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Table of contents

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INTRODUCTION BY MR KAREL VAN MIERT,

the Commissioner with special responsibility for competition policy

European competition policy in 1995 was marked by a sharp increase in the number of cases submitted to the Commission and in the number of decisions taken. Looking at the whole range of areas covered (restrictive agreements and concerted practices, mergers and state aid), the number of new cases submitted to the Commission was more than one third up on the previous year.

A large part of this increase is due to the fact that three new member countries joined the European Union on 1 January 1995. However, the figures also show that businesses are increasingly aware that their playing field is Europe as a whole. In addition, the pressure of competition gives firms an incentive to cooperate or merge so as to remain competitive.

Competition policy plays a key role in creating an environment that is favourable to businesses, this being crucial to lasting growth in the European economy and to job creation.

Another crucial competition policy objective is consumer protection. The single market must first and foremost serve people. It must be ensured, through strict application of the competition rules, that consumers have freedom of choice between quality products at competitive prices.

Let me illustrate Commission efforts in pursuit of these two competition policy objectives in 1995 by highlighting a few of the most significant examples.

The Commission took action against business practices that block parallel imports and prevent consumers from taking advantage of price differences between Member States. With the same end in view, the new Regulation on motor vehicle distribution in Europe, while allowing structured networks that provide after-sales service, ensures that individual consumers are free to carry out parallel imports. The Commission is similarly on its guard against firms that restrict market access for new competitors.

The application of the competition rules to the information society has continued to be a priority. Major progress has been achieved on legislative provisions liberalizing telecommunication services: such liberalization has applied to mobile telephones since 1995 and will apply to alternative networks on 1 July 1996 and to voice telephony on 1 January 1998. In several Member States (Belgium, Ireland and Italy), new entrants to the mobile-telephone market are treated on an equal footing with the established operator. However, the Commission's role does not stop there: operators must be prevented from concluding agreements or engaging in practices which have the same foreclosure effect as the statutory protection that existed previously. For this reason, strategic alliances, which are an increasingly frequent phenomenon, can be authorized only if they do not shut off national markets.

The Commission also prohibited two operations in the audiovisual sector, which is a sensitive and rapidly developing sector, so as to safeguard the scope for competition.

Let me emphasize that the policy of liberalization takes full account of the needs of the public services, whose performance it aims to improve while maintaining quality and prices that consumers can afford.

The same consideration applies to the competition rules as a whole, including those governing state aid. The Commission accordingly agreed that a tax measure in support of the French Post Office should not be deemed to be aid, since it merely counterbalanced certain public-service constraints imposed upon the Post Office. On the state aid front, the Commission endeavoured to pursue a strict policy, authorizing aid only on the basis of precise and uniform rules for priority objectives (for example, research and development). One of the most important and most widely remarked decisions, that on Crédit Lyonnais, shows how this concern for strict enforcement of the rules is combined with awareness of the specific features of individual sectors.

I am aware that it is crucial for firms to have competition policy cases dealt with within the tightest possible deadlines. Most mergers are cleared by the Commission, on a one-stop-shop basis, within one month of notification. This represents a considerable advantage for firms. I would also like to speed up procedures in other types of cases, particularly those involving joint ventures.

It is my intention that European competition policy should continue to adjust to the needs and priorities of individuals and of the European economy. Discussions will accordingly be entered into or pursued with all those concerned on the following subjects: cooperation with the national competition authorities, fines to be imposed on cartels, the Green Paper on mergers, the Green Paper on vertical restrictions in distribution, and changes to the "de minimis" rule, the aim being to reduce as far as possible the constraints imposed on enterprises while at the same time focusing Commission action on essentials.

Part One

25th Report on competition policy

COM(96)126 final

TABLE OF CONTENTS: 25th REPORT

Introduction

1. A competitive environment as a prerequisite for competitiveness

1. It is widely recognized that competition policy has a key role to play in ensuring that EU industry remains competitive.

Competition policy serves as an instrument to achieve the optimal allocation of resources, technical progress and the flexibility to adjust to a changing environment. In that respect, competition and competitiveness belong together. Experience shows that only those companies which are used to strong competition and perform well in open and dynamic markets will be able to function effectively on a wider scale - be it in other geographic areas or in a more global economy in general.

Competition policy and competitiveness policy are thus not contradictory but rather serve the same goals of creating the essential conditions for the development and maintenance of an efficient and competitive Community industry, bringing better products and services to European citizens, and providing a stable economic environment.

2. Internal market and competition policy

2. The complementarity between those two policies is also clearly shown by the Community's objective of creating an internal market. On the one hand, the internal market is an essential condition for the development of an efficient and competitive industry. On the other hand, competition policy is an important tool for achieving the goal of, and maintaining, an internal market, in particular via the enforcement of rules ensuring that the regulatory barriers to trade which have been removed are not replaced by private or other public restrictions having the same effect.

2.1 Factors affecting competition in the internal market

3. While the legislative steps spelt out in the 1985 Commission White Paper on the internal market have almost all been adopted and transposed at national level, preliminary evidence suggests that some product and service markets remain fragmented.[1]

Internal market integration, in tandem with the progressive globalization of markets, is expected to widen geographic markets (not necessarily to Community level - relevant geographic markets may contain a distinct set of regional or national areas). It may therefore redefine the structural parameters of the market within which the implications of actions of public- or private-sector operators for competition must be judged. No definitive judgement can be made at this early stage as to whether the pro-competitive impact of the internal market has manifested itself. In some markets, there is tentative evidence that competition is increasingly defined at a supranational level, while in others there is reason to believe that markets remain segmented along national lines. The latter can be explained by reference to a range of factors which must be taken into account when assessing the

[1] During 1996 the Commission intends to present the findings of an overall analysis of the impact and effectiveness of the internal market programme pursuant to Council Resolution 92/1218 of 7 December 1992.

consequences of internal market integration in terms of the geographical expansion of "relevant markets".

4. A first factor relates to the effectiveness of legislative action (and ancillary measures such as European standardization) in dismantling legal and administrative barriers to cross-border transactions. Where the legislative framework is incomplete or inadequate, the Commission intends to press for its reinforcement. There may also be situations where there are no entry barriers but where discrepancies in national arrangements result in differences in economic conditions that are capable of distorting trade and competition (e.g. pharmaceutical pricing, taxation, monetary fluctuations). Where these factors result in differences in economic conditions between national markets, leading operators to distinguish between them, this may need to be taken into account in defining the relevant market for competition. "Natural barriers" such as language, taste and habits, or structural characteristics which reduce the tradability of products or services, may also require that national markets be regarded as separate entities. These issues have arisen in the context of the Commission's investigation of mergers in TV broadcasting and the media sector, where linguistic and cultural factors require that the EU market be regarded as consisting of a series of distinct national markets. This cultural diversity contributes to the richness of our shared European heritage and must be taken into account in the analysis of cases by the Commission, even if cases of dominance are more frequently encountered as a result (Nordic Satellite; RTL/Veronica/Endemol).

2.2 Role of competition policy

5. While internal market integration shapes the economic context within which Community competition policy must be applied, it is also the case that the application of Community competition policy will help to reinforce the functioning of a single market. Three main areas of activity can be identified: anti-competitive agreements and practices, the regulated or monopolized sectors, and state aid. It is an essential consideration here that the Commission has at its disposal a set of interdependent competition policy instruments. The anti-trust rules, merger control, the policing of state aid and the rules on liberalization, all serve the same objective of ensuring that competition in the internal market is not distorted.

6. The Commission is vigilant in applying Community competition rules where firms attempt to stifle the pro-competitive effects emanating from internal market integration through anti-competitive behaviour designed to sustain market segmentation. Examples of behaviour which give rise to such concern are restrictions on parallel trade, certain types of vertical agreements and/or distribution systems, and unjustified refusal to provide (non-discriminatory) access to facilities which third parties require in order to compete.

7. The liberalization of traditionally monopolized markets, such as utilities, is an essential step in the establishment of an internal market. It is strongly believed that, without a stronger and more competitive base in the fields of energy, public transport and telecommunications, the European economy, including consumers and medium-sized enterprises, will be at a disadvantage.[2] The Madrid European Council in December 1995 concluded that it is essential to introduce increased competition in different sectors in

[2] Competitiveness Advisory Group, Enhancing European Competitiveness, Second Report to the President of the European Commission, the Prime Ministers and Heads of State, December 1995 ("Ciampi Report"). In the same context, it is argued that "what matters most is not so much that the ownership - and management - of public utilities moves from the State to the private sector, as that competition is introduced and extended wherever possible".

order to enhance competitiveness and so create new jobs. The Commission has therefore pursued its efforts to open up these markets to competition and intra-Community trade while ensuring that the measures proposed or adopted are compatible with the performance by public services of tasks of general economic interest, such as the provision of a universal service to all citizens at affordable prices.

8. Telecommunications is a strategic area of considerable interest for the European Union[3]. Ongoing liberalization of this sector has forced telecom operators to launch new services and to reduce prices. Both industry and consumers benefit from the opening-up of telecom markets. The introduction of competition in this sector is also vital to facilitate the transition to the information society, and thus for our ability to survive in an increasingly competitive and global market. In this context, cultural diversity and equal access to the new services are essential objectives that need to be addressed.

Much of the legislation at Community level has either been adopted or is well under way for complete liberalisation by 1998. This must of course be transposed into national legislation and effectively applied in order to ensure the introduction of real competition. The role of the Commission will not be reduced once the legislative acts are in place. On the contrary, the Commission must ensure that, once removed, the legal barriers will not be replaced by agreements or practices of a similar nature, such as anti-competitive mergers, market-sharing agreements, abusive behaviour of the incumbents against newcomers -for example, by denying non-discriminatory access to essential facilities- or by illegal state aid. Where exclusive rights are maintained in reserved areas, cross-subsidization of the operator's non-reserved areas should be avoided.

In the meantime, industry moves on to anticipate new emerging markets. New alliances having global implications have been submitted to the Commission for scrutiny. The Commission's assessment of these cases demonstrates how the existing competition rules, when applied realistically, are capable of grasping the dynamics of innovation and globalization. But newly emerging markets is not a password for approval. While alliances should be allowed, or even encouraged when pro-competitive, they cannot be accepted where they thwart or threaten the demonopolization process. Where big players join forces, the Commission should aim to prevent market foreclosure.

9. To an even greater degree than the telecoms sector, the air transport sector, where full liberalization will be completed by the end of 1997, demonstrates that legislation is necessary but not sufficient to achieve a fully competitive environment. In this sector, where airlines fight to secure or retain a sufficient share of a modestly growing and competitive market, there is an ever-present danger that the incumbents might use unfair methods to protect their interests. Strict application of competition rules, mainly in the field of state aid and control of abusive behaviour, is absolutely necessary. In particular, state aid is seen as a counterproductive measure which tends to protect the inefficient against the efficient, simply delaying the necessary restructuring. State aid might even be used to fight new competitors by means of predatory pricing and other measures. While restructuring is necessary to achieve efficiency gains and competitiveness in a growing market, the Commission has to make sure that a high degree of concentration does not foreclose routes and slots, thereby re-erecting legally removed barriers.

10. Energy is another key factor for industry and was mentioned as such in the Ciampi Report. However, this year has not produced any real progress in the liberalization of this sector.

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[3] Green Paper on the liberalization of telecommunications infrastructure and cable television networks : Part One (COM(94) 440, 25.10.1994) and Part Two (COM(94) 682, 25.01.1995).

11. According to the fourth survey on state aid in the European Union, published in 1995, the total amount of national aid in the period 1990-1992 has decreased, but - at around ECU 94 billion on average per year for the Community as a whole - is still too high for the Commission's objectives to be attained, notably with respect to the richer Member States. Vast amounts of state aid are not the way to achieve competitiveness. They delay necessary restructuring, distort competition between the companies and regions, and are a burden on public budgets.

However, it would be unrealistic to suggest that all state aid be simply eliminated, and this has never been envisaged by the authors of the Treaty or by the Commission. Market forces alone, in a market which is not perfect, do not allow the attainment of certain fundamental objectives of the Member States and the European Union, such as economic and social cohesion, a sufficient degree of R&D and environmental protection, the development of SMEs, and the necessity of allowing time for structural adjustment, in particular for social reasons. For the Commission, it is essential to ensure that, where state aid is allowed by derogation, the negative effects on competition and trade between Member States are limited to what is strictly necessary and that they are offset by the realization of objectives of general Community interest.

3. International cooperation

12. The increasing globalization of the world economy and the changing pattern of modern trade makes international cooperation between competition authorities inevitable.

First, companies operating worldwide must be aware of, and must comply with, differing competition laws and practices in different jurisdictions. This necessarily entails a cost for the companies concerned. Moreover, when transactions fall within the jurisdiction of multiple competition authorities, there is an increased risk of conflicting measures being imposed. Competition authorities for their part may have difficulties in gaining access to information evidencing an anti-trust violation located outside their jurisdiction. Alternatively, competition rules aimed at preserving effective competition on the home market may be less effective in dealing with anti-competitive conduct at the global level. Finally, it is widely recognized that greater application of competition rules must accompany trade liberalization if it is to be effective - private barriers must not replace dismantled public barriers.

For all these reasons greater cooperation at international level is clearly in the interests of industry and consumers.

13. On a bilateral level, the Agreement with the United States (confirmed in April 1995 by the Council) already offers scope for cooperation and its provisions on coordination of enforcement activities to some extent allow the parties to work together to tackle anti-competitive situations affecting the EU and US markets.

In a report on competition policy in the new trade order drafted by it at the request of Mr Van Miert, an independent group of experts recommends as a "priority" the deepening of the current EC/US Agreement. It also formulates recommendations in relation to plurilateral cooperation as it believes that bilateral agreements cannot of themselves adequately address all the problems which could arise at international level.

4. Role of the Commission in applying the competition rules

14. It is fair to say that the development phase of Community competition policy is completed. Policy and law are now well established through the Commission's administrative practice and the principles developed by the European Courts. On the other hand, the Commission has at its disposal limited resources to deal with an ever- increasing number of cases. In 1995 in particular, the number of new cases, especially state aid and Articles 85/86 cases, increased significantly as a result of the accession of three new Member States.

15. Accordingly, the Commission has been considering how to focus on those arrangements which have a significant effect on competition and are likely to affect trade between Member States appreciably. For this purpose, several instruments and concepts have already been developed. Preparatory work is under way to broaden and refine them further. Particularly relevant in this respect are the application of the *de minimis* principle (in the fields of both anti-trust and state aid), group exemptions (which allow firms to make agreements without notifying them to the Commission so as to obtain legal certainty), and the notion of Community interest in the case of complaints.

16. Where the Commission must deal as a priority with cases having an appreciable effect on intra-Community competition, the role of national authorities and courts in competition cases becomes more important. The decentralized application of the competition rules is often a quicker and more efficient way to bring infringements to an end . More frequent application by national courts and authorities reminds the Community citizen that these rules are part of the "living law" of each Member State and are aimed at protecting their rights.

17. The Commission therefore continued to encourage the decentralized application of Community competition rules, in particular as far as cases falling within the scope of Articles 85 and 86 are concerned. It's aim is to establish effective cooperation between the national courts, competition authorities and itself. In this respect, the preparatory work for a new notice on cooperation between the Commission and national competition authorities is well advanced and will complement the existing notice on cooperation with the national courts.

This policy of decentralization should however be implemented gradually and with care. The actual decentralization process goes hand in hand with a continuing effort on the part of the Commission to clarify and simplify the rules of substance in order to enable the Member States to use the same concepts when applying the Community competition rules.

18. The principle of subsidiarity dictates that the most appropriate authority should take action. Therefore, certain cases which fall within the jurisdiction of several national authorities should be handled by the Commission. Thus, in the case of mergers, it is preferable for firms to have their proposed mergers examined by the Commission alone rather than having to submit them to a number of national authorities. In 1995 the Commission embarked on a new review of the Merger Regulation, inter alia to consider whether the turnover-based criterion for determining those cases which must be submitted to the Commission and those which fall within the exclusive jurisdiction of the Member States is still appropriate.

19. In the field of state aid, the subsidiarity principle dictates that the Community must have exclusive competence because Member States cannot be asked to control their own state aid expenditures in a fair way vis-à-vis their neighbours. However, one aspect can be handled at national level : national courts may act upon complaints by the competitors of the firm receiving state aid, and in particular it may control whether the necessary notification and approval procedures have been followed by the

Member State. The Commission has published a new notice in this area which has a threefold purpose: to strengthen and decentralize enforcement of state aid rules, to clarify the legal position for the benefit of all interested parties and to offer assistance to judges.

5. Transparency

20. Competition rules are often complex because the economic, legal and political context in which they operate is complicated and constantly evolving. This does not mean that there is no room left for more transparency and simplification. The Commission has indeed found several ways to increase information about its policy and to simplify the legal framework. They include : the newly adopted group exemption for technology transfer agreements, which will replace the two regulations concerning know-how and patent licensing; the use of notices and communications to provide guidelines on the application of the competition rules in certain sectors (cross-border credit transfers; postal services); the use of green papers for the purpose of public consultation (i.e. the planned green papers on vertical restraints and merger review to be published in 1996); and the publication of explanatory brochures (new car distribution regulation). In the field of state aid, the obligation to notify, which is laid down in the Treaty, is central to ensuring transparency. The Commission has indicated in a communication that it intends to utilize all the powers which the Treaty confers on it to ensure that Member States respect this obligation. It has also started working on a revised and consolidated regional aid framework and has adopted a new framework for aid for research and development. Lastly, it pursued its active campaign to inform the public of competition policy matters : press releases and conferences, DG IV's Information Service, publications, the Competition Policy Newsletter and, last but not least, the Annual Report on Competition Policy, all of which serve the same purpose, namely to enhance transparency, legal certainty and predictability.

6. Democratic accountability

21. Competition policy cannot simply be a technocratic or administrative exercise, but has everything to gain by bringing about a wide democratic consensus. The Commission accordingly attaches great importance to a fruitful dialogue with the other Institutions of the European Union on all aspects of its competition policy.

22. The Annual Report on Competition Policy serves as a basic instrument of communication and information to the other Institutions of the European Union, in particular the European Parliament, the Council and the Economic and Social Committee. The fruitful exchanges of view and discussions concerning the previous report were clearly of help to the Commission in implementing its tasks and contributed to better information on, and comprehension of, European competition policy. Moreover, where appropriate, the Commission takes the initiative of consulting the other Institutions on newly proposed provisions or on other policy documents. In particular, in the context of the adoption of Article 90 liberalization directives, it has carefully considered the observations made by the European Parliament, the Council, the Economic and Social Committee, and the Committee of the Regions.

23. The Commission has also collaborated closely with the Council on various aspects of its policy, in particular as regards the relationship between competition policy and competitiveness.

24. Member States are closely involved in the Commission's decision-making process through the Advisory Committee on Restrictive Practices and Dominant Positions, the Advisory Committee on

Concentrations and the Conference of national government experts. Moreover, Commission officials have regular and constructive informal contacts with their colleagues at national level.

25. On 3 and 4 April the Commission organized the First European Competition Forum in Brussels on the issue of vertical restraints.[4] More than 260 participants including competition authorities and judges from 35 European countries attended. The purpose of such a forum is to promote exchanges of experience and discussions among Community and Member State officials whose responsability is to enforce competition law, and to encourage decentralized application of competition law. A second Forum is planned in 1996.

26. The Commission's XXVth Annual Report on Competition Policy (1995) differs in presentation from the previous annual reports.

27. In recent years the Commission's competition report has increased steadily in size, to reach more than 600 pages in 1994. Since the Commission's separate brochure "European Community competition policy - 1994", which summarizes the Commission's policy and decisions in a "user-friendly" format, has been well received, the Commission has been asked, in particular by the Economic and Social Committee, to present a shorter and more readable document.

The Commission therefore decided to produce a shorter report than in the past, focusing on the main policy developments in the field of competition, which are illustrated, where applicable, by the Commission's major decisions and new legislative measures.

In addition to the present Annual Report, the Directorate-General for Competition (DG IV) of the European Commission prepared a "Report on the application of the competition rules in the European Union - 1995", which describes the important individual cases decided by the Commission. It also contains lists of references to the new legislative provisions and notices, the Commission decisions and press releases, and decisions by the Court of Justice and the Court of First Instance. It furthermore gives a description of the application of competition rules in the Member States.

7. Statistics

28. There has been a large increase in the overall number of new cases registered. The total number of new cases (anti-trust, mergers, state aid) rose from 1 081 in 1994 to 1 472 in 1995 - an increase of 36%. New Articles 85 and 86 cases increased by more than 42%, merger notifications rose by nearly 16% and the number of new state aid cases grew by 35%. A significant part of this increase, in particular in the field of anti-trust and state aid, is due to the accession of three new Member States to the European Union on 1 January 1995.

29. The total number of cases closed in 1995 remained almost at the same level as in 1994 : 1 210 cases compared with 1 200.

4 Competition Policy Newsletter, No 5, Volume 1, summer 1995, p. 7.

I - Anti-trust : Articles 85 and 86

A - Ensuring the benefits of the internal market

30. An essential aim of European competition policy is to ensure that the completion of the internal market brings consumers and the European economy as a whole all the benefits of a Community-wide market.

Competition policy must create the appropriate framework allowing companies to adjust to the new possibilities opened up by the elimination of national barriers. However, where companies try to slow down the process of market integration or even obstruct cross-border trade by anti-competitive practices, it is necessary to pursue a vigilant policy, including the imposition of severe sanctions in case of hard-core infringements of the competition rules.

Vertical arrangements between suppliers and distributors are a core element of European competition policy in this field. Some of these arrangements may be necessary to penetrate new markets, launch new products or promote efficient distribution networks and might thereby benefit consumers. Problems may, however, arise where there is not enough competition between producers or between distributors in the same markets or where the arrangements are used for anti-competitive purposes, i.e. for market-partitioning or for restricting access to the market by new entrants.

1. Car distribution

31. Because motor vehicles are consumer durables which require expert maintenance and repair, manufacturers cooperate with selected dealers and repairers in order to provide specialized distribution and servicing for the product. Such arrangements are likely to enhance efficient distribution of the products concerned, and the exclusive and/or selective nature of the distribution system can be regarded as indispensable for attaining rationalization and efficiency in the motor vehicle industry.

This was and still is the basic motivation for allowing restrictive distribution and servicing agreements in the car sector. However, the new group exemption relating to the distribution and servicing of motor vehicles,[5] which the Commission adopted on 28 June 1995 to replace the existing Regulation No 123/85,[6] contains several adjustments aimed at intensifying competition in the markets for cars and spare parts and improving the position of consumers by guaranteeing them the full benefits of the internal market.

32. In particular, the new regulation secures greater independence for dealers vis-à-vis car manufacturers. Most importantly, dealers are allowed to sell cars of other manufacturers provided that this is done on separate sales premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between brands. To ensure effective competition on the maintenance and repair markets, car manufacturers or suppliers are not allowed to impede access by independent spare part producers and distributors to the markets or to restrict the dealer's right to

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5 Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ L 145, 29.6.1995, p. 25).

6 Commission Regulation (EEC) No 123/85 of 12 December 1984 (OJ L 15, 18.1.1985).

procure spare parts of equivalent quality from firms of his choice outside the network Furthermore, car manufacturers must provide repairers outside the network with the technical information they need to enable them to repair and maintain cars produced by them, provided that the information is not covered by an intellectual property right.

33. Multidealerships, opening-up of the market in spare parts, greater competition in the field of repairs, all serve the aim of increasing consumers' choice in accordance with the principles of the single market. The same objective requires that consumers are able to buy a car and to have it maintained or repaired wherever in the European Union prices or terms are most favourable.

This is all the more important in the car sector, where price differences between Member States are significant. In its latest six- monthly survey of car prices, published in July, the Commission noticed that price differentials had risen dramatically since November 1994.[7] Since the beginning of 1995 it has received an increasing number of complaints from individuals in the European Union, mostly from Austria, Germany and France, who have been prevented from purchasing a car in Italy and Spain, where, following currency devaluations, prices were relatively low.[8]

The new regulation expressly bans any practices designed to prevent parallel trade.[9] Dealers must be allowed to meet demand from outside their allotted sales area and may in future undertake certain means of advertising outside their territory.

34. The Commission departments published on 26 September 1995 in all Community languages a brochure which explains the new regulatory framework for manufacturers, dealers, spare part producers and independent repairers. It also provides consumers with information on their freedom to buy a car anywhere in the Community.[10]

2. Restrictions on parallel trade

35. It is one of the most well-established principles of Community competition law that producers are forbidden to divide the internal market by private agreements and to maintain price differences by arranging anti-competitive absolute territorial protection. However, such behaviour continues to occur on the market and, where it comes to light, one can expect severe action by the Commission.

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7 Commission press releases IP/95/50 of 19.1.1995 and IP/95/768 of 24.7.1995.

8 "The impact of currency fluctuations on the internal market", Communication from the Commission to the European Council, 31.10.1995, point 25.

9 See also judgments of the Court of Justice of 24 October 1995 in Cases C-70/93 *Bayerische Motorenwerke AG and ALD Auto-Leasing D GmbH* and C-266/93 *Bundeskartellamt and Volkswagen AG, VAG Leasing GmbH* (not yet published).

10 "Distribution of motor vehicles", Explanatory brochure, European Commission, DG IV, IV/9509/95. More than 7 000 copies of this brochure have already been distributed.

BASF/Accinauto

36. In a decision of 12 July 1995,[11] the Commission imposed a fine of ECU 2.7 million on the German car refinish paint producer BASF Lacke + Farben, a subsidiary of the BASF group, and a fine of ECU 10,000 on BASF's exclusive distributor in Belgium and Luxembourg, Accinauto S.A.. The case originated with a complaint by two English parallel importers of Glasurit car refinish paint products. They alleged that Accinauto, from whom they bought the Glasurit products, had ceased deliveries to them in the summer of 1990 on the instructions of BASF. The Commission carried out investigations on the premises of BASF and Accinauto and found out that Accinauto was bound by a contractual obligation to transfer to BASF all orders from customers from outside its exclusive distribution territory. The Commission concluded that this obligation constitutes an unacceptable restriction of competition as it hinders the export by Accinauto of the relevant products from Belgium to the United Kingdom. In fact, as a result of this obligation, BASF itself, and not the exclusive distributor, decides on and controls supplies to parallel importers from other Member States.

Pharmaceutical products : Organon

37. Prices for pharmaceutical products differ significantly between Member States. This is usually explained by the differences in national price control and health care systems. On several occasions, the Court of Justice has ruled that parallel imports should not be blocked, irrespective of the factors that determine price differences. Hence, in the pharmaceutical sector, the Commission has consistently applied the competition rules to agreements or conduct which restrict parallel trade in drugs. It is believed that the unrestricted operation of market forces in this way is likely to act as a catalyst for the gradual convergence not only of prices but also of price control mechanisms. Prices in the high-cost countries should fall, while those in the low-price countries should, if they fail to offer pharmaceutical companies a reasonable return on investment, ultimately increase in reaction to the real threat of product withdrawal. Some Member States with high drug prices even stimulate parallel imports in order to bring about a reduction in their country's overall drug bill.

38. Organon is a British subsidiary of Akzo (Netherlands) which specializes in the manufacture and marketing of contraceptive pills.

On 4 May 1994 Organon changed the price regime applicable to its contraceptive pills Mercilon and Marvelon, the latter holding substantial market shares throughout the Community. Before that date, ORGANON applied a discount of 12.5% on all products supplied to its customers, irrespective of their final destination. The new price regime differentiated between those pills to be sold in the UK and those intended for export. Only the former qualified for the 12.5% discount rate.

Following several complaints and Organon's notification of the new pricing system, the Commission initiated proceedings against Organon and issued a statement of objections aimed at withdrawing the immunity from fines brought about by notification. For the Commission, the new price regime, which forms part of continuous business relations between Organon and its wholesalers and therefore constitutes an agreement within the meaning of Article 85(1),[12] constituted a serious infringement of

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11 OJ L 272, 15.11.1995, p. 16.

12 In its judgment of 24 October 1995 in Cases C-70/93 and C-266/93 (see footnote 9), the Court confirmed its prior jurisprudence that a call by a company to its dealers does not constitute an unilateral act which falls outside the scope of Article 85(1) but is an agreement within the meaning of that provision if it formed part of a set of continuous business relations governed by a general agreement drawn up in advance.

the competition rules in that it gave rise to discrimination in the prices of the products according to their geographical destination. As a result, consumers could no longer enjoy the benefits of parallel trade. In the Netherlands in particular, where the Marvelon pill of Dutch origin is not fully reimbursed by the social security scheme, whereas the price of the British pill allows it to be offered at a price equal to the Dutch social security reimbursement level, consumers were no longer able to opt for the UK produced Marvelon and thus to benefit from not having to pay an amount over and above the reimbursement price.

Organon, however, decided to abandon the new pricing regime, which the Commission had opposed, and reintroduced the previous price conditions. The status quo having being restored, the Commission suspended its proceedings and reserved the right to examine the forthcoming pricing system which Organon intends to bring in.

3. Restrictions on access to the market by new entrants

39. A truly competitive internal market also implies that companies are free to enter the market to compete with existing market players. The Commission is therefore particularly keen to keep open markets and has in fact intervened where companies, be it through restrictive agreements or by unilateral action, have impeded access to the market by new entrants.

40. New competitors can be prevented from entering the market by vertical arrangements between existing suppliers and distributors. This is in particular the case where a large number of retailers on the market are tied by an obligation to sell only the products of the manufacturer with which they have a contract or arrangements having a similar exclusionary effect on third parties. The cases concerning the impulse ice cream market (Unilever/Mars) are examples of such arrangements.

In other cases, access by third parties to the market is impeded through a horizontal agreement or concerted practice between actual or potential competitors. This is what happened on the Dutch crane-hire market (Van Marwijk/FNK-SCK).

Access to the market can also be blocked through abuse by a monopoly or dominant provider of essential facilities or services. This is a problem of increasing importance in various sectors. Where a dominant company owns or controls a facility access to which is essential to enable its competitors to carry on business, it may not deny them access, and it must grant access on a non-discriminatory basis. Be it in the transport sector, in particular air transport, in banking or in the telecommunications sector, the Commission applies this general principle of EU competition law[13] in order to foster new competition. The case concerning access to the port of Roscoff in France (ICG/CCI Morlaix) raises the same issue.

[13] This general principle has found support in the Judgment of the Court of Justice of 6 April 1995 in Cases C-241/91 P and C-242/91 P *Radio Telefis Eireann (RTE) and Independant Television Publications Ltd v Commission (Magill)* [1995] ECR I-743.

Unilever/Mars

41. Unilever is market leader in most EU Member States in "impulse" ice cream products (i.e. single wrapped items of industrially manufactured ice cream sold for immediate consumption in places like newsagents, petrol stations, etc.).

In the Republic of Ireland, it is by far the largest ice cream producer. Unilever's distribution system consisted in providing freezer cabinets to retailers subject to a condition of exclusivity whereby only Unilever products could be stored in the cabinets ("freezer exclusivity"). Moreover, the cost of cabinet provision was included in the price of the ice cream charged to all retailers, irrespective of whether they had a Unilever freezer cabinet.

On a complaint from Mars, the Commission examined the distribution arrangements operated by Unilever in Ireland. It found that, where a retailer has only one or more Unilever freezer cabinets in his outlet, that outlet is in practice tied exclusively to the sale of Unilever ice cream as a result; the majority of all outlets offering impulse ice cream in Ireland fall into this category. Such outlet exclusivity has already been condemned by the Commission in 1992 with regard to the German impulse ice cream market.[14] The Unilever agreements had the cumulative effect of appreciably restricting competition by preventing third competitors' access to the market. The arrangements were also found to be an abuse of Unilever's dominant position on the market.

Unilever, however, agreed to alter its practices with the aim of freeing up the market, in particular by giving wider choice to retailers. The Commission has accordingly announced that the new arrangements appear to meet the conditions for the granting of an exemption.[15]

Van Marwijk/FNK-SCK

42. In its decision of 29 November 1995[16], the Commission imposed fines[17] on FNK and SCK for infringements of Article 85 (1) on the Dutch crane-hire market.

FNK (Federatie van Nederlandse Kraanverhuurbedrijven) is an association of Dutch firms which hire out mobile cranes. SCK (Stichting Certificatie Kraanverhuurbedrijf) was set up on the initiative of FNK in order to guarantee, through a certification system, the quality of cranes and equipment used in the crane-hire business. Most of the firms which participate in SCK are also members of FNK. They account for between 50% and 80% of the Dutch market. Crane-hirers themselves hire cranes from other crane-hirers on a large scale.

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14 In 1992 the Commission took a negative decision against Langnese (Unilever) and Schöller, who are in a duopolistic position on the German impulse ice cream market. In that case the Commission acted against "sales outlet exclusivity" arrangements under which a retailer undertakes to sell only the products of the manufacturer with whom he has a contract. The Commission decided that the cumulative effect of the agreements in question amounted to an appreciable restriction of competition by Langnese and Schöller. This finding was appealed against by the parties but was upheld by the Court of First Instance in its judgments of 8 June 1995 in Case T-7/93 *Langnese-Iglo GmbH v Commission* [1995] ECR II-1533 and in Case T-9/93 *Schöller Lebensmittel GmbH & Co. KG v Commission* [1995] ECR II-1611.

15 OJ C 211, 15.08.1995, p.4.

16 OJ L 312, 23.12.1995, p.79.

17 The immunity from fines resulting from the notifications by FNK and SCK in early 1992 was withdrawn under Article 15(6) of Regulation No. 17 by Commission Decision of 13 April 1994 (OJ L 117, 7.5.1994).

Apart from FNK's recommended prices for the hiring-out of cranes and the concerted prices applied between members of FNK, the Commission attacked the ban on SCK certificate-holders hiring cranes from firms not affiliated to SCK. It considered that the SCK hiring ban was caught by the prohibition of Article 85(1) as the SCK certification system did not fulfil the conditions of openness and acceptance of other equivalent quality guarantee systems. It concluded that the ban not only restricted the freedom of action of the affiliated firms but also considerably impeded access by third parties to the Dutch market.

In its decision, the Commission indicated that, while its policy on certification allows scope for private-law certification systems designed to provide supplementary monitoring of compliance with statutory provisions, such systems should be in accordance with the competition rules.

ICG/CCI Morlaix

43. Irish Continental Group (ICG) applied to the Chambre de Commerce et d'Industrie de Morlaix (CCI Morlaix) for access to the port of Roscoff (Brittany) for the purpose of commencing a ferry service between Ireland and Brittany in the summer of 1995. Brittany Ferries was at that time the only ferry company operating between Ireland and Brittany. Initially, an agreement in principle was reached between the parties following which ICG started to market and take bookings for its new ferry service. Negotiations were however suspended in January 1995 and no final agreement could be reached between CCI Morlaix and ICG after ICG had complained to the Commission and further negotiations had taken place.

The Commission found that CCI Morlaix, being the operator of the port of Roscoff, which was the only port capable of providing adequate port facilities in France for ferry services between Brittany and Ireland, was prima facie in a dominant position. It also found that, by its unjustified refusal to give ICG access to the port facilities of Roscoff, CCI Morlaix had prima facie abused its dominant position. The Commission could therefore order interim measures on 16 May 1995 obliging CCI Morlaix to take the necessary steps to allow ICG access to the port of Roscoff until the end of the summer season.

After the Commission's intervention, the parties concluded a five-year contract for the use of the Roscoff port facilities by ICG; this was not only to their mutual benefit but, more importantly, to the benefit of travellers, who now have a wider choice of transport services and activities in the Roscoff area.

4. Green Paper on vertical restraints

44. Vertical arrangements between suppliers and distributors in the various Member States have always received particular attention under Community law in view of the goal of market integration. It has been a core element of Community policy to keep channels for parallel trade open and free from restrictions by private business. Even though competition policy towards vertical restraints has served the Community well to date, it is felt necessary to undertake a review in order to ascertain whether Community policy in this field is still adapted to the distribution and consumer needs of the future.

For example, the application of information technology and just-in-time methods is changing not only production methods but also the form and systems of distribution. The implications of this must be fully reflected in policy so as not to stifle the highly innovative and rapidly changing distribution techniques.

Moreover, the main block exemptions in the field of vertical restraints come up for renewal soon : exclusive selling and buying in 1997 and franchising in 1999. These renewals need to be prepared.

The review will take the form of a Green Paper which will set out different alternatives for future policy. The intention is to submit this option paper next year to a wide and in-depth public consultation of all interested political and socio-economic partners (the European Parliament, Member States, producers, distributors and consumers).

5. Cross-border credit transfers

45. The banking sector is still not characterized by a properly functioning internal market. Payments for financial transactions are an important cost factor for companies and may act as a significant impediment to the smooth operation of the internal market.

46. In September the Commission adopted a notice on the application of the EC competition rules to cross-border credit transfers.[18]

The notice is part of a package of measures adopted by the Commission, including a proposal for a directive, with a view to improving the cross-border credit transfer services offered by banks.[19] These systems are used by banks to transfer money on behalf of customers between different countries in the Union.

47. The notice updates and replaces competition principles published in 1992. It states that the Commission's general approach will be to view positively cooperation agreements between banks that in particular enable them to meet the requirements of the directive. This cooperation should not, however, go so far as to eliminate competition between banks. The notice therefore provides guidelines for banks as to how they can set up cooperation arrangements to handle cross-border credit transfers more efficiently without falling foul of the competition rules. It may therefore contribute to the development of payment systems which are more favorable to European citizens.

48. The notice addresses two issues of particular importance: market entry, and price competition.

As to market entry, the Commission wishes to ensure that smaller banks are not unfairly excluded from systems to which they must belong if they are, in practice, to be able to offer cross-border credit transfers to their customers. The conditions for access to such systems should be objectively justified and applied in a non-discriminatory manner. Conversely, the exclusion of newcomers from a system which is not an essential facility, e.g. a smaller system developed by groups of banks, will not normally give rise to competition concerns.

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18 OJ C 251, 27.09.1995, p. 3.

19 Commission Communication "EU Funds Transfers: Transparency, Performance and Stability", COM(94)436, 19 October 1994; Bull. EU 9-1995, point 1.3.12.

As far as price competition is concerned, the notice distinguishes between bank-customer pricing agreements and inter-bank pricing agreements.

Banks must not conclude agreements among themselves that determine the level of customer fees or the way in which they are to charge such fees.

The key issue concerning inter-bank pricing agreements is the assessment of multilaterally agreed interchange fees, i.e. collectively agreed transaction fees paid by one bank (typically the sender's bank or its correspondent bank) to another bank (the beneficiary's bank). The Commission takes the view that a multilaterally agreed interchange fee is a restriction of competition falling within the prohibition of price agreements contained in Article 85(1). Such a fee can, however, be exempted under Article 85(3) where the conditions for exemption are met. In the case of OUR cross-border credit transfers (i.e. where the sender has asked to bear the costs), a beneficiary's bank cannot charge the beneficiary an additional fee for handling a cross-border credit transfer. In such a case, banks may agree that the beneficiary's bank receive a multilaterally agreed interchange fee if that fee covers the costs actually and necessarily incurred by the bank when it handles cross-border credit transfers. The agreed fee should not exceed the average real costs incurred by the beneficiary's bank when it handles cross-border credit transfers. Furthermore, it should be expressed as a default fee, allowing bilateral agreements on amounts above or below the default.

6. Leniency programme

49. The Commission continued its active pursuit of secret cartels, involving price fixing or market sharing, which still appear to exist in major industries.

Fact-finding is accounting for an increasing share of the Commission's administrative resources for competition law enforcement. In 1995 the Commission undertook some 91 on-the-spot investigations, including 87 surprise inspections.

50. Cartels are typically operated in secrecy and considerable efforts are devoted by participants to avoid detection by the authorities, including the use of information technology.

In certain cases, the benefit which may accrue to consumers from the detection and prohibition of secret cartels outweighs the interest the Community may have in fining companies which cooperate with the Commission, thereby enabling or helping it to detect and prohibit a cartel. For this reason, the Commission is considering granting lenient treatment to companies which cooperate in the preliminary investigation or proceedings in respect of an infringement.[20] It published a draft notice which specifies the conditions under which firms cooperating with the Commission can receive immunity from fines or significant reductions in the fine which would otherwise have been imposed upon them. Before it adopts the notice, the Commission has invited all interested persons to submit their observations on its draft notice.[21]

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[20] On 10 August 1993 the US Department of Justice Antitrust Division issued its corporate leniency policy. This was followed by a leniency policy for individuals that was issued on 10 August 1994.

[21] OJ C 341, 19.12.1995, p. 13.

7. Access to the file

51. The European Community's anti-trust enforcement procedures must not be arbitrary or unfair. The Commission is required to observe procedural safeguards aimed at protecting the interests of firms affected by its decisions. Take, for instance, preservation of the rights of defence, in particular the right to a fair hearing. Addressees of formal decisions and interested parties also have the ultimate safeguard of the right of appeal to the European Courts.

52. The Court of First Instance annulled a series of Commission decisions of 19 December 1990[22] sanctioning infringements of the competition rules on the market in soda ash. One of the decisions related to a concerted practice by which Solvay and ICI divided the European market between them. In addition, the Commission found that both Solvay and ICI abused their dominant positions in western Europe, in the United Kingdom and Ireland respectively.[23]

The decision, which was based on Article 85, has been annulled on the ground that the Commission did not respect the parties' rights of defence. The Court found that the Commission should have given Solvay access, in the context of the Article 85 procedure, to certain documents contained in the Commission's file for the Article 86 case against ICI.[24] Conversely, the Court, acting on the same basis, decided in favour of ICI.[25]

The Commission is examining the exact impact of these decisions on its current practice, also in view of the new mandate of the Hearing Officer, which provides that, if a company believes that the Commission has not provided it with all the documents necessary for its defence, the Hearing Officer should examine any such claim and decide on the merits.[26]

B - Cooperation and competition in a rapidly changing and increasingly global economic environment

53. Today's economic environment is characterized by a sharp increase in competitive pressures. Several factors have contributed to this : the continuing shortening of product life-cycles; the growing globalization of industries and markets; and the completion of the legislative programme for the achievement of the internal market. These economic realities must be taken into account in applying the competition rules. As a result, economic market analysis is becoming increasingly important in competition cases. The Commission has to take account of the specific economic features of a particular market in placing the relevant case in its proper context.

In an economic environment characterized by dynamic markets, innovation and globalization, cooperation between firms is often vital to enable them to remain competitive on the market by improving their R&D efforts, reducing costs and developing new products. None the less, such

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22 OJ L 152, 15.6.1991.

23 XXth Report on Competition Policy (1990), points 92 and 113.

24 Judgment of the Court of First Instance of 29 June 1995 in Case T-30/91 *Solvay v Commission* [1995] ECR II-1775.

25 Judgment of the Court of First Instance of 29 June 1995 in Case T-36/91 *Imperial Chemical Industries plc v Commission* [1995] ECR II-1847.

26 Commission Decision of 12 December 1994 on the terms of reference of hearing officers in competition procedures before the Commission (OJ L 330, 21.12.1994, p.67).

cooperation must not lead to anti-competitive situations which are incompatible with the competition rules of the Treaty.

1. The application of Articles 85 and 86 in the telecommunications sector

1.1. Strategic alliances

54. The ongoing liberalization of the telecommunications sector, together with the increasing convergence of telecommunications, information technologies and media, are spurring substantial commercial activity in the core sectors of the information market. Market players are now positioning themselves to take advantage of the new opportunities. This has resulted in a wave of new alliances and partnerships being announced or implemented.[27]

Strategic alliances between incumbent telecommunications operators (TOs) moving into global markets are one type of such alliances (BT/MCI; Atlas-Phoenix). Other alliances (conglomerate alliances) are set up either between companies with no prior presence in the telecommunications market but which benefit from synergies through market entry -such as electricity utilities or banks that have substantial internal networks as well as financial means and know-how -or between the latter and TOs (Cable & Wireless and Veba; BT-Viag; BT-BNL, Albacom). Large consortia are also being formed to offer mobile satellite telecommunications services on a worldwide basis (Inmarsat-P, Iridium, Globalstar and Odyssey).

55. The application of the basic competition rules to these alliances has become one of the major challenges for EU competition policy in recent years. The Commission must ensure that the current restructuring process will lead to competitive and growth-oriented market structures. The Community's policy aimed at liberalizing telecommunications is generating new services and products at competitive prices for consumers, reducing costs for the industry and creating new jobs. However, these efforts would serve little purpose if new restrictive agreements, practices or market structures were allowed to develop which prevented competition from emerging on liberalized markets or if TOs could engage in abusive behaviour aimed at preserving their position. This shows that there is a close inter-relationship between different Community policy areas and that all competition instruments must be applied together in a coherent way.

56. The Concert joint venture between British Telecommunications and the US MCI Corporation was the first major telecoms strategic alliance which the Commission dealt with, and it was granted an exemption under Article 85(3).[28]

Alliances intending to offer new global services, with features sought in particular by large corporations (e.g. seamlessness, end-to-end, one stop shopping and billing, etc.), will in general improve the quality and the availability of advanced telecommunications services and will also contribute to the creation of trans-European networks, which is one of the objectives of the EC Treaty (Article 129b). Consumers, including large multinational companies but also innovative small and

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27 A comprehensive overview of case decisions and publications in this field is given in Community Competition Policy in the Telecommunications Sector, European Commission, Official Documents, Update July 1995 (IV/18571/95).

28 Decision of 27 July 1994 (OJ L 223, 27.08.1994, p. 36); XXIVth Report on Competition Policy (1994), points 156-160.

medium-sized enterprises, can benefit from more advanced global services and efficiency gains, thereby improving their competitive position both globally and within the European Union.

However, to the extent that alliances offer domestic as well as international services, the indispensability required under Article 85(3) and the possible elimination of competition at the national level are important elements in the Commission's analysis. Important elements in the Commission's favourable attitude to the creation of Concert were the genuinely global nature of the services concerned and the fact that the markets of both parent companies are open to competition.

Atlas/Phoenix

57. The Atlas agreement, which the Commission investigated during 1995, differs from the BT-MCI alliance in two important respects: firstly, the domestic component of the services offered is much stronger than the global elements planned and, secondly, the home markets of the parties (France and Germany) are less liberalized than the home markets of BT and MCI (UK and US).

The Atlas transaction brings about a joint venture between the French and German public telecommunications operators, France Telecom (FT) and Deutsche Telekom (DT). Atlas is also the instrument of DT's and FT's participation in the second transaction, named Phoenix, with the US company Sprint Corporation.

Atlas targets two separate product markets for value-added telecommunications services, namely the market for advanced corporate telecommunications services and the market for standardized low-level packet-switched data communications services. The broader Phoenix alliance will address the same markets for value-added telecommunications network services and also the market for traveller services and the market for so-called carrier's carrier services.

The Atlas and Phoenix arrangements raised a number of concerns from a competition point of view, in particular with respect to the home markets of the EU partners to the transactions, where FT and DT hold legal and de facto dominant positions with respect to a number of telecommunications services and the provision of infrastructure. It was argued therefore that competition could be eliminated and the positive effects of future full liberalization endangered. In response to this, the parties to the alliances as well as the French and German Governments have undertaken certain amendments and commitments to address these concerns. They relate to the non-integration into Atlas of the domestic French and German public switched data networks, the non-discriminatory access to these networks, and the avoidance of cross-subsidization. However, the main commitment made by the governments was that the use of alternative telecommunications infrastructure for the provision of liberalized telecommunications services (i.e. not basic voice telephony) will be liberalized as of 1 July 1996. Without such liberalization, competition in the area of data communications would also be endangered or eliminated in other Member States by the alliance between the Union's largest telecommunications organizations. Full liberalization, i.e. including basic voice telephony and infrastructure, will be achieved by 1 January 1998.

On this basis, the Commission has indicated that it is ready, subject to observations from third parties, to take a favourable view of the Atlas-Phoenix agreements.[29]

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[29] Notices pursuant to Article 19(3) of Regulation No 17 (OJ C 337, 15.12.1995, pp. 2 and 13).

58. Other strategic alliances of the same type which the Commission has begun to investigate are Unisource and its Uniworld alliance with AT&T.

Global Mobile Satellite Systems

59. The Commission has launched an in-depth and comprehensive examination of the newly emerging strategic alliances which are being formed to offer mobile satellite telecommunications services on a worldwide basis.

In this sector, which has only a few global market players, it is essential that competition is safeguarded in the downstream markets involved, namely local service provision, distribution and equipment supply.

One of the systems examined, Inmarsat-P, has already been favourably viewed by the Commission.[30]

1.2. Access and interconnection agreements

60. An important problem for the application of EU competition law to the sector, and in general for the regulatory environment of the future telecommunications market, is the issue of access and interconnection agreements.[31] In fact, the post-monopoly and future multimedia environment is likely to be characterized by situations where firms singly or jointly control facilities - such as networks, conditional access systems or critical software interfaces - which may provide an essential route to customers.

Access and interconnection agreements may, in principle, be seen as pro-competitive because they are aimed at extending the range of services available to customers. However, they may also generate substantial collusive behaviour and market foreclosure, as well as abuse of dominant positions.[32] The non-discriminatory access to essential facilities on reasonable terms is of central importance in this context. The Commission therefore intends to present in 1996 a draft communication on the implementation of the competition rules in this area.

2. Globalization of markets

ATR/BAe

61. The market for regional aircraft is an example of a sector with a worldwide dimension. The main manufacturers operate in all continents.

62. On 18 August the Commission authorized, by means of a comfort letter, the regional aircraft joint venture between Aérospatiale and Alenia, already integrated in ATR, and British Aerospace. The ultimate objective of the project is to merge the parties' regional aircraft activities. The first stage of

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30 Notice pursuant to Article 19 (3) of Regulation No 17 (OJ C 304, 15.11.1995, p. 6).

31 G7 conclusions and Telecommunications Infrastructure Green Paper.

32 Coudert Bros, Competition aspects of interconnection agreements in the telecommunications sector, Report to the European Commission, June 1995.

cooperation mainly concerns services direct to customers and the joint carrying-out of feasibility studies for new aircraft in this sector.

The Commission's authorization is valid for only a limited period ending on 6 June 2000; this leaves it the option of reviewing the situation if, following the feasibility studies, the parties decide not to develop, produce or launch the programmes for new aircraft but to nonetheless maintain their cooperation in the areas of sales and after-sales service.

3. Transfer of technology

63. One of the priority tasks of the Commission with a view to developing the large internal market is to encourage innovation and the dissemination of new technology in European industry. The prime role played by technology transfer in the development of technological innovation in the economy of the European Union and in strengthening the competitiveness of enterprises operating in this area was highlighted in the Commission White Paper on growth, competitiveness and employment.

64. The Regulation on the block exemption of categories of technology transfer agreements,[33] proposed in 1994 and substantially amended in 1995 following third party hearings and the second meeting of the Advisory Committee on Restrictive Practices and Dominant Positions, is intended to promote economic growth and enhance competitiveness by simplifying the content of the two existing regulations on licensing agreements[34] and combining them in a single regulation.

65. The Regulation thus reduces the disparities between the Regulation on patent licensing and the Regulation on know-how licensing and removes several clauses preventing block exemption or transfers them to the so-called "opposition" procedure. It also provides for new, lawful clauses which give greater contractual freedom to the parties. This relaxation of the rules, which will benefit most operators in the Community is, however, accompanied by a clear warning to enterprises with strong market positions: the benefit of the block exemption can be withdrawn if enterprises use their exclusive licences to monopolize the market for a product and prevent third parties from gaining access to new technologies. When assessing such cases, the Commission will pay particular attention to situations in which the market share of the licensee exceeds a threshold of 40%.

C - Transport

1. Maritime transport

66. The European Union is the largest trading bloc in the world. The bulk of its trade with the rest of the world (and a significant part of intra-Union trade) is carried out by means of maritime transport. Liner shipping, i.e. scheduled maritime transport services, is of major importance in this respect.

It is therefore essential for the European Union to have the best possible maritime transport service at the lowest possible cost. Competition policy is a tool well-adapted to help achieve this objective.

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33 The Regulation was adopted by the Commission on 31 January 1996.

34 Regulations (EEC) Nos 2349/84 of 23 July 1994 and 556/89 of 30 November 1988.

67. It should also be noted that in the United States, a proposal to deregulate liner shipping and make it subject to a more competitive statutory regime was recently adopted by the House of Representatives and is currently before the Senate. If the proposal, the Ocean Shipping Reform Act, is passed, the US regime will more closely match the European rules.

1.1. Liner shipping consortia

68. The new regulation granting block exemption to liner shipping consortia[35] is an important instrument for this purpose, as it will encourage shipowners to improve and rationalize their operations, thereby reducing costs and freight rates whilst at the same time allowing them to offer a better-quality service along with greater frequency. This is the second block exemption that has been adopted in the liner shipping sector. Regulation (CEE) No 4056/86, which lays down rules for the application of Articles 85 and 86 to maritime transport, already contains a block exemption for liner conferences.[36]

69. The new block exemption entered into force on 22 April 1995 and applies for a period of five years. Liner shipping consortia are agreements between two or more shipping companies relating to the joint operation of liner transport services through cooperation in the technical, operational and/or commercial field, with the exception of price fixing. It applies only to international liner shipping services to or from one or more Community ports intended exclusively for the carriage of cargo, chiefly by container. It also covers both consortia operating within a liner conference and consortia operating outside such conferences, except that it does not cover the joint fixing of freight rates. Consortium members that wish to fix rates jointly and do not satisfy the conditions of Regulation (CEE) No 4056/86 must apply for individual exemption.

The block exemption covers the following activities : the coordination and/or joint fixing of sailing timetables and the determination of ports of call; the exchange, sale or cross-chartering of space or slots on vessels; the pooling of vessels and/or port installations; the use of one or more joint operations offices; the provision of containers, chassis and other equipment and/or rental, leasing or purchase contracts for such equipment; the use of a computerized data exchange system and/or joint documentation system; temporary capacity adjustments;[37] the joint operation or use of port terminals and related services; the participation in tonnage, revenue or net revenue pools; the joint exercise of voting rights in liner conferences; a joint marketing structure and/or joint bill of lading; and any other activity ancillary to any of these and necessary for its implementation.

70. The Commission considers that consortia generally help to improve the productivity and quality of available liner shipping services by reason of the rationalization they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and

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35 Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council regulation (EEC) No 479/92 (OJ L 89, 21.04.1995, p. 7).

36 Regulation (CEE) No 4056/86 of 22 December 1986 (OJ L 378, 31.12.1986, p. 4).

37 This does not include arrangements concerning the non-utilization of existing capacity, whereby shipping line members of the consortium refrain from using a certain percentage of the capacity of vessels operated within the framework of the consortium; See Article 4 of Regulation (CEE) No 870/95 and Commission Decision of 19 0ctober 1994 concerning the Trans-Atlantic Agreement, in which the Commission prohibited an agreement for the non-utilization of capacity (OJ L 376, 31.12.1994, p. 1).

utilization of port facilities. Transport users generally obtain a fair share of the benefits resulting from consortia if there is sufficient competition in the trades in which the consortia operate.

In order to benefit from the block exemption, a consortium must possess, in respect of the ranges of ports it serves, a share of direct trade of under 30% when it operates within a conference and of under 35% when it operates outside a conference. A simplified opposition procedure applies to consortia whose share of the trade exceeds the above limit but does not exceed 50% of the direct trade.

1.2. Inland rate fixing by ship liner conferences

71. On 8 June 1994 the Commission adopted a report[38] on how it intends to apply the competition rules to liner shipping which it presented to the Transport Council. The report focuses on an analysis of the legal position with regard to price-fixing agreements concluded by shipowner members of liner conferences concerning the land section of multimodal transport services provided by them in the Community. It concluded that this practice was contrary to the Community competition rules and could not qualify for exemption as it stood. It suggested, however, that a new approach be established that was compatible with the competition rules and allowed inland container transport to be organized more efficiently and more to the advantage of shippers.

72. At the Council meeting in November 1994, Mr Van Miert, Competition Commissioner, agreed to report to the Council on the implementation of the guidelines, on the basis of the work of a wise men's committee. This committee, known as the Multimodal Group, was set up in July 1995, and would be submitting an interim report to him at the beginning of 1996 which would be presented to the Council in the first half of 1996.

73. In 1994 the Commission took two decisions prohibiting inland price fixing agreements : the TAA (Transatlantic Agreement) decision[39] and the FEFC (Far Eastern Freight Conference) decision.[40] On 10 March 1995 the Court of First Instance ordered the suspension of the TAA decision in so far as it prohibited joint price fixing in respect of the inland portions within the Community of through-intermodal transport services.[41] That order was confirmed on appeal by the Court of Justice on 19 July 1995.[42]

In the meantime, a modified version of the TAA, the Trans-Atlantic Conference Agreement (TACA), was notified to the Commission. The Commission sent the parties to the TACA a statement of objections setting out the reasons why it had formed the preliminary view that it was appropriate to withdraw any immunity from fines in respect of inland price fixing which may have been brought about by the new TACA notification.[43] An application for interim measures preventing the Commission's anticipated decision to withdraw immunity from fines was dismissed by the Court of First Instance.[44]

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38 SEC(94)933.

39 Decision of 19 October 1994 (OJ L 376, 31.12.1994, p. 1).

40 Decision of 21 December 1994 (OJ L 378, 31.12.1994, p. 17).

41 Case T-395/94 R *Atlantic Container Line and Others v Commission* [1995] ECR II-595.

42 Case C-149/95 P (R) *Commission v Atlantic Container Line and Others* [1995] ECR I-2165.

43 Commission press release IP/95/646, 21.06.1995.

44 Order of the President of the Court of First Instance of 22 November 1995, Case T-395/94 R II *Atlantic Container Line and others v Commission* (not yet published).

2. Air transport

2.1. IATA tariff consultations

74. Regulation (EEC) No 1617/93 of 25 June 1993[45] states that Article 85(3) is applicable in particular to the holding of consultations on tariffs for the carriage of passengers and freight on scheduled air services between Community airports. The exemption is, however, subject to the conditions set out in Article 4 of the Regulation, notably that the exemption is applicable only if the consultations give rise to interlining.

75. According to the preliminary information obtained by the Commission in 1995, it would seem that, as a general rule, there are not many, if indeed any, interlining agreements on the carriage of goods. It is also clear that tariffs established through consultation by airlines are appreciably higher than normal market prices and therefore encourage airlines to increase their tariffs beyond the level normally set by competition.

The Commission therefore considers it desirable to amend the above-mentioned Regulation in order to exclude from its scope tariff consultations relating to the carriage of freight. The Commission has published a notice[46] giving the airlines and other interested parties the opportunity to make known their views in advance. It will decide on further action in 1996.

2.2. Cooperation between airlines

76. Cooperation between airlines can facilitate the healthy restructuring of air transport in Europe and lead to an improvement in the quality of consumer services and better cost control. While the Commission does not intend to impede the restructuring of European air transport, it is monitoring operations to ensure they do not lead to restrictions of competition that are not indispensable and do not rule out opportunities for real competition from new operators on the main routes.

The conditions proposed by Swissair/Sabena which the Commission agreed when it approved the merger of the two airlines, and the conditions imposed by the Commission when it exempted the cooperation between Lufthansa and SAS, satisfy that objective.

Lufthansa/SAS

77. The general cooperation agreement between Lufthansa and SAS provides for the setting-up of an integrated air transport system between the two airlines, based on long-term relationships in the commercial and operational fields. Commercial cooperation will be particularly close on the routes between Scandinavia and Germany where the parties are considering setting up a joint venture.

78. The Commission stated[47] that, although the agreement appreciably restricted competition on the markets in question, especially on the routes between Scandinavia and Germany, it could qualify for

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45 OJ L 155, 26.6.1993, p. 18.

46 OJ C 322, 2.12.1995, p. 15.

47 OJ C 201, 5.8.1995, p. 2.

exemption provided that certain conditions were met, allowing existing and potential competition to be maintained.

These conditions related chiefly to: a frequency freeze on certain routes operated by the two companies; the opening of frequent flyer programmes to airlines not operating such schemes; the obligation on Lufthansa and SAS to conclude, subject to certain conditions, interlining agreements with new entrants; termination of certain cooperation agreements with other airlines; transfer to new market entrants of slots in certain crowded airports.

The Commission adopted a decision granting exemption on 16 January 1996.

D - Trans-European networks and competition rules

79. In 1995, the Commission examined the question of the relationship between the private financing of trans-European networks and the application of the competition rules. Its conclusions were incorporated in the general report on trans-European networks, given a warm reception by the Madrid European Council on 15 and 16 December. In the report, the Commission set out the following guidelines on the handling of competition questions and announced that it would set up a "one-stop help-desk" (fax: 32.2.295 65 04) to provide project managers with additional information on the guidelines.

80. The Commission proposes to apply the following principal criteria when processing cases submitted to it: (i) where the infrastructure operator wishes to give enterprises the opportunity to reserve capacity as soon as a project is launched, the opportunity should be offered to all Community enterprises likely to be interested; (ii) capacity reserved by an enterprise must be proportional to the direct or indirect financial commitments entered into by the enterprise and correspond to planned operational requirements covering a reasonable period; (iii) new infrastructure is generally not congested when it first enters into service. Therefore, an undertaking or group of undertakings within the meaning of Article 3 of Directive 91/440/EEC should not reserve all available capacity. Some of the capacity should remain available to enable other firms to operate competing services; (iv) enterprises holding operating rights may not object to the loss of such rights if they are not used; (v) the duration of agreements reserving capacity must be reasonable and adapted to each case.

This list of criteria is not exhaustive and does not prejudge the Commission's final position, which will be defined in the light of the specific characteristics of each project.

81. The Commission will endeavour to deal rapidly with the notifications of agreements relating to the financing of trans-European networks. In particular, it is considering adopting a final decision in not more than six months' time, provided the parties have contacted the Commission before finalizing the agreements.

Gas Interconnector

82. In its White Paper on growth, competitiveness and employment, the Commission highlighted the importance of new European infrastructure networks that could help overcome the fragmentation of certain markets in Europe.

On 17 May 1995 the Commission issued a comfort letter clearing a joint venture arrangement between nine leading European gas companies for the construction and operation of a UK-Belgium underwater gas interconnection, in particular a high pressure gas pipeline which will be the first connection between the United Kingdom and continental gas markets.

Given the possibility for third parties to acquire, on freely negotiated terms, access to transport capacity through the interconnector, and in view of the fact that this project will create opportunities for competition between markets which so far are quite isolated, the Commission found that the pro-competitive effects of the joint venture clearly outweigh the restrictions of competition. In its comfort letter, the Commission also ensured that the agreements will operate in practice in such a way as to effectively meet demand for any reverse flow capacity which may arise.

E - Competition and environment

83. In 1995 the Commission once again made clear how it intended to apply competition policy to environmental matters, especially voluntary agreements.[48]

84. Community environmental policy favours the "polluter pays" principle. The effectiveness of this principle depends, in particular, on the functioning of the pricing mechanism; this must reflect, in terms of costs, the negative effects of an economic activity on the environment. For the mechanism to act correctly as an indicator, enterprises must internalize the costs of environmental protection. The "polluter pays" principle does not preclude state aid for environmental protection, under certain conditions (see below).

Distributing resources in ways which respect the environment can take the form of direct public regulation, taxation, "voluntary" agreements and self-regulation. Voluntary agreements are contracts between industry and public administrations which include a number of environmental objectives to be achieved by the industry in question according to a timetable. Voluntary agreements may relate both to objectives and to the means of achieving them.

The use of voluntary agreements is growing in most OECD countries in parallel with a trend towards deregulation and less intervention by the state.

Voluntary agreements and self-regulation are often regarded as a less bureaucratic and more flexible solution than more traditional approaches. Voluntary agreements or self-regulation, however, may contain restrictions of competition under Article 85(1) of the Treaty. The Commission is in fact currently examining several complaints on this matter.

85. When the Commission examines individual cases, it weighs up the restrictions of competition arising out of an agreement against the environmental objectives of the agreement, and applies the principle of proportionality in accordance with Article 85(3). In particular, improving the environment is regarded as a factor which contributes to improving production or distribution or to promoting economic or technical progress.

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[48] See the document "Competition and the environment" presented by DG IV to the Round Table on the Environment and Competition held by the OECD Committee on Law and Competition policy, Paris, May 1995.

The Commission intends, however, to remain very firm with regard to the principle of non-closure of national markets to foreign operators. It will also be very vigilant about problems of access by third parties to a system and about agreements which could result in a product being squeezed out of the market.

The Commission also takes a negative view of multilateral tariff or price fixing resulting from an agreement on the environment; its assessment will, however, be on a case-by-case basis and will look at whether any such agreement is indispensable. The aim of environmental protection is not necessarily sufficient in itself to warrant an agreement on prices being regarded as indispensable.

F - Secondary product markets

86. Several complaints which the Commission received concern the alleged abuse of a dominant position in secondary product markets such as spare parts, consumables or maintenance services. These products are used in conjunction with a primary product and have to be technically compatible with it (e.g. software or hardware peripheral equipment for a computer). Thus, for these secondary products there may be no or few substitutes other than parts or services supplied by the primary product supplier. This prompts the question whether a non-dominant manufacturer of primary products can be dominant with respect to a rather small secondary product market, i.e. secondary products compatible with a certain type of that manufacturer's primary products.

The question raises many complex issues. Producers of primary equipment argue that there cannot be dominance in secondary products if there is lack of dominance in the primary product market because potential buyers would simply stop buying the primary products if the prices for parts or services were raised. This theory implies a timely reaction on the primary product market due to consumers' ability to calculate the overall life-time costs of the primary product including all spare parts, consumables, upgrades, services, etc. It furthermore implies that price dicrimination is not possible between potentially new customers and "old" captive customers or that switching costs for the latter are low. On the other hand, complainants who produce consumables or maintenance services assume dominance in the secondary product market if market shares are high in this market, i.e. this approach focuses only on the secondary products without analysing possible effects emanating from the primary product market.

In the Commission's view, neither of these approaches reflects reality sufficiently. Dominance has always been defined by the Commission as the ability to act to an appreciable extent independently of competitors and consumers. Therefore, an in-depth fact-finding exercise and analysis on a case-by-case basis are required. In order to assess dominance in this context the Commission will take into account all important factors such as the price and life-time of the primary product, transparency of prices of secondary products, prices of secondary products as a proportion of the primary product value, information costs and other issues partly mentioned above. A similar approach was taken by the US Supreme Court in its 1992 Kodak decision.

Pelikan/Kyocera

87. The Commission took this approach when it rejected in 1995 the complaint of Pelikan, a German manufacturer of toner cartridges for printers, against Kyocera, a Japanese manufacturer of computer printers including toner cartridges for those printers. Pelikan's complaint alleged a number of practices by Kyocera to drive Pelikan out of the toner market and accused Kyocera, among others, of abusing

its dominant position in the secondary market although Kyocera was clearly not dominant in the primary market. Apart from the fact that there was no evidence of behaviour that could be considered abusive, neither did the Commission find that Kyocera enjoyed a dominant position in the market for consumables. This was due to the particular features of the primary and secondary markets. Thus, purchasers were well informed about the price charged for consumables and appeared to take this into account in their decision to buy a printer. "Total cost per page" was one of the criteria most commonly used by customers when choosing a printer. This was due to the fact that life-cycle costs of consumables (mainly toner cartridges) represented a very high proportion of the value of a printer. Therefore, if the prices of consumables of a particular brand were raised, consumers would have a strong incentive to buy another printer brand. In addition, there was no evidence of possibilities for price discrimination between "old"/captive and new customers.

G - Liberal professions

88. The free movement of liberal professions in the Community means that certain restrictive practices in this field are increasingly likely to affect trade between Member States. One can expect a growing number of cases in this area. On several occasions the European Parliament has called on the Commission to apply the competition rules to the liberal professions.[49]

Coapi

89. On 30 January the Commission took a decision under Article 85 applying the competition rules in this field.

The Colegio Oficial de Agentes de la Propiedad Industrial (Coapi) is the professional association of industrial property agents in Spain. All agents practising in Spain are members. Industrial property agents give advice to the general public, and assist or represent clients in proceedings involving industry property rights.

The Commission found that the fixing by the general meeting of Coapi of compulsary minimum scales of charges for the cross-border services provided by its members constitutes an infringement of Art. 85(1).

In conformity with existing Community law, the Commission confirmed that the national legal framework within which such agreements or decisions by liberal professions are made, is not relevant to the application of Article 85. Even if public authorities encourage such behaviour or delegate to an association of undertakings the power to fix the prices to be applied by its members, the association's exercise of that power does not fall outside the scope of Article 85 of the Treaty.

H - Subsidiarity and decentralization

90. In his address to the European Parliament on the occasion of the investiture debate of the new Commission, the President of the European Commission insisted on the necessity to make a constant effort to concentrate on essentials : "Less action, but better action".

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[49] Resolution on the XIXth Report on Competition Policy, point 9 (iii), and Resolution on the XXth Report on Competition Policy, point 38 and the Commission's response hereto in the XXIst Report on Competition Policy, pp. 233 and 234.

As far as cases falling within the scope of Articles 85 and 86 are concerned, this principle is applied by the Commission in limiting its action to those arrangements which have a significant effect on competition and which are likely to affect trade between Member States appreciably. Moreover, in view of the responsibilities incumbent on the Commission, which has the sole power to authorize certain agreements, the Commission is encouraging decentralization, in particular in cases which may lead to a prohibition decision.

1. De minimis agreements

91. Agreements whose effects on trade between Member States or on competition are negligible are not caught by the ban on restrictive agreements contained in Article 85(1). Only those agreements are prohibited which have an appreciable impact on market conditions. For this reason, it is essential for the Commission to make a proper analysis of the market in which those agreements operate.

The Commission's notice on agreements of minor importance sets quantitative criteria to give guidance as to the concrete meaning of the concept of "appreciability". Despite the recent increases in thresholds,[50] it is believed that a further review of the de minimis concept may be justified. The Commission has therefore started internal deliberations on this issue with a view to presenting new proposals for consultation during the course of 1996.

2. Decentralization

92. In its attempt to deal as a matter of priority with cases having a significant Community dimension, the Commission is also encouraging national enforcement of Community competition law. It considers that there is not normally a sufficient Community interest in examining a complaint when the plaintiff is able to secure adequate protection of his rights before national courts.[51] In its SACEM judgments of 24 January 1995, the Court of First Instance further specified the conditions under which the Commission has the right to reject a complaint on the ground that it lacks a significant Community interest.[52] In 1995 several cases were closed on this basis.

93. An important step forward in the decentralization effort is the Commission's notice on cooperation between national courts and the Commission in applying Articles 85 and 86.[53] In 1995 several national courts in Spain, France, Germany and Belgium have relied upon the cooperation mechanism laid down in this notice to obtain information from the Commission on competition issues.

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50 Commission notice concerning the updating of the 1986 communication on agreements of minor importance (OJ C 368, 23.12.1994).

51 The Court of First Instance endorsed this practice for the first time in its judgment of 17 September 1992 in Case T-24/90 *Automec v Commission* [1992] ECR II-2223, paragraphs 91 to 94.

52 Case T-114/92 *BENIM v Commission* [1995] ECR II-147 and Case T-5/93 *Tremblay v Commission* [1995] ECR II-185. The Court of First Instance, referring to the Automec II judment, indicated that, in order to assess the Community interest, the Commission must balance the significance of the alleged infringement as regards the functioning of the common market, the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required to enforce the competition rules. The fact that a national court or national competition authority is already dealing with a case concerning the the compatibility of an agreement or practice with Article 85 or 86 is a factor which the Commission may take into account.

53 OJ C 39, 13.2.1993, p. 6.

In its preliminary ruling of 12 December 1995,[54] the Court of Justice found that the same principles of cooperation between the Commission and national courts apply in the field of agriculture, where Regulation No 26 determines the extent to which the Community competition rules apply. It is worthwhile noting that, according to the Court's judgment, the national court can, in its assessment, take into consideration the criteria established by the case-law of the Court, as well as the practice of the Commission, which practice is evidenced not only by the decisions adopted by the Commission but also from other sources, including in particular its reports on competition policy and its communications.

94. It is not only national courts, but also national competition authorities, that have an important role to play in raising the level of enforcement of Community competition law and, generally speaking, in ensuring unrestricted and fair competition in the Union. In cases where an appreciable economic effect is felt mainly in one Member State, national authorities are closer to the market and may thus be better placed to handle the case.

The Commission has pressed ahead with its preparation of a notice on cooperation between the Commission and national competition authorities[55], pursuant to which the Commission will inform and consult the national authorities when the latter apply Article 85(1) or 86 or national competition law in cases with a Community dimension. A draft has already been submitted to the Member States for consultation. Further consultation of interested third parties will follow on the basis of a draft notice which the Commission intends to publish in 1996.

95. Decentralized enforcement should not, however, lead to differing application of competition law in the European Union. The Commission is therefore also pursuing uniformity in the substance and application of national competition laws. This is done not through any formal act of harmonization but through a continuation of, and improvement in, communication and cooperation between Community and national enforcement officials.

At present, nine Member States have competition laws with respect to restrictive agreements and abuses of a dominant position which substantially resemble those of the Community. Most of the others are considering amendments to national law aimed at bringing them into line with Community law. This process of "soft harmonization" is a natural consequence of the integration process, which creates pressure for a level-playing field throughout the Community.

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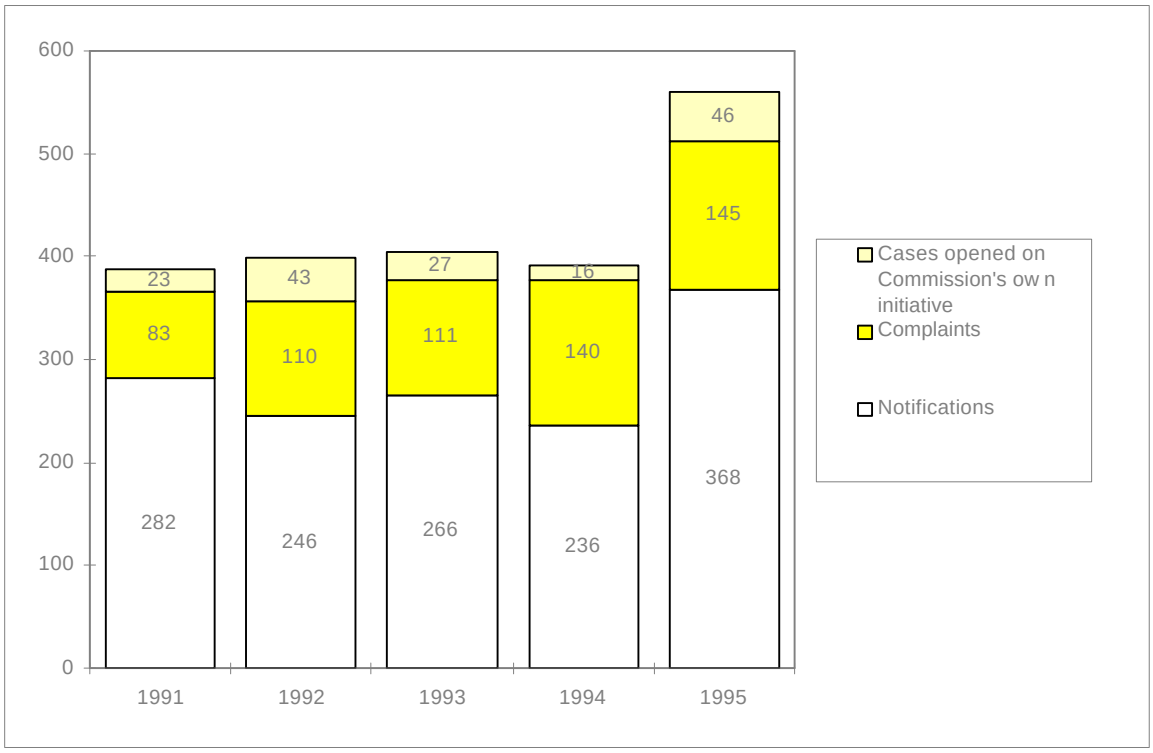
54 Joined cases C-319/93, C-40/94 and C-224/94 *Dijkstra/Frico Domo, van Roessel/Campina Melkunie, de Bie/Campina Melkunie* (not yet published).

55 The conclusions of an ad hoc group of representatives of national authorities and the Commission which were approved by the Directors-General for Competition in 1994 served as the basis for the Commission's draft. See XXIVth Report on Competition Policy (1994), points 40-42.

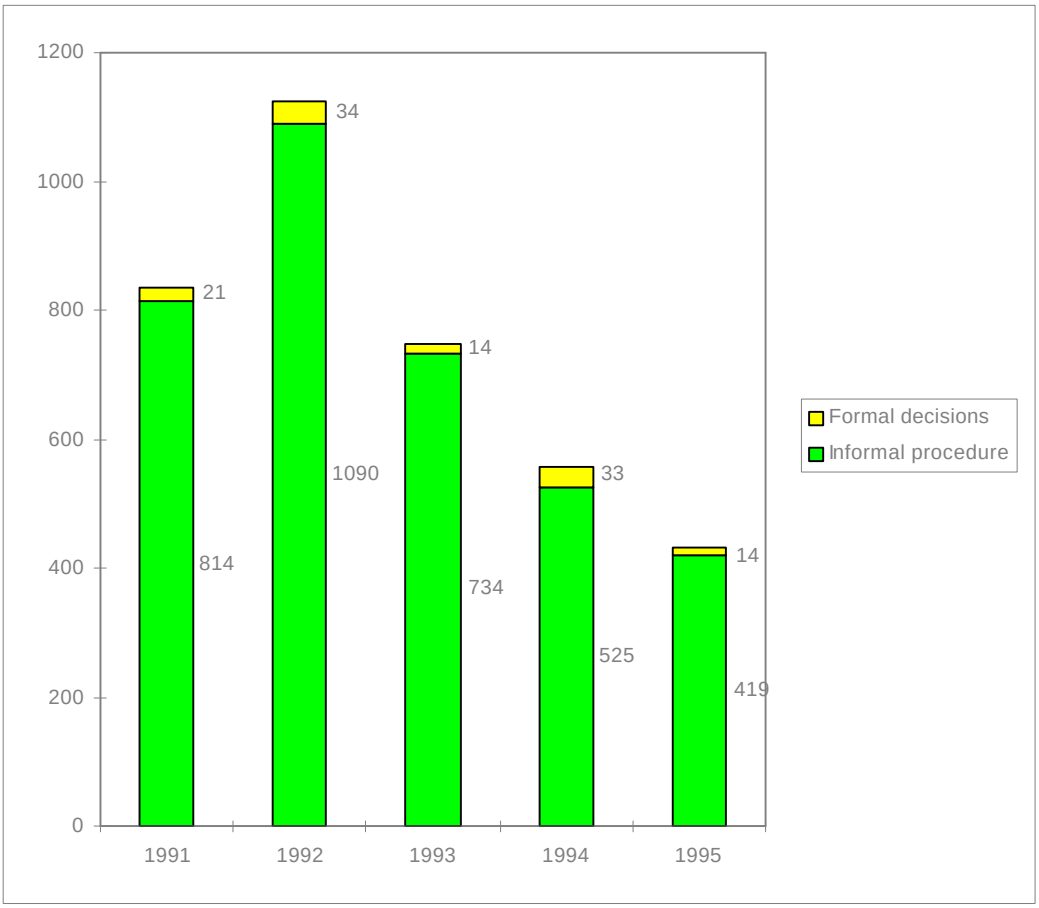
I - Statistical overview



Graph 1 : New cases

96. During the year the Commission registered 559 new cases, including 368 notifications, 145 complaints and 46 cases opened on the Commission's own initiative. This represents an increase of more than 42% compared with 1994 and exceeds the average number of incoming cases over the last eight years by more than 32%.

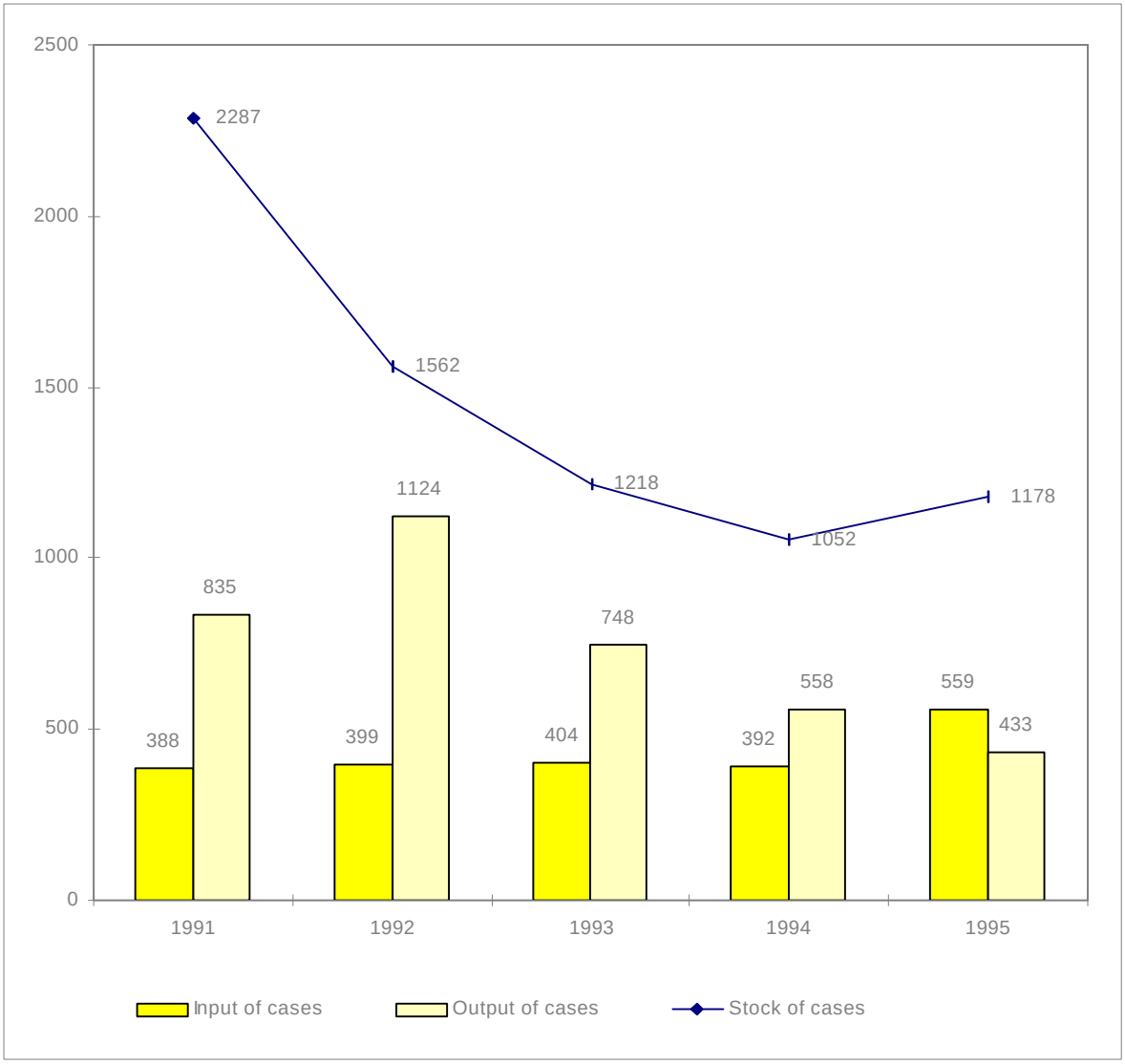
Almost half of the increase in new cases (78 cases) is attributable to the transfer of cases pending by the EFTA Surveillance Authority following the accession of Sweden, Finland and Austria to the Union.



Graph 2 : Cases dealt with

97. During the year the Commission closed 433 cases in total, of which 419 through an informal procedure (including comfort letter, discomfort letter, rejection of complaint and administrative closure of the file[56]) and 14 by formal decision. In 1995, the number of cases closed fel by 23.4% compared with 1994.

56 Cases closed because agreements are no longer in force, because the impact was too slight to warrant further investigation, because complaints had become moot or had been withdrawn or because investigations had not revealed any anti-competitive practice.



Graph 3 : Stock of cases over time

98. The overall net result of input and output in 1995 leads to an increase of the stock of cases remaining open at the end of the year for the first time since 1988. This increase is however rather modest; more specifically it is less than 12% and, if the number of additional files of the new Member States are not taken into consideration, less than 5%. The actual stock of cases is still considerably lower than the more than 3000 cases pending at the end of the 1980s and corresponds roughly to the number of cases being actively dealt with.

The Commission is nonetheless aiming at a further reduction in the existing stock of cases, to be achieved in particular by further improving the efficiency of its proceedings and by encouraging the decentralized application of the competition rules where appropriate.

II - State monopolies and monopoly rights : Articles 37 and 90

A - Introduction

1. Services of general economic interest at the heart of the Commission's liberalization policy

99. The Commission has pursued its policy of liberalizing and opening up to competition certain sectors traditionally subject to monopoly such as telecommunications, energy, postal services or transport. As these sectors are essential to individual consumers, competitiveness, growth and job creation in the European economy as a whole, the gains in efficiency resulting from the introduction of some competition will have generally positive results for the citizens of Europe. Otherwise, we will not have a true internal market while these essential sectors continue to be organized on a purely national and monopolistic basis.

Because of the importance of these sectors to our society and because of their specific characteristics, e.g. their network structure, Member States have in the past granted exclusive or special rights to public or private operators or allowed other restrictions of competition in exchange for the operation of services of general economic interest such as the supply of a universal service to all citizens on specific terms and at affordable prices.

The Commission has always acknowledged that these general economic interest objectives are legitimate but considers that the means traditionally used to provide them are no longer always justified, particularly in view of technological developments and the new needs of consumers, and also in view of European integration itself. This is particularly true for the information society, a source of growth, new services and new jobs in the years ahead.

A thorough review is therefore needed, in the light of these new realities, of the instruments most likely to provide the public with the quality services it requires. The Commission considers that the introduction of competition can, in many cases, improve service quality, allow innovation and the creation of employment and help to cut consumer prices. The removal of obstacles to free competition is, however, only one aspect of the Commission's liberalization policy. On the one hand, the adoption of a new regulatory framework will frequently be necessary to ensure that universal service is provided in a competitive environment. On the other hand, where certain restrictions of competition prove essential in maintaining a universal service, the Commission recognizes the legitimacy of these restrictions under Community law (as in the case of state aid).

The Commission therefore considers that the development of competition policy is fully compatible with public service. It should also be noted that the liberalization of a sector is different from the privatization of public enterprises operating in the sector. Whilst the introduction of competition can in certain cases stem from Community rules, the latter are neutral as regards the public or private nature of enterprises.

2. Article 90(3) Directives

100. In order to achieve the objective of introducing competition, Article 90(3) gives the Commission the power to adopt decisions or directives that are binding on the Member States. This latter possibility is occasionally objected to by certain parties.

In practice, even if Article 90(3) allows the Commission to adopt directives, the Court of Justice has stipulated that the provision empowers it only to establish general rules defining the obligations already imposed on Member States by the Treaty with regard to public undertakings or undertakings granted special or exclusive rights, or to take the necessary preventive measures to allow it to carry out its monitoring function.

The limited power conferred on the Commission by Article 90(3) is thus different from and more specific than the power of the European Parliament or the Council to adopt directives. The Commission may not impose new obligations on Member States; it may only determine, with regard to all the Member States, the specific obligations imposed on them by the Treaty. The extent of the Commission's duties and powers consequently depends on the scope of the rules that are to be complied with.

The Commission has always used this instrument with caution. Directives under Article 90(3) have been used only in situations where the existence of many infringements of the fundamental rules of the EC Treaty made them necessary to avoid a multiplicity of infringement proceedings and to give operators a minimum amount of legal certainty.[57] These initiatives have generally been taken in response to concerns expressed by the Council or Parliament. The Commission has always attached the greatest importance to the need for this instrument to be used as part of a transparent procedure involving the broadest possible dialogue with the other Union institutions, Member States and interested parties.

This is the approach normally adopted in the initial assessment stages, through the publication by the Commission of Green Papers or discussion papers intended to stimulate debate at the public consultation stage. On the basis of the results of the consultations, studies by experts and information obtained by it, the Commission adopts a draft directive which is presented for comments to Parliament, the Economic and Social Committee, the Committee of the Regions and the Member States. The draft text is also published in the Official Journal of the European Communities to enable other interested parties to submit their comments.

The adoption by the Commission of the final Article 90(3) directive is in any event preceded by careful scrutiny of comments received, especially any comments from the European Parliament, the Economic and Social Committee and the Committee of the Regions.

The discussions held during the year on the directives on cable television networks, mobile communications and the full liberalization of telecommunications are good illustrations of this approach.

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57 Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (OJ L 195, 29.7.1980, p. 35), as amended by Commission Directive 85/413/EEC of 24 July 1985 (OJ L 229, 28.8.198(,p. 20) and Commission Directive 93/84/EEC of 30 September 1993 (OJ L 254, 12.10.1993, p. 16); Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment (OJ L 131, 27.5.1988, p. 73); Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192, 24.7.1990, p. 10), as amended by Commission Directives 94/46/EC of 13 October 1994 on satellite communications (OJ L 268, 19.10.1994, p. 15) and 95/51/EC of 18 October 1995 on the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services (OJ L 256, 26.10.1995, p. 49).

3. Other instruments available to the Commission

101. Article 90(3) also enables the Commission to adopt individual decisions, where Community law is applied to specific cases; the decisions are very similar in substance to Commission decisions in other fields (aid), and their legality is also monitored by the Court of Justice.

In certain cases, the Commission may find it necessary, in order to enhance legal certainty and transparency, to explain the criteria it intends to follow in monitoring compliance of Community law by Member States and operators in a specific sector. The draft communication on the application of the Treaty rules to the postal service published in 1995 is an example of this sort of initiative.

B - Telecommunications

1. General measures

102. The Commission continued, with the support of the Council and the European Parliament, to promote liberalization in the field of telecommunications.

On 25 January it adopted the second part of the Green Paper on the liberalization of telecommunications infrastructures. The Green Paper examined the regulatory conditions required to ensure full competition in the telecommunications sector within the time-frame agreed by the Council.[58] After wide-ranging consultations on the Green Paper, the Commission adopted on 3 May a Communication on the consultations[59] summing up the results and listing the measures necessary to complete the moves towards full liberalization and establishment of a clear regulatory framework. This includes:

- setting the date of 1 January 1998 for the discontinuation of all remaining exclusive and special rights for both public voice telephony and network competition by way of Article 90 directives under EU competition law;
- ensuring the financing of a universal service and clarifying the interconnection of access conditions, via further development of the legislative framework ensuring Open Network Provision;
- further development of the regulatory framework at national and European level, including discussion of future interaction of national and EU regulation in this sector.

Three Commission proposals for directives drafted in this connection under Article 90(3) were discussed and/or adopted during the year.

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58 Council Resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures (OJ C 379, 31.12.1994, p. 4).

59 COM(95)158.

2. Cable TV liberalization directive

103. On 18 October the Commission adopted a directive allowing cable TV infrastructure to be used to provide already liberalized telecommunications services.[60] The draft had been issued for public consultation on 21 December 1994[61]. Although not bound by specific Treaty requirements, the Commission has sought to establish a transparent and open procedure for the adoption of Article 90(3) directives. The more than forty written comments received expressed their broad support for the Commission draft.

The directive provides for the abolition of restrictions on the use of transmission capacity on cable TV networks for all telecoms services, apart from public voice telephony from 1 January 1996, and ensures that cable TV networks are allowed (i) to interconnect with the national public telecoms network, and (ii) to interconnect with each other directly. It also calls on the Member States to impose accounting transparency and the separation of financial accounts between the two business activities as soon as a turnover of ECU 50 million is reached in the market for telecommunications.

This directive is only a first step towards the objective of liberalizing the infrastructures, which will be achieved in the full competition directive. It will also facilitate from 1 January 1996, the effective provision of already liberalized services.

3. Mobile telephony liberalization directive

104. The second directive concerns the liberalization of mobile and personal communications. A draft was published for public consultation by the Commission on 1 August 1995,[62] with a period of two months being allowed for comments. It was transmitted to the Council, the European Parliament, the Economic and Social Committee, and the Committee of the Regions. Comments were broadly in favour of the wording of the draft.

