Eleventh Report on Competition Policy

(Published in conjunction with the 'Fifteenth General Report on the Activities of the European Communities in 1981')
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on Competition Policy

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COMP. REP. EC 1981
Introduction

The continuing economic difficulties and their industrial and social consequences represent, now more than ever before, a challenge to any competition policy. As is clear from the Treaties, the Community is essentially based on a market economy in which fair, undistorted competition is supposed to ensure that available resources are allocated to the most productive sectors, to stimulate firms to make use of their know-how and skills and to encourage them to invent, develop and exploit efficiently new techniques and new products. The last two functions are particularly important in a time of crisis since they enable firms to recover, retain and improve their competitiveness. The Commission must therefore ensure that competition performs its proper role.

However, this policy is not based on a laissez-faire model, but is designed to maintain and protect the principle of workable competition. Its success depends on the determination and ability of business to take an active and dynamic part in a single Community market whose scale is a fundamental asset to European industry, since it permits the development of innovative, high-performance firms which outgrow the national markets. As Parliament points out in its Resolutions on competition policy and as the Commission stresses in its recent Communication to the Council on the strengthening of the internal market, decisive importance is attached to the interaction between competition policy and the policies which contribute to the attainment of a single market, where conditions are similar to those on national markets. The interaction between competition policy and the common commercial policy is equally important. This is because, firstly, the extent to which the Community is open to other countries must be taken into account in assessing the competitive position of firms under competition law and, secondly, there is no valid alternative to an internationally-oriented commercial policy, since the Community is heavily dependent on imports for its raw materials supplies, and exports to non-member countries make up about one quarter of its gross national product.

The Community is thus very sensitive to the effects of the crisis. And it is in this very situation that it must develop a strategy to adapt and improve its industrial
machinery in order to recover necessary competitiveness where it is at present lacking. As part of this strategy, competition policy measures must be analysed in terms of their effects both on economic sectors as a whole and on individual operators therein. The purpose of this Report on competition policy is to describe application of these measures.

Assessment of the overall sectoral effects concerns primarily the Commission's policy on State aids, crisis cartels and the behaviour of national undertakings, as well as other measures concerning the whole of a given sector.

There is a growing tendency in the various Member States for the public authorities, under considerable pressure, to make use of aid to protect their industries. Such measures are frequently designed to enable industries to survive or to offset the effects of the crisis, which are all the more marked where industrial structures are poorly adapted to the new requirements of the world market.

The Commission's policy on aid must therefore strike a realistic balance by ensuring that assistance in no way, because of its scale or the terms, on which it is granted, jeopardizes the unity of the market, but without preventing the use of those aids which, as transitional measures, make an effective, lasting contribution to the Community's economic and social recovery.

In general, the Commission adopts a positive approach—in so far as it complies with the relevant guidelines—to aid which promotes the adaptation of firms to the new conditions governing the energy market or to stricter environmental protection requirements, or which helps to promote technological development in the Community. It also views in a favourable light aid which serves to promote a better balance between the regions or which makes it possible to tackle particular problems, such as youth unemployment. These examples also demonstrate the close link between the Commission’s policy with regard to Member States’ aids and the implementation of the Community’s own measures in this area.

This attitude is, however, limited by the need to avoid distortions of competition within the Community. Such a policy implies that strict conditions for the granting of aids be laid down and observed particularly for industries in crisis like steel, textiles and shipbuilding. It would be wrong to try to overcome economic or employment difficulties by granting firms financial benefits enabling them to increase their competitiveness only artificially. Whatever benefits might be obtained in the very short term by such a lax approach, there is no doubt that in the medium and long term it would make the situation worse rather than better, serving only to prevent or delay the necessary adjustments by misallocating the limited financial resources available. These considerations form the foundation of the Community’s whole steel policy.
The industries in crisis also raise the problem of the introduction of defensive measures by firms, in the form of agreements known as 'structural crisis cartels', and these must be viewed in the light of the provisions governing restrictive practices. Where there is an irreversible disparity between production capacity and demand, agreements between undertakings aimed at achieving an orderly reduction of excess capacity may be exempted from the ban on restrictive practices, insofar as undertakings do not jointly fix production and delivery volumes and selling prices of the relevant products nor aim at barring imports. Nor can the Commission tolerate measures which use private or public protectionism to shield a national market from external competition.

The Commission has adopted a neutral position on the question of the nationalization of sectors of the economy. The decision by a Member State to extend public ownership is no innovation as far as the Community is concerned. This right is laid down in the Treaties which state that they are without prejudice to the rules on Member States governing the system of property ownership and give both the advocates and the opponents of the extension of public ownership the assurance that their membership of the Community is not a barrier to their objectives in the matter. The Commission does not therefore feel that any action on its part is called for in respect of the nationalization decisions. The Member States retain full freedom in this regard.

However, as regards the conduct of nationalized undertakings, both new and existing, in the Community, the Member State to whose jurisdiction they are subject and the undertakings themselves are bound by all the principles and rules laid down in the Treaty and, in particular, by all the competition rules. It is this which provides the guarantee against possible distortions of competition with respect to other undertakings.

In the recent example of the nationalization measures in France, the Commission therefore felt that their implementation should not in itself cause distortions of competition. In line with its approach to public undertakings in general, it intends to ensure, however, that distortions of competition do not result from any measures taken by the State in relation to the nationalized undertakings or from the market practices which the undertakings themselves adopt.

The Directive on the transparency of financial relations between Member States and their public undertakings adopted by the Commission in June 1980, which came into force on 1 January 1982, takes on a special significance in this context.

Lastly, under the heading of measures relating to a sector as a whole, the Commission has submitted to the Council two proposals for a Regulation concerning the application of the rules of competition to air and sea transport with a view to increasing competition in these sectors. These two measures should provide the
Commission with the means, which it has hitherto lacked, of effectively applying the ban on restrictive practices and abuse of dominant positions to airline and shipping companies.

In addition to applying the instruments of competition policy to economic sectors as a whole, the Commission uses the Treaty rules in order to take action within sectors. This approach involves implementation of the rules in individual cases and the preparation of general measures designed to increase competition by establishing the extent to which restrictions of competition are admissible, but also by favouring in particular certain specialization and research and development agreements.

As regards application of the EEC Treaty provisions concerning restrictive practices and dominant positions in individual cases the Commission, regarding respect for the unity of the Community market being of prime importance, has continued its policy of imposing deterrent fines in cases of restrictive or abusive practices designed to isolate national markets. But competition policy does not by any means have only a preventive role. It also fulfils a positive role, granting exemption from the ban on restrictive practices to agreements and certain desirable forms of cooperation between firms by means of individual decisions or block exemption regulations.

As regards general measures, the Commission has attempted to revive its 1973 proposal for a Regulation on merger control—which has been shelved since 1978—with the aim of ensuring that those industries which are already highly oligopolistic do not veer towards anti-competitive structures. It has therefore submitted an amended version of its initial proposal to the Council. The main purpose of the new proposal is to make it clear that the future regulation should be applied first and foremost to mergers of a European scale and to involve the Member States more closely in the decision-making process.

At the same time, in order to strengthen the position of small and medium-sized undertakings which in the present difficult period are an important source of jobs and serve to promote adaptation to the necessary structural changes, the Commission is endeavouring to give practical expression to its support for the various forms of cooperation between these undertakings. By generally exempting certain types of agreement, in particular specialization or research and development agreements, from the ban on restrictive practices, it will help small and medium-sized undertakings to cope better with competition from larger undertakings. Similarly, it is considering allowing certain major restrictions of competition, in particular in the area of licensing and distribution agreements, as a special concession restricted to small and medium-sized undertakings. The Commission has also manifested a favourable attitude towards State aid for small and medium-sized undertakings.
The effectiveness of competition policy in performing its strategic role in solving current economic problems is, however, subject to two factors: how quickly it is implemented and how well it is understood by public opinion.

Aware of these requirements, the Commission is taking a number of practical steps to speed up its decision-making process and make it more transparent.

The Commission has also decided to consult the Economic and Social Committee on a regular basis in the hope that, through such systematic contacts with the various economic and social interest groups concerned, it will foster greater understanding of the importance of competition policy and make the people of Europe more aware of the problems which arise and the solutions adopted to solve them.

Competition within the Community is marked by an ever-increasing tendency towards oligopoly. If the competitiveness of the Community economy is to be maintained and developed it is therefore vital that the existing scope for effective competition should not be jeopardized by private or government measures.

The combination of the persistent crisis and the tendency towards oligopolistic structures highlights more than ever before the need, when pursuing policies at Community level, to bear in mind their effects on competition in a Community which is an integral part of the world economy.

Twenty years of continuous administrative practice have shown that there is scope for improvement in the examination of cases pending before the Commission, notably as regards inspection procedures, the provision of information or the content of files and the conduct of hearings. The changes introduced have made the exercise of the rights of defence even more effective without the necessity for any amendments to the formal procedural provisions.
Part One

Competition policy towards enterprises
§ 1—Air and sea transport

1. In 1981, the Commission transmitted two proposals for Regulations to the Council concerning the application of Articles 85 and 86 of the EEC Treaty to air and sea transport respectively.

Both proposals aim to fill a gap in Community competition law. Although under the general terms of the Treaty the competition rules are applicable to air and sea transport, they are the only two sectors of the economy for which the Council has still not adopted the relevant implementing regulations.

The texts proposed are on the one hand designed to ensure effective application of the ban on restrictive practices and abuse of dominant positions and on the other hand introduce extremely flexible arrangements for exemption which impose a minimal administrative burden on firms.

2. In presenting a Regulation applying Articles 85 and 86 to air transport, the Commission takes account of the fact that the Council had included competition in a list of priorities for the air transport sector in June 1978 and also takes account of the views of the European Parliament, which is also anxious to promote competition between Community airlines.

Apart from a statutory exemption for certain technical cooperation agreements, the Regulation deals with procedure; it is based on Article 87 of the Treaty and in the main repeats the provisions applicable to transport by rail, road and inland water-

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way. It will give the Commission the powers of investigation it needs to obtain the factual information indispensable to decision-making. In the Sterling Airways case the Commission encountered serious difficulties in applying the rules of competition to this particularly complex field merely on the basis of Article 89, which requires the close cooperation of the Member States.

The Regulation only applies to the airlines’ business operations and therefore does not concern measures which are the sole responsibility of the Member States, such as establishing arrangements to control market entry or bilateral agreements between States. Similarly, proven State-imposed business conduct will not be caught. The object is to develop conditions giving more scope for competition than at present in the business conduct upon which the companies themselves decide—where the State plays no part.

The Commission considers that some of the commercial agreements which airlines have entered into and which fall within Article 85(1) could be exempted under Article 85(3). The Regulation does not, however, provide block exemption for this type of agreement. The Commission is waiting until it has acquired sufficient experience by means of individual decisions before contemplating such measures.

The proposed Regulation was forwarded for examination by the Council, Parliament and the Economic and Social Committee.

3. At the same time, the Commission continued its work on the preparation of other proposals which are also on the priority list for air transport approved by the Council in June 1978.

4. This led to publication of a report on scheduled passenger air fares in the EEC which contains several conclusions, in particular on the advantages to be gained, both for passengers and for the airlines, from improving the procedures currently followed. This improvement would seem desirable, for example, in regard to the speed of decision-making when new fares are introduced. On 26 October 1981 the Commission accordingly presented a draft Council Directive on tariffs for scheduled air transport, which is aimed principally at introducing a more flexible and rapid tariff setting procedure and fixing the basic principles to govern the determination of tariffs. It confirms the principle that tariffs are fixed by agreement between States but provides for the rapid resolution of disputes. It also introduces as the basic criteria for the setting of tariffs the costs of an efficient company based in the country of origin of the tariff in question.

2 Tenth Report on Competition Policy, points 136 to 138.
3 Air transport: a Community approach, Memorandum of the Commission, Annex 1 to Supplement 5/79—Bull EC.
4 COM(81) 398 final, 23.7.1981.
5. The Commission has also endeavoured to define more clearly the scope of Articles 85 and 86 in this sector. To supplement the information received from its survey in 1978, it sent questionnaires to the governments of the Member States and the airlines established in their territories.

The questions put to the Member States aim to find out where to draw the line between the powers of public authorities and the responsibilities of the companies in relation to tariff fixing.\(^1\)

Current procedures might be caught by Article 90 of the Treaty, in conjunction with Articles 85 and 86, in so far as the Member States merely delegate responsibility for tariff fixing to the airlines.

The questions put to the airlines concern the application of capacity-sharing arrangements and other commercial agreements which could constitute presumed infringements of the rules of competition.

2 — Sea transport

6. The proposal for a Regulation applying Articles 85 and 86 to sea transport establishes both substantive and procedural rules.

The substantive rules establish, first of all, that certain technical cooperation agreements are not caught by the ban on restrictive practices in Article 85(1) of the EEC Treaty. General exemption is granted to liner conferences operating scheduled services as long as they fulfil certain conditions and requirements specified in the Regulation. These conferences remain subject to investigation to ensure that they do not abuse their position.

The Commission’s proposal is thus consistent with its policy, which has been accepted by the Council, concerning the United Nations Code of Conduct for Liner Conferences. This policy involves recognizing the stabilizing role of conferences, while preventing them from breaching the rules of competition. While there is no conflict between the proposal for a Regulation and the Code of Conduct, its provisions do not simply reaffirm the principles laid down in the Code: they amplify or clarify a number of points through Community rules. Agreements between conferences and shippers or shippers’ associations relating to the quality, rate or conditions of scheduled services are also exempt. However, bulk transport is, at

\(^1\) This division of responsibilities is challenged by numerous users of scheduled air transport services in the Community, notably Lord Bethell, Member of the European Parliament. In September 1981 he took action before the Court of Justice with the aim of requiring the Commission to move, under Article 89, against the current system for fixing air fares in the Community (Case 246/81).
this stage, excluded from the proposal. The Commission reserves the right to present supplementary proposals for bulk transport in due course.

The procedural rules in the proposal also reproduce the provisions governing transport by rail, road, and inland waterway.

In view of the international implications of the sea transport sector, the proposal provides for special procedures to avoid conflict with the legislation of non-member countries. Such conflicts, which could endanger important Community trading and shipping interests, could arise because the Regulation covers all transport operations beginning or ending in a Community port, irrespective of the country of registration of the company that owns the vessel.

The Council, Parliament and the Economic and Social Committee are proceeding to examine the proposal.
§ 2 — Distribution

1 — Exclusive dealing and purchasing

7. In September the Commission submitted to the Advisory Committee on Restrictive Practices and Dominant Positions a series of draft Regulations designed to replace Regulation No 67/67/EEC\(^1\) from 1 January 1983. They are now being redrafted for submission to the Committee once again. They will then be published as proposals in the Official Journal of the European Communities.

The thinking behind this legislation is that exclusive dealing and exclusive purchasing should be dealt with in separate regulations.

**Exclusive dealing agreements**

8. The scope of the new Regulation will be wider; the block exemption should also apply to agreements covering the entire territory of the common market.

In contrast, it should be more rigorous as regards agreements entered into between competing manufacturers. Reciprocal exclusive dealing agreements will still not qualify for exemption, and non reciprocal agreements should in future only qualify if at least one of the two parties is a small or medium-sized undertaking, i.e. its annual turnover does not exceed 100 million ECU.

The provisions concerning promotion of interpenetration of the different national markets and opening up the common market to the outside should be strengthened. In all cases falling within the Regulation it must be possible both in law and in fact to make parallel imports, the essential counterbalance to any grant of territorial exclusivity.

Indeed, this is the only guarantee the consumer has that he can acquire the given products at the best prices and on the best terms throughout the common market.

Suitable transitional arrangements will be introduced for existing agreements covered by the current rules in order to help undertakings adapt to the new legal situation.

\(^1\) Tenth Report on Competition Policy, points 1 to 4.
Exclusive purchasing agreements

9. The new Regulation on exclusive purchasing agreements concluded for resale purposes will confirm the principle of general exemption in Regulation No 67/67/EEC. However, certain conditions for exemption still have to be defined; they concern both the duration and scope of exclusive purchase.

Similar solutions will be worked out for solus agreements concluded with breweries and filling stations, account being taken of their special features.

2 — Selective distribution

10. The Commission is now endeavouring to define the principles behind application of Article 85 to selective distribution systems; proceedings under way in a number of individual cases are providing the groundwork. In one case a fine was imposed for abusive and discriminatory application of a selective distribution system which had been notified. In other cases, also concerning the electronic leisure equipment industry, proceedings now in progress raise in particular the question of whether methods for appointing dealers are compatible with the rules of competition. The key factors in this connection, in accordance with the case law of the Court of Justice, are to ensure that no dealer satisfying objective and qualitative selection criteria is prevented from obtaining supplies and also that trade between appointed dealers in the Community is not impeded by restrictions on resale prices. When these proceedings have come to an end, the Commission intends to draw up general guidelines spelling out the restrictions which may and may not be incorporated in a selective distribution system.

11. When rejecting a complaint the Commission stated that there was in principle no obligation to supply under Article 85. Even where a given distribution system is caught by Article 85(1), the Commission does not consider that it normally has to step in to make a manufacturer supply directly a given qualified applicant, unless the manufacturer holds a dominant position on the market and the tests for application of Article 86 are satisfied. Where refusal to appoint a dealer results from discriminatory application of a distribution system, its compatibility with Article 85 is brought into question. An obligation may then be imposed on the manufacturer to refrain from impeding the dealer’s access to his products.

12. The Commission approved the basic principles of a draft Regulation relating to the application of Article 85(3) of the Treaty to certain categories of agreements

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1 AEG-Telefunken, points 85 to 87 of this Report.
2 Commission Decision of 11.5.1981, Demo-Studio/Schmidt/Revox, see also point 118 of this Report.
concerning distribution and pre- and after-sales service in the motor vehicle sector. The draft must first be referred to the Advisory Committee on Restrictive Practices and Dominant Positions and will then be published in the Official Journal to enable interested parties to comment.

The draft follows on from the principles laid down in the BMW Decision\(^1\) of 1974, which the Commission has used as guidelines in adapting motor vehicle distribution contracts to the requirements of the Community’s competition rules.

Under the proposed Regulation the automobile manufacturer should be able to confer by contract upon his dealers an area where they must primarily concentrate their selling activities, while guaranteeing them in return limited territorial protection. In order to maintain close contact with his dealers, while ensuring that they provide a satisfactory information, maintenance and repair service to their customers, the manufacturer must be able to set up distribution networks in which, at all stages, access to the distribution and after-sales service network is reserved only for selected firms that he has approved.

The manufacturer should in principle be able to impose a non-competition clause on dealers and on garages in order to be certain that they concentrate their activities on his make. However, this clause should be applicable only on the basis of objective grounds.

The Regulation should also provide the Commission with a means of ensuring that intra-brand competition at all stages of distribution can play its role in inter-State trade. The Commission is aware of the price disparities for the same make of car in the different Member States and is anxious to secure the free flow of trade; it intends to ensure that the final consumer remains free to purchase the vehicle he wants in the Member State where the most favourable terms prevail, if necessary via intermediaries. The consumer must also be able to exercise his warranty rights at any dealer or garage in the network throughout the Community, wherever he purchased his vehicle.

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§ 3 — Merger control

13. The Commission adopted an amended version of its proposal for a Regulation transmitted to the Council on 20 July 1973; the new proposal is now being examined by Parliament and the Economic and Social Committee. The proposed changes should enable the Council to resume the work suspended since 1978.

The amended proposal deals with two of the political problems mentioned in the Tenth Report on Competition Policy.¹

Firstly, it defines the conditions for applying the Community rules. In assessing whether a merger is likely to give the firms concerned the power to hinder effective competition, the merger is to be presumed compatible with the common market where the market share of the goods or services concerned in the common market accounts for less than 20% of the turnover in identical or similar goods or services, unless the Commission can prove otherwise.

Secondly, the Member States are to be more closely associated in the Commission's decision-making process prior to any decision on the incompatibility of a merger. Under the amended proposal a Member State may, in certain circumstances, raise an objective in the Council which should be considered as having priority over and therefore as justifying derogation from the rules concerning incompatibility.

¹ Tenth Report on Competition Policy, point 20.
§ 4 — Commission procedures in implementing the rules of competition

14. Wide-ranging discussion has been going in Parliament and in interested legal and economic circles on the administrative procedures relating to restrictive agreements and practices. On the one hand, there are suggestions for a simplification and acceleration of procedures and on the other, suggestions for increased procedural guarantees which have the effect of prolonging and slowing down the Commission’s current procedures.¹

The Commission takes the view that on the whole the provisions implementing Articles 85 and 86, which are based mainly on Council Regulation No 17 and Commission Regulation No 99/63/EEC, have stood the test of time and do not require any substantial amendments. It also considers that in practical application these procedures are fair and that they respect all the principles established by the Court of Justice. However, the Commission fully understands the concern expressed in business circles and is therefore looking into all possible ways of making improvements, which are compatible with its task of effectively eliminating anti-competitive practices and the need for thorough analysis of the frequently complicated economic background to its decisions. The Commission thus aims to allay the principal apprehensions which have emerged in its talks with interested parties, i.e. improved legal certainty for firms and additional guarantees that its assessment of cases handled is objective.

15. Legal certainty for businesses could be substantially increased by the introduction of more rapid exemption procedures, notably in the case of cooperation projects involving substantial investments. The problem now facing the Commission is essentially a practical one. The Commission is exclusively responsible for granting exemptions under Article 85(3) and there are now almost 4,000 applications pending;¹ some 200 new applications are made every year. The majority of these cases fall under the block exemption regulations but many still have to be dealt with individually. The Commission is now examining ways of speeding up the general handling of such cases. It is already working on a system for dealing more efficiently and more rapidly with two types of cases.

As regards cases which at first sight raise no problems with respect to the rules of competition and do not require a formal decision, notably negative clearance, the Commission intends to pursue its policy of closing the case and informing the firms concerned by means of comfort letters. To increase the legal value of these letters,²

¹ Point 69 of this Report.
² See the judgments of the Court of Justice in the Perfumes cases; Tenth Report on Competition Policy, point 50 et seq.

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it envisages prior publication of a Notice in the Official Journal, to give interested third parties the opportunity to submit comments.

The Commission proposes to settle cases which obviously satisfy the tests of Article 85(3) by means of simplified exemption decisions, which would solve in particular the problem of the numerous cases having common features.

16. The criticism that objectiveness in procedures is not adequately guaranteed stems in the main from a feeling of insatisfaction with the fact that the Commission holds concurrently powers of investigation, examination and decision.

The investing of such power in a single authority is consistent with the classic rules of administrative law in most Member States. However, they provide for two instances of judicial review which guarantees the parties concerned both certainty as regards the judicial assessment of the substance and the review of lawfulness. At Community level there is no equivalent two-tier judicial review.

However, it can be seen from the judgments of the Court that it has dealt fully not only with questions of law but also with those of fact in actions concerning competition. The complex nature of any dispute involving economic analyses inevitably increases the Court's workload. The Commission therefore favours the introduction of a two-tier system of judicial review: a court of first instance dealing with questions both of fact and of law, the court of second instance merely re-examining questions of law. The Court itself, moreover, made such a suggestion in 1978. The Commission believes that in future this reform would be the most appropriate way of improving all administrative and legal procedures relating to competition cases.

While endeavouring to maintain a balance between undertakings' individual interest as regards their rights of defence and the general interest in efficacious application of the competition rules, the Commission has taken certain practical steps to reinforce the objectiveness of its procedures, notably by making them more transparent. These measures concern investigations carried out at undertakings, access to the Commission's files and proceedings at oral hearings.

1 — Procedures during inspections

17. Undertakings regard the inspections which the Commission is empowered to undertake under Article 14 of Regulation No 17 as serious interference in their private sphere of activity. For this reason the Commission intends, within the context of the existing rules, to improve understanding of its action in this connection by assuring firms that the exercise of these powers is strictly lawful, by specifying the scope of their legitimate rights and by guaranteeing that the information thus obtained will be utilized objectively.
18. The purpose of inspections is therefore now defined more precisely than in the past. The degree of precision naturally depends in each case on the value of the information already in the Commission’s possession and the stage reached in its enquiries.

This applies both to inspections carried out on the basis of an authorization, in accordance with Article 14(2) of Regulation No 17 and also to those carried out on the basis of a formal Commission decision under Article 14(3). Undertakings are thus better able to check for themselves that the information requested is strictly relevant to the object of the inspections and that it is used only for the purpose for which it was requested.

19. The Commission’s officials responsible for carrying out inspections have also been instructed to inform the firm concerned of the scope and limits of their powers under Article 14 of Regulation No 17 and of its right to consult its legal advisers. Such consultation may not, however, unduly delay the investigation or impede its progress.

20. Finally, with the view to objectiveness, the relevant facts uncovered during inspections whether favourable or unfavourable to the undertakings concerned, are assembled in the report on the inspections and taken into consideration when the Commission decides on its course of action. Since the time available to carry out inspections is inevitably limited, the Commission does, of course, rely on the undertakings concerned to draw its attention to favourable factors which it might not come across.

21. A number of difficulties stem from the fact that Community competition law has no specific rule on ‘legal professional privilege’. The Commission does recognize this principle. It accepts that in practice documents seeking or giving legal advice on competition rules or on the defence of a company will not be used as evidence in establishing infringements of the competition rules.\(^1\) The officials authorized by the Commission to carry out inspections have been instructed not to take copies of these documents. Nevertheless, the Commission believes that, subject to review by the Court of Justice, it has the right to decide whether certain documents fall into this category. The Commission is now awaiting the decision of the Court in Case 155/79 AM & S (Europe) Ltd v Commission.

\(^1\) Answer to Written Question No 63/78 by Mr Cousté: OJ C 188, 7.8.1978.
2 — Access to the Commission's files

22. The right of firms to be heard before any decision is taken against them is guaranteed by the forwarding of the statement of objections and the opportunity of replying in writing and, if necessary, orally.

23. In accordance with the case law of the Court\(^1\) the statement of objections may be restricted to a brief, but clear, description of the facts on which the Commission bases its case, provided that it supplies, in the course of the administrative procedure, the details necessary to the defence. The Commission is not obliged to send the firms concerned all the documents on which its arguments are based; it is sufficient to forward only the documents concerning the essential facts.

The Commission accordingly already gives undertakings the opportunity of commenting on all documents and all factual information which the Commission puts forward against them in its statement of objections. In cases where firms submit a request, justified by the need for a better understanding of the file, the Commission does allow them to inspect the documents themselves. The Commission also consistently informs the firms concerned, in so far as possible, of the relevant part of formal complaints.

24. The Commission is even considering going beyond the requirements laid down by the Court and allowing, in principle, firms involved in a procedure to have access to the file on the particular case. However, any such inspection is limited by the Commission's obligation to refrain from disclosing business secrets to other companies and the need to preserve the confidential nature of the Commission's internal or working documents.

25. A particular problem arises in cases where the Commission wishes to rely as against one undertaking on a document containing business secrets of another undertaking, where this latter will not release the Commission from its obligation to preserve the confidentiality of the document. Such conflicts can be solved only on a case-by-case basis. One solution the Commission has already used is to send the firm concerned a non-confidential summary of the document. It is examining other possibilities, such as inspection of the documents in question by an accountant or a 'fiduciary' ("société fiduciaire").

3 — Oral Hearings

26. The Commission’s administrative procedure takes place mainly in writing and this must remain so on account of the complicated nature of the cases it examines. The oral hearing is the place to clarify certain matters which have not been settled during the written procedure and to emphasize the main lines of the case.

The Commission recognizes the need to make sure that the hearing is properly prepared and particularly that questions of fact are clarified in so far as possible. It already customarily supplies firms in advance with a list of questions on which it wishes them to outline their points of view.

The Commission is also considering making certain changes to proceedings at the actual hearings. Although the Commission has no reason to believe that they are not conducted fairly at present it intends to emphasize the objectivity of the hearing. With this in mind it envisages appointing hearings officers, duly authorized to chair hearings, vested with genuine autonomy and the right of direct access to the responsible Member of the Commission. This would provide an even better guarantee that the Commission, when stating its views on an individual case as a decision-making authority, would be fully informed of all features of the case whether favourable or unfavourable to the undertakings.

27. It must, however, be kept in mind that the Commission’s procedure relating to restrictive practices and abuse of a dominant position is administrative and not judicial; it must not be turned into a trial.

This is a factor to which the Commission has regard when it has to examine proposals for introducing into its procedure an independent person, who would play a decisive role from the commencement of the proceedings right up to adoption of the final decision.

Mention has been made in some interested quarters of the introduction of administrative law judges who are autonomous and are appointed in particular to the Federal Trade Commission (FTC) and who in the United States hold, like the Commission, powers of investigation and decision in the field of competition. These administrative law judges are themselves empowered to carry out investigations and ut forward decisions to the FTC. The introduction of such an authority which, moreover, does not seem to have proved fully satisfactory, at any rate in the competition field, in the United States, does not seem compatible with the institutional scheme of the Treaty. In addition, it could well make procedures in individual cases even more complicated and prolonged.

1 See case law of the Court, recently reiterated in the abovementioned Fedetab case; Tenth Report on Competition Policy, point 49.
Parliament\(^1\) has proposed the possible appointment by the Court or by the Commission of persons independent of the Directorate-General for Competition who would take part in investigations and deal with certain procedural problems. Although to a lesser degree, this solution raises many of the same problems as administrative law judges, while it would still not completely attain the goal of providing substantial additional guarantees of the right of defence.

**Conclusion**

28. The Commission considers that the practical steps outlined above can be expected to make a substantial improvement to its decision-making process and allay to a great extent the concern expressed in interested economic and legal circles. Only the passage of time will tell, however, whether the reforms which have been introduced will provide an adequate, completely satisfactory solution in practice. The Commission intends to put them to the test before reconsidering the whole matter again.

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\(^1\) Point 41 of the Resolution on the Tenth Report on Competition Policy; point 166 of this Report.
§ 5 — Application of the competition rules to small and medium-sized enterprises

29. Because they are a cornerstone of the industrial and commercial structure of the Community and a major source of innovation and jobs, small and medium-sized enterprises (SME) have a crucial role to play, especially in the current recession. As a result, they are the subject of attention from and concern to numerous bodies at national, Community and international level. As a contribution to its continuing dialogue with Parliament on this matter, the Commission sent to it, at the end of 1980, a communication taking stock of what is being done in the Community to help small and medium-sized enterprises and proposing certain measures. Also the Commission emphasized and developed the important role of SME, cooperatives and local initiatives in its Communication to the Council pursuant to the 30 May 1980 Mandate entitled 'Job creation: Priorities for Community Action'.

30. During talks with the Commission, the representatives of SME, in support of their efforts to obtain easier access to the internal market of the Community, called in particular for the abolition of the administrative, technical and tax obstacles and of the other non-tariff barriers, improved access to financial instruments such as the Social Fund and the Regional Fund and an adjustment of their social security contributions. Although competition policy cannot achieve such objectives alone, its role as it affects SME is far from negligible. To the extent that it really makes it possible to maintain or re-establish a competitive structure, competition policy helps create a legal and economic environment in which SME can compete, if not on equal terms, at least with the maximum chance of success, with large firms, both private and public, national and multinational, operating in the same market.

31. It is with this in mind that, in implementing the competition rules as they apply both to undertakings and to action taken by Member States, the Commission has not hesitated to resort, with a view to strengthening the competitive capacity of SME, to two types of measures provided for in the Treaty:

(i) The Commission considers, that very many agreements to which such undertakings are parties are not caught by the prohibition on restrictive practices.

1 For example, the Council of Europe adopted on 3.7.1980 Recommendation 895 on the future of small and medium-sized businesses in Europe.
2 COM(80)726 final. This report was the subject of a resolution by Parliament (adopted on 19.2.1982) based on a report by its Committee on Economic and Monetary Affairs (rapporteur Mr Deleau).
3 COM(81) 638 final.
4 For a detailed description of the general and specific measures taken to assist SME, see the Seventh Report on Competition Policy, points 21 to 26.
5 Points 244 and 245 of this Report.
Thus agreements entered into by undertakings whose market share and turn-over are below a certain threshold are considered not to be capable of having an appreciable impact on competition or intra-Community trade. Certain types of agreement which are particularly advantageous to SME, whether they involve joint market studies, the pooling of statistics, research and development, joint advertising or a form of cooperation of fundamental importance to SME, namely subcontracting, are also considered not to have, in themselves, restrictive effects.

(ii) The Commission makes liberal use, in favour of small SME, of its power to grant exemption from the prohibition on restrictive practices, by means of both individual decisions and measures having general scope, to certain forms of cooperation which have the effect of improving production or distribution. In addition to a large number of individual decisions, the Commission has drawn up or prepared several general measures. Two regulations concern agreements between undertakings which are at different economic levels: the rules on exclusive dealing agreements enable small and medium-sized producers to set up effective sales networks in other Member States and allow small and medium-sized dealers access to foreign manufacturers' products. The regulation being prepared on patent licensing agreements should enable SME in particular to obtain access to the new technologies and to ensure the exploitation of their own inventions.

In both cases, the Commission intends to take account of the specific needs of SME by accepting certain major restrictions for them alone, namely greater territorial protection for licensing agreements and exclusivity between competing producers in the case of non-reciprocal dealing agreements.

Another regulation concerns agreements between undertakings at the same economic level: this is the regulation on specialization, which is specifically designed to enable SME, by concentrating on the manufacture of a limited number of products, to achieve economies of scale under conditions comparable to those of large firms.

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3 Commission notice concerning its assessment of certain subcontracting agreements, OJ C 1, 3.1.1979, p. 2.
4 Commission Regulation No 67/67/ECC of 22.3.1967 on the application of Article 85(3) of the Treaty to certain categories of exclusive dealing agreements, OJ 57, 25.3.1967, p. 849. See also points 7 to 9 of this Report.
5 Proposal for a regulation exempting certain categories of patent licensing agreements, OJ C 58, 3.3.1979. See also the Ninth Report on Competition Policy, point 7, and the Tenth Report on Competition Policy, point 6.
32. In determining the various quantitative criteria, expressed in terms of turnover and market shares, which in general provisions, notices and regulations define the concept of SME, the Commission takes account each time of the economic context peculiar to the field in question. It adjusts these criteria, moreover, in line with economic change.

33. In so far as they are consumers of numerous products or services supplied by other firms, especially large firms, SME also benefit indirectly from the Commission's unremitting opposition to the most serious restrictive practices, such as price-fixing agreements, quota agreements or agreements protecting national markets.

Similarly, where they depend for their growth, if not their survival, on the behaviour of undertakings in a dominant position, SME also benefit from action by the Commission to put an end to abusive practices such as discriminatory pricing, refusals to sell, or attempts to maintain a dominant position by various ploys designed to retain customers (fidelity rebates, differential discounts, etc.).

Lastly, if the Commission should, at long last, succeed in its attempt to acquire an instrument for the control of large-scale mergers at Community level this should also make it possible to prevent excessive structural changes from suddenly occurring in certain sectors to the detriment of SME.¹

¹ See also point 13 of this Report.
§ 6 — Application of the competition rules to non-Community undertakings

1 — General remarks

34. The EEC Treaty’s rules on competition apply to restrictive or abusive practices by undertakings situated in non-member countries where their conduct has an appreciable impact within the common market.

35. The Commission was one of the first antitrust authorities to have applied the internal effect theory to foreign companies, both to their advantage and to their detriment. Putting the theory into practice can, it is true, have repercussions outside the Community: but that is not a reason for regarding it as an inadmissible exercise of extra-territorial jurisdiction. To assert the contrary would be tantamount to preventing public or judicial authorities from effectively dealing with competition cases falling within their jurisdiction.

The Court of Justice held in *Béguelin v G. L. Import Export* : ‘The fact that one of the undertakings which are parties to the agreement is situated in a third country does not prevent application of that provision since the agreement is operative on the territory of the common market.’.

