

JUDGMENT OF THE COURT OF FIRST INSTANCE  
(Fourth Chamber, Extended Composition)  
28 February 2002 \*

In Case T-155/98,

**Société internationale de diffusion and d'édition (SIDE)**, established in Bagneux (France), represented by N. Coutrelis, lawyer, with an address for service in Luxembourg,

applicant,

v

**Commission of the European Communities**, represented by G. Rozet and B. Mongin, acting as Agents, with an address for service in Luxembourg,

defendant,

\* Language of the case: French.

supported by

**French Republic**, represented by J.-F. Dobelle, G. de Bergues and F. Million, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of the last sentence of Article 1 of Commission Decision 1999/133/EC of 10 June 1998 concerning State aid in favour of Coopérative d'exportation du livre français (CELF) (OJ 1999 L 44, p. 37),

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES  
(Fourth Chamber, Extended Composition),

composed of: P. Mengozzi, President, R. García-Valdecasas, V. Tiili, R.M. Moura Ramos and J.D. Cooke, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 4 July 2001,

gives the following

## Judgment

### Facts

- 1 The Société internationale de diffusion et d'édition ('SIDE') is an agency company established in France. Its activities consist in particular of exporting French-language books to other Member States of the European Union and to non-member countries.
  
- 2 CELF (Coopérative d'exportation du livre français, trading as 'Centre d'exportation du livre français'), which was formed in 1977, is a limited cooperative society whose object, according to the most recent version of its statutes, is 'directly to handle orders from abroad or the overseas territories and departments for books, brochures and all communications media, and more generally to carry out any transactions for the purpose, in particular, of furthering the promotion of French culture throughout the world by means of the abovementioned media'. Most of the 101 members of CELF are publishers established in France, although membership is open to all persons engaged in the publication or distribution of French-language books, irrespective of their place of establishment.
  
- 3 Like SIDE, CELF is commercially active in distributing books, chiefly in countries and areas that are not French-speaking, since in French-speaking areas,

particularly Belgium, Canada and Switzerland, that task is performed by the distribution networks set up by publishers.

- 4 Among the various operators involved in the distribution of books, agents, who deal only with retailers or organisations but not with the final consumer, enable orders to be satisfied which publishers or their distributors do not find remunerative. The agent collects orders, each inconsiderable in itself, from different customers and approaches the publisher or distributor, who thus needs to deliver to only one place. Similarly, the agent gathers together orders from his bookselling or institutional customers in respect of works from different publishers, thus sparing his customers the need to place multiple orders with many different suppliers. On account of the fixed costs for handling each order, an agent's involvement makes it possible to make savings at both the distributor level and the customer level, which makes it economically worthwhile.
  
- 5 In 1979 CELF was in financial difficulties, and booksellers, publishers, the Syndicat National de l'Édition and the public authorities reached agreement that it should be preserved. Thus it was decided to grant compensatory subsidies towards the handling of small orders, which began in its present form in 1980.
  
- 6 The operating subsidy granted to CELF is intended to offset the extra cost involved in handling small orders from booksellers established abroad. It enables CELF to meet orders which, because of the substantial transport costs in relation to the total value of the order involved, are regarded as barely worthwhile by the publishers or their associated distributors. Consequently, the grant of that subsidy helps to spread the French language and to propagate French-language literature.

- 7 In practice, the support mechanism works in the following way. Booksellers who need small quantities of works published by different publishers place their orders with CELF, which then acts as export agent. The subsidy is specifically designed to make it possible to meet orders to the value of less than FRF 500, excluding costs of carriage, which are considered to be below the break-even point. One quarter of the amount of subsidy granted during the previous year is disbursed at the beginning of the year, the balance being granted in the autumn, after the public authorities have examined CELF's operational estimates and the fluctuations in the first part of the financial year. Within three months of the end of the financial year, an account showing how the subsidy has been used, together with a list of supporting documents, must be forwarded to the Ministry of Culture and French Language.
- 8 By letter of 20 March 1992 the applicant's legal adviser drew the Commission's attention to the aid for promoting, transporting and marketing French books which he claimed the French Ministry of Culture and French Language was granting to CELF. In that letter, he asked the Commission whether the aid in question had been notified in accordance with Article 93(3) of the EC Treaty (now Article 88(3) EC).
- 9 By letter of 2 April 1992 the Commission asked the French authorities for information about the measures in favour of CELF.
- 10 On 7 April 1992 the Commission informed SIDE that the aid in question did not appear to have been notified. It was confirmed to SIDE, in a letter of 7 August 1992, that the aid had not been notified.
- 11 On 18 May 1993 the Commission adopted a decision authorising the aid in question, notice of which was published in the *Official Journal of the European*