At its meeting on 20 December 1995, the Commission agreed the Article 90(3) directive in principle. The directive was formally adopted by the Commission on 16 January 1996.[63] The Commission's aim is to ensure fair competition as regards both the granting of licences to operators and the management of mobile telephony networks in the European Union. This should help new entrants to gain access to the market and facilitate the interconnection of national networks.

The directive seeks to achieve this by requiring Member States to abolish all exclusive or reserved rights in the field of mobile communications and to put in place, if the Member States have not already done so, authorization procedures for the granting of licences. It also calls on the Member

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60 Commission Directive 95/51/EC of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services (OJ L 256, 26.10.1995, p.49).

61 XXIVth Report on Competition Policy (1994), point 220.

62 Draft Commission Directive amending Directive 90/388 EEC with regard to mobile and personal communications (OJ C 197, 1.8.1995, p. 5).

63 Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications, OJ L 20, 26.1.1996, p. 59.

States to allow new entrants on the market in mobile telecommunications services to offer their services via their own infrastructures or via so-called alternative infrastructures. This is indispensable if competition is to be fostered since, as the Commission noted in its Communication on the 1992 review of the telecommunications sector,[64] high tariffs for and lack of availability of the basic infrastructure over which liberalized services are operated or provided to third parties have delayed the widespread development of such services.

However, the Member States who have less well-developed networks (Spain, Greece, Ireland and Portugal) may benefit, if they wish, from a five-year derogation period. Luxembourg, because of the small size of its network, may extend the deadline by two years.

The legal reasoning for the removal of the special or exclusive rights under this directive is that they constitute a restriction on the freedom to provide services under Article 59. In addition, however, the directive is based on Article 86, with recital 10 reading as follows :

> "The exclusive rights that currently exist in the mobile communications field were generally granted to organizations which already enjoyed a dominant position in creating the terrestrial networks, or to one of their subsidiaries. In such a situation, these rights have the effect of extending the dominant position enjoyed by those organizations and therefore strengthening that position, which, according to the case-law of the Court of Justice, constitutes an abuse of a dominant position contrary to Article 90."

4. Full competition directive

105. In its resolution of 22 December 1994, the Council of Ministers reaffirmed that 1 January 1998 should be the date for the liberalization of telecommunications infrastructures and public voice telephony services, subject to transitional arrangements for certain Member States (i.e. Greece, Spain, Portugal, Ireland : up to five years; Luxembourg : up to two years). The Commission responded to this by proposing a package of two measures: an Article 90(3) Commission directive concerning the introduction of full competition into the telecommunications markets, and a proposal for a Council and Parliament directive based on Article 100a of the EC Treaty with a view to harmonizing the rules for interconnection. The package thus demonstrates the need for competition policy to develop in close cooperation with the more general aspects of Community telecommunications policy.

106. As regards the Article 90(3) directive, this was published for comments on 10 October 1995 and envisages the liberalization of all telecommunications services including voice telephony by 1 January 1998, with transitional periods for certain Member States. Restrictions on the use of alternative infrastructures must be lifted by 1996 (except for public voice telephony, which is to be liberalized in 1998), and the conditions and rules for the authorization of interconnection must be established by 1997. The directive also lays down the fundamental principles governing authorization of new entrants on the markets for voice telephony and telecommunications infrastructures. These principles guarantee the introduction of competition into these sectors and list the measures necessary to safeguard universal service in the Member States. The directive also provides that Member States must publish the authorization conditions and procedures, as well as the terms and conditions for interconnection.

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64 Communication of 21 October 1992 on the 1992 review of the situation in the telecommunications service sector (SEC (92) 1048).

In addition, Member States with underdeveloped or small networks can benefit from derogations of five and two years respectively.

107. In parallel with its action to establish the above-mentioned regulatory framework, the Commission pursued its efforts to ensure full implementation of the existing directives in the telecommunications sector and in particular the Services Directive.[65] On 4 April, the Commission issued a Communication[66] on the status and implementation of this directive,which affirmed the Commission's intention to ensure that the problems and gaps in implementation identified in the Communication are resolved.

5. Infringement proceedings under Article 90(3)

108. As well as directives of general application the Commission is also authorized under Article 90(3) to take decisions against Member States in individual cases. It signalled its intentions to do this as regards possible discrimination against second mobile phone operators in several Member States. State operators already enjoy significant advantages over new entrants - such as the universal phone network, a dominant position on the market and an established mobile user base (often with permission to offer mobile services having been granted without any requirement of a selection process). The Commission has therefore taken care to ensure that second operators receive fair treatment from Member States. In particular, it was concerned about the auction procedure which a number of Member States included in the selection criteria for the second operator. Such an auction, critically analyzed in the 1994 Green paper on mobile and personal communications,[67] results in the award of second licences not only on the basis of a comparison of intrinsic qualitative elements but also on the basis of a financial bid above a certain set threshold.

Omnitel Pronto Italia

109. On 4 October, the Commission took a formal decision under Article 90(3)[68] in the case of Italy for discriminating against Omnitel Pronto Italia and in favour of Telecom Italia Mobile (the state operator). The discrimination which strengthened the dominant position of Telecom Italia Mobile, took the form of a requirement that Omnitel Pronto Italia pay an entry fee for a GSM licence, without a similar payment being required from Telecom Italia and without compensation for Omnitel in the form of an easing of the regulatory environment. The decision provided that the Italian Government must either require that Telecom Italia Mobile make an identical payment or adopt, after receiving the agreement of the Commission, corrective measures equivalent in economic terms. In addition, the measures definitively adopted must not undermine the competition introduced by the authorization of the second GSM operator.

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65 Commission Directive 90/388/EEC on competition in the markets for telecommunications services (OJ L 192, 24.7.1990, p. 10). The Services Directive provided for the removal of special and exclusive rights granted by Member States for the supply of all telecommunications services other than voice telephony; it came to be recognized as a cornerstone of the EU framework for liberalizing the European telecommunications market.

66 Commission Communication of 4 April 1995 to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services (OJ C 275 of 20.10.1995, p. 2).

67 Towards the personal communications environment - Green paper on a common approach in the field of mobile and personal communications in the European Community (COM(94)145).

68 OJ L 280, 23.11.1995, p. 49-57.

GSM Radiotelephony services in other Member States

110. The Commission has also been taking action against a number of other countries (including Belgium, Spain and Ireland) with a view to establishing a level playing-field for the second GSM operator. For example, only after discussions with the Commission did Belgium give an undertaking to charge Belgacom (the state operator) a similar fee for its existing GSM licence as was to be paid by the second GSM provider, Mobistar. The Commission is continuing to monitor the operating conditions for second operators in the Member States.

Vebacom

111. The Commission has also taken action under Article 90 in other areas of telecommunications. In April, it received a complaint under Article 90 from Vebacom, the telecommunications subsidiary of VEBA AG, a German utilities holding company. Vebacom had made several unsuccessful attempts to obtain a licence for a broadband telecommunications network based on SDH (Synchronous hierarchy) technology which would allow the transfer of data between 36 different sites of the German public television broadcaster ARD. The Commission formed the preliminary view that the complaint was justified, in particular since Vebacom intends to offer a service based on a new technology (SDH) which was not offered by Deutsche Telekom AG, the holder of the infrastructure monopoly in Germany. After informal discussions with the Commission, the German Ministry of Posts and Telecommunications agreed to grant a licence for the establishment and operation of an alternative telecommunications network.

C - Energy

112. The Council continued its in-depth examination of the amended proposals for directives concerning common rules for the internal market in electricity and gas presented by the Commission on 7 December 1993.

113. However, it has been impossible in 1995 to make any substantial progress with the liberalization of the Community's electricity and natural gas markets, which, with a few exceptions, are still dominated by exclusive rights or monopolies. The Council of Ministers, at its meeting on 20 December, was not in a position to agree on a common position with regard to the draft Directive concerning common rules for the internal market in electricity, although the Spanish Presidency could conclude that negotiations had reached the final stage and that it should be possible to take a decision early in 1996.

114. Early in the year and at the request of the Council, the Commission examined the possibilities for coexistence between the Commission's negotiated access approach (consumers and producers negotiate access to the grid with its operator) and the so-called single buyer concept (one single entity within a system responsible for all buying and selling and for public services). In its working paper on the organization of the internal electricity market,[69] the Commission concluded that the original single buyer model was incompatible with the Treaty and would not provide equivalent economic results or reciprocity between the two systems. It also suggested a number of modalities for the single buyer model which would permit coexistence of the two systems. These modalities covered the degree

69 SEC(95)464 of 22.3.1995.

of consumer choice for all eligible consumers, the possibility of imports and exports under objective conditions, measures to ensure transparency and to avoid any distortions of competition, guarantees for fair competition in generation and also its opening up to independent producers, and the possibility of establishing direct lines. The Council at its meeting in June accepted the Commission's position in principle by concluding that coexistence of the two systems could take place only on the basis of modifications to the single buyer model. However, little agreement was forthcoming on the list of modalities proposed by the Commission.

115. The Spanish Presidency presented a compromise text in July which incorporated all the political agreements already reached in previous Council conclusions, including the conclusions of the Commission's March working paper, and attempted to come up with solutions to problems not yet solved. It accepted the coexistence of the negotiated access and single buyer systems, but modified the latter to take into account a number of the required changes. This compromise text was intensively discussed throughout the second half of the year.

116. The two central issues outstanding concern the degree of market opening via the definition of eligible customers and especially the question whether distributors should be among the eligible customers that would be free to contract with the most efficient producers. Furthermore, some Member States fear that the proposed solution for public-service obligations may be abused in a manner that unduly restricts competition.

117. The Commission deplores the fact that it has not been possible to reach agreement on the proposed directive, especially in view of the importance of the subject. As stated in the Ciampi report,[70] the failure to liberalize the energy sector is having a very detrimental effect on the competitiveness of the European economy.

D - Postal services

118. On 26 July the Commission adopted a package of measures consisting of a proposal for a European Parliament and Council Directive establishing common rules for the development of postal services and a draft Commission communication on the application of the competition rules to the postal sector. The aim of the measures is to guarantee the provision of universal service and at the same time to open up the postal market to greater competition.

The proposal,[71] based on Article 100a of the EC Treaty, provides for mandatory universal services to be provided throughout the Community to all citizens at affordable prices, with a high degree of quality, including in remote areas and peripheral regions of the Community. In order to ensure the financial viability of the universal service, the proposal defines harmonized criteria for the services which may be reserved for the universal service providers. Thus, domestic mail in the Member States weighing not more than 350 g where the tariff is less than five times the rate for a standard letter (up to 20 g), direct mail and incoming cross-border mail may continue to be reserved until 31 December 2000 (subject to review of the direct mail sector by 30 June 1999). The proposal also requires the Member States to set, in particular, universal service tariffs at affordable prices fixed in relation to the

70 See footnote 2 above.

71 Proposal for European Parliament and Council Directive on common rules for the development of Community postal services and improved quality of service (OJ C 322, 2.12.1995, p. 22).

costs and to define quality standards applicable to national services which are consistent with the Community measures.

The draft communication,[72] which will be the subject of a public consultation procedure, complements the proposal for a Directive. The Commission sets out the principles governing how it intends to apply the competition rules in the Treaty to the postal sector, in order to facilitate gradual, controlled liberalization of the postal market. It describes the approach it intends to adopt to analysing State measures restricting the freedom to provide services or to compete on the postal markets, in relation to the Treaty provisions. The Commission particularly raises questions of non-discrimination in access to the postal network, identifying cross-subsidies and defining the mandatory safeguards necessary to ensure fair competition.

E - Transport

1. Airports

119. The Commission is pursuing its efforts to ensure that the liberalization of air transport in the European Union is not jeopardized by anti-competitive practices at airports. It continued its investigation of several complaints and took decisions aimed at improving competition at certain major airports of the European Union.

1.1 Landing fees

Brussels-National Airport

120. The Commission adopted a decision under Article 90(3)[73] concerning the system of discounts on landing fees charged at Brussels-National Airport under the Royal Decree of 22 December 1989. British Midland, the airline which lodged the complaint, considered that the system enabled the airline Sabena, its main competitor on the Brussels-London route, to benefit from a discount of 18% on its landing fees, although no other airlines qualified for a reduction.

After examining the complaint, the Commission concluded that the system constituted a state measure within the meaning of Article 90(1), read in conjunction with Article 86, as it had the effect of applying to the airlines dissimilar conditions for equivalent transactions connected with landing and take-off and hence introducing distortions of competition. The Commission considered that such a system could be justified solely by economies of scale achieved by the airport operator.

This did not apply in the case in question. The Commission therefore requested the Belgian authorities to put an end to the system.

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72 Draft Commission communication on the application of the rules of competition to the postal sector and in particular on the assessment of certain State measures relating to postal services (OJ C 322, 2.12.1995, p. 3).

73 OJ L 216, 12.9.1995, p. 8.

1.2. Ground handling

121. The Commission also continued its investigation of anti-competitive practices in ground handling (ramp, terminal and/or cargo handling). Positive results were achieved during the year, the Commission's approaches to the authorities of Member States having resulted either in a gradual opening-up of the market (e.g. in Ireland, where the ground handling market has been open to a second operator since 1 January 1995), or specific commitments to this end (e.g. in Greece and Spain, whose authorities notified the Commission of their plans to improve efficiency in this sector, as well as a liberalization timetable).

The Commission also continued its examination of the complaints lodged under Article 86 of the Treaty against two private airport companies responsible for operating two of the largest airports in the Union: Frankfurt and Milan.

122. A fresh development in this area was the agreement in principle, reached on 8 December, by the Transport Council, on the Directive relating to the liberalization of ground handling services in Community airports. The proposal, based on Article 84 of the Treaty, had been presented by the Commission in December 1994 and followed the Council Resolution of 24 October 1994[74] on the situation in European civil aviation and the Commission communication on 'The way forward for civil aviation in Europe'.

Ground handling is an activity related to air transport without which carriers would be unable to carry on their business. Its liberalization forms part of the completion of the single market in air transport and follows the adoption of the Community rules on slot allocation and the operation of computerized reservation systems. It is also intended to help European airlines to improve control of their operating costs and better match their services to customer requirements.

The proposal also provides for a transitional market adjustment period, fixing different deadlines for entry into force based on certain reference thresholds. Full liberalization should take place, depending on the sector and the case at issue, between 1998 and 2003.

2. Ports

123. Following the judgment of the Court of Justice in *Port of Genoa*,[75] Italy initiated a reform of its port system which led to the adoption in 1994 of Law No 84.

In principle, the law provides for the opening-up to competition of the market for port handling operations (loading and unloading). In practice, however, this has not proved the case as in some Italian ports the local authorities have systematically refused to grant the necessary operating licences to potential competitors of the long-established dockers companies. As this situation was contrary to its policy of competition in ports, the Commission decided that action was necessary. The port of Genoa was selected in view of its importance to the Union as a whole and its position as the leading Italian port.

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74 OJ C 309, 5.11.1994, p. 2.

75 Judgment of 10 December 1991, in Case C-179/90 *Porto di Genova* v. *Siderurgica Gabrielli*, [1991] ECR I-5889.

On 21 June, the Commission warned the Italian Government to issue an operating licence within ten days to the firm that had been unlawfully denied that right by the local port authority.

On 11 July the Italian authorities informed the Commission that the licence had been issued within the period stipulated. The licence opened up the port operations sector in the Port of Genoa to other service providers. The measure will benefit port users, a number of local enterprises, chiefly small and medium-sized firms, and generally increase the dynamism of the port with regard to international competition.

124. The Commission is also pursuing its different infringement proceedings instituted against Italy concerning aspects of port work which continue to pose problems with regard to Community law.

F - Other state monopolies of a commercial character

125. The adjustment of national monopolies of a commercial character in the new Member States was the subject of extensive discussions between the Commission and the governments concerned. The aim was to adjust the laws governing the monopolies to Community legislation and to Article 37 of the Treaty in particular.

1. Swedish and Finnish alcohol monopolies

126. The adjustment of the alcohol monopolies in Sweden and Finland was discussed by the Commission and the two new Member States with a view to adjusting the monopolies to Community law. In the light of these objectives, the two Member States agreed to abolish the exclusive rights to import, export, produce and sell wholesale, including wholesale sales to cafés and restaurants. The Commission was able to ensure that these exclusive rights, which should already have been abolished when the EEA Agreement entered into force, were finally abolished by the new laws on alcohol adopted by Sweden and Finland at the end of 1995.[76]

The Commission considers that the exclusive rights to retail alcohol may, without prejudice to future developments in the caselaw of the Court of Justice, be justified under existing Community legislation, in particular in view of legitimate national concerns about alcoholism, provided that there is no discrimination between national products and products imported from other Member States. To ensure that retail monopolies conformed to these requirements, the Commission considered it necessary to be closely involved in detailed and regular monitoring of their operation.

2. Austrian alcohol monopoly

127. Austria holds a national monopoly of a commercial character in pure alcohol and certain alcoholic beverages which involves exclusive import and wholesale rights but which, unlike the exclusive retailing rights, are considered to be clearly incompatible with Article 37 of the EC Treaty, without any of the above-mentioned requirements being applicable. The exclusive rights should therefore have been abolished by 1 January 1995. As this had not been carried out, the Commission

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[76] Regarding Sweden, see the Alcohol Act (1994:1738) promulgated 16.12.1994 and entered into force 1.1.1995. For Soumi-Finland, see new Alcohol Act (1143/94) adopted on 8.12.1994 and entered into force on 1.1.1995.

was compelled to initiate the infringement procedure provided for in Article 169 of the EC Treaty against Austria.

3. Austrian salt monopoly

128. With regard to the national monopoly of a commercial character in the salt sector, Austria, following action taken by the Commission, finally agreed to abolish the exclusive rights to import and sell products from other Member States wholesale; the rights should have been abolished by the start of 1995.[77]

4. Austrian manufactured tobacco monopoly

129. The Austrian monopoly of manufactured tobacco, characterized by exclusive import and marketing rights, is subject to the requirements of Article 71(1) to (3) of the Act of Accession of Austria.[78] Under that Article, Austria is required gradually to adjust its monopoly of manufactured tobacco by the progressive opening, as from the date of accession, of quotas for the import of products from Member States so that, by 31 December 1997 at the latest, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States. Compliance with this obligation entails the abolition of exclusive import rights and exclusive wholesale rights. As regards retail sale of products imported under quotas, distribution of such products to consumers must be carried out in a non-discriminatory manner.

Finding that Austria had not taken the necessary measures to comply with these provisions, in particular as regards the opening of quotas as required, the Commission was obliged to initiate the infringement procedure provided for in Article 169 of the EC Treaty.

The Commission also checks that the retail sale of products imported under quotas is carried out in a non-discriminatory manner. Thus, for instance, the Commission must ascertain that licensing and distribution agreements between Austria Tabakwerke and other European operators are not liable to jeopardize the effectiveness of adjusting the Austrian manufactured tobacco monopoly and are compatible with the Treaty competition rules.

77 *Bundesgesetzblatt* (Austrian Official Journal) No 518/1995, 4.8.1995.

78 OJ C 241, 29.8.1994, p. 35.

III - Merger control

A - Introduction

130. Concentrations falling under the Merger Regulation were even more numerous than in 1994. The Commission received 114 notifications (1994: 100) and took 109 final decisions (1994: 90). Activity in 1995 was over 24% higher than the previous year, which itself had been about 50% higher than in the three years 1991 to 1993. A total of 7 second-phase investigations were begun compared with 6 a year earlier and 2 operations were prohibited compared with 1 in 1994.

This year marked the fifth anniversary of the entry into force of the Merger Regulation.[79] In those five years the Commission took 382 final decisions, an average of about one decision every three and a half working days or over 70 decisions per year. The sectoral breakdown of cases indicated a continuing significant number of notifications in telecommunications, financial services, the media and pharmaceuticals.

The revised Implementing Regulation[80] came into force on 1 March 1995. In addition, four interpretative notices which were published at the end of 1994 were applied for the first time in 1995.[81] They concern the distinction between concentrative and cooperative joint ventures, the notion of a concentration, the notion of undertakings concerned and the calculation of turnover.

These changes in the operation of the Merger Regulation were adopted by the Commission as a result of its 1993 review exercise. A new review exercise was launched during the year. The Commission carried out a wide-ranging consultation exercise on the issue of lowering the thresholds contained in the Merger Regulation as well as on other aspects of the Regulation which might need to be revised. Among those consulted were the Member States, other Community institutions, individual businesses, trade associations and legal advisers. A Green Paper on the operation of the Merger Regulation was published early in 1996[82] with a view to full public consultations on the issues involved. Legislative proposals are likely to be made later in the year.

B - In-depth investigations

131. A total of 7 in-depth (phase-two) investigations were completed under the Merger Regulation. As a result, 2 operations were prohibited which were both in the media sector - the Nordic Satellite Distribution (NSD) joint venture in the Nordic area and the RTL/Veronica/Endemol (Holland Media Groep - HMG) transaction in the Netherlands. The remaining 5 operations were all cleared, 2 unconditionally and 3 with conditions which removed the competition problems identified by the Commission during its investigation.

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79 Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, 30.12.1989, p. 1).

80 Commission Regulation (EC) No 3384/94 of 21 December 1994 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ L 377, 31.12.1994); XXIVth Report on Competition Policy (1994), points 234-235).

81 XXIVth Report on Competition Policy (1994), points 237-260.

82 COM(96)19.

1. Media cases

132. The Commission has received an increasing number of notifications in the media sector which reflect the changing patterns of ownership and the convergence of previously separate technologies, e.g. telecommunications and media. The majority of these cases have presented no competition problems and have been approved after a first-phase enquiry.

The decisions in the NSD and HMG cases indicate the importance which the Commission attaches to cases in this sector. These transactions involved significant horizontal and vertical effects, with new companies being created which would restrict access to TV networks - terrestrial, satellite or cable - in the future. In 1994 the Commission had prohibited the MSG Media Service joint venture, which had been proposed by Bertelsmann, Kirch and Deutsche Telekom with a view to providing services for pay-TV in Germany. In its prohibition of the NSD operation, the Commission invited the parties to present new proposals which could be considered compatible with the common market. This emphasizes the Commission's willingness to see new companies being set up in this sector, provided that they do not create or strengthen a dominant position.

Nordic Satellite Distribution

133. NSD was designed to transmit satellite TV programmes to cable TV operators and households receiving satellite TV via their own dish. However, the Commission concluded that the establishment of NSD in its proposed form would have led to a concentration of the activities of its parents, creating a vertically integrated operation extending from production of TV programmes to retail distribution services for pay-TV channels.

NSD's parents are strong media players in the Nordic area. Norsk Telekom A/S is the largest cable operator in Norway, has pay-TV distribution activities in Norway and also controls satellite capacity suitable for Nordic viewers. TeleDanmark A/S (TD) is the dominant cable TV operator in Denmark. In addition, TD, with Kinnevik, controls most of the remaining satellite capacity suitable for Nordic viewers. Kinnevik, a Swedish conglomerate, is the most important provider of Nordic satellite TV programmes and a major pay-TV distributor in the Nordic countries and has an important stake in cable and advertising-financed TV in Sweden.

The Commission found that NSD would have resulted in the creation or strengthening of a dominant position on three markets:

- the provision of satellite TV transponder capacity to the Nordic region (Denmark, Norway, Sweden, and Finland);
- the Danish market for operation of cable TV networks;
- the market for distribution of satellite pay-TV and other encrypted TV channels to direct-to-home households.

The vertically integrated nature of the operation would have meant that the parties would have been able to foreclose the Nordic satellite TV market to competitors and obtain a "gatekeeper" function for the Nordic market for satellite TV broadcasting. As the affected markets are currently in a transitional phase the Commission acted to ensure that these future markets would not be foreclosed.

RTL/Veronica/Endemol

134. The Commission began an examination of the *RTL/Veronica/Endemol* case following a request from the Dutch Government under Article 22 of the Merger Regulation. This Article allows a Member State to refer a case to the Commission even if it does not have a Community dimension, provided there is an effect on trade between Member States. Although the Commission took the view that the relevant geographic market was the Netherlands, it concluded that the concentration affected trade between Member States because it would influence conditions for new entrants on the Dutch TV broadcasting market and would have an impact on the acquisition of foreign-language programmes and because the joint venture itself is based in Luxembourg, where two of its channels are "licensed" by the Grand Duchy of Luxembourg. The examination followed the normal procedure except that the usual suspension provisions did not apply. Therefore, in this case, the parties were able to complete the operation despite the Commission's decision that the joint venture would result in a dominant position for the parties.

The case concerned a joint venture, Holland Media Groep (HMG), between RTL, Veronica and Endemol. RTL transferred its broadcasting activities in the Netherlands to HMG, in particular the two commercial TV channels RTL4 and RTL5. A third commercial channel was introduced through Veronica, which left the public broadcasting system in the Netherlands to participate in the joint venture. The other main parent, Endemol, is the largest independent producer of TV programmes in the Netherlands.

Following its investigation, the Commission concluded that the new company would have at least 40% of the market for free access TV broadcasting in the Netherlands and over 60% of the TV advertising. In addition, Endemol's position as the largest independent TV producer in the Netherlands would be strengthened by its participation in HMG. The Commission adopted a prohibition decision and invited the parties to propose measures to restore effective competition on the Dutch TV advertising and production markets within three months. The Commission's decision has been challenged before the Court of First Instance.

2. Other in-depth investigations

135. The remaining operations in which in depth investigations were opened were all ultimately declared compatible with the common market. *Siemens/Italtel*, a joint venture in the telecommunications equipment industry in Italy, and *Mercedes Benz/Kässbohrer*, the acquisition by Mercedes of one of the other German bus and coach manufacturers, were both cleared unconditionally. In each case, however, the parties made certain statements which were included in the decision concerning their future business conduct. However, these statements were not an integral part of the Commission's competition analysis but were offered by the parties. For example, STET, the parent company of Italtel, undertook not to influence the purchasing policy of Telecom Italia in favour of the joint venture; and Mercedes announced that it would supply engines at competitive prices to third-party manufacturers who lacked their own engine production capability.

136. In *Siemens/Italtel*, Siemens and STET, the holding company for the Italian telecommunications operators, including Italtel, intended to contribute their respective telecommunications equipment manufacturing subsidiaries to a joint venture. The operation raised both horizontal and vertical issues. Horizontally, the joint venture's highest market share occurred in switching equipment where the parties' combined share was 50-60% of the Italian market, and around

30% of overall EU sales (combined shares in transmission equipment were lower). Vertically, the joint venture would be partially owned by its largest customer.

In concluding that the proposed joint venture was compatible with the common market, the Commission took into account :

- the potential effects of new technologies which are likely to alter the telecommunications markets significantly;
- the effects of standardization and public procurement directives in opening up national markets;
- the further liberalization of telecommunications services and, in particular, of telecommunications infrastructure, which will lead to world markets for telecommunications equipment.

137. In the *Mercedes Benz/Kässbohrer* case, although the bus market throughout Europe would be affected, the Commission considered that the German bus market in particular required in-depth investigation. Three markets were identified with the parties combined share reaching 44% in city buses, 54% in tourist coaches and 74% in intercity buses. With a share of 57% of the entire bus market in Germany, however, the Commission concluded that there would be adequate constraints on Mercedes' freedom of action on the German market because there were two German competitors, as well as potential entrants from elsewhere in Europe. According to customers these potential entrants could be expected to provide additional leverage to German bus operators. Lastly the Commission found that public procurement directives, which make Community-wide tendering compulsory for the main part of the market for city and intercity buses, were also leading to the development of a wider European market.

138. In the other cases, the Commission's clearance of the respective operations was conditional on undertakings given by the parties in the course of the proceedings.

139. In *ABB/Daimler Benz*, the Commission considered that the market for local trains had remained national in Germany although, in other Member States, the lack of major national rail transportation industries had already led to wider geographic markets. The proposed operation would have led to the creation of a dominant duopoly in the German market for local trains. The concentration would also have impeded market entry by foreign suppliers by eliminating independent German suppliers of electrical components. No competitive issues were identified in relation to other relevant product markets.

In order to alleviate the Commission's concerns, the parties agreed to the sale of Kiepe Elektrik GmbH, a Daimler-Benz subsidiary specializing in electrical supplies for local trains. As a result of this divestiture, a competent producer of electrical components that was independent of the parties would remain on the German market and would be able to supply or cooperate with suppliers of the mechanical components of local trains. Kiepe is an established and successful supplier and played an important role in opening up the German market through its cooperation with the Canadian firm Bombardier.

The transaction was the subject of a request for referral by the German authorities under Article 9 of the Merger Regulation. Although the competition problems were concentrated on two product markets in Germany, the proposed operation - which created the largest supplier of railway equipment in the world - had significant effects throughout Europe. The request for referral was thus refused.

140. In *Orkla/Volvo*, the acquisition was approved subject to the divestiture of Orkla's brewing company Hansa. The parties would otherwise have had a 75% share of the Norwegian beer market

and neither the retail nor the hotel and catering industries were considered capable of deploying any countervailing purchasing power.

141. In *Crown Cork and Seal/Carnaud MetalBox*, following a detailed second-phase analysis of both the horizontal and vertical issues raised, the Commission determined that the only market in which the proposed concentration threatened to create a dominant position was the market for tinplate aerosol cans. In the European Economic Area (EEA), both parties produce and sell tinplate aerosol cans and food cans, as well as certain closures for beverage cans and bottles, including beverage can ends, metal crowns, and plastic and aluminium caps. Consequently, the Commission concluded that Crown's commitment to divest a specified group of tinplate aerosol can operations would be sufficient to overcome its competition concerns.

The parties agreed to divest substantial manufacturing activities for tinplate aerosol cans in five different Member States; these activities accounted for almost 22% of the EEA tinplate aerosol can market. Without the divestiture, the combined European market shares of the two parties would have been more than 60%, with the next largest competitor having a 15%-20% market share and with the major share of the excess capacity in this market being held by the parties.

C - Other major cases

142. A number of major operations were cleared without in-depth investigations within one month of their notification. They included several in the pharmaceutical sector, among which were *Glaxo/Wellcome, Behringwerke/Armour Pharmaceutical, Hoechst/Marion Merrell Dow, Rhone Poulenc Rohrer/Fisons and Upjohn/Pharmacia*. In order to remove any possible doubts as to compatibility, Glaxo agreed to grant to a third party an exclusive licence for one of the anti-migraine compounds currently under development by either Glaxo or Wellcome. It appears that recent mergers in the pharmaceutical industry are intended to increase the range of products offered by companies, thereby making them more competitive as suppliers to the wholesalers, hospitals and pharmacy chains. As a result, the operations to date have been largely complementary in nature and have not in general led to any competition problems.

143. In *Swissair/Sabena*, the Commission secured remedies for resolving the competition problems raised by the operation which consisted of Swissair acquiring a 49.5% stake in Sabena. The transaction would have led to a monopoly in air transport between Switzerland and Belgium. Moreover, Swissair was a participant in the European Quality Alliance with SAS and Austrian Airlines, while SAS had proposed a cooperation agreement with Lufthansa. The operation, taken together with these arrangements, would have enabled the participating airlines to create an extensive route network carrying about 35% of passenger traffic within Europe, twice as much as the next largest carrier. In order to clear the operation, the Commission secured undertakings from the two airlines and from the Belgian and Swiss Governments that they would make available the necessary traffic rights and airport slots to enable competitors to operate flights between Belgium and Switzerland. Swissair and Sabena were also required to provide competitors with interlining arrangements and with the opportunity to participate in frequent flyer programmes. Lastly, Swissair was required to sever its previous links with SAS through the European Quality Alliance. This transaction was notified twice, on the second occasion following modifications to the operation. At that time, it was fully evaluated (including consultations with the Member States) without it being necessary to initiate a second-phase procedure.

144. The Commission approved an operation by which the Finnish companies *Repola Corporation* and *Kymmene Corporation* entered into a full merger. Repola and Kymmene are large international companies active in the fields of printing paper and packaging materials. The operation involved, among other products, the markets for newsprint, magazine paper and paper sacks.

As regards paper sacks, the Commission's investigation led to the conclusion that there is a separate Finnish market for this product and that the concentration would lead to the creation of a dominant position on that market. The new company would be virtually the sole supplier of paper sacks to Finnish customers.The parties have given commitments involving the divestiture of some of their paper sack capacity on the Finnish market.

The markets for newsprint and magazine paper are at least Western European in scope and Repola/Kymmene, like all the other major European paper producers, transport and market their products in almost all Member States. As a result of the operation,the new company will be the major European player in newsprint and magazine paper. However, the combined market shares will not exceed some 20% in either of the two product markets; what is more, several competitors have strong market positions.

Along with five other Finnish paper producers, Repola is a member of Finnpap Marketing Association, a joint sales organization which markets the paper products of the members on a worldwide basis. Kymmene has its own sales network and is not a member of Finnpap. The parties have undertaken not to sell paper products through the Finnpap joint sales agency.

D - Legitimate interests of Member States

145. On 6 March the United Kingdom authorities made, in the context of the proposed acquisition of *Northumbrian Water* by *Lyonnaise des Eaux*, the first application under Article 21(3) of the Merger Regulation for the recognition of a legitimate interest. The application concerned legislation which regulates the water supply industry in the United Kingdom. This legislation has specific merger provisions which are designed to enable the regulatory system to achieve its objective of safeguarding the provision of a vital service and protecting the consumer. Accordingly, whenever a merger takes place or is expected to take place, the case is referred to the Monopolies and Mergers Commission (MMC) for it to decide whether it would be expected to operate against the public interest. The criteria for the public interest test for water industry mergers include the number of independently controlled water companies among which the water regulator could make comparisons for the purpose of calculating the price regulatory formula. The United Kingdom's application covered these provisions as the reference to the MMC is automatic and not discretionary.

The Commission, in acknowledging the United Kingdom's legitimate interest, set specific limits to the MMC investigations in these circumstances. Its decision of 29 March 1995 acknowledged that the MMC could assess potential mergers on the basis of the public interest test but that the public interest in those cases was limited to those issues which were directly related to the operation of the water regulatory legislation. The United Kingdom authorities were required to inform the Commission of any measure taken under the decision so that the Commission could check that the measure was appropriate.

Soon after the Commission's decision, the United Kingdom authorities referred the proposed takeover bid to the MMC. Following the MMC report, which found the merger to be against the public interest unless substantial price reductions for consumers were achieved, OFWAT consulted Lyonnaise and

Northumbrian and proposed a measure which included a price reduction formula with which Lyonnaise subsequently formally agreed. As required by the decision, the Commission was informed of the proposed measure by the United Kingdom government and had no observations to make on it.

E - Mergers in the coal and steel industries

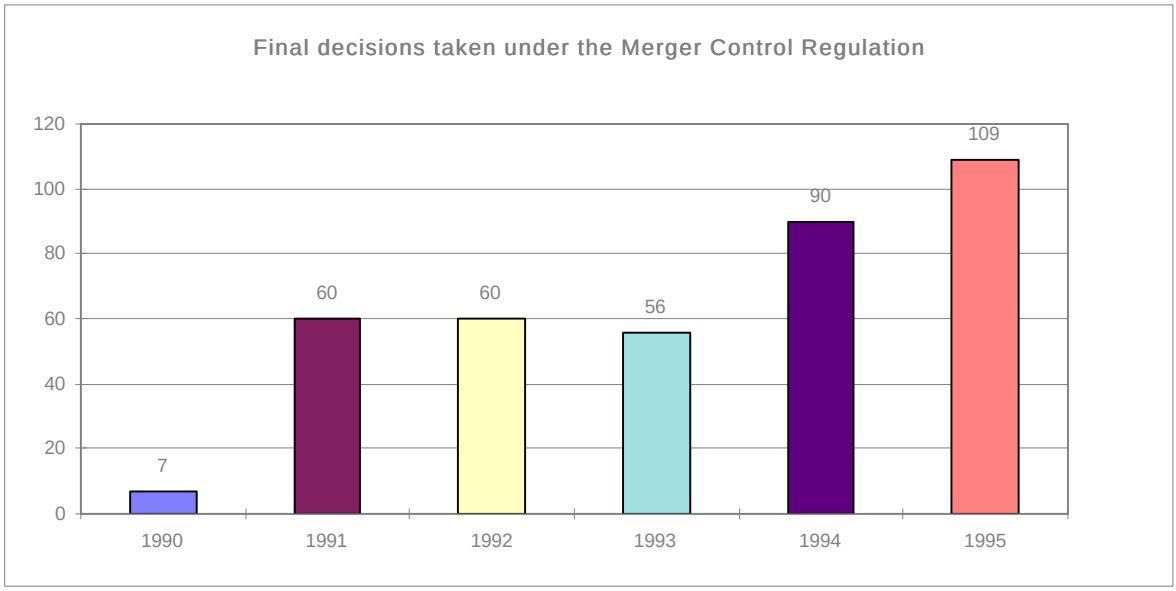
146. During the year the Commission took seven decisions on concentrations under Article 66 of the ECSC Treaty. Three of these cases involved the sale to the private sector of steel companies that had previously been State-owned : the acquisition by the *RIVA* group of *Ilva*'s flat products operation; a joint venture between *Usinor Sacilor and Hoogovens* to take over the Portuguese flat products company *SN-Planos;* and another joint venture between *RIVA and FREIRE* involving the takeover of *SN-Longos*.

F - Perrier

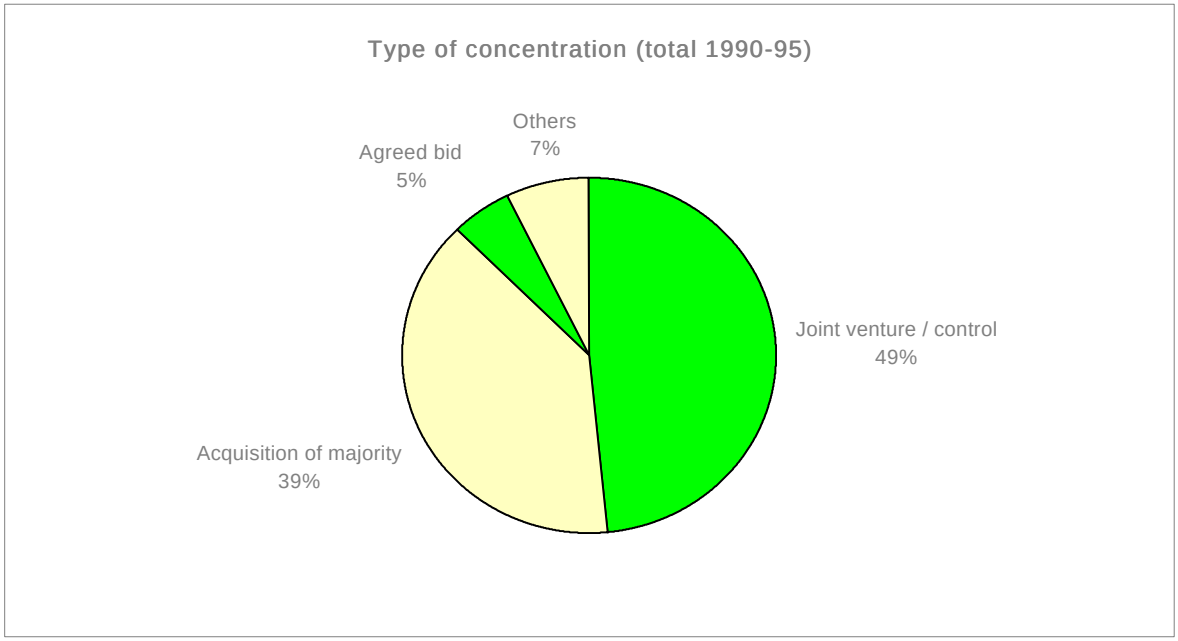
147. On 27 April the Court of First Instance (CFI) ruled on two cases, one brought by the employees of Perrier and the other by the employees of Vittel and Pierval against the Commission's decision of 22 July 1992 in the case Nestlé/Perrier. The Commission had approved the concentration with conditions and obligations. The principal points of the judgments were as follows:

- while recognizing that the Merger Regulation is concerned primarily with questions of competition, the CFI concluded that this does not preclude the Commission from taking into account the social effects of a concentration if these affect the level or conditions of employment at the level of the European Community or a substantial part of it;
- the fact that a third party has not directly intervened in the course of the administrative procedure does not in all cases exclude that third party from being entitled to challenge the decision;
- the representatives of the workers of a company are not, in principle, directly concerned by a merger procedure and so are not entitled to request the annulment of a decision, except to protect their procedural rights;
- third parties do not have the right to be treated in the same way as the parties to the concentration in the administrative procedure.

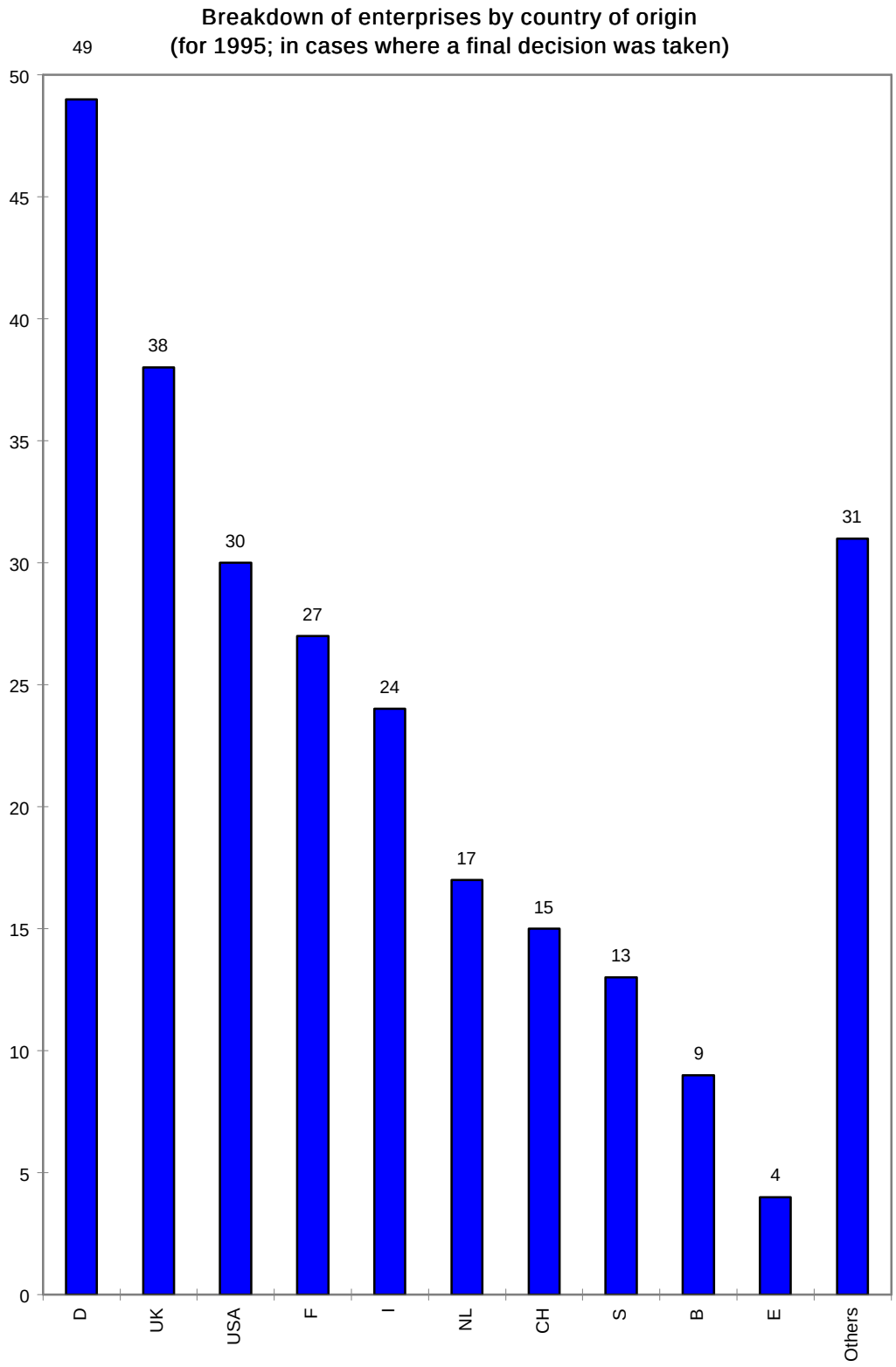
G - Statistical overview



Graph 1 : Number of final decisions adopted each year since 1990



Graph 2 : Breakdown for 1995 by type of operation



Graph 3 : Country of origin of the enterprises involved in the operations in 1995

IV - State aid

A - General policy

148. In July, the Commission published its Fourth survey on state aid in the Community[83] covering 1991 and 1992. The survey is an essential quantitative instrument in defining aid policy. The trend recorded in the period 1981-1990 showing a slow but steady fall in total aid has continued, despite the high costs of German unification, recession and stronger international competition. However, total aid granted remains high, with an average of ECU 94 billion a year for the Community as a whole, or 1.9% of its GDP and ECU 704 per person employed. In November, the Industry Council met and approved the Commission's analysis indicating that, whilst taking account of other Community objectives, it was necessary to continue to reduce aid levels by strengthening control mechanisms and improving their transparency.

149. The obligation to notify aid imposed by the Treaty is central to aid transparency. In a communication adopted in May, the Commission stated that it intended to use all the powers it had under the Treaty to compel Member States to comply with that obligation. By publishing a communication on cooperation between the Commission and national courts, it demonstrated its will to assist national courts in their role of protecting the rights of firms affected by illegal aid that has been granted to competitors.

150. The publication of guidelines and communications defining the criteria applied by the Commission in assessing the compatibility of state aid with the common market is another important feature of the Commission's policy of transparency and simplification. All instruments in force at 31 December 1994, including the manual of procedures and a list of Court of Justice judgments, have been collected in a single volume entitled "Competition law in the European Communities. Volume II: Rules applicable to state aid". However, as the rules have accumulated over the years, it would be desirable to consolidate certain instruments and revise others. Those on regional aid are therefore being consolidated, and the Commission has adopted a new framework on research and development aid, which was discussed at a multilateral meeting between the Commission and Member States' experts in April. At that meeting, there was also a discussion on the criteria for distinguishing between state aid and the "general" measures not covered by Article 92(1), and the problems of aid granted in connection with the sale of publicly-owned land and in the form of loan guarantees. A detailed questionnaire on state guarantees was sent to all Member States.

151. Two other multilateral meetings were held in 1995. In July Member States' experts reviewed the *de minimis* rule and the Guidelines on State aid for small and medium-sized enterprises, as well as draft guidelines on state aid to the arts and cultural activities, especially the audiovisual sector. In December, they examined the future control of aid to the synthetic fibres industry and a first draft for a horizontal framework on regional aid for major investment plans and the problems of defining and collecting the reference and discount rates that are crucial to calculating aid.

152. Over the year the Commission took a record number of state aid decisions, partly because of the accession of three new Member States. Much of the aid examined was intended to offset the social consequences of restructuring in certain sectors. The Commission is also endeavouring to

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83 Fourth Commission Survey on state aid in the European Union in the manufacturing and certain other sectors, COM(95)365 final.

increase control of aid in sectors that have traditionally been protected from international competition and less obvious forms of aid that have often escaped checks in the past. Because firms are increasingly sensitive to aid granted to their competitors and are better informed about the opportunities for fair competition afforded them by the Community competition rules has resulted in their submitting more and more complaints to the Commission and more appeals to the Court of First Instance against Commission decisions to approve aid to their competitors.

New measures to enforce compliance with the notification requirement

153. The Commission continued its efforts to enforce compliance with the requirement that Member States notify all plans to grant state aid. Experience has shown that this obligation, provided for in Article 93(3), must, if it is to be effective, be accompanied by a package of incentives or, if necessary, penalties.

1. Recovery of illegal aid

154. Again the Commission emphasised the importance it attaches to the system of prior control of aid plans and the concrete expression of the system, i.e. the rule that prior notification must be given. Thus, in May, it adopted a communication[84] that details the principles it intends to apply in ensuring compliance with its policy on the recovery of aid granted in breach of that obligation.

The communication forms part of a wider movement aimed firstly at ensuring that Member States comply more strictly with Article 93(3) of the EC Treaty and, secondly, at encouraging economic operators to be more vigilant about the lawfulness of the aid granted to them. The Commission had already tackled the matter before when it sought the recovery of incompatible and unlawful aid,[85] a position upheld and indeed strengthened by the Court of Justice.[86] More recently, the Court of First Instance again upheld Commission policy in this area. In its judgment of 13 September in joined cases T-244/93 and T-486/93, *Textilwerke Deggendorf GmbH v. Commission*, the CFI upheld the Commission's decision to make its authorization of a new aid package subject to a suspension of the payment of that aid, until a prior aid to the same company which had been declared incompatible had been recovered, because it was clear from the Commission's decision that the cumulation of the incompatible aid and the new aid package would render the totality of the aid incompatible.

However, in terms of its effectiveness, such temporary suspension was of limited usefulness inasmuch as it would not have any immediate effect on the part (or all) of the aid already paid. These means were therefore not sufficient to tackle and settle the problem of potential distortion of competition, the effects of which could continue until the final Commission decision. Even if they repay the aid eventually, firms benefitting from illegal aid nevertheless continue to have an edge over their competitors, either in financial terms or by having a longer period of solvency in the case of firms in crisis.

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84 OJ C 156, 27.6.1995, p. 5.

85 Commission Communication on aids granted illegally (OJ C 318, 24.11.1983).

86 Judgment of 21 March 1990, in Case C 142/87 *Royaume de Belgique* v *Commission (Tubemeuse)* [199O] ECR I-959. Judgment of 14 February 1990, in Case C 301/87 *République française* v *Commission (Boussac)* [1990] ECR I-307.

This is the problem the Commission communication seeks to tackle. It stipulates that, in certain cases, the Commission reserves the right, after having given the Member State concerned notice to submit its views and to consider rescue aid instead, to require the Member State by means of a temporary order to recover all or part of the aid granted in breach of the Treaty. Recovery must comply with the provisions of domestic law and interest must be charged from the time the aid was paid. Another new point is that interest is calculated not on the basis of the legal rate but according to the commercial rate, i.e. the reference rate used by the Commission in connection with regional aid.[87] If a Member State failed to comply with such an order, the Commission might apply to the Court of Justice for interim measures by a procedure similar to that provided for in the second subparagraph of Article 93(2) of the EC Treaty.

2. Cooperation between the Commission and national courts

155. In October, with the same aim of increasing observance of legality in the Community, the Commission adopted a notice on cooperation between national courts and the Commission in the state aid field.[88] It is not binding or limiting but seeks to give fresh impetus to relations between the Community executive and national courts and to draw courts' attention to the important role that they can play in the prompt safeguarding of the rights of third parties and securing compliance by Member States with certain procedural obligations. The notice thus clearly forms part of the general trend described in the preceding point.

The notice points out that, while the Commission is the Community body responsible for implementing and developing competition policy in the Community's public interest, national courts do no more than preserve, until the final decision of the Commission, the rights of individuals faced with a possible breach by State authorities of the prohibition laid down by the last sentence of Article 93(3) of the EC Treaty.[89] To that end, national courts are invited to use all appropriate devices and remedies and apply all relevant provisions of national law and, in particular, to grant interim relief, by ordering the freezing or returning of monies illegally paid, or awarding damages to parties whose interests are harmed.

In order to attain these objectives more efficiently, the Commission intends to assist national courts by instituting closer cooperation, notably by:

- pursuing and improving its policy of transparency by publishing information on state aid;
- supplying information of a procedural nature on pending cases;
- supplying factual, statistical and analytical information.

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87 See Commission Communication to the Member States, letter SG(95)D/1971 of 22.2.1995. The Court of First Instance very recently confirmed that the Commission could seek the payment of interest on sums recovered: Judgment of 8 June 1995, in Case T 459/93 *Siemens SA*, [1995]ECR II-1675.

88 OJ C 312, 23.11.1995, p. 8.

89 Judgment of 21 November 1991, Case C 354/90 *Fédération nationale du commerce extérieur des produits alimentaires et Syndicat national des négociants et transformateurs de saumon contre Etat français*, [1991] ECR I-5527, paragraph 14.

B - Concept of aid

156. Interpreting the concept of aid as set out in the Treaties is often the most difficult part of the Commission's assessment of aid measures. The criteria for determining the presence of aid in measures taken by the Member States with regard to their enterprises are of particular importance not only to the administrative authorities of the Member States responsible for notifying them but also to the national courts which may have to determine whether a contested measure should have been notified. Several Commission decisions taken in 1995 help to define the concept of aid provided for in the competition rules.

157. (a) For Article 92(1) to apply, the measure must have provided a firm with an economic advantage which it would not have received in the normal course of business. The Commission considers that this condition would be met if a company were to acquire publicly owned land or publicly owned industrial site at a price lower than the market price. It therefore decided to initiate the Article 93(2) procedure in respect of the acquisition by the company *Siemens Nixdorf AG/Mainz* of a publicly owned site at a price estimated to be between DM 5.5 million and DM 21.5 million lower than the market price. The same reasoning would apply if the State were to acquire land from a company at a price higher than the market price. As the Commission had doubts whether the price for the land sold by the Spanish steel company *Tubacex* to the public authorities corresponded to the market value, it decided to initiate the Article 93(2) procedure.

158. Public financing of costs inherent in the preparation of a building/industrial site and in providing connections to various (public) utility services does not fall under Article 92(1) if the company pays for the use of the infrastructure through direct or indirect charges. Since preparation of the site in Villey, Meurthe-et-Moselle, for setting-up a new production plant by the paper company *Kimberly-Clark* benefited this company alone, in particular because it is the owner and sole user of the installations put in place, the partial public financing provided constituted an aid to that company. In this context, the Commission also took into consideration that a private market investor would not have carried out this preparation since the selling price for the site did not even cover partial financing of it.

159. Public funds provided to a (public) undertaking on terms more favourable than those on which a private investor operating under normal market conditions would provide them to a private firm in a comparable financial and competitive position constitute state aid. In cases where the State's acquisition of a holding in a company may be combined with other types of public intervention which need to be notified to the Commission pursuant to Article 93(3), there is a presumption that state aid may be involved. In accordance with its Communication on the application of Article 92 and 93 of the EC Treaty to public authorities' holdings,[90] the Commission asked the Spanish Government to inform it in advance of any acquisition made by the *Institute for the Development of Andalusia.*

Because the intended capital injection by the Land of Bavaria to cover the accumulated losses of the steel undertakings *Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH* would coincide with the sale of its shares in these companies, thereby removing any prospect of profitability from the provision of these funds even in the long term, the Commission decided that these capital injections constituted state aid. For similar reasons, it decided that the capital injections made by the Italian State through its industrial holding company ENI into the fertilizer company *Enichem Agricultura S.p.A.* in the period 1991-94 constituted state aid, as the capital injections were made before a

90 See Commission Communication of 1983, Bulletin EC 9-1984, points 3.4 and 4.4.

restructuring plan had been set up solely to prevent the company from going bankrupt and thus without any prospect of a reasonable return. Moreover, the Commission considered that, under the circumstances, the period during which the company had suffered heavy losses, i.e. five years, was too long to have been acceptable to a private market investor who would have liquidated or thoroughly restructured the company much earlier. The capital injections to be made in the context of a restructuring plan set up at a later stage therefore also constituted state aid and the Commission considered the positive results expected from implementation of the plan to be too low compared with the total injection of new capital.

However, if a capital injection by the State into a company is accompagnied by an injection of capital by a private investor on equal terms and if the private investor's holding in the company has real economic significance, the Commission considers that no aid is involved in the public intervention. It therefore decided that the capital injection and loans provided by the authorities of Wallonia (Belgium) to the textile company EM-Filature were based on normal commercial considerations and did not constitute state aid since this intervention went hand-in-hand with an injection of capital by private shareholders making them majority shareholders in the company and since private shareholders offered loans on similar terms. For similar reasons, the Commission considered that the injection of capital by the Portuguese State into the ship repair company *Lisnave* in connection with a restructuring of the company did not involve state aid under Article 92(1).

160. (b) Under Article 92(1) aid must be granted to certain undertakings (or the production of certain goods) to constitute state aid. General measures of economic, tax or social policy do not fall within Article 92(1) and competitive advantages for firms in one Member State arising from differences in such general policy measures must be addressed, if necessary, under the appropriate procedure laid down in Articles 101 and 102.

Therefore, Article 92(1) does not apply to general measures applicable to all undertakings in a Member State and satisfying objective and non-discriminatory requirements. In the light of these considerations, the Commission considered that aid granted by the German Government to employees of the firm Maschinenfabrik Sangerhausen GmbH to cover social security obligations in connection with the liquidation of the firm did not constitute state aid, since the aid is automatically available to any firm in liquidation in Germany. Similarly, it took the view that the suspension of debt repayments in favour of the Spanish steel company *Tubacex* did not, in itself, constitute state aid, but a general measure taken within the framework of Spanish insolvency legislation generally applicable to all companies. However, it also follows from the above criteria that, if the effect of the objective requirements under a scheme open to all firms is that only certain undertakings may benefit from the measure, the Commission considers state aid to be involved.

If a measure is applicable to all undertakings but confers discretionary power on the authorities administering the measure, state aid may also be involved. Therefore, the Commission considered that a Finnish employment aid scheme available to all firms in every sector of the industry and every region of the country nevertheless involved state aid since the labour market authorities had discretion as to the level of aid and the length of the subsidized period for each unemployed person taken on by a firm.

161. (c) The financial benefit to certain undertakings must be granted by a Member State or through state resources in order to constitute state aid under Article 92(1), which applies to aid granted by any central, regional or local authority and any public or private body established or appointed by

the State to administer the aid.[91] Even if an aid is not granted through a body established or appointed by the State, state aid may be involved if the financial contribution to the recipient firm(s) is made by the State.

162. (d) The aid must be capable of affecting trade perceptibly between Member States. The Commission considered this condition to be met in respect of aid to the German company *Leuna-Werke GmbH* even though the company does not export goods to other Member States, since the aid may enable it to increase its production for the domestic market and thus reduce the potential market there for goods imported from other Member States.

C - Assessment of compatibility of aid with the common market

1. Sectoral aid

1.1. Sectors subject to specific rules

1.1.1. Aid to shipbuilding

163. On 21 December the Council adopted Regulation (CE) No 3094/95[92] implementing an OECD agreement with respect to normal competitive conditions in commercial shipbuilding and shiprepair, including the elimination of production subsidies. The new regulation will apply as from the entry into force of the OECD agreement. This was scheduled for 1 January 1996 but, although the European Union ratified the agreement in December, entry into force was unfortunately delayed because of delays in ratification by other parties to the agreement. The Council therefore decided that the rules of the Seventh Directive on aid to shipbuilding[93] should continue to apply ad interim but not beyond 1 October 1996. If the OECD agreement has still not entered into force by 1 June 1996, the Commission will put forward appropriate proposals to the Council so that it can decide future policy before 1 October 1996. Against this background, the Commission decided to maintain from 1 January 1996 the common production aid ceiling at 9% for large vessels and 4.5% for vessels costing less than ECU 10 million and for conversions.

1.1.2 Steel

164. During 1995 the Commission continued to be vigilant in applying the steel aid code.[94] This strict enforcement of the aid rules resulted in a number of negative decisions being taken, including ordering of the recovery of aid illegally granted.

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91 Judgment of the Court of Justice in Case 78/76 *Steinike und Weinlig v Bundesamt für Ernährung und Forstwirtschaft* [1977] ECR 575.

92 OJ L 332, 30.12.1995.

93 Council Directive 90/684/EEC, as last amended by Directive 94/73/EC.

94 Commission Decision 3855/91/ECSC.

In November and December respectively the Council gave its unanimous assent to special derogations under Article 95 ECSC relating to production and closure aid for iron-ore mining in Austria and the privatization of the public steel company in Ireland.

Close monitoring of six previous Article 95 ECSC cases (Ilva in Italy, CSI and Sidenor in Spain, EKO Stahl and SEW Freital in Germany, and Siderurgia Nacional in Portugal) was maintained with half-yearly reports being submitted to the Council.

In March the Commission proposed that the provisions of the steel aid code relating to aid for environmental protection should be brought into line with the revised Community guidelines on state aid for environmental protection under the EC Treaty to ensure that the steel industry enjoyed equal treatment with other industrial sectors. The Council's assent is still awaited.

1.1.3 Coal

165. Decision No 3632/93/ECSC[95] of 28 December 1993 establishes the Community rules for state aid to the coal industry covering the period from 1994 until 2002.

On 4 April the Commission authorized[96] financial assistance totalling ECU 3 384.2 million that had been planned by Germany for 1995 in the form of compensation to the electricity generators under the Third Law on electricity produced from Community coal, aid for maintaining the underground workforce in mines ("Bergmannsprämie"), and aid to cover the exceptional costs of a number of coal undertakings resulting from inherited liabilities.

On 19 July the Commission delivered a positive opinion on a restructuring plan submitted by the French authorities and authorized aid[97] totalling ECU 912.8 million to cover operating losses for 1994, aid to cover inherited liabilities resulting from the modernization, rationalization and restructuring of the coal industry, and aid for research and development. On the same occasion, the Commission approved additional German aid totalling ECU 196.9 million for the supply of coking coal and coke for the Community steel industry.[98]

On 26 July the Commission authorized[99] France to grant aid totalling ECU 668.1 million to cover operating losses for 1995, aid to cover inherited liabilities resulting from the modernization, rationalization and restructuring of the coal industry, and aid for research and development.

The Commission authorization for the United Kingdom to grant aid totalling ECU 2 594.4 million for inherited liabilities in 1995 was contained in the Commission Decision of 3 November 1994.[100]

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95 OJ L 329, 30.12.1993, p. 12.

96 Decision 95/464/ECSC (OJ L 267, 9.11.1995. p. 42).

97 Decision 95/465/ECSC (OJ L 267, 9.11.1995, p. 46).

98 Decision 95/499/ECSC (OJ L 287, 30.11.1995, p. 53).

99 Decision 95/519/ECSC (OJ L 299, 12.12.1995, p. 18).

100 Decision 95/995/ECSC (OJ L 379, 31.12.1995, p. 6).

Notifications of aid for 1995 have been received from the Portuguese and Spanish authorities, and an additional notification has been received from the German authorities. These are all being examined by the Commission departments to determine their compatibility or otherwise with Decision 3632/93/ECSC.

1.1.4. Motor vehicle industry

166. By its judgment of 29 June 1995,[101] the Court of Justice ruled in respect of the last Commission's decision extending the EC framework on state aid to the motor vehicle industry for an unlimited period that it had ceased to apply on 1 January 1995. To avoid any legal vacuum that the judgment might create, the Commission had to take extraordinary action and, on 5 July decided to extend the framework retroactively from 1 January 1995 and, at the same time, proposing to the Member States that the framework be reintroduced for a two-year period starting no later than 1 January 1996.

Subsequently, the Spanish Government appealed to the Court against the Commission's decision to extend the framework retroactively and, unlike all other Member States, also refused to accept the proposal to reintroduce it for a two-year period. Following the refusal, the Commission was obliged to initiate the Article 93(2) procedure in order to examine the compatibility of all aid schemes which might benefit the motor vehicle industries in Spain. On 20 December it adopted a final decision compelling Spain to comply - in the same way as the other Member States - with the requirements of the newly reintroduced framework.

On the basis of its decision of 5 July, the Commission continued to apply the framework during 1995. It received 9 notifications on the basis of approved schemes and 2 notifications on the basis of ad hoc schemes. It adopted a decision approving notified aid in 6 cases. It also took an interim decision enjoining the German Government to provide within a fixed deadline all the information necessary to allow an assessment of aid to the new projects of *VW Sachsen*, which were not covered by a previous 1994 decision.[102]

167. In assessing individual awards based on regional aid schemes (e.g. *FORD Genk*), the Commission continued to apply its criterion whereby regional aid in this sector should be in proportion to the actual regional handicaps arising for an investor. However, it should be noted that, on average, it has allowed higher aid intensities for motor vehicle manufacturers carrying out investment projects in the least-developed regions of the EU.

168. As regards rescue and restructuring aid, the Commission adopted final decisions on the cases concerning *DAF Belgium, DAF Netherlands and SEAT-Volkswagen*. These decisions implied, pursuant to the existing regulations, a recovery of part of the aid in the case of bankrupt DAF and a significant reduction of production capacity in the case of SEAT. Furthermore, the Commission decided to initiate proceedings under Article 93(2) against aid granted by the Spanish authorities to *Santana Motor S.A.*

169. In assessing aid for research and development the Commission, while recognizing the potential beneficial effects of R&D activity on economic development, takes into consideration the risk of distortions of competition and ensures that such aid is granted only to projects that are genuinely

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101 Case C-135/93 *Spain v Commission* [1995] ECR I-1651.

102 XXIVth Competition Report, point 367 and Annex II.E., point 2.6.

innovative at a European level. It also verifies that the maximum intensities laid down in the Community framework on aid for R&D are adhered to. As these conditions were fulfilled in the *Opel Austria* and *Ford Valencia* cases, the Commission approved the aid proposed for these projects.

170. Both cases also involved aid for investment projects to reduce environmental pollution. In line with the motor vehicle framework and the guidelines on state aid for environmental protection, such aid can be approved only if it is to cover extra investment costs necessary to reduce or eliminate pollution or to adapt production methods in order to protect the environment and only if the limits of aid intensity specified, i.e. 15% for projects complying with new standards and 30% for projects significantly exceeding standards or for voluntary measures, are not exceeded. In both the Opel Austria and the Ford Valencia cases, as well as in the Ford Genk case mentioned earlier, these conditions were fulfilled with the result that the Commission approved the proposed aid.

171. In several past cases, the Commission has required the national authorities to monitor the realization of eligible investment and asked the Member States to send annual reports on the investments carried out and the aid payments made. Practice has shown the importance of such a follow-up procedure, bearing in mind that the execution of large multi annual investment projects leads to many changes which might require modification of the aid payments. In the course of 1995 this ex post control was exercised in the *Ford/VW Setubal* and *Fiat Mezzogiorno* cases as well as in the *Chrysler* and *SNF* cases in Austria, where the European Union had reached agreement on aid reductions with the Austrian authorities. In its *NedCar* decision, the Commission required the Dutch authorities to notify the rules on the allocation of costs between the old and new models, so that it could ensure that no aid was granted to Volvo and Mitsubishi on the basis of inadequate rules.[103] The analysis of the cost allocation rules for 1994 and 1995 showed that they did not contain elements of state aid. Finally, in the case of restructuring aid for *Rover*, which dates from a period prior to the establishment of the framework, and in the case of regional aid for *Opel Eisenach* the ex post monitoring was terminated after all the conditions of the decisions had been fulfilled.

1.1.5. Synthetic fibres industry

172. Since 1977 aid to this industry has been subject to supplementary control through the code on aid to the synthetic fibres industry. In April the Commission asked an independent consultant to assess the code's effects and, if supplementary control were still considered necessary, advise what form it should take. The consultant reported in October and the Commission will decide what action to take early in 1996. Also in April the Commission extended the period of validity of the current code[104] for a further nine months to 31 March 1996[105].

1.1.6. Transport

173. The year has seen a substantial increase in the number of aid cases in the transport sector (from 29 to 52). At the same time, cases have become increasingly complex and the scope for enforcement of Articles 92 and 93 has expanded. As the liberalization of transport markets progresses, commercial pressure increases on operators across the board. The forthcoming completion of civil aviation liberalization will include cabotage rights for European carriers from March 1997. The recently

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103 XXIVth Competition Report, points 367 and Annex II.E, point 2.6

104 OJ C 346, 30.12.1992.

105 OJ C 142, 8.6.1995.

approved Directives on infrastructure charges and track access in the railway sector follow on from Directive 91/440, which is also being extended to intra-state lines in the shipping industry. These are but a few examples of the progress being made towards a single market for transport services.

174. As commercial operations move into new areas, control of financial support from the state must be stepped up to preserve a level playing-field for all enterprises, both public and private. In transport cases, no advantage that reduces the costs normally included in the cost structure of an undertaking and stems from a State measure should be authorized unless it responds to the need for coordination of transport or represents reimbursement for the discharge of public service obligations. In addition, the development of transport as an economic activity or a concrete project of common European interest might qualify for exemption.

175. In the course of the year the Commission departments were consulted on several cases (Ferrovie dello Stato, fixed Öresund link) by Member States in order to clarify whether public investment in infrastructure could be considered state aid. Governments have always used financial intervention as an essential tool in their policy of infrastructure development. In principle, as long as access and usage remain public and general, such intervention will not constitute aid within the meaning of Article 92(1) but will be normally regarded as being in the public interest. For there to be a distortion that might qualify as aid, the infrastructure-related advantages, should be conferred selectively, with the aim of helping specific firms: for example, a purpose-built facility for the sole use of one undertaking or discriminatory access restrictions.

In economic terms, public authorities normally provide these goods and services because of the inability of the price system to do so effectively. Goods such as infrastructures tend to be indivisible and collectively consumable by all citizens whether they pay for them or not. Such a public good provided by government benefits society in a collective manner and is not conferred upon any specific enterprise or industry (principle of non excludability). Consequently, public support for infrastructure will not normally constitute aid, but rather a general measure derived from the State's sovereignty in respect of economic policy, land planning and development.

176. Various complaints submitted during the year claimed the existence of state support for ports. The question arises whether financial backing for port activities can be examined in the context of Article 92.

177. In relation to civil aviation, the Commission based its decisions concerning state aid on the principles developed in the new guidelines adopted in November 1994.[106] These take account of the increasingly competitive nature of the market for air transport services after the entry into force of the third liberalization package in 1993. In 1994 the Commission authorized the granting of restructuring aid to be paid in instalments in favour of TAP and Air France. In both cases, the Commission's approval was made subject to the correct fulfilment of a list of commitments and restructuring plans. Then in 1995, with the assistance of independent experts, the Commission monitored compliance. In view of the satisfactory fulfilment of both elements by TAP[107] and Air France[108] no objections were raised to payment of the second tranches of the aid.

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106 XXIVth Report on Competition Policy, point 375.

107 OJ C 154, 21.6.1995.

108 OJ C 295, 10.11.1995.

178. Also in 1994, the Commission decided that the subscription by the French public entity CDC-P to bonds issued by Air France constituted illegal aid, incompatible with the common market, and requested its reimbursement. In October 1994, France and Air France challenged the Commission decision before the Court of First Instance. The Commission then decided on 4 April 1995[109] to amend its original decision, and to request France to ensure that the aid and interest on arrears are deposited in a blocked bank account until the Court delivers a final ruling. The economic rationale of this mechanism is to deprive Air France of the use of the money corresponding to the aid, pending Court proceedings.

179. On 4 May 1995[110], the Commission analysed the financial transactions involved in an agreement between Swissair and Sabena, aimed at the acquisition by the former of a strategic stake (49.5%) of Sabena. The operation implied the issue by Sabena of new shares for BEF 9.5 billion, BEF 6 billion being subscribed by Swissair and the remaining part by Belgium and a group of Belgian investors. The Commission recalled that when the public holding in a company is to be increased, the capital injection will not involve state aid provided that the public investment goes together with the injection of a significant amount of capital by a private shareholder. Swissair's subscription of new shares at the same price and under the same conditions as Belgium and the Belgian investors was accepted as evidence that the operation was a normal financial transaction and not state aid.

180. On 10 May 1995, the European Commission decided not to raise objections to plans by the German government to contribute to pension funds in favour of Lufthansa employees as part of the company's privatisation programme initiated in 1992. The measures were linked to the charges imposed on Lufthansa following its compulsory withdrawal from a supplementary pension fund managed by the public entity VBL to which, as a public company, it had been obliged to belong. The Commission considered that a private investor in the same position as the German State, obliged to relinquish the control of Lufthansa, would have acted in the same way in order to maximise the final value of its stake.

181. On 19 July 1995, the Commission analysed a capital injection of FF 300 million into the company AOM by its parent State owned company Credit Lyonnais. The Commission, having analysed the restructuring plan of the airline, reached the conclusion that AOM was likely to return to profitability in the near future and that the net present value of future cash-flows was higher than that of the investment. The operation was considered to amount to a normal financial transaction and not state aid, since a market economy private investor in the same circumstances would have made the investment in AOM.

182. On 29 November 1995, the Commission adopted a final negative decision concerning the exceptional mechanism of depreciation of aircraft registered in Germany and used for international commercial activities. In certain circumstances, the scheme allowed for an exceptional depreciation of up to 30% of the total acquisition cost. The Commission considered that the scheme amounted to an aid and that it could not fall within the second and third paragraph of Article 92.

183. Likewise, the Commission took a number of decisions in cases involving aid to the maritime sector. The Commission's 1989 guidelines on the examination of state aid to Community shipping companies is currently under review in the context of an overall reappraisal of Community maritime

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109 OJ L 219, 15.9.1994.

110 OJ L 239, 7.10.1995 page 19.

transport policy. The results of this exercise will be presented by the Commission in a strategy discussion document on which the European institutions, the Member States and other interested parties will be invited to comment.

184. In particular the Commission decided that an agreement between Spanish regional and local authorities in the Basque Country and "Ferries Golfo de Viscaya", concerning a ferry service between Bilbao and Portsmouth did not contain state aid elements. The final decision, following the opening of the procedure under article 93.2 of the Treaty, was taken on 6 June 1995.

185. Serious doubts were raised about the compatibility of aid granted to the French State-owned shipping company Compagnie Générale Maritime ('CGM') with the Treaty. The Commission decided on 31 October 1995, and later on 20 December 1995, to initiate and extend respectively, the Article 93.2 procedure. The aid amounts to approximately ECU 330 million.

186. The Commission also examined several cases of state aid in the road transport sector, taking particular account of the gradual liberalization of cabotage since 1 January 1995[111] which entails the opening-up of local markets to Community competition.

187. On 18 August the Commission brought an action before the Court of Justice against Italy for not having taken the necessary measures to comply with the Commission Decision of 9 June 1993, which declared a tax credit for professional road hauliers in Italy incompatible with the common market and ordered the Italian authorities to recover the sums paid.

In addition, the scheme, which had been deemed to be operating aid and had initially been scheduled for the 1992 tax year, was extended by the Italian authorities to 1993 and 1994, with a budget of ECU 558 million. On 4 October the Commission decided to initiate Article 93(2) proceedings in respect of the extensions and called for the immediate suspension of the aid.

188. In the area of inland waterways, the structural reorganization aimed at reducing existing overcapacity by scrapping vessels that was begun in 1990 on the basis of Council Regulation (EEC) No 1101/89 of 27 April 1989 is still underway. In view of the amount of excess capacity, the Commission presented a proposed amendment of the above-mentioned Regulation to the Council on 23 May, recommending extensive scrapping in the period 1996-98, part-financed by the Community, the Member States concerned and the trade. This action is an important measure accompanying the gradual liberalization of the waterway-transport market which was also advocated by the Commission in a proposal of 23 May 1995.

189. In the course of 1995 some operations undertaken by railway companies were examined by the Commission in the light of Articles 92 and 93. In relation to the UK sale of the railway rolling stock companies (ROSCOs) the Commission decided on November 29 that the guarantees provided to the purchasers maximised the sale profit and therefore do not constitute State aid.

Similarly, on October 18 1995, the Commission decided that, a state guarantee in favour of Ferrovie dello Stato S.p.A., issued by the Italian government for a loan of 372 MECU to railway infrastructure investments in the high speed train link Brenner -Verona, did not constitute state aid.

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111 Council Regulation No 3118/93 (OJ L 279, 12.11.1993).

1.1.7. Agriculture

190. The accession of three new Member States (Austria, Sweden, Finland) brought about some change in the situation regarding state aid in agriculture. The Act of Accession established a specific procedure for each new Member State for aid existing at the time of accession and for a given transitional period. In accordance with the Act of Accession, the new Member States informed the Commission by 30 April of all existing agricultural aid schemes within the meaning of Article 93(1) of the Treaty. On 13 February the Commission adopted two decisions approving the Austrian and Finnish programmes for the implementation of Articles 138 to 140 of the Act of Accession, which provide for the granting of transitional, degressive national aid for agricultural products. The decisions were subsequently modified to take account of new factors.

191. Generally speaking, the Commission opposes any state aid relating to support measures that would be liable to upset the Community market machinery and which, as operating aid, would not have any lasting effect on the development of the sector in question.

192. As regards investment aid in the primary production sector and, in particular, pursuant to Article 12(1) of Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures,[112] the assessment of Community and state aid should, as far as possible, be carried out in conjunction with a parallel assessment of the cases within the periods stipulated for state aid; this procedure would make it possible to send only one letter to the Member State concerned, under both Articles 92 and 93 of the Treaty and Regulation No 2328/91.

193. As regards aid to investments in improving the processing and marketing of agricultural products, Community policy is laid down by Council Regulation (EEC) No 866/90.[113] This Regulation also authorizes Member States to establish aid measures, under various conditions, in accordance with Articles 92 and 93 of the Treaty. However, this facility is limited by the selection criteria provided for in the Regulation, applied by the Commission by analogy to the assessment of state aid.

Until 1994, the selection criteria applicable to such investments, known as "sectoral limits", were specified in Commission Decision 9O/342/EEC of 7 June 1990.[114] This was amended by Commission Decision 94/183/EEC of 22 March 1994.[115] In 1994, the Commission informed Member States that it would continue to apply the sectoral state aid limits provided for in point 2 of the Annex to the 1990 Decision.[116] In 1995, the Commission altered its position in order to apply the more favourable limits provided for in the 1994 Decision.[117] Following preparatory work with the Member States, the Commission adopted[118] the principle of the application to state aid, from 1 January 1996, of the criteria contained in its Decision of 22 March 1994 and no longer those in its Decision of 7 June 1990.

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112 OJ L 218, 6.8.1991, p. 1.

113 OJ L 91, 26.4.1990, p. 1.

114 OJ L 163, 29.6.1990, p. 71.

115 OJ L 79, 23.3.1994, p. 29.

116 OJ C 189, 12.7.1994, p.5.

117 OJ C 71, 23.3.1995, p. 6.

118 OJ C 29, 2.2.1996, p. 4.

194. The Commission also adopted the principle of a review of its policy concerning subsidized operating loans in the agricultural sector.[119]

1.1.8. Fisheries

195. In 1995 the Commission registered 37 new aid schemes and 20 aid schemes that were either not notified or were only notified after their adoption, as well as three new cases of existing aid. It decided not to object to the aid in 22 cases, one of which was started in 1994. It also decided to initiate the Article 93(2) procedure in respect of two aid measures, one Italian and the other German. In the same period, the Commission decided to terminate the Article 93(2) procedure initiated in respect of an aid measure implemented in Italy and notified in 1993.

1.2. Specific sectors not subject to special rules

196. For some years Europe has been experiencing a major shift towards liberalization, privatization and the adjustment of national monopolies. This trend, together with continued harmonization of rules at Community level, prompted the Commission to study methods of applying state aid rules to certain sectors such as banking or postal services. Although they are in principle subject to the same treatment as any other sector (especially the principle of a "private investor in a market economy"), they are nevertheless sufficiently different to warrant being taken into account by the Commission when assessing state aid.

1.2.1. Banking

197. This sector has particular characteristics that are chiefly social and statutory (protection of savers), macroeconomic and financial (necessary stability of the sector, smooth operation of the payments system), political and international (possible repercussions in the form of "panic" in other establishments in the same country or other countries due to the considerable interdependence existing in this sector, especially in the event of a major institution failing). That is why specific authorities are in charge of monitoring the sector in the various Member States.

After the Banesto case in 1994, the Credit Lyonnais case is an important example of the way in which state aid rules should be applied with a view to the particular sensitivity of a sector. In terms of the amounts involved, this case is the largest yet dealt with by the Commission: the total volume of aid was FF 45 billion (ECU 7.5 billion). In addition, at the end of 1993, Crédit Lyonnais was the largest European bank in terms of total balance, thus providing an example of what happens when a major bank fails, with all the downstream consequences for the entire financial and banking system in France and, indeed, Europe.

The principle adopted by the Commission, after consulting a high-level group of experts, was to apply to the banking sector substantive and procedural rules on state aid, taking account of the specificities of banking. Compliance with the rules also ensures that credit establishments enjoying the implicit or explicit support of the state, being either public establishments or too important to be allowed to go bankrupt, do not act in an imprudent manner. Such an attitude would require state assistance and

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119 OJ C 44, 16.2.1996, p. 2.

hence lead to distortions of competition which could have been avoided. Even if state intervention were considered necessary to prevent undesirable effects on other financial establishments and markets, the Commission would wish to ensure that the solution chosen would produce the least possible distortion of competition. Lastly, major counter-concessions will have to be offered by a defaulting establishment in order to offset the negative effects of state assistance on other market operators. That is why the Commission eventually decided to approve the aid to Crédit Lyonnais conditional on the sale of a large part of its international network, on a contribution to the costs of the hiving-off mechanism in the form of a better-fortunes clause, on a clear separation between Crédit Lyonnais and the hived-off structures and on the probable privatization of the bank within five years.

1.2.2. Postal sector

198. The Commission regards this as an essential sector owing to its vital function as a vehicle for the social and economic activities of a country. However, it must also take account of the fact that the Court of Justice specified that the competition rules applied to postal services,[120] without prejudice to the principle of Article 90(2) of the EC Treaty.

Postal services, especially public or semi-public services or those granted special and exclusive rights, continue to enjoy a special relationship with the state. This is reflected in the benefit of direct financial support (grants) or indirect support (tax relief) usually lacking in transparency. On the one hand, the Commission Directive on the transparency of financial relations between Member States and public undertakings is applicable in this area,[121] which entails special accounting and financial obligations. On the other hand, such direct or indirect financial assistance constitutes state aid which the Commission has a duty to monitor, both because of the obligation on Member States to notify aid plans in advance and because of its obligation to keep under constant review all existing systems of aid in order to take account of the progressive development or functioning of the common market.

The case "Activités concurrentielles de la Poste française" is doubly interesting in this respect inasmuch as it deals both with the application of the state aid rules (Articles 92 and 93) and with the provisions on enterprises entrusted with the operation of services of general economic interest (Article 90(2)). This case constitutes the first combined application of these two provisions by the Commission. The latter considered that the tax advantages enjoyed by the postal services did not outweigh the extra costs resulting from the constraints imposed on the French post office in carrying out its public service task and did not benefit the competitive aspects of its activities (i.e. the activities not reserved to the post office under French law). The Commission therefore decided that the tax advantages did not constitute aid under Article 92(1) of the EC Treaty.

1.2.3 The audiovisual sector

199. The Commission recognizes that the European film and television industry makes an important contribution to the diversified European culture. Thus, the promotion of cultural diversity is accepted by the Commission as a justification for state aid to the film industry and the production of television programmes. However, in its assessment of state aid to the audiovisual sector, the Commission will ensure that the aid does not cause any undue distortions of competition and that there

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120 Judgment of 12 February 1992, Joined Cases C-48 and C-66/90 *Nederland en PTT Nederland and PTT Post* v *Commission* [1992] ECR I-565; Judgment in Case C-320 *Paul Corbeau* [1993] ECR I-2563.

121 Commission Directive 80/723/EEC of 25 June 1980, as amended by Directive 84/413/EEC (OJ L 229, 28.8.1985, p. 20).

is no discrimination on grounds of nationality or any other impediment to the free flow of goods, services, people and ideas across the European Union. The Commission aims to strike a balance between the requirements of cultural and heritage promotion and the openness of trade and competition in the single market.

To clarify state aid policy in this field, the Commission is currently preparing guidelines on state aid for culture, the arts and the audiovisual sector. The guidelines were discussed with Member States at a multilateral meeting in June and met with general support.

200. In light of complaints from private TV stations alleging that public broadcasters receive state aid which distorts competition on the TV market within the EC, the Commission in 1993 appointed a firm of consultants to undertake a study on the situation, paying particular attention to the public service obligations imposed on public broadcasters, how much they cost and how much subsidy the public broadcasters receive. In October, the Commission received the final report and sent it to Member States for comments. In respect of the new Member States and the EFTA States, signatories to the EEA Agreement, it has issued an invitation to tender for a similar study. When it receives the comments of Member States on the first study and when the second study is completed, the Commission will consider the cases pending and encourage a debate on the way forward.

2. Horizontal aid

2.1. Research and development

201. On 20 December the Commission adopted a new Community framework for state aid for research and development.

The framework in force since 1986 was amended in the light of the new competition environment both in the Community and internationally. The revised version takes account of the recommendations of the White Paper on growth, competitiveness and employment and of the consequences of the agreements resulting from the multilateral negotiations of the Uruguay Round. In addition, the text clarifies certain unwritten practices developed by the Commission since the 1986 framework entered into force.

Although as a general rule the admissible aid level is still 25% for pre-competitive development projects that are closer to the market, and 50% for basic industrial research, "bonuses" are possible for projects involving SMEs (+10 points), assisted regions (+5 or 10 points) and projects tagged as priority in the Community R&D framework (+15 points).

Furthermore, the admissible aid intensity will also be increased by 10 points for projects meeting at least one of the following criteria: cross-frontier cooperation between independent firms, broad dissemination of research results, cooperation between universities and industry. An increase of 25 points will be allowed for priority projects under the R&D framework which also provide for cross-frontier cooperation between enterprises or between enterprises and public research bodies, and broad dissemination of results.

This system of bonuses will make it possible to adjust the amount of aid that is acceptable on the basis of the general interest and which must in any event comply with the maximum rates of the WTO Subsidies Code.

To take account of competition outside the Community and the new possibilities offered by the WTO Agreement on Subsidies and Countervailing Measures, the new framework provides that European firms are eligible for the maximum aid levels approved by the WTO (50% for precompetitive research and 75% for basic industrial research) in the following cases: overlapping state aid and Community support, important project of common European interest (exemption under Article 92(3)(b)), projects and programmes for which similar activities are carried out by enterprises outside the European Union having benefited (in the last three years) or about to benefit from aid having an equivalent intensity at a level accepted by the WTO for the same two types of research.

In the new framework, to lessen the bureaucratic burden on Member States and itself, the Commission believes, on the basis of experience, that it is no longer necessary to notify annual budget increases of less than 100% of the original amount and/or extensions of authorized schemes, provided that certain conditions are met.

Aid to an individual project under a research and development scheme authorized by the Commission need not in principle be notified. However, the new framework requires notification of large aid grants under existing schemes, setting the aid threshold at ECU 5 million and project costs at ECU 25 million.

The revised framework also provides for different situations in which public financing of R&D conducted by establishments of higher education or non-profit-making public research bodies, either individually or on behalf of enterprises or in collaboration with them, does or does not cope within the scope of Article 92(1) of the EC Treaty.

The framework also specifies the factors taken into account by the Commission to determine whether R&D aid proposed by a Member State encourages enterprises to carry out supplementary research and development in addition to that which they carry out in the course of their normal work (incentive effect of R&D aid).

For SMEs, it will be assumed that the aid is necessary and acts as an incentive, whilst in the case of large undertakings the Commission will pay particular attention in aid cases where the research is close to the marketplace.

2.2 Employment aid and general social measures

202. In 1995, the persistently high unemployment rate within the Community was the fundamental economic and social problem facing the Community. In an attempt to remedy this grave situation Member States introduced an increasing number of measures to promote employment and, in its White Paper on growth, competitiveness and employment, the Commission set out various ways of promoting employment in harmony with Community competition policy.

Most measures taken by Member States under their labour market policies are general in nature and do not involve aid, either because they do not favour certain undertakings or do not affect trade between Member States within the meaning of Article 92(1) of the EC Treaty. For example, under the new *Danish Energy Package*, which imposes on Danish industry new or increased energy taxes (CO_2 and SO_2 emissions), some of the proceeds of these taxes will flow back to the industry in the form of a general reduction in labour market contributions paid by the industry. As all companies automatically benefit from this reduction on the basis of objective criteria, the Commission did not consider this reduction to constitute state aid under Article 92(1).

Only measures that selectively reduce labour costs of certain firms or in certain sectors with a view to encouraging them to increase their labour force, to maintain the level of employment or to recruit certain categories of unemployed persons distort or threaten to distort competition because they favour the beneficiaries vis-à-vis their competitors. Accordingly, the Commission considered that a *Swedish employment aid scheme* available only to firms with less than 500 employees constituted state aid in favour of those firms to the detriment of competitors with more than 500 employees.

203. Given the considerable number of aid measures to promote employment, the Commission considered it appropriate to clarify state aid policy in this field by way of the employment aid guidelines.[122] As regards support measures for training, the issue will be indirectly addressed in the more general guidelines on the distinction between state aid and general measures since measures that support training can in many cases be defined as general measures. The prime objective of the Employment Aid Guidelines is to inform Member States and interested parties of the principles the Commission will apply in determining the existence and compatibility of employment aid measures with the common market and in ensuring coherence between the competition rules and the employment policy measures advocated in the Commission's White Paper on growth, competitiveness and employment. The guidelines confirm the traditionally positive approach the Commission has taken towards state aid for job creation, in particular aid granted to SMEs or firms located in regions eligible for regional aid, provided that the aid leads to a net increase in the number of jobs in the firm concerned. Similarly, the Commission normally takes a favourable view of aid granted to firms that take on unemployed persons who have particular difficulties in finding a permanent job, such as the long-term unemployed or young people. In its assessment the Commission will also take account of possible counterparts offered by the firm for aid going beyond the employment of the unemployed, such as training. Moreover, in line with the general principles underlying state aid policy, the Commission will always examine whether or not the aid is necessary to take on an unemployed person and whether or not it is temporary.

However, not all employment aid is viewed favourably by the Commission, which considers that certain employment aid measures, given their actual or potential harmful effect on competition within the common market, are contrary to the common interest and may be approved only in a limited number of cases. Thus, the guidelines confirm the Commission's unfavourable view on aid to maintain jobs in a firm. In fact, such aid constitutes operating aid which generally has the effect of frustrating or delaying structural changes necessary to render a firm/sector economically viable, thereby keeping unprofitable businesses artificially alive. The Commission considers that, in most cases, the negative effects of such aid outweigh the possible short-term benefits in terms of maintaining a certain level of employment. Moreover, it will normally look unfavourably on aid for job creation available to only one or more sectors that are sensitive, suffer from overcapacity or are in a crisis. The negative effects such aid might have on competing firms in the same sector in other Member States and the risk that aid would merely export unemployment to other Member States outweigh the positive effects in terms of reduction of the unemployment rate in the Member State granting the aid. The Commission thus decided to initiate the procedure provided for in Article 93(2) in respect of employment aid offered to *the shoe sector in Italy* under a general employment aid scheme to sectors suffering from an employment crisis.

However, aid to maintain jobs may be approved if it is granted to firms located in regions which, owing to the serious socio-economic problems they are experiencing, are eligible for regional aid under

122 OJ C 334, 12.12.1995, p. 4.

Article 92(3)(a) or if it is granted in the context of a rescue or restructuring plan.[123] Moreover, sectoral employment aid may be approved in regions with serious unemployment or if it is granted in subsectors which are experiencing economic growth and generating jobs.

204. In response to the urgent need to deal with the current unemployment crisis in the European Union and to support the promotion of structural employment policies, in particular by means of active labour market measures, the Commission is considering adopting an accelerated procedure for the notification of employment and training aid schemes. Under the accelerated procedure, the Commission will decide within twenty working days on notified aid measures.

2.3. Aid for environmental protection

205. The Community's environmental policy is based on the principle that the polluting firm should pay for the environmental damage it causes. Aid to firms for environmental protection is, in principle, not compatible with the "polluter pays" principle. However, it must be recognized that, in certain cases, such aid may be necessary either as an incentive for companies to implement measures for the protection of the environment going beyond existing mandatory requirements or in order to preserve the competitiveness of the industry when imposing new environmental requirements. Thus, under certain circumstances, aid for environmental protection may be justified. However, it is clear that such aid is capable of distorting competition between companies within the common market and is justified only if the beneficial effects of the aid on the environment outweigh the distortive effects on competition.

206. The Community guidelines on state aid for environmental protection[124] aim to strike a balance between the above-mentioned competition policy and environmental policy considerations. Thus, they confirm the "polluter pays" principle but at the same time provide that environmental aid may be authorized under certain conditions.

In line with these principles, the guidelines stipulate that, although operating aid is normally considered to be incompatible with the common market, in exceptional cases the Commission may authorize operating aid in the form of relief from environmental taxes as well as other compensatory measures, provided that the aid is necessary to achieve the environmental objectives set. Thus, the Commission considered that the relief from new energy taxes on *CO_2 and SO_2 emissions in favour of energy-intensive firms in Denmark* and the *Netherlands* and the *relief from tax on groundwater and waste in favour of certain firms in the Netherlands* could be approved since they had to be regarded as the inevitable price to be paid for being among the first countries to introduce a tax beneficial for the environment. Without some relief these taxes would so seriously damage the competitiveness of energy-intensive firms in the countries going ahead with the tax, in this case Denmark and the Netherlands, as to be impracticable. However, in order to ensure that these tax reliefs do not distort competition unduly and to encourage aid recipients to implement measures to reduce pollution, the Commission will always stipulate that the tax relief must be temporary and, in principle, degressive.