The *Béguelin* case does not, however, constitute a strict application of the internal effect theory, since one of the parties to the exclusive dealing agreement in question concluded between *Béguelin* (Belgium-France) and *Oshawa* (Japan) for the sale of pocket cigarette-lighters was established in the Community. In all the cases with which the Commission and the Court of Justice have so far dealt, there has been a link with the Community in the form of subsidiaries or contracting parties situated in the common market.

36. As a result of the large economic area which the common market represents for the Commission’s investigations into anti-competitive practices and the importance attached by large international companies to the establishment there of manufacturing or marketing subsidiaries, the Commission finds as a rule a substantive connection with, and even active participation in such practices within, the Community for the purpose of pursuing forms of behaviour of external origin. In the light of the questions of procedure or degree of responsibility arising in indivi-
dual cases, the Commission and the Court have developed, alongside the effect theory, the concept of the imputation of behaviour of a subsidiary to its parent and the economic entity theory for structured groups of undertakings. These concepts come into play in particular where subsidiaries in the common market act on instructions from a decision-making centre located abroad.

37. The openness of the common market and its close involvement in international trade are strong incentives for the Community to support and actively contribute to the efforts being made at world level to gain acceptance, establishment and respect of equitable rules for controlling restrictive trade practices prejudicial to international trade. It is obvious, however, that the territorial application of competition law to internationally operative restrictive practices poses problems related to the sovereignty of non-Community countries. This is so, for example, in the case of the notification of procedural steps and decisions which occur in other countries. The very logic of the growth of world trade and the bringing into force of international codes which, even if they are not compulsory, will have consequences for the exercise in competition matters of the sovereignty of the countries concerned mean that any difficulties which arise must be solved while bearing in mind the overriding need for the relevant national or regional authorities to ensure compliance with their rules on competition. This requirement does not, however, necessarily imply that truly important and harmful effects occurring abroad may not be taken into account whenever possible in the assessment of a specific case. Active cooperation between the authorities concerned should iron out certain difficulties and at the same time help maintain fair competition in the interests of the continuing growth of international trade.

2 — Application to multinational undertakings

38. The administrative practice of the Commission, as confirmed by the judgments of the Court of Justice, has established a number of principles governing fair conduct with which business circles are now conversant and which apply fully, uniformly and in a non-discriminatory manner to all undertakings or groups of undertakings operating within the common market. Out of some 160 substantive decisions taken to date by the Commission, more than a third concern undertakings known as 'multinationals', of both European and foreign origin. This section deals principally with decisions concerning foreign multinationals, since undertakings of Community origin have no particular features that would distinguish them from other European undertakings for the purposes of competition law.

1 See points 160 and 161 of this Report.
Foreign multinationals have benefited from negative clearance decisions declaring the prohibition on restrictive practices laid down in Article 85(1) to be inapplicable. The best-known case is that of the Kodak decision concerning standardized general conditions of sale for the whole common market. Multinationals have also obtained derogations from that prohibition in accordance with Article 85(3). Examples of this are Colgate-Palmolive in respect of research and development in collaboration with Henkel, and de Laval International, controlled by Transamerica Corporation, in respect of the formation of a joint venture with the Dutch company Stork.

Prohibitions pursuant to Article 85(1) have affected, inter alia, Giba-Geigy, Sandoz and ICI in respect of concerted price-fixing practices; Pittsburgh Corning Europe in respect of a concerted discriminatory pricing practice; W.E.A. Fillipacchi Music SA, 51% of which is owned by Warner Brothers Inc., and Miller International, a subsidiary of MCA Records Inc., for imposing in both cases on record retailers export bans to other Member States: Kawasaki, Pioneer and Johnson & Johnson for preventing their retailers from making deliveries from common market countries where their products were sold cheaply to countries with higher prices.

Lastly, multinational undertakings have been subject to the prohibition on the abuse of a dominant position. The Commission considered that Continental Can Company, through its subsidiary Euro-emballage Corporation, had abused its dominant position by acquiring a company which was the largest manufacturer of metal containers in the Benelux countries. It also found Commercial Solvents Corporation guilty of an abusive practice because its subsidiary in Italy stopped supplying an Italian pharmaceuticals company with raw materials, in which the American company has a world-wide monopoly, needed for the manufacture of a medicinal product intended for the treatment of tuberculosis. United Brands Company was found guilty of refusing to sell, and discriminatory pricing practice regarding, its Chiquita brand bananas. Finally, Hoffmann-La
Roche was proceeded against in respect of the exclusive or preferential supply agreements it had concluded with several major purchasers of vitamins in bulk, themselves for the most part multinational groups, which thus covered their total world requirements.

42. Until now the Commission has not experienced any particular difficulties in applying the competition rules to multinationals. Clearly, it is not as a rule applications for negative clearance or notifications with a view of obtaining exemption under Article 85 (3) which give rise to problems, but proceedings which can lead to the imposition of a fine or prohibition. The fact that the Commission now pursues a policy of imposing heavy financial penalties in cases of flagrant infringement of Treaty provisions might increase the difficulties which can result from the involvement of undertakings situated outside the Community in the implementation of the competition rules within the common market. Although Article 15 (4) of Regulation No 17 stipulates that they are not of a criminal law nature, the fines are now large enough to prompt the undertakings concerned to deploy, more than in the past, every means of defence open to them, including arguments derived from the so-called extraterritoriality of the jurisdiction the Commission is exercising. It is nevertheless now firmly established in Community case law that it is no defence for an undertaking seeking to evade the jurisdiction of Community authorities to argue, first, that the allegedly unlawful conduct of a subsidiary in the common market cannot be imputed to the foreign parent company because of the separate legal personality of the subsidiary, and, secondly, that since the subsidiary is not economically independent, the proceedings against the foreign parent company and its subsidiary in the common market constitute an inadmissible extraterritorial application of Community competition law.

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§ 7 — Application of the competition rules to specific sectors

1 — Policy on steel prices

43. The increases in steel prices in 1981 and those planned for 1982 have given cause for concern in certain quarters, particularly among consumers, because the increases allegedly result from price-fixing agreements prohibited under Article 65 of the ECSC Treaty.

It must be pointed out, however, that since 1974 steel prices in the Community have lagged far behind production costs and the prices of manufactured goods in general. This has meant that, for a number of years, the majority of Community steel producers have been unable to cover their costs and have not been able to finance restructuring measures. Consuming undertakings, however, have been encouraged to calculate their costs on the basis of artificially low prices which were not sustainable in the long term.

44. The Commission considers, therefore, that the situation must be normalized so that the Community iron and steel industry can restore profitable price levels in accordance with Article 3(c) of the ECSC Treaty. To this end, it has taken two sets of measures:

(i) It has established a better quantitative balance between supply and demand in the Community by means of a system of voluntary supply commitments and compulsory quotas; and
(ii) It has tried to ensure that producers reinforce the results expected from this corrective action by means of a well-ordered pricing policy.

For example—on the strength of a study of the costs of a steel undertaking of average competitiveness and after consulting producers, dealers and consumers—the Commission, in a communication based on Article 46 of the ECSC Treaty and published in the Official Journal, called upon Community steel undertakings to decide on certain price rises with effect from 1 January 1982. In the Commission’s view, further, smaller increases, on which it will express its opinion in the same way, should be introduced in 1982.

45. The Commission does not tolerate, therefore, unlawful ‘price-fixing agreements’, but, pursuant to the tasks entrusted to it under the ECSC Treaty, plays an active role in the fields of prices with due regard for the interests of all the parties concerned.

2 — *Man-made fibres*

46. In the Community man-made fibres sector there is surplus production capacity of major proportions, arising from the difficulties which the European textile and clothing industry has been experiencing for a number of years. In 1978, to cope with this situation, the leading European producers of man-made fibres, Fabelta, Rhône-Poulenc, ANIC, Montedison, Società Italiana Resine (SIR), SNIA Viscosa, Akzo-Enka, Bayer, Hoechst, Courtaulds and ICI, notified to the Commission, under Article 85(3) of the Treaty, an agreement providing for a cutback in capacity according to a predetermined plan. This included production and sales quota measures which the Commission rejected.\(^1\)

The Commission considers that, although it restricts competition between the signatories, an agreement which merely reduces excess production capacity can be exempted under Article 85(3) only if the undertakings do not, at the same time, fix prices, production or sales—whether by agreement or by means of concerted practices. ‘Structural crisis cartels’ which provide for participation by at least a majority of the undertakings in the sector concerned, compliance with a strict code of internal discipline covering all the economic activities of its members and protection against competition by outsiders in order to prevent the agreement from collapsing prematurely are incompatible with the conditions for exemption provided for in Article 85(3), and in particular that contained in subparagraph (b), which prohibits agreements affording the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

47. The Commission’s position induced the undertakings concerned to amend the notified agreement by deleting with immediate effect all the provisions concerning the commercial conduct of the signatories and replacing them with an undertaking by the non-Italian signatories that they would individually make certain purchases from the Italian signatories. The Commission agreed, however, to sales by one producer to another, which are not in themselves unlawful, only on condition that they did not constitute concerted action by the producers concerned, as this would be contrary to Article 85.

48. At the end of 1981, the signatories to the agreement notified a further amendment which provided, firstly, for the annulment of the undertaking relating to purchases between producers and, secondly, for a six-months extension until 30 June 1982 of the basic notified agreement, the Commission having expressed opposition to the planned extension of one year. According to the parties concerned, this additional period should give them time to draw up and notify a new agreement, which is necessary because there is still considerable surplus capacity

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\(^1\) Eighth Report on Competition Policy, point 42.
in the common market. In view of the successive amendments to the initial agreement and the prospect of a fresh notification in the near future, the Commission will, as soon as it receives notification of the new agreement, have to take a decision on the matter in the light of a comprehensive assessment of the development of the situation since the beginning of the procedure.
Chapter II

Main cases decided by the Court of Justice

49. The points of law established by the Court of Justice in 1981 as regards the object matter covered by this report mainly concerned the application of the competition rules to banking and agricultural cooperatives, the interpretation of various concepts in Article 85(1) and (3) and firms’ legal protection with respect to the Commission’s procedural acts. In addition it dealt with the relations between, on the one hand, national laws on industrial and commercial property and on the other hand, the Community rules on the free movement of goods.

§ 1 — Practices caught by Article 85

Rennet


In its Decision the Commission found that the exclusive purchasing obligation imposed under the Coöperatieve’s rules on its members and also the provisions concerning payment of a certain sum in the event of infringement of that obligation, of resignation or of expulsion from the Coöperative, constituted infringements of Article 85(1) of the Treaty and did not qualify for exemption under Article 85(3).

51. The Court upheld the Commission’s finding that the object of the rules in question was clearly to prevent members from obtaining supplies from other suppliers of rennet and colouring agents, or from making them themselves, if in so doing they obtained better quality or prices.


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The rules were thus apt to prevent competition in the supply of rennet and colouring agents for cheese and also tended to preclude potential competition on the entire market in these ancillary substances, which are indispensable in the making of cheese.

These obligations were also liable to affect trade between Member States by reinforcing the isolation of the Dutch market.

52. The Court also shared the Commission’s view that on account of the economic importance of the Coöperatieve, which holds a virtual monopoly in the Netherlands in the production of rennet (100%) and of colouring agents for cheese (90%) and whose members account for more than 90% of cheese output in the country, the restrictive clauses could not qualify for exemption under Article 85(3). The obligations went beyond what is necessary for attaining the advantages ensuing from the Coöperatieve’s joint production and also enabled its members to eliminate competition in respect of a substantial part of the relevant market.

53. The exemption provided in Regulation No 26/62 for cooperation agreements in agriculture did not apply to this case. Rennet does not appear among the products listed in Annex II to the EEC Treaty. The Court rejected the Coöperatieve’s argument that Regulation No 26/62 is applicable to a product not listed in Annex II if it is a substance (rennet) ancillary to the production of another product which itself is listed (cheese).

54. However, the Court stated that its ruling in this case had no general bearing on typical farming cooperatives, even where they impose an exclusive supply obligation or an obligation to pay a severance fee. Such obligations may be indispensable if certain cooperatives are to be set up with reasonable chances of success. But when, as in the case at issue, they contribute to reinforcing a quasi-monopoly, they cannot be exempted under Article 85(3).

Salonia

55. In its judgment of 16 June 1981 concerning a reference for a preliminary ruling from the Tribunale Civile of Ragusa, Italy, the Court answered several questions relating to the compatibility with Articles 85 and 86 of the Treaty of a national selective distribution system for newspapers and periodicals.

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56. As regards the effect on trade between Member States, reiterating its ruling on national price agreements, the Court held that a selective distribution system which extends throughout the territory of a Member State may by its very nature have the effect of reinforcing the partitioning of the market on a national basis, thereby impeding the economic interpenetration which the Treaty is designed to bring about and protecting national production.

Although it was true in this case that the sole subject-matter of the agreement in question was the distribution of national newspapers and periodicals and that it was not concerned with foreign newspapers and periodicals, the fact remains that a closed-circuit distribution system applying to most of the sales outlets for newspapers and periodicals on national territory may also have repercussions on newspapers and periodicals from other Member States. The significant factor in determining an appreciable effect on intra-Community trade is whether newspapers and periodicals from other Member States may be sold through other channels of distribution and whether termination of the contested agreement would alter demand for these products.

57. Confirming its previous case law the Court stated, however, that a selective distribution clause restricting the supply of the products concerned to approved licence-holders alone infringes neither Article 85(1) nor Article 86 of the Treaty if it appears that the authorized retailers are selected on the basis of objective criteria relating to the capacity of the retailer and his staff and the suitability of his trading premises in connexion with the requirements for the distribution of the product, and that such criteria are laid down uniformly for all potential retailers and are not applied in a discriminatory fashion.

58. As to possible application of Article 85(3) the Court agreed with the Commission that an individual exemption decision had to be ruled out as the agreement had not been notified. Furthermore, the agreement did not qualify for the block exemption in Regulation No 67/67/EEC, since this applied only to agreements to which two undertakings are a party. This test was not satisfied since the agreement had been concluded between two associations (publishers and newspaper retailers), both of which had a large membership.

1 Case 8/72 VCH [1972] ECR 977.
Züchner

59. Giving judgment on 14 July 1981 the Court confirmed that the rules of competition are applicable to the banking sector. The case concerned the question of whether the debiting by German banks of a general service charge from their customers' accounts on sums transferred from one Member State to another constitutes a concerted practice contrary to Article 85(1) of the EEC Treaty.

The bank in question maintained that by reason of the special nature of the services provided by banks and the vital role which they play in transfers of capital they must be considered as undertakings ‘entrusted with the operation of services of general economic interest’ within the meaning of Article 90(2) of the Treaty and thus are not subject, pursuant to that provision, to the rules on competition in Articles 85 and 86 of the Treaty. It also relied in support of its arguments on the provisions in Article 104 et seq. of the Treaty concerning ‘economic policy’.

The Court dismissed both these arguments: although the transfer of customers’ funds from one Member State to another normally performed by banks is an operation which falls within the special task of banks, the Court held that that is not sufficient to make them undertakings within the meaning of Article 90(2) of the Treaty. They could only be classified as such if it could be established that in performing such transfers the banks are operating a service of general economic interest with which they have been entrusted by a measure adopted by the public authorities.2

As to Article 104 et seq. of the Treaty, the Court pointed out that those provisions are restricted to stipulating that there must be coordination between the Member States on economic policy; in no way do they exempt banks from the competition rules of the Treaty.

60. As far as the application of Article 85(1) to concerted practices between banks is concerned, the Court first recalled its judgments in the Dyestuffs3 and Sugar4 cases in which it defined the concept of concerted practice and distinguished between such a practice and parallel autonomous behaviour.

Turning to the case in question the Court stated that the practice consisting in the levying by all banks in the Federal Republic of Germany of a uniform 0.15% service charge for transfers of sums of a similar amount to other Member States, even where justified on account of the costs involved in foreign transfers and only representing partial reimbursement of such costs, could constitute a concerted

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1 Case 172/80 Züchner v Bayerische Vereinsbank [1981] ECR, not yet reported.
3 Case 48/69 Imperial Chemical Industries [1972] ECR 619.
practice within the meaning of Article 85. Consideration must therefore be given to whether between banks behaving in a parallel manner there are contacts, or, at least, exchanges of information on the subject of, *inter alia*, the rate of the charges actually imposed for comparable transfers which have been carried out or are planned for the future and whether, taking into account the conditions of the market in question, the rate of charge uniformly imposed is no different from that which would have resulted from the free play of competition.

Such a practice is capable, precisely because of the fact that it covers international transactions, of affecting ‘trade between Member States’ within the meaning of Article 85, the concept of ‘trade’ used in that Article having a wide scope which includes monetary transactions. It would appreciably affect competition if it deprived the banks’ customers of any genuine opportunity to take advantage of services on more favourable terms which would be offered to them under normal conditions of competition. This is a question of substance which must be decided by the national court, notably in the light of the number and importance in the market of the banks taking part, and the volume of transfers on which the charge in question is imposed as compared with the total volume of transfers made by the banks from one Member State to another.

61. The Court’s decision confirms the approach which the Commission has consistently adopted. It makes it clear that the banking sector is only exempted from the competition rules to the extent that any anti-competitive conduct by banks is imposed on them by the monetary authorities.

The Court has thus cleared up any remaining doubts about private-sector agreements and concerted practices in relation to interest rates, charges, commissions and terms for transactions, whether or not they depend on monetary policy. Where their effects extend beyond national boundaries, they must be notified to the Commission with a view to possible exemption under Article 85(3).

§ 2 — Procedural matters

*IBM*

62. By its judgment of 11 November 1981 the Court of Justice dismissed as inadmissible the application made by International Business Machines (IBM) for

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1 Second Report on Competition Policy, point 51; Eighth Report on Competition Policy, point 32.
2 Case 60/81 [1981] ECR, not yet reported; IBM’s application for suspension of the Commission’s administrative procedure as an interim measure was dismissed by the President of the Court; Joined Cases 60/81R and 190/81R [1981] ECR, not yet reported.
annulment of the Commission's decision to initiate infringement proceedings under Article 86 of the EEC Treaty and of the statement of objections appertaining thereto.

The Court, which shared in full the Commission's view, stated that the two acts could not be challenged in an action for a declaration that they were void under Article 173 of the EEC Treaty since they were merely intermediate steps taken for the sole purpose of preparing the Commission's final decision. If the Court were to admit such an action it might have to arrive at a decision on questions on which the Commission had not yet had an opportunity to state its definitive position and would as a result anticipate the arguments on the substance of the case, confusing different stages of the administrative and judicial procedures. It would thus be incompatible with the system of the division of powers between the Commission and the Court and of the remedies laid down by the Treaty, as well as the requirements of the sound administration of justice and the proper course of the administrative procedure to be followed by the Commission.

Adequate legal protection is guaranteed by the fact that undertakings may use the judicial review procedure to challenge the Commission's final decision and it is then permissible for them to advance all the appropriate arguments. It is then for the Court to decide whether anything unlawful has been done in the course of the administrative procedure and if so whether it is such as to affect the legality of the decision taken by the Commission on the conclusion of the administrative procedure.

§ 3 — Industrial and commercial property

63. Four rulings on references concerning interpretation of Articles 30 and 36 of the EEC Treaty, from the Bundesgerichtshof (Federal German Supreme Court),\(^1\) the Højesteret (Supreme Court of Denmark),\(^2\) the Arrondissmentsrechtshof (District Court), of Rotterdam\(^3\) and the Landgericht (Regional Court), Hamburg,\(^4\) gave the Court of Justice the opportunity to throw new light on the concept of the exhaustion of industrial and commercial property rights, a general principle of Community law which was established in previous cases.\(^5\)

\(^3\) Case 187/80 Merck v Stephar and Exler [1981] ECR, not yet reported.
\(^4\) Case 1/81 Pfizer v Eurim-Pharm [1981] ECR, not yet reported.
64. The Membran K-tel case involved the question of whether the owner of the copyright of musical works reproduced on grammophone records, or a company managing such rights, may claim from the parallel importer payment of a fee equal to the royalties ordinarily paid for marketing on the national market less the lower royalties paid in the Member State where the records were put into circulation by the copyright owner or with his consent. The answer is no.

Further developing its case law the Court first emphasized that sound recordings, even if incorporating protected musical works, are products to which the system of free movement of goods applies. It follows that, by virtue of Articles 30 and 36 of the Treaty, the owner of an exclusive right to manufacture grammophone records pursuant to the law of a Member State cannot rely on that law to prevent the importation of a product which has been lawfully marketed in another Member State by the owner himself or with his consent. In this regard there is no reason to make a distinction between copyright and other industrial and commercial property rights.

With reference to this particular case the Court also held that the collection of a fee for products already in free circulation in the common market is tantamount to an unlawful restriction on imports, for its effect would be to further segregate national markets whereas the Treaty aims to dismantle such barriers. It could not sanction payment of an additional fee for the sole purpose of offsetting price disparities resulting from different economic situations in the Member States and thus eliminating the advantage accruing to the importers of sound recordings from the establishment of the common market.

65. The Merck case concerned the same approach to patent rights. If the owner of a patent decides to market his product in a Member State where the law does not provide patent protection for the product in question he must accept the consequences of his choice as regards the free movement of the product within the common market. In that case he may not prevent the importation of this product into another Member State where he holds a patent. The Court's ruling represents a significant development in relation to the Parke, Davis case.

66. The question that arose in the Dansk Supermarked case was whether goods which have been lawfully marketed in one Member State with the consent of the undertaking which is entitled to sell them may be precluded, under an agreement concluded between that undertaking and the manufacturer, from marketing in another Member State either on the basis of national provisions on the protection of

1 Deutsche Grammophon Gesellschaft. Case cited supra.
2 In the light of this judgment GEMA, which deals with the exploitation of copyright in Germany, gave an undertaking that it would no longer collect an additional fee on sound recordings imported from other Member States, see Bull. EC 3-1981, point 2.1.25.
3 Case 24/67 [1968] ECR 55; First Report on Competition Policy, point 60.
copyright or trade marks or under legislation on fair marketing practices: the Court held not.

Confirming its judgment in the Béguelin case,\(^1\) it stated that the actual fact of the importation of goods which have been lawfully marketed in another Member State cannot be considered as an improper or unfair act since that description may be attached only to offer or exposure for sale on the basis of circumstances distinct from the importation itself. Furthermore, it remarked that it is impossible in any circumstances for agreements between individuals to derogate from the mandatory provisions of the Treaty on the free movement of goods. An agreement prohibiting the importation of these goods could therefore not be relied upon or taken into consideration in order to classify the marketing of such goods as an improper or unfair commercial practice.

67. The Court has dealt with the scope of trade mark law many times\(^2\) and further clarified its views in the *Pfizer* judgment. It held that the proprietor of a trade mark right may not rely on that right to prevent an importer from marketing a pharmaceutical product manufactured in another Member State by the subsidiary of the proprietor and bearing latter's trade mark with his consent, where the importer, in repacking the product, confined himself to replacing the external wrapping without touching the internal packaging and made the trade mark affixed by the manufacturer to the internal packaging visible through the new external wrapping, at the same time clearly indicating on the external wrapping that the product was manufactured by the subsidiary of the proprietor and repackaged by the importer.

68. The Court's recent decisions in the field of industrial and commercial property constitute not only a major step forward towards the attainment of a genuine unified market, but also put the Commission in a position to perform properly its task of applying Articles 85 and 86 in cases where, by means of restrictive practices or abuse of a dominant position, firms use their exclusive rights to divide up or seal off national markets.

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\(^1\) Case 22/71 [1971] ECR 949.

\(^2\) *Centrafarm v Winthrop, Hoffmann-La Roche v Centrafarm, Centrafarm v American Home Products*. Cases cited supra.
Chapter III

Main decisions and measures taken by the Commission

69. In 1981 the Commission took 11 decisions applying Articles 65 and 66 of the ECSC Treaty and 11 applying Articles 85 and 86 of the EEC Treaty. It also adopted 10 procedural decisions under Regulation No 17/62. The Commission attaches the utmost importance to market unity and to safeguarding the unimpeded flow of trade between Member States; in the main it continued to adopt a stringent approach in this connection, imposing heavy fines for various forms of restrictive or abusive agreements and practices aimed at isolating national markets. However, 121 cases were settled without a decision being taken because the agreements were brought into line with the rules of competition in the EEC Treaty, were terminated or expired. As in previous years most of these were distribution agreements, the cases generally being terminated after amendments were made to conform to the block exemption Regulation 67/67/EEC.

On 31 December there were in all 4,365 pending cases of which 3,882 were applications or notifications (185 made in 1981), 250 were complaints from firms (45 made in 1981) and 233 were proceedings on the Commission's own initiative (63 opened in 1981). Of the applications and notifications pending before the Commission 64% concerned licensing agreements, 25% concerned distribution agreements and 11% concerned horizontal agreements.

The cases pending before the Commission include an increasing percentage of licensing agreements, which highlights the value of the future block exemption Regulation for this type of agreement.¹

70. The Advisory Committee on Restrictive Practices and Dominant Positions, which has to be consulted prior to any decision that Articles 85 or 86 of the Treaty has been infringed, that gives a negative clearance, or that gives an

¹ Ninth Report on Competition Policy, point 7; Tenth Report on Competition Policy, point 6.
71. Taking further action against restrictive practices on the Italian glass market, the Commission established that agreements made in 1976 and 1977 between Italian flat glass wholesalers and processing firms through their associations—Istituto Sviluppo Vetro (ISVE), Associazione Vetro Italia Centrale (ASVIC), Associazione Meridionale Vetro in Lastre (AMVL)—and agreements between these associations and the major Italian manufacturers of flat glass—Fabbrica Pisana SpA (Pisa), a member of the Saint-Gobain group, Società Italiana Vetro, San Salvo (Chieti), a State-controlled company, and Vernante Pennitalia SpA, Cuneo—were incompatible with Article 85 of the EEC Treaty.\(^1\)

The three manufacturers concerned are major undertakings in the glass industry and between them they account for over 90% Italian flat glass production. The three associations include all the largest Italian flat glass wholesale and processing firms, which together control some 60% of the market.

The agreements, which were not notified, came to the attention of the Commission following investigations carried out in the Italian glass market.\(^2\) The agreements, which were abandoned towards the end of 1977, included the following particular restrictions:

(i) under the agreements between the wholesale and processing firms through their associations, the participants undertook to buy from Italian manufacturers only through the associations and on the basis of fixed quotas. Purchasing from foreign manufacturers was prohibited, except in exceptional circumstances. Products imported from State-trading countries had to be divided between participants following prior authorization from the associations, and there was an obligation to adopt and respect a compulsory common price list;

(ii) under the agreements between the associations and the manufacturers, sales quotas were imposed and the manufacturers were required to grant the mem-

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bers of the associations a differential discount in return for their dealing commitments.

72. These agreements were likely to cause a serious restriction of competition on the Italian flat glass market, both because of the nature of the restrictions involved and because of the participants' market share. However, the Commission did not impose fines in respect of these infringements because the firms in fact only partially implemented the agreements and then rapidly ceased to apply them.

Soda ash

73. In keeping with its guidelines for the assessment of exclusive purchasing agreements for compatibility with the rules of competition,' the Commission intervened to make soda ash producers amend their purchasing contracts within the Community.

74. During 1979 and 1980 the Commission investigated the Community market in soda ash and in particular its effect on the glass manufacturing industry. Glass manufacturers are the main purchasers of soda ash and in order to maintain their production they depend entirely on a continuous supply of large quantities of soda ash.

There are only a few suppliers of soda ash in the Community. The two most important producers by far are Solvay which has subsidiaries in most Member States and ICI in the United Kingdom. The others are Rhône-Poulenc in France, Akzo in the Netherlands and Matthes & Weber and C.F. Kalk in Germany but although they are all major companies none of them has a position in this field comparable to that of ICI and Solvay. In the light of overall consumption of soda ash in the EEC, imports from Eastern Europe and the United States are negligible.

The Commission's investigations showed that Solvay, along with the other Community soda ash producers, had entered into a number of long-term supply contracts with major clients on their respective domestic markets, most of whom were glass manufacturers. These contracts, which had often been concluded for five years or more, tied the glass manufacturers to one supplier only to the exclusion of all other sources, even for occasional or additional supplies.

The Commission has established on numerous occasions that the simultaneous existence of such contracts may foreclose competition in respect of a substantial part of the market for the products in question on the various national markets. In this particular case this might also stifle competition between glass manufacturers.

1 See notably Seventh Report on Competition Policy, points 9 to 16.
It did not appear that these restrictions of competition were of a nature that could qualify for exemption under Article 85(3) of the Treaty.

75. In view of the importance of Solvay and ICI in this field it was decided first to approach them with a view to changes in the commercial practices at issue.

When the Commission informed Solvay of its thinking on the matter the firm immediately declared its willingness to amend the contracts to make them compatible with the Community competition rules; it then proceeded to do so.

In future Solvay's contracts will not be exclusive. They will provide for supplies of fixed tonnages and will not normally exceed two years. The tonnages may be altered within certain limits according to the purchaser's need. These arrangements are intended to meet the glass manufacturers' expressed needs for secure, uninterrupted supplies and at the same time to enable other suppliers of soda ash to make competitive offers.

The changes will enable purchasers, notably the glass manufacturers, to seek substantial supplies from alternative sources, thus promoting competition between suppliers of soda ash and ultimately benefiting the consumer.

The Commission also approached ICI, with a view to obtaining a similar solution and the company amended its supply contracts to accommodate the Commission's views.

76. In view of the importance of this matter it seems necessary that the Commission will have to seek similar solutions with the other soda ash suppliers. It intends to follow closely developments in the market in order to ensure that the changes made do in fact restore conformity with the Community competition rules.

Joint restrictions on parallel imports

ANSEAU—NAVEWA

77. The Commission also adopted a Decision finding that the system of vetting washing-machines and dishwashers for compliance with Belgian pollution control standards constituted, in its present form, an infringement of Article 85(1). The system was based on an agreement concluded in December 1978 between the majority of washing-machine and dishwasher manufacturers and sole importers in Belgium and Association nationale des Services d'eau—Nationale Vereniging der

Waterleidingsbedrijven (ANSEAU-NAVEWA), a non-profitmaking body representing the local authority water supply companies.

Under this agreement compliance with the pollution control standards was attested by attaching labels to the machines which could only be obtained through manufacturers or sole importers. Where other importers were refused labels they had to have an individual inspection carried out, the cost of which was prohibitive in comparison with the selling price of the machines. This made parallel imports into Belgium very difficult, if not impossible.

The Commission established that the firms which took part in drawing up the agreements committed this infringement intentionally, being aware of the agreement’s anti-competitive object. The infringement was particularly serious in that it affected the whole of the Belgian market in washing-machines and dishwashers. The fact that ANSEAU-NAVEWA, which is responsible for quality control of the water supply, was a party to the agreement gave it binding force on third parties. For these reasons the Commission decided to impose fines on the offenders totalling 1 015 000 ECU in proportion to their degrees of responsibility and importance on the market.

78. This Decision demonstrates the Commission’s determination to censure any agreement establishing a system for the control of compliance with technical standards which, besides its declared aim, has the object or effect of restricting competition in a manner incompatible with Article 85.

Joint price-fixing agreement

**VBVB—VBBB**

79. Following protracted discussions with the parties, and having weighed up the interests at issue, the Commission adopted a Decision finding that the agreement entered into between Vereniging ter Bevordering van de Belangen des Boekhandels (VBBB), the Dutch Book Association, Amsterdam, and the Vereniging ter Bevordering van het Vlaamse Boekwezen (VBVB), the Flemish Book Association, Antwerp, was not compatible with Article 85 of the EEC Treaty.1

The great majority of publishers, wholesalers, booksellers and importers of Dutch-language books in the respective countries belong to the two associations. The

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agreement required in the main that the member publishers fixed retail selling prices and that the member dealers charged the prices and discounts fixed by the publishers, on both the domestic and import markets. The agreement also prohibited members of one association from selling books through intermediaries not belonging to the association in the other country.

The Commission takes the view that even in the book trade a joint system of cross-border resale price maintenance infringes Article 85(1) of the EEC Treaty¹ and cannot qualify for exemption under Article 85(3). Such a system eliminates all possible price competition between sellers of the same book and takes away the possibility of publishers and importers choosing not to impose resale prices in either of the two countries should they want to do so.

The Commission considers that a joint resale price maintenance system is not essential to publishers and booksellers to offset losses on sales of slow-moving titles against profits on bestsellers. Each publisher and bookseller must be free to decide whether such cross-subsidizing is necessary.

The Commission fully recognizes the fundamental role that books play as a cultural medium. It is also aware of the great importance of improving and diversifying distribution. Nevertheless, it is convinced that this aim can be achieved without imposing a system of joint exclusive dealing and joint vertical cross-border resale price maintenance.

80. Having taken account of a Resolution passed by the European Parliament on this matter,² the Commission gave the two associations four months to put an end to their agreement and asked them to submit proposals for introduction of a system compatible with rules of competition.³

81. The Commission has not by this Decision taken up a position on the resale price maintenance arrangements which each of these associations operates in its respective Member State.

¹ The Commission has adopted other decisions concerning price agreements in trade between Member States and its decisions have been confirmed by the Court of Justice.
³ VBVB has appealed to the Court of Justice against this Decision (Case 43/82) and also applied for interim measures to suspend implementation of the Decision (Case 43/82 R). VBVB has also appealed to the Court of Justice against the Decision (Case 63/82) and applied for interim measures to suspend implementation of the Decision (Case 63/82 R).
§ 2 — Article 85 applied to distribution

Export bans

Moët & Chandon

82. In line with the case law of the Court of Justice and its own decision-making practice which goes back more than fifteen years,\(^1\) the Commission considered that the imposition of an export ban in 1980 constituted a serious infringement of the provisions of the Treaty which warranted an appropriate fine.

The Commission therefore decided to impose a fine of 1 100 000 ECU on the French group, Moët-Hennessy, in respect of an export ban applied by its British subsidiary, Moët & Chandon (London) Ltd.\(^2\)

The Commission investigated this case following a complaint by a British wholesaler. On 1 January 1980 Moët & Chandon (London) Ltd had introduced terms of sale which included a clause forbidding resale outside the United Kingdom of the champagne it distributes; this clause was deleted on 21 October 1981.

Moët-Hennessy argued that the clause was included at a time of shortage of champagne and was aimed at ensuring that the limited quantities allocated to the United Kingdom would remain there and at preventing speculative buying for subsequent export.

The clause at issue did not qualify for exemption because it had not been notified to the Commission. In any event, however, the Commission took the view that such an obstacle to the free movement of goods could not be justified by the alleged shortage.

Hasselblad

83. In another case involving obstacles to intra-Community trade the Commission prohibited the distribution arrangements of Victor Hasselblad AB, the Swedish reflex-camera manufacturer and Hasselblad (GB) Ltd, its UK sole distributor, which is an independent company.\(^3\)


Following a complaint from a UK photographic retailer, Camera Care, it came to the Commission's notice that the Swedish manufacturer and its British distributor had taken steps, together with Hasselblad's sole distributors in Belgium, Denmark, France, Germany and Ireland, to prevent or to impede trade in Hasselblad equipment within the Community. Ancillary measures were introduced to support the partitioning-off of markets, the firms concerned set up a system of reciprocal checks on the serial numbers stamped on Hasselblad equipment and exchanged price lists and terms of sale in order to trace the sources of uncontrolled exports. In addition, Hasselblad (GB) Ltd discriminated in its warranty arrangements and after-sales service against Hasselblad equipment which it had not itself imported. The firm further sealed off the UK market by applying a selective distribution system incompatible with the rules of competition and by requiring exports to be authorized by them.