*Communities* of 25 June 1993 under the title ‘Aid to exporters of French books’, number NN 127/92 (OJ 1993 C 174, p. 6).

- 12 By judgment of 18 September 1995 in Case T-49/93 *SIDE v Commission* [1995] ECR II-2501, hereinafter ‘the *SIDE* judgment’, the Court of First Instance annulled that decision in so far as it concerned the subsidy granted exclusively to CELF to offset the extra cost involved in handling small orders for French-language books placed by booksellers established abroad.
  
- 13 The Commission wrote to the French authorities on 17 October 1995, asking them to inform it, before it considered the possibility of opening the procedure laid down by Article 93(2) of the Treaty, of any changes they might have made to the aid granted to CELF in the light of the *SIDE* judgment. The French authorities replied by letter dated 5 December 1995, stating that no changes had been made to the aid in question.
  
- 14 On 7 June 1996 a meeting took place between *SIDE* and the Commission. On 28 June 1996 *SIDE* submitted further information to the Commission which it considered relevant to the case.
  
- 15 On 30 July 1996 the Commission decided to open the procedure under Article 93(2) of the Treaty. It informed the French Government of that decision by letter dated 21 August 1996.
  
- 16 On 5 December 1996 the Commission published a notice in the *Official Journal of the European Communities* calling on interested parties to submit observations on the aid in issue (OJ 1996 C 366, p. 7).

- 17 During December 1996 and January 1997 the Commission received observations from a number of interested parties. The applicant sent its observations under cover of a letter dated 6 January 1997. The Commission then forwarded those observations to the French Government by letter of 15 April 1997.
  
- 18 By letters of 2 July and 25 July 1997 SIDE complained in strong terms to the Commission about the delay in the procedure.
  
- 19 The French Government replied to the Commission's decision to open a procedure and to the observations received from interested parties in letters dated 12 December 1996 and 1 October 1997 respectively. A meeting between representatives of the Commission and the French authorities took place on 29 October 1997. The French Government submitted further information and observations to the Commission by letters of 30 October and 21 November 1997.
  
- 20 On 13 February 1998 Commission representatives met representatives of the French authorities and of CELF.
  
- 21 By letter of 5 March 1998 the French authorities submitted further information to the Commission, relating in particular to the compensatory nature of the aid. By faxes dated 26 March 1998 and 10 April 1998 CELF provided the Commission with updated information on the extra costs of handling small orders and on the compensatory nature of the aid. By fax dated 17 April 1998 the Ministry of Culture likewise provided the Commission with additional information. By fax dated 19 May 1998, the French authorities again supplied further information to the Commission.

- 22 On 10 June 1998 the Commission adopted Decision 1999/133/EC concerning State aid in favour of Coopérative d'exportation du livre français (CELF) (OJ 1999 L 44, p. 37, hereinafter 'the contested decision'), which was notified to the applicant's legal adviser on 23 July 1998.
- 23 The Commission states in Article 1 of that decision:

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

#### **Procedure and forms of order sought by the parties**

- 24 By application lodged at the Registry of the Court of First Instance on 29 September 1998, the applicant brought the present action.
- 25 By letter registered at the Registry of the Court of First Instance on 4 March 1999 the French Republic applied to the Court for leave to intervene in the present proceedings in support of the form of order sought by the defendant.

