

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 4 November 1998

on aid granted by France to Nouvelle Filature Lainière de Roubaix

(notified under document number C(1998) 3515)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/378/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

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

Having given the interested parties notice, in accordance with the abovementioned Articles, to submit their comments, and having regard to those comments,

Whereas:

### I. PROCEDURE

By letters dated 6 May and 16 September 1996, the German industrial association 'Industrieverband Garne and Gewebe' drew the Commission's attention to aid which had been granted or which might have been granted to Nouvelle Filature Lainière de Roubaix.

By letter dated 25 September 1996 and at the express request of the Commission by letters dated 15 May and 3 July 1996, the French Government informed the Commission of aid which it had granted or intended to grant to Nouvelle Filature Lainière de Roubaix. By letters dated 22 November 1996, 16 January, 2 April and 3 July 1997, the French Government submitted additional in-

formation to the Commission. By letter dated 19 September 1996, the Commercial Court of Roubaix-Tourcoing forwarded to the Commission the judgment of 17 September 1996 under the 'redressement judiciaire' procedure (administration under supervision of a court) concerning SA Filature Lainière de Roubaix.

By letter dated 18 August 1997, the Commission informed the French Government of its decision to initiate proceedings under Article 93(2) of the Treaty with respect to the aid. The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities* <sup>(1)</sup>. The Commission called on the interested parties to submit their comments on the aid.

By letter dated 24 September 1997, the French Government submitted its comments to the Commission. On the basis of this letter, the Commission sent the French Government additional information in letters dated 2 March and 17 June 1998, to which the French Government replied by letters dated 8 May, 21 July and 16 October 1998. Additional information was received by letter dated 30 October 1998.

### II. DESCRIPTION OF THE AID

This Decision concerns aid in the form of an equity loan of FRF 18 million and an investment premium of FRF 22 million which the French Government has granted to Nouvelle Filature Lainière de Roubaix as part of the 'administration procedure' concerning the group SA Filature Lainière de Roubaix.

<sup>(1)</sup> OJ C 392, 24.12.1997, p. 6.

## 1. The recipient

Following the company's bankruptcy, the Commercial Court of Roubaix decided on 30 April 1996 to initiate the 'judicial administration' (redressement judiciaire) procedure with respect to the group SA Filature Lainière de Roubaix (hereinafter referred to as SA Filature), comprising three companies (SA Groupe Lainière, SA Lainière de Roubaix and SA Proditex). By judgment of 17 September 1996, having ascertained that the plan for recovery via the clearing of liabilities in accordance with Article 18 of Law No 85/98 of 25 January 1985 was not feasible and having invited bids with a view to selling the company, the Commercial Court of Roubaix decided that the company should be sold in accordance with the abovementioned Law to a newly created public limited company with a capital base of FRF 510 000 named 'Nouvelle Filature Lainière de Roubaix' (hereinafter referred to as Lainière de Roubaix).

Under the above judgment, and with effect from 1 October 1996, the assets of the companies undergoing the administration procedure and most of the business and service contracts concluded by those companies were sold to the shareholders of the new company for FRF 4,8 million. The assets taken over were estimated on 1 September 1996 at FRF 50,956 million and were made up as follows: intangible assets and financial assets: none; tangible movable assets: FRF 21,126 million; stock and work in progress: FRF 20,676 million; debts to be recovered: FRF 3,647 million and liquid assets: FRF 5,507 million. The financial debts of the companies undergoing the administration procedure, the figures for which were not communicated to the Commission, were cleared as part of the procedure. The French Government then granted the new company the aid in question described below. In the grounds for the judgment of sale to the buyer, the Court took into account the fact that France, in the person of the Procureur de la République, had: 'confirmed State support to the amount of FRF 40 million according to the arrangements offered by each of the bidders, and hopes that the Court will adopt the plan which will ensure rigorous use of public funds restricted solely to the assets necessary to finance the recovery of the companies acquired, excluding the possibility of any equity investment or external expansion and ensure the continuity of business and employment'.