The Commission considered that these practices were caught by Article 85(1) of the Treaty and also that in view of the practices and measures at issue the exclusive distribution agreements entered into between Victor Hasselblad and its distributors could not qualify for the exemption for certain categories of exclusive dealing agreements provided for in Regulation No 67/67/EEC. Under Article 3(b)(2) of this Regulation, the exemption does not apply where, as in this case, the parties take measures 'to prevent dealers or consumers from obtaining from elsewhere goods to which the contract relates or from selling them in the territory covered by the contract'.

These practices constituted a particularly serious infringement since the Swedish and British firms put pressure on the other sole distributors. The Commission took this into account and also the duration of the infringement in imposing fines of 560 000 ECU on Victor Hasselblad and 165 000 ECU on Hasselblad (GB) Ltd. On the other hand, much smaller fines were imposed on the Belgian, French and Irish sole distributors, who took an active part in the market partitioning, but under pressure from Victor Hasselblad and Hasselblad (GB) Ltd. Since the Danish and German sole distributors were found to have only participated in supporting measures (serial number checks and exchange of price lists) which were not directly related to the obstruction of individual export transactions, the Commission decided not to impose any fines on them.

1 The complainant also asked the Commission to adopt interim measures: see Order of the Court of Justice of 17.10.1980 [1980] ECR 119; Tenth Report on Competition Policy, point 53.
2 In the course of the same proceedings the Commission imposed a fine on the French sole distributor of Hasselblad equipment, Télôs SA, on the grounds that it gave an incorrect reply to a request for information: point 116 of this Report. Hasselblad (GB) Ltd has appealed to the Court of Justice against this Decision.
Selective distribution systems

AEG-Telefunken

85. If manufacturers apply selective distribution systems in an abusive manner they can cause appreciable restrictions of competition and are then liable for heavy penalties.

86. The Commission established that the selective distribution system for Telefunken branded products operated in the Community by Allgemeine Elektrizität-Gesellschaft (AEG-Telefunken), the German company which manufactures in particular electronic leisure equipment, constituted, in the form practised between 1976 and 1980, an infringement of Article 85(1) of the Treaty. The Commission imposed a fine of 1 000 000 ECU on AEG-Telefunken.

In 1973 AEG-Telefunken notified the Commission of a distribution system under which its Telefunken 'five star' range could only be sold within the Community by wholesalers and retailers recognized by the firm on the basis of certain conditions of admission. The firm stated that any dealer who satisfied these conditions would be admitted.

In fact, AEG-Telefunken applied a different system. On account of their pricing policy, admission to the distribution system was refused, rendered difficult or made subject to further conditions in the case of certain distribution organizations and certain dealers whose pricing threatened the company's own pricing policy, even though they satisfied the letter of the conditions laid down. It also directly and indirectly exercised substantial influence on the setting of retail prices by dealers.

As applied, AEG-Telefunken's selective distribution system, which regulated trade between the different Member States, appreciably restricted competition.

87. In setting the amount of the fine the Commission took account of the fact that AEG-Telefunken is a major manufacturer of electronic leisure equipment and that the infringement had had a substantial effect on the market and on trade between Member States. However, as mitigating circumstances, the Commission bore in mind that this was the first case in which it was taking a Decision on the application of a selective distribution system which was incompatible with the rules of competition but which in itself gave no cause for objection and also that the discrimination

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1 See points 10 to 12 of this Report.
§ 3 — Permitted forms of cooperation

Joint publishing and distribution agreements

Langenscheidt/Hachette

88. The Commission took a favourable decision on three agreements between Langenscheidt, Munich and Hachette, Paris, regarding the publication and distribution of French language courses in Germany. Hachette is the largest publishing house in France, and Langenscheidt is a major publisher of dictionaries and educational works in Germany.\(^1\)

The agreements set up a joint subsidiary in Munich under the name Langenscheidt-Hachette GmbH. Its main function is to publish and distribute Hachette's French language courses on the German-speaking market, either in their original form or after adapting them especially to the needs of German-speaking users.

The Commission took the view that, because of the size of the two parent companies, these agreements restrict competition and could appreciably affect trade between Member States within the meaning of Article 85(1) of the EEC Treaty.

Nevertheless, at the request of the firms, the Commission decided to exempt the agreements under Article 85(3) until 31 December 1984. The agreements should improve the production and distribution of French language courses in Germany, and consumers should be able to draw a fair share of the resulting benefit. The joint venture provides for the combination of Hachette's experience in the publication of courses for the teaching of French as a foreign language and Langenscheidt's knowledge of the requirements of the German market in this field. The joint subsidiary’s operations will be confined to French language courses in Germany, which is a highly competitive sector of the market.

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\(^1\) This Decision is not concerned with the 'partnership contracts' which since September 1981 have replaced in Germany the selective distribution agreement for Telefunken brand products which still continues to apply in the other Member States.

Research and development agreement

Sopelem/Vickers

89. The Commission renewed for a period of ten years\(^1\) the favourable Decision adopted in 1977 on the cooperation agreement between the French company, Sopelem and the United Kingdom company, Vickers, involving their joint subsidiary Nachet.\(^2\)

The agreement covers technical cooperation and the exchange of know-how in research and development of microscopes, particularly those of highly-advanced technology. Joint distribution, which was originally included in the agreement, is no longer provided for.

There is intense competition in the market for microscopes within the Community. Sopelem and Vickers, although major undertakings in other fields, have only a very limited share of that market. The greater part of the market is shared mainly by Japanese and German manufacturers.

After examining the present situation, notably on the basis of the annual reports submitted by the undertakings concerned in accordance with the previous Decision, the Commission found that the conditions necessary for exemption were still satisfied.

It therefore adopted a further favourable Decision, subject to the same requirement that a detailed report be submitted regularly so that the Commission can continue to monitor the effects of the agreement and developments in the market in question.

Cooperation agreement between steel undertakings

Pôle des indépendants

90. The Commission granted authorization under Article 65 of the ECSC Treaty to three medium-sized Belgian companies, Usines Gustave Boël SA, Forges de Clabecq SA and Fabrique de Fer de Charleroi SA, \(^3\) to form an association to be known as Pôle des indépendants. The objects of the association are the optimum utilization of plant, and the coordination and rationalization of its members' production, marketing and purchasing policies.

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As far as production is concerned, each member has undertaken not to manufacture in its plant finished or semi-finished products which could be manufactured under more economical conditions by another member. In situations of this kind the parties will exchange or transfer the products in question.

With regard to sales, the parties have undertaken to pool orders in order to optimize production costs.

Furthermore, as regards the purchase of raw materials (iron-ore, coal and scrap), the parties expect by means of joint ordering to benefit from prices lower than those which each member could obtain for his own needs alone.

The Commission takes the view that this type of agreement is likely to strengthen competition, since by concentrating production in the most efficient plants small and medium-sized firms are better able to contend with competition from large groups.

§ 4 — Articles 85 and 86 applied to agreements and practices related to industrial and commercial property rights and copyright

Patents

Patent pools

In the course of the year the Commission dealt with two cases which enabled it to explain its views on the compatibility of patent pool agreements with Article 85.

Concast/Mannesmann

In the first case Concast and Mannesmann made all their patents relating to continuous casting available to each other, but they remained autonomous as regards their exploitation. Continuous casting is a very important process in the manufacture of semi-finished steel products as it leads to substantial savings of energy and crude steel. The agreement in question restricted competition on two counts. First, it eliminated potential competition between the parties as regards technical innovation and secondly, by concentrating a substantial ‘package’ of know-how in their hands, it encouraged purchasers of continuous casting plant to deal with these two firms rather than competing third firms.

The Commission took action following a complaint by Fives Cail Babcock SA which was the subject of legal proceedings brought by Concast and Mannesmann.
for infringement of certain patents covered by their agreement. Fives Cail Babcock was alleged to have used their patents when building continuous casting plant. Concast and Mannesmann have held an important position in the market for some time in this plant; between 1975 and 1977 their sales of plant within the Community accounted in total for some 60% of the market. During the course of the Commission’s investigation Mannesmann and the complainant, Fives Cail Babcock, settled their dispute over infringement of patents. The cooperation agreement between Concast and Mannesmann was terminated with effect from the end of 1981. In view of this, the Commission considered that it no longer needed to pursue the matter.

*IGR Stereo Television*

94. The second case makes it clear that the joint purchase by a group of undertakings of patents essential for operation on a certain market, constitutes a restriction of competition within the meaning of Article 85(1) of the EEC Treaty where the exercise of the patent rights thus acquired has the object and effect of excluding from the relevant market firms not belonging to the group. Although in this case the third parties were not to be excluded indefinitely, the consequences could have been considerable; all third parties would have been denied the opportunity of taking part from the outset in the launching of a new product on the market. There would be a marked effect on the structure of supply and considerable harm to consumers’ interests. This case in fact involved the joint acquiring and exercise of certain patents with a view to controlling the market in stereo television sets.

A specially designed television set or a converter is required for stereo reception. There are two patents which have to be employed in the manufacture or operation of these sets; they were granted in Germany to Institut für Rundfunktechnik GmbH (IRT), Munich, a body set up by two German television companies (ARD and ZDF). In October 1980 IRT assigned these two patents to Interessengemeinschaft für Rundfunkschutzrechte GmbH (IGR), Düsseldorf. IGR’s members include all firms manufacturing colour television sets in Germany. IGR granted licences to all these manufacturers. However, in accordance with a resolution they passed in spring 1981, non-members were to receive a licence only from 1 January 1983 at the earliest and only for a limited number of sets.

Exercising its patent rights, IGR prevented Salora, a Finnish manufacturer of television sets already operating on the German market, from fulfilling its contracts to supply stereo sets concluded with major mail-order firms (Neckermann and Quelle).
On receiving Salora's complaint and application for interim measures, the Commission examined whether it should adopt interim measures in the public interest or to protect the complainant.¹

However, there was no need to pursue this possibility as, following the Commission's investigations, IGR declared its immediate willingness to grant licences free of all restriction and on reasonable terms to all other manufacturers in the Community. Since then, the complainant, Salora, has received a licence.

Sale of patents and business: territorial restrictions in non-competition clause

_Sedame/Precilec_

95. The Commission takes the view that under the competition rules a purchaser of a business may prohibit the seller from re-acquiring his old customers in the areas where he operated before the sale.² However, even where restricted only to the national territory of the business sold, such a ban could go beyond the restrictions required to guarantee the value of the assets transferred. This would be the case where the seller is a small businessman and only possesses facilities in that territory; the non-competition clause would then in practice amount to a complete ban on any competing activity in territories where he had not operated before the sale.

When Mr Simon, a manufacturer and research worker, and Sedame, a company he set up, sold commercial and industrial activities and French and foreign patents to the French company, Precilec, they undertook to refrain from utilizing goodwill and commercializing competing products, directly or indirectly, for a five-year period, although there were no restrictions on their research and development activities.

The Commission took up a complaint submitted by the sellers and following its intervention the parties agreed to interpret the non-competition clause as not preventing the sellers from manufacturing in France both products connected with the business sold and competing products provided they were intended for direct export.

Trade marks

Trade mark licensing and ban on competition in the event of transfers of undertakings

Tyler/Linde

96. The Commission was also able to outline its position on the duration of a ban on competition in connection with an exclusive trademark licensing agreement concluded on transfer of a business which, in the case in question, had the same effect as a non-competition clause.

The US firm, Clark Equipment Co. and the German firm, Linde AG, entered into an exclusive licensing agreement in respect of use in Europe of the 'Tyler' trade mark. The agreement was concluded in 1975 when Clark sold its European interests in the refrigerated display units business, notably Tyler Refrigeration International GmbH, Schwelm, to Linde AG.

At the beginning of 1976 Clark transferred its remaining interests in refrigerated display units to the US firm, Tyler, Niles Co., which had been re-formed by third parties. All existing worldwide trade mark rights were also transferred, subject to the rights enjoyed by contracting parties under licensing agreements previously concluded by Clark.

The ten-year licensing agreement on the 'Tyler' trade mark entered into with Linde AG amounted in practice to a ban on competition in favour of the latter. Although Tyler, Niles attempted to secure a foothold on the European, and in particular on the German, market under another name and using another trade mark, it only achieved a limited success since the 'Tyler' mark had an excellent reputation in the line of business in question.

The Commission considered that the purchaser was protected against competition from the seller or his licensees for an unreasonable length of time; the agreement was accordingly amended to enable the US firm, Tyler, Niles, and its subsidiaries to use the 'Tyler' name and trade mark in the near future. Linde AG and its subsidiaries will no longer use that name and trade mark.
Barriers to market entry by competitors

Osram/Airam

97. A firm in a dominant position in a substantial part of the common market which registers a trade mark when it knows or ought to have known that that mark is already used by a competitor in other Member States may infringe Article 86 of the EEC Treaty, for this registration restricts the competitor's opportunities for penetrating the market dominated by the firm concerned.

The Commission expressed this view in relation to investigations it carried out following a complaint by the company OY Airam AB, a small Finnish lamp manufacturer, against Osram GmbH, one of the main lamp producers in the Community. Osram opposed registration by the Finnish firm of its trade mark 'Airam' on grounds of possible confusion with its mark 'Osram'. It later acted defensively in registering the 'Airam' mark in the Federal Republic of Germany. The Commission stepped in and the parties came to a settlement on how the mark could be used. The Commission raised no objection to this settlement whereby OY Airam AB is now able to use the word 'Airam' as part of its trade name and trade mark everywhere in the Community. To avoid confusion in the consumer's mind over the goods of the two companies, OY Airam AB's name is to be printed so that the corporate descriptions 'OY' and 'AB' are printed on the same line and as prominently as 'Airam' and are always used in close conjunction with the word 'Finland' (or other country of manufacture).

Copyright

Elimination of export ban relating to copyright

STEMRA

98. Copyright protection cannot be used to justify contractual export bans; they create artificial barriers to trade prohibited by the competition rules. Nor can they be justified by the fact that the royalties payable in the exporting country are different from those in the country of destination. The Commission took this line on a clause prohibiting exports in a licensing agreement which STEMRA, the Dutch

1 For the Commission's position on the compatibility with the EEC competition rules of agreements delimiting the use of trade marks see Decision Sirdar-Phildar: OJ L 125, 16.5.1975; Decision Penneys: OJ L 60, 2.3.1978; Cases settled informally include Persil: Seventh Report on Competition Policy, points 138 to 140; Bayer-Tanabe: Eighth Report on Competition Policy, points 125 to 127.

collecting society, had entered into with the Dutch firm, Viditone. The agreement concerned overdubbing of works protected by copyright for use as background music. Exports to other Member States were only authorized on the agreement of the collecting society in the country of destination. Following the Commission’s moves STEMRA removed all bans on exporting cassette and tape recordings to the other Member States.

§ 5 — Article 86 applied to abuse of dominant position

Unlawful discount system

Michelin Nederland

99. In keeping with its longstanding opposition to any policy on prices, rebates and discounts used abusively by a dominant undertaking to maintain or consolidate its position on the market, the Commission imposed a fine of 680 000 ECU on Nederlandsche Banden-Industrie Michelin (NBIM), Amsterdam, a subsidiary of Société Michelin, Clermont-Ferrand, for abusing its dominant position on the Dutch market in replacement tyres for heavy vehicles by pursuing an unlawful policy of discounts.¹

NBIM’s dominant position results first and foremost from the fact that it holds the largest share (some 60%) of the Dutch market in replacement heavy tyres, while none of its main competitors holds more than 8% of the market; but its dominance is also indicated by the wide range of tyres it markets and by its intensive marketing among final consumers. Its position is such that dealers run serious commercial risks in not including Michelin tyres in the range of products they sell.

NBIM applied a discount system consisting, mainly, in fixing a sales target such that the share of Michelin tyres in a dealer’s total sales either increased or at least remained stable. This policy of collective discounts not only had the effect of tying dealers to NBIM, but also resulted in discrimination between such dealers. The system’s harmful effects on the dealers’ commercial autonomy were compounded by a number of its operational aspects such as the failure to publish the criteria applied or to communicate or confirm them in writing to dealers in accordance with normal trade practice. By using such methods to consolidate its position on the market and to dissuade dealers from obtaining supplies from competing manufacturers, NBIM made it more difficult for manufacturers in other Member States to

enter the Dutch market, thus creating an artificial barrier to intra-Community trade.

100. The Commission, which acted on a complaint from a Dutch wholesaler dealing in heavy tyres, concluded that there was a serious infringement warranting the imposition of a fine, since the system of discounts in question must be regarded as a variant of the loyalty discount system, which is incompatible with Article 86 of the Treaty when applied by a dominant firm, as the Commission's previous decisions and judgments given by the Court of Justice\(^1\) have both made clear.

In determining the amount of the fine, however, the Commission took account of the fact that in recent years NBIM had eased its discount policy somewhat, finally abandoning it in its disputed form at the beginning of 1981.\(^2\)

**Protection of authors and artists**

101. The Commission adopted two Decisions aimed at improving the social and economic situations of authors and artists within the Community.

**GVL**

102. The Commission decided that the practice of the German collecting society GVL (Gesellschaft zur Verwertung von Leistungsschutzrechten), which consisted in refusing to conclude contracts with foreign artists who were not resident in the Federal Republic of Germany, constituted an abuse of dominant position and was therefore prohibited.\(^3\)

GVL is the only body in Germany which protects the rights of performing artists such as singers and musicians and collects their royalties from German users of musical works, such as broadcasting companies and others communicating works to the public. It refused to supply its services to foreign artists not resident in Germany, thus depriving them of part of the fees to which they are entitled for communication of their work to the German public. During the proceedings GVL changed its conduct to comply with the rules of competition, but claimed that its refusal was legally well founded.


\(^2\) NBIM challenged this Decision before the Court of Justice, Case 322/81.

It was therefore necessary to determine by Decision that an undertaking in a dominant position may not practise discrimination on grounds of nationality. The Commission is aware of the difficulties which the differing royalty arrangements in the Community create for artists. However, it stressed in its Decision that differences in Member States' legal systems regarding the protection of the rights of performing artists cannot provide any justification for this kind of discrimination.

This Decision will enable artists in the Community to ensure that GVL enforces their claims for royalties due to them in Germany.\(^1\)

**GEMA**

103. The Commission also adopted a Decision stating that it had no reason to take action under Article 86 against an amendment to the statutes of GEMA (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte), a German Collecting society.\(^2\)

GEMA, which has its registered office in Berlin, is the only German collecting society concerned with protecting the authors of musical works and safeguarding their rights. It notified the Commission of an amendment to its statutes prohibiting its members (composers, librettists and music publishers) from entering into agreements with users, for example broadcasting authorities, under which the latter receive a direct share of the income of the members if they play certain of their compositions.

According to GEMA, the amendment was intended to improve the exploitation of copyright and ensure that all authors receive a fair reward for their intellectual creations. It should protect authors against pressure from financially powerful music users and ensure a uniform approach by authors in their business relations with such users.

Without the amendment, broadcasting authorities and other users could have been tempted to increase their incomes by giving priority treatment to works by authors belonging to GEMA who gave them a direct share of their royalties, to the detriment of the vast majority of other authors.

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1 GVL has appealed to the Court of Justice against this Decision, Case 7/82.
 § 6 — Merger control (Article 66 ECSC and Article 86 EEC)

Merger control in the steel industry

104. The most important mergers approved by the Commission in 1981 were in keeping with the crisis and restructuring measures adopted by the Community for they were aimed at enabling the companies concerned to increase their competitiveness and to improve the balance between supply and demand for steel products.

The planned mergers fit in with the restructuring carried out in the steel sector of the Saar (Rogesa), the United Kingdom (Allied Steel) and France (special steels). The Commission's authorization decisions often impose conditions designed to ensure that the firms concerned do not establish any personal links liable to reduce competition between them. The exemption decisions which the Commission adopted during 1981 clarify its position in this field.  

Rogesa

105. The Commission authorized two Saarland steel manufacturers, Dillinger Hüttenwerke, Dillingen and Stahlwerke Röchling-Burbach, Völklingen, to jointly set up Roheisengesellschaft Saar mbH (Rogesa) with the object of producing pig-iron and supplying it to the parent companies' steel furnaces.

The Rogesa project is an important part of the restructuring plans for the steel industry in the Saarland. Its purpose is to concentrate all pig-iron production in the Saar on one site (at Dillingen) in three modern blast furnaces, thus providing for an overall reduction in ironmaking capacity and at the same time a considerable improvement in efficiency.

The Commission's Decision is in keeping with its general policy on restructuring the steel industry, namely to encourage rationalization and cooperation which ensures better utilization of complementary industries within the limits and the degree of flexibility allowed by Articles 65 and 66 of the ECSC Treaty.

Allied Steel & Wire Ltd

106. The British Steel Corporation (BSC), London and Guest Keen & Nettlefolds (GKN), Smethwick, were granted Commission authorization to combine their steel wire rod, reinforcing bar and reinforcement engineering interests to-

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2 Points 108 to 110 of this Report.
together with the wire manufacturing activities of GKN in a new joint venture called Allied Steel & Wire Ltd (ASW).¹

GKN will no longer produce general steels itself, but will remain in the market as a steel stockholder and as a producer of special steels.

The background to the project is the serious structural excess capacity for wire rods and reinforcing bars in the United Kingdom and in the Community in general. The creation of the new company by the two partners will enable them to rationalize production and sales programmes and, in anticipation of the joint venture, both BSC and GKN have already considerably reduced their wire rod and bar capacity.

The new company, ASW, will account for about 4% of total Community wire rod capacity; it will be competing against six larger Community manufacturers of this product (Arbed, Thyssen, Sacilor, Usinor, Cockerill and Korf) and some forty other manufacturers. ASW will have about 2% of Community capacity for reinforcing bars and will be competing against nine large producers and many other smaller ones.

**French special steels**

*107.* The Commission also authorized a merger, in which three undertakings took part and which is regarded as the first step in the restructuring of the French special steels industry: it concerns Usinor, Creusot-Loire and Chiers-Châtillon.²

The merger will be carried out in a number of stages.

First of all the Chiers-Châtillon holding company is to sell out 'Aciers spéciaux de la Chiers' to Creusot-Loire Dunes, a firm which mainly produces high-grade and special alloy and non-alloy structural steels.

Usinor will then acquire a controlling interest in Creusot-Loire Dunes which, after an increase in capital, will take the name of Compagnie Française des Aciers Spéciaux; 75.44% of its shares will be held by Usinor and 24.56% by Creusot-Loire.

The combined output of structural steels by the undertakings in question in 1979 ranks them sixth and fourth respectively among Community producers of non-alloy and alloy crude steels with production shares of roughly 6.7% and 8%. Their crude steel is processed by being rolled into bars, wire rod, tube rounds and squares, and flats.

The main outcome of this merger will be an increase in the undertakings' competitiveness through the use of Usinor's more efficient plant, modernization of other plants and closure of certain obsolete production units.

Decisions on interlocking directorates

108. The Commission's policy is consistently to ensure, notably when scrutinizing mergers, that steel undertakings, which are gradually but steadily decreasing in number, do not establish interlocking directorates capable of restricting actual or potential competition between them. The aim is to prevent a person who is a member of management bodies of firms belonging to different groups from acquiring information on the policies of competing undertakings and from possibly coordinating industrial or business activities which should remain independent. Serious risks particularly arise where the relevant market is a tight oligopoly, which is increasingly so in the case of the integrated steel industry. In decisions authorizing mergers under Article 66 of the ECSC Treaty, the Commission has accordingly specified that members of management bodies of firms concerned by a particular transaction should not perform similar functions in other steel undertakings. This was the case in the recent Rogesa Decision.

However, the Commission may grant an exemption from this prohibition of interlocking directorates if it can establish either that the effect on competition is slight or that it is warranted by special circumstances. Such a situation may arise on account of the present need to implement restructuring in the steel industry.

The Commission thus adopted two Decisions on interlocking directorates during the year.

109. The first authorized a member of the supervisory board of Röchling-Burbach (Arbed group) to also sit on Thyssen's supervisory board. Although simultaneous membership by the person concerned of management bodies of Thyssen and Röchling-Burbach establishes a link between steelmaking groups ranking second and fourth in the Community respectively, the Commission granted authorization for a transitional period, until 31 August 1983, to allow Röchling-Burbach, which is playing a major role in implementing the restructuring plan for the Saar steel industry, to continue to benefit from the experience of a person who has taken an active part in the preparation and initial application of this plan.

110. The second Decision concerns a person who is already a member of management and supervisory bodies of other steel undertakings; two applications for

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1 Point 105 of this Report.
2 Decision of 25.3.1981.
derogation were submitted with a view to his sitting on the supervisory board of Dillingen Hüttenwerke AG, a firm in the Sacilor group, and on the management board of Arbed.

However, the restructuring requirements of the steel industry in the Saar could not justify this person's simultaneous membership of the management and supervisory boards of both Dillingen/Sacilor and Arbed, in view of the fact that he was already a member of the Board of other undertakings. Competition would have been placed in serious jeopardy.

The Commission was therefore able to grant a derogation only to one of the two groups. It favoured Dillingen, since it is more directly concerned than Arbed by the Saar restructuring plan, it only has subsidiaries in the Saar and there is less risk to competition from membership of the supervisory board of a subsidiary than from that of a group's central management board.

The derogation was granted until Dillingen's annual general meeting in 1983, when the main part of the restructuring of the Saar steel industry (specially the Rogesa project) should be completed.

Scrutiny of mergers for compatibility with Article 86 of the EEC Treaty

Although appropriate monitoring procedures are not available to the Commission (the Council has still not adopted the proposed merger control Regulation) the Commission continues to supervise mergers at Community level on the basis of Article 86.

During the time which this Report covers, the Commission had to deal with two complaints. The first, which involves the leading company in its field in a Member State is still being investigated. The second was settled in the course of the investigations and is of special interest since the complainant requested the Commission to take interim measures.

Amicon Corp./Fortia AB and Wright Scientific Ltd

Amicon Corp. submitted a complaint concerning infringement of Article 86 in respect of the purchase by the Swedish group, Fortia AB, of Wright Scientific Ltd, a British firm. In order to forestall any permanent repercussions on the market situation during investigation of the case, and using as a legal base the Order of the

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4 Point 105 of this Report.
5 Point 13 of this Report.
Court in the Camera Care case, Amicon also asked the Commission to adopt, as a matter of urgency, a decision on interim measures.

The relevant market was in chromatography columns used by research laboratories and the chemical industry, notably in the field of pharmaceuticals. Chromatography is a process which enables the extraction from a chemical solution of molecules such as proteins and hormones and other natural or synthetic molecules which are important in biology and pharmaceuticals.

Fortia is a Swedish conglomerate with subsidiaries throughout the world. One of its subsidiaries is specialized in the research, development, manufacture and sale of products and equipment for separating molecules (chromatography, electrophoresis, etc.) which are mainly exported to the United States, Japan, France, the Federal Republic of Germany and the United Kingdom.

Wright Scientific Ltd is a small family business which produces chromatography columns using its own research technology. These products are sold either directly or via agents to distributors throughout the industrial world.

Amicon Corp. is a US group, which manufactures and sells complementary products used in chromatography (medias); it has subsidiaries in the Community where it distributes the columns manufactured by Wright under its own trade mark on a non-exclusive basis.

The complaint alleged that the takeover was likely to strengthen the Fortia group’s dominant position or even to give it a monopoly in the market in chromatography columns. According to information supplied by the claimant, confirmed by a third party undertaking also operating on the relevant market, the takeover would have enabled Fortia to increase its market share in columns for industry from 73% to 82%.

A copy of the complaint was sent to Fortia and Wright requesting their comments and informing them that the Commission would give them the opportunity to put forward their views at a hearing on the case and warning them of possible interim measures that the Commission might have to take if the facts alleged by the complainant were proved; Wright then notified the Commission that it had ceased merger negotiations with Fortia. A few days later Amicon withdrew its complaint and its application for emergency interim measures, so the Commission was able to close the file.

§ 7 — Principal Decisions on procedural matters

113. The Commission has continued to make full use of its powers concerning procedural matters under Regulation No 17, notably to obtain information (Article 11), to carry out investigations (Article 14) and to deal with complaints (Article 3 of Regulation No 17 and Article 6 of Regulation No 99/63/EEC). The most important cases are outlined below.

Incorrect replies to requests for information

114. In order to carry out its task of monitoring application of Articles 85 and 86 the Commission has the power, under Article 11(1) of Regulation No 17, to obtain the information it needs from the firms concerned.

In performing this task the Commission first sends the firms a written request for information stating, as required by Article 11(3), the legal basis and the purpose of the request and the penalties for supplying incorrect information provided for in Article 15(1)(b).

The Commission considers that a request for information pursuant to these provisions must be viewed both in light of the questions asked and the objective pursued. Similarly it believes that the firm’s reply to its request must be assessed as a whole and that the assessment should not be restricted merely to the responses given to the list of questions put.

Not only are replies to the questions put by the Commission to be considered as a response to a request within the meaning of Article 15(1)(b), but also information extending beyond the scope of the specific questions if connected with the object of the Commission’s request.

The Commission made use of these provisions for the first time in 1981 and adopted four Decisions against firms who had given incorrect replies to formal requests for information. The maximum fine was imposed in all cases.

115. The first case concerns Comptoir Commercial d’Importation (CCI), a French company which distributes, among other things, electric motors for vacuum cleaners supplied by the Matsushita Electrical Trading Company, Japan. In response to a formal request from the Commission asking for a copy of all documents

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1 Ninth Report on Competition Policy, point 134.
2 Article 15(1) of Regulation No 17 states that ‘the Commission may by decision impose on undertakings or associations of undertakings fines from one hundred to five thousand units of account where, intentionally or negligently:
   ... (b) they supply incorrect information in response to a request made pursuant to Article 11(3) ... .

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defining its commercial relations with Matsushita, CCI replied that it had no contract with Matsushita and that the latter imposed no sales or resale restrictions on it. In the course of subsequent investigations, the Commission discovered a number of documents which showed that there were indeed commercial relations between the two firms, involving restrictions on trade which could be deemed serious infringements of the competition rules.¹

116. In a second case² Telos SA, the sole distributor of Hasselblad photographic equipment in France, replied to a formal request for information concerning an export ban, that there were absolutely no arrangements prohibiting it from re-exporting Hasselblad products to another Member State. On making investigations, the Commission determined that there were commitments between Telos and the Swedish manufacturer, Victor Hasselblad, and also between the latter and sole distributors, to refrain from exporting within the Community.³

117. The last cases concern two subsidiaries of the Japanese firm Matsushita, National Panasonic (France)⁴ and National Panasonic (Belgium),⁴ which market electronic leisure equipment in Europe, notably high fidelity equipment sold under the brand names ‘Technics’, ‘National Panasonic’ and ‘Panasonic’.

In response to a formal request from the Commission to provide details of their recommended retail prices, both firms replied that they did not recommend retail prices. The Commission, however, established that the firms’ price policy consisted not only in recommending retail prices to their dealers, but also in making them comply with such prices.⁵

Rejection of complaints

118. Natural or legal persons who claim a legitimate interest are entitled, under Article 3(2) of Regulation No 17, to apply to the Commission to have it require undertakings bring to an end infringements of Articles 85 and 86. The Commission examines such applications. Where it arrives at the conclusion that the complaint cannot be taken up, it informs the applicant by letter of its reasons and fixes a time limit for submission of any further comments in writing in accordance with Article 6 of Regulation No 99/63/EEC. The Commission considers that this communication is not a Decision within the meaning of Article 189 of the EEC Treaty and cannot be challenged before the Court of Justice.

¹ The substantive aspects of these infringements are covered by separate proceedings.
³ The Commission also adopted a Decision on the substance of Hasselblad’s distribution system; point 83 of this Report.
⁵ Proceedings on the substance of these cases are in progress.
On several occasions, after having received a letter of rejection pursuant to Article 6 of Regulation No 99/63/EEC, complainants have applied for a formal Decision on the object of their complaint. In the case of Demo-Studio Schmidt the Commission did adopt a Decision in the form of a letter expressing a final opinion, rejecting the complainant’s request for supply of Revox products.\(^1\)

Although the Commission thus acknowledged that a formal decision can be adopted on the rejection of a complaint, it did not concede the applicant’s entitlement thereto. In certain cases formal rejection of a complaint may be of general interest, notably when required to throw light on a new point of law. However, this does not imply that an individual is entitled to oblige the Commission to take action in cases involving restrictions of competition.

\(^1\) Point 11 of this Report. The applicant challenged this Decision before the Court of Justice, Case 210/81.
Chapter IV

Main developments in national competition policies

119. As has been pointed out both within the European Parliament and the Economic and Social Committee,¹ increased convergence between Community competition policy and national competition rules is desirable, not only in the interest of the creation and development of a single market but also because concordant national policies can serve as a decentralized back-up system for Community rules.

Although there is no evidence which would indicate that potential contradictions in the respective legislations are detrimental to the development of trade within the common market, notably because Community law takes precedence as soon as intra-Community trade is affected, national legislation has in fact tended to evolve towards the Community rules.

In this context, the survey of national competition policy in Greece, the first such survey in this series of Reports, is of particular interest. The relevant legislation, which came into force in March 1978, clearly in anticipation of that country’s accession, corresponds in great detail to the Community competition rules, the main differences being—aside from the fact that the scope of application is national—that certain undertakings, including public undertakings, may by ministerial decree be exempted from application of the law, and, secondly, that sanctions of a penal nature are included.

In the other Member States, no significant legislative developments in competition policy took place during the period under review, although in the Netherlands and Belgium the process of modifying the existing basic legislation continued.

Enforcement of national laws in certain individual cases referred to in the surveys below indicates an approach similar to that of the Community in the points at issue.

Belgium

120. There have been no changes in competition legislation during the period in question. The Act of 27 May 1960 on protection from the abuse of economic power remains applicable.

The review of legislation governing rules on competition in economic affairs is still in progress. An amendment has been drafted with a view to making the law more effective and speeding up the procedure. The draft was submitted in February 1981 to the Central Council for Economic Affairs, an advisory body representing all the interests concerned, both employers' and workers'. Because of the resignation of the Government on 21 September 1981, the Council confined itself to formulating a number of fundamental principles which should be taken into account in any review of legislation. These principles are being examined by the Department of Economic Affairs.

121. As regards the procedure relating to information employed by the Commissaire-rapporteur under Article 5 of the Act of 27 May 1960,1 a Royal Decree of 23 January 1981 'designating the State officials authorized to assist in the investigation of abuses of economic power' enables officials of the Department of Trade with special responsibility for competition matters to assist the Commissaire-rapporteur in his task.

122. In the case concerning the distribution of newspapers and periodicals, referred to in the last Report,2 the Council for Economic Disputes found that the defendants enjoyed economic power over the newspaper market in question, but had not abused that power, within the meaning of Article 2 of the Act of 27 May 1960, in refusing to supply the retailer. The Council felt that the refusal to supply did not prejudice the public interest. This negative opinion is binding on the Minister for Economic Affairs.

Four other cases in which the Commissaire-rapporteur found that there was improper conduct were submitted to the Council for Economic Disputes for its opinion; in addition to the two cases concerning respectively the ban on taking part in other exhibitions and the refusal to accept a competitor's advertising, also

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1 Tenth Report on Competition Policy, point 68.
2 Tenth Report on Competition Policy, point 69.
referred to in the last Report, there were two cases of refusal to supply newspapers and periodicals in various regions.

123. On the basis of Article 7 of the Act of 27 May 1960, the Minister may order the Commissaire-rapporteur to continue the procedure where the latter, at the end of the investigation, informs the Minister of his intention to formally close the file on the matter. The Minister made use of that provision in two cases during the period in question. The first case concerned a complaint lodged by an electricians' federation against a Confederation and a trade association in the construction sector, which it claimed had charged excessive prices and refused to work with non-affiliated firms.

