II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 16 July 2008

on the aid measure implemented by France for the IFP Group (C 51/05 (ex NN 84/05))

(notified under document number C(2008) 1330)

(Only the French text is authentic)

(Text with EEA relevance)

(2009/157/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

1. PROCEDURE

(1) By letter dated 25 November 2004, registered as received on 29 November 2004 under number CP221/2004, the Commission received a complaint concerning allegedly unlawful State aid for the Institut Français du Pétrole (IFP) and one of its subsidiaries, Axens. The complainant asked that its identity not be disclosed for fear of negative repercussions in the market.

(2) By letter dated 21 December 2005, the Commission informed France of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the measure.

(3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested third parties to submit their comments on the measure.

(4) By letter dated 16 January 2006, registered as received on the same day, France asked for a further period of one month in which to send its comments. The Commission acceded to this request by letter dated 19 January 2006. France submitted its comments by letter dated 23 February 2006, registered as received on the same day.

(5) By letter dated 15 March 2006, registered as received on the same day, UOP asked for a further period of one month in which to send its comments. The Commission acceded to this request by letter dated 22 March 2006.

(6) By letter dated 17 March 2006, registered as received on the same day, Haldor Topsoe A/S asked for a further period of one month in which to send its comments. The Commission acceded to this request by letter dated 22 March 2006.

[1] OJ C 42, 18.2.2006, p. 5.

[2] See footnote 1.

(7) By letter dated 20 March 2006, registered as received on 22 March 2006, Axens submitted its comments on the measure to the Commission.

(8) By letter dated 12 April 2006, registered as received on the same day, Haldor Topsoe A/S asked for an extension until 24 April 2006 in which to submit its comments. The Commission acceded to this request by letter dated 19 April 2006.

(9) By letter dated 18 April 2006, registered as received on 19 April 2006, UOP submitted its comments on the measure to the Commission.

(10) By letter dated 19 April 2006, the Commission asked the complainant to furnish a non-confidential version of its complaint. This was sent to the Commission by letter dated 26 April 2006, registered as received on 27 April 2006.

(11) By letter dated 3 May 2006, registered as received on the same day, Haldor Topsoe A/S asked for a further extension, which the Commission refused by letter dated 4 May 2006.

(12) By letter dated 22 June 2006, the Commission forwarded to France a copy of the comments submitted by UOP and Axens and of the complaint. It also sent a request for additional information. By letter dated 4 July 2006, registered as received on 5 July 2006, France asked for an extension of the time limit, which the Commission granted by letter dated 7 July 2006. By letter dated 8 September 2006, registered as received by the Commission on 12 September 2006, France submitted to the Commission its comments on the comments from interested third parties and answers to the additional questions put by the Commission.

(13) By letter dated 18 July 2006, registered as received on 19 July 2006, France informed the Commission of the transformation of IFP into a State-owned industrial and commercial establishment (*établissement public à caractère industriel et commercial* – EPIC).

(14) By letter dated 13 October 2006, the Commission asked France to provide additional information. This was sent to the Commission by France by letter dated 24 October 2006, registered as received on 26 October 2006.

(15) A working meeting took place between France and the Commission on 15 June 2007.

(16) By letter dated 19 June 2007, the Commission asked France for additional information. By letter dated 10 July 2007, France asked for a further extension until 31 August 2007. By letter dated 11 July 2007, the Commission granted a further extension until 13 August 2007. The additional information was sent to the Commission by France by letters dated 9 and 22 August 2007, registered as received on 9 and 22 August 2007 respectively.

2. **DESCRIPTION**

2.1. **The IFP Group**

(17) Up until 2006, IFP was a trade body set up under private law (*établissement professionnel de droit privé* [3]), without any capital or shareholders, placed under the economic and financial control of the French Government [4]. Ever since Decree No 2006-797 of 6 July 2006 implementing Law No 2005-781 of 13 July 2005, IFP has been an EPIC. The question of the existence of State aid within the meaning of Article 87(1) of the Treaty resulting from this change of status is the subject of a Commission investigation in another proceeding (NN 11/08).

(18) Under its statutes, IFP performs three tasks: research and development in the fields of oil and gas prospecting and refining and petrochemicals technologies; the training of engineers and technicians; and the provision of sector information and documentation. A contract of objectives with the State lays down the broad lines of its work for five years at a time.

(19) In return, IFP receives an annual budgetary allowance. This public financing amounted to EUR 144 million in 2005 and EUR 167,5 million in 2006 [5].

[3] Within the meaning of Law No 43-612 of 17 November 1943 on the management of trade interests (Loi sur la gestion des intérêts professionnels).

[4] Decrees Nos 2003-204 of 5 March 2003 and 55-733 of 26 May 1955.

[5] Source: IFP's 2006 financial report.

(20) Axens is the result of the merger, on 29 May 2001 (with retroactive effect from 1 January 2001), between Procatalyse SA (a wholly owned subsidiary of ISIS, which was in turn 52,8 %-owned at the time by IFP) and IFP's industrial division, which was split off at the same time. On 22 October 2001, IFP purchased from ISIS its stake in Axens. Currently, IFP therefore holds 100 % of the capital stock of Axens. Axens is active in the market for catalysts and technologies for the refining and petrochemicals industries. Its consolidated turnover amounted to EUR 304,9 million in 2005 and EUR 308,45 million in 2006, about one third of which was accounted for by process licensing ([6]). It employed 636 people in 2006 ([7]). Its share of the world market for existing licensed refining units is estimated at 7 % ([8]).

(21) IFP holds directly and indirectly (through the financial holding company IFP Investissements) all the shares in several enterprises, including Beicip-Franlab and Prosernat. Beicip-Franlab is a commercial enterprise set up by IFP in 1967. It specialises in the publication and distribution of deposits exploration software and in consultancy and advisory services. In 2006, its turnover was EUR 42 million and it employs 166 people ([9]). Prosernat is a commercial enterprise acquired in 2001 as part of the transfer by ISIS of ownership of IFP Investissements to IFP. It provides consultancy and other services and supplies gas treatment and sulphur recovery plants. In 2006, its turnover was EUR 49,9 million and it employs 71 people ([10]).

2.2. **Earlier Commission decisions**

(22) From 1944, when it was established, to the end of 2002, IFP collected the proceeds of a parafiscal charge on certain petroleum products. The repayment of this charge was the subject of Commission Decision 96/615/EC of 29 May 1996 on the renewal, for the period 1993 to 1997, of the charge levied on certain oil products for the benefit of the Institut Français du Pétrole ([11]), which concluded that, pursuant to point 2.4 of the 1996 Community framework for State aid for research and development (the 1996 R & D framework) ([12]), the payment of the proceeds from a parafiscal charge for the benefit of IFP for the period 1993 to 1997 was not caught by Article 87(1) of the Treaty.

(23) On 3 October 1997, France notified to the Commission a new, substantially unchanged decree on the parafiscal charge levied on certain petroleum products for the benefit of IFP for the period 1998-2002. In its decision of 4 February 1998 ([13]), the Commission raised no objection to its implementation for the period 1998-2002.

2.3. **Exclusive agreements between IFP and Axens**

(24) By letters dated 1 March and 18 May 2001 (hereinafter called 'the 2001 letters'), France informed the Commission of a plan to reorganise the research activities of IFP in the fields of refining, petrochemicals and gas and asked the Commission to confirm that the plan would not lead to the analysis adopted by the Commission in its earlier decisions being called into question.

(25) The plan involved entrusting the management of marketing the results in the above fields to a commercial entity formed by merging IFP's industrial division with Procatalyse, which was indirectly controlled by IFP and specialised in the industrial development, manufacture and sale of all chemical products.

(26) In addition to the transfer of the greater part of IFP's industrial division, including its existing customers and contracts, effected in exchange for a majority stake in the new subsidiary, the plan involved the signature by IFP and its subsidiary of the following agreements:

(a) a 10-year exclusive framework licensing agreement under which the subsidiary may use IFP's present and future intellectual property rights essentially in processes in its field of activity to provide engineering services to customers in connection with those processes and to transmit to them the right to use the related technologies in the form of patent licence sub-grants;

(b) a 10-year exclusive product licensing agreement under which the subsidiary may use IFP's present and future technology in its field of activity to manufacture and sell to its customers catalysts, adsorbents, captation masses, equipment, and other products and software developed by IFP;

([6]) Source: Axens's 2006 consolidated accounts.
([7]) Source: Axens's 2006 consolidated accounts.
([8]) Source: data communicated by the French authorities.
([9]) Source: Beicip-Franlab's 2006 consolidated accounts.
([10]) Source: Prosernat's 2006 accounts.
([11]) OJ L 272, 25.10.1996, p. 53.
([12]) OJ C 45, 17.2.1996, p. 5.
([13]) OJ C 192, 19.6.1998, p. 4.

(c) a 10-year industrial research agreement under which [IFP proposes to its subsidiary the results of its research in the field of refining and petrochemicals in order that it may, if it so wishes, pursue the research in a joint project with IFP and then exploit the said results. Should the subsidiary not avail itself of this possibility, IFP can propose its results to other enterprises. Each partner bears the costs of its participation in the research project, and at project end IFP holds the ownership rights to the products and processes while its subsidiary holds the ownership rights to the industrialisation stages of the products and processes] (*).

(27) In return, the subsidiary pays IFP royalties under the licensing agreements and remuneration […] (**) for access to IFP's research capacity. […] (**).

(28) The Commission took the view that the IFP reorganisation plan presented was in keeping with the conditions laid down in its decision of 4 February 1998 on the renewal, for the period 1998-2002, of the parafiscal charge levied on certain petroleum products and it informed France accordingly by letter D/52473 dated 19 June 2001.

(29) In conformity with the plan presented, Axens was set up as an IFP subsidiary on 29 May 2001. The agreements between IFP and Axens took effect on 1 January 2001 for a period of 10 years.

(30) By letter dated 27 November 2002, France informed the Commission of the replacement, as from 1 January 2003, of the proceeds from the parafiscal levy by a budgetary allowance for IFP.

2.4. **Exclusive agreements between IFP and Beicip-Franlab**

(31) An exclusive development, marketing and use agreement, signed on 28 May 2003, with retroactive effect from 1 January 2003, for a period of 10 years provides that [IFP will propose to Beicip-Franlab the results of its research into the algorithms, models and methodologies developed by IFP in the field of 'Exploration–Deposits' and that Beicip-Franlab may request permission from IFP to produce products on that basis. IFP will hold all the ownership rights to the software products developed. Beicip-Franlab will cover all of the product development costs borne by IFP and make various additional payments to cover maintenance and rights of use] (*).

(32) An amendment was signed on 16 December 2005, with retroactive effect from 1 January 2005. It modifies the payment arrangements while at the same time retaining the principle of total coverage of development costs by Beicip-Franlab.

2.5. **Exclusive agreements between IFP and Prosernat**

(33) A framework licensing agreement and an industrial research agreement between IFP and Prosernat were signed on 18 August 2003, with retroactive effect from 1 January 2002, for a period of 10 years. Under these agreements [IFP is to offer up the results of its research in the field of gas treatment and sulphur recovery technologies. IFP will hold the property rights to the correlations, processes and specific equipment associated with the processes. If Prosernat is interested in marketing them, then it must itself perform, while at the same time preserving the associated property rights, the task of industrialising these processes, for which it may then be granted an exclusive licence] (*).

(34) In consideration for the licence for the processes, Prosernat must pay a fee of […] (**) out of the annual turnover from sub-licensing royalties for the first four years. This fee rate is to rise to […] (**) after the first four years. The fee rate for equipment is set on a case-by-case basis. IFP's remuneration for Prosernat's access to the results of the research work amounts to […] (**) of Prosernat's global annual turnover.

