STATE AIDS (BANKING): THE STARDUST MARINE CASE

Subject: State aids
Annulment (of Commission Decision)

Industry: Banking

Parties: French Republic
Commission of the European Communities
(Credit Lyonnais)
(Altus Finance)
(SBT-Batif)
(Stardust Marine)

Source: Judgment of the Court of Justice of the European Communities, dated 16 May 2002, in Case C-482/99 (*French Republic v Commission of the European Communities*)

(Note. As in the Airtours case, reported in our last issue, the present case represented a serious setback for the Commission. It is no coincidence that the Paris newspaper, Le Monde, carried an article recently questioning the Commission's ability to take its competition cases to a satisfactory conclusion in the light of the two cases. In the present case, the Commission certainly succeeded in showing that there was a presumption of State aid where state funds were used, whether directly or indirectly; and the Commission gained a valuable dictum from the Court to the effect that "Community law cannot permit the rules on State aid to be circumvented merely through the creation of autonomous institutions charged with allocating aid": Paragraph 23. But the Commission lost on the issue inelegantly described as imputability. The Court, no less inelegantly, described the issue in the following terms. "There is no dispute that, in the contested decision, the Commission inferred the imputability of the financial assistance granted to Stardust by Altus and SBT to the State simply from the fact that those two companies, as subsidiaries of Crédit Lyonnais, were indirectly controlled by the State. Such an interpretation of the condition that, for a measure to be capable of being classified as State aid within the meaning of Article 87(1) of the EC Treaty, it must be imputable to the State, which infers such imputability from the mere fact that that measure was taken by a public undertaking, cannot be accepted": Paragraphs 51-2. The case is an invaluable source of material and case-law on the whole question of State aids.)

Judgment

1. By application lodged at the Court Registry on 20 December 1999, the French Republic brought an action under Article 230 of the of the EC Treaty for the annulment of Commission Decision 2000/513/EC of 8 September 1999 on aid granted by France to Stardust Marine (the contested decision).

2. Stardust Marine (Stardust), a company whose main business developed in the pleasure-boat market, was set up in 1989. The bank SBT-Batif (SBT), a subsidiary of Altus Finance (Altus), which was itself part of the Crédit Lyonnais group, initially undertook to finance Stardust by loans and guarantees.

3. After five years of rapid growth, Crédit Lyonnais made losses in 1992 (FRF 1.8 billion) and 1993 (FRF 6.9 billion). In 1994, at the request of the supervisory authority of the French banking system, the French authorities took decisions to support it financially. The decisions included, first, an increase in capital of FRF 4.9 billion and, second, the assuming of the risks and costs connected with the commitments, which were then transferred to a separate structure, the Consortium de Réalisations (CDR), a 100% subsidiary of Crédit Lyonnais, which was created in 1995 as part of a hiving-off operation. CDR purchased nearly FRF 190 billion of assets from Crédit Lyonnais. Under the restructuring plan, all the assets concerned were to be transferred or sold.

4. Stardust, controlled since 1994 by Crédit Lyonnais through the intermediary of Altus, following an increase in capital of FRF 44.3 million, which had been subscribed by Altus in October 1994 through conversion of debts, was part of the Crédit Lyonnais assets transferred to CDR under the 1995 hiving-off plan in view of their poor results and expected losses. As a subsidiary of CDR, Stardust was part of the Crédit Lyonnais group after 1995 and until the latter's privatisation, since until the end of 1998 CDR remained a 100%, unconsolidated, subsidiary of Crédit Lyonnais. The Crédit Lyonnais management, however, ceased to play any direct part in the management of Stardust after its transfer to CDR because of the total separation of management between CDR and Crédit Lyonnais, in accordance with Commission Decision 95/547/EC of 26 July 1995 giving conditional approval to the aid granted by France to the bank Crédit Lyonnais.