123 Guidelines on rescuing and restructuring firms in economic difficulty (OJ C 368, 23.12.1994).

124 OJ C 72, 10.3.1994.

2.4. Aid to small and medium-sized enterprises (SMEs)

207. The Commission continued in 1995 to apply the criteria of the Community guidelines on state aid for SMEs adopted by the Commission on 20 May 1992.[125] The framework provides for a review of its application by the Commission no later than three years after publication. The Commission therefore presented experts from the Member States, at a multilateral meeting held in July, with the conclusions of the review and noted the changes it believed to be necessary. The Commission's objective continues to be to authorize aid which provides impetus and overcomes specific handicaps affecting SMEs whilst limiting distortions of competition to a minimum. The discussion chiefly centered on clarification and simplification of the rules, updating the *de minimis* rule and the possibility of taking account of investment expenditure relating to technology transfers.

2.5. Export aid

208. Export aid, i.e. aid linked to the quantity[126] of goods sold in other Member States/EEA States or aid closely linked to the marketing and sale of goods in those countries (such as aid for the setting-up or operation of distribution networks or sales agencies for goods and services within the Community and the EEA), is clearly at odds with the objective of an internal market. Such aid does not promote any Community objective which can justify its direct distortive effects on competition. Thus, the Commission will not authorize export aid. However, in line with the favourable view it takes of financial assistance to SMEs, in particular in view of their limited know-how and difficulties in raising external financing, the Commission may authorize soft aid in favour of SMEs related to the development of export markets, such as aid for consultancy and marketing research, provided that the aid is a one-off operation and limited to the penetration of new markets. It may, under the same circumstances, approve aid to SMEs for participation in trade fairs.

209. European companies are not only in competition within the EC/EEA but also compete for investment on foreign markets, such as Eastern Europe, Russia and South-East Asia. The Commission believes that aid to firms for investments on foreign markets may distort competition and affect trade within the Community and therefore falls under the state aid rules of the EC Treaty. It is concerned that such aid measures may lead to business relocation and be available predominantly in the central and most-developed regions of the Community, thereby negating the efforts made under the Community's cohesion policy to reduce the gap between the more prosperous and the less prosperous regions of the Community. On the other hand, these aid measures may assist countries in Eastern Europe, the Baltic States and Russia in their efforts to convert to a market economy and may, therefore, be justified in certain cases. To establish a clear policy in this field the Commission decided to open the Article 93(2) procedure in respect of a number of internationalization schemes and invited Member States and third parties to submit their comments.

210. The Commission has continued its efforts to reach an agreement with Member States on a Communication on short-term export credit insurance, which will require Member States to withdraw public support from export credit insurance companies in respect of short-term commercial risks. The Commission expects that the outstanding problems will be resolved in the course of 1996 so that the Communication can then be adopted.

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125 OJ C 213, 19.8.1992, p. 2.

126 The Commission is considering whether to include an explicit exemption to this end in the "de minimis" rule under revision.

2.6. Rescue and restructuring aid

211. The Commission continued to apply the new guidelines on rescuing and restructuring firms in economic difficulty.[127] Without strict control, rescue and restructuring aid may be used by Member States to sustain ailing companies artificially, with the risk that necessary structural adjustments in the internal market will be frustrated or unduly delayed and the burdens of such adjustments shifted onto viable companies. However, rescue and restructuring aid may be warranted, for instance, on the basis of social or regional policy considerations, and the main objective of the guidelines is to strike a reasonable balance between such considerations and the creation of a common market with free and undistorted competition.

212. The purpose of rescue aid is to maintain a firm in operation temporarily while an appropriate restructuring plan is drawn up. A rescue aid may therefore be granted for only a limited period of time, normally no more than six months. The Commission considered that the guarantee with a duration of eighteen months granted by the Spanish Government to *Gutierrez Asunce Corporacion (Guascor)* for commercial loans did not meet the conditions of rescue aid.

213. Under the guidelines, the Commission makes the approval of restructuring aid subject to strict conditions. In particular, the aid should normally be a one-off operation. It must be linked to a restructuring plan capable of restoring the long-term viability of the firm within a reasonable period of time and on the basis of realistic assumptions as to its future operating conditions, so that further aid will not be necessary. The Commission considers this to be a sine qua non for the approval of restructuring aid.[128] In view of the fact that certain *German guarantee and soft-loan schemes for the rescue and restructuring of firms in difficulty* did not, in principle, exclude the repetitive provision of aid for such operations in favour of the same firm, the Commission reserved its right to examine such repetitive aid individually. Similarly, as the restructuring plan for *SANTANA Motor S.A.*, a subsidiary of SUZUKI Motor Corporation Group, was vague and unconvincing and did not aim to restore the long-term viability of the firm, the Commission could not approve the aid which the Spanish Government intended to grant under that plan and decided to institute the investigative procedure of Article 93(2) EC.

214. In order to offset as far as possible adverse effects on competitors, it is a condition for authorizing restructuring aid to firms operating in sectors suffering from structural overcapacity that the recipient firm reduce capacity in a genuine and irreversible way. In its approval of restructuring aid to the Italian fertilizer company *Enichem Agricultura S.p.A.*, the Commission emphasised the implementation of an irreversible reduction in the company's production capacity and decided, moreover, that this condition for approval had to be respected until such time as the effects of the aid on the competitive situation in the Community were insignificant. However, it was unable to approve a state guarantee in favour of the Spanish company *Guascor* since the restructuring plan for the company did not seem to provide for reductions in capacity in at least one of its product sectors in which there is overcapacity in the EC.

The Commission cannot itself impose a condition of privatisation on an undertaking that receives aid for restructuring purposes. However, a commitment from a Member State to privatize the recipient of aid may be a decisive element for the Commission in assessing the future viability of the company

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127 OJ C 368, 23.12.1994, p. 12.

128 See also the Community guidelines on state aid to the aviation sector (OJ C 350, 10.12.1994, p. 5).

without the need for further aid. Thus, in its decision on the compatibility of the restructuring aid to the Italian fertilizer company *Enichem Agricultura S.p.A.*, the Commission took account of the commitment made by the Italian Government to privatize the company.

2.7. Treuhandanstalt

215. In January the Commission decided on the terms applicable for 1995 for privatization aid in the new *Länder*. Such terms had previously been defined in 1991[129] and 1992[130]. Following the dissolution of the *Treuhandanstalt*, the Commission decided that the procedures and assessment criteria applying to privatizations in 1995 should be more in line with those applicable for other Member States. After the transition year 1995 no special rules would exist.

The Commission investigated several individual cases of aid for the privatization of companies in the new *Länder*. By far the most important was the privatization of the petrochemical plants of *BSL* (Buna, Sächsische Olefinwerke, Leuna) to Dow Chemical. In November, the Commission took a final decision allowing aid of ECU 5 billion (DM 9.5 billion) for the restructuring of BSL as an integrated complex.

3. Regional aid

216. The Commission continued its review of the schemes in force, their arrangements and the maps of the regions to be regarded as eligible for regional aid (in accordance with the principles of a reduction in population coverage and consistency with the Structural Fund maps). Decisions were taken for the Netherlands, Belgium (excluding Hainaut), Spain and Italy. The whole review exercise is thus almost over with only one country's still having to revise its map. As regards the three new Member States (Austria, Sweden, Finland), the Commission approved and adopted the maps drawn up by the EFTA Surveillance Authority in 1994 in the context of the European Economic Area. The Commission also continued to examine, under Articles 92 and 93 of the Treaty, the compatibility of Structural Fund assistance for various Community objectives and initiatives.

D - Procedures (rights of complainants)

217. In its judgment of 28 September 1995 in Case T-95/94 *SYTRAVAL v. Commission*, the Court of First Instance annulled the Commission's decision of 31 December 1993 rejecting a complaint in respect of alleged state aid in favour of Sécuripost, a subsidiary of the state-owned French postal administration, which operates in competitive markets. The CFI considered that the Commission had not provided sufficient reasoning for the rejection of a series of statements by complainants alleging preferential treatment of Sécuripost.

The significance of this judgment lies in the statements made by the CFI in respect of the rights of complainants in such procedures. The CFI stated that the Commission must examine impartially and exhaustively all allegations made by complainants and cannot impose on the complainant the burden of proof concerning the existence and (in)compatibility of state aid. Otherwise, complainants would be required to obtain information in support of their allegations which in most cases they would not

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129 XXIst Competition Report, point 249.

130 XXIInd Competition Report, point 349.

be able to collect without the Commission's acting as an intermediary. Therefore, the Commission cannot justify the lack of sufficient reasoning or the failure to examine certain allegations on the grounds that the complainant has not provided sufficient information. The conclusions in *SYTRAVAL* confirm the CFI's judgment of 18 September 1995 in Case T-49/93 *SIDE v. Commission*.

218. There are two stages in the Commission's procedure for the examination of state aid measures: the preliminary examination of the measure, and the opening of the procedure provided for in Article 93(2) EC in cases where the Commission, following the preliminary examination, still has doubts as to the compatibility of the measure with the common market. Whereas the Treaty provides for a procedure whereby third parties are invited to submit their comments in the procedure opened under Article 93(2), this is not the case in respect of the preliminary examination. When the compatibility of an aid with the common market can be established without further examination, it does not appear necessary to alert third parties before the decision of the Commission. Therefore, it has been the consistent practice of the Commission not to grant third parties, including complainants, a right to be heard during the preliminary examination. The European Court of Justice has supported this position in a number of judgments.[131] However, further to the requirement to examine impartially and exhaustively all the allegations made by the complainant and to state the reasons for its decision in SYTRAVAL, the CFI imposes an obligation on the Commission, under certain circumstances, to initiate a contradictory procedure with complainants in cases involving difficult questions as to the determination of whether or not measures are state aid before the Article 93(2) procedure has been opened. The judgment seems to impose additional obligations on the Commission in its examination of complaints in cases giving rise to doubts about the existence of aid, and to go against the established case-law of the European Court of Justice. Therefore, the Commission has appealed against this judgment to the ECJ.

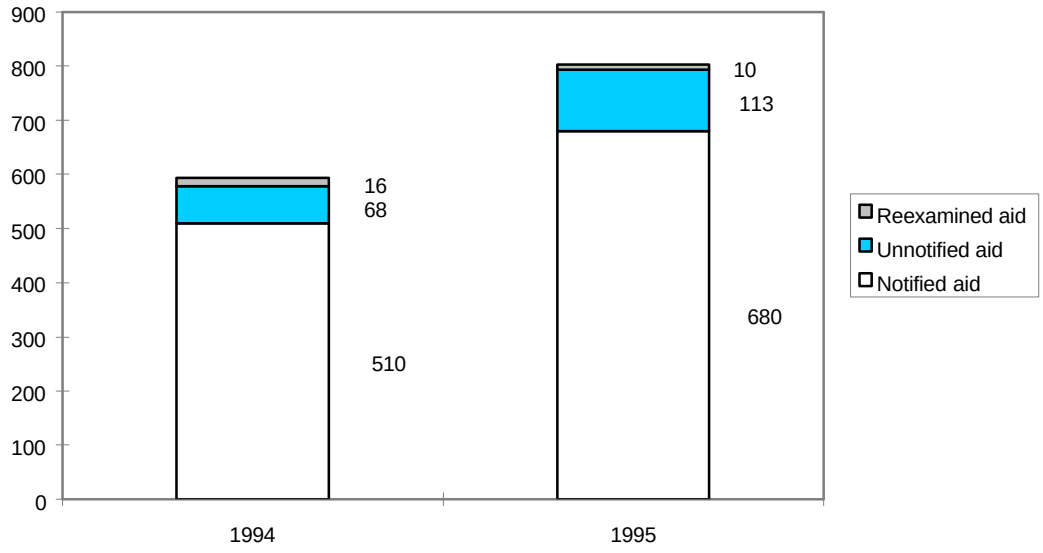
E - Statistics

219. Over the year, the Commission registered 680 notifications of new aid measures or changes to existing aid measures, and 113 cases of unnotified aid.[132] In the same period, it decided in 504 cases not to raise objections in 504 cases. In 57 cases it decided to initiate the procedure provided for in Article 93(2) of the EC Treaty or in Article 6(4) of Decision 3855/91/ECSC. This detailed analysis procedure resulted in 22 positive final decisions, 9 negative final decisions and 5 conditional final decisions. Lastly, the Commission decided to propose appropriate measures under Article 93(1) of the EC Treaty in respect of 6 existing aid systems.

131 See in particular Case 84/82 *Germany v Commission* [1984] ECR 1451.

132 These figures do not include aid cases in agriculture, fisheries, transport and coal.

Graph 1: New cases in 1995



Graph 2

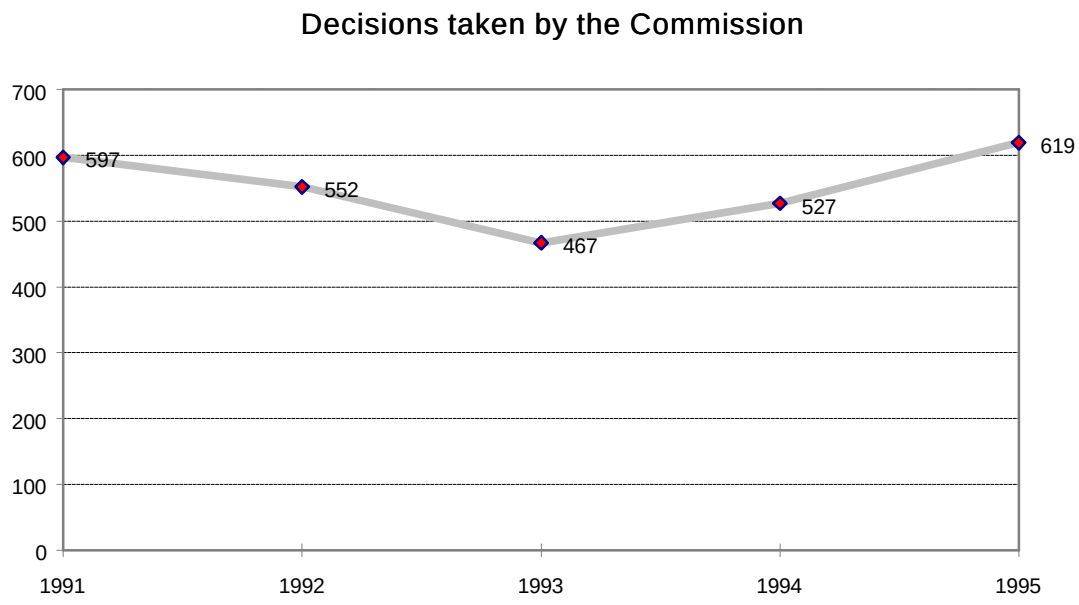


Table 1: Decisions by Member State

Austria	22
Belgium	15
Denmark	17
Finland	2
France	51
Germany	209
Greece	9
Ireland	3
Italy	93
Luxembourg	1
Netherlands	34
Portugal	12
Spain	110
Sweden	6
United Kingdom	35
EUROPEAN UNION	**619**

V - International activities

A - European Economic Area

220. After Austria, Finland and Sweden joined the European Union on 1 January 1995, Norway and Iceland were the only remaining EFTA signatories of the Agreement on the European Economic Area (EEA Agreement). On 1 May 1995 they were joined by Liechtenstein.

Cooperation in matters of competition resulting from the EEA Agreement, supplemented by informal but systematic consultation measures established by common accord between the Commission and the EFTA Surveillance Authority,[133] was maintained with the three countries.

In addition, in accordance with Article 172 of the Treaty of Accession of Austria, Finland and Sweden to the European Union,[134] the aid cases relating to the new Member States that were being processed by the EFTA Surveillance Authority were forwarded to the Commission (some 80 cases under Articles 53 and 54 of the EEA Agreement and about 400 aid cases).

B - Central and Eastern Europe, Baltic States, New Independent States and Mediterranean countries

1. Central and Eastern Europe

221. As part of the pre-accession strategy for the six associated countries of Central and Eastern Europe (CEECs),[135] the Essen European Council of December 1994 stressed the importance not only of competition policy but also of facilitating its enforcement. Among other things, it charged the Commission, together with the Member States, with setting up a competition policy training programme. The Commission and the Member States' authorities have met several times and managed to improve coordination of their actions and to launch a significant joint action. Officials from the CEECs and from the Baltic States attended a two-week collective training period at DGIV in September (financed by the PHARE programme) and then individually visited a national competition authority in the EU. The action was widely acclaimed by the participants.

Technical assistance under the PHARE programme has so far centred mainly on anti-trust law aspects. In 1996, it will focus in particular on monopolies, exclusive rights and state aid, and will pay particular attention to effective enforcement of legislation.

The Commission's White Paper providing guidelines on the integration of the CEECs[136] underlines the importance of a viable competition policy for economies in transition and lays down four pillars

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133 22nd Competition Report, points 85 to 89 and 24th Competition Report, point 399.

134 OJ C 241, 29.8.1994.

135 The Europe Agreements with Romania, the Czech Republic, Bulgaria and the Slovak Republic entered into force on 1 February 1995; those with Poland and Hungary entered into force on 1 February 1994, The Agreements' substantive competition rules are basically those of the Treaty of Rome; see XXIVth Report on Competition Policy, point 401.

136 Commission White Paper on the preparation of the associated countries of Central and Eastern Europe for integration into the internal market of the Union (May 1995), endorsed by the Cannes European Council in June 1995.

(anti-trust, mergers, state aid and state monopolies/exclusive rights) for the approximation of legislation which the associated countries should undertake. Substantial progress has been made in this area as regards anti-trust; all but one associated country have a competition law authority. Upon accession, these countries will accept all of the Community legislation in force ("acquis communautaire") and, in the meantime, technical assistance is being provided.

As regards the rules for implementing the Europe Agreements, those for applying the competition rules to undertakings are in the process of being adopted by the Association Councils while a proposed set of rules is being discussed for state aid. One country has agreed to the set of rules and the formal approval process is being launched. Another country has announced its agreement.

The Commission has made several efforts to publicize competition policy for all economic agents in these countries. At the Brno conference in April, the Director-General for Competition spoke to a wide audience, including competition officials and business representatives, about the international dimension of competition policy and the importance of cooperation between competition authorities. At the Visegrad Conference on 19-21 June, heads of the competition authorities in the CEECs and DGIV officials discussed specific competition problems of economies in transition and also the interaction of anti-trust and state aid policies; a joint action programme was agreed upon. It was agreed inter alia to establish a network for electronic data exchange. In the autumn the Director-General for Competition visited Bulgaria and discussed issues relating to state aid and monopolies.

2. Baltic States, Slovenia and New Independent States

222. As part of the pre-accession strategy for the Baltic States (Estonia, Latvia and Lithuania), the Free Trade Agreements (FTAs), which contain the same competition rules as those in the Europe Agreements with the CEECs, came into force on 1 January 1995. They will soon be replaced by the Europe Agreements signed in June; these three countries now must fulfil the same conditions for inclusion in the pre-accession strategy which the EU has set for the CEECs. The same implementing rules as those for the CEECs are proposed for the Baltic States. One country has notified its basic agreement both with the rules on undertakings and with those on state aid. Negotiations with Slovenia for a Europe Agreement are under way.

Partnership and cooperation agreements have been signed with Russia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan and Moldova; although the competition rules agreed upon are less stringent than those in the CEEC agreements, the agreements also include a clause on the approximation of legislation. Cooperation has begun, in particular by means of the provision of technical assistance under the TACIS programme. In this context, financing was provided for an international conference organized by the Russian competition authority in the autumn in Moscow and attended by the Deputy Director-General for Competition. A working group with Russia met in May and again in December. It reviewed ways of embarking on the practical implementation of the partnership and cooperation agreement (PCA).

3. Mediterranean countries and Mercosur

223. Association agreements have been signed with Tunisia, Morocco and Israel and similar agreements are currently being negotiated with Jordan, Egypt and Lebanon. These contain or are expected to contain competition rules as provided in the Europe Agreements. The agreement for establishing a customs union with Turkey, which has been signed and is in the process of ratification,

contains extremely stringent obligations relating to the approximation of legislation, particularly competition law, which must be fulfilled within specified periods.

It is to be noted that all these bilateral agreements have triggered important moves in the direction of policy harmonization. This is compatible with the recommendations of the group of experts on competition policy in the new trade order (see below).

Negotiations with Mercosur are under way and will extend to some aspects of competition.

C - North America

224. The Agreement between the European Community and the United States on the application of their competition laws was approved by the European Council on 10 April. At the same time, the Council approved the text of a letter addressed to the United States clarifying the European Community's interpretation of certain provisions of the Agreement.[137]

This letter, reflecting the text of Commission statements made to the Council, clarified two issues.

Firstly, information covered by Article 20 of Regulation No 17 or by equivalent provisions of other regulations in the field of competition may not be communicated by the Commission to the US anti-trust authorities save with the express agreement of the source concerned.

Secondly, each Party ensures the confidentiality of all information provided in confidence by the other Party and will use all the legal means at its disposal to oppose the disclosure of such information. The Commission, after notifying the US competition authorities, will inform the Member State(s) whose interests are affected of notifications sent to the Commission by the US anti-trust authorities and, after consulting them will also inform the Member State(s) concerned of any cooperation or coordination of enforcement activities. In the latter regard, however, the Commission will respect a request by the US authorities not to disclose the information which they provide in cases where this is necessary to ensure confidentiality.

The approval of the Agreement by the Member States has imparted the political impetus and created the legal certainty necessary for a redoubling of cooperation efforts between the EC and the US.

Notifications from the US to the EC under the Agreement have continued regularly through the year with a total of 35 altogether (21 from the Department of Justice and 14 from the Federal Trade Commission), 21 of which were in merger cases. The notifications from the EC to the US resumed after 10 April, following the short interruption due to uncertainty about the legal position of the Agreement under Community law[138]. The EC notified the US on 43 occasions in 1995, of which 30 involved merger cases.

The biannual high-level meetings between the Commission and the US anti-trust authorities resumed on 13 November after a break of two years. The discussions concentrated on the effectiveness of current bilateral cooperation and a number of areas were identified for further study. Future bilateral

137 OJ L 95, 27.4.1995, as corrected by OJ L 131, 15.6.1995.

138 XXIVth Competition Report, point 413.

and multilateral cooperation was also discussed in the context of the report of the group of experts on competition policy in the new trade order and of the adoption by the United States of the International Antitrust Enforcement Assistance Act of 1994. A significant part of the meeting was also given over to innovation markets and their relationship with competition policy.

On 23 January the Council authorized the Commission to open negotiations with Canada on a bilateral cooperation agreement in the area of competition.[139] A first round of negotiations under this authorization was held on 27 January, when good progress was made in defining the shape of a draft agreement. The draft agreement was discussed by the Council Group on Economic Questions on 6 March. It is expected that the negotiations will be concluded in the first part of 1996.

An informal meeting between the Commission and the Canadian Bureau of Competition Policy was held on 14 November to exchange views on recent developments in competition policy in the EU and Canada.

D - Japan

225. Relations between DG IV and the Japanese Fair Trade Commission (JFTC) remained close during the year under review.

On 22 November the third seminar held jointly by the two competition authorities took place in Tokyo. The seminar topics concerned the role of competition policy in a globalized economy and the scope of competition policy.

The annual bilateral meeting between DG IV and the JFTC was held on 24 November. The two competition authorities discussed bilateral relations and subjects of common interest such as the liberalization and internationalization of the competition rules. They also reported on the main legislative developments in their respective areas and on the implementation of the competition rules.

Both formal and informal contacts with the Japanese authorities were intensified in 1995. DG IV was thus able, under the deregulation plan adopted in May by the Japanese Government, to put forward its requests to that Government for a broader and more rigorous application of the competition rules, the abolition of virtually all the exceptions to those rules and the strengthening of the competition authority (JFTC).

E - Australia and New Zealand

226. Bilateral contacts with Australia were pursued on a number of occasions during 1995. Topics discussed during these informal meetings included recent policy developments in the EU and Australia, in particular in the area of deregulation, and the reform of the Australian Competition Act.

139 XXIVth Competition Report, point 414.

F - Multinational organizations and other international issues

1. OECD

227. DG IV played an active part in the work of the OECD on competition matters. The main areas of discussion were the convergence of laws, international cooperation and the relationship between competition policy and international commercial policy, in the context of the liberalization of trade. Other topics included the application of the competition rules to the liberalized sectors (telecommunications and maritime transport); lastly, particular attention was paid to certain individual or sectoral aspects of competition policy (failing firm and efficiency claims, vertical integration in the cinema industry, competition policy and environmental policy).

DG IV represents the Commission in the OECD Industry Committee's Working Party on Public Support Measures. By way of its expertise, it continued to contribute to the ongoing OECD survey on public support in the manufacturing sector.

2. World Trade Organization

228. Negotiations in the sectors where agreement could not be reached by the end of the Uruguay Round were actively pursued, especially as regards basic telecommunications services. The European Union, within the framework of the negotiations, put forward a proposal which places emphasis in particular on a timetable for external liberalization that is compatible with liberalization within the European Union, as well as guarantees in terms of the independence of regulators.

In the state aids field, all Member States agreed to the Commission's proposal for a joint notification and reporting procedure to the Commission and the World Trade Organisation, thereby modifying the existing standardized system of notification and annual reporting of state aid[140]. As a result of this modification, the notification of subsidies as required by the WTO Agreement on Subsidies and Countervailing Measures and the above annual reporting is carried out in one step. The Commission is confident that this new procedure will alleviate the administrative burden on Member States and ensure a high level of transparency.

3. UNCTAD

229. DG IV continued to play an active part in the work of UNCTAD on restrictive trade practices. In particular, it took part in the third United Nations Conference which reviewed all the principles and rules agreed by UNCTAD in this area.

4. International cooperation

230. The group of experts convened by Mr Van Miert in 1994 to discuss the prospects for closer cooperation between competition authorities presented its report in July 1995.[141] It made a number of

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140 Commission letter D/20500 dated 2 August 1995 replacing letter SG(94) D/2484 dated 22 February 1994.

141 Competition policy in the new trade order: strengthening international cooperation and rules (COM(95) 359 final).

recommendations. Having briefly examined the possibility of establishing an international competition authority and a worldwide competition code, it put this to one side as not being realistic in the short or medium term. Instead it felt that one should commence with the introduction of an adequate set of competition rules by those countries not yet having one. In this regard the group recommended that assistance should be provided by those countries which have already acquired experience in this area.

The group proposed a dual approach. First, it recommended a strengthening of bilateral cooperation between competition authorities with, as a priority, a deepening of existing cooperation with the United States and an extension of bilateral cooperation to other partner countries.

The second but principal recommendation of the group was the elaboration of a plurilateral cooperation framework as the group believes that, even if it is strengthened, bilateral cooperation cannot resolve all the problems facing competition authorities or create effective momentum for enforcing competition rules in third-country markets. A plurilateral agreement would include all the elements already incorporated in bilateral agreements, to which would be added a set of minimum competition rules, a binding positive comity instrument and an effective and progressive dispute-settlement mechanism.

On 17 July the Commission authorized the presentation of the report to the Council and to Parliament with a view to launching discussions with the Union's main partners and within the international organizations concerned.

At a meeting of the Directors-General of the Member States' competition authorities on 17 October, it was agreed that a working group should be established to consider the technical aspects of some of the group's recommendations.

This report has also been presented to the European Parliament, to the Council's Article 113 Committee and to the Community's OECD partners. The initial reaction has been positive.

VI - Information policy

231. During 1995, the Commission continued its active public information campaign on competition policy. As in the past, press releases on competition-related issues accounted for almost one third of the total number of Commission press releases. With its limited resources, DG IV's Information Service replied during the past year to more than 1000 questions from the public, forwarding relevant documentation or providing useful advice. Owing to a lack of resources, most information enquiries have in recent months been answered by way of standard letters containing an updated list of *Community publications on competition available to the public*[142] (including studies and speeches by DG IV officials). DG IV, in collaboration with the Office for Official Publications, published during 1995 several reference books on competition law, while the *EC Competition Policy Newsletter*, issued three times per year and with a print-run of 17 000 copies, has established itself as a leading source of information in the field. For 1996, several new publications are under preparation and DG IV plans to introduce data on EUROPA, the European Institutions' host on the World Wide Web.[143]

142 For more information and to obtain the latest list of *Community Publications on Competition available to the public*, contact DG IV's Cellule Information, C150 00/158, Wetstraat, 200 rue de la Loi, Bruxelles B-1049 Brussel, tel. (+32-2) 295 76 20, fax. (+32-2) 295 54 37, Electronic mail: X400: c=BE;a=RTT; p=CEC;o=DG4;s=INFO4, Internet: Info4@dg4.cec.be

143 http://europa.eu.int

Annex : Cases discussed in the report

1. Articles 85 and 86 and Article 90

Case	Paragraph numbers
Brussels National Airport	120
Atlas-Phoenix	57
ATR/BAe	61-62
BASF/Accinauto	36
Coapi	89
Gas Interconnector	82
ICG/CCI Morlaix	40,43
Inmarsat-P	59
Lufthansa/SAS	77-78
Omnitel Pronto Italia	109
Organon	37-38
Pelikan/Kyocera	87
TACA	73
Unilever/Mars	40,41
Van Marwijk/FNK-SCK	40,42
Vebacom	111

2. Merger control

Case	Paragraph numbers
ABB/Daimler Benz	139
Crown Cork and Seal/Carnaud MetalBox	141
Glaxo/Wellcome	142
Lyonnaise des Eaux/Northumbrian Water	145
Mercedes Benz/Kässbohrer	135,137
Nordic Satellite Distribution	133
Orkla/Volvo	140
Perrier	147
Repola Corporation/Kymmene	144
RTL/Veronica/Endemol	134
Siemens/Italtel	135-136
Swissair/Sabena	76,143

3. State aid

Case	Paragraph numbers
Air France	177, 178
Andalusian Development Agency	159
AOM	181
BSL (Buna, Sächsiche Olefinwerke,Leuna)	215
CGM	185
Chrysler	171
Crédit Lyonnais	197
DAF Belgium	168
DAF Netherlands	168
Danish energy package	202, 206
EM-Filature	159
Employment aid scheme in Sweden	202
Energy taxes in the Netherlands	206
Enichem Agricultura S.p.A.	159, 214
Ferries Golfo De Viscaya	184
Ferrovie dello Stato S.p.A.	189
Fiat Mezzogiorno	171
Footwear industry in Italy	203
Ford Genk	167
Ford Valencia	169
Ford/VW Setubal	171
French postal administration	198
Guascor (Gutierrez Asunce Corporacion)	212
Kimberley-Clark	158
Lech-Stahlwerke GmbH	159
Leuna-Werke GmbH	162
Lisnave	159
Lufthansa	180
Maschinenfabrik Sangerhausen GmbH	160
NedCar-Volvo/Mitsubishi	171
Opel Austria	169
Opel Eisenach	171
ROSCOs	189
Rover	171
Santana Motor SA	213
SEAT-Volkswagen	168
Siemens Nixdorf AG/Mainz	157
SNF	171
Swissair-Sabena	179
Sytraval	217
TAP	177
Textilwerke Deggendorf GmbH	154
Tubacex	157, 160

Part Two

Report on the application of the competition rules in the European Union

(Report prepared under the sole responsibility of DG IV in conjunction with the Twenty-fifth Report on Competition Policy, 1995)

TABLE OF CONTENTS:
APPLICATION OF COMPETITION RULES IN THE EUROPEAN UNION

I - Antitrust: Articles 85 and 86 of the EC Treaty - Articles 65 and 66 of the ECSC Treaty

A - Case summaries

1. Prohibitions

1.1. Horizontal agreements

COAPI

Following a complaint, the Commission adopted a Decision in which it ordered the *Colegio Oficial de Agentes de la Propiedad Industrial* (Official Association of Industrial Property Agents - COAPI), firstly, to suspend the provisions in its internal regulations which grant its general meeting the power to fix compulsory minimum scales of fees and, secondly, to discontinue the decisions taken annually by the general meeting concerning the establishment of the minimum scales of charges.

The COAPI is the professional association of industrial property agents in Spain and includes all such agents practising in Spain. It comes within a general law which defines the "colegios" (professional associations) as legal persons governed by public law and supported by the law and recognized by the State, having their own legal personality and capacity to attain their objects, which are the regulation of the activities of the profession, its sole representation and the defence of the professional interests of its members.

On the basis of the established case-law of the Court of Justice, under which the concept of undertaking includes any entity exercising an economic activity, regardless of its legal status and the way in which it is financed, the Commission deemed the members of the COAPI to be undertakings and the COAPI to be an association of undertakings within the meaning of Article 85 of the Treaty.

The infringements relate to the scales of charges for services provided by COAPI members to non-resident clients who wish to obtain an industrial property right in Spain and to the minimum scales of charges applicable to clients resident in Spain relating to services abroad.

The restrictions have an appreciable effect on trade between Member States since the members of the professional association enjoy, as a group, a monopoly of services provided to clients resident abroad and since, as far as services provided to clients resident in Spain are concerned, they have a dominant position due to their specialization and the identifiable status of COAPI members with clients.

The Commission considers that, while it is true that quality of service is an essential feature of competition between members of the professions, it should not be coupled with a prohibition on price competition.

The conditions of entry to the profession, especially the high moral standards required of COAPI members, constitute sufficient guarantees of the quality of their services. Collective fixing of minimum scales of charges is thus not necessary to guarantee the quality of such services.

The existence of a general law which allows professional associations in Spain to regulate minimum fees charged by the professions does not prevent the Commission from applying Article 85(1) of the EC Treaty to the relevant decisions of the COAPI. The Court of Justice has on several occasions confirmed that the legal basis of agreements does not affect the application of this provision of the Treaty.

This Commission decision shows clearly that the professions do not fall outside the scope of the competition rules laid down in the Treaty even if their restrictive conduct is authorized under national laws.

The decision will also provide a basis for continuing to apply the competition rules to the professions as and when cases arise and specifically to put an end to price agreements and certain restrictions of competition which are not necessary to guarantee ethical standards, professional dignity, the standing of the profession or the quality of service.

Dresser /Ingersoll /General Electric/ Nuovo Pignone

On 2 September 1994 Dresser Industries, Ingersoll-Rand, General Electric and Nuovo Pignone notified a proposed acquisition by Dresser and Ingersoll-Rand of a minority shareholding in Nuovo Pignone of 12% each from General Electric. Both Dresser and Ingersoll-Rand, through their joint ventures Ingersoll-Dresser Pump and Dresser-Rand, are direct competitors of Nuovo Pignone.

Following intervention by the European Commission, the two American companies, Dresser and Ingersoll-Rand, have withdrawn their plans to participate as minority shareholders in the Nuovo Pignone, which is still in the hands of General Electric.

Inquiries had shown that the production of Dresser-Rand and of Nuovo Pignone in the field of process gas compressors more or less overlaps. They are leaders in compressor technology worldwide. Cooperation in this field might have led to an unacceptably strong position in some fields of application such as natural gas transmission and distribution.

Trans-Atlantic Conference Agreement (TACA)

On 27 June the Commission decided to send a statement of objections to the 16 shipping lines which are parties to the TACA, announcing its intention to withdraw the immunity from fines conferred by notification of the agreement regarding their price-fixing activities on the inland section of the multimodal transport which they supply.

On 5 July 1994 the parties to the TACA notified the Commission of the agreement pursuant to Article 12 of Council Regulation No 4056/86, seeking individual exemption under Article 85(3) of the EC Treaty. The TACA is a revised version of the Trans-Atlantic Agreement (TAA). On 19 October 1994 the Commission adopted a decision prohibiting the TAA.[1]

The TACA notified to the Commission contains price agreements relating to inland transport services supplied within the territory of the Community to shippers as part of a multimodal transport operation for the carriage of containerized cargo between northern Europe and the United States of America.

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1 OJ L 376, 31.12.1994, p. 1.

This type of inland price-fixing agreement has been dealt with by the Commission not only in the TAA decision, but also in the decision[2] which it adopted on 21 December 1994 in respect of the FEFC, the liner conference operating between Europe and the Far East. It was also examined in more general terms in the report on the application of the competition rules to maritime transport, which the Commission presented to the Council in June 1994.[3]

In those decisions, the Commission took the view that such practices did not qualify for the block exemption granted to liner conferences by Regulation No 4056/86, since the block exemption covered only the maritime, and not the inland activities, of liner conferences.

The Commission further took the view that the practices infringed Article 85(1) of the EC Treaty and did not qualify for individual exemption under Article 85(3) and under Article 5 of Council Regulation No 1017/68.

In the light of these precedents, the Commission takes the view, on the basis of its provisional examination, that the TACA's inland price-fixing agreements constitute a clear and serious infringement of Article 85(1) and are not eligible for individual exemption under Article 85(3) of the EC Treaty.

Since the conditions for withdrawing immunity from fines are met, the Commission concluded that the relevant procedure should be initiated by sending a statement of objections informing the TACA members accordingly.

Van Marwijk e.a./FNK, SCK

The parties concerned

FNK (Federatie van Nederlandse Kraanverhuurbedrijven) is an association of Dutch firms which hire out mobile cranes. Its object, as laid down in its statutes, is to promote the interests of crane-hire companies, particularly of FNK members, and to foster contact and cooperation in the broadest sense between members. In mid-1994, the association had 196 members.

SCK (Stichting Certificatie Kraanverhuurbedrijf) was set up on the initiative of FNK in 1984 in order to guarantee, through a certification system, the quality of cranes and equipment used in the crane-hire business, as well as that of the firms involved and of their staff and plant. In mid-1994, 190 firms participated in SCK, mostly firms which were also members of FNK.

The complainants are firms which hire out mobile cranes. At the time that the complaint was lodged none of them was a member of FNK or affiliated to SCK. The complainants claim severe damage because of the prohibition on SCK participants' hiring cranes from them.

The market involved

Mobile cranes are employed, above all, in the construction, petrochemical and transport industries. In the crane-hire business, the hiring of extra cranes from other crane-hirers occurs on a large scale since it is a means of equipment rationalization and optimum capacity utilization. At the time of

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2 OJ L 378, 31.12.1994, p. 17.

3 SEC(94) 933 final, adopted by the Commission on 8 June 1994.

notification there were, according to FNK, about 350 crane-hire firms in the Netherlands, with a total turnover of some ECU 450 million. According to an independent survey of the sector carried out in 1990, the market share of FNK members and SCK certificate-holders was an estimated 78%. FNK and SCK estimate their market share in 1992 at about 51%. Because of transport difficulties, according to FNK, most cranes operate within a radius of about 50 km, which would limit the market in the Netherlands for firms from other Member States to areas near the Belgian and German borders.

The infringements of Article 85(1)

FNK

Until a national court's judgment in February 1992 the FNK's rules contained a requirement that members charge "reasonable" prices for hiring out cranes and apply the general conditions issued by FNK, including provisions relating to price. Under its statutes, expulsion may follow where a member acts in breach of the FNK rules. FNK published cost calculations and recommended rates based on them. These rates and the rates which crane-hire companies charge each other for the hiring of extra cranes were regularly discussed by companies hiring out cranes of certain categories. FNK was involved in those discussions. The jointly recommended prices, which may or may not have been observed in practice, make it possible to predict with reasonable certainty what the pricing policy of competitors would be. The system of recommended prices falls, in accordance with the Commission's decisions and the case-law of the Court of Justice, within the scope of Article 85(1) of the Treaty.

SCK

The SCK arrangements prohibited firms affiliated to SCK from hiring extra cranes from non-affiliated undertakings, the so-called "inhuurverbod". Participants which broke this rule faced expulsion from the system. Not only did the ban restrict the freedom of action of affiliated firms and, hence, competition between them, but it also considerably impeded access by third parties to the Dutch market. Firms established in other Member States were effectively shut out by means of the requirements imposed by SCK for participation in the system. The SCK certification system was in any case not completely open and does not permit the acceptance of equivalent guarantees from other systems. Seen in this context, the ban on hiring extra cranes was thus caught by Article 85(1). Because SCK firms hold substantial market shares the effects on the competitive structure on the market were appreciable.

The ban was only withdrawn by SCK when an interlocutory judgment by a Dutch court in October 1993 forced it to do so. The national court judgment was to remain in force until the Commission adopted the final decision.

Procedure and conclusions

The immunity from fines resulting from the notifications by FNK and SCK in early 1992 was withdrawn under Article 15(6) by Commission Decision 94/272/EC of 13 April 1994[4] stating that the "inhuurverbod" fell within the scope of Article 85(1) and that an exemption under Article 85(3) could not be granted, since the infringement was at least not indispensable. Subsequently the main procedure under Article 85(1) was continued. The Statement of Objections in the main procedure was sent on October 1994 and in their written reply FNK and SCK waived their right to have a hearing.

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4 OJ L 117, 7.5.1994, p. 30.

The Decision finds that FNK applied a system of recommended prices for nearly twelve years and that SCK closed off the crane-hire market in and around the Netherlands by prohibiting its participants from hiring extra cranes from non-participants. These are infringements of Article 85(1), and an exemption under Article 85(3) cannot be granted. The assessment of the "inhuurverbod" is made in its legal and economic context, in particular in the light of the certification scheme it is part of, which did not fulfil the conditions of openness and acceptance of other equivalent quality guarantee systems. The Decision requires FNK and SCK to end the infringements, in so far as they have not already done so, and imposes fines on each.

1.2. Vertical agreements

BASF/Accinauto

On 12 July, in a decision which finds that they infringed Article 85(1) of the EC Treaty, the Commission imposed a fine of ECU 2.7 million on the German car refinishing paint producer BASF Lacke+Farben (BASF L+F), a subsidiary of the BASF group, and a fine of ECU 10 000 on BASF L+F's exclusive distributor in Belgium and Luxembourg, Accinauto SA.

The case originated in a complaint to the Commission by two United Kingdom parallel importers of Glasurit car refinishing paints and associated products. The complainants alleged that the Belgian exclusive distributor, from whom both bought Glasurit products, had stopped supplying them in the summer of 1990 on the instructions of BASF L+F.

Following investigations carried out by Commission officials on the premises of BASF L+F, BASF Coatings and Inks (BASF L+F's UK subsidiary) and the Belgian distributor, the Commission concluded that the contractual obligation on the exclusive distributor to "pass on to BASF L+F any customer enquiries coming from outside the contract territory" constituted a restriction of competition. One consequence of this obligation was that it was not the exclusive distributor but BASF L+F which decided on the supply of parallel importers from other Member States.

This interpretation of the contractual obligation is also confirmed by the manner in which the parties consistently applied it in their commercial relations:

- in March 1986 the Belgian exclusive distributor obtained "exceptional permission" from BASF L+F to begin supplying the complainant;
- in June 1989 BASF L+F instructed its exclusive distributor to stop exporting and thus to terminate the exports initially authorized by BASF L+F;
- the exclusive distributor did not comply with this ban on continued supplies to the complainants from July 1989 to the end of May 1990. After that date, it did comply fully with its contractual obligation.

In setting the amount of the fines, the Commission took account of the fact that the infringement was liable to thwart one of the fundamental objectives set out in the Treaty, namely the integration of the internal market. The practices at issue were thus deemed to be a serious infringement of Community law.

The amount of the fine imposed on the Belgian exclusive distributor reflects the fact that the company is economically dependent on BASF L+F and that this dependence was used by BASF L+F to impose its economic interests.

Dunlop Slazenger/Newitt a.o. (All Weather Sports)

The Commission considers that any company which takes over all or substantially all of the activities of a company which has committed an infringement deserving a fine becomes liable for the fine. Following the judgment of the CFI of 28 April 1994 (Case T-38/92) the Commission considered that All Weather Sports Benelux was liable for the fine for the infringement of Article 85(1) committed by All Weather Sports BV (see Commission decision of 18 March 1992, OJ L 131, p. 32) since it took over the economic activities of All Weather Sports BV. However, because it appeared that All Weather Sports Benelux in the meantime had stopped all its activities, and had no assets, the Commission decided not to continue the proceedings.

1.3. Abuse of dominant position

Irish Continental Group v. CCI Morlaix

Acting on a complaint from the Irish ferry operator, Irish Continental Group, the Commission ordered interim measures on 16 May 1995, against the Chambre de Commerce et d'Industrie de Morlaix, Brittany, France. The Commission found that there was a prima facie case that the Chamber of Commerce had abused its dominant position as the operator of the port of Roscoff in Brittany by refusing ICG access to the port facilities there, in violation of Article 86 of the EC Treaty and that serious and irreparable harm for the applicant would result. The Commission ordered the CCI to grant ICG access to the port of Roscoff by 10 June 1995 (or as the parties might otherwise agree).

ICG applied to CCI Morlaix for access to Roscoff in November 1994 for the purpose of commencing a ferry service between Ireland and Brittany in May 1995. Following negotiations, the parties had agreed in principle on the question of access to Roscoff by 16 December 1994, for the season beginning 27 May 1995, and sailing schedules and a number of technical issues had been agreed.

Following the agreement in principle of December 1994, ICG announced its services to Roscoff and began to take bookings. However, in January 1995 CCI Morlaix indicated its wish to suspend negotiations.

Following ICG's complaint to the Commission, further negotiations took place but no agreement was reached between the parties.

The Commission decided that, prima facie, the behaviour of CCI Morlaix amounted to an unjustified refusal to supply services.

The port of Roscoff is the only port capable of providing adequate port facilities in France for ferry services between Brittany and Ireland, a market which accounted for around 100,000 passengers in 1994. At the time of the Decision, only one ferry company, Brittany Ferries, operated between Ireland and Brittany.

The interim measures obliged CCI Morlaix to take the necessary steps to allow ICG access to the port of Roscoff from 10 June 1995 until the end of the Summer season, pending a final Commission decision in the case. However, the parties subsequently agreed on a 5 year contract beginning from 14 June 1995, and ICG withdrew its complaint.

Interim measures are not justified merely to allow a new entrant to enter a market. In this case the Commission considered that Irish Ferries had been led to believe that it could begin operations, and that CCI Morlaix was largely responsible for the situation which developed as a result.

2. Authorizations

2.1. Horizontal agreements

a) Strategic alliances

Atlas/Phoenix[5]

During the course of 1995, the Commission reached an advanced stage in its examination of the second strategic alliance in the telecommunications area formally notified under Regulation 17, involving the French and German public telecommunications operators (TOs), France Telecom (FT) and Deutsche Telekom (DT) respectively, and the US Sprint Corporation. The first strategic alliance notified to the Commission, the CONCERT joint venture between British Telecommunications and the US MCI Corporation, was cleared by means of a formal Commission decision in 1994[6]. The arrangements involving FT, DT and Sprint were notified as two separate but linked transactions, the ATLAS set of agreements, notified on 16 December 1994, and the PHOENIX set of agreements, notified on 29 June 1995. Both transactions have been considered to be structural joint ventures qualifying for accelerated treatment.

ATLAS brings about a joint venture owned 50% by France Telecom (FT) and 50% by Deutsche Telekom (DT) and is also the instrument of DT and FT's participation in the PHOENIX transaction. The ATLAS venture will be structured at two levels: a holding company established in Brussels, Atlas S.A., will be incorporated as a société anonyme under the laws of Belgium. Atlas S.A. will have three operating subsidiaries, namely one in France (Atlas France), one in Germany (Atlas Germany), and one for the rest of Europe. ATLAS, both at the Europe-wide and national level, targets two separate product markets for value-added telecommunications services, namely the market for advanced corporate telecommunications services (data services, value-added application services such as messaging and video-conferencing, intelligent network services and integrated very small aperture satellite -VSAT-services) and the market for standardised low-level packet-switched data communications services.

The PHOENIX agreements comprise two main transactions: (i) FT and DT will each acquire an equity stake of approximately 10% in Sprint and (ii) ATLAS and Sprint will create a joint venture, PHOENIX, for the provision of enhanced and value -added global telecommunications services. Specifically, the markets which PHOENIX will address are (i) the market for corporate advanced telecommunications services, both globally and regionally, (ii) the global market for travellers services such as calling cards and (iii) the market for carrier's carrier services, i.e. the lease of transmission capacity and the provision of related services to third-party telecommunications traffic carriers, by nature an international market.

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5 The Phoenix transaction is now called Global One.

6 Commission Decision of 27 July 1994, OJ L 223, 27.8.1994, P. 36.

The ATLAS and PHOENIX arrangements as notified presented a number of concerns from the competition point of view, in particular with respect to the home markets of the EU partners to the transactions, where FT and DT hold legal and de facto dominant positions with respect to a number of telecommunications services and the provision of infrastructure. During the course of the notification procedure, these concerns were addressed either through amendments to the original agreements or by way of undertakings given by the parties to the Commission. Also, the general stage of liberalization of the French and German telecommunications markets is crucial to the Commission's assessment of the notified transactions, and commitments from the respective governments were a pre-requisite for the Commission to consider taking a favourable view with respect to the agreements.

The following specific commitments, as well as basic undertakings, were made by the parties and the French and German governments so as to enable the Commission to launch the formal procedure intended to lead to the adoption of a positive decision:

- the French and German governments have undertaken to do what is in their power to liberalize alternative telecommunications infrastructure for the provision of liberalized telecommunications services, i.e. not basic public voice telephony, by 1 July 1996 and to liberalize fully all telecommunications services, including public voice, and infrastructure by 1 January 1998;

- the public switched data networks in France and Germany, Transpac and Datex-P respectively, will until full liberalization of the telecommunications markets in France and Germany has taken place, as is scheduled to occur by 1 January 1998 remain separated from the ATLAS joint venture set up by France Telecom and Deutsche Telekom;

- France Telecom and Deutsche Telekom agree to establish and maintain access to their domestic public switched data networks in France and Germany on a non-discriminatory, open and transparent basis to all service providers offering low-level (so-called X.25) data services and to ensure continued non-discriminatory access in the future. The parties' commitment also relates to any generally applied standardised interconnection protocol that may modify, replace or co-exist with, the current standard;

- France Telecom and Deutsche Telekom agree not to engage in cross-subsidisation; in order to prevent cross-subsidies, all entities formed pursuant to the ATLAS and PHOENIX ventures will be established as distinct entities, separate from the parent companies and subject to regular and customary auditing, to ensure that dealings between these entities and France Telecom and Deutsche Telekom take place on an arm's length basis;

- France Telecom agrees to sell its INFO AG subsidiary, an important competitor of Datex-P on the German data network services market.

A notice pursuant to Article 19(3) describing in detail the notified arrangements and the modifications and undertakings given by the parties and the governments was published in the Official Journal in December of 1995, inviting comments from interested third parties. The final decision in this case, which will take into account those comments, is scheduled for mid-1996.

b) Joint ventures and other forms of cooperation

Sony/Philips/Matsushita - Minidiscs (MD)

In August 1994 Sony Corporation notified to the Commission for exemption or negative clearance a series of agreements relating to patent licensing in connection with the development and exploitation of the Minidiscs (MD) System, which is a new portable, recordable, digital audio system. It consists of software, which includes playback - only optical discs ("Premastered MD Discs") and recordable magneto-optical discs ("Recordable MD Discs") and hardware, which includes MD Players (which are capable only of playing Premastered and Recordable MD Discs) and MD Recorders (which are capable of recording onto Recordable MD Discs and playing Premastered and Recordable MD Discs).

The other principal parties to the agreements are Philips International BV and Matsushita Electric Industrial Company Ltd.

Notwithstanding the fact that the agreements contained restrictions on competition falling within Article 85(1) of the Treaty, namely pooling of patents and know-how together with standardization of specifications, the Commission took the view that there were sufficient grounds for an exemption under Article 85(3).

The Commission has advised Sony on 3 July 1995 by administrative letter that the criteria for an exemption are fulfilled.

Aspen (Elf Atochem/Union Carbide Corporation)

The creation of a joint venture, Aspen, between Union Carbide Corporation and Elf Atochem has been approved by comfort letter. The joint venture is in the field of specialty polyethylene resins and compounds.

By the operation, the parties transfer some, principally wire and cable and white compounded grades, of their interests in the European specialty polyethylene products sector to the joint venture.

For UCC, this operation will replace imports to the European market of specialty polyethylene products destined for wire and cables applications. For Elf Atochem, its wire and cables activities will be transferred to Aspen. The joint venture will become a full-line supplier of these specialty products.

Elf Atochem will also transfer some of its facilities at Gonfreville, France, which will subsequently benefit from the introduction of "Unipol" technology and "wire and cable" product technology licensed by UCC. The joint venture will also be licensed by Elf Atochem to use its technologies for certain polyethylene specialties.

The marketing of these products will be split between the parents who will act as agents. UCC will market those products relating to the wire and cables sector, whereas Elf Atochem will market all other products including some bulk grade polyethylene produced by the joint venture, but not required for specialties.

The Commission addressed the issue of whether there was any likely decrease in competition on the polyethylene technology licensing market arising from the operation. While it was considered that Elf Atochem may have been a future competitor to UCC in this market, this was judged to be a contingent and tenuous likelihood, and that therefore any appreciable effects on this market were far outweighed by the pro-competitive effects in the polyethylene markets.

A comfort letter was issued on 3 April 1995 stating that the agreements meet the conditions for exemption under Article 85(3) of the Treaty.

General Electric Plastics/BASF

On 6 January 1995, the Commission received a notification of a proposed joint venture to be formed by General Electric Plastics b.v and by BASF Aktiengesellschaft to produce polybutylene terephthalate (PBT), a polymer in resin form, which is an intermediate material used to produce blended and compounded plastics materials, destined for automotive, electrical/electronics and industrial equipment applications.

The joint venture is to be situated within the present BASF facilities at Schwarzheide, and will be supplied with services by BASF. BASF and GEPE will jointly manage the facilities in such a way that neither party is disadvantaged by the siting of the plant. Controls will be put in place to ensure the competitiveness of the site services delivered to the joint venture by BASF, so that they remain broadly compatible with those of GEPE's other facilities. So that neither side is disadvantaged by the additional transport costs, these will be equalised between the parents. This package of anticipated costs is minor in overall comparison to the value of the product.

Moreover, neither party will be in the position to restrain marginal capacity increase in the plant, or be prevented from operating it at above the anticipated capacity utilisation. This allows each party to vary capacity without the others' consent and in such manner be able to meet demand fluctuations that do not affect the parties equally.

Such flexible arrangements allow each of the parties to invest in increased capacity that would not be warranted by each acting alone. The arrangements thus meet the conditions for exemption under Article 85(3) of the Treaty, and a comfort letter was issued accordingly on 23 May 1995.

Sovereign Exploration

On 31 August 1994, the Commission received a notification of a joint venture by which Northern Electric plc, by means of its subsidiary, Northgas, and Neste Production Ltd formed Sovereign Exploration Ltd which will exploit twelve gas licences granted by the government of the United Kingdom.

Northern is entering the relevant market for the first time, and Neste is an established player in North Sea oil and gas exploration. Northern is in the electricity supply and distribution industry, principally in the North of the United Kingdom. It seeks to extend its activities into the gas supply industry, and seeks to secure supplies to enter into this market.

Restrictions on exploration in the licensed block are imposed to the benefit of the joint venture. The parents both create an outlet for gas supplies and obtain sufficient quantities to expand in and increase competition in the downstream gas retail and distribution markets.

The Commission concluded that such agreements, given the proposed building of inter-state gas and other power connectors, may appreciably affect trade between Member States of the Community and also those of the European Economic Area.

A notice was published in the Official Journal on 8 November 1994. The case was closed by means of a comfort letter on 9 January 1995.

Exxon/Hoechst

In 1994 Exxon and Hoechst notified the Commission of an R&D agreement for the development and marketing of a new metallocene catalyst to be used in a polymerization process for making polypropylene.

The agreement, which is for two years and is renewable, is an extension of a joint programme dating from 1992 relating to a pilot plant for the production of the catalyst.

The agreement sets out the rules governing cooperation between the two companies for the development of the catalyst and the associated technology for the marketing of polypropylene. It also lays down rights and obligations for each party under industrial property rules.

The Commission took the view that Regulation No 418/85, which grants a block exemption applicable to research and development agreements, applied to this agreement. It concluded that the clauses were covered by Articles 4 and 5 of the Regulation and that the agreement did not contain any clauses blacklisted under Article 6 of the Regulation. A comfort letter was sent to the companies.

Gas interconnector between UK and Belgium

A joint venture arrangement between nine leading European gas companies for the construction and operation of a United Kingdom - Belgium subsea gas interconnection was cleared by a comfort letter issued on 17 May 1995.
The JV, which was notified in March 1995, was judged by the Commission to be of a structural co-operative nature and therefore dealt with under the accelerated procedure. A notice was published in the Official Journal inviting comments from interested parties. No objections were raised.

The Interconnector is a high pressure gas pipeline, due to come on stream in October 1998, which will link Bacton (UK) and Zeebrugge (Belgium) and thus be the first connection between the UK and the Continent gas markets. In response to expressed demand, the pipeline is technically designed to be primarily a forward flow facility, i.e. for the transport of gas from North (UK) to South (Belgium), with a capacity of 20 bcm/year, but it will also initially be able to provide 8.5 bcm/year reverse flow, i.e. in the South to North direction. It will be possible to increase this reverse flow capacity, up to a maximum of the full flow capacity of the pipeline, by additional investments, essentially in establishing pumping facilities at Zeebrugge. Such additional investments would be funded by those transporters who wish to have such reverse flow capacity. JV rules stipulate that no transporter, whether initial transporter or future assignee, may have reverse flow rights in excess of forward flow, in order to prevent unjust subsidisation.

The process leading up to the final conclusion of the notified JV arrangements was open and transparent. The project was widely publicised and all interested undertakings were invited to participate. There is no indication that any interested gas company was excluded from the possibility of participating in the Interconnector by way of booking equity (shares to be funded) and/or transport

capacity in the facility. All final JV participants at the same time booked equity and capacity in the following ratios:

Amerada Hess	5 % of the shares and 5 % of the capacity
BP	10 % of the shares and 10 % of the capacity
British Gas	40 % of the shares and 40 % of the capacity
Conoco	10 % of the shares and 10 % of the capacity
Distrigaz	5 % of the shares and 5 % of the capacity
Elf	10 % of the shares and 10 % of the capacity
Gazprom	10 % of the shares and 10 % of the capacity
National Power	5 % of the shares and 5 % of the capacity
Ruhrgas	5 % of the shares and 5 % of the capacity.

The project's funding will be secured by take-or-pay tariffs, related to respective rights in forward flow and (presently limited) reverse flow capacity, which the 9 JV participants pay under the Transport Agreements which they individually concluded with the JV company Interconnector UK Ltd.

The Commission regarded the project as a whole as pro-competitive, especially because, first, it will create opportunities for competition between markets which - for technical reasons - so far are quite isolated, and, second, there are satisfactory possibilities for third parties to acquire, on freely negotiated terms, access to transport capacity through the Interconnector. Capacity holders will be free to provide transport capacity to others by assignment and by sub-lease, subject to the fulfilment of criteria in the case of assignees, to ensure that they are able to meet the financial commitments involved.

There is no indication that the market for assignment and sub-lease of such capacity will not be competitive. The fact that rules prevent transporters from acquiring reverse flow rights in excess of capacity rights constitutes a legitimate limitation in the view of the above described funding mechanism. Moreover, in the circumstances of the case, the 20 year duration of the Transport Agreements with the nine initial transporters who wished to participate in the project was considered to be justified.

The agreements contain restrictions of competition falling within Article 85(1) EC Treaty: in particular certain provisions allow the JV company Interconnector UK Ltd. to market transport capacity, thereby leading to joint selling by the JV partners. The analysis showed that such joint selling would occur only in limited circumstances but nevertheless this restriction could gain some significance given the fact that the JV partners, at least in the Interconnector's initial phase, will have 100 % of the relevant market for transport of piped gas across the Channel.

The Commission was concerned also to ensure that the agreements will operate in practice in such a way as to effectively meet demand for reverse flow capacity which may arise.

The Directorate-General came to the conclusion that, after balancing the pro-competitive effects of the JV and the limited restrictions associated with it, a comfort letter of the exemption type could be issued. In that letter it is stated that the Commission will wish to ensure that in the case where the demand for reverse flow from South to North increased beyond the Interconnector's present reverse flow capacity, the JV arrangements would operate in such a way that technically and financially viable reverse flow enhancements to meet this demand would be put in place.

Toyota Industrial Equipment

Toyota Industrial Equipment is a structural joint venture formed by Toyoda Automatic Loom Works Ltd (Japan), Toyota Motor Corporation (Japan) and Manitou BF (France). Toyota Industrial Equipment will be involved in France in the manufacture and assembly of Toyota brand fork-lift trucks and their spare parts and accessories. The object of the creation of the joint venture is to replace current arrangements pursuant to which Manitou, operating as a subcontractor, assembled Toyota brand industrial fork-lift trucks. The joint venture will attain 80% of the total production required to supply the European market in Toyota brand fork-lift trucks. Although Manitou is a potential competitor of Toyota for industrial fork-lift trucks, sufficient justification has been provided for a comfort letter.

Auto Car Europe (ACE)

On 22 June the Commission sent a comfort letter to the representative of NV Auto Car Europe (ACE). ACE is a joint venture set up by British Railways Board (BR), Société Nationale des Chemins de Fer Belges (SNCB), NV Ferry Boats and NV Cobelfret. Its object is the transport of new cars and other products of the motor vehicle industry from the factory to dealers, by rail, road, water and air, and the provision of services ancillary to transport. ACE's activities will be performed throughout Europe, but it will concentrate on transport between the United Kingdom and the continent.

The Commission took the view that the agreement restricted competition between the parties, but that it also comprised positive elements that had to be taken into consideration. The agreement is likely to promote economic progress by allowing specialized transport services to be established between the United Kingdom and the continent. In view of the investment involved and the difficulties inherent in introducing the new services, the proposed cooperation may be regarded as indispensable for a number of years to come. The ACE representatives have confirmed that the essential services which the parent companies will supply to their joint subsidiary will also be available, without discrimination, to other transport operators.

In view of these factors and in particular the importance of the undertaking given by the rail networks that they will supply essential services to other operators, the Commission sent the representatives of ACE a comfort letter which indicated a period of three years.

PSA/Fiat (Sevel) agreement

On 29 June 1978, Fiat and PSA concluded an agreement on the setting up of a joint venture, Sevel, to produce a medium-sized commercial vehicle. On 19 December 1988 a new agreement between the parties extended and amended the initial agreement to allow the vehicle produced by Sevel to be replaced by a new model. Fiat and PSA each own 50% of Sevel. The parties have an equal say in all the decision making bodies. They share costs and profits equally. Each party agrees not to produce the vehicle in competition with the joint subsidiary.

The contract products manufactured by Sevel are sold solely to the two parent companies on a 50-50 basis, subject to any adjustment required by the needs of each company. Once the vehicles have been personalized, Fiat and PSA sell them on markets throughout the European Union.

The agreement is liable to have restrictive effects on competition that are caught by the ban laid down in Article 85(1) of the EC Treaty, namely the limiting or controlling of production, technical development and investment and the sharing of European commercial-vehicle markets, affecting some

20% of the relevant market, which means that the agreement is liable to affect trade between Member States.

However, the agreement confers benefits on consumers, since it means that a producer - Sevel - capable of supplying an advanced technology product, thanks to the joint research carried out by Fiat and PSA, is able to operate on the market. In addition, without the agreement, it is not certain that Fiat and PSA would have committed themselves to a stagnating market. The continuation of their cooperation thus seems for the time being to be the only means of allowing them to compete with the other manufacturers operating on the market without bringing about harmful repercussions on the structure of the market.

Pursuant to Article 19(3) of Council Regulation No 17, the Commission published a notice inviting interested parties to submit their comments.[7] The Commission did not receive any comments.

The Commission took the view that the arguments put forward by Fiat and PSA to justify the restrictive provisions of the agreement were sufficient to conclude that the conditions laid down in Article 85(3) were met and that the case could be closed by means of a comfort letter.

However, in view of the specific features of the sector and the operating requirements of the agreement, the Commission sent the parties to the agreement a comfort letter which indicated the date of 31 December 2008.

ATR/BAe

On 22 June the aircraft manufacturers Aérospatiale (F), Alenia (Finmeccanica) (I) and British Aerospace (UK) notified the Commission, pursuant to Council Regulation (EEC) No 4064/89, of an agreement on the setting-up of a joint venture.

The ultimate objective of the project is to merge the parties' regional-aircraft activities. These include the product range manufactured by ATR (Avions de Transport Régional) - an existing cooperative arrangement between Aérospatiale and Alenia - and in particular the ATR 42 and 72 turboprops, and BAe's Jetstream turboprop operation and the Avro regional jets business.

On 25 July the Commission concluded that at this stage the operation was not a concentration covered by the Merger Regulation, but would be examined under Council Regulation No 17/62.

In the first stage of cooperation, the parties will pool and rationalize services provided direct to customers, such as marketing and after-sales service. In addition, the parties have set up a single pilot-instruction centre in Naples and will jointly carry out feasibility studies for new aircraft in this sector. The joint venture is also responsible for research and development activities.

This joint venture agreement between the parties was the subject of a comfort letter of 18 August which referred to a transition period of five years. The letter states that, in Commission's opinion, there is no risk of competition in the sector being seriously diminished or eliminated through the cooperative arrangement. This conclusion stems from a detailed analysis of the situation on the relevant market.

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7 OJ C 310, 16.11.1993, p. 6.

The market

The regional-aircraft market is worldwide. The main manufacturers operate on all the continents. A distinction must be drawn between jet aircraft and turboprop aircraft.

In its 1991 "De Havilland" Decision, the Commission identified three market segments within the turboprop category on the basis of seating capacity (20 to 39 seats, 40 to 59 seats and 60 or more seats). In the regional jet aircraft category (up to 125 seats), no breakdown into segments was carried out.

In its comfort letter the Commission based itself on this breakdown and took account of the comments submitted by third parties, including competitors of the parties to the agreement, and from Member States.

Although it cannot be said that there is a great degree of substitutability between turboprop aircraft and regional jets, since operating costs are rather different, certain trends may be noted on the market. In particular, where the aircraft has a seating capacity of more than 60 seats and has to cover a fairly long distance, the desire to ensure passenger comfort prompts purchasers to opt for a jet rather than a turboprop.

Market share

The setting-up of the joint venture will reduce the number of competitors supplying products in this sector, without increasing the market share to an extent that would be likely to disrupt the existing structure. The cooperation between the largest and sixth largest competitors means that the number of producers will be reduced from 7 to 6.

- On the regional-jet market, ATR does not operate and BAe has a share of about 24%. The main competitors are Boeing (34%) and Fokker (31%).

- In the turboprop segments, the situation is as follows:

  20 to 39 seats:
  BAe has 8% (Jetstream J41), while ATR is not present; the main competitors are Saab 340 (33%), Embraer 120 (28%), de Havilland Dash 8-100/200 (24%) and Dasa-Dornier 328 (6%);

  40 to 59 seats:
  BAe is not present, while ATR has 43% (ATR 42); the main competitors are Fokker F50 (27%), de Havilland Dash 8-300 (17%), Casa-IPTN (8%) and Saab 2000 (6%);

  60 or more seats:
  BAe stopped producing its J 61 plane early in 1995, and the only model on supply in the segment is the ATR 72 (100%). New competitors plan to enter this segment.

There is consequently no combination of high market shares nor will there be any cumulation of market shares in the various segments.

The transaction will not create a dominant group that would be the sole operator in all the market segments. There is at least one competitor (de Havilland) that also supplies a wide range of turboprop aircraft and is preparing to enter the regional-jet market.

Legal assessment

In its legal assessment of the case under Article 85 (3), the Directorate-General for Competition assumed that the different stages of the operation will take place as planned. Subject to this condition the Directorate-General found that the conditions laid down by Article 85 (3) are fulfilled.

- Improvement of production or distribution and promotion of technical or economic progress

The improvement of production and distribution and the promotion of technical or economic progress is essentially linked with the final stage of full financial and industrial integration of the parties' businesses, and the development and production of new regional aircraft.

In that respect, the joint venture represents an important stage in the process of restructuring the regional aircraft industry in Europe, which is characterised by existing overcapacity. The joint venture will present an industrial and financial structure which is healthier and better adapted to the exigencies of the market.

The unified and rationalised marketing, sales and customer support teams for the existing regional aircraft of the parties and the creation of a single integrated European training centre for pilots, together with the rationalisation of spare logistics services during the pre-merger period, are to be considered as important steps to the proposed merger. From the predevelopment phase the promotion of technical progress will be attained by the pooling of engineering and technical knowledge from different design offices for the preliminary design, which will be managed by the engineering team of the joint venture.

- Fair share of the resulting benefit for consumers

The level of customer service will improve through integration of the existing teams and through assimilation of "best practice" operations, which will also enhance the safety of passengers.

A wider package of aircraft types will be offered, which presents opportunities for consequential commercial benefits in negotiations between the sales force and their customers. Moreover the customer will benefit from the harmonisation of training systems in a single facility, the harmonised spare logistics system, the larger experience in product development and support activities and a wider network of market representation.

- Indispensable restrictions

The integration of the marketing aspects of the existing businesses is necessary to create the operating structure needed for gradual full industrial integration, including the development and production in common of new aircraft, which the parties plan for a later stage of the joint venture. As such, the commercial integration in the first stage is an indispensable restriction of competition for the attainment of the benefits which will result from the fuller integration process.

The same is valid for the non-competition clause, whereby the parties refrain from activities competing with the joint venture in the regional aircraft business.

- Elimination of competition

The formation of the joint venture does not significantly change the existing market situation, as the product range of the parties is complementary. Hence, no elimination of competition arises in relation to the overall market.

However, in the 60+ seat turboprop segment the joint venture will be offering 100% of the planes now available, because the only model now offered in this segment is the ATR 72. This is the result of the announcement by BAe in January 1995 of the cessation of the ATP/J61 programme. The evidence given to the Commission allows it to conclude that the withdrawal of British Aerospace's ATP/J61 aircraft was, for commercial reasons, unavoidable.

Furthermore, it should be taken into consideration that this segment accounts for only 10% of the orders for turboprops. In the segment itself, new entries into the market are expected. One prospective entrant was present at the last Paris Airshow (De Havilland Dash 8-400).

For all these reasons, the Commission sent the parties a comfort letter which referred to the date of 6 June 2000, thus allowing itself to review the situation if, following the feasibility studies, the parties decide not to develop, produce or launch the programmes for new aircraft, whilst maintaining their cooperation in the areas of sales and after-sales service.

ETSI Interim IPR Policy

This case concerned the intellectual property rights arrangements developed since 1988 by the European Telecommunications Standards Institute ("ETSI"), notified to the Commission in 1994.

The application of a given standard could be made impossible if the standard incorporated proprietary technology and the owner of that technology was not willing to make it available to parties wishing to manufacture products complying with the standard. In telecommunications, European standards play a specific role under Community law, i.e. they must be used in connection with the mutual recognition for type approval of terminal equipment and in relation to public procurement procedures by telecommunications operators. Equipment manufacturers would be de facto foreclosed from the market if licenses for such technology were not available.

In order to reduce the risk of the preparation of standards being wasted, ETSI in 1993 adopted an interim Intellectual Property Rights (IPR) Undertaking and Policy, which differed in many essential respects from policies applied by other standard-making bodies with respect to IPRs. Broadly, the ETSI IPR arrangements provided that members would agree in advance to allow their IPRs to be included in a given ETSI standard, unless the IPR owner had identified any IPR it wished to withhold within a fixed period. This became known as the "licensing-by-default" obligation, which was a significant departure from the common practice whereby IPR-holders must explicitly agree to have their technology included in a standard. In addition, the IPR Undertaking contained a number of specific provisions regarding the terms of the licenses to be granted with regard to IPRs, such as the obligation for licensors to accept monetary compensation, unless the licensee agreed to grant cross-licenses.

These arrangements gave rise to a complaint by the Computer Business Equipment Manufacturers Association (CBEMA), alleging infringements of Articles 85 and 86 resulting from ETSI's IPR arrangements, in particular an obligation on members to sign the undertaking, which in CBEMA's view amounted to a compulsory licensing system.

The issues raised by this complaint were never decided on formally by the Commission, as the undertaking was abandoned by ETSI's General Assembly in November 1994 in order to achieve greater consensus amongst ETSI members, and the complaint was subsequently withdrawn.

Under ETSI's modified Interim IPR Policy, ETSI members are obliged to use "reasonable efforts" to inform ETSI in a timely manner of IPRs they become aware of in a given standard being developed. If the member is unwilling to grant licenses, ETSI will seek a viable alternative technology which is not blocked by that IPR, and if no viable technology is found, work on that standard will cease. Members will merely be required to explain in writing the reasons for refusing to license the IPR in question, and this explanation will be sent inter alia to the Commission. Furthermore, once ETSI becomes aware of any IPRs in a particular standard, it shall ask the owner (member or non-member) whether it is prepared to grant irrevocable non-exclusive licences on fair, reasonable and non-discriminatory terms and conditions. A refusal to do so will give rise to further consultations, possibly culminating in the non-recognition of the standard in question, to the extent it has already been adopted. There are thus no provisions relating to compulsory or automatic licensing, or to specific licensing terms.

A notice pursuant to Article 19(3) of Regulation 17 published in the Official Journal with respect to the modified Interim IPR Policy gave rise to a number of comments, none of which however caused the Commission to change its view that the modified arrangements do not restrict competition.

The Commission consequently issued a negative clearance-type comfort letter with respect to ETSI's Interim IPR Policy. ETSI and its members will endeavour to formulate a definitive IPR policy, which will include an evaluation of the application of the modified interim policy, by 1998, i.e. four years after its adoption.

Global Mobile Satellite Systems

During the course of 1995, the services of DG IV launched an in-depth and comprehensive examination of the newly emerging global mobile satellite systems (MSS), which by the end of this century will probably have several million subscribers world-wide.

The general service to be offered by such MSS involves the full coverage of a roaming system, using a large number of satellites (current information indicates anywhere from 12 to 125, depending on the system). These world-wide networks of satellites will support full user mobility: via light hand-held terminals, users will be able to obtain world-wide coverage, notably in remote areas where terrestrial services are non-existent or uneconomic, and users will be reachable globally under a single telephone number. "Global coverage" not only means that the user can move anywhere, but also that the communications system can serve new fixed or stationary users. Thus, these systems will also present benefits for users other than purely business-oriented international travellers.

Due to the scarcity of frequencies, the very heavy financial implications involved in launching and operating the large number of satellites needed for these systems, and a high level of market uncertainty, it is unlikely that there will be more than a few market players, all of which are consortia whose members are sharing the risks involved. In principle, the emergence of new MSS systems is pro-competitive, and the fact that consortia are formed can be justified in view of the special characteristics of this market. However, precisely because of the limited number of players which are expected to emerge, it is of particular importance that competition in the European Union is safeguarded in the downstream markets involved, namely local service provision, distribution and equipment supply. The Commission's examination at an early stage of development of this new market

is aimed at encouraging the positive aspects of the arrangements, while making it possible to intervene from the outset against anti-competitive aspects.

The consortia which the Commission's services were screening at the end of the year were: (i) Inmarsat-P, a system sponsored by the International Maritime Satellite Organization (Inmarsat) and a large number of its Signatories, including several EU public telecommunications operators (TOs), (ii) Iridium, in which the US telecommunications equipment manufacturer Motorola plays a leading role, as well as involving several European companies, including at least one TO, (iii) Globalstar, led and sponsored by the Loral Corporation, a leading US defence electronics company, and involving several European equipment and aerospatial companies, and (iv) Odyssey, a mainly US-Canadian oriented undertaking.

With respect to Inmarsat-P, which was the first of these consortia to be officially notified, the Commission on 15 November 1995 published a notice pursuant to Article 19(3) of Regulation 17 indicating its positive attitude towards the creation of the joint venture company which will finance, construct and operate the Inmarsat-P system as well as towards the services agreement governing the relationship between Inmarsat and the joint venture company. The Commission's position with respect to all further aspects of the transaction, and of other similar consortia, can only be formulated when all relevant agreements have been concluded and notified.

UIC agreements

On 25 July the Commission granted a three-year exemption to two cooperation agreements concluded between twelve European railway companies for the combined international transport of goods. The agreements were adopted by the International Union of Railways (UIC).

The first agreement establishes arrangements for technical and commercial cooperation between railways for the supply of international services. As regards commercial cooperation, the railways intend firstly to make use, where necessary, of subcontracting agreements. Under any such agreement, a railway company that has undertaken to perform a transport operation may entrust part of the performance of the operation to another railway company.

The railway companies also plan to operate some services jointly. However, such joint operation may not cover all trains on a single itinerary or eliminate actual or potential competition between itineraries. Horizontal commercial agreements between all the railway companies are therefore excluded.

The second agreement sets out principles governing relations between the railways as the suppliers of rail traction and the combined transport operators as the buyers of such services. The agreement sets out the conditions governing the supply of such services, either on the initiative of the railway companies or at the request of the operators. Railway/combined transport operator agreements may also be concluded in order to share the risk involved in launching new services whose profitability is not assured.

The Commission took the view that the agreements restricted competition between the railway companies in breach of Article 85(1) of the Treaty. Under Council Directive 91/440/EEC of 29 July 1991, each railway company is able to operate international combined transport services on its own.

However, the Commission also took the following aspects into account:

- during a transitional period, the agreements may prove essential in ensuring the development of combined transport and promoting economic progress;
- although freedom to provide services is now established in international combined transport, the railways must be allowed an adjustment period if they are to make effective use of such freedom.

Consequently, the Commission took the view that the agreements could be exempted for a three-year period pursuant to Article 12(3) of Council Regulation (EEC) No 1017/68, i.e. until 26 April 1998. The Commission told the railways that they should start thinking now about new arrangements for the provision of transport services that would be more in line with the provisions of Council Directive 91/440/EEC.

Premiair

On 18 December 1995 the Commission decided to exempt a shareholders agreement between Scandinavian Leisure Group AB (SLG) and Simon Spies Holding A/S (Spies) concerning the establishment of a joint airline, Premiair following the opposition procedure laid down in Article 5 of Council Regulation (EEC) No 3975/87/EEC.

The agreement involves the establishment of a new airline on a 50/50% basis between the two parties. The airline's main activity is to provide air transport for internal tour operators belonging to SLG and Spies. This task used to be undertaken by two separate airlines belonging to the two groups, Scanair for SLG and Conair for Spies. These airlines have ceased activity.

The Commission considered that the existence of airlines like Premiair, that are potential competitors to scheduled airlines, is important. It is not likely, in principle, that new airlines would penetrate the market for scheduled flights as this requires substantial investment. Consumers will also receive a share of the benefits achieved through lower production costs and a more flexible product through lower prices of holiday travels. It is also considered that the establishment of Premiair will not have a negative influence on the situation for external tour operators, because Premiair will be less integrated in the parties' groups and it will have a more neutral profile towards their customers compared to the previous situation.

Consequently, the Commission decided on 18 December 1995 not to raise serious doubts and the agreement was exempted for a period of six years from the date of publication in the Official Journal On 7 October 1995.

Lufthansa/SAS

On 11 May Lufthansa and SAS notified the Commission of a general cooperation agreement providing for the establishment of an integrated transport system between the two airlines. The parties intend to create an enduring alliance by establishing an integrated air transport system based on a comprehensive set of long-term, commercial, marketing and operational relationships and involving integration of their worldwide networks. Commercial cooperation will be particularly far-reaching on the routes between Scandinavia and Germany, where the parties intend to set up a joint venture.

On 5 August the Commission published a notice pursuant to Article 16(3) of Council Regulation (EEC) No 3975/87. In the notice, the Commission stated that, in its view, the agreement appreciably restricted competition on the relevant markets, but that it could also, under certain conditions, promote

economic progress, firstly by allowing the establishment of a much more extensive and efficient LH/SAS network and, secondly, by helping to reduce the two airlines' costs.

Accordingly, the Commission stated that it intended to exempt the agreement subject to the imposition of conditions that would ensure that sufficient actual and potential competition was maintained.

The conditions related mainly to:

- a freeze on the frequencies operated by the two airlines;
- the opening-up of frequent-flier programmes to airlines not having such programmes;
- a requirement that LH/SAS must, subject to certain conditions, conclude interlining agreements with new entrants;
- the termination of certain cooperation agreements between LH/SAS and other airlines;
- the giving-up of LH/SAS slots at certain crowded airports so as to give new entrants market access.

In handling this case, the Commission followed the same approach as that adopted in the Swissair-Sabena case, i.e. it has no wish to stand in the way of the restructuring of European air transport, but it has to ensure that such operations do not involve any non-essential restrictions of competition and do not prevent new competitors from entering the market. The conditions which the Commission intends to impose are directed at this objective.

The Commission adopted an exemption decision on 16 January 1996.

2.2. Vertical agreements

a) Selective distribution

Sony Pan-European Dealer Agreement (PEDA)

After important amendments, the "Sony Pan-European Dealer Agreement" (PEDA), which is intended to create a selective distribution system for Sony's consumer electronics products throughout Europe (EC and EFTA) has been approved.

The products covered by the PEDA are high-value and technically complex products for which consumers need specialized advice prior to purchase and full after-sales service. Products not falling within this category are not covered by the PEDA. Dealers wishing to sell Sony products covered by the PEDA must satisfy certain objective criteria. They must also abide by the selective nature of Sony's distribution network, notably by purchasing the products only from Sony or from other authorized dealers and by reselling them only to final consumers or to other authorized dealers.

The details of the notification have been published.[8] In response to the notice, the Commission received a number of comments from interested parties and registered three official complaints.

The Commission entered into discussions with Sony with a view to resolving those aspects of the agreements which infringed competition law, and a number of amendments were made to them.

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8 OJ C 321, 27.11.1993, p. 11.

The main one is the maintenance of a wholesale distribution level, which was not provided for in the notification. The Commission was afraid that the removal of wholesalers would result in a decrease in parallel imports, which might result in higher retail prices for consumers.

On the same grounds, additional protection was also granted to all authorized dealers, whether wholesalers or retailers, which Sony may not refuse to supply without written justification.

In its original form, the PEDA do not provide for any appeal procedure for dealers not authorized by Sony. At the Commission's request, Sony has set up an arbitration procedure to which wholesalers or retailers refused admission to the selective distribution system may appeal.

The fourth change made to the PEDA agreements concerns mail order sales. Following discussions with the Commission, Sony agreed to include in such sales home delivery and the granting of a non-binding trial period for mail order purchasers. This improvement in the service provided to the latter justifies the extension of the selective distribution system to include mail order sales.

On the basis of these changes, the Commission sent Sony Europe GmbH a comfort letter stating that no action now needed to be taken on the notified agreements for infringement of Article 85(1) of the EC Treaty.

Chanel

The selective distribution system for Chanel watches, which was adjusted at the Commission's instigation, was granted clearance. The selective distribution system comprises two levels, the first being an exclusive distributor for each member country, with the exception of Belgium and Luxembourg, where Chanel has concluded contracts directly with 13 dealers, and the second being dealers for retail sale. The main changes made in response to the Commission's action concern the establishment of objective qualitative criteria for the selection of dealers and the withdrawal of bans on exporting outside the European Union. Authorized dealers situated within an EEA country may thus purchase and sell watches to other Chanel approved dealers in an EEA country or in a country with which the European Union has concluded a free trade agreement.

b) Exclusive dealing

MD Foods/FDB

The Commission has cleared, by way of an administrative letter, a purchasing agreement between the largest Danish dairy producer, MD Foods amba, and the retail chain, Forenede Danske Brugsforeninger (FDB).

In 1977 the two parties established a joint cooperative, Danmælk, for the production and sales of milk and dairy products. The parties agreed to purchase these products exclusively from Danmælk. With effect from September 1992 MD Foods acquired FDB's shares in Danmælk. In relation to this the parties entered a purchasing agreement to ensure continuity of outlets for Danmælk. This agreement was notified to the Commission under Regulation No 17/62 on 12 July 1993.

The notified agreement took effect on 1 October 1992 and was of a five-year duration. The agreement contained an exclusive purchasing obligation on FDB as concerns fresh milk, and a minimum

purchasing obligation for other dairy products. The minimum purchasing obligation represented 98% of FDB's total requirement in year one, 95% in years two and three, and 90% in years four and five.

Following a preliminary assessment of the case, the Directorate-General for Competition informed the parties that the agreement fell under Article 85(1). It created a barrier to entry for third parties, including dairy producers in other Member States, thus affecting trade between Member States. The agreement did not meet the conditions for the application of Article 85(3). The Directorate-General further informed the parties that the agreement constituted an abuse of a dominant position by MD Foods under Article 86.

After negotiations, the parties amended the agreement. The purchasing obligation was annulled as concerns UHT-milk and reduced for the remainder of the contract period as concerns fresh milk products. The obligation now represents 70% of FDB's total requirements from 1 October 1994 to 1 October 1995, 50% till 1 October 1996 and 30% till 1 October 1997.

The Directorate-General for Competition considers that the obligations maintained in the amended agreement do not appreciably restrict competition, and that the agreement therefore does not infringe Articles 85 or 86. A comfort letter to this effect has been sent to the parties.

Unilever/Mars

The Commission has decided to reorient its proceedings against Van den Bergh Foods Ltd (a subsidiary of the Unilever group) for breach of the EU competition rules, in the light of undertakings given by Unilever (consisting principally of alterations to its distribution arrangements) aimed at substantially opening up the market for "impulse" ice cream in Ireland.

The impulse ice cream market consists of single wrapped items of industrially-manufactured ice cream, sold for immediate consumption. The Unilever group of companies is the market leader in impulse ice cream products in most Member States of the European Union; in the Republic of Ireland, it is by far the largest ice cream producer.

In September 1991 and July 1992 respectively, the Commission received complaints from Masterfoods Ireland Ltd (Mars) and Valley Ice Cream Ltd relating to the distribution arrangements operated by HB Ice Cream Ltd (a subsidiary of the Unilever group, now trading as Van den Bergh Foods Ltd) for its impulse ice cream products in the Republic of Ireland. In July 1993, the Commission provisionally concluded that the arrangements infringe both Articles 85 & 86 of the EC Treaty, and addressed a "Statement of Objections" against Van den Bergh Foods to that effect. Unilever contested the Commission's view of the legality of its distribution arrangements.

The two aspects of the distribution arrangements impugned by the Commission were, firstly, the provision of freezer cabinets to retailers subject to a condition of exclusivity contained in Unilever's agreements with retailers, allowing only Unilever products to be stored in the cabinets: This practice is known as "freezer exclusivity". Secondly, the inclusion of the cost of cabinet provision in the price of the ice cream itself ("inclusive pricing"), and the charging of this price to all retailers, irrespective of whether or not they have a Unilever freezer cabinet.

The Commission concluded in its Statement of Objections that exclusivity conditions of the kind contained in Unilever's agreements with retailers have as their effect the restriction of competition - and thus constitute an infringement of Article 85(1) of the EC Treaty - in that they prevent retailers thus contracted from stocking other impulse ice cream in their outlets, where a retail outlet's only

cabinet(s) is/are provided by the same ice cream supplier, and where it is neither likely that the cabinet(s) will be replaced (by the retailer's own or another supplier's cabinet), nor commercially feasible for an additional one(s) to be installed.

The Commission found that a majority of all outlets offering impulse ice cream in Ireland have only one or more Unilever freezer cabinet(s) and fulfill the conditions for an infringement of Article 85(1). It was thus concluded that the Unilever freezer cabinet agreements concluded for those outlets had the combined effect of appreciably restricting competition in the Irish impulse ice cream market. As ice cream suppliers are precluded from these outlets irrespective of their geographical location or the origin of the goods, the Commission found that the cabinet agreements with restrictive effect are likely to affect trade between Member States to an appreciable extent.

The Commission also found that Unilever is in a dominant position on the Irish impulse ice cream market, with a market share in 1993 of over 70%, and that it was abusing this position, contrary to Article 86, in two ways: Firstly, by inducing retailers to enter into freezer cabinet agreements subject to a condition of exclusivity and, secondly, by discriminating - through its policy of inclusive pricing - against retailers who have not taken a Unilever freezer cabinet, but who nonetheless purchase and stock Unilever ice cream; these are effectively obliged to subsidise the provision of cabinets to other retailers.

The Statement of Objections furthermore rejected Unilever's contention that the application of the competition rules in these circumstances is tantamount to an interference with its property rights, contrary to Article 222 of the EC Treaty, in that it would permit other manufacturers' products to be stored in its freezer cabinets. In Community law, as in the law of all Member States, it is recognised that the exercise of property rights may be restricted in the public interest, and to the extent necessary in that regard. Being fundamental provisions of Community law, Articles 85 and 86 of the EC Treaty serve the public interest. Moreover, the application of Articles 85(1) and 86 in the present proceedings does not concern Unilever's use of its own property, but rather the restrictions which it imposes upon others to whom it has granted such use, and then only to the extent necessary to ensure that competition in the common market is not distorted.

In its Statement of Objections, the Commission did accept that Unilever's arrangements bring about some improvement in distribution, but found that this was outweighed by the harmful effects of restricted competition. It was nonetheless made clear that the possibility remained open for Unilever to propose an alteration to its distribution arrangements for impulse ice cream in Ireland which might be capable of being granted the benefit of an exemption pursuant to Article 85(3). While maintaining its view as to the legality of its current distribution arrangements, Unilever came forward with such proposals:

- A differential pricing scheme has been introduced. The scheme allows for the payment of a lump sum to retailers stocking Unilever ice cream but not taking a Unilever freezer cabinet, provided that retailer achieves a minimum annual turnover in Unilever ice cream. This lump sum reflects the purchase and maintenance cost savings to Unilever in not supplying a cabinet to the retailer.

- Unilever has introduced, as an optional alternative to its current arrrangements, a freezer cabinet hire-purchase scheme which enables retailers to buy their own new cabinet, with exclusivity to Unilever only applying during the repayment period. The cabinets are offered at the wholesale price at which Unilever purchased them, and repayment can be made over a maximum period of five years. Maintenance is assured by Unilever throughout the repayment period, during which period hire-purchasers qualify for the differential pricing lump sum, less the maintenance element.

- Finally, as a means of achieving a substantial freeing up of outlets in the short term, Unilever has undertaken to ensure the sale of an *in situ* "front of shop" freezer cabinet with "a useful remaining life" to retailers in a significant number of the outlets in which its cabinets are currently installed. This is being carried out on a "one-off" basis during 1995 and 1996.

The Commission considers that the proposals of Unilever meet its concerns as outlined in its Statement of Objections, and that, taken together, they will have the effect of opening up the impulse ice cream market in Ireland to a considerable degree. In the first instance, the practice of inclusive pricing has been abandoned; this will result not only in the redressing of the current discrimination against retailers offering Unilever products from their own cabinets, but will also reduce the incentive for retailers to take or retain Unilever-supplied cabinets.

The leading producer of impulse ice cream has furthermore introduced a real alternative for those retailers contemplating the purchase of their own freezer cabinets. The cost of purchasing the cabinet should be affordable to most retailers, giving them the choice of stocking the ice cream of whatever producers they choose. This, in combination with the immediate opening up of a large number of the outlets where Unilever cabinets are currently installed (about 15% of all outlets offering impulse ice cream in Ireland) and most of which have been exclusively offering Unilever ice cream, should consequently result in a substantial increase in the number of retailer-owned freezer cabinets. Access to the market by competing producers will thereby be rendered easier, and consumers should likewise benefit from the increased availability of a variety of manufacturers' products.

The new distribution arrangements have been notified to the Commission and a summary thereof published in the Official Journal; they appear, on first view, to meet the conditions required for the granting of an exemption under Article 85(3).

In addition to its undertakings in relation to the Irish market, Unilever has also committed itself to introducing non-discriminatory pricing schemes in all other EU Member States during the course of 1995. This will help to redress competitive distortions in impulse ice cream markets throughout the Community and, as such, is welcomed by the Commission.

c) The provision of services

PMI and DSV

On 25 January the Commission took a decision authorizing the agreement between PMI and DSV on the relaying of televised pictures of French horseraces in Germany.