3. **REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

(35) In initiating the formal investigation procedure, the Commission expressed the following doubts about the French State's support for the IFP group and about the justifications put forward at that time by France.

(36) First, the Commission considered that the conditions laid down in its earlier decisions were no longer met. As a reminder, its earlier decisions were based on:

(a) the fact that no direct aid was granted to IFP insofar as IFP was a non-profit-making research centre not engaged in a commercial activity. In accordance with the first paragraph of point 2.4 of the 1996 R & D framework, public financing of R & D activities by public non-profit-making higher education or research establishments is not normally covered by Article 87(1) of the Treaty;

(*) Paraphrase of information covered by professional secrecy.
(**) Information covered by professional secrecy.

(b) the fact that no indirect aid was granted to firms acquiring the findings of IFP studies insofar as the potential advantage resulting from the transfer of the findings was available without discrimination to all firms. In this connection the Commission had noted that IFP transferred its research findings to firms in four different ways: dissemination in the public domain, services invoiced at cost price, collaborative research and sale of licences. In the latter two cases, the Commission considered that, while firms did not bear the total costs of research, this advantage was available without discrimination to all firms, irrespective of nationality;

(c) the fact that no indirect aid was granted to firms in which IFP held shares insofar as IFP collaborated with those firms on the same terms and conditions as with other firms in which it did not hold shares. Because of the involvement of other shareholders, IFP's minority shareholdings in firms active in its research field and its collaboration with those firms on the same terms and conditions as with other firms in which it did not hold shares, the Commission concluded that the firms in question did not receive more favourable treatment.

(37) The Commission found that, since 2001 on the other hand, IFP had been taking an increasingly structured and up-front commercial approach thanks to the creation, in the market for refining and petrochemicals technologies, of Axens and the conclusion with it of exclusive research and licensing agreements. Thus, this commercial subsidiary, majority held by IFP, has preferential access to the R & D work conducted by IFP in its field of activity. Consequently, in its decision to initiate the procedure the Commission took the view that the reasons justifying the 1996 and 1998 decisions were no longer valid and that the first paragraph of point 2.4 of the 1996 R & D framework was no longer applicable to Axens's field of activity. Hence it concluded as to the existence of State aid within the meaning of Article 87(1) of the Treaty in favour of IFP and its subsidiary Axens.

(38) Moreover, insofar as IFP had majority shareholdings in two other commercial subsidiaries, Beicip-Franlab and Prosernat, and insofar as IFP had signed exclusive agreements with those subsidiaries, the Commission could not rule out the existence of State aid within the meaning of Article 87(1) of the Treaty in the fields of activity of the subsidiaries Beicip-Franlab and Prosernat.

(39) Secondly, the Commission analysed the compatibility of the aid in the light of the various Treaty provisions. It concluded that, in view of its objectives, the potential aid could be analysed only in the light of the provisions of Article 87(3)(c) of the Treaty, and more particularly in the light of the 1996 R & D framework. In the absence of justification by France in that respect, the Commission expressed doubts as to whether the necessary conditions for authorising the aid under those provisions were fulfilled.

(40) The Commission accordingly invited France to submit its comments and:

(a) furnish evidence of the extent to which IFP and its subsidiaries can be considered separate entities the relationship between which is market driven;

(b) draw a clear distinction, in conformity with Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings [14], between the economic and the non-economic activities of IFP and its subsidiaries so as to make clear what proportion of the public subsidy supports the group's commercial activities;

(c) provide precise proof that any aid is compatible with the Community rules on R & D aid.

4. COMMENTS FROM FRANCE ON THE INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

4.1. On the background to the current procedure

(41) First, France states that the IFP financing arrangements have formed the subject matter of two Commission decisions finding that no State aid is involved within the meaning of Article 87(1) of the Treaty.

[14] OJ L 195, 29.7.1980, p. 35. Directive repealed by Directive 2006/111/EC (OJ L 318, 17.11.2006, p. 17).

(42) Secondly, it recalls that the 2001 reorganisation resulted in the conversion into a subsidiary of IFP's commercial activities in the field of refining and petrochemicals, these having been previously carried on in part internally by IFP's industrial division and for the rest by Procatalyse, an enterprise indirectly controlled by IFP. The aim of the reorganisation was to refocus IFP's activities on the general interest mission entrusted to it by the State of supporting research and development in the field of hydrocarbons and new energy and environment technologies.

(43) Against this background, France considers that the 2001 letters constitute notifications for the purposes of Article 88(3) of the Treaty. The letter sent on 5 March 2001 contained an information memo, a completed notification form ([15]) and five technical annexes, including the industrial research agreement and the licensing agreements. France refers also to the subsequent meeting ([16]) and information exchange ([17]) and says it received an acknowledgement of receipt from the Commission dated 7 May 2001 ([18]). It recalls having asked the Commission to confirm that the reorganisation plan did not imply any calling into question of the Commission's analysis in its earlier decisions.

(44) Consequently, France considers that letter D/52473 dated 19 June 2001, in which the Commission indicated that IFP's reorganisation plan as submitted was in keeping with the conditions laid down in its decision of 4 February 1998 on the renewal for the period 1998-2002 of the parafiscal charge levied on certain petroleum products, created a situation of legitimate expectation. It recalls that, in that letter, the Commission took the view that the reorganisation plan modified neither the nature of IFP's activities nor the position of French enterprises vis-à-vis other Community enterprises as regards process marketing activities and raised no objection to the draft agreements, and in particular to the right of first refusal of which it had nevertheless had cognisance during the exchanges with France since 5 March 2001. In France's opinion, it could legitimately consider that the creation of Axens and the signature of the agreements between IFP and Axens would not lead to the existence of State aid. France maintains that the creation of Axens and the signature of the agreements between IFP and Axens took place in accordance with the draft submitted to the Commission in March 2001.

(45) Regarding the changes introduced subsequently of which the Commission was not informed, France provides the following information. First, according to France, the 100 % takeover of Prosernat and Axens by IFP at the end of 2001 could not be attributed to a choice on the part of IFP insofar as it was the deed of independent players. France points out, moreover, that, in its letter D/52473 of 19 June 2001, the Commission considered as a guarantee of non-discrimination the fact that IFP holds at least the majority of the shares in the new entity. Secondly, France maintains that, the agreements between IFP and Prosernat being similar to the agreements between IFP and Axens, it did not deem it necessary to forward them to the Commission. Lastly, France felt it was unnecessary to transmit to the Commission the agreement between IFP and Beicip-Franlab insofar as it provided for total coverage of IFP's costs.

(46) France states that it informed the Commission of the change in the method of financing IFP by letter dated 27 November 2002.

4.2. **On IFP's compliance with Directive 80/723/EEC**

(47) France considers that the principle of the separation of accounts by activity, embodied in Article 1 of Directive 80/723/EEC, is respected. It points out in this connection that IFP's budget is organised along the lines of a breakdown between five results centres, an 'Information' task and an 'Exploratory Research' item which makes it possible to distinguish between IFP's various activities.

(48) France describes the method of classifying projects within the results centres as follows:

(a) competency acquisition projects, often carried out in collaboration with other research institutes, are designed to seek out new ideas;

(b) industrial research projects are carried out by IFP with or without the collaboration of third parties. In the case of the 'Exploration-Production' results centre, they involve the search for solutions which may lead to methodologies, software, chemical additives, equipment, processes and expertise. In the case of the 'Refining-Petrochemicals' results centre, they concern the development of processes and products for the production of fuels and petrochemical intermediates from all accessible carbon sources;

([15]) On p. 8 of the notification form, it is stated that 'the French State informs you by the present notification that IFP is considering reorganising its activities within its group in the field of refining/petrochemicals' (l'Etat français vous informe par la présente notification que l'IFP envisage de réorganiser ses activités au sein de son groupe dans le domaine du raffinage/pétrochimie).

([16]) A meeting between the Commission and France was held on 4 May 2001.

([17]) The letter from France, dated 18 May 2001, contained further information on the right of first refusal and on the liability of imports to the charge introduced for the benefit of IFP.

([18]) The acknowledgement of receipt states that 'annexed hereto is, moreover, an outline of the measures envisaged in accordance with the form prescribed for the notifications provided for in Article 88(3) of the Treaty' (en annexe, figure en outre une présentation des mesures envisagées selon la forme prescrite pour les notifications prévues à l'article 88-3 du traité).

(c) 'trade equipment' projects concern the development of test benches, testing equipment, experimental testing facilities and test loops, together with the implementation of specific software and the management of databases;

(d) 'support activities' projects comprise quality measures, post-programme follow-up and management of intellectual property rights.

(49) Lastly, France provides information on IFP's analytical accounting system, which allows an allocation of (non-State-budgetary-allowance) income and expenditure by project within each results centre.

4.3. **On the distinction between IFP and its subsidiaries**

(50) France disputes the Commission's analysis that IFP and Axens constitute a single economic entity. It considers that IFP and its subsidiaries are separate entities whose tasks are different in nature.

(51) First, France considers that IFP's research activity is a general interest mission forming part of an approach — recognised at national, Community and world level — aimed at ensuring long-term security of supply in hydrocarbons.

(52) Secondly, it considers that the reference to the concept of linked enterprises, as set out in Annex I to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (the 'SME Recommendation') ([19]), is not relevant to this case. France recalls, moreover, the Community case law according to which the fact that 100 % of the shares in a subsidiary are held by its parent company does not suffice to demonstrate the existence of control by the latter. France points out, furthermore, that the existence of an exclusive agreement is not a feature of an absence of autonomy, as otherwise Article 81 of the Treaty, which refers to such agreements between independent enterprises, would be otiose. Lastly, France considers that the common image of IFP and Axens in the market necessarily stems from the fact that Axens distributes products resulting from the research conducted by IFP, and that this common image must be distinguished from an absence of autonomous behaviour.

(53) Thirdly, France tenders evidence to demonstrate the autonomy of IFP's subsidiaries. Each subsidiary devises its own strategy and has it validated by its management board, which is not composed solely of IFP representatives. Contracts between IFP and its subsidiaries respect the ordinary-law rules on regulated agreements, hence the IFP representative does not take part in the voting on matters pertaining to the said contracts. Each subsidiary has its own committees and enjoys complete managerial autonomy subject to shareholder control, which is exercised through standard reporting mechanisms. In addition, IFP and its subsidiaries have hierarchically and geographically independent financial and accounting departments with different information and management systems. Lastly, IFP's subsidiaries decide freely on the products and services they market. In this respect, Axens is free to accept or refuse the work presented by IFP, and France gives several examples of processes where Axens supplements its research requirements with other contractual relationships.

4.4. **On the existence of State aid**

(54) France considers that, pursuant to the first subparagraph of point 2.4 of the 1966 R & D framework, the financing of IFP, a non-profit-making body, does not constitute State aid.

(55) First, France points out that, according to the second subparagraph of point 2.4 of the 1996 R & D framework, 'where the results of publicly financed R & D projects are made available to Community industry on a non-discriminatory basis, the Commission will assume that State aid within the meaning of Article 92 (now 87) of the EC Treaty is not normally involved'.

(56) France indicates in this connection that IFP conducts a great deal of research work the results of which are made available to Community enterprises without discrimination. Among the means used to ensure the accessibility of the results of its activities are a scientific journal and the drafting of articles, the presentation of work at conferences, the publication and posting online of works, membership of scientific associations and the establishment of partnerships with other research centres and doctoral training schemes.