## 2. Restructuring and investment by the recipient

### — *Restructuring measures undertaken by the recipient*

Under the supervision of the administrator appointed by the Court of Roubaix to implement the plan, the new shareholders reduced capacity by closing down one area

of production, the heavily loss-making manufacture of basic yarns. Thus around 60 % of the production capacity of the former SA Filature, i.e. some loss-making production units and one entire industrial site (Proditex), was definitively closed down. In terms of turnover, the projected business of the new company is FRF 150 million, i.e. 38 % and 26 % of the turnover in 1995 and 1994 respectively. Production is reoriented towards more specialised products with greater added value. With the Court's authorisation, the new company has also made 339 of the 587 employees of the former group redundant. Under the abovementioned judgment, the Court of Roubaix decided that Lainière de Roubaix must make a redundancy payment of FRF 50 000 to each employee dismissed (i.e. a total of FRF 16,95 million for the 339 jobs cut).

However, as the Commission has already noted in its decision to initiate proceedings, the French Government did not forward a restructuring plan which would allow the Commission to assess restoration of the recipient company's long-term viability and the need for the aid. By the letter referred to above of 2 March 1998, the Commission asked the French Government to forward: 'the latest financial information available on Lainière de Roubaix (. . .), i.e. the detailed balance-sheet and financial statement, including the trading account'.

By letter dated 8 May 1998, the French Government sent the Commission, in addition to the projected profit and loss figures for 1996 to 1999, which it had already sent in the letter of 2 April 1997, the provisional profit-and-loss account at 31 December 1997. However, the French Government did not forward the other information requested.

### — *Restructuring costs*

At the repeated request of the Commission with a view to obtaining additional information on the exact costs to be covered by the FRF 18 million loan, the French Government sent the following information:

— by letter dated 16 January 1997, the French Government calculated the costs of restructuring at FRF 14,5 million, including FRF 12,5 million for retraining leave and FRF 2 million for redeployment of the employees made redundant. The French Government also stated in the same letter that 'some 20 people had taken early retirement, in accordance with the provisions of ordinary law'; however, the French Government did not indicate how much this measure might cost,

- by letter dated 2 April 1997, the French Government confirmed that the FRF 18 million loan was to cover the costs of 'maintaining activity and rapidly adapting the wage bill via the social plan implemented following the judgment of 17 September 1996',
- in its letter of 8 May 1998, the French Government calculated the costs relating to restructuring as follows: extra rent for premises not necessary for production for the period 1996/1997: FRF 2,2 million; cost of transfer of products (handling) involving unloading and reloading detrimental to the organisation of production: not quantified; renovation of premises: FRF 2,5 million; cost relating to the under-productivity of the company in the first six months: FRF 10 million; training costs: not quantified; costs relating to the welfare benefits of employees not made redundant in accordance with French law: not quantified; costs of setting up a management control system: not quantified,
- by letter dated 21 July 1998, the French Government maintained that it was 'in effect impossible to allocate a resource precisely to specific jobs'. The French Government also indicated that the loan corresponded to the period of restarting activity following the administration procedure and confirmed the use of the FRF 18 million loan for costs relating to restarting, for financing running costs and for part of the planned investments. The French Government also calculated the costs of under-productivity of the company in the first six months at FRF 10 million, the costs of renovating premises (letter of 8 May 1998) at FRF 2,5 million and the costs of the extra rent to be paid for premises not necessary to production for the period 1996/1999 at FRF 5 million. It mentioned the costs of retraining employees (not quantified) and the extra costs relating to welfare benefits due to the seniority of most of the employees taken over (FRF 1,6 million a year),
- by letter dated 16 October 1998, in addition to the information given in the letter of 21 July, the French Government indicated that additional [...] (\*) could arise [...]\*. At the time of the letter, however, this figure was not final.

— *Investment costs*

Lainière de Roubaix implemented an investment programme amounting to FRF 22,2 million, spread over three years, aimed at improving the efficiency of produc-

tion plant at the sites and minimising related costs (heating, maintenance, etc.). The programme involves the modernisation of obsolete machinery from the point of view of quality and productivity, the acquisition of new spindles (FRF 9,5 million), the development of differentiated products such as Plyfil Lycra (FRF 7,6 million) and the installation and retrofitting of a boiler (FRF 5,1 million).

— *Other information*

At present, Lainière de Roubaix operates in the textiles sector (spinning of woollen yarn) and is in direct competition with other producers in Europe and Asia. It is located in the Nord/Pas-de-Calais region, which is eligible for regional aid under Article 92(3)(c) of the Treaty and in accordance with the Commission Decision of 14 September 1994 on the regional planning grant scheme for industrial projects (?). According to the letter of 24 September 1997 and on the date the company was taken over, Lainière de Roubaix currently has 248 employees, a (projected) turnover of FRF 150 million and a balance sheet total of FRF 60 million. A total of 85 % of the capital is held by natural persons.

