Twelfth Report on Competition Policy

(Published in conjunction with the 'Sixteenth General Report on the Activities of the European Communities 1982')
Commission of the European Communities

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on Competition Policy

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Introduction

Maintenance of undistorted competition is one of the fundamental principles of the free market economy on which the Community is based; the Commission’s task, pursuant to the Treaties, is to secure its application. However, as a result of economic difficulties and their serious industrial and social repercussions, there has been a sharp increase in initiatives, taken both by governments and individual firms, which are liable to place this principle in jeopardy. In such circumstances the Commission believes that it is vital, now more than ever before, to safeguard the operation of fair, workable competition: the only way to ensure optimum allocation of resources, the development of innovation and a long-term improvement in the competitiveness of the European economy. Without such competition, free trade—mainstay of the common market and trump card of its economy—would be at risk. Moreover, competition provides an effective means of stimulating firms’ potential and encouraging adaptation of industrial structures to changing economic conditions. Active competition policy can therefore play a useful part in solving the persisting economic difficulties. With this in mind, the Commission has implemented its policy of rigorously monitoring State aids, restrictive agreements between undertakings and abuses of dominant positions. Although such supervision is based on a general prohibition, this is qualified by a system of derogations giving the Commission a certain discretion when assessing State aids or restrictive agreements between undertakings for compatibility with the common market.

This Report sets forth the Commission’s approach in using the combination of prohibitions and authorizations to promote the proper operation of competition at a time when economic difficulties are affecting an increasing number of firms, spheres of business and regions in the Community. It cannot, therefore, provide a detailed analysis of the numerous links between the Community’s economic and industrial policy as a whole and the competition policy which plays a significant role therein. The efficient functioning of this system is essential for the consolidation of the Community’s unified market, particularly as its attainment is still hampered by obstacles to the free movement of goods and services, establishment problems, disparities in company law, as well as marked
differences in national economic policies. This Report cannot, however, present a detailed analysis of the interconnections between the Community's competition policy and its other economic and industrial policies, although it is generally recognized, for example, that reinforcement of competition and consolidation of the unified market go hand in hand.

The general economic and social situation and in particular worsening unemployment, no doubt explain why the Member States have stepped in so many times to support or rescue both private and public undertakings. Thus in 1982 the Commission had to take decisions on 233 State aid schemes, far more than in any other year, even in the recent past. It is also noticeable that, in certain Member States at least, an increasing proportion of the budget has been earmarked for aid; this doubtless brings its own problems in view of the growing public finance deficits. The Commission has acknowledged that the grant of State aids may in some cases be beneficial to the Community in so far as such assistance favours economic growth, improves industrial structures, reduces regional imbalances and promotes research and development. Those objectives are also pursued by the Community itself when awarding aid from Community funds, so it would be inconsistent to fail to recognize that in certain cases the grant of State assistance is in fact warranted: of the aid proposals, including general schemes, notified to the Commission in 1982, 104 were considered compatible with the common market. However, the Commission is well aware of the dangers inherent in the proliferation of State aids and whenever necessary it has drawn attention to their numerous adverse repercussions: risk of firms becoming dependent; risk of delaying the reallocation of resources; risk of maintaining unviable firms in business to the detriment of those that are competitive. To these harmful consequences of a general nature, which may defer or even impede the solution of economic problems, are added from a Community point of view the damaging effects of aids which distort trade between Member States: the increase of State intervention can lead to outbidding, with all its attendant hazards, threatening the unity of the common market. It may have effects similar to those of national protectionism and transfer the economic difficulties which they aim to eliminate from one Member State to another.

This explains why the Commission has developed, in the spirit of the Treaties very restrictive criteria which it applies when granting derogations, from the general ban on aids which distort or threaten to distort competition. Such derogations are therefore granted subject to a series of conditions. The compatibility of an aid with the common market must be assessed from the standpoint of the Community rather than of a single Member State. The assistance must also be considered necessary to accomplishment of the assisted scheme and its intensity and duration must be proportionate to the importance of the scheme.
All these conditions must be satisfied if the grant of State aid is to comprise the counterpart within the meaning ascribed by the Court of Justice in its judgment in the *Philip Morris* case. The Member States certainly do not normally include these Community requirements when drawing up their aid policies, so it is hardly surprising that during the Report period the Commission initiated proceedings in respect of 129 cases; 55% of notifications received. Nevertheless, following the negotiations between the Commission and Member States in the course of these proceedings and the ensuing amendments, final negative Decisions were adopted in only 13 cases.

In addition, with the aim of improving practical application of its decisions on State aids, the Commission has defined the position it will be adopting in cases where aid is paid out illegally. Having established that it can require recovery of any aid granted illegally, the Commission is considering the steps it will take with a view to gradual implementation of this principle.

At the same time, in an endeavour to be more explicit, the Commission defines guidelines for identifying State aid which is in line with the Community interest, notably where it is clearly advisable because of developments on the world market to encourage restructuring and industrial redeployment. The aid framework for the textile and clothing industries, the Directive on aid to shipbuilding, the rules for aids to the steel industry and the aid framework for environmental matters were worked out in this context. As far as regional aid is concerned, the Commission has long endeavoured to specify the nature and terms of State measures that can be approved for the purpose of reducing the disparities in development as between the regions of the Community. Furthermore, work is in progress in the Commission on guidelines to be issued in the near future—once again on the basis of the Community interest—for the grant of assistance for energy saving and the promotion of research and development. The Commission has also stressed that the development of small and medium-sized enterprises is essential to the balance of the European industrial fabric, so certain measures of support for such businesses may also be approved.

In dealing with State aids, therefore, the Commission has above all made use of its discretionary powers under the Treaties, authorizing only those aids which can genuinely improve the competitiveness of European industry and are essentially apt to ensure the eventual creation of lasting employment.

The Report period provided the Commission with the opportunity to assert once again that the Community competition rules are applicable to all undertakings, irrespective of whether they belong to the private or public sector. Although there is no discrimination of treatment, the extension of the public sector does give the State a greater say in the operation of the market place.
The need to safeguard competition implies, therefore, *inter alia*, that the Commission must decide whether any aspects of State intervention are tantamount to aid. It was this concern that gave rise to the Directive on the transparency of financial relations between Member States and public undertakings; following applications for annulment by three Member States, the validity of this Directive was upheld by the Court of Justice on 6 July 1982.

The Commission accordingly plans to proceed first of all to examine the financial relations between the Member States and their public undertakings in the following industries: automobiles, shipbuilding, man-made fibres, textile machinery and manufactured tobacco. On the basis of these enquiries the Commission will be able to ascertain whether distortions exist in the conditions of competition in these industries and if so, whether any of them should be eliminated.

The Commission's policy towards restrictive practices on the part of firms pursues two complementary objectives: in the first it must enable competition to perform its traditional role in helping to improve the allocation of resources, increase businessmen's capacities for adjustment and better satisfy the requirements of consumers; secondly, it must reinforce the unity of the Community market by eliminating obstacles to trade between Member States. In examining these practices, the Commission naturally takes account of the intensity of international competition in the common market or in a substantial part thereof. The objectives of this competition policy consequently extend beyond those of the national policies which have been developed in the same field; in contrast, however, it ties in with other Community policies aimed at attainment of a single market.

Such a policy necessarily involves prohibition of practices designed to maintain or create divisions within the European market. In the course of 1982 the Commission accordingly adopted several decisions banning horizontal agreements which, notably by means of price-fixing and concerted practices, constituted barriers to trade within the common market. It also took a number of formal decisions prohibiting restrictive practices relating to distribution, such as export and resale bans. The Commission thus drew attention to the importance attached in Community competition policy to the prohibition of vertical agreements which may partition the market to the detriment of the European consumer. In order to prevent the national car markets from being sealed off, resulting in substantial price differences between Member States, the Commission made use for the first time of its power to take interim measures, since it considered that Ford Werke AG's decision to suspend deliveries of right-hand drive vehicles in the Federal Republic was against the general Community interest. Furthermore, the Commission is likewise anxious to oppose protection of
national markets: Article 86 of the EEC Treaty was applied for the first time to the telecommunications industry. The Commission held that in prohibiting private message-forwarding agencies in the United Kingdom from relaying international telex messages, British Telecommunications had infringed the Community rules of competition by abusing its dominant position.

In the interests of legal certainty, the Commission’s policy in 1982 also included clarification of the kinds of agreement which may be considered compatible with the Community competition rules. The Commission had the most opportunity to spell out the scope of certain exemptions in cases relating to small and medium-sized enterprises. Indeed, the Commission took the view that the economic fabric woven by such smaller businesses can make a significant contribution towards adapting the European economy to the constraints of the world market, and consequently to improving its competitiveness and safeguarding employment. In implementing the Community competition rules, therefore, it appeared appropriate to contemplate situations where cooperation between small and medium-sized firms may be in the general interest. The new Regulation concerning the application of Article 85(3) of the EEC Treaty to certain specialization agreements, which now covers joint manufacturing, reflects this concern. Similarly, the draft legislation on exclusive dealing agreements, scheduled for adoption in 1983, allows for non-reciprocal exclusive distribution and purchasing agreements between competing manufacturers regarded as small and medium-sized undertakings. Finally, the draft of the proposed block exemption Regulation for patent licensing agreements was amended following the judgment of the Court of Justice in the Maize seed-plant breeders’ rights case. Importance was attached in elaborating this draft to safeguarding the potential contributions that small and medium-sized businesses and also technical progress can make to the European economy. In a decision on an individual case the Commission also took a favourable view of a joint manufacturing and distribution agreement in the field of radioactive products, taking account in particular of the advanced technology involved in such manufacturing. The Commission’s exemption decisions are not restricted to agreements between small and medium-sized firms so long as certain conditions are fulfilled and the cooperation in question contributes, for example, to technical progress or to improving European competitiveness in the face of competition from non-member countries.

Furthermore, since the Commission is able to view certain agreements in a favourable light, for instance those which benefit the key industries of the future, the question arises as to whether it can on the other hand, regard as compatible with the common market agreements in restraint of competition which provide for concerted reductions of production capacity in industries
struck by crises or undergoing adaptation. Where the Commission ascertains that structural capacity does in fact exist, it may consider authorizing such agreements, but they must be made subject to the maintenance of adequate conditions of competition and a genuine reorganization of production structures. This structural reorganization should also bring in its wake a rapid improvement in the competitiveness of European industry.

The fact that the public sector accounts for a significant proportion of the European economy is not in itself a potential obstacle to accomplishment of the objectives of Community competition policy. As pointed out by the Court of Justice in its judgment on the transparency of financial relations between the State and public undertakings, private undertakings determine their industrial and commercial strategy by taking into account in particular requirements of profitability; decisions of public undertakings, on the other hand, may be affected by factors of a different kind within the framework of the pursuit of objectives of public interest which may exercise an influence over those decisions. In the single Community market a large national public sector must not be allowed at any stage, by virtue of its operation and management, to cause damage or distortion to the conditions of competition.

After 20 years of application it appears, therefore, that the Community competition rules, which have had to be implemented in very different economic circumstances—from sustained expansion to marked recession—have stood the test of time. Based on the general principle of prohibition accompanied by possible exemptions, the system of supervision is sufficiently flexible to take account of the economic conditions prevailing at any given time. Where the Commission notes that the existing rules are wanting, it puts forward additional measures as required, as in the case of the ECSC Treaty, which needed to be supplemented to make temporary provision for specific rules for aids to the steel industry. This should also apply to the supervision of significant mergers; to this end, some considerable time ago, the Commission proposed to the Council introduction of suitable complementary provisions under the EEC Treaty. The Commission's amended proposal was discussed by the Economic and Social Committee in the summer of 1982, and as soon as Parliament has delivered its opinion, the Commission will press the Council to take its decision. The Commission, for its part, has continued its action with regard to procedures by implementing a series of measures which improve the objectiveness of investigations in individual cases and speed up certain procedures, notably by enhancing the value of certain comfort letters; this has brought a considerable improvement to the administrative provisions now in force.

