement, which has been incorporated into Community law. By subjecting an export credit to the state aid procedures laid down in Article 88 of the EC Treaty, the Commission is creating considerable legal uncertainty and may be weakening the position of European exporters vis-à-vis their foreign competitors.

5. COMMENTS BY FRANCE

(54) The French authorities begin by recalling the characteristics and main stages of the project, especially as regards financing and the invitation to tender.

(55) As for the assessment of the measure in question, the French authorities argue mainly that the measure cannot be classified as aid. They maintain in particular that it does not confer any advantage. According to them, the Coface guarantee was granted on market terms. They comment on the methodology applied by the Commission in its decision to initiate the procedure. They regard it as one commonly used by banks and note that it shows that the guarantee premium was granted at market rates. They go on to say that the methodology can be usefully supplemented and verified by applying a more complex method for valuing financial assets which they describe as a 'method for comparing credit values'. On the basis of this second method, the French authorities come to the conclusion that a bank would have attributed a higher value to the guaranteed loan than to the credit facility, that is to say, they would have regarded the former as being more remunerative. This amounts to saying that the credit guaranteed by Coface confers no advantage on any of the partners in the project in the form of lower financing costs. The French authorities also argue that the measure cannot be classified as Sstate aid since it affects neither competition nor trade between Member States.

([7]) Germany, which is chairing the Group, has pointed out that the United Kingdom does not agree with all of the views expressed.

(56) In the alternative, France argues that, if the measure were to constitute aid, it would be compatible with the common market. On the one hand, it would be compatible on the basis of Article 87(3)(c) of the EC Treaty since it pursues a legitimate objective and does not affect trade to an extent contrary to the common interest. On the other hand, it would be compatible on the basis of Article 87(3)(b) of the EC Treaty.

(57) In the latter respect, France furthermore points to various obstacles to recovery, referring in particular to the principle of legitimate expectations. According to France, the Commission has traditionally taken no action with regard to medium- or long-term export credits. The measure is also compatible with the rules of the OECD Arrangement. On these points, France's analysis reflects the comments presented by the other Member States mentioned in paragraph 53.

6. **ASSESSMENT OF THE MEASURE**

(58) In order to assess the measure implemented by France in March 2004, the Commission has first to establish whether it constitutes State aid within the meaning of Article 87(1) of the EC Treaty. In this connection, it points out that an export credit or a guarantee linked to such a credit may, especially where it relates to a transaction between Member States, constitute State aid within the meaning of Article 87(1) of the EC Treaty. The OECD Arrangement does not automatically rule out the possibility that such a measure may constitute State aid within the meaning of Article 87(1) ([8]).

(59) In its decision initiating the procedure, the Commission states that, on the basis of an initial analysis, the measure does not seem to constitute aid, in particular because it does not seem to confer an advantage on the beneficiary. Accordingly, it should be ascertained whether there are any new elements that call the preliminary analysis into question.

6.1. **Classification as State aid: existence of an advantage**

6.1.1. *Introduction*

(60) In its decision initiating the procedure, the Commission notes that the measure is a guarantee in respect of a loan provided by some banks to TVO and rules out the possibility that it confers an advantage on the banks. This assessment has not been challenged by the parties that presented their comments to the Commission under the present procedure. The Commission, in this decision, will therefore simply verify the existence or otherwise of an advantage for the borrower TVO and its supplier AREVA NP. As regard the latter, the decision initiating the procedure states that it cannot be ruled out at this stage that France made the provision of the guarantee to TVO conditional on the contract being concluded with AREVA NP. If this were the case, France would be conferring an advantage on TVO provided that AREVA NP were selected as the supplier. AREVA NP would, therefore, also benefit from the measure. It follows that the existence of an advantage for TVO is a necessary prior condition for the existence of an advantage for AREVA NP. In the present decision, the Commission will therefore ascertain initially the existence or otherwise of an advantage for TVO.

(61) The advantage that a borrower like TVO might obtain from a public guarantee in respect of a loan is a reduction in its financing costs. In order to establish whether or not a public guarantee confers an advantage on the borrower, there is a case therefore for determining which financial charges the borrower would have had to bear if it had resorted to the market in bank loans without any public intervention and for comparing this cost with the cost incurred after public intervention. It should also be ascertained whether some companies simply have no access to the capital market and can take this step only with the help of public intervention. In such a case, the advantage accruing from public intervention may be even greater. In such circumstances and given the fact that EREF doubts that VTO had access to the market in bank loans at the time, the Commission, before analysing whether there was any reduction in financial charges, will ascertain whether TVO had access to the capital market and whether such access was sufficient to finance the entire Olkiluoto 3 project.

6.1.2. *Analysis of access to the market in bank loans*

(62) In Section 2 of this decision the Commission analysed the different stages of the Olkiluoto 3 project and its financing. It transpires that the guaranteed loan was formally provided in March 2004. However, Coface had undertaken to stand guarantor as early as 1 December 2003, a move that had been approved by the CGCCE on 17 November 2003. On 11 November 2003 five banks had formally undertaken to provide TVO with up to EUR 2,5 billion, this loan being sufficient to complete the financing of the project. The information provided by the French authorities demonstrates that, even before the intervention of the French Government, TVO had sufficient access to financial markets to be able to finance the entire project.