5. CDR increased Stardust's capital in three stages. A first increase of capital, totalling FRF 112 million, took place in April 1995. A second increase, of FRF 250.5 million, was decided upon following an extraordinary general meeting held on 26 June 1996 and was effected in two payments made, respectively, in June 1996 (as to two-thirds of that sum) and March 1997 (as to the remaining third). Finally, a third increase in capital was effected following the extraordinary general meeting of 5 June 1997, in the amount of FRF 89 million.

6. Following the last recapitalisation operation in June 1997, CDR sold its holding in Stardust (which was 99.90% of its capital) to FG Marine for FRF 2 million.

The procedure before the Commission and the contested decision

7. On 20 June 1997, the Commission received a complaint against the French Republic, concerning several recapitalisations of Stardust by the State and the conditions in which the latter had been transferred by CDR to FG Marine.

8. On 2 July 1997, the Commission sent a letter to the French authorities, asking them to supply full information on the financial position of Stardust, the capital

operations which had taken place and, where appropriate, the transfer or planned transfers of those assets of CDR and the precise arrangements for the sale procedure which had been entered into.

9. On 5 November 1997, the Commission decided to initiate the procedure under Article 93(2) of the EC Treaty (now Article 88(2)) in relation to the support measures in favour of Stardust and informed the French Government of that fact by letter of 8 December 1997, requesting it to supply all the information necessary for the investigation of the matter.

10. The initiation of that procedure formed the subject-matter of Commission communication 98/C 111/07 of 9 April 1998, sent pursuant to Article 93(2) of the of the EC Treaty Treaty to the other Member States and other interested parties on the recapitalisation of Stardust Marine.

11. After the initiation of the above-mentioned procedure, further exchanges of information took place between the Commission and the French Government.

12. The Commission adopted the contested decision on 8 September 1999, and notified it to the French authorities on 13 October 1999.

13. The operative part of the contested decision is worded as follows:

Article 1

The capital increases of FRF 44.3 million injected into Stardust Marine in October 1994 by Altus Finance and FRF 112 million injected by CDR in April 1995, the advance on current account of FRF 127.5 million granted by CDR from July 1995 to June 1996, the recapitalisations of FRF 250.5 million in June 1996 and of FRF 89 million in June 1997 by CDR constitute State aid within the meaning of Article 87(1) of the Treaty. The aid, amounting to a discounted value at 31 October 1994 of FRF 450.4 million, cannot be declared compatible with the common market under Article 87(2) and (3) of the Treaty and with Article 61(2) and of the EEA Agreement.

Article 2

France shall require Stardust to repay to the State or to CDR the sum of FRF 450.4 million corresponding to the State aid content of the measures in question, discounted to 31 October 1994. The amount to be repaid shall bear interest from that date, at the reference rate established by the Commission for the calculation of the net grant equivalent of aid in France.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Substance

14. In support of its action for annulment of the contested decision the French Government puts forward five pleas in law.

15. First, the French Government disputes the State origin of the funds supporting Stardust, its plea in this respect being composed of two parts. Second, it maintains that the Commission made an obvious error of assessment in holding the conduct of SBT and Altus with respect to Stardust to have been imprudent. Third, the contested decision reveals internal contradictions, particularly in relation to the identification of the person dispensing the aid. Fourth, the decision infringes the principle of legal certainty by going back upon previous decisions of the Commission. Finally, the Commission infringed the French Government's rights of defence in the procedure which led to the adoption of the contested decision.

General preliminary observations

16. The contested decision shows that Commission's analysis of the measures in question as State aid relates, first, to financial support granted to Stardust before it was hived off to CDR.

[Paragraphs 17 to 19 summarise the Commission's position.]

20. Since the Commission thus regarded the financial aid granted to Stardust by Altus and SBT in 1992, 1993 and 1994 as being at the root of the State aid impugned by the contested decision, the Court's examination of the issue of classification as State aid, which is called for by both the first and the second of the applicant's pleas in law, must relate first and foremost to those measures.

The first plea in law

21. In this plea, the French Government denies, first, that the funds used by Altus and SBT, subsidiaries of Crédit Lyonnais, to finance Stardust may be classified as State resources (first part of the plea) and, second, that the support measures taken in favour of Stardust may be regarded as imputable to the French State (second part of the plea).