- 26 The contested decision was also the subject of an application for annulment brought by the French Republic, lodged at the Registry of the Court of Justice on 8 September 1998 (Case C-332/98), on the ground that the Commission did not apply Article 90(2) of the EC Treaty (now Article 86(2) EC).
- 27 Since the two actions challenged the validity of the same act, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance ordered on 25 March 1999, pursuant to the third paragraph of Article 47 of the EC Statute of the Court of Justice, that the present proceedings be stayed pending delivery of final judgment by the Court of Justice in Case C-332/98.
- 28 As the Court of Justice dismissed the action of the French Government in its judgment of 22 June 2000 (Case C-332/98 *France v Commission* [2000] ECR I-4833) the present proceedings have been continued.
- 29 By order of 3 July 2000 of the President of the Fourth Chamber, Extended Composition, of the Court of First Instance, the French Republic was granted leave to intervene in support of the form of order sought by the defendant.
- 30 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber, Extended Composition) decided to open the oral procedure. The defendant and the intervener replied to the written questions and produced the documents requested as measures of organisation of procedure.
- 31 The parties presented oral argument and their replies to the Court's questions at the hearing on 4 July 2001.

32 The applicant claims that the Court of First Instance should:

— annul the last sentence of Article 1 of the contested decision;

— order the defendant to pay the costs.

33 At the hearing the applicant stated that it was also applying for the annulment of the contested decision on the ground that the Commission stated, in the second paragraph of section XIII of the recitals in the preamble thereto, that the recapitalisation of CELF in 1980 did not constitute State aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC).

34 The defendant and the intervener contend that the Court of First Instance should:

— dismiss the action;

— order the applicant to pay the costs.

**Admissibility of the claim for annulment of the findings of the Commission in the contested decision as to the recapitalisation of CELF in 1980**

*Arguments of the parties*

- 35 The defendant maintains, without raising a plea of inadmissibility, that the recapitalisation of CELF in 1980 was not linked to the aid mechanism for handling small orders. Thus, it claims, there is no link between that increase of capital and the operating aid mechanism authorised by the contested decision.
- 36 In reply to a question from the Court on the admissibility of its application for annulment of the findings of the Commission in the contested decision concerning the recapitalisation of CELF in 1980, the applicant stated that this was a matter for the discretion of the Court.

*Findings of the Court*

- 37 It should be noted that the issue of the recapitalisation of CELF in 1980 was addressed in the second paragraph of section XIII of the recitals in the preamble to the contested decision, and was not referred to in the operative part thereof.
- 38 In that regard, it should be recalled that, according to settled case-law, the proceedings provided for in Article 173 of the Treaty (now, after amendment, Article 230 EC) can be instituted only against an act adversely affecting a

person's interests, in other words against an act capable of affecting a given legal position. Whatever the grounds on which such an act is based, only its operative part is capable of producing legal effects and, as a consequence, of adversely affecting such interests. As regards the assessments made by the Commission in the recitals to the contested decision, their legality might be open to review by the Community judicature only to the extent to which, as grounds of an act adversely affecting a person's interests, they constituted the necessary support for its operative part (Case T-138/89 *NBV and NVB v Commission* [1992] ECR II-2181, paragraph 31).

39 Furthermore, to determine whether an act or decision produces binding legal effects such as to affect the interests of an applicant by bringing about a distinct change in his legal position, it is necessary to look to its substance (Joined Cases T-125/97 and T-127/97 *Coca-Cola v Commission* [2000] ECR II-1733, paragraphs 77 and 78, and the case-law cited therein).

40 It follows that, in the present case, the mere fact that the issue of the recapitalisation of CELF in 1980 was addressed in the second paragraph of section XIII of the recitals in the preamble to the contested decision, and not in the operative part thereof, does not mean that that finding may not be the subject of an action for annulment. In the second paragraph of section XIII of those recitals the Commission concluded 'that the increase in CELF's capital did not constitute State aid, but merely the acquisition of a shareholding, since private investors also took part'. That conclusion does not constitute the necessary support for the operative part of the contested decision since the operative part concerns only aid granted to CELF for the handling of small orders.

41 Consequently, the application for annulment of the findings of the Commission in the contested decision concerning the recapitalisation of CELF in 1980 must be rejected as inadmissible.

**The application for annulment of the last sentence of Article 1 of the contested decision**

42 The applicant advances seven pleas in support of its action for annulment, as follows: (i) procedural irregularity, inasmuch as the Commission did not undertake a thorough and impartial investigation of the complaint and the observations of all the persons concerned; (ii) an inadequate statement of reasons; (iii) errors of fact; (iv) manifest errors of assessment; (v) violation of the principle of non-discrimination; (vi) infringement of Article 92(3)(d) of the Treaty, and (vii) incompatibility of the contested decision with Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC).