While economic horizons remains hazy, pursuit of a workable competition policy is more necessary than ever. The in-depth sectoral analyses carried out
under the Commission's programme of studies have revealed favourable development prospects in the various industries where competition operates effectively. These encouraging signs inspire determination to press on with measures consistently directed towards achievement of a competitive economy.
Competition policy and the role of socio-economic and political interest groups

1. In the line of the Commission's firm undertaking to encourage greater involvement of socio-economic and political interest groups in the evolution of Community competition policy, the period under review has been marked by intensified debates on competition matters within the European Parliament and the Economic and Social Committee, as well as numerous contacts with a broad range of interested parties to discuss both general problems of competition policy and specific issues of particular importance to certain sectors.

Both the European Parliament and the Economic and Social Committee have indicated their appreciation of the steps which the Commission has taken in this context, in particular the inclusion of a special chapter in the yearly competition reports on the role of socio-economic and political interest groups in that policy and the Commission's decision to consult on a systematic basis the Economic and Social Committee on competition policy issues of general Community interest.¹

The Commission's continuing effort to listen to and subsequently react to the comments and wishes of its institutional interlocutors has manifestly contributed to an atmosphere of constructive cooperation which can enhance the quality of the discussions held on competition matters.

As in the past, the Commission has likewise pursued its policy of conducting bilateral discussions on problems of specific interest to certain groups or sectors. In connection with the preparation of a number of regulatory measures during the course of the year, the Commission has had numerous contacts with various interest groups and representative organizations.

1. European Parliament

2. During the plenary session of December 1982, the European Parliament debated and adopted the motion for a resolution prepared by the Committee on Economic and Monetary Affairs, which takes into account the opinion of the Legal Affairs Committee, on the Commission’s Eleventh Report on Competition Policy.¹

On the whole, the statements made during the debate and the resolution itself indicate an increasingly positive attitude on the part of the Parliament vis-à-vis both the Commission’s competition policy itself and the Commission’s efforts to take account of the Parliament’s constructive comments on specific issues.²

Parliamentary involvement would, however, in the Commission’s view be less significant if it did not entail a certain amount of criticism: recurring comments in its resolutions include those of a general nature, such as the need for greater integration of competition policy with other Community policies, and requests for greater Commission attention to, for example, the banking sector, selective distribution networks, and the particular needs of small and medium-sized enterprises. The need for block exemptions for certain exclusive distribution and purchasing agreements, motor vehicle distribution systems and patent licensing agreements is fully acknowledged by the Parliament, although certain comments of a detailed nature are devoted to the actual elaboration of these legislative proposals. Other suggestions include the call for a more rigorous approach by the Commission to national aid systems and for intensified economic research.

The Parliament’s positive reaction to reforms which have been implemented with respect to the Commission’s procedures in competition cases nevertheless leaves room for suggestions on a number of pending procedural issues, certain of which have been elaborated on in the present Report.³ In general the Commission endeavours in each subsequent Report to respond as adequately as possible to the Parliament’s requests or criticism. It is clear, however, that certain problems which are admittedly linked to competition matters should be dealt with in the Commission’s general yearly reports or other specialized reports.

² See for example points 59 and 61 of the resolution on the Eleventh Report on Competition Policy.
³ See points 29 to 37 of this Report.
3. The annual discussions in the Parliament of the Commission’s reports on competition policy are of particular importance in view of the fact that the autonomous powers which the Commission has in this area imply that as opposed to the procedure normally followed in other domains—involving proposals to the Council and the prescribed consultation of the Parliament—formal consultation of the Parliament on competition matters is the exception rather than the rule.

Such formal consultation of the Parliament did, however, occur during the period under review on the proposed Council Regulation concerning the application of Articles 85 and 86 to the air transport sector, which culminated in a debate and the adoption of a resolution in June of this year.¹ The Parliament’s largely positive attitude towards the proposal will serve to strengthen the Commission’s position in the further legislative process.²

Aside from formal consultation on legislative proposals, the Commission has since 1970 adhered to an informal consultation policy with respect to its delegated powers to adopt regulations exempting as a group certain agreements from the prohibition of Article 85(1). When the Commission has sufficiently crystallized its position with regard to a given group exemption, it informs the competent committee of the Parliament thereof and participates in detailed discussions of the proposed regulations.

During the course of this year, such discussions took place both within the Committee on Economic and Monetary Affairs and the Legal Affairs Committee on the draft Regulations on exclusive distribution and purchasing agreements³ as well as on motor vehicle distribution and servicing agreements.⁴

The fact that these discussions are not part of a formal consultation process does not in any way diminish the importance which the Commission attaches to the opinions expressed, in particular as the points of view are of a more political nature and the diverging opinions inherently represented in a parliamentary forum can serve to highlight the problems involved in the broadest possible way.

4. Other topics related directly or more or less tangentially to competition policy discussed by the Parliament during 1982 included debates on small and

¹ The debate is reproduced in Annex to the OJ No 1-286 of 1982; the resolution is published in OJ C 182, 19.7.1982.
² See also point 19 of this Report.
³ See points 12 to 15 of this Report.
⁴ See point 16 of this Report.
medium-sized enterprises,\(^1\) the internal market and related issues,\(^2\) the crisis in the steel sector\(^3\) and national aids to the film industry.\(^4\)

5. The number of parliamentary questions to the Commission on competition matters during the course of 1982 included more than 100 written questions relating either exclusively or in part to the competition field, and another 60 written questions concerning issues having certain links with competition policy were received by the Commission.

Furthermore, the number of questions put to the Commission in 1982 for oral reply, with or without debate, amounted to nearly 50, indicating a notable increase as compared to previous years\(^5\) in the use of this parliamentary instrument to monitor the Commission's activities in the competition area.

### 2. Economic and Social Committee

6. The initiative taken by the Commission in 1981 to include the Economic and Social Committee (ESC) on a systematic basis in the inter-institutional discussions regarding competition policy has proved to be of great mutual value. Annual consultation of the ESC on issues of general Community interest covered in the Commission's yearly competition reports not only ensures that the broad range of socio-economic interest groups represented within the ESC are given the opportunity to air their views on Community competition policy, but in practice has also enhanced the consistency and quality of the continuing collaboration of the ESC and the Commission with regard to specific competition matters.

At the plenary session held on 27 and 28 October 1982, the ESC unanimously adopted the opinion prepared by the Section for Industry, Commerce, Crafts and Services on the Commission's Eleventh Report on Competition Policy.\(^6\)

As indicated in the opinion and the preceding debates, the ESC is on the whole very supportive of the Commission's activities in the competition field, notably the measures taken or envisaged to simplify and accelerate procedures, its intensified efforts to enforce the competition rules with respect to State aids and

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\(^1\) For the text of the debate, see Annex to the OJ No 1-280 of 16.2.1982; the resolution is published in OJ C 66, 15.3.1982.
\(^3\) Annex to the OJ No 1-291 of 1982.
\(^5\) In 1981, the number of oral questions amounted to nearly 30; Eleventh Report on Competition Policy, point 168.
the special attention which is being paid to the problems of small and medium-sized enterprises. The ESC appreciates the evolution in the Commission's approach to competition problems to one which is more responsive to economic and social realities.

These conclusions were presented by the rapporteur of the competent Section of the ESC to the Committee on Economic and Monetary Affairs of the European Parliament when the latter met to discuss the elaboration of its own report on the same subject matter.

7. On the basis of a report drawn up by the Section for Industry, Commerce, Crafts and Services, the ESC on 30 June/1 July 1982 adopted an opinion on the amended version of the proposed Council Regulation on the control of concentration. The opinion agrees with the measures proposed by the Commission in the interest of breaking the stalemate which has existed with respect to the draft legislation, reserving its position, however, on a number of, specific points, notably insisting on the need to ensure that the Commission retains final competence in this area.

In the context of the informal consultation procedure applied by the Commission with respect to its delegated legislation, detailed discussions have been held within the ESC on the proposed block exemptions for exclusive distribution and purchasing agreements, and, respectively, specialization agreements. Preliminary deliberations at working group level have also taken place regarding the draft Regulation on motor vehicle distribution and servicing agreements.

3. Other contacts

8. In addition to the discussion of competition matters within the inter-institutional framework, various possibilities exist to ensure that the necessary bilateral contacts take place between the Commission and interested groups with respect to both individual cases and issues of more general importance, such as legislative matters.

The important role which such contacts can play in the process of preparing secondary legislation was illustrated by the developments which took place this

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2 See point 23 of this Report.
3 OJ C 33, 7.2.1983.
4 See points 172 to 174 of the Eleventh Report on Competition Policy.
year with respect to the proposed Regulation on exclusive distribution and exclusive purchasing agreements, and on specialization agreements.¹

Following the mandatory publication² of the draft Regulations with which the Commission intends to replace Regulation No 67/67/EEC on exclusive dealing agreements,³ the volume of reactions received from a very wide range of interest groups and the importance of the issues raised in a number of those comments, contributed to the Commission's decision to extend the validity of the existing Regulation for a six-months period, in order to enable a proper re-examination where necessary.⁴

Publication of the proposed Regulation concerning specialization agreements,⁵ to replace the Regulation which expired at the end of 1982, gave rise to written comments from half a dozen associations representing industrial interest groups both at European and national level.⁶

¹ See respectively, points 15 and 10 of this Report.
² Article 5 of Council Regulation No 19/65/EEC.
³ OJ C 172, 10.7.1982.
⁴ See point 15 of this Report.
⁵ OJ C 172, 10.7.1982.
⁶ See point 10 of this Report.
Part One

Competition policy towards enterprises
Chapter 1

Main developments in Community policy

§ 1 — Specialization

9. On 23 December 1982 the Commission adopted a new Regulation\(^1\) on the application of Article 85(3) of the Treaty to categories of specialization agreements.\(^2\)

The new Regulation, which came into force on 1 January 1983, essentially retains the same underlying principles as its predecessor\(^3\) exempting certain forms of cooperation between small and medium-sized undertakings from the prohibition of Article 85(1). A significant difference, however, is the extension of the block exemption to agreements in which the contracting parties undertake to only manufacture, or have manufactured, certain products jointly.\(^4\)

This extension was considered appropriate to cover a form of cooperation which is of particular importance to small and medium-sized undertakings; they will thus be able to achieve economies of scale more easily.

10. During the course of 1982, the procedure\(^5\) which culminated in the adoption of the new Regulation took place, starting with the first consultation of the Advisory Committee on Restrictive Practices and Dominant Positions on 30 April 1982. The subsequent publication of the draft text on 10 July 1982\(^6\) gave rise to half a dozen reactions from associations representing industrial interest groups both at European and national level. A slightly revised version of the

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2 See Annex.
4 See Article 1(b) of the Regulation.
6 OJ C 172, 10.7.1972.
propoaisal, which took into account a number of the comments received, was discussed for a second and final time by the Advisory Committee during its meeting of 3, 4 and 5 November 1982.

II. The consultation procedure revealed universal approval of the extension of the block exemption to agreements for the joint production of specialized products.

Suggestions put forward to further expand the scope of the Regulation, by raising considerably the criteria on total turnover set at 300 million ECU were not followed by the Commission, because such a modification would conflict with the whole concept of the Regulation, basically designed to benefit small and medium-sized undertakings. The Commission must continue to exercise, by means of individual decisions, control over specialization agreements between large groups of undertakings which, at least potentially, represent a threat to competition.

Adjustment of this threshold for inflation is not necessary at present. However, the new Regulation is to remain in force for 15 years on account of the possible structural implications of long-term specialization agreements and the problem could arise during this period. An amendment to the Regulation in accordance with Council Regulation (EEC) No 2821/71 would provide an appropriate solution.

§ 2 — Distribution

1 — Exclusive distribution and purchasing

12. During 1982 the Commission continued its preparation of two Regulations to replace Regulation No 67/67EEC, which was to expire on 31 December 1982.

The Advisory Committee on Restrictive Practices and Dominant Positions was consulted for the first time in September 1981 and discussions continued at a meeting held from 28 to 30 April 1982. In accordance with the relevant procedural rules the Commission published the draft Regulations on 10 July 1982; a second consultation was held on 3, 4 and 5 November 1982.