(63) The Commission would also point out that TVO was classified as investment grade by a leading rating agency when setting up the different financing packages for the Olkiluoto 3 project. In the normal course of events, such a rating guarantees easy access to the market in bank loans and so TVO cannot be regarded as a firm in difficulty.

([8]) However, in some cases, the OECD Arrangement may be a significant element to be taken into account in the anlysis of the compatibility of such a measure on the basis of Article 87(3) of the EC Treaty.

(64) Lastly, the Commission notes that the guaranteed loan (EUR 570 million) is small compared with the aggregate amount of capital raised (over EUR 3 billion). Consequently, even after the intervention of Coface, the bulk of the project is still being financed by the market. As regards the amount of the guaranteed loan, the Commission would comment that on 11 November 2003 five banks had agreed to provide up to EUR 2,5 billion, i.e. up to EUR 500 million each. The risk borne by the French State is thus comparable to that which private banks were prepared to bear. Accordingly, participation by the French State in the financing of the project did not diversify the sources of the finance or reduce the risks borne by the other banks any more than if another bank had participated in the financing of the project.

(65) On the basis of the information at its disposal, the Commission has come to the conclusion that TVO had sufficient access to financial markets prior to any public intervention. Contrary to what EREF states, the French Government did not play the role of lead investor and provided its guarantee at a time when the financing for the entire project had already been secured. What is more, if the French Government had acted as lead investor, its intervention was in respect of an amount that was small compared with all the funds needed to finance the project and therefore insufficient to have a knock-on effect on private investors. The Commission also comes to the conclusion here that the possibility — referred to by EREF — of the financing for the project collapsing if the Coface guarantee were withdrawn can reasonably be ruled out.

6.1.3. *Analysis of the existence of a reduction in financial charges for TVO*

(66) Since it has been established that, contrary to EREF's assertion, TVO had sufficient access to the capital market, it should be ascertained whether or not the level of the guarantee premium asked by the French Government led to a reduction in the financial charges that TVO would have had to bear in the absence of public intervention.

(67) In the decision initiating the procedure, the Commission stated that no insurer or financial institution currently offered the precise type of insurance as that offered by Coface in the present case, i.e. insurance against a payment default by TVO in the long term. The fact that the market does not at present offer this type of insurance is confirmed by the French authorities and has not been challenged by the complainants. This is not contradicted by the Commission communication to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance ([9]), according to which, while there is a market for short-term export-credit insurance, this is not always the case for medium- and long-term insurance. Consequently, the price charged by the French authorities cannot be directly compared to a market price.

(68) The fact that there is no market for this type of insurance does not have any automatic consequences for the existence or otherwise of an advantage. Since the measure in question is a loan guarantee, TVO would, in the absence of public intervention, have had to obtain financing in the form of an unguaranteed loan. To establish the existence of an advantage, it should therefore be ascertained whether TVO benefited from a reduction in its financing costs by comparing the total cost of the guaranteed loan (the interest rate charged by the banks plus the amount of the guarantee premium) with the interest rate that would have been charged by private banks for a similar loan in the absence of a public guarantee.

(69) The Commission notes that, in addition to the guaranteed loan, TVO had recourse to bank financing in the form of a credit facility for the project. It should, therefore, be examined whether the rate charged by the banks for the credit facility is a reliable indicator of the rate that would be charged by private banks for a loan similar to the guaranteed loan if no public guarantee had been provided.

(70) EREF disputes the assertion that the interest rate for the credit facility is a sound estimate of the market rate that would have been charged by the banks in the absence of a public guarantee. Firstly, it takes the view that BLB's role regarding the credit facility constitutes aid and favourably influenced the conditions on which it was granted to TVO. The Commission notes that, in its decision in Case NN 62/B/06 ([10]), it ruled out the possibility that BLB's role might constitute aid. It therefore rejects the complainant's first assertion. Secondly, EREF considers that the Coface guarantee reduced the risk attaching to the credit facility and thus encouraged the banks to grant the latter on more favourable conditions than a loan not backed by a public guarantee. On this point, la Commission notes that EREF does not indicate the precise mechanism by which the Coface guarantee would reduce the risk attaching to the credit facility. It has analysed in detail the financing of the Olkiluoto 3 project. Although the Coface guarantee clearly reduces

([9]) OJ C 281, 17.9.1997, p. 4. Communication as last amended by the communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Article 92 and 93 of the Treaty to short-term export-credit insurance (OJ C 325, 22.12.2005, p. 22).

([10]) EREF brought before the Court of First Instance an appeal against Commission final decision C(2006) 4963 concerning Case NN 62/B/06. The Court registered the appeal under No T-94/07.

the risk attaching to the loan as regards the banks that provided it and therefore lowers the interest rate charged by them for the guaranteed loan, the Commission has not identified any mechanism or contract whereby the Coface guarantee would lower the risk attaching to the credit facility. It should be pointed out that the Coface guarantee in no way covers the credit facility. Accordingly, the Commission rejects the complainant's assertion that the Coface guarantee reduces the risk attaching to the credit facility.