43 It is appropriate to consider the fourth plea.

44 The fourth plea is put forward in four parts. In the first part, the applicant claims that the Commission committed a manifest error of assessment as regards the definition of the reference market. The second part alleges a manifest error of assessment as regards the proportionality of the aid in issue. The third part concerns a manifest error of assessment as regards the effect of that aid on competition. By the fourth part the applicant claims that the Commission wrongly considered that the recapitalisation of CELF in 1980 did not constitute aid within the meaning of Article 92 of the Treaty.

45 It is appropriate to consider the first part of the fourth plea, to the effect that the Commission committed a manifest error of assessment in selecting the export market for French-language books in general as the reference market.

*Arguments of the parties*

- 46 The applicant states that the relevant market is specifically the export agency market, and not that for the export of French-language books in general, nor, *a fortiori*, that for books in general. It notes that the Commission itself employed the concept of export agency to describe the aid to CELF. Thus, the applicant claims, the Commission confused the market for a product — books — with that in issue, namely the market for a service — the service provided by export agencies.
- 47 It submits that if a customer chooses to go through a distributor or an agent, not because he has compared the prices or quality of the two substitutable services, but because of the specific nature of his order, it is because in practice the two services are different, meeting different requirements and therefore constituting two distinct markets. The distinction arises from the nature of the services offered by an agent and an exporter. The export agent offers a specific service, that of the gathering together of individual orders so as to process them in favourable economic conditions of price and cost, and thus to make them economically worthwhile. Accordingly, the criterion for the definition of a separate market is the interchangeability (or otherwise) of the services from the point of view of demand. Furthermore, from the point of view of supply, the publishers refuse to meet orders below a certain threshold, thereby making it indispensable to go through an agent. The fact that export agents do not only carry out that activity does not invalidate the specific nature of that market.
- 48 According to the applicant, the Commission subsumed the market to which the contested aid relates within the much larger market for the export of French-language books in general, with the result that it did not carry out a genuine assessment of the effect of that aid on competition or, therefore, any serious assessment as to whether that aid complied with Article 92(3)(d) of the Treaty.

- 49 That error led the Commission to think that small orders have a specific nature, whereas that specific nature is quite simply that of the export agency market. CELF's commitment in that respect to meet all small orders is irrelevant because it is precisely the acceptance of all orders, no matter how small, that distinguishes the agent from the distributor. Similarly, according to the applicant, the fact that books ordered are not in stock is not a particular characteristic of small orders, since agents are, by definition, merely intermediaries who pass their customers' orders on to the publishers, and who therefore do not hold goods in stock. Furthermore, the applicant claims that that same disregard of the specific market led the Commission to consider that the two undertakings which benefited from the disputed aid at a given time were in a situation comparable to that of the applicant.
- 50 Finally, the applicant claims that the Commission should have asked for the data which, in the view of the former, are lacking in order to distinguish a specific market for export agencies. The difficulty in obtaining information on the export agency market should not create difficulty in identifying that market, but in its quantification.
- 51 The defendant takes the view that there is no separate and specific export agency market for French-language books. There is an export market for such books, in which CELF competes with other operators. The agent only acts as an intermediary and the product sold is not specific to him. Furthermore, it is not in dispute that export agents carry out other activities besides strict agency, such as classic bookselling. Thus, according to the Commission, it was difficult to obtain data on any export agency market in the strict sense of the term. It observes that SIDE and the other operators claiming to operate in that market have provided no information to distinguish that part of their turnover deriving from export agency from that of their other activities.

- 52 As to the statement that all export agents handle small orders, the Commission points out that orders of less than FRF 500 represent a very small proportion of the turnover of export agents (less than 5% of the turnover of CELF when it received the disputed aid), that CELF alone was contractually engaged by the Ministry of Culture to accept small orders, that commitment being one of the specific reasons for the aid, and that export agents are primarily interested in institutional clients. It was legitimately entitled to infer from this that few export agents other than CELF handled orders below FRF 500 in value.
- 53 The French Republic points out that, in section x of the recitals in the preamble to the contested decision, the Commission carried out a detailed analysis of the information submitted not only by its Government but also by the applicant.
- 54 It considers that, in order to prove the existence of a specific export agency market, it is necessary to show that the export of French-language books and export agency are mutually exclusive services. It adds that, from the point of view of demand, a significant number of orders from abroad are sent directly to the traditional distributors without involving the agents. It stresses that, on the supply side, export agents generally carry out other economic activities. Consequently, it is not possible to distinguish a specific market for export agency of French-language books.