Preliminary observations on the first plea

22. It should be recalled, at the outset, that Article 87(1) of the EC Treaty provides that 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 is, in so far as it affects trade between Member States, incompatible with the common market.

23. It is settled case-law that no distinction is to be drawn between cases where the aid is granted directly by the State and those where it is granted by public or private bodies which the State establishes or designates with a view to administering the aid (see, in particular, Case 78/76, *Steinike and Weinlig* v *Germany*, paragraph 21; Case 290/83, *Commission* v *France*, paragraph 14; Joined Cases 67/85, 68/85 and 70/85, *Van der Kooy* v *Commission*, paragraph 35; and Case C-305/89, *Italy* v *Commission*, paragraph 13). Community law

cannot permit the rules on State aid to be circumvented merely through the creation of autonomous institutions charged with allocating aid.

24. However, for advantages to be capable of being categorised as aid within the meaning of Article 87(1) of the EC Treaty, they must, first, be granted directly or indirectly through State resources (See Joined Cases C-72/91 and C-73/91, *Sloman Neptun* v *Bodo Ziesemer*, paragraph 19; Case C-189/91, *Kirsammer Hack* v *Sidal*, paragraph 16; Joined Cases C-52/97 to C-54/97, *Viscido and Others* v *Ente Poste Italiane*, paragraph 13; Case C-200/97, of the EC Treaty*otrade Srl* v *Altiformi e Ferriere di Servola SpA*, paragraph 35; Case C-295/97, *Piaggio SpA* v *International Factors Italia SpA (Ifitalia), Dornier Luftfahrt GmbH, Ministero della Difesa*, paragraph 35; and Case C-379/98, *PreussenElektra AG* v *Schleswag AG*, paragraph 58) and, second, be imputable to the State (*Van der Kooy*, paragraph 35; Case C-303/88, *Italy* v *Commission*, paragraph 11; Case C-305/89 *Italy* v *Commission*, cited above, paragraph 13).

[Paragraphs 25 to 31 set out the arguments of the parties]

Findings of the Court

32. As a preliminary point, it should be observed that the French Government does not deny that the resources used by CDR to finance Stardust are State resources within the meaning of Article 87(1) of the EC Treaty. It therefore only needs to be examined whether the loans, guarantees and recapitalisation granted by Altus and SBT in favour of Stardust, before it was hived off to CDR, must be regarded as coming from State resources.

33. On that point, the documents before the Court show that, on 31 December 1994, the State held about 80% of the shares in Crédit Lyonnais and nearly 100% of its voting rights. Crédit Lyonnais held 100% of the shares in Altus and the latter owned 97% of those of SBT, the remaining 3% being held by Crédit Lyonnais. In addition, the chairman of Crédit Lyonnais and two-thirds of the members of its administrative board were appointed by the State. The chairman of Crédit Lyonnais also chaired the administrative board of Altus, the members of which were appointed by the administrative board of Crédit Lyonnais.

34. In those circumstances, it has to be concluded that Crédit Lyonnais, Altus and SBT were under the control of the State and had to be regarded as public undertakings within the meaning of the second indent of the first subparagraph of Article 2 of Commission Directive EEC/723/80 of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, as amended by Commission Directive EEC/84/93 of 30 September 1993). The French authorities were indeed able, directly or indirectly, to exercise a dominant influence over those undertakings within the meaning of that provision of Directive EEC/723/80.

35. It therefore needs to be examined whether such a situation of State control allows the financial resources of the undertakings subject to that control to be regarded as State resources, within the meaning of Article 87(1) of the EC Treaty,

in a case such as the present, in which it is undisputed between the parties that the undertakings in question did not receive financial support from the French authorities before 30 June 1994, such as a guarantee or a specific transfer of funds.