In the second case, a motor mechanic and body-builder lodged a complaint against the police and the garage-owners' trade association of a Belgian province concerning the establishment by the latter of a breakdown service in which the complainant wished to be listed without having to be a member of the trade association.

124. The rules of a European trade fair for bakers and confectioners prohibited participants from exhibiting in Belgium throughout the period between each fair, which are held every four years. The organizers also reserved the right to refuse participants for no valid reason and without any means of redress.

Following the intervention of the Department of Economic Affairs, which felt that these two aspects considerably restricted competition in the organization of other exhibitions, the organizers amended their rules to provide that exhibitors are free to participate in other fairs except during a period of one and a half years before each of their fairs and that reasons must be given for refusals to allow participation.

**Denmark**

125. The price freeze introduced in December 1979 as part of the Government's multiannual coordinated economic policy which applied up to 28 February 1981, was not extended.

A new Heating Supply Act, which took effect on 1 March 1981, requires all district heating suppliers to report their prices and terms of business to a committee for which secretarial services are provided by the executive of the Monopolies Control Authority (Monopoltilsvnet).

126. The Monopolies Appeal Tribunal (Monopolankenævnet) overturned the railway rolling stock decision which had held that there was an obligation to notify

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1 Tenth Report on Competition Policy, point 69.
an agreement between the only two Danish rolling stock producers. The Tribunal’s main grounds were that the agreement was justified by the difficult circumstances of both parties, and that in reality it merely represented a transfer of a line of business; the Tribunal also attached importance to the general difficulties of importing railway rolling stock.

127. The Monopolies Control Authority continued its policy of applying Sections 11 and 12 of the Monopolies Act to help to open the market to new distribution channels.

It began talks with a major Danish bicycle manufacturer with a view of changing the way in which the firm applied its conditions for approving dealers, so that supermarkets, large stores and discount houses which met the conditions for approval as notified by the manufacturer to the Authority would not be prevented from dealing in the manufacturer’s products.

The Authority completed its study of the ironmongery trade and ordered the Ironmongers’ Association of Denmark (Danmarks Isenkraemmerforening) to end its practice of calling on suppliers to the trade to give an account of their business with discount houses, and circulating the replies among its members. The Authority also required that the association’s ‘price list service’ should be notified to it for registration. The Ironmongers’ Association has appealed against both decisions to the Monopolies Appeal Tribunal.

128. The High Court (Landsretten) is expected to give judgment in the course of 1982 in the case of the prices charged by A/S Ferrosan for contraceptive pills.

In order to provide countrywide distribution of fresh meat and dairy products some of the largest dairies and slaughterhouses have established a joint sales company which, when fully operational in 1991, is expected to achieve a market share of about 50%.

This agreement was notified to the Monopolies Control Authority, which made a provisional assessment pursuant to the Monopolies Act, despite the fact that negotiation on the joint sales company had not yet been concluded, and has informed the parties that it has serious reservations regarding cooperation of the kind proposed.

129. In recent years the Authority has acted against exclusive purchasing arrangements particularly in trade in convenience goods. Thus it objected to a plan by

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1 Tenth Report on Competition Policy, point 73.
2 Tenth Report on Competition Policy, point 74.
two of the largest convenience goods wholesalers to offer retail grocers a selection of goods at very low prices, competing with those offered by discount houses, if the grocers would undertake to take a fixed percentage of their total purchases from the two wholesalers. The Authority found that this restriction had harmful effects within the meaning of Section 11 (1) of the Monopolies Act, because it would restrict the grocers' freedom to choose their own suppliers, and would place other suppliers with a range of goods narrower than that of the two wholesalers at a competitive disadvantage.

The Authority entered into negotiations for the removal of an exclusive clause in an agreement between the Danish Cooperative Wholesale Society (Fællesforeningen for Danmarks Brugsforeninger—FDB) and the dairy company Mejeriselskabet Danmark Amba (MD), on the purchase, packaging and distribution of fruit juice. The agreement cannot be terminated before 1995; it obliges the FDB to purchase all its fruit juice in one-way packages from MD, which must supply the quantities, qualities and packaging requested by the FDB. The agreement was notified to the Monopolies Control Authorities, which found that, given the parties' strong market position the exclusive rights conferred on MD, aggravated by the long period for which the agreement was to run, constituted a serious limitation on future developments, and could restrict the free conduct of their business by other fruit juice producers.

The Monopolies Control Authority, which cannot intervene in cases within the jurisdiction of another public authority, has made a report to the Minister for Industry regarding an exclusive agreement between the national sickness insurance scheme and the Danish Chiropractors' Association (Dansk Kiropraktor-Forening). The agreement makes membership of the association essential for the practice of chiropractic, as sickness insurance payments to patients will be made only where the chiropractor is a member of the association.

In a study the Authority found that of twelve major car importers four (Volvo, Domi, Ford and Skandinavisk Motor Company) tied dealers exclusively to their make, precluding them from selling other makes.

The Authority found that this restricted the free conduct of their business by both importers and dealers, and ordered the four importers to put an end to the requirement so as to allow importers to make agreements with other dealers in the respective areas for the sale of new vehicles.

**Federal Republic of Germany**

130. No changes were made to Federal competition legislation during the period under review. In its response to the third main advisory opinion by the
Monopolies Commission on merger control, the Government agreed with the Commission on the key importance of merger control for maintaining healthy competition. However, on the proposal mooted by the Commission for the present competition legislation to be backed up with legal rules concerning demergers, the Government thought that legislation on demergers could not be considered until the possibilities offered by merger control were exhausted and there had been detailed clarification of the many legal and political issues such legislation raised.

In a special advisory opinion entitled 'The role of the Federal Post Office in the telecommunications sector', the Monopolies Commission discussed ways of opening the telecommunications sector to increased competition, with particular reference to the market for terminal equipment. The Federal Government has made it clear that the Federal Post Office will have to exercise restraint in the newly developing markets for terminal equipment and that whether the Post Office should be allowed to enter a particular market could only be decided on a case-by-case basis after careful consideration of the telecommunications requirements and the wider economic interest.

131. On the merger control front, the Federal Cartel Office blocked ten mergers, three of them in the newspaper and publishing sector. Fifteen other planned mergers were abandoned by the firms concerned because of objections raised by the Office.

132. The Federal Cartel Office also began its first-ever proceedings to dissolve mergers that had already taken place. The action was taken after the Federal Supreme Court had ended a legal battle stretching back several years by upholding the Cartel Office's decisions to block two mergers involving Alsen Breitenburg and Klöckner and Springer and Elbe Wochenblatt. However, the dismantling of the mergers, which were completed several years ago, has proved to involve considerable practical difficulties. Not content with a formal dissolution of the mergers, the Cartel Office is aiming at arrangements which will eliminate the restrictions on competition that resulted from the mergers.

The Cartel Office's first demerger order has now been served in the case of Springer/Elbe Wochenblatt. The undertakings concerned have appealed.

133. In the area of discrimination and predatory conduct by dominant firms, the Federal Supreme Court has set aside the Cartel Office's decision in the VW spare parts case. The Office had forbidden the Volkswagen group to require its dealers and workshops to buy all their supplies of spares from VW, including those which

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1 Ninth Report on Competition Policy, point 57.
VW did not manufacture itself but purchased from component suppliers outside the group. The Supreme Court agreed with the Cartel Office that the exclusive purchasing clauses imposed by the Volkswagen group limited the freedom of component manufacturers and repair workshops. However, after carefully considering the various interests at stake, it reached the conclusion that the restriction was not unfair since the interest of the car manufacturer in ensuring that repair workshops only used spare parts for whose quality and safety it could vouch on the basis of adequate checks took precedence over the interest of component manufacturers in being able to decide how their products were distributed.

The Cartel Office’s view of ‘most-favoured-customer’ clauses was upheld by the Federal Supreme Court in the final appeal judgement in the Garant Schugilde case. Such clauses, under which a supplier is required to extend to the favoured customer no less favourable prices and terms than he grants to any other customer, will therefore from now on be deemed anti-competitive.

In the Effem case involving a manufacturer who dominates the dog and cat packaged food market, the Berlin Court of Appeal largely upheld the Cartel Office’s prohibition order.

The Cartel Office had forbidden the firm to operate a discriminatory annual bonus scheme. The Court of Appeal emphasized that competition law required dominant firms, like any other, to behave in accordance with the principles of effective competition. But unlike undertakings which operate in conditions of effective competition, dominant firms were under an obligation to exercise special restraint towards their customers and competitors. Loyalty rebates and other economically similar forms of rebate based on turnover over a long reference period and involving an obligation on the customer to stock the relevant products did not, however, spring from a desire to compete solely on performance. The type of conduct consistent with the principles of competition based on performance was one which always left the customer free to choose, from an economic standpoint, the offer most favourable to him in the circumstances, allowed him to change his supplier without incurring economic disadvantage, and did not impair the function of commerce to provide the consumer with as wide a selection of goods as possible to meet his needs. The Court of Appeal’s judgment is final.

134. The Federal Cartel Office ordered Telefunken Fernseh- und Rundfunk GmbH, which is a member of the AEG Group, to discontinue new distribution arrangements (called ‘partnership contracts’) which it had introduced in 1981, on the ground that they infringed the prohibition of resale price maintenance. The new agreements obliged Telefunken’s independent specialist retailers in Germany to
sell its products only at the standard prices laid down by Telefunken for the whole of Germany and forbade them to grant their customers rebates, discounts or price reductions of any kind. Retailers failing to keep to the prescribed resale prices would be liable to have their supplies cut off by Telefunken and incur an agreed penalty. Telefunken has appealed to the Berlin Court of Appeal.

135. Problems arising from the buying power of large undertakings and the abuse of that power became an important area of the Cartel Office's work in the period under review. Large customers in trade and industry and public authorities are increasingly using their buying power to exact special terms from their suppliers. Of particular concern to the competition authorities is the formation of buyers' cartels in order to exert power over suppliers.

The Cartel Office ordered the break-up of one such buyers' cartel for the first time in the foodstuffs sector. Four multiple food retailers taking large volumes of produce from their suppliers and previously having separate buying arrangements had formed a joint trading company (HFGE) to concentrate a large proportion of their purchasing on a number of agreed suppliers and obtain the same terms for all the firms involved. HFGE decided to drop its original purchasing arrangements and submitted a new scheme to the Cartel Office. However, this too was rejected by the Office. The case is not yet closed.

France

136. There have been no major changes in the applicable competition legislation during the reference period, except for a circular of 26 September 1981 laying down the arrangements for the implementation of a 1977 Order on the advertising of prices with regard to advertisements concerning price reductions outside the place of sale.

137. The provisions in force designed to raise moral standards in relation to individual trading practices have enabled the authorities to take action as a matter of routine or as a result of complaints and to impose penalties in respect of the most serious infringements of the competition rules, within time limits and according to standards of efficiency that are satisfactory to both undertakings and consumers.

As in previous years, most of the action taken consisted of checks on the arrangements for the advertising of prices.

1 On 13 March 1981, the Conseil d'État took an important decision in which it confirmed that while the Competition Commission's procedure is administrative it nevertheless keeps its adversary nature (Recueil des décisions du Conseil d'État, p. 135).

2 Seventh Report on Competition Policy, point 85.
As regards other specifically anti-competitive practices, the authorities have been particularly vigilant in taking action against refusals to supply. In the first half-year alone, they intervened in over 260 cases, generally as a result of complaints, and prepared 19 reports in cases of serious infringements. Particular attention was paid to the perfume, clothing and domestic electrical appliances sectors because of the problems they present, due, in particular, to the existence of selective distribution networks. The competent authorities also continued their permanent programme of action against attempts to impose minimum resale prices, which are subject to a general ban, and certain recommended prices. The latter were, in fact, banned under a ministerial decree in certain sectors in which they were a cover for the imposition of tariffs or margins (such as footwear, wallpaper and tyres). In the first six months of the year, there were 245 interventions to verify that the ban on recommended prices was being observed, and only 8 cases of infringement were found.

In taking action against discrimination in pricing and terms of sale, the authorities aim to ensure that distinctions between purchasers are made, not on the basis of their status, but on the basis of their actual purchasing capacity. 123 interventions were made in this area in the first half-year, which were followed up by 11 reports for infringement.

The action taken by the authorities to stimulate competition is designed at the same time to secure fair competition. For this purpose, the competent services endeavour to eliminate certain unfair practices designed to divert sales and disorganize the market, in particular the practices of loss-leading and under-cost selling, misleading advertising of prices and bonus-assisted sales.

At the end of the year, a survey was made of the retail trade throughout national territory for the purpose of verifying compliance with the rules on loss-leading as laid down in the ministerial circular of 22 September 1980.¹ The numerous checks carried out have established that most traders are complying with the obligations laid down in the circular. The same survey, however, brought to light a large number of infringements in respect of failure to comply with the various rules on the advertising of consumer prices or in respect of false advertising.

The authorities also directed their action against under-cost reselling, which is prohibited by law, and certain commercial promotion campaigns, such as bonus-assisted sales or sales with gifts, which are signed to attract customers and divert their attention from the intrinsic qualities of the products.

In general, where infringements are found, these checks lead to the imposition of fines by the administrative authorities. Certain infringements, however, become

¹ Tenth Report on Competition Policy, point 82.
the object of further judicial proceedings, either due to their nature or at the request of the authorities or the transgressor.

138. There have been some major developments in the action taken with regard to restrictive practices and dominant positions under Article 50 et seq. of Order No 45-1483, since the Minister for Economic Affairs, after consulting the Competition Commission, has taken 20 decisions in the past year (as against 11 in 1980), including 15 in the second half of the year alone.

A comparison with previous years reveals a number of trends. The role of employers and labour in assisting the authorities to combat anti-competitive practices is becoming increasingly apparent: authorized legal persons (local authorities, trade unions, trade associations and approved consumer organizations) are making increasingly frequent use of the power given to them in 19771 to refer directly to the Competition Commission acts which may fall within the scope of Article 50. The number of such referrals is at present slightly larger than the number referred by the Minister for Economic Affairs. It must also be emphasized that there has been a relative drop in the number of cases concerning intermediate products for industrial consumption or public contracts, compared with those relating to markets in end products or services (foodstuffs, medicinal products, tyres, for example). As regards penalties, there has been, in addition to the frequent recourse to injunctions, an increase in the fines imposed on firms or trade associations in respect of serious infringements: in 1981 the Minister imposed a total of 42 fines amounting to over ten million francs. No case has, however, been referred to the public prosecutor's office for legal action.

139. The most frequently condemned anti-competitive behaviour in the area of restrictive practices consists of restrictions on access to the market, aimed in particular at new forms of competition or new manufacturing processes, pricing agreements and simulated competition in public contracts.

Of the cases relating to restrictions on access to the market, the decision finding trade associations of furniture dealers guilty of putting pressure on certain suppliers in order to dissuade them from supplying a cooperative of national education service staff which applied lower prices than conventional trade prices is of particular significance. Similarly, in the non-proprietary medicines sector, i.e. copies of original medicines which are no longer legally protected, heavy penalties were imposed on seventeen pharmacists' trade associations which had obstructed the introduction onto the market of such products, which were considerably cheaper.

1 Seventh Report on Competition Policy, point 85.
An example of a pricing agreement is provided in the case of the penalty imposed in the fertilizers sector. A fine was imposed on several major producers who had taken concerted action on price lists, rebates, terms of sale and their relations with certain marketing groups.

In the area of public contracts, a fine of one million francs each was imposed on two large companies operating on the drinking water distribution market, which had on several occasions submitted bids to local authorities which were described as ‘separate but combined’, so that competition between them was distorted. The Minister also recommended that the firms concerned should not be associated in future when tendering to local authorities, except where it was not possible to employ resources on a separate and competitive basis.

The monitoring of situations of economic domination, in particular, enabled the Minister to reach a decision concerning certain practices observed on the tyre retreading market. Fully endorsing the opinion of the Competition Commission, the Minister considered that the Michelin company had in no way abused its dominant position in order to develop or protect its own positions on the market in question.

140. The Act of 19 July 1977 providing for control of economic concentration was applied only once during the reference period, on the occasion of the takeover of Société Grange Frères, a manufacturer of household refuse bins, by the German company IWKA and the Compagnie Générale des Eaux. The Ministers for Economic Affairs and for Industry, endorsing the opinion of the Competition Commission, authorized the takeover subject to the condition that the commercial networks of Grange and the Compagnie Générale des Eaux, which through one of its subsidiaries is the major supplier to the French market, remain separate.

Other concentrations were the subject of direct contacts between the authorities and the undertakings concerned without giving rise to formal proceedings.

However, the difficulties encountered in the implementation of the 1977 Act, due mainly to the notification procedures and the high control thresholds, which in practice exclude the distribution and services sectors, have caused the authorities to examine the advisability of amending the provisions in force.

Greece

141. Act No 703 of 1977 on the control of monopolies and oligopolies and the protection of free competition introduced into the Greek legal system, along the

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1 Seventh Report on Competition Policy, point 85.
lines of Community law, the principle of intervention against practices which restrict competition and abuses of dominant positions.

The Act prohibits agreements, decisions by associations and concerted practices which have as their object or effect the prevention, restriction or distortion of competition. Prohibited agreements are automatically void. The Act also provides that certain agreements may be exempted, where they fulfil certain conditions and where they are notified to the competent authority in due time.

The abuse of a dominant position by one or more firms over the whole or part of the national market is also prohibited.

Mergers by incorporation, absorption or takeover do not as such fall within the prohibition of agreements.

Agreements between firms which are designed exclusively to develop exports are not prohibited, save as otherwise provided in a ministerial decision.

A ministerial decision may provide that the Act does not apply to certain public undertakings or undertakings in the agriculture or transport sectors, or to certain branches of their activity.

The Act provides for fines and penalties of a criminal law nature in respect of infringements.

Two bodies set up under the auspices of the Ministry of Trade are responsible for implementing the Act: the Department for the Protection of Competition and the Commission for the Protection of Competition, made up of officials and experts. The Department carries out investigations for the purpose of establishing infringements and brings cases of infringement before the Commission.

The Commission, acting at its own initiative or on the basis of complaints lodged, makes recommendations and takes decisions pursuant to the law, against which appeals may be brought before the administrative courts. The Commission also gives negative clearance where requested.

A number of decisions have been taken by the Commission, two of which should be mentioned. The first is the Guy Laroche perfumes case, in which the Commission imposed a fine of DR 2 200 000 on the company's exclusive dealer in Greece for his refusal to supply as part of a selective distribution system. The second is the nickel slag case (a product used in the manufacture of a substance for cleaning the surfaces of ships), in which the Commission imposed a fine of DR 2 800 000 on the Larco company, because it had abused its dominant position in refusing to supply the abovementioned product.
Ireland

143. In the course of 1981 the basic legislation relating to restrictive practices has not altered.

Three statutory orders were made under the Restrictive Practices Act 1972:

(i) Restrictive Practices (Motor Spirit) (No 2) Order, 1980, which extended, for a period of two months, the existing ban on petrol companies from operating additional retail outlets.


The two most important recommendations were, firstly, that the temporary ban which has existed for some years on the opening of new wholesaler-owned petrol stations be made permanent, but with some modification to allow a limited degree of flexibility, and, secondly, that those operators of wholesaler-owned stations who are neither employees of the wholesaler nor have security of tenure by reason of the terms of their leases be given such security by the device of a three-year licence renewable at their option, but without the right of assignment.

(iii) Restrictive Practices (Groceries) Order, 1981, which consolidates all groceries orders from 1956 to 1978. The order implements recommendations made in The Report by the Restrictive Practices Commission on under-cost selling in the Grocery Trade, which was published in March, 1981. The Report recommended that under-cost selling in the trade should not be made unlawful, but also made a number of recommendations to tighten up the law against under-cost advertising (which is already unlawful in the grocery trade) and to clarify the law which allows suppliers to withhold grocery supplies from under-cost sellers.

144. In July 1981, the Examiner of Restrictive Practices commenced an investigation into the operation of the Restrictive Trade Practices (Electrical Appliances and Equipment) Order, 1971. The information obtained in the course of the investigation is now being analysed.

In November, the Examiner requested the Restrictive Practices Commission to hold an enquiry in order to ascertain whether or not certain provisions in the Dentists Act, 1928, which restrict the practice of dentistry or dental surgery, with
certain limited exceptions, to registered dentists, are unfair or unjust or in any other respect operate against the common good.

The Examiner also investigated complaints of unfair practices in the provision of various services and in the supply and distribution of various goods.

145. 55 proposed mergers or take-overs were notified during the course of 1981 under the Mergers, Take-overs and Monopolies (Control) Act, 1978. 16 of these did not fall within the scope of the Act. In one case the proposal did not receive any further consideration as the deal fell through. 31 proposals were considered and cleared. Manufacturing industry accounted for 5 cases, the distribution sector for 8, the manufacturing/distribution sector for 5 and the services sector for 13.

Since 1 October, 1980, the Minister for Trade, Commerce and Tourism referred four proposals to the Examiner of Restrictive Practices for investigation under Section 8 of the Act. These proposals concerned the newspaper, match manufacturing, milk supply and metal can manufacturing sectors. The Minister made an Order prohibiting the proposal involving the newspaper sector except on compliance with certain conditions. The match manufacturing and milk supply proposals were allowed to proceed. No decision had been reached regarding the metal can manufacturing proposal by the end of the period in question.

Italy

146. There was no change in Italian competition legislation during the report period.

Luxembourg

147. There was no change in Luxembourg competition legislation during the report period. However, at the start of the year new appointments were made to the Restrictive Trade Practices Commission. Pursuant to the Act of 17 June 1970 the Commission comprises two full members from the Ministry of Economic Affairs, one full member from the Ministry of Justice, three full members from the private sector, a secretary and an expert in concerted practices.

148. In February 1981 the Minister for Economic Affairs referred to the Commission a case concerning road salt. Following the Commission’s opinion, the Minister for Economic Affairs issued a warning to two firms for concerted practices which had distorted competition and hampered a new firm’s entry onto the Luxembourg market. The warning called for stricter supervision of markets to avert any concerted conduct or abuse in connection with prices.
149. During the report period the Prices Office’s activities in the legislative sphere covered in particular the fixing of maximum retail prices for drinking milk, cream, and butter, selling prices of Luxembourg wine and the display of official prices for foodstuffs.

The Act of 1 July 1981 froze profit margins (in absolute values) and adjustments to the wage-indexing system. All price increases beyond the level at 29 August 1981 must be notified to the Prices Office for authorization.

Netherlands

150. Changes will be made, subject to parliamentary approval, to the scheme of the Bill introduced in December 1977 to amend the Economic Competition Act (Wet economische mededinging) dealing with price maintenance and minimum prices. The memorandum of reply in response to the interim report on the Bill was presented to the Second Chamber on 17 August. It was accompanied by an amendment notice and a new version of the Bill proposing that the authorization system should apply only to vertical resale price maintenance agreements whereas it was originally to apply to all forms of price maintenance agreements. Pending adoption of such rules, the Royal Decree of 1 April 1964 declaring unenforceable vertical price maintenance clauses in restrictive agreements was extended by the Act of 14 May 1981 for a further three years until June 1984. A separate Bill, which still has to go before Parliament, will contain more detailed provisions on horizontal price maintenance agreements and other restrictive practices which may appreciably affect competition; the current system for supervising abuse will be strengthened by incorporating more detailed assessment tests. Cease-and-desist decisions could be imposed in individual cases where such practices are caught by these tests.

On 5 January a Bill concerning a register of restrictive agreements was introduced in Parliament. It amends the Economic Competition Act, entailing compulsory notification of horizontal agreements, followed by entry on a public register. On 7 May the Second Chamber’s standing committee on economic affairs delivered its interim report. The Government is expected to submit its memorandum of reply in response to the report fairly soon.

Another Bill amending the Economic Competition Act will shortly be introduced in Parliament aimed at extending the right of appeal, inter alia by widening the circle of those entitled to appeal. It will also seek to introduce a provision whereby, in urgent cases, the Chairman of the Business Appeals Tribunal (College van Beroep voor het bedrijfsleven) may be asked to take an interim decision in the context of an appeal to that Tribunal.
By order dated 4 August 1981, the Ministers for Economic Affairs and for Agriculture and Fisheries decided to extend once again—this time for three years—the declaration making the agreement on the minimum retail price for white granulated sugar generally applicable. The minimum price does not apply to imported sugar.

**United Kingdom**

151. Following the enactment last year of the Competition Act 1980, the Director General of Fair Trading (DGFT) has completed four investigations into alleged anti-competitive practices and initiated two more.

The first Competition Act report to be published on anti-competitive practices, concluded that certain criteria used by TI Raleigh Industries Limited and TI Raleigh Limited (the Group), in deciding whether to supply bicycles to retailers, amounted to an anti-competitive practice. The DGFT did not receive any acceptable undertakings from the Group and in April 1981, he referred the matter to the Monopolies and Mergers Commission (MMC) to consider whether or not the practice was in the public interest.

The report on Petter Refrigeration Limited (PRL) was published in May 1981 and concluded that PRL has induced, or attempted to induce, persons who sell, service, or repair commercial vehicle refrigeration equipment (including spare parts), not to do so where it had not been manufactured by PRL. Following publication of this report, the DGFT accepted an undertaking from PRL not to repeat their anti-competitive course of conduct.

In December 1980, the DGFT announced an investigation into the criteria adopted by Arthur Sanderson & Son Limited for deciding to supply furnishing fabrics to retail outlets. In August 1981, the DGFT concluded in his report that the application of criteria adopted by the Company did not amount to an anti-competitive practice.

The report on Sheffield Newspapers Limited (SNL), published in late October, concluded that SNL had been, and in some cases were still, pursuing anti-competitive practices in the criteria it applied in determining whether to accept property advertising, the terms on which it supplied such advertising, and the terms on which it supplied newspapers to newsagents. SNL has the opportunity to offer an undertaking to cease or modify these practices which, if accepted by the DGFT, will make it unnecessary to refer the matter to the MMC for further investigation.

The DGFT also announced two further anti-competitive practice investigations

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1 Tenth Report on Competition Policy, point 95.
involve, respectively, the London Electricity Board and W M Still & Sons Ltd. and W M Still Services Ltd., which have yet to be completed.

In some cases organizations have offered to modify their practices and formal investigations under the Act have therefore been unnecessary: e.g. from ICI in that it would modify certain of its contract terms; and from the British Broadcasting Corporation and Independent Television Publications Limited, in that they would allow free newspapers to publish details of television programmes.

152. The MMC, following references from the Secretary of State under the Competition Act, has made three reports on questions primarily concerning the efficiency of the operation of public sector bodies: London and South-East Commuter Rail Services,\(^1\) Central Electricity Generating Board (CEGB),\(^2\) and the Severn Trent Water Authority (STWA) (together with two water companies operating in association with the Authority).\(^3\) The Commission concluded that the British Railways Board were not pursuing a course of conduct which operated against the public interest. Nevertheless, it did find that performance could be improved and made 36 detailed suggestions for improved running of services. The Commission concluded that the CEGB's course of conduct in the appraisal of new investment had operated against the public interest and made suggestions to improve the assessment of future projects. On STWA, the Commission concluded that the headquarters exercised inadequate control over its divisions and in this respect operated against the public interest. Following a further reference from the Secretary of State, the MMC is currently investigating the activities of four bus undertakings.

153. The DGFT has announced that he proposed taking Court action under the Restrictive Trade Practices Act 1976 against parties to several unregistered agreements brought to light since the last report. The agreements related to the supply of liquified petroleum gas-burning domestic heaters, synthetic polyester resins, gas-fired central heating boilers, cast steel rolls, seamless steel tubes (two agreements) and road safety barriers. The three latter agreements, to which the British Steel Corporation (BSC) was party, are the first of several agreements notified to the Office of Fair Trading by the BSC following proceedings before the Restrictive Trade Practices Court in December 1980. Following proceedings earlier in 1980 against four manufacturers of concrete pipes,\(^4\) dings for contempt of court

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\(^2\) Central Electricity Generating Board. A report on the operation by the Board of its system for the generation and supply of electricity in bulk. HC 315 (Session 1980-81) HMSO 20 May 1981.

\(^3\) Severn Trent Water Authority, East Worcestershire Waterworks Company and South Staffordshire Waterworks Company. A report on water services supplied by the Authority and the Companies. HC 339 (Session 1980-81) HMSO 9 June 1981.

\(^4\) Tenth Report on Competition Policy, point 101.
were instituted in December 1980 against BSC who had entered into the same agreements as the four suppliers. At the time when the Corporation entered into the agreements, the assets and obligations of a company, which had been subject to earlier undertakings given to the Court, were vested in the Corporation. The Court decided that the Corporation was subject to the obligations of the company in respect of the undertakings which the company had given, and found the Corporation was guilty of contempt. A fine of UKL 50 000 was imposed.

Since last year’s report proceedings have been completed in respect of two agreements, those relating to the supply of coal in South-West Wales, and to the supply of animal feeding stuffs. In each case Court Orders under section 35(3) of the Act were made (or undertakings accepted by the Court in lieu of such Orders), restraining the parties from giving effect to any agreements to which they might be a party without first submitting particulars for registration. The restrictions in the two agreements were declared contrary to the public interest and Orders under section 2 of the Act (or undertakings) now restrain the parties from giving effect to those restrictions or making any other registrable agreements to the like effect.

Proceedings continued on the reference to the Court of the Stock Exchange, Association of British Travel Agents, and Society of West End Theatres agreements. The Aerodrome Owners’ Association and the British Reinforcement Manufacturers’ Association agreements, previously referred to the Court, have been ended by the parties, but Court Orders will be sought against them.

154. In the period since the last report, the DGFT has made four references (apart from merger references) under the Fair Trading Act 1973, namely: the wholesale supply in the United Kingdom of motorcar parts, the supply in Great Britain of films to exhibitors for exhibition in cinemas, the supply in Northern Ireland of pitches for holiday caravans, and the prices charged for the supply of contraceptive sheaths.

155. During the same period, the MMC published six reports. Four examined the operation of a possible monopoly in the supply of liquified petroleum gas (LPG), roadside advertising, ready-mixed concrete and concrete roofing tiles. The other two were general investigations into tie-in sales and full-line forcing, and discounts to retailers.

It found that whereas a monopoly did exist in the supply of LPG, this did not operate against the public interest and the MMC did not find against their exclusive dealing system. It did, however, consider that certain practices operated by Calor Gas Limited were against the public interest. On the supply of roadside advertising, the MMC confirmed the existence of a monopoly and concluded that it operated against the public interest. It was recommended therefore that British Posters (a
consortium of ten of the major poster contractors) be disbanded and that no like organization should be formed again. Concerning trading practices in the supply of ready-mixed concrete, the MMC found that there was no evidence to suggest there was not effective competition following the discovery by the DGFT of a large number of unlawful, local price agreements which had then been abandoned. On the supply of concrete roofing tiles the MMC found that scale monopolies which existed in favour of the Redland Group and the Marley Tile Company Limited operated against the public interest and they recommended, inter alia, that the two companies should notify the DGFT of any proposals to acquire any other concrete roofing tile producer and that the DGFT should monitor various aspects of the industry. Of the general investigations carried out, it was found that no further legislation was needed to control tie-in sales and full-line forcing, although particular categories of the tie might be the subject of action under existing competition legislation. The MMC found that the general effect of the practice of giving non cost related discounts to retailers had not been harmful to the public interest, though it emphasized that this conclusion depended on the maintenance of effective competition in retailing. The MMC drew attention to the fact that individual cases of abuse could be investigated under the Competition Act.

In the light of the MMC report on the supply of certain domestic gas appliances, published in 1980, the Government decided that the British Gas Corporation should cease retailing domestic gas appliances and dispose of their showrooms over a five-year period, but that the programme of showroom disposals would not be set in motion before comprehensive safety legislation had been enacted.

The DGFT made recommendations to the Secretary of State on 182 mergers and prospective mergers, while the Secretary of State referred six cases to the MMC. Of these, the MMC has so far reported only on British Rail Hovercraft Limited and Hoverlloyd Limited, recommending that the merger should be allowed to proceed, and on the Enserch Corporation/Davy Corporation Limited merger proposal, finding that it would be expected to operate against the public interest and recommending prohibition.

The MMC also reported on two cases referred to it during 1980: namely, Compagnie Internationale Europcar and Godfrey Daned Limited (recommending that it should be allowed to proceed) and S & W E d Limited and British Sugar Corporation Limited (recommending that it should be allowed to proceed, provided the acquirer gave certain undertakings as to future behaviour). The latter merger has not taken place.

1 'A report on the supply of certain domestic gas appliances in the United Kingdom' HC 703 (Session 1979-80) HMSO 29 July 1980.
Chapter V

Commission involvement in work concerning restrictive practices and State aids in international trade

157. The Commission considers it essential to promote and to strengthen cooperation between antitrust authorities, particularly in respect of restrictive business practices in international trade.

It has taken an active part in the work of the OECD’s Committee of Experts on Restrictive Business Practices, and Commission representatives also attended the first meeting of the Intergovernmental Group of Experts on Restrictive Business Practices, which was established under the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, adopted by the General Assembly of the United Nations on 5 December 1980.¹

The Commission also pursued bilateral cooperation with antitrust authorities in non-member countries, which is called for notably in the OECD Council Recommendation of 25 September 1979 on cooperation between member countries on restrictive practices affecting international trade.²

§ 1 — OECD

158. A report on ‘The Role of Competition Policy in a Period of Economic Recession’ was issued by the OECD Council. The report calls for stricter control of agreements concerning price fixing, quotas, market sharing or rationalization as well as stricter control of mergers. It emphasizes the need to limit aid to firms and industries in difficulty, and to ensure that such aid is not liable to delay the process of adjustment. It also argues that crisis cartels should be authorized only in exceptional cases, as part of a clear restructuring programme, due account being

¹ Tenth Report on Competition Policy, point 60.
² Third Report on Competition Policy, point 40; Ninth Report on Competition Policy, point 33.
taken of the interests of consumers and of the damaging effects such measures may have on international trade.

159. Within the OECD framework there are specialized working parties studying the situation in certain industries facing serious difficulties. Among these are the Steel Committee and Working Party No 6 on Shipbuilding. The steel policies of OECD countries are regularly considered by the Steel Committee as a way of exchanging information. At the Steel Committee meeting on 18 November 1981 the Commission described Community policy on aids to this industry. The meeting discussed the Commission's general policy in the area, and the position the Commission had taken on individual cases of assistance.

In OECD Working Party No 6 the Commission took an active part in the work leading to the revision of the understanding on export credits for ships, and in preparations for the revival of the General Arrangement for the progressive removal of obstacles to normal competitive conditions in the shipbuilding industry.

In the Committee for International Investment and Multinational Enterprises, and its Working Party on International Investment, the Commission is actively following the work being done to identify incentives and obstacles to international investment and their effects on international cooperation.

§ 2—UNCTAD

Principles and rules on restrictive business practices

160. The Intergovernmental Group of Experts on Restrictive Business Practices was set up on 20 March 1981 by Resolution 228 (XXII) of the Trade and Development Board of the United Nations Conference on Trade and Development (UNCTAD); this Intergovernmental Group was provided for in Section G of the ‘Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices’, adopted by the General Assembly of the United Nations on 5 December 1980 in Resolution 35/63, and is to act as an international institutional mechanism to make the Set of Principles and Rules operative.

The Group is to meet at least once a year. Its first session was held in Geneva from 2 to 11 November 1981.

1 See points 186 to 201 of this Report.
2 Tenth Report on Competition Policy, points 60 to 63.
3 Tenth Report on Competition Policy, point 61.
As part of its study and research activities, it adopted by consensus a resolution which among other things requested the Secretary-General of UNCTAD to prepare studies, for its next meeting, on:

(a) collusive tendering;

(b) tied purchasing practices, particularly in respect of replacement equipment and components for imported capital goods;

(c) the effects on international commercial transactions of restrictive business practices in the service sector by consulting firms and other enterprises in relation to the design and manufacture of plant and equipment.

