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EU-DEL. BRUSSEL	
2060038-95	AKSB.
20 DES 2006	
ARKIVKODE	542.423
Brussels, 15 December 2006	
Case No: 60647	
Event No: 403529	

EFTA SURVEILLANCE
AUTHORITY

Dear Sir,

Subject: Complaint – zero-rated VAT on newspapers
- Forwarding complaint by the Norwegian Weekly Press Association

1 INTRODUCTION

By letter dated 25 August 2006, Magasin-og Ukepresseforeningen (the Norwegian Weekly Press Association) filed a complaint with the EFTA Surveillance Authority (the "Authority") regarding an alleged grant of aid to publications falling within the zero-rated category of VAT under the Norwegian VAT Act.

The complaint was received and registered by the Authority on the same day (Event No 385379) and will be dealt with under the case number mentioned above. Please quote the case number as a reference in any future correspondence.

2 INVITATION TO COMMENT

The Norwegian authorities are hereby invited to comment on the complaint, which is enclosed with this letter. The Norwegian authorities should, in particular, comment on any aspect which enables the Authority to assess the case under the EEA provisions on state aid, in particular Article 61(1) of the EEA Agreement.

More specifically, the Authority would appreciate the view of the Norwegian authorities in relation to the assessment in the complaint that, despite the fact that VAT is a tax on consumers, the zero-rating for VAT on the sale of newspapers constitutes an indirect advantage for the undertakings benefiting from that rate as compared with competing publications having to charge the normal rate of VAT at 25%.

Norwegian Mission to the European Union
Rue Archimède, 17
1000 Brussels

The Authority would appreciate a reply to this invitation to comment on the complaint no later than **31 January 2007**. In case of any further queries, do not hesitate to contact the casehandler in charge, Ms. Lorna Young (tel.: +32.2.286 1839).

Yours faithfully,



Amund Utne
Director
Competition and State Aid Directorate

Enclosure: Complaint

SCHJØDT

TELEFAX

To:	EFTA surveillance Authority	From:	Jan Magne Juhl-Langseth
Attention:		E-mail:	jml@schjodt.no
Telefax no:	00 32 2 286 1800	Regarding:	State aid complaint: Application of 0% VAT rate on the sale of newspapers
Date:	25 August 2006	Number of pages:	30 (including this)

Comments:

- Please see enclosure As agreed Also sent by post
 Please contact the undersigned Other comments:

Advokatfirmaet Schjødt AS - Member of the Norwegian Bar Association - Org.no.: 968 050 257
Dronning Mauds gt. 11 P.O.Box 2444 Solli NO-0204 Oslo Norway Tlf: +47 22 01 88 00 Fax: +47 22 83 17 12
www.schjodt.no

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SCHJØDT

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussels,
Belgium

Oslo, 25 August 2006
+312796-002_362591/1
Attorney in charge:
Jan Magne Juuhl-Langseth

Dear Sirs,

STATE AID COMPLAINT: APPLICATION OF 0% VAT RATE ON THE SALE OF NEWSPAPERS

We represent the Norwegian Weekly Press Association ("Magasin- og Ukepresseforeningen). We are writing to you to lodge a complaint about State aid in Norway.

The matter in a nutshell is the following: Newspapers are within the scope of the Norwegian VAT system. Thus, they can deduct input VAT and they charge output VAT on the products they sell. However, the output VAT rate is fixed at 0 % for sale of newspapers. Periodicals in competition with newspapers are governed by the same regime, however, with the notable modification that they must charge full output VAT on their sales, 25 %. The outcome is for instance that a newspaper with the sales price of 100 NKR before VAT is sold at that price while the competing periodical with the same sales price before VAT is sold at 125 NKR. This amounts to a distortion of competition and it is this distortion of competition that is at the very centre of this complaint.

Below we shall expose more in detail the matter. Before doing so, we shall briefly recall that the matter has been before the Authority at a previous occasion.

The Authority's previous actions

Reference is made to case SAM 020.500.034, and the Authority's letter of 15 January 2001 (Doc.No: 01-310-D), where the Competition and State Aid Directorate closed a complaint lodged by our client regarding the application of varying levels of VAT with respect to newspapers and magazines (Doc.No. 99-6913-A).

In its letter of 15 January 2001 the Authority expressed doubts as to whether the EEA State aid provisions were applicable. It stated in particular the following:

"As to the requirement that the State measure favours certain undertakings through the transfer of State resources, the Competition and State Aid Directorate observes that the application of a 0 % VAT rate on the sale of newspapers does not seem to relieve newspaper undertakings from costs they would normally have to bear. Since VAT is a tax on consumers rather than on undertakings, the application of a 0 % rate does not seem to constitute a direct benefit to newspaper undertakings. On the other hand, it can not entirely be excluded that certain indirect benefits might also fall under the EEA State aid provisions. In this respect the Competition and State Aid Directorate notes, however, that the complainant has not provided any information which would enable the Authority to determine and quantify the financial benefit to newspaper undertakings, which they would not have obtained without the application of the 0 % VAT rate.

As to the requirement that competition is distorted and trade affected, the Competition and State Aid Directorate considers that, in general, aid measures will affect competition and trade between the Contracting Parties of the EEA Agreement, provided that the recipient undertaking is in competition with undertakings in other EEA States. Irrespective of the question regarding the purported substitutability of certain daily newspapers and magazines, the Competition and State Aid Directorate takes the view that the market for press publications is predominantly national. Even though there might be a certain degree of import of foreign publications, this fact in itself does not necessarily imply that trade is affected within the meaning of Article 61(1) of the EEA Agreement. This is particular true where, due to the language barriers and the demand for national and local information, national and foreign publications do not compete for readers or advertising on a give market. In this respect, the Competition and State Aid Directorate also notes that the complainant has not provided any proof of foreign magazines being in direct competition with Norwegian daily newspapers either in Norway or abroad. Consequently, it seems unlikely that the differentiated VAT rates for newspapers and magazines distort competition and affect trade within the meaning of Article 61 (1) of the EEA Agreement."

The complainant was invited to provide the Authority with further information within one month enabling it to determine whether the 0% VAT rate on newspaper was caught by the EEA State aid provisions. However, as the complainant failed to provide the Authority with further information, the complaint was closed without any further notice.

State aid or not?

The Norwegian rules

The Norwegian Authorities introduced value added tax in 1970 through the Value Added Tax Act referred to above.

As stated in the Authority's Decision of 19 July 2006 in another VAT case, VAT is an indirect tax on consumption of goods and services.¹ VAT is calculated at all stages at the supply chain and on imports of goods and services from abroad. The final consumer, not registered for VAT, absorbs the VAT as part of the purchase price. As we presume that the Authority is well acquainted with the Norwegian VAT Act from that VAT case, the Act is not enclosed.

VAT is paid on the sale of goods and services covered by the VAT Act. Article 2 in Chapter I of the VAT Act provides a definition of goods and services within the meaning of the VAT Act:

"By goods are meant physical objects, including real property. By goods are also meant electric power, water from waterworks, gas, heat and refrigeration. By a service is meant anything that can be supplied that is not regarded as goods as defined in the first subsection. Also regarded as a service is a limited right to a physical object or real estate property, together with the total or partial utilisation of intangible property."