*Findings of the Court*

- 55 Article 92(1) of the Treaty provides that '[s]ave as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.' Paragraph 3(d) of that article states that 'aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest' may be considered to be compatible with the common market.
- 56 In order to establish whether, in the present case, competition is affected to an extent that is contrary to the common interest for the purposes of Article 92(3)(d) of the Treaty, it is necessary to consider first the definition of the market for the services in question. To that end, it will be recalled that the Commission defined the market on which it assessed the effects of the aid in issue as being that for the export of French-language books in general.
- 57 So far as concerns the material definition of the market, the Court observes that, in order to be considered the subject of a sufficiently distinct market, it must be possible to distinguish the service or the good in question by virtue of particular characteristics that so differentiate it from other services or other goods that it is only to a small degree interchangeable with those alternatives and affected by competition from them. In that context, the degree of interchangeability between products or services must be assessed in terms of their objective characteristics, as well as the structure of supply and demand on the market, and competitive

conditions (Case T-229/94 *Deutsche Bahn v Commission* [1997] ECR II-1689, paragraph 54, and the case-law cited therein).

- 58 In the present case, it should be noted, as is apparent from Article 1 of the contested decision, that the aid in issue is granted to CELF for the handling of small orders of books in the French language. The Commission explained at the hearing that the purpose of the aid in issue was to offset part of the management costs in respect of small orders of such books, so that CELF does not charge its customers for those costs in full.
- 59 Consequently, it is necessary to examine whether the export of French-language books in general and export agency are interchangeable services as regards the handling of orders below FRF 500 in value.
- 60 In that regard, the interchangeability of those services is contradicted by the very justification for the aid in question. According to the first paragraph of section VI of the recitals in the preamble to the contested decision, the operating subsidy granted to CELF enables it 'to meet orders which publishers or their associated distributors do not consider it profitable to satisfy, given the increased transport costs and the total value of the order involved.' It adds, in the third paragraph of section VI of the recitals in the preamble to the contested decision, that '[a]mong the various operators involved in the distribution of books, agents (*commissionnaires*), who deal only with retailers or organisations but not with the final consumer, enable orders which publishers or their distributors consider unremunerative to be satisfied.'
- 61 Furthermore, the French Government itself stressed that the '[aid] mechanism is not in any way likely to affect the business of publishers distributing their own works or of ordinary distributors. Because they are so small, the orders to which the aid relates are never handled by such operators, and in any event the aid benefits them indirectly, since it is to them that CELF turns to obtain its supplies.

Any competitive impact which the aid may have therefore arises only in respect of operators engaged in the export agency business' (fifth paragraph of section VIII of the recitals in the preamble to the contested decision). It adds that '[t]he orders which the mechanism is intended to render feasible are outside the normal market, even if in individual cases an individual operator may accept them' (sixth paragraph in section VIII of the recitals in the preamble).

- 62 Finally, at the hearing, the Commission acknowledged that, whilst the publishers and distributors can accept orders below FRF 500 in value, they only do so by charging a premium, thereby making the orders too expensive for the customer.
- 63 Given that the publishers and distributors do not accept small orders without charging such a premium, the service provided by an agent is of a different type, meeting different requirements. Because of that premium, the fact that publishers and distributors in theory accept orders below FRF 500 in value is not sufficient to show that their services are interchangeable with those provided by agents. The market on which the effect of the aid in issue must be considered cannot also contain economic operators who are not genuinely active in that market. Consequently, the reference market must be the agency export market, since, given that only agents are genuinely involved in the handling of orders below FRF 500 in value, that market constitutes a market distinct from that for the export of French-language books in general.
- 64 Furthermore, the fact that the publishers and distributors only accept those orders upon payment of a premium shows that they too treat them differently from their general activities of distributing and exporting French-language books. Such different treatment is a factor corroborating the existence of a distinct market.