161. The Community, acting alongside the Member States, actively contributed to the progress of the work. In its final declaration Group B, which within UNCTAD comprises the OECD countries, recalled the importance it attaches to the problem of exclusive dealing agreements and announced that the Delegation of the European Communities was prepared to present a report on this subject at the second session of the Intergovernmental Group of Experts, which is to be held in Geneva in November 1982.

For the purposes of the Set of Principles and Rules, the Community, as a regional grouping of States which has authority in the field of restrictive business practices, has the same rank as the member countries of UNCTAD. However, its present status in the operation of the Intergovernmental Group of Experts does not yet allow it to participate fully, and so it cannot play the important role which should fall to it in a body that seeks to deal effectively with the control of restrictive business practices at a world level.

*International code of conduct on transfer of technology*

162. The fourth session of the UN Conference on the code of conduct on the transfer of technology took place in Geneva from 26 March to 10 April 1981. The Conference was unable to reach an agreement on any of the questions outstanding.\(^1\) It forwarded the draft code to the General Assembly in its present form, asking it to take the appropriate measures. Negotiations are to continue within an interim committee before the Conference is reconvened. The central difficulty is the general thrust of the chapter on restrictive practices, particularly the application of that chapter to parent subsidiary relationships.

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\(^1\) Tenth Report on Competition Policy, point 64.
§ 3 — Cooperation between the Commission and the antitrust authorities of non-member countries

163. A Commission delegation, headed by the Member with special responsibility for competition policy, met representatives of the US antitrust authorities in the United States in November 1981; discussions centred on general questions of competition policy, particularly the policies pursued by both sides regarding the control of restrictions of competition in, respectively, the areas of sea and air transport, distribution and mergers.

The visit was organized in the context of the bilateral international cooperation which the Commission has been building up for several years with the antitrust authorities of non-member countries to deal with restrictive business practices liable to affect international trade. Cooperation has mainly taken the form of exchange of non-confidential information.

164. In application of the OECD Council Recommendation of 25 September 1979, contact was also established with the antitrust authorities of several OECD countries, when firms based in those countries were implicated in Community proceedings.

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1 Seventh Report on Competition Policy, point 74; Eighth Report on Competition Policy, point 43; Tenth Report on Competition Policy, point 65.
2 Ninth Report on Competition Policy, point 33.
Chapter VI

Competition policy and the role of socio-economic and political interest groups

165. In the debates which have taken place over recent years in the European Parliament on competition policy in the Community, particular emphasis has been placed on the need for greater involvement of a broad range of socio-economic interest groups in that policy.

The Commission fully agrees that if competition policy is to play a constructive role in the harmonious development of the Community, it must generally be accepted by the society to which it relates and supported by the various interest groups represented within that society.

In this context, it has been decided to devote a separate chapter in the annual reports on competition policy to significant developments which have taken place in the contacts between the Commission and representatives of socio-economic circles.

It should be emphasized that the role of the European Parliament itself in discussions on competition policy is very important. It was at the Parliament's suggestion that the Commission, in 1971, first started preparing specific reports on developments in the competition area and the debates in the Parliament and its committees on the basis of these annual reports are followed attentively by the Commission.

Although at the origin a report to the Parliament, the annual reports now reach an increasing circle of readers in- and outside of the Community, so that a brief annual review of the Parliament's involvement in competition matters must be included.

As to contacts with specific interest groups such as consumer organizations, trade union federations and industrial associations, the Commission has decided that the Economic and Social Committee, which brings together representatives of
these and other interest groups, would be an appropriate forum for an orderly and systematic exchange of views. The steps taken by the Commission in this respect are dealt with in the second paragraph.

Consultation of the Parliament and the Economic and Social Committee does not, however, preclude bilateral discussions on specific problems, and a final paragraph is devoted to general reflections as to such contacts.

§ 1 — European Parliament

166. The most wide-ranging discussion in the European Parliament on competition matters takes place each year on the basis of the Commission’s annual reports on competition policy.

In May of 1981, the Parliament adopted the draft resolution prepared by the Committee on Economic and Monetary Affairs (rapporteur: Mr Moreau) on the Commission’s Ninth Report on Competition Policy.¹

For the debate on the Commission’s Tenth Report which took place in the plenary session of December 1981,² the draft resolution of the Committee on Economic and Monetary Affairs (rapporteur: Mr Beazley) was for the first time in recent years accompanied by an opinion submitted by the Legal Affairs Committee (draftsman: Mr Megahy).

The Commission considers that both resolutions indicate Parliament’s support of the broad thrust of its competition policy. The fact that suggestions are made for improvements on specific points of that policy is a constructive form of criticism which can only be appreciated by the Commission.

Recurring topics include the Parliament’s desire for progress in areas where proposed legislation is blocked—for example, in the area of merger control—and its wish to see the competition rules extended to areas such as air- and sea transport and the banking and insurance sectors. Its insistence to be better informed of the Commission’s policy on specific issues such as the dealings of transnational enterprises and the positions of small and medium-sized enterprises, is understandable, although the position on these matters inevitably extends beyond considerations of competition policy. The Parliament’s suggestions with respect to the complex problem of State aids and matters regarding the Commission’s procedures in competition matters are often helpful.

² For the text of the debates, see Annex to the OJ, 1-278 of 1981.
In general, the Commission shares the Parliament’s concerns and feels that mutual support will lead to positive results. Various chapters in this Report accordingly take into account a number of requests made by the Parliament.

167. In addition to the debates on the Ninth and Tenth Reports on Competition Policy, the Parliament held several debates during the course of 1981 on issues directly or indirectly involving competition policy, notably: on the European automobile industry,\(^1\) on aids in the shipbuilding sector,\(^2\) on the fixing of book prices,\(^3\) on the textile industry,\(^4\) on industrial cooperation between Member States,\(^5\) on the steel industry,\(^6\) on trade relations with Japan,\(^7\) on the international economic activities of enterprises and governments, including control of mergers,\(^8\) and on the relations between competition policy, national aids and non-tariff barriers.\(^9\)

168. Finally, the Parliament has shown an increasing interest in competition policy and related matters through its written and oral questions to the Commission: from 1 January 1981 to the end of December 1981, the Commission was requested to reply in writing to approximately 80 questions relating directly and/or exclusively to competition matters, while some 85 questions for written answer were submitted concerning issues closely related to or in some way involving competition policy.

Also, nearly three dozen questions directly or indirectly involving competition policy were put to the Commission for oral reply, with or without debate, during the ‘Question Time’ which is held at each plenary session of the Parliament.

§ 2 — Economic and Social Committee

169. The Commission and the European Parliament share the view that the evolution of competition policy would be enhanced by an increased public awareness and understanding of the aims and principles involved. And, although the independence and objectivity of the Commission must be ensured, it is likewise in the Commission’s interest to be fully aware of public opinion on competition matters.

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\(^7\) Resolution in OJ C 172, 13.7.1981, p. 86.
Having considered various ways in which this mutual exchange of information could take place, the Commission concluded that an annual discussion of competition matters within the Economic and Social Committee (ESC), a Community institution which ensures the interests of all socio-economic circles, would be most appropriate.

The Commission has therefore decided, pursuant to the first paragraph of Article 198 of the Treaty, to consult the ESC on a voluntary basis on issues of general Community interest covered in the Commission’s annual reports on competition policy.

170. A special study group on competition policy set up within the ESC’s Section for Industry, Commerce, Crafts and Services has devoted several meetings, attended by Commission officials, to drawing up an opinion on the Commission’s Tenth Report on Competition Policy.

The opinion is closely linked to the opinion on ‘Community competition policy in the light of the current economic and social situation’, which the ESC issued on 30 April 1981 on the basis of an own-initiative report prepared by the Section for Industry, Commerce, Crafts and Services (rapporteur: Mr Bagliano, and co-rapporteur: Mr Neumann).

This extensive report emphasizes a number of themes, notably the need to view the Community’s competitiveness in the context of the existing world-wide interdependence and the importance of coordinating Community policies within the economic and social framework. On specific issues, the report shows the same concerns as the European Parliament with respect to the position of small and medium-sized enterprises, merger control, coordination of national and Community policies and the need for speeding-up and otherwise improving the procedures for applying the competition rules to firms.

171. The Commission is convinced that systematic discussions with the ESC in the future will ensure that the viewpoints of all interested groups on specific and general issues are heard.

§ 3 — Other contacts

172. The systematic discussions with the Parliament and the ESC by no means rule out the possibility of bilateral contacts between the Commission and interested groups.

173. Within the framework of legislation implementing the competition rules, provisions have been included to ensure that both in individual cases and in the preparation of secondary legislation, interested parties are given the opportunity of expressing their opinion.

In individual cases in which the Commission intends to give a negative clearance or grant an exemption pursuant to Article 85(3) of the Treaty, it must, according to Article 19, paragraph 3 of Regulation 17, publish a summary of the relevant application or notification and invite interested parties to submit any relevant observations within a specified time.

As regards the preparation of secondary legislation, the regulations conferring the necessary powers on the Commission invariably require the Commission, before adopting such legislation, to publish a draft thereof and invite all persons concerned to submit comments within a certain time limit.

For example, following the publication of the draft Commission regulation amending Regulation 67/67/EEC in accordance with the requirements of Article 5 of Council Regulation 19/65/EEC, extensive comments were received from more than a dozen organizations, including industrial associations, chambers of commerce and law firms. The Commission has subsequently carefully considered the criticisms and suggestions received in redrafting the proposal.

174. Furthermore, even prior to the publication of such proposed legislation, the Commission maintains informal contacts with interested parties. For example, when secondary legislation concerns particular branches of industry, the Commission services regularly contact the professional organizations and trade unions of the branch concerned.
Part Two

Competition policy and government assistance to enterprises
Chapter 1

State aids\(^1\)

§ 1 — General

175. The continuing and deepening recession in 1981 exerted a major influence in the field of State aids. It created great pressures in Member States for these to intervene through use of the State aid instrument, both in order to help with the adjustment process of adapting their industries to changed world market conditions and the need to counter rising levels of unemployment. The Commission considers that the pressure to grant State aids and the scale of intervention that has come to be accepted as normal carries with it the danger of the creation of what might be called an aid mentality on the part of undertakings, i.e. that firms, when they get into difficulties, turn immediately to the State for assistance rather than rely on their own resources and efforts to overcome their difficulties. This aid mentality is nurtured particularly in cases where they see their competitors receiving aids in other Member States and consequently feel that they have a right and a need to receive aid themselves. The inherent dangers of this situation are obvious.

176. Both in the number of aid proposals on which it has taken position and in the quantity of State resources involved, it is evident to the Commission that there is a rising trend in the granting of State aids. In this section of the Competition Report attention is concentrated upon the areas of industrial aids. Massive State aids are also given in the field of agriculture and transport but they are considered in detail, where appropriate, in other reports of the Commission.

The rising level of State aids already referred to is evident in all Member States. Differences can be observed in the policies State aids are used to promote, for example in one Member State the emphasis may be on regional aids, in another on

\(^1\) For State aids concerning the products listed in Annex II to the Treaty, see Fifteenth General Report, point 423.
aids to help sectors in crisis, while in a third Member State the emphasis may be on aid for research and development.

In the face of these trends, the role of the Commission in controlling aids has become increasingly complex, particularly from the point of view of reconciling the competing pressures to which the grant of aids responds with the sometimes not necessarily confluent objectives of Community policy.

Moreover, the effect of the use of aids within the Member State should not be overlooked. While the recipient of the aid receives a positive advantage, there are automatic disadvantages for those who do not receive aid. Not only do they have to compete, but the very fact of the granting of subsidies may have wider economic effects in terms of higher tax, budget deficits and higher rates of interest which further heighten the disadvantage of the non-recipient of aid. It is possible to envisage a situation where efforts to ameliorate the social consequences of the adaptation of crisis sectors can and do lead to the result that potential growth in newer industries, which provide the real future, is retarded, if not made impossible. The Commission has analysed some aspects of these problems in its Fifth Medium Term Economic Programme. The Report of the Study Group on Industrial Policies in the Community: ‘State Intervention and Structural Adjustment’ also analyses these problems.

177. The control of State aids has a vital role to play in the effective functioning of the common market. Within Member States the actions of various pressure and other interest groups, as well as legal constitutional structures, should lead to a certain equilibrium. In international affairs the role of international agreements, for example the GATT, means that instruments such as countervailing duties are available to protect against unacceptable consequences. Within the common market these possibilities do not exist to the same extent. Therefore the existence and importance of the State aid rules of the EEC Treaty. Their point of departure is that aids in as far as they distort competition and affect trade between Member States are incompatible with the common market. In this they serve as an important instrument for strengthening the unity of the common market.

178. However, the Treaty provisions allow for certain automatic exemptions; apart from the limiting criterion that aids must affect trade between Member States, aids having a social character granted to individual consumers, or aids to overcome natural disasters are automatically permissible. Of greater importance, the derogations contained in Article 92(3) EEC Treaty lay down criteria which allow the Commission to consider as compatible with the common market aids meeting Community objectives and furthering the development of the common market. These derogations place a heavy responsibility on the Commission which was underlined in the decision of the European Court in its judgment in the Philip Morris
case which was reported on in detail in the Tenth Report on Competition Policy. In particular the judgment underlined that the Commission in its evaluation of aid proposals cannot accept that national objectives are sufficient to justify the use of aids. They can only be considered compatible with the common market if they further Community objectives.

179. The Commission regards the aid rules as a positive policy instrument. In 1981 it strengthened its position in respect of the examination of aid proposals. In particular, it issued a new code of aids for the steel industry; the Fifth Directive on aids to shipbuilding was proposed and agreed by the Council; the system of control of aids to the textile industry is being tightened by the addition of a new reporting procedure and work commenced on revising the principles of coordination of regional aid systems presently in force. In addition it continued to ensure that Member States observe their obligation to notify to the Commission, pursuant to Article 93(3) EEC Treaty, all proposals to grant or alter the grant of aid.

While the main aim of the Commission in administering the State aid rules is to avoid the distortion of competition and to strengthen the unity of the common market, it has on the other hand to take into account the demands of the current economic situation, in particular the need for structural adaptation and strengthening of the competitiveness of the Community's industry, the fight against unemployment, the demands of an equitable regional development, etc. In this respect the Commission distinguishes between the short to medium term problems encountered in the crisis industries, for example steel, shipbuilding, textiles; the long term problems associated with for example regional development, or the special problems of the Community coal industry; and what might be described as the incitational needs in respect both of future industries and general problems of a horizontal nature such as the promotion of research and development, economy of energy, substitution of energy sources and promotion of the protection of the environment.

Of special importance in respect of such incitational measures it regards measures to promote the development of small and medium-sized enterprises which some studies have shown to be an efficient means of encouraging the growth both of new industries and technologies as well as of employment.

180. In administering industrial State aids, particularly in the crisis sectors, the Commission has developed a number of practical guidelines. They are:

1 Points 214 to 217.
Firstly, the use by one Member State of State aids must not lead to the transfer of industrial difficulties and unemployment from that Member State to the rest of the Community.

Secondly, where aids are given, they must bring about the restoration of the health of the recipient undertaking so that it can, within a reasonable period of time, be expected to operate viably without further aid.

Thirdly, any aids permitted should be so structured that they are transparent and can be controlled.

181. The Commission has gone on record stating the guidelines it will adopt in aids to specific Community objectives or industries, for example coordination of regional aids, aids for the environment, aids for sectors in difficulty. The aim has been to provide strict limits and indicate to Member States the thrust which their proposals should adopt, that is to say, the conditions under which aids may be given at all, the criteria to be adopted by such aids and finally, on a procedural level, to ensure maximum transparency. Such guidelines do not relieve Member States of their obligation to notify to the Commission individual proposals to grant or to alter the grant of aid before these proposals are put into operation. All proposals are examined individually by the Commission in order to consider their compatibility with the common market. It should be underlined that, particularly in respect of aids to industries in crisis, the effects of such aids are likely to have an enhanced negative effect in distorting competition given the problems of surplus capacity, low margins, etc. For this reason, for example in the case of aids to the steel industry, particular emphasis is laid on the fact that aids must be associated with reductions in capacity and be of limited duration.

182. At the other extreme of the industrial spectrum, in the development of future industries such as micro-electronics, telematics, biotechnology etc., the Community is faced with growing external challenges and a weak internal base. Our industrial future will to a large extent depend upon successfully meeting the challenge of these industries, but this carries with it high risks and costs in the innovation and development stages which may be beyond the capacity of many individual undertakings. The Commission considers that these challenges should be met by policies developed and implemented on a Community-level. If however, this is not possible it could be justified that, in line with the overall Community policies in these areas, Member States may intervene if they consider this desirable and it can be shown that their proposals are in the common interest. These aids have as their function to incite and speed up activities which might otherwise not take place, but their duration in any one case must be limited. Between these two extremes of the industrial spectrum lies the broad mass of
industrial sectors operating normally, adjusting to the changing needs of world markets. The Commission considers that as a general rule governments should not provide aid in these sectors. Any stimulus to investments should be given through improvement of general economic conditions at macro-level and reduction or elimination of various distortions and rigidities at micro-level. It is examining in particular the use of powers under general aid schemes in these areas, and taking a very firm line against such interventions unless they can be shown to be specifically in the common interest.

183. In the case of horizontal aid measures where the objective is to incite investments promoting developments that have a wider coverage than those concerned with specific regional or sectoral policies and are not specific to individual undertakings, the Commission considers that the threat of a major distortion of competition may be more limited. For example, measures to help the financing of small and medium-sized enterprises which provide many employment growth and product development opportunities, and which may have difficulty in gaining access to capital markets would come into this category. For these reasons they are judged favourably by the Commission. Similarly, the Commission considers that for example research and development, protection of the environment, and energy saving and substitution should be promoted. However, in assessing any aid proposals in these areas, the Commission will consider the implications of these to ensure that they are in the common interest and do not work contrary to the unity of the common market. Not only are these areas which need developing for intrinsic reasons, but in themselves they can provide useful opportunities for job creation.

184. The overall activity of the Commission is summarized in the following table showing the number of aid proposals notified and the decisions taken by the Commission in the period 1970-81. In considering this table it should be emphasized that in many cases where the Commission raised no objection and particularly where the procedure under Article 93(2) did not lead to a formal published negative decision, discussions with Member States led to substantial amendments of the original proposals to make these compatible with the common market.

§ 2 — Aid schemes for specific industries.

185. This section gives a description of particularly significant aid schemes or cases of aid which have a special interest because they constitute precedents or have important economic effects. It is not intended to present an exhaustive account of all the Commission’s decisions in the field of aids.

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Positions taken by the Commission concerning State aids from 1970 to 1981

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1 Excludes agricultural aids. The comparable figures for these for 1981 are: Notified 196. No objections 126. Procedures under Article 93(2) 8. Negative decisions 3. Notifications on which decisions pending 62. Also excludes transport aids.

2 In some of the cases, subject to conditions and/or modifications of the aid scheme originally notified, after negotiations between the Commission and the Member State concerned.

3 Opened and closed. During these procedures, proposals may be accepted after further examination, or modified after negotiation. The negotiation may result in the withdrawal of the proposition by the Member State after it has become clear that the proposal is incompatible with the common market.

Iron and steel (Application of the ECSC and EEC Treaties)

186. In its Resolution of 26 and 27 March 1981, the Council outlined proposals for a policy for the recovery of the Community steel industry. This Resolution defined the policy objective as: 'the restoration in the medium-term of normal market conditions in which undertakings are profitable, i.e., they cover from the proceeds of production, without State aids, the cost of the factors of production, including a normal level of depreciation and a reasonable rate of financing costs'.

From this base, the Resolution proceeded to develop proposals for action on prices, production, social measures and State aids. As regards State aids, it laid down a number of criteria which should be taken into account in determining their acceptability or otherwise:

(i) aids should be available only to undertakings or groups of undertakings which had specific plans covering the various aspects of restructuring (modernization, reductions of capacity and, where necessary, financial reconstruction) and ensuring restoration of competitiveness;
(ii) no aid should be accepted which would lead to a net increase in capacity for products for which there was not a growth market;

(iii) aids should be progressively reduced and, within a limited period, phased out entirely;

(iv) all State aids to the steel industry, from whatever source or on whatever basis—sectoral, regional or general—they are given, should be subject to the same constraints and should be notified in advance to the Commission;

(v) aids should not provoke unwarranted distortions of competition, and should be fully transparent.

187. In view of the increasing seriousness of the crisis in the steel industry, the Council considered that the then existing steel aids Decision (257/80/ECSC) was no longer an adequate instrument for dealing with the problems and asked the Commission to replace it as soon as possible with a new Decision which would reflect the principles of the Resolution. The Commission presented a draft Decision in May; this received the unanimous assent of the Council in July and was adopted by the Commission in August.¹

This Decision (2320/81/ECSC) applies until the end of 1985. It retains the basic objectives of its predecessor, namely the promotion of restructuring and the prevention of undue distortion of competition through State aids, but the rules have been strengthened in a number of ways in order to make the achievement of these objectives more certain:

(i) a timetable is established for the progressive phasing out of aid to the steel industry. Aids must be notified not later than 30 September 1982 and authorized by the Commission by 1 July 1983. Payments of aid may not be made after 31 December 1985, with the exception of interest relief grants on previously disbursed loans or of payments to honour guarantees. The time-limits are more restrictive in the case of emergency aid (approval only possible up to 31 December 1981) and aid to continued operation (payment must cease by 31 December 1984). It follows that apart from the emergency aids described in this report no further aid of this character will be payable in the future.

(ii) all beneficiaries of an aid (other than emergency aid) must be engaged in restructuring programmes leading to reduction in their production capacity, and the volume and intensity of aid must be in proportion to this restructuring effort.

(iii) Provision is made for greater transparency by requiring the Commission to consult Member States on the more important aid cases before it takes a decision and to inform Member States of all decisions taken by it. In addition Member States must report to the Commission twice a year the aid payments made in each half-year to enable it to monitor the progressive reduction of aid levels.

After only a few months of operation, it is not possible to give more than a tentative view on how the new Decision is working. This early experience, however, highlighted some of the difficulties in the way of achieving the desired results. As the following sections make clear, few of the aid proposals put forward by Member States since the new Decision came into force were acceptable to the Commission in their initial form, especially as regard the relationship between aids and capacity reductions. There was a tendency for Member States to seek to justify new aids solely on the grounds of restructuring undertaken in the past—an argument which does not correspond to the letter or the spirit of the Decision, and which demonstrates a reluctance to face up to the full magnitude of the steel industry’s problems. On the procedural level, it was necessary to take action in three cases where aid was granted either before the Commission had received notification or before it had taken a final decision. The Commission felt obliged to re-emphasize to Member States the importance for the future of the industry of the achievement of the objectives of the Decision.

The Commission took a position during the year on a number of aid proposals, both under Decision 257/80/ECSC and under its successor, 2320/81/ECSC. In some cases where a position was taken before the entry into force of the new Decision, the Commission nevertheless bore in mind the principles set out in the Council’s Resolution of 26 and 27 March 1981.

**Major aid schemes**

**Schemes approved by the Commission**

**Denmark**

In May 1981 the Danish Government notified the Commission of a plan for the financial reconstruction of a steel undertaking.

This undertaking has been carrying out a major restructuring programme to replace open hearth with electric steelmaking, to introduce continuous casting and to increase its plate capacity. The Danish Government provided aid towards this programme in 1978 and 1980, by a contribution of subordinated loan capital.
Commission approved the 1980 aid under Article 4 of the Decision 257/80/ECSC, on condition that the company closed its medium section mill by mid-1982.\(^1\) This mill was in fact closed in January 1981.

The financial restructuring proposed in May 1981 involved the company’s private shareholders and bankers as well as the State. As regards the shareholders and the banks, the measures consisted of the write-off of some loans and capital, subscriptions of new capital, the conversion of some loans to capital and the postponement of repayments on others.

The State proposed to write off DKR 144 million of existing subordinated loan capital, to subscribe DKR 54 million of new share capital and DKR 162 million of new subordinated loan capital and to take over existing guaranteed debts of DKR 207 million.

The Commission considered the proposal under Decision 257/80/ECSC and with reference to the Council’s Resolution of 26 and 27 March 1981, in particular the part—later to become Article 2(3) of Decision 2320/81/ECSC—dealing with the ‘special situation of Member States having only one steel undertaking whose effect on the Community market is minimal’. It regarded the financial reconstruction as part of the continuing restructuring programme, but had reservations about the extent to which the company, even after the restructuring of its finances, would be able to become competitive and to operate in the future without State aid. The Commission therefore decided that it could approve the proposed aids only on condition that the company’s structural problems received urgent attention. Accordingly, it made its approval subject to the Danish Government’s agreement to the appointment of a firm of consultants to study the company’s prospects of viability and to make proposals for appropriate action. The first conclusions of this study are to be available in June 1982, and on the basis of these the Commission may make recommendations to the company. In the meantime, the latter is to seek synergy with other steel undertakings, and will until the end of 1985 restrict its light section and plate production to any voluntary or mandatory quotas which may be in force. If such quota arrangements cease to exist, the Commission will itself establish production quotas in consultation with the company.

The Danish Government indicated its acceptance of these conditions at the end of July 1981.

United Kingdom

189. In March the United Kingdom Government notified the Commission of its proposals for the funding of the British Steel Corporation (BSC) for the year 1981/82. The funding amounted to UKL 730 million and was intended to cover

\(^1\) Tenth Report on Competition Policy, point 199.
investment costs, redundancy costs, increase in working capital and to meet anticipated operating losses. The funding was associated with a Corporate Plan for 1981/82 which entailed further major reductions in the workforce and the closure of some installations. Although it recognized the importance of the measures already taken towards the restructuring of BSC, the Commission considered that the proposed reduction in crude steel capacity (0.9 million tonnes) was inadequate given the fact that it was intended to maintain some 6.5 millions tonnes in reserve, and that the volume of aid was excessive in comparison with the further restructuring to be carried out. Accordingly, while raising no objection to the closure aids, it decided in May 1981 to initiate the procedure of Article 6(2) of Decision 257/80/ECSC in respect of the remainder (UKL 550 million). In the light of further information received, the Commission decided to approve the remainder of the proposed finance, in two tranches (July and November). It took account of the fact that, apart from the crude steel capacity reduction mentioned above, BSC was also effecting a considerable reduction in its finished products capacity. In addition, there would be in 1981/82 a reduction of crude steel capacity in the United Kingdom private sector of about the same size as that proposed for BSC. The Commission also discussed with the United Kingdom authorities the basic economic assumptions underlying a three-year Corporate Plan for BSC covering the period 1982/83 to 1984/85, and considered them a realistic planning framework for the Corporation’s future activities. The United Kingdom Government agreed to discuss the three-year plan with the Commission before any decision was taken on it. The Commission made its approval of the two tranches subject to the conditions that advances to BSC should be limited to what was strictly necessary, with monthly reports on these, and their justification, to be sent to the Commission; and that BSC’s crude steel output should be limited to 13.9 million tonnes in 1981/82, unless the Commission gave prior authorization to exceed that figure.

Schemes subject to procedure or at first stage of examination

Belgium

190. The previous report\(^1\) outlined the Commission’s reasons for initiating (in December 1980) the Article 93(2) EEC procedure in respect of certain aids proposed by the Belgian Government for ‘strategic’ and ‘minor’ investment programmes and emergency aids for undertakings in the Triangle de Charleroi.

In April 1981, the Commission extended this procedure to take in also further proposed emergency aids in the form of guarantees of loans of about BFR 6 500 million. Given its doubts about the general restructuring aids in respect of which

\(^1\) Tenth Report on Competition Policy, points 200 and 201.
it had initiated the procedure in December, and in the absence of clear indications of the proposed future capacity of the Belgian steel industry, the Commission found it impossible to take a coherent view of the new emergency aids.

These procedures were still in force when the Belgian Government notified the Commission, in June 1981, of its proposals as regards the merger of Cockerill and Hainaut-Sambre. The information given was completed by the Belgian Government’s reply to a detailed questionnaire drawn up by the Commission, and by further information supplied in October 1981.

The aids proposed (apart from those in respect of which the Article 93(2) procedure had already been initiated) were intended to cover investment costs and social costs and to contribute to the restoration of the financial position of the group. They were to take several forms, namely State guarantees on loans, the conversion of debt into capital, the subscription of new capital, the issue of convertible participating bonds and various interest reliefs, including a two-year prolongation of the State’s existing undertaking to bear interest on certain long-term debts. The measures to restore financial stability amounted to some BFR 58 000 million, the investment aids covered one half of the total investment finance requirement and the social aids were in the form of a State guarantee on loans covering the whole of the foreseen costs.

The associated restructuring programme would result in capacity reductions of 3.2 million tonnes of crude steel and about 1 million tonnes of hot-rolled products, and the workforce would fall by 5 000 between 1981 and 1985, through natural wastage and early retirement.

The Commission decided in November to initiate the procedure of Article 8(3) of Decision 2320/81/ECSC in respect of these proposals on the grounds that the capacity reductions were insufficient and that the plan did not meet the viability criterion of Article 2 of Decision 2320/81/ECSC.

191. In August, the Commission agreed to the provision of a State guarantee on short-term loans of BFR 5 200 million at market rate to meet the financial needs of Cockerill-Sambre up to October 1981; without this finance the enterprise would have been confronted with immediate and very serious liquidity problems. This aid, which is to be counted as part of the total aid package for the restructuring of Cockerill-Sambre referred to above, was first proposed by the Belgian Government in the form of a subscription of capital. Considering the emergency character of this intervention, the Commission could not approve an aid in this form and the Belgian Government decided to adopt the loan-guarantee approach.

The Commission indicated that approval of this emergency aid did not prejudge its overall assessment of the Cockerill-Sambre proposals or of other aids notified for
the Belgian steel industry. The Belgian Government undertook to give no further aid to Cockerill-Sambre before October, to ensure fulfilment by the undertaking of its obligations on quotas and prices and to arrange communication of its liquidity position on a monthly basis.

During the course of discussions with the Commission, the Belgian Government requested the Commission's approval of certain aids on the basis of the implementation of certain measures provided for in the restructuring programme. These consisted of the definitive closure of two blast furnaces, a sintering plant and two mills with a total capacity of 700,000 tonnes of long products. This enabled the Commission to authorize part of the proposed financial restructuring, namely the conversion of BFR 520 million of debts into capital, as well as a loan of BFR 4100 million at market rate to meet the financial requirements of Cockerill-Sambre in the early part of 1982. At the same time the Commission decided to release ECSC loans for three previously approved investment projects within the group.

The Belgian Government agreed to continue discussions with the Commission with the aim of establishing a restructuring programme which would ensure the viability and competitiveness of the group. The conditions regarding monthly reports, production quotas and prices remained in place.

Federal Republic of Germany

192. In July the Commission initiated the procedure of Article 93(2) EEC in conjunction with Article 6(2) of Decision 257/80/ECSC in respect of a proposal to provide aid to a steel undertaking in Bavaria. The proposal concerned a programme of investment costing DM 213 million over a 3-year period (already notified under Decision 22/66) and a Research and Development (R & D) programme costing DM 66 million. For the investment programme, grants totalling DM 34.5 million were envisaged, while the R & D programme was to receive grants of DM 38 million. The net grant equivalent of all the aids together was estimated at about 14%. These proposals were expected to result in an employment reduction of about 10%.

Further information provided by the German Government during the course of the procedure made it clear that capacity reductions in excess of those originally indicated would result from the restructuring programme—35% in crude steel and more than 28% in rolled products. The Commission considered that restructuring on this scale would make a major contribution to the solution of the undertaking's structural problems and concluded that it need raise no objection to the proposed investment aids of DM 34.5 million. As regards the R & D programme, the Commission took the view that aids towards the capital expenditure of DM 20 million would
have to be treated according to the rules for investment aids and must consequently be limited to levels acceptable for such aids. Aids for other aspects of the R & D programme would have to observe the 50% ceiling established by Article 7 of Decision 2320/81/ECSC. As a result, the Commission considered that it would be able to authorize DM 29 million of the proposed DM 38 million of R & D aids. In December it invited the German Government to modify its proposals accordingly.

193. In August 1981 the German Government notified aids for the continuation and modification of a programme for the restructuring of the Saarland steel industry which had been commenced in 1978.

The modification involved the closure of the liquid phase at one site a year earlier than foreseen, the continued mothballing of a steelworks originally intended to be brought back into use in 1981, a more rapid build-up to full production in a new steelworks and the cessation of production of seamless tubes at one site. New investments including a continuous caster and a reheating furnace were proposed, at a total cost of DM 190 million. These changes would lead to a further employment reduction of some 1 250, and social costs would be increased by DM 200 million. The aids envisaged were conditionally repayable grants of DM 170 million, and guarantees on loans of DM 210 million, both aids to be jointly financed by the Federal and Land Governments. The Commission decided to initiate the procedure of Article 8(3) of Decision 2320/81/ECSC in respect of these proposals. It considered that the changes in the market situation since the initiation of the original restructuring plan merited a more fundamental review of the position of the Saarland Industry, in particular with regard to rolling capacity, which it is intended to maintain at the level of the 1978 plan.

The Commission was therefore unable to conclude that the modified programme was sufficient to ensure the future viability and competitiveness of the undertaking, or that the restructuring effort justified the proposed level of aid. In the context of the procedure, the German Government provided further information on the situation of the undertaking. In the light of this the Commission concluded that aid was required as a matter of urgency and accordingly it authorized the payment of DM 170 million. This authorization was given on the condition that the utilization of 1 million tonnes of crude steel capacity which had been put in reserve at one works would be subject to prior approval by the Commission. The procedure remained in force as regards the remainder of the aid proposed. The Commission underlined its doubts about the ability of the restructuring programme to achieve the desired results and indicated to the German Government that it wished to discuss possible modifications to the programme in the context of its consideration of the remaining aid proposals.
194. The German Government proposed to introduce a sectoral aid scheme for investments in the steel industry. A grant of 10% of the investment cost would be available to steel undertakings making investments which were linked to programmes of restructuring, modernization or rationalization. The investments must be made in the years 1982-85 and no payments would be effected after the end of 1985. The total aid budget for the scheme is estimated at some DM 600 million. It would be possible for enterprises to combine aid under this scheme with other aids, up to a maximum of 20% of the total investment cost. The Commission asked for certain further details about this scheme, and is studying the German Government’s reply.

France

195. In October the Commission initiated the procedure of Article 8(3) of Decision 2320/81/ECSC in respect of an aid scheme for the restructuring of an enterprise producing special steels in France. The aim of the restructuring is to rationalize the company’s production of special steels and long products, and mainly involves the modernization of a steelworks at Les Dunes. The cost of the programme is estimated at FF 800 million (including FF 200 million for non-ECSC activities), to which the French Government proposes to contribute FF 450 million in the form of subordinated loans of 20 years’ duration.

The Commission was led to open the Article 8(3) procedure for several reasons. The larger part of the ECSC investment programme (c. FF 400 million) had not been declared to the Commission as required under Decision 22/66. The information available indicated that the investments proposed would have the effect of increasing capacity for crude steel and finished products, while no precise details on any compensating closures were given, these being still under study. It was not clear whether action would be taken to improve the quality of the rolling facilities of the company which in the Commission’s view raised doubts as to the future viability and competitiveness of the company in the absence of further aids. Finally, the exact terms of the subordinated loans were not communicated and the Commission was therefore unable to assess the intensity of the aid involved.

