

Reply of the French Ministry of the Economy, Finance and Budget to the MMC's request for information

I INFLUENCE EXERCISED BY THE FRENCH GOVERNMENT AND THE ROLE OF GOVERNMENT-APPOINTED DIRECTORS

The role played by the Government as shareholder in the management of public enterprises is first and foremost predetermined by the legal framework provided by company law, which governs the way in which public enterprises are managed, in the same way as companies in the private sector.

In addition, the Public Authorities have always pursued a policy of allowing public sector enterprises 'management autonomy'.

1. Company law provides the framework for the Government's responsibilities

In practice, all the financial enterprises in the public sector take the legal form of a 'société anonyme' (public limited liability company) which, like their counterparts in the private sector, are governed by Law No 66-537 of 24 July 1966 on commercial companies.

The Government, like any other majority shareholder, appoints the Chairman of the enterprise and certain member of the Board of Directors, whilst complying with the provisions of Law No 83-675 of 26 July 1983.

The role of the Government and the Government-appointed directors should therefore be viewed within the legal framework of the Law of 1966, the main object of which is to delegate as much power as possible to the Chairman of the enterprise.¹

The Articles of the Law of 1966 determining the competence of the various responsible bodies within the company in fact grant the Chairman the widest possible powers to act under any circumstances in the name of the company and to represent it in dealings with third parties, subject to the powers expressly granted to the meetings of shareholders and the special powers granted to the Board of Directors.

The Law of 1966 therefore gives the Chairman complete authority over the management of the company, whether it is a public or a private company.

In the case of public enterprises, this means for example that:

- the Chairman will make all appointments to posts of responsibility within the enterprise and will nominate its representatives on the boards of subsidiaries and holdings (who, in their turn, will take part in the appointment of the Chairman of these subsidiaries);²
- the Chairman decides on the enterprise's commercial policy and its policy on the acquisition of subsidiaries and holdings and the Board of Directors or the shareholders have no legal entitlement to exercise those powers of initiative or management in his place.

¹It should be noted that all financial enterprises in which the Government has a direct majority shareholding take the form of a 'société anonyme' with a Board of Directors and not that of a 'société à conseil de surveillance et directoire' (company with a Supervisory and Management Board), which is also provided for under this Law.

²Only a few regional banks which are owned by the Compagnie Financière de CIC and which do not operate in the United Kingdom and also the Banque Worms, which is 100 per cent controlled by the UAP, although they are subsidiaries, have their Chairman appointed by the Government because they were previously directly controlled by the state. On the other hand, their Board is appointed by their general meeting of shareholders (its composition therefore, in practice, being determined by the parent company) without any government-appointed representative.

The Board of Directors ('conseil d'administration') of these enterprises is not the same as the Board of Directors of an English company since, in France, it is a body with limited executive powers. The powers specially reserved for a French Board of Directors are mainly concerned with the preparation of the annual accounts and the summoning of meetings of shareholders. In evaluating its role in the running of the enterprise, it should be borne in mind that, in almost all French enterprises, the Board only includes a minority of those actually involved in the running of the company.

This feature is particularly marked in the case of public enterprises, the largest of which have a tripartite Board, consisting of elected representatives of the workforce, persons appointed by the Government on the basis of their experience (in practice selected from directors of other public or private, French or foreign enterprises) and officials appointed by the Government as its representatives (and whose duties elsewhere prevent them from playing any active role in the management of the enterprise). This composition reinforces the role of the Board as a forum for general discussion of the broad outlines of company policy and for monitoring of performance, providing support for the Chairman who is responsible for the management of the enterprise.³

2. The Government has established the guideline that autonomy of management of public enterprises should be respected

The Government's policy towards public enterprises operating in the business sector has always been to refrain from interfering in management decisions taken by their Chairman. These decisions are not subject to any veto or any right of prior approval on the part of the Government or its representatives on the Board of Directors.

On the other hand, the Government does obviously reserve the right to pass judgment on the results of the strategy adopted by each public sector group, but in this it is no different from any majority shareholder in a private company.