Following a complaint lodged with the Commission in 1989 by Ladbroke Racing (Deutschland) GmbH, the German subsidiary of Ladbroke, the leading British bookmaker, on the grounds of infringement of Articles 85 and 86 of the EC Treaty against the economic interest grouping "Pari mutuel urbain", Paris (France), Pari mutuel international SA ("PMI"), Paris (France), and Deutscher Sportverlag Kurt Stoof GmbH & Co. ("DSV"), Cologne (Germany), the latter two undertakings notified the Commission in 1990 of a contract which no longer contained the clauses objected to.

However, the contract still contained three clauses which restricted competition, because their wording was insufficiently precise. These were a clause concerning a requirement of honesty and two clauses providing for the recognition of the racing associations' intellectual-property rights and the supply of confidential information by corporate bookmakers. These clauses were dealt with in a statement of

objections from the Commission, and the signatory associations agreed to delete them or to amend them in such a way as to make the contract compatible with Article 85 of the EC Treaty.

The Commission accordingly granted the contract negative clearance, finding that the agreements do not fall under the ban on agreements between undertakings laid down in Article 85 of the Treaty or under the prohibition of abuses of dominant position in Article 86 of the Treaty, and meeting the requirements of the complainant, the grounds for whose complaint have now been removed.

3. Rejection of complaints

Pelikan/Kyocera

This case arose from a complaint by Pelikan, a German manufacturer of, inter alia, toner cartridges for printers and photocopiers, against Kyocera a Japanese manufacturer of computer printers. Pelikan manufactures and sells toner cartridges for use with Kyocera's printers which compete directly with the cartridges produced by Kyocera itself. Pelikan's complaint alleged a number of practices by Kyocera to drive Pelikan out of this market and alleged that these constituted restrictive arrangements between Kyocera and its dealers and/or abuses of a dominant position by Kyocera. These allegations centred on limits placed by Kyocera on its warranty if damage was caused to its printers through the use of non-Kyocera toner cartridges, and on large discounts offered by Kyocera to consumers who bought "bundles" of Kyocera-made toner cartridges and Kyocera-made "drum kits" (a drum kit is another consumable used in a laser printer, and not manufactured by Pelikan).

By a decision of 22 September 1995 this complaint was rejected. The Commission found that Kyocera's policy and statements with respect to warranties were not a breach of Article 85, as they only amounted to refusing to cover damage arising purely from the use of non-Kyocera consumables. With respect to Article 86 the Commission found that Kyocera did not enjoy a dominant position on any relevant market and that even if it did there was no evidence of behaviour that could then be considered abusive. It is of particular interest to note that the Commission did not find that Kyocera enjoyed a dominant position in the market for consumables for Kyocera printers despite its large market share on this market. This was because Kyocera was subject to intense competition on the "primary" market - that for printers- and circumstances on the market were such that this competition also restrained its behaviour on the "secondary" market for printer consumables. Purchasers of printers were well informed about the price charged for consumables and appeared to take this into account in their decision to purchase a printer. The useful life of a printer and the balance between the capital cost of a printer and the total cost of consumables for that printer over its useful life were such that consumers would have a strong incentive to switch printer brand if the price of consumables for that brand were raised. The complexity and cost of printers was such that the costs of switching from one brand to another are not excessive.

This analysis obviously implies that there are circumstances where a manufacturer may enjoy a dominant position in a secondary market for consumables or services for its own primary products[9].

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9 Commission decision of 8 December 1977(Hugin/Liptons), OJ L 22, 27.1.1978, p. 23 .

Postal cases

The Commission has taken a number of steps which clarify its approach to two issues which are of vital importance in the postal sector, namely terminal dues and interception of cross-border intra-Community mail. These issues arose in a complaint lodged with the Commission by the International Express Carriers Conference (IECC), a grouping of companies whose members are among other activities involved in "remail" services: the provider of a remail service collects bulk mail from a sender in one country A and remails it in a second country B for delivery by the ordinary post to final destinations in country B or any other country, including the country of origin, A. Certain public postal operators (PPOs) apparently saw the emergence of such services as a threat to their own activities.

In the context of this complaint, the Commission in 1993 issued a statement of objections under Articles 85 and 86 of the EC Treaty against seven public postal operators (PPOs)[10]. The aim of this action was to establish whether:

a) certain PPOs had infringed the EC competition rules by deliberately seeking to eliminate competition from remailing companies by introducing a certain basis for the calculation of so-called terminal dues, i.e. the compensation method used by PPOs to deliver incoming cross-border mail to the final customers (in view of the postal monopolies, the originating PPO in country A can not deliver the mail from country A to final destinations in country B);

b) certain PPOs had infringed the competition rules by intercepting, returning or charging extra postage on letters which had been posted in a country other than that of the sender.

Following the statement of objections, several European PPOs formed a group to design a new system of mutual charges for the processing of incoming international mail. Their work has culminated in the "Agreement for the Remuneration of Mandatory Deliveries of Cross-Border Mail", the so-called "REIMS" scheme, which will provide a link between terminal dues and the domestic tariff structure, thus allowing individual PPOs to reflect their costs in the long term.

In view of this positive reaction by the parties, the Commission decided not to pursue the procedure with respect to the old terminal dues scheme, but rather to concentrate on an in-depth examination under the competition rules of the new REIMS scheme, both in terms of the substance of the reforms which it will introduce and the pace of the introduction of those reforms[11].

A problem related to the discrepancy between terminal dues and the real delivery costs of certain PPOs has been the interception of intra-Community incoming cross-border mail. Tariff differences together with low terminal dues have led to the relocation of mailing activities from countries in which domestic tariffs are high compared to the international compensation rates, into countries where domestic and international tariffs are low. This development has taken place not only due to the activities of commercial remail companies, but also in connection with companies generating large quantities of mail, which have chosen to centralize their mailing facilities in a given country where, among a range of other favourable factors, postal services are relatively cheap and of a good quality. Private citizens in high tariff countries may also choose to entrust all of their mail to a PPO in a

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10 Those of Belgium, France, Germany, the United Kingdom, Finland, Sweden and Switzerland; see also IP(93)264 of 7 April 1993

11 This decision was appealed to the Court of First Instance, T-110/95.

neighbouring country where rates are cheaper. Interception of certain types of incoming cross-border mail is allowed by the Universal Postal Union Convention.

The Commission's position with respect to interception, as explained in its rejection of the IECC complaint, is that interception is justified only to the extent to which commercial remail companies violate the postal monopoly of a given country and because of that activity, the universal service obligation of the PPO in that country is threatened. In this situation, interception of the remailed items when they re-enter that country (i.e.commercial ABA remail) is not under the current circumstances an abuse under Article 86 of the EC Treaty[12], in particular to the extent that the receiving PPO does not receive sufficient payment to recover the cost for delivery.

4. Settlement

Organon

On 4 May 1994 Organon, a British subsidiary of Akzo (Netherlands), which specializes in the manufacture and marketing of contraceptive pills, changed the price regime applicable to the sale of two of its major products, Marvelon and Mercilon. Marvilon is one of the best-known contraceptive pills in the world. In 1992 its worldwide sales amounted to a record 500 million packs.

Organon's new price regime differentiated between pills to be sold in the United Kingdom and those intended for export. Pills intended for export no longer qualified for the 12.5% discount applied to pills marketed and consumed in the United Kingdom. No distinction of this type had previously been made by Organon, which supplied all its customers on the same terms, with the 12.5% discount applicable to all products, whatever their destination.

Organon had sent all British wholesalers involved in export a circular setting out the new price regime. The wholesalers were granted the discount only on orders which they could prove were intended for the United Kingdom and would not be re-exported. Organon thus controlled *direct* exports of its products from the United Kingdom.

Organon had also sent wholesalers involved only in United Kingdom distribution a letter asking them not to supply at the United Kingdom price including the discount other wholesalers re-exporting the product. One of them had acceded to this request. Organon thus controlled *indirect* exports of its products from the United Kingdom.

The Commission immediately received three complaints on the new price regime. However, Organon had notified its price regime to the Commission.

On 24 August 1995 the Commission initiated proceedings against Organon and sent it a statement of objections to the effect that the new price regime, which formed part of the continuous commercial relations between Organon and its wholesalers and thus constituted an agreement, was a clear and serious infringement of the Community competition rules since it established price discrimination between products on the basis of their geographical destination. The statement of objections informed Organon that the Commission intended to take a decision under Article 15(6) of Regulation No 17

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[12] This decision was appealed to the Court of First Instance, T-133/95

withdrawing from it the benefit of immunity from fines conferred by its notification of the price regime.

By letter dated 28 September 1995 Organon informed the Commission that it was withdrawing the discriminatory pricing regime and would restore its previous pricing regime as from 1 October 1995. Organon stated that it disputed the Commission's interpretation and was drawing up a new price regime. The Commission informed Organon that the proceedings under Article 15(6) were no longer applicable. The Commission suspended the case for the time being, reserving the right to examine the compatibility of the forthcoming price regime with the Community competition rules.

The discriminatory price regime had very substantial effects on the sales of Marvelon in the Netherlands in particular. In the Netherlands the price of Marvelon of Dutch origin is higher than the amount of reimbursement provided by the social security system. The price of Marvelon of United Kingdom origin, however, allows the product to be marketed at a price which is the same as the amount of reimbursement provided by the social security system. This had made Marvelon imported from the United Kingdom very popular with Dutch consumers, who, prior to Organon's introduction of the discriminatory price regime, had been able to purchase a product that was fully reimbursed.

The initiation of proceedings against Organon enabled the Commission to restore the status quo. Consumers can thus once again benefit fully from the advantages of parallel trade within the European Union, as they had done before Organon introduced its discriminatory price regime.

B - New legislative provisions and notices adopted or proposed by the Commission

No	date	publication
Commission Regulation (EC) No 70/95 amending Regulation (EEC) No 2349/84 on the application of Article 85(3) of the Treaty to certain categories of patent licensing	17.01.95	OJ L 12, 18.01.95, p. 13
Commission Regulation (EC) No 870/95 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation(EEC) No 479/92	20.04.95	OJ L 89, 21.04.95, p. 7
Commission Regulation (EC) No 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements	28.06.95	OJ L 145, 29.06.95, p. 25
Commission Regulation (EC) No 2131/95 amending Regulation (EEC) No 2349/84 on the application of Article 85(3) of the Treaty to certain categories of patent licensing	07.09.95	OJ L 214, 08.09.95, p. 6
Notice on the application of the EC Competition rules to cross-border credit transfers	27.09.95	OJ C 251, 27.09.95, p. 3
Notice pursuant to Article 5 of Council Regulation (EEC) No 3976/87 of 14 December 1987 concerning a draft regulation amending Commission Regulation (EEC) No 1617/93 on the application of Article 85(3) of the EC Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports	02.12.95	OJ C 322, 02.12.95, p. 15
Draft Commission notice on the non-imposition or the mitigation of fines in cartel cases	19.12.95	OJ C 341, 19.12.95, p. 13

C - Formal decisions pursuant to Articles 85 and 86 of the EC Treaty

Published decisions	**date of decision**	**publication**
Commission Decision relating to a proceeding under Article 85 of the EC Treaty (IV/33.686 - COAPI)	30.01.95	OJ L 122, 2.6.95, p. 37
Commission Decision relating to a proceeding under Articles 85 and 86 of the EC Treaty (IV/33.375 - PMI-DSV)	31.01.95	OJ L 221, 19.06.95, p. 34
Commission Decision relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/33.802 - BASF Lacke + Farben AG, and Accinauto SA)	12.07.95	OJ L 272, 15.11.95, p. 16
Commission Decision relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.179, 34.202, 216 - Stichting Certificatie Kraanverhuurbedrijf and the Federatie van Nederlandse Kraanverhuurbedrijven)	29.11.95	OJ L 312, 23.12.95, p. 79

Other formal decisions	**date**	**nature**
SNCB+SNCF+10 (Fiches UIC)	25.7.95	Article 85(3)
SAS + Icelandair	5.12.95	Article 85(3)
Premiair (SAS + Spies)	20.12.95	Article 85(3)
SFEI/Poste Française +SFMI	26.2.95	rejection of complaint
IECC/USP	9.8.95	rejection of complaint
Remailing	30.8.95	rejection of complaint
Pelikan/Kyocera	26.9.95	rejection of complaint
Viho/SFAC	25.12.95	rejection of complaint

D - Notices pursuant to Articles 85 and 86 of the EC Treaty

1. Publication pursuant to Article 19(3) of Council Regulation No 17

Case No IV/	Name of the case	Publication
35006	ETSI interim IPR policy	OJ C 76, 28.3.95, p. 5
35280	Sicasov	OJ C 95, 19.4.95, p. 8
30373	P&I Clubs	OJ C 181, 15.7.95, p. 16
35436	Van den Bergh Foods	OJ C 211, 15.8.95, p. 4
34799	CBA	OJ C 211, 15.8.95, p. 11
34563	Ecomet	OJ C 223, 29.8.95, p. 2
35296	Inmarsat-P	OJ C 304, 15.11.95, p. 6
34607	Banque Nationale de Paris - Dresdner Bank	OJ C 312, 23.11.95, p. 13
35337	Atlas	OJ C 337, 15.12.95, p. 2
35617	Phoenix	OJ C 337, 15.12.95, p. 13

2. Publication pursuant to Article 16(3) of Council Regulation (EEC) 3975/87

Case No IV/	Name of the case	Publication
35545	Lufthansa/SAS	OJ C 201, 5.8.95, p. 2

3. Publication pursuant to Article 5(2) of Council Regulation (EEC) No 3975/87

Case No IV/	Name of the case	Publication
35545	Lufthansa/SAS	OJ C 141, 7.6.95, p. 9
35087	Premiair	OJ C 262, 7.10.95, P. 6

4. Publication pursuant to Article 12(2) of Council Regulation (EEC) No 4056/86 and Article 12(2) of Council Regulation (EEC) No 1017/68

Case No IV/	Name of the case	Publication
35111	Decisions of associations of undertakings operating in the international combined transport of goods (Fiches UIC)	OJ C 105, 26.4.95, p. 4
35382	Minoan Lines Shipping Company - Strintzis Lines Shipping Company	OJ C 255, 30.9.95, p. 4
35202	Joint operation of ferry service between Dragør and Limhamn	OJ C 350, 30.12.95, p. 16

5. "Carlsberg" notices concerning structural cooperative joint ventures

Case No IV/	Name of the case	Publication
35331	Glaxo/Warner-Lambert	OJ C 15, 20.1.95, p. 2
35360	General Electric/BASF	OJ C 23, 28.1.95, p. 3
35344	Recticel SA/Toscana Gomma SpA (Tigierre)	OJ C 23, 28.1.95, p. 4
35363	Gaz + Energy	OJ C 73, 25.3.95, p. 18
35484	Toyota Industrial equipment	OJ C 107, 28.4.95, p. 2
35421	IBM - Philips Semiconductors	OJ C 117, 12.5.95, p. 7
35522	Continental/Michelin	OJ C 136, 3.6.95, p. 3
35531	BT/VIAG	OJ C 148, 15.6.95, p. 3
35328	Canal +/Bertelsmann	OJ C 168, 4.7.95, p. 8
35617	Phoenix	OJ C 181, 18.7.95, p. 11
35640	Cummins-Wärtsilä	OJ C 200, 4.8.95, p. 9
35486	La Poste (B)/Royale Belge	OJ 205, 10.8.95, p. 3
35491	La Poste (B)/Générale de Banque	OJ C 205, 10.8.95, p. 4
35625	Saab AB/Brit. Aerospace Defence Ltd.	OJ C 217, 22.8.95, p. 4
35635	Nippon Electric/Schott	OJ C 226, 31.8.95, p. 9
35738	Uniworld	OJ C 276, 21.10.95, p. 9
35734	Bayer/Monsanto	OJ C 298, 11.11.95, p. 8
35645	Warner-Ishi Europe	OJ C 314, 25.11.95, p. 13
35841	Hydro Texaco - OK Petroleum	OJ C 347, 28.12.95, p. 17
35855	MD Foods - Arla (Scandairy)	OJ C 350, 30.12.95, p. 18

E - Press releases[13]

reference	date	subject
IP/95/50	95.01.19	CAR PRICE DIFFERENTIALS IN THE EUROPEAN UNION ON 1 NOVEMBER 1994
IP/95/51	95.01.19	NEW RULES FOR MOTOR VEHICLE DISTRIBUTION
IP/95/89	95.02.01	THE LIBERAL PROFESSIONS ARE NOT EXEMPT FROM THE COMPETITION RULES
IP/95/99	95.02.03	COMMISSION APPROVES AGREEMENT BETWEEN PMU AND DSV ON THE RELAYING OF TELEVISION BROADCASTS OF FRENCH HORSE-RACES
IP/95/104	95.02.07	COMMISSION WILL NOT PROGRESS ITS EXAMINATION OF UK BEER SUPPLY AGREEMENTS PENDING RESULTS OF ENQUIRY OF THE OFFICE OF FAIR TRADING
IP/95/229	95.03.10	THE COMMISSION REORIENTS ITS PROCEEDINGS AGAINST UNILEVER IN VIEW OF UNDERTAKINGS AIMED AT SUBSTANTIALLY OPENING THE MARKET FOR "IMPULSE" ICE CREAM IN THE REPUBLIC OF IRELAND
IP/95/243	95.03.14	COMPETITION - SEA TRANSPORT MR VAN MIERT'S REACTION TO THE ORDER OF THE COURT OF FIRST INSTANCE ON THE TRANSATLANTIC AGREEMENT
IP/95/288	95.03.22	COMMISSION EXAMINES A THIRD STRATEGIC ALLIANCE IN THE TELECOMMUNICATIONS SECTOR
IP/95/393	95.04.20	EU/US AGREEMENT ON COMPETITION POLICY
IP/95/409	95.04.28	COMMISSION APPROVES BLOCK EXEMPTION FOR CONSORTIUM AGREEMENTS IN SHIPPING
IP/95/420	95.04.26	THE COMMISSION ADOPTS SELECTIVE CAR DISTRIBUTION REGULATION
IP/95/443	95.05.04	GLOBAL EUROPEAN NETWORK PROJECT. MR VAN MIERT WANTS CLARITY ON THE ACCESS PRICE
IP/95/492	95.05.16	IRISH FERRIES ACCESS TO THE PORT OF ROSCOFF IN BRITTANY: COMMISSION DECIDES INTERIM MEASURES AGAINST THE MORLAIX CHAMBER OF COMMERCE

[13] The full texts of Commission's Press releases are available on-line from the RAPID database, on the day of their publication by the Commission's Spokesman's Service. To obtain access to RAPID, please write to EUR-OP Information, Marketing and Public Relations (OP/4B) 2 rue Mercier L-2985, Luxembourg, tel. +352/2929.42455, fax. +352/2929.42763

IP/95/523	95.05.24	COMPETITION POLICY IN 1994: MR VAN MIERT PRESENTS THE ANNUAL REPORT
IP/95/524	95.05.24	TELECOMMUNICATIONS - ATLAS PROJECT: STATEMENT BY COMMISSIONER KAREL VAN MIERT
IP/95/549	95.06.07	COMMISSION LAUNCHES INVESTIGATIONS INTO GLOBAL MOBILE SATELLITE SYSTEMS
IP/95/550	95.06.01	THE COMMISSION GIVES ITS APPROVAL TO A JOINT VENTURE THAT WILL CONTRIBUTE TO THE INTEGRATION OF THE EUROPEAN GAS MARKET
IP/95/646	95.06.21	COMMISSION SAYS IT MAY IMPOSE FINES ON MEMBERS OF THE TRANS-ATLANTIC CONFERENCE AGREEMENT (TACA)
IP/95/648	95.06.21	DISTRIBUTION OF MOTOR VEHICLES: THE COMMISSION ADOPTS A NEW REGULATION WHICH ASSURES MORE INDEPENDENCE FOR DEALERS
IP/95/657	95.06.22	EUROPEAN COMMISSION AND SIX CENTRAL EUROPEAN COUNTRIES AGREE ON AN ACTION PROGRAMME ON COMPETITION POLICY
IP/95/736	95.07.11	THE COMMISSION APPROVES A MODIFIED SONY PAN-EUROPEAN DEALER AGREEMENT
IP/95/746	95.07.12	COMMISSION FINES BASF AND ITS BELGIAN EXCLUSIVE DISTRIBUTOR OF GLASURIT CAR REFINISH PAINT FOR HINDERING THE EXPORT OF THIS PRODUCT TO THE UNITED KINGDOM
IP/95/752	95.07.12	THE COMMISSION PROPOSES TO LAUNCH A DEBATE TO REINFORCE INTERNATIONAL COOPERATION BETWEEN COMPETITION AUTHORITIES
IP/95/768	95.07.24	CAR PRICE DIFFERENTIALS IN THE EUROPEAN UNION ON 1 MAY 1995
IP/95/791	95.07.18	COMMISSIONER VAN MIERT DETAILS CONDITIONS UNDER WHICH ATLAS TELECOMMUNICATIONS VENTURE COULD BE ACCEPTABLE UNDER THE COMPETITION RULES
IP/95/952	95.09.11	THE EUROPEAN COMMISSION AUTHORISED A JOINT VENTURE AGREEMENT BETWEEN AVIONS DE TRANSPORT REGIONAL (ATR) AND BRITISH AEROSPACE (BAE)
IP/95/958	95.09.13	COMPETITION GUIDELINES FOR CROSS-BORDER TRANSFER SYSTEMS
IP/95/1001	95.09.19	THE COMMISSION SURVEYS THE EUROPEAN ONLINE MARKET

IP/95/1036	95.09.26	CAR DISTRIBUTION - THE COMMISSION PUBLISHES A GUIDE IN QUESTION-AND-ANSWER-FORMAT
IP/95/1138	95.10.18	ATLAS-PHOENIX : CLEARANCE POSSIBLE BY MID-1996
IP/95/1275	95.11.22	ALTERNATIVE TELECOMS NETWORK AUTHORISED IN GERMANY AFTER COMMISSION INTERVENTION
IP/95/1306	95.11.29	NETHERLANDS: COMMISSION IMPOSES FINES ON CRANE-HIRE CARTEL
IP/95/1345	95.12.05	CONTRACEPTIVE PILLS: COMMISSION PUTS AN END TO DISCRIMINATORY PRICING PRACTICES BETWEEN THE UNITED KINGDOM AND THE NETHERLANDS
IP/95/1354	95.12.06	COMMISSION OPENS AN ENQUIRY ON THE ALLIANCE AMERICA ONLINE / BERTELSMANN / DEUTSCHE TELEKOM
IP/95/1355	95.12.06	FIGHT AGAINST CARTELS: COMMISSION PROPOSES TO THE MEMBER STATES THAT FIRMS WHICH REPORT UNLAWFUL AGREEMENTS BE TREATED LENIENTLY
IP/95/1411	95.12.15	PROFESSIONAL FOOTBALL : EUROPEAN COURT RULES IN THE BOSMAN CASE

F - Judgments of the Community courts

1. Court of First Instance

Case	Parties	Date	Publication
T-102/92	VIHO EUROPE BV against Commission + Parker Pen Ltd	12.O1.95	OJ C 54, 4.3.95, p. 15 [1995] ECR II-17
T-114/92	Bureau européen des médias de l'industrie musicale (BEMIM) against European Commission	24.01.95	OJ C 74, 25.3.95, p. 9 [1995] ECR II-147
T-5/93	R. Tremblay, F. Lucazeau, H. Kestenberg + Syndicat des exploitants de lieux de loisirs (SELL) against European Commission	24.01.95	OJ C 74, 25.3.95, p. 10 [1995] ECR II-185
T-74/92	Ladbroke Racing (Deutschland) GmbH against European Commission	24.01.95	OJ C 74, 25.3.95, p. 9 [1995] ECR II-115
T-29/92	Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and others against European Commission	21.02.95	OJ C 87, 8.4.95, p. 8 [1995] ECR II-289
T-34/93	Société Générale against European Commission	08.03.95	OJ C 87, 8.4.95, p. 10 [1995] ECR II-545
T-395/94 R	Atlantic Container Line AB and others + Japanese Shipowners' Association and European Community Shipowners' Association against European Commission	10.03.95	OJ C 159, 24.6.1995, p. 23 [1995] ECR II-595
T-80-81-83-87-88-90-93-95-97-99-101-103-105-107-112/89	BASF AG (and others) against European Commission	06.04.95	OJ C 137, 3.6.95, p. 16 [1995] ECR II-729
T-141-142-143-144-145/89 and T-147-148-149-150-151-152/89	Welded Steel Mesh	06.04.95	OJ C 137, 3.6.95, p. 17-20 [1995] ECR II-791-1212
T-79/95 R and T-80/95 R	Société nationale des chemins de fer français (SNCF) and British Railways Board (BR) against European Commission	12.05.95	OJ C 189, 22.7.95, p. 16 [1995] ECR II-1433
T-14/93	Union internationale des chemins de fer against European Commission	06.06.95	OJ C 189, 22.7.95, p. 15 [1995] ECR II-1503
T-7/93	Langnese-Iglo GmbH against European Commission	08.06.95	OJ C 208, 12.8.95, p. 18 [1995] ECR II-1533
T-9/93	Schöller Lebensmittel GmbH & Co.KG against European Commission	08.06.95	OJ C 208, 12.8.95, p. 19 [1995] ECR II-1611

T-186/94	Guérin automobiles against European Commission	27.06.95	OJ C 208, 12.8.95, p. 20 [1995] ECR II-1753
T-30/91	Solvay SA against European Commission	29.06.95	OJ C 208, 12.8.95, p. 21 [1995] ECR II-1775
T-31/91	Solvay SA against European Commission	29.06.95	OJ C 208, 12.8.95, p. 21 [1995] ECR II-1821
T-32/91	Solvay SA against European Commission	29.06.95	OJ C 208, 12.8.95, p. 21 [1995] ECR II-1825
T-36/91	Imperial Chemical Industries plc against European Commission	29.06.95	OJ C 208, 12.8.95, p. 22 [1995] ECR II-1847
T-37/91	Imperial Chemical Industries plc against European Commission	29.06.95	OJ C 208, 12.8.95, p. 22 [1995] ECR II-1901
T-275/94	Groupement des cartes bancaires "CB" against European Commission	14.07.95	OJ C 268, 14.10.95, p. 21 [1995] ECR II-2172
T-104/95 R	Tsimenta Halkidos AE against European Commission	11.08.95	OJ C 299, 11.11.95, p. 22 [1995] ECR II-2237
T395/94 R II	Atlantic Container Line AB and others against Commission	22.11.95	OJ C 16, 20.1.96, p. 13

2. Court of Justice

Case	Parties	Date	Publication
C-360/92 P	The Publishers Association + Clé/The Irish Book Publishers Association, Booksellers Association of great Britain and Ireland / European Commission, Pentos plc, Pentos Retailing Group Ltd	17.01.95	OJ C 54, 4.3.95, p. 3 [1995] ECR I-23
C-412/93	Société d'importation Edouard Leclerc-Siplec + TF1 Publicité SA and M6 Publicité SA	09.02.95	OJ C 74, 25.3.95, p. 1 [1995] ECR I-179
C-241/91 P and C-242/91 P	Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) + Intellectual Property Owners (IPO) / European Commission + Magill TV Guide Ltd	06.04.95	OJ C 137, 3.6.95, p. 3 [1995] ECR I-743
C-310/93 P	BPB Industries plc and British Gypsum Ltd / European Commission + Iberian UK Ltd	06.04.95	OJ C 137, 3.6.95, p. 4 [1995] ECR I-865
C-149/95 P (R)	European Commission against Atlantic Container Line AB and others	19.07.95	[1995] ECR I-2168
C-96/94	Centro Servizi Spediporto Srl and Spedizioni Marittima del Golfo Srl	05.10.95	OJ C 299, 11.11.95, p. 6 [1995] ECR I-2900
C-140-141-142/94	DIP SpA and Comune di Bassano del Grappa; LIDL Italia Srl and Comune di Chioggia; Lingral Srl and Comune di Chioggia	17.10.95	OJ C 315, 25.11.95, p. 6 [1995] ECR I-3287
C-266/93	Bundeskartellamt and Volkswagen AG, VAG Leasing GmbH	24.10.95.	OJ C 333, 9.12.95, p. 1 [1995] ECR I-3508
C-70/93	Bayerische Motorenwerke AG and ALD Auto-Leasing D GmbH	24.10.95	OJ C 333, 9.12.95, p. 1 [1995] ECR I-3459
C-134/94	Esso Española SA et Comunidad Autonoma de Canarias	22.11.95	OJ C 31, 3.2.96, p. 5
C-319/93 C-40/94 C-224/94	Dijkstra/Frica Domo, van Roessel/Campina Melkunie, de Bie/Campina Melkunie	12.12.95	OJ C 46, 17.2.96, p. 3
C-399/93	H.G. Oude Luttikhuis e.a. and Coberco	12.12.95	OJ C 46, 17.2.96, p. 4
C-415/93	Bosman	15.12.95	OJ C 64, 2.3.96, p. 6

II - State monopolies and monopoly rights: Articles 37 and 90 of the EC Treaty

A - Case summaries

System of discounts granted on landing fees at Brussels airport

On 28 June the Commission adopted an Article 90(3) Decision requesting the Belgian authorities to end the system of discounts on landing fees at Zaventem airport. British Midland, a United Kingdom airline, had lodged a complaint against the system, which had been introduced under the Royal Decree of 22 December 1989. Article 2 of the Royal Decree established a system of discounts for airlines paying more than ECU 131 000 in monthly fees, with the reductions amounting to between 7.5% and 30% of the amount of fees due each month in excess of the ECU 131 000. In recent years, three airlines qualified for the discount, namely Sabena, which received an annual reduction of ECU 1.9 million, Sobelair (a subsidiary of Sabena), which received ECU 34 000, and British Airways, which received ECU 105.

In its decision the Commission took the view that the system constituted a state measure within the meaning of Article 90(1) of the Treaty. Its effect was to apply to airlines dissimilar conditions for equivalent transactions, linked to landing and take-off, thereby placing them at a competitive disadvantage. The system thus constituted an infringement of Article 90(1) of the Treaty read in conjunction with Article 86. The ECU 131 000 threshold in landing fees was so high that the discount could hardly benefit carriers other than those based at Brussels, to the detriment of other Community carriers. It was necessary to operate six to seven frequencies (landing and take-off) daily in order to reach the threshold. Sabena qualified for a 30% reduction on the top portion, equivalent to an overall reduction of 18% on its fees. On a route such as Brussels-London, where Sabena and British Midland are in competition, Sabena received an 18% discount on its airport fees (4% to 6% of its operating costs) for an equivalent service provided by the Belgian Airways Authority, which managed the airport. The Commission took the view that such reductions could be justified only if the airport manager achieved corresponding economies of scale. There were no economies of scale in this instance. The system thus had the object of favouring the Belgian airline. In addition, the exception provided for in Article 90(2) did not apply.

Commission Decision of 4 October 1995 concerning the conditions imposed on the second operator of GSM radiotelephony services in Italy

Following a Commission request in July 1993 to terminate or justify the monopoly enjoyed by Telecom Italia in GSM radiotelephony, on 16 December 1993 the Italian Government launched a process to select a second GSM operator. One of the selection criteria, notified to interested parties on 29 January 1994 by the Italian authorities, was the amount of money tendered.

On 18 April 1994, the Italian Government officially announced the grant of the second concession to Omnitel Pronto Italia in exchange for a payment of 750 billion lira. The incumbent public operator, and previously sole provider of mobile telephony in Italy, Telecom Italia, had been granted its licence without making a similar payment.

The Commission found that the imposition of such an initial payment only on the new entrant would necessarily lead to one of the following results, each of which represents a breach of Article 90(1) read in conjunction with Article 86 of the Treaty:

a) the extension of the dominant position of the established operator thanks to the competitive advantage provided by this distortion of the cost structure;

b) the limitation of production, markets or technical development within the meaning of Article 86(b).

The Decision, which aims to abolish the distortion of competition resulting from the initial payment by Omnitel, therefore provided that the Italian Government must either:

- require that Telecom Italia Mobile make an identical payment; or

- adopt, after receiving the agreement of the Commission, some corrective measures equivalent in economic terms to the payment made by the second operator.

In addition, it requires that the measures finally adopted should not undermine the competition introduced by the authorization of the second GSM operator.

B - New legislative provisions and notices adopted or proposed by the Commission

	Date	**Publication**
Commission Directive 95/51/EC amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services	18.10.1995	OJ L 256, 26.10.1995, p. 49
Draft Commission Directive, amending Directive 90/388/EEC with regard to mobile and personal communications		OJ L 197, 11.08.95, p. 5
Draft Commission Directive amending Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets		OJ C 263, 10.10.1995, p. 6
Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services		OJ C 275, 20.10.1995, p. 2
Draft notice from the Commission on the application of the postal sector and in particular on the assessment of certain State measures relating to postal services		OJ C 322, 2.12.1995, p. 3

C - Commission decisions

	date	reference
Commission Decision relating to a proceeding pursuant to Article 90(3) of the Treaty (Brussels National Airport - Zaventem)	28.6.1995	OJ L 216, 12.09.1995, p.8
Commission Decision concerning the conditions imposed on the second operator of GSM radiotelephony services in Italy	4.10.1995	OJ L 280, 23.11.1995, p. 49

D - Press releases

reference	date	subject
IP/95/61	95/01/25	LIBERALISING TELECOMMUNICATIONS INFRASTRUCTURE : PUBLICATION OF PART II OF THE GREEN PAPER AND CONSULTATION ON THE FUTURE REGULATORY FRAMEWORK
IP/95/131	95/02/13	LIBERALISING CORE SECTORS OF INFORMATION SOCIETY IN EUROPE: "NO FORTRESS EUROPE BUT NO BLUE-EYED APPROACH EITHER" SAYS COMMISSIONER VAN MIERT
IP/95/432	95/05/03	LIBERALISING TELECOMMUNICATIONS INFRASTRUCTURE : THE REPORT ON THE RESULTS OF THE CONSULTATION ON THE GREEN PAPER CONCERNING THE LIBERALISATION OF TELECOMMUNICATIONS INFRASTRUCTURE AND CABLE TV NETWORKS
IP/95/647	95.06.21	MOBILE AND PERSONAL COMMUNICATIONS : COMMISSION WANTS OPEN MARKET
IP/95/765	95.07.19	COMMISSION CONFIRMS MEASURES ENSURING FULL COMPETITION IN TELECOMS BY 1998
IP/95/802	95.07.20	LIBERALISATION IN ITALIAN PORTS: A MAJOR STEP FORWARD
IP/95/813	95.07.26	COMMISSION ADOPTS LEGISLATIVE PROPOSALS FOR POSTAL SERVICES
IP/95/959	95.09.13	AS GSM MOBILE COMMUNICATIONS MARKET IS OPENED TO COMPETITION THE COMMISSION SCREENS THE LICENSING PROCEDURES
IP/95/1093	95.10.04	GSM ITALY : COMMISSION ASKS FAIR TREATMENT FOR OMNITEL
IP/95/1102	95.10.11	THE COMMISSION OPENS CABLE TV NETWORKS TO LIBERALISED TELECOMS SERVICES
IP/95/1353	95.12.06	START OF CONSULTATION ON THE DRAFT POSTAL NOTICE

E - Judgments of the Community courts

1. Court of First Instance

Case	Parties	Date	Publication
T-84/94	Bundesverband der Bilanzbuchhalter eV. against European Commission	23.01.1995	OJ C 74, 25.3.95, p. 11 ECR 1995, p. II-103
T-548/93	Ladbroke Racing Ltd against European Commission	18.09.1995	OJ C 286, 28.10.95, p. 12

2. Court of Justice

Case	Parties	Date	Publication
C-96/94	Centro Servizi Spediporto Srl and Spedizioni Marittima del Golfo Srl	05.10.1995	OJ C 299, 11.11.95, p. 6 ECR 1995, p. I-2900
C-19/93P	Rendo NV and others against European Commission	19.10.1995	OJ C 315, 25.11.95, p. 7 ECR 1995, p. I-3336
C-91/94	Thierry Tranchant and Téléphone Store SARL	09.11.1995	OJ C 16, 20.1.96, p. 3 ECR 1995, p. I-3911
C-244/94	Fédération Française des Sociétés d'Assurance and others, and Ministère de l'Agriculture et de la Pêche	16.11.1995	OJ C 31, 3.2.96, p. 2 ECR 1995, p. I-4022
C-430/93 and C-431/93	Jeroen Van Schijndel and Johannes Nicolaas Cornelis van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten	14.12.95	OJ C 77, 16.3.96, P. 1
C-387/93	Giorgio Domingo Banchero	14.12.95	OJ C 64, 2.3.96, p. 2

III - Merger control : Council Regulation (EEC)No 4064/89 and Article 66 of the ECSC Treaty

A - Case summaries

1. Application of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings

- ***Summaries of the most important or interesting Article 6.1.a and 6.1.b decisions***

1.1. Wood, pulp and paper products

Svenska Cellulosa/PWA Papierwerke (20.02.95)

The Commission approved the acquisition of a majority share holding in the German company PWA Papierwerke Aldhof-Ashaffenburg AG (PWA) by the Swedish company Svenska Cellulosa AB (SCA).

SCA is a forest industry company that specialises in the manufacture of hygiene products, transport packaging (corrugated case materials and corrugated cases), tissue products and graphic papers. SCA's activities in the area of hygiene products and tissue products are carried out within its subsidiary, SCA Mölnlycke. PWA is a manufacturer of a range of paper and packaging products, in particular coated and uncoated fine paper, tissue products, transport packaging, container board and speciality papers. Following the operation, the new group (worldwide turnover about ECU 5,700 million) will be the largest supplier in the European paper industry.

SCA and PWA are both active in several product markets involving the supply of tissue products, transport packaging, and uncoated wood-free papers. However, PWA is not active in a number of the principal areas in which SCA is involved.

The Commission considered that, although SCA and PWA are important operators in certain affected tissue product markets where the new entity would have substantial market shares both within the EEA as a whole and within individual Member States, it would continue to face competition from other multinational tissue product manufacturers. In particular, the Commission took into account that in the specific tissue product markets affected by the operation (i.e. non-feminine protection products), which are of a less sophisticated nature and for which recognised brands are less relevant than those considered in the recent Procter & Gamble/VP Schickedanz (II) case, market entry barriers are comparatively weak. This is demonstrated by the relatively high penetration of private label products and the relatively high price sensitivity of consumers.

Within the other affected markets (transport packaging and uncoated wood-free papers), it was found that the combined share of SCA and PWA in EEA-wide markets did not give rise to competition concerns, as in all these markets there were large and financially strong companies to whom customers could turn.

Noranda Forest/Glunz (08.09.95)

The Commission approved a joint venture whereby the European wood-based panel board operations of Noranda Forest Inc and the United Kingdom wood-based panel board operations of Glunz AG

would be combined in Norbord Holdings Ltd (currently a Noranda subsidiary to be renamed CSC Forest Products Ltd following consummation of the transaction).

Upon completion of the operation Noranda Forest Inc, a Canadian forest products company, was to withdraw from the European panel board market. The only panel board product for which the operation will lead to a substantial combined market share is oriented strand board (OSB), a comparatively new product in Europe, for which Glunz and Norbord Holdings Ltd have the only two lines currently producing in the European Union.

Total consumption of OSB is very small compared to that of other panel board products, notably particle board and plywood, for which OSB is a substitute in certain applications. Furthermore, the market shares of Glunz and Norbord on markets combining OSB and particle board, and for OSB and plywood, respectively, do not give rise to any competition concerns. In addition, at least one other major producer of panel board products is installing an OSB line in the European Union.

Repola/Kymmene (30.10.95)

The Commission approved an operation by which Repola Corporation and Kymmene Corporation entered into a full merger. Repola and Kymmene were large Finnish companies active internationally in the fields of printing paper and packaging materials. The operation involved product markets for newsprint, magazine paper and paper sacks.

In paper sacks the Commission concluded that there is a separate Finnish market for this product and that the concentration would lead to the creation of a dominant position on the Finnish market. Repola and Kymmene have dominated the Finnish market for several years and as a result of the operation the new company would be practically the sole provider of paper sacks to Finnish customers. However, Repola and Kymmene entered into commitments vis à vis the Commission which remove the serious doubts as to the proposed operation's compatibility with the common market. The commitments involve divestiture of some of Repola and Kymmene's paper sack capacity on the Finnish market.

The markets for newsprint and magazine paper are at least Western European in scope and Repola/Kymmene, like all other major European paper producers, market and distribute their products in almost all Member States. The new company will be the largest European player in newsprint and magazine paper. However, its combined market share does not exceed 20% in either of these two markets and several of their competitors have strong positions.

Repola was, together with five other Finnish paper producers, a member of Finnpap Marketing Association. Finnpap was a joint sales organisation which markets the paper products of its members on a world-wide basis. Kymmene, which is not a member of Finnpap, has its own sales network. In the notification the parties had not made clear their plans as to whether the marketing of paper produced by Repola would remain in Finnpap or whether all the paper products of the new company would be marketed through Kymmene's own distribution network. If Repola had continued to distribute its products through Finnpap's network, a link between Kymmene's paper marketing and the other producers represented by Finnpap would have emerged. In such a situation the scope of the merger would have been extended to include the combined sales of the new company together with the other Finnish producers selling through Finnpap. Given this background, in order to eliminate any possible concerns about the role of Finnpap, the parties decided to commit themselves not to sell paper products through the Finnpap joint sales agency.

In light of the commitments given by Repola and Kymmene, the Commission has concluded that the concentration does not create or strengthen a dominant position.

1.2. Petroleum Products, Chemicals, Plastics Etc

Texaco/Norsk Hydro (09.01.95)

The Commission approved the creation of a joint venture between Texaco and Norsk Hydro, where the joint venture's activities will be the distribution of refined oil products in Norway and Denmark. The JV's parents, Texaco (USA) and Norsk Hydro (Norway), are both fully integrated oil companies. Texaco and Norsk Hydro would thus withdraw from the business of the JV, that is, from the business of distribution of refined oil products in Norway and Denmark. The joint venture would take over all the assets of the mother companies in the two countries concerned, that is, terminals, depots, trucks and service stations.

This operation fell under the jurisdiction of the Merger Regulation, as the joint venture had the characteristics of an autonomous joint venture which is active in a trade market with the necessary facilities to perform the normal functions of a trading company in such a market. Taking into account the fact that the JV would not be the main customer of each of the parents, the very different nature of the two parents' activities and their limited presence on the upstream market for supply of refined oil products to distributors (9% together), the Commission found that there would be no scope for coordination between them on this upstream market.

Accordingly, the Commission concluded that the joint venture between Texaco and Norsk Hydro did not create or strengthen a dominant position in the common market or in a substantial part of it. The combined market shares of the parties on the relevant markets did not exceed 25% and there were several other large competitors to the parties (Shell, Esso, Statoil, Q8, Fina).

Union Carbide/Enichem (13.03.95)

The Commission authorised a joint venture between Enichem and Union Carbide (UCC) in the market for polyethylene ("PE"), a thermoplastic used for the manufacture of a variety of end-products including film and moulded goods.

Enichem was to transfer to the joint venture, Polimeri Europa Srl, its Western European PE manufacturing facilities and sales network, with the exception of its Porto Torres (Sardinia) PE plant, its interests in two ethylene crackers at Brindisi and Dunkirk and its PE production technologies. UCC, which prior to the operation was not active as a PE producer in Western Europe, was to contribute its technological expertise, including a licence to use its "Unipol" PE production process. UCC is the leading world supplier of PE production technology.

The Commission examined the effects of the proposed operation on three separate markets: the market for the production and sale of PE resins; the upstream market for the supply of ethylene (which is the raw material used in the production of PE); and the market for PE technology licensing market. The Commission concluded that the operation would not create or strengthen a dominant position in any of these markets.

In the market for the production of PE resins, there are three basic families of PE resins defined on the basis of their degree of density and crystallinity, namely High-Density (HDPE), Low-Density

(LDPE) and Linear Low Density (LLDPE). There is a growing demand for PE resins, especially for LLDPE, which is gradually replacing LDPE, and for HDPE, which has different characteristics and end-uses (greater strength but lower processability).

In Western Europe there are a number of major producers of PE resins, including Enichem, Borealis, BP, Dow, DSM and Exxon. Although Enichem is one of the largest suppliers of PE resins, its share of PE resins either as whole or within each PE family did not exceed 25%. UCC did not add to this market share, except to a very small extent, through its participation in a recent joint venture with Elf Atochem. Furthermore, several of the JV's competitors belong to large, vertically integrated groups that have their own proprietary PE technology.

In the upstream market for the production of ethylene, Enichem was the only producer and main supplier of this raw material in Italy; imports into Italy are very small in view of transportation difficulties and the need for port and storage facilities. However, the joint venture did not strengthen this pre-existing market position, since UCC was not a producer of ethylene in Western Europe. Moreover, Enichem's regional strength was not likely to lead to a creation of dominance on the downstream market for PE, because Italy only accounts for a small proportion of total Western European ethylene capacity.

In the PE technology market, there are four types of PE production processes that are currently used, distinguished by the method in which ethylene is polymerised: gas phase (for instance, UCC, BP, Montedison); slurry (for instance, Phillips Petroleum, Mitsui); solution (for instance, Novacor, Dow) and high pressure (for instance, ICI, Enichem).

Whilst none of these technologies are obsolete, demand for high pressure technology is decreasing, because of its higher operating costs and the fact that it can only be used to produce LDPE. As the demand for HDPE and LLDPE is expected to be stronger than LDPE, potential licensees for PE technology will naturally seek licences for low-pressure processes (gas-phase, slurry or solution) that produce one or both of these products. In this context, the capability of a technology to switch production from HDPE to LLDPE at a single plant (that is, a "swing" plant) is also important for at least some potential licensees in Western European.

UCC's PE technology, Unipol, is the leading gas-phase PE process. However, the Commission concluded that the creation of Polimeri Europa would not significantly improve Unipol's position in PE technology, since Enichem's technological experience is mainly confined to the area of high-pressure technology and only to a very limited extent in gas-phase or slurry.

The Commission also examined the effects of the joint venture on the supply of propylene, one of the by-products of the ethylene production process. It concluded that the operation would not lead to an addition of market shares in that area either.

The parties also submitted to the Commission, in conjunction with the notified joint venture, an ethylene supply agreement between Enichem and the joint venture. In assessing this agreement, the Commission took into account the interests of third parties in order to assure them of the availability of sufficient quantities of ethylene in the area.

Saudi Aramco/MOH (23.05.95)

The Commission approved the setting up of a joint venture between the Saudi Arabian Oil Company ("Saudi Aramco") and the Vardinoyannis family through Saudi Aramco's acquisition of a 50% stake in two pre-existing Greek companies, Motor Oil Corinth Refineries S.A. ("MOH"), an oil refining company, and Avinoil Industrial and Maritime Oil Company S.A. ("Avin"), a retailer of refined petroleum products. Before the operation these two companies were exclusively controlled by the Vardinoyannis family.

Saudi Aramco, a company wholly owned by the Kingdom of Saudi Arabia, is engaged in the exploration, production, transport, refining and marketing of oil primarily outside Europe. The members of the Vardinoyannis family are Greek nationals with multiple business activities including oil and petroleum products, shipping, banking, real estate, media, hotels and leisure.

The concentration would mainly affect the Greek markets for the refining and the retail distribution of refined petroleum products. As Saudi Aramco was not present in these markets in Greece before the concentration, there is no addition of market shares.

1.3. Pharmaceuticals

Glaxo PLC/Wellcome PLC (28.02.95)

On 30 January 1995 Glaxo plc ("Glaxo") notified to the Commission its public bid for the acquisition of Wellcome plc ("Wellcome"). The activities of Glaxo and Wellcome in the pharmaceutical market were basically complementary. Furthermore, the Commission found that the companies are subject to competitive pressures exerted by other large pharmaceutical companies in most of the markets where they are present.

However, the Commission specifically addressed the issue of whether the acquisition of Wellcome could significantly bolster Glaxo's strong position in one particular therapy area, that is, migraine therapy. Glaxo had a strong position in the treatment of migraines with its product "Imigran", and it also had a compound in an advanced stage of development in this therapeutic area. At the same time, Wellcome currently marketed only one off-patent medicine used in the anti-migraine area, and this product had only limited sales and market share in all EU Member States. However, Wellcome did have a compound in development which appeared to have the potential to compete with Glaxo's Imigran in the near future. Therefore, the merger would result in Glaxo combining its currently high market shares in several Member States with the ownership of two compounds in advanced stages of development.

In order to remove any possible doubts as to the compatibility of its acquisition of Wellcome with the common market, Glaxo undertook to grant a licence of one of these two main anti-migraine compounds under development to a third party. In any event, the Commission found that several other pharmaceutical firms were also in the process of developing new anti-migraine compounds similar to those of Wellcome's and Glaxo's, with at least some of these products due to come onto the market in a similar time frame. In view of the fact that several of these competing firms were also major pharmaceutical companies with the ability to market their products on a worldwide basis, the Commission concluded that the removal of Wellcome as a competitor in this field was therefore of limited effect.

The Commission also examined the possible effects of the acquisition on products under research and development. Both Glaxo and Wellcome are research-based pharmaceutical firms, and their combination would imply the combination of large research resources and skills. Both companies were active in research for new compounds for the treatment of HIV/AIDS. After consulting a number of the major competitors and customers, distributors of medicines, and certain affected national health services in the EU, the Commission determined that there were no overlaps between the products being developed by the two companies in these areas and therefore no major competitive threats arose.

Behringwerke AG/Armour Pharma (03.04.95)

The European Commission approved the creation of a joint venture between Behringwerke AG (Behringwerke) and Armour Pharmaceutical Co (Armour), where both parties transfered their respective worldwide plasma derivative businesses into the joint venture. Behringwerke, a subsidiary of Hoechst AG, and Armour, which indirectly belongs to Rhône-Poulenc, are both manufacturers of pharmaceutical products.

The concentration concerned a variety of plasma-derived products, with the activities of the parties overlapping in four of these - human albumin, intravenous immunoglobulin, factor VIII and factor IX. Differing national systems for registration, safety standards and social security reimbursement have the effect that the markets for these products are still national. In most EEA countries the combined market shares of the parties was low. But whilst their combined shares for factor VIII in the EEA was about 30 per cent, in Germany it exceeded 40 per cent and in Austria it was significantly higher.

Nonetheless, Behring's share of the factor VIII market in Germany had declined in recent years because the technology of its product had been superseded by more advanced products. In particular, Bayer and Baxter were supplying a recombinant product which contained fewer elements of human blood and was therefore considered safer than traditional products, such as Behring's. Although Bayer and Baxter had granted distribution licences for recombinant factor VIII to Armour, the quantity of product to which the joint venture would have access was limited, and Baxter and Bayer had the important advantage of having entered the German market substantially earlier. Other significant competitors such as Pharmacia (Sweden) and Novo Nordisk (Denmark) were also found to be likely to enter the market within a few years.

The Commission found that similar considerations applied to the Austrian market for factor VIII, where Behring's market share had also declined appreciably from 1993 to 1994. For some years prior to that, market positions had been vulnerable and subject to significant changes. In Austria, the introduction of recombinant factor VIII was imminent and, again, the joint venture would face suppliers who had entered the market before them.

1.4. Metals

Alumix/Alcoa (21.12.95)

The Commission cleared the acquisition by the U.S. company Aluminum Company of America ("Alcoa") of the Italian company Alumix S.p.A. ("Alumix"). Alumix was owned by EFIM and this operation was part of the privatisation programme for EFIM (which is a corporation wholly owned by the Italian government and is currently in compulsory administrative liquidation). The operation consisted of the acquisition by Alcoa of Alumix's interests in the aluminium sector, with the exclusion of a minor part of its flat rolled products business (the manufacture of slugs). In addition, Alcoa would

acquire Alumix's 6% participation in Halco Mining, Company, a Delaware company engaged in bauxite mining in Guinea through Compagnie des Bauxites de Guinée.

Alcoa is a vertically integrated company and is the world leader on the aluminium market. Alumix, also a vertically integrated aluminium producer, has activities are focused on the European market, and in particular the Italian market.

The Commission concluded that the operation would not create or strengthen a dominant position on any of the markets affected by the operation, as on each of them Alcoa would face competition from major competitors like Alcan, Pechiney, Alusuisse, VAW, Hoogovens. The decision adopted under the Merger Regulation did not cover the procedures concerning Alumix under the Commission's State Aid rules.

1.5. Manufactured Goods, Electrical

Daimler Benz/Carl Zeiss (27.06.95)

The Commission authorized the creation of a joint venture, Zeiss-Electro Optronic GmbH, by Daimler-Benz and Carl Zeiss in which the parties would contribute their activities in the field of military optronics.

The main defence applications of optronics are related to reconnaissance, identification, range finding and missile guidance. In Germany, Daimler-Benz and Carl Zeiss had a combined market share of around 40 % for military optronics. However, the only significant overlap in the activities of both companies was for thermal imaging equipment in Germany where Daimler-Benz and Carl Zeiss were the only producers. An order given to the Israeli company, ELOP, in the context of the project to improve the fighting capability of the LEOPARD 2 Tank, demonstrated that the behaviour of the joint venture in the German market for thermal imaging equipment would be sufficiently limited because the German Ministry of Defence could switch to international suppliers.

Thomson/Teneo/Indra (22.08.95)

The Commission approved the acquisition by THOMSON-CSF, a subsidiary of the French company THOMSON SA, of 25% less one share of the capital stock of INDRA SISTEMAS SA (INDRA), a subsidiary of the Spanish public group TENEO SA. A shareholders agreement between Thomson and Teneo ensured that Indra would operate under the joint control of Thomson-CSF and Teneo.

Thomson is a holding company controlled by the French State, with two main subsidiaries: Thomson Consumer Electronics, which is active in the design, development and manufacture of consumer electronic products. and Thomson-CSF, active in professional electronics and defence systems. Its main strengths are in aircraft equipment, communication and command networks, detection systems, missile systems, electronics and information technology. Indra is active in the business of professional electronics through subsidiaries operating in the sectors of defence and dual technologies, consulting and computer services, control and communication, and space electronics.

There were no material overlaps because the parties basically operated in the same products in different geographical markets. Consequently there was no material addition of market shares. Furthermore, the operation did not materially modify the present structure of national markets since the possibility for other strong competitors and new entrants to expand remained essentially unchanged.

Seagate/Conner (17.11.95)

The Commission approved an operation by which Seagate Technology Inc. would enter into a full merger with Conner Peripherals Inc. Both companies are incorporated in the USA.

The relevant product market was the hard disk drive market, which was split into three segments: drives for portable/notebook computers, 3.5 inch drives (currently approximately 90% of the market) used predominantly for desktop computers and drives including 5.25 inch and larger formats used in servers, mini and mainframe computers. After analysing pricing, distribution costs, the views of manufacturers and purchasing patterns, the Commission concluded that the relevant geographic market for hard disk drive is probably global and is certainly at least EU-wide.

The only sector where an overlap led to a substantial market share was the 3.5 inch sector where a market share of slightly under 40% would be achieved. In this sector, there were three other competitors having shares above 10%, one of which held a share above 20%. After taking into consideration the current high level of competition in the product market, the investment plans of competitors and the very rapid growth of the market, the Commission concluded that the merger would not raise serious doubts as to its compatibility with the common market.

1.6. Manufactured Goods, Mechanical

Ingersoll Rand/Clark Equipment (15.05.95)

Ingersoll-Rand, a U.S. corporation which manufactures machinery for the construction and other sectors, acquired Clark Equipment, another U.S. corporation active in the construction equipment sector.

On 13 April 1995 Clark Equipment had completed the disposal of its 50% share in the Dutch construction equipment company VME. As a result of this earlier divestment, the EU turnover of Clark Equipment was below 250 MECU, and therefore the Commission issued a 6.1.(a) decision as the acquisition of Clark Equipment by Ingersoll-Rand did not have a Community dimension under the Merger Regulation.

ATR/BAE (25.07.95)

The Commission decided that the regional aircraft joint venture between Aérospatiale, Alenia and British Aerospace was not a concentration within the meaning of the Merger Regulation. The operation was therefore treated under the procedures for structural joint ventures under Article 85 of the Treaty of Rome.

Aérospatiale and Alenia, already integrated within ATR, and British Aerospace notified to the Commission under the Merger Regulation a joint venture which would include all their regional aircraft activities. These regional aircraft activities consisted of the ATR product range, including the ATR 42 and ATR 72 aircraft, BAe's Jetstream turboprop operation and the Avro regional jets business. The joint venture was set up to conduct feasibility studies into new aircraft and progressively to combine the activities connected with their existing product ranges.

According to the Commission's analysis, the joint venture would not be full function in the first stage of its existence as there would be uncertainty over the outcome of the feasibility studies and the

combining of the existing aircraft activities would not amount to much more than the formation of a joint sales agency. Moreover, plans for further integration were, at the time, considered to be too uncertain to enable the operation to be considered as a full function joint venture. Consequently this operation was considered to be outside the scope of the Regulation.

1.7. Transport and travel

Babcock/Siemens/BS Railcare (30.06.95)

On 30 May 1995 Siemens AG and Babcock International Group plc notified the Commission of their agreement to establish, through their respective U.K. subsidiaries, Siemens plc and Babcock International Ltd, a joint venture holding company, Railcare Ltd, which will carry out activities in the rail transport sector, primarily within the United Kingdom.

The joint venture company, which was constituted in the framework of the privatization of British Rail, would be involved mainly in two areas of activity relating to railway vehicles (including locomotives) i.e., maintenance and refurbishment. To this end it bid for and recently acquired two Level 5 heavy maintenance depots, at Wolverton and Springburn, belonging to the British Railways Board. The transaction would be completed by the joint venture's acquisition of the Babcock International Ltd's business for design, supply and refurbishing of railway vehicle interiors, Tickford Rail Ltd.

In its activities of maintenance and refurbishment of railway vehicles in the U.K., the joint venture company, Railcare Ltd, would face strong competition from important players such as GEC Alsthom, ABB Transportation and Bombardier, who already had an important presence there. Consequently, the Commission concluded that there would be no creation or strengthening of a dominant position as a result of the proposed operation and, therefore, decided not to oppose it.

GRS Holding (11.12.95)

Charterhouse/Porterbrook Leasing Company (11.12.95)

The Commission authorised the acquisition of Angel Train Contracts Ltd by Noruma and of Porterbrook Leasing Co Ltd by Charterhouse Development Capital Holdings Ltd. These two cases are steps in the privatisation of British Rail. The passenger railway rolling stock, previously owned by the British Railways Board, was vested in three rolling stock companies ("ROSCOs") each of which has an approximate market share of 33%. This is because each ROSCO was granted an approximately equal share of existing passenger rolling stock of an equal average age. Furthermore, each rolling stock company was endowed with an equal share of the existing operating leases with the twenty-five Train Operating Companies ("TOCs").

The purpose of the sale of the ROSCOs is to introduce competition into the market for the provision of passenger rolling stock. The Commission noted that at the outset it might appear that competition would be restricted due to the market shares of the three ROSCOs. However it further noted that the TOCs, on renewal of the operating leases, would be able to choose between the various providers of passenger rolling stock. Furthermore, there would be no regulatory restrictions or licence requirements (other than those appertaining to safety) preventing other operators entering the market.

The application of Article 3.5(c) of the Merger Regulation, which sets out how operations carried out by financial holding companies are to be treated, is discussed in the Charterhouse/Porterbrook Leasing Company decision.

1.8. Telecommunications

The Commission took a number of decisions on operations in the telecommunications sector in 1995. Omnitel concerned the establishment of a consortium which was granted the second mobile telephone licence in Italy. The Commission found that the operation was not a concentration, as some of the parent companies were active in mobile telephony in other countries. It considered that the parents could, therefore, compete with the joint venture through these companies by offering GSM standard mobile telephones and the roaming agreements between mobile telephone operators. Accordingly, the operation was considered under the Article 85 procedures for co-operative joint ventures.

The other major telecommunications cases in 1995 all concerned the establishment of new or extensions of existing joint ventures to take advantage of the ongoing liberalisation of telecommunications in the European Union. Telenordic/BT/Teledanmark concerned the establishment of a new joint venture to take advantage of the already liberalised telecommunications market in Sweden. Cable and Wireless/Veba and British Telecom/VIAG were both operations which involved German companies with certain telecommunications interests (including existing private infrastructure) entering into joint ventures with UK telecommunications companies in anticipation of the liberalisation of German and other telecommunications markets in 1998. All three of these operations were cleared under the Merger Regulation. Albacom was a joint venture between British Telecom and BNL, an Italian bank, for the establishment of a company in Italy to offer certain network services which had been liberalised in Italy and other services when they were in turn liberalised. In the light of the agreement between the parties, the limited period of joint control was insufficient for the operation to be considered as jointly controlled within the meaning of the Merger Regulation. The acquisition by BT of sole control fell below the Merger Regulation turnover thresholds.

Unisource/Telefonica involved the inclusion of Telefonica, the Spanish telecommunications operator in the Unisource consortium which already included Telia of Sweden, PTT Telecom of the Netherlands and Swiss PTT. Unisource was active in a number of areas whereas Telefonica contributed its satellite services operation and provided for a form of joint management of its data services activities with Unisource. Telefonica was not able to fully contribute its data activities for legal reasons. Because of the management arrangement which was devised for the data services and the non-concentrative nature of other activities which were to be contributed to the new company, the operation was considered not to be a concentration and was instead examined under the Article 85 procedures.

1.9. Banking and Financial Services

Mitsubishi Bank/Bank of Tokyo (17.07.95)

The Commission approved an operation by which two Japanese credit institutions, the Mitsubishi Bank Limited and the Bank of Tokyo Ltd would enter into a full merger. The new entity resulting from this operation will be called "The Bank of Tokyo - Mitsubishi Ltd" and it would rank amongst the largest banks in the world.

The great majority of the business of both banks is conducted outside the Community, in particular on their domestic market in Japan and thus, the primary effects of the merger would be felt outside the Community. Within the Community, both banks are established in major EU countries where they are mainly engaged in the provision of loans and advances to corporate entities. However the new entity which would be created by the merger would not hold significant market shares in any product or geographic market within the Community.

Chase Manhattan/Chemical Banking (26.10.95)

The Commission approved the merger between Chemical Banking Corporation and The Chase Manhattan Corporation, which ranked as the fourth and sixth largest banks in the USA.

The major portion of each bank's activities is located in the USA, and the primary effect of the merger would be on USA and international markets. Both banks are active in the EU in the investment and commercial banking sectors, and in financial trading activities, but their combined market shares are not such as to hinder competition, whether in national or international markets.

1.10. Insurance

Allianz/Elvia/Lloyd Adriatico (03.04.95)

The Commission authorized the German insurance company Allianz to acquire the Swiss insurance company Elvia and the Italian insurance company Lloyd Adriatico. The initial sale agreement between Schweizer Rückversicherungsgesellschaft and Allianz provided that Allianz would also acquire the majority stake held by Schweizer Rück in the German insurance group Vereinte. However, because of potential competition problems which that transaction could pose on the insurance market in Germany, Allianz and Schweizer Rück agreed that Schweizer Rück would for the time being keep its holding in Vereinte and that it would ask a merchant bank to find another purchaser who was able to provide the necessary guarantees. Allianz will thus not at any time be able to exercise a determining influence on Vereinte.

Elvia operates almost exclusively in Switzerland, while Lloyd concentrates essentially on the Italian market. within the common market, the main impact of the acquisition will thus be on the Italian insurance market. In life assurance, Allianz will have a share of 11% in Italy, while its market share in non-life insurance will be 16%. In each of these sectors, Allianz will have powerful competitors such as Generali and the Fondiaria Group. The Commission accordingly concluded that the transaction would not result in the creation of a dominant position and that it was compatible with the operation of the common market.

UAP/Sunlife (21.08.95)

The Commission approved an operation by which the French insurance and banking group UAP would acquire sole control of the British insurance group Sun Life.

Sun Life which is predominantly active in the life insurance sector in the UK had been jointly controlled, since 1991, by UAP and the South African based insurance and financial services group, the Liberty Life Group. By the present operation UAP would acquire the whole of Liberty Life's interest in Sun Life and thus would become the sole owner of this latter undertaking. The

concentration would not raise competition concerns since there is no significant overlap of activities either in the UK or in any other EU country.

1.11. Media Industries

CLT/Disney/Super RTL (17.05.95)

The European Commission approved the creation of a joint venture between CLT and Disney, Super RTL, a family and children orientated channel. It would be a free access channel available in Germany on cable and satellite.

Through subsidiary companies, CLT - Compagnie Luxembourgeois de Telediffusion - owns 50% of the channel and the Walt Disney Company owns the other 50%. CLT also has stakes in two other German TV channels - RTL Plus and RTL 2. Apart from Super RTL, Disney is not present on the German free access TV market. However, Disney sells film and TV rights to German TV channels.

The new channel would compete with other general interest channels which are available freely in Germany. Though no other specifically children orientated channels currently exist in Germany, two such channels are planned: one free access TV and one pay TV. As the new channel did not have any market share, at its inception, for TV advertising on German free access TV, its formation raised no serious doubts as to its compatibility with the common market. Due to the competitive structure of the German TV advertising market, this would be equally true if the other channels in which CLT has stakes (RTL Plus and RTL 2) were also taken into account. On the market for film and TV rights, despite Disney's strong programme library, there are other competitors who are able to provide similar types of programmes to the joint venture and to other channels. Consequently the operation raised no serious doubts on this market.

In addition, Disney and CLT have signed a licence agreement providing for licences for programme rights from Disney to CLT, including sublicences to Super RTL. As it would not be possible to divide the broad licensing agreement and the sub-licensing provisions for programme rights to the joint venture, this agreement was not considered to be directly related and necessary to the concentration and therefore was not covered by the clearance decision.

Havas(CEP)/Groupe de la Cité (29.11.95)

The Commission authorized Havas to acquire control of Groupe de la Cité and a number of other press companies. The book publishers Groupe de la Cité had hitherto been controlled jointly by Havas and Alcatel Alsthom. In future, it will be controlled solely by Havas. The transaction thus amounts to a transition from joint control to sole control. As Havas is not otherwise involved in the publishing industry and as there are other major competitors in the field of French-language publications (e.g. Hachette and Flammarion), the Commission took the view that the transaction would not lead to the creation or strengthening of a dominant position.

The other firms acquired are chiefly engaged in newspaper publishing activities. Hitherto controlled solely by Alcatel Alsthom, they will in future be controlled only by Havas. In the general area of press publications, the Commission drew a distinction between the readership market (sale of newspapers to readers) and the market for the purchase of advertising space. In the readership market, it found that Havas and the firms acquired were not competitors. Havas is present in the market for trade publications and economic and financial magazines, whilst the firms acquired produce three specialized publications for the general public and two weeklies covering political and general

affairs. As regards the market for the purchase of advertising space, the Commission used several methods of analysis, including the one used by the French Competition Council when it examined the agreement between L'Express and Le Point in 1993.

Regardless of the method used, the Commission concluded that the transaction did not pose any competition problems, either because the titles concerned are not on the same market or because other competitors exist (Perdriel Group with the Nouvel Observateur and Challenges titles, the Hersant Group with Figaro Magazine, and the Filipacchi Group with Paris Match).

- ***Summaries of decisions taken under Article 8 of Council Regulation EEC 4064/89***

Mercedes-Benz/Kässbohrer (14.02.95)

The Commission declared the proposed acquisition of the Karl Kässbohrer Fahrzeugwerke GmbH (Kässbohrer) by Mercedes-Benz AG (Mercedes) compatible with the common market. On the basis of its extensive investigations the Commission concluded that the proposed merger would not lead to the creation or strengthening of a dominant position.

Mercedes-Benz is the leading European bus supplier with a slightly larger overall market share than Volvo. Kässbohrer is the fourth largest supplier of buses. Although the bus market throughout the European Union would be affected the Commission considered the German market required particular attention. This market was characterised by low imports, the result of the brand loyalty and close customer-supplier relationships. The Commission therefore considered that the German bus market was a national market.

The combined market share of Mercedes-Benz and Kässbohrer of the German bus market in 1993 was 57%. The overall bus market is composed of three segments: city buses, intercity buses and touring coaches. The combined market shares of the parties in each of these segments were 44%, 74% and 54% respectively. However, the boundaries between these segments are not rigid and it is comparatively easy to switch production from on bus type to another.

Despite the high market share in the total bus market and in the individual segments, the Commission concluded that there would be adequate constraints on Mercedes' freedom of action on the German market. There were two German competitors, MAN and Neoplan already on the market whose market shares could be expected to increase after the merger as some operators would be likely to wish to maintain at least two independent suppliers. The potential competition from European manufacturers outside Germany was of decisive importance and will lead to the progressive opening up of the German market. Non-German suppliers had already developed buses to meet the requirements of the German market. Furthermore German bus operators were expected to make increasing use of other European competitors as a means of obtaining leverage on the German market. This view which was stressed by the Associations of Private and Public Bus Operators. The EU directives on public procurement, which makes EU wide tenders obligatory for the main part of the city and intercity bus purchases, also favour the progressive opening up of the German market.

Mercedes has undertaken to supply engines for buses to be sold within the EEA, produced by bus manufacturers lacking their own engine production and who are not linked to another engine supplier. Furthermore, Mercedes has committed itself to permit the sales representatives and contracted garages of the Kässbohrer network to undertake sales and service work for non-German manufacturers and their subsidiaries.

Siemens/Italtel (17.02.95)

The Commission adopted a decision authorising the merger of the activities of the Italian subsidiary of Siemens for the manufacture of telecommunications equipment (Siemens Telecomunicazioni SpA) and Italtel, the manufacturing subsidiary of the STET group in the sector of telecommunication equipment. STET is a holding company which also controls the Italian public telecom operators, recently merged into Telecom Italia.

After the initial one month assessment provided for under the Merger Regulation, the Commission considered that the proposed operation raised both horizontal and vertical issues in the markets of public telecommunication equipment and that there were serious doubts as to its compatibility with the common market. Horizontally, the joint venture would hold a substantial share of the public switching and transmission equipment market in Italy. In the other EEA countries the operation would not have major effects because Italtel's sales were basically restricted to Italy. Vertically, the Siemens/Italtel joint venture would be partially owned by its major customer.

The second phase investigation, during which the Commission consulted a large number of telecommunication equipment manufacturers and telecommunication operators, showed that in spite of the substantial market shares, the creation of the joint venture would not result in market dominance. The Commission took into consideration the fact that the markets for telecommunications equipment are in the process of transformation, and that in the longer term the introduction of new technologies could result in major changes in the structure of the industry. In particular the Commission considered :

i) the potential for technological developments to make significant changes;
ii) the effects of standardization and public procurement legislation in opening up national markets; and
iii) the further liberalization of telecommunications services and, in particular, the liberalization of telecommunications infrastructures which will lead progressively to worldwide market for public telecommunications equipment.

The effects of the combination of these developments have already been seen in the area of mobile communications, where the definition of a European standard (GSM), the liberalization of services and the liberalization of infrastructures have resulted today in the creation of a European, if not worldwide, market for the supply of telecommunication equipment.

In relation to the vertical link between the new joint venture and STET it was noted that any benefits that could arise from Telecom Italia granting privileges to the joint venture would be shared with Siemens. The operation therefore reduces the objective interest of STET or Telecom Italia to favour the joint venture. Siemens would have gained direct influence only over the equipment supplier (Italtel) and would have had no influence at all over the telecom operator (Telecom Italia) or over its parent (STET).

Thirdly the distinction between the interests of the service and manufacturing activities within the STET group had been reinforced in by the creation of Tecnitel, whose main function is the supervision of the manufacturing activities of STET.

In the course of the proceedings, STET gave assurances to the Commission that STET would not interfere in the purchasing policy of Telecom Italia, in particular with regard to the choice of suppliers

and that there would be a clear separation between the Boards of Directors, the CEO, and in general the management of Telecom Italia, Tecnitel and the companies of the Italtel group.

In the other affected markets, mobile radio networks and private telecommunication equipment, the investigation confirmed that liberalisation has already resulted in a competitive market situation and that the positions of the joint venture in these sectors do not raise competition concerns.

Nordic Satellite Distribution (19.07.95)

The Commission declared the proposed joint venture NORDIC SATELLITE DISTRIBUTION (NSD) in its then current form incompatible with the Common Market and the EEA Agreement. However, the Commission remained open to new proposals from the parties.

NSD was conceived as a joint venture between Norsk Telekom A/S (NT), TeleDanmark A/S (TD) and Industriförvaltnings AB Kinnevik (Kinnevik) with each parent holding one third of the company. The parties to NSD were three very strong players in the Nordic TV and media industry:

- NT was the largest cable TV operator in Norway with about 30% of the connections. NT controlled the satellite capacity on the 1° West satellite position (one of the two Nordic positions), and it was an important pay-TV distributor in Norway through its subsidiary Telenor CTV.
- TD was the largest cable TV operator in Denmark with about 50% of the connections, and it would enjoy a privileged position in relation to its cable TV operations until January 1, 1998, the latest date for the telecommunications markets to be liberalized. TD and Kinnevik, controlled most of the satellite capacity on the 5° East satellite position (the other Nordic position).
- Kinnevik was a Swedish conglomerate with interests in TV programming, magazines and newspapers as well as in steel, paper, packaging and telecommunications. Kinnevik was the most important provider of Nordic satellite TV programmes with, among others, the very popular TV3 channels, TV6, Z-TV, and the TV1000 pay-TV channels. The company was the largest pay-TV distributor in the Nordic countries through its Viasat companies. Kinnevik had an important stake in Kabelvision, the second largest cable TV company in Sweden and in TV4, the largest advertising-financed Swedish channel.

NSD intended to transmit satellite TV programmes to cable TV operators and households receiving satellite TV on their own dish ("direct-to-home" market). NSD in its purposed form would lead to a concentration of the activities of NT, TD and Kinnevik, resulting in the creation of a highly vertically integrated operation extending from production of TV programmes through operation of satellites and cable TV networks to retail distribution services for pay-TV and other encrypted channels.

In its investigation the Commission found that the NSD joint venture in its purposed form would create or strengthen a dominant position on three markets:

i) NSD would have a dominant position on the market for provision of satellite TV transponder capacity to the Nordic region (Denmark, Norway, Sweden, and Finland);
ii) TD's dominant position on the Danish market for operation of cable TV networks would be strengthened; and
iii) NSD would obtain a dominant position on the market for distribution of satellite pay-TV and other encrypted TV channels to direct-to-home households.

The vertically integrated nature of the operation means that the down-stream market positions (cable TV operations and pay-TV) reinforce the up-stream market positions (satellite transponders, provision of programmes) and vice versa. Overall the parties would achieve such strong positions that they would be able to foreclose the Nordic market for satellite TV. In this respect the operation to some extent resembles the joint venture MSG Media Service, proposed by Bertelsman, Kirch Group, and Deutsche Telecom, which was blocked by the Commission in the autumn of 1994.

The affected markets are currently in a transitional phase, since the telecommunications markets were about to be liberalized and new technologies and services were continually being developed and some were about to be introduced. In this situation the decision of the Commission took on a particular importance, because future market structures were being defined. The Commission therefore acted to ensure that these future markets were not foreclosed.

However, the Commission recognized that joint ventures and particularly transnational joint ventures can be instrumental in developing the media and telecommunications sectors to their full potential. Furthermore it is the Commission policy to take new developments into account. The parties were therefore invited to present a modified project compatible with the Common Market and the functioning of the EEA agreement.

RTL/Veronica/Endemol (20.09.95)

The Commission decided that the Dutch TV joint venture Holland Media Groep SA (HMG) could not be approved under the EC Merger Regulation. As a result the creation of HMG has been declared incompatible with the common market.

HMG is a joint venture between RTL4 SA (RTL), Vereniging Veronica Omroeporganisatie (Veronica) and Endemol Entertainment Holding BV (Endemol). The parent companies of RTL are the Luxembourg broadcasting group CLT and the Dutch publishing group VNU. RTL has transferred its broadcasting activities in the Netherlands to HMG, in particular the two commercial TV channels RTL4 and RTL5. A third channel has been brought into HMG by Veronica which became a fully-fledged commercial channel as from 1 September 1995. The other main parent, Endemol, is the largest independent producer of TV programmes in the Netherlands.

The Commission's examination of this case was initiated following a request from the Dutch government, in the absence of which the Commission would not have had jurisdiction to deal with the case since the turnover thresholds set out in the Merger Regulation were not met. Where the thresholds are not met, jurisdiction normally rests with the Member States. However, a Member State is entitled under Article 22 of the Regulation to request the Commission to take up the case provided there is an effect on trade between Member States. Since there is no suspension effect for cases under Article 22 the parties were entitled to complete the operation.

Before the operation, there were nine major public broadcasting organisations in the Netherlands which share three channels - Nederland 1, 2 and 3. In addition there are two general commercial channels RTL4 and RTL5, plus a number of foreign channels available through cable networks, which cover 95% of the country. Based on the average yearly audience share the combined market share of Nederland 1, 2 and 3 was around 50% in 1994 (based on prime time viewing). The combined market share of RTL4 and RTL5 was around 32% (also based on prime time viewing). Up to 1 September 1995 Veronica shared the Nederland 2 channel with two other public broadcasting organisations, broadcasting only two and a half days a week. As a commercial channel within HMG, Veronica now broadcasts a full seven day service.

On the basis of its investigation the Commission concluded that, with its three channels HMG would achieve a very strong position on the Dutch market for TV broadcasting, which is likely to result in an audience share of more than 40%. As a consequence, the audience share of the public broadcasters will be substantially reduced. HMG therefore would become the largest TV broadcaster in the Netherlands.

The market position of broadcasters in the TV advertising market is largely determined by their audience shares. As a result of its high audience shares HMG would become by far the strongest player on the Dutch TV advertising market. In 1994 the two RTL channels had a market share of around 50% in TV advertising although their share of the viewers' market was only 32%. With the addition of the Veronica channel, HMG's market share was likely to exceed 60%. A particular strength of HMG was that it was able to cover the most important target groups for advertisers by coordinating the programme scheduling of its three channels which would be more difficult for the three public channels. The market power of HMG was also likely to have an adverse effect on the opportunities for the small competitors on the Dutch TV advertising market to compete and to have made it more difficult for potential new entrants to enter this market. The Commission concluded that HMG would obtain a dominant position on the market for TV advertising in the Netherlands.

The Commission considered that Endemol, the largest independent Dutch TV producer, already had a dominant position on the Dutch TV production market. Apart from Endemol this market was highly fragmented with the few producers of any size being very small compared with Endemol. Through its participation in HMG Endemol obtained a structural link to the leading broadcaster in the Netherlands providing it with preferential access to the largest customer in the Dutch TV production market. As a result Endemol's already dominant position on this market would be further strengthened.

The decision in which the Commission concluded that the HMG joint venture was incompatible with the common market did not prevent HMG from continuing its activities. The measures needed to restore effective competition on the Dutch TV advertising and production markets will be adopted at a later date. In the meantime, the parties were invited by the Commission to propose appropriate measures to this effect.

Orkla/Volvo (20.09.95)

The merger between Ringnes (Orkla) and Pripps (Volvo) was cleared in respect of Sweden and declared compatible with the EEA Agreement subject to conditions in Norway. During its investigation the Commission established that the proposed joint venture would have a significant share (in excess of 75%) of the beer market in Norway. In the individual, relevant product markets, being beer sold to retailers and beer sales to the hotel and catering industry, the proposed joint venture's market shares were estimated to be at similar levels.

Neither the retail trade nor the hotel and catering industry was considered able to offer any countervailing purchasing power to the proposed joint venture. In addition it was considered that, given the legislation currently in force in Norway, there was little opportunity for increased import penetration or the establishment of new brands to counteract the new business.

Accordingly, the Commission considered that the proposed concentration would create a dominant position through which effective competition in a substantial part of the territory covered by the EEA Agreement would be significantly impeded.

In order to alleviate the Commission's concerns and to avoid a prohibition decision the parties offered to modify the original planned concentration. The modification, the sale of the Hansa brewery business as a going concern during 1996, was accepted by the Commission and removes the competition issues raised by the original proposal.

ABB/Daimler Benz (18.10.95)

The Commission approved the proposed joint venture between ABB and Daimler Benz only after the parties offered a divestiture to remedy competition problems. In order to remove the Commission's concerns that the operation would lead to the creation of a duopoly in the German markets for trams (including light railway vehicles) and metros the parties have agreed to the sale of Kiepe Elektrik GmbH (a Daimler Benz subsidiary) which specialised in electrical supplies for these types of trains. This means that a competent electrical partner, independent of the parties remains available in the German market for cooperation with other mechanical suppliers.

In the proposed joint venture ABB and Daimler Benz intended to combine their worldwide activities in the field of rail transportation. The merger led to the world´s largest firm in this field. In Europe, Daimler´s and ABB´s activities would have almost complemented each other geographically. The only overlaps being in Germany where a detailed investigation of the competitive impact took place. At the time, the rail transportation markets for trams and metros were still national in Germany, whereas in the other member states the lack of major national rail transportation industries had already opened the markets.

The merger would have resulted in there being two large "full-line" suppliers in Germany, the Daimler/ABB joint venture on one hand and Siemens on the other. In several product markets the two suppliers combined market shares would have had over 65% of the German market. The Commission therefore examined the merger to determine whether it created or strengthened a duopoly.

The results of this examination have shown that for most of the product markets considered there was no threat of creating or strengthening a dominant duopoly. However, there remained concerns in two markets, trams (including light rail vehicles) and metro systems, where the concentration would have created a dominant duopoly on both markets. With the exclusion of the parties and Siemens, the major suppliers in Germany are primarily active in the production of the mechanical parts of a rail vehicle. Consequently they need to cooperate with other suppliers for the electrical equipment.

The divestiture of Kiepe meant that a competent electrical supplier, independent of the parties, remained free in the market for cooperation with mechanical suppliers of rail equipment and allowed them the opportunity of competing effectively. Kiepe was a well-established and successful supplier specialising in the supply of electrical equipment for trams and LRVs where it has achieved considerable market success. Kiepe, which had only recently been acquired by Daimler Benz, has co-operated with Bombardier a Canadian firm that had entered the European market, notably winning a contract to supply light rail vehicles to the city of Cologne. As a result of the divestiture the further development of sales by foreign suppliers to the German market will be aided by ensuring that there is a viable independent supplier of electrical equipment.

Crown Cork and Seal/Carnaudmetal Box (14.11.95)

Crown Cork & Seal, an American manufacturer of packaging (in particular, metal cans), was permitted to acquire the French company CarnaudMetalbox, S.A. - also one of the world's largest packaging

companies - subject to the fullfillment of the undertaking offered by the parties, consisting in the divestiture en bloc of five tinplate aerosol plants under its control. These plants were located in France, the United Kingdom, Italy, Spain and Germany and represented approximately 22% of the EEA market for tinplate aerosol cans at the time.

The merger could only be approved after the parties had offered and the Commission had accepted the undertaking described above. The merger between the two companies raised serious doubts under the Merger Regulation, particularly in the market for tinplate aerosol cans, where the aggregated market share of the two companies reached approximately 65% of the EEA market in 1994 (i.e. sales of 1.3 billion units out of a total market of 2.2 billion units).

In the tinplate aerosol market, the two companies offered to divest the following five sites: Crown Cork & Seal's aerosol plant in Southall (United Kingdom) and Voghera (Italy), and CarnaudMetalbox's plants in Laon (France), Reus (Spain), and Schwedt (Germany). With this divestiture, which will be closely monitored, the Commission believed that the two partners will no longer have a dominant position in the EEA market for tinplate aerosol cans.

As regards food cans, the only market which could have posed competition problems was the Benelux region. In this market, the concentration had horizontal effects, as Crown has an appreciable market share of 20%. However, in view of the competitive features of this market, the operation would not have created a dominant position. After the concentration, the new entity would have had a market share of less than 40%, and would face strong competition from Schmalbach-Lubeca with a market share of between 30% and 35%. In addition, a number of competitors export to the Benelux region from neighbouring geographic markets.

As regards the upstream steel markets, the Commission concluded that the merger would not lead to any significant vertical effects because the new company would not be in a position to obtain purchasing conditions on tinplate and tin-free steel substantially different from those of its main competitors in aerosol cans, food cans and metal crowns.

Finally, in the various markets for beverage closures (including, plastic and aluminium bottle caps, metal crowns and beverage can ends), the Commission believed that there was no specific risk as sufficient actual competition existed in each of these markets.

2. Concentrations under Article 66 of the ECSC Treaty

2.1. Coal and Lignite

Rheinbraun/Laubag (29.03.95)

The Commission authorised Rheinbraun AG (Rheinbraun), PreussenElektra AG, Bayernwerk AG, RWE Energie AG, Badenwerk AG, Berliner Kraft- und Licht AG, Energie-Versorgung Schwaben AG, Hamburgische Electricitätswerke AG and Vereinigte Elektrizitätswerke Westfalen AG to acquire Lausitzer Braunkohle AG (LAUBAG). Given the planned holdings of the parties and the provisions of the shareholders' agreement, the transaction gave Rheinbraun sole control of LAUBAG and constituted a concentration between Rheinbraun and LAUBAG within the meaning of Article 66(1) of the ECSC Treaty.

LAUBAG, which belonged to the Treuhandanstalt, extracted brown coal from opencast mines in the Lausitz area. There were four large integrated groups (Kombinate) producing brown coal in the former GDR. The mines and briquette plants which were intended to be taken out of production owing to the lack of outlets had been placed in the hands of Lausitzer Bergbau-Verwaltungsgesellschaft mbH (LBV) with the Treuhandanstalt retaining ownership of LBV. The plants that were intended to continue in operation were grouped together within LAUBAG with a view to their privatization.

Brown coal briquettes were the only products falling under the ECSC Treaty. Brown coal briquettes are products whose transport costs prevent them in practice from being marketed and consumed outside the immediate vicinity of their production site. Rheinbraun's briquettes were produced and consumed in North Rhine-Westphalia while LAUBAG's briquettes were produced and consumed in the new German *Länder*, where consumption was in sharp decline following German unification. Rheinbraun and LAUBAG therefore operated on two separate geographic markets. It was found that the concentration between Rheinbraun and LAUBAG would not strengthen the parties' market position since they operate on non-overlapping geographic markets.

British Steel/Scunthorpe Rolling Mill/ASW (17.01.95)

The Commission authorised an operation by which British Steel plc ("BS") would acquire Scunthorpe Rod Mill ("SRM") from ASW Holdings PLC ("ASW"). As consideration for SRM, BS would pay a cash sum to ASW which would be used to repurchase BS's share holding in ASW.

SRM was immediately adjacent to BS's integrated steel works at Scunthorpe. It purchased steel billet primarily from BS and manufactured and sold wire rod to customers worldwide.

The combined market share of BS and SRM in the EU market for wire rod was approximately 11%. There were many producers of wire rod within the EU of which two producers had larger market shares than BS and SRM combined and other significant Community producers had market shares between 5 and 9%. In addition there were a number of substantial purchasers exercising countervailing buyer power.

Riva/Ilva Laminati Piani (03.04.95)

In the context of the restructuring plan for the public steel sector, the Italian government informed the Commission of its commitment to privatise ILVA Laminati Piani, (ILP).

The transaction concerned the acquisition of 100% of the capital in ILP by the RIVA Group. ILP was engaged in the production and distribution of flat products (hot-rolled coils, cold-rolled and coated sheets, tinplate and quarto plates), while the RIVA Group operated on the markets of long products (wire rod, merchant bars and reinforcing bars). As the parties operated in separate product markets, the operation would not increase the market power of RIVA.

The operation was carried out in accordance with the conditions and terms laid down in the Commission Decision No 94/259 ECSC of the 12 April 1994, concerning aid to be granted by Italy to the public steel sector.