(57) France states that three quarters of the research budget of the 'Exploration-Production' results centre is devoted to fundamental research the results of which are disseminated widely without discrimination. In the case of the 'Refining-Petrochemicals' results centre, the results of much research are also disseminated without discrimination.

([19]) OJ L 124, 20.5.2003, p. 36.

(58) Secondly, France considers that the Commission's reasoning in its 1996 and 1998 decisions, according to which 'it has to be noted that, even though the IFP does not always charge the real cost of research to customers, it makes no distinction between the companies to which it transfers the findings of research carried out on its own behalf or on a collaborative basis', is still valid.

(59) It stresses in this connection that, in the 'Exploration-Production' field, IFP conducts industrial research on behalf of numerous industrial partners, either in the form of straightforward cooperation or in that of multi-client joint industrial projects in which participation is unrestricted.

(60) In the case of the refining and petrochemicals market, France considers that the payments made by Axens for the work placed at its disposal by IFP are equivalent to market terms and conditions. To this financial compensation, France adds the expenditure incurred by Axens in carrying out supplementary tasks needed for the exploitation of the research work and the additional costs borne by Axens for using technologies and products other than those of IFP. In France's view, the high share of its turnover devoted to research activities is a strong indicator of the absence of any competitive advantage derived by Axens from the research work carried out on its behalf by IFP. France provides evidence to show that the amounts spent by Axens on its research activities are much higher than the average for the sector.

(61) France states that, despite the right of first refusal enjoyed by Axens, several research works carried out by the 'Refining-Petrochemicals' results centre benefit various industrial partners from different countries.

(62) France concludes, therefore, that the State intervention in favour of IFP does not constitute State aid within the meaning of Article 87(1) of the Treaty and that IFP's subsidiaries derive no advantage from their access to the results of the research conducted by IFP on their behalf.

4.5. **On the compatibility of any State aid with the Treaty**

(63) France indicates that, if the State intervention in favour of IFP were to be interpreted as State aid within the meaning of Article 87(1) of the Treaty in favour of Axens, such aid would in any case be compatible with the common market. France provides evidence to show that the aid can be considered compatible with the Treaty under the exemption provided for in Article 87(3)(c).

(64) First, France considers that the financing by the State of Axens's industrial research work does not exceed the ceilings laid down by the 1996 R & D framework. It furnishes in this connection the amounts of expenditure by IFP allocated to industrial research conducted with Axens and of the financial returns paid by Axens. […] (**)

(65) Secondly, France indicates that any aid to Axens would have an incentive effect. It furnishes in this connection statistics which show a progression both in the amount of expenditure devoted by Axens to R & D by its R & D staff and in the ratio of internal expenditure to turnover. It furnishes, moreover, examples of Axens projects which would not have seen the light of day without help from IFP. It argues that all of Axens's competitors, and in particular those in the USA, receive substantial State support.

(66) Lastly, France points to the strategic importance of State aid to innovation and R & D, as recognised by the Commission in the context of the relaunch of the Lisbon Strategy and as reflected in the State Aid Action Plan.

5. **COMMENTS FROM THIRD PARTIES**

5.1. **Content of the complaint behind the initiation of the procedure**

(67) The complainant, fearing negative commercial repercussions, does not want its identity to be divulged. It believes its interests are directly threatened by the subsidising by France of IFP and/or its subsidiary Axens. Since it was created in 2001, Axens, a competitor of the complainant, is alleged to have pursued an aggressive commercial policy in relation to the process licences developed entirely thanks to the R & D activities of its parent, IFP.

(68) The complaint is centred on specific fields of activity of IFP, namely refining technologies and catalysts, gas treatment and petrochemicals production, and on Axens's licensing activities in these fields. The complainant considers that, in these fields, Axens is in direct competition with other market operators despite not having to cover its R & D costs insofar as it is the exclusive distributor of the technologies developed by IFP with the financial support of the State. Moreover, according to the complainant, the IFP/Axens entity is in a position to carry on R & D activities which would be unprofitable for non-subsidised operators.

(69) The complainant considers that State aid elements are identifiable in the direct State subsidy for IFP, the creation and capitalisation by IFP of its commercial subsidiary Axens, the financing of IFP's refining and petrochemicals section, the exclusive distributor for which is Axens, and the exclusive licences which IFP grants Axens for its technologies.

(70) The complainant takes the view that the current financing of the activities of IFP and Axens by the State, which has not been notified to the Commission and is not covered by any of the Commission's earlier decisions, constitutes unlawful State aid. It stresses in this connection the factual differences between the findings of the Commission's earlier decisions and the current situation in which IFP and Axens find themselves:

— the subsidiary Axens is a commercial entity,

— Axens has exclusive or preferential access to IFP's services and research results,

— IFP holds 100 % of Axens's share capital,

— in the market for technologies, most operators, including the complainant, are unsubsidised. The subsidised activities of the IFP/Axens entity lead to price distortion.

(71) The complainant thus considers that IFP departs significantly from the model of a public non-profit-making research establishment, as referred to in point 2.4 of the 1996 R & D framework, in the area of the commercial activities of its subsidiary Axens. On the contrary, in its view IFP and Axens constitute a single economic entity which acts in the market in direct competition with other operators. According to the complainant, several elements indicate that IFP and Axens are to be considered a single economic entity and hence an undertaking within the meaning of Article 87(1) of the Treaty:

— IFP holds 100 % of Axens's share capital,

— IFP behaves as an active shareholder by taking part in the definition of its subsidiaries' strategy,

— the staff of Axens and IFP visit potential customers together,

— Axens uses its name in connection with IFP's technologies (as can be seen from Axens's logo, which incorporates that of IFP).

(72) The resources granted by the French State to the IFP/Axens entity in order to finance research in the fields of refining, gas treatment and petrochemicals technologies constitute State resources. According to the complainant's estimates, IFP's R & D expenditure in these fields comes to about EUR 100 million, whereas Axens reimburses no more than half of these costs to its parent company. The complainant accordingly estimates the aid in favour of the IFP/Axens entity at EUR 50 million a year.

(73) The competitive advantage stems, according to the complainant, from the fact that the IFP/Axens entity does not have to cover all of its R & D costs and that it can, in consequence, exert downward pressure on market prices in the fields concerned. The complainant considers that such an advantage introduces the risk of a foreclosure effect to the detriment of other market operators.

(74) According to the complainant, the technologies market is a worldwide, or at the very least, European market. The State support for the IFP/Axens entity therefore affects intra-Community trade.

(75) Consequently, the complainant considers that the State support for the IFP/Axens entity constitutes State aid within the meaning of Article 87(1) of the Treaty.

(76) The complainant argues that, insofar as it is an activity close to the market whose results are directly marketable, the development of refining technologies is not covered by the definition of pre-competitive activities contained in the 1996 R & D framework. The aid granted to the IFP/Axens entity is therefore operating aid incompatible with the Treaty's State aid rules.

(77) The complainant stresses that, even if the activities of the IFP/Axens entity were to be considered pre-competitive development activities, the aid would exceed the permissible ceiling laid down in the 1996 R & D framework for such activities, which is 25 %, and could also exceed the ceiling of 50 % laid down for industrial research.

(78) Should it be found that research and development activities as defined in the 1996 R & D framework are involved, the complainant considers that the incentive effect of the aid is questionable. According to the complainant, the aid to the IFP/Axens entity dissuades other market operators from investing in R & D in these fields insofar as their revenues are affected by the existence of State aid and are insufficient to offset their R & D costs.

(79) The complainant concludes, therefore, that the State aid in favour of the IFP/Axens entity is unlawful and incompatible with the common market.

5.2. **Comments submitted by Axens**

(80) First, Axens states that it was set up in 2001 to bring together in a single commercial entity IFP's activities relating to refining and petrochemicals processes and those of the subsidiary relating to the production of catalysts. It possesses all of the functions (financial, legal, human resources) needed to conduct its business completely autonomously, and its day-to-day running is carried out by its management under the responsibility of its Chief Executive Officer. Only very few decisions are taken as high as management board level, and its shareholder allows its top management a great deal of autonomy when it comes to commercial and industrial decision-making. It therefore contests the Commission's analysis that IFP and Axens constitute a single economic entity.

(81) Secondly, Axens points out that the 2001 reorganisation was carried out in accordance with the plan explicitly approved by the Commission. It considers it could legitimately trust in the validity of this legal and financial framework, the questioning of which would seriously hamper its development.

(82) Thirdly, Axens argues that most operators in the refining and petrochemicals technologies and catalysts markets have recourse to a combination of internal and partnership research. Criterion, a subsidiary of Shell, has access to the latter's research, and ABB Lummus has agreements with Chevron and Shell, UOP with Total and other operators and Albermale with ExxonMobil. Axens indicates that its collaboration with IFP is to be seen in this context and has been structured transparently through the three research and licensing agreements. These are based, from the point of view of each of the parties, on a traditional commercial logic. Axens considers that the fact that the portion of its turnover that is devoted to research expenditure is comparable to the outlay expended by its competitors is further proof that it derives no advantage from its relationship with IFP.

(83) Lastly, Axens stresses that it faces competition from very powerful operators who are often actively supported by their countries of origin. In the United States, the Department of Energy devotes a budget of several hundred million dollars to project support.

5.3. **Comments submitted by UOP**

(84) The registered office of UOP Limited is in the United Kingdom. The company has two production sites, one in the United Kingdom and one in Italy, and is active in 17 Member States. It specialises in the design, engineering, licensing and servicing of such processes as oil conversion, clean fuel production, fuel desulphurisation and in petrochemicals technologies. It also produces catalysts, molecular filters, adsorbents and other specialised equipment.

(85) UOP and the IFP/Axens entity are competitors in the fields of petroleum production and desulphurisation technologies, aromatics production and extraction technologies and catalysts for a wide range of clean fuel production processes. UOP is in favour of initiating the formal investigation procedure in respect of the aid paid to IFP and agrees with most of the Commission's conclusions.

(86) First, UOP has noticed a sharp increase in IFP's activities in recent years. IFP has thus restructured one licensing activity which is relatively insignificant and open to all enterprises, so as to compete directly with private operators in the process market. UOP points out that Community case law requires that, where the State decides to act like an economic operator, it must act under the same conditions as a private operator. UOP considers in this respect that an operating deficit of more than EUR 555 million over the past three years would be unacceptable to a normal shareholder.

(87) Against this background, UOP has asked the Commission to order France to suspend the State support for IFP in accordance with Article 11 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 ([20]).

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

(88) Secondly, UOP considers that the fact that the IFP/Axens entity does not have to cover all of its R & D expenditure has enabled it not only to acquire a significant share of the market in refining and petrochemicals technologies but also to threaten its competitors' profitability. It argues that the proximity to the market and the low level of the IFP/Axens entity's R & D activities is evidence that the aid has no incentive effect. Lastly, it considers that any benefit to be derived from the aid would be largely offset by the risk of crowding out private operators in the relevant markets, it being its view that private operators will have to reduce their R & D expenditure in the medium term in order to remain competitive with a largely subsidised rival.

(89) Thirdly, UOP shares the Commission's analysis that IFP and its subsidiary Axens constitute a single economic entity. The capital structure, management, preferential relations and degree of economic integration of IFP and its subsidiary Axens all point to that conclusion. UOP stresses in this respect that the economic integration of the two entities is borne out by the fact that Axens is the sole distributor of the technologies developed by IFP and the main and potentially only recipient of IFP's findings. Such arrangements show, according to UOP, that IFP and Axens are indubitably dependent on one another, work in concert and pursue identical interests in the market. UOP considers, moreover, that, as Axens's only shareholder, IFP is in a position to determine Axens's short- and medium-term strategy.