13. As regards the provisions of the proposed Regulation on exclusive distribution agreements, following the above consultations, the Commission intends to maintain the overall approach outlined in its Eleventh Report on Competition Policy; extending the scope of the Regulation to agreements covering the entire territory of the common market, maintaining the exemption for non-reciprocal agreements between competing manufacturers regarded as small or medium-sized undertakings, and strengthening guarantees to ensure the possibility of parallel imports.

14. As far as the draft on exclusive purchasing agreements is concerned, account must be taken of the case law of the Court of Justice which has established that such agreements may fall within Article 85, taken either in isolation or together with others, in the economic and legal context in which they are made, notably because of the existence of similar agreements and the cumulative effect they produce. The Commission has accordingly established not only general rules applicable to exclusive purchasing agreements caught by Article 85(1), but has also taken action in two sectors, beer and motor fuel, where there have traditionally been vast networks of exclusive purchasing agreements at national level. This was the main cause of the difficulties encountered by the Commission in working out suitable ways of reconciling the conflicting positions of the interested parties.

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1 Eleventh Report on Competition Policy, point 7.
3 OJ C 172, p. 2.
4 Point 8.
The Commission believes that a comprehensive solution to all these problems can be found only by restricting the duration and scope of the relevant agreements so that they satisfy the conditions for exemption in Article 85(3), which necessitates making special provisions for agreements concerning beer and motor fuel.

15. On account of the number and the importance of the comments the Commission received following publication of the draft Regulations, the Commission decided to extend Regulation No 67/677EEC for six months,¹ so that it can proceed with a supplementary examination of certain specific problems and with technical drafting of the new texts. There will thus also be time to complete the second consultation of the Advisory Committee and to intensify the discussions which are in progress with Parliament and the Economic and Social Committee.

In broad lines, the Commission intends to maintain the principle that in order to benefit from the block exemption, exclusive purchasing obligations must be limited both in scope and duration, with similar but derogating provisions to be applied to exclusive purchasing agreements concluded by breweries and petrol companies, taking into account the special features of these sectors. The large majority of the reactions submitted after publication of the draft proposals related to provisions on exclusive purchasing agreements, in particular brewery agreements. Depending on the interests involved many of these comments were diametrically opposed. It is in the light of these comments and of the discussions with the Advisory Committee, Parliament, the Economic and Social Committee, as well as with other interested parties, that the final text of the proposed Regulation will be prepared before the end of June 1983.

2 Selective distribution: motor vehicle sector

16. The Commission also continued its work on an exemption Regulation relating to the motor vehicle sector.²

At its meetings of 1 and 2 July 1982 and 8 and 9 September 1982, the Advisory Committee on Restrictive Practices and Dominant Positions discussed the proposed Commission Regulation on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements³

² For a general analysis of the structure of the motor vehicle market, notably with respect to price differentials, see Part III of this Report, point 238.
³ Eleventh Report on Competition Policy, point 12.
and concluded that it can agree with the publication of a draft Regulation on the basis of and along the same lines as the proposal submitted to it.

The first phase of the consultation procedure prescribed by Article 6(1) of Regulation No 19/65/EEC has accordingly been completed, so that the Commission can proceed to publish the proposal in the Official Journal, inviting interested parties to submit comments.

Informal contacts have been established with Parliament and the Economic and Social Committee to allow an exchange of views as early as possible in the Commission's process of elaborating the Regulation.
§ 3 — Patent licensing agreements

17. Following the judgment delivered by the Court of Justice on 8 June 1982 in the Plant breeders' rights—maize seed case, the Commission has prepared a new version of its proposed Regulation relating to exemption for certain categories of patent licensing agreements; it will be submitted to the Advisory Committee for the second consultation on the draft in accordance with the relevant provisions.

In line with the judgment of the Court, the Commission's amended draft lists the circumstances in which the obligations on the licensor not to manufacture or sell himself in the licensed territory and not to grant other licences there, are not caught by the prohibition in Article 85(1).

As far as the remaining provisions are concerned, the Commission believes that the Court's judgment upholds most of the basic principles set out in the proposal for a Regulation published in March 1979. It is therefore retaining the structure and fundamental content of this proposal, while taking account, however, of the numerous suggestions for improvements put forward following publication of the proposal and at the hearing held with interested parties on 8, 9 and 10 October 1979. They concern in particular extension of the Regulation to all mixed patent licensing and know-how agreements, irrespective of the importance of each component, allowing the use of know-how to be restricted to certain applications and introduction of a simple procedure for examining licensing agreements which include restrictions not expressly listed in the Regulation.
§ 4 — Air and sea transport

18. In 1982 the two proposals for Regulations\(^1\) laying down rules for application of Articles 85 and 86 of the EEC Treaty to air\(^2\) and sea transport\(^3\), which the Commission transmitted to the Council in 1981, were the object of debates within the European Parliament and the Economic and Social Committee.

The discussions of the proposals which have taken place at working group level within the Council have helped to crystallize certain issues which will need further consideration before final agreement can be reached.

1 — Air transport

19. On 18 June 1982 Parliament adopted a resolution which approved in principle the proposal for a Regulation applying the competition rules to the air transport sector.\(^4\)

The resolution agrees with the Commission that the effective application of competition policy to air transport has been hampered by the absence of implementing legislation giving the Commission the necessary powers of investigation and enforcement in this sector and accordingly urges speedy Council adoption of the proposal. The main reservation made in the resolution is that the scope of the Regulation is limited and that other proposals relating to structural conditions will be needed to allow fair competition in this sector.

Within the Council, the ad hoc Working Group on Air Transport/Rules of Competition has devoted several meetings to the proposed Regulation since it was submitted by the Commission in August 1981.

The discussions have been of a preliminary nature and have not yet included an article-by-article review of the proposal. Aside from certain questions raised as to the adequacy of Article 87 of the Treaty as a legal basis of the Regulation, the discussions have focused on the scope of the Regulation, which covers international air transport, and the legal exception for technical agreements provided for in Article 2 of the proposal.

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\(^1\) Eleventh Report on Competition Policy, points 1 to 3.
\(^3\) OJ C 282, 5.11.1981.
In the Economic and Social Committee, a draft opinion on the draft Regulation has been prepared by the Transport Section, to be debated in plenary at the beginning of 1983.\(^1\)

20. During the course of the year, all Member States replied to the questionnaires which the Commission had sent the previous year to determine more clearly the applicability of Articles 85 and 86 of the Treaty to the tariff-setting procedure in the air-transport sector.\(^2\)

The replies are in keeping with the conclusions of the report on scheduled passenger air fares in the EEC\(^3\) that fares for scheduled passenger air services are a result of airline and government activities, whereby the first stages of consultation and negotiation involve mainly the airlines, individually and/or collectively, while final responsibility in the adoption of a tariff rests with the governments of the Member States.

The Commission must now determine the ways in which public authorities intervene in the final stages of the tariff setting procedure in order to make sure that they are compatible with the rules of competition. In this connection Article 90 of the Treaty may be used.

Replies were also received from airline companies to the questionnaire concerning capacity and pooling arrangements and certain other matters on which common decisions seem to be taken; the Commission notes that the replies were incomplete, which underlines the need for legislation giving the Commission the powers of investigation it needs.

2—Sea transport

21. The proposal for a Regulation applying Articles 85 and 86 of the Treaty to sea transport\(^4\) was forwarded for examination and consultation to Parliament and the Economic and Social Committee.

Parliament’s Economic and Monetary Affairs Committee has been given opinions by the Legal Affairs and Transport Committees and is proceeding to draft a resolution to be presented in plenary in the near future.

The Transport Section of the Economic and Social Committee has prepared an opinion which it plans to discuss at a plenary session early in 1983.\(^1\)

\(^{1}\) This opinion was adopted on 27.1.1983: OJ C 77, 21.3.1983.
\(^{2}\) Eleventh Report on Competition Policy, point 5.
\(^{3}\) COM (81) 398 final, 23.7.1981, paragraph 8.
\(^{4}\) Eleventh Report on Competition Policy, points 1 and 3.
Within the Council, the *ad hoc* Working Group on Sea Transport/Rules of Competition has discussed the substantive rules of the proposals, with the aim of reaching an agreement of principle on certain points; this would serve as a basis for further detailed article-by-article examination.

The Working Group also discussed problems that might arise from proposals by the United States of America to reform its policy on the regulation of competition in shipping. Member States and the Commission addressed a communication to the US Administration noting that as both sides are at present in the process of legislating on the same subject, consultation provisions should be included in both sets of legislation to avoid, in so far as possible, situations of conflict.

In the course of further talks, the Commission has also made clear its interests in negotiations on possible adjustments of texts in order to avoid shipowners having different responsibilities over one and the same trade route.
§ 5 — Merger control

22. During the course of 1982, the amended version of the Commission's proposed Regulation on merger control,¹ referred to in the Eleventh Report on Competition Policy,² has been the object of discussions within the Economic and Social Committee and the European Parliament.

23. The opinion adopted by the Economic and Social Committee at its plenary session of 30 June/1 July 1982³ approves the amended proposal, subject to a number of comments. The opinion welcomes in particular the added clarification that the Regulation will apply to mergers with a Community dimension and the introduction of international competition as an element in assessing the compatibility of a merger with the common market. The addition of market share as an assessment criterion is likewise favourably received in that it provides enterprises with guidance when contemplating a merger.

The opinion also stresses that 'the Commission must continue to hold absolute responsibility for deciding whether a merger is incompatible or not with the common market'.

24. Parliament is due to discuss the Commission's proposal at a part-session in the early spring of 1983, on the basis of a draft resolution prepared by the Committee on Economic and Monetary Affairs.

As soon as this resolution has been adopted, the Commission will press the Council to resume its work on the proposal.

² Eleventh Report on Competition Policy, point 13.
§ 6 — Small and medium-sized enterprises

25. In anticipation of 1983 as 'the year of the small and medium-sized enterprise'\(^1\) the discussions concerning such enterprises have intensified during the course of the year.

Parliament held a general debate on the position of SMEs in the Community;\(^2\) the Commission, for its part, examined the possible measures which could be undertaken at Community level in this context.

The broad range of topics covered in the discussions on SMEs underlines the fact that, on the one hand, a structure of sound, viable SMEs is of importance to a competition based economic policy and that, on the other hand, competition policy is one of a number of factors which must be taken into account in a comprehensive Community policy towards SMEs and can be used as an instrument in promoting them.\(^3\) The Commission therefore continues to pursue its policy of applying the competition rules in such a way as to strengthen the competitiveness of SMEs.

26. In this vein, developments with respect to a number of legislative proposals indicate the Commission's continuing concern for the special problems of SMEs.

The Commission adopted a new Regulation which expands the scope of applicability of the exemption by category of certain specialization agreements between small and medium-sized enterprises to include joint production agreements\(^4\). By allowing enterprises which fulfil the quantitative criteria as to turnover and market share to agree to only manufacture, or have manufactured, certain products jointly, the new Regulation further enhances the ability of SMEs to achieve economies of scale.

In July the Commission published the draft legislation which is intended to replace Regulation 67/67/EEC on exclusive dealing agreements.\(^5\) Although final adoption of the draft Regulations has been postponed until June 1983 due to the need for further reflection on a number of issues, the Commission intends to maintain the provisions which allow non-reciprocal exclusive distribution or

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1 See Parliament's resolution on the situation of small and medium-sized undertakings in the Community: OJ C 66, 15.3.1982, point 18.
3 Eleventh Report on Competition Policy, point 29 et seq.
4 Point 9 of this Report.
5 Points 12 to 15 of this Report.
purchasing agreements between competing manufacturers if at least one of them is a small or medium-sized enterprise, as determined by total turnover.

With respect to the block exemption for patent licensing agreements, a standstill of several years whilst awaiting the judgment of the Court of Justice in the Maize seed case has now ended and the Commission will proceed to take the necessary steps leading to adoption of a slightly modified version of the original draft Regulation.\(^1\) This Regulation, which is inherently favourable towards SMEs in that it will allow enterprises access to new technology and exploitation thereof, has the added advantage for SMEs that greater territorial protection will be permitted for them alone.