Pursuant to article 13 of the VAT Act, VAT shall be paid on the turnover of goods and services subject to chapter I of the Act.

However, according to article 16 of the VAT Act, output VAT shall not be charged on: newspapers that are issued at least once a week (no. 7); and periodicals (journals and magazines) that are mainly sold to fixed subscribers or are distributed to cardholders and periodicals with predominantly political, literary or religious content (no. 8). On the sales of all other periodicals normal output VAT must be levied, currently 25 %.

The EEA rules

As the Authority knows, the notion of State aid requires the presence of four cumulative conditions: a) an advantage conferred upon undertakings b) which involves State resources, c) which is of a selective nature, d) and which has distorting effects on competition and may affect trade between the EEA States.

Given that the contested national measure lies within a general tax regime, it is also worth recalling that the selective nature of the measure does not entail qualification as State aid, if that nature stems from the system and the logic of the tax regime, and that the measure must be examined as a scheme, cf. Part II of Protocol 3 to the Surveillance and Court Agreement. Thus, the general characteristics of the scheme and not its possible application in an individual case are at issue.

¹ The EFTA Surveillance Authority Decision of 19 July 2006, Case No. 60227, Event No. 380161.

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As concerns the advantage, we are inclined to agree with the Authority's view of 15 January 2001 that there is no direct benefit for the newspapers and magazines that are exempted from levying output VAT: Those who benefit from the 0% rate are first and foremost the consumers who pay a lower price for the newspapers.

However, we find it very difficult to follow the Authority when it disregards the implicit advantage conferred upon the undertakings benefiting from the 0% rate on their sales. We will try to put our view across with two examples: If an EEA State conferred upon one enterprise the benefit of a 0% rate on output VAT, for instance a shipyard or an energy producer, such a measure would come within the State aid rules. There would be no doubt that the immense advantage conferred upon the undertaking in question would be to the detriment of other undertakings in the sector. That the measure is individual does not detract from the validity of the example in relation to the point under discussion, i.e. whether one is in presence of an advantage within the meaning of the State aid rules. In the second place, we submit that there is a certain parallelism between the present case and the cases that the Authority has dealt with concerning public financing of housing: In those cases, the ultimate beneficiary of the measure in place has been the consumer. He is the one who benefits from cheap loans and the public entity granting the loans is barred from making any profit from its activities and is not active in other segments of the market. Still, the Authority has found such measures to imply State aid. It appears to us that the one who can sell his products at 25% less than the competitors is clearly enjoying an advantage.

That the advantage may be difficult to quantify, does not detract from the qualification as an advantage.

Next, it appears that the transfer of State aid resources is present within the meaning of EEA law: The 0% rate on output VAT must be regarded as granted by the State or through state resources as the State is forgoing income which would normally devolve to the public purse.

Next, it appears that the state measure is selective as the favourable rate only applies to certain publications. It does not follow from the structure and the logic of the VAT system that there should be discrimination between different sorts of publications. Moreover, to the extent that the 0% rate on output VAT is historically based on considerations as to favour the information flow in a pluralist society, such considerations do not stem from the structure and logic of the VAT system, either.

As regards distortion of competition, the Norwegian Competition Authority has repeatedly found such distortion present. The Norwegian Competition Authority concluded in a statement of 6 August 1999 which refers to previous statements, that weekly magazines and single copy sale newspapers compete in the same market, both

with respect to readers and advertisers. The Norwegian Competition Authority therefore stated that two types of publications should be subject to the same level of VAT. The statement was submitted in the process prior to the Authority's letter of 15 January 2001. For ease of reference, it is submitted again. For the same reason, a translation into English is also submitted.

Moreover, according to relevant practise, effect on competition and trade is easily established. It is enough that competition is potentially effected. Furthermore, foreign owner interests or foreign operators on the domestic market are normally enough to establish any effect on trade. Some of the disfavoured magazines are owned by *inter alia*, Swedish and Danish interests.

In its letter of 15 January 2001, the Authority stated that the market for press publications predominantly is domestic, because of the language barrier and because of the need for local and national news. The Authority therefore took the view that "*national and foreign publications do not compete for readers or advertising on a give market.*" This also follows from (EFT 1977 C 64/24), as referred to by the complainant in its initial complaint. However, more recent practise shows that the European Commission has changed its earlier position.

In case C 63/2003 the European Commission stated that:

"(44) The Commission notes that competition rules generally apply to every economic activities involving trade between Member States and that the production of publishing products can be considered as an economic activity. The issue is whether aid to this activity really or potentially affects trade between Member States, given the alleged domestic and thus internal nature of the Italian market for publishing products in Italian language. It can be noted that the publishing market includes the market for royalties, advertising, printing and distribution. Aid to a publisher may affect one or the other of those activities.

(45) Further, on the basis of the information submitted by the Italian authorities, the Commission notes that there is trade between Member States in the publishing products concerned by the aid measures under review. Thus, the aid measures under review could distort competition between firms inasmuch as, for instance, publishing firms can pursue their activity in different Member States, producing publications in different languages and compete for publishing rights and advertising.

(46) The Commission acknowledges the information and clarifications submitted by the Italian authorities documenting the fact that the amount of intra-EU trade, in the publishing products in Italian language concerned by the two measures under review,

is limited.

(47) Notwithstanding the above consideration, in light of the foregoing, the Commission considers that, however limited, the effect on trade of the measures under review cannot be excluded. Hence, the two schemes under review constitute State aid within the meaning of Art 87 (1) EC." (Our underlining)

For ease of reference the Commission decision is enclosed.

It follows from this that the differentiated VAT rates for newspapers and magazines distort competition and affect trade on that given market. Firstly, there are foreign owners in publishing firms in Norway. Secondly, it is not doubtful that Norwegians are reading foreign publications – lots of Norwegians are reading, first and foremost Swedish, Danish and English publications. Furthermore, one cannot limit the content of the publications to include local and national news only. In today's society with extensive trade and integration cross-borders, there is also a great need for international news. Both Norwegian newspapers and magazines contain a significant amount of information and news related to international matters, and foreign newspapers and magazines are therefore in direct competition with Norwegian publications in these fields.

Also, as stated by the Commission in C 63/2003, publishing firms can pursue their activity in different Member States, producing publications in different languages and compete for publishing rights and advertising.

It must therefore follow from the above that national and foreign publications do compete for readers or advertising on a given market, and hence, the differentiated VAT rates for newspapers and magazines distort competition and affect trade on that given market.

On the basis of the above it is submitted that the differentiated VAT rates on newspapers and magazines are contrary to Article 61(1) of the EEA Agreement.

Procedural matters

To the best of our knowledge, the aid is existing aid. The provision on the 0 % rate was enacted long before the entry into force of the EEA Agreement. Thus, the workable option for seeking redress is the Authority.

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We would like to be informed of the actions the Authority takes towards the Norwegian authorities and of the appropriate measures it may decide to address to those authorities. We also request access to the information that the Norwegian authorities provide to the Authority on the matter.