According to information from the French authorities, Lainière de Roubaix has a market share of only 0,4 % of European production and 8 % of French production. About 50 % of its output is exported, over half of this figure being accounted for by other Member States.

### 3. The aid granted

(a) *FRF 18 million loan*

The French Government communicated the following conditions governing the equity loan of FRF 18 million: duration 12 years, comprising an initial two-year grace period with a fixed interest rate of 4,5 % followed by 10 years with an interest rate of 6,5 %, plus an additional amount indexed on retained earnings. By letter dated 2 April 1997, the French Government communicated the consolidated projected profit-and-loss figures for Lainière de Roubaix showing the interest on the equity loan at FRF 200 000 for 1996, FRF 800 000 for 1997, FRF 900 000 for 1998 and FRF 1 100 000 for 1999. In its letter of 21 July 1998, the French Government maintained that the loan had been granted under market conditions.

(\*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(?) OJ C 364, 20.12.1994, p. 6.

In reply to the Commission's question in its letter of 17 June 1998, i.e. whether Lainière de Roubaix had, at the time the State loan was granted, obtained loans from private banks and, if so, on what terms (interest rate, grace period, duration, etc.), the French Government told the Commission that: 'the company was given (...) an authorised ceiling for financing of FRF 28 million with a financial institution at a rate currently of the order of 4,2 %'.

The French Government did not, however, communicate the terms of the loan at the time the State equity loan was granted, or the status of the financial institutions involved.

By letter dated 2 April 1997, the French Government confirmed that the equity loan had been granted before the plan for the takeover by Lainière de Roubaix came into effect on 1 October 1996.

(b) *FRF 22 million investment premium*

As part of the takeover plan, the French Government also granted Lainière de Roubaix an investment premium of FRF 22 million on the basis of the abovementioned investments.

This money was deposited in a sequestration account in the hands of the administrator appointed by the Court of Roubaix to implement the plan. The funds are being released as the company implements the plan. The French Government did not inform the Commission how much aid had already been released.

(c) *Legal basis of the aid*

The equity loan was granted by the government on an *ad hoc* legal basis. It is not part of an aid scheme approved by the Commission.

The FRF 22 million investment premium was granted on the basis of the 'Crédits de politique industrielle (funds for industrial restructuring) scheme administered by the Ministry of Industry (CIRI, budget line 64-96)'. This scheme has never been notified to the Commission in accordance with Article 93(3) of the Treaty. However, by letter dated 3 July 1991 to the French Government, the Commission proposed, as an appropriate measure under Article 93(1), that all cases of restructuring aid granted on the basis of the scheme should be notified in advance. By

letter dated 11 November 1991, the French Government accepted the above proposal of individual notification for cases of aid over FRF 5 million. This amount has clearly been exceeded in the case in question.

### III. COMMENTS UNDER THE ARTICLE 93(2) PROCEEDINGS

#### 1. Reasons given by the Commission for initiating Article 93(2) proceedings

In its decision to initiate proceedings, the Commission raised doubts concerning the compatibility of the aid with the common market. It gave the following reasons.

The Commission considers State aid for rescuing and restructuring firms in difficulty on the basis of the Guidelines published in 1994<sup>(3)</sup>. On the basis of the information available to the Commission at the time it initiated proceedings, it was not able to determine whether the aid granted could be considered compatible in accordance with the criteria set out in the Guidelines. Furthermore, since no restructuring plan had been submitted giving all the information necessary to assess the compatibility of the aid, the Commission was unable to ascertain the company's long-term viability or to check that the aid was limited to the strict minimum needed to enable restructuring to be undertaken. It nevertheless indicated that, under certain conditions and up to a certain limit, the company might be eligible for regional aid under Article 92(3)(c) of the Treaty.

#### 2. Comments of the French Government under the proceedings

The French Government insists that, in its view, the aid granted to Lainière de Roubaix must be considered compatible with the common market. It maintains that the State measures to support the company must be considered as a whole, i.e. the investment aid and the equity loan. These two measures, the abandonment of structurally loss-making activities and investment in expanding market niches would be necessary to ensure the company's return to long-term viability.