B - Commission decisions

1. Decisions under Articles 6 and 8 of Council Regulation (EEC) No 4064/89

1.1. Decisions under Article 6(1) of Council Regulation (EEC) No 4064/89

Case No	NAME	Date of decision	Published in OJ
IV/M.0511	Texaco/Norsk Hydro	9.1.95	OJ C 23, 28.1.95
IV/M.0537	Sidmar/Klöckner (II)	9.1.95	OJ C 37, 14.2.95
IV/M.0520	Direct Line/Bankinter	12.1.95	OJ C 134, 1.6.95
IV/M.0523	Akzo Nobel/Monsanto	19.1.95	OJ C 37, 14.2.95
IV/M.0531	Recticel/CWW-Cerko	3.2.95	OJ C 187, 21.7.95
IV/M.0533	TWD/Akzo Nobel/Kuagtextil	10.2.95	OJ C 46, 23.2.95
IV/M.0540	Cegelec/AEG	20.2.95	OJ C 71, 23.3.95
IV/M.0549	Svenska Cellulosa/PWA PapierWerke	20.2.95	OJ C 57, 7.03.95
IV/M.0543	Zürich Insurance CY/Banko di Napoli	22.2.95	OJ C 58, 8.3.95
IV/M.0555	Glaxo plc/Wellcome plc	28.2.95	OJ C 65, 16.3.95
IV/M.0550	Union Carbide/Enichem	13.3.95	OJ C 123, 19.5.95
IV/M.554	Dalgety/The Quaker Oats Company	13.3.95	OJ C 82, 4.4.95
IV/M.0518	Winterthur/Schweizer Rück	14.3.95	OJ C 73, 25.3.95
IV/M.0548	Nokia OY/SP Tyres	14.3.95	OJ C 163, 29.6.95
IV/M.0558	La Rinascente/Cedis Migliarini	15.3.95	OJ C 71, 23.3.95
IV/M.0563	British Steel/UES	17.3.95	OJ C 105, 26.4.95
IV/M.0561	Securicor/Datatrak	20.3.95	OJ C 82, 4.4.95
IV/M.0490	Nordic Satellite Distribution	24.3.95	OJ C 104, 25.4.95
IV/M.0571	CGI/Dassault	24.3.95	OJ C 100, 22.4.95
IV/M.0538	Omnitel	27.3.95	OJ C 96, 20.4.95
IV/M.0536	Torrington/Ingersoll	28.3.95	OJ C 104, 25.4.95
IV/M.0495	Behringwerke AG/Armour Pharma	3.4.95	OJ C 134, 1.6.95
IV/M.0539	Allianz/Elvia/Lloyd Adriatico	3.4.95	OJ C 180, 14.7.95
IV/M.0572	Gehe/AAH	3.4.95	OJ C 117, 12.5.95
IV/M.0557	Alfred C. Toepfer/Champagne Cereales	6.4.95	OJ C 104, 25.4.95
IV/M.0564	Havas Voyage/American Express	6.4.95	OJ C117 12.05.95
IV/M.0573	ING/Barings	11.4.95	OJ C 114, 6.5.95
IV/M.0575	Volvo/VME	11.4.95	OJ C 104, 25.4.95

Case No	NAME	Date of decision	Published in OJ
IV/M.0578	Hoogovens Klöckner & Co.	11.4.95	OJ C 243, 20.9.95
IV/M.0565	Solvay/Wienerberger	24.4.95	OJ C 170, 6.7.95
IV/M.0570	Telenordic/BT/Teledanmark/Telenor	24.4.95	OJ C 154, 21.6.95
IV/M.0579	Blockbuster/Burda	27.4.95	OJ C 129, 25.5.95
IV/M.0577	GE/Power Controls BV	28.4.95	OJ C 163, 29.6.95
IV/M.0584	Kirch/Richemont/Multichoice/Telepiu	5.5.95	OJ C 129, 25.5.95
IV/M.0560	EDS/Lufthansa	11.5.95	OJ C 163,29.6.95
IV/M.0588	Ingersoll Rand/Clark Equipment	15.5.95	OJ C 154, 21.6.95
IV/M.0566	CLT/Disney/Super RTL	17.5.95	OJ C 144, 10.6.95
IV/M.0553	RTL/Veronica/Endemol	22.5.95	
IV/M.0574	Saudi Aramco/MOH	23.5.95	OJ C 158, 24.6.95
IV/M.582	Orkla/Volvo	23.5.95	
IV/M.0589	Seagram/MCA	29.5.95	OJ C 149, 16.6.95
IV/M.0583	Inchcape/Gestetner	1.6.95	OJ C 201, 5.8.95
IV/M.0568	Edison-EDF/ISE	8.6.95	OJ C 241,16.9.95
IV/M.0576	FerruzziFinanziaria/Fondiaria	9.6.95	OJ C 158, 24.6.95
IV/M.0586	Generali/Comit/R.Flemings	15.6.95	OJ C 263, 10.10.95
IV/M.0587	Hoechst AG/Marion Merrell Dow Inc.	22.6.95	OJ C 193, 27.7.95
IV/M.0593	Volvo/Henlys	27.6.95	OJ C 177, 12.7.95
IV/M.0598	Daimler Benz/Calr Zeiss	27.6.95	OJ C 276, 21.10.95
IV/M.0597	Swiss Bank Corp./S.G. Warburg	28.6.95	OJ C 180, 14.7.95
IV/M.0542	Babcock/Siements/BS Railccare.	30.6.95	OJ C 186, 20.7.95
IV/M.0600	Empls Reins. Corp./Frankona Rück AG	30.6.95	OJ C 272, 18.10.95
IV/M.0601	Empls Reins. Corp./Aachener Rück AG	30.6.95	OJ C 272, 18.10.95
IV/M.0591	Dow/Buna	4.7.95	OJ C 181, 15.7.95
IV/M.0585	Vai/Davy	7.7..95	OJ C 246, 22.9.95
IV/M.0596	Mitsubishi Bank/Bank of Tokyo	17.7..95	OJ C 198, 2.8.95
IV/M.0616	Swissair/Sabena	20.7.95	OJ C 200, 4.8.95
IV/M.0551	ATR/BAE	25.7.95	OJ C 264, 11.10.95
IV/M.0603	Crown Cork & Seal/Carnaudmetalbox	25.7.95	
IV/M.0606	Generali/Comit (Previnet)	26.7.95	OJ C 263, 10.10.95
IV/M.612	RWE-DEA/Augusta	27.7.95	OJ C 207, 12.8.95
IV/M.0611	Dresdner Bank/Kleinwort Benson	28.7.95	OJ C 207, 12.8.95

Case No	NAME	Date of decision	Published in OJ
IV/M.0613	Jefferson Smurfit plc/Munksjo AB	31.7.95	OJ C 252, 28.9.95
IV/M.0617	Credit Loc.de France/Hypo.Bank Berlin	10.8.95	OJ C 241, 16.9.95
IV/M.0618	Cable+Wireless/Vebacom	16.8.95	OJ C 231, 5.9.95
IV/M.0614	Generali/France Vie+France IARD	21.8.95	OJ C 244, 21.9.95
IV/M.0627	UAP/SUNLIFE.	21.8.95	OJ C 292, 7.11.95
IV/M.0620	Thomson/Teneo/Indra	22.8.95	OJ C 264, 11.10.95
IV/M.0625	Nordic Capital/Transpool	23.8.95	OJ C 243, 20.9.95
IV/M.0581	Frantschach/Bischof und Klein	28.8.95	OJ C 238, 13.9.95
IV/M.0599	Noranda Forest/Glunz	8.9.95	OJ C 298, 11.11.95
IV/M.0622	Ricoh/Gestetner	12.9.95	OJ C 264, 11.10.95
IV/M.0623	Kimberly-Clark/Scott Paper	12.9.95	
IV/M.0604	Albacom (BT/BNL)	15.9.95	OJ C 278, 24.10.95
IV/M.0632	Rhone-Poulenc/Fisons	21.9..95	OJ C 263, 10.10.95
IV/M.0628	Generale Bank/Credit Lyon. Bank	25.9..95	OJ C 289, 31.10.95
IV/M.0631	Upjohn/Pharmacia	28.9.95	OJ C 294, 9.11.95
IV/M.0640	KNP BT/Société Générale	3.10.95	OJ C 274, 19.10.95
IV/M.0580	ABB/Daimler Benz	23.6.95	
IV/M.0630	Henkel/Schwarzkopf	18.10.95	OJ C 298, 11.11.95
IV/M.0615	Rhone-Poulenc/Engelhard	23.10.95	OJ C 293, 08.11.95
IV/M.643	CGER Banque/SNCI	23.10.95	OJ C 293, 08.11.95
IV/M.0644	Swiss Life/Inca	25.10.95	OJ C 307, 18.11.95
IV/M.0642	Chase Manhattan/Chemical Banking	26.10.95	OJ C 33, 6.2.96
IV/M.0646	Repola/Kymmene	30.10.95	OJ C 318, 29.11.95
IV/M.0544	Unisource/Telefonica	06.11.95	OJ C 13, 18.1.96
IV/M.0655	Canal+/UFA/MDO	13.11.95	OJ C 15, 20.1.96
IV/M.0656	Seagate/Conner	17.11.95	OJ C 334, 12.12.95
IV/M.0659	GE Capital/Sovac	17.11.95	OJ C 322, 12.12.95
IV/M.0648	McDermott/ETPM	27.11.95	OJ C 330, 08.12.95
IV/M.0665	Havas (CEP)/Groupe de la Cité	29.11.95	OJ C 338, 16.11.95
IV/M.0666	Johnson Controls/Roth Frères	05.12.95	OJ C 3, 6.1.96
IV/M.0660	RTZ/CRA	07.12.95	OJ C 22, 26.1.96
IV/M.0639	Montedison/Groupe Vernes/SCI	08.12.95	OJ C 347, 28.12.95
IV/M.0664	GRS Holding	11.12.95	OJ C 8, 13.1.96

Case No	NAME	Date of decision	Published in OJ
IV/M.0669	Charterhouse/Porterbrook Leasing Co.	11.12.95	OJ C 350, 30.12.95
IV/M.0619	Gencor/Lonrho	20.12.95	
IV/M.0650	SBG/Rentenanstalt	20.12.95	OJ C 23, 27.1.96
IV/M.0670	Elsag Bailey/Hartmann & Braun AG	20.12.95	OJ C 24, 30.1.96
IV/M.0657	Lyonnaise des Eaux/Northumbrian	21.12.95	OJ C 11, 16.1.96
IV/M.0621	Bayerische Landesbank + Girozentrale/	21.12.95	OJ C 23, 27.1.96
IV/M.0662	Leisureplan	21.12.95	OJ C 63, 2.3.96
IV/M.0674	Demag/Komatsu	21.12.95	OJ C 38, 10.2.96
IV/M.0675	Alumix/Alcoa	21.12.95	OJ C 121, 25.4.96
IV/M.0595	British Telecom/VIAG	22.12.95	OJ C 15, 20.1.96
IV/M.0657	Röhm/Ciba-Geigy - TFL Ledertechnik	22.12.95	OJ C 60, 29.2.96
IV/M.0668	Philips/Origin	22.12.95	OJ C 58, 28.2.96
IV/M.0673	Channel Five	22.12.95	OJ C 57, 27.2.96
IV/M.0676	Ericsson/Ascom II	22.12.95	OJ C 19, 23.1.96
IV/M.0678	Minorco/Tilcon	22.12.95	OJ C 24, 30.1.96

1.2. Decisions under Article 8 of Council Regulation (EEC) No 4064/89

Case No	NAME	Date of decision	Published in OJ
IV/M.0477	Mercedes-Benz/Kässbohrer	14.02.95	OJ L 211, 6.9.95
IV/M.0468	Siemens/Italtel	17.02.95	OJ L 161, 12.7.95
IV/M.0490	Nordic Satellite Distribution	19.07.95	OJ L 53, 2.3.96
IV/M.0553	RTL/Veronica/Endemol	20.09.95	OJ L 134, 5.6.96
IV/M.582	Orkla/Volvo	20.09..95	OJ L 66, 16.3.96
IV/M.0580	ABB/Daimler Benz	18.10.95	
IV/M.0603	Crown Cork & Seal/CarnaudMetalbox	14.11.95	OJ L 75, 23.3.96

2. Decisions pursuant to Article 66 of the ECSC Treaty

Case No	NAME	Date of decision
1160	British Steel/SRM/ASW	17.01.95
1154	Rheinbraun/Laubag	29.03.95
1169	RIVA/ILVA Laminati Piani	03.04.95
1170	Thyssen/Klöckner - scrap	26.07.95
1186	Coal products/Anglo Coal	10.10.95
1174	RIVA/FREIRE/SN-Longos	07.12.95
1168	Usinor/Hoogovens Nobel/SN-Planos	20.12.95

C - Press releases

Reference	Date	Subject
IP/95/23	95.01.10	COMMISSION APPROVES JOINT VENTURE BETWEEN TEXACO AND NORSK HYDRO FOR THE DISTRIBUTION IN DENMARK AND NORWAY OF REFINED PRODUCTS
IP/95/24	95.01.10	COMMISSION APPROVES PURCHASE OF ADDITIONAL SHARES BY SIDMAR NV IN KLOCKNER STAHL GMBH
IP/95/30	95.01.13	COMMISSION APPROVES A JOINT VENTURE FOR THE DIRECT MARKETING OF MOTOR AND HOUSEHOLD INSURANCE IN SPAIN
IP/95/54	95.01.20	COMMISSION APPROVES THE CREATION OF THE RUBBER CHEMICALS JOINT VENTURE BETWEEN AKZO NOBEL AND MONSANTO
IP/95/103	95.02.06	COMMISSION APPROVES CREATION OF JOINT VENTURE BY RECTICEL SA AND CWW-GERKO AKUSTIK GMBH & CO KG
IP/95/128	95.02.14	COMMISSION CLEARS ACQUISITION BY MERCEDES-BENZ OF KASSBOHRER
IP/95/149	95.02.20	COMMISSION CLEARS PROPOSED JOINT VENTURE BETWEEN SIEMENS AND ITALTEL IN THE SECTOR OF TELECOMMUNCATION EQUIPMENT
IP/95/162	95.02.22	COMMISSION CLEARS ACQUISITION OF A MAJORITY SHAREHOLDING BY SVENSKA CELLULOSA AB IN PWA AG
IP/95/164	95.02.22	COMMISSION DECIDES NOT TO OPPOSE THE ACQUISITION OF AEG'S DRIVES AND RELATED PROJECTS BUSINESS BY CEGELEC
IP/95/205	95.03.01	COMMISSION CLEARS GLAXO'S BID FOR THE ACQUISITION OF WELLCOME

IP/95/214	95.03.07	COMMISSION LIFTS SUSPENSORY PROVISIONS UNDER EC MERGER REGULATION IN THE EVENT THAT ING AGREES TO ACQUIRE THE BARINGS GROUP
IP/95/244	95.03.14	COMMISSION APPROVES ACQUISITION BY DALGETY OF EUROPEAN PETFOODS BUSINESS OF QUAKER OATS
IP/95/245	95.03.14	COMMISSION CLEARS JOINT VENTURE BETWEEN UNION CARBIDE CORPORATION AND ENICHEM S.P.A. IN THE CHEMICAL SECTOR
IP/95/263	95.03.15	NOKIA CORPORATION - SP TYRES UK LTD - COMMISSION DECIDES THAT NOTIFIED OPERATION FALLS OUTSIDE MERGER REGULATION
IP/95/264	95.03.15	THE COMMISSION APPROVES WINTERTHUR'S ACQUIRING CONTROL OF THE WHOLE OF FOUR SUBSIDIARIES OF SCHWEIZER RUECK IN ITALY AND SPAIN
IP/95/266	95.03.21	COMMISSION APPROVES ACQUISITION OF CEDIS MIGLIARINI BY RINASCENTE
IP/95/275	95.03.21	THE COMMISSION APPROVES THE ACQUISITION OF UES BY BRITISH STEEL
IP/95/282	95.03.21	COMMISSION CLEARS A CONCENTRATION AIMED TO PROVIDE VEHICLE TRACKING SERVICES IN THE NETHERLANDS
IP/95/305	95.03.29	THE COMMISSION AUTHORISES DASSAULT ELECTRONIQUE TO ENTER INTO THE CAPITAL OF A SUBSIDIARY OF CGI (IBM FRANCE)
IP/95/311	95.03.29	THE COMMISSION IS INITIATING A DETAILED INVESTIGATION INTO "NORDIC SATELLITE DISTRIBUTION"
IP/95/312	95.03.29	THE COMMISSION HAS CONSIDERED THAT THE CREATION OF OMNITEL-PRONTO ITALIA IS NOT A CONCENTRATION AND HAS TO BE ASSESSED UNDER ARTICLE 85
IP/95/314	95.03.31	COMMISSION AUTHORISES CREATION OF NASTECH EUROPE LTD
IP/95/316	95.03.31	LYONNAISE DES EAUX - NORTHUMBRIAN WATER: COMMISSION ACCEPTS THE UNITED KINGDOM GOVERNMENT'S REQUEST TO CHECK CERTAIN ASPECTS OF THE INTENDED BID BY THE FRENCH GROUP
IP/95/344	95.04.04	COMMISSION APPROVES JOINT VENTURE BEHRINGWERKE/ARMOUR IN PLASMA-DERIVED PRODUCTS
IP/95/345	95.04.04	COMMISSION CLEARS ACQUISITION OF ELVIA AND LLOYD ADRIATICO BY ALLIANZ
IP/95/416	95.04.26	THE COMMISSION AUTHORISES THE RIVA GROUP TO ACQUIRE 100% OF THE CAPITAL OF ILVA LAMINATI PIANI SPA.
IP/95/426	95.04.28	COMMISSION APPROVES CREATION OF SWEDISH TELECOMS JOINT VENTURE

IP/95/489	95.05.16	COMMISSION APPROVES JOINT VENTURE BETWEEN EDS AND LUFTHANSA
IP/95/490	95.05.16	COMMISSION FINDS THAT THE ACQUISITION OF CLARK EQUIPMENT COMPANY BY INGERSOLL-RAND COMPANY DOES NOT FALL UNDER THE MERGER REGULATION
IP/95/515	95.05.29	COMMISSION APPROVES THE CREATION OF ASPEN JOINT VENTURE BETWEEN ELF ATOCHEM AND UNION CARBIDE CORPORATION
IP/95/526	95.05.24	COMMISSION TO CARRY OUT DETAILED INQUIRY IN DUTCH TV PROPOSED JOINT VENTURE
IP/95/534	95.05.30	THE COMMISSION IS INITIATING A DETAILED INVESTIGATION INTO THE ORKLA/VOLVO BEVERAGES JOINT VENTURE
IP/95/535	95.05.30	COMMISSION CLEARS ESTABLISHMENT OF SUPER RTL BETWEEN CLT AND DISNEY
IP/95/538	95.05.30	COMMISSION APPROVES ACQUISITION BY SEAGRAM OF CONTROL OF MCA
IP/95/539	95.06.02	THE COMMISSION APPROVES ENTRY OF SAUDI ARAMCO IN A JOINT VENTURE FOR THE REFINING AND RETAILING OF PETROLEUM PRODUCTS IN GREECE
IP/95/578	95.06.07	COMMISSION APPROVES CREATION OF A JOINT VENTURE OPERATING IN THE ASIAN/PACIFIC OFFICE AUTOMATION MARKET
IP/95/599	95.06.12	THE COMMISSION CLEARS THE JOINT ACQUISITION OF ISE BY EDF AND EDISON
IP/95/600	95.06.12	COMMISSION CLEARS ACQUISITION OF THE WHOLE OF FONDIARIA BY FERRUZZI
IP/95/617	95.06.16	COMMISSION APPROVED PROPOSED JOINT VENTURE BETWEEN GENERALI, BANCA COMMERCIALE ITALIANA (COMIT) AND ROBERT FLEMINGS HOLDING
IP/95/662	95.06.23	COMMISSION APPROVES TAKE OVER OF MARION MERREL DOW BY HOECHST
IP/95/663	95.06.28	THE COMMISSION CLEARS A JOINT VENTURE BETWEEN VOLVO AND HENLYS GROUP IN THE NORTH AMERICAN BUS MARKET
IP/95/668	95.06.26	COMMISSION INITIATES DETAILED INVESTIGATION INTO THE ABB/ DAIMLER-BENZ RAIL TRANSPORTATION JOINT VENTURE
IP/95/674	95.06.28	IBM - PHILIPS JOINT VENTURE ON CHIPS APPROVED
IP/95/679	95.06.28	THE COMMISSION CLEARS JOINT VENTURE OF DAIMLER-BENZ AND CARL ZEISS IN THE FIELD OF MILITARY OPTRONICS
IP/95/688	95.06.29	THE COMMISSION CLEARS THE ACQUISITION OF WARBURG BY SWISS BANK CORPORATION

IP/95/700	95.07.06	THE COMMISSION APPROVES THE PURCHASE OF AN 80% SHARE IN BUNA SOW OLEFINVERBUND (BSL) BY DOW EUROPE SA
IP/95/713	95.07.03	COMMISSION APPROVES ACQUISITION BY EMPLOYERS REINSURANCE CORPORATION OF FRANKONA RÜCKVERSICHERUNGS-GESELLSCHAFT AG AND AACHENER RÜCKVERSICHERUNGS- GESELLSCHAFT AG
IP/95/714	95.07.03	THE COMMISSION CLEARS A JOINT VENTURE BETWEEN SIEMENS AG AND BABCOCK INTERNATIONAL GROUP PLC
IP/95/735	95.07.10	COMMISSION APPROVES JOINT VENTURE SET UP BY VOEST ALPINE INDUSTRIEANLAGENBAU GMBH AND DAVY INTERNATIONAL LTD TO PRODUCE HOT CONNECT SYSTEMS FOR STEEL MANUFACTURING PLANTS
IP/95/767	95.07.27	COMMISSION APPROVED PROPOSED JOINT VENTURE (PREVINET) BETWEEN GENERALI AND BANCA COMMERCIALE ITALIANA
IP/95/786	95.07.18	THE COMMISSION CLEARS THE MERGER OF TWO BIG JAPANESE CREDIT INSTITUTIONS
IP/95/801	95.07.19	COMMISSION DECIDES NOT TO AUTHORISE NSD IN ITS CURRENT FORM, BUT REMAINS OPEN TO EXAMINE NEW PROPOSALS
IP/95/805	95.07.19	SABENA/SWISSAIR : COMMISSION APPROVES ALL ASPECTS OF THE DOSSIER
IP/95/825	95.07.27	THE COMMISSION AUTHORIZES THYSSEN HANDELSUNION AG TO ACQUIRE CONTROL OF KLOCKNER AND CO. AG'S OPERATIONS IN THE RECYCLING OF STEEL, METALLURGY AND WASTE TREATMENT.
IP/95/831	95.07.28	COMMISSION CLEARS THE ACQUISITION OF ENICHEM AUGUSTA S.P.A. BY RWE-DEA AG IN THE PETROCHEMICAL SECTOR
IP/95/849	95.07.25	COMMISSION DECLARES ATR/BAE REGIONAL AIRCRAFT JOINT VENTURE NOT TO BE A CONCENTRATION AND WILL BE ASSESSED UNDER ARTICLE 85 RULES
IP/95/856	95.07.25	COMMISSION INITIATES DETAILED INVESTIGATION INTO THE PROPOSED ACQUISITION OF CARNAUDMETALBOX BY CROWN, CORK & SEAL
IP/95/881	95.08.01	COMMISSION AUTHORIZES ACQUISITION OF KLEINWORT BENSON BY DRESDNER BANK
IP/95/893	95.08.01	COMMISSION APPROVES ACQUISITION BY JEFFERSON SMURFIT OF MUNKSJO
IP/95/922	95.08.18	COMMISSION APPROVES ESTABLISHMENT OF CABLE AND WIRELESS AND VEBA TELECOMMUNICATIONS JOINT VENTURES
IP/95/928	95.08.23	THE COMMISSION CLEARS THE THOMSON-CSF/TENEO/INDRA JOINT VENTURE

IP/95/929	95.08.23	COMMISSION CLEARS ACQUISITION OF SOLE CONTROL OF SUN LIFE BY UAP
IP/95/930	95.08.24	COMMISSION APPROVES ACQUISITION BY CREDIT LOCAL DE FRANCE OF BERLIN-BASED HYPOTHEKENBANK
IP/95/931	95.08.24	COMMISSION GIVES GO-AHEAD TO TAKEOVER OF FRANCE VIE AND FRANCE IARD BY GENERALI
IP/95/932	95.08.24	COMMISSION CLEARS CAPITAL INJECTION BY NORDIC CAPITAL INTO THE SWEDISH TRAVEL GROUP TRANSPOOL
IP/95/935	95.08.29	COMMISSION APPROVES JOINT VENTURE IN THE FIELD OF FLEXIBLE PACKAGING
IP/95/950	95.09.11	THE COMMISSION CLEARS PROPOSED JOINT VENTURE BETWEEN NORANDA FOREST INC AND GLUNZ AG IN THE SECTOR OF WOOD BASED AND BOARD PRODUCTS
IP/95/968	95.09.12	COMMISSION OPENS FULL INVESTIGATION INTO PROPOSED MERGER BETWEEN KIMBERLY-CLARK AND SCOTT PAPER
IP/95/978	95.09.14	COMMISSION APPROVES THE ACQUISITION BY RICOH OF GESTETNER
IP/95/984	95.09.21	COMMISSION FINDS BANCA NAZIONALE DEL LAVORO/BT TELECOMS JOINT VENTURE ALBACOM TO BE OUTSIDE THE JURISDICTION OF THE MERGER REGULATION
IP/95/985	95.09.27	THE COMMISSION CLEARS THE ACQUISITION OF CREDIT LYONNAIS BANK NEDERLAND N.V. BY GENERALE BANK N.V.
IP/95/995	95.09.20	HOLLAND MEDIA GROUP - DUTCH TV JOINT VENTURE CANNOT BE CLEARED IN ITS CURRENT FORM. - COMMISSION AND PARTIES POSITIVELY DISCUSS SOLUTIONS, VAN MIERT SAYS
IP/95/1021	95.09.20	ORKLA/VOLVO : COMMISSION ACCEPTS JOINT VENTURE AFTER COMMITMENT TO SELL THE HANSA BREWERY
IP/95/1024	95.09.22	THE EUROPEAN COMMISSION HAS DECIDED THAT THE TAKEOVER OF FISONS BY RHONE POULENC DOES NOT RAISE COMPETITION ISSUES
IP/95/1059	95.10.02	COMMISSION APROVES THE MERGER OF UPJOHN AND PHARMACIA
IP/95/1085	95.10.04	COMMISSION APPROVES A JOINT VENTURE BETWEEN KNP BT AND SOCIETE GENERALE IN THE FIELD OF DISTRIBUTION, MAINTENANCE, ENGINEERING AND TRAINING IN THE PROFESSIONAL PC MARKET
IP/95/1126	95.10.18	COMMISSION CLEARS RAIL TRANSPORTATION JOINT VENTURE BETWEEN ABB AND DAIMLER-BENZ
IP/95/1154	95.10.19	COMMISSION APPROVES TAKEOVER OF SCHWARZKOPF BY HENKEL

IP/95/1164	95.10.24	COMMISSION AUTHORISES THE ACQUISITION OF CONTROL OF SOCIETE NATIONALE DE CREDIT A L'INDUSTRIE BY CAISSE GENERALE D'EPARGNE ET DE RETRAITE BANQUE
IP/95/1165	95.10.24	COMMISSION APPROVES CREATION OF A JOINT VENTURE BY RHONE- POULENC CHIMIE AND ENGELHARD S.A.
IP/95/1174	95.10.26	THE COMMISSION AUTHORISES THE ACQUISITION BY SWISS LIFE OF A CONTROLLING INTEREST IN THE CAPITAL OF I.N.C.A.
IP/95/1177	95.10.27	THE COMMISSION CLEARS THE MERGER BETWEEN CHEMICAL BANKING CORPORATION AND THE CHASE MANHATTAN CORPORATION
IP/95/1182	95.10.30	FINNISH PAPER INDUSTRY: COMMISSION CLEARS FULL MERGER BETWEEN REPOLA AND KYMMENE
IP/95/1245	95.11.14	CROWN CORK & SEAL/CARNAUDMETALBOX: THE COMMISSION IMPOSES STRICT CONDITIONS
IP/95/1282	95.11.22	COMMISSION CLEARS THE ACQUISITION OF SOVAC BY GE CAPITAL
IP/95/1290	95.11.24	THE COMMISSION CLEARS THE MERGER BETWEEN SEAGATE TECHNOLOGY INC.AND CONNER PERIPHERALS INC.
IP/95/1323	95.11.30	COMMISSION APPROVES A JOINT VENTURE BETWEEN MCDERMOTT AND ETPM IN THE FIELD OF THE PROVISION OF MARINE CONSTRUCTION SERVICES TO THE OFFSHORE AND GAS INDUSTRIES
IP/95/1327	95.12.01	COMMISSION AUTHORIZES CEP COMMUNICATION (A HAVAS SUBSIDIARY) TO ACQUIRE CONTROL OF GROUPE DE LA CITE, L'EXPRESS AND LE POINT
IP/95/1335	95.12.04	THE COMMISSION CLEARS THE PROPOSED ENTRY OF BERTELSMANN INTO THE CONTROLLING BLOCK OF TELE MONTE CARLO
IP/95/1379	95.12.11	MINING SECTOR : COMMISSION CLEARS THE MERGER BETWEEN RTZ AND CRA
IP/95/1382	95.12.12	COMMISSION AUTHORIZES THE ACQUISITION OF ROTH FRERES BY JOHNSON CONTROLS
IP/95/1383	95.12.12	THE COMMISSION CLEARS THE ACQUISITION BY MONTEDISON OF GARDINI'S SHAREHOLDING IN SCI
IP/95/1385	95.12.12	COMMISSION GRANTS PARTIAL DEROGATION FROM SUSPENSION ON COMPLETION OF MERGER BETWEEN KIMBERLY-CLARK AND SCOTT PAPER
IP/95/1449	95.12.21	COMMISSION INITIATES DETAILED INVESTIGATION INTO THE MERGER OF THE PLATINUM OPERATIONS OF GENCOR AND LONRHO
IP/95/1467	95.12.22	COMMISSION DECIDES THAT ACQUISITION OF UBS BY SWISS LIFE IS NOT OF COMMUNITY LEVEL

IP/95/1468	95.12.22	THE COMMISSION APPROVES CREATION OF A JOINT VENTURE BETWEEN BAYERISCHE LANDESBANK AND AUSTRIAN TRADE UNIONS
IP/95/1469	95.12.22	COMMISSION APPROVES TAKEOVER OF NORTHUMBRIAN WATER BY LYONNAISE
IP/95/1470	95.12.22	COMMISSION CLEARS HYDRAULIC EXCAVATOR JOINT VENTURE BETWEEN MANNESMANN DEMAG AND KOMATSU
IP/95/1471	95.12.22	THE COMMISSION CLEARS THE PROPOSED ACQUISITION OF ALUMIX BY ALCOA
IP/95/1472	95.12.22	COMMISSION AUTHORIZES THE ACQUISITION OF HARTMANN & BRAUN BY ELSAG BAILEY

D - Judgments of the Community courts

1. Court of First Instance

Case	Parties	Date	Publication
T-2/93 (Costs)	SA à participation ouvrière Compagnie nationale Air France against European Commission	8.3.95	OJ C 137, 3.6.95, p. 21 [1995] ECR II-535
T-96/92	Comité central d'entreprise de la Société générale des grandes sources, Comité d'établissement de la source Perrier, Syndicat CGT de la Source Perrier et Comité de groupe Perrier against European Commission	27.04.95	OJ C 159, 24.6.95, p. 21 [1995] ECR II-1216
T-12/93	Comité central d'entreprise de la société anonyme Vittel, Comité d'établissement de Pierval and Fédération générale agroalimentaire against European Commission	27.04.95	OJ C 159, 24.6.95, p. 21 [1995] ECR II-1250

IV - State aid

A - Overview of cases

1. Regional aid

Germany

(a) Consolidation Funds

The Commission took a series of decisions throughout the year concerning the new German Länder (Saxony, Saxony-Anhalt, Thuringia, Brandenburg and Mecklenburg-Western Pomerania, Berlin) and relating to the establishment of Consolidation Funds ("Konsolidierungsfonds") to assist ailing firms.

These schemes comply with the Community Guidelines on state aid for rescuing and restructuring firms in difficulty. They are restricted to SMEs, while cases benefiting large firms, like those concerning sensitive sectors, must be notified on a case-by-case basis.

(b) State loan and guarantee schemes to provide liquidity for firms

In February and March, on the basis of Article 93(1) of the EC Treaty, the Commission examined a number of existing economic support programmes that contained guidelines on the granting of state loans and guarantees to provide liquidity for firms in the Länder of Hamburg and Baden-Württemberg.

In the light of the development of the common market and the way it operates at present, the Commission took the view that such programmes had to be revised in a number of respects, and appropriate measures were proposed to the German authorities. The measures include the following:

(1) aid to sectors subject to specific rules is excluded from the scope of the schemes if such rules are not complied with;
(2) restriction of the scope of the schemes to SMEs;
(3) the schemes must incorporate the implementing conditions contained in the guidelines on rescuing and restructuring aid;
(4) an annual aid ceiling must be set, together with a maximum amount of aid per recipient firm;
(5) the implementing conditions of the schemes must incorporate such amendments as are necessary to ensure compliance with the regional rules on initial investment;[14]
(6) the setting of annual limits for the amount of guarantees, maximum periods covered by the guarantees and minimum levels for the percentage of responsibility of the lending financial institutions.

(c) State guarantee schemes

In March the Commission initiated a scrutiny procedure under Article 93(2) of the EC Treaty with regard to the guarantee schemes of Saxony-Anhalt, Rhineland-Palatinate, Bavaria, Bremen,

[14] Principles of coordination of regional aid systems, OJ C 31, 3.2.1979; Council Resolution of 20 October 1971, OJ C 111, 4.11.1971.

Lower Saxony, North Rhine-Westphalia, Mecklenburg-Western Pomerania, Schleswig-Holstein and Saxony.

Following the Commission's adoption of its guidelines on rescue and restructuring aid,[15] a number of aspects of the guarantee schemes no longer complied with Community rules. Accordingly, after having proposed the relevant appropriate measures from August to December 1994, the Commission was obliged to initiate proceedings on the award of guarantees for rescue and restructuring projects of large firms in difficulties without individual notification.

(d) Extension, modification and expansion of the investment allowance for the new German Länder.

In November, the Commission approved a number of changes to the German investment allowance scheme for the new Länder.

The changes related to:

i) a two-year extension (to the end of 1998) of the scheme to cover the acquisition and production of economic goods in a given period;
ii) the ceiling of 5% gross aid for investment in manufacturing businesses;
iii) the introduction of an investment allowance of 10% gross (ceiling) for investments in the former GDR, within a given period, by statutorily independent commercial enterprises employing not more than 50 people.

The Commission approved these changes on the following grounds:

i) the whole of the former GDR benefits from the regional exemption under Article 92(3)(a) of the EC Treaty;
ii) some of the amendments are designed to facilitate the development of SMEs (10% aid), especially small traders;
iii) the investment allowance is intended only for investments in plant and machinery;
iv) the net maximum intensity will not exceed 6.5% under the new arrangements (10% gross);
v) rules on overlapping and a monitoring mechanism are provided for to ensure compliance with maximum aid intensities of the regional joint Federal Government/Länder scheme when investment allowances are cumulated with aid under the joint scheme;
vi) the scheme has a time limit and is degressive;
vii) the whole of the former GDR benefits, until the end of 1999, from regional aid under Objective 1 of the Structural Funds. In the event of a change in the socio-economic indices in the new Länder, the Commission has expressly reserved the right to review the scheme in order to adapt it to the development of the common market pursuant to Article 93(1) of the EC Treaty.

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15 OJ C 368, 23.12.1994.

Belgium

(a) Regional aid map

In July, pursuant to Article 93(3) of the EC Treaty, the Commission approved the new Belgian regional aid map, excluding the Province of Hainaut, which was the subject of a separate decision in June 1994.[16]

The new map reflects continuity while at the same time taking account of the principles that currently guide Commission policy on regional aid. The main features of the decision are as follows:

(1) the only basis for derogation used is Article 92(3)(c) of the EC Treaty, since Belgium does not have any region eligible for aid under Article 92(3)(a);
(2) the proportion of the national population covered by regional aid will in future be 34.97% (including Hainaut);
(3) the rates of aid intensity approved remain the same as in the previous map (15% and 20% net grant equivalent), but are lower in relative terms (excluding Hainaut) compared with the previous situation as the population covered by the highest rates has been reduced;
(4) preferential terms are provided for SMEs, thus making use of the scope afforded by the guidelines on aid for SMEs;
(5) a maximum period of validity has been set (31 December 1999) so as to align the regional aid map with the Structural Funds map.

It may be seen from the terms of the new map that the principles and objectives underlying Commission action in this sphere have been confirmed by the decision. The following parameters were used in determining the new development areas in Belgium:

(1) aid is concentrated on the most disadvantaged regions of the country;
(2) the rates of aid intensity are reduced;
(3) geographical consistency with the regional objective areas under the Structural Funds (Objectives 1, 2 and 5b) is sought;
(4) the period of validity is limited and brought into line with the Structural Funds;
(5) population coverage is restricted;
(6) there is an aid intensity differential in support of SMEs.

Spain

(a) Review of the development areas

In July, following the review of the previous regional aid map,[17] the Commission proposed appropriate measures under Article 93(1) of the EC Treaty to Spain on regional aid. In September Spain complied with the Commission's decision.

As regards the areas eligible for the derogations provided for in Article 92(3)(a) of the EC Treaty, the new map comprises all the NUTS level II regions in which per capita GDP/PPS[18] is 75%[19] or less of

16 State aid N307/A/93 approved on 6 June 1994.

17 Decision 88/C 251/04; OJ C 251, 27.9.88.

18 Gross domestic product/purchasing power standard.

the Community average. On the basis in particular of the per capita GDP of the NUTS level III regions and the nature, intensity or urgency of the regional problems, the new map breaks the eligible regions down into four groups covered by ceilings of 60%, 50%, 40% and 30% nge (net grant equivalent) respectively. The main change compared with the previous map is the lowering of the maximum ceiling from 75% nge to 60% nge.

In addition, in view of the particular seriousness of the problems faced by certain areas, the new map allows exceptional ceilings of 60% for the Cartagena and El Ferrol areas and 45% for the Alto Campóo area, i.e. ceilings higher than those of the regions in which these areas are situated.

The NUTS level III region of Teruel, which in the previous map was expressly eligible for the derogation provided for in Article 92(3)(a) of the EC Treaty, now becomes a region eligible for the derogation provided for in Article 92(3)(c) of the EC Treaty. However, it will be allowed exceptional, though degressive, ceilings (from 60% to 25%) during the period 1995-99.

With regard to the areas eligible for aid under the derogation provided for in Article 92(3)(c) of the EC Treaty, the new map comprises some of the Objective 2 and 5b areas covered by the Structural Funds. The main changes compared with the eligible areas in the previous map are, firstly, the removal of the 45% and 30% ceilings and, secondly, the fact that the NUTS level II region represented by the Basque Country becomes eligible in its entirety. As far as ceilings are concerned, the new map breaks down the eligible regions into three groups covered by ceilings of 25%, 20% and 15% nge respectively.

So as to ensure consistency with Community regional policy, the definition of the regions and the respective ceilings in the new map will expire at the same time as the Structural Funds long-term map, i.e. on 31 December 1999.

Lastly, applying strictly not only the method[20] on regional aid, but also the decrease in the rates of aid intensity, the Commission pursued its policy of restricting regions receiving regional aid to those facing problems of regional development as compared with the European Union as a whole and of reducing the intensity of aid so as to lessen the distortion of competition.

France

(a) Development fund for SMEs and SMIs

In February the Commission approved the setting-up of a "Fonds de Développement des PME-PMI" (SME-SMI development fund) in place of the former "Fonds de Redéveloppement Industriel (FRI)" (industrial redevelopment fund).

The new Fund, which was approved for five years, is accessible only to small and medium-sized enterprises and small and medium-sized industries that meet the Community definition given in the guidelines on aid for SMEs.[21] It allows grants to be made in support of investment involving a high

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19 Throughout the communication, per capita GDP/PPS is consistently expressed as a percentage of the Community average.

20 Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid, OJ C 212, 12.8.1988, as amended, OJ C 364, 20.12.1994.

21 OJ C 213, 19.08.1992, p. 2.

level of technology and innovation. In the assisted regions (i.e. those eligible for the PAT or regional development premium), the maximum regional aid intensity rates, increased by the 10% bonus allowed under the SME guidelines, must be complied with. Outside the PAT assisted regions, the maximum levels of aid provided for in the guidelines on aid for SMEs will be complied with.

Greece

(a) Greek regional aid scheme

In May the Commission approved a number of amendments to the Greek regional aid scheme, which was approved in September 1994.

The amendments concern the following: the maximum amount of grants, which may now be as high as ECU 10.1 million; aid rates in individual development areas, and the addition of a new development area (comprising the prefectures of Dodecanese, Samos, Khios and Lesbos, and the island of Samothrace and a number of other localities) at 40% gross; and the duration of interest rate subsidies, which increases from 3 to 4 years for Zones B and C.

The Commission considered these amendments to be compatible with Articles 92 and 93 of the EC Treaty and Articles 61 and 62 of the EEA Agreement, in view of the following considerations in particular: the level of socioeconomic indicators in Greece, which are well below the Community average; and the fact that Greece as a whole is eligible for aid under Article 92(3)(a) of the EC Treaty, applying the method drawn up in 1988.

Italy

(a) Regional aid scheme

In March the Commission approved the new Italian regional aid scheme.

The scheme authorizes investment aid of 40% and 50% net according to the area (plus the SME bonus) in six Mezzogiorno regions covered by the derogation provided for in Article 92(3)(a) (Campania, Basilicata, Apulia, Calabria, Sicily and Sardinia); in addition, in the same regions (plus Molise and - until the end of 1996 - Abruzzi), a new guarantee fund will provide assistance for SMEs. By providing public guarantees to banks and institutional investors, the fund should make it possible to consolidate the debts of viable SMEs or, alternatively, to grant equity loans. The same guarantee is intended to encourage banks and institutional investors to take minority shareholdings in the SMEs concerned.

The scheme also provides for investment aid in the Centre-North regions covered by the Article 92(3)(c) derogation. The aid may reach intensities of between 10% and 20% net, depending on the size of the enterprise. These regions contain 12.5% of the population of Italy, to which 2.2% is added until 31 December 1996 to take account of the population of Abruzzi. The areas concerned correspond to almost the whole of the areas covered by Objective 2 of the Structural Funds, a large part of the areas covered by Objective 5(b) and certain particularly sensitive local situations.

Special treatment is accorded to Abruzzi and Molise, which are covered by Objective 1 of the Structural Funds (Abruzzi until 31 December 1996), but which no longer meet the conditions to qualify for a derogation from the ban on aid under Article 92(3)(a) of the EC Treaty. However, they

do meet the conditions to qualify for a derogation under Article 92(3)(c) of the EC Treaty. As in the past, the Commission has recognized the need for certain temporary and limited accompanying measures for regions which cease to qualify for the derogation under Article 92(3)(a) of the EC Treaty. Aid intensity will thus vary from 25% to 45% net, depending on the area and the size of the enterprise.

The scheme also provides for aid for research in the Mezzogiorno and in the regions covered by the regional derogation under Article 92(3)(c) of the EC Treaty, and for aid for businesses set up by young people (Law No 44).

(b) Reduction in social security contributions and their financing by the State

In March the Commission adopted a conditional final decision on the Italian scheme providing for a reduction in social security contributions in the Mezzogiorno and their taking-over by the State.

In its decision, the Commission upheld the position it adopted in initiating proceedings,[22] which was to dismantle this type of aid, deemed to be particularly distortive of competition, since it was operating aid which merely relieved firms of costs normally borne by any economic operator.

As regards the six Mezzogiorno regions covered by the terms of the derogation provided for in Article 92(3)(a) of the EC Treaty (Campania, Basilicata, Apulia, Calabria, Sicily and Sardinia), since their weak economic structure would not be able to cope with an abrupt and substantial increase in labour costs as a result of the outright abolition of these measures, the Commission deemed it necessary to allow the dismantling to be carried out at a reasonable pace.

The economic situation of Molise and Abruzzi, which are eligible only for the derogation provided for in Article 92(3)(c) of the EC Treaty, did not justify the granting of this type of aid. The Italian Government had accordingly abolished the reductions in social security contributions there as from 1 November 1994.

As regards the taking-over of the social security contributions by the State, since the two regions were until 31 December 1993 covered by the derogation provided for in Article 92(3)(a) of the EC Treaty, the Commission took the view that temporary supporting measures should be allowed so as to help firms in the regions adapt to new and less favourable forms of economic support.

Accordingly, under timetables provided for very rapid dismantling, the benefit of differentiated state financing of these costs is afforded on a degressive basis up to 31 December 1999 in the case of Molise and up to 31 December 1996 in the case of Abruzzi.

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22 OJ C 240, 19.9.1992, p. 7.

(c) Trieste Centre for financial services and insurance

In April the Commission gave the go-ahead, subject to certain conditions, to the granting of tax concessions to firms setting-up in the Trieste Centre for financial services and insurance.

The Centre is designed to develop financial relations between the EC and East European countries by collecting funds on international markets for use in financial transactions with those countries.

The aid, essentially taking the form of tax reductions on profits made in the Centre, may be granted only for the first five years of operation of the Centre. It is limited to transactions with East European countries and is limited to Lit 65 billion and ECU 3.5 billion of investments. To enable the Commission to monitor closely the effects of the aid, it will be compulsory to submit a detailed report.

The reason for the Commission's approval lies in the importance to the EU of a developed private capital market in Eastern Europe, this type of measure constituting one of the major points of Community policy in its relations with those countries.

Netherlands

(a) Development areas map

In March the Commission approved the new map of development areas in the Netherlands, i.e. all the territorial areas in which firms are eligible to receive national regional aid pursuant to Article 92(3)(c) of the EC Treaty.

The map, which replaces the old map whose validity expired on 31 December 1994, shows little change from the previous period: the only amendments are the inclusion of the whole of the province of Flevoland (recognized as an Objective 1 area by the Council of Ministers in July 1993) and the inclusion of the commune of Hoogeveen in the province of Drenthe (these additions were offset by the removal from the map of a series of communes in Zuid-Limburg). Some areas were notified for five years (1 January 1995 to 31 December 1999), while others will be eligible for only two years (1 January 1995 to 31 December 1996). The levels of aid intensity remain unchanged at 25% gross for Flevoland, 20% gross for the areas eligible for five years and 15% gross for the areas eligible for two years.

The Commission considered the map to be acceptable on the basis of the following considerations: all the regions proposed (except Zuid-Limburg) fulfil at least one of the three alternative eligibility criteria provided for in the first stage of analysis under the 1988 method;[23] the second stage of the method makes it possible to accept the inclusion of parts of the province of Zuid-Limburg on the basis of its socio-economic indices and its isolated geographical situation; the very slight increase (0.38%) in the coverage of the national population is well below the increase that would have been possible following the recognition of Flevoland as an Objective 1 area (1.5%) and enlargement of the new Structural Funds map for the period 1994-99 (11%). It should also be pointed out that, with a figure

[23] Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid, OJ C 212, 12.8.1988, as amended, OJ C 364, 20.12.1994, p. 8.

of 17.26%, the Netherlands has the lowest regional aid coverage of the national population of all the Member States.

(b) Main regional aid scheme

In April, following its approval of the map, the Commission approved the Investment Grant Scheme (Investeringspremieregeling - "IPR"), which is the main regional aid scheme implementing the aid available under the new map. The new IPR scheme also reflects a concern for continuity with the previous IPR schemes cleared by the Commission in 1988 and 1990.

The scheme aims to promote the regional development of the North of the country, Twente and Zuid-Limburg by offering investment grants that comply with the aid intensity ceilings provided for in the new map. Rules are laid down on the combining of different types of aid so as to ensure that the ceilings are not exceeded. Like the map, the scheme is limited in time in such a way as to align it with the period of validity of the Structural Funds.

Portugal

(a) Madeira free zone

In January, following a review of the scheme that had existed since 1987 and had already been reviewed once in 1991, the Commission decided not to raise any objection to the continued application until 31 December 2000 of the measures designed to attract new enterprises to the free zone of Madeira.

Aid provided under the scheme may take the form of training grants, investment grants and tax aid (exemption from taxes). The aid may be combined with other aid available in the free area as well as elsewhere.

The Commission approved the extension of the scheme, even though it comprises operating aid, in the light of the following considerations: the free zone of Madeira is situated in a region which very clearly meets the eligibility criteria under Article 92(3)(a), since its per capita GDP is only 24% of the Community average, making Madeira one of the poorest regions in the Union; Madeira has a very precarious economic structure and the state of its economy is very unfavourable; the outermost regions are entitled to adopt specific measures to assist their economic and social development.[24] However, in compliance with the provisions relating to operating aid[25] and following the pattern of the arrangements agreed for similar schemes at Dublin and Shannon, the scheme will be limited in time, with the setting-up of new enterprises in the zone being allowed only until 31 December 2000, after which date the scheme will be reviewed and a decision taken on whether to extend or abolish it.

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24 "Declaration on the outermost regions of the Community", annexed to the Final Act of the Treaty on European Union.

25 See in particular point I.6 of the Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid, OJ C 212, 12.8.1988.

2. Sectoral aid

2.1. Steel

Austria

(a) Voest Alpine Erzberg GmbH (VAEG)

In October the Commission decided to submit a proposal to the Council under Article 95 of the ECSC Treaty for the authorization of production aid and closure aid to VAEG, an open pit mine producing iron ore, for the years 1995-2002. The production aid is intended to cover the difference between revenues and costs of the company for a limited period during which the company will gradually close down its activities. The closure aid will enable the company to close down its production in an environmental-friendly and socially acceptable way. If this aid were not granted the company would have to close down immediately and the mining site would be abandoned in its present conditions which from a regional point of view and in terms of safety and environmental consideration would not be acceptable. The aid will not unduly affect competition within the common market because it is closely linked to the closing down of the company in the foreseeable future. Austria will only be permitted to grant the annual operating aid if certain limits of production, which will decrease up to the final closing in year 2002, are respected.

The Council gave its assent to the Commission's proposal and the Commission finally approved the aid in November.

Germany

(a) Neue Maxhütte Stahlwerke GmbH

In September 1994 the Commission initiated the procedure pursuant to Article 6(4) of the Steel Aid Code in respect of the plan to grant loss compensation and investment aid to the Bavarian steel companies Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH.[26] On 4 April 1995 the Commission decided that the intended financial measures would constitute state aid prohibited under the provisions of the Steel Aid Code and the ECSC Treaty and should consequently not be implemented.[27]

The Government of Bavaria planned to sell its 45% stake in Neue Maxhütte Stahlwerke GmbH to a private entrepreneur for a nominal purchase price and to cover 80.35% of the losses the company accumulated during the years 1990-94. The final calculation of these losses, presented by the German Government during the procedure, led to an amount of ECU 66.15 million. The Government further intended to grant ECU 29.5 million to cover costs of certain investments. It also planned to sell its 19.74% stake in Lech-Stahlwerke GmbH to the same entrepreneur for a nominal purchase price of DM 1,- and to pay loss compensation to this company totalling ECU 10.52 million.

The German Government claimed that the intended loss compensation would be in line with normal market investor behaviour and would therefore not constitute aid. Having examined the arguments of the German Government the Commission considered that the loss compensation would not be

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[26] OJ C 377, 31.12.1994, p. 4.

[27] OJ L 253, 21.10.1995, p. 22.

equivalent to normal market investor behaviour as the loss compensation would coincide with the sale of its shares in the companies. The State would therefore not have any prospect of return, even in the long-term, on its financial contribution whereas a private market investor will invest own capital only if there is a prospect of a reasonable return on that investment. The Commission therefore concluded that the intended loss compensation would constitute state aid which was incompatible with the Steel Aid Code and the ECSC Treaty. In respect of the intended investment aid the Commission also concluded that it was incompatible with the Steel Aid Code as the two companies are not located in the territory of the former GDR and may not benefit from general investment aid under Article 5 of the Code.

In view of the foregoing the Commission decided not to authorize the loss compensation and investment aid.

In November 1994 the Commission initiated another procedure under Article 6(4) of the Steel Aid Code in respect of different shareholder's loans granted by the Bavarian Government to Neue Maxhütte Stahlwerke GmbH between March 1993 and August 1994 totalling ECU 26.53 million. The Commission considered that the behaviour of the Government was not equivalent to that of a private market investor as no or not all of the other shareholders in the company were prepared to grant loans under equivalent conditions. The Commission therefore considered the loans to constitute state aid which, moreover, seemed not to be compatible with the common market.

On the basis of similar considerations the Commission in July decided to open a second procedure under Article 6(4) of the Steel Aid Code in respect of loans totalling ECU 12.68 million granted by the Government in 1994-95 to maintain the company in operation.

In October the Commission decided that the loans granted to the company between March 1993 and August 1994 totalling ECU 26.53 million constituted state aid which was incompatible with the common market. The Commission reached this conclusion in the light of the fact that the loans were granted to avoid illiquidity and subsequent insolvency, thereby being equivalent to the injection of risk capital, and because the private shareholders did not provide financing on similar conditions. Moreover, in view of the economic difficulties of the company, the Bavarian Government had no reasonable chance ever to receive any repayment of these loans. The loans were intended to cover the operating losses of the company during that period. Such aid cannot benefit from any derogation under the Steel Aid Code and the Commission therefore decided that the aid is incompatible with the common market and that Germany should recover that aid from the company with interest from the day the aid was granted.

(b) Georgsmarienhütte GmbH

In February the Commission decided to close the procedure initiated pursuant to Article 6(4) of the Steel Aid Code in 1993 against aid amounting to ECU 17 million to the steel company Georgsmarienhütte GmbH. The German Government considered this aid to be for R&D purposes and thus compatible with Article 2 of the Steel Aid Code and the Community framework for state aid for R&D.[28] However, during the investigative procedure the Commission established that certain eligible costs, amounting to some ECU 32 million, were not to be incurred directly as a result of the R&D project, but constituted industrial investment costs necessary for the company to produce its steel products. These costs were not eligible for aid for R&D. Moreover, as the R&D project involved

[28] OJ C 83, 11.4.86, p. 5.

applied research and did not involve specifically high risks for the company the Commission decided to approve an aid intensity of only 25% and did not accept an additional 5% as notified by the German Government. In reaching this decision the Commission took into account that if the R&D project failed the company would be able to adapt the project to normal standards and steel production at minimum extra cost.

In view of these considerations the Commission adopted a final decision approving aid for the R&D project of ECU 8 million.

(c) Werkstoff-Union GmbH, Reinwald Recycling GmbH, Hansa Chemie Abbruch und Recycling GmbH and Walzwerk Ilsenburg GmbH.

In January the Commission decided to open the Article 6(4) procedure under the Steel Aid Code in respect of various aid measures in favour of the steel company Werkstoff-Union GmbH for the establishment of a new facility for producing ferrous and non-ferrous products in the former GDR. The costs of the new facility are estimated to be ECU 148 million and the German Government has already provided investment aid of ECU 23.9 million and a fiscal concession of ECU 8.9 million to the company under two regional investment schemes approved for the ECSC sector up to 31 December 1994. However, as this aid and other possible aid measures were not notified to the Commission within the prescribed deadline pursuant to Article 6(1) of the Code, i.e. before 30 June 1994, it did not allow the Commission sufficient time to examine the aid. Moreover, the notification of 15 December 1994 was considered to be incomplete. For these reasons the Commission has serious doubts whether the aid measures involved in the establishment of this new facility are compatible with the Steel Aid Code and the ECSC Treaty. In this context the Commission noted that the Steel Aid Code is very strict on the deadline for payments of aid under Article 5. With the exception of the Investitionszulagengesetz the deadline is 31 December 1994.

For similar reasons the Commission decided to open the procedure provided for by Article 6(4) of the Steel Aid Code in respect of aid to the steel companies Reinwald Recycling GmbH, Hansa Chemie Albruck und Recycling GmbH and Walzwerk Ilsenburg GmbH.

d) Eko Stahl GmbH

In July 1994 the Commission initiated the procedure provided for in Article 6(4) of the Steel Aid Code in respect of the continued loss coverage and financing of investments through loans and guarantees by the Treuhandanstalt and investment loans granted by the public bank Kreditanstalt für Wiederaufbau to the steel company Eko Stahl GmbH. On 21 December 1994 the Commission decided to authorize aid of up to ECU 474 million to the company under Article 95 of the ECSC Treaty in connection with the sale of 60% of its shares to the Belgian steel company Cockerill Sambre S.A. As part of this restructuring plan the Commission authorized the waiving by THA of outstanding loans to the company totalling ECU 190.84 million and a guarantee by THA covering ECU 31.57 million of investment loans. In view of this:

- loans of max. ECU 190.84 million to cover past losses and ECU 165.2 million for investment, repair and maintenance which have been made subject to the Article 6(4) procedure are to be considered repaid as from 31 December 1994 because the THA with the Commission's approval has waived the debts arising from these loans.

- the guarantee by THA covering the entire investment loans made subject to the Article 6(4) procedure has been terminated.

Moreover, in respect of the investment loans granted by the Kreditanstalt für Wiederaufbau, they were granted together with a consortium of banks, including private banks, that took part under the same conditions as the public bank. The Commission therefore considered that these investment loans did not involve state aid.

In view of the foregoing the Commission considered that EKO Stahl was no longer benefitting from any state aid incompatible with the ECSC Treaty or the Steel Aid Code. In February the Commission therefore decided to close the Article 6(4) procedure.

e) Hamburger Stahlwerke GmbH

The Commission decided in October that loans granted to Hamburger Stahlwerke GmbH by the City of Hamburg by way of a credit line granted via the Hamburgische Landesbank at the beginning of 1994 constitute state aid that is incompatible with the ECSC Treaty and the Steel Aid Code. It also established that the loans made on the basis of a partial credit line of ECU 11 million (DM 20 million) opened at the start of 1993 constituted state aid that is also incompatible with the above-mentioned rules. It has ordered that the state aid be repaid.

At the beginning of 1994 press reports alerted the Commission to the fact that the City of Hamburg had granted financial support to Hamburger Stahlwerke GmbH. On 6 July 1994 the Commission initiated proceedings in the course of which it emerged that Hamburger Stahlwerke GmbH had been run as a quasi-state-owned firm since its creation in 1984. The new Hamburger Stahlwerke GmbH was founded in 1984 to take over, as part of a rescue plan, the business of the old Hamburger Stahlwerke GmbH, which had become bankrupt. The share capital was raised through various intermediaries by the City of Hamburg which, via the Hanseatische Landesbank, obtained a decisive say in the future of the new Hamburger Stahlwerke GmbH.

Since no private buyer had been found, the Hamburgische Landesbank and the City of Hamburg decided to support the firm's continued operation. They took the view that, by so doing, they could obtain repayment of the outstanding claims against the old Hamburger Stahlwerke GmbH. The City of Hamburg provided equity of ECU 11 million (DM 20 million) and granted aid of some ECU 13 million (DM 23.5 million) and guarantees of some ECU 7.2 million (DM 13 million) that were approved by the Commission at the time. It also made available a credit line of up to ECU 43.3 million (DM 78 million) via the Hamburgische Landesbank, which itself provided a credit line of up to ECU 29 million (DM 52 million).

When the firm got into economic difficulties at the end of 1992 the Landesbank refused to increase the credit line and thereby preserve the company's liquidity. The City of Hamburg granted the ECU 11 million (DM 20 million) increase at its own risk. At the end of 1993 Hamburger Stahlwerke GmbH was again experiencing severe financial problems and needed a further ECU 13.3 million (DM 24 million) increase in the credit line. The bank withdrew its support completely but the City of Hamburg took over the financing of the company and granted an additional credit line of ECU 96.7 million (DM 174 million) and an additional ECU 5.5 million (DM 10 million), at its own risk. At the end of 1994 the company was sold to the Indonesian Ispat group. Under the terms of the sale, all claims arising from loans to Hamburger Stahlwerke were transferred to Ispat for an at that time still to be determined fraction of the nominal value. The Commission concluded that the loans which

Hamburger Stahlwerke GmbH received by way of the credit line in December 1992 and by way of the credit line as a whole at the beginning of 1994 constituted state aid that is incompatible with the Steel Aid Code and must therefore be repaid.

Greece

(a) Halyvourgia Thessalias SA

In May the Commission decided to initiate the procedure provided for in Article 6(4) of the Steel Aid Code in respect of investment aid to be granted by the Greek Government to the steel company Halyvourgia Thessalias SA for the purchase of modern machinery and modernization of existing installations. Investment aid is normally considered to be incompatible with the Steel Aid Code and the ECSC Treaty and may not be approved. However, under Article 5 of the Code the Commission may approve investment aid granted under general regional aid schemes in Greece up to 31 December 1994. As the aid was notified to the Commission on 15 February 1995 the aid cannot be deemed to be compatible with the common market pursuant to Article 5. The Commission therefore has serious doubts whether the investment aid may be compatible with the Steel Aid Code and the ECSC Treaty.

Ireland

(a) Irish Steel Ltd.

The Commission decided in April to initiate the procedure provided for in Article 6(4) of the Steel Aid Code in respect of financial assistance by the Irish Government of ECU 61.73 million to the state-owned company Irish Steel Ltd. to support the restructuring of the company and a loan guarantee of ECU 13.3 million granted in 1993. It appeared that the financial assistance, taking the form of loan guarantees and equity, and the loan guarantees from 1993 did not seem to fall within any of the categories of aid which may be authorized under the Steel Aid Code and could therefore be approved only under Article 95 ECSC. The Irish Government subsequently withdrew its plans to grant this aid and notified a new restructuring plan involving the sale of the company to Ispat International. Under this plan the Irish Government intended to grant financial assistance totalling ECU 38.39 million, involving debt write-off, cash contributions towards environmental work and a pension scheme.

The Commission considered that the financial assistance constituted aid, as it was doubtful whether this assistance was lower than the liquidation costs which a private market investor would incur. Moreover, given the company's steadily deteriorating financial position over several years a rational private investor might have been expected to have acted much sooner to reduce his losses. The Commission considers that this aid cannot benefit from any of the derogations provided for under the Steel Aid Code (apart from a small amount of aid for retraining) and can therefore be approved only under Article 95 ECSC.

The Commission considered that the conditions for submitting a proposal to the Council under Article 95 were fulfilled in this case given that the aid seems to be limited to what is strictly necessary and is granted in the context of a restructuring plan enabling the firm to return to viability within a reasonable period of time. The Commission moreover considered that the interest of competitors are safeguarded as the level of aid is relatively small and the company will not be allowed to increase its production capacity for a period of at least five years from the last payment of aid. In view of these considerations and the fact that the closure of the company, which is situated in an Article 92(3)(a)

region, would cause serious social and regional problems the Commission decided to submit a proposal to the Council under Article 95 approving the restructuring aid to Irish Steel Ltd.

At its meeting on 21 December 1995, the Council gave its unanimous assent to the Commissions's proposals, subject to various additional conditions being imposed, including restrictions on the company's product range, output and sales over the next five years in order further to minimize possible distortions of competition. It was also agreed that the aid should be increased by about ECU 9 million.

Italy

(a) Acciaerie di Bolzano (Falck)

Following a complaint the Commission became aware of a number of aid measures in favour of the steel company Acciaeri di Bolzano, a subsidiary of Falck, granted between 1983 - 1988 without prior notification and approval by the Commission. Having examined this aid on the basis of the current Steel Aid Code it seemed that certain of the aid measures were granted for productive investment, which does not benefit from a derogation under the Steel Aid Code, and others were granted for environmental protection purposes without it being possible to establish whether the conditions for approving such aid under the Code were complied with.

The Commission therefore had serious doubts about the compatibility of these aid measures with the common market and decided to initiate the procedure provided for in Article 6(4) of the Steel Aid Code.

(b) Bresciani Law

The Commission decided on the one hand not to object to 20 closure aid proposals notified under Law No 481 of 3 August 1994 on the restructuring of the private steel sector in Italy and, on the other hand, to initiate the procedure provided for in Article 6(4) of the Steel Aid Code in respect of six other state aid proposals.

When the Commission authorized Law No 481, it noted that it complied with the Steel Aid Code and in particular with its Article 4, and required the Italian authorities to give prior notification of each application of the Law in question. According to information in the Commission's possession, however, although 20 cases satisfied all the conditions imposed, in accordance with the Steel Aid Code, in six other cases the six firms concerned had not been regularly manufacturing ECSC products up to the date on which the aid was notified to the Commission.

The Commission thus had reason to believe that the firms in question could not at first sight qualify for closure aid under Article 4 of the Steel Aid Code, inasmuch as they had not apparently been regularly producing ECSC steel products up to the date of notification of framework Law No 481 on the restructuring of the Italian private steel industry.

The Commission therefore considered it necessary and appropriate to initiate the procedure provided for in Article 6(4) of Commission Decision 3855/91/ECSC in respect of the six aid cases in question.

2.2. Non-ECSC steel products

Germany

(a) Berg-Spezial-Rohr GmbH

In March 1993 the Commission decided to initiate the Article 93(2) procedure in respect of an investment aid to be granted under an approved regional aid scheme to the company Berg-Spezial-Rohr GmbH producing large steel tubes not covered by the ECSC Treaty. In view of the existing overcapacity in the sector concerned, with capacity utilization of around 40% between 1989-1992, the Commission had doubts whether this aid was compatible with the common market.

Having examined the aid in the light of the information provided by the German authorities and interested parties during the procedure, the Commission decided in September to approve the aid pursuant to Article 92(3)(c) of the EC Treaty. In reaching this decision the Commission carried out an assessment of the sectoral impact of the aid against the regional benefits of the aid. In this context the Commission noted that the overall production capacity of the company remains unchanged with the aid and that the aid contributed to the improvement and diversification of the labour market in the region. In line with similar cases in the past the Commission therefore considered that the regional benefits of the aid outweigh the sectoral distortion of competition due to the aid.

Italy

(a) Tubificio di Terni Srl and Ilva Lamiere e Tubi, Srl

The Commission decided in March 1994 to open the Article 93(2) procedure in respect of financial contributions by the State to the above-mentioned two companies producing non-ECSC steel products. In view of the difficult market situation in the sector of large welded tubes in which the companies operate, the Commission had doubts whether these contributions were based on normal commercial considerations, and if not, whether the aid was compatible with the common market.

The Commission considered that the financial contribution to Tubificio di Terni Srl (ECU 3.1 million or LIT 6300 million) was based on normal commercial considerations and, consequently, did not involve any aid under Article 92(1). In reaching this conclusion the Commission put emphasis on the fact that there was an upward market trend in the sector within which the company operates at the time the contribution was made and that by investing in the company the State acted like other private investors on the market. The fact that there is at present a low rate of capacity utilization in the sector is not decisive. However, even if the contribution were to constitute state aid it could be approved pursuant to Article 92(3)(c) of the EC Treaty as it would not lead to an increase in overcapacity and helped to improve employment in the region.

The Commission considered that the financial contributions to Ilva Lamiere e Tubi Srl were not equivalent to the behaviour of a private market operator in view of the overcapacity in the market on which this company operates. Moreover, the contribution was made to a plant belonging to Ilva at the time, which suffered financial difficulties. The Commission therefore considered these contributions to be state aid linked to investment. However, the investment aid does not lead to any increase in the company's production capacity and the company is located in an area eligible for regional aid under Article 92(3)(a) of the EC Treaty. The Commission considered, therefore, that the possible sectoral problems produced by the aid were outweighed by the positive regional impact and approved the aid.

Spain

(a) Tubacex

In February the Commission decided to initiate the procedure provided for in Article 6(4) of the Steel Aid Code and Article 93(2) of the EC Treaty in respect of a number of possible aid measures in favour of Tubacex, a producer of seamless stainless steel tubes. In its decision the Commission in particular focused on the apparent financial restructuring of the company, including the decision by the Social Security Treasury to waive its preferential creditor rights and to lift embargoes on assets without the proceeds of the sale of those assets being used to repay their debts. The Commission also paid particular attention to the sale of land by the company to the Basque Government at a price which seems to be above market price and whether the loans granted by the Wages Guarantee Fund to cover wage payments were based on normal market conditions.

2.3. Shipbuilding

The current rules on state aid to shipbuilding are laid down in the Seventh Directive on aid to shipbuilding which expired on 31 December 1995. New arrangements need to be established to comply with the Community's obligations under an OECD international agreement which is to enter into force on 1 January 1996. Therefore, in July the Commission decided to submit a proposal to the Council for a Regulation on aid to shipbuilding implementing this agreement as from 1 January 1996.

In December the Council adopted Regulation No 3094/95 implementing the OECD agreement on normal competitive conditions in commercial shipbuilding and shiprepair, including the elimination of production subsidies. Under the Regulation all measures of support provided, directly or indirectly, to commercial shipbuilding are prohibited except those expressly provided for, i.e. aid for R&D, social aid related to closure, export credits for ships under the OECD Understanding on Export Credits for Ships and domestic credits on equivalent terms. Aid for restructuring will generally not be allowed except for a transitional period for Belgium, Portugal and Spain. The new Regulation will be applicable as from the entry into force of the OECD agreement. This had been due on 1 January 1996, but although the European Union ratified the agreement in December, entry into force was delayed because of hold-ups in the ratification process among other parties to the agreement. The Council has therefore decided that the rules of the Seventh Directive on aid to shipbuilding[29] should continue to apply ad interim and at the latest until 1 October 1996. Against this background the Commission decided to maintain the common production aid ceiling as from 1 January 1996 at 9% for large vessels and 4.5% for vessels costing less than ECU 10 million for conversions.

France

(a) Société nouvelle des Ateliers et Chantiers du Havre (ACH), Société française de Constructions Navales (SFCN) and other yards in Italy and Germany

In June the Commission decided to initiate the Article 93(2) procedure in respect of indirect aid to the above-mentioned two French shipyards and a yard in Germany and Italy. Between 1987-1990 the two

[29] Council Directive 90/684/EEC, as amended by Directive 94/73/EEC.

French yards SFCN and ACH received direct aid for the production of three ships under a scheme approved by the Commission. The aid intensity represented between 9.4%-28% of the contract price which was within the limits under the approved scheme. However, under an approved regional aid scheme for the French Départements d'Outre Mer (DOM) firms making investments in DOM regions could benefit from favourable fiscal measures and the purchasers of the same ships benefitted from these aid measures when investing in the ships. The Commission's approval was subject to individual notification of aid within sectors, such as shipbuilding, with specific rules on state aid.

It follows from Article 3 of the Seventh Directive on aid to shipbuilding that the grant equivalent of aid to shipowners or to third parties which is available as aid for the building or conversion of ships shall be subject in full to the aid intensity ceilings for production aid pursuant to Article 4 of the Directive, provided the aid is actually used for the building or conversion of ships in Community shipyards. On the basis of the information available to it the Commission established that the main purpose of the aid granted to the purchasers of these ships was actually to benefit the shipyards concerned and not for regional development in the DOM regions. This aid should therefore be taken into account when calculating the total aid granted to SFCN and ACH for the construction of the three ships with the result that the total aid intensity exceeded that approved by the Commission under the aforementioned scheme.

Likewise, the indirect aid granted under the regional aid scheme for the construction of two ships in a German and an Italian shipyard exceeded the ceiling for production aid to those yards.

Germany

(a) Volkswerft, MTW-Schiffswerft, Warnow Werft, Elbewerft Boizenburg and Peene Werft

The Seventh Directive on aid to Shipbuilding contains a derogation in favour of shipyards located in the former GDR which allows operating aid paid before end 1993 which exceeds the general operating aid ceiling defined in Article 4 of the Directive. The derogation requires the German Government to carry out a genuine and irreversible closure of 40% of the shipbuilding capacity existing in the new Länder in 1990 before the end of 1995. After privatization in 1993 the Commission approved for each of the above-mentioned yards the release of all proposed operating aid. Pursuant to Articles 6 and 7 of the Directive the Commission also approved restructuring aid in the form of investment aid and closure aid for these yards. The Commission approves restructuring aid in tranches provided that it is shown that the aid is necessary to carry out the restructuring plan, that the subsidized investments are carried out according to the plan approved by the Commission, that there is no spill-over effect on other shipyards and that the reduction in capacity for the individual yard are respected.

On that basis the Commission decided to approve further releases of aid to these yards. However, in respect of MTW-Schiffswerft the additional aid approved was reduced due to the fact that MTW had not concluded contracts for the total amount of the investment programme. The approval of the full aid package for favour of those yards is based on the realization of the complete investment programme, otherwise the aid intensity would go beyond what is acceptable.

Greece

Neorion Syros Shipyards SA.

In July the Commission decided to adopt a final positive decision under Article 93(2) with regard to aid that the Greek Government decided in 1991 to grant to Neorion Shipyard in the form of a debt write-off totalling ECU 53.433. The aid was granted pursuant to Article 10 of the Seventh Directive

on aid to shipbuilding on condition the yard was privatized. However, since the yard had not been privatized by February 1994 the Commission decided to initiate the Article 93(2) procedure.

The Commission's decision of July recognizes that the Greek Government has fulfilled its obligation to privatize Neorion Shipyard, which had been transferred to a private company in September 1994, and the aid was found to be compatible with the Shipbuilding Directive.

In November the Commission decided to approve an investment in favour of Neorion Syros Shipyard SA to cover a part of the investment expenditure for the restructuring and modernization of the yard. The investment aid will amount to a maximum of ECU 4.041 million representing 50% of the total investment expenditure. The aid was approved pursuant to Article 6 of the Seventh Directive as the aid is linked to a restructuring plan which results in a reduction of the shiprepair capacity of the shipyard of about 20%. Moreover, since the aid is granted on the basis of Greek legislation existing before the signing of the OECD Agreement the standstill provision of the 1994 OECD Agreement on normal competitive conditions in the shipbuilding and repair industry is respected.

Spain

Aid towards the restructuring of publicly-owned yards

In 1991 the Commission authorized loss compensation to the public Spanish yards in the context of a restructuring of those yards covering the years 1987-1992 and amounting to ECU 792.3 million. However, due to budgetary constraints it did not prove possible to make these payments according to schedule and the publicly-owned yards have continued to experience serious financial problems due to this delay in the receipt of aid payments and the prevailing difficult market situation.

In November the Spanish authorities notified the Commission of plans to grant aid totalling ECU 1.125 billion (PTA 180 billion) in support of a further restructuring of the publicly-owned yards. This notification covers social aid measures, the outstanding loss compensation aid and investment aid, as provided for in a special derogation for Spain under the OECD agreement.

In view of the fact that the notified amount of loss compensation aid of ECU 556.9 million corresponds to the outstanding loss compensation aid approved by the Commission in 1991, but not paid due to budgetary constraints, the Commission decided in December that this aid may be approved pursuant to Article 5a of the Directive. However, the Commission asked the Spanish Government to submit six-monthly reports to enable the Commission to verify that the aid is used for the purpose intended and not for unfair competition practices such as under-pricing.

The Commission also decided to initiate the procedure provided for in Article 93(2) in respect of a proposed tax credit facility worth ECU 301.8 million (approx. PTA 48 billion) to be granted to the public yards concerned during the period 1995-98. A decision on the remaining aid elements was deferred pending further examination.

2.4. The motor-vehicle sector

The reintroduction of the Framework

In view of the legal vacuum created by the Judgment of the European Court of Justice of 29 June 1995, which states that the 1992 review of the Framework on aid to the motor-vehicle sector could not extend the Framework for an indefinite period, the Commission decided to reintroduce the Framework pursuant to Article 93(1) of the EC Treaty and to introduce interim measures in the form of a retroactive prolongation of the original Framework until the end of 1995 pending the reintroduction of the Framework under Article 93(1) EC.

All Member States apart from Spain agreed unconditionally to reintroduce the Framework for two years as from 1 January 1996. The Commission considered that the arguments put forward by the Spanish Government did not justify its refusal to accept the reintroduction of the Framework and, as the Commission cannot accept the non-applicability of the Framework in one Member State only, unless exceptional circumstances occur in that Member State (which is not the case in Spain), in September the Commission decided to open the Article 93(2) procedure in respect of all aid schemes in operation in Spain.

In December the Commission took a final decision in respect of this procedure requiring existing state aid schemes in Spain to be altered so to comply with the obligations to notify and submit annual reports contained in the new Framework. In other words, the Spanish Government is required to notify all aid measures to be granted for projects costing more than ECU 17 million under any existing or approved aid schemes to undertakings operating in the motor-vehicle sector as defined in the Framework.

Austria

(a) Opel Austria

In July the Commission approved aid totalling ECU 16.1 million in favour of Opel Austria, a wholly owned subsidiary of General Motors Corp., in support of its R&D, environmental and training expenditure in Aspern/Vienna. The aided projects originate from Opel´s decision to develop a new small-size petrol engine family (family 0), which forms part of a new overall approach to the powertrain design. The project takes place over the period of 1994 to 1998 at a total cost of ECU 375.4 million (ATS 4.913 million). Of these, ECU 261.4 million (ATS 3.421 million) concern normal investment, which is not eligible for aid. Total eligible expenditure is thus ECU 114 million (ATS 1 492 million) in various categories, for which a total of ECU 16.1 million (ATS 210.3 million) of aid has been earmarked. The aid takes the form of a grant from the central government and from the local administration of Vienna. The aid for product-related R&D amounts to ECU 7.2 million (ATS 93.8 million) at an intensity of 15% on eligible expenditure of ECU 48.1 million (ATS 625.3 million), while the intensity on process-related R&D and innovative investment is 10% resulting in an amount of ECU 5.6 million (ATS 72.8 million) on eligible expenditure of ECU 56 million (ATS 727.5 million). For the environmental expenditure of ECU 7.6 million (ATS 99 million) a grant of 30% will be given, leading to an aid amount of ECU 2.3 million (ATS 29.7 million). Finally, aid for basic training will be ECU 0.6 million (ATS 8 million), i.e. a 50% intensity on expenditure of ECU 1.2 million (ATS 15.9 million), while aid for on-the-job training is set at ECU 0.5 million (ATS 6 million) at an intensity of 25% on eligible expenditure of ECU 1.8 million (ATS 24 million).

In approving the state aid for R&D expenditure, the Commission concluded that the product and process development expenditure is genuinely innovative on a European level and the aid intensities remain within the limits set by the Framework on state aid to the motor vehicle industry and the Framework on state aid for R&D. As regards the aid for environmental projects, the Commission concluded that the investment in new cleaning and washing processes for the engine components lead to a significant reduction in effluent emission and to the recycling of these effluents which either go beyond national standards or are voluntary measures in the sense that no standards exist, so that the proposed aid intensity of 30% is within the limits foreseen by the motor vehicle Framework and the Community guidelines on state aid for environmental protection. In view of the innovative nature of the project, the Commission considered that the vocational training measures will correspond to genuinely qualitative changes in the required skills of the workforce. The basic training elements are not company specific. On this basis and since the level of aid is within reasonable limits, the aid for training was considered acceptable according to the rules on aid for vocational training as specified in the Motor Vehicle Framework.

Belgium

(a) Ford Werke AG

In July the Commission approved regional and environmental aid to Ford Werke AG in support of its investment plans in Genk. The projects involves the launch of the new Ford Mondeo passenger car series and the expansion of the capacity of the plant for this purpose. Environmental investments are also linked to this project. Given that the project requires *inter alia* a completely new body construction line and significant investments in the paint shop, the company has actively examined alternative locations for this project, thereby underlining the necessity for regional aid to safeguard the medium and long-term prospects of the Genk plant. The project takes place over the years 1992-1995 at a total cost of BFR 26 910 million, of which ECU 509 million (BFR 19.587 million) are eligible for regional aid. The regional aid will take the form of a grant of ECU 24.1 million (BFR 916.4 million) to the project, which will be paid in three equal annual instalments between 1995 and 1997. In addition to that, the company will obtain an exemption from property tax for 5 years, the present value of which is estimated at ECU 4.5 million (BFR 171.8 million). Given the delay in payment of aid, the aid intensity of the two elements of regional aid expressed in grant equivalent is equal to 4.3%. In approving the state aid, the Commission assessed the regional development benefits against possible adverse effects on the sector as a whole such as the creation of important overcapacity. It carried out a cost-benefit analysis to establish to what extent the regional aid is in proportion to the regional handicaps that Ford faces through its investment in Genk. These disadvantages were found to be higher than the proposed aid intensity. Consequently, the aid will have no adverse effects on the sector.

The environmental projects mainly concern investments in the paint shop to reduce the emission of solvents. Furthermore new systems of waste collection and disposal are introduced. The cost of these projects is ECU 7.1 million (BFR 270.3 million). The environmental aid will be given in the form of a grant of 15% leading to an aid amount of ECU 1.1 million (BFR 40.5 million). As the projects lead to reduction in emissions partly beyond the standards required by current regional legislation and partly to their observance, the aid intensity of 15% is in line with the limits of the guidelines on state aid for environmental protection.

Belgium and the Netherlands

(a) DAF

In September, the Commission took a partly negative final decision concerning the two Article 93(2) procedures which it had initiated in October 1993[30] to examine the existence and the compatibility of state aid elements contained in the public interventions of the Dutch State and the Region of Flanders in favour of the truck producer DAF, before and after its bankruptcy.

DAF N.V. together with its many subsidiaries in the Netherlands, Belgium and the UK had gone into receivership in February 1993. One month later, the Commercial Courts in the Netherlands and Belgium approved the purchase of the core assets from the former DAF company located in these two Member States by a newly created company, DAF Trucks N.V., in which the Dutch State and Flemish Region held a majority shareholding.

With regard to the sale of the assets of DAF België N.V. and the role of the public authorities the Commission considered that the administrators in the Netherlands and Belgium had acted in the independent way provided for by law. With regard to the state participation in the risk capital of DAF Trucks N.V. and its subsidiary DAF Trucks Vlaanderen N.V., the Commission concluded that the authorities of both Member States had provided risk capital under the same conditions as the private shareholders, whose holding has real economic significance. A detailed examination of the business plan proved that a reasonable return on the shareholders' capital could be expected. It did not, therefore, contain any state aid.

Following a detailed analysis of the different financial interventions in support of the old DAF company, the Commission concluded that three aid measures awarded by the Dutch State constituted state aid under Article 92(1)EC and two of them were also incompatible with the common market and had to be recovered.

First, the rescheduling in December 1990 of a TOK-loan (*Technisch ontwikkelingskrediet*) awarded in 1983 produced additional financial advantages to a company in difficulty, valued at ECU 8.4 million (HFL 17.7 million) on the date of receivership, which according to the motor vehicle framework needed to be notified to the Commission. The non-notified aid, which was qualified as rescue and restructuring aid, was not compatible with the guidelines of the Framework as it had not been linked to a restructuring plan.

Second, the aid element and the illegal character of the last TOK-loan awarded in 1991 and 1992 was not disputed by the Dutch State. Contrary to its opinion, the Commission concluded that it was also incompatible with the guidelines of the Framework as the aided project concerned the development and pre-industrialization stages of the R&D cycle by which a new but non-innovative truck series was prepared for its launch into the market. As specified by the Framework, the development of new models, which are less polluting and more fuel efficient than their predecessors, is a standard requirement for a truck company in order to remain competitive in the European market. Such normal business activity should in principle not be aided. As the Dutch State was already recovering the loan from the bankrupt company, the Commission required the reimbursement only of the additional aid element contained in the interest subsidy of the loan and valued at ECU 0.2 million (HFL 0.4 million) on the date of receivership.

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30 Twenty-third Competition Report, point 508.

Third, the Commission considered that the HFL 1.55 million advance to a notified but not approved R&D aid - paid end 1992 - was in conformity with the guidelines for assessment of R&D aid of the said Framework as it was linked to the VOLEM project ('accelerated development of low emission engines') which contained sufficient elements of pre-competitive research to justify the level of aid actually paid.

The Commission thus required the Dutch State to recover from DAF N.V. a total of ECU 8.6 million (HFL 18.1 million) incompatible aid (8.4 + 0.2). Given that DAF N.V. and DAF Trucks N.V. are legally entirely different companies and that the assets of DAF N.V. were sold in compliance with the Dutch bankruptcy procedure, the Commission did not require the recovery of the first two aid measures from DAF Trucks N.V., even if it were later to emerge that these aid measures could not have been (entirely) reimbursed by the company in liquidation, DAF N.V..

Finally, the Commission considered that illegal state aid had been granted to the new DAF company by the Belgian authorities. By not charging the normal risk premium of 1.5% on state guarantees already attached to the debt which were transferred from the bankrupt DAF België N.V. to DAF Trucks Vlaanderen N.V., the Belgian authorities granted state aid to the new company. This artificial financial advantage was valued at ECU 0.2 million (BFR 9.3 million) at the moment of transfer of the debt and guarantees. This operating aid was considered to be incompatible with the common market as the guidelines of the said Framework provide that no operating aid should be authorized in this sector. Consequently, the Commission ordered the recovery of that amount plus the interest charges from the date of award.

Germany

(a) Volkswagen Group (VW)

At the end of October the Commission decided to require the German Government to provide all documentation, information and data on the new investment projects of the Volkswagen Group (VW) in the new German Länder and on the aid that is to be granted to them within six weeks. In July 1994 the Commission had taken a final decision on the various aid measures benefiting Sächsische Automobilbau GmbH (SAB), a joint venture of VW and the Treuhandanstalt (THA), for the restructuring of the existing car and engine plants Mosel I and Chemnitz I and the cylinder head plant in Eisenach.[31] These projects formed the first step of VW´s investment in the new Länder. At the time of that final decision Germany had informed the Commission that the VW Group would finalize its plans on its new investment projects in Saxony, the car plant Mosel II and the engine plant Chemnitz II, by the end of 1994 and that information on these projects would then be transmitted to the Commission so that it could assess the proposed regional aid for them.

In spite of several letters reminding the German authorities to submit the information to the Commission, this had not been done by end October 1995. In this situation, the Commission in line with several recent judgments of the European Court of Justice, could take the above-mentioned interim decision requiring the Member State in question, to provide the Commission with the information listed above. Should Germany fail to comply with this decision, the Commission could take a final decision on the basis of the currently available information that could include a demand

[31] XXIVth Report on Competition Policy, point 367.

for reimbursement of the aid of ECU 197.3 million (DM 372.2?) that had been paid illegally to the company before the opening of proceedings, including interest charged on the amount of aid paid.

Spain

(a) SUZUKI Motor S.A. (SANTANA)

In January the Commission decided to open proceedings under Article 93(2) EC on the aid measures adopted by both the National authorities and the Junta de Andalucia (Regional Government) in favour of the car plant in Linares (Andalusia) of Santana Motor, S.A. (Santana), subsidiary in Spain of the Suzuki Motor Corporation group. In June 1994 the Spanish authorities apparently concluded an agreement with Suzuki under which Santana had been awarded two interest-free loans totalling ECU 85.1 million (at 1994 prices) (PTA 13.600 million) in order to ensure the viability of the company. Replying to the Commission's request for further information, the Spanish Government confirmed that it had advanced an amount of ECU 27.5 million (PTA 10.116 million at 1994 prices) to the company. The Spanish Government also transmitted a copy of the draft restructuring plan prepared by Santana in April 1994.

The result of the Commission's verification showed that the restructuring plan for Santana submitted by the Spanish Government at that stage was vague and unconvincing and did not aim to restore the long-term viability of the company. In addition, certain other aspects of the state aid granted to Santana remained unclear. From the information sent by the Spanish Government, the Commission cannot precisely determine the relationship between the state aid intended for SANTANA and the measures composing the restructuring plan of that company. Furthermore, The Spanish Government did not notify any rescue aid in conformity with the rescue and restructuring guidelines. Therefore, the Commission is unable to determine whether or not the proposed state aid to Santana would conform to the conditions it has laid down for the authorization of rescue aid. For these reasons, the Commission has doubts about the compatibility of the aid to Santana with the Common market.

In the context of the Article 93(2) procedure, the Commission expressed its willingness to cooperate with the Spanish authorities in formulating a rescue and restructuring plan compatible with the granting of state aid as regulated by the EC Treaty.

(b) Seat SA

In October the Commission took a final conditional decision on an Article 93(2) procedure it had opened in June 1995 and modified in July 1995 approving an aid package of ECU 283 million (PTA 46 billion) awarded by the Spanish central and regional authorities in support of the restructuring plan of Seat SA, S.A., a motor vehicle manufacturer subsidiary of the Volkswagen Group. Of that amount, ECU 221 million (PTA 36 billion) were advanced in the form of two loans to Volkswagen A.G., the principal and interest charges on which would be reimbursed by future grants payable to Seat.

The Commission carried out, with the help of an independent consultant company, an examination to verify to what extent the notified plan reflects the reality of the restructuring measures undertaken and whether or not the conditions of the EC Guidelines on rescue and restructuring aid in general as well as those of the EC Framework on state aid to the motor vehicle industry in particular, were met. The results of the Commission's examination can be summarized as follows:

The Commission agreed that the plan was sufficient to restore the viability of the company within a reasonable period. In fact, the financial situation of Seat as of October 1995 showed that the operating results were progressing in line with the results expected from the restructuring plan. It appeared from the analysis of the financial data that, if sales increase as scheduled in the plan, the company will become profitable in 1997, i.e. two years later than foreseen by the original plan.

The cost of the restructuring plan, ECU 2.715 million (PTA 441.7 billion), was also lower than notified and comprised investment and product programmes, redundancies and other closure costs, the training programme, the reconstitution of working capital and a reduction of the financial debt.

The review of Seat's restructuring plan demonstrated that the VW Group made a significant contribution to the restructuring of the car industry in Europe. The irreversible closure of the Zona Franca plant, which is only partly compensated by capacity expansion at Martorell and other plants of the VW Group, will reduce the capacity of Seat by 29% and of the VW Group by 5%.

Although the reduction of Seat's capacity is considerably lower than the 50% foreseen by the notified plan, it is still considered to constitute a significant reduction in excess capacity. It is also expected that the production and sales forecast of Seat for the remaining period covered by the restructuring plan will not lead to an increase of its market share in the EEA at the expense of its unaided competitors. The amount of aid (ECU 289 million)(PTA 46 billion) and intensity of the aid (10.4% of the total restructuring cost) is certainly in proportion with the restructuring to be undertaken. The intensity of the aid is relatively lower in percentage terms than the reduction of SEAT's capacity.

In conclusion, the Commission's view is that the ECU 289 million (PTA 46 billion) of aid to the Seat restructuring plan satisfies the criteria laid down by the EC Guidelines on rescue and restructuring aid and the Framework on state aid to the motor vehicle industry provided that the following conditions are complied with:

- VW-Seat does not alter the main content and timing of the implementation of the restructuring plan of Seat and, in particular, the paint shop of Zona Franca is closed and dismantled by end 1996; no new capacity increase will take place at Seat's plants before 1 January 1998 and the updated investment programme of Seat must be fully realized;

- no further aid in the form of capital contributions or any other form of discretionary aid in support of the restructuring plan will be granted to Seat or its subsidiaries.

- the VW Group meets its commitment to achieve a 5% net reduction of the group's car production capacity in the EEA.

Finally, the Spanish Government was requested to provide the Commission with an annual report on the implementation of the restructuring plan.

United Kingdom

The Rover Group

In November, the Commission was able to close the file on the implementation of the decisions it had taken in 1988 and 1990 on restructuring aid to the Rover Group. In the first decision ECU 640 million of restructuring aid in the form of a debt write-off and a regional grant had been approved and

linked to various conditions to be fulfilled by the company and the UK Government during the restructuring plan ('Corporate Plan 1988-1992'), and would be monitored by the Commission. The Commission took a second decision in 1990 adding further conditions to its original decision and requiring reimbursement of ECU 52 million, corresponding to the aid which the UK authorities paid to British Aerospace for its purchase of Rover Group over and above the authorized amount. The latter part of that decision was annulled by the Court of Justice on procedural grounds in February 1992 but reinstated by a new negative decision in March 1993, which was implemented the same year when British Aerospace reimbursed ECU 67.4 million, corresponding to the principal and backdated interest. A further voluntary reimbursement of ECU 35 million, which constituted the net underspending on the truck and bus restructuring element of Rover Group's debt at the time of the 1988 decision, was made by Rover Group in 1992. The Commission is also satisfied that the other conditions of the two decisions have been duly met within the agreed timeframes, in particular the full completion of the Corporate Plan in terms of investment and restructuring actions and amounts, degree of capacity reductions for cars, engines and transmissions and amount of capital expenditure in regional assisted areas.

2.5. Synthetic fibres

Belgium

(a) DS Profil bvba

In April, the Commission decided to close the proceedings opened in May 1994[32] under Article 93(2) EC in respect of the Belgian Government's proposal to award aid to DS Profil bvba in retrospective support of part of the total cost of the company's investment in new capacity to produce down from polyester staple fibre. The investments took place on the company's site in Dendermonde, Vlaanderen, and the aid would be awarded under the Law of 4.8.1978 for the development of small and medium-sized enterprises, which was authorized by the Commission as compatible with the common market under Article 92(3)(c). The aid comprised an interest rate subsidy (ECU 1 million), exemption from advance property tax (ECU 0.01 million) and the right to use accelerated depreciation (value uncertain).

In the light of expert advice, the Commission concluded that fibres with the characteristics required for the production of the company's end-product, a type of down, were not available from any fibre producer located within the EEA. The company had therefore been compelled to install its own fibre production capacity and the Belgian Government could have awarded aid in support of the downstream activities only where these were integrated with that capacity. Accordingly, the aid would not be by way of support for fibre production and it did not come within the scope of the Code on aid to the synthetic fibres industry.[33] It was therefore compatible with the common market and the EEA Agreement.

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32 OJ C 201, 23.7.1994, p.2.

33 OJ C 346, 30.12.1992, p.3. The period of validity of the Code has been extended twice - see OJ C 224, 12.8.1994, p.4 and OJ C 142, 8.6.1995, p. 4.

France

(a) Allied Signal Fibers Europe SA

In its Judgment of 24 March 1993,[34] the Court of Justice annulled the decision by which the Commission had refused to open proceedings under Article 93(2) EC in respect of a grant (ECU 24 million) awarded by the French Government to Allied Signal Fibers Europe SA in support of a new facility for the production of high tenacity polyester filament yarn located at Longwy, Meurthe-et-Moselle, an area in the European Development Area which is eligible for regional aid under Article 92(3)(c). The aid was awarded under the Regional Planning Grant Scheme.

Accordingly, in June 1993,[35] the Commission opened Article 93(2) proceedings in respect of the grant, and in respect of additional support (ECU 6 million) provided to the company to finance the cleaning and de-pollution of the site of the new facility.

In January 1995, the Commission decided that:

- the financing of the land cleaning operation did not constitute aid within the meaning of Article 92(1)EC or Article 61(1) EEA;

- certain parts of the investment supported by aid - namely the polymerisation and related chemical activities for the production of high viscosity polyester chips - were outside the scope of the 1987-89 Code on aid to the synthetic fibres industry,[36] which was in force at the time of the earlier annulled Decision. Therefore, aid in support of these activities was compatible with the common market and the functioning of the EEA Agreement. In accordance with the Commission's authorization of aid in support of investments in the European Development Area, under which aid may be awarded in support of eligible investments of up to 30%, aid totalling ECU 20 million could be awarded in support of these activities;

- the remainder of the aid (ECU 4 million), which had been awarded in support of yarn production, did not conform with the 1987-1989 Code. This aid was therefore incompatible with the common market and the functioning of the EEA Agreement.

The Commission also required the French Government to recover with interest ECU 0.01 million from the company. This is the difference between the amount of aid paid to the company before the Commission opened Article 93(2) EC proceedings (ECU 20.1 million) and the amount of aid authorized by the Commission (ECU 20 million).

(b) Beaulieu Group

In April, the Commission opened Article 93(2) proceedings in respect of the French Government's proposal to award aid to the Beaulieu Group in support of investments in a new facility to produce carpet webbing and carpets at Maubeuge, Nord-Pas-de-Calais. The facility appeared to be linked to the installation by the company of new capacity for the production of polypropylene carpet filament

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34 Case C-313/90: International Rayon & Synthetic Fibres Committee v Commission.

35 OJ C 215, 10.8.1993, p.7.

36 OJ C 183, 11.7.1987, p.4.

yarn, so that the aid appeared to constitute indirect support for yarn production and thereby to come within the scope of the Code. Furthermore, as it appeared that there would be an increase in the company's yarn production capacity, the proposed aid would not conform with the Code under which aid is only authorised where it would result in a significant reduction in capacity. Therefore, the proposed aid appeared to be incompatible with the common market and the functioning of the EEA Agreement.

In opening proceedings, the Commission noted that, in reaching a decision on the compatibility of the aid, it would take account of its earlier decisions[37] by which Belgium was required to recover incompatible aid awarded to the Beaulieu Group in 1983. Consequently, even if the Commission considered the proposed aid to be compatible, it would in the light of case law consider whether or not to suspend payment if Belgium had still not complied with the earlier decisions.