Yours sincerely,

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Jan Magne Juuhl-Langseth

Enclosures:

Enclosure 1: Statement of the Norwegian Competition Authority of 6 August 1999 with an English translation

Enclosure 2: Commission Decision in Case C 63/2003

UNOFFICIAL TRANSLATION FROM NORWEGIAN

Konkurransettilsynet
Postbox 8132 Dep
0033 Oslo

Dagspresseutvalget (Daily Press
Committee)
Institute for Journalism
Postbox 1185
1631 Gamle Fredrikstad

To: Jens O. Simensen

Your ref:

Our ref: MK4 561.0 The
Case no.: 99/607

Date: 6 August 1999

HEARING ON PRESS SUBSIDIES

The Norwegian Competition Authority refers to the letter of 10 June of this year where the Daily Press Committee requests comments and views on press subsidies and possible proposals for changes in the current system.

The Competition Authority rendered its comments on press subsidies in connection with Statkonsult's report 1998:2, On Subsidies and the Government's Advertising Rules. In these comments the Competition Authority explained its view of press subsidies, and the changes the Authority believes should be made in the present system. The Competition Authority assumes that the views which it presents in the report are also of interest to the Daily Press Committee. A copy of the Competition Authority's comments of March 13, 1998 accompanies this letter.

The Competition Authority notes that according to the mandate of the Daily Press Committee, the Committee shall not only evaluate the direct subsidies which fall under the heading of press subsidies, but also the form and effects of the means and methods used by the government which are important to the general economic conditions and parameters of the press. This indicates that the Committee shall evaluate the press' general conditions, including direct subsidies to the press, the government's advertising rules, and the value-add tax system.



Side 2

The Competition Authority would like at this time to focus on the exemption from the value-added tax which applies for newspapers which publish at least one edition per week. The exemption from value-added tax does not apply to the weekly press industry. The Competition Authority has previously pointed out the negative effects on competition which can arise where publications which have similar editorial content and therefore can appear to be alternatives for a number of readers, have differing economic parameters. We refer to the enclosed letter of July 4, 1997 to the Ministry of Planning and Co-ordination and the letter of September 9, 1998 to the Ministry of Labor and Administration. In the opinion of the Competition Authority, the issue particularly applies to competition between the weekly press publications and single copy sale newspapers which in the past few years have become more and more similar with respect to which editorial material they offer to readers. In the opinion of the Competition Authority, one issue which there is reason to study is the matter of the definitions which are employed to determine whether the different publications receive an exemption from value-added tax, in order to ensure that such exemptions do not reduce competition between the market actors. The Competition Authority recognizes that it can be difficult to draw a clear line between the weekly press and newspapers, and the Competition Authority therefore has previously proposed that the exemption from value-added tax be removed for all types of publications, and eventually replaced by direct subsidies for individual publications. The Competition Authority believes the Daily Press Committee should take a closer look at the competition issues which the exemption for value-added tax raises, with a view to changing the exemption system so that it does not contribute to limiting competition between market actors.

In conclusion, the Competition Authority would like to point out the technological changes which are now occurring in the entire media market and which lead to different media actors becoming more and more alike with respect to the form of presentation and content. This development is most obvious in the Internet, where the traditional newspapers compete with other actors such as broadcasting companies and electronic news agencies in communicating news, sports and entertainment. This development means that media actors which previously did not compete directly with each other, to a larger extent now operate in the same markets. This development will lead to a need to re-evaluate the media market as a whole both with respect to the competition conditions between actors, and with respect to the means used to ensure free speech and a diverse media. In the opinion of the Competition Authority, the Daily Press Committee should therefore not just focus on the general parameters and conditions of the press, but should also evaluate what effects these conditions can have on other media and market actors which in whole or in part operate in the same markets.

Yours very truly

Morten Berg (with authorization)
Division director

Arve Kvale
Section chief



Side 3

Casehandler: Advisor Torhild Henriksen, telephone: 2240 0944

Enclosures:

- copy of letter of July 4, 1997 from the Competition Authority
- copy of letter of March 13, 1998 from the Competition Authority
- copy of letter of September 15, 1988 from the Competition Authority

Copy:

Ministry of Labor and Administration

Konkurransetilsynet

Norwegian Competition Authority

ARKIVKOPI

Dagspresseutvalget
Institutt for Journalistikk
Postboks 1185
1631 Gamle Fredrikstad

Til: Jens O. Simensen



Postboks 8132 Dep
0033 OSLO

Besøksadresse: H. Heyerdahls gate
Telefon 22 40 09 0
Telefaks 22 40 09 9

post@konkurransetilsynet.no

Deres ref:

Vår ref.: MK4 561.0 THa
Saksnr.: 99/607

Dato: 6. august 1999

Høring: pressestøtten

Konkurransetilsynet viser til brev av 10. juni i år der Dagspresseutvalget ber om synspunkter på pressestøtten og eventuelle forslag til endringer i denne.

Konkurransetilsynet uttalte seg om pressestøtten i forbindelse med Statskonsults rapport 1998:2 Om pressestøtten og statens annonseregulering. I uttalelsen gjorde tilsynet rede for sitt syn på pressestøtten og hvilke endringer som bør foretas. Tilsynet antar at synspunktene som der framkommer også er av interesse for Dagspresseutvalget. Kopi av tilsynets uttalelse av 13. mars 1998 følger vedlagt.

Konkurransetilsynet ser av mandatet til Dagspresseutvalget at utvalget ikke bare skal vurdere de direkte støtteordningene som inngår i selve pressestøtten, men også utformingen og virkningene av de virkemidler i offentlig regi som har betydning for pressens økonomiske rammevilkår. I dette ligger at utvalget skal vurdere pressens rammevilkår herunder pressestøtten, statens annonsepolitikk og merverdiavgiftssystemet.

Konkurransetilsynet vil i den forbindelse rette søkelyset mot fritaket for merverdiavgift som gjelder for aviser som utgir minst ett nummer per uke. Fritaket gjelder ikke for ukepressen. Tilsynet har tidligere påpekt de konkurransebegrensninger som kan oppstå dersom aktører som har en del tilsvarende redaksjonelt stoff og således kan fremstå som alternativer for en del lesere, har ulike rammebetingelser. Det vises til vedlagte brev av 4. juli 1997 til Planleggings- og samordningsdepartementet (PSD) og 9. september 1998 til Arbeids- og administrasjonsdepartementet. Etter tilsynets mening gjelder problemstillingen spesielt konkurransen mellom ukepresse og løssalgssaviser som de senere årene har nærmet seg hverandre med hensyn til hvilket redaksjonelt stoff som tilbys leserne. Etter tilsynets vurdering kan det blant annet være grunn til å se nærmere på de definisjoner som legges til grunn for om ulike publikasjoner skal innvilges fritak for merverdiavgift for å unngå at ordningen reduserer konkurransen mellom markedsaktørene. Tilsynet erkjenner at det kan være vanskelig å trekke et klart skille mellom ukepresse og aviser og tilsynet har derfor tidligere foreslått at fritaket for merverdiavgift oppheves for alle typer publikasjoner og eventuelt erstattes med direkte støtte til enkelte publikasjoner. Tilsynet mener at Dagspresseutvalget bør se nærmere på de konkurransemessige problemstillinger som fritake

**Konkurransetilsynet**

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for merverdiavgift medfører med sikte på å endre ordningen slik at den ikke bidrar til å begrense konkurransen mellom markedsaktørene.