Overall, by assuming a grant equivalent of FRF 22 million for the investment premium and FRF -0,4 million for the loan (based on the reference rate of 5,55 % as communicated by the Commission in its letter of 18 August 1997), the French Government calculates the grant equivalent of aid for restructuring at FRF 21,6 million or 55 % in terms of aid intensity (letters dated 24 September 1997 and 8 May 1998).

<sup>(3)</sup> OJ C 368, 23.12.1994, p. 12.

The French Government also insists that the FRF 18 million loan must be regarded as rescue aid within the meaning of the Guidelines, even though it is of over six months' duration, the period generally set as the maximum in the Guidelines. The aid should therefore be considered compatible with the common market (letter of 24 September 1997). It also disagrees that the aid is illegal, while refusing to discuss the point (letter of 8 May 1998). It challenges the view taken by the Commission in its decision to initiate proceedings that the French Government did not submit sufficient information for the Commission to ascertain the company's long-term viability (letter of 24 September 1997).

The French Government also maintains that the aid granted to Lainière de Roubaix cannot be regarded as distorting competition. First, the new company had made a considerable reduction in capacity and closed certain production sites and, secondly, its share of the European market was trifling (letter of 24 September 1997). In the French Government's view, the company should be regarded as an SME under the Community definition, located in a region eligible for regional aid under Article 92(3)(c) of the Treaty with an admissible aid intensity of up to 33 % for an SME (letter of 24 September 1997). Finally, the French Government submitted information showing that the market on which Lainière de Roubaix currently operates does not suffer from overcapacity but, on the contrary, is growing (letter of 8 May 1998).

### 3. Comments from interested third parties

As part of the proceedings, the company 'Leuze Textil GmbH & Co.', Owen-Teck, Germany (by letters dated 11 November and 17 December 1996 and 11 February 1998), the company 'Kammspinnerei Stöhr GmbH', Mönchengladbach, Germany (by letter dated 23 January 1998) and the textile federation Febeltex (by letter dated 22 January 1998) submitted their comments to the Commission. They essentially pointed to the difficulties confronting the relevant market as such and called on the Commission to examine the compatibility of the aid granted to Lainière de Roubaix. In a letter dated 2 March 1998, the Commission forwarded a copy of the letters to the French Government and gave it the opportunity to comment on them.

## IV. ASSESSMENT OF THE AID

### 1. State aid within the meaning of Article 92(1)

#### (a) *The FRF 22 million investment premium*

The investment premium constitutes State aid within the meaning of Article 92(1). It was granted by the State in the form of a non-repayable grant to a specific company

and therefore gives that company a financial benefit of FRF 22 million. Furthermore, it threatens to distort competition, since it constitutes an economic advantage which other producers were unable to benefit from. It affects trade between Member States in so far as the recipient company exports a large proportion of its products to other Member States.

The fact that the company made considerable reductions in its production capacity does not in itself mean that the measures in question do not constitute State aid within the meaning of Article 92(1) of the Treaty. Similarly, the recipient company's relatively small share of the European market does not in itself mean there is no distortion of competition. Without the aid in question, the recipient company would not have been able to make the investments it has made; some of the recipient's market share could therefore have been won by its competitors.

#### (b) *The FRF 18 million equity loan*

An equity loan granted by the State confers an economic advantage on the recipient in so far as it allows the company to obtain capital on better terms than those prevailing on the market. The market conditions and the terms of the loan in question must be compared with reference to the time the loan was granted, i.e., in the absence of a precise date communicated by the French authorities, the date of effective takeover on 1 October 1996, which was carried out with the loan under examination.

The method of calculating the rate applicable to the equity loan chosen by the French Government includes an additional amount for the final 10 years of the loan depending on the company's performance rather than on the market rate. This method therefore makes it difficult to conclude that the equity loan was granted under market conditions.

In the absence of precise information that would allow the conditions of the loan granted by the State to be compared with market conditions, the Commission applies a reference rate to calculate the aid component of a loan. This is supposed to reflect the average level of market interest rates in the Member States for medium- and long-term loans with normal security. In this case, the State granted an equity loan which gives it the option of acquiring a holding in the company in question. This measure is therefore similar to a capital injection by the State. The Commission has published a notice setting out

the conditions for assessing whether a capital injection by the State constitutes State aid<sup>(4)</sup>. In that notice, the Commission states that where fresh capital is injected into a company, this does not involve State aid if the capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions.