27. In order to allow SMEs to overcome the handicaps peculiar to them and given the important role they play in the stimulation of the economy, the fight against unemployment and the improvement of competitiveness, all Member States give aid in one form or another to such enterprises.

Although such assistance will normally be caught by Article 92(1) of the Treaty, the Commission has maintained the policy described in previous Reports\(^2\) that derogations from the general ban on aids may be granted where assistance is designed to enable the SMEs concerned to fulfil their role effectively. Aids to SMEs that have accordingly received favourable treatment in the past, and may be expected to do so in the future, have taken the form of:

(i) improved access to credit through loans at reduced rates, guarantees and specialized risk capital institutions, designed to fill the gap between SMEs and large undertakings which can obtain finance on more favourable terms;

(ii) direct aids for research and development projects;

(iii) technical assistance with commercial and management policies.

In addition, when the Commission states its views on the compatibility with the common market of aid schemes for specific industries it considers whether they discriminate against SMEs or whether, on the contrary, they have a particularly favourable effect.

Finally, by establishing suitable thresholds the Commission makes sure as a rule that SMEs are not subject to the system of prior notification which it has introduced for significant individual cases of application under general

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1 Point 17 of this Report.
2 Sixth Report on Competition Policy, point 253 et seq.
aid schemes and schemes for specific industries, whereby notification is required once a certain threshold is reached.\footnote{Ninth Report on Competition Policy, point 183 \textit{et seq.}}

28. The Commission intends to pursue its favourable approach towards SMEs, and is looking into possible new ways of providing further support for such firms.
§ 7 — Procedures

29. The improvements in administrative procedures which the Commission outlined in its Eleventh Report on Competition Policy\(^1\) were on the whole very well received.\(^2\)

These amendments meet the requests of interested economic and legal circles to improve legal certainty for firms, speed up procedures and provide additional guarantees that cases are handled objectively.

30. As far as legal certainty is concerned, the Commission has put into effect for the first time its avowed intention\(^3\) of increasing the value of comfort letters.\(^4\)

The Commission thus plans to open the way for a more flexible administrative practice in assessing applications for negative clearance under Article 2 of Regulation No 17 of 1962, whereby it may certify that Article 85(1) does not apply to all agreements. Experience has indeed shown that in certain cases a comfort letter from the Directorate-General for Competition was an appropriate response to an application for negative clearance. However, in order to enhance the declaratory value of such a letter and without prejudice to the possibility of terminating the procedure by a formal decision, the Commission now publishes the essential content of such agreements pursuant to Article 19(3) of Regulation No 17, so as to give interested third parties an opportunity to make known their views. In appropriate cases a comfort letter closing the procedure could be sent after publication, so as to simplify and shorten the procedure.

Arrangements will also be made for the appropriate liaison with the Advisory Committee on Restrictive Practices and Dominant Positions.

Cases closed by a comfort letter following publication will be brought to the attention of interested third parties by the subsequent publication of a Notice in the *Official Journal of the European Communities*.\(^5\)

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\(^1\) Points 14 to 18.
\(^2\) Points 2 to 6 of this Report.
\(^3\) Eleventh Report on Competition Policy, point 15.
\(^5\) See also Commission answers to Written Questions by Mr Prout (No 815/82: OJ C 259, 4.10.1982) and Mr Tyrrell (No 874/82: OJ C 287, 4.11.1982).
31. Guarantees of objectiveness have been improved considerably by the amendments outlined below, made to procedures during inspections, access to the Commission’s files and hearings.

1 — Procedures during inspections

32. With the aim of providing full information to undertakings on their rights and obligations when subject to inspections, the Commission has drawn up an explanatory memorandum, in the form of a document attached to the authorization; it outlines the scope and limits of the powers of the officials carrying out the investigations and the rights of the undertakings concerned.

The document explains in particular that during the inspection the undertaking may call in its legal advisers for consultation. However, their presence is not a legal precondition for the validity of the inspection, which must not be unduly delayed as a result. In all events, it is not necessary to wait for a legal adviser where the undertaking concerned has in-house lawyers. Moreover, the undertaking must ensure that its files remain as they are.

The document also states that the undertaking may draw the attention of the Commission officials carrying out the investigations to factors favourable to them which relate to the purpose of the inspection and emerge from documents other than those requested. This helps to ensure that the information collected by the Commission is complete and will be used objectively in the subsequent procedure.

33. Although in its judgment in the AM & S case, the Court of Justice confirmed that the Commission holds wide powers of investigation and of obtaining information, and that it is for the Commission to decide whether a given document must be produced, it nevertheless recognized that certain written communications between lawyer and client constitute an exception and are protected by the principle of confidentiality. It is therefore up to the undertaking which claims protection for a document to prove to the Commission’s authorized agents that, in its opinion, the said document qualifies for protection, for example, by producing relevant material by which it can be identified. In the event of dispute, the Commission is obliged to adopt a decision which may be challenged before the Court of Justice.

The Commission has accordingly reconsidered the position set out in its answer to Written Question No 63/78 by Mr Cousté, that the Commission customarily

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1 Case 155/79: points 50 to 54 of this Report.
examined but did not use as evidence, legal papers relating to the rules of competition and the planning of an undertaking's defence. The inspectors may no longer have access to written communications between an independent lawyer entitled to practice his profession in one of the Member States and an undertaking for the purposes and in the interests of the latter's right of defence, i.e. all written communications exchanged after the initiation of administrative enquiries and all earlier written communications which have a relationship to the subject matter of those enquiries. The Commission is, however, entitled to inspect all other pages.

2 — Access to files

34. The Commission has put into effect the proposal mentioned in the Eleventh Report on Competition Policy\(^1\) to go beyond the requirements laid down by the Court and improve the exercise of the rights of defence in the course of administrative procedures. It now permits the undertakings involved in a procedure to inspect the file on their case.

35. Undertakings are informed of the contents of the Commission's file by means of an annex to the statement of objections or to the letter rejecting a complaint, listing all the documents in the file and indicating documents or parts thereof to which they may have access.

They are invited to come and consult these documents on the Commission's premises. If an undertaking wishes to examine only a few of them the Commission may forward copies.

However, the Commission regards the documents listed below as confidential and accordingly inaccessible to the undertaking concerned:

(i) documents or parts thereof containing other undertakings' business secrets;

(ii) internal Commission documents, such as notes, drafts or other working papers;

(iii) any other confidential information, such as documents enabling complainants to be identified where they wish to remain anonymous,\(^2\) and information disclosed to the Commission subject to an obligation of confidentiality.

\(^{1}\) Points 22 to 25.

\(^{2}\) Such cases are treated as own-initiative procedures.
Where an undertaking makes a justified request to consult a document which is not accessible, the Commission may make a non-confidential summary available.

In order to facilitate the determination of the accessibility of documents, undertakings are henceforth requested, when supplying information, to state whether and to what extent it should be regarded as confidential.

It should be possible to apply the procedures relating to access to files as described above without any problem, except for files assembled before they were introduced, for which these new arrangements could not be taken into account; they will have to be dealt with on a case-by-case basis.

3 — Hearing Officer

36. In accordance with the plans referred to in the Eleventh Report on Competition Policy, 1 the Commission decided to create the post of Hearing Officer with effect from 1 September 1982. 2

The Hearing Officer's task is to ensure that the hearing is properly conducted and thus to contribute to the objectiveness of the hearing itself and of any subsequent decision. In performing his duties he ensures that the rights of the defence are respected, while taking account of the need for effective application of the competition rules in accordance with the regulations in force and the principles laid down by the Court of Justice. He also ensures that in the preparation of draft Commission decisions in competition cases due account is taken of all the relevant facts, whether favourable or unfavourable to the parties concerned.

The Hearing Officer therefore fulfills an important role in the preparation and conduct of the oral stages of the procedure, and in the action taken in the course of the decision-making process after the undertakings have submitted their defences.

(i) The Hearing Officer organizes preparations for the hearing, fixing the date, duration and place; he may also let the undertakings concerned know in advance the matters on which he would particularly like them to set forth their points of view. To this end he may organize a meeting with the parties concerned and, if necessary, with the relevant Commission departments to prepare for the hearing. He may also ask for prior submission in

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1 Point 26.

writing of the main content of statements by persons who are to speak on behalf of the undertakings concerned.

(ii) The Hearing Officer is fully responsible for the actual hearing and decides whether to admit new documents in the course of the hearing, to hear persons who may corroborate the facts relied upon, and also whether to hear the persons concerned separately or in the presence of other persons admitted to the hearing. On completion of the oral stage of the hearing, he ensures that the essential content of the statements made by each person heard are recorded in the minutes, which the person concerned must read and approve.

(iii) As regards the role of the Hearing Officer in the steps to be taken after the hearing, he reports to the Director-General for Competition on developments at the hearing and on his conclusions. He submits comments on the continuation procedure. These comments may concern, inter alia, the need for additional information, withdrawal of certain objections or an additional statement of objections.

Administratively, the Hearing Officer belongs to the Directorate-General for Competition. To ensure his independence in the performance of his duties, he has the right of direct access to the Member of the Commission with special responsibility for competition policy; if he considers it appropriate he may refer to the Member his comments on the draft decision.

In order to make sure that the Commission, when taking a decision on a draft decision on an individual case, is fully informed of all relevant factors, the Member of the Commission with special responsibility for competition policy may also submit to it the Hearing Officer's opinion.

37. Since there were only a few oral hearings for which the Hearing Officer was responsible in 1982, no initial conclusions from experience gained in implementing the new arrangements can be drawn until the next Report.
§ 8 — The competition rules and measures to reduce structural overcapacity

38. As the economic recession persists, problems of overcapacity are appearing in increasingly acute form in individual firms and entire industries. The associated employment problems are particularly worrying at a time of high unemployment in all the Member States. In such circumstances, the Commission must offer guidance as to how far it considers the solutions sought by firms as compatible with Article 85 of the EEC Treaty.

Structural overcapacity exists where over a prolonged period all the undertakings concerned have been experiencing a significant reduction in their rates of capacity utilization, a drop in output accompanied by substantial operating losses and where the information available does not indicate that any lasting improvement can be expected in this situation in the medium-term.

In a predominantly free market economy such as the Community’s, it is up to each undertaking to assess for itself whether and at which point such overcapacity becomes economically unsustainable and to take the necessary measures to reduce it. However, within a given crisis-struck industry, economic circumstances do not necessarily guarantee a reduction of the least profitable surplus capacity. Undertakings which have failed to make the necessary adjustments may have their losses offset within their groups, to the detriment of healthy undertakings and there may be additional distortion from external subsidies.

39. Against this background, and in order to combat the structural problems of individual sectors, the Commission may be able to condone agreements in restraint of competition which relate to a sector as a whole, provided they are aimed solely at achieving a coordinated reduction of overcapacity and do not otherwise restrict free decision-making by the firms involved. The necessary structural reorganization must not be achieved by unsuitable means such as price-fixing or quota agreements, nor should it be hampered by State aids which lead to artificial preservation of surplus capacity.

The Commission will be able however to authorize sectoral agreements where it is satisfied that the other conditions of Article 85(3) of the EEC Treaty are met, notably in the following circumstances:

(i) production can be considered to be improved if the reductions in capacity are likely in the long run to increase profitability and restore competitiveness, and if the coordination of closures helps to mitigate, spread and
stagger their impact on employment. For this purpose, the agreement must contain a detailed and binding programme of closures for each production centre, which ensures, on the one hand, that overcapacity is irreversibly dismantled and, on the other, that while the plan is in operation no new capacity is created, except for replacement capacities provided for in the reorganization programme;

(ii) consumers can be considered to enjoy a fair share of the benefits resulting from the agreement if, at the end of the agreement, they can rely on a competitive and economically healthy structure of supply in the Community, without having been deprived during its operation, despite the effects of the capacity cutbacks, of their freedom of choice or the benefit of continued competition between the participating firms;

(iii) the restrictions of competition which the agreement involves can be considered to be indispensable to the objective of the planned restructuring, if the agreement is concerned solely with reducing surplus capacity and is limited from the outset to the period necessary for the technical implementation of the envisaged programme of cutbacks. The creation of a system for exchanging information to check that promised reductions of capacity are being implemented is admissible provided it does not in any way help to coordinate policy on the utilization of remaining capacity or to align conditions of sale;

(iv) the parties to the agreement will not be afforded the possibility of eliminating competition eventually for the following reasons: first, since the orderly reduction of excess capacity is only one element, albeit an important one, of the competitive strategy of the participating undertakings, they will not have surrendered all freedom of action in the marketplace, so that a degree of internal competition will be maintained. Secondly, the presence in the market of firms not party to the agreement and the fact that the Community is open to imports from third countries will usually provide a source of external competition. Finally, as the agreement is from the outset to run for a limited period only, the certainty of a return to completely unfettered competition in the near future will prompt the undertakings concerned to take account, in the decisions they make even during the course of the agreement, of the fact that in due course they will again become full competitors.