Avslutningsvis vil Konkurransetilsynet peke på de teknologiske endringer som nå foregår i hele mediemarkedet og som bidrar til at de ulike mediekanalene nærmer seg hverandre med hensyn til presentasjonsform og innhold. Tydeligst kommer denne utviklingen fram gjennom Internett der de tradisjonelle papiravisene konkurrerer med blant andre kringkastingsselskaper og elektroniske nyhetsbyrå om å formidle nyheter, sport og underholdning. Utviklingen innebærer at medieaktører som tidligere ikke konkurrerte direkte med hverandre, i større grad opererer på de samme markeder. Utviklingen vil medføre at det er behov for å vurdere mediemarkedet i en større helhet både med hensyn til konkurransebetingelsene mellom aktørene, og i forhold til virkemidler for å sikre ytringsfrihet og mediemangfold. Etter tilsynets mening bør derfor Dagspressutvalget ikke bare fokusere på rammebetingelsene til pressen, men også vurdere hvilke virkninger disse rammebetingelsene kan få for andre medier og markedsaktører som helt eller delvis opererer i de samme markedene.

Med hilsen



Morten Berg (e.f.)
avdelingsdirektør



Arve Kvåle
seksjonssjef

Saksbehandler: rådgiver Torhild Henriksen, tlf.: 22400944

Vedlegg:

- kopi av brev av 4. juli 1997 fra Konkurransetilsynet
- kopi av brev av 13. mars 1998 fra Konkurransetilsynet
- kopi av brev av 15. september 1998 fra Konkurransetilsynet

Kopi:

- Arbeids- og administrasjonsdepartementet

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.2004

C (2004) 2215 final

COMMISSION DECISION
of
ON THE MEASURES
notified by Italy
in favour of the publishing industry

(notified under document number C 63/2003 (ex N 14/A/03 and N 14/B/03))

(Only the Italian version is authentic)

(Text with EEA relevance)

ON THE MEASURES
notified by Italy
in favour of the publishing industry

(notified under document number C63/2003 (ex N 14/A/2003 and N 14/B/2003))

(Only the Italian version is authentic)

(Text with EEA relevance)

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 comments¹, and having regard to their comments,

Whereas:

S.E. On. Franco FRATTINI
Ministro degli Affari esteri
P.le della Farnesina 1
I - 00194 ROMA

Rue de la Loi 200 - B - 1049 Bruxelles/Watstraat 200, B - 1049 Brussel - Belgio - Ufficio:
-Telefoni centralino - 32 (0) 2-299-44-44. - Telex: COMEU B 21877 - Indirizzo telegrafico: COMEUR Bruxelles

¹ O.J. C 285 of 28.11.2003, p. 14.

1. PROCEDURE

- (1) By letter of 19 December 2002, n. 15808 e 15809, registered on 31 December 2002, pursuant to Art. 88 (3) EC, the Italian authorities notified the Commission the above measures to support the Italian publishing industry.
- (2) By letter dated 29 October 2003, the Commission notified Italy of its decision to initiate proceedings under Article 88(2) of the EC Treaty in respect of the two notified measures.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*². The Commission invited interested parties to submit their comments on the measures.
- (4) By letter dated 2 December 2003, the Italian authorities requested an extension of the response deadline to submit their comments to the Commission's decision to initiate proceedings, which the Commission granted by letter dated 10 December 2003.
- (5) The Italian authorities submitted their comments and provided additional information by letter dated 9 January 2004, registered on 14 January 2004.
- (6) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 3 March 2004, registered on 4 March 2004.

2. DESCRIPTION OF THE AID MEASURES

- (7) The two aid measures notified by the Italian authorities concern respectively aid in the form of interest rate subsidies on bank loans in favour of companies active in the publishing industry and tax credits in favour of undertakings producing publishing products³.

2.1. Aid in the form of interest subsidy

- (8) The first aid scheme is introduced with articles 4 to 7 of law of 7 March 2001, n.62⁴, concerning "Nuove norme sull'editoria e sui prodotti editoriali e modifiche alla legge 5 agosto 1981, n.416" (hereinafter law n.62/2001) and decree of the President of the Republic of 30 May 2002, n.142, concerning "Regolamento concernente le

² O.J. C 285 of 28.11.2003, p. 14.

³ The eligible products consist of the paper-based products, including books or electronic-based products, which are to be published or used to disseminate information to the public through any means, including electronic or through radio or television broadcasting. Products reproducing sounds and voices, moving pictures including documentaries; and corporate information documentation whether for internal or external use are explicitly excluded from the list of eligible products.

⁴ The Italian authorities indicate that the measure under review would replace existing aid measures introduced by respectively law n.416 of 5.8.1981 and n.67 of 25.2.1987, both of which were approved by the Commission, respectively on 18.11.1983 with letter n. 1398 and on 7.7.1988 with letter n. 8232 under aid C 25/87.

agevolazioni di credito alle imprese operanti nel settore editoriale"⁵ (hereinafter DPR n.142/2002).

- (9) The aid consists of contributions on interest payments on ten-year loans granted by banking institutions for projects concerning technical and economic restructuring; acquisition, extension and modernisation of equipment, with particular reference to information technology hardware and software networks also in conjunction with the utilisation of the international telematic networks and satellites for the improvement of distribution; and expenditure for vocational training.
- (10) 90% of the project's total cost is eligible for aid⁶. The contribution amounts to the difference in the amortisation plan calculated on the basis of a reference rate established by the Treasury and the payments due on the same amortisation plan calculated on the basis of half such rate. In practice, using a reference rate of 5%, the State contributes around 13% of the project's total expenditure, and this is reduced to circa 10% if the contribution is requested in the discounted form.
- (11) The beneficiaries are undertakings active in the whole publishing cycle⁷. This explicitly includes: press agencies; publishing companies; printing companies; distribution undertakings of daily press, periodicals, and books - published on paper, on electronic or informatic support - radio and television broadcasters; undertakings which are mainly or exclusively selling publishing products and the undertakings which publish Italian newspapers abroad. The scheme is open to beneficiaries which have their headquarters in one of the Member States of the European Union. The number of expected beneficiaries is between 101 and 500.
- (12) A 10-year limit for the aid scheme is foreseen⁸. The total budget allocation for the years 2001, 2002 and 2003 is equal to circa € 26.3 million⁹, increased by € 50.8 million of previously unspent appropriations. The aid granted under this scheme can only be cumulated with that introduced by article 8 of the same law described hereinafter¹⁰.

⁵ The terms, amount of resources available and the eligibility conditions of publishing undertakings to the aid measures defined at art.6 of law n.62/2001 are specified in the decree of the Capo dipartimento per l'informazione e l'editoria della presidenza del Consiglio of 13 December 2002, GU 297 19.12.2002, p.29.