36. In that respect, it should first be noted that, according to settled case-law, it is not necessary to establish in every case that there has been a transfer of State resources for the advantage granted to one or more undertakings to be capable of being regarded as a State aid within the meaning of Article 87(1) of the EC Treaty (see, in particular, Case C-387/92, *Banco Exterior de España* v *Ayuntamiento de Valencia*, paragraph 14; Case C-6/97 *Italy* v *Commission*, paragraph 16).

37. Second, it should be recalled that it has already been established in the case-law of the Court that Article 87(1) of the EC Treaty covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Therefore, even if the sums corresponding to the measure in question are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources (see the judgment in Case C-83/98 P, *France* v *Ladbroke Racing and Commission*, paragraph 50).

38. It follows that, by holding in the contested decision that the resources of public undertakings, such as those of Crédit Lyonnais and its subsidiaries, fell within the control of the State and were therefore at its disposal, the Commission did not misinterpret the term State resources in Article 87(1) of the EC Treaty. The State is perfectly capable, by exercising its dominant influence over such undertakings, of directing the use of their resources in order, as occasion arises, to finance specific advantages in favour of other undertakings.

39. Moreover, such an interpretation cannot be regarded, as the French Government argues, as a possible source of discrimination against public undertakings as compared with private undertakings. In a context such as that in point here, the position of a public undertaking cannot be compared with that of a private undertaking. Through its public undertakings, the State may pursue objectives other than commercial ones, as is pointed out in the eleventh recital in the preamble to Directive 80/723.

40. Nor can the French Government validly argue that the contested decision infringes Article 253 of the EC Treaty, in that the Commission did not indicate the reasons for which the measures in favour of Stardust were granted by means of State resources.

41. According to settled case-law, the statement of reasons required by Article 253 of the EC Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure in order to defend their rights and to enable the Community judicature to exercise its

power of review (Joined Cases 43/82 and 63/82, *VBVB and VBBB* v *Commission*, paragraph 22; Case C-156/98, *Germany* v *Commission*, paragraph 96).

42. In that regard, it is sufficient to note that the contested decision mentions several times, in particular in paragraphs 27, 37 and 83, that the Commission considers that the resources of public undertakings, such as those of Crédit Lyonnais and its subsidiaries, are State resources within the meaning of Article 87(1) of the EC Treaty. That enabled the French Government and the Community judicature to know the reasons for which the Commission considered that, in this case, State resources were involved.

43. It follows from all the foregoing that the first part of the first plea in law must be rejected.

[Paragraphs 44 to 49 set out the arguments on the second part of the first plea]

Findings of the Court

50. There is no dispute that, in the contested decision, the Commission inferred the imputability of the financial assistance granted to Stardust by Altus and SBT to the State simply from the fact that those two companies, as subsidiaries of Crédit Lyonnais, were indirectly controlled by the State.

51. Such an interpretation of the condition that, for a measure to be capable of being classified as State aid within the meaning of Article 87(1) of the EC Treaty, it must be imputable to the State, which infers such imputability from the mere fact that that measure was taken by a public undertaking, cannot be accepted.

52. Even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed. A public undertaking may act with more or less independence, according to the degree of autonomy left to it by the State. That might be the situation in the case of public undertakings such as Altus and SBT. Therefore, the mere fact that a public undertaking is under State control is not sufficient for measures taken by that undertaking, such as the financial support measures in question here, to be imputed to the State. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of those measures.

53. On that point, it cannot be demanded that it be demonstrated, on the basis of a precise inquiry, that in the particular case the public authorities specifically incited the public undertaking to take the aid measures in question. In the first place, having regard to the fact that relations between the State and public undertakings are close, there is a real risk that State aid may be granted through the intermediary of those undertakings in a non-transparent way and in breach of the rules on State aid laid down by the Treaty.

54. Moreover, it will, as a general rule, be very difficult for a third party, precisely because of the privileged relations existing between the State and a public

undertaking, to demonstrate in a particular case that aid measures taken by such an undertaking were in fact adopted on the instructions of the public authorities.