40. As an alternative to such sectoral agreements, the Commission can also envisage agreements between a small number of firms providing for reciprocal specialization which would enable them to close excess capacity.
41. Whatever type of solution is chosen, the Commission will always have to satisfy itself that after the reorganization programme is completed there will still be a sufficient number of Community manufacturers left to maintain effective competition in the Community. This condition is necessary to ensure that the economy as a whole, and users and consumers in particular, will also benefit from the positive results of the arrangements.

Reorganization operations should also be such as to stabilize and secure the employment situation within the sector concerned.
Chapter II

Main cases decided by the Court of Justice

42. The principal judgments delivered by the Court of Justice in 1982 in the field of competition law applicable to undertakings have dealt with issues which are both very significant and highly controversial. They concerned the applicability of Article 85 to the exclusive grant of industrial and commercial property rights in general and of plant breeders' rights in particular and also to a right derived from copyright, the right of exhibition. There were also two important cases relating to procedural matters; the Commission's powers of investigation in relation to respect for the principle of confidentiality, and the definition of the circumstances in which the Commission can exercise its power to order interim measures.

The Court also ruled on the circumstances in which an individual has a right of appeal and on procedures for recovering fines.

§ 1 — Industrial and commercial property and the application of Articles 85 and 86

Maize seed

43. On 8 June 1982 the Court rendered its long-awaited judgment in the Maize Seed case.¹

This case concerned the licensing arrangements for certain maize seed varieties between Institut National de la Recherche Agronomique (INRA), a French public law corporation entrusted with research and development of plant varieties, the originator of these varieties, and Société française des semences de

¹ Case 258/78 Nungesser KG & Eisele v Commission, not yet reported.

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maïs (FRASEMA), the French undertaking charged by INRA with their commercial exploitation and, on the other hand, the German licensee of the plant breeders’ rights in the seeds, Nungesser KG, and its owner, Mr Eisele.

The Commission had found in its Decision of 21 September 1978\(^1\) that certain provisions of the agreements infringed Article 85(1) and could not be exempted pursuant to Article 85(3). The Commission Decision also attacked a provision contained in a settlement terminating legal proceedings before a German Court whereby the licensee relied on his plant breeders’ right to prohibit parallel imports into Germany from France.

The German licensee appealed against this Decision.

44. The Court upheld the broad lines of the Commission Decision except for the part which prohibited the provisions of the agreement imposing an obligation on the licensor not to produce or sell in Germany or license others to do so. The Court considered that a potential licensee for a newly developed hybrid maize seed might be deterred from accepting the risk of cultivating and marketing that product in the absence of any assurance that he would not encounter competition from other licensees in the territory granted to him, or from the owner of the right himself. Such a result would be damaging to the dissemination of new technology and would prejudice competition between the new product and similar existing products.

Thus in this case, the Court drew a distinction between an ‘open’ exclusive licence, where the licensor is only prevented from granting other licences or exploiting himself in the territory granted to the licensee so that parallel importers and other licensees remain free to sell in that territory, and a ‘closed’ exclusive licence, where the licensor is also under an obligation to prevent others from importing the product into the licensee’s territory and the licensee is enabled to prevent the import of the product into his territory—in other words, where the licensee is given absolute territorial protection. The Court consequently held that, having regard to the specific nature of the products in question, in a case such as the one at hand, the grant of an open exclusive licence, that is a licence which does not affect the position of third parties—parallel importers and licensees for other territories—is not in itself incompatible with Article 85(1) of the Treaty.

The Court went on to confirm, however, that all the aspects of the agreements which gave the licensee absolute territorial protection were incompatible with Article 85. In doing so it also held that:

\(^1\) Breeders’ rights—maize seed: OJ L 286, 12.10.1978: Eighth Report on Competition Policy, point 123.
1. the agreements should be treated in the same way as a licence even though the ‘licensee’ is the legal owner of the plant breeders’ rights in Germany;

2. plant breeders’ rights are not so different from patent rights that the concept of Community-wide exhaustion developed for patents cannot be applied to them. The plaintiff could not therefore impede parallel imports;

3. the agreements do not form an integral part of an agricultural market organization within the meaning of Council Regulation 26/62 and Article 85(1) is accordingly applicable;

4. INRA, being an undertaking entrusted with service of general economic interest pursuant to Article 90(2), would not be obstructed in the performance of the particular tasks assigned to it by the application of the competition rules as done by the Commission in its Decision.

5. Article 85 applies where an industrial property right is the subject matter, means or consequence of a restrictive agreement. This is especially the case where it leads to the prevention of parallel imports and the partitioning of the common market. Such an application of Article 85 is not excluded by the fact that the exercise of the right in such circumstances might also be a measure of equivalent effect to a quantative restriction on imports under Article 30 and not justified under Article 36. In such a case the rules of the Treaty concerning the free movement of goods and the competition rules are of parallel application;

6. Article 85 is not applicable to judicial settlements terminating legal proceedings. It is not an impermissible interference in the exclusive domain of national courts. Although such a settlement may be in the form of a court order, it is also a contractual arrangement to which Article 85 is applicable.

The Court also dismissed the applicants’ submission that the facts had not been established correctly. Furthermore, the other restrictions found by the Commission in its Decision, that is the obligation on the licensee not to distribute competing maize varieties and to purchase two-thirds of his supplies of seed from France, were not contested in the appeal.

45. This judgment is of great importance for it confirms that the same rules apply to plant breeders’ rights as to other intellectual property rights, that exclusive licences can fall under Article 85(1) and that exclusive licences which afford absolute territorial protection can rarely, if ever, be exempted under Article 85(3).

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Coditel II

46. On 6 October 1982 the Court rendered its judgment in the Coditel case on a reference for a preliminary ruling from the Belgian Cour de Cassation in a dispute between three Belgian cable television companies (Coditel) on the one hand and a Belgian film distribution company (Ciné Vog), a French film producing company (Films la Boetie) and other representatives of the film industry on the other hand.

The dispute arose out of the retransmission in Belgium by Coditel through its cable network of a French film dubbed in German which it had picked up by its special television aerials from a German television broadcast. Ciné Vog, which had exclusive distribution rights for this film in Belgium, sued for damages, using the right of action granted to exclusive copyright licensees under Belgian law.

The Court had already been called upon by the Brussels Cour d'Appel to rule on the question of whether Ciné Vog's action was contrary to the Treaty rules on the freedom to provide services (Article 59). The Court held that it was not and in doing so developed its previous case law on intellectual property rights and the free movement of goods by drawing a distinction between on the one hand intellectual property rights incorporated in physical goods and on the other hand intellectual property rights which relate to a right of exhibition or performance (as in a film).

47. The question which was now referred by the Cour de Cassation was whether the agreement granting Ciné Vog an exclusive right to show the film infringed Article 85; the Cour d'Appel had decided that said Article was not applicable and had not referred this question to the Court of Justice.

The Court held that given the characteristics of the cinematographic industry and of its markets in the Community, an agreement whereby the owner of a copyright in a film grants an exclusive right to exhibit that film for a specific period in the territory of a Member State is not, as such, subject to the prohibitions contained in Article 85 of the Treaty. In a given case, therefore, it must be ascertained whether the manner in which the exclusive right conferred by that contract is exercised, in the given economic or legal circumstances, is such as to have the object or effect of preventing or restricting the distribution of films or to distort competition on the cinematographic market, regard being had to the specific characteristics of that market.

1 Case 262/81 Coditel et al. v Ciné Vog Films et al., not yet reported.
The Court held that since it did not have the necessary information in this case, it was for the national court to decide, if necessary after obtaining this information, whether Article 85(1) applies. For this purpose, the Court indicated a number of criteria: whether the exercise of the exclusive right to exhibit a cinematographic film creates barriers which are artificial and unjustifiable in terms of the needs of the cinematographic industry, or the possibility of charging fees which exceed a fair return on investment, or an exclusivity the duration of which is disproportionate to those requirements, and whether, from a general point of view, such exercise within a given geographic area is such as to prevent, restrict or distort competition within the common market.

48. The importance of this case lies in the fact that it confirms the applicability of Article 85 to copyright licences even where the subject matter of the copyright is not a physical object but a right of exhibition or performance and that where all the other elements for the applicability of Article 85 are present, the fact that the licensee has a legal right valid erga omnes (as well as his mere contractual right) is irrelevant.

**Keurkoop**

49. In its judgment of 14 September 1982\(^1\) the Court ruled on the conformity with Community law of the Uniform Benelux Law on Designs and on the lawfulness, notably pursuant to Article 85, of an application for an injunction under that law.

This case arose out of an attempt by the importer and registered proprietor of a design for ladies handbags (‘Nancy Kean Gifts’) to prevent the importation of identical handbags from another Member State by another importer (‘Keurkoop’).

The design was protected under the Uniform Benelux Law on Designs which accords exclusive rights to the first person to apply to register a design, even if he has no connection with the designer. This is how Nancy Kean Gifts had become the registered proprietor of the design.

The Dutch Gerechtshof before which the dispute arose referred two questions to the European Court of Justice for a preliminary ruling.

The first question aimed at establishing whether the Benelux law is compatible with the rules of the Treaty relating to the free movement of goods in providing that the person to apply for registration of a design should be given exclusive

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\(^1\) Case 144/81 *Keurkoop v Nancy Kean Gifts*, not yet reported.

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rights and that no-one, except the real designer, can oppose such registration. The Court replied that in the absence of any unification of industrial design laws in the EEC, the conditions and procedures of protection are a matter for national legislation.

The second question related to whether the proprietor of the right to a design in the Netherlands may prohibit the import of products of a design identical to that covered by his right where the said products have been marketed lawfully in another Member State.

Applying to industrial design rights the distinction between the existence and the exercise of rights it has developed in respect of patents and trade marks, the Court held that the proprietor of exclusive rights in an industrial design acquired under the legislation of a Member State can prevent the importation of products from another Member State which are identical in appearance to the design which has been filed, provided that the products in question have not been put into circulation in the other Member State by, or with the consent of, the proprietor of the right or a person legally or economically dependent on him, that as between the natural or legal persons in question there is no kind of agreement or concerted practice in restraint of competition and finally that the respective rights of the proprietors of the right to the design in the various Member States were created independently of one another.

§ 2 — Procedural matters

AM & S

50. By its judgment of 18 May 1982 in the case Australian Mining & Smelting Europe Limited¹ the Court ruled on a question which is fundamental to the appraisal of the rights of defence of undertakings: the limitations on which may be imposed the Commission’s exercise of its investigating powers under Article 14 of Council Regulation No 17 due to the legal protection accorded to the confidentiality of written communications between lawyers and their clients.

51. This case followed a Decision taken by the Commission in July 1979² under Article 14(3) of Regulation No 17 during the course of its enquiries into the zinc market, ordering AM & S Europe Ltd to submit to an investigation and to produce for inspection ‘as far as is necessary for the purpose of establishing

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¹ Case 155/79 AM & S Europe Ltd v Commission, not yet reported.
whether they should be used’ documents for which the undertaking claimed protection.

AM & S appealed against this Decision. Both the United Kingdom Government and the Consultative Committee of the Bars and Law Societies of the European Community intervened in the procedure in support of the applicant, while the French Government, as intervener, supported the Commission’s submissions.