⁶ Further, the draft law - atto camera 4163, "Disposizioni in materia di editoria e di diffusione della stampa quotidiana e periodica" - Introduces an amendment to article 5 of law of 7 March 2001 n.62, which explicitly rules out from the eligible costs all the costs which are not incurred for the production of publishing products, in particular promotional and advertising costs. The eligible costs can be of 100% only in the case of cooperatives of journalists foreseen at article 6 of law n.416 of 5.8.1981.

⁷ Firms in difficulty are explicitly excluded pursuant to the aforementioned decree of the Capo dipartimento per l'informazione e l'editoria della presidenza del Consiglio of 13 December 2002 concerning law n.62/2001.

⁸ The 10-year limit to the scheme has been explicitly introduced, after the notification, in the draft law presented to the Italian Parliament on 16 July 2003, a.c. 4163, "Disposizioni in materia di editoria e di diffusione della stampa quotidiana e periodica". This draft law is currently discussed in the Culture Commission of the Parliament.

⁹ The funds budgeted by the State are respectively circa € 4.1 million in 2001, € 12.6 million in 2002, € and circa € 9.7 million in 2003.

¹⁰ Pursuant to article 8 of the DPR n.142/2002 aid granted pursuant to articles 4-7 of law n.62/2001 cannot be cumulated with other aid granted by the State, regions, autonomous provinces of Trento e Bolzano, the European community or by any public body or institution to finance the same investment programme.

- (13) The benefits foreseen at articles 5 to 7 of Law n. 62/2001, will be awarded by a bespoke fund instituted and administered by the presidency of the Council of Ministers¹¹. The aid will be granted either pursuant to an automatic procedure¹² or through an individual evaluation procedure. Under the automated procedure, the funding of the project does not exceed circa € 0.5 million¹³ and the eligible project must be completed within two years of the granting of the benefit. The projects involving larger funding amounts are subject to an individual evaluation procedure conducted by a bespoke committee instituted by Presidency of the Council of Ministers. The maximum benefit allowed under this scheme is capped at circa € 15.5 million¹⁴, whilst projects valued under this procedure are also subject to the two year limit requirement concerning their completion. Both granting procedures require *inter alia* the submission of detailed information and documents proving the existence and needs of the project, the eligibility of the recipient, proof of the eligible expenses incurred¹⁵, and a copy of the bank loan contract. This measure also contains dispositions for the recovery of unduly granted benefits.
- (14) Aid granted under this scheme aims at preserving the information pluralism in the meaning of article 21 of the Italian Constitution.

2.2. Aid in the form of tax credit

- (15) The second notified scheme is introduced with article 8 of law of 7 March 2001, n. 62, concerning "Nuove norme sull'editoria e sui prodotti editoriali e modifiche alla legge 5 agosto 1981, n.416" and decree of the president of the Council of Ministers of 6 June 2002, n.143, concerning "Disciplina del credito di imposta in favore delle imprese produttrici di prodotti editoriali" (hereinafter decree n.143/2002).
- (16) The scheme foresees the granting of a tax credit by the State to undertakings producing publishing products. The aid consists of a total tax credit equal to 15% the total cost of the investment, divided into equal yearly instalments during five consecutive fiscal years¹⁶. The credit is to be deducted from fiscal liabilities and can be carried forward for four years.
- (17) The aid is granted for the acquisition of instrumental goods for the production of publications in Italian language, including newspapers, magazines, periodicals, books and multimedia products. Investments in plants, equipment and patents destined to all phases of the production cycle as part of technical and economic restructuring are also eligible for aid under the reviewed scheme.

However aid granted under art 4-7 of law n.62/2001 can be cumulated with the tax credit introduced by article 8 of the same law.

- ¹¹ Pursuant to Art 5 Law n. 62/2001, the fund is called "Fondo per le agevolazioni di credito alle imprese del settore editoriale".
- ¹² Article 1 of DPR n.142/2002, states that undertakings can only present one project at the time under the automatic procedure.
- ¹³ The funding must not exceed ITL 1 billion pursuant to article 6 paragraph 1 (a) of Law n.62/2001.
- ¹⁴ The maximum aid cannot exceed ITL 30 billion pursuant to article 7 paragraph 1 (a) of Law n.62/2001.
- ¹⁵ The procedures and requirements giving access to the benefit are detailed at paragraphs 2 to 6 of article 7 of Law n.62/2001, and in the DPR n.142/2002.
- ¹⁶ Under this scheme the maximum amount is set as percentage of the investment value rather than per beneficiary, nonetheless it is capped by the total funds available.

- (18) The aid scheme is limited to investment taking place before 31.12.2004. The allocated budget for the entire period is circa € 102 million¹⁷. The aid granted under this scheme can only be cumulated with that introduced by articles 4-7 of the aforementioned law¹⁸. The measure contains dispositions for the verification concerning the existence and reliability of the projects as well as for the recovery of unduly granted benefits.
- (19) The tax credit is granted to undertakings producing publishing products¹⁹. The latter undertakings include press agencies, publishing undertakings, printing companies of daily newspapers, periodicals and books - published on paper, in electronic or informatic format - radio and television broadcasting companies and undertakings publishing Italian newspapers abroad. The scheme is open to beneficiaries which have their headquarters in one of the Member States of the European Union. The number of expected beneficiaries is between 101 and 500.
- (20) Aid granted under this scheme aims at promoting culture and preserving the information pluralism in the meaning of article 21 of the Italian Constitution.

3. GROUNDS FOR OPENING

- (21) In its decision to initiate the proceedings, the Commission concluded that the two aid measures constituted State aid in the meaning of article 87 (1) EC and expressed its doubts concerning respectively the entity of the effect on trade of the notified measures and their compatibility with the common market.
- (22) Further, the Commission regarded the opening as a means to allow the submission of the relevant information and comments to allay its above mentioned doubts.

4. COMMENTS FROM INTERESTED PARTIES

- (23) Following the initiation of the investigation procedure, several interested parties sent their comments on the measures. An overview of the relevant comments from these parties is outlined in the following paragraphs.
- (24) In their letter of 18 December 2003, the Federation of European Publishers (FEP-FEE) considered that the aid measures are not in violation with EU legislation because:
- i) Publishing, unlike other industrial activities is extremely linguistically dependent and thus State support to publishing is unlikely to affect cross-border trade in the European Union;
 - ii) The amount of aid provided is very modest;

¹⁷ The funds budgeted by the State are respectively circa € 5.7 million in 2001, € 11.3 million in 2002, € 28.4 million for each year from 2003 to 2005.

¹⁸ See footnote 11.

¹⁹ The definition of undertaking producing publishing products is more restrictive than the one used under art 4-7 of the law under review. Firstly, it only concerns publications in Italian language. Secondly, it only concerns undertakings producing publishing content whereas, under the other scheme the eligible beneficiaries are all the undertakings active in the production and distribution cycle of the publishing product.