II FINANCIAL ASSISTANCE FOR PUBLIC ENTERPRISES

Public enterprises do not have access to any special funding arrangements simply because the Government is their principal shareholder.

More specifically, we would answer the question put by the Commission as follows:

- there are no special funding arrangements (either in the form of direct funding or the provision of guarantees) intended to help French financial enterprises in making acquisitions, whether they be public or private enterprises;
- public financial enterprises do not have a different or preferential access to sources of loan;
- like their counterparts in the private sector, public enterprises may increase their capital through subscriptions from their shareholders.

III GOVERNMENT INVOLVEMENT IN DECISIONS ON COMMERCIAL OR FINANCIAL OBJECTIVES

In accordance with the principle of management autonomy, public enterprises decide for themselves on their commercial and financial objectives, which are approved by the Government as shareholder only in so far as it is concerned to ensure that its assets will increase in value in the normal way.

³However, the Board of the Compagnie Financière de CIC has a different composition, with the officials representing the Government being outnumbered by the other directors who are appointed by the general meeting, with no intervention on the Government's part. This does not make any difference to its responsibilities.

Public financial enterprises decide on their objectives within the constraints which apply to them, just as much as they do to their counterparts in the private sector (such as the results on solvency laid down by the EEC in the case of banks, for example).

IV GOVERNMENT CO-ORDINATION OF COMPETITION BETWEEN PUBLIC ENTERPRISES

In line with the principle of management autonomy, the Public Authorities have always pursued a policy of not making changes to the rules of competition within the public sector.

As a result:

- public industrial enterprises are completely free to choose their insurers and bankers, who may be public, private, French or foreign, as they wish; similarly, financial enterprises are quite free to determine their policy on loans or action to be taken in respect of both the private and the public sectors;
- the Government makes sure that competition law is strictly applied by the public financial sector, against whom all economic operators are protected by the same rules on abuse of dominant positions, agreements and concerted practices as apply in the private sector;
- the Government does not impose any particular 'Government Group' policy or action upon public financial enterprises, nor does it offer suggestions to that effect, either as regards their operations in France or their activities abroad.

Generally speaking, all French and foreign analysts are agreed that the financial sector in France is very competitive and that this competitiveness has in no way been reduced by the presence of the public sector.

V PROTECTION FROM THE RISK OF FAILURE OR TAKE-OVER AND LACK OF INCENTIVES TO BE COMPETITIVE

The desire of an enterprise to be competitive is not determined by an assessment of the likelihood of its failing in the short or long term, but by the freedom of action and the degree of responsibility which it is allowed by its shareholders.

Here, the principle of management autonomy, which is subject only to the acceptance of basic strategic guidelines by the principal shareholders, gives the Chairman of a public enterprise the widest possible freedom of action, makes him fully responsible towards the Government and guarantees that the public financial sector is fully committed to being competitive.

On this point moreover, it should be noted that the Government's powers of appointment, which are exercised at least every three years under the law on democratisation, are a guarantee that the majority shareholder has considerably greater powers of sanction over the way in which the Chairman has managed the business than are to be found in the private sector, where the large groups, whose shareholders are often highly dispersed, are managed by people who are in fact less subject to any such constant incentive to maximum efficiency. This is particularly true if we remember that, at the same time, public financial enterprises, which all have a major proportion of their capital quoted on the Stock Exchange, are equally exposed to the same market pressures as their counterparts in the private sector.

VI EXCEPTIONAL CIRCUMSTANCES LIKELY TO ARISE IN THE FUTURE WHICH WOULD CAUSE THE FRENCH GOVERNMENT TO EXERCISE A MORE DIRECT INFLUENCE OVER PUBLIC ENTERPRISES

There is a very broad consensus within France concerning two fundamental principles which must be applied to public sector enterprises, namely that they should have management autonomy and that fair and open competition between public enterprises and between public and private enterprises must be guaranteed both in France and within the European Economic Community. Consequently, we cannot envisage any circumstances which would bring about a radical change in this policy.