52. The Court first of all analysed Article 14 of Regulation No 17 in the light of the objectives pursued and concluded that it confers on the Commission wide powers of investigation and inspection. Since the Commission may demand those documents whose disclosure it considers necessary in order to bring to light an infringement of the rules of competition, it is for the Commission, and not the undertaking concerned or a third party, to decide whether or not a document must be produced.

However, these rules do not exclude the possibility of recognizing, subject to certain conditions, that certain business records are of a confidential nature. Community law must in fact take into account the principles and concepts common to the laws of the Member States concerning the observance of confidentiality as regards certain communications between lawyers and their clients which serves the requirement that any person must be able, without constraint, to consult a lawyer.

Although the national laws of the Member States vary as to the scope and the criteria for applying this principle of the protection of written communications between lawyer and client, common criteria are to be found in all legal systems in as much as they protect this confidentiality in similar circumstances, subject to two conditions: such communications must be made for the purposes and in the interests of a client’s right of defence and they must emanate from independent lawyers, that is to say, lawyers that are not bound to the client by a relationship of employment.

Viewed in the context of Regulation No 17, the protection of the principle of confidentiality implies, in respect of the condition concerning the rights of defence, that it must cover all written communications exchanged after the initiation of the administrative procedure which may lead to a decision on the application of Articles 85 and 86 of the Treaty or to a decision imposing a pecuniary sanction on the undertaking, and that it must also be possible to extend it to earlier written communications which have a relationship to the subject matter of that procedure.

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As regards the second condition, the requirement as to position and status as an independent lawyer is based on a conception of the lawyer's role as collaborating in the administration of justice. The counterpart of that protection lies in the rules of professional ethics and discipline which are laid down and enforced in the general interest by institutions endowed with the requisite powers for that purpose.

Having regard to the principles of the Treaty concerning freedom of establishment and the freedom to provide services, the protection thus afforded by Community law must apply without distinction to any independent lawyer entitled to practise his profession in one of the Member States, regardless of the Member State in which the client lives. Such protection may not be extended beyond those limits.

53. Turning to the procedures relating to the application of the principle of confidentiality, the Court upheld the Commission's view that in the initial stages of any dispute it is for the Commission to decide whether a document is protected by legal professional privilege. Where an undertaking refuses, on the ground that it is entitled to protection of the confidentiality of information, to produce, among the business records demanded by the Commission, written communications between itself and its lawyer, it must provide the Commission's authorized agents with the relevant material of such a nature as to demonstrate that the communications fulfil the condition for being granted legal protection, although it is not bound to reveal their content.

Where the Commission is not satisfied that such evidence has been supplied, the appraisal of those conditions is not a matter which may be left to an arbitrator or to a national authority. The solution must be sought at Community level. In that case it is for the Commission to order, by a Decision under Article 14 of Regulation No 17, production of the communications in question. Although by virtue of Article 185 of the EEC Treaty any action brought by the undertaking concerned against such decisions does not have suspensory effect, the interests of the undertaking concerned are safeguarded by the possibility which exists under Articles 185 and 186, as well as under Article 83 of the Rules of Procedure of the Court, of obtaining an order suspending the application of the decision which has been taken, or any other interim measure.

54. In the case at issue, the Court considered that part of the communications in question should not be subject to the Commission's powers of investigation and declared the Commission's Decision void in as much as it required production of those documents. These communications were drawn up at the time of the United Kingdom's accession to the Community and were concerned with how far it might be possible to avoid conflict between AM & S and the Commu-
nity authorities with regard to Community competition law. In spite of the relatively long period which elapsed between the communications and the initiation of the procedure, the Court held that they should be protected from disclosure insofar as they emanated from an independent lawyer entitled to practise his profession in a Member State. The Court on the other hand rejected the application in respect of the other documents which the Commission required in its Decision.¹

*Ford*

55. By an order of 29 September 1982² the President of the Court of Justice took an interim decision on the applications submitted on 3 September 1982 by Ford of Europe Inc. and Ford Werke AG for suspension of the operation of the Commission Decision of 18 August 1982³ in which interim measures were adopted. This Decision required Ford Werke AG to resume sales in Germany of right-hand drive vehicles forming part of its delivery range.

In support of their applications, the applicants claimed that the contested Decision was without legal basis and the implementation thereof prior to the Court's judgment in the main action would cause them grave and irreparable harm.

56. As to the legal basis, the President's order refers to the order of the Court of 17 January 1980 in the *Camera Care* case⁴ and points out that the Commission must be able, within the bounds of the supervisory tasks conferred upon it in competition matters by the Treaty and by Regulation No 17, to take protective measures to the extent to which they might appear indispensable in order to prevent its final decision from becoming ineffective. It is nevertheless necessary for those interim measures to be taken only in cases of proven urgency, in order to prevent the occurrence of a situation likely to cause serious and irreparable damage to the party applying for their adoption or intolerable damage to the public interest. The measures must be of a temporary and conservatory nature and must be limited to what is necessary in the given situation.

¹ For the practical repercussions of this judgment on the conduct of investigations see point 33 of this Report.
² Jointed cases 228/82-R, and 229/82-R not yet reported.
³ Point 107 of this Report. By order of 6 September 1982 in Case 229/82-R the President of the Court suspended the operation of Articles 1 and 2 of the contested Decision as a conservatory measure pending the making of the order in this case. The actions brought by Ford of Europe Inc. and Ford AG seeking a declaration that the Commission Decision is void are still pending.

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57. As regards the grave and irreparable harm which might be caused by im-
plementation of such measures, the Court held that in this case there was a seri-
ous risk that the detrimental effects of the contested Decision might, if it were put into operation immediately, exceed those of a conservatory measure and in the meantime cause damage considerably in excess of the inevitable but short-lived disadvantages arising from such a measure.

The Court therefore suspended in part the operation of the contested Decision, so as to restore the situation which had come into being immediately before the date on which Ford issued the circular condemned in the Commission Decision, by keeping the flow of trade at the level it had attained on that date.

The Court considered that this result could be obtained in practical terms by requiring Ford Werke AG to continue to fulfil orders from German distributors for right-hand drive vehicles, but only for an aggregate number of vehicles limited, as a temporary measure, to approximately the same level as that attained before the measure in question was introduced. It also stated that this obligation applied only to vehicles constructed to German specifications.

Lord Bethell

58. In judgment handed down on 10 June 1982,1 the Court of Justice dismis-
sed as inadmissible, pursuant to both Article 175 and Article 173, an action brought by Lord Bethell, supported by the United Kingdom Government, against the Commission, supported by a number of airline companies, claiming that the Court should find that the Commission had failed to act under Articles 85 and 86 against concerted action between European airline companies with regard to the fixing of passenger fares for air transport.

Lord Bethell, who is engaged in an action against agreements and concerted practices which, he alleges, exist with respect to the fixing of air fares, requested in a letter to the Commission that the latter should commence investigations into the airline companies. The Director-General for Competition replied that in most cases the final fixing of air fares was the sole responsibility of the Member States and therefore beyond the scope of Article 85. However, he stated that the Commission would examine the subject further from the point of view of Articles 5 and 90 in conjunction with Article 86.2

1 Cese 246/81 Lord Bethell v Commission of the European Communities, not yet reported.
2 Eleventh Report on Competition Policy, point 5.
Regarding this answer as inadequate, Lord Bethell brought an action for failure to act, or in the alternative, for annulment of the Commission's communication.

59. The Court held that for his application to be admissible Lord Bethell had to be in a position to establish either that he was the addressee of a measure of the Commission having specific legal effects with regard to him, which was, as such, capable of being declared void, or that the Commission, having been duly called upon to act, had failed to adopt in relation to him a measure which he was legally entitled to claim. This depends on whether the Commission had the right and the duty to adopt in respect of the applicant a decision in the sense of the request made by him to the Commission in his letter.

The Court took the view that the application in this case was inadmissible, for the applicant was asking the Commission not to take a decision in respect of him, but to open an enquiry with regard to third parties and to take decisions in respect of them. No doubt the applicant, in his double capacity as a user of the airlines and a leading member of an organization of users of air passenger services, has an indirect interest, as other users may have, in such proceedings and their possible outcome, but he is nevertheless not in the precise legal position of the actual addressee of a decision which may be declared void under the second paragraph of Article 173 or in that of the potential addressee of a legal measure which the Commission has a duty to adopt with regard to him, as is required under the third paragraph of Article 175.

AEG Telefunken; Hasselblad

60. Since it has become routine practice for firms to appeal to the Court of Justice against Commission decisions imposing fines on them, the Commission in 1981 decide to change its former practice of agreeing not to collect the fine as long as an appeal was pending before the Court. The Commission now makes suspension of collection of a fine subject to two conditions: the undertaking must agree to pay interest for the period of suspension and provide a bank guarantee covering the amount of the fine and the interest.

This two-fold condition was incorporated in two Decisions adopted respectively at the end of 1981 and at the beginning of 1982, in which fines were imposed for violations of Article 85.¹

61. By two orders made by way of interim decision following actions brought by the undertakings concerned, the President of the Court fully approved of the Commission's new practice. On the basis of Article 185 of the EEC Treaty, which provides that actions brought before the Court do not have suspensory effect and Article 86(2) of its Rules of Procedure, which provides for the lodging of security to be determined in the light of circumstances, the Court held that suspension of the recovery of fines could remain subject to the Commission's two-fold condition.

In these particular cases, the Court considered that the undertakings concerned could satisfy the two conditions and thus dismissed their application for suspension of the fine.

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1 Order of 6.5.1982 in Case 107/82-R AEG Telefunken v Commission, not yet reported; Order of 7.5.1982 in Case 86/82-R Hasselblad (GB) Ltd v Commission, not yet reported.
Chapter III

Main decisions and measures taken by the Commission

62. In 1982 the Commission took nine decisions applying Articles 65 and 66 of the ECSC Treaty and nine applying Articles 85 and 86 of the EEC Treaty. It also adopted four procedural decisions under Regulation No 17. By means of these decisions the Commission above all reasserted its opposition to any agreement on price-fixing, market-sharing or market-partitioning. To prevent any impeding of parallel imports, which are of great interest to the European consumer, it made use for the first time of its power to order interim measures. In addition, 479 cases were settled without a formal decision either because the agreements concerned were altered to conform with the rules of competition in the EEC Treaty, were terminated or expired. Most of these cases concerned licensing or distribution agreements; it was possible to settle many of the latter on the basis of the Commission Notice on Agreements of Minor Importance. As in previous years, several agreements and practices relating to the use of industrial and commercial property rights and copyright were amended at the Commission’s request without any need for adoption of a formal decision. The most important cases are described on the following pages.

63. On 31 December there were in all 4 199 pending cases of which 3 175 were applications or notifications (256 made in 1982), 259 were complaints from firms (49 made in 1982) and 225 were proceedings on the Commission’s own initiative (17 opened in 1982). The breakdown of all notifications and applications pending before the Commission is broadly the same as in previous years:

1 Three of these decisions are described below; the fourth concerned an investigation on the basis of Article 14(3)
2 The number 385 indicated in the Sixteenth General Report (point 222) is erroneous.
3 Eleventh Report on Competition Policy, point 69.

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64% concerned licensing agreements, 25% concerned distribution agreements and 11% concerned horizontal agreements.

64. The Advisory Committee on Restrictive Practices and Dominant Positions, which has to be consulted prior to any decision that Article 85 or 86 of the Treaty has been infringed, that gives negative clearance, or that gives an exemption under Article 85(3), met nine times in 1982 and gave opinions on 11 individual cases of application of Articles 85 and 86 of the EEC Treaty.

The Advisory Committee has an active role to play in the development of Community competition policy. Where necessary, it helps to seek consensus in the assessment, in the light of national and Community law, of restrictive or abusive practices on the part of firms.

This endeavour to reach consensus is, in fact, the most suitable means of avoiding situations of conflict in handling individual cases.