- iii) The support is addressed to types of investments that are tailored on linguistic areas and the publications benefiting from State aid are only those in Italian language. The rationale of State support is to stimulate private investments in order to cope with competition between publishers and other companies in the same competitive arena, which is a national one.
- (25) In their letter of 19 December 2003, the Association of Portuguese Book Publishers (APEL) considered that the aid measures under review are not in violation with EU legislation because:
- i) Of the reasons identical to those outlined above by the FEE and;
 - ii) The eligible investments are not directed to export or to actions in the international environment.
- (26) In addition, the Commission received the following comments from interested parties in the course of the investigation more than a month after the publication of the opening decision.
- (27) In their letter of 8 January 2004, the Spanish Federation of Publishers (FGEE) considered that the aid measures under review are not in violation with EU legislation for the identical reasons invoked above by the Association of Portuguese Book Publishers.
- (28) In their letter of 12 January 2004, the European Newspaper Publishers' Association (ENPA) considered that the aid measures under review are not in violation with EU legislation because:
- i) Newspapers cross-border trade is negligible and should not cause competition concerns between Member States. This especially applies to regional newspapers which operate only within well-defined area on the domestic market. The notable nature of competition in this sector remains on the national market;
 - ii) The minority of newspapers which are sold abroad are largely bought by expatriate nationals who wish to keep up-to-date on the current affairs in their home country. For this relatively small number of consumers, to have access to an Italian language source of information and to be able to have access to a familiar brand is both linguistically and culturally highly important in value and this could only be provided by the Italian publishers.
 - iii) In order for newspapers to remain competitive with other newer forms of media, e.g. internet, the industry needs desperately resources which are provided through the two schemes under review. If it did not receive this support, then sharp economic downturns such as the latest one, which has damagingly affected most of Europe's newspaper sector because of the decline in advertising sales, will seriously jeopardise the future of the national industry.
- (29) In their letter of 7 January 2004, the Federation of Italian Newspapers' Publishers (FIEG) submitted a detailed argumentation to support its view that the measures under review are not to be considered as violating EU legislation because:
- i) The support measures do not constitute State aid;
 - ii) The support measures do not constitute aid in relation to activities for which there is no cross-border trade or competition between Member States and the EEA;

- iii) The measures are compatible with the Common Market pursuant to art.87 (3)(d) of the EC Treaty.

5. COMMENTS OF THE ITALIAN AUTHORITIES

5.1. Comments to the opening of procedure

- (30) In order to allay the doubts expressed by the Commission in the opening decision, the Italian authorities submitted additional explanations and data supporting their view concerning the marginal trade affectation and the compatibility of the measures at hand.
- (31) The Italian authorities maintain aid to the publishing sector will have very limited effect on intra-EU trade due to the virtually non existing diffusion of publishing products in Italian language outside their domestic market. In particular they derive support to their analysis from the interpretation of the general principles outlined in the CELF judgement²⁰ as well as from statistical evidence and explanations submitted in response to the opening of the procedure.
- (32) Concerning the principles outlined in the CELF judgement, in relation to books, the Italian authorities maintain that those principles should also be applicable to the other publishing products due to their similar characteristics and to the fact that readership of publishing products in Italian language in the EU is even more limited than that in French. The two principles referred to are:
- i) *"Competition in the book sector (can) be limited by linguistic and cultural barriers and consequently, the effect on intra-EU trade should be limited²¹";*
 - ii) *"The European sector of typography and publishing continues to be more a juxtaposition of national markets than an integrated market at the European level, as indicated by the share of exports in the sector as percentage of turnover. The multitude of languages spoken inside the Community constitutes an additional barrier the 'Europeanization' of the sector²²."*
- (33) Concerning the situation of the Italian publishing market and the limited intra-EU trade in publishing products, the Italian authorities submitted statistical data to support their assertion and additional clarifications concerning the beneficiaries. In particular, the statistical data submitted indicates that:
- i) In the last 20 years the daily newspapers market in Italian language has been characterised by a relative stagnation despite the fact that the Italian production system has significantly changed during that period²³. In 2003 the number of copies sold daily has fallen back to the 1984 level;
 - ii) The average daily diffusion of daily newspapers and the number of copies sold per thousand habitants in Italy, France, Germany and Great Britain, indicate that

²⁰ Judgement of the European Court of Justice, 22.6.2000, in case C 332/98, French Republic v European Commission "Aides à la Coopération d'Exportation du Livre Français (CELF)" ECR I-4833.

²¹ See note 20 Point VIII of the Commission decision 1999/133/EC, OJ L 44, 18.2.1999, p.37.

²² Comments made by the Commission in the document "Panorama of the community industry" of 1997.

²³ Statistical data submitted by Italy indicates that in 2003 daily sales of daily newspapers in Italy have consistently declined since 1990 and are back to their 1984 level at circa 5.8 million copies.

- Italy lags significantly behind the other large EU Member States²⁴ and is inferior the potential which could be reached given the level of revenue per capita in Italy;
- iii) In 2001 the diffusion of Italian daily newspapers to the EU stands at 1.3% of the total production, whereas for weekly and monthly publications the number stands at 0.8% of the total production;
- iv) Between 1996 and 2001, the statistical data submitted to the Commission indicates that *total* exports (to both outside and inside EU) of daily, weekly and monthly publications represent between 0.7% and 2.5% of total production;
- v) With regards to the multimedia publishing products, the Italian authorities submitted data concerning the aggregate exports of books and multimedia publishing products and services, to both outside and inside the EU in 2001, which shows that total exports are equal to 5% of the total sales for these products. However, the Italian authorities specify that, exports to the EU represent only a fraction of the aforementioned number and that the cd-roms and publishing services, of which multimedia publishing products, account only for a very small part of the latter fraction. Hence, the Italian authorities conclude that the diffusion of Italian multimedia publishing products in the EU is of negligible proportion;
- vi) Concerning the printing of newspapers and books, the Italian authorities underline that publishing products are typically printed close to their market due to the obsolescence of information as well as the importance of transportation costs in comparison to the value of the product.
- vii) Concerning press agencies, the Italian authorities initially observe that international competition in this market can only be referred to the news reports in foreign language. Further, they note that the only Italian player producing such reports is ANSA, for which the turnover for this type of report accounts for 0.3% of the company's total turnover;
- viii) To conclude on the issue of the limited trade affectation of the measures under review, the Italian authorities indicate that the aggregate share of Italian publishing products diffused in the EU is 0.3% to 0.5% of the EU market.
- (34) Pursuant to the information above, and in line with the principles outlined in the CFI judgement in *SIDE* case²⁵, the Italian authorities maintain that the market for publishing products in Italian language should be considered as distinct²⁶.
- (35) Moreover, to underscore the fact that in their view both measures should be compatible with the Common market pursuant to art. 87 (3)(d) EC, the Italian authorities make reference to:
- i) Article 151 (1) EC, which states that *"the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore"*;

²⁴ Data from the Osservatorio Tecnico per i Quotidiani e le Agenzie d'Informazione - "L'industria dei quotidiani in Italia - Monografia macro settoriale" - 2000.

²⁵ Judgement of the European Court of First Instance, 28.2.2002, in case T 155/98, page II-1179.

²⁶ Judgement of the European Court of First Instance, 21.10.1997, in case T 229/94, *Deutsche Bahn v. Commission*, page II-1689 paragraph 54 and jurisprudence cited therein.