196. In August and September the French Government notified two tranches of emergency aid to Sacilor and Usinor. These aids took the form of loans by the Fonds de Développement Economique et Social amounting to some FF 4 900 million. Simultaneously with the notification of the second tranche, the French Government informed the Commission of its intention to convert FDES loans of some FF 13 800 million to Sacilor and Usinor (including the emergency aids of FF 4 900 million) into share capital, in the context of its plans for the nationalization of the steel industry. As regards the emergency aids and their conversion into capital, the Commission was unable to assess the compatibility of these proposals with the criteria of Decision 2320/81/ECSC. Details of the terms of the loans were not
available, and no indication was given of any restructuring which it was proposed to put into effect in connection with these aids. It was therefore necessary to initiate the procedure of Article 8(3) of Decision 2320/81/ECSC in respect of them. At the same time the Commission asked the French Government to provide it with details of the remaining FF 8 900 million of FDES loans (granted in previous years) which were also to be converted into capital. From the information available to it, the Commission was unable to determine what effect the conversion of these loans would have on the financial charges borne by the companies and, consequently, to what extent it should be considered as an aid.

Sacilor and Usinor were the subject of a further request by the French Government for authorization of emergency aids in the form of loans amounting to FF 4 430 million. The Commission decided in December to authorize a maximum of that amount under Article 6 of Decision 2320/81/ECSC, taking the view that the aids were essential to the survival of the undertakings and were intended to avoid serious social problems, pending the development of an overall restructuring plan for the French steel industry. The Commission made it a condition of approval that the loans should bear a market rate of interest and should not be paid after 30 June 1982. In addition, the French Government was required to supply monthly reports on the amount and conditions of loans advanced together with details of the undertaking’s financial situation and to begin discussions with the Commission on its proposals for the restructuring of the steel industry not later than the end of March 1982.

Italy

In October, the Italian Government notified the Commission of the adoption of Decree-law No 495 of 4 September 1981, which made provision for aids to both the private and the public sector steel industry in Italy.

For the private sector, the aid was a measure to lessen the impact of rising energy costs on electric steelworks. The Decree-law empowers the State to meet up to 30 June 1983 all increases in the price of off-peak electricity above the level which obtained at 31 March 1981. An initial budgetary provision of LIT 50 000 million had been established for 1981.

As regards the public sector, the Decree-law authorized IRI to issue 7-year bonds on the financial market to an amount of LIT 2 000 000 million. The bonds, which would be guaranteed by the State, would have a 3-year grace period and the State would meet the interest up to 11 percentage points for the life of the bonds. The product of the issue would be made available to IRI’s steel enterprises to reduce their short-term debts. The issue of these bonds was conditional on the approval, by the Minister of State Participations and the Interministerial Committee
on Planning and Industry, of a restructuring plan for the public sector steel industry.

In considering these aids under Articles 2 and 5 of Decision 2320/81/ECSC, the Commission noted that the private sector enterprises were not required to undertake any restructuring in return for the aid. The State-owned enterprises on the other hand were to draw up a restructuring plan, but this had not been made available to the Commission, so that assessment was impossible. In addition, the volume of the two aids taken together (estimated at about LIT 1 000 000 million in grant equivalent) appeared likely, considering their character as aids to continued operation, to have serious effects on competition. Both aids also raised problems with regard to Article 5, the IRI bonds because they would lead to payments after the two-year limit established by that Article and would not be proportionately reduced at least once a year, the electricity aid because there was no provision for annual reduction and, in principle, the volume of aid seemed more likely to increase than to decrease, given the underlying trend in energy prices.

For these reasons the Commission decided to initiate the procedure of Article 8(3) of Decision 2320/81/ECSC in respect of these aids.

198. The Italian Government notified the Commission in November of a draft law to increase the capital of Finsider. Before the Commission had time to take a position on this draft law the Italian Government asked it to release a first tranche of LIT 350 000 million of the proposed capital in order to meet urgent financial needs of the undertaking. The provision of this finance would be accompanied by a reduction of 130 000 tonnes of capacity for hot-rolled products. The Commission considered that in view of the financial situation of the undertaking, provision of this capital inevitably contained aid elements, and would have to be taken into account in its overall assessment of aids proposed in connection whith the restructuring plan for the Italian steel industry. It agreed to authorize this tranche of capital on this basis.

Luxembourg

199. In April the Commission opened the procedures of Article 93(2) EEC and Article 6(2) of Decision 257/80/ECSC in respect of the Luxembourg industry. The proposed aids consisted of grants of 15% and special repayable grants of 10% on investments estimated to cost a total of LFR 20 000 million, loans of LFR 1 028 million at reduced interest rates, a tax concession enabling losses up to half of annual depreciation to be carried forward indefinitely, aids for infrastructural work at one site and towards the costs arising from the closure of another, and an increase of LFR 3 500 million in the ceiling for State guarantees of ECSC loans.
These aids were regarded by the Commission as falling under Articles 2 (investment), 3 (closure) and 4 (continued operation) of Decision 257/80/ECSC. As regards the investment and operating aids, it considered that the capacity reductions and restructuring proposed were insufficient to justify the intensity and amount of the aids. Further, details of some of the investments had not been declared to the Commission, which was therefore not in a position to judge whether these investments could be expected to improve the competitiveness of certain plants. There seemed to be no provision for the operating aid to be progressively reduced and the Commission could not establish whether it was limited to what was necessary to enable activity to be continued during restructuring. Similarly, for the closure aids, the information given by the Luxembourg Government was insufficient to enable the Commission to establish compatibility with Article 3. In the context of the procedure the Commission addressed a detailed questionnaire to the Luxembourg Government, whose reply is under consideration.

Individual investment projects

200. The Commission approved aids for individual investment projects in five Member States under Decision 257/80/ECSC.

*Federal Republic of Germany*: The project concerned the centralization of coke and pig-iron production in the Saar. The aids consisted of a conditionally repayable grant of DM 200 million and regional grants at 8.75%, the two together having a net grant equivalent of 20% of the investment cost.

*France*: The aids were for an investment programme at an integrated steelworks at Fos-sur-Mer. They took the form of a grant of FF 21.6 million from the Agence pour les économies d'énergie and a State guarantee for an ECSC loan accorded to the project. Their combined net grant equivalent was about 6%.

*Luxembourg*: The construction of a new plant at Dudelange for the production of coated sheet and aluminized sheet was aided by a grant of 12.5% (c. LFR 163 million) and a partial tax exemption for eight years not exceeding 10% of the cost, amounting together to net grant equivalent of about 15%.

*Netherlands*: The investment related to the construction of a new coking plant at IJmuiden, and the aids, which had a net grant equivalent of 9% consisted of a State guarantee on a loan of HFL 200 million plus a grant of 9%, not exceeding HFL 40 million.

*United Kingdom*: Aids consisting of a regional grant and an exchange guarantee for an ECSC loan were accorded to a project for the concentration of special steels production by a private sector company. Their net grant equivalent was about 15%.
In all five cases, the Commission considered that the restructuring and modernization effort involved justified the intensity and volume of the aids in terms of Article 2 of the Decision.

The Commission decided to initiate the procedure of Article 8(3) of Decision 2320/81/ECSC in respect of aids notified by the German Government for investment programmes to be undertaken by four steel undertakings. Although the proposed aids (reduced-interest loans) were of low intensity and amount, the Commission was unable to determine their compatibility with Articles 2 and 3 of the Decision. The information provided about the nature and purpose of the investments was insufficient and it was not clear that any restructuring was planned to accompany them. In two of the cases, the Commission considered that the investment was notifiable under High Authority Decision 22/66, though no such notification had been made.

A number of notifications of individual investment projects have been received from Member States and are being examined by the Commission.

**Action on infringements of procedural requirements**

201. The Commission has initiated infringement procedures under Article 88 ECSC against France and Italy and under Article 169 EEC against Belgium.

The Article 88 procedure against France concerns the subordinated loan capital for a special steels company and the emergency aids for Sacilor and Usinor mentioned above.

In both cases, the aids had already been granted before the notification was made, in contravention of the requirements of Article 8(1) of Decision 2320/81/ECSC.

In the case of Italy, the aids in question are those provided for in Decree-law No 495 (see above), a LIT 750 000 million financing of Italsider (the funds being provided by banks, but covered by a deposit of treasury certificates by IRI) and a LIT 431 000 million increase in the capital of Italsider. The Decree-law was notified after the date of its entry into force. The electricity aid became available immediately and the bonds issue, though not authorized at the time of notification, was to follow the approval of a restructuring plan—an approval which itself was to be given not later than 40 days after the adoption of the Decree-law. The two interventions in favour of Italsider have not been notified to the Commission.

The Belgian case in respect of which the Article 169 EEC procedure has been initiated concerns the emergency aid of BFR 1 500 million for the Triangle de Charleroi and the BFR 6 500 million aid mentioned above, as well as a measure to convert loans of BFR 2 000 million granted by the Société Nationale de Crédit à l'Industrie to a steel company. The aids of BFR 1 500 million and BFR 6 500
million were granted by the Belgian Government despite the Article 93(2) EEC procedure initiated in respect of them, which has the effect of preventing the implementation of aid proposals before the Commission has taken a final decision. The conversion of BFR 2 000 million of loans was notified after it had been accomplished.

Shipbuilding


202. The Fifth Directive on aid to shipbuilding was adopted by the Council on 28 April 1981.¹ Like the Directive of April 1978,² which it supersedes, it is designed to provide a framework for aid towards continued efforts to reorganize the Community's shipbuilding industry and increase its efficiency. Subject to certain conditions it allows crisis aid and aid to deal with the social and regional consequences of restructuring. The Directive is to apply until 31 December 1982.

National aid schemes

203. In several cases the Commission was called upon to adopt a position on the compatibility with the common market of schemes proposed by Member States to help meet the present crisis.

Italy

204. The Italian Government notified the Commission of aids to the shipbuilding industry, taking the form of grants towards the construction of ships under law No 231 of 1978 and law No 122 of 1980.³ The Commission initiated the procedure of Article 93(2) EEC in respect of both schemes, on the grounds that the level of aid provided for was a good deal higher than that authorized for other Member States.

The Commission also found that the absence of restructuring objectives for the shipbuilding industry in Italy was a serious shortcoming, applying the tests laid down in Article 6 of the Directive on aid to shipbuilding.

The schemes were amended following discussion with the Italian authorities, notably with regard to the maximum rates of aid actually applied, which in the case of Law No 122 of 1980 are now restricted to 27.5% of the contract price.

¹ OJ L 137, 23.5.1981; Tenth Report on Competition Policy, point 181.
³ Tenth Report on Competition Policy, points 186 to 189.
The Commission also took note of the Italian Government’s firm intention to lay a restructuring plan for the industry before Parliament in the near future. The Commission will be consulted on this plan.

In the light of the changes which the Italian Government had made to the schemes, and the particularly difficult social and regional circumstances facing the industry, the Commission decided to raise no further objection to the grant of the aids in question.

**France**

205. The French Government sought the Commission’s approval for the extension of its shipbuilding aid scheme to cover 1981 and 1982. Production aid would be reduced from the 25% formerly permitted to 23% of the contract price, for ships built in the large yards. For ships built in small yards the maximum rate would be 13% of the contract price.

These ceilings would apply to the combination of production aid proper and the incidence if any of the price guarantee mechanism.

The Commission decided not to raise any objection to the extension of the scheme; the aid was being progressively reduced, as required by Article 6 of the Council Directive of 28 April 1981, and the grant of assistance would be linked to the continuance of the restructuring process in the French shipbuilding industry, aimed at making the industry competitive and able to operate without aid.

**Denmark**

206. The Danish Government has twice applied to the Commission for authorization to extend the credit facility scheme it offers Danish shipowners for the purchase of ships in the Community, the first time to cover the year 1981 and the second to cover 1982. Under the scheme loans are available for up to 80% of the contract price of the vessel, at an interest rate of 8%. The repayment period, which was fourteen years for purchases in 1981, will be reduced to ten years for 1982. The grace period on repayment will be shortened from four to two years. In the light of the rules which the Fifth Directive lays down on crisis aid (the progressive reduction requirement) and on aid to shipowners (Article 8), the Commission concluded that the Danish aid could be considered compatible with the common market.

**United Kingdom**

207. The Commission was twice called upon to rule on the compatibility of UK shipbuilding aids, once for the first six months of 1981 and then for the period up to 1 July 1982.
Under plans for the restructuring of the industry in Great Britain production capacity would be reduced by 10% over this period, with a corresponding cut in jobs.

The aid has been reduced in intensity and in volume: the maximum rate falls from 25 to 20%, and in the second period the funds set aside amount to UKL 55 million, compared with UKL 67.5 million previously.

In view of the substantial measure of restructuring already accomplished in the industry in the United Kingdom, and of the progressive reduction of aid, the Commission decided to approve the implementation of these measures.

**Individual case of application**

**United Kingdom**

208. State aids taking the form of credit facilities for the export of ships are governed by an international code, the Understanding on Export Credits for Ships, set out in a resolution of the OECD Council adopted on 30 July 1981.

The Understanding provides that credit may not be for longer than eight and a half years, that the interest rate may not be less than 8%, and that the down payment must be at least 20% of the contract price.

Exceptions are permissible to assist a developing country (genuine aid), or to match an offer by another country not respecting the Understanding. The British Government invoked this latter clause in order to offer more favourable terms for the sale of two product tankers to Panama. The Swedish Government had made an offer for the sale of similar vessels to an Indonesian shipowner on genuine aid conditions. The two offers concerned the same ships, and the British Government argued that it was entitled to match the Swedish offer, the ships being destined for Panama. The Commission did not accept the argument, Panama being a country with open registry, and Indonesia a developing country.

The matter came before the Commission under Article 2 of Council Directive 81/763/EEC, which incorporates the Understanding on Export Credits into Community law; the Commission found that aid to match the Swedish offer would not be justified, and took on 16 December 1981 a negative decision on the British aid under Article 93(2) of the Treaty.

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Ship repairing

209. Like shipbuilding, ship repairing is feeling the effects of the prolonged decline in shipping activity during recent years. Ship repairing, however, benefits from two positive factors, since the almost complete drying-up of new orders does not entail a corresponding absence of ship-repair work, given that normal maintenance work on ships has to continue. Ship repair also benefits from a captive market in the large ports which serve as landing points for large numbers of ships.

The decline of activity has nevertheless led the ship repairing industry to undertake structural adaptations to meet the new market conditions. This has been the case in France, the Netherlands and Belgium. As regards the aids envisaged in Belgium, the Commission was obliged to initiate the procedure of Article 93(2) of the EEC Treaty, because it could not be certain that the proposed restructuring took full account of the lower volume of traffic in the future. The Belgium Government was able to give assurances on this point and the Commission ceased to oppose the application of the proposed aids.

Textiles and clothing

Commission policy on aid to the textile and clothing industry

210. The sensitive nature of the industry throughout the Community, as a whole, and the acute difficulties facing some sections of it have accentuated Member States' tendency to relieve difficult economic and social situations by granting aids.

Commission action over the past year has therefore been aimed mainly

(a) at avoiding an escalation of aids, and public measures which would shift difficulties from one Member State to another;

(b) at ensuring that the grant of aid is tied to restructuring efforts by the recipient firms.

In the positions it has adopted, the Commission also sought to ensure that the aid plans notified to it helped to reduce surplus capacity, to improve technology and production, and/or to move into promising markets or quality brackets, as required by the aid frameworks.

1 Eighth Report on Competition Policy, point 192.
2 Eighth Report on Competition Policy, point 194.
3 Tenth Report on Competition Policy, point 193.
In the difficult conditions facing the industry the Commission believes that it must be in a position to monitor the application of all aid schemes used to assist the textile industry in order to establish what their effects are on the industry.

It therefore plans to introduce a method of *a posteriori* monitoring of all aid granted to the textiles and clothing industry, making it easier to check how the schemes are being applied in practice.


*Synthetic fibres*

211. In 1977, in view of the problems created by overcapacity in the synthetic fibre industry (acrylic yarn and fibre, polyester and polyamide), the Commission asked the Member States to stop granting any aid, specific, regional or general, which might increase production capacity for these synthetic fibres; the Commission also asked Member States to notify it in accordance with Article 93(3) of the EEC Treaty of all planned aids which, while not increasing capacity, were aimed at remedying serious social or regional problems, and all measures which the Member States might take under general or regional aid plans to help the industry in question. This arrangement applied for two years, and was subsequently extended up to 19 July 1981.

It helped to secure a reduction in Community capacity, which did not, however, go far enough: stagnating demand, falling prices and the temporary difficulties caused by imports of American fibres created further difficulties. Capacity utilization was 75% for polyamide and polyester yarns and 65% for polyester and acrylic fibres in August 1981. According to an estimate of average trends, there will continue to be substantial overcapacity (between 400 000 and 500 000 tonnes) over the next few years.

The Commission accordingly decided, on 29 July 1981, to extend the code introduced in 1977 for a further period of two years (expiring on 19 July 1983), but if necessary to reconsider the matter before that date if, for example, there is abnormal competition from fibres imported from non-member countries.
National schemes

Netherlands

212. On 26 May 1981 the Commission decided to close the Article 93(2) procedure it had initiated in October 1980 in respect of a Dutch plan to assist the cotton and allied textiles sector (cotton, rayon and linen—'KRL'). The Commission had drawn attention to the succession of public aid measures in this industry since 1975, and the fact that certain features did not conform to the Commission's guidelines on assistance to the textiles and clothing industry.

In the course of the proceedings the Dutch authorities made a number of amendments to the initial plan:

(i) aid would not be granted merely for the renewal of equipment;

(ii) the export aid initially planned would be dropped;

(iii) the scheme would be applied in such a way as to avoid the creation of any new production capacity; aid would be restricted to investment by firms modifying their production processes, speeding up the introduction of new technology, or moving into new markets created by demand;

(iv) the amount earmarked for the assistance would be lowered from HFL 30 million to HFL 25 million.

It was these amendments which prompted the Commission to close the Article 93(2) procedure.

In order to monitor the application of the scheme the Commission asked the Dutch Government to supply it with appropriate particulars at the end of each year for the duration of the assistance.

Belgium

213. In July 1980 the Belgian Government notified the broad lines of a major aid programme it intended to introduce to assist the textile and clothing industry as a whole as part of a five-year recovery and restructuring programme.

Further contact with the Belgian authorities allowed certain points to be clarified which had been unclear when the scheme was notified, and led subsequently to changes in the essential features of the initial project, including the following:

(i) the firms' own contribution to the cost of restructuring investment has been increased, and will as a general rule be at least 30%;
(ii) the proportion of the investment cost which can be covered by a State loan (with interest relief of seven percentage points for five years) will be limited to 30%;

(iii) the establishment of a maximum of 45% for State participation in restructuring investments carried out by the textile and clothing industry;

(iv) the prohibition of any cumulation of the aid programme with, or substitution for it of, any other scheme or intervention whatsoever;

(v) the exclusion of the synthetic fibres industry\(^1\) from all public aid;

(vi) planned assistance will be notified to the Commission in advance wherever the firm affected employs more than 50 people and operates in the sections of the textiles and clothing industry deemed to be sensitive (mens' outer garments, ladies' stockings and tights, and worsted yarn) or where the Belgian industry was already highly competitive within the Community (i.e. carpets, cut pik and cotton terry fabrics);

(vii) a monitoring system was introduced allowing the Commission to keep track of the realization of the objectives of the scheme, and to ensure that the terms defined in the scheme are in fact respected.

This is in fact the first time that the Commission has put in place such a detailed control system consisting of prior notification of important cases of application and a posteriori monitoring is carried out at relatively short intervals (one month for data on trade and three months for other data), thus ensuring a permanent and precise check on the application of this aid scheme.

Following assessment of the amendments made, the Commission informed the Belgian Government that it would not oppose the introduction of the scheme for a period of one year ending on 31 December 1982, at the end of which the Belgian authorities would have to make a further application if they believed it necessary to continue the scheme.

**Greece**

214. The Commission informed the Greek Government of the Community legislation and aids codes. These include in particular the two Approaches, of 1971 and 1977, and the suspension of aid to the synthetic fibre industry. The Greek Government has been asked to supply the Commission as rapidly as possible with the details of aid schemes which are being applied in Greece and could benefit the textiles and clothing industry.

\(^1\) Applies only to the production of acrylic yarns and fibres, polyamides and polyester.
Car industry

215. There was no substantial change on the car market in 1981 as compared with 1980.\(^1\)

In a statement on ‘the European Automobile Industry’,\(^2\) the Commission made an initial assessment of the difficulties on the automobile market and listed certain steps the Community could take in order to help create a favourable environment which would allow manufacturers to take advantage of the world market and to meet the challenge of outside competition.

The Commission’s concern is to avoid the development of excess capacity, which could subsequently lead to protectionist measures, and particularly State aids liable to distort competition and to affect the free movement of goods.

To help achieve this objective the Commission announced its intention of establishing an \textit{a posteriori} monitoring system for national aids, which would cover both specific aids and the use of other schemes to assist the automobile industry.

Such a monitoring system would help to supplement the information already available to the Commission by providing a coherent frame of reference. It would facilitate dialogue between the Member States and the Commission on adjustment in the industry and on discipline in the granting of State aids.

United Kingdom

216. On 3 February 1981 the British Government informed the Commission that it intended to increase the capital of British Leyland Ltd. in two stages, by a total of UKL 990 million. This figure includes contingency aid already envisaged when BL’s capital was increased in 1980.\(^3\) The transaction is in line with BL’s 1981-85 corporate plan.

Following assessment of the measure the Commission initiated the Article 93(2) procedure in respect of certain aspects of the planned financing. On 28 July 1981, however, it decided to terminate the procedure, after the British authorities had given assurances regarding the completion of the restructuring process and the recovery measures undertaken. The Commission also asked for a regular report allowing it to make a periodic assessment of the results achieved.

\(^1\) Tenth Report on Competition Policy, point 206.
\(^3\) Tenth Report on Competition Policy, point 208.
Paper industry

Belgium

217. The Commission initiated the Article 93(2) procedure in respect of assistance granted by the Belgian Government to rescue a firm in the paper industry. The assistance was granted under Section 75 of the Act of 5 August 1978. The Commission found that the assistance had been notified late and that the requirement of Article 93(3) that Member States notify aid measures in advance had not therefore been respected.

The Commission further took the view that assistance which encouraged investment in sections of the industry which were already in difficulties was liable to adversely affect trading conditions to an extent contrary to the common interest.

Netherlands

218. The Commission initiated the Article 93(2) procedure in respect of the Dutch Government’s decision to acquire, through a regional public holding company, a stake in a firm in the paper industry. The firm, which was facing serious difficulties, notably in financing essential investments, thus received a capital injection. It was specialized in paper board processing; its own situation and the excess capacity in this industry made it impossible for the Commission to conclude, on the basis of the information available to it, that the aid was compatible with the common market.

Aids to the energy sector

Aids to the coal industry

219. State aids to the energy sector are dominated in volume terms by aid amounting to 2 694 million ECU granted in the four coal producing Member States to their coal industries. These aids are examined by the Commission under the terms of Decision 528/76/ECSC1 and an annual report on them is submitted to the Council.2 The breakdown of these aids for 1980 and 1981 is as follows:

Breakdown of aids

<table>
<thead>
<tr>
<th></th>
<th>Total sum (million ECU)</th>
<th>Amounts per tonne (ECU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Republic of Germany</td>
<td>1 098.7</td>
<td>1 162.3</td>
</tr>
<tr>
<td>Belgium</td>
<td>298.2</td>
<td>281.6</td>
</tr>
<tr>
<td>France</td>
<td>461.4</td>
<td>404.2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>287.4</td>
<td>845.7</td>
</tr>
<tr>
<td>Community</td>
<td>2 145.7</td>
<td>2 693.8</td>
</tr>
</tbody>
</table>

| Of which:           |            |            |          |          |
| — indirect measures | 24.4        | 40.0        | 0.10     | 0.17     |
| — aids to coking coal | 844.9    | 844.2       | 3.49     | 3.49     |
| — direct measures   | 1 276.4    | 1 809.6     | 5.28     | 7.47     |
|                       | Community   | 2 145.7     | 2 693.8  | 8.87     | 11.12    |

| Of which:            |            |            |          |          |
| — Article 7 (Investments) | 339.1    | 309.2       | 1.40     | 1.28     |
| — Article 8 (Personnel)     | 82.3       | 98.7        | 0.34     | 0.41     |
| — Article 9 (Stocks)       | 20.3       | 25.0        | 0.08     | 0.10     |
| — Article 10 (Strategic reserves) | 54.3    | 50.6        | 0.22     | 0.21     |
| — Article 11 (Power station coal) | 19.2    | 25.0        | 0.08     | 0.10     |
| — Article 12 (Loss coverage)    | 762.1      | 1 301.1     | 3.16     | 5.37     |

¹ While the sum of 11.75 ECU per tonne (1980) and 12.42 ECU per tonne (1981) for the Federal Republic of Germany in this international comparison following the provisions of Decision 528/76 is correct statistically and according to the definition, it is only partly valid for a genuine comparison with the other Community countries. This is due to the third electricity-from-coal law, which lays down that German power stations must buy steam coal from the coal industry at break-even prices. The additional cost incurred by the electricity companies using Community coal (mainly German coal) is offset by increasing electricity prices. In 1980, this offset levy amounted to some DM 2 100 million (8.90 ECU per tonne). A figure of DM 1 800 million (7.54 ECU per tonne) is estimated for 1981.

Aids to the coal industry are designed to bring Community coal prices into line with world market prices. The user of Community coal, therefore, is not given a subsidy when he uses Community coal.

The background to these aids lay originally in the need to ameliorate the social consequences of the adaptation, i.e. the contraction, of the Community coal producing industry. Because of difficult geological conditions, Community coal producing costs compare unfavourably with those of other suppliers to the world market. In addition, the low prices prevailing in the oil markets up to 1973-74 placed quite exceptional pressures on the Community coal industry. In the light of the energy crisis that has prevailed since 1974 it has become a fundamental objective of Community policy to reduce dependence on imported energy sources and increase the use of indigenous resources. The need to ensure a security of supply, plus the social aspects, are considered to justify aiding the coal sector. Despite the fact of
rising prices of competing energy sources, as has been shown by the analysis in the Commission's report to the Council on 'the Role of Coal in the Framework of Community Energy Policy', these problems and the associated aids are likely to continue in the foreseeable future.

Belgium

Aid to a petroleum refinery

220. In November 1981 the Commission decided to prohibit the grant by the Belgian Government of aid to a refinery installing additional catalytic cracking plant in Antwerp. The proposed aid would have amounted to 6% of the investment costs of BFR 6,670 million. The Commission took this decision in view of its analysis of the refinery situation in the Community, and in particular that catalytic cracking capacity was a growth area where market price levels were sufficient to ensure reasonable profitability and therefore any required investment. There were no regional reasons justifying the proposed aid.

Federal Republic of Germany

Loans for energy saving and related objectives

221. In May 1981 the Federal Government informed the Commission of plans to grant loans at a reduced rate of interest (2 to 2.5%) to firms, with a concentration on small and medium-sized undertakings, making investments leading to an economy of energy, substitution of oil by other energy sources, new energy technologies and innovation. To finance this programme, the Federal German Government was raising an international loan of DM 6,300 million.

In view of the fact that the loans were to be concentrated primarily on small and medium-sized undertakings during a period of economic difficulty when they might find problems in raising capital for investment projects; that there was no sectoral specificity; that the intensity of aid—approximately 5% net grant equivalent—is relatively low; that these three aspects mean that there would be a relatively low distortion of competition; and the fact that the types of investment to be aided were in line with Community policies in respect of the objectives mentioned above, the Commission raised no objection to this proposal.

1 Doc. COM(82) 31 of 27.1.1982.
Aid for the construction of coal-fired thermal heating stations and extension of the distribution network for area heating.

222. The Federal German Government notified a programme of joint aid by the Federal Republic and the Länder for such investments undertaken before 31 December 1983. Investment aid of 35% would be given. The total budget for these projects amounts to DM 1 200 million. The aid could not be cumulated with other aids.

As the investments in question would lead to an economy of energy, reduce the dependence of the Federal German Republic on imported energy sources, and were in line with declared Community policy, the Commission raised no objection to this proposal.

United Kingdom

Aid for the conversion of oil-fired boilers to use coal

223. The Commission raised no objection to a British proposal to grant investment aid of up to 25% of the cost to companies changing from oil-fired to coal-fired boilers. The budget for this scheme amounts to UKL 50 million and applications may be received until 31 March 1983.

Significant cases of application of general aid schemes

224. In 1981 the Commission examined 45 individual cases, 1 31 of which were notified during the year. The table below shows the industries and Member States concerned. Further details are contained in the Annex to this Report.

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1 This figure excludes cases of assistance for the steel industry which are dealt with in the relevant section of this Report.
§ 3 — Regional aid schemes

General

225. Although regional disparities within the Member States’ economies are substantial, those at Community level are even more so, with growing economic and political repercussions as attainment of the common market progresses. Moreover, rising unemployment and inflation and the declining rate of growth experienced by all countries to varying degrees is bound to delay elimination of these disparities or even increase them. Situations in the regions vary considerably; improvements in certain areas can even accentuate the difficulties to be overcome by others. In addition to the convergence of national economies—one of the Community’s key objectives—endeavours must focus on more effective convergence of regional situations. The Commission’s concern as regards regional assistance is twofold: on the one hand, aid granted in the most prosperous regions must not be allowed to distort competition and impede the orderly functioning of the common market, while on the other, a special effort must be made to deal with the hardest-hit regions to enable them to overcome their drawbacks and narrow the gap separating them from the more favoured regions. This must be tackled by concentrating more aid on the less-favoured regions. The aid rules will therefore have to be tightened up, not only to cut out any risk of outbidding and distortion of competition, but also to try and attract investments to the regions facing the most serious problems. It was with this in mind that the Commission scrutinized a number of

<table>
<thead>
<tr>
<th>Industry</th>
<th>Belgium</th>
<th>FR of Germany</th>
<th>Luxembourg</th>
<th>Netherlands</th>
<th>United Kingdom</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petroleum and chemicals</td>
<td>5</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Mechanical and electrical engineering</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Data processing and micro-electronics</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>4</td>
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<td>Beverages</td>
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<td>2</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Textiles and clothing</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>Services and transport</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Metal processing</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Automobiles</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td>2</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
<td>2</td>
<td>3</td>
<td>23</td>
<td>7</td>
<td>45</td>
</tr>
</tbody>
</table>

The results of the Commission’s examination of these cases are as follows: Decisions to raise no objections: 21; Initiation of Article 93(2) procedure: 6; Initiation and termination of Article 93(2) procedure: 1; Termination of Article 93(2) procedure: 1; Negative decisions: 14; Cases still under examination: 2
schemes for granting regional aid in the central regions of the Community and expressed its misgivings about assisted area coverage and certain forms of assistance. In so doing the Commission had to take account not only of the criteria used by the Member States in drawing up their regional aid systems, but also other criteria based on the European context. This occurred in particular in relation to the Community’s central regions when the Commission considered to what extent certain schemes qualified, in the common interest, for the derogation from the prohibition of aids set out in Article 92(3)(c).

Specific statements on certain national regional aid schemes

Federal Republic of Germany

226. In November the Commission initiated the procedure under Article 93(2) of the EEC Treaty¹ in respect of the German regional aid system, the Tenth General Plan, a joint task of the Federal Government and the Länder aimed at improving regional economic structures.²

The system is based on a four-year General Plan, revised each year. When initiating other procedures,³ the Commission stated its views on previous General Plans. In particular it informed the German Government that it considered the overall amount of regional aid granted in the Federal Republic too high.

A new method was used for designating assisted areas under the Tenth General Plan. The German authorities prepared a new delimitation of the 179 labour markets which make up the entire Federal territory and then analysed the socio-economic situation there by means of a system of indicators reflecting the situation as regards employment, income and infrastructure, thus enabling the labour markets to be assembled into a ranking. The lower ones were designated as assisted areas, with the exception of the Zonenrandgebiet which has assisted area status by law⁴ and the Saar, which has assisted area status by special decision of the General Plan Committee.⁵ With respect to the previous General Plan, the proportion of national territory having assisted area status has diminished and as a result with respect to the population as a whole, the proportion of the population in the assisted areas has dropped from 36% to 30%. The funds earmarked for the investment grant are down by 20%.

Although the Commission regarded these reductions as an important step in the

² Gesetz über die Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur.
³ Ninth Report on Competition Policy, point 142; Tenth Report on Competition Policy, point 166.
right direction,\textsuperscript{1} and although it agrees that in designating assisted areas each Member State should use the methods and criteria it considers opportune, the Commission had to consider the development regions scheduled in the Federal Republic of Germany in the European context. In this particular case the Commission used the most meaningful indicators, unemployment and gross domestic product per capita in these regions, and compared them with the Community average.

Even though the Commission was able to accept the designation as assisted areas of regions above the Community average when the national indicators revealed substantial regional disparities, it had nevertheless to initiate the Article 93(2) procedure in respect of aid granted in regions whose socio-economic situation, both with respect to the Community and national average, could be described as sound.

The Commission also reiterated its objections in respect of the criteria adopted for promoting basic rationalization investment,\textsuperscript{2} since these criteria cannot ensure that only rationalization investment and not replacement investment will qualify for aid.

In its letter of 30 January 1979 the Commission expressed reservations as to the aid granted in certain labour markets in the Zonenrandgebiet.\textsuperscript{3} The Federal Government argued that the Zonenrandgebiet had to be assessed as a whole. The Commission therefore requested the German Government to submit a report explaining its position.

In accordance with the Article 93 procedure the Commission gave notice to the Federal Government, to the other Member States and to other interested parties, to submit their comments within a certain period.

**Belgium**

227. Pursuant to Article 2 of the Commission Decision of 26 April 1972\textsuperscript{4} on the Economic Extension Act of 30 December 1970\textsuperscript{5} the Belgian Government was to notify a new proposal concerning the scheduling of development areas. The relevant notification was made in November 1980.

For the purpose of designating assisted areas in Flanders the Belgian authorities used two basic quantitative criteria: the level of taxable income per capita in 1976 and the estimated job shortfall in 1985. Two threshold values were established on

\textsuperscript{1} Tenth Report on Competition Policy, point 166.
\textsuperscript{2} Ninth Report on Competition Policy, point 143.
\textsuperscript{3} Ninth Report on Competition Policy, point 142.
\textsuperscript{4} Moniteur belge, 1.1.1971.
\textsuperscript{5} OJ L 105, 4.5.1972.
the basis of these criteria and seven arrondissements were thus designated as assisted areas. However, the Belgian authorities felt that these two criteria did not take sufficient account of certain specific situations and they therefore applied a set of more qualitative criteria; on this basis thirteen more arrondissements were scheduled as assisted areas. Different indicators were used for Wallonia: four relating to employment, two to income and one to population. In the first stage a quantitative analysis was carried out at canton level; the second stage consisted in a qualitative analysis of each arrondissement.

The Commission examined the socio-economic grounds and methods adopted by the Belgian authorities; however, to place the Belgian measures in the European context it considered it necessary to use its own method. The Commission's method of analysis was uniformly applied to all Belgian regions and consisted in scrutiny of their socio-economic situation in both the European and national context. The Commission endeavoured to follow an integrated approach by analysing the indicators relating to economic development in the regions on the basis of a time series.

On completion of its examination the Commission concluded that the grant of regional assistance in some of the regions notified by the Government did not seem compatible with the rules of the common market. It therefore decided to initiate the procedure of Article 93(2) of the EEC Treaty in respect of the proposed grant of regional aid in these areas.

The Commission also proceeded to reexamine the provisions on regional aid in the Act of 30 December 1970 and as a result initiated the procedure of Article 93(2) of the EEC Treaty in respect of the provisions allowing the grant of regional aid for replacement investment. The Commission takes the view that only aid for initial investment or job creation is apt to promote regional development. In the context of this procedure the Commission also informed the Belgian authorities that, since certain details were lacking in the Act 30 of December 1970, it could not establish whether it was compatible with the rules of the common market.