Germany

(a) Rhotex Texturgarne GmbH Cottbus

On 20 December, the Commission authorized aid in support of the company's investment in new capacity for the texturization of polyamide textile filament yarn on the grounds that it conforms with the Code and, therefore, is compatible with the common market and the functioning of the EEA Agreement.

2.6. The financial sector

France

(a) Commission final decision granting conditional approval to restructuring aid for Crédit Lyonnais

In July the Commission decided to terminate Article 93(2) proceedings and to approve, subject to conditions, the aid granted by the French Government for rescuing and restructuring the public-sector bank, Crédit Lyonnais.

At the end of 1993, Crédit Lyonnais was the leading European bank in terms of total assets. It recorded losses in 1992, 1993 and 1994. The very large losses in relation to own funds would have brought the bank's solvency ratio (i.e. the ratio of own funds to risk-adjusted assets) to below the minimum 8% level required if the French authorities had not taken measures to provide financial support for Crédit Lyonnais, in particular a capital increase and a "hive-off" of the risks and costs linked to ECU 21 billion (FF 135 billion) in assets transferred to an ad hoc hive-off vehicle. The Commission took the view that the system contained significant aid components, the final net cost of which to the State could amount to as much as ECU 7 billion (FF 45 billion).

The Commission is aware of the particular sensitivity of the banking sector, which calls for special attention on the part of the national and Community authorities to ensure that serious difficulties in a major financial institution do not disrupt financial links between institutions in the sector and create a more widespread crisis. The treatment of the case took account in particular of the thinking on the

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[37] OJ L 62, 3.3.1984, p. 18 and OJ L 283, 27.10.1984, p. 42.

applicability of the state aid rules to banking established between the Commission departments responsible for the file and a group of experts asked to assess the problems which might arise if the rules laid down in the Treaty were applied with insufficient care to the specific features of the banking sector. On the basis of this thinking, the Commission concluded in its final decision that the state aid rules could and should also apply to banks, while taking account of the specific nature of the sector, notably in the event of the failure of a major institution. Protection of the stability of the banking sector should be carried out in compliance with the competition rules, notably as regards state aid. Compliance with the state aid rules may mean that the institution concerned must make important concessions in order to compensate competitors for any distortion of competition caused by the aid. In general, the Commission considers that if support for a bank in difficulty is provided voluntarily by other credit institutions, with a significant financial participation by private-sector institutions, Article 92 is not applicable. This was, for example, one of the key elements in the Commission's assessment of the rescue of the Spanish bank Banesto. Its positive assessment was based on the fact that private banks were free to participate in the guarantee fund, that they had given their assent to the rescue plan and that the majority of the fund's resources came from the private sector. The Commission also took account of the fact that the rescue was carried out within a relatively brief period of time on the basis of a single overall solution and that the bank was immediately sold to the private sector through an open public purchase offer procedure. Conversely, if there is no such voluntary and significant private-sector participation, support measures are in principle likely to contain state aid components within the meaning of Article 92 if such measures comprise non-commercial terms and conditions. Consequently, such measures are bound by the prior notification requirement laid down in Article 93(3) and may not be implemented until the Commission has reached a final decision.

In the case under review, in view of the amount of aid involved and the sensitivity of the sector to aid on such a scale, and in view also of the fact that the purpose of the aid is to make up for the damage caused by the aggressive and poorly handled policy pursued by Crédit Lyonnais in the past, the Commission concluded that Crédit Lyonnais should provide a substantial quid pro quo, especially in the area in which the aid has had significant effects, namely the expansion of business and of the banking network. It was for this reason that the system of aid for Crédit Lyonnais was accepted only subject to the requirement that Crédit Lyonnais reduce substantially its business in European and outside Europe. Crédit Lyonnais will also be required to contribute to the costs of the hive-off through a "better fortunes" clause. In addition, the Commission has ensured that there will be a clear separation between Crédit Lyonnais and the hive-off vehicle so as to prevent any conflict of interest. Crédit Lyonnais will be allowed to buy back certain assets only at the same price they were sold to the hive-off vehicle. Furthermore, in the decision to approve the rescue arrangements for Crédit Lyonnais the Commission also took note of the fact that Crédit Lyonnais may probably be privatized within five years. At such time, if the "better fortunes" clause is transferred, independent experts will be called upon to verify that the selling price matches the market price. Provision has also been made for a system for monitoring the restructuring plan and the implementation of the enacting terms of the Commission's decision. It should be noted here that if the final costs of the mechanism exceed the amount of aid approved by the Commission, any new assistance will have to be notified to the Commission, which will examine its compatibility with the common market. At such time, there will have to be a review of the scale of the reduction in the commercial presence of Crédit Lyonnais, which may be required to make additional concessions. The Commission is of the opinion that the plan will ensure the return of Crédit Lyonnais to viability; a maximum contribution is provided by Crédit Lyonnais to the system so as to reduce the aid to the strict minimum. In addition, the plan will through privatization ensure that the preferential links between Crédit Lyonnais and the State are severed, and it will accordingly restrict any distortions of competition in the future.

2.7. Transport sector

2.7.1. Road transport

France

In connection with a road transport restructuring plan in France, the Commission regarded as compatible with the common market two aid measures for small haulage businesses which are having the most difficulty in adjusting to the recent liberalization. The total aid involved is ECU 26.5 million and takes the form first, of a premium for voluntary cessation of activity, considered on 12 July as not constituting aid under Article 92(1) of the Treaty and, second, of an aid for the grouping together of businesses provided that capacity is cut, considered compatible on 18 October as it was intended to facilitate the development of a sector without affecting trading conditions to an extent contrary to the common interest.

Italy

On 18 August the Commission instituted proceedings before the Court of Justice against the Italian Republic for failing to take the necessary measures to comply with the decision of 9 June 1993 which found that a tax credit for road hauliers in Italy was incompatible with the common market and ordered the Italian authorities to recover the sums paid.

Furthermore, the scheme, which had been regarded as simple operating aid and originally was to have lasted only for the fiscal year 1992, was extended to 1993 and 1994 by the Italian authorities and allocated a budget of ECU 558 million. The Commission decided on 4 October to initiate the Article 93(2) procedure in respect of the extension and requested the immediate suspension of the aid.

Portugal

With a view to improving the environmental impact of goods transport by road in Portugal, the authorities notified a plan to grant aid totalling ECU 60.9 million over five years. The Commission approved the proposal on 26 April under the Community guidelines on state aid for environmental protection[38] and Article 92(3)(c) of the Treaty. The scheme comprises various measures aimed at transferring transport capacity from less efficient to more efficient carriers and at reducing noise and gaseous emissions.

2.7.2. Inland waterways

In 1995, France, Germany and the Netherlands notified proposals to grant state aid to their inland waterway transport sector.

The primary aim of the programmes was to restructure the national inland waterway sector by reducing overcapacity as part of a Community-level action. The next objective was to set up support measures intended in particular for small business (one to two boats) to help them to overcome the difficulties

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[38] OJ C 72, 10.3.1994, p. 3.

they would encounter as a result of the liberalization of the inland waterway sector advocated by the Commission in its proposal for a directive of 23 May 1995.[39]

2.7.3. Rail transport

United Kingdom

Government guarantee for leases of European Night stock

On 16 January the Commission decided to raise no objection to a Government guarantee to European Night Services Ltd., a Government-owned company, for the lease of sleeping cars for international passenger services through the Channel Tunnel. The arrangement replaces a British Rail Board guarantee that has ended.

It is the intention of the UK Government to privatize ENS by selling it to a consortium to design, construct and operate the Channel Tunnel Rail Link.

Aid to Union Railways Limited

The Commission decided on 17 May to raise no objection to the provision of further assistance to enable Union Railways, a Government-owned company, to carry out further design and engineering work affecting the Channel Tunnel Rail Link route.

Sale of the railway rolling stock companies (ROSCOs)

The Commission decided on 29 November to close the file as the guarantees provided to the purchasers of the three companies maximized the profit and therefore do not constitute state aid.

Italy

State aid to Ferrovie dello Stato SpA

On 18 October the Commission approved a state guarantee to Ferrovie dello Stato SpA issued by the Italian Government for a loan of ECU 372 million to railway infrastructure investments in the high speed train link Brenner - Verona.

2.7.4. Air transport

TAP and Air France

In 1994, the Commission authorized the granting of restructuring aid to be paid in instalments to TAP and Air France. In both cases, the Commission's approval was made subject to the fulfilment by Portugal and France of a list of commitments and correct implementation of the restructuring plans.

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39 COM (95) 199 final.

In 1995, with the assistance of independent experts, the Commission monitored the fulfilment of those commitments.

As regards TAP, the Commission concluded that the airline had successfully implemented the plan during the period under review, and that it had strictly complied with the conditions set out in the decision. Therefore, in April it authorized the payment of the second instalment of the aid.[40] Similarly, in July in the case of Air France, the Commission considered that the results of the first year of the restructuring plan were generally satisfactory, and that France had fulfilled its commitments. Accordingly, the Commission decided not to raise objections to the payment of the second tranche.[41]

CDC

In 1994, the Commission decided that the subscription by the French public entity CDC-P to bonds issued by Air France constituted illegal aid, incompatible with the common market, and requested France to ensure the reimbursement of the aid plus interest. The Commission took note of the technical difficulties which France would face implementing the decision, since repayment would result in Air France's breaching the French law of contract. Given the fact that, in October 1994, France and Air France challenged the Commission decision before the Community Courts, the Commission decided on 4 April 1995[42] to amend its original decision, and to request France to ensure that the aid and interest on arrears are instead deposited on a blocked bank account until the Court delivers a final ruling in the case. The economic effect of this mechanism is to deprive Air France of the use of the money corresponding to the aid, pending proceedings before the Courts.

Sabena

In May the Commission analysed the financial transactions involved in the agreement between Swissair and Belgium aimed at the acquisition by the former of a strategic stake (49.5%) in Sabena. The operation implied the issue by Sabena of new shares for ECU 245 million (BFR 9.5 billion), ECU 155 million (BFR 6 billion) being subscribed by Swissair and the remaining part by Belgium and a group of Belgian investors. The operation also required the purchase by a Belgian public institution of an important stake held by Air France, in part through a loan made by Swissair. On the basis of its long-standing practice, the Commission recalled that when the public holding in a company is to be increased, the capital injection does not involve state aid provided that the public investment goes together with the injection of a significant amount of capital by a private shareholder. Swissair's subscription of new shares at the same price and under the same conditions as Belgium and the Belgian investors was accepted as evidence that the operation was a normal financial transaction and not state aid. In addition, the repeal by Belgium of certain special social contributions relating to pilots and air crew, which was merely aimed at the correction of an anomalous situation in the Belgian social security system, was accepted as a general measure of economic policy falling entirely within the State's responsibility.

Lufthansa

On 10 May the Commission decided not to raise objections to plans by the German Government to contribute to pension funds in favour of Lufthansa employees as part of the company's privatisation

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40 OJ C 154, 21.6.95.

41 OJ C 295, 10.11.95.

42 OJ L 219, 15.9.94.

programme initiated in 1992. The measures were linked to the charges imposed on Lufthansa following its compulsory withdrawal from a supplementary pension fund managed by the public entity VBL to which, as a public company, it had been obliged to belong. The Commission considered that a private investor in the same position as the German State, obliged to relinquish control of Lufthansa, would have acted in the same way in order to maximise the final value of its stake.

AOM

On 19 July the Commission analysed a capital injection of ECU 46.9 million (FF 300 million) in AOM by its parent, the state-owned Crédit Lyonnais. The Commission, having analysed the restructuring plan of the airline, reached the conclusion that AOM was likely to balance its books in the near future and that the net present value of future cash-flows was higher than that of the investment. The operation was considered to amount to a normal financial transaction and not state aid, since a market economy private investor in the same circumstances would have made the investment in AOM.

Sardinia

On the same date, the Commission decided that the aid scheme established by the Italian law of 20 January 1994 was incompatible with the common market. The law provided for wide discretionary powers in the granting of subsidies to certain airlines carrying out air transport regional services to and from Sardinia. Unlike the procedure for the imposition of public service obligations under Article 4 of Regulation (EEC) No 2408/92, the scheme was not sufficiently transparent, and left room for cross-subsidization of other services.

VLM

On 26 July, the Commission declared that the interest-free loan of ECU 517.000 (BFR 20 million) granted by the Flemish Region to the airline VLM in 1994 included an aid component incompatible with the common market.[43] However, the Commission considered that the losses of VLM in early 1994 were not such as to prevent access to the financial market, and took accordingly the view that the amount of aid was equal to the interest which VLM would have had to pay under normal market conditions. The Commission took into account the risk premium which would have been added to the base rate in Belgium for a six-year loan at the time, and decided to require Belgium to order that interest of 9.3% be paid on the loan of ECU 517.000 (BFR 20 million) within two months.

Germany

On 29 November the Commission examined the exceptional mechanism of depreciation of aircraft registered in Germany and used for international commercial activities or for transport services provided abroad. In certain circumstances, the scheme allowed for an exceptional depreciation of up to 30% of the total acquisition cost. The Commission considered that the scheme amounted to a specific measure and was not of a general fiscal nature. In addition, it noted that the scheme could not fall within the second and third paragraph of Article 92. Accordingly, the German authorities were requested not to extend its application for five additional years.

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43 OJ L 267, 9.11.95, p. 49.

2.7.5. Maritime transport

Spain

The Commission considered that modifications introduced in an agreement between Spanish regional authorities and a shipping company removed provisions which constituted state aid and consequently the examination procedure of Article 93(2) of the Treaty, initiated in 29 September 1993, could be closed. The decision was taken on 6 June.

France

Doubts were raised about the compatibility of aid granted to the French state-owned shipping company Compagnie Générale Maritime with the Treaty. The Commission decided on 31 October to initiate the Article 93(2) procedure. The aid amounts to approximately ECU 330 million.

Denmark

A Danish scheme to support the development of a bridge simulator was authorised by the Commission on 1 February. It will be used in training seafarers and should contribute to improving levels of competence and hence safety at sea. The state contribution amounts to ECU 4 million.

2.8. Agricultural sector

The Commission has until now approved most of the aid notified by the new Member States. It was obliged, however, to initiate the Article 93(2) procedure in respect of two Austrian aid measures regarded as operating aid and hence incompatible with the common market and the Act of Accession.

They take the form of two premiums per hectare (a per capita premium for milk and beef production and a premium for oilseeds, medicinal herbs and plants for seasoning). The Commission, however, considers that state aid which contains any type of revenue support measure is incompatible with the common market as such aid, granted for instance by production unit or by hectare, is usually liable to upset Community support mechanisms and, as operating aid, has no lasting effect on the operation of the sector concerned.

The Commission also took this approach with regard to several operating aid measures taken by other Member States.

It took a negative final decision on an Italian aid scheme comprising a package of measures for Sardinia aimed chiefly at granting loans to consolidate the liabilities of agricultural cooperatives in difficulty (aid No C 18/94). It also initiated the Article 93(2) procedure in respect of similar aid measures adopted by Sicily which it defined as "retroactive aid to the operation of the cooperatives themselves".

It also initiated proceedings under Article 93(2) against several aid schemes which do not appear to qualify for exemption under Article 92 of the Treaty, in particular aid for advertising/promotion campaigns for the French sheep industry (aid No NN 103/94). On the basis of the information in its possession, the Commission took the view that the framework for national aid for the advertising of

agricultural products[44] had not been complied with, all the more so as the advertising campaigns in question, encouraging consumers to buy French products for the sole reason of their national origin, appeared to be contrary to Article 30 of the EC Treaty. The same was also true of the Sicilian Regional measures relating to natural disasters (aid No NN 31/94), where it was not possible to determine whether the Community criteria for state aid for natural disasters had been complied with.

With regard to state aid covered by Council Regulation (EEC) No 2328/91[45] and Commission Regulation (EEC) No 2741/89 relating to wine-growing,[46] the Commission initiated proceedings under Article 93(2) against aid for the rationalization of vineyards in Rhineland-Palatinate, Germany. Certain aspects of the aid exceeded the levels authorized in Article 12(1) of Regulation No 2328/91. At the same time, the Commission adopted appropriate measures under Article 93(1) of the Treaty in respect of aid already granted in the same area.

Following the adoption by the Council of Regulation (EEC) No 2611/95 on state aid to ofsset losses of agricultural income caused by monetary movements in other Member States,[47] the Commission did not object to the special aid granted by France to offset losses incurred by cattle farmers as a result of monetary disturbances since spring 1995 (Cases Nos NN 176/75 and N 922/95). The Commission took the view that the aid fulfilled the criteria laid down by the Council Regulation.

In every instance of aid that was incompatible with the common market, the Commission took a strict approach with regard to Member States in its decisions and used all the means afforded it by the EC Treaty and by the caselaw of the Court of Justice.

The Commission is more vigilant regarding compliance with deadlines by Member States for the implementation of Commission decisions and the recovery of illegal aid without awaiting a final decision by the Commission. Thus, within the periods imposed, it requires Member States not only to recover aid but to provide evidence of such recovery. It put this concept into practice in applying the procedure relating to French aid in the pigmeat sector, which had been the subject of negative final decisions in 1994 (Cases Nos C 8/94 and C 9/94), by asking the French authorities to provide evidence of the repayment by beneficiaries of the sums granted illegally.

Similarly, the Commission decided a second time, in July 1995, to apply to the Court of Justice for annulment of a Council decision authorizing, in view of the exceptional circumstances,[48] French aid for "controlling production in the wine-making sector", against which the Commission had initiated proceedings under Article 93(2) of the EC Treaty (aid No NN 127/94). In the case of the similar aid granted for the preceding wine year which had formed the subject of a first application for annulment to the Court of Justice (Case No C-122/94), the Advocate General submitted his opinion on 21 November 1995.

An interesting example of the relationship between the common agricultural policy and other Community policies in the area of the application of the competition rules is the case of aid to biofuels. The Commission examined aid in this area in Belgium, France and Italy. In Belgium, it involved aid to winter rape in the form of premiums per hectare or price guarantees (cases

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44 OJ C 272, 28.10.1986, p. 3 and OJ C 302, 12.11.1987, p. 6.

45 OJ L 218, 6.8.1991, p. 1.

46 OJ L 264, 12.9.1989, p. 5.

47 OJ L 268, 10.11.1995.

48 Council Decision of 22 June 1995.

Nos N 679/94 and N 741/94), in France (case No NN 10/A/92, NN 10/B/92, NN 51/94) and in Italy (No NN 49/93), tax advantages for biofuels was cumulated with state aid for the primary products. The Commission initiated Article 93(2) in respect of all these measures which infringed Article 95 of the Treaty, the regulations on the common organization of the markets concerned and Council Regulation (EEC) No 1765/92 establishing a support system for arable farmers.[49]

The Commission made it clear that its position did not call into question the Community policy of encouraging the development of biofuels. It wished only to stress that that could not take place outside the fundamental rules of the Treaty and the provisions of the common agricultural policy which prohibit, on the one hand, all discriminatory tax measures based on the national origin of the product concerned and, on the other hand, state aid reserved for products originating in set-aside land.

2.9. Other sectors

Austria

Initiation of the Article 93(2) procedure on restructuring aid to Head Tyrolia Mares.

In December the Commission decided to initiate proceedings under Article 93(2) on the aid granted to the Austrian company Head Tyrolia Mares (HTM), a major producer of sporting goods (mainly for ski-ing and tennis) wholly owned by the public tobacco concern Austria Tabakwerke (AT).

After having injected rescue capital into the loss-making HTM some months before, AT decided to sell HTM to private investors. A symbolic price was agreed, while AT had to provide a final contribution to HTM's equity. The Commission action was prompted by several complaints of competitors and by the difficult situation of the ski and tennis world market.

The Austrian Government's view that no state aid was involved was not shared by the Commission. In particular the Commission, contrary to the Austrian authorities' arguments, considered that:

1) state resources are involved in the operation, as: a) AT cannot be claimed to be independent from its public shareholder, the latter holding 100% of the shares and appointing the members of AT's administrative board; b) AT's traditionally positive financial profile and the dividend flow actually provided to its shareholder cannot be taken as proof of a non-involvement of state funds, as profits mainly arose from AT's public monopoly in the tobacco business; c) the recent lower results of AT due to its loss-making involvement in HTM are a lack of remuneration for the public shareholder, i.e. a direct grant of state resources to HTM.

2) AT did not behave like a market economy investor, as: a) the first rescue intervention was carried out in the absence of a restructuring plan, and should normally have taken place at a much earlier stage; b) HTM's sale on the terms agreed cannot be regarded as the cheapest way for AT to terminate its loss-making investment; c) HTM's recapitalization and sale cannot be compared with other similar operations undertaken by private companies; d) HTM's sale is not the result of an open, transparent and unconditional bidding procedure; e) HTM's sale is related to "non-commercial" considerations like the maintenance of HTM's activity in Austria and the Austrian Government's plan to privatize AT during 1996.

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[49] OJ L 181, 1.7.1992, p. 12.

The aid granted will finance HTM's rescue and restructuring. HTM's restructuring plan will constitute the basis for the final assessment of the aid. The public investigation will allow HTM's competitors and all interested parties to comment on the case.

In addition to launching the investigation, the Commission decided, pending its final decision, to allow provisional rescue aid to cover HTM's interim liquidity requirements.

France

(a) La Poste française

On the basis of complaints the Commission examined whether certain forms of tax relief benefitting the French post office constituted state aid within the meaning of Article 92(1), whether they distorted competition on the markets where the French post office operates, and if so, whether they were compatible with the common market.

In its decision the Commission notes that pursuant to Article 90(2) of the EC Treaty, undertakings entrusted with the operation of services of general economic interest are subject to the rules on competition in the EC Treaty, including the state aid rules in Articles 92-94, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.[50] In the light of this and in conjunction with Article 92(1) the Commission considers that the tax relief for the French post office constitutes an economic advantage for the post office which, in order to benefit from the exemption in Article 90(2), must not exceed what is necessary for the operation of services of general interest entrusted to the French post office. In other words, this economic advantage must not benefit the activities carried out by the post office on competitive markets.

The Commission established that the value of the tax relief is less than the costs of the public service obligations imposed on the post office, namely to provide post offices throughout the country and deliver mail throughout the territory of France irrespective of the fact that the prices for this service may not always correspond to the costs. The value of the tax relief is estimated at ECU 186 million (FF 1.196 billion) whereas the additional costs of the aforementioned public service obligations is estimated to be at least ECU 434.6 million (FF 2.782 billion). However, the latter amount is calculated on the basis of all the activities of the French post office. In order to take into account the advantages for the French post office on competitive markets due to the existing postal infrastructure in rural areas the Commission considered it necessary to reduce the latter amount of ECU 434.6 million (FF 2.782 billion) by a percentage corresponding to the percentage of these commercial activities of its total turnover, i.e. 34.7%. In this way the total costs of the public service obligations were reduced to ECU 284 million (FF 1.82 billion) which exceeds the value of the tax relief of ECU 186 million (FF 1.196 billion).

In the light of the foregoing the Commission considered that the tax relief granted to the French post office does not go beyond what is necessary to provide the general interest service entrusted to it. Therefore, it was decided pursuant to Article 90(2) that the tax relief does not constitute state aid within the meaning of Article 92(1).

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50 See Judgment of 15 March 1994, Case C-387/92, [1992] ECR I-908, paragraph 17.

Germany

(a) Gemeinnützige Abfallverwertung GmbH

In December the Commission decided to open the Article 93(2) procedure in respect of a number of aid measures in favour of the company Gemeinnützige Abfallverwertung GmbH (GAV) which operates on the market for the collection and recycling of company waste.

Whilst the collection of household waste is traditionally the task of local authorities, the Commission considers that this is not the case with regard to collecting, sorting and marketing company waste. Many commercial companies are active in this field in competition with each other. The Commission therefore considers that aid to GAV may distort competition and affect trade within the meaning of Article 92(1) on the market for company waste. In reaching this conclusion the Commission considered that the fact that GAV is a non-profit company was irrelevant. Moreover, as the Commission was unable to conclude that the aid measures, including an investment aid of ECU 1.5 million for the construction of a new sorting-hall and annual grants to promote the motivation of its workforce totalling ECU 1.7 million, were compatible with the common market, it decided to initiate the Article 93(2) procedure.

(b) Machine-tools

In December the Commission decided to initiate the Article 93 (2) procedure with respect to certain measures concerning the firm Gildemeister AG, a German manufacturer of machine-tools.

Following complaints that aid had been given to the firm, the Commission received information from the German authorities concerning the relationship between Gildemeister AG with the Westdeutsche Landesbank Girozentrale (WestLB) and the Land of North Rhine-Westphalia, as well as information on Gildemeister's takeover of Deckel/Maho, a Bavarian machine-tool producer which had gone into bankruptcy in 1994.

On the basis of that information, the Commission established the need to review certain measures in greater depth, namely a waiver in 1984 of outstanding claims of ECU 26.1 million (DM 47 million) by WestLB; a guarantee granted by the Land of North Rhine-Westphalia in 1993 in relation to a ECU 411.1 million (DM 20 million) credit given to Gildemeister in 1992; the financing in 1994 by the Bavarian authorities through the "Bayernfonds" programme of 1% of the 9.25% interest rate of an ECU 8.3 million (DM 15 million) credit given by the Bayerische Landesanstalt für Aufbaufinanzierung (LfA) in connection with Gildemeister's takeover of Deckel/Maho; and a subordinate guarantee for (ECU 5.6 million) DM 10 million given by the LfA and the Thüringische Industrie-Beteiligungsgesellschaft (TIB) to WestLB for its guarantee for the placing on the market of Gildemeister's capital increase of ECU 18.9 million (DM 34 million) in October 1994.

The Commission considered, on the basis of the information available to it, that these measures should be viewed as part of the effort to restructure Gildemeister AG. It considered that at that stage it was doubtful whether they met the conditions set out in the Community guidelines on state aid for rescuing and restructuring firms in difficulty; no restructuring plan had been submitted to the Commission and, given the situation of the machine-tool sector, it was unclear whether the takeover of certain parts of Deckel/Maho by Gildemeister resulted in a reduction in the capacity of the firm as a whole.

(c) Petrochemical sector

In November, the Commission took a final decision on aid in favour of the company BSL Polyolefinverbund GmbH, which consists of the former East German petrochemical companies Buna GmbH, Sächsische Olefinwerke GmbH and part of Leuna-Werke GmbH in the new Länder Saxony and Saxony-Anhalt. These three companies were owned and managed since 1990 by the public holding Treuhandanstalt (THA)[51] and since 1995 by its successor Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS), who commenced the restructuring by closing down obsolete factories, carrying out urgent investment in safety and pollution control and reducing employment from 26 000 to 5 800.

After an open call for bids, Dow Chemical turned out to be the only potential purchaser of the three companies in question; the privatization plan agreed between Dow and the German authorities would, however, entail large sums of aid. In June 1995 the Commission decided to examine whether the integrated project proposed by Dow would be viable. It also doubted the necessity of all of the aid and objected to 'open-ended' sums of aid.

Within the framework of the procedure negotiations took place with the German Government. The latter agreed to modify its proposal on several points. Under the procedure the Commission was assisted by independent experts, who analyzed the viability of the set-up proposed by Dow and who also gave their opinion on the necessity of the aid and on the effects the plan would have on competition in the Community. Several competitors and one other Member State also submitted observations under the procedure.

Whereas the Dow plan reduces production capacity for olefines and some downstream products, it increases and creates production capacity for other downstream products. The Commission verified with its consultants whether each of these investments was necessary and essential for the integrated complex and what their effect on competition would be. It found that only the aniline plant was doubtful. This ECU 83.3 million (DM 150 million) investment was accordingly excluded from the aided restructuring plan. ECU 533.3 million (DM 960 million) of energy aid and ECU 188.9 million (DM 340 million) of operating aid after the restructuring were also deleted. The total remaining potential sum of aid was fixed at ECU 5 309 million (DM 9 556.22 million). The Commission took the view that the modified aid package constitutes the minimum necessary for the restructuring programme to be carried out. A monitoring procedure will ensure that the aid is not used for purposes other than for which it was approved.

Italy

(a) Conditional final decisions approving restructuring aid to Enichem Agricoltura S.p.A. and Iritecna S.p.A.

In June, the Commission decided to close two Article 93(2) procedures by approving the aid granted to the Italian companies Enichem Agricoltura S.p.A. and Iritecna S.p.A., two companies wholly owned by the two Italian state holdings ENI and IRI respectively.

The Commission approved both restructuring aid measures, subject to certain conditions. In light of these conditions the two aid measures fulfil the criteria of the Community guidelines on state aid for

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[51] Twenty-fourth Competition Report, point 361.

rescuing and restructuring firms in difficulty. They are therefore compatible with the common market under Article 92 (3)(c). The main points underlying the approval were : 1) Both Enichem Agricoltura and Iritecna's restructuring plans involve closures and disposals of productive units, assets and subsidiaries. Moreover, they involve the concentration of the activity on the core business and on the most efficient and profit-making units with a view to privatization. The remaining parts of the companies are to be sold or liquidated; 2) Both plans provide for a considerable effort to reduce the productive capacity and the presence of the two groups in the market, across their product range. Significant reductions in personnel are also involved, a major part of the companies' workforce being made redundant at the end of the process. The conditions imposed upon the restructuring are:

1) the restructuring and liquidation plan must be carried out in full;
2) the Italian Government must respect its commitment to finally privatize the two companies;
3) the total income obtained through the sale of the restructured companies must be used to reduce the costs and losses covered by the aid. It cannot be invested in such a way as to result in further aid to other companies or activities in the group that have not yet been sold;
4) the privatization must be open, transparent and unconditional, and must not be financed by further state aid;
5) the carrying-out of the restructuring plan will be monitored by the Commission.

Regarding Enichem Agricoltura in particular, given its activity in a sector featuring structural overcapacity in the common market, the Commission required that the closures of capacity involved must be genuine and irreversible and that this must be respected until the moment at which the effects of the aid on competition in the Community become insignificant. Moreover, any plan to restart plants that are now mothballed, awaiting disposal or closure must be notified to the Commission for prior approval.

(b) Breda Fucine Meridionali (BFM)

In February the Commission decided to initiate the Article 93(2) procedure in respect of financial contributions totalling ECU 256.4 million (LIT 52 billion) from the public holding company EFIM to BFM and a state guarantee enabling the company to raise loans of ECU 49.3 million (approx. LIT 10 billion) from private banks.

In view of the company's serious financial difficulties, including losses in 1993 exceeding the company's turn-over and a total debt more than five times as high as the share capital, the Commission considered that a private market investor would not have made a similar financial contribution. Even in the long-term, a private investor could not reasonably expect a return on this investment. The financial contribution therefore constituted state aid in favour of the company. For similar reasons the Commission considered that the state guarantee constituted state aid, as the company, in view of its economic difficulties, would not have been able to raise financing on the private market without the guarantee. The company moreover benefitted from an exemption from a rule under Italian legislation pursuant to which, due to its financial problems, it would otherwise have been forced to go into liquidation.

On the basis of the information available to it the Commission has serious doubts whether these aid measures may be compatible with the common market.

(c) Aid for production and employment in the footwear sector

The Commission decided to initiate proceedings under Article 92(3) of the EC Treaty in respect of aid provided for under the "extraordinary intervention to support production and employment in the footwear sector", an aid scheme approved by the Italian Government.

The scheme is part of a plan for shifting to taxation all or part of the burden of employers' social security contributions for any newly recruited workers. Five thousand workers may be taken on under these conditions, half on contracts of indefinite duration. This budgetization plan is to run for a period of five years and will be on a reducing scale for workers employed on contracts of indefinite duration.

The Commission took the view that the measures in question constitute sectoral aid since the benefit of the measures is reserved for specific sectors experiencing an employment crisis. In addition, not only sectors in difficulty but also buoyant sectors, such as the footwear sector, are susceptible to employment crises; the Italian authorities have failed to demonstrate the need to grant preferential treatment to the footwear sector. The aid in question relieves firms of part of the burden of wage costs, which represent normal expenditure incurred in the course of production. This allows these firms artificially to improve their competitive position at the expense of competitors in EEA countries.

The advantage that Italian firms may obtain from these measures is all the greater since the Italian footwear industry accounts for almost half the trade among EU Member States, while the EFTA countries are the leading export market outside the European Union.

The way in which the aid is granted mean that it ranks as operating aid.

(d) Recycling charge on polyethylene

The Commission decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of aid deriving from the "polyethylene recycling charge" introduced in Italy, and the method of levying the charge.

The charge consists of a 10% turnover tax on unadulterated polyethylene marketed on Italian territory and used to produce plastic film for the domestic market. A similar charge, also amounting to 10% of turnover, is levied on polyethylene and plastic film from other Community countries. However, products exported from Italy are exempt.

The purpose of the charge is twofold. It is designed to finance, firstly, differentiated polyethylene waste collection, recovery and recycling activities and, secondly, the development of markets for materials obtained from regenerated and recycled plastic film.

The Commission has at least some doubts about the compatibility with the common market of the following aid elements.

- The fact that imports from other countries of the European Union are taxed, with the proceeds financing the above-mentioned measures which constitute the objective of the charge, results in an advantage for Italian firms, which are the main beneficiaries for those measures.

- Only plastic film and plastic-film products imported into Italy are subject to the charge. Since the charge is based on turnover, Italian producers of plastic film enjoy an advantage in that they have already paid the charge on their sales of polyethylene (raw material), whereas firms which

export to Italy pay it on the value of the plastic film or plastic-film products (intermediate or finished products). The impact of this aid is particularly great since plastic film is used in many sectors of manufacturing.

- It is highly likely that the financing of the collection and recovery of polyethylene and of the development of markets for the products obtained from polyethylene recycling constitutes aid to specific firms. However, since the Italian authorities have not yet determined how the aid is to be granted, the Commission has insufficient information to judge whether or not it is compatible.

- Lastly, the exemption from the charge for exported products would seem to constitute export aid.

(e) Initiation of the Article 93(2) EC procedure in respect of the Enirisorse group

In December the Commission decided to initiate proceedings under Article 93 (2) of the EC Treaty against alleged state aid amounting to ECU 887 500 (LIT 1 800 billion) to the Enirisorse group. The breakdown of the aid is as follows:

- ECU 246 500 (LIT 500 billion) to reduce the financial debts of the group;

- ECU 394 476 (LIT 800 billion) to cover losses from the liquidation of certain companies and plant closures

- ECU 246 500 (LIT 500 billion) to cover exceptional costs in operating companies to facilitate redundancies, environmental protection measures, etc.

The Commission is not convinced that the capital that has been made available to Enirisorse corresponds to the exact costs arising from the liquidation and the sales of various companies and from the restructuring of the remaining ones and that it has been used solely for this purpose.

Moreover, it has not been established so far that the restructuring will lead the Enirisorse group to viability and profitability, especially since the restructuring has not affected the main loss-making activity of lead and zinc production.

Consequently, the Commission considers it doubtful whether a private investor in a market economy would have behaved in the same way as ENI.

It remains to be verified whether a private investor comparable to ENI would not have withdrawn from Enirisorse after years of losses and rising debts and a foreseeble lack of medium or long-term viability.

Spain

(a) Piezas y Rodajes SA (Pyrsa)

In 1991 the Commission approved an aid granted to Pyrsa, operating in the steel casting sector and producing sprockets and GET parts. In May 1993 the European Court decided to annul the Commission's decision, except for a subsidy of PTA 975 905 000 granted under a regional aid scheme, and in July 1993 the Commission decided to open the Article 93(2) procedure in respect of the aid.

The main reason for the Court's annulment of the Commission decision was that the Commission in its approval of the aid had sought to rely on the absence of overcapacity in the sprockets and GET parts sub-sector. However, during the Court proceedings the Commission was not in a position to prove that this was in fact true and should therefore have opened the Article 93(2) procedure.

During the Article 93(2) procedure the Commission received information enabling it to establish that already in 1990 there was overcapacity on the relevant market, i.e. steel casting, which was presumably even higher in 1988 and 1989. Although Pyrsa is located in a region eligible for regional aid pursuant to Article 92(3)(a), the aid granted to Pyrsa does not automatically qualify for approval under this derogation. In fact, since the aid in question was not granted under an approved regional aid scheme the Commission had to carry out an individual assessment of the aid. As the beneficiary of the aid operates in a sector suffering from overcapacity the Commission has to ensure that the negative impact of the aid in the sector concerned does not outweigh the positive benefits for the region. In view of the fact that the aid to Pyrsa contributes to a further deterioration of the situation in the sector, this condition was not fulfilled in the present case and the Commission could not approve the aid under Article 92(3)(a). For similar reasons the Commission considered that the aid could not be approved under Article 92(3)(c).

In view of the foregoing the Commission in March adopted a final negative decision in respect of the aid to Pyrsa. As the aid had already been granted the Commission moreover decided that the aid should be recovered from the company with interest from the day of payment of the aid.

(b) Gutierrez Asunce Corporacion SA (Guascor)

In July 1994 the Commission decided to initiate the Article 93(2) procedure in respect of an 18-month loan guarantee granted by the Spanish Government to Guascor, a producer of engines and generators, for commercial loans totalling ECU 4.6 million (PTA 730 million) The Commission had doubts whether this guarantee was compatible with the common market according to the criteria developed in the Community guidelines on rescuing and restructuring firms in difficulty.[52]

The Spanish authorities submitted that the guarantee was granted under an approved scheme providing rescue and restructuring aid for SMEs and that the guarantee was granted to enable the firm to survive while a restructuring plan was being drawn up. The Spanish authorities therefore regarded the guarantee as a rescue aid. However, under the approved SME scheme and in compliance with the above-mentioned guidelines, rescue aid should not have a duration exceeding 6 months. The Commission therefore considered that the guarantee, with a duration of 18 months, did not fulfil the conditions relating to rescue aid and could not be approved as a new ad hoc rescue aid under the guidelines. Moreover, the guarantee appeared not to fulfil the conditions under the approved scheme relating to restructuring aid, since the restructuring plan for the company did not seem to provide for reductions in capacity in at least one of the product sectors (diesel generating sets) in which there is over-capacity in the EC. For similar reasons the Commission considered that the guarantee did not fulfil the conditions of the above-mentioned guidelines relating to restructuring aid and the guarantee could not be approved as a new ad hoc aid.

In July the Commission therefore decided that the guarantee constituted a state aid which was incompatible with the common market and could not be approved. However, as the aid had already

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52 OJ C 368, 23.12.1994, p. 5.

been recovered from the company with interest at the time this decision was adopted there was no need to take any further action and the Commission closed the file.

3. Horizontal aid

3.1. Environment

Denmark

(a) New energy tax package

In July the Commission approved a new Danish energy tax package imposing an even higher CO_2-tax than that existing today, extending the tax on energy used for room heating to industry and introducing a new energy tax on SO_2 emissions. With this energy tax package Denmark goes far beyond what other Member States have introduced at this time in terms of "green taxes" and should be seen in the light of the failure, so far, to reach an agreement on a common CO_2/energy tax at Community level. The scheme imposes a tax of ECU 12.6 per tonne of CO_2 emitted from energy used in the production process and a tax of ECU 77 per tonne of CO_2 emitted from energy used for room heating. Moreover, a tax of ECU 1.3 per kg of SO_2 emitted is to be introduced gradually from 1996-2000. Under the scheme energy-intensive firms carrying out certain energy-intensive production processes will benefit from temporary and degressive tax relief from the CO_2-tax on energy used in the production process. This tax relief may be increased if energy-intensive firms enter into voluntary agreements with the authorities, committing themselves to invest in energy efficiency measures, thereby reducing CO2 -emission. The CO_2-tax on energy used for room heating will be reduced gradually and no firms will benefit from tax relief. In respect of the SO_2-tax the same energy-intensive firms benefitting from relief of CO_2-tax will also benefit from temporary tax relief.

The proceeds of the energy taxes will be reimbursed to the industry in full either through general measures in favour of the industry as a whole, such as a general reduction in the tax on labour, or through specific measures to the benefit of firms carrying out environmental protection measures, such as investments in energy savings.

It is expected that the energy package will make a considerable contribution to a reduction in CO_2 emissions of 20% by 2005 compared to the level in 1988 and an 80% reduction in SO_2 emissions by 2000 compared to the level in 1980. The energy package will be revised in 1998 to see whether the environmental objectives are being achieved.

In reducing the emission of greenhouse gases through taxes on industry's energy consumption the new Danish energy taxes are in line with fundamental Community objectives in this field and with the polluter-pays principle which requires all environmental costs to be internalized in the firm's production costs. Relief from environmental taxes of this nature for energy-intensive firms must be regarded as the inevitable price to be paid for being among the first countries to introduce a tax that will be beneficial for the global environment but, without some relief, would seriously damage the competitiveness of energy-intensive firms in the countries going ahead with the tax so as to be politically impracticable. This becomes all the more relevant in this case where the net environmental tax burden on energy-intensive firms will be considerably increased compared to the existing tax burden. The Community guidelines on aid for environmental protection allow relief from environmental taxes, provided the relief is temporary and in principle degressive. In view of the fact that the tax relief granted under the Danish scheme met these conditions and the Commission was able

to establish that the energy-intensive firms will not receive a net economic advantage through a combination of tax relief and the reimbursement measures under the scheme, the Commission decided to approve the tax relief pursuant to Article 92(3)(c). Moreover, as the reimbursement measures to the benefit of firms carrying out environmentally-friendly investments complied with the environmental guidelines, the Commission decided also to approve that part of the scheme under Article 92(3)(c).

(b) System for the collection and disposal of used batteries

In November the Commission decided to close the file in respect of a Danish system for the collection and disposal of used batteries with dangerous substances. Under the system the Danish Government imposes a charge on the sale of new batteries, be they imported or domestically produced, containing certain substances considered as being particularly harmful to the environment. The proceeds of the charge are used to pay companies for the collection and disposal of the products after use. The Commission considers that this system does not involve state aid because the charge is imposed on all importers/producers of the products concerned in a non-discriminatory way, the payment to the collecting firms is based on normal commercial terms and the system does not allow, directly or indirectly, the collecting companies to sell the collected products at prices below market price.

The Netherlands

(a) Tax on groundwater and waste

The Commission decided in May to approve a Dutch scheme imposing a tax on the consumption of groundwater and on waste delivered to waste treatment facilities in the Netherlands, but at the same time providing for some relief from these tax measures. The Commission did not consider the two tax measures to constitute state aid in themselves. However, the relief on the groundwater tax for rinse water used for reusable product packaging and the relief on the tax on waste for de-inking residue and plastic recycling waste favoured certain companies and were therefore considered to be state aid. This is so, even though the reduced taxes represented an increased net tax burden for the companies concerned.

The introduction of environmental taxes is in line with Community objectives enshrined in Article 130r of the EC Treaty and with the polluter-pays principle. However, without some relief the competitiveness of certain firms in countries going ahead with these taxes would be damaged so as to render their introduction politically impracticable. Thus, under the Community guidelines on aid for environmental protection such tax relief may be approved if it is temporary and necessary to prevent certain firms being placed at a disadvantage compared to competitors in countries which do not impose similar environmental taxes. Furthermore, under the present scheme full taxation of the exempted activities appeared to be environmentally counterproductive.

The Dutch tax scheme was therefore considered to be compatible with the common market pursuant to Article 92(3)(c) of the EC Treaty.

(b) System for the collection and disposal of car wrecks

In November the Commission decided to close the file in respect of a Dutch scheme for the collection and disposal of car wrecks as the Commission considered the system does not involve state aid within the meaning of Article 92(1). The decision is based on similar principles to those explained above with regard to the Danish system for the collection and disposal of used batteries.

(c) Energy tax scheme for small-scale consumers of energy

In December the Commission decided to approve aid to certain large energy consumers contained in a Dutch energy tax scheme for small-scale consumers of energy.

The tax will be raised on the consumption of the first 50 000 kWh of electricity and the first 170 000 m^3 of natural gas. The tax is intended for small-scale energy consumers only, mainly private households and small-scale business consumers. The purpose of the tax is to contribute to the reduction of carbon dioxide emissions and to promote energy savings. The revenues of the tax will be reimbursed to the taxpayers by means of a reduction in the direct tax and labour income and will therefore not increase the net tax burden.

For large-scale energy consumers there are other measures to reduce their energy consumption; as regards tax on electricity and tax on gas, large energy consumers are either fully or partly exempted. The Commission considers these exemptions to be state aid because they are specifically targeted at a limited number of firms only, namely those which are heavy users of energy. However, the Commission considered the aid scheme to be compatible with the common market because it complies with the Community's policy in the field of environmental taxation and, in particular, the Community guidelines on state aid for environmental protection.[53] Thus, the tax relief is temporary, i.e. renotification after 3 years, and considered to be necessary to offset losses in competitiveness at international level and, in addition, the large-scale energy consumers in the Netherlands are bound by multiannual agreements to reduce substantially their energy consumption. Moreover, the scheme is in line with the Commission's own proposal for a tax on carbon dioxide emissions and energy and the Dutch authorities will, if necessary, amend the scheme to comply with a common CO_2-/energy tax proposal at Community level.

The Commission's authorization does not apply to the steel sector for which a separate decision will be taken.

3.2. Research and development

France

Eureka projects

In October the Commission decided to approve, pursuant to Article 92(3)(c), aid proposed by the French authorities in the context of the regularization of notification of aid granted during 1992, 1993 and 1994 to fulfil the criteria specified in a letter sent to Member States in February 1990 concerning the notification of Eureka projects, i.e. aid in support of Eureka projects EU 205 Eximer, EU 863 Cascade, EU 815 Intec, EU 226 Solid, EU 68 Fieldbus, EU 676 Eurolang. They concern research in the fields of laser application, computer-assisted design/manufacture, management of waste, laser technology, special network for transfer of information and translation assisted by computers. The aid will be granted under one or several of the following schemes: "Filière électronique", "Fonds de la Recherche et de la Technologie (FRT) and "Grands Projets Innovants" (GPI), approved by the Commission in 1986, 1988 and 1989 respectively.

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53 OJ C 72, 10.3.1994, p. 3.

The beneficiaries are, in addition to some SMEs and laboratories: Laserdot (EU 205), Matra (EU 863), Générale des Eaux (EU 815), Quantel (EU 226), Cégélec, Merlin Gérin (EU 68) and Sonovision Itep Technologies (EU 676). Except for EU 863 and EU 815 where only applied research and development are involved, the rest of the projects concern also basic industrial research. The type of aid applicable to the different types of research consists of repayable advances for the former and grants for the latter. The levels of project financing vary according to the different projects being all in conformity with the R&D framework and the Commission's policy.

The Commission has examined for each project the evolution of the R&D costs of the companies over the past years and has verified that the R&D expenditure has increased. Consequently the aid had as an effect the encouragement of additional efforts in the R&D field over and above the normal operations which the firms carried out in their day-to-day operations. Besides, the aid encourages the beneficiaries to participate in cross-border cooperation projects which are clearly out of the scope of normal operation of the firms. Therefore, the aid complies with the additionality criteria.

Génélex

In July the Commission decided to approve pursuant to Article 92(3)(c) the aid proposed by the French authorities in support of Eureka project EU 524 Génélex. It is designed to create a multilanguage electronic dictionary for non-literary translation purposes. The languages concerned are Italian, French, Spanish and Portuguese, with the possibility to extend it to other European languages such as English and German. The aid will be granted in application of the schemes "filière électronique", approved by the Commission in 1986, and "Fonds de la Recherche et de la Technologie", approved by the Commission in 1988.

The beneficiary is the Sema Group. Other participants in the Eureka project are the following: Bull, Hachette, IBM-France, GSI ERLI, Université Paris 7, LADL-CNRS (France); Tecsidel, Salvat, Universidad Autónoma de Barcelona (Spain); Iltec (Portugal); SERV.EDI, Consorzio Lexicon Ricerche (Italy).

The project involves basic industrial research and applied research and development. The levels of project financing are 45% and 25% respectively, which is in conformity with the R&D framework and the Commission's policy. The aid consists of a grant of ECU 6.4 million (FF 42.3 million) covering 5 years. The total investment required for the project, in accordance with the R&D framework provisions on eligible costs, is ECU 21 million (FF 138 million) over the five-year period. The project is linked to the Esprit Multilex and Aquilex projects, as well as the Eagles programme and Eurolang, another Eureka project. The aid encourages the Sema Group to participate in a cross-border cooperation project which is clearly out of the scope of normal operation of the firm. Therefore, the aid complies with the additionality criteria.

Planet

In July the Commission decided to approve pursuant to Article 92(3)(c) the aid proposed by the French and the Italian authorities in support of Eureka project EU 265 Planet (Production Line for Automotive New Electronic Technologies). The objective of the project is to design and implement a totally automated assembly line for the production of electronically controlled fuel management systems. The project involves basic industrial research and applied research and development.

The beneficiaries are Marelli Autronica S.p.A. (Italy) and Marelli Autronica S.A (France). The aids will be granted in application of the schemes "Fondo Ricerca Applicata", approved in 1989, for Italy

and "Filière électronique", approved in 1986, for France. Grants of a maximum of ECU 14.3 million (Lit 30.817) for the period 1988-1995 and ECU 5 million (FF 33.4 million) respectively for the period 1989-1994 will be awarded. The project will be carried out in cooperation with other companies in Spain (Jaeger Ibérica) and France (Sormel) and with university departments in the United Kingdom (Wolfson Image Analysis Unit, Manchester University), Ireland (A.M.T. Centre, Dublin University), Spain (Universidad de Madrid) and Portugal (Istituto de Soldatura y Qualidad).

The Planet project is a Eureka research project which can, according to the R&D framework, benefit from higher aid levels since it is linked with Community RTD programmes (such as Esprit) and involves international cooperation. The levels of project financing of 33.29% for Italy and 34% for France are in conformity with the Commission's policy. The Planet research project was carried out at a time when both Marelli Autronica and Marelli Autronica France were under financial constraints and the promised aid has enabled them to maintain (and even increase in the case of the Italian company) the investment in research activities. Therefore, the aid complies with the additionality criteria.

Germany

Aeronautic research and technology

In July the Commission decided to approve pursuant to Article 92(3)(c) an aid scheme to encourage research in the aircraft sector. The aim of the research is to increase and validate in the medium term the basic knowledge in a range of aeronautics related science and technology disciplines to such an extent that essential phenomena are better understood and the relevance of technologies and production methods for technical applications can be better estimated. The aid concentrates on fields of common technology concepts in the light of the inner European industrial cooperation on large aircraft (Airbus partners) and helicopters (German-French cooperation).

The total budget for the scheme is ECU 324 million covering the period 1995-98. The recipients are research institutes and industry. Intellectual property rights will belong to the industry, but it will be obliged to publish the results of the research and give non-exclusive and non-transferable right of use to third parties for domestic purposes and the needs of international cooperation.

Aid for fundamental research will make up 5-10% of the budget, 85-90% will concern basic industrial research and less than 5% will be for applied research and development. The aid intensities will be 100% for fundamental research, 50% for basic industrial research and 25% for applied research and development. Bonuses of 10% for SMEs and 10% for the former GDR will be available. These levels of project financing are in conformity with the state aid R&D framework and the Commission's practice.

Italy

(a) S.G.S. Thomson Microelectronics srl., Finmeccanica Spa., BULL HN and Italtel Spa.

In May the Commission decided to approve state aid to the above-mentioned four companies for participation in a Eureka research project named Jessi. The purpose of the Jessi programme is to strengthen European electronic industry by creating know-how and research networks throughout Europe in which scientists, producers of components and system-users work together in order to ensure an independent European position on basic microelectronics technology. The aid will be paid to all companies in the form of a grant not exceeding 35% of eligible costs. The total amount of aid to the four companies amounts to some ECU 5.2 million.

The Commission based its approval of the aid on Article 92(3)(b) of the EC Treaty as aid to promote the execution of an important project of common European interest. The Jessi programme has in the past been regarded as a Eureka project covered by this provision. The Commission therefore considered that the aid for companies participating in the Jessi programme has a promotional effect, is directed towards a project which is clearly defined as to its terms and goals and that the project is significant and represents an important step forward towards meeting specific Community objectives. The common European interest also consists in the necessity to reach a strategic position within the Community as regards American and Japanese competition in the area of microelectronics.

Although the Commission normally only approves an aid intensity of 25% for applied research and development, the nominal aid intensity of 35% was considered to be compatible with the common market in view of the fact that the aid is linked to the Jessi programme involving companies, universities and research centers from eleven European countries.

b) Alcatel Italia S.p.a.

In January the Commission decided to approve pursuant to Article 92(3)(c) an aid from the Italian Government in support of a Eureka project, Synchronous Digital Hierarchy. It is designed to define a new digital hierarchy which has been suggested by new needs in transmission networks which cannot be covered by existing plesiochronous systems. Synchronous transmission techniques are suitable to comply with the demand for higher flexibility in transmission systems as they avoid complex mapping-demapping functions by simply reconfiguring the multiplexing frames.

The beneficiary of the aid is Alcatel Italia S.p.A. The company develops and manufactures digital transmission systems on cable, optical transmission terminals, optical fibre transmission systems for long distance links and other electronic devices. The project is linked to other European technological cooperation programmes. The total aid is ECU 9.5 million for a period of 4 years. The research project relates mainly to applied research and development (only about 10% of basic research will be involved). The aid intensity is 32% which is in conformity with the Commission's policy on state aid for R&D. The aid will encourage the company to maintain and even increase its resources dedicated to the R&D activities concerned, even if its turnover has reduced in recent years. Moreover, participation in the above-mentioned cross-border cooperation is clearly going beyond the company's normal business operations and, therefore, the Commission considers that the aid meets the criterion of additionality.

3.3. Aid for internationalization

In October the Commission decided to initiate the Article 93(2) procedure in respect of a German and Austrian scheme offering state guarantees and/or soft loans for direct investments in Eastern Europe, in particular for the setting-up of joint ventures and acquisitions. The Commission considers that, since European companies are not only in competition within the EC/EEA but also compete for investment on foreign markets, such as Eastern Europe, Russia and South-East Asia, such aid may distort competition and affect trade within the Community. Moreover, the Commission had doubts whether and under what conditions investment aid schemes of this nature may be approved, which was further accentuated by the fact that the two schemes were not limited to SMEs and the investment aid intensities provided for in the SME aid guidelines.[54] To establish a clear policy in this field the

[54] OJ C 213, 22.8.1992.

Commission decided to initiate the Article 93(2) procedure and invited Member States and other interested parties to submit their comments.

However, in December the Commission approved a German guarantee scheme offered to SMEs for the provision of partnership loans or participation in SMEs located in East European countries which are in a democratic and market economy reform process. The aid intensity of this scheme is 2% and, thus, considerably below the aid intensity ceilings allowed under the SME guidelines. As the scheme complies with the SME guidelines the Commission decided to raise no objection to the implementation of the scheme.

B - List of state aid cases in sectors other than agriculture, fisheries, transport and the coal industry

1. New legislative provisions and notices adopted or proposed by the Commission

	Date	Publication
Interest rate to be applied when aid granted unlawfully is being recovered	01.02.95	Letter to Member States - 22.02.95
Communication on recovery of aid granted without Commission approval	10.05.95	OJ C 156, 22.06.95
Commission proposal for a Council Regulation regarding shipbuilding	26.07.95	COM(95)410 OJ L 332, 30.12.95
Employment aid guidelines	19.07.95	OJ C 334,12.12.95
Readoption and extension of the framework for aid for the motor vehicle sector	05.07.95	OJ C 284, 28.10.95
Extension of synthetic fibres framework until 31.03.96	12.04.95	OJ C 142, 8.06.95
Communication on cooperation with national judge	31.10.95	OJ C 312, 23.11.95
Framework State Aid R&D	20.12.95	OJ C 45, 17.02.96

2. Aid cases in which the Commission raised no objection without opening an investigation

Germany

N/0621/94	04.01.1995	R&D aid for ecological and environmentally friendly production (east Berlin)	OJ C 058, 08.03.1995
N/0664/94 IP(95)35	17.01.1995	Aid for improved processing and marketing of forest products (Thuringia)	OJ C 265, 12.10.1995
N/0768/94 IP(95)36	17.1.1995	Privatization aid schemes in the new *Länder*	OJ C 265, 12.10.1995

N/0405/94	23.01.1995	Aid for the motor industry- Steuerfreie Rücklage 1991 -Volkswagen	
N/0524/94	23.01.1995	Aid under the Community programme for the Objective 5(b) region of the *Land* of Rheinland-Pfalz	OJ C 265, 12.10.1995
N/0554/94	23.01.1995	Programme in favour of technology	OJ C 062, 11.03.1995
N/563/A/94	23.01.1995	1995 ERP budget	OJ C 265, 12.10.1995
N/0649/94	23.01.1995	Special fund for SMEs (Berlin)	OJ C 265, 12.10.1995
N/0700/94	23.01.1995	Programme for the exploitation of industrial sites under the regional Structural Funds (Lower Saxony)	OJ C 265, 12.10.1995
N/0737/94	23.01.1995	Aid for renewable energy sources in Germany	
N/0752/94	23.01.1995	Aid for managing the quality system in SMEs (new *Länder*)	
N/0770/94	23.01.1995	Environmental aid: LFA programme for environmental protection	
N/0784/93	23.01.1995	Naval research and technology programme	OJ C 058, 08.03.1995
N/767/A/94	26.01.1995	Environmental initiatives (west Berlin)	OJ C 265, 12.10.1995
N/745/C/94	30.01.1995	Conversion programme of the *Land* of Hessen	OJ C 265, 12.10.1995
N/745/B/94	30.01.1995	Programme of the *Land* of Hessen for land development for industrial purposes	OJ C 265, 12.10.1995
N/0001/95 IP(95)78	01.02.1995	Shipbuilding aid for Warnow Werft	OJ C 265, 12.10.1995
N/0007/95	01.02.1995	Amendment to the programme of the *Land* of Rheinland-Pfalz for SMEs located in Objective 2 and 5(b) regions of the *Land* not eligible for national regional aid under the "joint interest task: improvement of regional economic structures"	OJ C 265, 12.10.1995
N/0009/95 IP(95)80	01.02.1995	Shipbuilding aid for Peene Werft	OJ C 265, 12.10.1995
N/0618/94	01.02.1995	Aid for environmental protection: "UFP IV" (west Berlin)	OJ C 265, 12.10.1995
N/0622/94	01.02.1995	Aid for environmental protection: "UFP III" (east Berlin)	OJ C 265, 12.10.1995
N/0722/94	01.02.1995	Aid for environmental protection: Umweltforderung-Programm	OJ C 290, 01.11.1995
N/0619/94	07.02.1995	Aid for environmental protection [ZOW] (west Berlin)	OJ C 265, 12.10.1995

N/0733/94	07.02.1995	Aid for investment in waste processing (Brandenburg)	OJ C 265, 12.10.1995
N/767/B/94	07.02.1995	Aid for environmental protection [ZOW] (east Berlin)	OJ C 265, 12.10.1995
N/0084/94	13.02.1995	Aid for fundamental research into the use of equipment	OJ C 265, 12.10.1995
N/0772/94	13.02.1995	Information technology aid scheme (Berlin)	OJ C 265, 12.10.1995
N/0550/94	14.02.1995	SME investment scheme (Thuringia)	OJ C 265, 12.10.1995
N/175/A/94	14.02.1995	R&D aid in the transport sector for 1994-99	OJ C 062, 11.03.1995
N/0534/94	16.02.1995	Promotion of women in rural areas (Saxony)	
N/0051/95 IP(95)190	01.03.1995	Federal scheme to promote sales by eastern German firms on certain western markets	OJ C 295, 10.11.1995
N/0099/95 IP(95)191	01.03.1995	Aid for rolling-stock manufacturer Kaelble Gmeider GmbH	OJ C 276, 21.10.1995
N/0320/94 IP(95)185	01.03.1995	Programme of research into new materials	OJ C 266, 13.10.1995
N/0584/94 IP(95)186	01.03.1995	Scheme of the *Land* of Mecklenburg-Western Pomerania to assist consolidation projects	
N/0641/93 IP(95)175	01.03.1995	Aid for sea transport	OJ C 266, 13.10.1995
NN/021/95 IP(95)192	01.03.1995	Scheme of the *Land* of Saxony to promote the creation of apprenticeships	OJ C 266, 13.10.1995
N/0119/95	08.03.1995	Federal programme to assist businesses affected by flooding	OJ C 266, 13.10.1995
N/745/D/94	08.03.1995	Scheme of the *Land* of Hessen to promote the setting-up of regional innovation centres	OJ C 266, 13.10.1995
N/745/E/94	08.03.1995	Scheme of the Land of Hessen to promote public tourism infrastructure	OJ C 266, 13.10.1995
N/0128/95 IP(95)253	14.03.1995	Shipbuilding aid for Elbewerft Boizenburg	OJ C 266, 13.10.1995
N/0156/95 IP(95)254	14.03.1995	Aid in the non-ferrous metals based products sector for Aluhett Aluminiumwerk GmbH	OJ C 276, 21.10.1995
N/0761/94	24.03.1995	"Creation and growth" part of the programme of initiatives for the economy of the *Land* of North Rhine-Westphalia	

N/0166/95	30.03.1995	Work and technology programme [1995-98]	OJ C 266, 13.10.1995
N/0006/95 IP(95)351	04.04.1995	R&D aid: Production 2000	OJ C 267, 14.10.1995
N/0740/94	04.04.1995	Steel aid [non-ECSC] for Mannesmann-Rohren-Werke Sachsen GmbH	OJ C 295, 10.11.1995
N/0161/95	06.04.1995	Measures for technological improvement and innovation in businesses [1995-2005] (Thuringia)	OJ C 267, 14.10.1995
N/0682/93 IP(95)380	12.04.1995	State guarantees programme of the *Land* of Saarland	
N/0052/95	12.04.1995	Pilot project preparing the ground for a programme to promote the development of employees and the organization of firms in the new *Länder*	OJ C 295, 10.11.1995
N/0081/95 IP(95)382	12.04.1995	Consolidation fund of the *Land* of Berlin	OJ C 295, 10.11.1995
N/0117/95 IP(95)382	12.04.1995	Consolidation fund of the *Land* of Saxony	OJ C 295, 10.11.1995
N/0184/95	12.04.1995	Measures of the *Land* of Brandenburg to promote SME staff retraining by way of Objective 1 assistance	
N/0185/95	12.04.1995	Measures of the *Land* of Berlin to promote SME staff retraining by way of Objective 1 assistance	
N/0186/95	12.04.1995	Measures of the *Land* of Mecklenburg-Western Pomerania to promote SME staff retraining by way of Objective 1 assistance	
N/0187/95	12.04.1995	Measures of the *Land* of Thuringia to promote SME staff retraining by way of Objective 1 assistance	
N/0188/95	12.04.1995	Measures of the *Land* of Saxony-Anhalt to promote SME staff retraining by way of Objective 1 assistance	
N/0189/95	12.04.1995	Measures of the *Land* of Saxony to promote SME staff retraining by way of Objective 1	
N/0190/95	12.04.1995	Measures of the *Land* of Brandenburg to promote the taking-on of unemployed people by way of Objective 1 assistance	
N/0191/95	12.04.1995	Measures of the *Land* of Berlin to promote the taking-on of unemployed people by way of Objective 1 assistance	
N/0192/95	12.04.1995	Measures of the *Land* of Mecklenburg-Western Pomerania to promote the taking-on of unemployed people by way of Objective 1 assistance	

N/0193/95	12.04.1995	Measures of the *Land* of Thuringia to promote the taking-on of unemployed people by way of Objective 1 assistance	
N/0194/95	12.04.1995	Measures of the *Land* of Saxony-Anhalt to promote the taking-on of unemployed people by way of Objective 1 assistance	
N/0195/95	12.04.1995	Measures of the *Land* of Saxony to promote the taking-on of unemployed people by way of Objective 1 assistance	
N/0196/95	12.04.1995	Measures of the *Land* of Bavaria to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 2 and 5(b) assistance	
N/0197/95	12.04.1995	Measures of the *Land* of Brandenburg to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 1 assistance	
N/0198/95	12.04.1995	Measures of the *Land* of Berlin to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 1 assistance	
N/0199/95	12.04.1995	Measures of the *Länd* of Mecklenburg-Western Pomerania to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 1 assistance	
N/0200/95	12.04.1995	Measures of the *Land* of Thuringia to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 1 assistance	
N/0201/95	12.04.1995	Measures of the *Land* of Saxony to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 1 assistance	
N/0202/95	12.04.1995	Measures of the *Land* of Saxony-Anhalt to promote the setting-up of businesses by former unemployed people (Existenzgründungsbeihilfen) by way of Objective 1 assistance	
N/0203/95	12.04.1995	Programme of the *Land* of Thuringia to promote the creation of apprenticeships	
N/0204/95	12.04.1995	Programmes of the *Land* of North Rhine-Westphalia concerning on-the-job training measures by way of Objective 2 and 5(b) assistance	
N/0205/95	12.04.1995	Programmes of the *Land* of North Rhine-Westphalia concerning training measures in SMEs by way of Objective 5(b) assistance	
N/0227/95	12.04.1995	Sewage legislation (Thuringia)	OJ C 267, 14.10.1995

N/0127/95	03.05.1995	Aid for building component manufacturer Brandenburger Bauelemente	OJ C 272, 18.10.1995
N/0240/95	03.05.1995	Aid for the creation of apprenticeships in SMEs (Saxony-Anhalt)	
N/0305/95	03.05.1995	Aid for a technical equipment manufacturer (Saxony-Anhalt)	
N/0308/95	03.05.1995	Aid in the ecology sector: vocational training (Lower Saxony)	
N/0345/95	03.05.1995	Aid to promote the sale of consumer goods (Former GDR)	
N/0074/95 IP(95)460	10.05.1995	Consolidation fund of the *Land* of Saxony-Anhalt	OJ C 295, 10.11.1995
N/0355/95	18.05.1995	Aid to commodity trader B & K Schielke Rostock	
N/0356/95	18.05.1995	Aid to Kuagtextil GmbH (Konz)	
N/0075/95 IP(95)503	23.05.1995	Consolidation fund of the *Land* of Mecklenburg-Western Pomerania	OJ C 295, 10.11.1995
NN/073/95 IP(95)508	23.05.1995	R&D aid for SMEs (Berlin)	OJ C 324, 05.12.1995
N/0663/94	06.06.1995	R&D aid (Lower Saxony)	OJ C 324, 05.12.1995
N/0036/95	06.06.1995	Measures to promote the rational use of energy and renewable energy sources	OJ C 290, 01.11.1995
N/0371/95	06.06.1995	German research network	OJ C 324, 05.12.1995
N/0181/95 IP(95)561	07.06.1995	Consolidation fund of the *Land* of Brandenburg	OJ C 295, 10.11.1995
N/0376/95 IP(95)565	07.06.1995	Shipbuilding aid for Jos L. Meyer GmbH (Indonesia)	OJ C 343, 21.12.1995
NN/001/95 IP(95)566	07.06.1995	Measures to assist SMEs [soft aid] (Hessen)	OJ C 276, 21.10.1995
NN/002/95 IP(95)567	07.06.1995	Aid for chemicals producer Buna GmbH	
NN/003/95 IP(95)567	07.06.1995	Aid for chemicals producer Sächsische Olefinwerke	
N/0019/95	27.06.1995	Investment aid for non-university research centres (Saxony)	

N/0084/95 IP(95)622	21.06.1995	Shipbuilding aid for Volkswerft	OJ C 343, 21.12.1995
N/0306/95	28.06.1995	Aid fund in the ecology field - "New environmental technologies" guidelines (Lower Saxony)	
N/0307/95	28.06.1995	Aid fund in the ecology field - "Economy and environment" guidelines (Lower Saxony)	
N/0340/95	28.06.1995	Pilot scheme to assist SMEs (Bavaria)	OJ C 295, 10.11.1995
N/0458/95	04.07.1995	Programme for the creation of additional workplaces for apprenticeships in Mecklenburg-Western Pomerania	OJ C 290, 01.11.1995
N/0344/95	05.07.1995	Regional economic development programme (North Rhine-Westphalia)	
N/0071/95	06.07.1995	Measures to promote the development of industrial technologies (Berlin)	OJ C 276, 21.10.1995
N/0377/95	06.07.1995	Innovation programme (Baden-Württemberg)	OJ C 335, 13.12.1995
N/0169/95 IP(95)773	19.07.1995	Steel aid [ECSC] for Krupp Hoesch Stahl AG	
N/0170/95 IP(95)773	19.07.1995	Steel aid [ECSC] for Thyssen Stahl AG	
N/0470/95	24.07.1995	Loan programme of the *Land* of Bavaria for SMEs	OJ C 290, 01.11.1995
N/0549/95	24.07.1995	SME exhibitions programme (Saxony-Anhalt)	OJ C 276, 21.10.1995
N/0555/95	24.07.1995	Aid for waste processor Abfall-Behandlungsgesellschaft	OJ C 276, 21.10.1995
N/0381/95 IP(95)836	26.07.1995	R&D aid	OJ C 290, 01.11.1995
N/0453/95	26.07.1995	State aid for Brauerei Gotha	OJ C 276, 21.10.1995
N/0510/95 IP(95)839	26.07.1995	Aid programme for own capital in the new *Länder*	
N/0309/95	01.08.1995	Bavarian programme of loans for protection against noise and vibration and the collection of industrial waste	OJ C 318, 29.11.1995
N/0540/95	01.08.1995	Aid for the mechanical engineering company OTB Management GmbH	OJ C 295, 10.11.1995

N/0380/95	05.09.1995	*Land* guarantees for Landeskreditbank (Baden-Württemberg)	OJ C 318, 29.11.1995
N/0590/95	05.09.1995	Measures to promote microelectronics	OJ C 324, 05.12.1995
N/0663/95	05.09.1995	State aid in the building sector for Janeba Bau GmbH	OJ C 298, 11.11.1995
N/0559/95	12.09.1995	R&D aid for Keiper Recaro Remscheld	OJ C 324, 05.12.1995
N/0588/95	12.09.1995	R&D aid: Achievement and innovation in teleworking (Bavaria)	OJ C 290, 01.11.1995
N/0591/95	12.09.1995	Aid for the microelectronics industry	OJ C 298, 11.11.1995
N/0572/95 IP(95)1009	20.09.1995	Shipbuilding aid for MTW Schiffswerft GmbH	
N/0637/95 IP(95)1010	20.09.1995	Shipbuilding aid for Kvaerner Warnowwerft	
N/0650/95 IP(95)1011	20.09.1995	Aid for ceramics manufacturer Winterling Porzelan AG	OJ C 298, 11.11.1995
N/0700/95 IP(95)1013	20.09.1995	Shipbuilding aid for Elbewerft Boizenburg	
N/0740/95	02.10.1995	Guidelines in the energy sector (Lower Saxony)	
N/0748/95	02.10.1995	Aid for SMEs (Hamburg)	OJ C 335, 13.12.1995
N/646/A/95	04.10.1995	Aid for increasing the capital of firms in the new *Länder:* Programme of Kreditanstalt für Wiederaufbau	
N/646/B/95	04.10.1995	Fund for increasing the capital of firms in the new *Länder:* Soft loans programme of Deutsche Ausgleichsbank	
N/0742/95	09.10.1995	Investment in small hydroelectric plants (Bavaria)	
N/0573/95	13.10.1995	Rational use of energy and renewable energy sources (Baden-Württemberg)	
N/0717/95	13.10.1995	Measure to promote reusable energy sources	
N/0688/95 IP(95)1142	18.10.1995	Shipbuilding aid [Arts. 4 and 7, 7th Directive] for China	
N/0747/95 IP(95)1143	18.10.1995	Aid in the building sector for Brandeburger Tiefbau GmbH	OJ C 335, 13.12.1995
N/0627/95	06.11.1995	Investment programme of the *Land* of Mecklenburg-Western Pomerania in favour of SMEs	

N/0628/95	06.11.1995	Aid for initiatives aimed at creating jobs for school-leavers in Mecklenburg-Western Pomerania
N/0845/95	06.11.1995	Aid for the creation and certification of quality schemes in SMEs (new *Länder*)
N/0801/95 IP(95)1253	14.11.1995	Shipbuilding aid for Volkswerft Stralsund
N/0773/95	16.11.1995	Programme of research into new materials (Bavaria)
N/0827/95	16.11.1995	Aid in the building sector for AHG Baustoffelatz Stache GmbH (Brandenburg)
N/0638/95	21.11.1995	Technology programme of the *Land* of Saxony
N/0709/95	21.11.1995	Aid for SMEs through the Mittelständische Beteiligungsgesellschaft (Saxony-Anhalt)
N/0769/95	21.11.1995	Measures to promote the provision of information about communications technology
N/0770/95	23.11.1995	Measures to assist newly formed technology-oriented companies (Bavaria)
N/494/A/95	29.11.1995	Extension/modification of the investment allowance in the new *Länder*
N/0536/95 IP(95)1326	29.11.1995	Measures to assist shipbuilding in Germany in 1995
N/710/C/95	29.11.1995	Extension of the investment allowance for firms in the distributive trades in the new *Länder*
N/0767/95	29.11.1995	Aid for restructuring SMEs (Saxony)
N/0797/95	29.11.1995	Shipbuilding aid for Kvaerner Warnowwerft
N/837/95	29.11.1995	Technical assistance in the Ennshafen regional development area
N/0928/95	04.12.1995	Measures to promote new products and processes (Saxony)
N/0929/95	04.12.1995	Measures to assist projects oriented towards the innovative technologies (Saxony)
N/0660/95	06.12.1995	Aid to motor manufacturer Daimler Benz (Berlin)
N/0867/95	06.12.1995	State aid in the building sector for Glaswerk Schönborn GmbH
N/0896/95	06.12.1995	Aid to small businesses for the sale of local products

N/0053/95	07.12.1995	Aid to promote the use of biofuels (Mecklenburg-Western Pomerania)	
NN/074/95	20.12.1995	Business consolidation fund (Thuringia)	
N/0362/95	20.12.1995	State guarantees of the *Land* of Lower Saxony for businesses in central and eastern Europe and south-east Asia	
N/0621/95	20.12.1995	Aid for synthetic fibres manufacturer Texturgarne GmbH	
N/0805/95	20.12.1995	Aid for the mechanical engineering firm Wilhelm Machinenfabrik GmbH	
N/0828/95	20.12.1995	Aid in the building sector for Mühl Product & Service and Thüringer Baustoffhandel AG	
N/0842/95	20.12.1995	Shipbuilding aid	
N//0846/95	20.12.1995	Aid for the mechanical engineering firm Graff GmbH	
N/0883/95	20.12.1995	Shipbuilding aid [Art. 4(5) of the Seventh Directive]	
N/0868/95	21.12.1995	Aid in the building sector for Betonwerk Munk und Schroeder GmbH	
N/0869/95	21.12.1995	Aid in the building sector for Bauton Rationnelles Bauen GmbH	
N/0918/95	21.12.1995	Aid in the non-ferrous metals based products sector for Aluhett Aluminiumwerk GmbH	
N/0960/95	21.12.1995	Federal scheme to promote sales by eastern German firms on certain western markets	
Austria			
N/0318/95	06.06.1995	ERP-SME technological programme	OJ C 290, 01.11.1995
N/0315/95 IP(95)563	07.06.1995	ERP regional programme	OJ C 295, 10.11.1995
N/0347/95	20.06.1995	Measures to promote innovation, technology and R&D	OJ C 324, 05.12.1995
N/0216/95	28.06.1995	General rules of the *Land* of Niederösterreich on the granting of aid	
N/226/A/95	28.06.1995	Investment grant of the *Land* of Niederösterreich	
N/226/B/95	28.06.1995	Measures to promote the setting-up of businesses in the *Land* of Niederösterreich	

N/0164/95	28.06.1995	Investment aid measures of the *Land* of Niederösterreich	
N/0319/95	04.07.1995	ERP technological programme	OJ C 324, 05.12.1995
N/0135/95 IP(95)833	26.07.1995	Aid for motor manufacturer Opel Austria; R&D scheme of the City of Vienna; Guarantee Act 1977	OJ C 310, 22.11.1995
N/0580/95	01.08.1995	ERP programme in the tourism industry	
N/0582/95	01.08.1995	Programme of the *Land* of Burgenland in the tourism industry	
N/0589/95	01.08.1995	Investment grant programme of the *Land* of Burgenland	
N/0837/95	29.11.1995	Technical amendment of the Austrian assisted areas map; Ennshafen regional development	
N/0104/95	06.12.1995	Measures to promote tourism infrastructure	
N/0105/95	06.12.1995	Measures to promote tourism - TOP	

Belgium

N/0727/94	23.01.1995	Aid to promote external trade [Order of 13.01.94] (Brussels-Capital)	
N/0321/95 IP(95)383	12.04.1995	Aid for textile manufacturer EM-Filature	OJ C 267, 14.10.1995
N/0298/95	06.06.1995	Aid for firms affected by flooding	OJ C 272, 18.10.1995
N/0285/95	05.07.1995	Aid for steelmaker ALZ Genk	
N/0297/95	05.07.1995	Aid under Art. 3 ECSC for steelmaker Sidmar	
N/307/B/93 IP(95)697	05.07.1995	Review of development areas (excluding Hainaut)	OJ C 318, 29.11.1995
N/0241/95 IP(95)774	19.07.1995	Aid for motor manufacturer Ford Werke AG	OJ C 5, 10.01.1996
N/0605/95 IP(95)842	26.07.1995	Shipbuilding aid for Vlaamse Scheepsbouw Maatschappij NV (VSM)	
N/0569/95 IP(95)1326	29.11.1995	"Nivelinvest" measure under the Community Resider initiative (Wallonia)	
N/0766/94 IP(95)1326	29.11.1995	"Invest" measure in the Meuse-Vesdre industrial area (Objective 2) - (Wallonia)	
N/0372/94	29.11.1995	"AIDE" aid measures for firms in the Meuse-Vesdre area (Objective 2) - (Wallonia)	

N/0361/94	29.11.1995	"AIDE" measures for firms (Objective 5(b)) (Wallonia)	
NN/057/95	20.12.1995	Steel aid for Cockerill-Sambre	
Denmark			
N/0605/94	13.01.1995	Aid for trade and industry	OJ C 265, 12.10.1995
N/0002/95 IP(95)79	01.02.1995	Extension of the shipbuilding aid scheme	OJ C 265, 12.10.1995
N/778/A/94	23.03.1995	Aid for R&D: Tax arrangements	OJ C 266, 13.10.1995
N/778/B/94	23.03.1995	Aid for R&D: extension for 1995 of the Tax Law	OJ C 266, 13.10.1995
N/0698/94	12.04.1995	Measures to assist power generation	OJ C 267, 14.10.1995
N/0714/94	03.05.1995	Measures to promote tourism	OJ C 272, 18.10.1995
N/0528/94 IP (95)502	23.05.1995	"Energy 2000" programme": New energy technologies	OJ C 290, 01.11.1995
N/0391/95 IP(95)625	21.06.1995	Aid for guarantee funds	OJ C 343, 21.12.1995
N/0155/95	28.06.1995	Danish Industrial Development Fund	OJ C 272, 18.10.1995
N/0459/95 IP(95)777	19.07.1995	Environmental tax regime and exemptions	OJ C 324, 05.12.1995
N/0471/95	01.08.1995	Tax on fur production	OJ C 318, 29.11.1995
N/0460/94	01.08.1995	Renovation project and demonstration projects abroad	OJ C 324, 05.12.1995
N/0538/95	12.09.1995	Aid for laser applications in heavy industry	OJ C 324, 05.12.1995
N/0541/95	02.10.1995	Measures in the tourism sector	OJ C 335, 13.12.1995
Spain			
N/0696/93 IP(95)33	17.01.1995	IFA aid for 1993 (Andalusia)	
N/0462/94 IP(95)33	17.01.1995	Aid for the promotion of Andalusia	
N/0106/94	23.01.1995	Aid for the development of businesses in "Parque Cartuja 93" (Andalusia)	OJ C 058, 08.03.1995

N/0551/94	23.01.1995	Investment aid for SMEs (Castile-La Mancha)	
N/0628/94	01.02.1995	Aid for businesses in the forestry sector (Balearic Islands)	
N/0665/94	07.02.1995	Aid for vocational training (Canary Islands)	OJ C 265, 12.10.1995
N/0721/94	07.02.1995	Measures to assist cooperatives and limited companies (Catalonia)	OJ C 265, 12.10.1995
N/0448/94	09.02.1995	Six programmes of assistance for SMEs (Asturias)	OJ C 265, 12.10.1995
N/0033/95	09.02.1995	Aid in the tourism sector (Catalonia)	
N/260/A/94	13.02.1995	I+D concerted projects: interest-free loans	
N/0067/95	20.02.1995	Aid for technological innovation and development [PRIB] (Balearic Islands)	
N/0450/94	28.02.1995	Employment aid (Canary Islands)	OJ C 265, 12.10.1995
N/0445/94	01.03.1995	R&D aid programme (Rioja)	
N/0068/95	13.03.1995	Measures in the economic promotion zone (Valencia)	OJ C 266, 13.10.1995
N/0080/95	13.03.1995	Aid in the tourism sector for vocational training (Valencia)	OJ C 266, 13.10.1995
N/0046/95	21.03.1995	Aid in the tourism sector (Valencia)	OJ C 266, 13.10.1995
N/0066/95	21.03.1995	Measures in the energy sector (Valencia)	OJ C 266, 13.10.1995
N/0079/95	21.03.1995	Aid for environmental protection and energy saving (Balearic Islands)	OJ C 266, 13.10.1995
N/0078/95	21.03.1995	Aid for business promotion [PRIB] (Balearic Islands)	OJ C 266, 13.10.1995
N/0138/95	21.03.1995	Aid to industrial, business and service sectors (Balearic Islands)	OJ C 266, 13.10.1995
N/0235/95	03.04.1995	Measures to promote youth employment (Galicia)	OJ C 267, 14.10.1995
N/0233/95	03.04.1995	Measures to promote SMEs (Madrid)	
N/0215/95	03.04.1995	Aid to promote jobs for the long-term unemployed (Galicia)	OJ C 267, 14.10.1995
N/0234/95	03.04.1995	Measures to promote vocational training (Balearic Islands)	

N/0020/95	03.04.1995	Aid to improve industrial quality (Rioja)	OJ C 267, 14.10.1995
N/0039/95 IP(95)353	04.04.1995	Aid for building boats for Cameroon. Members of ASEGA (Galicia)	OJ C 295, 10.11.1995
N/0083/95	12.04.1995	Aid for motor manufacturer Fasa-Renault SA	OJ C 267, 14.10.1995
N/0174/95	12.04.1995	Measures to promote tourism	OJ C 267, 14.10.1995
N/0178/95	12.04.1995	Aid for vocational training (Galicia)	OJ C 267, 14.10.1995
N/0250/95	12.04.1995	Renovation of housing in rural areas	OJ C 276, 21.10.1995
N/0251/95	12.04.1995	Measures to promote tourism (Canary Islands)	OJ C 276, 21.10.1995
N/0252/95	12.04.1995	Measures to assist tourism, leisure and catering firms (Canary Islands)	OJ C 276, 21.10.1995
N/0253/95	12.04.1995	Measures to improve tourist accommodation (Canary Islands)	OJ C 276, 21.10.1995
N/0023/95 IP(95)398	26.04.1995	PITMA II programme	OJ C 267, 14.10.1995
N/0065/95	03.05.1995	Grants to craft businesses (Extremadura)	OJ C 272, 18.10.1995
N/0072/95	03.05.1995	Investment aid (Valencia)	OJ C 276, 21.10.1995
N/0092/95	03.05.1995	Aid for environmental protection (Valencia)	OJ C 276, 21.10.1995
N/0275/95	03.05.1995	Measures to promote employment (Madrid)	
N/0343/95	03.05.1995	Aid for tourist establishments	
N/0782/94	18.05.1995	Aid for new tourist infrastructures in Doñana (Andalusia)	OJ C 276, 21.10.1995
N/0329/95	18.05.1995	Aid for the development of the gas network (Asturias)	OJ C 276, 21.10.1995
N/0341/95	18.05.1995	R&D aid for a technological action programme [PCTI]	
N/0351/95	18.05.1995	Regional programme to assist enterprises (Cantabria)	OJ C 276, 21.10.1995
N/0552/94	06.06.1995	Aid for research: diversification and innovation (Valencia)	
N/0401/95 IP(95)626	21.06.1995	Programme to promote vocational training (Murcia)	OJ C 276, 21.10.1995
N/0402/95 IP(95)626	21.06.1995	Measures to promote vocational training (Valencia)	OJ C 276, 21.10.1995

N/0522/95	04.07.1995	R&D aid: technological innovation (Catalonia)	
N/230/A/95	04.07.1995	Framework aid scheme for the Community initiative Leader II	OJ C 335, 13.12.1995
N/0382/95	04.07.1995	Aid for industry (Andalusia)	OJ C 276, 21.10.1995
N/0021/95	05.07.1995	Measures to promote the development of economic activity (Galicia)	OJ C 298, 11.11.1995
N/0404/95 IP(95)705	05.07.1995	Measures to promote employment (Aragon)	OJ C 276, 21.10.1995
N/0342/95	11.07.1995	Aid to promote new tourist infrastructure	OJ C 324, 05.12.1995
N/0410/95	11.07.1995	Aid in the telecommunications sector	OJ C 324, 05.12.1995
N/0413/95 IP(95)775	19.07.1995	Measures to assist the media (Galicia)	OJ C 318, 29.11.1995
N/0432/95 IP(95)776	19.07.1995	Employment aid for 1995 (Murcia)	OJ C 324, 05.12.1995
N/0444/94	24.07.1995	Aid for SMEs (Aragon)	OJ C 276, 21.10.1995
N/0326/95	24.07.1995	Measures to promote tourism (Cantabria)	OJ C 324, 05.12.1995
N/0328/95	24.07.1995	Programme of aid for research (Asturias)	OJ C 290, 01.11.1995
N/0350/95 IP(95)834	26.07.1995	Measures to promote employment and training (Cantabria)	OJ C 298, 11.11.1995
N/0379/95 IP(95)835	26.07.1995	Shipbuilding aid for Astilleros Españoles	OJ C 343, 21.12.1995
N/0403/95 IP(95)834	26.07.1995	Employment promotion measures (Valencia)	OJ C 335, 13.12.1995
N/0532/95 IP(95)834	26.07.1995	Employment promotion measures for 1995 (Andalusia)	OJ C 298, 11.11.1995
N/0553/95 IP(95)834	26.07.1995	Measures to promote vocational training (Aragon)	OJ C 290, 01.11.1995
N/0269/95	01.08.1995	Measures to assist SMEs in the business sector (Castile-Leon)	OJ C 298, 11.11.1995
N/0270/95	01.08.1995	Measures to assist business associations (Castile-Leon)	OJ C 298, 11.11.1995
N/0313/95	01.08.1995	Measures to assist SMEs (Extremadura)	

N/0349/95	01.08.1995	Measures to assist craft businesses (Cantabria)	OJ C 298, 11.11.1995
N/0417/95	01.08.1995	Aid for automotive components manufacturer Group España SA	OJ C 295, 10.11.1995
N/0576/95	01.08.1995	Measures to assist craft firms (Aragon)	OJ C 290, 01.11.1995
N/0581/95	01.08.1995	Measures to assist SMEs (Basque Country)	
N/0145/95	05.09.1995	Aid for the natural gas sector : second phase of the Valencia-Orihuela gas pipeline extension	OJ C 290, 01.11.1995
N/0412/95	12.09.1995	Measures to assist industry (Balearic Islands)	OJ C 290, 01.11.1995
N/0422/95	12.09.1995	Aid to promote youth employment (Murcia)	OJ C 290, 01.11.1995
N/0630/95	12.09.1995	Measures to promote the employment of women (Andalusia)	OJ C 290, 01.11.1995
NN/080/95 IP(95)1016	20.09.1995	Aid to firms for improvements in environmental quality (Castile-Leon)	OJ C 298, 11.11.1995
N/0606/95	02.10.1995	Extension of the programme for improvement of the technological and innovative capacity of industry (Basque Country)	
N/0607/95	02.10.1995	Financial assistance for industrial investment	
E/0012/91	04.10.1995	National programme for the development of renewable energy sources	
N/0732/95	04.10.1995	Shipbuilding aid measures	
N/0545/95	09.10.1995	Measures to assist SMEs (Aragon)	OJ C 335, 13.12.1995
N/0564//95	13.10.1995	Investment in the distributive trades (Basque Country)	
N/0378/95 IP(95)1141	18.10.1995	Aid for improving forest product processing conditions	
N/0640/95	16.11.1995	CIRIT-CIDEM R&D aid for the employment of young academics (Catalonia)	
N/0312/95	29.11.1995	Measures to promote forest products (Galicia)	
N/0421/95	05.12.1995	Regional development programme (Murcia)	

N/0831/95	06.12.1995	Measures to promote business start-ups (Andalusia)	
N/500/C/95	07.12.1995	Improvement and marketing of cereals, mineral water, confectionery, chocolate, caramel and sorbets	
N/0895/95	07.12.1995	Aid for the creation of stable jobs in activities and sectors considered strategic (Ceuta)	
N/0348/95	20.12.1995	Aid for industry	
N/538/95 IP(95)1444	20.12.1995	Aid for motor manufacturer Ford España	
N/0924/95	20.12.1995	Aid for the self-employed (Ceuta)	
N/0925/95	20.12.1995	Aid for the long-term unemployed	
N/0420/95	21.12.1995	Employment promotion measures (Murcia)	
Finland			
N/0115/95 IP(95)252	14.03.1995	Employment aid	OJ C 266, 13.10.1995
N/0857/95	29.11.1995	Aid to promote the development of SMEs	
France			
N/0708/94	10.01.1995	Réunion aid schemes	OJ C 062, 11.03.1995
N/0712/94	10.01.1995	Introduction of conversion arrangements in the potash mining area of Alsace	
N/0425/94	13.01.1995	Charbonnages de France conversion corporations Sofirem and Finorpa: endowment for 1994	OJ C 215, 19.08.1995
N/0716/94	26.01.1995	Increase in the Sofodom-administered Guadeloupe guarantee fund	OJ C 324, 05.12.1995
N/0715/94	30.01.1995	Aid for the tourist industry (Guadeloupe)	OJ C 324, 05.12.1995
N/0717/94	30.01.1995	Aid for the risk-capital activities of Sagipar (Guadeloupe)	OJ C 324, 05.12.1995
N/0027/94	01.02.1995	SME-SMI Development Fund	
N/0758/94	13.02.1995	Change in arrangements for Sofirem assistance	OJ C 215, 19.08.1995
N/0762/94	13.02.1995	Conversion company of the Sodie steel group - appropriation for 1993	OJ C 215, 19.08.1995

N/0004/95	23.02.1995	Refinancing of the Atout-Puma scheme for 1995	
N/0005/95	23.02.1995	Refinancing of the large innovative projects scheme for 1995	OJ C 265, 12.10.1995
N/0637/94	28.02.1995	Parafiscal charge on entertainment	OJ C 324, 05.12.1995
N/0063/95	01.03.1995	Setting-up of a French Guiana strategic fund	OJ C 324, 05.12.1995
N/0124/95	03.03.1995	Estimate of the means of intervention for 1995 of non-ECSC publicly owned industrial groups	
N/0064/95	14.03.1995	Setting-up of a French Guiana guarantee fund	OJ C 324, 05.12.1995
N/0724/94	14.03.1995	Job-creation grants in the overseas departments	OJ C 324, 05.12.1995
N/0030/95	22.03.1995	Renewal of the parafiscal charge on air pollution	OJ C 266, 13.10.1995
N/0070/95	12.04.1995	"Fact" and "ACE" schemes: Fund for improving working conditions and aid for advisory services for firms	OJ C 276, 21.10.1995
NN/070/94	23.05.1995	Aid for textile manufacturer Fabertex (Insenheim)	OJ C 272, 18.10.1995
NN/0111/93	21.06.1995	Shipbuilding aid for building sailing ships	
N/0365/95 IP(95)624	21.06.1995	Shipbuilding aid	
N/0501/95	04.07.1995	Additional capital contributions to "Sodie" for the extension of its area of activity (Lorient, Marseille)	OJ C 276, 21.10.1995
NN/084/95 IP(95)771	19.07.1995	R&D aid for Marelli Autronica SA: Eureka EU 265 - Planet scheme	OJ C 290, 01.11.1995
N/0462/95	19.07.1995	Parafiscal charge on concrete and earthenware products	
NN/085/95 IP(95)781	19.07.1995	R&D aid: Eureka 524 - Genelex project	OJ C 290, 01.11.1995
N/0461/95	26.07.1995	Parafiscal charges for the clothing industry	OJ C 276, 21.10.1995
N/0447/95	26.07.1995	Parafiscal charges for the footwear and hides industry	OJ C 276, 21.10.1995
NN/086/95 IP(95)1017	20.09.1995	R&D aid: Eureka EU 205 - Eximer, Sopra and Laserdot	OJ C 324, 05.12.1995
N/0516/95 IP(95)1008	20.09.1995	Parafiscal charge on the clock and watch and jewellery industries	OJ C 295, 10.11.1995
NN/123/95 IP(95)1081	04.10.1995	R&D aid: Eureka EU 863 - CAS.CAD	OJ C 324, 05.12.1995