- 65 As regards the statement of the Commission that it did not possess accurate data enabling it to define the relevant market as that for export agency, it will be recalled that the same problem was raised by that institution in the proceedings culminating in the *SIDE* judgment. As is stated in paragraph 70 of that judgment, the Commission claimed that it was for the applicant to establish that a specific sub-market exists for agency exports and submitted that it was required to conduct a thorough investigation of market conditions only where it was supplied with detailed information at the administrative procedure stage.
- 66 The Court of First Instance rejected that argument. It stated, in paragraph 71 of the *SIDE* judgment, that '[o]n the Commission's argument, competitors of undertakings which are receiving unnotified State aid must provide it with information to which, in most cases, they have no access and which they can obtain only through the Commission itself from the Member States granting the aid'.
- 67 In the present case, the Commission justifies its choice of reference market only by adopting the statements of the French Government. Thus, in the 20th paragraph of section × of the recitals in the preamble to the contested decision, it states: 'the French Government doubts whether an export agency market for French-language books can be defined in anything more than purely theoretical terms.' It adds, in the 26th paragraph of section × of the recitals in the preamble to the same decision, that '[t]he French authorities believe, therefore, that it is not possible to compile data on an export agency market for French-language books in the strict sense.' In its view, '[e]ven if one were to carry out an individual survey of all the operators who state that they carry on this business, it is unlikely that their cost accounting would always be sufficiently precise to pinpoint it.' Finally, it states, in the 27th paragraph of section × of the recitals in the preamble to the contested decision, that the French authorities have been able to provide it

only with export turnover figures for operators established in France who are known to deal with the type of order normally placed with export agents.

- 68 Those quotations show that the Commission did not even attempt to check whether it was possible for it to obtain the relevant data to enable it to distinguish the export agency market from that for the export of French-language books in general. As appears from the 15th, 27th and 28th paragraphs of section x of the recitals in the preamble to the contested decision, the number of operators active in the export agency business is known.
- 69 Furthermore, at the hearing, the Commission did not answer the Court's question whether it had asked the applicant and the other operators to supply the information that would enable it to distinguish their turnover in respect of export agency business from that in respect of their other activities.
- 70 It is apparent from the invoicing carried out by the applicant in its capacity as an agent between 1 April 1999 and 31 March 2000 that it is entirely possible to separate the two types of turnover. Furthermore, in the 13th paragraph of section VI (footnote on page 4) of the recitals in the preamble to the contested decision, the same separation was carried out in relation to CELF's turnover.
- 71 Consequently, the Commission should have examined the effects of the contested aid on competition and trade between the other operators carrying on the same activity as that for which the aid was granted, in this case the handling of small orders of French-language books. In selecting the export market for French-language books in general as the reference market, the Commission was unable to

assess the true impact of the aid on competition. Accordingly, the Commission committed a manifest error of assessment as regards the definition of the market.

72 In the light of the foregoing, it is unnecessary to check the data relating to CELF's competitors. If the market definition is regarded as erroneous, CELF's share of the relevant market must also be reassessed.

73 In those circumstances, the first part of the fourth plea, relating to the definition of the market, must be upheld. It follows that the application for annulment of the last sentence of Article 1 of the contested decision must be declared well founded, without there being any need to consider the other pleas and arguments put forward by the applicant.

## Costs

74 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has been unsuccessful, it must, in accordance with the form of order sought by the applicant, be ordered to bear its own costs and to pay those of the applicant.

75 The French Republic, which intervened in the proceedings, must bear its own costs, pursuant to the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE  
(Fourth Chamber, Extended Composition)

hereby:

1. Annuls the last sentence of Article 1 of Commission Decision 1999/133/EC of 10 June 1998 concerning State aid in favour of Coopérative d'exportation du livre français (CELF);
2. Orders the defendant to bear its own costs and to pay those of the applicant;
3. Orders the French Republic to bear its own costs.

Mengozzi

García-Valdecasas

Tiili

Moura Ramos

Cooke

Delivered in open court in Luxembourg on 28 February 2002.

H. Jung

Registrar

P. Mengozzi

President

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