(71) The Commission has not identified any other factors that might suggest that the interest rate for the credit facility is not a valid indicator of the interest rate that private banks would charge for a loan similar to the guaranteed loan in the absence of a public guarantee. It notes that the guaranteed loan is not a subordinated loan, i.e. a loan the repayment of which would be conditional on the prior repayment of the credit facility. The guaranteed loan has the same ranking as the credit facility. The Commission also points out that the credit facility does not enjoy any preference or have any collateral that would distinguish it from the guaranteed loan ([11]).

(72) In view of the foregoing, the Commission concludes that the interest rate for the credit facility is a valid indicator of the interest rate that private banks would charge for a loan similar to the guaranteed loan in the absence of any guarantee.

(73) The Commission has already compared the total cost of the guaranteed loan with the cost of the credit facility in paragraphs 59 and 63 of the decision initiating the procedure. The comparison is based on the average period to maturity of the guaranteed loan. The interest rate ([12]) that would be charged for such a period is calculated by linear extrapolation of the rate for the credit facility. This shows that the total cost (the interest rate charged by the banks plus the guarantee premium charged by Coface) of the guaranteed loan is not lower than the interest rate charged by the banks for the credit facility.

(74) The Commission notes that the French authorities consider the method of comparison described in paragraphs 59 and 63 of the decision initiating the procedure to be valid even though the complaints have not commented on this and have not proposed any alternative method of comparison. Agreeing with the Commission's analysis in this respect, TVO points out that the loan guaranteed by Coface was more expensive than the credit facility and the other sources of financing available at the time.

(75) The Commission concludes that the guarantee has not led to any reduction in TVO's financial charges compared with those that it would have had to bear if it had turned to the banking market without the backing of a public guarantee.

(76) The Commission would emphasise that neither in their comments on the initiation of the procedure nor in their previous comments had the complainants proposed a calculation method that would have made it possible to ascertain whether or not the level of the guarantee premium charged by France led to a reduction in TVO's financing costs.

6.2. **Classification as State aid: conclusion**

(77) As the analysis described in Section 6.1 shows, the Commission has been unable to establish the existence of an advantage for TVO.

(78) In points 69 and 70 of the decision initiating the procedure, the Commission stated that suppliers of nuclear power stations might have competed not only on the price asked for the construction of the power station itself but also on the financing conditions offered to TVO. It noted that, if this were so and suppliers competed on the 'overall price' including the financing, the guarantee might have allowed AREVA NP to propose to its customer TVO financing at a more advantageous rate and thus to propose a more attractive 'overall price' than the other suppliers of nuclear power stations. In such a case, the guarantee would have conferred an advantage on AREVA NP and would have constituted export aid.

(79) The chronology of events described by the French authorities and summarised in Table 2 rules out the possibility that suppliers might have competed on an 'overall price' including the financing. Firstly, the AREVA NP/Siemens consortium was selected as the preferred bidder by TVO before the guarantee had been formally agreed and well before the precise level of the premium had been fixed. Secondly, the contract for the supply of the power station had been formally signed with the AREVA NP/Siemens consortium before the precise level of the guarantee premium has been formally fixed. These facts demonstrate that TVO chose AREVA NP/Siemens before knowing the precise cost of the guarantee and hence the cost of financing the project.

([11]) The two loans are not backed by any particular security. Both provide for a negative pledge by TVO.

([12]) Since both the guaranteed loan and the credit facility are variable-rate loans, the comparison is based on the spread over EURIBOR and not on absolute interest rates, which are in any event unknown since they are determined in the future.

(80) For the rest, even if this latter conclusion were to prove incorrect and if suppliers did indeed compete on an 'overall price', the Commission has already come to the conclusion in paragraph 75 of the present decision that the guaranteed loan was not a less expensive source of financing than the other sources available to TVO. Since the guarantee did not have the effect of reducing TVO's financing costs relative to the cost of other financing not covered by the guarantee that was available, it did not reduce the 'overall price' of the bid submitted by the AREVA NP/Siemens consortium and did not therefore make this bid more attractive.

(81) In conclusion, the possibility that the measure may have conferred an advantage on AREVA NP should be ruled out.

(82) Since the existence of an advantage, this being a key factor in classification as aid, could not be established either for TVO or for AREVA NP, the Commission concludes that the Coface guarantee for the EUR 570 million loan granted to TVO does not constitute State aid.

7. **CONCLUSION**

(83) The Commission finds that the guarantee provided by France through the intermediary of Coface on 25 March 2004 does not constitute aid,

HAS ADOPTED THIS DECISION:

Article 1

The guarantee provided by France on 25 March 2004 in connection with the construction by AREVA NP of a nuclear power station for Teollisuuden Voima Oy does not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 25 September 2007.

For the Commission

Neelie KROES

Member of the Commission