§ 1 — Article 85(1) of the EEC Treaty applied to horizontal agreements

Agreement on price-fixing and distribution

SSI

65. Acting once again to preserve a measure of competition in the cigarette trade, the Commission adopted a Decision under Article 85(1) of the EEC Treaty against restrictive practices which have been applied in the Dutch cigarette market since the beginning of the 1970s; they covered almost all cigarette manufacturers, importers, wholesalers and retailers in the country, along with their trade associations, notably Stichting Sigarettenindustrie (SSI).¹

The main agreements affected by this Decision were a bonus scheme applied by manufacturers and importers to tobacconists, agreements on consultation between SSI and representatives of the wholesale and retail trade over a statutory increase in excise duty and prices, and horizontal price agreements between cigarette manufacturers and importers.

66. The Commission found that the notified bonus scheme applied since 1974 by cigarette manufacturers and importers in the Netherlands in their dealings

¹ Decision of 15.7.1982: OJ L 232, 6.8.1982; SSI and the other addressees have appealed to the Court of Justice: Cases 240 to 242/82, 260 to 262/82, 268 and 269/82.
with tobacconists infringed Article 85 of the EEC Treaty. Under the scheme tobacconists could each year obtain a uniform extra discount on their sales of cigarettes, calculated not on the basis of the quantity of cigarettes which the tobacconists bought from the individual supplier, but on the total quantity of cigarettes which he bought from all the participating manufacturers and importers. In accordance with its consistent practice the Commission held that this collective bonus scheme appreciably restricted competition between cigarette manufacturers and importers, since it prevented retail tobacconists obtaining discounts in relation to their efforts to promote sales of particular brands. Moreover, the scheme did not improve distribution of cigarettes on the Dutch market, and the resulting benefit went mainly to manufacturers rather than consumers. An exemption could, therefore, not be granted under Article 85(3).

67. The Commission found that competition was also restricted by those notified agreements which provided for consultation between the industry and the wholesale and retail trade over the increases in excise duty and cigarette prices in 1980; these agreements did not qualify for exemption either. The collective negotiations at each trading level were an obstacle to firms negotiating freely and independently with their suppliers or purchasers over their margins. Furthermore, in the Commission's view it is not for the different categories of dealers to artificially maintain in existence outlets in excess of consumer needs.

The Commission Decision prohibits the firms and associations involved from consulting each other on price increases and trading margins for cigarettes in the Netherlands and urges them to establish their terms of sale individually.

In addition, fines were imposed on the manufacturers and importers who took part in horizontal price agreements in 1974, 1975 and 1978 and through a number of accompanying measures sought to stabilize their market shares. The fines totalling 1 475 000 ECU, were imposed on the following firms: Sigarettenfabriek Ed. Laurens BV, The Hague; British American Tobacco Co. (Nederland) BV, Amsterdam; Turmac Tobacco Co. BV, Amsterdam; R.J. Reynolds Tobacco BV, Hilversum; Philip Morris Holland BV, Amstelveen; De Koninklijke Bedrijven Theodorus Niemeyer BV, Groningen. In determining the amount of these fines, the Commission, while recognizing the agreements as serious infringements of Article 85 of the EEC treaty, took account of their relatively short duration, and of the fact that the Dutch authorities intervened

2 Members of the Rothmans International group.
appreciably in the consultations over price increases and the way any increase in margins should be shared between wholesalers and retailers.¹

68. This Decision is in line with the Commission Decision in the Fedetab case,² involving agreements between Belgian and Luxembourg cigarette manufacturers and importers, which are similar, apart from the price agreements in respect of which fines were imposed in the present case. In that Decision, upheld by the Court of Justice, the Commission stressed that since government intervention narrowed the potential for competition, it was all the more necessary to protect what potential there was left.³

*Price-fixing agreement*

**AROW-BNIC**

69. Following a complaint by the Association of Retailer-Owned Wholesalers in Foodstuffs (AROW), the Commission found that the practice of fixing minimum prices for the sale of cognac, instituted in 1979 by industry agreements concluded under the auspices of the Bureau National Interprofessionnel du Cognac (BNIC), infringed the competition rules of the EEC Treaty (Article 85).⁴ The BNIC terminated this practice only in March 1982, after repeated representations had been made by the Commission.

The BNIC represents the interests of cognac wine-growers, cooperatives, distillers and shippers. Its members are appointed by the Minister of Agriculture on the basis of proposals from the trade associations to which they belong.

The fact that the BNIC fixed minimum prices for the sale of cognac, which were subsequently made binding on the whole industry through extension orders made by the French authorities, had the effect of restricting competition by preventing cognac producers from determining freely the prices of their products, which are widely exported, particularly within the common market.

¹ In introducing general excise duty and price increases for cigarettes, the authorities pursue the budgetary and socio-economic objectives of maximum tax revenue and preservation of the profitability of wholesalers and retailers. Where the latter aspect is concerned the authorities often indicate how the new margins should be divided up. They also pursue a prices policy in order to avoid unduly large price increases.
³ See Commission answer to Written Question No 1268/82 by Mr Rémilly, OJ C 12, 17.1.1983.
In view of the gravity and duration of the infringement, as well as the particular circumstances of the case, the Commission decided to fine the BNIC 160 000 ECU.

70 This Decision confirms the position consistently maintained by the Commission, that trade or industry-wide associations, even when entrusted with functions of general interest, including quality control, as in the present case, may constitute associations of undertakings within the meaning of Article 85.1 It also makes it clear that decisions by such associations may be censured under the competition rules, even if, as in the present case, they have subsequently been extended by decision of the public authorities.

**Attempted price-fixing**

**Woollen fabrics (UIB)**

71. Following moves by the Commission, the Unione Industriale Biellese (UIB), Gruppo Lanifici, an association of woollen fabric producers in the Biella region, accounting for about 15% of Italian output of woollen fabrics, entered into a formal written agreement to refrain in future from any concerted action regarding the selling price of its fabrics. It informed all its members of this commitment.

The Commission had made enquiries of the association and several of its members concerning a decision taken within the association to raise the selling price of woollen fabrics, contrary to Article 85(1). The enquiries revealed, however, that the decision had not been applied by the producers concerned, and that in the various EEC countries there were no parallel movements of producers’ prices which might have resulted from action taken within the group.

The Commission therefore decided not to pursue the matter further, but reserved the right to check at any time that the commitment entered into by UIB is in fact being complied with by the woollen fabrics group and its members.

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Agreement protecting national markets

Zinc industry

72. The Commission adopted a Decision condemning certain restrictive practices in the rolled zinc products and zinc alloys industry.¹ The firms involved are the leading French, German and Belgian manufacturers: Compagnie Royale Asturienne des Mines (CRAM), France; Rheinisches Zinkwalzwerk GmbH & Co. KG (RZ), Federal Republic of Germany; Société des Mines et Fonderies de Zinc de la Vieille-Montagne (VM), France; Société Minière et Métallurgique de Penarroya (PYA), France; Société Anonyme de Prayon (Prayon), Belgium.

The relevant facts can be summarized as follows:

(i) CRAM and RZ had engaged in concerted practices whose object and effect was to protect the German market against all uncontrolled imports. In sales agreements which they both concluded with the same Belgian wholesaler they inserted a clause stipulating that the goods they supplied were to be sold only in a specified country outside the Community. When it emerged that the wholesaler was not complying with this clause, and was selling the goods in question on the German market, CRAM and RZ took joint action to force him to stop. For this infringement, which, though serious, did not last for very long, fines were imposed of 400,000 ECU on CRAM and 500,000 ECU on RZ. The two companies bear the same degree of responsibility for the concerted practice, but account was taken of the difference in their sizes;

(ii) a reciprocal agreement between CRAM, RZ and VM obliged them to supply large quantities of rolled zinc products to each other for what amounted to an indefinite period in the event of one or other of them being temporarily unable to produce, for whatever reason. The Commission concedes that it is legitimate for competing producers to help one another out with the occasional delivery, particularly where this is not done on an exclusive basis. But it cannot accept agreements such as the one concerned here, which are so general in nature that they substitute the assurance of permanent mutual assistance for the normal risks of competition;

(iii) under an agreement between CRAM and PYA, PYA undertook to refrain, for 15 years at least, from production, investment or research and development in the field of rolled zinc products, in return for an under-

¹ Decision of 14.12.1982; OJ L 362, 23.12.1982. CRAM and RZ have appealed to the Court of Justice against this Decision (Cases 29/83 and 30/83).
taking from CRAM that it would be allowed one third of the French market in zinc alloys;

(iv) under an agreement between CRAM and Prayon, Prayon was to obtain supplies of rolled zinc products solely from CRAM for at least 15 years.

The three restrictive agreements were not notified and thus could not be exempted under Article 85(3) of the Treaty. In any event, despite certain features of rationalization, the tests for exemption do not appear to be satisfied given the duration of the restrictions and the fact that some of them were not indispensable.

Coordination of investments and sales policy

Feldmühle-Stora

73. In the course of enquiries into conditions of competition in the Community newsprint industry, the Commission intervened in relation to agreements between Feldmühle AG of Düsseldorf and Stora Kopparbergs Bergslags AB of Falun, Sweden. Following talks with the companies in connection with the institution of a proceeding, they amended their agreements in order to remove restrictions of competition incompatible with Article 85(1).

Feldmühle and Stora had invested in a joint venture, Hylte Bruks AB of Hyltebruk, Sweden, for the purpose of producing newsprint. The firms had entered into long-term commitments, Stora and Hylte promising to supply Feldmühle and Feldmühle promising to buy from Stora and Hylte. They had also coordinated their common market sales policy for Hylte paper, certain Member States being reserved for each firm. In the Federal Republic of Germany, where they had supplied newsprint for many years, the two firms operated through a joint marketing organization. Purchase prices were based on the average of the list prices which a number of Finnish, Norwegian and Swedish manufacturers charged their customers.

The amended agreements provide that decisions on further investment no longer have to be endorsed by the parties. The long-term supply and purchasing agreements may in future be renewed for a period of not more than three years. The practice of partitioning the common market into marketing areas reserved for Feldmühle and Stora has been stopped, and prices are now established independently on the basis of market prices.

The marketing organization in Germany belongs to Feldmühle and acts solely on that firm's behalf, while Stora sells its own newsprint in Germany.
74. The Commission will continue to monitor closely further developments in the common market in newsprint in order to ensure that the EEC's competition rules are properly complied with.

§ 2 — Article 85 applied to distribution

Export ban

National Panasonic

75. In keeping with its consistent practice of opposing obstacles to intra-Community trade, the Commission took a decision finding that National Panasonic United Kingdom Ltd, the marketing subsidiary of Matsushita Electrical Trading Company, one of the largest companies of its kind in the world, infringed Article 85(1) of the EEC Treaty by imposing an export ban on one of its dealers in the United Kingdom.2

Although no written agreements existed between National Panasonic UK and its dealers, it nevertheless operated a network of authorized dealers and in 1976 and 1978 prohibited one of them, Audiotronics, from exporting Matsushita hi-fi products to other Member States. Such exports could have been attractive for dealers, because of the price differences between five Member States throughout the relevant period.

In view of the gravity and duration of the infringement, a substantial fine would have been justified. However, Matsushita has taken steps since mid-1981 to put its overall marketing and distribution policies in the EEC in order, and, so as to ensure the distribution of its products in strict conformity with EEC rules on competition, it has drawn up a code of conduct to be followed by all its European subsidiaries. These steps were regarded as an extenuating factor in assessing the fine, which was set at 450,000 ECU.

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1 Eleventh Report on Competition Policy, point 82.
Resale ban

Colombian coffee

76. The Commission also took a Decision on the resale ban on Colombian green coffee contained in the supply contracts between the Federacion Nacional de Cafeteros de Colombia (FNC) and coffee roasters throughout the EEC.¹

FNC, a semi-state body set up under Colombian law, markets all green coffee originating in Colombia. For this purpose it concludes annual contracts either direct with coffee roasters or, in the case of France and Belgium, with two distributors which sell the green coffee to a group of roasters previously approved by FNC.

In addition to the conditions of sale, these contracts contain a clause obliging the roasters to use all the Colombian green coffee in their own roasting plants, and forbidding the two distributors from reselling the green coffee to roasters other than those previously authorized by FNC.