(90) Fourthly, UOP considers, like the Commission, that, for there to be no advantage to the IFP/Axens entity, IFP's budget devoted to R & D carried out in collaboration with or on behalf of Axens would have to be financed by revenue earned in the market.

(91) Fifthly, UOP suggests that the Commission should bear in mind the specificity of the market for process technology licences when it seeks to establish a correspondence between the R & D activities of the IFP/Axens entity and the categories of research defined in Annex I to the 1996 R & D framework. This specificity is due, in its opinion, to the fact that the IFP/Axens entity and its competitors market, not a product or a service, but a process. According to UOP, the fact that the industry habitually uses the term 'R & D' to designate the development of a marketable process must not make the Commission lose sight of the fact that such development is downstream of R & D activities as defined in the 1996 R & D framework. In this respect UOP argues that R & D for the refining and petrochemicals processing industries can be categorised according to three stages:

(a) a fundamental research stage during which new materials and process concepts are developed and tested up to proof of principle ([21]) demonstration;

(b) a process and material development stage during which the materials and process concepts discovered are developed for commercial application;

(c) an application development stage during which tools are built, enabling reproducible performance forecasting and materials manufacturing so as to offer the product in a competitive context.

(92) UOP considers that stages (b) and (c) form an integral part of commercial development.

(93) Lastly, though it shares the Commission's analysis on the economic unity of IFP and its subsidiary Axens, UOP has furnished certain additional information in the event of the Commission's concluding at the end of the formal investigation procedure that IFP and Axens constitute two separate economic entities. According to UOP, the process market proposes products which are not comparable. Consequently, the only way to ensure that Axens pays the market price for IFP's results would be to have recourse to a tendering procedure. UOP thus considers that the right of first refusal constitutes in itself an advantage in that, by granting Axens a right of first refusal, IFP forgoes the opportunity of selling its results via a tendering procedure to the highest bidder.

6. COMMENTS FROM FRANCE ON THE COMMENTS FROM THIRD PARTIES

(94) France's comments concern UOP's comments and the complaint.

6.1. In response to UOP's comments

(95) First, France contests UOP's assertion as to the existence of a single entity in the form of IFP/Axens, pointing to Axens's autonomy from IFP and to the fact that IFP is a research, teaching and documentation institute — a feature which distinguishes it fundamentally from its subsidiary Axens and from UOP Limited.

([21]) Also known as 'proof of concept'.

(96) Concerning Axens's autonomy from IFP, France states first that, according to established Community case law, the ownership structure of the capital of a subsidiary is not, by itself, a sufficient criterion for determining whether that subsidiary may or may not be regarded as enjoying economic autonomy from its parent company. Despite being wholly owned by IFP, Axens is totally independent in the market. This independence is confirmed by several items of evidence:

(a) Axens has an autonomous decision-making process and a financial and human organisation of its own;

(b) Axens sets freely its commercial policy and its sales targets and gross margins;

(c) Axens acts in the refining and petrochemicals market in its own name and on its own behalf and has the power to contract without IFP's prior consent;

(d) Axens enjoys financial autonomy from IFP within the limits of the reserved powers specified in its articles of association and is not the sole distributor of IFP technologies.

(97) As regards IFP's nature as a non-profit-making research institute, France reiterates that IFP is a research institute whose primary purpose is to carry on research activities and disseminate the results thereof through education, publication or technology transfer, any profits being reinvested in their entirety in research or the dissemination of its results.

(98) Secondly, given that in accordance with the first subparagraph of point 2.4 of the 1996 R & D framework the resources transferred by the State to IFP do not constitute State aid, France contests UOP's assertion that those resources ([22]) constitute operating aid.

(99) Thirdly, according to UOP, almost all of the public subsidy paid to IFP is used to finance market-oriented work and hence the 1996 R & D framework does not apply. This claim is contested by France, which states that IFP fulfils above all a general interest mission focused on fundamental research and the exploitation of its results as well as on teaching and the dissemination of knowledge — activities which must not be confused with the strictly commercial objectives pursued by private operators such as UOP and Axens.

(100) Moreover, the research work which IFP carries out for Axens under the industrial research agreement consists of (a) technical feasibility studies and (b) industrial research. IFP does not do any pre-competitive research work on behalf of Axens, the fact being that the latter carries out and finances the work on its own. Inasmuch as the financial schedules included with France's comments of February 2006 attest that IFP complies fully with the provisions of Directive 80/723/EEC, France considers that the budgetary allowance is indeed used to fulfil its general interest mission and to finance R & D work within the meaning of the 1996 R & D framework.

(101) Fourthly, according to UOP, the right of first refusal confers an advantage on Axens, which allegedly does not pay the market price for such a right. France stresses the importance of assessing the economic impact of the remuneration paid by Axens to IFP as a whole. Besides dividends, the components of this overall remuneration (consisting in the remuneration for the right of first refusal and the royalties paid under the framework licensing and product licensing agreements) were determined in 2001 according to an economic logic. This logic is intended to ensure that Axens does not derive any economic advantage from its relationship with IFP and to guarantee a suitable, steady return from year to year for IFP, sufficiently independent of the combination resulting from Axens's sales at any given time so as to avoid any risk to IFP from excessive variations in resources.

(102) France maintains that it is only this overall remuneration, actually borne by Axens, viewed against its total turnover, that should be analysed in the light of market conditions. Having regard to these elements, the right of first refusal does not create any competitive advantage in favour of Axens or any distortion of competition.

(103) Fifthly, France also contests the assertion that the existence of alleged unlawful State aid in favour of the IFP/Axens entity has caused loss or damage to competitors and impaired the innovation dynamic. France points out that UOP Limited is the only competitor among the many in existence to have submitted comments to the Commission. France stresses, moreover, that no proof has been furnished of such alleged loss or damage.

([22]) According to UOP, this amount came to EUR 555 million over the last three years, while according to France it seems to correspond to the sums received by IFP by way of the budget allocation for the years 2003, 2004 and 2005 (being in reality exactly EUR 507 million).

(104) Lastly, France considers that the innovation dynamic is not impaired in the refining and petrochemicals market. In this connection, in the process licensing and catalyst market, market share analysis shows clear domination by the UOP group. If there is any market power, it lies in France's view with UOP and not with Axens. France adds that, if UOP's market power has weakened, this can be attributed to UOP's own strategic errors, inter alia, in the desulphurisation market, in which UOP has ceased to invest, thereby missing out on a strong revenue-generating activity.

6.2. **In response to the anonymous complaint**

(105) First, France reaffirms that the reorganisation of IFP's activities was indeed notified to the Commission. The 2001 letters, by which it informed the Commission of the internal reorganisation plan which led to IFP's commercial activities being split off into a subsidiary, did constitute notifications within the meaning of Article 88(3) of the Treaty.

(106) Secondly, France repeats the arguments advanced both in its own comments (see Section 4.3) and in response to the comments from UOP (see recitals 95 *et seq*.) which contradict the assertion that IFP and Axens form a single economic unit.

(107) Thirdly, France emphasises that the research carried out by IFP at the 'Refining-Petrochemicals' results centre benefits various industrial partners from several countries […] (**), and not just Axens as the complainant claims.

(108) Fourthly, contrary to the complainant's assertion that over half of Axens's income is generated by the sale of process licences and the provision of related services, France indicates that the share of Axens's turnover in 2003, 2004 and 2005 accounted for by process licensing came to 36 %, 38 % and 31 % respectively.

(109) Fifthly, France contests the complainant's assertion that Axens does not have any research facilities of its own. On the contrary, Axens has its own human and material resources with which to carry out its pre-competitive development work with a view to pre-market type approval, namely: dimensioning software, process simulation tools, catalyst and adsorbent evaluation apparatus, and pre-industrial-extrapolation catalyst development and unit step sequence simulation pilot plants. Axens's resources have, moreover, according to France, enabled it to finalise the development of products and processes proposed by third parties other than IFP.

(110) Sixthly, France reaffirms that, through its mission and its activities, IFP still possesses the characteristics of a non-profit-making institution performing fully a general-interest mission conferred by the State. This analysis is borne out by the functioning and organisation of IFP and its subsidiaries insofar as IFP has ensured that its commercial subsidiaries are completely autonomous and independent. France considers therefore that, in accordance with the first subparagraph of point 2.4 of the 1996 R & D framework, the financing of IFP, a non-profit institution, does not constitute State aid.

(111) Seventhly, France refutes specifically the point that IFP's research activity ought to be seen as the mere development of a technology process capable of being used directly by commercial enterprises for their industrial production. It provides on this point detailed information concerning the development cycles of processes and products.

(112) Eighthly, France refers to the comments transmitted following the initiation of the procedure concerning the complainant's assertion that the remuneration for the research work carried out by IFP on behalf of Axens is not in line with market conditions (see recital 60).

(113) Ninthly, France contests the assertion that the amount of aid allegedly received by Axens came to EUR 50 million for 2003, basing itself in this respect on the financial schedules provided.

(114) Lastly, France considers that, contrary to what the complainant asserts, Axens's competitors very generally benefit from (direct and indirect) State support for their R & D work. For example, the UOP group receives funding for its internal R & D programmes from the National Institute of Standards and Technologies (NIST). It outsources, moreover, part of its research through partnerships with research institutes and laboratories or with universities, which are themselves in receipt of public funding. UOP thus collaborates with the Pacific Northwest National Laboratory, the Argonne National Laboratory, the Synchrotron Catalysis Consortium of the University of Delaware, the College of Engineering of the University of Illinois at Urbana Champaign, and Sintef in Norway.

7. **ASSESSMENT**

7.1. **Existence of State aid**

7.1.1. *Identification of potential beneficiaries*

(115) In its 1996 and 1998 decisions, the Commission found that the State aid granted for IFP's R & D activities did not fall within the scope of Article 87(1) of the Treaty insofar as IFP was a non-commercial, non-profit-making research organisation.

(116) However, in its decision to initiate the procedure the Commission, for the reasons set out in recital 37 of this Decision, partly called this analysis into question. It found, inter alia, that, through its subsidiaries Axens, Beicip-Franlab and Prosernat, IFP was engaged in economic activities in, respectively, the market for refining and petrochemicals technologies, the market for oilfield operation consultancy services and the contract development of oilfield software, and the market for gas treatment and sulphur recovery technologies (hereinafter called 'the relevant markets'). Consequently, it must be examined whether or not the public subsidy paid to IFP amounts to State aid in the relevant markets.

(117) In order to establish the existence of State aid, the Commission has identified potential beneficiaries. The Commission considers that, from a competition standpoint, IFP and its subsidiaries Axens, Beicip-Franlab and Prosernat cannot be deemed distinct economic operators. It bases this view primarily on the direct holding by IFP of 100 % of Axens's capital and 100 % of Beicip-Franlab's capital and on the indirect holding of 100 % of Prosernat's capital.

(118) Capital structure is commonly used by the Commission in its competition analyses as a measure of enterprises' independence. In this connection the Commission would reiterate that, by taking into account the capital structure criterion as specified in Article 3(3) of the Annex to the SME Recommendation, it is possible to eliminate from the SME category groups of enterprises whose economic power may exceed that of an SME. The SME Recommendation states that enterprises are 'linked' where one enterprise has a majority of the shareholders' or members' voting rights in another enterprise. This recommendation is also used in other Commission communications, including the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([23]), to determine whether or not an enterprise is independent. Capital structure is also referred to in Article 5(4)(b) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('the EC Merger Regulation') ([24]) and in Article 1(2) of Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements ([25]).