NN/124/95 IP(95)1081	04.10.1995	R&D aid: Eureka EU 815 - Intec [Générale des Eaux]	OJ C 324, 05.12.1995
NN/125//95 IP(95)1081	04.10.1995	R&D aid: Eureka EU 228 - Solid (Solid, Quantel and others)	
NN/126/95	04.10.1995	R&D aid: Eureka EU 68 - Fieldbus (Cégélec and Merlin Gérin)	
N/0651/95	04.10.1995	Parafiscal charge on the furniture industry	OJ C 335, 13.12.1995
N/0763/95	13.10.1995	Extension of the areas of activity of Sofirem and the FIBM to the Canton of Grauhet	
NN/135/95 IP(95)1145	18.10.1995	R&D aid: Eureka EU 676 - Eurolang	OJ C 335, 13.12.1995
N/0799/95	23.11.1995	Special aid scheme in connection with the flooding in the Ardennes	OJ C 335, 13.12.1995
E/010//90	29.11.1995	Regional aid in metropolitan France	
N/0493/95	29.11.1995	Town and country planning framework law	
NN/130/95	20.12.1995	R&D aid: EU 1187 - ADTT	
NN/131/95	20.12.1995	R&D aid: EU 606 - Acropol	
Greece			
N/0302/94 IP(95)76	01.02.1995	Investment aid for the shipyard Elefsis SA [Ministerial Decree 30512 of 13.9.91]	OJ C 265, 12.10.1995
NN/014/95 IP(95)435	03.05.1995	Law 2234/94 amending the Greek regional aid scheme	
N/0337/95	28.06.1995	Measures to promote tourism and the craft industry	
N/0728/95 IP(95)1014	20.09.1995	Shipbuilding aid scheme (Seventh Directive)	
N/0418/95 IP(95)1326	29.11.1995	Investment aid for ship repair to Neorion Shipyards Yrou SA	
Ireland			
N/0509/95	04.07.1995	Measures to assist small businesses: access to funds	
Italy			
N/0163/94	10.01.1995	Three-year programme in favour of employment (Friuli-Venezia Giulia)	OJ C 265, 12.10.1995

N/0338/94	10.01.1995	Three-year programme in favour of employment [Regional Law 32/85] (Friuli-Venezia Giulia)	OJ C 265, 12.10.1995
N/0718/94	10.01.1995	Measures to promote tourism (Calabria)	OJ C 265, 12.10.1995
N/0598/94 IP(95)34	17.01.1995	R&D aid for Alcatel Italia SpA: Eureka EU 481 - Jessi	OJ C 265, 12.10.1995
N/0651/94	09.02.1995	Aid for restructuring the commercial distribution network (Liguria)	OJ C 265, 12.10.1995
N/0295/94	16.02.1995	Measures to assist businesses (Province of Belluno)	OJ C 276, 21.10.1995
N/0040/95 IP(95)187	01.03.1995	Regional aid measures	OJ C 184, 18.07.1995
N/0091/95	08.03.1995	Measures to assist victims of natural disasters	OJ C 266, 13.10.1995
NN/112/94 IP(95)259	14.03.1995	Financial measure in favour of the public holding company IRI SpA	OJ C 266, 13.10.1995
N/0050/95 IP(95)251	14.03.1995	Shipbuilding aid measures	
N/0365/94	21.03.1995	Action to promote new businesses and innovation (Emilia-Romagna)	OJ C 266, 13.10.1995
N/0742/94	21.03.1995	Measures to promote economic cooperation and technical assistance in the business sector (Emilia-Romagna)	OJ C 290, 01.11.1995
N/0056/95	21.03.1995	Measures to promote the craft industry	OJ C 266, 13.10.1995
N/0055/95	27.03.1995	Regional fund to promote youth employment and encourage business start-ups [Law 61/94]	OJ C 266, 13.10.1995
N/0267/95	27.03.1995	Amendment of the Article 92(3)(c) exemption map in respect of regional aid	
N/0291/94	11.04.1995	Measures to promote businesses [Regional Law 31] (Venezia)	OJ C 267, 14.10.1995
N/0769/94 IP(95)397	26.04.1995	R&D aid for Ansaldo Gie Srl	OJ C 267, 14.10.1995
NN/014/94 IP(95)434	03.05.1995	Acquisition of a minority shareholding in Ferriere Nord by the Italian holding company Friulia	OJ C 295, 10.11.1995
N/0183/95	03.05.1995	Aid for the reduction of pollution by asbestos	OJ C 272, 18.10.1995
N/0595/94 IP(95)459	10.05.1995	R&D aid for Finmeccanica (Alenia) SpA: Eureka EU 127 AE/36 - Jessi	OJ C 272, 18.10.1995
N/0596/94 IP(95)459	10.05.1995	R&D aid for Bull HN: Eureka EU 127 AC/5 - Jessi	OJ C 272, 18.10.1995

N/0597/94 IP(95)459	10.05.1995	R&D aid for Italtel SpA: Eureka EU 127 AC/5 - Jessi	OJ C 272, 18.10.1995
N/0732/94 IP(95)458	10.05.1995	R&D aid for Stet pA, Fiat Cei SpA, Zeltron SpA, Centro Richerche Fiat pA: Eureka EU 45 - Prometheus	OJ C 272, 18.10.1995
N/0734/94 IP(95)459	10.05.1995	R&D aid for SGS Thomson srl: Eureka EU 127 T22 - Jessi	OJ C 272, 18.10.1995
N/0142/94	23.05.1995	Refinancing of Laws 41 of 3.2.89 and 221 of 30.7.90 to create alternative activities in mining	OJ C 272, 18.10.1995
NN/093/94 IP(95)506	23.05.1995	Taxes on the marketing of plastic bags and on the production and marketing of polyethylene	
N/338/A/95	27.06.1995	Measures for the certification of goods and services	OJ C 324, 05.12.1995
N/338/B/95	27.06.1995	Revolving fund for small business start-ups (Liguria)	
N/140/A/95	06.07.1995	Measures to promote youth employment [Law 431] (Marche)	OJ C 324, 05.12.1995
N/0487/95	06.07.1995	Measures to promote SMEs	
NN/132/93	19.07.1995	Regional Law 51/93 providing for aid for craft firms in Sardinia	
N/0731/94 IP(95)771	19.07.1995	Aid for Marelli Autronica: EU 265 Planet	OJ C 290, 01.11.1995
N/0143/94 IP(95)832	26.07.1995	Aid towards the social costs connected with the restructuring of the Ilva Group	OJ C 343, 21.12.1995
N/0204/94	01.08.1995	Law 15/94 on measures to promote industrial activities	
N/0389/95	14.08.1995	Three-year programme (1995-97) to promote employment (Friuli-Venezia Giulia)	OJ C 298, 11.11.1995
N/0472/94	05.09.1995	Measures to promote firms in the craft and distributive trades (Sicily)	OJ C 335, 13.12.1995
N/0662/95	06.09.1995	Guarantee Fund for SMEs under Objective 1	OJ C 343, 21.12.1995
N/367/A/94	12.09.1995	Law 11/94 laying down measures to assist young entrepreneurs (Sicily)	OJ C 343, 21.12.1995
N/0730/95	12.09.1995	Assistance from the Region of Sicily for industrial firms	OJ C 343, 21.12.1995
N/0273/95	02.10.1995	Aid for businesses following the floods of October 1991: Draft Law 649 of February 1994 (Sicily)	OJ C 343, 21.12.1995

N/324/B/95	02.10.1995	EIMA national programme: aid for the purchase and sale of spirits	
N/0528/95	02.10.1995	Promotion of rural tourism	OJ C 335, 13.12.1995
NN/069/95	04.10.1995	Measures to promote craft firms, tourism and the distributive trades (Bolzano)	OJ C 335, 13.12.1995
N/0231/95	09.10.1995	Aid for rural tourism (Molise)	OJ C 335, 13.12.1995
NN/091/A/95 IP(95)1144	18.10.1995	Aid for employment (Sicily)	OJ C 343, 21.12.1995
N/0815/95	31.10.1995	R&D aid for SGS Thomson Microelectronics: Jessi Project	
N/0546/95 IP(95)1252	14.11.1995	Shipbuilding aid for the cooperative Luigi Orlando di Livorno	
N/0903/95	14.11.1995	Regional aid: revision of the budgetary limit under Art. 5 of the EEC Decision of 9.12.92	
N/0595/95	23.11.1995	R&D aid measures in the industrial sector (Valle d'Aosta)	
N/0784/95	29.11.1995	Steel aid [ECSC] for Ferriera Acciaeria del Caffaro SpA	
N/0774/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Ferriera San Carlo SpA	
N/0775/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Ferriera Valchiese SpA	
N/0776/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Ferriera Trevali SpA	
N/0778/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Afim SpA	
N/0779/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Acciaeria di Cividate al Piano	
N/0781/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Acciaeria San Marco SpA	
N/0782/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Acciaeria e Ferriera di Crema SpA	
N/0783/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Acciaeria di Lonato SpA	
N/0785/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Acciaeria di Calvisano SpA	

N/0786/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Acciaeria di Barghe srl	
N/0787/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for So. La. Fer. SpA	
N/0788/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for F.lli Pasini di Alessio SpA	
N/0789/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for S.I.S.V.A. SpA	
N/0792/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Montello SpA	
N/0795/95 IP(95)1304	29.11.1995	Steel aid [ECSC] for Ilfo SpA	
N/0808/95	29.11.1995	R&D aid for Italtel SpA : UT-B-ISDN project	
N/0809/95	29.11.1995	State aid for Italtel SpA: REMAT 2 Project	
N/0810/95	29.11.1995	R&D aid for Italtel SpA: TAG Project	
N/0908/95	20.12.1995	Steel aid [ECSC] for Acciaerie Ferrero SpA	
N/0909/95	20.12.1995	Steel aid [ECSC] for O.L.M.A. SpA	
N/0910/95	20.12.1995	Steel aid [ECSC] for O.M.V. SpA	
N/0911/95	20.12.1995	Steel aid [ECSC] for Ferriera Pontechiese SpA	
Luxembourg			
N/0060/95	05.07.1995	Steel aid for Profilarbed SA	
Netherlands			
N/0531/94	13.01.1995	R&D aid to refinance Philips projects for 1994	OJ C 062, 11.03.1995
N/0743/94	14.02.1995	Extension for 1995 of the policy of improving the business environment	
N/0017/95	23.02.1995	R&D aid for University Clusters Philips	OJ C 265, 12.10.1995
N/0760/94	28.02.1995	Energy-saving measures for 1995	OJ C 265, 12.10.1995
N/0048/95 IP(95)188	01.03.1995	Regional aid map for 1995-99	OJ C 298, 11.11.1995

N/0015/95 IP(95)250	14.03.1995	Shipbuilding aid for Damen Shipyards Ltd	OJ C 295, 10.11.1995
N/0106/95	16.03.1995	Aid to Philips for the Ecodesign project	OJ C 266, 13.10.1995
N/0143/95	21.03.1995	Measures following flooding	OJ C 266, 13.10.1995
N/0242/95	03.04.1995	Refinancing for 1995 of the aid to businesses in respect of their participation in the Eureka/Jessi project: flanking policy	
NN/065/93 IP(95)356	04.04.1995	Environmental protection measures involving CFC-free products	OJ C 267, 14.10.1995
N/0171/95 IP(95)354	04.04.1995	Aid for building new ships	OJ C 267, 14.10.1995
N/0636/94 IP(95)381	12.04.1995	Investment premium scheme [IPR] (northern part of the country)	OJ C 295, 10.11.1995
N/0642/94 IP(95)381	12.04.1995	Investment premium scheme [IPR] (Twente)	OJ C 295, 10.11.1995
N/0643/94 IP(95)381	12.04.1995	Investment premium scheme [IPR] (South Limburg)	OJ C 295, 10.11.1995
N/0302/95	19.05.1995	Aid for AT-T project	OJ C 276, 21.10.1995
NN/013/95 IP(95)516	23.05.1995	Environmental aid: Tax law amendment	OJ C 272, 18.10.1995
N/0419/95	06.06.1995	Aid for the development of environmentally-friendly	OJ C 272, 18.10.1995 technologies
N/0263/95 IP(95)562	07.06.1995	Shipbuilding aid [Art.7, 7th Dir.] for Damen Shipyards Ltd	OJ C 343, 21.12.1995
N/0325/95	27.06.1995	Development scheme for the North Netherlands region	OJ C 276, 21.10.1995
N/0457/95	05.07.1995	Shipbuilding aid for Damen (Yemen)	OJ C 343, 21.12.1995
N/0363/95	05.09.1995	R&D aid for the Océ TOK project	OJ C 324, 05.12.1995
N/0655/95	12.09.1995	Automation of pig slaughter lines: cooperation between Stork NV and research institutes	OJ C 324, 05.12.1995
NN/099/95	04.10.1995	Aid for job creation in the Flevoland region	
N/0629/95	31.10.1995	Shipbuilding aid for Dutch shipyards	
N/0674/95	31.10.1995	Shipbuilding aid for Damen	
N/0759/95	06.11.1995	Aid measures to promote a new system in the energy sector	

N/0682/95	16.11.1995	Environmental measures in favour of the IMZ test project (Arnhem-Noord)	
N/0762/95	16.11.1995	KIC Project	
N/0841/95	21.11.1995	Measures to promote industries in the shipping sector	
N/0850/95	21.11.1995	Measures to reduce the cost of research workers	
N/0936/95 IP(95)1207	29.11.1995	Aid to shipbuilding	
N/760/95	20.12.1995	Energy tax (IP (95)1446)	
Portugal			
N/0656/94	13.01.1995	SIRA aid system (Azores)	
E/0019/94 IP(95)39	17.01.1995	Free zone (Madeira)	
N/0759/94	16.02.1995	SIR - Sistema de Incentivos Regionais	
N/0232/95 IP(95)399	26.04.1995	Aid to shipbuilding	
N/0375/95 IP(95)564	07.06.1995	Tax breaks for SMEs	OJ C 295, 10.11.1995
N/0096/95 IP(95)623	21.06.1995	Aid to Lisnave for shipbuilding and ship repair	
N/0441/95	11.07.1995	Measures to promote SMEs	OJ C 290, 01.11.1995
N/0686/95 IP(95)1076	04.10.1995	Measures in favour of the CNP as part of the privatization process	
N/0823/95	06.12.1995	Aid to promote the development of SMEs (Madeira)	
N/0657/94	20.12.1995	Aid for DAF Trucks NV	
N/0760/95	20.12.1995	Measures in the energy sector to promote glasshouse cultivation	
N/0943/95	20.12.1995	Shipbuilding aid for tugboats	
United Kingdom			
N/0648/94	13.01.1995	Workshop renovation project [Harlesden City Challenge]	
N/0246/94 IP(95)75	01.02.1995	Aid from Scottish Enterprise to the International Drilling and Downhole Technology Centre (Aberdeen, Scotland)	OJ C 058, 08.03.1995

NN/134/94 IP(95)75	01.02.1995	Aid from the Grampian Regional Council to International Drilling and Downhole Technology Centre (Aberdeen, Scotland)	OJ C 058, 8.3.1995
N/0749/94	14.02.1995	R&D: "Spur and Smart"	OJ C 265, 12.10.1995
N/0003/95	14.02.1995	R&D: OSO Oil and Gas	OJ C 265, 12.10.1995
N/0061/95	28.02.1995	Strategic development of businesses	
N/0085/95	28.02.1995	Highland Opportunity Ltd	
N/0028/95	13.03.1995	Highland Prospect Ltd	OJ C 266, 13.10.1995
N/0032/95	13.03.1995	Flexible aid for business development (Wansbeck)	OJ C 266, 13.10.1995
N/0129/95	21.03.1995	Cardiff Bay Development Corporation	OJ C 266, 13.10.1995
N/0120/95	03.04.1995	Diagnostic and consultancy scheme (Scotland)	OJ C 267, 14.10.1995
N/0220/95	03.04.1995	Business support initiative (Hamilton)	
N/0016/95 IP(95)352	04.04.1995	Investment aid for shipbuilders A&P Appledore (Tyne)	OJ C 295, 10.11.1995
N/0031/95	03.05.1995	Single regeneration budget	
N/0088/95	03.05.1995	British National Space Centre	OJ C 272, 18.10.1995
N/0311/95	03.05.1995	Aid for consultancy services to SMEs in the environment and energy saving field	OJ C 276, 21.10.1995
NN/023/95	10.05.1995	Financial assistance to small businesses (Wansbeck)	OJ C 272, 18.10.1995
N/0366/95	27.06.1995	Marketing aid (Northern Ireland)	OJ C 272, 18.10.1995
N/0237/95	06.07.1995	R&D aid: innovation credit scheme (Scotland)	
N/0364/95	06.07.1995	Energy efficiency scheme	OJ C 324, 05.12.1995
N/0142/95	19.07.1995	Aid to shipbuilding	
NN/092/95	26.07.1995	Aid to R&D: Compete programme (previously known as "IRTU")	OJ C 324, 05.12.1995
N/0449/95	01.08.1995	Increase in aid intensity of the Spur scheme	OJ C 324, 05.12.1995
N/0213/95	05.09.1995	Aid to SMEs (England, Scotland and Wales)	OJ C 335, 13.12.1995
N/0583/95	05.09.1995	Advanced technologies programmes	OJ C 324, 05.12.1995

N/0585/95	05.09.1995	LINK initiative	OJ C 324, 05.12.1995
N/0584/95	05.09.1995	Eureka initiative	OJ C 324, 05.12.1995
N/0586/95	05.09.1995	General industrial collaborative projects [GICP]	OJ C 324, 05.12.1995
N/0601/95	05.09.1995	Hamilton risk capital fund	
NN/098/94	20.09.1995	Countryside Commission grants	OJ C 335, 13.12.1995
N/0665/95	02.10.1995	Creation of a business park (Tyne Riverside)	
N/0661/95 IP(95)1208	31.10.1995	Steel aid [non-ECSC] for Sterling Tubes Ltd	
N/0839/95	06.11.1995	Marketing aid	
N/0144/95	04.12.1995	Financial assistance for infrastructure in the Cleveland area	

Sweden

N/0165/95 IP(95)252	14.03.1995	Measures to promote employment	OJ C 290, 01.11.1995
N/0126/95	03.04.1995	Programme for the industrial development of regional policy priority areas	OJ C 267, 14.10.1995
N/0460/95	04.08.1995	Investment in the development of ecological products	OJ C 318, 29.11.1995
N/0544/95	04.08.1995	Measures to promote SMEs	OJ C 318, 29.11.1995
N/0664/95 IP(95)1012	20.09.1995	Aid in the peat sector for Harjedalens AB	OJ C 298, 11.11.1995
N/0370/95	04.10.1995	Shipbuilding credits	

3. Aid cases in which the Commission initiated Article 93(2) proceedings or extended proceedings already initiated

Germany

C/0004/94 IP(95)84	01.02.1995	Aid in the chemical sector to BSL Olefinverbund (Buna, Sow, Leuna) (Thuringia)	OJ 227, 01.09.1995
N/0412/94 IP(95)77	01.02.1995	Aid in the engineering sector to Maschinenfabrik Sangerhausen (Saxony-Anhalt)	OJ C 262, 07.10.1995

NN/050/94 IP(95)255	14.03.1995	Aid in the engineering sector to Sket Schwermaschinenbau Magdeburg GmbH	OJ C 215, 19.08.1995
E/0005/94 IP(95)260	14.03.1995	Guidelines on the award of state guarantees by Saxony-Anhalt	OJ C 242, 19.09.1995
E/0006/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by Lower Saxony	OJ C 242, 19.09.1995
E/0007/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by North Rhine-Westphalia	OJ C 242, 19.09.1995
E/0008/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by Rhineland-Palatinate	OJ C 242, 19.09.1995
E/0009/94 IP(95)260	14.03.1994	Guidelines concerning the granting of state guarantees by Bavaria	OJ C 242, 19.09.1995
E/0013/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by Bremen	OJ C 242, 19.09.1995
E/0014/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by Mecklenburg-Western Pomerania	OJ C 242, 19.09.1995
E/0015/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by Schleswig-Holstein	OJ C 242, 19.09.1995
E/0016/94 IP(95)260	14.03.1995	Guidelines concerning the granting of state guarantees by Saxony	OJ C 242, 19.09.1995
N/0682/93	12.04.1995	Programme of state guarantees in Saarland	OJ C 294, 09.11.1995
NN/059/95 IP(95)507	23.05.1995	Aid in the aeronautical industry to ASL Lemwerder	OJ C 295, 10.11.1995
NN/002/95 IP(95)567	07.06.1995	Aid in the chemical sector to Sächsische Olefinwerke (Thuringia)	OJ C 203, 08.08.1995
NN/003/95 IP(95)567	07.06.1995	Aid in the chemical sector to Buna GmbH	OJ C 203, 08.08.1995
C/0004/94 C/0061 and 0062/94 NN/056/94 N/0467/95, IP(95)567	07.06.1995	Aid in the chemical sector to BSL Olefinverbund (Buna, Sow, Leuna) (Thuringia)	OJ C 203, 08.08.1995
N/0353/95	05.07.1995	Aid to the particle board manufacturer Glunz AG	OJ C 295, 10.11.1995
N/0076/95	31.10.1995	Measures in Brandenburg for investment projects in Poland	
NN/69/94 IP(95)1392	13..12.1995	Aid to the machine tool manufacturer Gildemeister AG	

NN/067/95	20.12.1995	Aid in the particle board sector to Bestwood E.F. Kinder GmbH	
NN/072/95	20.12.1995	Aid to the recycling of waste	
Austria			
N/0317/95	31.10.1995	ERP international programme	
N/0320/95	31.10.1995	ERP programme for Eastern Europe	
NN/169/95 IP(95)1443	20.12.1995	Aid to the sporting goods manufacturer Head Tyrolia Mares	
Spain			
NN/144/94	11.01.1995	Aid to the motor vehicles manufacturer Suzuki Santanamotor	OJ C 144, 10.06.1995
NN/032/94	11.01.1995	Aid to the motor vehicles manufacturer Suzuki	OJ C 144, 10.06.1995
NN/121/94	14.02.1995	Steel aid to (ECSC and non-ECSC) to Tubacex	OJ C 282, 26.10.1995
N/0222/95 IP(95)433	13.06.1995	Aid to the vehicle manufacturer Seat	OJ C 237, 12.09.1995
NN/063/94 IP(95)433	13.06.1995	Aid to Seat	OJ C 237, 12.09.1995
E/0016/95 IP(95)1007	20.09.1995	Community framework on state aid to the motor vehicle industry	OJ C 304, 15.11.1995
NN/143/95 IP(95)1255	14.11.1995	Aid in the ceramics sector to Alvarez (Vigo)	
N/0941/95 IP(95)1447	20.12.1995	Aid to Los Astilleros Publicos Espanoles	
France			
NN/111/93 IP(95)112	08.02.1995 and 21.06.1995	Aid for the construction of sailing ships	OJ C 279, 25.10.1995
NN/052/95	12.04.1995	Financial support in the banking sector for the recovery of Crédit Lyonnais	OJ C 121, 17.05.1995
NN/045/95 IP(95)400	26.04.1995	Aid in the synthetic fibres sector to Beaulieu Group (Nord-Pas de Calais)	OJ C 284, 28.10.1995

Greece

C/0002/88 IP(95)1250	14.11.1995	Capital increase for Heracles General Cement Co	

Italy

NN/009/95 IP(95)129	14.02.1995	Aid to Bredafucine Meridionali: complaint by Manoir Industries	OJ C 293, 08.11.1995
NN/059/94 IP(95)357	04.04.1995	Aid in the footwear industry for exemption from recruitment costs	OJ C 271, 17.10.1995
NN/093/94 IP(95)506	23.05.1995	Taxes on sales of plastic bags and the production and marketing of polyethylene	OJ C 290, 01.11.1995
NN/046/95	20.12.1995	Aid to Enirisorse	

4. Aid cases in which the Commission initiated proceedings under Article 6 (4) of Decision 3855/91/ECSC, or extended proceedings already initiated

Germany

NN/137/94 IP(95)38	17.01.1995	Aid to the steel producer Werkstoff-Union GmbH (Lippendorf)	OJ C 283, 27.10.1995
N/0775/94 IP(95)37	17.01.1995	Aid to the steel producer Reinwald Recycling GmbH	OJ C 271, 17.10.1995
N/0776/94 IP(95)37	17.01.1995	Steel aid to Hansa Chemie Abbruch und Recycling GmbH	OJ C 271, 17.10.1995
N/0777/94 IP(95)95	14.02.1995	Steel aid to Walzwerk Ilsenburg GmbH	OJ C 289, 31.10.1995
NN/083/95 IP(95)780	19.07.1995	Aid to the steel producer Neue Maxhütte Stahlwerke GmbH	OJ C 312, 23.11.1995

Spain

NN/121/94	14.02.1995	Steel aid (ECSC and non-ECSC) to Tubacex	OJ C 282, 26.10.1995

Greece

N/0167/95 IP(95)504	23.05.1995	Steel aid to Halyvourgia Thessalias SA	OJ C 284, 28.10.1995

Ireland

N/0219/95 IP(95)355	04.04.1995	Steel aid to Irish Steel	

Italy

NN/047/95	05.07.1995	Aid to the steel producer Falk Acciaierie di Bolzano	OJ C 344, 22.12.1995
N/0777/95 IP(95)1304	29.11.1995	Aid to the steel producer Ferriera Acciaieria Casilina SpA	
N/0780/95 IP(95)1304	29.11.1995	Aid to Acciaieria del Sud	
N/0790/95 IP(95)1304	29.11.1995	Steel aid for OLS SpA	
N/0791/95 IP(95)1304	29.11.1995	Aid to the steel producer Montifer srl	
N/0793/95 IP(95)1304	29.11.1995	Aid to the steel producer Moccia Irme SpA	
N/0794/95 IP(95)1304	29.11.1995	Aid to the steel producer Mini Acciaieria Odolese SpA	

5. Aid cases in which the Commission terminated Article 93(2) proceedings

Germany

C/0028/93 IP(95)82	01.02.1995	Aid to the textile manufacturer Nino AG Nordhorn	OJ C 327, 07.12.1995
C/0029/93 IP(95)258	14.03.1995	Aid to the aluminium producer Giesserei Vilingen GmbH	
C/0004/94 C/0061/94 C/0062/94 IP(95)567	07.06.1995	Aid in the chemical sector to BSL Olefinverbund (Buna, Sow, Leuna) (Thuringia)	OJ C 203, 08.08.1995
C/0004/93 IP(95)1006	20.09.1995	Non-ECSC steel aid to Fa. Berg Spezialrohr	
C/0032/94 IP(95)1140	18.10.1995	Measures to assist the setting-up of a rapeseed oil methylester pilot plant	

Belgium			
C/0022/94 IP(95)401	26.04.1995	Aid to the synthetic fibres manufacturer DS Profil BVBA (Flanders)	OJ C 263, 10.10.1995
Spain			
C/0037/94	26.07.1995	Aid in the engines industry to Guascor SA	OJ C 313, 24.11.1995
C/0034/95 IP(95)769	31.10.1995	Aid to the vehicle manufacturer Seat	
France			
C/0020/94 IP(95)85	01.02.1995	Aid for the development of the Kimberley-Clark plant at Toul (Meurthe et Moselle)	OJ C 283, 27.10.1995
C/0043/93 IP(95)358	04.04.1995	Aid to the printing firm Avenir Graphique	OJ C 309, 21.11.1995
C/0026/95 IP(95)829	26.07.1995	Financial support in the banking sector for the recovery of Crédit Lyonnais	OJ L 308, 21.12.1995
Greece			
C/0010/94	31.10.1995	Aid to the shipyard Neorion in the form of a debt write-off of DRA 16.5 billion	
Italy			
C/0033/94 IP(95)86	01.02.1995	Aid to the paper manufacturer Cartiere del Garda SpA	OJ C 294, 09.11.1995
C/0034/92 IP(95)187	01.03.1995	Refinancing measures to cut social security charges in the Mezzogiorno	OJ C 265, 08.11.1995
C/0006/92 IP(95)256	14.03.1995	Aid in the metalworking sector for capital contributions to CMF Sud SpA and CMF CpA	OJ C 120, 16.05.1995
C/0035/92 IP(95)385	12.04.1995	Law No 19/91 on the development of economic activities and international cooperation	OJ C 264, 07.11.1995
C/0039/94 IP(95)568	07.06.1995	Aid in the engineering, civil and industrial engineering sector to Iritecna SpA	OJ C 300, 13.12.1995
C/0013/94 IP(95)620	21.06.1995	Aid to the fertilizer manufacturer Enichem Agricoltura	OJ L 28, 6.2.1996

C/0017/94 IP(95)621	21.06.1995	Application of Law No 181/89 to Ilva	OJ C 309, 30.11.1995

6. Aid cases in which the Commission terminated proceedings under Article 6(4) of Decision 3855/91/ECSC

Germany

C/0046/93 IP(95)83	01.02.1995	R&D aid to Georgsmarienhütte GmbH (Lower Saxony)	OJ C 257, 27.10.1995
C/0029/94 IP(95)194	01.03.1995	Steel aid to EKO Stahl GmbH	OJ C 294, 09.11.1995
C/0028/94 IP(95)1215	31.10.1995	Steel aid to Hamburger Stahlwerke GmbH (Hamburg)	

7. Aid cases in which the Commission took a conditional decision under Article 93(2) of the EC Treaty

Germany

C/0004/94 C/0061/94 C/0062/94 IP(95)1189	08.11.1995	Aid in the chemicals sector to BSL Olefinverbund (Buna, Sow, Leuna) (Thuringia)	

France

C/0026/95 IP(95)829	26.07.1995	Financial assistance in the banking sector for the recovery of Crédit Lyonnais	OJ L 308, 21.12.1995

Italy

C/0013/94 IP(95)620	29.06.1995	Aid in the fertilizer sector to Enichem Agricoltura	
C/0039/94 IP(95)568	07.06.1995	Aid in the engineering, civil and industrial engeineering sector to Iritecna SpA	OJ C 300, 13.12.1995

Spain

C/0034/95 IP(95)1188	31.10.1995	Aid to the vehicle manufacturer Seat	

8. Aid cases in which the Commission took a negative or partly negative decision under Article 93(2) of the EC Treaty

Belgium

C/0036/93 IP(95)1086	04.10.1995	Aid in the heavy goods vehicle sector to DAF Trucks NV	

Spain

C/0025/93 IP(95)257	14.03.1995	Aid to the foundry Piezas y Rodajes SA (Pyrsa)	OJ L 257, 27.10.1995
C/0044/95 IP(95)1442	21.12.1995	Framework on state aid to the motor vehicle industry	

Greece

C/0001/92 IP(95)193	01.03.1995	Aid in the pharmaceutical products sector	OJ L 265, 08.11.1995

Netherlands

C/0038/93 IP(95)1086	04.10.1995	Aid in the heavy goods vehicle sector to DAF Trucks NV & Van Doorne DAF	

France

C/0016/93	17.01.1995	Aid in the synthetic fibres sector to Allied Signal Fibers Europe SA (Meurthe-et-Moselle)	OJ L 159, 11.07.1995

9. Aid cases in which the Commission took a negative or partly negative decision under Article 6(4) of Decision 3855/91/ECSC

Germany

C/0042/94 IP(95)359	04.04.1995	Steel aid to Neue Maxhütte Stahlwerke GmbH	
C/0055/94 IP(95)1137	18.10.1995	Steel aid to Neue Maxhütte Stahlwerke GmbH (Sulzbach-Rosenberg, Bavaria)	
C/0028/94 IP(95)1215	31.10.1995	Steel aid to Hamburger Stahlwerke GmbH (Hamburg)	

10. Aid cases in which the Commission proposed appropriate measures under Article 93(1) of the EC Treaty

Germany

E/0003/95	01.03.1995	Economy promotion programme of the *Land* of Baden-Württemberg: guidelines concerning the granting of state guarantees
E/0004/95	01.03.1995	Economy promotion programme of the *Land* of Baden-Württemberg: guidelines concerning the granting of loans and state guarantees to maintain the liquidity of enterprises
E/0005/95	14.03.1995	Guidelines concerning the granting of state guarantees

Austria

N/837/95	29.11.1995	Technical supplement in the regional development area of Ennshafen

Spain

N/463/94	26.07.1995	Appropriate measures concerning the Spanish regional aid map
E/12/91	04.10.1995	National programme for renewable energy sources

11. Aid cases which the Commission put before the Council under Article 95 of the ECSC Treaty

Austria

N/0095/95	04.10.1995	Steel aid to Voest Alpine Erzberg GmbH

Ireland

C/0022/95 IP(95)1101	11.10.1995	Steel aid to Irish Steel

12. Aid cases in which the Commission took a decision with the unanimous assent of the Council under Article 95 of the ECSC Treaty

Austria

N/0095/95 IP(95)1305	29.11.1995	Aid to Voest Alpine Erzberg GmbH

13. Other Commission decisions

Germany

C/0011/89	01.02.1995	Aid granted by the city of Hamburg (withdrawal of decision)	OJ C 251, 27.09.1995
NN/113/94 IP(95)1015	20.09.1995	Guidelines concerning financial assistance from the public authorities for waste disposal measures	(92(1) not applicable)
C/0062/91 IP(95)1187	31.10.1995	Aid to the vehicle manufacturer Volkswagen AG (Saxony; Thuringia)	(interim decision)
E/0020/94	29.11.1995	Aid in the optics industry to Carl Zeiss Jena	(filed)

Austria

N/316/95	12.09.1995	ERP infrastructures programme	(92(1) not applicable)

Denmark

N/0763/94 IP(95)349	04.04.1995	Amendment of the law on electricity distribution	(92(1) not applicable) OJ C 267, 14.10.1995
N/0393/95	20.12.1995	Aid for low-cost housing	(92(1) not applicable)
N/0539/95 IP(95)1326	29.11.1995	Aid for batteries and accumulators	(92(1) not applicable)

Spain

C/0044/95 IP(95)1442	20.12.1995	Community framework on state aid to the motor vehicle industry	(obligation to notify)

France

NN/135/92 IP(95)111	08.02.1995	Competitive activities of the French Post Office	OJ C 262, 07.10.1995 (92(1) not applicable)

Italy

N/477/94 IP(95)560	07.06.1995	Steel aid (autonomus region of the Aosta Valley)	(92(1) not applicable)

Netherlands

NN/093/95 IP(95)1254	14.11.1995	Ecological disposal of wrecks	(92(1) not applicable)

United Kingdom

N/0721/95 IP(95)1077	04.10.1995	Shipbuilding aid to McTay Marine	(92(1) not applicable)

14. Judgments of the Community courts

14.1. Court of First Instance

Case	Parties	Date	Publication
T-490/93	*Bremer Vulkan Verbund AG* v *European Commission*	23.02.95	ECR II-469
T-488/93	*Hanseatische Industrie-Beteiligungen GmbH* v *European Commission*	23.02.95	ECR II-479
T-442/93	*Association des amidonneries de céréales de la CEE (AAC) and others* v *European Commission*	27.04.95	ECR II-1333
T-435/93	*Association of Sorbitol Producers within the EC (ASPEC) and others* v *European Commission*	27.04.95	ECR II-1285
T-471/93	*Tiercé Ladbroke SA* v *European Commission*	18.09.95	
T-95/94	*Chambre syndicale nationale des entreprises de transport de fonds et valeurs* v *European Commission*	28.09.95	

14.2. Court of Justice

Case	Parties	Date	Publication
C-135/93	*Kingdom of Spain* v *European Commission*	29.06.95	ECR I-1673

C - List of State aid cases in other sectors

1. In the agriculture sector

1.1. Aid cases in which the Commission raised no objection

Austria

27.7.1995	Aid for forestry measures in agriculture
3.8.1995	Farm credit measures
16.8.1995	Advisory and vocational training schemes

22.8.1995	ERP programme for agriculture	
22.8.1995	Salzburg: Measures to prevent the decay of forests	
28.11.1995	Lower Austria: Investment in agriculture	
7.12.1995	Production-related measures	
7.12.1995	Aid to the wine industry in the period 1995-97	
11.12.1995	Quality production	

Belgium

31.3.1995	Decree relating to investment in agriculture	OJ C 93, 27.7.1995
14.6.1995	Aid to vegetable growers	
8.11.1995	Flemish region: Aid to greenhouse cultivation and chicory growers	

Denmark

13.2.1995	Aid to investment in the environment	
7.3.1995	Assistance for the production and processing of agricultural products	OJ C 38, 12.2.1993
20.3.1995	Potato growers fund	
4.4.1995	Development of agricultural and forestry products	
24.8.1995	Measures to assist young farmers	
30.8.1995	Aid for agricultural structures and biological farming	
30.8.1995	Aid for agricultural structures and biological farming	
4.11.1995	Assistance for ecological farming methods	
7.12.1995	Aid and taxes on pesticides	

Germany

23.1.1995	Thuringia: Measures to promote the use of agricultural machinery	OJ C 251, 27.9.1995
3.2.1995	Saxony: Agricultural improvement programme	OJ C 251, 27.9.1995
14.3.1995	Thuringia: Assistance for the production and utilization of forestry products	OJ C 251, 27.9.1995
16.3.1995	Saxony: Measures to protect nature and the countryside	OJ C 251, 27.9.1995
20.3.1995	Thuringia: Measures to assist the reconstruction and modernization of markets	
20.3.1995	Bavaria: Agricultural development programme	OJ C 251, 27.9.1995
28.3.1995	Baden-Württemberg: Measures to combat grape disease	
4.4.1995	Rhineland-Palatinate: Meat processing plant, Josef Kalnik, Alfter	OJ C 251, 27.9.1995
6.4.1995	Brandenburg: Aid to the production of agricultural products	
20.4.1995	Thuringia: Measures to reduce the cost of soil analysis	OJ C 343, 21.12.1995
26.4.1995	Schleswig-Holstein: Measures to assist the utilization of raw materials	OJ C 343, 21.12.1995
17.5.1995	Measures to assist farms in difficulty following natural disasters	
23.5.1995	Brandenburg: Aid for potatoes	
29.5.1995	Mecklenburg-Western Pomerania: Measures to assist farms	
29.5.1995	Bavaria: Measures to promote meat supplies	

31.5.1995	Saxony-Anhalt: Measures to assist varietal conversion in the case of hops
8.6.1995	Saxony: Measures to protect forests
9.6.1995	Lower Saxony: Modernization of a slaughterhouse
9.6.1194	Baden-Württemberg: Measures for rape oil
5.7.1995	Brandenburg: Improvement of agricultural structures
5.7.1995	Saxony-Anhalt: Aid for farms affected by natural disasters
20.7.1995	Thuringia: Community initiative Leader II
26.7.1995	North Rhine-Westphalia: Forestry measures in private woods
27.7.1995	Saxony: Aid to the potato industry
27.7.1995	Saxony: Measures to promote the use of agricultural machinery
16.8.1995	Baden-Württemberg: Programme to improve the efficiency of agricultural structures
21.8.1995	Aid to improve the efficiency of agricultural structures
22.8.1995	Saxony: Development of villages and improvement of rural structures
6.9.1995	Mecklenburg-Western Pomerania: Aid for the production of potatoes
18.9.1995	Bavaria: Measures to assist breed societies
18.9.1995	Saxony-Anhalt: Leader II programme
21.9.1995	Saxony-Anhalt: Aid to protect and develop nature and the countryside
21.9.1995	North Rhine-Westphalia: Aid to offset disasters caused by water
25.9.1995	Saxony-Anhalt: Measures to promote the biological cultivation of agricultural products
26.9.1995	Saxony: Granting of additional income to family farms in difficulty
28.9.1995	Hessen: Measures to reduce pollution in agriculture
2.10.1995	Mecklenburg-Western Pomerania: Measures to promote the ecological storage of animal excrement
4.10.1995	Saxony: environmentally friendly farming methods
4.10.1995	Mecklenburg-Western Pomerania: aid for the purchase of heifers
6.11.1995	Lower Saxony: measures to promote the sale of agricultural produce as part of pilot projects
21.11.1995	Lower Saxony: aid for feeding birds
21.11.1995	Saxony-Anhalt: marketing of agricultural produce
21.11.1995	Brandenburg: Leader II programme
21.11.1995	Bremen: measures to promote environmentally friendly country planning
28.11.1995	North Rhine-Westphalia: aid measures to promote the agricultural sector
28.11.1995	Measures to promote forestry
7.12.1995	Saarland: promotion of private consultancies in agriculture
7.12.1995	Lower Saxony: building of a treatment plant for a cannery
7.12.1995	Thuringia: measures to assist farmers

Greece

21.3.1995	Application of modern methods of plant care
8.5.1995	Genetic improvement of animals
8.5.1995	Improvement and preservation of the indigenous gene pool
8.5.1995	Building of a boar monitoring station
19.7.1995	Transplanting of breeding units and building of new installations
20.7.1995	Prevention of forest fires
27.7.1995	Improvement of vineyard structures
22.8.1995	Regional aid for livestock improvement
24.8.1995	Regional aid for the purchase of sperm
24.8.1995	Purchase of sperm and male breeding animals
24.8.1995	Biological action against pine grove diseases - bee-keeping
29.8.1995	Aid for farms affected by the fires of 1994
29.8.1995	Production and marketing of propagating material

Spain

23.1.1995	Catalonia: measures against oil-mill pollution	OJ C 251 , 27.9.1995
13.2.1995	Galicia: La Coruña, aid for technological development	
13.2.1995	Madrid: marketing of agricultural produce	
1.3.1995	Marketing of agricultural produce	OJ C 251, 27.9.1995
20.3.1995	Galicia: purchase of machinery and equipment to protect forests against the risk of fire	OJ C 251 , 27.9.1995
21.3.1995	Castile-Leon: measures to assist green bean growers	
24.3.1995	Rioja: aid for stock breeders	
10.4.1995	Galicia: measures to promote the development of forests	OJ C 343, 21.12.1995
12.4.1995	Valencia: aid for the clean-up of citrus fruit plantations	OJ C 343, 21.12.1995
17.5.1995	Valencia: aid for farmers	
17.5.1995	Galicia: measures to protect the indigenous breed of cattle	
17.5.1995	Basque Country: measures in favour of the agricultural sector	
13.6.1995	Extremadura: financial assistance for the pursuit of the profession of veterinary surgeon	
16.6.1995	Andalusia: measures to assist the food industry	
16.6.1995	Measures to promote rural development	
19.6.1995	Canary Islands: improvement of the effectiveness of agricultural structures	
19.6.1995	Measures to promote food products	
26.6.1995	Extremadura: measures in favour of cattle, sheep and goats	
26.6.1995	Extremadura: aid for ATRIAS (Plant Defence Association)	
30.6.1995	Extremadura: aid for building stock-breeding centres	
13.7.1995	Catalonia: aid to the agri-foodstuffs industry	
28.7.1995	Navarra: measures to promote the marketing of agricultural produce	
31.7.1995	Leader II aid	
31.7.1995	Andalusia: aid for forestry development	
3.8.1995	Castile-Leon: varietal conversion of hop gardens	
3.8.1995	Castile-La Mancha: aid for cattle farmers	
3.8.1995	Extremadura: measures to improve farm infrastructure	
16.8.1995	Measures to mitigate the effects of the drought	
16.8.1995	Canary Islands: aid for banana growers	
28.9.1995	Rioja: aid to farmers' cooperatives	
4.10.1995	Improvement of the marketing of agricultural produce	
4.10.1995	Extremadura: aid for beef and veal producers	
4.10.1995	Valencia: farm improvement	
31.10.1995	Galicia: aid for forestry businesses	OJ C 19, 23.1.1996
6.11.1995	Andalusia: programme of research and development in the agri-foodstuffs industry	
21.11.1995	Castile-Leon: aid for cattle farmers	
21.11.1995	Rioja: measures to assist cattle farmers	
21.11.1995	Andalusia: improvement of the processing and marketing of agricultural produce	
28.11.1995	Castile-Leon: contribution towards the cost of certain transfers of holdings	
28.11.1995	Asturias: measures in favour of farmers' associations	
28.11.1995	Castile-Leon: aid to bee-keepers	
28.11.1995	Castile-Leon: aid for irrigation	
28.11.1995	Castile-Leon: aid to reduce the cost of electricity in irrigation plants	
28.11.1995	Castile-Leon: aid for extensive cattle farms	
28.11.1995	Castile-Leon: aid for rabbit farmers	
28.11.1995	Asturias: apple growing	
12.12.1995	Valencia: measures in favour of agri-foodstuffs	
13.12.1995	Madrid: aid for indigenous breeds and breeders' associations	

15.12.1995	Extremadura: aid for cattle farmers	
15.12.1995	Galicia: measures in respect of crops for 1995	

Finland

26.6.1995	Measures to promote apple production	
3.8.1995	Measures to promote bee-keeping	
3.8.1995	Measures to assist potato growers	
28.9.1995	Guarantees for the cereal sector (Avena Ltd.)	
13.10.1995	Aid for horticulture	
13.10.1995	Measures to assist the agricultural sector	
15.11.1995	Improvement and marketing of agricultural produce	
28.11.1995	Loans in the agricultural sector	
5.12.1995	Aid for the food industry	

France

2.2.1995	Amendment of scheme to promote the planting of enhancing vine varieties	OJ C 251, 27.9.1995
20.3.1995	Aid and parafiscal charges of the Institut des Corps Gras (ITERG)	
20.3.1995	Aid and parafiscal charges of the Groupement national interprofessionnel des semences, graines et plants	OJ C 251, 27.9.1995
20.3.1995	Compensation for fruit tree growers - Sharka virus	
26.4.1995	Aid of the Ile-de-France region to supplement agri-environment aid	OJ C 343, 21.12.1995
26.4.1995	Investment aid for environmental protection in agriculture	OJ C 343, 21.12.1995
30.5.1995	Introduction of an interest rebate on loans	OJ C 343, 21.12.1995
5.7.1995	Aid for and parafiscal charges on sugarbeet production (Anda)	
5.7.1995	Aid for and parafiscal charges on cereals and rice (Anda)	
5.7.1995	Aid for and parafiscal charges on oilseeds andhigh-protein seeds (Anda)	
5.7.1995	Extension of the aid for planting enhancing vine varieties	
22.8.1995	Aid and parafiscal charges of the Groupement national interprofessionnel des semences, graines et plants (GNIS)	
24.8.1995	Aid for range improvement	
18.9.1995	Aid and parafiscal charge of the Centre technique interprofessionnel des oléagineux métropolitains	
20.9.1995	Aid for livestock quality in mountain areas (pig farming)	
16.10.1995	Aid and parafiscal charge for agricultural development	
16.10.1995	Aid for and parafiscal charge on sheep's and goat's milk	
14.11.1995	Aid and parafiscal charge of the Centrestechniques interprofessionnels de la canne et du sucre	OJ C 343, 21.12.1995
21.11.1995	Aid for and parafiscal charge on fruit and vegetables for the benefit of the Association nationale pour le développement agricole	
21.11.1995	Aid for and parafiscal charge on wine	
21.11.1995	Aid for and parafiscal charge on cow's milk and cream	
21.11.1995	Aid for and parafiscal charge on floral and ornamental horticulture products	
21.11.1995	Aid and parafiscal charges of ONIC and ITCF for financing in the cereals sector	
21.11.1995	Aid for and parafiscal charge on meat	
21.11.1995	Aid for the Comité national interprofessionnel de l'horticulture (CNIH)	
21.11.1995	Aid and parafiscal charges of the Centre technique interprofessionnel des fruits et legumes (CTIFL)	

21.11.1995	Aid and parafiscal charges of the Centre technique de la conservation des produits agricoles	
11.12.1995	Aid for breeders of young cattle affected by currency fluctuations	
11.12.1995	Aid measures in the beef and veal sector - offsetting of losses due to currency movements	

Italy

3.2.1995	Measures in favour of the sugar sector -Minerbio	OJ C 251, 27.9.1995
3.2.1995	Amendment of the AIMA national programme for the beef and veal sector	OJ C 251, 27.9.1995
8.2.1995	Abruzzi: farm credit programme	
23.2.1995	Emilia-Romagna: special measures for the meat-processing industry	OJ C 251, 27.9.1995
20.3.1995	Sardinia: measures to promote cork-oak growing	
30.3.1995	Campania: lemon cultivation	OJ C 251, 27.9.1995
26.4.1995	Emilia-Romagna: economic promotion of regional agricultural products and foodstuffs	OJ C 343, 21.12.1995
26.4.1995	Abruzzi: measures to promote forests and the environment	OJ C 343, 21.12.1995
29.5.1995	Abruzzi: extension of Regional Law No 31 of 3.6.82	
29.5.1995	EIMA national programme, aid for the purchase of ethyl alcohol	
16.6.1995	Piedmont: measures in favour of the agro-industrial sector	
20.6.1995	EIMA national programme: aid in the potato sector	
26.6.1995	EIMA programme in favour of the sale of alcohol	
30.6.1995	Measures to assist the sugar sector - Ostellato	
3.8.1995	Marche: measures in favour of wine and agri-products	
22.8.1995	Sicily: Regional Law 27/95 A -exclusion of the provisions on refinancing of Regional Law 13/86	
22.8.1995	Aid for oilseed producers - promotion and research	
18.9.1995	Sicily: measures aimed at breeders whose herds have been affected by infectious diseases: Arts. 1, 2, 8 Law 28/95	
25.9.1995	Valle d'Aosta: reparcelling of holdings	
25.9.1995	Measures to promote oranges	
25.9.1995	Valle d'Aosta: regional aid	
21.11.1995	Campoverde project: Mezzogiorno	
28.11.1995	Veneto: measures to assist agriculture	
28.11.1995	AIMA national programme in the fruit-alcohol purchasing sector	

Luxembourg

30.8.1995	Aid for the potato sector	

Netherlands

17.1.1995	Environmental protection and organic farming aid	OJ C 251, 27.9.1995
2.2.1995	Aid for agriculture	
8.3.1995	Aid and parafiscal charges for the benefit of the beef and veal sector	OJ C 251, 27.9.1995
20.3.1995	Natural gas tariff for horticulture	OJ C 251, 27.9.1995
26.4.1995	Environmentally friendly agricultural production methods	OJ C 343, 21.12.1995

17.5.1995	Aid and parafiscal charges in the potato sector (promotion aid)	
13.7.1995	Quality control in the meat sector	
31.7.1995	Measures to promote the meat sector	
1.8.1995	Measures in the meat sector	
30.8.1995	Measures to assist agricultural holdings damaged by flooding	
14.9.1995	Data-processing development - forestry sector	
14.11.1995	Farm improvement	
14.11.1995	Aid for fruit and vegetables	
14.11.1995	Measures in favour of fruit and vegetables	
14.11.1995	Measures to support the horticultural sector	
15.11.1995	Aid for animal health	
21.11.1995	Aid for mushroom marketing	
21.11.1995	Measures in favour of forestry	
21.11.1995	Aid in the meat sector - SPOM	
12.12.1995	Aid for rural bodies responsible for mutual assistance between farmers	

Portugal

16.8.1994	Leader II programme	
27.11.1995	Measures to promote the marketing of agricultural products	

United Kingdom

27.1.1995	Northern Ireland: Milk Marketing Board	OJ C 251, 27.9.1995
3.2.1995	Aid for the purchase of small farms by young people	
14.2.1995	Farm capital grants	
20.3.1995	The Meat and Livestock Commission potential redundancy liability	OJ 251, 27.9.1995
21.3.1995	Promotion costs for milk marque	OJ C 402, 31.12.1994
30.3.1995	Agricultural programme for farming and crofting businesses	
26.4.1995	Channel Islands (Guernsey): aid to horticulture	OJ C 343, 21.12.1995
11.7.1995	Northern Island: Mozzarella project	
21.8.1995	Environmentally sensitive areas: amendments to conservation plans	
30.8.1995	Lochaber and Argyll croft entrants scheme	
25.9.1995	Sugar beet research and education programme: levy rates 1995/96	
10.11.1995	Home Grown Cereals Authority levies	
14.11.1995	Nitrate sensitive areas scheme	
21.11.1995	Livestock quota compensation arrangements	

1.2. Aid cases in which Article 93(2) proceedings were initiated

Belgium

20.3.1995	Flanders: biofuels - action plan for Flanders	
20.3.1995	Regional premium for growing winter rape for non-food use	
14.7.1995	Wallonia: aid for investment and setting-up in farming	OJ C 294, 9.11.1995
24.11.1995	Wallonia: compulsory contributions for the poultry sector; aid and incentives for dairy farms	

Germany

7.4.1995	Rhineland-Pfalz: support for vineyards	OJ C 169, 5.7.1995

Greece

27.1.1995	Greek Cotton Board	OJ C 278, 24.10.1995

Spain

26.7.1995	Navarra: aid for Pamplonica SA	OJ C 293, 8.11.1995

France

20.3.1995	Aid for controlling wine production	
29.3.1995	Aid for sheep farmers	OJ C 289, 31.10.1995

Italy

2.3.1995	Sicily: measures to assist businesses affected by natural disasters	OJ C 295, 10.11.1995
21.3.1995	Lazio: agricultural crops (Laws 44/89 and 57/92)	OJ C 267, 14.10.1995
3.5.1995	Friuli-Venezia-Giulia: regional fund in the agricultural sector	OJ C 342, 20.12.1995
3.5.1995	Abruzzi: Law for the development of agriculture for the period 1995-97	OJ C 289, 31.10.1995
27.7.1995	Agreement on promoting the use of kenaf for the production of cellulose	OJ C 294, 9.11.1995
27.7.1995	Campania: Regional Law of 12/8/1993 No 24 on biological agriculture	OJ C 292, 7.11.1995
27.7.1995	Sardinia: Regional Law of 19 January 1994 - rules on promoting and improving the status of organic farming	OJ C 294, 9.11.1995
31.7.1995	Sicily: Regional Law of 14.8.93: extraordinary measures to promote employment	OJ C 295, 10.11.1995
7.11.1995	Lazio: agricultural cooperation	OJ C 327, 7.12.1995
21.11.1995	Sicily: improvement of cooperatives	

1.3. Aid cases in which Article 93(2) proceedings were terminated by way of a positive decision

Spain

20.3.1995	Aragon: aid for agricultural cooperatives	OJ C 157, 23.6.1995
20.3.1995	Aid for Puleva	OJ C 142, 8.6.1995

1.4. Aid cases in which the Commission took a negative final decision pursuant to the first subparagraph of Article 93(2) of the EC Treaty

Belgium

4.1.1995	Poultry and rabbit farming: Draft Royal Decree	OJ L 277, 21.11.1995
4.1.1995	Fund for the promotion of fruit and vegetables and poultry and rabbit farming	OJ L 277, 21.11.1995
4.1.1995	Compulsory contributions to promote the sale of poultry and rabbit products	OJ L 277, 21.11.1995

France

28.11.1995	Aid for French pig farmers in the form of a state guarantee
28.11.1995	Measures to reduce social charges, and compensation for the 1992 road blockade

Italy

4.4.1995	Sardinia: measures to promote agriculture (Regional Law No 17 OF 27.7.1992)	OJ L 218, 14.9.1995

1.5. Aid cases in which the Commission scrutinized an existing aid scheme pursuant to Article 93(1) of the EC Treaty

Italy

31.7.1995	Sicily: Article 1 of Regional Law No 13/88

1.6. Council decisions pursuant to Article 93(2) of the EC Treaty

Council Decisions of 22 June 1995 on the granting of exceptional aid to table wine producers in France

1.7. Judgments of the Community courts

Judgment of the Court of First Instance in Case T-435/93 *Association of Sorbitol Producers within the EC (ASPEC), Cerestar Holding BV, Roquette Frères SA, and Merck OHG* v *Commission* [1995] ECR II-1281 - application for annulment of Commission Decision 91/474/EEC of 16 August 1991 concerning aid granted by the Italian Government to Italgrani SpA for the setting-up of an agri-foodstuffs complex in the Mezzogiorno.

Judgment of the Court of First Instance in Case T-422/93 - *Seven firms in the starch sector* v *Commission* [1995] ECR II-1329 - application for annulment of Commission Decision 91/474/EEC of 16 August 1991 concerning aid granted by the Italian Government to Italgrani SpA for the setting-up of an agri-foodstuffs complex in the Mezzogiorno.

Judgment of the Court of First Instance in Case T-443/93 *Casillo Grani Snc* v *Commission* [1995] ECR II-1375 - application for annulment of Commission Decision 91/474/EEC of 16 August 1991 concerning aid granted by the Italian Government to Italgrani SpA for the setting-up of an agri-foodstuffs complex in the Mezzogiorno.

2. In the fisheries sector

2.1. Aid cases in which the Commission raised no objection, without initiating the assessment procedure (1995)

Austria			
N/445/D/95	09.10.95	Guidelines for the services sector	OJ C 6, 11.01.96, p. 6
Denmark			
N/526/95	16.05.95	Fisheries bank	OJ (being published)
Germany			
N/13/95	11.01.95	Aid for fisheries and aquaculture	OJ C 192, 26.07.95
N/37/95	11.01.95	Aid for processing and marketing fisheries products	OJ C 192, 26.07.95
N/472/95	16.05.95	Measures to assist adjustment in the fisheries sector	OJ C 290, 01.11.95
Greece			
N/34/95	18.01.95	Aid to the fisheries sector	OJ C 272, 18.10.95, p. 7
Spain			
N/86/95	27.01.95	Aid for the temporary laying-up of the fleet. Valencia.	OJ C 335, 13.12.95
N/236/95	07.03.95	Aid to training	OJ C 343, 21.12.95
N/245/95	08.03.95	Aid to fisheries and aquaculture in the Canaries	OJ C 192, 26.07.95
N/247/95	08.03.95	Aid to fisheries in the Canaries	OJ C 6, 11.01.96, p. 6
N334/b/95	29.03.95	Aid to the fishing industry	OJ C 192, 26.07.95
N/497/95	30.05.95	Aid to the scrapping of fishing vessels in Cantabria.	OJ C 343, 21.12.95
N/520/95	08.06.95	Structural aid in the fisheries sector. Andalusia	OJ C 276, 21.10.95

N/608/95	05.07.95	Aid to development and aquaculture	OJ C 343, 21.12.95
N/246/95	08.03.95	Modernization and conversion of fishing vessels. Canaries	OJ C 272, 18.10.95, p. 8
N/390/95	04.04.95	Measures to assist fishing	OJ C 272, 18.10.95, p. 9
France			
N/157/95	21.02.95	Aid to the scrapping of fishing vessels	OJ C 149, 16.05.95, p. 6
Netherlands			
N/535/94	08.09.94	Research fund for the wholesale fisheries industry	OJ C 6, 11.01.96, p. 6
Portugal			
N/438/95	10.05.95	Measures to assist the fisheries industry in the Azores	OJ C 272, 18.10.95, p. 10
NN/51/95	21.02.95	Programme for the development of maritime activities. Madeira	OJ C 192, 26.07.95
United Kingdom			
N/43/95	20.01.95	Loans for fishing vessels and aquaculture	OJ C 192, 26.07.95
N/44/95	20.01.95	Loans for the processing and aquaculture industry	OJ C 272, 18.10.95, p. 9

2.2. Aid cases in which the Commission initiated Article 93(2) proceedings or extended proceedings already initiated (1995)

Germany			
C/6/95	03.02.95	Aid to FA. Jadekost	OJ...
Italy			
C/10/95	14.02.95	Measures to assist the fisheries sector	OJ C 157, 23.06.95, p. 8

2.3. Aid cases in which the Commission terminated Article 93(2) proceedings

Italy

C/21/94	03.05.94	Abruzzi. Measures to assist the fisheries sector	OJ...
C/65/91	24.9.91	Aid for the temporary laying-up of fishing vessels. Italy (Sardinia)	OJ L 126, 9.6.95, p. 32

2.4. Commission decisions - trends

The following table gives an overview of the development of the number of aid schemes adopted in the fisheries and the aquaculture industry examined by the Commission and the decisions it has taken on their compatibility with the competition rules applicable to the fisheries sector. The figures correspond to data known at the time the decision was taken and do not necessarily correspond to the number of cases received or examined.

YEAR	TOTAL	COMMISSION DECISION			
		NO OBJECTION	INITIATION OF ARTICLE 93(2) PROCEEDINGS 2	TERMINATION OF PROCEEDINGS	NEGATIVE DECISION
1991	45	18	7	4	0
1992	33	28	10	9	-
1993	25	21	2	3	-
1994	54	16	2	1	-
1995	60	22	2	1	1

3. In the transport sector

3.1. Aid cases in which the Commission raised no objection

Denmark

01.02.1995	Development of a visual bridge-simulator for the training of ship crews (IP(95)90)	

Germany

10.05.1995	Privatization of Lufthansa A.G. (IP(95)456)	
26.07.1995	Measures to assist inland waterways (IP(95)859)	OJ C 343, 21.12.1995

France

12.07.1995	Aid for the voluntary cessation of activity	OJ C 312, 23.11.1995
18.10.1995	Road transport modernization plan (IP(95)1131)	OJ C 335, 13.12.1995
14.11.1995	Economic and social plan for inland waterways (IP(95)1193)	

Ireland		
20.12.1995	Aid to Aer Lingus (IP(95)1431)	OJ L 54, 25.02.1994
Netherlands		
26.07.1995	Telematics for the transport sector (IP(95)838)	OJ C 298, 11.11.1995
20.09.1995	Investment in equipment for combined transport	
20.09.1995	Measures to assist combined transport in the period 1995-96 (IP(95)1002)	
18.10.1995	Measures to assist transport (IP(95)1130)	
Portugal		
04.04.1995	Aid grant to the Portuguese airline TAP (IP(95)341)	OJ L 279, 28.10.1994
26.04.1995	Measures to aid road transport	OJ C 276, 21.10.1995
United Kingdom		
16.01.1995	Guarantees for lease of European night stock	OJ C 318, 29.11.1995
16.05.1995	Grant aid to Union Railways Ltd	OJ C 6, 11.01.1996
18.10.1995	Shipping: capital allowances balancing charges (IP(95)1132)	

3.2. Aid cases in which the Commission initiated Article 93(2) proceedings

Spain		
01.03.1995	Programme of aid to Iberia (IP(95)195)	OJ C 114, 06.05.1995
France		
31.10.1995	Un-notified aid in the form of a capital contribution to CGM (IP(95)1159, IP(95)1432)	
Italy		
04.10.1995	Tax credit for road hauliers (IP(95)1091)	OJ C 3, 06.01.1996
14.11.1995	Friuli Venezia-Giulia: Article 3 of draft Law No N 422/92 on transport	OJ C 2, 05.01.1996

3.3. Aid cases in which Article 93(2) proceedings were terminated

Spain		
07.06.1995	Basque Country: aid to	OJ C 321, 01.12.1995
IP(95)579	Ferries Golfo de Vizcaya S.A.	

V - International activities

A - New legislative provisions and notices adopted or proposed by the Commission

COM(95)157 final, Proposal for a Council and Commission Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Czech Republic of the other part, with regard to the adoption of the necessary rules for the implementation of Article 64 para 1(i) and (ii) and para 2 of the Europe Agreement, of 18.05.1995.

COM(95)156 final, Proposal for a Council and Commission Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Slovak Republic of the other part, with regard to the adoption of the necessary rules for the implementation of Article 64 para 1(i) and (ii) and para 2 of the Europe Agreement, of 18.05.1995.

COM(95)528 final, Proposal for a Council and Commission Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Bulgaria of the other part, with regard to the adoption of the necessary rules for the implementation of Article 64 para 1(i) and (ii) and para 2 of the Europe Agreement, of 22.11.1995.

VI - The application of competition rules in the Member States

A - Legislative and policy developments

The importance of competition policy within Member States has continued to grow in 1995. Denmark and the Netherlands have prepared draft legislation on competition along the lines of EC law, and discussion is going on in Germany and the United Kingdom. Greece has substantially improved the legal framework for competition policy at national level, and has clarified the competence of the Competition Committee to apply Articles 85(1) and 86. A similar development has taken place in Italy, where for the first time Article 14(6)of Regulation No 17 and similar provisions in other procedural regulations have been implemented. As regards the new Member States, Finland and Sweden had already harmonized their competition law with that of the Union before joining it. Austria had done so only indirectly, by implementing the EEA competition rules.

This chapter is based on the contributions supplied by the national authorities. Fuller details may be found in the national reports drawn up by the relevant authorities.

Austria

Application of the European competition rules in Austria

The EEA Competition Act,[55] which governs in particular the rights, obligations and powers of the Federal Minister for Economic Affairs as the competent national authority, was amended for the second time. Following the creation in 1994 of the preconditions for affording the necessary assistance in connection with investigations within the meaning of Article 14(6) of Regulation No 17[56] the formal adjustments made necessary by accession to the European Union have now been carried out and the Law has been renamed.[57]

Restrictive Trade Practices Act [58]

Before the 1995 revision of the Restrictive Trade Practices Act,[59] jurisdiction in restrictive practices cases was exercised by two special courts, namely the Restrictive Practices Court attached to the Vienna Higher Provincial Court at first instance, and the Superior Restrictive Practices Court attached to the Supreme Court of Appeal at second and final instance. Through the revision, the legislator was seeking, by conferring jurisdiction in such cases on the ordinary courts,[60] to remove the difficulties which used to arise in the past as a result of the way the courts were organized.

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55 Federal Act on the application of competition rules in the European Economic Area (EEA Competition Act), Federal Law Gazette 125/1993.

56 Federal Act amending the EEA Competition Act, Federal Law Gazette 627/1994.

57 Federal Act amending the EEA Competition Act, Federal Law Gazette 175/1995. New name: Federal Act on the application of competition rules in the European Union (EU Competition Act).

58 Original version: Federal Act of 19 October 1988 on restrictive trade practices and other restrictions of competition (1988 Restrictive Trade Practices Act), Federal Law Gazette 600/1988.

59 Federal Act amending the 1988 Restrictive Trade Practices Act, Federal Law Gazette 520/1995.

60 The Vienna Higher Provincial Court now acts as a restrictive practices court, and the Supreme Court of Appeal acts as a superior restrictive practices court.

Vertical distribution agreements

The 1993 revision of the Restrictive Trade Practices Act resulted in a separate set of legal arrangements for vertical distribution agreements. Since then, some 600 model contracts have been registered and examined from the point of view of their compatibility with Community competition law.

The Federal Minister for Justice issued, in agreement with the Federal Minister for Economic Affairs, an Order under the Restrictive Trade Practices Act incorporating the relevant Community legislation into the purely internal Austrian legal framework in so far as the presumption that there are no grounds for imposing a ban is justified in the case of agreements the content of which satisfies the requirements of the block exemption Regulations.[61]

Belgium

The Act of 5 August 1991 against restraint of competition, which entered into force on 1 April 1993, has provided Belgium, in the competition policy field, with a law largely based on the rules and principles enshrined in Community legislation. As regards mergers, operations must be notified in advance if two thresholds relating to turnover and market share are exceeded. Initially, these thresholds were a combined global turnover of BFR 1 billion and a combined market share of 20% of the relevant market. A major revision of the thresholds was effected in 1995 by the Royal Decree of 31 March 1995 increasing the thresholds laid down in Article 11(1) of the Act of 5 August 1991. The thresholds were, as far as the criteria of turnover and market share are concerned, raised to BFR 3 billion and 25% respectively.

Denmark

The Danish Law on competition, which entered into force on 1 January 1990, was amended in 1995, extending the right to appeal against decisions of the Competition Council on disclosure/secrecy to the Competition Appeals Board. It continues not to empower the Competition Council to apply Article 85(1) or 86 of the Treaty directly. The Competition Law Committee, which was established under the aegis of the Ministry of Trade and Industry, published Report No 1297 at the beginning of August 1995. The Committee was set up in 1993 with the brief of examining competition law in Denmark, in particular of ensuring that it meshes properly with the EC competition rules. The main thrust of the draft law incorporated in the report is that Danish competition law should be aligned on EC competition law and regard should be had for the structure of business in Denmark, i.e. there are a small number of big firms and a large number of small firms. The Committee has taken the view that, if the Commission is considering whether a case should be prohibited or exempted, the Danish authorities should refrain from dealing with that case except in wholly exceptional circumstances on the Danish market. The report is being circulated among ministries, organizations, etc.

Germany

The Act Prohibiting Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen - GWB) was not amended during the period under review (1995). However, in the 1995 Annual Economic Report the Federal Government announced its intention of amending the Act to bring it into line with

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61 Order of the Federal Minister for Justice of 28 February 1995 on the exemption of vertical distribution agreements, Federal Law Gazette 148/1995.

European competition law. With a view to preparing the ground for the sixth amendment to the GWB, the Federal Ministry of Economic Affairs has set up a Working Group, on which representatives of the Federal Cartel Office will sit.

Greece

Greek legislation on competition (Law No 703/77 on the control of monopolies and oligopolies and the protection of free competition) was supplemented in 1995 by Law No 2296/95, which entered into force on 24 February 1995. The amendments made by Law No 2296/95 supplement and improve existing legislation on the protection of competition and create the institutional conditions for rapid and effective application of such legislation, through the following measures in particular:

- merger control is introduced for all sectors of the economy, provided that the conditions laid down by the Law are met (minimum turnover of ECU 50 million or minimum market share of 25%);
- negative clearance is re-established, so as to provide legal certainty for firms;
- the amount of fines for infringing the provisions of the Law has been adjusted and periodic penalty payments have been introduced so as to reinforce the dissuasive effect of these provisions while observing the principle of proportionality;
- the Competition Commission has been given the status of an independent collegiate administrative authority with its own administrative infrastructure and organizational autonomy; parallel to this, a secretariat has been set up to exercise the powers and functions which, until the adoption of the Law, had been exercised by the Market Surveys and Competition Directorate;
- the powers of the Competition Commission have been extended: it now has the exclusive power to take interim measures, the power to impose fines and periodic penalty payments where the Law is infringed and decisions not complied with, and wide-ranging consultative powers.

As part of these changes, the rules of procedure of the Competition Commission were adopted and the forms for the notification of mergers drawn up. The presidential decree on the organization of the secretariat has not yet been issued, so that the rules governing the secretariat have not yet been established. The changes recently introduced have meant a substantial legislative advance in the powers of the Greek competition authority to apply Articles 85(1) and 86. More specifically, Article 4(12) of Law No 2296/96 have spelt out such powers.

Spain

A draft Royal Decree is under scrutiny which amends the Royal Decree at present in force on the application of Articles 85 and 86 of the EC Treaty to Spain. The new Royal Decree will provide the legal basis for the cooperation which, under the terms of Community instruments published after the existing Royal Decree, is to take place between the European Commission and the Spanish authorities responsible for competition.

Finland

Finnish competition law

EC competition rules are directly applicable by the competent Finnish authorities, as the Supreme Administrative Court has acknowledged in its judgement of 30 November 1995. Finnish national competition legislation does not, however, contain a provision which would directly provide for the

power of the Finnish competition authorities to apply Articles 85(1) and 86 of the Treaty of Rome. The Acts on Competition Restrictions (no 480/92) and on the Competition Council (no 481/92) entered into force on 1 September 1992. The current Act on Competition Restrictions largely corresponds with the EC competition rules. The Act is mainly based on the prohibition principle, according to which cartels and the abuse of a dominant market position are forbidden. Actual merger control rules do not exist.

The Ministry of Trade and Industry established a working group on 18 December 1995, whose task it is to investigate and propose possible amendments to the Act on Competition Restrictions by 31 December 1996. Particularly the following issues are under consideration:

- the strengthening of competition legislation to prevent monopolisation;
- possible elimination of cases of minor importance from the tasks of the Office of Free Competition;
- the possibility of entrepreneurs of receiving a negative clearance from the Office of Free Competition;
- possible inclusion in the competition legislation of a provision on the direct application of Articles 85(1) and 86 of the EEC Treaty.

Implementation of the Commission's powers of investigation

Article 20(1) and (2) of the Act on Competition Restrictions have been amended as of 1 July 1995 to the effect that the Office of Free Competition now has an obligation to perform investigations if so requested by the European Commission. The Office of Free Competition and the Provincial State Offices also have an obligation to assist Commission officials in the execution of such investigations.

France

Law No 95-127 of 8 February 1995 on public procurement and the delegation of public services lays down new rules designed to introduce greater transparency into such contracts. It also supplements Article 53 of Order No 86-1243 of 1 December 1986 on freedom of prices and competition. That article provides that the rules laid down in the Order "apply to all production, distribution and service activities, including those performed by public persons". It is now supplemented by the phrase "notably within the framework of agreements involving the delegation of public services". This addition confirms that the competition rules apply to the conditions governing the conclusion of such agreements, whether such rules are enforced by the Competition Council within the framework of its monitoring of the conduct of undertakings or by the administrative courts as part of their monitoring of the administrative acts transferring the activities.

Ireland

The Competition Amendment Bill 1994 is still under discussion by a Dail Committee. The Bill would give the Authority enforcement powers, both civil (by way of application to Court for injunction) and criminal (with penalties on conviction of imprisonment, or fines of up to 10% of turnover). The civil and criminal offences are both defined in a form of words almost identical to Articles 85 and 86 of the Treaty. The 1991 domestic legislation had already provided for enforcement by private action only. No legislative developments affecting the jurisdiction or practical competence of the national Authority to apply Articles 85(1) and 86 have taken place.

Italy

Adoption by the Italian Parliament of the measures required for the implementation of the Community competition rules

The Italian Parliament adopted the "Community Law" for 1994, which provides for a number of measures intended to meet the obligations stemming from membership of the European Union. Some of the measures concern cooperation with the Commission in competition matters. The fifth paragraph of Article 54 of the Law gives the Competition Authority ("Autorità Garante della Concorrenza e del Mercato") the power to implement Articles 85(1) and 86 of the EC Treaty by using the powers available to it in proceedings implementing the Italian Law on competition. The first three paragraphs of Article 54 implement the provisions of the various Community regulations which require the Member States to adopt regulations ensuring that Commission officials receive the necessary assistance to enable them to carry out their investigative tasks.

Competition and regulation in the field of public services

Law No 481 of 14 November 1995 on measures concerning competition and regulation in the field of public services sets up public services regulators for gas and electricity and telecommunications. The Autoritá Garante della Concorrenza e del Mercato continues to oversee the application of the rules of competition in the sectors covered by the new regulators.

Netherlands

In the spring of 1995, an entirely new competition Law was drafted. In June it was presented by the Cabinet to the Council of State.

The purpose of the draft is to bring Dutch competition law into line with European law. The proposed Law prohibits agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition on the Dutch market as a whole or on a part thereof. Prohibited agreements are to be legally null and void. Provision is also being made for granting either individual or block exemption from the prohibition on the basis of the same criteria as are set out in Article 85(3) of the EC Treaty. There are also provisions prohibiting firms from abusing a dominant position. Finally, preventive control is to be introduced for concentrations exceeding a certain level of turnover.

Enforcement of the new Law will be entrusted to a professional body, whose duties will be laid down by law, but which, from a hierarchical point of view, will be answerable to the Minister for Economic Affairs.

Sweden

On 1 July 1993 Law No 20:1993, the legislation currently regulating competition, entered into force. The Law is based primarily on Articles 85 and 86 of the EC Treaty and on the rules regulating acquisitions and mergers applied within the EU. EC practice provides guidance for the application of the Law.

On 9 November 1995 the government decided to set up a committee to examine and evaluate the application of the new Law on competition (indeed when the Law was enacted it had been indicated

that the committee would be established). The committee, which should complete its report at the end of 1996, is to consider the pros and cons of applying legislation at national level having largely the same substantive content as the EC competition rules. In 1993 the government also granted nine general national block exemptions, eight of which corresponded to EC block exemptions. There was also a block exemption for business chains. The national block exemptions to some extent correspond to special features of the Swedish market; the limits applicable to turnover in EC exemptions have been applied at a lower level and limits on market shares have been introduced in certain block exemptions.

Time-limits have been applied to block exemptions, partly so that they can be reviewed on the expiry of the corresponding block exemptions in the EC. Thus the government decided in November 1995 to extend the block exemption for patent-licensing agreements pending the introduction of the EC's block exemption for technology-transfer agreements. It also decided to extend the block exemption for agreements on the sale and servicing of motor vehicles. Likewise in autumn 1995, the government decided that Swedish block exemptions should be examined in the light of the experiences gained since 1993, in particular, developments in block exemptions in relation to EC law and their appropriateness.

B - Application of the Community competition rules by the national authorities

Some of the Member States' national competition authorities still lack the competence to apply Articles 85(1) and 86 of the Treaty (namely Denmark, Ireland, Finland, the Netherlands, Austria, Sweden and the United Kingdom). In those countries where national law provides for the possibility that an administrative body applies EC competition rules, there is an increasing trend to apply them at national level. The main developments can be summarized as follows.

Belgium

During the first three quarters of 1995 the Competition Council took no decisions under Articles 85(1) and 86 of the EC Treaty. The President of the Competition Council did, however, take an important decision in 1995 involving the prescribing of interim measures. The National Council of Architects was prohibited from continuing to apply a provision on the fixing of minimum fees contained in the Rules on the Professional Duties of Architects, together with ethical principle No 2. The Competition Council referred in this decision to the Decision of the European Commission of 30 January 1995 in COAPI[62]. The decision of the Competition Council has been appealed against.

Denmark

The work on the Øresund fixed link has led the Competition Council to issue decisions on agreements involving two consortia offering to provide supplies of cement and ready-mixed concrete. The agreements were also notified to the Swedish Competition Authority and the Commission and the three agencies subsequently cooperated on the cases.

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62 OJ L 122, 2.6.95, p. 37.

The first agreement was concluded between Aalborg Portland A/S and the Swedish firm, Cementa AB, setting up a joint venture, Øresundscement I/S, to provide supplies of grey cement for the Øresund link. The Council asked for the agreement to be notified but took the view that there was no reason to intervene. On the other hand, the Swedish Competition Authority prohibited the agreement, while the Commission granted negative clearance[63].

The second agreement was concluded between two Danish firms (Unicon Beton I/S and 4K-beton A/S) and two Swedish firms (Betongindustri AB and AB Sydsten), which are producers of ready-mixed concrete. Under the agreement, a joint venture, Øresundsbeton I/S, was set up so that the four firms could submit joint tenders for supplies for the Øresund link. The Competition Council decided that the agreement must be terminated since it applied to all known producers of ready-mixed concrete who might envisage submitting tenders for supplies for the Øresund link. The Competition Council's decision that the agreement should be terminated was set aside by the Competition Appeals Board, which attached weight to the circumstance that, in a major bridge project like the Øresund link, it was most unusual for the main contractor to organize his own cement supplies. The Board accepted the argument of the parties to the agreement that it was crucial to establish a competitive alternative to the production which the three main contractors might wish to establish for themselves. It also found that there was continued competition between, on the one hand, each of the main contractors and, on the other, the parties to the agreement. In this case too the Commission granted negative clearance.

Germany

During the period under review the Federal Cartel Office applied the Community competition rules in three cases:

(a) It prohibited implementation of the articles of association of carpartner Autovermietung GmbH (cp) and of the cooperation agreements concluded between cp and 42 motor vehicle liability insurers on the ground that they infringed the prohibition on restrictive practices laid down in §1 of the GWB and Article 85(1) of the EC Treaty. Cp is a joint venture between several German insurers, two of which are owned by a French insurer. Cp is engaged in the business of procuring hire cars in the accident indemnity field and has concluded skeleton agreements with the 42 motor vehicle liability insurers concerning the "conduct of procedures for the settlement of car-hire costs in connection with motor vehicle liability claims". In the Office's opinion cp has been set up by its shareholders and the other motor vehicle liability insurers in order to depress, by means of collusive demand-side behaviour, prices in the accident indemnity field to a level acceptable to the insurers. The motor vehicle liability insurers concerned have a total market share of over 50%, cp's shareholders alone having a market share of almost 20%. The Office therefore assumes that the cp system is likely to affect inter-state trade in insurance services. All cooperation agreements between cp and motor vehicle liability insurers have since been terminated, and the proceedings are now directed solely against cp and its six shareholders. The latter have lodged an appeal against the prohibition order before the Berlin Higher Regional Court.

(b) It again prohibited under Article 85(1) the demarcation agreement between Ruhrgas AG and Thyssen GmbH. The agreement provides for a delimitation of each party's supply zone and joint supply of four large municipal power plants (Duisburg, Düsseldorf, Cologne and Oberhausen).

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63 See below: application of the Community competition rules in Sweden.

In the Office's opinion, this excludes competition between the two leading grid-gas companies. The restriction of competition affects inter-state trade in gas in the European Community inasmuch as both companies import gas from other European countries. The Office had previously suspended a first prohibition order adopted in 1994. The suspension was intended simply to afford the energy watchdogs of all 12 Länder whose territory is covered by the demarcation agreement an opportunity to comment on the proceedings before the Office in this case. The companies have lodged an appeal against the fresh prohibition order before the Berlin Higher Regional Court.

(c) It issued a warning in respect of the concession agreement between RWE Energie AG and the municipality of Nordhorn near the German/Dutch border. In the Office's opinion, the obligation imposed under the agreement on the municipality of Nordhorn not to grant any other company the right to start up a public electricity supply business in the area infringes Article 85(1) of the EC Treaty. Foreign suppliers from other EC Member States - in particular the Netherlands owing to its proximity - are thereby prevented from supplying potential customers in Nordhorn. The parties thereupon notified the agreement to the European Commission with a view to obtaining negative clearance or exemption under Article 85(3). The Commission has since informed the Office that it has no objections to a resumption of the proceedings.

The prohibition imposed by the Federal Cartel Office under both German merger control law and Article 85(1) of the EC Treaty on the formation of a joint venture to be owned equally by ATG Automobiltransportlogistikgesellschaft mbH, Menke Holding GmbH & Co. KG, and Silcock and Colling Ltd became final following withdrawal by the companies of their appeal.

The Berlin Higher Regional Court upheld the Office's prohibition order under Article 85(1) of the EC Treaty in respect of the exclusive dealing agreements between, on the one hand, Touristik Union International GmbH & Co. KG and NUR Touristik GmbH and, on the other, 15 Spanish hoteliers for the purchase of beds for the 1994/95 winter season and all subsequent seasons. Leave was given to appeal on a point of law to the Federal High Court.

Spain

The TDC (Tribunal de Defensa de la Competencia - Competition Tribunal) adopted a Resolution on 16 January 1995 (File R98/94. Insurance policies for haulage firms following from a complaint to the SDC (Servicio de Defensa de la Competencia - Competition Service) by the Consejo General de Colegios Oficiales de Gestores Administrativos (General Managerial Council) alleging that a number of insurance companies were each charging the same bond-insurance premium.

In this resolution the TDC studied the market position of insurance companies in order to decide whether the agreement between the insurers was likely to be caught by Article 1(1) of the Competition Act (LDC; Law No. 16/1989 of 17 July 1989) or by Articles 85 and 86 of the EC Treaty and, where appropriate, whether an individual authorization or an exemption in accordance with Article 85(3) of the Treaty could be granted.

In its Decision of 1 February 1995 (File 350/94. Telephones at airports) the Competition Tribunal examined, following a complaint by 3C Communications España SA against Telefónica de España SA. Telefónica had refused to provide the complainant with telephone lines for the supply of telephone services which users would pay for by credit or debit card. The TDC found that Telefónica had abused its dominant position on the Spanish telecommunications market by trying to restrict the activities of

a smaller competitor. Such conduct infringes Article 6(2) of the LDC and Article 86 of the EC Treaty. The decision imposed a PTA 124 million fine on Telefónica de España.

France

The Competition Council referred to Community law in a case involving the marketing of extinguishers. APSAD (Assemblée plénière des sociétés d'assurances dommages), which comprises most of the French and foreign insurance companies, deals with problems relating to prevention on behalf of its members. For this purpose, it has been approved by the Ministry of Industry as a body issuing certificates for fire and theft protection systems, for which no standards have been laid down. It issues certificates for such products on the basis of specifications and criteria which it lays down itself. It also lays down rules governing the installation and maintenance of extinguishers and the qualifications of persons installing them. For this purpose, it has introduced a series of requirements, known as "rule R4", governing the installation of movable extinguishers, together with a "regulation on the qualifications of persons installing movable extinguishers".

The Competition Council found that the conditions imposed under that regulation included the requirement that firms must have their registered office in France. The Competition Council took the view that this clause infringed Article 85(1) of the Treaty; it rejected APSAD's argument that the requirement, which had been removed from the regulation currently in force, could not have had any anti-competitive effect in view of the specific safety requirements that applied in each Member State, on the grounds that there was no proof that foreign companies could not have adjusted to French market conditions.

Ireland

The Authority, in response to a request from the Minister for Enterprise and Employment under section 11 of the Competition Act, advised the Minister that UK newspapers were not engaged in predatory pricing in selling newspapers in Ireland. The Authority rejected the notification to it under domestic law of a joint purchasing agreement for Polish coal, on the basis that the Commission had made a decision under Article 65 of the European Coal and Steel Treaty authorising the agreement.

Netherlands

In April 1995, on behalf of the Dutch Government, the Minister for Economic Affairs asked the European Commission to examine the setting-up of HMG (Holland Media Group) in the light of the Community's merger Regulation. By decision of 20 September 1995 (RTL/Veronica/Endemol case No IV/MTF/553) the European Commission declared the concentration incompatible with the common market and requested that the parties concerned produce, within three months, proposals for eliminating the negative effect of the concentration on the market in television advertising and in Dutch-language television programme production. By way of this request the Netherlands has, for the first time, made use of Article 22(3) of the Merger Regulation.

A number of applications for exemption were rejected on the basis of the decision - put into effect in 1993 - prohibiting horizontal price agreements and of the decision - put into effect in 1994 - on rules covering market-sharing. In all, four of those cases concerned agreements which were also

covered by Community competition law and the decisions concerned were therefore made after consulting the European Commission.

Portugal

The Competition Council has not directly applied EC competition rules in 1995. In two cases, however, (Iglo (impulse ice-cream) and Lactogal (concentration in the milk sector)), the legality of the conduct in question was scrutinized in the light of the relevant provisions of Regulations Nos 1983/83 and 4064/89 respectively.

Sweden

One example of cases of Community relevance involves a joint venture and another involves an agreement on credit cards. The first case concerned an application for negative clearance submitted to both the Authority and the Commission by the biggest cement-producers in Sweden and Denmark, who proposed to form a joint venture for the supply of cement for the construction of the Øresund link. The Commission issued a comfort letter indicating that a more detailed examination was not justified in view of its insignificant effect on trade between Member States. The Swedish Competition Authority found that the agreement was contrary to the Swedish Law on competition, and an appeal was lodged against that decision before the District Court of Stockholm. The Danish competition authorities, which also examined the case, did not institute any further proceedings[64].

The second case involved an agreement between banks in Sweden and Europe concerning the issue of credit cards related to the Visa card. The Authority found that the agreement contained a number of restrictions on competition, including a "non-competition clause" whereby the banks could prohibit retailers from deducting a charge when their customers used a card.

United Kingdom

Although UK legislation does not allow Articles 85(1) and 86 to be applied by the national competition authority, there are some developments in the UK competition field that are of interest to the Community. In particular, there have been two decisions by the Restrictive Practices Court this year which relate to proceedings that are before the Court and at the same time being considered by the Commission under Article 85, and an enquiry by the OFT on beer prices.

British Sugar

The first concerned British Sugar's application for a stay of proceedings before the Restrictive Practices Court until European Commission proceedings arising from the same matters had been concluded. The Court found that the tasks of the European Commission and the UK's Restrictive Practices Court under the Restrictive Trade Practices Act are very different. The application was refused.

Net Book Agreement

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64 See above: application of the Community competition rules in Denmark.

The second was in connection with the Net Book Agreement. The Court had been asked for leave to apply for a review of the Court's decision to uphold the Net Book Agreement in 1962, on the grounds that there had been material changes in publishing since 1962. The Publishers Association applied for a stay of proceedings, pending the decision of the European Commission on an exemption under Article 85(3). The application for a stay of proceedings was refused. The Court found that the question of whether there had been a material change in relevant circumstances was posed by national law, not that of the European Community. It was therefore relevant to the continuing validity of the decision reached by the Court in 1962, and the national court should be left to decide how to control its own proceedings. The Court subsequently granted the application for leave to review the 1962 decision on 6 December 1995.

Beer

During the year, the Office of Fair Trading undertook an enquiry into the wholesale pricing policy of brewers. The enquiry followed European Commission concern about price differentials between the tied and free trades that arose during consideration of an application for exemption under Article 85(3). The OFT concluded that tied tenants, in general, enjoyed various benefits that offset the higher prices they paid for their beer and that the matter did not warrant reference to the Monopolies and Mergers Commission.

C - Application of the Community competition rules by courts in the Member States

Articles 85(1) and 86 of the EC Treaty have continued to be applied by ordinary courts in Member States, although most of them (including new Member States) have reported no cases. The situation in the six countries where Community competition rules have been applied may be summarized as follows.

Belgium

In the course of 1995, a number of judgments in which reference was made to Articles 85(1) and 86 of the EC Treaty were communicated to the Competition Council. The judgments concerned selective distribution in the perfume sector, parallel sales and the selective distribution system in the perfume sector, abuse of a dominant position in the cable distribution sector, abuse of a dominant position in the voice telephony services sector and formation of a cartel in the insurance industry in relation to the setting of rates and conditions for policies in the field of healthcare and hospitalization insurance.

Germany

Regional Courts (Landgerichte) applied EC competition rules several times, mainly to assess whether Article 85 or a specific block exemption regulation applied in the cases they considered. In other cases, the following judgments were rendered:

Frankfurt am Main Regional Court, judgment of 18 January 1995, ref.: 3/8 O 142/91, (P-203/95)
No claim for damages arises out of an exclusive dealing agreement with an export ban which infringes Article 85 EC.
Stuttgart Higher Regional Court, judgment of 17 March 1995, ref.: 2 U 130/94, (P-100/95)

Partial nullity of a distribution agreement on the ground of infringement of §15 of the GWB (price disparity clause) and Article 85(1) EC (exclusive dealing clause).
Stuttgart Higher Regional Court, judgment of 19 May 1995, ref.: 2 U (Kart) 28/95, (P-035/95)
No infringement of competition law by carpartner Autovermietung GmbH, in particular because the necessary restriction of competition between the shareholders under §1 of the GWB has not been proven and because there has been no appreciable effect on trade between Member States as required by Article 85 EC (also: §§25(2) and 26(4) of the GWB).

France

More than 30 decisions were delivered by the Supreme Courts and the Courts of Appeal, the most significant being the following:

(1) Paris Court of Appeal, First Chamber, 27 January 1995, CMS Dental and Brasseler Gmbh.

In this case, the Court of Appeal held that "the applicants cannot seriously maintain that intra-Community trade is not affected by the refusal of one French company to sell to another French company, since the refusal relates to products manufactured in Germany by Brasseler, which holds a dominant position in a substantial part of the Community, and applies to mail order companies holding 15% of the French market in diamond-tipped rotary instruments".

(2) Paris Court of Appeal, First Chamber, 3 February 1995, Asia Motor France and Others.

The companies excluded from the quotas on imports of Japanese vehicles, including Asia Motor, lodged an appeal against the decision of the Competition Council of 18 January 1994, on the grounds that it refused to recognize the existence of restrictive agreements between the importers. They objected in particular to the fact that, on the basis of the provisions of Article 9(3) of Regulation No 17, the Competition Council had refused to deal with the facts relating to the import quotas, confining itself to examining only the practices involving exclusion from shows, and they requested in the alternative a stay of judgment pending a final decision by the Court of First Instance and the Court of Justice of the European Communities in the case. The Court of Appeal upheld the Competition Council's decision and pointed out that the proceedings were not closed, since, following the BEUC judgment of 18 May 1994[65], the Commission's decision to reject the complaint had been annulled. The fact that the Commission had not yet sent a statement of objections was not relevant in this regard.