55. For those reasons, it must be accepted that the imputability to the State of an aid measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken. In that respect, the Court has already taken into consideration the fact that the body in question could not take the contested decision without taking account of the requirements of the public authorities (see, in particular, *Van der Kooy*, paragraph 37) or the fact that, apart from factors of an organic nature which linked the public undertakings to the State, those undertakings, through the intermediary of which aid had been granted, had to take account of directives issued by a Comitato Interministeriale per la Programmazione Economica (CIPE) (Case C-303/88 *Italy* v *Commission*, cited above, paragraphs 11 and 12; Case C-305/89 *Italy* v *Commission*, cited above, paragraphs 13 and 14).

56. Other indicators might, in certain circumstances, be relevant in concluding that an aid measure taken by a public undertaking is imputable to the State, such as, in particular, its integration into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains.

57. However, the mere fact that a public undertaking has been constituted in the form of a capital company under ordinary law cannot, having regard to the autonomy which that legal form is capable of conferring upon it, be regarded as sufficient to exclude the possibility of an aid measure taken by such a company being imputable to the State (Case C-305/89, *Italy* v *Commission*, cited above, paragraph 13). The existence of a situation of control and the real possibilities of exercising a dominant influence which that situation involves in practice makes it impossible to exclude from the outset any imputability to the State of a measure taken by such a company, and hence the risk of an infringement of the Treaty rules on State aid, notwithstanding the relevance, as such, of the legal form of the public undertaking as one indicator, amongst others, enabling it to be determined in a given case whether or not the State is involved.

58. In this case, the Commission adopted in the contested decision, as the sole criterion, the organic criterion according to which Crédit Lyonnais, Altus and SBT, as public undertakings, were under the control of the State. In those circumstances, it must be held that that interpretation of the criterion of imputability to the State is erroneous.

59. The second part of the French Government's first plea in law is therefore well founded.

[Paragraphs 60 to 67 set out the arguments on the second plea in law]

Findings of the Court

68. It should be noted as a preliminary observation that investment by the public authorities in the capital of an undertaking, in whatever form, may constitute State aid only where all the conditions set out in Article 87(1) of the EC Treaty are fulfilled (see, in particular, Case C-142/87 *Belgium* v *Commission, Tubemeuse*, paragraph 25; Joined Cases C-278/92 to C-280/92, *Spain* v *Commission*, paragraph 20).

69. It should also be noted that, pursuant to the principle that the public and private sectors are to be treated equally, capital placed directly or indirectly at the disposal of an undertaking by the State in circumstances which correspond to normal market conditions cannot be regarded as State aid (Case C-303/88, *Italy* v *Commission*, cited above, paragraph 20).

70. Therefore, in accordance with equally settled case-law, it is necessary to assess whether, in similar circumstances, a private investor of a dimension comparable to that of the bodies managing the public sector could have been prevailed upon to make capital contributions of the same size (Case C-261/89, *Italy* v *Commission*, paragraph 8; Joined Cases C-278/92 to C-280/92, *Spain* v *Commission*, cited above, paragraph 21; Case C-42/93, *Spain* v *Commission*, paragraph 13), having regard in particular to the information available and foreseeable developments at the date of those contributions.

71. In this case, it is undisputed between the parties that, in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market of the economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the of the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation.

72. In those circumstances, and having regard to paragraphs 16 to 20 of the present judgment, it has to be examined whether, as the contested decision states several times (see, in particular, paragraph 25), the Commission did indeed view matters from the standpoint of 1992, 1993 and 1994 when holding that the loans and guarantees granted to Stardust by Altus and SBT did not reflect prudent conduct in a market of the economy, taking account of the available information and foreseeable developments at the time when they were actually granted. Should that not be the case, the Commission has misapplied the criterion of the private investor operating in a market of the economy, which also concerns the recapitalisations of Stardust by Altus in October 1994 and by CDR in April 1995, June 1996 and June 1997.

73. On that point, the contested decision states, in paragraph 25, that the bank [SBT] became the [company's] sole banker and that its financial support took a number of forms, including direct and indirect loans, in particular financing granted by SBT to investors wishing to acquire shares in boats managed by Altus, or in the form of guarantees for those investments. That practice entailed a considerable amount of risk, as SBT bore all the banking exposures and a large part of the firm's off balance-sheet exposures.