(119) Besides the criterion of capital structure, the Commission takes into account several elements which, taken together, confirm the Commission's analysis that IFP and its subsidiaries are, in the eyes of customers and competitors in the relevant markets, indistinguishable. As the Court of Justice of the European Communities stated in its judgment in Intermills/Commission ([26]), 'in spite of the fact that the three manufacturing companies each has a legal personality separate from the former SA Intermills, all those undertakings together form a single group, at least as far as the aid granted by the Belgian authorities is concerned. The Commission was therefore justified in considering the entire group to be a single "undertaking" for the purposes of the application of Article 92 of the Treaty'.

(120) As regards the tasks and activities of IFP and its subsidiaries, the Commission notes that, whereas the principal object and the statutes of IFP differ from those of its subsidiaries, the exploitation in the market of IFP's R & D results numbers among the priorities laid down by the State in its contract of objectives with IFP and forms part of IFP's development strategy, the aim being to 'secure a financial return on its R & D expenditure, thereby enhancing its research effort' (obtenir un retour financier sur ses dépenses de R & D, qui vient amplifier son effort de recherce) while profiting from the opportunities afforded by the markets:

— in the 'Refining-Petrochemicals' field, the contract of objectives states that 'It is IFP's ambition, during the current decade, to widen its field of activity and increase its market share so as to become a key player at world level … [The aim is] to strengthen the new business hub formed by IFP's Industrial Division and Procatalyse [Axens], which is to benefit from the fillip provided by licence sales and to make the most of IFP's R & D potential in this field'. (L'ambition de l'IFP, au cours de la décennie en cours, est d'élargir son domaine d'intervention et d'accroître ses parts de marchés pour devenir, au plan mondial, un acteur incontournable. (…) [Il s'agit de] renforcer le nouveau pôle constitué par la Direction Industrielle de l'IFP et Procatalyse [Axens], destiné à bénéficier de l'effet d'entrainement associé aux ventes de licences et à valoriser au mieux le potentiel de R & D de l'IFP dans ce domaine),

([23]) OJ C 244, 1.10.2004, p. 2, footnote 22.
([24]) OJ L 24, 29.1.2004, p. 1.
([25]) OJ L 123, 27.4.2004, p. 11.
([26]) Judgment of the Court of Justice of 14 November 1984 in Case 323/82 (ECR 3809).

— in the 'Exploration-Production' field, 'the best use should be made, on a case-by-case basis, of "Group competencies", in particular those of direct subsidiaries, and every possible synergy should be harnessed from this arrangement in order to ensure the most effective possible coverage of markets' (il convient, au cas par cas, d'utiliser au mieux les 'compétences Groupe', notamment celles des filiales directes, et de tirer toutes les synergies possibles de ce dispositif, pour assurer la couverture la plus efficace possible des marchés) ([27]).

(121) On the question of effective control of the subsidiaries, the Commission has taken account, first, of the presence of IFP managers in the subsidiaries' decision-taking bodies and, secondly, of the decision-taking centres for strategic planning and key decisions:

— Axens: as at 10 November 2005, of the nine members of its management board, six also belonged to IFP's senior management, and five in particular sat on IFP's executive committee. The management board is alone empowered to adopt Axens's annual budget, investment plan and financing plan, and any expenditure in excess of EUR 762 000 has to be validated by it,

— Beicip-Franlab: as at 1 January 2003, three of the seven members of Beicip-Franlab's supervisory board belonged to IFP's senior management. Under Beicip-Franlab's articles of association, the supervisory board exercises ongoing supervision and control over the executive board,

— Prosernat: as at 1 January 2003, three of the five members of Prosernat's management board also belonged to IFP's executive committee. Prosernat's management board decides on strategic plans, the annual budget, the creation of new activities and joint venture agreements.

(122) The Commission notes that, as regulated agreements, the exclusive agreements are governed by specific rules according to which IFP's representative on the management board does not participate in voting on matters to do with the exclusive agreements. Notwithstanding this, even if the IFP representative does not take part in the vote, other members of the management board who are also senior IFP managers do take part.

(123) The Commission concedes that the exclusive agreements do not in themselves constitute evidence of an absence of autonomy on the part of the enterprises. It notes, however, that the agreements are essential to the subsidiaries' economic activities.

(124) The Commission also takes account of the fact that the possibilities for collaborative research with other enterprises in the subsidiaries' fields of activity are strictly defined in the exclusive agreements. Thus, IFP can embark on a research project in the fields of activity of the subsidiaries concerned only insofar as the latter do not wish to carry out the project after exercising their right of first refusal ([28]). Similarly, IFP has a right of first refusal over all the research work the subsidiaries concerned may wish to carry out. It is only after IFP has exercised its right of first refusal that the subsidiaries concerned may propose the research project to other enterprises ([29]). The Commission considers these restrictions to be evidence of strong economic integration between IFP and the subsidiaries concerned.

(125) The Commission has taken account, moreover, of the existence of assignment contracts for, among other things, the provision of premises and staff:

— for Axens: premises, corporate catering, staff, administrative services,

— for Beicip-Franlab: liquidity, staff,

— for Prosernat: legal and financial services.

(126) On the question of how IFP and its subsidiaries are perceived in the relevant markets, the Commission considers that several elements point to IFP and the subsidiaries concerned having a common presence and a common image in the eyes of their customers and competitors. Besides the words 'IFP Group Technologies' on Axens's and Prosernat's logos, there are direct links between the Internet sites of the subsidiaries concerned and the Internet site of IFP. Axens and Prosernat refer on

([27]) Contract of objectives 2001-05, p. 3.

([28]) […] (**).

([29]) […] (**).

their Internet sites to IFP's R & D efforts in their fields of activity ([30]). Beicip-Franlab's Bahrain office calls itself 'IFP Middle East Consulting'. And IFP and Axens participate jointly in various conferences ([31]). The Commission has also noted several references to a single entity, IFP/Axens, in advertisements and publications ([32]) and on the Internet sites of players in the industry ([33]).

(127) Lastly, the Commission notes an overlap between the fields of activity of IFP and those of its subsidiaries Axens, Beicip-Franlab and Prosernat, which heightens the necessity of regarding the IFP group as a single enterprise.

(128) In conclusion, the objective of exploiting R & D results is at the heart of IFP's development strategy as set out in its contract of objectives with the State. The holding of the subsidiaries' capital and the presence of senior IFP managers in the subsidiaries' organs attest to a *de jure* and de facto control by IFP of the subsidiaries concerned. The exclusive agreements between IFP and the subsidiaries concerned in key areas of their activities bear witness to the economic integration of the entities involved. The common image and presence of IFP and its subsidiaries in the relevant markets are further proof of this. Consequently, the Commission considers that, in the light of its decision-making practice and the case law of the Court of Justice, the subsidiaries concerned are indistinguishable, as economic operators in the relevant markets, from their parent company IFP.

(129) In the light of the above, the Commission considers that the beneficiaries of any State aid are the entities IFP, Axens, Beicip-Franlab and Prosernat in respect of their activities in the market for refining and petrochemicals technologies, in the market for consultancy services in relation to oilfield operation and the contract development of oilfield software, and in the market for gas treatment and sulphur recovery technologies.

7.1.2. *Determination of the selective advantage financed by State resources*

(130) Insofar as it has been shown that IFP carries on economic activities through its subsidiaries Axens, Beicip-Franlab and Prosernat, the support provided by the State for IFP in the three subsidiaries' fields of activity is liable to be caught by Article 87(1) of the Treaty.

(131) The question the Commission must answer before concluding that a competitive advantage exists is that of whether the public financing of IFP also benefits IFP's economic activities in the relevant markets. In this connection the Commission sets out its interpretation of the concept of aid where the same entity carries on both economic and non-economic activities in the new Community framework for State aid for research and development and innovation ([34]) of 2006, which reflects the Commission's position on the subject: 'If the same entity carries out activities of both economic and non-economic nature, in order to avoid cross-subsidisation of the economic activity, the public funding of the non-economic activities will not fall under Article 87(1) of the EC Treaty, if the two kinds of activities and their costs and funding can be clearly separated. Evidence that the costs have been allocated correctly can consist of annual financial statements of the universities and research organisations' ([35]).

(132) In other words, the Commission must determine whether there is any cross-subsidisation of IFP's economic activities through the financing by the State of its non-economic activities. To this end, the Commission has examined IFP's accounts in order to identify the amount of any State subsidy earmarked for commercial activities. IFP and the subsidiaries concerned are distinct legal entities and their accounts are separate. The Commission considers that, if there is any subsidisation of economic activities, it results from the level of the remunerations paid by the subsidiaries concerned to the parent company and is reflected in IFP's accounts.

(133) First, the Commission notes that IFP's budget is organised, by type of activity, around seven results centres, which allows effective accounting separation of the activities of R & D, training, knowledge dissemination and management of IFP's portfolio.

([30]) Extract from Axens's Internet site: 'Axens is a refining, petrochemical and natural gas market focused company offering market-leading products including processes, catalysts, adsorbents and equipment, backed by nearly fifty years of R & D and industrial success'. Extract from Prosernat's Internet site: 'The association of all the scientific skills and development know-how of Prosernat's mother company IFP, with Prosernat's industrial experience brings a unique opportunity to turn innovative ideas into an industrial reality'.

([31]) See, for example, single IFP/Axens representative at the 10th Congress of the Société Française de Génie des Procédés (http://inpact.inp-toulouse.fr/SFGP/pageaccueil.html).

([32]) See, for example, 'Liquefin, developed and commercialised by IFP-Axens', in 'New liquefaction process promises lower costs', Oil & Gas Journal, 19.8.2002, 'IFP is the world's second largest process licensor in refining and petrochemicals (via its subsidiary Axens) and is an internationally recognised center of excellence in exploration and production'. www.tmcnet.com, 15.12.2005.

([33]) See, for example, on the site www.topsoe.com, references to units licensed by 'IFP/Axens'; reference to 'IFP (Axens)' on the site of Nexant, a consultancy firm in the energy sector (http://nexant.ecnext.com/coms2/summary_0255-3019_ITM); see also the presentation of the GTL Eni-IFP/Axens project at http://gcceu-conference.epu.ntua.gr

([34]) OJ C 323, 30.12.2006, p. 1.

([35]) Point 3.1.1, first subparagraph.

(134) In this context, the Commission considers that the accounts which are relevant to its examination are those of the 'Refining-Petrochemicals' results centre for activities in the field of refining and petrochemicals technologies and for activities in the field of sulphur recovery technologies, and those of the 'Exploration-Production' results centre for activities in the field of oilfield operation consultancy services and the contract development of oilfield software and for activities in the field of the market for gas treatment technologies. The Commission considers that the public financing of projects carried out under the heading of 'Exploratory Research' does not fall within the scope of its examination insofar as such projects consist of fundamental research within the meaning of Annex I to the 1996 R & D framework, are high risk and are not aimed at a specific industry.

(135) Secondly, the Commission considers that the system of analytical accounts implemented within IFP effectively allows an allocation of (non-State-budgetary-allowance) income and expenditure within each results centre. It notes in this connection that IFP's analytical accounting is based on the concept of project. Projects are grouped by results centre. Within each results centre, projects are listed by segment or type. The allocation of income and expenditure in each results centre is done project by project. The Commission notes, moreover, that IFP's budget and annual accounts are subject to independent external scrutiny by two auditors.

(136) Thirdly, the Commission notes that the results centres have their own revenues inasmuch as the State budgetary allowance is not analytically allocated to them. This may result in an accounting deficit between the income and expenditure allocated to them. The centres' own revenues comprise remunerations for services rendered, licence fees and dividends paid by subsidiaries.