228. In late November the Belgian Government also notified the Commission of two schemes concerning a six-month extension of the complementary regional aid granted under Article 2(b) of the Act of 30 December 1970 and the cyclical aid for small businesses under Article 1(c) of the Economic Reform Act of 4 August 1978.¹

This complementary regional aid was implemented by a Royal Decree of 23 May 1975² for an initial six-month period; it has been regularly extended since then and was to come to an end on 31 December 1981.

¹ Moniteur belge, 17.8.1978.
² Moniteur belge, 29.5.1975; Tenth Report on Competition Policy, point 168.
However, in initiating the Article 93(2) procedure in respect of the proposed designation of development areas and with a view to further scrutiny of the complementary regional aid, the Commission warned the Belgian authorities that it could no longer agree to any extension of the cyclical aid beyond those areas where it could be proved that the effects of the economic situation were worse than in the rest of the country. Having completed this further scrutiny the Commission decided to initiate the Article 93(2) procedure in respect of the proposed grant of complementary regional aid in two regions. However, as regards the extension of cyclical aid under the Economic Reform Act, the Commission took the view that the firms concerned are particularly vulnerable to the cyclical difficulties which the Belgian economy is experiencing and therefore decided that the scheme qualified for derogation under Article 92(3)(c) of the EEC Treaty.

**Denmark**

229. The Commission decided to terminate the procedure of Article 93(2) of the EEC Treaty initiated in December 1980 in respect of retention of the municipality of Kalundborg as an assisted area until 31 December 1981. Having examined the comments submitted by the Danish Government in the course of the procedure, the Commission found it difficult to draw definitive conclusions on the trend of unemployment in the area on account of the changes made in 1979 to the method used to calculate unemployment in Denmark and considered it advisable to await completion of the reform of regional policy under way in Denmark. However, the Commission informed the Danish Government that it would not approve continued granting of assistance in Kalundborg beyond 31 December 1981.

230. The new aid scheme was notified to the Commission in November; Kalundborg had been descheduled. The designation of assisted areas is based on a new analysis of Danish regions carried out by the Danish authorities and takes account of the town and country plans drawn up by local authorities. The proportion of the population in assisted areas has decreased by 8.2%.

The Commission examined the socio-economic situation in all the proposed development areas and ascertained that the situation in several of them had improved markedly since 1977 not only in the Community, but also in the national context. It also appeared that regional disparities in income and unemployment had balanced out. Three development areas in particular did not seem to qualify for assistance or to qualify for as high a rate of assistance as planned. In December therefore, the Commission initiated the Article 93(2) procedure.

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1 Tenth Report on Competition Policy, point 169.
3 Seventh Report on Competition Policy, points 170 to 173.
France

231. The Commission approved a number of measures of assistance in France.

It terminated the Article 93(2) procedure initiated in respect of the grant of State loans in quasi-equity form through the Special Industrial Conversion Fund (FSAI) in certain industrial conversion areas. In the course of the procedure meetings were held with the French authorities. It was established that the loans constituted regional aid and a standard method for measuring the net grant-equivalent of the loans was devised; as a result they were measurable in terms of the principles of coordination of regional aid systems.

At the same time, in view of the relevant socio-economic situation the Commission raised no objection to the extension until 31 December 1981 of the FSAI to the mining area in the Nord-Pas de Calais in areas eligible for the regional development premium; Douai, Béthune and Lens labour markets.

232. The Commission also took a favourable decision on two draft Decrees notified by the French Government concerning amendments to the regional development premiums for firms in the Overseas Departments (ODs).

233. The Commission also authorized the French Government to extend most of its regional aid schemes until 31 December 1981 when they were due for adjustment. The measures in question are the regional development premium (PDR), the service industries location premium (PLAT), the research activities location premium (PLAR) and special rural aid.

Two individual cases concerning application of the PDR outside scheduled areas were notified in advance by the French Government; the Commission raised no objection. The measures related to the establishment of a company in the Doubs department and investment for an extension by a company in the Aisne department.

234. The Commission received a request for derogation from the principles of coordination of regional aids in respect of the above-mentioned special rural aid, submitted by the French Government in accordance with point 7 of the principles. Special rural aid is a job creation measure intended to encourage all small craft and industrial firms (not connected with agriculture) to create permanent jobs in certain areas.

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1 Ninth Report on Competition Policy, point 146.
2 Eighth Report on Competition Policy, point 152; OJ C 31, 3.2.1979.
3 Seventh Report on Competition Policy, points 174 to 178.
4 Ninth Report on Competition Policy, point 147.
5 Eighth Report on Competition Policy, point 160.
rural areas of France suffering from major demographic problems. The request for derogation concerned possible exceeding of the absolute ceilings expressed as a percentage of investment when special rural aid is granted for a project. The Commission established that the ceilings could only be exceeded in the case of relatively small investments; it also took into consideration the structural features of the assistance, the limited funds and the assisted programmes involved and was therefore able to grant the derogation requested.

235. Finally, following initiation of the Article 93(2) procedure in respect of the Act of 3 July 1979 providing for an increase in firms’ allowable depreciation on fixed assets financed with the aid of a regional development premium awarded in 1979 or 1980, progress was made in the talks held between the French authorities and the Commission; information was provided on the socio-economic grounds warranting the grant of assistance and assurances provided that Community ceilings would be respected. It should be possible to terminate the procedure in the near future.

Ireland

236. In 1980 the Irish Government notified the Commission that it was withdrawing its Export Sales Relief and Shannon Relief schemes on 31 December 1980; at the same time it decided to reduce to 10% throughout the country the rate of corporation tax on firms in the manufacturing industry, no distinction being made between profits from exports and from domestic sales. In March the Irish Government notified the Commission of its plan to extend the scheme to certain non-manufacturing activities at Shannon airport.

In view of the socio-economic situation in the area concerned the Commission decided in June to raise no objection to the scheme. In so doing it also took into consideration the Irish Government’s undertaking to apply the measures only to initial investments and to observe the Community ceiling when granting the regional aid, including where combined with other types of regional assistance.

When notifying this scheme the Irish Government also requested the Commission to approve replacement of the threshold of 3 million ECU of investment costs fixed pursuant to point 2(i) of the principles of coordination by a threshold of 50 jobs created per project. This is the threshold which applies—in the category of regions including Ireland—to the grant of assistance not linked to initial investment such as tax relief. The Commission considered that in the services industry an employment-related threshold was more appropriate than the threshold in investment

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2 Tenth Report on Competition Policy, point 170.
3 Finance Act 1980; Tenth Report on Competition Policy, point 173.
costs which had initially been laid down in the context of the manufacturing industry.

237. Furthermore, the Commission authorized introduction by the Irish Government of a tax-exempt employment grant for service industry projects making a significant contribution to regional and national development. During the first year of the scheme the average employment grant per job created was to be limited to IRL 5 000 for the entire country. In support of its request the Irish Government argued that speeding up development of the tertiary sector was indispensable to successful implementation of the job creation programme it had launched.

In approving the new scheme in July, the Commission felt that it represented a useful supplement to the existing capital grants scheme, which mainly benefits the secondary sector and is not in fact the most efficient means of developing the tertiary sector on account of the lower volume of fixed assets that projects in the tertiary sector usually involve. Moreover, the Irish Government undertook to respect the Community ceilings laid down by the principles of coordination in granting regional assistance, including where combined with other regional aid.

Italy

238. The Commission stated its views in July on Bill No 101 of the autonomous province of Trento concerning introduction of measures of State assistance for industries in the province. The provincial development objectives are to be attained by implementation of an industrial policy plan containing details on the locations of the province’s inadequately developed areas and on the industries concerned, account being taken of national sectoral plans. The measures mainly consist in aid for the creation, extension and modernization of firms in the form of interest relief, assistance for industrial conversion and restructuring in the form of credit facilities, interest relief and assistance for the issue of bonds, assistance to restore financial balance in the form of low-interest loans and aid for female employment.

The Commission decided to initiate the Article 93(2) procedure in respect of some of these measures. Investment aid for modernization can only be approved if it involves a fundamental change in the product or production processes concerned, within the meaning of the principles of coordination of regional aid systems. The aid for conversion and restructuring, which represents a localized application of the national provisions under Act No 675/77,2 should fulfill the same requirements as are imposed for the application of aid under that Act. The Italian authorities and the Commission are now discussing that matter and a final decision has not yet been

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1 Industrial Development (No 2) Bill 1981.
2 Seventh Report on Competition Policy, points 225 to 228.
taken. The aid for restoring financial balance must be considered as general assistance for firms in difficulties and should consequently be subject to the same principles and procedural rules as similar measures in other Member States. The Commission reaffirmed this approach in 1978 when stating its views on Clause 75 of the Belgian Act of 5 August 1978.¹

As regards the scheme under which the cost of family allowances payable for newly-employed women is met by the State during a four-year period, the Commission reminded the Italian Government of the conclusions in Decision 80/932/EEC of 15 September 1980 on the arrangements under which the Italian State takes over part of the burden of employers’ contributions to sickness insurance schemes² and requested it to exclude from the scheme sensitive industries such as textiles, clothing, footwear and leather.

The Commission decided to raise no objection to other measures of assistance under the Bill on account of the socio-economic situation in the province, which is a mountain area in its entirety, the very low level of industrialization, the low GDP per capita with respect to the Community average, the low activity rate and also the effort made by the province to regulate the granting terms in such a way as to give priority to the least favoured areas. Moreover, small and medium-sized businesses will be the main recipients and the Commission generally takes a favourable view of such assistance.

239. In December the Commission took a decision on the autonomous province of Bolzano’s Bill concerning financial assistance to industry. The measures mainly concern aid for industrial restructuring and conversion, for the establishment, extension and modernization of facilities and for job creation.

The Commission decided to initiate the procedure of Article 93(2) of the EEC Treaty in respect of aid for female employment and aid for industrial restructuring and conversion. The former scheme consists in reimbursing firms 60% of contributions for family allowances in respect of female workers over a two-year period; since the jobs concerned already exist the scheme constitutes an operating aid, which the Commission has consistently opposed³ in principle. Moreover, as in the previous case, the measure should be viewed in the light of Decision 80/932/EEC of 15 September 1980 concerning the partial taking-over by the State of employers’ contributions to sickness insurance schemes in Italy.²

As regards the latter scheme introducing measures of assistance for restructuring and conversion, it also represents localized application of the national provisions

¹ Eighth Report on Competition Policy, points 229 and 230.
² OJ L 264, 8.10.1980; Tenth Report on Competition Policy, point 221.
³ Tenth Report on Competition Policy, points 164 and 175.
under Act No 675/77 and must comply with the conditions imposed for application of that Act.¹

The Commission decided to raise no objection to introduction of the other measures under the Bill, its reasons were the same as those behind its approval of certain measures in the province of Trento’s Bill; the socio-economic situation, the recipients in question and the features of the assistance are almost identical.

Netherlands

240. Following initiation of the Article 93(2) procedure in 1980² in respect of the increase in the investment premium under the Dutch regional aid scheme (Investeringspremieregeling—IPR)³ in three development poles, the Dutch authorities stated early in the year that they were abandoning the measure. At the same time they announced an overall review of their regional aid system by the end of the year.

In the meantime the Government notified the Commission of its intention to extend until 31 December 1981 its existing aid scheme, notably grant of the IPR premium in the development poles of Cuyk, Oss and Bergen op Zoom. It also announced its intention of granting the special regional premium (Buitengewone Regionale Toe- slag—BRT) under the Investment Account Act (Wet Investeringsrekening—WIR)⁴ to two new areas, Maastricht (including Valkenburg) and Delfzijl; the total amount of assistance granted in these areas would accordingly increase.

The Commission scrutinized the socio-economic situation in these development poles and areas with reference both to Community and national standards and in July initiated the Article 93(2) procedure in respect of maintenance of the IPR premium in one development pole and the increase in regional aid in one area.

241. In October the Commission decided to raise no objection to the Dutch Government’s proposed amendment to its regional system through the Investment Account Act (WIR).⁵ Various investment premiums are provided under the Act, notably the premium payable in accordance with town and country planning considerations granted for investment connected with the transfer of economic activity from the Randstad to growth centres playing a special role in such planning at national level. By virtue of the amendments the entire premium (no longer half) will be granted in the municipality of Leeuwarden (Friesland) and the premium will

¹ Point 243 of this Report.
² Tenth Report on Competition Policy, point 179.
³ Eighth Report on Competition Policy, point 167.
⁴ Eighth Report on Competition Policy, point 166.
⁵ Staatsblad No 368, 1978; Eighth Report on Competition Policy, point 166.
also be extended to the municipalities of Duiven and Westervoorst (Gelderland), located on the border of the Randstad.

**United Kingdom**

242. In November the Commission approved the British Government's amendment to its regional selective assistance scheme for office and service industry undertakings\(^1\) applicable in certain UK regions. The scheme was applied differently in the three categories of assisted area in the United Kingdom. It consisted of a lump-sum grant per person engaged, the amount depending on the status of the area, a grant covering 80% of redundancy costs on transfer of a firm from a non-assisted area and a removal grant of UKL 1 500 per employee up to a maximum of 30% of jobs created in assisted areas. The amendments consisted in increasing the amount of the above two grants and introduction of a grant of up to 25% of cost for feasibility studies concerning relocation in assisted areas.

On examination of the amendment it became clear that the proposed increases merely offset the reduction in value of the former grants on account of firms' increased costs. Moreover, none of the grants exceeded Community ceilings per job in net grant-equivalent. Finally, the British Government gave its assurance that in the event of combination with other assistance, the Community ceilings laid down by the principles of coordination would be respected. The Commission therefore raised no objection to these measures.

\(\S\) 4 — Aid schemes other than regional or industry ones

**Restructuring of Italian industry**

243. Full details of Act No 675 of 12 August 1977 on the restructuring and development of Italian industry were given in the Seventh Report on Competition Policy.\(^2\) Discussions have continued between the Commission and the Italian authorities on the implementing provisions for the aid provided by Act No 675. The Italian authorities have informed the Commission that no aid has so far been granted under Act No 675, save in one case concerning a steel works near Naples, which was notified to the Commission in advance and duly approved.\(^3\) The Industrial Restructuring and Conversion Fund set up by Act No 675 was initially for a four-year period; as aid has not yet been granted from the Fund the

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\(^1\) Section 7, Industry Act 1972; Ninth Report on Competition Policy, point 153.
\(^2\) Points 225 to 228.
\(^3\) Tenth Report on Competition Policy, point 198.
Italian Government has decreed that the application of the funds should be extended until 31 December 1982.

**Aid to small and medium-sized firms**

244. In regard to assistance for small and medium-sized businesses, the Commission has pursued the policy outlined in its Sixth Report on Competition Policy. The Commission is mindful of the role that these firms play in creating new jobs, improving competitiveness and stimulating the economy, and is therefore favourably disposed when examining measures taken by the Member States aimed at overcoming the difficulties peculiar to this type of firm in such fields as financing, research, innovation, management and marketing.

**Netherlands**

245. In the course of the year the Dutch Government notified the Commission of several aid schemes for small businesses. One provided State guarantees for holding companies stepping in to help small firms. Under this scheme the State shoulders, for a limited period, part of the risks that the private financing companies (set up for the purpose) run by taking an equity stake in small firms.

The State undertakes to cover 50% of the losses that a holding company might incur through these transactions. This injection of new capital may be used by the firm for new investments or for its ordinary operations; the decision on how the capital is to be used is taken by the holding company. The Dutch authorities have earmarked between HFL 10 million and HFL 20 million a year to cover such losses.

The other schemes notified provided grants for developing data-processing in the administration and management of small businesses, for applying micro-electronics to production and for improving their management and technical development. The amounts set aside to finance these three types of grants in 1981 were HFL 2.5 million, HFL 3 million and HFL 7.5 million respectively.

In line with its favourable approach on aid to small firms, the Commission considered that the schemes notified by the Dutch Government qualified for derogation under Article 92(3)(c) of the EEC Treaty.

**Premiums for innovation**

246. In December 1980 the Dutch Government informed the Commission of its intention to use State aid to promote research and development in the Nether-
lands. The scheme notified provided for the granting of two premiums: one to finance part of the salary costs incurred by firms for their research and development workers and one to promote investment in research and development. The two premiums may be granted concurrently to firms operating in industry, agriculture or fisheries. HFL 160 million per year has been set aside for the salary premium and HFL 30 million for the investment premium.

In keeping with its favourable view on national aid for the promotion of research and development the Commission raised no objection to these two Dutch schemes, pursuant to the derogation in Article 92(3)(c) of the EEC Treaty. With regard to the premium for the salary costs of research and development workers, the Commission required (as in the case of a similar scheme in Germany approved in 1979)\(^1\) that the period for which any firm may qualify be restricted to a maximum of five years.

**Aid for export credits**

247. The Commission exercises particular watchfulness over the use of export credits when applied to intra-Community trade. In this respect, the Commission inserted a statement in the Council Minutes when it adopted the ‘consensus’ decision that ‘it had always considered export aids granted by Member States in intra-Community trade as incompatible with the common market within the meaning of Article 92 of the EEC Treaty. The decision, based on Article 113 and concerning credits for exports to non-member countries, did not affect this position. In particular, it did not legitimate assistance granted by Member States using the credit terms provided for by the decision in their trade with other Member States. The Commission reserved the right to take the measures required, pursuant to its powers under Article 92 of the Treaty, to put an end to such aids if they still existed or prohibit them if the Member State intended to introduce any further aids.’

The accession of Greece to the European Economic Community changed its status in respect of subsidized export credits for goods exported to that country. Member States were reminded during 1980 that with the accession of Greece to the common market, the use of subsidized export credits would have to cease. When the attention of the Commission was drawn to the fact that the French Government was continuing to maintain tenders for capital goods orders including the use of subsidized credits, the Commission opened the procedure under Article 93(2) EEC against the French Government. At the time it informed other Member States of this action. It underlined to them its determination to ensure that such aids were not applied in intra-Community trade.

\(^1\) Ninth Report on Competition Policy, point 195.
Adjustment of State monopolies
of a commercial character

248. The long process of eliminating the discriminatory aspects of the French and Italian manufactured tobacco monopolies was brought a decisive step nearer to conclusion during the year. Reasoned opinions in the context of Article 169 infringement procedures concerning manufactured tobacco monopolies had been served upon the French\(^1\) and the Italian\(^2\) Governments on 22 July and 13 November 1980 respectively. In the Italian case, the match monopoly was also covered by the reasoned opinion.\(^3\)

249. The reply from the French Government went only a small way towards eliminating the points which had been criticized by the Commission, with the result that the latter decided on 28 October 1981 to bring the matter before the European Court of Justice. The French authorities finally made proposals for eliminating these aspects of the monopoly regime which the Commission had declared illegal and the Commission therefore decided on 18 December 1981 to suspend the implementation of its previous decision.\(^4\)

250. As to the Italian manufactured tobacco monopoly the Commission took, also on 28 October 1981, a decision similar to that concerning the French case. The continuing discussions with the Italian authorities covered the questions of who might open wholesale warehouses and how these should be operated; product packaging; conditions of payment for tax stamps; access of importers to retailers and compulsory fixed retail margins. On all but the latter point, the Italian authorities undertook to introduce the necessary reforms as a matter of urgency, as well as those concerning the reform of the match monopoly. The Commission thus decided on 18 December 1981, to suspend implementation of its previous decision concerning all these aspects for which a satisfactory solution had been reached, but to bring the unsettled question of the retail margins before the European Court of Justice.\(^4\)

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\(^1\) Tenth Report on Competition Policy, point 228.
\(^2\) Idem, point 229.
\(^3\) Idem, point 230.
\(^4\) Bull. EC 12-1981, point 2.1.50
Public Undertakings

251. At a time when economic difficulties are considerable, it is of importance that the Commission should do the maximum to ensure that Treaty rules designed to prevent competition being distorted by the use of State resources be applied with equal stringency to both the public and private sectors. To make this possible, a greater degree of clarity is necessary where the complex field of State financing of industrial and commercial activity is concerned, and it was in order to permit this that the Commission adopted on 25 June 1980 its Directive 80/723 on the transparency of financial relations between Member States and public undertakings.1 Three Member States subsequently instituted annulment proceedings with the European Court of Justice.2 The Court joined the three cases which received the numbers 188/80 (France), 189/80 (Italy) and 190/80 (United Kingdom). Germany and the Netherlands intervened in support of the Commission.

252. In essence, the arguments of the Member States requesting annulment of the directive are based on their contention that in adopting it under the provision of Article 90 paragraph 3, EEC, the Commission was in fact usurping legislative powers in the field of State aids, such powers being properly exercised by the Council under Article 94, EEC. Furthermore, France and Italy deny the need for greater transparency in the public sector, but on this point the United Kingdom sides with the Commission in considering that such a need does indeed exist. The Court’s decision in these cases is expected during the first half of 1982.

253. In the meantime, the Commission has maintained contact with various interested parties and has noted in particular the increasing impact of the public sector on the Community economy. Over recent years this growth has been considerable, whether looked at from the point of view of employment, value added or investment. The enlargement of the Community to include countries possessing a developed and sometimes complex system of State financing of entrepreneurial activities can only heighten the absolute necessity for the Commission to be adequately informed about the nature of the financial relations involved, and in particular to be able to follow-up the use which is made by public undertakings of publics funds. In this context, the Commission is having a study of the Greek public sector carried out, as a complement to the earlier study covering public enterprise in the nine-member Community3.

254. It was against this background that the Commission wrote to Member States towards the end of the year to remind them that the directive would come into force on 1 January 1982, drawing their attention to the requirement that measures

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1 Tenth Report on Competition Poling, point 235.
2 Idem, point 239.
3 Seventh Report on Competition Policy, point 272.
necessary for its implementation should be taken before this date and communicated to the Commission. The Commission's services continued their examination of the problems involved in extending the provisions of the directive to certain of the sectors so far excluded, notably public credit institutions, energy and transport.
Part Three

The development of concentration and competition in the Community
Introduction

255. As in previous years, this part of the Report first looks into the present situation and trend with regard to share purchases, joint ventures, takeovers and mergers in the Community (§ 1).

It goes on to discuss several points arising from the Commission's programme of studies on the development of concentration, focusing attention on a number of possible relationships between market structures and the conduct of firms in a competition context (§ 2).

An overall assessment of the price survey findings (§ 3), is followed by conclusions (§ 4).

§ 1 — National and international takeovers and mergers, share purchases and joint ventures in the Community from 1977 to 1980

256. As in previous years, the data on which the following analysis is based permitted only a quantitative description of the situation and trend.

Although the economic significance of individual operations could not be assessed, the consistent application of a particular method for gathering data from the same sources opened the door to interesting comparative analyses of changes in the frequency of operations, both over time and as between the different categories of operation.

Trend in the number of operations and in the number of firms involved

257. The pronounced increase in the total number of national and international operations recorded in 1979 did not continue in 1980 (Table 1). The total was in fact 17% down on 1979 but still higher than in 1977 or 1978.

There was a marked decline in the number of purely national operations, which accounted for 72% of all operations in 1980, as against 75% in 1979.

Share purchases were once again the most common type of operation, both in a national (81%) and international (74%) context.
**TABLE 1**

Share purchases, joint ventures, takeovers and mergers in the Community from 1977 to 1980
Number of operations (a) and average number of firms involved in each operation (b)

<table>
<thead>
<tr>
<th>Operations</th>
<th>Year</th>
<th>Share purchases</th>
<th>Joint ventures</th>
<th>Takeovers and mergers</th>
<th>Total</th>
<th>Bilateral operations</th>
<th>Multilateral operations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(a)</td>
<td>(b)</td>
<td>(a)</td>
<td>(b)</td>
<td>(a)</td>
<td>(b)</td>
</tr>
<tr>
<td>National operations</td>
<td>1977</td>
<td>1279</td>
<td>2.1</td>
<td>194</td>
<td>3.8</td>
<td>146</td>
<td>2.6</td>
</tr>
<tr>
<td></td>
<td>1978</td>
<td>1328</td>
<td>2.1</td>
<td>162</td>
<td>3.3</td>
<td>137</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>1979</td>
<td>1824</td>
<td>2.1</td>
<td>216</td>
<td>3.7</td>
<td>146</td>
<td>2.2</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>1402</td>
<td>2.1</td>
<td>191</td>
<td>3.4</td>
<td>148</td>
<td>2.2</td>
</tr>
<tr>
<td>International</td>
<td>1977</td>
<td>413</td>
<td>2.3</td>
<td>288</td>
<td>3.0</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>operations</td>
<td>1978</td>
<td>399</td>
<td>2.2</td>
<td>278</td>
<td>2.5</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>1979</td>
<td>518</td>
<td>2.2</td>
<td>223</td>
<td>2.8</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>503</td>
<td>2.1</td>
<td>175</td>
<td>2.7</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>All operations</td>
<td>1977</td>
<td>1692</td>
<td>2.1</td>
<td>482</td>
<td>3.3</td>
<td>146</td>
<td>2.6</td>
</tr>
<tr>
<td></td>
<td>1978</td>
<td>1727</td>
<td>2.1</td>
<td>440</td>
<td>2.8</td>
<td>137</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>1979</td>
<td>2342</td>
<td>2.1</td>
<td>439</td>
<td>3.3</td>
<td>146</td>
<td>2.2</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>1905</td>
<td>2.1</td>
<td>366</td>
<td>3.0</td>
<td>148</td>
<td>2.2</td>
</tr>
</tbody>
</table>
As in 1979, bilateral operations outnumbered multilateral ones in 1980, accounting for 87% of national operations and for 82% of international operations.

With the exception of takeovers and mergers, where the situation was virtually unchanged, there was a general decline between 1979 and 1980 in the various types of operation. The fall was not very sharp in the case of international operations (barely 8%). This was especially true of share purchase operations (down only 3%) and bilateral operations (down 7%).

The converse applies to the number of joint ventures, which fell by 22% at international level but by only 12% at national level; few such operations took place, however, so the general trend was not affected.

It should also be noted that bilateral international share purchase operations played an increasingly important role during the period.

The average number of firms involved in each operation remained fairly steady, at around 2.3. However, this stability was less rigid where joint ventures were concerned, and there was a clear downward trend in the number of firms involved in multilateral operations.

Lastly, in 1980 once again, fewer firms were involved in international multilateral operations than in national multilateral operations. This might have been because firms taking part in the former are normally larger than those taking part in the latter.

Possible explanations of the trend in the number of operations

Two potentially complementary hypotheses can be put forward to explain the significant decline in the number of operations between 1979 and 1980.

The first hypothesis is that saturation level may now have been reached in the number of operations taking place each year, making any further increase unlikely. Evidence may be seen in the fact that, in percentage terms, national operations have fallen a good deal more sharply than international operations, while the former are much more numerous than the latter. This difference in trend could signify a greater degree of saturation at national level than at international level.

The second hypothesis reflects cyclical considerations. While the theory is that during a recession firms tend to resort more to share purchases, joint ventures, takeovers and mergers, the number of such operations fell between 1979 and the recession year, 1980. This may be put down to the particular economic conditions obtaining in 1980: the combination of low company profitability and low dividends and very high interest rates may have prompted firms to switch to types of investment that they considered more profitable and less risky than the acquisition...
of financial stakes with or in other firms, e.g. government bonds carrying a high fixed rate of interest.

More detailed information covering a longer period would, however, be needed for a thorough analysis of the cyclical reasons for the trend in the number of operations under consideration.

**International operations by Member State**

259. In 1980 the Benelux countries once again recorded the largest number of international share purchases and joint ventures in the Community (Table 2(a)).

However, taking each Member State separately, France took over first place from the United Kingdom and stands out as the only Member State in which the number of the operations in question has risen steadily since 1977.

Although the Federal Republic of Germany, with 19% of all international operations, increased its share in 1980, an analysis of the entire four-year reference period reveals that it no longer plays a predominant role.

Overall, this trend was in line with movements in share prices, which rose sharply in France and to a lesser degree in the United Kingdom, but fell in the Federal Republic of Germany and more so in the Benelux countries.

**TABLE 2**

**International operations in the Community, 1977-80**

(a) Breakdown by Member State (as % of total)

<table>
<thead>
<tr>
<th>Member State</th>
<th>1977</th>
<th>1978</th>
<th>1979</th>
<th>1980</th>
</tr>
</thead>
<tbody>
<tr>
<td>FR of Germany</td>
<td>23</td>
<td>20</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>France</td>
<td>14</td>
<td>15</td>
<td>19</td>
<td>23</td>
</tr>
<tr>
<td>Italy</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Netherlands</td>
<td>10</td>
<td>6</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>Belgium</td>
<td>19</td>
<td>18</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>8</td>
<td>10</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>16</td>
<td>23</td>
<td>21</td>
<td>22</td>
</tr>
<tr>
<td>Ireland</td>
<td>5</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Denmark</td>
<td>2</td>
<td>—</td>
<td>1</td>
<td>—</td>
</tr>
<tr>
<td><strong>EEC</strong></td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>(Total number of operations)</td>
<td>(701)</td>
<td>(677)</td>
<td>(741)</td>
<td>(678)</td>
</tr>
</tbody>
</table>

COMP. REP. EC 1981
(b) Breakdown by type of operation, with indication of operations involving non-Community firms (number of operations)

<table>
<thead>
<tr>
<th>Type of operation</th>
<th>Year</th>
<th>Operations involving Community firms only</th>
<th>Operations involving non-Community firms¹</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share purchases</td>
<td>1977</td>
<td>202</td>
<td>211</td>
<td>413</td>
</tr>
<tr>
<td></td>
<td>1978</td>
<td>187</td>
<td>212</td>
<td>399</td>
</tr>
<tr>
<td></td>
<td>1979</td>
<td>273</td>
<td>245</td>
<td>518</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>227</td>
<td>276</td>
<td>503</td>
</tr>
<tr>
<td>Joint ventures</td>
<td>1977</td>
<td>138</td>
<td>150</td>
<td>288</td>
</tr>
<tr>
<td></td>
<td>1978</td>
<td>166</td>
<td>112</td>
<td>278</td>
</tr>
<tr>
<td></td>
<td>1979</td>
<td>135</td>
<td>88</td>
<td>223</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>74</td>
<td>101</td>
<td>175</td>
</tr>
<tr>
<td>Total</td>
<td>1977</td>
<td>340</td>
<td>361</td>
<td>701</td>
</tr>
<tr>
<td></td>
<td>1978</td>
<td>353</td>
<td>324</td>
<td>677</td>
</tr>
<tr>
<td></td>
<td>1979</td>
<td>408</td>
<td>333</td>
<td>741</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>301</td>
<td>377</td>
<td>678</td>
</tr>
</tbody>
</table>

¹ Operations involving non-Community firms, either exclusively or in combination with Community firms.

Taking all the years under review, there was a tendency for the gap between the proportion of international operations carried out in the individual Member States to narrow. While the Member States which accounted for the largest shares of total international operations in 1977, i.e. the Benelux countries and the Federal Republic of Germany, lost ground in 1980, the other Member States, whose shares were relatively small in 1977, saw them increase in 1980, the sole exception being Ireland.

Share of non-Community firms in international operations in Member States

260. In 1979, operations involving only Community firms had been predominant in international share purchases and joint ventures in the Community.

In 1980, the situation was reversed (Table 2(b)), with operations involving Community firms alone accounting for only 45% of all international share purchases and for 42% of joint ventures. This reflects the steady increase between 1977 and 1980 in the number of share purchase operations in which non-Community firms were involved.
TABLE 3
National and international operations in the Community, by industry, 1977-80

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Metal industries</th>
<th>Energy and oil</th>
<th>Chemicals</th>
<th>Textiles</th>
<th>Other manufacturing</th>
<th>Food</th>
<th>Services</th>
<th>of which:</th>
<th>Total</th>
<th>Banking and insurance</th>
<th>Holding companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>of which:</td>
<td>Machinery and mechanical parts</td>
<td>Electrical and electronic engineering</td>
<td>Metal goods</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1977</td>
<td>634</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>52</td>
<td>203</td>
<td>101</td>
<td>379</td>
<td>179</td>
<td>772</td>
<td>243</td>
<td>55</td>
</tr>
<tr>
<td>1978</td>
<td>733</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>56</td>
<td>176</td>
<td>109</td>
<td>380</td>
<td>194</td>
<td>656</td>
<td>182</td>
<td>58</td>
</tr>
<tr>
<td>1979</td>
<td>881</td>
<td>232</td>
<td>163</td>
<td>160</td>
<td>88</td>
<td>217</td>
<td>146</td>
<td>629</td>
<td>225</td>
<td>741</td>
<td>234</td>
<td>44</td>
</tr>
<tr>
<td>1980</td>
<td>698</td>
<td>185</td>
<td>163</td>
<td>86</td>
<td>90</td>
<td>252</td>
<td>135</td>
<td>365</td>
<td>196</td>
<td>682</td>
<td>210</td>
<td>40</td>
</tr>
</tbody>
</table>

1 Excluding machinery and transport equipment.
**Industry breakdown of national and international operations in the Community**

261. The industry breakdown of national and international operations (Table 3) reveals that the decline between 1979 and 1980 was uneven.

Only in the machinery and mechanical parts industry did developments match the overall trend. The number of operations fell more markedly (42%) in other manufacturing industries, reducing their share from 22% in 1979 to 15% in 1980, while the number of operations in the textile industry, in the food industry and in services fell by around 10% between 1979 and 1980.

The number of operations rose in only two industries: in energy and oil slightly and in chemicals sharply (16%).

As mentioned above, the decline in the total number of operations may owe something to the economic situation. The divergent trends in the number of operations in individual industries could be put down to differing cyclical positions.

Firm size may have been a further factor. Between 1979 and 1980, industries where large firms predominate recorded an increase in the number of operations, while the reverse occurred in industries where most firms are small.

**§ 2 — Market structures**

**The markets investigated**

262. For the purposes of the present analysis, specific product markets in the following industries have been singled out from the programme of studies on the development of concentration:

(i) food industry;

(ii) certain branches of the chemical industry (polishing and scouring preparations, in particular detergents and soaps; plastics);

(iii) cement industry;

(iv) pharmaceutical industry;

(v) paper industry;

(vi) textile industry;

(vii) electrical and electronic goods (in particular domestic electrical appliances and consumer electronics);
(viii) non-electrical engineering (in particular, agricultural machinery, office machinery, textile machinery, hoisting and handling equipment);

(ix) manufacture of transport equipment (cycles, motor-cycles and vehicle accessories);

(x) motor vehicle industry.

Since the purpose of this analysis is to indicate how competition is operating, it is based on the product market concept and not on an industry approach. It is on the product market that market power is exercised and exerts its influence, thereby determining the working of competition.

**Geographical delimitation of markets**

263. In general, the market power of firms is not evenly distributed throughout the Community since a number of large firms hold quasi-monopolistic positions on their national markets yet have a relatively low ranking at Community level. The Community’s motor vehicle industry is one example. In 1979, the market leader for small cars (under 1 000 cc) held only 30% of the Community market, while the leading firm in France and in Italy accounted for 53% and 68% of the national market respectively. Moreover, the market leader was not the same in every country: Renault in France, Belgium and the Netherlands; Fiat in Italy; Ford in the United Kingdom; Volkswagen in the Federal Republic of Germany. The large-car market (over 2 000 cc) provides an even more striking example, with the relevant market leader holding only 22% of the Community market but 39% of the Danish market, 36% of the UK market, 40% of the German market and 67% of the French market.

These examples show that, in analysing market power in the Community, account must be taken not only of the situation at Community level but also of that at national level. Otherwise, the actual market power exerted by large firms might be underestimated.