In the present case the Commission cannot conclude that the equity loan from the French Government as part of the takeover of the assets of SA Filature by Lainière de Roubaix was granted on terms which would be acceptable to a private investor operating under normal market economy conditions. In its decision to initiate proceedings, the Commission had already demonstrated that the takeover of assets by the new company was based almost exclusively on State aid, particularly in view of the low capital base in comparison with the amount of aid granted. Despite the Commission's request, the French Government did not demonstrate that Lainière de Roubaix had received or could have received, at the time the equity loan was granted by the State, loans or capital injections on terms comparable to the terms of the loan in question. Under these circumstances, in order to calculate the aid component of the loan in question, the reference rate mentioned above must be applied as an indicator of the market rate.

At the time the loan was granted, the method for setting the interest rate used by the Commission with the agreement of the Member States, meeting at the multilateral meetings of 24 and 25 June 1993 and 15 December 1993, was that which the Commission communicated to the Member States by letter of 17 January 1994. On the basis of this method, the Commission communicates the reference rate to the Member States at the beginning of each year. By letter of 2 August 1996 to the French Government, the Commission notified the reference rate of 8,28 % applicable with effect from 1 August 1996 and thus also applicable at the time the equity loan was granted by the State. In the absence of more precise information on the return on a market equity loan equivalent to that granted to Lainière de Roubaix, this reference rate must be applied, for the period the loan has already run, as a minimum market rate for the equity loan granted in 1996.

The grant equivalent of the equity loan therefore consists of the difference between the rate applied by the State and the reference rate. This difference must be regarded

as an economic advantage granted by the State to the recipient company. As with the investment premium, this loan, in so far as it involves a financial advantage, threatens to distort competition and affects trade between the Member States. The loan therefore involves aid within the meaning of Article 92(1) of the Treaty.

Thus, by applying the abovementioned reference rate and assuming, in the absence of information provided by the French Government, linear repayment of the loan, the Commission calculates the gross grant equivalent of the FRF 18 million equity loan at FRF 1 461 067 for the full term of the loan (or, as an indicative figure should the rate be raised to the same level as the reference rate at 31 December 1998, FRF 1 164 980).

The French Government also used the above method to calculate the aid intensity as communicated in the letters referred to above. However, the result of the calculation is wrong, in so far as the French Government used the reference rate of 5,5 % in force at 1 August 1997, communicated by the Commission to the French Government by letter of 18 August 1997, and not that applicable at the time the loan was granted.

## 2. Illegal nature of the aid

As demonstrated above, the aid was not granted on the basis of a scheme approved by the Commission. Thus, in breach of Article 93(3), the aid was granted before the Commission had decided on its compatibility with the common market. The same is true of the FRF 22 million investment premium, even though it has not yet been paid in full to the recipient, since the decision to grant it has been taken and payment now depends only on completion of the various stages of the investment. The aid must therefore be regarded as illegal.

## 3. Compatibility of the aid with the common market

The aid is not compatible with the common market on the basis of the derogations provided for in Article 92(2), since it is not aid having a social character granted to individual consumers and is not intended to make good the damage caused by natural disasters or exceptional occurrences. Nor does the derogation provided for in Article 92(2)(c) apply. Similarly, the aid cannot be considered compatible on the basis of Article 92(3)(a), (b) or (d). It does not promote the economic development of areas where the standard of living is abnormally low or where

<sup>(4)</sup> Bull. EC 9-1984.

there is serious underemployment, pursuant to Article 92(3)(a), the Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid<sup>(5)</sup> and the Commission Decision on the regional planning grant scheme for industrial projects<sup>(6)</sup>. Nor is the aid intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, and it is not intended to promote culture and heritage conservation.

Assessment of compatibility of the aid must therefore be confined to the derogation provided for in Article 92(3)(c). In this context, application of the derogation must be examined on the basis of the Guidelines clearly setting out the Commission's interpretation of the derogation.

#### — *Rescue and restructuring aid*

For the following reasons, the Commission does not find that the aid may be considered compatible with the common market.

First, in line with the Commission's consistent practice, based on the Guidelines on aid for rescuing and restructuring firms in difficulty<sup>(7)</sup>, one condition for the compatibility of restructuring aid is the submission of a restructuring plan which would allow the Commission to assess restoration of the recipient company's long-term viability within a reasonable timescale. The plan must be based on realistic assumptions as to the company's future operating conditions. In this case, as stated in point II.2 of this Decision and as the Commission already pointed out in its decision to initiate proceedings, the French Government did not submit a credible restructuring plan to the Commission. Nor has any such plan been submitted to the Commission by the French authorities since the proceedings were initiated. The Commission cannot therefore alter the position it took when it initiated the proceedings.