[Paragraphs 74 and 75 illustrate the Commission's argument.]

76. It must be noted, however, first, that the Commission did not identify the amount of the loans and guarantees granted to Stardust in 1992, 1993 and 1994 respectively. Such detail is indispensable in order to assess whether or not the financing measures in question were prudent and to enable the Court to exercise its power of review. Nor, moreover, has the Commission in any way indicated the reasons for which those various financing measures appeared imprudent in the context of the period. The contested decision contains no indications in that regard on the basis of the information available in each of those years, taking account, in particular, the financial position of Stardust, its position on the market as a start-up company, and the prospects of that market.

77. Moreover, the contested decision shows that the Commission took as its point of reference the end of 1994 in applying the criterion of the prudent investor operating in a market of the economy, that is to say in a context later than that of the period during which the aid was actually granted ...

[Paragraphs 78 to 80 substantiate the foregoing by quoting from the Decision.]

81. It is thus apparent from the wording of the contested decision itself that the Commission misapplied the criterion of the private investor operating in a market economy in that it did not examine the loans and guarantees granted to Stardust in the context of the period in which they were granted. That misapplication concerns not only those loans and guarantees but also the recapitalisations by Altus in 1994 and by CDR in April 1995, June 1996 and June 1997 which the Commission regarded as the implementation of the aid granted to Stardust before October 1994, as has been mentioned in paragraphs 16 to 19 of this judgment.

82. Therefore, the second plea in law of the French Government is also well founded.

83. Since the two pleas alleging misinterpretation of the criterion of imputability to the State of the financial support measures taken in favour of Stardust by Altus and SBT and misapplication of the criterion of the private investor in a market of the economy are well founded, the contested decision must be annulled without there being any need to examine the other pleas in law raised by the French Government.

[Paragraph 84 deals with costs: see the ruling below.]

Court's Ruling

The Court hereby:
1. Annuls Commission Decision 2000/513/EC of 8 September 1999 on aid granted by France to Stardust Marine;
2. Orders the Commission to pay the costs. ■

The Dutch Service Stations Case

In Case C-382/99 (*Kingdom of the Netherlands v Commission of the European Communities*), dated 13 June 2002, the Court of Justice dismissed the application brought by the Netherlands for partial annulment of the Commission's decision on State aid to 633 Dutch service stations located near the border between Germany and the Netherlands. The Netherlands scheme for granting aid in respect of individual service stations carries a risk of accumulation of aid and indirectly benefits oil companies by making the application of price management system clauses unnecessary. Following an increase in excise duties on petrol, diesel and liquid gas at the beginning of July 1997, the Netherlands legislature, concerned about the adverse effects for operators of service stations located near the German border as a result of the more competitive rates charged in Germany, provided for the adoption of temporary measures intended to reduce the disparity in the rates between the two countries.

Aid granted to undertakings by Member States is incompatible with the EC Treaty; however, exceptions are permitted under certain circumstances, and it is the Commission which determines the conditions for compatibility of that aid. The Commission considers that small amounts of aid do not affect trade between Member States. Such aid, known as *de minimis* aid, must comply with three conditions: the maximum amount must not exceed €100 000; the amount covers a period of 3 years from the date when the first aid is granted; and the aid must not be cumulative. Although such *de minimis* aid is exempted from the requirement of notification to the Commission, the Netherlands Government notified the Commission of the proposed amendment to verify its legality. The declared that part of the aid was incompatible with the common market and consequently ordered the recovery of aid which had already been granted.

The Kingdom of the Netherlands then brought an action for partial annulment of that decision before the Court of Justice of the European Communities. In its judgment, the Court dismissed that application, in particular, with regard to the following four points: the risk of accumulation of aid, the existence of indirect aid to oil companies, the absence, or at the very least, the inadequacy, of information provided by the Netherlands, and the recovery of aid which had already been granted.