**Method used in the analysis**

264. The basic data used in the analysis are taken from studies of the structures of the different product markets and of the size differences between firms operating on those markets.
As a first step, each product market is assessed in the light of the following four structural criteria:

(i) monopolistic intensity;
(ii) duopolistic intensity;
(iii) oligopolistic intensity;
(iv) intensity of oligopolistic disequilibrium.

As a second step, each of these criteria is broken down into four categories, each indicating the potential threat to competition:

**Category I:**
highly probable threat to competition;

**Category II:**
less pronounced threat to competition;

**Category III:**
slight threat to competition;

**Category IV:**
no threat to competition.

Lastly, an overall assessment is made of the findings for all the product markets investigated by weighting each of the various structural criteria in such a way as to reflect the degree to which competition is threatened. This approach, which is similar to that used for carrying out a quantitative analysis of concentration, provides a clearer picture, in all the cases investigated, of the tendency toward a potential threat to competition.

This method of analysis consists not in classifying a particular product market on the basis of a single structural criterion and according to the particular threat to competition but in obtaining, from market structures, general information on the situation with regard to, and the development of, market power and the intensity of competition.
The development of market power on the product markets investigated between 1970 and 1979

265. The analytical method described above was applied to a sample of 305 product markets, each being analysed over an average period of two years. This gives a total of 746 cases. The markets investigated are located in the four largest Community countries (Federal Republic of Germany, France, Italy, United Kingdom).

Table 4 sets out the findings for the three periods 1970-73, 1974-76 and 1977-79.

A comparison of the overall findings for categories I and II reveals that a growing threat to competition emerged between 1970 and 1979. This can be explained by looking at the different structural criteria applied.

First, the degree of monopolistic intensity remained broadly unchanged during the last five years of the investigation period. The proportion of markets appearing in the first two categories was 50% in 1970-73, 46% in 1974-76 and 47% in 1977-79. The breakdown by Member State reveals that the degree of monopolistic intensity actually declined in the United Kingdom, notably as a result of keener international competition and economic integration in the Community. In Italy, on the other hand, monopoly power still appears to play a significant role.

The second criterion, duopolistic intensity, brings out the significant and growing role of duopolistic structures, which generally tend to be fairly balanced, the two largest firms occupying rather strong and broadly equal positions on the market.

The trend for the third criterion, oligopolistic intensity, is similar but even stronger than that of duopolistic structures. Between 1970 and 1979, category I expanded considerably, from close on 50% in the period 1970-73 to over 61% in the period 1977-79. There is, in fact, a growing tendency for this tight oligopolistic structure to tighten even further and to develop on all the product markets throughout the Community as a whole.

In order to assess oligopolistic developments from the viewpoint of their potential threat to competition, it is necessary to examine the findings on the intensity of oligopolistic disequilibrium. These show that the growing oligopolistic tendency is not accompanied by an equally pronounced shift in the disequilibrium between oligopolists.

Over the last ten years, structures on the product markets investigated seem to have pointed to genuine scope for competition. Provided it is spread evenly, market power does not, therefore, automatically impede competition.

On the development of market structures, Table 4 also shows that monopolistic tendencies have weakened and oligopolistic tendencies strengthened. Generally
### TABLE 4

Development of market power on product markets investigated in the Federal Republic of Germany, France, Italy and the United Kingdom, 1970-79

<table>
<thead>
<tr>
<th>Period</th>
<th>Country</th>
<th>Number of cases</th>
<th>Overall assessment</th>
<th>Monopolistic intensity</th>
<th>Duopolistic intensity</th>
<th>Oligopolistic intensity</th>
<th>Intensity of oligopolistic disequilibrium</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>I</td>
<td>II</td>
<td>III</td>
<td>IV</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>F</td>
<td>103</td>
<td>22</td>
<td>37</td>
<td>18</td>
<td>23</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>I</td>
<td>39</td>
<td>38</td>
<td>31</td>
<td>13</td>
<td>18</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>UK</td>
<td>80</td>
<td>50</td>
<td>35</td>
<td>14</td>
<td>1</td>
<td>50</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>289</td>
<td>31</td>
<td>33</td>
<td>17</td>
<td>19</td>
<td>28</td>
</tr>
<tr>
<td>1974-76</td>
<td>D</td>
<td>33</td>
<td>24</td>
<td>31</td>
<td>21</td>
<td>24</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>F</td>
<td>71</td>
<td>15</td>
<td>56</td>
<td>20</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>I</td>
<td>54</td>
<td>33</td>
<td>31</td>
<td>32</td>
<td>4</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>UK</td>
<td>63</td>
<td>32</td>
<td>43</td>
<td>22</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>221</td>
<td>26</td>
<td>42</td>
<td>24</td>
<td>8</td>
<td>28</td>
</tr>
<tr>
<td>1977-79</td>
<td>D</td>
<td>29</td>
<td>17</td>
<td>31</td>
<td>21</td>
<td>31</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>F</td>
<td>90</td>
<td>32</td>
<td>52</td>
<td>12</td>
<td>4</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>I</td>
<td>67</td>
<td>39</td>
<td>34</td>
<td>21</td>
<td>6</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>UK</td>
<td>50</td>
<td>22</td>
<td>38</td>
<td>32</td>
<td>8</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>236</td>
<td>30</td>
<td>42</td>
<td>20</td>
<td>8</td>
<td>30</td>
</tr>
<tr>
<td>Total 1970-79</td>
<td></td>
<td>746</td>
<td>29</td>
<td>38</td>
<td>20</td>
<td>13</td>
<td>29</td>
</tr>
</tbody>
</table>

1. The classification by structural criterion is based on numerous indicators; the following are given by way of example:
(a) **monopolistic intensity**: I, where the largest firm holds over 40% of the market; IV, where it holds less than 10%;
(b) **duopolistic intensity**: I, where the two largest firms hold over 50% of the market; IV, where they hold less than 20%;
(c) **oligopolistic intensity**: I, where the four largest firms hold over 80% of the market; IV, where they hold less than 40%;
(d) **intensity of oligopolistic disequilibrium**: I, where the largest firm is more than four times the size of the next largest firm; IV, where the largest firm is only slightly larger than the next largest firm.
speaking, the oligopolies in question consist of two or three firms that dominate a particular market and thus constitute tight duopolistic or triopolistic oligopolies.

Lastly, the overall assessment of the different criteria reveals divergent trends between Member States. The market power of large firms has diminished significantly in the United Kingdom but has grown in France and, to a lesser extent, in Italy. Taking the markets liable to be affected by restrictions of competition (categories I and II), it can be seen that their shares of the sample analysed evolved as follows in the ten years under investigation:

(i) Federal Republic of Germany: 40% in 1970-73, 54% in 1974-76 and 48% in 1977-79;
(ii) France: 59% in 1970-73, 71% in 1974-76 and 84% in 1977-79;
(iii) Italy: 69% in 1970-73, 64% in 1974-76 and 73% in 1977-79;
(iv) United Kingdom: 85% in 1970-73, 75% in 1974-76 and 60% in 1977-79.

Judging from the sample, the Federal Republic of Germany and the United Kingdom are therefore the countries in which competition is keenest, whereas France in the period 1977-79 was close to the exceptional situation of oligopolistic concentration experienced in the United Kingdom when it joined the Community (shares of 84% and 85% respectively).

§ 3 — Price structures

Some factors determining international price differences

266. The many surveys carried out show a varying pattern for 1980. In the case of some products, there are considerable price differences as between Member States, while for others, prices are more or less the same. Among the many factors determining price differences, the most important are the following:

(i) differences in national systems;
(ii) the effects of exchange rate variations;
(iii) differences in the business cycle and differing rates of inflation;
(iv) differences in consumer preferences and habits;
(v) national purchasing power disparities.

By way of example, the influence which differences in national taxation may have on prices is discussed below.
The rates of value added tax, which have the most obvious effect on the final price, vary considerably from one country to another for individual products and also over time. The same is true, often to a greater extent, of excise duties; unlike VAT, which is a general tax on consumption, they are charged on certain goods only.

In the case of cars, for example, indirect taxes charged on purchase amount to 10% in the Grand Duchy of Luxembourg, 13% in the Federal Republic of Germany and 33.33% in France, while in Denmark, on top of VAT at 22%, there is a progressive specific tax amounting to up to 180%, and in Greece, where VAT is not yet applied, the amount of tax may range up to 200%.

In addition to the absolute level of VAT, changes in VAT rates also play an important role in the price differences observed. In the Federal Republic of Germany, the standard rate of VAT was only 10% until July 1968, 11% until 1 January 1978, then 12%, and is at present 13%. In Italy, by contrast, the 35% rate charged on a number of consumer electronics items such as radios, TV sets and hi-fi equipment has been reduced to 18%. There was also a very substantial reduction in VAT in Ireland between 1978 and 1980. Greater alignment of national tax systems would probably have the effect of removing some international price distortions and would thus make for more uniform prices within the Community.

International price differences in 1980: certain selected products

Generally speaking, it cannot be said that one Community country is more expensive than another. This depends on the products, brands and shops analysed and on the date of the survey. Subject to this reservation, the products listed in Table 5 were cheaper in some countries and dearer in others. However, it should be emphasized that the table is not fully comprehensive, since some products could not be covered in all nine Community countries in 1980. Nor have products at relatively uniform prices been included, i.e. cases where the differences from one country to another are less than 10% of the minimum price observed.

Furthermore, the international price disparities found in the case of the limited sample of products covered do not reflect the very marked local dispersions. A look at the competitive situation within one and the same country shows that there are very considerable differences between the prices for different brands. In general, retailers’ own brands cost much less than those of major manufacturers.

Some comparisons of prices between 1976 and 1980

An analysis of the period 1976-80 shows that there were concurrent, but different trends, with sharp price increases for some products contrasting with
TABLE 5

International differences in retail prices in 1980 for twenty consumer durables and non-durables (including all taxes) 1

<table>
<thead>
<tr>
<th>Product</th>
<th>Cheapest country</th>
<th>Dearest country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic electrical appliances</td>
<td>I - NL - L</td>
<td>F - B</td>
</tr>
<tr>
<td>Small domestic appliances</td>
<td>NL - UK - (D)</td>
<td>(F)</td>
</tr>
<tr>
<td>Small mechanical appliances and tools (drills, etc.)</td>
<td>D</td>
<td>(L)</td>
</tr>
<tr>
<td>Consumer electronics (radios, TV sets, hi-fi equipment)</td>
<td>NL - D - UK</td>
<td>F - B - (I)</td>
</tr>
<tr>
<td>Photographic equipment</td>
<td>D - NL - (UK)</td>
<td>B - F</td>
</tr>
<tr>
<td>Typewriters</td>
<td>D</td>
<td>F - B</td>
</tr>
<tr>
<td>Sewing machines</td>
<td>NL</td>
<td>F</td>
</tr>
<tr>
<td>Cars 2</td>
<td>L - D</td>
<td>IRL - F - NL</td>
</tr>
<tr>
<td>Boxed sets of classical records</td>
<td>D</td>
<td>F</td>
</tr>
<tr>
<td>Toys</td>
<td>L - D</td>
<td>F</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>I - F</td>
<td>D - NL</td>
</tr>
<tr>
<td>Motor oil</td>
<td>L</td>
<td>D - F</td>
</tr>
<tr>
<td>Detergents</td>
<td>NL</td>
<td>(D)</td>
</tr>
<tr>
<td>Tea</td>
<td>UK - B</td>
<td>F</td>
</tr>
<tr>
<td>Coffee beans</td>
<td></td>
<td>D</td>
</tr>
<tr>
<td>Instant coffee</td>
<td>NL</td>
<td>D</td>
</tr>
<tr>
<td>Soft drinks, cola, etc.</td>
<td>D</td>
<td>F - B - NL</td>
</tr>
<tr>
<td>Alcoholic beverages (whisky, aperitifs)</td>
<td>L - B</td>
<td>F - D - I</td>
</tr>
<tr>
<td>Fresh bananas</td>
<td>D</td>
<td>F - B</td>
</tr>
<tr>
<td>Macaroni, spaghetti and similar products</td>
<td>I - B</td>
<td>D</td>
</tr>
</tbody>
</table>

1 The name of the country is given in brackets where sharp price differences were noted, but on the basis of too few observations to allow general conclusions to be drawn.

2 Other studies, not included in this sample, indicate that retail car prices are highest in Denmark and Greece.

divergent price movements in the case of other products. This applies both to purchase prices and to consumer prices.

Table 6, which is based on a sample of food products and retail outlets in Germany, illustrates the divergence of trends in purchase prices, consumer prices and mark-ups for certain products.

For example, in the case of one brand of biscuits, despite an average increase of 47.2% in the purchase price, retail traders increased their selling prices to the consumer by only 12.8%, thus reducing their 36% mark-up on the purchase price paid. This is an instance of the retail trade absorbing increases in production prices.

270. Other similar cases were noted, especially in France, and this confirms that there is generally active competition between retailers. In France, instances of
TABLE 6

Examples of changes in prices and mark-ups

(Price index: 1976 = 100)

I. Purchase prices — II. Consumer prices — III. Mark-ups

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>— a brand of biscuits containing butter</td>
<td>100</td>
<td>114.2</td>
<td>+ 29%</td>
<td>+ 33%</td>
</tr>
<tr>
<td>mark-up</td>
<td>III.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— another brand of biscuits</td>
<td>100</td>
<td>147.2</td>
<td>+ 36%</td>
<td>+ 4%</td>
</tr>
<tr>
<td>mark-up</td>
<td>III.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— cereal flakes</td>
<td>100</td>
<td>123.4</td>
<td>+ 23%</td>
<td>+ 34%</td>
</tr>
<tr>
<td>mark-up</td>
<td>III.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— a fruit cake</td>
<td>100</td>
<td>106.5</td>
<td>+ 31%</td>
<td>+ 50%</td>
</tr>
<tr>
<td>mark-up</td>
<td>III.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— rice in sachets</td>
<td>100</td>
<td>100</td>
<td>+ 22%</td>
<td>+ 47%</td>
</tr>
<tr>
<td>mark-up</td>
<td>III.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— a brand of fruit preserved in syrup</td>
<td>100</td>
<td>210.7</td>
<td>+ 78%</td>
<td>+ 65%</td>
</tr>
</tbody>
</table>

Negative mark-ups were also found, i.e. the products concerned were sold at a loss. However, losses or reduced profits on certain products are offset by increased or excessive mark-ups on other products. For example, Table 6 shows that purchase prices for rice in sachets did not change between 1976 and 1980, while retail prices increased by 22.1%. Comparable findings were made in the other Community countries.

The sample chosen sheds light on two trends that are of interest as regards the working of competition. Firstly, it would appear that there is active competition in the distributive trades; secondly, retail traders apparently base their price strategy, not on the mark-up for each individual product, but rather on an average mark-up for the whole of their range.

COMP. REP. EC 1981
### TABLE 7


<table>
<thead>
<tr>
<th>% share of demand from</th>
<th>FR of Germany</th>
<th>Netherlands</th>
<th>Belgium</th>
<th>France</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 largest purchasers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>23%</td>
<td>29%</td>
<td>41%</td>
<td>16%</td>
</tr>
<tr>
<td></td>
<td>(20% ; 5%)</td>
<td>(52% ; 9%)</td>
<td>(36% ; 13%)</td>
<td>(48% ; 30%)</td>
<td>(23% ; 11%)</td>
</tr>
<tr>
<td>10 largest purchasers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>13%</td>
<td>32%</td>
<td>48%</td>
<td>62%</td>
<td>27%</td>
</tr>
<tr>
<td></td>
<td>(25% ; 8%)</td>
<td>(72% ; 13%)</td>
<td>(59% ; 22%)</td>
<td>(70% ; 49%)</td>
<td>(51% ; 18%)</td>
</tr>
<tr>
<td>20 largest purchasers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>18%</td>
<td>43%</td>
<td>67%</td>
<td>81%</td>
<td>37%</td>
</tr>
<tr>
<td></td>
<td>(35% ; 12%)</td>
<td>(88% ; 18%)</td>
<td>(81% ; 37%)</td>
<td>(90% ; 65%)</td>
<td>(61% ; 22%)</td>
</tr>
</tbody>
</table>

1 The table shows the percentage averages calculated from the sample of producers/suppliers who replied to the questionnaires sent out by AIM in Brussels (European Association of Industries of Branded Products). The figures in brackets are the percentages for the most dependent producer (maximum) and for the least dependent producer (minimum).

2 The 1967 figures in France and Italy, are not available.
The purchasing strength of the major distributors

271. In all the Community countries except Italy and Greece, the balance of power between producers and distributors is tending to shift in favour of distributors.

Table 7 highlights the considerable increase in concentration among purchasers and hence their power vis-à-vis the producers/suppliers of foodstuffs and beverages. The table shows that in 1979 there were producers in Europe who were obliged to sell about half of their output to only five customers (52% of their sales in Germany, 48% in the Netherlands, 64% in Belgium, 43% in France). These are the figures for the producer in each country who is placed at the greatest disadvantage by the concentration of demand (the maximum dependence figures in Table 7). The table also shows that, taking the averages, one third (32%) of their sales in Germany and two thirds (64%) in Belgium went to only ten customers.

§ 4 — Conclusions

272. The findings as regards the state and development of concentration and competition are summarized below.

In 1980 there was a fall in the number of national and international mergers and takeovers, share acquisitions and new joint ventures in the Community compared with the previous year. This drop was particularly marked in the case of purely national operations. Share acquisitions remain the most common form of operation. One reason for the fall in the number of operations could be that saturation point has now been reached, making any increase unlikely, and a second reason could be the impact of cyclical factors.

The breakdown of international share acquisitions and new joint ventures in 1980 shows that once again the leading position was held by the Benelux group of countries. However, looking at the individual Member States, France was in the lead, having overtaken the United Kingdom. There was also a tendency towards a more balanced regional pattern as regards international operations in the Community.

The increase between 1977 and 1980 in share acquisitions involving firms from outside the Community resulted in a reversal of the situation. Now, out of all the international operations in the Community, those involving firms from outside the Community are more numerous than those carried out solely between firms from member countries.

273. The breakdown by industry of both national and international operations shows that the fall in the overall number of operations is not spread equally. This
difference of trend might be due to differences between business conditions in specific industries.

274. The analysis of the market structures investigated indicates that market power is not in general uniformly distributed within the Community. Between 1970 and 1979 in the Community as a whole, market power presented an increasing threat to competition as oligopolies increased their hold on markets. Nevertheless, such oligopolistic structures are still in a state of balance that allows practical scope for competition.

275. The price structures of the sample of products show major disparities between Member States in 1980. They are attributable to several factors, the most important being the differences between national tax systems and business trends. A few price comparisons for 1976 and 1980 show that movements in purchase prices, consumer prices and mark-ups varied considerably. Underlying this situation is the price strategy pursued by retail distributors, whereby the aim is not to apply the same mark-up to each product, but rather to achieve profitability for the whole of the range carried. Another finding is that there is active competition in the distributive trades. At the same time, there has been an increase in the purchasing strength of the distributors vis-à-vis the manufacturers. The available information does not, however, allow any conclusions to be drawn as to possible long-term changes in the competitive situation at distribution level.
Annex

List of individual Decisions of the Commission and Rulings of the Court of Justice made in 1981 concerning the application of Articles 85 and 86 of the EEC Treaty and of Articles 65 and 66 of the ECSC Treaty.

Final negative Decisions adopted by the Commission under Article 93(2) of the EEC Treaty.

Cases in which the Commission raised no objection.

Cases in which the procedure under Article 93(2) of the EEC Treaty or under Article 8(3) of Decision 2320/81/ECSC was initiated.

Cases in which the procedure under Article 93(2) of the EEC Treaty or under Article 8(3) of Decision 2320/81/ECSC was terminated.

List of Decisions and Rulings

1. Pursuant to Articles 85 and 86 of the EEC Treaty (other than procedural decisions)

Decision of 28 September 1981 on a proceeding under Article 85 of the EEC Treaty
'Italian flat glass'

Decision of 7 October 1981 on a proceeding under Article 86 of the EEC Treaty
'Bandengroothandel Frieschebrug NV/NV Nederlandsche Banden-Industrie Michelin'

Decision of 29 October 1981 on a proceeding under Article 86 of the EEC Treaty
'GVL'

Decision of 17 November 1981 on a proceeding under Article 85 of the EEC Treaty
'Langenschmidt-Hachette'

Decision of 25 November 1981 on a proceeding under Article 85 of the EEC Treaty
'VBBB/VBVB'

Decision of 26 November 1981 on a proceeding under Article 85 of the EEC Treaty
'Sopelem Vickers'

Decision of 27 November 1981 on a proceeding under Article 85 of the EEC Treaty
'Moët & Chandon (London) Ltd.'

Decision of 2 December 1981 on a proceeding under Article 85 of the EEC Treaty
'Hasselblad'

Decision of 4 December 1981 on a proceeding under Article 86 of the EEC Treaty
'Gema Statutes'

Decision of 17 December 1981 on a proceeding under Article 85 of the EEC Treaty
'ANSEAU-NAVEWA'

Decision of 6 January 1982 on a proceeding under Article 85 of the EEC Treaty
'AEG-Telefunken'

2. Principal procedural Decisions pursuant to Regulation No 17

Decision of 17 November 1981 on a proceeding under Article 15 of Council Regulation No 17
'Comptoir Commercial d'Importation'

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Decision of 25 November 1981 on a proceeding under Article 15 of Council Regulation No 17
'Telos'

Decision of 11 December 1981 on a proceeding under Article 15 of Council Regulation No 17
'National Panasonic (France) SA'

Decision of 11 December 1981 on a proceeding under Article 15 of Council Regulation No 17
'SA National Panasonic (Belgium) NV'

3. Decisions concerning Articles 65 and 66 of the ECSC Treaty

Decision of 25 March 1981 on a proceeding under Article 66 of the ECSC Treaty authorizing two derogations from Article 3(3) of Commission Decision 74/153/ECSC of 20 December 1973 concerning the acquisition by August Thyssen-Hütte AG of a majority shareholding in Rheinstal. AG

Decision 81/431/ECSC of 31 March 1981 on a proceeding under Article 65 of the ECSC Treaty authorizing specialization and coordination agreements between the Belgian steel-producing undertakings Usines Gustave Boël SA, Forges de Clabecq SA and Fabrique de Fer de Charleroi SA (Pôle des Indépendants)

Decision 81/492/ECSC of 18 June 1981 on a proceeding under Article 66 of the ECSC Treaty authorizing the joint creation of the undertaking Roheisengesellschaft Saar GmbH ('Rogesa') by AG der Dillinge Hüttenwerke and Stahlwerke Röchling-Burbach GmbH

Decision of 3 July 1981 on a proceeding under Article 66 of the ECSC Treaty authorizing the joint creation of Allied Steel & Wire Ltd. by British Steel Corporation and Guest Keen & Nettlefolds Ltd.

Decision of 14 September 1981 on a proceeding under Article 66 of the ECSC Treaty on the formation of Siderpotenza SpA by Lucchini Siderurgica SpA, Acciaierie e Ferriere Leali Luigi SpA and GEPI SpA


Decision of 5 November 1981 on a proceeding under Article 66 of the ECSC Treaty authorizing Usinor SA to acquire a 75.44% shareholding in Creusot-Loire Dunes SA.

Decision 81/1007/ECSC of 30 November 1981 on a proceeding under Article 66 of the ECSC Treaty on the joint formation of Zentralkokerei Saar GmbH, Dillingen, by two steel producing undertakings and one coal producing undertaking.
Decision 82/10/ECSC of 10 December 1981 on a proceeding under Articles 53 and 65 of the ECSC Treaty relating to the extension of the authorization concerning the equalization fund established by the Chamber of Coal Traders and the National Coal Board, London, to reduce the price of anthracite and anthracite briquettes originating from within the Community and from third countries.

Decision of 15 December 1981 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition by Frère-Bourgeois Commerciale SA of a 51% shareholding in Jouret-Aciers SA and joint control of this undertaking by Frère-Bourgeois Commerciale and the former shareholders.

Decision of 18 December 1981, on a proceeding under Article 66 of the ECSC Treaty concerning Mr Otto Wolff von Amerongen's membership of the supervisory board of Dillinger Hüttenwerke AG and the board of management of Arbed.

4. Rulings of the Court of Justice


see also Order of 7 July 1981 in joined Cases 60/81 R and 190/81 R 'IBM/Commission of the European Communities' OJ C 215, 26.8.1981, p. 2

Order of 3 December 1981 in Case 1/81 'Pfizer Inc./Eurim-Pharm GmbH' OJ C 1, 5.1.1982, p. 3
Final negative Decisions adopted by the Commission under Article 93(2) of the EEC Treaty

Netherlands

Decision 81/227/EEC of 20 March 1981 on a proposal by the Netherlands Government to grant aid for the creation of new production capacity by an undertaking in the chemical industry (polypropylene)

Decision of 20 March 1981 on a proposal by the Netherlands Government to grant aid for investments by a manufacturer of photographic products

Decision 81/523/EEC of 27 May 1981 on a proposal by the Netherlands Government to grant aid for certain investments by a manufacturer of insulating material (Rockwool)

Belgium

Decision 81/626/EEC of 10 July 1981 on a scheme of aid by the Belgian Government in respect of certain investments carried out by a Belgian undertaking to modernize its butyl rubber production plant

Netherlands

Decision 81/716/EEC of 23 July 1981 on a proposal by the Netherlands Government to grant aid for increasing production capacity by an undertaking in the chemical industry (polyethylene)

Decision 81/717/EEC of 23 July 1981 on a proposal by the Netherlands Government to grant aid for investment in the petrochemical industry

Decision 81/718/EEC of 23 July 1981 on a proposal by the Netherlands Government to grant aid for investment in the foodstuffs packaging industry
Decision 81/738/EEC of 31 July 1981 on a proposal by the Netherlands Government to grant aid for the creation of new production capacity by an undertaking in the petrochemical industry (aromatic solvents)

Decision 81/767/EEC of 9 September 1981 on a proposal by the Netherlands Government to grant aid for investment by an electrical and electronic engineering firm

Decision 81/797/EEC of 18 September 1981 on a proposal by the Netherlands Government to grant aid for the creation of new production capacity by an undertaking in the chemical industry (magnesium oxide)

Belgium

Decision 81/945/EEC of 10 November 1981 on a Belgian Government proposal to aid certain investments to be carried out by a Belgian undertaking for the establishment of production capacity for argon


Decision 82/4/EEC of 4 December 1981 on proposed assistance by the Belgian Government for investments by an Antwerp chemical firm for the production of polyether-polyol

United Kingdom

Decision 82/47/EEC of 16 December 1981 on a proposal of the United Kingdom Government to grant aid for the export of two ships to Panama
Cases in which the Commission raised no objection

Federal Republic of Germany

26. 2.81 Regional economic development programme in the Rhineland, North Rhine-Westphalia
18. 6.81 Aid for an investment programme in the steel industry
23. 6.81 Aid for the control of watering equipment in Schleswig-Holstein
25. 6.81 Aid for research and development in Bavaria
7. 7.81 Low-interest loans for energy-saving investments
14. 9.81 Aid for a data-processing firm
27.10.81 Federal Government/Länder energy programme: grants for the building of coal-fired power stations and for extending district heating networks
3.12.81 Environmental assistance for a coking plant at Bottrop
21.12.81 Environmental assistance in North Rhine-Westphalia

Belgium

30. 6.81 Extension of complementary regional aid
10. 8.81 Emergency aid for a steel undertaking
30.12.81 Aid for restructuring a steel undertaking

Denmark

30. 1.81 Grants to promote the exploitation of renewable energy sources
27. 2.81 Extension of a credit scheme for shipowners
30. 7.81 Aids to the steel industry
24. 8.81 Grant of assistance to a company in Kalundborg
12.10.81 Grant of assistance to a company in Kalundborg
3.12.81 Extension of aid for ship purchase

France

18. 3.81 Extension of the PDR, PLAR, PLAT and ASR regional development system and inclusion of the Nord-Pas-de-Calais mining area in the FSAI scheme
8. 4.81 Aid to a company in the Aisne department
29. 4.81 Aid for an investment programme in the steel industry
4. 6.81 Aid for shipbuilding in 1981-82
12. 6.81 Special rural aid
11. 9.81 ODs: two draft Decrees amending the regional development premium system
14. 9.81 Aid to a company in the Doubs department
22. 9.81 Financing for building up stocks of essence of ylang-ylang at Mayotte
22. 9.81 Measures of assistance for agriculture at Mayotte
30.12.81 Emergency aid for a steel undertaking

Ireland
24. 6.81 Tax relief for certain non-manufacturing activities at Shannon airport
22. 7.81 Introduction of an employment grant for the services industry
27. 7.81 Assistance for bread

Italy
19. 2.81 Sicily: aid for the creation and development of youth cooperatives
4. 5.81 Sicily: Bill concerning financial measures under the 1980-82 budget
19. 6.81 Emilia-Romagna: regional measures for small and medium-sized businesses
30. 6.81 Sicily: Bill concerning measures for small and medium-sized trade and artisanat businesses
12.10.81 Emilia-Romagna: Acts No 3/73, No 13/75 and No 13/77 providing for assistance to artisanat businesses
27.10.81 Friuli-Venezia-Giulia: Act No 243 concerning measures of assistance for cooperatives
30.12.81 Aid for the steel industry

Luxembourg
9. 6.81 Aid for an undertaking manufacturing steel non-ferrous metal powder
17. 6.81 Aid for a steel undertaking
13. 7.81 Aid for a firm manufacturing washing machines

Netherlands
29. 1.81 Aid for a transport company
6. 2.81 Aid for the paper industry
13. 2.81 Measures of assistance for a firm in the credit sector
3. 3.81 Aid for shipbuilding
6. 3.81 Aid for a firm manufacturing electrical transformers

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13. 3.81 Aid for a firm manufacturing electrical equipment
13. 3.81 Programme of aid in favour of wooden clog production
18. 3.81 Extension of aid to small and medium-sized businesses for research and development contracts
23. 3.81 Aid for a shipbuilding and repair firm
24. 3.81 Aid for an investment programme in the steel industry
27. 3.81 Emergency aid for a company manufacturing structural metal products
3. 4.81 Premiums for innovation
23. 4.81 Aid to small and medium-sized businesses for data processing projects
29. 4.81 Aid for an investment programme in the steel industry
11. 5.81 Aid for management and technical development in small and medium-sized industrial firms
11. 5.81 Aid for the application of micro-electronics to production in small and medium-sized firms
11. 5.81 State guarantees for holding companies taking interests in small and medium-sized firms
25. 5.81 Amendment to the scheme of assistance for shipbuilding
13. 7.81 Aid for a sanitary ware firm
20. 7.81 Guarantees for the preparation of technical specifications for tenders for non-member countries
28. 7.81 Aid for anti-pollution investment in the galvanizing industry
11. 8.81 Grants for tourist advertising
12. 10.81 Measures of assistance for wood processing
28. 10.81 Amendment to the WIR: implementing provisions for the ROT premium in the municipalities of Duiven, Westervoort and Leeuwarden
18. 12.81 Aid for a firm in the jute industry

United Kingdom

6. 2.81 Grant of assistance to a London firm under the Inner Urban Areas Act 1978
27. 2.81 New Intervention Fund for the shipbuilding industry
2. 3.81 Aid for an investment programme in the special steels sector
7. 4.81 Aid to a firm producing diesel engines
23. 4.81 Aid to a lead refining firm
23. 4.81 Aid to an aircraft firm for the sale of the Airbus
2. 7.81 Assistance to facilitate the conversion to solid fuel of oil-fired boilers used in industry
11. 2.81 Aid to a mechanical engineering firm
3. 11.81 Aid to the Northern Ireland Electricity Service
5. 11.81 Aid to a firm in the energy sector
17. 11.81 Aid to a heating equipment firm
24. 11.81 Amendment to the regional aid scheme for the services industry
5. 12.81 Aid to a firm in the data-processing industry
Cases in which the procedure under Article 93(2) of the EEC Treaty or under Article 8(3) of Decision 2320/81/ECSC was initiated

Federal Republic of Germany

8. 7.81 Aid to a steel undertaking in Bavaria
4.11.81 Tenth General Plan: joint Federal Government/Länder task
11.11.81 Aid for the publication of a scientific journal
11.12.81 Aid to four steel undertakings
16.12.81 Environmental assistance to a Saar steel firm

Belgium

3. 4.81 Aid to a refinery at Antwerp
10. 4.81 Emergency aid to a number of steel undertakings
22. 7.81 Aid to a lemonade business
22. 7.81 Aid to a mineral water and lemonade business
22. 7.81 Aid to a mineral water and lemonade business
11.11.81 New designation of regional development areas
26.11.81 Aid for restructuring a steel undertaking
16.12.81 Aid to three steel undertakings
16.12.81 Extension of complementary regional aid

Denmark

16.12.81 New designation of regional development areas

France

12. 5.81 Export credits for agreements concluded with Greece
30.11.81 Emergency aid to a steel undertaking

Italy

6. 5.81 Measures designed to stem inflation, support industrial competitiveness and promote employment (continuation of Article 93(2) procedure)
8. 7.81 Trento: measures of assistance for the industrial sector

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13. 7.81 Tax relief for banking consortia
25.11.81 Emergency aid for a shipyard
16.12.81 Bolzano: measures of assistance for the industrial sector

**Luxembourg**

15. 4.81 Aid for the steel industry

**Netherlands**

6. 2.81 Aid for a firm's property business
8. 7.81 Maintenance of the IPR in the Bergen-op-Zoon development pole and assistance under the WIR at Delfzijl
22. 7.81 Aid to a firm in the board sector
16.12.81 Aid to a shipbuilding firm

**United Kingdom**

8. 4.81 Measures of assistance for a firm in the automobile industry
14. 5.81 Aid to a steel undertaking
22. 7.81 Aid for the export of ships
Cases in which the procedure under Article 93(2) of the EEC Treaty or under Article 8(3) of Decision 2320/81/EECSC was terminated

Federal Republic of Germany
16.12.81 Regional development programme
16.12.81 Fourth, Fifth and Sixth General Plans
16.12.81 Seventh, Eighth and Ninth General Plans
22.12.81 Aid to a Saar steel undertaking
23.12.81 Aid to a Bavarian steel undertaking

Belgium
6. 4.81 Aid to a glass packaging manufacturer
15. 4.81 Aid to a brewery
13. 5.81 Aid for ship repair
10. 7.81 Aid to a firm manufacturing butyl rubber
1.11.81 Aid to a firm in the chemical industry (argon)
23.11.81 Aid for a refinery at Antwerp
4.12.81 Aid to a firm in the chemical industry (polyether-polyol)

Denmark
14. 5.81 Maintenance of assisted areas status for Kalundborg

France
10. 4.81 Aid for the building of four ships
28. 4.81 Participatory loans granted through the FSAI
25.11.81 Medical and scientific instruments

Netherlands
19. 3.81 Aid to a firm manufacturing chemical products
20. 3.81 Aid to a firm manufacturing photographic products
20. 3.81 Aid to a firm manufacturing chemical products (polypropylene)
15. 4.81 Aid to a mechanical engineering firm

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26. 5.81 Aid to the cotton, rayon and linen industry (KRL)
27. 5.81 Aid to a firm manufacturing insulating products (rockwool)
22. 7.81 Aid to a brewery
23. 7.81 Aid to a firm manufacturing chemical products (polyethylene)
23. 7.81 Aid to a firm manufacturing foodstuffs packaging
23. 7.81 Aid to a firm in a petrochemical group
31. 7.81 Aid to a firm in the petrochemical industry (aromatic solvents)
9. 9.81 Aid to an electrical and electronic engineering firm
10. 9.81 Aid to a civil engineering and building firm
18. 9.81 Aid to a firm manufacturing chemical products (magnesium oxide)

United Kingdom

28. 7.81 Aid to a firm in the automobile industry
11.11.81 Aid to a steel undertaking

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