Furthermore, the condition laid down in the Guidelines, whereby the restructuring aid must be submitted to the Commission in all relevant detail, is not met. Some information explicitly requested by the Commission was never sent, as stated in point II.2 of this Decision. Also, figures were not put on some elements of the cost of restructuring (point II.2 of this Decision). Furthermore, as indi-

cated above, the costs communicated to the Commission contain significant disparities in the various letters sent by the French authorities.

With regard to the company's long-term viability, as the projected accounts submitted to the Commission before the proceedings were initiated appear to demonstrate (letters of 22 November 1996 and 2 April 1997), the first operating account provided includes errors in the calculation of the operating profit. The second indicates that the company's net profit for 1996 (some FRF 20 million) is exclusively due to the investment aid. The net profit for 1999, when the restructuring is supposed to be complete, is put at FRF 848 000, which would mean a steady drop of 60 % to 70 % per year since 1996. Such figures could be taken to reflect a certain lack of competitiveness in the company.

It follows from the above that, even in the absence of a restructuring plan within the meaning of the Guidelines, the information provided by the French authorities does not demonstrate the company's long-term viability.

This is further borne out by the latest information sent by the French Government in its fax of 16 October 1998. According to this information, the profits of a large part of the new company's business were in fact considerably lower than the projected figures given by the buyer in his restructuring plan. [ . . . ]\*. Besides the fact that the various pieces of information sent by the French Government and described in points II.1 and II.2 of this Decision cannot be regarded as a restructuring plan within the meaning of the Guidelines, these facts show that the granting of the aid was not accompanied by a credible restructuring plan.

In addition, the Guidelines state that the aid must be in proportion to the restructuring costs and benefits. This means that aid recipients will normally be expected to make a significant contribution to the restructuring plan from their own resources or from external commercial financing. In this case, the buyer is putting up capital of some FRF 500 000 in addition to the money to buy up the assets, i.e. FRF 4,8 million. This contrasts with the FRF 40 million of public money. The disproportion is clear, since the buyer is contributing only 12 % of these funds. The condition that the aid must be proportional is therefore not met.

<sup>(5)</sup> OJ C 212, 12.8.1988, p. 2.

<sup>(6)</sup> See footnote 2.

<sup>(7)</sup> See footnote 3; point 3.2.

The disproportion between the public funding and the buyer's contribution is significant in several ways. First, it is clear that the company would not be viable without State support. Secondly, the steady and very considerable drop in profits over the supposed duration of the restructuring is a particularly optimistic assumption given that the buyer is having to consider closures of units in 1998. Finally, the fact that, according to the information given by the French authorities, the company's average price is higher than the average price on the relevant market and that the prices on this particular market (Lycra Wool) are also among the highest in Europe (letter of 8 May 1998) shows that the company is one of the least competitive on the market, even though it has been relieved of a large part of its costs through State support.

The French authorities' claim that the aid in the form of an equity loan is rescue aid cannot be accepted either. According to the definition given in the Guidelines, a rescue: 'temporarily maintains the position of a firm that is facing a substantial deterioration in its financial position reflected in an acute liquidity crisis or technical insolvency, while an analysis of the circumstances giving rise to the company's difficulties can be performed and an appropriate plan to remedy the situation devised'.

However, the aid was granted in order to allow the assets to be bought and a new company created. Quite obviously it was not granted in order temporarily to maintain the company until a restructuring plan was drawn up; as the Commission has found above, there is no such plan.

#### — Aid to promote regional development

Under the derogation set out in Article 92(3)(c) of the Treaty, the Commission may consider compatible with the common market aid to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Under the decision referred to above of 14 September 1994 on the regional planning grant scheme for industrial projects, the Commission decided, on the basis of socioeconomic data for the regions

concerned, that initial investment, within the meaning of point 18(i) of the Annex to the Commission communication on regional aid systems<sup>(8)</sup>, carried out in the region in which Lainière de Roubaix is located may be eligible for regional aid with an aid intensity of 25 % gross for large companies, with a possible 10 % bonus for SMEs (making 35 % gross). Lainière de Roubaix must be considered an SME under the Community definition.