- ii) Council Resolution of 12.2.2001²⁷ and in particular to the Council invitation to the Commission "when applying competition rules and rules on the free taking into account the specific cultural and economic movement of goods, to take account of the specific value of the book as a cultural object and the importance of books in promoting cultural diversity, and of the cross-border dimension of the book market"²⁸. Further, reference is also made to another recital from the aforementioned resolution which states that "homogeneous linguistic areas are an important area for distributing books and add a cross-border dimension to the book market, which needs to be taken into account"²⁹;
 - iii) Council Resolution³⁰ of 14.2.2002 concerning the promotion of language diversity and language learning in the framework of the implementation of the objectives of the European Year of Languages 2001;
 - iv) Article 22 of the Charter of Fundamental Rights of the European Union³¹, which reaffirmed the principle that the EU respects cultural, religious and linguistic diversity in Member States;
 - v) Article 21 of the Italian Constitution, which guarantees the freedom of expression and pluralism as right to exert a fundamental democratic liberty; and the Italian authorities state that publishing products are a means to exert this right³².
 - vi) Treaty of Maastricht which introduced the culture derogation under article 87 (3) (d) EC in order to overcome the limitations to the application of article 87 (3) (c) for the incentives to the culture sector.
- (36) In conclusion the Italian authorities state that, in the framework of the present procedure, given the absolute peculiarity of the publishing market, the need for public intervention to reverse a consolidated declining trend in the diffusion of publishing products on the domestic market, and the limited diffusion of the Italian language at the EU level, the Commission could only conclude that the maximum valorisation of the linguistic specificity is one of the key factors underpinning the culture derogation contemplated by article 87 (3)(d). Hence, the measures under review, which favour the diffusion of publishing products Italian language in the domestic market, should be deemed to be compatible with the Common market.

5.2. Comments to the interested parties' observations

- (37) By letter dated 24.2.2004, the Italian authorities submitted their comments to the interested parties' observations to the opening of procedure. The Italian authorities noted the overall convergence with their own assessment of the trade affectation and compatibility of the measures under review. Their main comments can be summarised by the following four considerations:

²⁷ O.J. C 73 of 6.3.2001, p. 5.

²⁸ The Italian authorities underline that despite the fact that the EC Council resolution 12.2.2001 explicitly refers to books, the principles outlined therein, and in particular those at recital 2, should be extended to all cases in which goods have a dual character as the bearers of cultural values and as merchandise, e.g. publishing products 'tout-court'.

²⁹ See recital 7 of EC Council Resolution of 12.2.2001.

³⁰ O.J. C 50 of 23.2.2002, p. 1.

³¹ O.J. C 364 of 18.12.2000, p. 1.

³² See judgement of the Constitutional Court in cases n. 348/1990, n.105/1972, n.225/1974 and n.94/1997.

- i) The observations received further to the Commission's invitation were submitted by the five parties indicated in section 4 of the present decision, which represent book and newspaper publishers in the 15 EU Member States as well as Cyprus, the Republic of Croatia, Lithuania, Norway and Slovenia;
- ii) The comments received from the interested parties are in line with those of Italy concerning the non violation of EU competition law;
- iii) As outlined by ENPA, the market for periodical papers is essentially a national market and the proportionality of the measure is fulfilled since, given the structure of the market for publishing products, the latter is not able to produce any significant distortion to trade between Member States;
- iv) As stated by FGEE, the aid amounts under consideration are limited. Further, the aid measures will have a very limited impact on trade between Member States because of the economic activity is by definition centred on homogeneous linguistic areas which are subject to limited cross-border trade.

6. ASSESSMENT OF THE AID MEASURES

6.1. Existence of State aid:

- (38) According to Article 87(1) EC 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"*.

6.1.1. State resources and favouring of undertakings/economic activity:

- (39) The Commission notes that the resources to fund both notified aid schemes come from the central government's budget and can thus be considered as State resources. Moreover, on the basis of their definition, the schemes favour specific economic sectors, namely the publishing sector in which the beneficiaries perform an economic activity and can be regarded as undertakings within the meaning of art. 87 (1) EC.

6.1.2. Selectivity:

- (40) Both notified schemes are selective in that they are addressed respectively to undertakings active in the publishing sector and to undertakings producing publishing products. Both schemes therefore provide sectoral aid.

6.1.3. Economic advantage:

- (41) The two notified schemes both confer an economic advantage to their beneficiaries.
- (42) Under the first scheme, the beneficiaries receive a subsidisation of the interest payable on bank loans for specific projects, which effectively reduces the financing costs of the beneficiary undertaking.
- (43) Under the second scheme the eligible undertakings benefit from a fiscal advantage in the form of a tax credit for investments, thereby relieving the beneficiaries from fiscal charges that they would normally have to incur³³.

6.1.4. Trade affectation between Member States and distortion of competition:

- (44) The Commission notes that competition rules generally apply to every economic activities involving trade between Member States and that the production of publishing products can be considered as an economic activity. The issue is whether aid to this activity really or potentially affects trade between Member States, given the alleged domestic and thus internal nature of the Italian market for publishing products in Italian language. It can be noted that the publishing market includes the market for royalties, advertising, printing and distribution. Aid to a publisher may affect one or the other of those activities.
- (45) Further, on the basis of the information submitted by the Italian authorities, the Commission notes that there is trade between Member States in the publishing

³³ See Commission Notice on the application of the State aid rules to measures relating to direct business taxation, O.J. C 384, 10.12.1998, p.3

products concerned by the aid measures under review³⁴. Thus, the aid measures under review could distort competition between firms inasmuch as, for instance, publishing firms can pursue their activity in different Member States, producing publications in different languages and compete for publishing rights and advertising.

- (46) The Commission acknowledges the information and clarifications submitted by the Italian authorities documenting the fact that the amount of intra-EU trade, in the publishing products in Italian language concerned by the two measures under review, is limited.
- (47) Notwithstanding the above consideration, in light of the foregoing, the Commission considers that, however limited, the effect on trade of the measures under review cannot be excluded. Hence, the two schemes under review constitute State aid within the meaning of Art 87 (1) EC.

6.2. Compatibility:

- (48) In those cases where the measures constitute State aid within the meaning of article 87 (1) EC, it is foreseen that shall be compatible or may be deemed compatible with the common market, aid which fulfils the conditions set forth respectively in article 87 (2) and article 87 (3) of the EC treaty.
- (49) The Commission notes that the conditions foreseen at article 87 (2) EC, article 87 (3)(a) and article 87 (3)(b) EC are evidently not applicable to the measures at hand.
- (50) Further to the opening, additional information and clarifications were submitted by the Italian authorities and comments were received from interested parties. On the basis of the above, it appears that intra-EU trade in publishing products in Italian language is limited and the measures could be deemed to be compatible under article 87 (3)(c) or article 87 (3)(d) EC.