(137) Fourthly, the Commission observes that all the costs incurred by IFP on a given project are entered in the accounts, including not only expenses directly chargeable to the project (project-specific purchases of supplies and small movable equipment, contracted-out services, travel, documentation, maintenance and leasing) but also indirect expenses (staff wages and social security contributions, the amortisation of fixed tangible and intangible assets, overheads). Indirect expenses are charged to the project in proportion to the number of man hours on the basis of an hourly rate calculated according to the staff category concerned (engineers, technicians, etc.). The Commission considers that this charging method is objective and relevant from an accounting point of view in the light of the activities concerned.

(138) Fifthly, the Commission notes that the cost of horizontal projects carried out within the results centres on the segments 'trade equipment' and 'support activities' is also passed on at the level of each project either directly or in proportion to the total expenses of the segment to which it belongs (competency acquisition or industrial research).

(139) Lastly, the Commission takes note of the fact that the incidental assignments mentioned in recital 125 form the subject matter of agreements between IFP and the subsidiaries concerned. These services are invoiced by IFP on a full-cost basis and charged to the results centres concerned.

(140) The Commission is therefore able to conclude that the expenses of the 'Refining-Petrochemicals' and 'Exploration-Production' results centres effectively reflect the totality of the costs of IFP's activities in the relevant markets.

(141) Nevertheless, the Commission takes note of the fact that there is no exact correspondence between the 'Refining-Petrochemicals' and 'Exploration-Production' results centres, on the one hand, and the fields of activity of the subsidiaries concerned, on the other. In other words, to use the terminology employed in the research agreements, the results centres group together activities not only in the subsidiaries' exclusive fields but also in non-exclusive fields.

(142) The 'Refining-Petrochemicals' results centre encompasses IFP's R & D activities in the field of sulphur recovery technologies, the results of which are exploited by the subsidiary Prosernat, in the field of the technologies of refining, petrochemicals, GTL (gas to liquid) and vegetable oil esters for the production of diesel fuels, the results of which are exploited by the subsidiary Axens, and in the field of CTL (coal to liquid), biomass (excluding vegetable oil esters for the production of diesel fuels) and hydrogen production, the results of which are exploited in collaboration with other industrial partners.

(143) The 'Exploration-Production' results centre covers IFP's R & D work in the field of oilfield operation consultancy services and the contract development of oilfield software, the results of which are exploited by the subsidiary Beicip-Franlab, in the field of gas treatment technologies, the results of which are exploited by the subsidiary Prosernat, and in the field of CO_2 recovery and hydrogen transport, the results of which are exploited in collaboration with other industrial partners.

(144) The Commission takes into consideration the fact that several projects carried out within the 'Refining-Petrochemicals' and 'Exploration-Production' results centres on the 'competency acquisition' segment count as fundamental research within the meaning of Annex I to the 1996 R & D framework and have their results widely disseminated among Community enterprises without discrimination. These projects have as their objective the emergence of new ideas through well-upstream creative research and the development of competencies. France has submitted to the Commission a list of projects carried out on these segments together with project descriptions. The Commission takes note, moreover, of the fact that IFP disseminates the results of this work using a number of tools, such as its own scientific journal *Oil & Gas Science and Technology*, which is freely accessible online, the organisation of and participation in conferences, the publication of works, partnerships with other research centres and doctoral sponsorships.

(145) Bearing in mind the elements set out in recitals 133 to 139, the Commission considers that IFP's system of analytical accounts makes it possible to trace all costs incurred by and remuneration received from its economic activities. The Commission would observe, however, that, in the light of the current organisation of IFP's accounts, the distinction between economic and non-economic activities necessitates a close analysis of the results centres' accounts, project by project. It considers, therefore, that, for the future, IFP must organise and publish its accounts in such a way as to distinguish more clearly, in accordance with the principles laid down by Directive 2006/111/EC, between its economic and its non-economic activities, for example by grouping its economic activities within one and the same results centre.

(146) Following its examination of the accounts of IFP's results centres, the Commission is able to establish the amount of IFP's R & D project costs and of IFP's own resources in the exclusive fields of activity of the subsidiaries Axens and Prosernat, namely the technologies of refining, petrochemicals, GTL and vegetable oil esters for the production of diesel fuels, and the technologies of gas treatment and sulphur recovery:

Table 1

(EUR)

	2003	2004	2005	2006
Expenditure	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Own resources	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Accounting deficit	[…] (**)	[…] (**)	[…] (**)	[…] (**)

(147) Inasmuch as these data point to an accounting deficit, IFP's commercial activities in the areas of the technologies of refining, petrochemicals, GTL and vegetable oil esters for the production of diesel fuels and of the technologies of gas treatment and sulphur recovery are not fully financed out of own resources and hence benefit from IFP's State funding. This constitutes a selective advantage financed by State resources.

(148) The combined deficit for the period 2003-06 amounts therefore, for the two relevant markets, to [less than EUR 50 million] (**). This amount is, however, well below the amount cited by UOP.

(149) IFP's activities in the field of oilfield operation consultancy services and the contract development of oilfield software deserve special mention. The Commission notes that the development agreement between IFP and its subsidiary Beicip-Franlab, as modified by the amendment signed on 16 December 2005 and applicable from 1 January 2005, provides that Beicip-Franlab is to reimburse IFP for all the costs, plus legal interest, of work carried out by the latter in Beicip-Franlab's field of activity, including research into algorithms, models and methodologies. The Commission has checked the remunerations paid by Beicip-Franlab to IFP in 2003 and 2004 and found that they broadly cover the cost of work done by IFP in its subsidiary's exclusive domain.

(150) The Commission is therefore able to conclude that the work of IFP and Beicip-Franlab is financed entirely out of income earned in the market for oilfield operation consultancy services and the contract development of oilfield software. In this market, IFP and Beicip-Franlab therefore do not enjoy a competitive advantage.

7.1.3. *Conclusion on the existence of aid*

(151) In conclusion, certain of IFP's activities fall outside the scope of its non-economic activities insofar as they give rise to commercial exploitation by its subsidiaries. The Commission has come to the conclusion that the subsidiaries concerned cannot be considered autonomous from their parent company insofar as their activities form part of IFP's development strategy, IFP exercises not only de jure but also de facto control, exclusive agreements bear witness to strong economic integration, and IFP and the subsidiaries concerned have a common image in the eyes of operators in the relevant sectors.

(152) Moreover, IFP benefits, for its commercial activities with the exception of the field of activity of its subsidiary Beicip-Franlab, from partial public financing, which constitutes a selective advantage insofar as it is granted to only one enterprise. This financing is, furthermore, imputable to the State.

(153) The Commission considers that, in the fields of activity of Axens and Prosernat, the other criteria for the existence of aid are also fulfilled.

(154) The Commission considers further that any contribution to activities in the fields of activity of Axens and Prosernat strengthens the competitive position of IFP and its subsidiaries and potentially involves a distortion of competition.

(155) Regarding the field of activity of IFP and Axens, the Commission takes note of the information communicated by France and reproduced by Axens in its comments, intended to show the high amount, compared, inter alia, with other enterprises in the sector, of the additional research costs financed by the subsidiary Axens out of its own resources. Nevertheless, the Commission considers that an absence of advantage cannot be deduced from this high amount insofar as the analysis of IFP's accounts clearly shows an accounting deficit between costs and resources in Axens's field of activity.

(156) Regarding the field of activity of IFP and Prosernat, the Commission takes note of France's comments to the effect that collaboration in most projects carried on in the field of oilfield research and exploration is open without discrimination to numerous industrial partners. Nevertheless, some projects fall under the exclusive agreements between IFP and Prosernat, and hence any collaboration with other industrial partners is strictly regulated and limited. The consequence for Prosernat is a selective advantage financed by State resources.

(157) Furthermore, this distortion of competition is liable to have an impact on intra-Community trade insofar as the fields of activity of the subsidiaries concerned constitute competitive markets at world level. The market for refining and petrochemicals technologies is a worldwide market open to competition since the 1950s. The main competitors of IFP and Axens in this market are UOP, Chevron, Lummus, Shell, ExxonMobil, Haldor Topsoe and ConocoPhillips. In the market for gas treatment and sulphur recovery technologies, IFP and Prosernat compete with such gas treatment equipment suppliers as KCC, KPS, SIIRTEC-NIGI, Hanover Maloney, Frames, TDE and GPS, with such gas sweetening technology licensees as UOP, ExxonMobil, Shell Global Solutions, BASF, Eneos and Huntsman, and with such sulphur specialists as Jacobs, Black & Veath Pritchard, Lurgi, Parsons, Technip-KTI, SIIRTEC-NIGI, CBI and TPA.

(158) Consequently, the Commission refutes the argument advanced by France to the effect that not all the elements necessary for classifying the State support for the activities of IFP and its subsidiaries Axens and Prosernat as State aid within the meaning of Article 87(1) of the Treaty are present.

(159) Lastly, the Commission would point out that the question of the existence of additional State aid within the meaning of Article 87(1) of the Treaty, resulting from the new EPIC status and a potential unlimited State guarantee for IFP stemming from that status ([36]), is the subject of a separate investigation in another proceeding (NN 11/08). This separate investigation is made possible, inter alia, by the relatively recent nature of the new EPIC status compared with the set of measures examined by the present Decision.

([36]) See the initiation Decision of 29.11.2007, Unlimited State guarantee for La Poste (C 56/2007).

7.2. **Lawfulness of the aid**

(160) The Commission has shown that IFP and its subsidiaries Axens and Prosernat enjoy a selective advantage financed by State resources. This advantage stems from the non-coverage by their own resources of R & D activities in the fields of activity of Axens and Prosernat. The non-coverage of IFP's expenditure in the fields of activity of Axens and Prosernat is the result of intra-group transfer mechanisms as established by the exclusive agreements between IFP and Axens, on the one hand, and IFP and Prosernat, on the other. The Commission considers, therefore, that the existence of the aid has come about as a result of the concomitance of the existence of commercial subsidiaries and the signature of exclusive agreements between those subsidiaries and the parent company, insofar as those agreements do not guarantee total coverage of the costs of work carried out by IFP on behalf of Axens and Prosernat. As a reminder, the agreements between IFP and Axens took effect on 1 January 2001 and those between IFP and Prosernat on 1 January 2002.

(161) The Commission takes note of the comments submitted by France and summarised in Section 4.1. It understands that France is of the opinion that it notified the main thrust of the structural and contractual changes to the Commission in 2001. Nevertheless, in the Commission's opinion the growth in IFP's commercial activity since 2001 through its subsidiaries is such that it significantly affects any previous economic and legal analysis. Hence it is adhering to its assessment, as set out in point 3.2 of the decision to initiate the procedure, as regards the unlawfulness of the aid, according to which the aid at issue must be considered unlawful as from the date of expiry of the validity of its 1998 decision, i.e. as from 1 January 2003.

(162) The Commission takes note of the comments from France and Axens concerning the situation of legitimate expectation on the part of the beneficiaries. Nevertheless, in the light of the elements that follow and insofar as the Commission concludes that the aid granted to IFP and its subsidiaries is compatible with the common market, it is not necessary for the Commission to rule on the matter.

7.3. **Request for a suspensive order**

(163) The Commission has not acceded to a request from UOP that it take a decision ordering France to suspend payment of any unlawful aid. First of all, the State support granted to IFP constitutes the main source of financing for activities other than the economic activities of IFP and its subsidiaries Axens and Prosernat, such as training, fundamental research, collaborative R & D and the dissemination of R & D findings, which the Commission considers in principle to be non-economic and which account for more than 90 % of the State support granted to IFP. Secondly, the Commission took the view that such a decision was irrelevant insofar as it was reasonable to anticipate the compatibility of at least part of the aid.