With regard to the FRF 22 million investment premium granted to Lainière de Roubaix, the Commission finds as follows: the investment of FRF 22,2 million described above carried out by Lainière de Roubaix may be considered to be initial investment within the meaning of the 1979 communication. Therefore, and in view of the foregoing, investment aid of 35 % gross of the investment costs of FRF 22,2 million, i.e. FRF 7,77 million gross, may be considered to be compatible with the common market on the basis of the derogation under Article 92(3)(c). However, the remaining aid of FRF 14,23 million cannot be considered to be compatible with the common market under that provision.

However, with regard to the equity loan of FRF 18 million the eligible costs, as communicated by the French Government in its letter of 21 July 1998, cannot be considered to be initial investment within the meaning of the abovementioned Communication. The costs concerned are in fact ongoing costs which a company is normally expected to bear. The aid must therefore be deemed to be operating aid which, according to the Commission's consistent practice in accordance with its Communication on the method for the application of Article 92(3)(a) and (c) to regional aid<sup>(9)</sup>, cannot be granted outside a region eligible for regional aid under Article 92(3)(a). The equity loan cannot, therefore, be considered to be compatible with the common market on the basis of this derogation.

#### — Other bases for derogation

Finally, Lainière de Roubaix could in principle be eligible for employment aid under the Guidelines on aid to employment<sup>(10)</sup>. However, despite repeated requests from the Commission, the French Government has not clearly demonstrated or put any figures on the social costs which might be eligible for the aid in question. In its most recent letters of 8 May, 21 July and 16 October 1998, the French Government communicated costs which cannot be eligible for employment aid on the basis of the Guidelines.

<sup>(8)</sup> OJ C 31, 3.2.1979, p. 9.

<sup>(9)</sup> See footnote 5; point 6.

<sup>(10)</sup> OJ C 334, 12.12.1995, p. 4.

## V. CONCLUSIONS

The Commission finds that the French Government has illegally granted an investment premium of FRF 22 million and an equity loan of FRF 18 million in breach of Article 93(3) of the Treaty.

The Commission considers that investment aid of 35 % gross of the investment costs of FRF 22,2 million, i.e. FRF 7,77 million, may be considered to be compatible with the common market under Article 92(3)(c). However, aid amounting to FRF 14,23 million must be considered to be incompatible with the common market. Therefore, in order to restore the company to the financial situation in which it would have found itself without the incompatible aid, the French Government must take all necessary steps to recover the incompatible aid of FRF 14,23 million from the recipient.

The Commission also finds that the equity loan of FRF 18 million includes an aid component, namely the difference between the rate applied by the French Government and the reference rate in force at the time the loan was granted. The Commission calculates this sum at FRF 1 461 067 for the full term of the loan (or, as an indicative figure should the rate be raised to the same level as the reference rate at 31 December 1998, FRF 1 164 980). Aid of this amount must be considered to be incompatible with the common market. In order to restore the company to the financial situation in which it would have found itself without the incompatible aid, the French Government must without delay abolish the aid in question by applying normal market conditions corresponding at least to the reference rate of 8,28 % applicable at the time the loan was granted,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid in the form of an investment premium granted by France to Nouvelle Filature de Roubaix amounting to FRF 7,77 million may be considered to be compatible with the common market on the basis of Article 92(3)(c) of the Treaty.

*Article 2*

The aid in the form of an investment premium granted by France to Nouvelle Filature de Roubaix amounting to

FRF 14,23 million is incompatible with the common market.

*Article 3*

1. The equity loan of FRF 18 million constitutes aid in so far as the rate applied by France is lower than the reference rate of 8,28 % applicable at the time the loan was granted.
2. The aid referred to in paragraph 1 granted by France to Nouvelle Filature de Roubaix is incompatible with the common market.

*Article 4*

1. France shall take all necessary measures to recover from the recipient, Nouvelle Filature de Roubaix, the aid referred to in Article 2 which has already been illegally paid.
2. Repayment shall be made in accordance with the procedures and provisions of French law. The amounts to be repaid shall bear interest from the date on which the aid was paid to the recipient until the date on which it is effectively recovered. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid.
3. France shall without delay abolish the aid referred to in Article 3 by applying normal market conditions corresponding at least to the reference rate of 8,28 % applicable at the time the loan was granted.

*Article 5*

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

*Article 6*

This Decision is addressed to the French Republic.

Done at Brussels, 4 November 1998.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*