6.2.1. Compatibility *ex* article 87 (3)(d) EC

- (51) Concerning the compatibility of the measures pursuant to article 87 (3)(d), the Commission does not concur with the assessment made by the Italian authorities, and is of the opinion that the cultural derogation is not applicable to the aid schemes in point.
- (52) In fact, although article 151 EC³⁵ indeed foresees that the Community should contribute to cultural diversity, under the terms of article 8 of law n 62/2001 no dispositions have been outlined concerning the appropriation of funds for the explicit promotion of culture but rather the funds are entirely used for the more general support of investment by undertakings producing publishing products in Italian language. Concerning the interest subsidy measure, pursuant to the terms³⁶ of article 5 of law n.62/2001, only 5% of the total funds available under the interest subsidy scheme under examination are explicitly set aside "for undertakings involved in projects of specific relevance for the diffusion of readership in Italy or the for the

³⁴ Moreover, the cross-border dimension of publishing, namely for books, has been recognised by Council Resolution of 12 February 2001, and the statistical data submitted by the Italian authorities.

³⁵ See in particular paragraphs contained in paragraphs 1 and 4 of article 151 EC.

³⁶ In particular paragraph 6 of art. 5 of Law n.62/2001.

diffusion of publishing products in Italian abroad". Further, the Commission notes that in the event the above 5% share is not utilised for the original purpose, it can be reallocated to fund the other actions contemplated by the measures under review. The latter include *inter alia* aid for training and for investment. Further, the eligible publications in Italian language include newspapers, magazines, periodicals, books and multimedia products. However, the Commission notes that the two schemes contain no specifications concerning the allocation of resources to the individual types of publications, concerning the content of the eligible publishing products, or any mention concerning the cultural values to be contained or promoted³⁷.

- (53) By the same token, it can be noted that the Italian language appears to be the common denominator of the two schemes. Nonetheless, despite the fact that those measures might as a last resort ultimately favour learning or the diffusion of the Italian language and culture, given the absence of any pedagogical or language learning specifications or focus in the measures, considering them as culture based measures would imply giving an unduly broad meaning to culture.
- (54) Moreover, in response to the Italian authorities' argument tying the promotion of culture and that of the promotion of information pluralism foreseen by the measures under review, the Commission has already stated in past decisions³⁸ that the educational and democratic needs of a Member State have to be regarded as distinct from the promotion of culture.
- (55) Thus, given the breadth of the scope of the measures under review and of the very generic description of the eligible publications, the measures under examination would appear to primarily aim at fostering the diffusion of publishing products in Italian language, which is the common denominator of the two schemes, rather than promoting the Italian culture and language.
- (56) In light of the foregoing, the Commission is of the opinion the measures under review do not satisfy the restrictive interpretation warranted for the application of the provision set forth at article 87 (3)(d) and outlined in the Communication on State aid to public service broadcasting³⁹. Further, accepting the culture derogation would also run counter to the Commission's interpretation outlined in the relevant case-law⁴⁰.

6.2.2. Compatibility ex article 87 (3)(c) EC;

- (57) Pursuant to the planned objectives, the measures under review would ultimately aim at promoting the diffusion of publishing products in Italian language and at contributing to the preservation of the information pluralism, whilst public intervention would appear to be needed to reverse a consolidated declining trend in the diffusion of publishing products on the domestic market.

³⁷ In practice, products including sports and other publishing products which do not necessarily bear any cultural content or features would be eligible to the benefits.

³⁸ Commission decisions in State aid cases: NN 88/98, "Financing of a 24-hours advertising-free news channel with license fee by BBC", O.J. C 78 of 18.3.2000, page 6; and NN 70/98 "State aid to public broadcasting channels 'Kinderkanal and Phoenix'", O.J. C 238 of 21.8.1999, page 3

³⁹ O.J. C 320, 15.11.2001 p. 5.

⁴⁰ See footnote 38.

- (58) The Commission acknowledges that there are no frameworks or guidelines which can be applied to assess measures such as those under review. Hence, no other specific compatibility clause seems to be applicable to the notified schemes as currently specified apart from the always possible general application of Article 87(3)(c) EC. The latter provides that, "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market*".
- (59) As established in the CELF judgement, the Commission notes that linguistic and cultural barriers limiting competition and cross-border trade between Member States in the book sector would appear to exist. Similarly, it would seem that "*the European sector of typography and publishing continues to be more a juxtaposition of national markets than an integrated market at the European level, as indicated by the share of exports in the sector as percentage of turnover. The multitude of languages spoken inside the Community constitutes an additional barrier the 'Europeanization' of the sector*"⁴¹.
- (60) Nonetheless, with regards to both books and the other publishing products concerned by the aid measures at hand, it should be emphasised that the existence of the above mentioned limitations is underpinned by the statistical data submitted by Italy which documents the limited incidence of cross-border trade in the EU in the relevant products.
- (61) In addition, since the aid is primarily aimed at publications in Italian language, it is unlikely that publications in another language would be real substitutes and in turn that subscribers and/or advertisers would switch between them due to the subsidy. It would thus seem that the distortion of intra-EU trade and competition is likely to be very limited. Further, the Community interest is also ensured by the eligibility and equal treatment of applicants based in other Member States.
- (62) Furthermore, the stated aim of the aid is to preserve information pluralism, which is an objective enshrined in Art. 11 par. 2 of the Charter of Fundamental Rights of the European Union⁴².
- (63) Finally, the evaluation concerning the potentially limited trade and competition distortion of the measures under review, and in particular, their proportionality to the stated objectives, is also underpinned by the combination of factors including: the duration of the schemes, which are of five and ten years; the high number of beneficiaries, which is expected to reach 500 undertakings for each measure; and the overall limited funds available, which amount to a grand total of circa € 179.3 million, for the entire period.

7. CONCLUSIONS

- (64) In the light of the foregoing, the Commission has found that the measures under review constitute State aid in the meaning of article 87 (1) EC.

⁴¹ Comments made by the Commission in the document "Panorama of the community industry" of 1997.

⁴² O.J. C 364 of 18.12.2000, p. 1

- (65) The factual and statistical information submitted by the Italian authorities have documented the likely limited effect on trade of the measures under review.
- (66) The limited distortion of trade and competition, and the proportionality of the measures to the objective of promoting publishing products in Italian language are underpinned by the duration of the schemes, the large number of beneficiaries, and the overall limited funds available.

Considering the above conclusions, the Commission

HAS ADOPTED THIS DECISION:

Article 1

The State aid measure in the form of interest subsidy in favour of undertakings active in the publishing sector, and the State aid measure in the form tax credit in favour of undertakings producing publishing products are compatible with the Common market pursuant to article 87 (3)(c) EC.

Article 2

Annual reports containing detailed information of the application of each measure shall be submitted to the Commission. The information reported should include: a summary of the application of the respective measures during the calendar year; a list and description of the eligible projects aided, the publishing products supported, the amounts granted per project, the identity of the beneficiaries; and an update in the statistics concerning intra-EU trade in the relevant publishing products shall be submitted order to allow the monitoring of the developments in the markets.

Article 3

This Decision is addressed to Italy.

Done at Brussels,

For the Commission

Mario MONTI

Member of the Commission

Notice

If the decision contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate State aid II
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32-2-296-95 80

Yours faithfully,
for the Commission

Mario Monti
Member of the Commission