7.4. **Basis for examining the compatibility of the aid**

(164) Before examining the research stages provided for in the 1996 R & D framework, the Commission must determine whether IFP's State-aided activities do in fact come under the heading of research and development. In this connection, the Commission would refer to the Frascati Manual ([37]), which gives definitions of R & D and classifications of its constituent activities.

(165) The Frascati Manual provides criteria for distinguishing R & D from related scientific, technological and industrial activities. The basic criterion proposed by the Manual is the existence, in the case of R & D, of an appreciable element of novelty and the resolution of scientific and/or technological uncertainty.

(166) There are a number of supplementary criteria in the form of the objectives of projects, the unknown nature of the phenomena, structures or relationships on which projects are based, the novel application of knowledge or techniques already acquired, the likelihood that projects will result in new (extended or deeper) understanding of phenomena, relationships or manipulative principles likely to be of interest to more than one organisation, the patentability of results, the type of staff working on projects, the methods used, the general nature of the findings or results of a project and, where applicable, the more natural classification of the project in other fields of activity.

(167) Lastly, the Frascati Manual states that 'If the primary objective is to make further technical improvements on the product or process, then the work comes within the definition of R & D. If, on the other hand, the product, process or approach is substantially set and the primary objective is to develop markets, to do pre-production planning or to get a production or control system working smoothly, the work is no longer R & D'.

([37]) Published in 2002 by the Organisation for Economic Cooperation and Development.

(168) The Commission notes that the activities carried on by IFP in collaboration with its subsidiary Axens concern the development of new processes and new products (catalysts and adsorbents) for the lowest-cost and eco-friendly production of fuels and petrochemical intermediates from all accessible carbon sources. It notes that the activities carried on by IFP in collaboration with its subsidiary Prosernat concern the development of new processes and equipment for natural gas treatment and sulphur recovery.

(169) In this context, the novelty of projects lies in the component parts, their relationships and/or the characteristics of the target processes or products. On each project, sticking points are identified. By way of illustration, IFP has carried out a project aimed at developing a new process for producing high-octane paraffin bases from heavier charges than those currently treated, making it possible to tackle the problem of reducing the aromatics content of the petrol pool.

(170) The Commission takes into account, moreover, the fact that the State-supported work takes place prior to type approval of the processes and products. It notes that the results of the projects carried out are wide in scope and patented, that the staff employed on the projects consists mainly of research workers and technicians and that the methods are based on experimentation, interpretation and modelling. Lastly, the Commission observes that activities of the same type carried on by other operators in the sector are usually classified as research activities ([38]).

(171) In conclusion, the Commission cannot accept the complainant's argument that the activities to which the present proceeding relates cannot be classed as R & D. The Commission considers, on the contrary, that the activities carried on by IFP in collaboration with its subsidiaries do fall under the heading of R & D.

(172) Inasmuch as what is at issue is State aid for R & D work, the rules applicable for the purposes of examining its compatibility are the rules on State aid for research and development. To the extent that the aid, which stems from the existence of commercial subsidiaries with which IFP concluded exclusive agreements between 1 January 2001 and 1 January 2003, is considered unlawful as from 1 January 2003, the rules applicable for the purposes of examining its compatibility are those of the 1996 R & D framework.

([38]) See in this connection Sintef's website: http://www.sintef.no/default.aspx?id = 490

7.5. **Compatibility of the aid**

7.5.1. *Research stages*

(173) Annex I to the 1996 R & D framework provides a definition of industrial research and pre-competitive development activity:

(a) industrial research consists of planned research or critical investigation 'aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services';

(b) pre-competitive development activity is aimed at 'the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements'.

(174) In this context, the Commission has examined the work cycle and allocation resulting from the industrial research agreement between IFP and its subsidiary Axens and the complete lists of and explanatory notes to projects carried out between 2003 and 2006 supplied by France:

(175) IFP conducts research work. The work seeks to examine the feasibility of a synthesis route and corresponds to feasibility studies preparatory to industrial research work within the meaning of the 1996 R & D framework:

(a) for a catalyst, samples based on small quantities (of the order of a gram), often in powder form, are prepared and tested with a view to studying the chemical reactions. This stage leads to the description of a procedure for preparing a catalyst sample presenting a desired activity or selectivity;

(b) for a technology or a process, feasibility is established from digital simulations, paper studies of models and experimentation with concepts.

(176) Next, a preliminary examination is made of the patent situation in order to ascertain the innovativeness of the research. At the end of this examination, IFP presents a scientific and technical dossier to its subsidiary, which exercises its right of first refusal.

(177) When Axens wishes to carry on the research on the basis of the dossier, IFP performs industrial research work 'aimed at acquiring the new knowledge or bringing about the improvements needed to develop new processes, products and technologies or improve those which already exist' (visant à acquérir les connaissances nouvelles ou les perfectionnements, permettant la mise au point de nouveaux procédés, produits et technologies ou le perfectionnement de ceux qui existent déjà) ([39]). The work consists in studying new synthesis routes or their improvement, on a scale unrelated to the industrial scale. The Commission considers that it is aimed at validating concepts and that it comes under the heading of industrial research within the meaning of the 1996 R & D framework:

(a) for a catalyst, this stage covers experimentation into new synthesis routes. The formulation defined during the research work is tested on samples of the order of a kilogram, the change of scale generating most of the time differences in structure and properties. A summary and detailed analyses are produced of the effluent from the catalyst thus obtained and the effects of inhibitors and poisons are studied;

(b) for a process, the industrial research work seeks to study the basic elements of the technologies, the appropriate conditions for implementing the catalyst and the dimensioning elements of the reaction system. A digital model is constructed by mapping the performance generated.

(178) Once the industrial research work is completed, a catalyst or process dossier is delivered by IFP to its subsidiary. At this stage, Axens may decide to proceed with development by conducting pre-competitive development work in order to prepare for industrialisation. The work during this stage covers testing and consolidation of the results of the work done during the stage described in recital 177 on prototypes representing the industrial chain:

(a) for a catalyst, a product test batch is produced at a scale representative of the industrial chain by adapting the operating procedures resulting from the industrial research work. This adaptation may give rise to raw material changes for cost, hygiene, safety or environmental reasons. The prototypes are tested on a reference charge and modified to achieve the desired performance. Tests are carried out to supplement the mapping of the catalyst's performance. Only at this stage is the choice of analysers and equipment decided on;

(b) for a process, a risk analysis study is conducted; industrial models of processes or combinations of processes are produced and a process white paper detailing the management of events is drawn up.

(179) A committee of experts is appointed to decide on and validate the product or process type approval stages. It is not until after type approval, which makes it possible to verify whether environmental and safety constraints have been effectively taken into account, that the decision is taken to market or industrially launch ([40]) the process and/or product. The products and processes resulting from the research work are thus not marketed until after they have been type approved nor are they industrially launched before that stage.

(180) The Commission considers that this work cannot be equated with routine operations on the industrial chain inasmuch as it lies outside the scope of industrial exploitation. It concludes that it comes under the heading of pre-competitive development activity within the meaning of the 1996 R & D framework. It notes that, in any case, the cost of the work is borne fully by the subsidiary Axens out of its own resources.

(181) Regarding the work carried out by IFP in collaboration with its subsidiary Prosernat, the Commission observes that the work cycle and allocation between IFP and its subsidiary Prosernat are governed by an industrial research agreement which, applied to gas treatment and sulphur recovery technologies, follows the same pattern as the industrial research agreement between IFP and its subsidiary Axens. This analysis is confirmed by an examination of the complete lists of and explanatory notes to projects carried out between 2003 and 2006 supplied by France.

([39]) Article 1-22 of the industrial research agreement.

([40]) The industrial launch is marked by the first commercial unit built under a third party process sub-licence or the first commercial charge of product used.

(182) In conclusion, the Commission considers that the activities financed by State resources do indeed correspond to the research stages defined in Annex I to the 1996 R & D framework. It notes that, in any case, the activities closest to the market, namely the activities of pre-competitive development and commercial development, are financed entirely by the subsidiaries out of their own resources, from income earned in the markets, and that the public financing concerns only the industrial research stages. The Commission cannot therefore accept UOP's argument that the State aid for the economic activities of IFP and its subsidiaries Axens and Prosernat constitutes operating aid.

7.5.2. *Eligible costs*

(183) Annex II to the 1996 R & D framework specifies the costs which may be taken into account in calculating the intensity of aid for research and development:

— personnel costs (researchers, technicians and other supporting staff employed solely on the research activity),

— costs of instruments, equipment, and land and premises used solely and on a continual basis (except where transferred commercially) for the research activity,

— cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources,

— additional overheads incurred directly as a result of the research activity,

— other operating expenses (e.g. costs of materials, supplies and similar products) incurred directly as a result of the research activity.

(184) Annex II to the 1996 R & D framework states, moreover, that, where they are generated by other activities as well — in particular other R & D activities — costs must be broken down between the subsidised R & D activity and other activities.

(185) The Commission notes, first, that the costs directly chargeable to projects relate to sub-contracting, travel, insurance and documentation, and supplies and small equipment. They correspond respectively to the cost of consultancy and equivalent services, additional overheads and other operating expenses. The Commission observes that these costs are incurred directly and exclusively as a result of the research activities.

(186) The Commission notes, secondly, that the other costs chargeable to projects relate to expenditure on research personnel, the amortisation of fixed tangible and intangible assets and other overheads and correspond respectively to personnel costs, the costs of instruments, equipment, and land and premises, and additional overheads. These costs are incurred directly as a result of the research activities and are broken down between the different research projects in proportion to the time spent by the research personnel on each project.

(187) The costs of horizontal R & D projects relating to the methods and equipment used in other R & D projects may be equated with additional overheads incurred directly as a result of the research activities. The costs of these horizontal projects are allocated in proportion to the costs of each R & D project. The Commission considers that the allocation methods used are appropriate.

(188) The Commission concludes that the project costs are in conformity with the eligible costs set out in Annex II to the 1996 R & D framework.

7.5.3. *Intensity of the aid*

(189) Pursuant to point 5.4 of the 1996 R & D framework, the maximum permissible aid intensity for technical feasibility studies preparatory to industrial research projects is 75 %. Pursuant to point 5.3 of the framework, the maximum permissible aid intensity for industrial research projects is 50 %. Pursuant to point 5.5 of the framework, the maximum permissible aid intensity for pre-competitive development projects is 25 %. Pursuant to point 5.9 of the framework, in cases of activity spanning industrial research and pre-competitive development activities, the maximum permissible aid intensity must not exceed the weighted average of the permissible aid intensities applicable to the two types of research.

(190) The Commission notes, first, that IFP financed out of its own resources, thanks to the remunerations paid by its subsidiaries and without any financial intervention by the State, more than 50 % of the costs of its technical feasibility studies and industrial research work between 2003 and 2006. The Commission notes that the permissible aid intensity may be higher than 50 % if it takes into account the part of the technical feasibility studies that qualifies for aid of an intensity of 75 %. The Commission has drawn up the following table on the basis of the project lists detailing the annual costs by project and by research stage and on the basis of the statement of IFP's resources. In performing this exercise, the Commission has followed a conservative approach by including all costs falling under, directly or indirectly ([41]), exclusive fields of activity of Axens and Prosernat and excluding all proceeds other than those paid by Axens and Prosernat ([42]).