(3) Court of Cassation, Commercial Chamber, 14 February 1995, Labinal v Paris Court of Appeal.

The Court of Cassation held in its judgment that "although the granting of benefits, premiums or rebates linked to the sale of a specific product does not necessarily constitute an unlawful practice, this is not the case where such benefits, as noted in the Court of Appeal's judgment, are particularly divergent and substantial and emanate from a company which dominates the whole of a very narrow market, and where such domination does not allow competing companies to respond to such practices by granting the same benefits; in view of these findings, the Court of Appeal, which provided grounds for its decision, was entitled to decide that Labinal had committed an abuse of a dominant position within the meaning of Article 86 of the Treaty of Rome".

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65 Case T-37/92, [1992]ECR II-285.

Ireland

In O'Neill v. Minister for Agriculture, a veterinary surgeon was unsuccessful in a challenge, under Article 90 of the Treaty, to the licensing system of the Minister of Agriculture for artificial insemination services for cattle. The veterinary's case, similar to the La Crespelle ECJ case[66], was that the Minister by creating geographical monopoly areas, in which only one licensed breeding Society could operate, created a dominant position, which the societies could not but abuse. It was argued that the service offered by the licensed societies was inadequate for customers' requirements. The case is under appeal by the unsuccessful plaintiff.

Italy

In only one judgment, delivered by the Court of Appeal, First Section, on 28 July 1995, was there a reference by a national judge to the Community provisions on competition. The said Court declared that Commission Regulation (EEC) No 123/85 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements applied solely to agreements between suppliers and distributors and not to agreements between two distributors.

Netherlands

In its judgment of 22 December 1995, the Supreme Court (Hoge Raad) annulled the judgment of the s'Hertogenbosch Court and referred the case to The Hague. The s' Hertogenbosch Court held that the "book cartel" (boekenkartel) did not qualify for the "provisional validity" which applied to duly notified agreements predating Regulation No 17. The Court took this view because the "book cartel" had in the meantime undergone a number of far-reaching amendments. This view was not disputed during the appeal proceedings and the Supreme Court stated that it remained valid after referral. Consequently, the s' Hertogenbosch Court had to judge whether Article 85(1) was applicable on this point. Since the Court's arguments did not show how it had reached this finding, the Supreme Court concluded that the s' Hertogenbosch Court had failed in its duty to provide grounds of judgment, or had interpreted the law erroneously. The Supreme Court stated that, in this case, which was appearing before a national court, serious consideration shall be given to approaching the European Commission direct before putting questions for a preliminary ruling to the European Court of Justice.

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66 Case C-323/93, [1994] ECR I-5077.

VII - Statistics

A - Articles 85 and 86

1. Activities in 1995

1.1. New cases opened during 1995

Type	number	%
Notifications	368	65
Complaints	145	26
Ex officio[67]	46	8
Total	559	

1.2. Cases closed during the year 1995

By formal decisions		By informal procedure	
Prohibition 85(1)	5	Comfort letter 85(1)	82
Prohibition 86		Comfort letter 85(3)	89
Negative clearance 85(1) or 86	1	Rejection of complaint (Art. 6 letter or pre-Art. 6 letter)[68]	29
Exemption 85(3)	3	Administrative closure of the file[69]	212
Rejection of complaint	5	Discomfort letter	7
Total[70]	14	Total	419

67 An ex-officio case is one opened at the Commission's own initiative.

68 Article 6 of Commission Regulation No 99/63 of 25 July 1963.

69 Cases closed because the agreements were no longer in force, because the impact was too slight to warrant further consideration, because complaints had become moot or had been withdrawn or because investigations had not revealed any anti-competitive practice.

70 The total number of cases closed by formal decision does not correspond with the total number of formal decisions taken by the Commission. The procedural decisions (such as decisions pursuant to Articles 11 and 14 of Regulation No 17) and interim measures are not included, which several cases may be closed by one and the same decision.

2. Eight-year overview

2.1. Evolution of stock of cases

Cases open at the end of the calendar year								
	88	89	90	91	92	93	94	95
Notifications	2909	2669	2145	1732	1064	754	604	709
Complaints	357	359	345	328	287	306	332	351
Ex officio	185	211	244	227	211	158	116	117
Total	3451	3239	2734	2287	1562	1218	1052	1178

2.2. Evolution of input

New cases registered during the year								
	88	89	90	91	92	93	94	95
Notifications	376	206	201	282	246	266	236	368
Complaints	83	93	97	83	110	111	140	145
Ex officio	44	67	75	23	43	27	16	46
Total	503	366	373	388	399	404	392	559

2.3. Evolution of output

Cases closed during the year								
	88	89	90	91	92	93	94	95
Formal decisions	25	11	13	21	34	14	33	14
Informal procedures	455	567	864	814	1090	734	525	419
Total	480	578	877	835	1124	748	558	433

3. Other statistics

3.1. Procedural decisions

In 1995, decisions ordering inspections were adopted in ten cases. In total 91 inspections were carried out, of which 87 on the basis of Article 14(3) and 4 on the basis of Article 14(2) of Regulation No 17.

On 6 September the Commission adopted a decision under Article 11 of Regulation No 17 formally requesting information from the Belgian air traffic authority, the Régie des Voies Aériennes/Regie der Luchtwegen, some of whose activities are of a commercial character. The authority has three times refused to reply to requests for information made by the Commission, which is investigating a complaint lodged against it by the Board of Airlines Representatives in Belgium.

3.2. Structural cooperative joint ventures

In 1992 the Commission announced that it intended henceforth to implement an administrative deadline for dealing with joint venture cases under Article 85(1), in so far as the operation in question resulted in structural change to the companies involved. It stated that it would endeavour to send to companies submitting such notifications either a comfort letter, or a warning letter, within two months of receiving a complete notification. Although these deadlines are not legally binding on the Commission, it was considered important for its departments to give companies undertaking important investments in such projects a rapid response regarding their compatibility with the competition rules.

Number of cases notified	15
Number of cases that were successfully dealt with within the two-month period by comfort letter	2
Number of cases that were successfully dealt with within the two-month period by warning letter	5
Number of such cases in which the two-month deadline was not applied	8[71]

[71] The two-month deadline was not applied for the following reasons: accelerated procedure not applicable (3); notification not complete (2); administrataive delay (2); suspension of procedure (1).

3.3. Cases closed by comfort letter in 1995

Case number	Title	Date of closure	Publication[72]	Type of comfort letter[73]
35035	HAMECH + CROWN	3 Jan 95		-2
35197	FOUR D RUBBER+MEDISPORT INTERNATIONAL	4 Jan 95		-3
34943	FLOGAS	5 Jan 95		-3
35190	LOEWE BINATONE	12 Jan 95		-3
34440	UPJOHN + SOLVAY + 3	16 Jan 95		-1
34954	MONSANTO+KUREHA+SYNEXUS	16 Jan 95		-1
35004	TRITECH + 2	16 Jan 95		-1
35115	FRANCE FONDANTS+3	16 Jan 95		-2
34861	UNITED AIRBAG SYSTEMS + 2	17 Jan 95		-1
34855	ETS	19 Jan 95		-1
34491	COSTAIN	24 Jan 95		-1
33828	HACHETTE+OXFORD UNIVERSITY	24 Jan 95		-2
35287	SIDMAR+RHEINMETALL+2	25 Jan 95		-1
35038	JETHONE	27 Jan 95		-2
34802	CHARNWOOD + PIZZA HUT	1 Feb 95		-1
35226	TI + SAMSUNG	1 Feb 95	JO C 330, 26.11.94	-1
35188	TREFILARBED BISSEN+GRIPPLE+FACEY	2 Feb 95		-2
35210	NORTHERN ELECTRIC+NESTE PRODUCTION+NORTHGAS+SOV.	7 Feb 95		-1
35056	CB+FRANCE TELECOM	9 Feb 95		-1
35122	MONSANTO+BAYER	9 Feb 95		-1
35154	EUPC	10 Feb 95		-1
34170	FRIGA-BOHN+HEATCRAFT	10 Feb 95		-2
34630	BWEL + 5	13 Feb 95		-2
34974	SYNON	16 Feb 95		-2
35244	VERBOND VAN VERZEKERAARS	21 Feb 95		-1
34005	BEIERSDORF+HERLITZ	21 Feb 95		-2
35074	SVENSKA+MONDI+9	28 Feb 95		-2
35303	RENAULT+MATRA	3 Mar 95		-1
34693	UNIPART + ROVER (EX CI 213)	3 Mar 95		-2
35291	SMMT	3 Mar 95		-2
34793	ARC	7 Mar 95		-1

[72] Reference to Notice in Official Journal ("Carlsberg Notice" - see XXIIIrd Report on Competition Policy, point 196 - and/or publication pursuant to Article 19 (3) of Regulation No 17/62)

[73] 1 Negative clearance 85 (1) or 86; 2 Exemption 85 (3); 3 Conformity with group exemption

31412	GARANTIEFONDS-REISGELDEN	9 Mar 95		-2
32680	IATA	10 Mar 95		-3
33611	NATIONAL RID (SCOTTISH INTERCONNECTOR)	13 Mar 95		-1
35220	COMITAL + SCHUR	13 Mar 95		-2
34885	PEEK + COMBITECH	16 Mar 95		-3
35157	MAMMOET STOOF+ECONOFREIGHT+SARENS+VAN SEUMEREN	20 Mar 95		-1
35228	CARLSBERG + INTERBREW	28 Mar 95		-2
35229	TUBORG + INTERBREW	28 Mar 95		-2
33024	AIR TRANSPORT ASSOCIATION	29 Mar 95		-3
34355	SNAT+SEALINK	30 Mar 95	JO C 82, 19.3.94	-2
32385	SEALINK + SNCF	30 Mar 95		-2
35345	DKV+BUNDESVERBANDE+14	31 Mar 95		-1
35310	WARDLE+ ROVER	1 Apr 95		-2
34960	MERCURY PERSONAL	4 Apr 95		-1
35206	SIEMENS + CASCADE	4 Apr 95		-2
35390	FETTINDUSTRIE+VEGETABILE+2	5 Apr 95		-1
35343	ROHM+CIBA-GEIGY+1	5 Apr 95		-2
35091	BRITISH COAL+SCOTTISH POWER	6 Apr 95	JO C 223, 11.8.94	-1
35092	BRITISH COAL+SCOTTISH POWER+SCOTTISH HYDRO	6 Apr 95	JO C 223, 11.8.94	-1
35138	EXXON+HOECHST	6 Apr 95		-1
35166	PHILIPS INT.+BAYERISCHE RUNDFUNKWERBUNG+2	10 Apr 95		-3
33329	CHOSEN HERITAGE+SIMPLICITY FUNERALS	11 Apr 95		-1
33970	KANZAN+4	11 Apr 95		-1
35462	ABB+NOKIA+1 (EX EFTA 66)	12 Apr 95		-3
34328	AEROSPATIALE + ALENIA	17 Apr 95		-2
34329	AEROSPATIALE + ALENIA +2	17 Apr 95		-2
34417	SWISSAIR+AUSTRIAN AIRLINES	19 Apr 95		-1
35384	THOMAS COOK+RYDER	19 Apr 95		-1
35289	LONDON BRICK+BUTTERLEY+2	24 Apr 95		-3
34172	BOSCH	25 Apr 95		-2
33961	REUTERS+EFFIX	26 Apr 95		-1
34614	REUTERS+BIGT+EFFIX	26 Apr 95		-2
35349	DAF+VIALLE	3 May 95		-2
35430	IBM + HAVANT	10 May 95		-3
35299	DE SPAARBELEGGER	12 May 95		-1
35454	CARADON +SCHNEIDER+2	12 May 95		-2
35411	LOGICA+BIWATER	15 May 95		-1

35312	HORSERACE+BASS LEISURE+1	17 May 95		-2
34970	DANAEG	18 May 95		-1
34416	MACCORMAC+PENATE+1	18 May 95		-2
35198	CARLSBERG+CONAGRA EUROPE+DANISH MALTING GROUP	19 May 95		-1
35292	RABOBANK+ROBECO	22 May 95		-1
35352	FINANCIAL TIMES+GOLDMAN+3	23 May 95		-1
35360	BASF GE SCHARZHEIDE	24 May 95	JO C 23, 28.1.95	-2
35205	LUPACK + STORK	29 May 95		-1
35254	EXALOID - SUD-CHEMIE + 2	29 May 95		-1
35440	HIMSA+4	30 May 95		-1
35321	UNION CARBIDE+ATOCHEM+1	30 May 95	JO C 377, 31.12.94	-2
34804	M D FOODS + FDB	31 May 95		-1
34956	DEGREMONT + RASCHKA	1 Jun 95		-2
35373	RAM+ERICSSON	7 Jun 95		-2
35469	SYLVANIA+OSRAM	8 Jun 95		-2
35030	GPTCSL	12 Jun 95		-1
35186	GROLSCH + DBH	13 Jun 95		-1
35132	LUNDBECK+PROMONTA+4	13 Jun 95		-2
34849	KELSEN + HAVNEMOLLERNE	14 Jun 95		-1
35029	SCHADEGARANT + 14	15 Jun 95		-2
35414	TELECOM ITALIA+BELL	16 Jun 95		-1
33052	DANSKE LANDBRUGS GROVVARELSESKAB+390 ADHERENTS	20 Jun 95		-1
34931	CYANAMID+MACK	20 Jun 95		-1
35400	BOCO+ECOLINGE	22 Jun 95		-1
35404	GUSMER+EDULAN+3	22 Jun 95		-2
35363	INTERCONNECTOR UK+11	23 Jun 95	JO C 73, 25.3.95	-2
34860	AUTOCARE EUROPE + 4	27 Jun 95	JO C 130, 12.5.94	-2
34156	MOLNLYCKE + PWA	28 Jun 95		-1
35484	TOYOTA INDUSTRIAL EQUIPMENT+3	28 Jun 95	JO C 107, 28.4.95	-2
35521	BROWNING + ZEBCO	29 Jun 95		-2
35207	SONY (MINIDISCS)	05 Jul 95		-2
35421	IBM+PHILIPS SEMICONDUCTORS+1	5 Jul 95	JO C 117, 12.5.95	-2
35156	CEMBUREAU	6 Jul 95		-1
33661	GLAVERBEL+SCHOTT	6 Jul 95		-2
35272	ASECA	12 Jul 95		-1
33583	FFSA+GAP+APSAD	13 Jul 95		-1
34656	EIBA + 71	13 Jul 95		-1
34631	SONY EUROPA+10	14 Jul 95	JO C 321, 27.11.93	-1
35423	ELKJOP NORGE AS/SONY (ESA 0111)	14 Jul 95		-1
35369	MODELIA	19 Jul 95		-3

35162	SCANIA+GEISSLER+WIEGELE	20 Jul 95		-3
35108	CANTAB+BAXTER	24 Jul 95		-1
35279	DELTA BIOTECHNOLOGY + PHARMACEUTICAL PROJECTS + 5	24 Jul 95		-1
35359	SWISHER + IMPERIAL	24 Jul 95		-2
35502	OAKLEY EUROPE HEADQUATERS	26 Jul 95		-2
35347	AALBORG PORTLAND+CEMENTA	28 Jul 95		-1
35537	4K BETON+BETONGINDUSTRI+3	28 Jul 95		-1
35412	KODAK+LINOTYPE	31 Jul 95		-2
35356	DTZ+CB+29	1 Aug 95		-1
35158	RE FRANCE HAAGEN-DAZS	7 Aug 95		-1
35497	CHAFFOTEAUX+BAXI	7 Aug 95		-2
35638	PFEIFFER+KHD HUMBOLDT	28 Aug 95		-1
34932	VAN MELLE + PERFETTI	29 Aug 95		-1
34927	NFC + 5	31 Aug 95		-2
34945	SRC	31 Aug 95		-2
35233	ENS	31 Aug 95		-2
35319	BASF+11	1 Sep 95		-1
35560	RIVELLA+ECKES GRANINI	4 Sep 95		-1
35043	DUFALCO + 5	5 Sep 95		-1
34105	VERENIGING VAN PAPIERGROOTHANDELAREN + 8	6 Sep 95		-1
34564	VVE	6 Sep 95		-1
35606	TETRA MOU	7 Sep 95		-1
35655	ANDRITZ+1 (EX RFTA 0096)	7 Sep 95		-1
35682	CAT-LINK SHIPPING + DSB	8 Sep 95		-1
35654	HOLMSUND GOLV+3 (EX EFTA 0018)	9 Sep 95		-2
35593	SCOTTISH & NEWCASTLE+FOSTER'S+4	11 Sep 95		-2
35450	ROSSIGNOL OSTERREICH	12 Sep 95		-1
35391	SIEMENS NIXDORF+ESCOM	13 Sep 95		-2
35600	AUSTRIAN COTTONWEAVERS CARTEL+8 (EX EFTA 0001)	13 Sep 95		-2
34334	EUREKO + 5 (EX M.207)	14 Sep 95		-2
35425	SURGICAL VISION + SOLID VISION	18 Sep 95		-3
35021	JSJ+THORITE	21 Sep 95		-3
35178	POLOCO	25 Sep 95		-3
35037	LUCAS + ALLIED SIGNAL AUTOMOTIVE	27 Sep 95		-2
35006	ETSI	2 Oct 95	JO C 76, 28.3.95	-1
35315	WELLCOME+THERAPLIX	2 Oct 95		-1
35542	FEV+DSP	2 Oct 95		-3
34935	TUBORG+AEGEAN	2 Oct 95		-2
35386	TUBORG+CARLSBERG IMPORTERS	2 Oct 95		-2

35387	CARLSBERG+CARLSBERG IMPORTERS	2 Oct 95		-2
35409	APPLEBEE'S+WESLY+1	4 Oct 95		-1
33738	STENA+SEA CONTAINERS+3	13 Oct 95		-1
35649	CONFERN MOBELTRANSPORT	23 Oct 95		-2
35625	SAAB+BRITISH AEROSPACE	27 Oct 95	JO C 217, 22.8.95	-1
35496	OPTECH+SAAB	27 Oct 95		-2
35723	DRAHTSEILVERBAND+2	27 Oct 95		-2
35615	PHI+BRISTOW HELICOPTERS+2	8 Nov 95		-1
35318	PPG INDUSTRIES+AKZO COATINGS INTERNATIONAL	13 Nov 95		-1
35817	SRR +2 (CECA NR 1178)	14 Nov 95		-1
35818	ODS + 2 (CECA NR 1166 ET EX-M578)	14 Nov 95		-1
35478	CENTOCOR+ELI LILLY	14 Nov 95		-2
34799	CBA + 3	22 Nov 95	JO C 211,15.8.95	-1
35344	RECTICEL+TOSCANA GOMMA+1	22 Nov 95	JO C 23, 28.1.95	-2
35350	RAPALA+SHIMANO+2	22 Nov 95		-2
35736	CARLSBERG+SINEBRYCHOFF+3	23 Nov 95		-2
35211	BYK GULDEN LOMBERG CHEMISCHE FABRIK+SCHWARZ PHAR	27 Nov 95		-1
35554	HARTMANN+GOSSEN	27 Nov 95		-2
35677	NOVADIGM + AMDAHL	27 Nov 95		-2
35443	NESTLE UK+BLUECREST+3	28 Nov 95		-1
181	C.E.M.A.T.E.X.	30 Nov 95		-2
35640	CUMMINS+WARTSILA+2	7 Dec 95	JO C 200, 4.8.95	-2
35515	A.C.NIELSEN+THE NPD GROUP WORLDWIDE	12 Dec 95		-3
35632	NORWEB+TDSI	15 Dec 95		-2

B - Merger Regulation

1. Notifications received

	91	92	93	94	95
Cases notified	63	60	58	95	110
Notifications withdrawn	0	3	2	5	4
Total cases closed by final decision	60	59	57	88	109

2. Article 6 decisions

	91		92		93		94		95	
Article 6(1)(a)	5	8%	9	15%	4	7%	5	5%	9	8%
Article 6(1)(b)	50	82%	47	78%	49	85%	80	88%	93	85%
Article 6(1)(c)	6	10%	4	7%	4	7%	6	7%	7	7%
Total	61	100%	60	100%	57	100%	91	100%	109	100 %
Cases in which undertakings accepted during phase I	3		4		0		2		2	

3. Article 8 decisions

	91		92		93		94		95	
Article 8(2) with conditions and obligations	3	60%	3	75%	2	67%	2	40%	3	42%
Article 8(2) without conditions and obligations	1	20%	1	25%	1	33%	2	40%	2	29%
Article 8(3) prohibition	1	20%					1	20%	2	29%
Total	5	100%	4	100%	3	100%	5	100%	7	100%
Article 8(4) divestiture orders										
Article 8(5) revocation of previously approved decisions										

4. Referral decisions

	91	92	93	94	95
Article 9 (to a Member State)		1	1	1	
Article 22(3) (to the Commission)			1		1

5. Procedural decisions

	91	92	93	94	95
Article 7(2) continuing suspensive effect	4	3	3	12	12
Article 7(4) terminating suspensive effect	1	2	3	0	3
Article 4(2) Regulation 2367/90 notification declared incomplete				2	2

C - Articles 65 and 66 of the ECSC Treaty

1. New cases opened during 1995

New cases opened during 1995	
Notifications	35
Complaints	1
Ex officio	-
Total	36

2. Cases open at the end of the year

	88	89	90	91	92	93	94	95
Notifications						12	6	1
Complaints						6	10	5
Ex officio						4	2	1
Total	14	15	38	47	42	22	18	7

3. Evolution of input

	88	89	90	91	92	93	94	95
Notifications	36	70	93	106	56	40	44	35
Complaints	1	5	7	7	3	3	12	1
Ex officio	1	4	6	7	1	3	7	-
Total	38	79	106	120	60	46	63	36

4. Evolution of output

	88	89	90	91	92	93	94	95
Formal decisions	18	12	33	31	10	6	13	7
Informal procedure[74]	19	44	64	94	70	48	46	37
Total	37	56	97	125	80	54	59	45

D - ECSC Inspections - Checks on the production of coal and steel subject to levies (Articles 49 and 50 of the ECSC Treaty)

	1991	1992	1993	1994	1995
Checks on production	110	76	103	71	114

E - State aid

1. New cases registered in 1995

Notified aid	N	680	85%
Non-notified aid	NN	113	14%
Review of aid	E	10	1%
Total		803	100%

2. Cases being examined as at 31 December 1995

Notified aid	N	219	58%
Non-notified aid	NN	99	26%
Review of aid	E	18	5%
Initiation procedures	C	39	11%
Total		375	100%

[74] The "informal" procedure covers letters of exemption under ECSC Decision No 25-67, which are to be regarded as formally closing a notified case, and comfort letters under Article 65 of the ECSC Treaty.

3. Cases closed in 1995

following a Commission decision				following withdrawal from register		
Notified aid	N	493	81%	at request of Member State	48	79%
Non-notified aid	NN	58	9%			
Review of aid	E	16	3%	*de minimis* cases	13	21%
Initiation procedures	C	40	7%			
Total[75]		607	100%	Total	61	100%

4. Decisions taken by the Commission in 1995[76]

No objection		504	81.8%
Procedure under Art. 93(2) of the EC Treaty or under Art. 6(4) of Decision 3855/91/ECSC	Initiation[77]	57	9%
	Termination	22	3.5%
	Negative[78]	9	1.5%
	Conditional	5	1%
Other decisions[79]		22	3.5%
Total		619	100%

75 The number of cases closed is lower than the number of Commission decisions since more than one decision may be taken in a particular case.

76 Does not include Council decisions under the third subparagraph of Article 93(2) of the EC Treaty or under Article 95 of the ECSC Treaty.

77 Including extensions of procedures already initiated.

78 Including partly negative decisions.

79 Namely, appropriate measures under Article 93(1) of the EC Treaty and decisions made with the assent of the Council under Article 95 of the ECSC Treaty.

5. Summary

Decisions taken by the Commission in 19..		**88**	**89**	**90**	**91**	**92**	**93**	**94**	**95**
No objection		303	259	415	493	473	399	440	504
Procedure under Art. 93(2) of the EC Treaty or under Art. 6(4) of Decision 3855/91/ECSC	Initiation[80]	36	36	34	54	30	32	40	57
	Termination	20	21	20	28	25	19	15	22
	Negative[81]	14	16	14	7	8	6	3	9
	Conditional	9	0	0	2	7	1	2	5
Other decisions[82]		28	11	9	13	9	10	27	22
Total		410	343	492	597	552	467	527	619

6. Summary: Decisions broken down by Member State

Decisions taken by the Commission in 1995[83]		A	B	DK	D	EL	E	Fi	F	IR	I	L	NL	P	Sv	UK	UE
No objection		15	13	14	163	5	93	2	41	1	72	1	32	12	6	34	504
Procedure under Art. 93(2) of the EC Treaty or under Art. 6(4) of Decision 3855/91/ECSC	Initiation[84]	3	0	0	27	2	9	0	4	1	11	0	0	0	0	0	57
	Termination	0	1	0	8	1	2	0	3	0	7	0	0	0	0	0	22
	Negative[85]	0	1	0	3	1	2	0	1	0	0	0	1	0	0	0	9
	Conditional	0	0	0	1	0	1	0	1	0	2	0	0	0	0	0	5
Other decisions[86]		4	0	3	7	0	3	0	1	1	1	0	1	0	0	1	22
Total		22	15	17	209	9	110	2	51	3	93	1	34	12	6	35	619

80 Including extensions of procedures already initiated.

81 Including partly negative decisions.

82 Namely, appropriate measures under Article 93(1) of the EC Treaty and decisions made with the assent of the Council under Article 95 of the ECSC Treaty.

83 Does not include Council decisions under the third subparagraph of Article 93(2) of the EC Treaty or under Article 95 of the ECSC Treaty.

84 Including extensions of procedures already initiated.

85 Including partly negative decisions.

86 Namely, appropriate measures under Article 93(1) of the EC Treaty and decisions made with the assent of the Council under Article 95 of the ECSC Treaty.

VIII - Studies

DG IV commissioned 25 studies in 1995. Eighteen were completed. Six of these dealt with individual cases and must remain confidential. Three are to be published or have already been published:

Competition aspects of interconnection agreements in the telecommunications sector

The purpose of the study was to determine which aspects of European competition law applied now, or would apply in the foreseeable future, to interconnection agreements between telecommunications operators or service providers or both, with a view to the drafting of a notice or a block exemption regulation covering agreements of this kind.

The main conclusions are as follows:

- It is imperative that the Commission should come forward with a formal framework defining the way in which the competition rules apply to interconnection agreements. This could be done in two stages: a Commission notice could be published in conjunction with the ONP Interconnection Directive, and a Council Regulation could be adopted later.
- The competition rules apply to most interconnection agreements, given the dominant positions held by the present operators, and will continue to do so in the longer term if new operators achieve significant market power.
- Two relevant markets have to be looked at in order to analyse interconnection agreements: the market in access to customers and the market in services supplied to customers. This is particularly important in order to determine whether operators who are not dominant on the market in services are under an obligation to conclude interconnection agreements with competitors seeking access to their customer base. These markets and the tests of dominance would be the main components in a formal framework.
- In the longer term the advent of a competitive market should reduce the need for strict application of the competition rules, and arbitration mechanisms should be preferred to intervention by the Commission or other competition authorities.

This study was published in 1995 under the reference number CM-90-95-801-EN-C.

Competition aspects of access by services providers to the resources of telecommunications network operators

The objectives of the study were:

- to determine which aspects of European competition law applied now, or would apply in the foreseeable future, to access agreements between telecommunications operators and service providers, with a view to the drafting of a notice or a block exemption regulation covering agreements of this kind;
- to determine whether the conclusions of the study could be generalized to cover access to the resources of service providers, and in particular to the content of multimedia services;
- to provide business with some measure of certainty with regard to the regulatory framework, so as to allow the market to develop.

The study is based on an analysis of four scenarios for access by service providers, looking at the law applicable in each case.

The main conclusions of the study are as follows:

- It is imperative that the Commission should come forward with a formal framework defining the way in which the competition rules apply to access agreements. This could be done in two stages: a Commission notice could be published in conjunction with the ONP Interconnection Directive, and a Council Regulation could be adopted later. It is especially necessary that a more precise definition be given of "essential resources" and "relevant markets" for service providers.
- It is also conceivable that the ONP Interconnection Directive might have to be supplemented by a directive imposing on the present operators a number of obligations specific to service providers who did not have their own networks. Article 90 might well constitute a sufficient basis for such a directive.
- The competition rules in most cases apply to interconnection agreements and agreements for access by service providers in the same way.

Efficient cooperation with national telecommunications authorities

The objectives of the study were as follows:

- Promoting the application at national level of Community competition law is a Commission objective. General proposals have been put forward to this end, in order to achieve some measure of decentralization. The study was to examine them to establish that proper account had been taken of the rights and the needs of economic operators and of consumers. Given the existence of national telecommunications regulators, the study was to determine how far those authorities could be involved in this process of decentralization of the application of the competition rules. It was to take account here of the existence of rules complementary to the Community competition rules (the ONP principles).
- In view of the limits to the jurisdiction of national regulators, the study was to determine whether a Community regulatory body was needed, and how its activities might dovetail with those of DG IV.
- The study was to establish a reference position both for the 1996 Intergovernmental Conference and for the specific framework of interconnection between telecommunications network operators.

The main conclusions of the study are as follows:

- The question of efficient cooperation with national regulatory and competition authorities is closely bound up with the possibility of exchanging information on a continuous basis. That possibility is in turn dependent on a fundamental recasting of the Treaty and of certain regulations.
- Four options can be envisaged:
  - the establishment of an independent European regulatory authority;
  - the establishment of an institute which would coordinate the activities of the existing authorities;
  - a strengthening of the existing committees;
  - the establishment of a task force inside DG IV.

  These options are complementary, and would allow a gradual approach to the problem of the exchange of information with a view to better cooperation without the need for a recasting of the Treaty.

There are no plans to publish the nine studies listed below: it is felt that they would be of little interest outside the Commission.

The code on aid to the synthetic fibres industry

The two primary objectives for the study were :
- to assess the efficacy of the code (OJ C 346, 30.12.1992; extended: OJ C 224, 12.4.1994 and OJ C 142, 8.6.1995) as an instrument of competition policy and in terms of its wider effects since 1977;
- to determine whether or not, in light of changes in the structure of the industry and in the markets for the fibres currently covered by the code, there is sufficient reason to continue to maintain any form of supplementary control on State aid to the synthetic fibres sector.

The conclusions on these points were that :
- historically, the code has been effective in restoring a measure of stability to the synthetic fibres sector and in preventing the distortion of competition because it reduced the rate of increase of fibre production capacity within the EEA at a time of crisis;
- supplementary control should be continued because a decision to end it when an effective non-sectoral alternative means of control was not in place would be likely to revive the problems that led to the introduction of the code in 1977.

The future control of State aid to the synthetic fibres industry

Recommendations on the future form of the measures by which the Commission should continue to limit the freedom of Member States to award State aid in support of the extension of fibre and yarn derived from certain polymers : that the Commission should only authorize aid where certain criteria were satisfied (concerning the effect that the aid would have on the relevant markets and on the extension capacity of the prospective beneficiary, the size of that company and the innovativeness of its products).

Study on the Dutch TV market

Study carried out in connection with the investigation in Case IV/M553 RTL/Veronica/Endemol.

The purpose of the study was to provide data and information to the Commission with regard to the future development of the Dutch TV market (in particular the viewer and TV advertising markets). The structure of the study was as follows :

- brief overview of the Dutch TV market over the last six years;
- identification of the most important variables to explain the future developments in the market shares in the TV advertising market;
- explanation of the econometric model developed for the study in order to forecast future development in the market shares in the TV advertising market, and assumptions used for the forecasting exercise;
- results of the modelling, i.e. predicted market shares for HMG in the TV advertising market, based on various positions in the viewers' market and brief interpretation of the results. Essentially based upon the most realistic positions of HMG in the viewers' market, the joint venture would achieve a market share of at least 60 % in the TV advertising market.

Study on State aids to the textile and clothing industry

The objectives of the study were:
- to evaluate the present situation of the structure of the textile and clothing industry as well as its evolution since 1971;
- to put the Commission in a position to determine whether or not, in the light of changes in the structure of the industry and in the markets for textiles covered by the communications, there is sufficient reason to continue to limit the freedom of Member States to award aid to this industry by some means of control supplementary to that which applies generally to all industrial sectors.

The main results of the study were:
- the structural difficulties the industry was facing in the 1970s have largely been overcome;
- the importance of the sector towards overall industry decreased during the last two decades;
- capacity utilisation is close or in excess of that one in the overall industry;
- the industry consists mainly in SME;
- the impact of the "Community framework for aids to the textile industry" can hardly be measured.

The recommendations of the study are :
- to abolish the framework;
- to strengthen horizontal guidelines.

Impact of regional investment aids

The study consists of research in the English-, French- and German-language literature, aimed at identifying articles reporting theoretical developments or empirical results which may be useful to the Commission in its attempts to elaborate a methodology for the assessment of regional aid measures. It provides a description and critical observations on articles considered interesting, a list of other articles, and brief conclusions.

Firm behaviour and market equilibrium : a competition approach

The study offers an economic description of the various problems of competition. The approach is didactic; each situation is illustrated by graphic material, followed by explanation. The initial objective was to provide an aid to officials called upon to explain basic theory, and was motivated by the need for such an exercise which regularly presented itself in the countries of Central and Eastern Europe.

International competition study (three phases)

Phase 1: Comparative study of bilateral agreements for the exchange of confidential information

In examining the issues which arise in relation to the exchange of information between competition authorities, with a view to preparing a discussion paper for discussions in the OECD meeting, it has become evident that the definition and use of different types of confidential information within the Community are far from clear. These are issues of considerable importance for a possible second generation agreement with the US competition authorities, as the Commission will need to know the limits of any possible exchange of confidential information before commencing negotiations. The study examines the rules as discussed in the case law of the Court and in past DG IV annual reports.

Phase 2: Comparative analysis of the sanctioning powers of the Member States' competition authorities, their investigation powers and the international accords

A summary of this phase was published in *Competition Policy Newsletter*, Volume 1, No 4, spring 1995.

Phase 3: Elaboration of the European Competition Forum report

A summary of this phase was published in *Competition Policy Newsletter*, Volume 1, No 5, summer 1995.

Viability of East German chemical industry

The study was initially aimed at the viability ot the East German chemical industry. Right after the study has been initiated, the three companies Buna, SOW and a part of Leuna (BSL) were privatized and sold to Dow Chemical aided by substantial contributions of the Bundesanstalt für Vereinigungsbedingte Sonderaufgaben (BvS) (one of the Treuhandanstalt (THA) succeeding companies). Accordingly, it was not only necessary but also appropriate for the contractor to investigate in particular the viability of the newly created company BSL.

After a historical description of the companies in question, the contractor investigated Dow as a suitable industrial partner and in particular scrutinized Dow's business plan for investments on the three sites of Buna, SOW and Leuna. Commercial and operating considerations such as the optimization of the new construction programme resulted in its findings that the process configuration selected by Dow is an optimal one. Total investments financed by BvS and additional costs and financial support by BvS were brought into relation with, according the contractor, considerable unavoidable costs by BvS in the case of a complete shutdown. The investment program was also considered to be considerably lower in cost than new greenfield construction.

The project viability was scrutinized under marketing aspects and with an economic assessment such as a projected cash-flow analysis, a historical cash-flow analysis and a competitive analysis (in comparison to competitors). The significative comparison approach resulted in the finding that the restructured complex will be competitive in size and major cost elements are all competitive ensuring greater productivity and efficiency and lower fixed costs. The investigation led to the conclusion that all viability tests are positive.

The study confirmed that the considerable contributions by BvS for the privatisation and restructuring of BSL with its large number of facilities interdependent of each other, mostly outdated and environmentally unsafe and with high operating costs, will lead after the restructuring and the implementation of Dow's business plan, which balances production and consumption of the key raw materials whilst minimizing product logistics and with the upgraded and partly new plants on the derivative side and despite limitation of contributions to the minimum necessary, to greater productivity and efficiency and an overall viability.

Ex-post evaluation of the draft horizontal framework on a selection of past major State aid cases

The European Community is constantly examining State aid regimes and cases under different sectoral Community Frameworks on State aid which set out the rules applicable for aid to the respective industry. Currently, a proposal is under discussion inside the Commission that would seek to replace these sectoral rules by a horizontal approach that would fix identical rules of assessment for projects above an investment volume of ECU 50 million and would cover all industries. Before putting the proposal into practice, the effects of the approach currently discussed had to be evaluated by looking at its consequences for a limited number of old cases.

The study thus evaluated which effect the application of the proposed rules would have had on the acceptable aid intensities of a selected number of typical big cases. In cooperation with the Commission services responsible seventeen cases from various industries in eight Member States that have obtained regional aid have been selected. The study applies the proposed rules of the draft horizontal framework on these cases. A certain number of data available through the aid notifications was transmitted by the Commission. Further information had to be obtained by the consultant with the help of the Commission services from the Member States, companies or other resources at its disposal. Relevant data for the assessment concern the project nature (greenfield, brownfield), the investment volume, the creation of employment, the value-added created by the project, overcapacity in the relevant market and a possible market dominance by the recipient. The last elements in particular had to be assessed by the study on the basis of independent information and the contractor's knowledge of the market.

The final report shows that the capital-labour ratio factor leads to a significant reduction of the permissible aid intensity and that the overcapacity element in the competition factor often comes into play as well. In general, the application of the formula to the seventeen cases led to permissible aid intensities significantly below of the respective regional ceilings. The report also makes comments on the way the different factors are defined.

Seven studies commissioned in 1994 were completed in 1995. One of these was published. Three more may be published at a later stage. The other three dealt with individual cases and must remain confidential.

Competition aspects of pricing access to networks

The study reviews recent developments in economic theory and the theory of regulation as applied to systems for pricing access to telecommunications networks, electricity networks etc. It takes the point of view of a competition authority. In the light of current economic theory it seeks to establish which approach is most appropriate in theoretical and practical terms for the assessment of the anti-competitive character of the prices asked by network operators.

Account is taken of the Community legal framework (Articles 86, 85, 90, etc.) in order to ensure that the conclusions arrived at are legally compatible with Community law as interpreted by the Court of Justice. The study discusses the advantages and disadvantages of the "efficient component pricing" theory (Baumol-Willig) and its variants (Laffont-Tirole).

It concludes by recommending an approach which applies a ceiling calculated on the basis of the "average incremental cost", with a flat-rate increase (50%, 100%, etc.) based on the inverse of the

share of the final market held by the network operator. It stresses the importance of leaving the competition authority a sufficient margin of discretion in the application of Article 86 to access pricing; the introduction of competition would otherwise by rendered practically impossible, it says, because of the problems of proof and the assymetry of information.

New industrial economics and experience from EC merger control - new lessions about collective dominance?

This study updates a former one published in 1987 under the title *Kollektive Marktbeherrschung. Das Konzept und seine Anwendbarkeit fur die Wettbewerbspolitik*. This former study analysed factors indicating oligopolistic dominance and pleaded for a merger control at Community level, a part of competition policy. The follow-up study reviews the merger control practice of the Commission in the field of oligopolistic dominance. It also reviews the new economic literature on oligopolistic dominance, in particular game theory. While largely confirming the conclusions of the former study and the current practice of the Commission, it suggests that greater emphasis should be put on factors such as the existence of irreversibilities (when analysing cost structures) and multi-market contacts. Furthermore not only - or mainly - price collusion should be taken into account, but other forms of collusion as well, in particular market area collusion.

The study was published in 1995 under the reference number CM-89-95-737-EN-C.

Impact of mergers in the EC market for nylon carpet fibre

This is a statistical and qualitative analysis of the Community market in nylon carpet fibre over the period 1991-94. The purpose was to analyse the impact of the restructuring of the industry at a time when several takeovers and joint ventures, notably the takeover by Du Pont of ICI's nylon business, had been notified under the Merger Control Regulation.

It provides extensive information on the development of the market in terms of volumes, prices, the trend towards vertical integration, technological developments, production capacities, etc. The main conclusion is that despite the high level of concentration of supply in the industry there continues to be significant competition in terms of price and quality.

Impact of mergers in the French mineral water market

This is a statistical and qualitative study of developments on the French mineral water market between 1991 and 1994, and especially in the period following the takeover of Perrier SA by Nestlé and BSN. The purpose was to analyse the impact of the takeover after the Commission decision on the transaction.

The study proposes setailed analyses of the strategies of mineral water suppliers, the development of demand, relations between suppliers and supermarket chains, range effects, and the impact of general economic developments on mergers and the market structures which result.

IX - Reactions to the Twenty-fourth Report

A - European Parliament

1. Resolution of the European Parliament on the Twenty-fourth Competition Report of the European Commission (OJ C 65, 4.3.1996 page 90)*

A4-0327195

Resolution on the 24th Report of the Commission on competition policy - 1994

The European Parliament,

- having regard to the 24th Report of the Commission on competition policy (COM(95)0142 C4-0165/95),

- having regard to the Commission's response to Parliament's resolution of 16 March 1995 on the 23rd report[1],

- having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy and the opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on External Economic Relations (A4-0327/95),

A. whereas the continuing liberalization of trade in goods and services through the implementation of the results of the Uruguay Round is giving international firms ever greater scope for their activities worldwide,

B. whereas the pursuit of free and fair competition by means of a set of rules is one of the cornerstones of the single market project and indeed of European integration,

C. whereas the aims of competition policy must be to promote the efficiency and competitiveness of production and distribution, thus contributing to the creation of employment, whilst protecting the interests of all those involved in the production and distribution processes (owners and employees, consumers, and the environment),

1. Welcomes this 24th report of the Commission on competition policy and the essentially sound implementation of the Community's competition rules to which it bears witness, and also the separate booklet which summarizes the year's decisions and developments in an easily digestible form;

2. Welcomes the significant reduction in the number of Article 85 and 86 cases pending compared to 1993 as well as the Commission's vigorous action against certain large cartels in key economic sectors;

3. Notes the growing complexity of the Commission's task given the explosive development in the number of strategic agreements and the difficulties in weighing up their positive aspects against the need to preserve free competition;

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* The Commission's reply to the resolution is not yet available in all EU languages at the time of this publication. It will be published in the Official Journal.

1 OJ C 89, 10.4.1995, p. 146.

4. Notes also the considerable increase in the number of notifications of concentrations, including the increase in the number of cases subject to more in-depth examination;

The competition authority

5. Expresses its concern at the large backlog of unpublished decisions at DGIV, due, apparently, in part to translation delays; calls for the allocation of greater resources to the DG and for attention to be given to the improvement of the structure of the organization and to access to information technologies; praises, however, the speed and efficiency with which particularly the Merger Task Force hands down its decisions;

6. Strongly regrets the division of competences between the Directorates General of the Commission which means that certain state aid cases are screened by DG's other than DGIV, and proposes that all cases of state aid be dealt with by DGIV so that it can truly become the European Union's competition authority;

Transparency and subsidiarity

7 . Regards openness and transparency as being of vital importance for the public acceptance of competition policy; welcomes in this connection the Commission's initiative in having the DirectorateGeneral for Competition publish a regular newsletter about competition files in progress but invites the Directorate-General for Competition to improve the information further, in particular about state aid cases;

8. Considers that small and medium-sized enterprises frequently lack information, and have difficulty obtaining information, about decisions of relevance to them, and proposes a form of DGIV hotline which SMEs could ring to obtain such relevant information;

9. Endorses the attempts to promote the decentralization of the application of competition rules as long as the essential balance between subsidiarity and the need for a 'level playing field' is ensured; warns however strongly against any trend towards renationalization of competition policy;

10. Calls for a strengthening of the democratic control of competition policy in the European Union, and for this purpose requests that the Member of the European Commission responsible for competition come personally to inform Parliament's Committee on Economic and Monetary Affairs and Industrial Policy of the latest decisions and developments in the sphere of competition policy; this information should be given on a regular basis and at a rhythm to be defined in common agreement with the Committee concerned;

11. Intends to consider the evolution of competition policy once a year, and in particular on the occasion of the debate on the Annual report on competition policy presented by the Commission, and to express its political assessment in this respect in the plenary session;

12. Calls on the Commission to produce an Annual Report on Industrial Policy to be viewed in conjunction with the Annual Reports on Competition Policy and the Single Market;

13. Calls for greater efforts to be made, within the framework of the Annual Report, to assess the impact of competition policy on other policy areas, in particular social, regional and environmental policy;

The challenges facing competition policy

14. Considers that Economic and Monetary Union will create a completely new competitive environment where devaluation will no longer exist as an instrument of economic policy; requests the Commission to ensure that state aid is not seen as an alternative to devaluation as a means of favouring chosen industries or sectors and that, on the contrary, budgetary constraints will be seen to limit Member States' scope to grant state aid;

15. Recalls that the White Paper on Growth, Competitiveness and Employment emphasized the important role that competition policy has to play for industrial restructuring and urges that competition cases before the Commission that would have the effect of creating employment be considered in that light;

16. Believes that the Commission could look more favourably on agreements between undertakings within markets, such as telecommunications and information technology, which face liberalisation and globalisation, and on agreements which can substantially improve enterprises' research and development effort;

17. Calls for a thorough review of Implementing Regulation (EEC) 17/62[1] for Articles 85 and 86 and proposes in this connection that the Commission take a more accommodating attitude to vertical agreements within sectors, which are usually more transparent than horizontal agreements and are certain to become more common with the completion of the single market;

18. Calls again for progress to be made on reducing the turnover thresholds above which a concentration operation can be deemed to be of Community dimension, noting that the advanced state of integration of the single market requires lower thresholds;

19. Welcomes the creation of a specialised cartel unit within DG IV of the Commission whose sole task will be the detection of cartels and the preparation of decisions leading to their prohibition and fining;

20. Welcomes the steps already undertaken to introduce competition to sectors which have hitherto been protected by national governments, calls for this process to be continued, but recalls the need to have a regulatory framework safeguarding public interests and to observe in the sectors of telecommunications and energy the principles of universality, continuity and transparency which are fundamental to the notion of the public provision of services;

21. Calls on the Commission to develop proposals on the definition and financing of public services and calls for the inclusion of a definition of public services in the Treaty during the 1996 IGC;

22. Opposes the use of Article 90(3) of the Treaty when the Commission has issued a Directive without democratic oversight by the European Parliament;

23. Calls for competition policy to make appropriate allowance for the process of structural change in the public services sector, taking into account the principles which characterize the notion of public service;

24. Points out that competition policy must go hand in hand with implementation of an effective policy for financing and precisely defining a universal service in those sectors which provide certain services for all European citizens, regardless of their place of residence or their social situation, and calls for the application of Article 90(3) to be suspended in this area;

25. Calls upon the Commission to integrate into the application of competition law other policy areas, such as the development of the internal market and economic growth, employment, and the international competitivity of the European Union;

26. Regrets that to date no review of the merger control Regulation has taken place and calls for such a review to be carried out immediately;

27. Calls upon the Commission to apply rigorously the rules concerning the granting of state aids, while reconciling their application with the principles of economic and social cohesion and with the protection of Community interests in its regional policy;

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1 OJ 13, 21.2.1962, p. 204.

28. Calls on the Commission to open up fully the telecommunications and postal sectors to competition, while still ensuring that consumers in all parts of the Community continue to enjoy an efficient service;

29. Recognizes that while the application of competition rules to public services should be under constant review, the same level of service which the citizens of the Union have the right to expect must be maintained;

30. Calls on the Commission to cooperate closely with the national authorities of the Member States and with other bodies such as the US authorities and the World Trade Organization in developing a worldwide framework for sustainable development and fair competition, while at the same time fulfilling its obligation to look after the Community's own competition policy interests at international level;

The Link between Competition Policy, Competitiveness and Employment

31. Notes that, while the Single Market formula - removal of trade barriers between Member States, combined with a strong competition policy - has brought considerable gains, it has not solved Europe's underlying problems of lack of competitiveness and structural unemployment;

32. Calls therefore for a detailed study to be carried out as to the links between competition policy, competitiveness and employment;

33. Calls on the Commission - using all available Treaty instruments - to put in place an active industrial policy so as to ensure a balanced mix of policies at EU level;

34. Welcomes the recognition contained in the Annual Report that, with increasing globalisation, definitions of relevant markets or actual or potential competitors should take account of third countries;

35. Welcomes too the Commission's favourable attitude to forms of cooperation which strengthen efficiency and hence the competitiveness of the firms involved;

36. Welcomes attempts to encourage technology transfers by simplifying the legal framework for patent and know-how licensing agreements;

37. Calls for greater clarification concerning the scope for cooperation between SMEs within the framework of competition policy;

State aid

38. Is particularly alarmed at the level of aid granted to European airlines and calls for strict enforcement of the 'one time, last time' principle;

39. Insists however that state aids granted for the conversion of industries hit by structural change and transitional aids for the workforce affected remain possible;

40. Agrees that state aids should not be granted solely to defend national interests but also to further Community interests, and believes that the locus for effective intervention has to some extent shifted to the European level;

41. Considers that firms have a fundamental right to defend themselves against arbitrary incursions by the state which can void property rights through distortions of competition. The rights of third parties should be enhanced to create a new culture based on:

- the right to information,

- the right to be heard,

-the right to comment before decisions are taken,

-a right to redress for legal aid;

42. Welcomes the Commission's recognition that aid to research and development and SMEs cannot be reduced, and calls for clarification concerning aid to employment, particularly given the active labour market policies advocated by the White Paper on Growth, Competitiveness and Employment;

43. Emphasizes that acquisitions and mergers can have serious implications for those working in the companies concerned, and calls for a reformulation of competition policy to take social factors into account;

44. Notes that the recently adopted Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[1] demonstrates the Commission's determination to protect the right of workers to independent representation within EU companies which cross national borders;

45. Calls on the Commission to take all possible steps to ensure that this basic democratic principle is also respected in cases where mergers or alliances occur between EU companies and companies outside the EU;

International aspects

46. Welcomes the Commission's efforts to introduce rules for the conduct of competition at international level, and considers the new cooperation agreement between the European Union and the United States, as well as the OECD agreement on support for shipyards, to be important steps in the direction of closer international cooperation;

47. Points out that the continuing liberalization of trade in goods and services will only benefit society as a whole, and consumers in particular, if at the same time uniform and binding rules governing business activities are established at international level;

48. Calls, therefore, for the prompt opening of negotiations under the aegis of the World Trade Organization (WTO) with the aim of incorporating minimum competition and social and environmental protection standards in the multilateral world trading system;

49. Calls on the Commission to submit to the Council a corresponding draft negotiating mandate;

50. Regards a ban on anti-competition agreements between firms (cartels), controls on transfrontier mergers and a code of conduct governing state aid as the key components of an international system of competition rules, with particular regard to the WTO's planned transitional periods and exemptions for developing countries;

51. Draws attention, in particular, to the importance of the exchange of confidential information between the competition authorities of the EU and of third countries as a sine qua non for the effective implementation of competition rules;

52. Acknowledges that the existing bilateral cooperation agreements between the EU and a large number of third countries in the sphere of competition policy make a valuable contribution to improving international competition; is convinced, however, that this network of bilateral agreements is no substitute for multilateral rules on competition;

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1 OJ L 254, 30.9.1994, p. 64.

53. Is convinced that a multilateral agreement will help to ensure that less frequent use is made of safeguards such as anti-dumping measures;

54. Stresses that the moves to liberalize direct international investments make the need for uniform competition rules all the more urgent and draws attention, in this connection, to the obligation for the WTO member states to consider incorporating provisions on competition into the agreement on trade-related investment measures when that agreement is revised;

55. Points out that the loosening of trade relations with the countries of central and eastern Europe will require the careful coordination of competition rules between the European Union and the countries concerned in order that enterprises in the European Union are not faced with unfair competition from businesses in countries with less rigorous competition regimes;

56. Stresses that the completion of the Union's internal market without frontiers has removed virtually all scope for long transitional periods and derogations to be granted to the countries of central and eastern Europe to allow their early accession, and insists that these countries must first comply with all Internal Market legislation, including the rules on competition, to avoid undermining the Union's own foundations;

57. Agrees that a new set of competition rules is required at international level and that these should aim at removing private sector obstacles to trade as well as public sector obstacles; stresses that such international competition rules should be designed to take account of social and environmental factors;

58. Instructs its President to forward this resolution to the Commission and the Council, the appropriate authorities in the Member States and the EFTA countries and the governments and parliaments of the Member States and EFTA countries.

B - Economic and Social Committee

1. Opinion of the Economic and Social Committee on the Twenty-fourth Report on Competition (COM(95)142 final) (OJ C 39, 12.2.1996, p. 79)

Opinion on the XXIVth Report of the Commission on Competition Policy-1994

(96/C 39/14)

On 23 May 1995 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the XXIVth Report of the Commission on Competition Policy-1994.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 18 October 1995. The Rapporteur was Mr Sepi.

At its 330th Plenary Session (meeting of 22 November 1995), the Economic and Social Committee unanimously adopted the following Opinion.

1. **Introduction**

1.1. The Committee is pleased to note that this year's Commission report on competition policy is much better organized and rationally set out, and consequently easier to read and to understand.

1.2. Earlier Committee Opinions have repeatedly stressed the need to make these reports easier to read, since they are one of the essential reference points for assessing not only competition policy but also the EU's economic policy as a whole.

1.3. Equally important for. transparency is the very recent publication of a summary of the report entitled 'Competition policy in the European Community' and intended for a much wider public than the official reports.

1.4. Nonetheless, and while noting the substantial progress made, the Committee is obliged to point out that the report remains somewhat ponderous and repetitive, while the initial summary could still be improved in order to allow easy assimilation of the basic EU policies.

1.5. Transparency is too important an aim for it not to be further pursued, e.g. by dividing the report into keynote volumes[1]

2. **Background**

2.1. The Commission's XXIVth Report on Competition Policy comes at a time of rapid change.

2.2. After many years of recession, the economy has begun to show signs of picking up. This will open the way to new developments which will require assessment criteria and particular attention on the part of DG IV

The new dynamism of growth must be accompanied by appropriate operational renewal, to ensure proper vigilance in this new stage of the business cycle.

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[1] For instance, it could be divided into four volumes: 1. Summary; 2. Agreements and mergers; 3. State Aid; 4. Annexes.

2.3. The Commission, and the EU as a whole, are committed to achieving the economic and social objectives set out in the White Paper on Growth, Competitiveness and Employment - The Challenges and Ways Forward into the 21st Century. The Committee considers that competition policy should focus more on these objectives.

2.4. The global situation has been considerably altered by the gradual opening-up of markets, culminating in the conclusion of the Uruguay Round and the establishment of the WTO. The impact of.th . ese developments has been heightened by the association agreements and the setting-up of the EEA, the accession of the new Member States, and the association agreements with the CEECs[1].

All this has changed the role of competition not just quantitatively, but also qualitatively.

3. **Commission activities**

3.1. 1994 was marked by intensive regulatory activity which produced a number of general papers, and an increase in administrative measures. The Committee would urge the Commission to continue with this work on standards of practice and the principles to be observed by economic and social players, both for institutional reasons and to speed up DG IV's *ad boc* administrative checking.

3.2. Incorporation of competition policy in the EU's general economic guidelines, as proposed by the Commission, was recommended in the Committee's Opinion[2] on the XXlllrd Report and is to be welcomed.

As evidenced by several passages in the report under review, the Commission is aware this will lead to profound changes in its tasks and role.

3.3. However, the Committee feels there is a need for more coherence between competition policy and other EU policies, especially the policies on trade and industry, employment, social cohesion, competitiveness, inflation and consumer protection.

3.4. The Committee believes that the trade policies and the initiatives for cooperation with the CEECs envisaged by the industrial cooperation agreements must respect certain social parameters, so as not to distort competition or encourage industrial relocation which might have an adverse economic and social impact within the EU.

3.5. On competition policy as such, the Commission, bearing in mind the White Paper, must adopt an interpretation that is appropriate to the new situation and take more account of the economic and social impact of decisions.

3.6. The Committee feels that special competition rules should be drawn up for market cooperatives and non-profit organizations operating in sectors far removed from business interests. More particularly, voluntary and social activities in support of marginalized groups might be allowed to benefit from state aid and specific legislative concessions.

3.7. The Commission has issued a notice on the application of the competition rules to cross-border credit transfers [3].

This notice sets out the approach which the Commission intends to take when assessing the compatibility of credit transfer systems with the competition rules enshrined in the Treaty.

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1 Central and Eastern European countries.

2 OJ No C 397, 31. 12. 1994.

3 OJ No C 251, 27. 9. 1995.

The notice should be examined in detail, and should form the subject of an ESC Opinion following up the Opinion adopted at the Plenary Session of 31 May/1 June 1995 on EU Funds Transfers: Transparency, Performance and Stability.

3.8. The Committee is aware of the difficulty of maintaining rigorous application of the rules while encouraging structural and productive growth in the EU; however, it holds that the basic principles expressed at the outset must prevail in practice.

4. **Agreements**

4.1. In assessing agreements, particularly in relation to the White Paper on growth, competitiveness and employment, the Commission draws a distinction between 'defensive' agreements in restraint of trade which are designed to protect markets, and agreements designed to improve company competitiveness by increased cooperation. The former are penalized and the latter are authorized.

4.2. The distinction is clear in theory but more difficult to apply in practice. The recent proposed regulation on technology transfer is not wholly satisfactory in this respect, as the Committee noted in its Opinion.

4.3. Two further points need to be made concerning the practical application of these rules:

a) sanctions against cartels must be commensurate with the various intervention levels of each participant;

b) as regards associations of undertakings, it is vital to define clearly whether sanctions apply to the associations or to their members, in order to avoid a party being penalized twice for the same act.

In the case of exchanges of price information, it is sometimes extremely difficult to assess whether there is a genuine intention to restrict competition. At all events, undertakings and associations must give an extremely precise indication of their means, methods and objectives in practices of this kind.

4.4. The White Paper dwells at length on the need for agreements between SMEs which make the market more dynamic and boost competitiveness and employment.

Competition policy-makers should also help to provide a clearer framework here, offer special exemptions for SMES, and review mechanisms for encouraging cooperation among them. To this end, apart from cooperation in the field of training and research, mentioned in various parts of the report, the creation of specific financial instruments and joint marketing and purchasing facilities should be encouraged, always subject to reasonable market shares.

5. **Mergers and concentrations**

5.1. The Commission was extremely active in this sector in 1994, in response both to restructuring developments and market globalization.

5.2. The aim of the decisions taken in individual cases was to eliminate any dominant positions but to authorize proposed mergers which were conducive to sectoral competitiveness, the business system and market openness, and did not prejudice competition - often seen in global terms (BT/MCI - Olivetti/Digital).

5.3. However, efforts should be speeded up to define new criteria that take account of the new dimension of competition, resulting from market globalization, which requires European industry to achieve higher levels of competitiveness.

5.4. The Committee therefore urges the Commission, in light of the efforts and experience already gained with the task force, to take an increasingly global view in assessing the markets and to keep a careful eye on the unfair practices deployed by third-country firms in some strategic sectors.

5.5. . The Committee is also concerned that concentrations might not be assessed consistently because of the competence of the national authorities. Here it would refer to its recent Opinion[1] calling for a reduction in thresholds and hence an extension of the remit of the Commission bodies.

6. **State aid**

6.1. Monitoring of state aid is a vital part of a proper competition policy and essential for increasing convergence of the Member States' economies. Social and regional criteria have been used to decide whether aid should be authorized. In the case of firms facing problems, the emphasis has been on the viability of their restructuring plans, and on avoiding aid that would lead to excess production capacity.

6.2. There is a clear contradiction here between perfect competition' and state financial aid motivated by political and social considerations; between different economic management cultures; and between different socioeconomic structures in different parts of the EU. A market liberalization policy clearly will not of itself resolve the serious problems of social cohesion in' and between the Member States. This problem requires further consideration - *inter alia* in relation to the contents of the White Paper - and the Commission has this year begun to examine aid for employment and for research and development.

6.3. Member States' administrative structures and financing mechanisms vary greatly. This calls for a serious effort to improve transparency, and an inventory of all aids and their economic impact.

6.4. The fourth report on state aid, recently published by the Commission, contains extremely useful data and analyses. The Committee notes with satisfaction that total annual state aid has fallen by 8,5% compared with the previous period; nevertheless ECU 93,8 billion continues to be a very high sum, particularly when one cons iders that 84% of state aid to industry is granted by the four largest Member States. The Committee would like to see this figure reduced still further in the next reference period. The Committee expresses its continuing concern about possible distortions of competition stemming from state-aid differences between the Member States and between the regions within the Member States. The Committee would urge the Cornmission once more to take vigorous action to ensure the rigorous application of rules governing the grant of state aid.

The Committee considers that the general policy must be to obtain a gradual reduction in direct and indirect state al id in individual Member States, and at the same time increase Community funds for reducing social and geographical imbalances.

6.5. In particular, the new schemes for conduct in the case of indirect aid need consideration, and new guidelines are needed in the case of state aid for restructuring or business rescues. There is a risk that such aid will be used as an indirect way of restricting the impact of competition policy.

6.6. The volume of aid granted directly by the EU has increased in recent years. The Committee feels it would be helpful to include this alongside other public aid in the new report.

6.7. Details of the launch of formal inquiries should be passed on to the social partners and the ESC at an early stage, albeit without setting up a formal consultation procedure.

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1 OJ No C 388, 31. 12. 1994.

7. **Liberalization of the public sector**

7.1. The White Paper advocates the opening up of all sectors to competition. One reason for this is that over recent decades - and despite certain heavily publicized privatizations - the public sector in many of the Member States has continued to grow. The introduction of competition is impeded by entrenched rules and regulations in the Member States which allow monopolies for certain services traditionally the preserve of the public sector. These rules reflect differing values, habits and legislative practices - and public monopolies are not always inefficient.

7.2. The Committee is aware that a liberalization in these sectors could be advantageous to consumers, through price reductions and better service; this should not, however, be made a matter of dogma. It is necessary to establish with great caution, on a case-by-case basis, where and how these positive effects can be achieved, **in** order to avoid liberalization producing the opposite effects to those hoped for. The Committee asks the Commission to make a study of the impact which competition has had in areas where it has been introduced.

7.3. The Committee also feels that the universality of service at present guaranteed by public ownership must be maintained, by not allowing liberalization and the introduction of competition to lead to cuts which may exclude certain categories and geographical regions that may not be economically attractive. For all its disadvantages in terms of efficiency and costs, at least the public service established a certain solidarity among differing situations. The Committee believes that all citizens must be guaranteed access to these services, even after the introduction of competition.

7.4. Some of these state monopolies were created to sustain investments which had very distant prospects of financial return, and were therefore of little interest to private enterprise. In opting for liberalization, account must also be taken of this need.

7.5. Even if it is not a foregone conclusion that liberalization processes will lead to a structural reduction in the labour force, they can generate social problems in the short term. These must be taken fully into account, using all possible Community instruments.

8. **The subsidiarity principle**

8.1. The Committee stresses the Commission's intention to leave responsibility for part of the implementation of competition law to the national authorities. The Committee's Opinion on the XXlllrd Report mentioned the need for Member States to 'act more effectively'. However, the Commission seems to envisage a precise breakdown of responsibilities, although this will not eliminate the problem of a 'diversified implementation', if only one level of intervention is retained, or the problem of a conflict of interest with the national authorities. The Committee voiced its views on this in its Opinion on the XXIllrd Report.

8.2. This calls for increasing regulatory activity by the Community bodies, especially the Commission, in close consultation with national authorities where these exist.

8.3. The Commimittee will consider this matter in more detail when the Commission issues its Communication on the subject.

9. **Globalization and competition policy**

9.1. A series of factors, listed in 2.4 above, will speed up the opening of continental and intercontinental markets over the next few years. Hence the XXIVth Report's statement that 'it is desirable that a genuine body of competition rules should be developed at international level'-, this will require effective implementing instruments.

9.2. The Committee urges the Commission to continue on the same path; however, it feels that pending the drafting of precise rules, which will certainly take a -long time, it is necessary to find a consensus on the basis of certain competition principles.

9.3. These rules, particularly in the ambit of the WTO, should include a minimum number of rules on workers' and trade union rights as laid down in ILO Conventions; the intention would not be protectionist, but rather to further civil progress at world level as advocated in the final document of the UN, Conference in Copenhagen, and to safeguard the EU's social system. It is in fact clear from these international documents that the violation of minimum workers'rights represents an actual distortion of rules of competition between companies.

9.4. In this context special attention must be given to the EU's association agreements and trading policy with the CEECs to avoid distortions deriving from the fact that these countries still have institutional structures, industrial policy instruments and labour-supply rules incompatible with a proper competition policy.

9.5. In the meantime, efforts must continue to establish bilateral agreements with the antitrust authorities of countries with the closest economic links with the EU. In particular the Committee urges the Commission to continue to work with the antitrust authorities of the United States, Canada and Australia. It feels that further, strong pressure should be exerted on the Japanese Government, with whom dialogue at present seems extremely difficult.

9.6. At all events, a close eye must be kept on the practices of the EU's main trade partners, and bilateral agreements should stipulate the possibility of monitoring their action.

10. **Consultation procedures**

10.1. The Committee appreciates the Commission's desire to make its decision-making procedures more transparent and participatory. Numerous Committee Opinions have clearly been influential in this.

10.2. However, two points need stating: firstly, in c I onsultations on competition policy, the Commission snould seek a dialogue with European trade unions and other interested EU socioeconomic organizations, as well as with BEUC and UNICE which have requested it.

10.3. Secondly, the ongoing dialogue between the Commission and the ESC could be improved, more especially by greater use of the possibility to inform the ESC of the line DG IV intended to take in advance of decisions and their publication.

10.4. It would be useful to consult workers' organizations and sub-contractors on aid for company restructuring as a matter of course, and not only as 'Interested third parties'. The Commission could thereby obtain not only the opinion of an essential party to restructuring plans, but also acquire data useful for its own assessment.

10.5. The Committee regrets the insufficient consultation of both the ESC and social partners before the recent agreement between the Commission and the USA Antitrust Authority.

11. **Operational efficiency**

11.1. The Commiss'on's action has often proved too slow for the requirements of the socioeconomic players involved. In this connection, the Committee endorses the Commission's efforts to improve the transparency and speed of its actions. The Commission asks for more resources to speed up and extend its activities.

11.2. The Committee cannot fail to take note of the quantitative and qualitative increase in the Cornmission's activity in this sector. The accession of new Member States, the new rules and the globalization of markets justify this greater effort.

The Committee feels, however, that simplifying the rules and applying the subsidlarity principle through appropriate threshold solutions can go at least some way towards meeting these needs.

11.3. This requires the establishment in all Member States of effective competition authorities with the task of implementing DG IV Directives.

12. **Independence of the application of competition law**

12.1. As well as playing an investigative role, DG IV also takes decisions, if only in the administrative sphere. In some European countries, however, the antitrust authority is independent from the bodies with executive powers.

12.2. The Committee takes note of the discussions going on within the other EU bodies and the proposals put forward by one Member State to bring the Community institutional framework into line with the above.

12.3. However, it feels that, on the basis of an approach reiterated year after year in Opinions on earlier reports and forcefully stated in the present Opinion, competition policy must be consistent with the other EU policies and with the new strategic objectives.

It therefore opposes the proposals to make the function of administrative decision independent.

13. **Other factors which distort competition**

13.1. The effectiveness of competition is today threatened by new types of distortion. The Committee asks the Commission to identify the instruments needed to lessen or eliminate their impact.

13.2. The Committee considers that the Commission should be particularly attentive to at least two such disruptive factors:

a) the destabilization of interest rates and exchange rates caused by speculation on the money markets;

b) competition policy cannot turn a blind eye to the possibility of social dumping between weak and strong areas in the absence of minimum labour legislation, particularly in the event of further EU enlargement. The social policy chapters of the Treaty must thus be applied consistently, and in all Member States, as emphasized in the Committee Opinions on social policy following the Maastricht Treaty.

Done at Brussels, 22 October 1995.

The President
of the Economic and Social Committee
Carlos FERRER

2. Reply by K. Van Miert to the opinion on the Twenty-fourth Competition Report - COM (95) 142 final

1. Introduction

Essential points of the ECS Opinion

1.1 to 1.5 *The Committee is pleased to note that this year's Report is much easier to read and understand. It sees the publication of a summary of the report entitled "Competition Policy in the European Community" as an important step towards greater transparency.*

It points out, however, that the report is still somewhat ponderous and proposes that it be divided into keynote volumes.

Commission's position

The Commission agrees that its Annual Report on Competition Policy has become too bulky. In the version published in book form, the Report has almost doubled in size between 1989 and 1993.

Naturally, this amount of text creates all sorts of difficulties: workload for DG IV, length of time taken for publication, especially in view of translation work, document not easy to read, as well as the danger that the message does not get across clearly.

The success of the booklet "Competition Policy in the European Community", intended for the general public, which the Commission published alongside the Annual Report, and the reports of less than 100 pages produced by several national competition authorities show that it is possible to achieve transparency while cutting down on volume. At the same time it is necessary to review the structure and organization of the Annual Report. The Commission's Annual Report must be above all a policy document which, by describing the main legislative, administrative and judicial developments, covers the broad lines of competition policy pursed by the EU - and the Commission in particular - in the context of the other fundamental objectives of the European Union.

This does not mean it is not useful to give practitioners and specialists in competition law fuller, systematic information on the Commission's activities regarding application of the competition rules over the year.

For 1995, the Commission therefore decided to produce an Annual Report less than 100 pages long that would provide a fair summary of the main developments in the various sectors of competition policy (Article 85/86, Article 90/37, mergers, state aid and international activities),

with the emphasis on the policy options and the background to competition policy in the EU.

Secondly, a more exhaustive and more technical report will be drawn up under the sole responsibility of DG IV. This document will contain summaries of the most important individual cases handled by the Commission, reference lists for Commission decisions, new legislative instruments, judgments of the Court of Justice, press releases and detailed statistics.

2. Background

2.1 and 2.2 *The Commission's 24th Report comes at a time of economic change.*

After many years of recession, the economy has begun to show signs of picking up. The resulting new dynamism will require appropriate operational renewal and particular attention on the part of DG IV.

The Commission is particularly attentive to the socio-economic changes and, at times, difficulties that Member States face. While we have seen the start of economic recovery, European countries are still having to contend with precarious socio-economic situations which require close attention and will be overcome only in the medium to long term. The 24th Report on Competition Policy devotes several pages to competition policy and the economic recovery, together with the industrial restructuring requirements this entails.

The Commission thus draws a number of lessons from, and is favourably disposed, towards forms of cooperation which improve the efficiency and hence the competitive position of the parties. It is also aware of the need to improve the dissemination of technology through know-how and patent licensing agreements.

However, it is very careful to watch out for forms of cooperation which could be cartels under another guise or could lead to a sharp reduction or even prevention of external competition.

The Commission is also favourably disposed towards forms of cooperation typical among SMEs.

As far as aid is concerned, the Commission has adopted guidelines on aid for rescuing and restructuring firms in difficulty.

2.3. *The Committee considers that competition policy should focus more on the objectives set out in the White Paper on Growth, Competitiveness and Employment.*

The Commission discussed at length the relationship between the White Paper and competition policy in its 23rd Competition Report. In applying Community competition rules to private and state activities, it took into account the need to support the restructuring of Community industry in order to make it more competitive. The implementation of the White Paper provided the focal point for the activities of the European Union in 1994. In stressing the role to be played by the control of state aid in establishing an environment conducive to the competitiveness of firms and in underscoring the need to reduce public deficits, the White Paper argues in favour of reducing state aid which has contributed to those deficits and held back the structural adjustments necessary for the competitiveness of European industry.

The Commission has thus adopted guidelines on aid for rescuing and restructuring firms in difficulty which aim to restrict aid to a bare minimum and allow aid only if it is accompanied by a restructuring plan that can ensure the long-term viability of the firm and, where appropriate, if it helps to reduce overcapacity on the relevant market. As announced in its communication on an industrial policy of competitiveness for the European Union, the Commission has pressed ahead with its work with a view to achieving an overall reduction in aid and reviewing the criteria for accepting aid. It intends to strengthen further the rigour, effectiveness and neutrality of state aid control. At the same time, it will pursue the objective of easing and streamlining procedures for less important cases. With regard to the promotion of intangible investment advocated in the White Paper, the Commission has also submitted to the Member States draft guidelines on aid to assist employment and a review of the guidelines on aid for research and development.

2.4. *The establishment of the WTO, the impact of which is heightened by the association agreements and by the setting-up of the EEA, has considerably altered the global situation and has changed the role of competition both quantitatively and qualitatively.*

The Commission agrees with the Committee that the global situation has changed. This brings with it the globalization of some markets and the need for cooperation with the competition authorities of third countries.

3. Commission activities

3.1. *1994 was marked by intensive regulatory activity. The Committee urges the Commission to continue with this work on standards of practice and principles, both for institutional reasons and to speed up DG IV's ad hoc administrative checking.*

The Commission is pleased that its efforts to create a reliable legal framework for economic and social players, particularly in the form of block exemption regulations and interpretative or policy communications, are seen as positive factors in the overall picture of Community competition policy. It will press ahead with its efforts to ensure the greatest possible transparency and flexibility in its activities.

3.2. and 3.3. *The Committee welcomes the Commission's proposal to incorporate competition policy in the EU's general economic guidelines. However, it feels there is a need for more coherence between competition policy and other EU policies, especially the policies on industry and competitiveness, trade, employment, social cohesion, inflation and consumer protection.*

Together with the establishment of a common market, competition policy is one of the two major tools provided for by the Treaty of Rome to achieve the Community's fundamental objectives, which are to promote throughout the Community a harmonious and balanced development of economic activities, a better standard of living and closer relations among the Member States. It cannot therefore be implemented as an objective without reference to its legal, economic, political and social context.

In practice, competition policy contributes to the achievement of a genuine area without internal frontiers and to economic and social cohesion through the opening- up of markets protected by exclusive rights, the removal of cartels and abuses of dominant positions or control of state aid. It thus makes for an improvement in the European economy, a source of growth and greater satisfaction for the consumer.

With particular regard to the link between industrial policy and competition policy, the report to the Corfu European Council on Europe and the global information society and the Commission communication on an industrial policy of competitiveness for the European Union, which are in line with the December 1993 White Paper, stress the fundamental role which competition policy has to play. For the European Union, industrial policy must not be an interventionist policy. It must leave the initiative to firms. The role of the public authorities is restricted to creating a dynamic environment that is favourable to industrial development. Industrial policy thus defined does not conflict with competition policy. On the contrary, because of

the emphasis placed on the responsibilities of industry, competition policy is an essential instrument of industrial policy.

With regard to the links between competition policy and the other Community policies, see also the Commission's replies to several other points of this Opinion. Finally, the Commission would stress that it invariably pays particular attention to the links between competition policy and developments in the other socio-economic fields. For example, the 25th Annual Report will contain comments on the links between competition policy and environmental protection policy.

3.4. *The Committee believes that the trade policies and the initiatives for cooperation with the CEECs must respect certain social parameters, so as not to distort competition or encourage industrial relocation.*

The Commission agrees with the Committee and would point out that, where competition policy is concerned, the problem of relocation can be tackled only by way of an analysis of state aid. The Europe Agreements and implementing rules provide for an exhaustive analysis of the effects of aid (based on Article 92).

3.5. *Bearing in mind the White Paper, the Commission must interpret competition rules in a way which takes more account of the economic and social impact of decisions.*

See replies to points 2.1. and 2.2., 2.3., 6.1. and 6.5.

3.6. *The Committee feels that special competition rules should be drawn up for cooperatives and the non-market sector.*

More particularly, voluntary and social activities might be allowed to benefit from state aid and specific legislative concessions.

The Commission understands the Committee's concern, but points out that often, by its very nature, this kind of activity is not even covered by Article 85. If such activities did, in fact, have the effect of restricting competition, Article 85(3) makes it possible to consider such agreements with the necessary flexibility. As far as aid is concerned, the Commission stressed in its guidelines on aid to employment which it adopted in 1995 that many social measures are not caught by the rules on aid, in particular those activities which do not involve trade between Member States (e.g. local services and certain local employment initiatives). It adopts a generally favourable attitude to social measures falling within the scope of Article 92(1).

3.8. *The Committee is aware of the difficulty of maintaining rigorous application of the rules while encouraging structural and productive growth in the EU; however, it holds that the basic principles expressed at the outset must prevail in practice.*

The Commission shares the Committee's view. In fact, it is already responding to the desire to consider specific cases in the light of the basic principles of its policy.

4. Agreements

4.1. and 4.2. *The Committee considers that the distinction between defensive agreements and agreements designed to improve competitiveness is clear in theory but more difficult to apply in practice.*

The distinction between bad and therefore unacceptable agreements and agreements which are beneficial to the economy and may therefore be authorized will always be difficult in borderline cases. Article 85(3) allows exemptions for agreements which contribute to improving the production or distribution of goods or promote technical or economic progress, and the Commission has some discretion in this respect. However, it must not allow restrictions which are not indispensable to be imposed on the firms concerned and must withhold its authorization for cooperation between large firms which would endanger the development of effective competition on the relevant markets.

4.3. *The Committee considers that sanctions against cartels must be commensurate with the various intervention levels of each participant.*

The Commission's policy on sanctions already fully meets the criteria set out by the Committee.

As regards associations of undertakings, it is vital to define clearly whether sanctions apply to the associations or to their members.

In the case of exchanges of price information, it is sometimes difficult to assess whether there is a genuine intention to restrict competition. At all events, undertakings and associations must give an extremely precise indication of their means, methods and objectives in practices of this kind.

The application of competition policy to information exchange agreements is in general a difficult area. This is also emphasized in a recent study prepared for the Commission (Information Exchanges Among Firms and their Impact on Competition, European Commission, June 1994, revised February 1995). Nevertheless, certain principles were already set out by the Commission in its 7th Competition Report. The exchange of statistical or aggregate information will normally not distort competition. However, when from the information the individual companies' behaviour or positions can be deduced and especially when this takes place in an oligopolistic market, such an exchange may enable or enhance collusive behaviour. Commission practice and Court judgments have progressed along these lines and have made it clear that the analysis can base itself either on the competition-restricting intentions of the parties or on the competition-restricting effects.

5. Mergers and concentrations

5.1. to 5.5. *In its analysis of the control of mergers and concentrations, the Economic and Social Committee suggests that there is some confusion between mergers covered by Council Regulation (EEC) No 4064/89 and other forms of*

In assessing the geographic market, the Commission is obliged to comply with strict analysis criteria and to rely on matters of fact.

associations of undertakings which fall within the scope of Article 85 of the Treaty.

Point 5.2. thus cites two cases which were not considered under the Merger Control Regulation.

The Committee also urges the Commission "to take an increasingly global view in assessing the markets and to keep a careful eye on the unfair practices deployed by third-country firms in some strategic sectors".

Although there is a trend towards globalization, this trend cannot be generalized and translated into a market definition for the individual case evaluation. The definition of the relevant market serves the purpose of assessing the real competitive constraints the companies concerned are facing. Fact-finding in individual cases may suggest the existence of global markets for certain products, such as in the cases mentioned by the Committee ("BT/MCI" and "Digital/Olivetti", which, as a matter of fact, were assessed under Article 85 owing to their cooperative nature, and not under the Merger Regulation). As regards many other product markets, however, fact-finding does not suggest the existence of global markets, but of European, national or even local markets.

With regard to the threshold reduction, the Commission agrees with the Committee that a wider scope of the Merger Regulation would increase the consistency in the application of merger control within the EU. In this respect, a Green Paper on the review of the Merger Regulation will discuss several options in this respect.

6. State aid

6.1. *The Committee points out that social and regional criteria have been used to decide whether aid should be authorized and that the emphasis has been on the need to avoid aid that would lead to excess production capacity.*

The Commission may allow aid on the basis of considerations other than solely "social and regional criteria". In fact, Article 2 of the Treaty, as amended by the Union Treaty, now specifies economic and social cohesion as one of the Community's objectives. Many other considerations may also be taken into account (research and development, environmental protection, promotion of SMEs, promotion of culture and preservation of national heritage, aid to certain sectors, etc.).

6.2. *The Committee considers that the considerations behind the policy on aid point up a clear contradiction between the notion of "perfect competition" and state financial aid. In its opinion, a market liberalization policy clearly will not of itself resolve the serious problems of social cohesion. The problem requires further consideration, inter alia in relation to the contents of the White Paper.*

Though it may be said that there is a "clear contradiction" between a situation of "perfect" competition and intervention by the Member States, this statement should nevertheless be viewed in its proper context, given that the Treaty of Rome establishes, if anything, a moderate neo-liberal system in which Member States may preserve their traditional role (mixed economy), provided that the smooth functioning of the

common market is not affected (see Article 222 in particular). The Commission takes account of the recommendations of the White Paper in revising existing guidelines (R&D and SMEs) and in preparing new texts.

6.3. *Member States' administrative structures and financing mechanisms vary greatly. This calls for a serious effort to improve transparency, and an inventory of all aids and their economic impact.*

In recent years the Commission has continued its efforts to improve transparency with regard to aid. These efforts include an increase in publications in the OJ on the subject, the publication of a "Competition Policy Newsletter" distributed free of charge and outlining the main developments in this area, improved opportunities for monitoring the economic impact of aid following the communication on standardized notifications and reports, the information campaigns conducted in connection with the annual competition reports, the continuation and constant improvement of the reports on state aid, the periodic summaries published in the EC Bulletin, and so on. The Fourth Report on State Aid in the EU was published in July 1995.

The Commission regrets that, for 1996, the decision by the European Parliament's Committee on Budgets to change completely the description of budget article B3-306* could mean that DG IV will no longer be able to distribute the EC Competition Policy Newsletter in its present format and could also lead to a drastic reduction in the programme of information and communication on competition policy.

The Commission is nevertheless endeavouring to find a budgetary solution which will enable it to continue to provide the information vital for public acceptance of competition policy.

6.4. *The Committee notes with satisfaction that total annual state aid fell by 8.5% in 1994, but points out that ECU 93.8 billion is still a very large sum, particularly when one considers that the bulk of state aid to industry (84%) is granted by the four largest Member States. The Committee expresses its continuing concern about possible distortions of competition stemming from these differences between the Member States.*

It considers that the general policy must be to obtain a gradual reduction in direct and indirect

The Commission is continuing its efforts to pursue the objective of reducing state aid. This is reflected inter alia in the recent revision of the regional aid maps in the Union, resulting in a reduction in the total population eligible for regional aid and a lowering of the maximum aid intensities in eligible regions, the adoption of more precise criteria for research and development, aid for employment, strict communications on repayment of aid granted in breach of the Treaty, etc. The adoption of guidelines in an increasingly wide range of areas

state aid in individual Member States and, at the same time, to increase Community funds for reducing social and geographical imbalances.

demonstrates the Commission's desire to systematize the rules applicable to state aid in order to control them more effectively and to ensure more equal treatment among Member States and regions. There has also been a significant increase in the Community resources (Structural and Cohesion Funds) earmarked for the development of the poorest regions.

6.5. *The new schemes for conduct in the case of indirect aid need consideration, and new guidelines are needed in the case of state aid for restructuring or business rescues in order to limit its scope.*

This is a particularly sensitive area which the Commission is watching closely. In 1994 the Commission adopted new guidelines on aid for rescuing and restructuring firms (OJ No C 368/12, 23.12.1994). The effects of these new guidelines will be monitored closely to see whether it is necessary to propose any further changes.

6.6. *The volume of aid granted directly by the EU has increased in recent years. The Committee feels it would be helpful to include this alongside other public aid in the new report.*

The Commission would point out that aid granted under the Structural Funds is not covered by the Competition Report but by the Fourth Report on State Aid (these reports are published every two years by DG IV).

6.7. *Details of the launch of formal inquiries should be passed on to the social partners and the ESC at an early stage, albeit without setting up a formal consultation procedure.*

If by "formal inquiries" the Committee means the procedures under Article 93(2) and asks to be informed of them, it should be pointed out that the procedures (initiation, termination) are published in the OJ in order to inform all the parties concerned and to receive any comments they may have.

7. Liberalization of the public sector

7.2. *The Committee feels that the need for liberalization should be decided on a case-by-case basis and should not be made a matter of dogma. A study of the impact of competition in the areas concerned should be conducted.*

The Commission agrees with the Committee. It believes that the approach, the scope and the rate of liberalization should take account of the particular situation in each sector. This explains the different approaches adopted in the postal and telecommunications fields. The Commission considers that the sectoral approach it has always adopted should be maintained.

The Commission also agrees on the need to learn from the experience gained from liberalization already introduced, both inside and outside the Community.

7.3. *The Committee feels that the universality of service at present guaranteed by public ownership must be maintained.*

Guaranteeing a universal service of a high standard is at the heart of the Commission's liberalization policy. Organization in the form of

public monopolies is not always the only or the best way of ensuring a high-standard public service. This may also be provided in a competitive environment, by public or private operators. It must be stressed that, as a general rule, liberalization involving appropriate back-up measures not only does not endanger the universal service but also significantly enhances the service by modifying the relationship between quality and price to the benefit of the consumer. This is clearly demonstrated by the current Community liberalization initiatives (telecommunications and air transport).

7.4. *In opting for liberalization, account must be taken of the need to sustain investments with distant prospects of a financial return.*

The Commission shares this view, but would point out that a monopoly is not the only means by which a country nowadays can encourage long-term investment. New economic and technological realities must be taken into account.

7.5. *Liberalization could generate social problems in the short term. These must be taken fully into account, using all possible Community instruments.*

The Commission considers that the beneficial effects of liberalization on the economy in general will lead to a rise in employment, in particular through the emergence of new types of activities and jobs; see the report by the Advisory Group on Competitiveness (Ciampi report) delivered in December 1995. Job losses could occur in certain monopolies, in so far as they may be less efficiently organized than firms in the competitive sector. Aware of these possible negative short-term effects, the Commission has always worked towards gradual liberalization.

8. The subsidiarity principle

8.1. to 8.3. *In the Committee's view, the Commission seems to envisage a precise breakdown of responsibilities in the field of competition, although this will not eliminate the problem of a "diversified implementation", if only one level of intervention is retained, or the problem of a conflict of interest with the national authorities. This calls for increasing regulatory activity by the Commission.*

To avert the dangers mentioned by the Committee, the method of dividing cases between the Commission and the national authorities will be of paramount importance. If the Member States simply deal with breaches of the rules which have an effect on a single national market (as provided for in our preliminary draft), the risks of "diversified application" and conflicts between the Community and Member States should be overcome.

9. Globalization and competition policy

9.1. to 9.3. *The Committee urges the Commission to continue on the path of developing a "genuine*

The Commission welcomes the Committee's support for the line taken in the XXIVth Report

body of competition rules" at international level. It feels that, pending the drafting of precise rules, it is necessary to find a consensus on the basis of certain competition principles. These rules, particularly in the ambit of the WTO, should include a minimum number of rules on workers' and trade union rights. Practices which violate minimum workers' rights represent an actual distortion of competition between companies.

regarding the development of a genuine body of competition rules at the international level.

However, specific social parameters are not provided for in the Treaty's competition rules. The same would probably also be true of any body of competition rules developed at the international level. Anyway, this does not preclude the development and application of rules on social policy in parallel and, in this regard, the Committee's attention is drawn to the Marrakesh Declaration of April 1994, which launched the WTO and identified a number of trade-related areas that could figure in the work programme of that organization. Both labour conditions and competition policy were among these.

9.4. *Special attention must be given to the EU's association agreements and trading policy with the CEECs to avoid distortions deriving from the fact that these countries still have rules which are incompatible with a proper competition policy.*

The provisions on competition contained in the Europe Agreements with the CEECs are aimed precisely at preventing agreements between private parties, abuses of dominant positions or the granting of aid from damaging competition. The CEECs will apply the same rules as the Member States in this regard.

10. Consultation procedures

10.1. to 10.3. *The Committee appreciates the Commission's desire to make its decision-making procedures more transparent and participatory.*

It feels that the Commission should seek an ongoing dialogue not only with BEUC and UNICE but also with European trade unions and other interested EU organizations.

It is the Commission's policy to make its procedures as transparent as possible and to involve all interested parties at the appropriate stages of the decision-making process. The Commission's greater use of Green Papers is evidence of this. In fact, within the limits of its resource constraints, the Commission enters into a dialogue on general policy matters with all social partners who request it. In addition, all social partners are encouraged to respond to draft notices and legislation that the Commission publishes as part of the consultation process.

The Committee also asks to be informed more often of the line DG IV intends to take in advance of decisions and their publication.

As regards the dialogue with the Committee, the Commission is willing to respond more often to requests for such a dialogue. However, it will not be possible to give preference to the Committee ahead of other Community institutions. It is already the Commission's practice to send copies of all draft notices and legislation to the Committee once they have been approved by the Commission for consultation. These draft notices

and legislation are the appropriate occasion for consultation and dialogue because they already precede any final decision the Commission may ultimately take. Similarly, the publication of Green Papers is an invitation to discuss policy where final decisions have not yet been adopted. Finally, it should not be forgotten that the Annual Competition Report, the Resolution of the Committee and the Commission's reply are an ideal opportunity to engage in discussions on general policy guidelines.

10.4. *The Committee feels that the Commission should consult workers and subcontractors on the subject of state aid as a matter of course, and not only as "interested third parties", in order to acquire data useful for its own assessment.*

In the interests of the firms concerned, their workers and the economy of the region or country concerned, aid for restructuring requires a very rapid reaction on the part of the Commission. In a situation of crisis (not to mention cases of rescue aid, which are even more sensitive) it is difficult to engage in additional consultations, and this could add to the criticism that the Community institutions are slow to act. In any case, all interested third parties are invited to participate when procedures are initiated, and various documents provide information after the event (publication in the OJ, Bulletin, DG IV News, etc.).

10.5. *The Committee regrets the insufficient consultation of both the ESC and social partners before the recent agreement between the Commission and the US antitrust authority.*

The Commission notes the Committee's dissatisfaction with the lack of consultation on the recent approval of the cooperation agreement with the US. It recalls, however, that the recent exercise was aimed at rectifying the defective conclusion of the agreement under European Community law following the judgment of the ECJ of 7 August 1994. The agreement was in fact signed and entered into force on 23 September 1991. Moreover, the agreement does not create any new powers for the Commission but simply provides a structure within which the EU and US competition authorities can cooperate under their existing rules.

11. Operational efficiency

11.1. to 11.3. *The Committee encourages the Commission to improve the transparency and speed of its actions and takes note of the quantitative and qualitative increase in the Commission's activity in the field of competition.*

The Commission shares the Committee's opinion provided that it is interpreted as support for the request for increased resources and for the policy of simplifying the rules and decentralizing application of Articles 85 and 86.

12. Independence of the application of competition law

12.1. to 12.3. *The Committee takes the view that the creation of a separate competition agency would be contrary to the position it has taken in previous opinions, i.e. competition policy has to be linked up with the other Community policies and the Union's new objectives.*

The Commission fully agrees with the Committee. It is a strength of the existing institutional order that competition policy is not applied and developed in isolation, but as one instrument among others which fosters the achievement of the Community's objectives. By the same token, the present order allows a comprehensive and coherent application of the broad range of legal instruments from antitrust and public enterprises to the control of state aid through one institution.

The proposed competition agency would sever these links and would divide responsibilities in an undesirable manner.

13. Other factors which distort competition

13.1. and 13.2. *The Committee considers that the destabilization of interest rates and exchange rates, along with social dumping, could threaten effective competition and therefore calls on the Commission to be particularly attentive to these factors.*

The Commission recently studied the impact of currency fluctuations on the internal market (COM(95)503). It concluded among other things that, for manufacturing industry, structural factors were far more important than exchange-rate effects over the period 1987-1994 and that, for intra-EU trade, the impact of production prices on the volume of exports was relatively small.

Nevertheless, the abruptness and the scale of exchange-rate movements since September 1992 have created problems of adjustment.

Firms may be tempted to bring in trade restrictions to protect their margins, while the public authorities in countries whose currency has appreciated may come under pressure from the hardest-hit sectors or regions. Action should be taken to prevent the introduction of anti-competitive practices which could lead to a breaking-up of the internal market, a contraction in intra-Community trade and a slowdown in growth in Europe.

The Community and the Member States already possess adjustment mechanisms (e.g. Structural Funds, initiative programmes, aid for rescue and restructuring, aid for specific regional problems).

On the problem of social dumping, see replies to points 9.1. to 9.4.

European Commission

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