Table 2

	2003	2004	2005	2006
Annual number of projects carried out ([1])				
Area of activity IFP/Axens	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Area of activity IFP/ Prosernat	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Total	48	54	55	68
Annual cost of technical feasibility studies (EUR)				
Area of activity IFP/Axens	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Area of activity IFP/ Prosernat	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Total	5 759 184	4 032 859	4 392 411	7 393 767
Annual cost of industrial research work (EUR)				
Area of activity IFP/Axens	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Area of activity IFP/ Prosernat	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Total	40 180 231	48 536 142	38 183 597	49 007 913
Own resources (EUR)				
Amount	[…] (**)	[…] (**)	[…] (**)	[…] (**)
Annual State aid (EUR)				
Amount	18 958 910	19 243 217	8 952 630	11 280 522
Intensity	41 %	37 %	21 %	20 %
Maximum permissible intensity ([2])	53 %	52 %	53 %	53 %

([1]) Some projects are multiannual. In the interests of exhaustiveness, 'number of projects' means the number of projects under way in any one year. Amounts are shown non-cumulatively for a given year.
([2]) Weighted average of the permissible aid intensities for industrial research and feasibility studies, in accordance with point 5.9 of the 1996 R & D framework.

([41]) Including the costs of horizontal projects, see recital 138.
([42]) Own resources consist of dividends, royalties and other proceeds such as the income from patents filed by IFP. The Commission has taken into account in its examination only remuneration paid by Axens and Prosernat.

(191) The Commission notes, secondly, that the share of the financing from own resources of the research activities of IFP and its subsidiaries may be higher if allowance is made for the pre-competitive development activities which potentially qualify for aid of an intensity of 25 %. This is because the pre-competitive development activities are financed fully by the subsidiaries Axens and Prosernat out of their own resources without any financial intervention either by the State or by IFP.

(192) Thirdly, the Commission has checked on compliance with the permissible intensities by research stage on the basis of the annual lists of projects carried out between 2003 and 2006. For subsequent years, France will have to submit an annual report to the Commission so that the latter may satisfy itself that the aid intensities by research stage and by project are complied with. The report will have to cover all projects carried out in the fields of activity of Axens and Prosernat, giving their costs by research stage and the amounts of public financing and of own resources allocated by IFP and its subsidiaries. The Commission considers that the aid rate must remain below 50 % in order to ensure compliance with the permissible intensities.

(193) Lastly, the Commission observes that compliance with the intensities depends to a large extent on the amount of own resources available to IFP for its projects in the fields concerned. These own resources consist mainly in the remunerations paid by the subsidiaries Axens and Prosernat to IFP. The Commission considers, therefore, that a clause must be inserted in the exclusive agreements governing such remuneration so as to ensure that a minimum variable remuneration, covering at least 25 % of the costs of feasibility studies preparatory to industrial research activities, 50 % of the costs of industrial research and, where appropriate, 75 % of the costs of pre-competitive development activities, carried out by IFP in the subsidiaries' fields of activity, is paid to the parent company ([43]).

(194) In conclusion, the Commission considers that the aid intensities permitted by the 1996 R & D framework are complied with provided the conditions laid down in recitals 192 and 193 are satisfied.

7.5.4. *Cumulation*

(195) The provisions of the 1996 R & D framework on cumulation (set out in point 5.12 of the framework) are complied with. The Commission has calculated the total amount of public financing irrespective of its origin.

([43]) These percentages correspond respectively to aid intensities of 75 % of the costs of feasibility studies preparatory to industrial research activities, 50 % of the costs of industrial research and 25 % of the costs of pre-competitive development activities.

7.5.5. *Incentive effect*

(196) First, the Commission takes note of the fact that the research activities of IFP and its subsidiaries are guided by a logic, initiated by the State, of ensuring the long-term security of energy supplies. Hydrocarbons are of strategic importance to the present-day economies of the Member States, owing in particular to their preponderance in transport and chemicals. The activities of IFP and its subsidiaries are to be seen against the threefold background of increasing energy demand primarily driven by increased mobility and trade, the steady exhaustion of oil and gas reserves, and mastery of greenhouse gas emissions. The Commission notes that the research conducted by IFP and its subsidiaries focuses in particular on the following priority areas:

(a) renewing reserves and increasing production of oil and gas. The aim is not only to increase exploration success and deposit recovery rates but also to allow the exploitation of unconventional resources (ultra-deep offshore, extra-heavy crudes, asphalt sands, etc.). By way of illustration, one of the major actions in this area is the development of a process for gases with a high H_2S and CO_2 content;

(b) designing clean, high-efficiency refining processes. The aim here is to optimise the production of fuels and petrochemical bases while reducing the impact of the refining and petrochemicals industries on the environment. Moreover, the exploitation of unconventional deposits necessitates the development of conversion technologies. This priority area includes hydrocracking research;

(c) developing innovative fuels and engine technologies in order to reduce vehicle emissions and consumption. The use of high-hydrogen gaseous fuels is one of the main avenues being pursued;

(d) diversifying the energy sources used in fuel production. One priority is the production of synthetic fuels from various energy sources (biomass, gas or carbon).

(197) The Commission notes that IFP's research programmes are scrutinised by technical committees the composition and procedures of which are prescribed by the Minister responsible and which ensure effective follow-up of the above priorities.

(198) Secondly, the Commission has regard to the fact that the development of new energy technologies, including biofuels and gas recovery, numbers among the Community's priorities in relation to research, energy policy and environmental policy.

(199) Thirdly, the Commission notes that, thanks to State support, IFP and its subsidiaries have been able to conduct additional research activities which would otherwise not have been pursued owing to the technological risk or the highly uncertain return on investment. In particular, in the field of refining and petrochemicals technologies, the considerable risk associated with the first industrial units means that enterprises operating in this market must be highly selective when it comes to choosing R & D projects. By way of illustration, IFP and Axens have been able to carry out the following research projects: new catalysts and technologies in the middle distillate hydroprocessing field; a more efficient adsorbent and technology for the production of para-xylene; a new process in the LNG field based on the use of new concepts and technologies from the refrigeration field; and a new, cleaner and more efficient process for the production of biodiesel by esterification of vegetable oils.

(200) Fourthly, the Commission notes a favourable trend since 2002 in various indicators of the R & D effort by IFP and its subsidiaries Axens and Prosernat. The expenditure and staff allocated to R & D by IFP and its subsidiaries Axens and Prosernat in the subsidiaries' exclusive fields of activity increased over the period 2003-06 despite the amount of State aid being reduced by 41 %:

Table 3

Progression of the indicators over the period 2003-06	IFP/Axens	IFP/Prosernat
Expenditure allocated to R & D in the exclusive field	[…] (**)	[…] (**)
Staff allocated to R & D in the exclusive field	[…] (**)	[…] (**)

(201) Fifthly, the Commission notes that the proportion of turnover accounted for by R & D expenditure is particularly high. In Prosernat's field of activity, it came to 9 % in 2006. In Axens's field of activity, that same year it came to 13 %, a much higher figure than for the sector as a whole. For four reference companies in Axens's area of business, the proportion of turnover accounted for by R & D expenditure varied from 2,3 % to 10 % ([44]).

(202) Sixthly, the Commission takes into consideration the fact that IFP and its subsidiaries are faced, in the fields of application of their research, with various constantly evolving rules and regulations depending on the geographic area concerned. In particular, since 2000, the refining sector has had to meet increasingly severe environmental standards. To the scientific and technological risks peculiar to R & D projects, there are thus added significant regulatory risks. Moreover, the results of the research carried out by IFP and its subsidiaries are difficult to protect owing to the large number of countries in which they are exploited and the diversity of patent laws applicable there.

(203) Seventhly, contrary to what UOP maintains, the Commission considers that the State support for IFP and its subsidiary Axens is not, by virtue either of its nature or its scale, liable to impair the dynamic of the refining technologies market. First of all, the Commission notes that supply in this market is highly differentiated, while the number of customers is limited. A world round-up of refining or petrochemical units in operation in 2005 thus shows that there were seven types of process. Moreover, customers choose a technology in the light of various criteria, some of which, such as the cost of the associated installation and the profitability of the investment, while they are regarded as critical, are completely exogenous to the aided research projects. Lastly, the Commission observes that certain competitors of IFP and Axens have a strong competitive position which should enable them to maintain their R & D plans in this market. UOP thus has a world market share corresponding to 57 % in value terms of existing licensed refining units, whereas the share held by IFP and Axens comes to 7 %.

(204) Lastly, the Commission notes that the European Union's trading partners also devote substantial budget resources to financing research into energy. Thus, the US Department of Energy had a budget of USD 5 794 billion in 2005 — a budget which has been growing steadily for the past 15 years. The Department subsidises numerous research programmes, including in the field of biodiesels. The Commission takes note of the fact that

([44]) *Source*: Yahoo! Finance.

the competitors of IFP and Axens also enjoy substantial State support. This is the case with UOP, which receives funding from the National Institute of Standards and Technology for its research into catalysts ([45]). UOP also benefits from indirect State support through its numerous partnerships with research institutes and universities.

(205) In conclusion, the Commission considers that the aid for IFP and its subsidiaries Axens and Prosernat has an incentive effect having regard to the strategic nature of the research carried out, the qualitative and quantitative progress made in the research effort and the risks and difficulties inherent in the sectors of activity concerned. It considers further that the aid should not impair the innovation dynamic in the markets. It takes note, moreover, of the support granted by other countries to IFP's competitors.

(206) The annual report that is to be submitted by France to the Commission until the exclusive agreements between IFP and its subsidiaries Axens and Prosernat expire will have to show that the aid still has an incentive effect.

7.6. **Conclusion**

(207) In the light of all the above considerations, the Commission concludes that the aid granted to IFP and its subsidiaries Axens et Prosernat is in keeping with the provisions of the 1996 R & D framework, subject to compliance with the conditions set forth in recitals 192, 193 and 206,

HAS ADOPTED THIS DECISION:

Article 1

The measure which France has implemented for the Institut Français du Pétrole (IFP) and its subsidiary Beicip-Franlab does not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

1. The measure which France has implemented for IFP and its subsidiaries Axens and Prosernat constitutes aid within the meaning of Article 87(1) of the Treaty.

2. The aid is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty subject to the conditions laid down in Articles 3 to 6 of this Decision.

Article 3

1. This Decision shall be valid until the end of the exclusive agreements in force on the date of this Decision between IFP and its subsidiaries Axens and Prosernat (hereinafter called 'the exclusive agreements').

2. Any prolongation or amendment of the exclusive agreements must be notified to the Commission.

Article 4

1. IFP shall organise and publish its accounts in such a way as to distinguish clearly between its economic and its non-economic activities.

2. Until the date of expiry of the exclusive agreements, France shall submit to the Commission an annual financial report in order that the latter might verify the amount of public funds allocated to IFP's activities in the exclusive fields of activity of Axens and Prosernat.

Article 5

1. Until the date of expiry of the exclusive agreements, France shall submit to the Commission a detailed annual report on the projects carried out by IFP in the exclusive fields of activity of Axens and Prosernat, specifying, by project, the costs by research stage, the amount of public funds allocated and the incentive effect of the aid.

2. France shall notify individually to the Commission any aid of an amount in excess of the thresholds laid down in the 2006 Community framework for State aid for research and development and innovation.

Article 6

The exclusive agreements shall be amended so as to provide for payment by Axens and Prosernat of a minimum remuneration to IFP, covering at least 25 % of the costs of feasibility studies preparatory to industrial research work, 50 % of the costs of industrial research and 75 % of the costs of precompetitive development by IFP in the fields covered by the exclusive agreements.

([45]) *Source*: UOP and NIST press releases.

Article 7

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

Article 8

This Decision is addressed to the French Republic.

Done at Brussels, 16 July 2008.

For the Commission
Neelie KROES
Member of the Commission