The Commission found that this clause infringed Article 85(1), since it is an obstacle to trade in green coffee between roasters. Although FNC stated during the proceedings that it would withdraw the clause from its 1983 contracts, the Commission considered it advisable in the circumstances to adopt a formal decision to ensure that the said clause would no longer be used and to clarify the legal situation in relation to the distribution of green coffee in the Community, by State or semi-State organizations from non-member countries.²

Provision of guarantee

Matsushita Electrical Trading Company

77. In pursuing its examination of guarantee schemes³ applied by Community manufacturers, the Commission scrutinized the guarantee scheme which the Matsushita Electrical Trading Company of Japan offers for its products.

The guarantee offered to consumers covered both the hi-fi goods, sold under the names Technics and Panasonic, and the other goods sold in the EEC under

² No formal decision was taken in the Instituto Brasileiro do Café case, which concerned the marketing policy for Brazilian coffee in the Community; Fifth Report on Competition Policy, point 33.
³ See also Decision of 23.10.79, Zanussi: OJ L 322, 16.11.1978; Seventh Report on Competition Policy, points 17 to 20; Eighth Report on Competition Policy, points 116 to 117; Tenth Report on Competition Policy, point 121.
the National and Panasonic brands, including small domestic appliances, radios and television sets.

The guarantee will henceforth be granted for all the products concerned, irrespective of their country of origin, and will usually be performed by the Matsushita subsidiary or distributor established in the territory of the Member State where the appliance is used and in accordance with the terms applicable there.

Only in cases where the model concerned is not of the same type as those marketed in the country of use and the spare parts needed for the repair are unavailable must the appliance be returned for repair in the country of origin at the user's expense. In cases where an appliance does not meet the safety standards in the country where it is used, the user must bear the cost of adaptation if he wishes to claim under the guarantee.

78. This guarantee scheme complies with the relevant principles laid down by the Commission pursuant to the competition rules, whereby a manufacturer's guarantee for the products he distributes must be applicable throughout the Community irrespective of the Member State where the product was purchased.

*Regulation 67/67/EEC applied to exclusive distribution agreements*

79. The Commission also dealt with two cases involving exclusive distribution agreements and examined their compatibility with the block exemption Regulation No 67/67/EEC.

80. The first case illustrates the Commission's desire to allow manufacturers to make adequate arrangements for their distribution networks and consequently to authorize exclusive distribution contracts complying with Regulation No 67/67/EEC, but at the same time to ensure that these agreements do not prevent purchasers from obtaining parallel imports from other Member States.

The case concerned a new exclusive distribution scheme set up by a Danish manufacturer of wooden racing kayaks. The Commission had received a complaint from a German wholesaler, who had been supplied directly by the Danish manufacturer, but who had been informed that direct deliveries were to come to an end, as the manufacturer had appointed an exclusive distributor for Germany. The distributor first of all refused to supply the complainant at the direct import prices which it itself had to pay, and then terminated all deliveries. Enquiries showed, moreover, that the complainant could not obtain supplies from other dealers established in the Community.
The German exclusive dealer gave an undertaking that he would no longer refuse to supply the complainant, although the Commission did not require that these deliveries should be on the same terms and prices as those applied to himself; the Commission informed the complainant that the agreement in question now qualified for the block exemption laid down by Regulation No 67/67/EEC, and therefore that it had no longer any reason for action in respect of it.

81. The second case demonstrates the Commission’s resolve that block exemption cannot be applied to exclusive distribution agreements between large competing manufacturers, even on a non-reciprocal basis.¹

The Commission opposed a proposal for the Canadian company Cansulex, the world’s leading sulphur exporter, to transfer sole distribution rights for its products in Western Europe and North Africa to Société Nationale Elf Aquitaine Production (SNEAP), the biggest sulphur producer in the Community.

Up to that time Cansulex had been one of the smaller suppliers of crude sulphur in the Community. Its sulphur was marketed by an independent sole distributor in competition with SNEAP. However, Cansulex’s considerable potential, and the political and economic situation (e.g. uncertainty about supplies of Polish sulphur and rising demand) suggested that Cansulex could play an increasingly important role on the European market.

The proposed cooperation would have enabled SNEAP to control the sale of Canadian sulphur in Europe and thus not only restrict existing competition but also prevent the keener competition expected in the future.

The Commission also took account of the fact that SNEAP had strengthened its position on the Community sulphur market by acquiring Texas Gulf; the latter has a stake in sources of sulphur supply in Arab countries and Europe could be receiving deliveries from 1983.

Only by ensuring that sulphur produced by Cansulex is sold in the Community through independent channels can the danger of a further deterioration of the market structure be averted.

Following the Commission’s intervention, the firms concerned abandoned the project, which could not have qualified for block exemption.

¹ The Commission proposes to amend Article 3 of Regulation No 67/67/EEC, along these lines: point 13 of this Report.
§ 3 — Permitted forms of cooperation

Rules governing motor shows

BPICA

82. Following previous decisions relating to fairs and exhibitions, the Commission decided\(^1\) to renew for a period of 10 years the exemption previously granted\(^2\) for regulations laid down by the International Permanent Bureau of Motor Manufacturers (BPICA), a grouping of national associations of motor vehicle manufacturers, assemblers and importers in 20 European countries.

Since it first exempted these regulations, the Commission has had no new information such as to make it change its assessment of the factual and legal context in which they apply.

As in its other Decisions in this area,\(^3\) the Commission has sought to maintain the necessary balance between the exhibitor’s right to take part in as many fairs as possible and the need to rationalize participation in such events.

Joint manufacturing and distribution agreement

Amersham-Buchler

83. Adhering to its consistently favourable approach towards cooperation agreements which enable their participants to improve the conditions of production and distribution in high technology markets, the Commission authorized\(^4\) the agreements notified to it at the end of December 1981 by Amersham International Ltd of the UK and Buchler GmbH of the Federal Republic of Germany. The agreements concern joint production and distribution of radioactive material and products such as radiochemicals for research purposes, radiopharmaceutical products and radiation sources.

Buchler had acted for Amersham as sole distributor in Germany since 1960. The new agreements, besides arranging for the pooling of Buchler’s radioactive products business and the know-how and experience acquired by both partners, provide for the distribution in the German market of jointly manufactured products and, under an exclusive sales licence, those produced by Amersham. The parties hold a combined 18% of the German market in the relevant products (as against the 13.5, 11.5 and 11.3% held by their nearest competitors).

84. In its Decision the Commission held that, although the agreements in question fall within the scope of Article 85(1) of the EEC Treaty, they nevertheless satisfy the conditions of Article 85(3). They contribute to improving the production and distribution of goods since they enable Amersham to produce and market a greater variety of products in Germany than before. Moreover, they provide the basis for creating a nuclear waste disposal service, which is vital to the marketing of radioactive products.

Consumers may be expected to receive a fair share of the resulting benefits since competitive pressure—increased by Amersham’s improved market penetration and given the presence of several other large undertakings—will ensure that at least part of these benefits will accrue to consumers.

In view of these factors, it was felt that the objective advantages of the agreements outweigh their relatively limited impact on competition.

**Production sharing agreement**

**Air-Forge**

85. The Commission has also demonstrated its desire to maintain effective competition between firms which have economic interests in common, for example where they have jointly undertaken large investments. As a result of its intervention changes were made in the statutes and rules of Air-Forge, a *groupement d'intérêt économique* (a form of joint venture) owned in equal proportions by Creusot-Loire and Forgeal, a subsidiary of Pechiney Ugine Kuhlmann.

Forgeal and Creusot-Loire manufacture parts for the aero-space industry in light alloys and titanium; they shape these parts using 20 000-tonne presses which they both possess, and a 65 000-tonne press which they own jointly—the largest press in existence in the free-market economy.

Air-Forge’s task is to take orders for parts for ballistic missiles and aircraft, to pool them, and to allocate them between the two parent companies. Air-
Forge’s statutes and rules provided for orders to be allocated under a system of fixed quotas.

These provisions were incompatible with Article 85(1) because they shared the market between Creusot-Loire and Forgeal.

After the Commission initiated proceedings the firms agreed to drop the offending provisions, which, in any event, had not been implemented. Each company is now free to manufacture in accordance with its own capacity and the requirements of the market, with Air-Forge’s role being confined to receiving orders, allocating them to the partners offering the best prices and terms, and harmonizing workloads.

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

Patents and secret know-how

Spitzer/Van Hool

86. In relation to a dispute between a German company, Spitzer Silo-Fahrzeugwerke KG and a Belgian company, Van Hool NV, over a patent licensing and know-how agreement concerning the manufacture of bulk transporters, the Commission informed the interested parties that, in accordance with its consistent practice in this field, it regarded certain clauses of the agreement as restrictions of competition, notably a non-competition clause imposed on the licensee, the obligation to assign to the licensor any improvement inventions and the obligation to pay royalties, even where the know-how was not used. Since the licensor was a medium-sized enterprise there was no reason to oppose the clauses restricting exclusivity to a given territory and providing for slightly higher royalties for sales outside said territory.

In the course of the proceedings the licensor abandoned the abovementioned restrictions of competition and the licensee, for his part, waived his exclusive rights.

The two companies thus became actual competitors in the same territory; to prevent the licensor from having access to the licensee’s business secrets when royalties are calculated the parties agreed to entrust supervision of the relevant documents to a suitable third party such as an accountant. The investigations were therefore terminated.
Kalwar/Plast Control v Kabelmetal

87. This case concerned infringement proceedings instituted by the holder of a patent, for which an exclusive licence had been granted. The defendants brought proceedings for invalidation and requested the Commission to find that the exclusivity in question infringed Article 85.

The request was rejected and the complainants were referred back to their action for invalidation since proceedings under Article 85 cannot ordinarily provide grounds for defence against patent infringement proceedings; moreover, such a finding would not have enabled the defendants to obtain a licence.

It was no longer necessary to decide whether exclusivity restricts competition, so the investigations came to a halt.

Copyright and related rights

Neilson-Hordell/Richmark

88. The Commission has already indicated in several cases its views on the application of the competition rules to export restrictions in licences having as their object the manufacture and sale of products protected by copyright. In such cases, the attitude taken by the Commission is generally the same as that adopted towards patent licensing agreements.

89. A complaint lodged by a copyright licensee provided the opportunity for confirming this approach with respect to four types of restriction that may occur in copyright licences. The case involved the use of copyright which is available under English law to protect purely technical drawings and, by extension, the products that they represent. The clauses were: a no-challenge clause, a non-competition clause, a clause requiring the payment of royalties on products not protected by any copyright of the licensor, and a clause requiring the licensee to transfer to the licensor the title to any copyright of the licensee in improvements made to the licensed products. Such restrictions would normally be regarded as infringing Article 85(1) of the EEC Treaty and as being incapable of exemption under Article 85(3). The fact that the clauses formed part of a settlement agreement terminating earlier copyright infringement litigation could not justify the insertion of a no-challenge clause. Following the Com-

1 BBC/Valley Printing: Sixth Report on Competition Policy, point 163; The Old Man and the Sea: Sixth Report on Competition Policy, point 164; Ernest Been Ltd: Ninth Report on Competition Policy, points 118 and 119.

mission's moves the parties entered into a new agreement that provided for abandonment of all the above restrictions so the Commission was able to close its file on the matter.

**RAI/Unitel**

90. As a result of proceedings which led to a request for information by Decision, the German company, Unitel, a producer of films for television, amended its exclusive contracts with opera singers. The proceedings were instituted following a dispute between Unitel and RAI, the Italian radio and television broadcasting company, over the right to broadcast live via Eurovision the opera 'Don Carlos' performed at La Scala, Milan, to celebrate its 200th anniversary. In the main roles were four international artists who had previously entered into exclusive contracts with Unitel for the entire duration of production of a film of the same opera which was intended chiefly for television. Furthermore, all the singers were subject to a non-competition clause extending over a considerable period. Since RAI did not appear to be willing to take account of this exclusivity, Unitel opposed the planned television broadcast. In response RAI appealed to all European radio and television broadcasting companies to boycott Unitel productions.

When warned of reservations as to compatibility with Article 85 of exclusive contracts such as those it applied, Unitel declared its willingness to limit the restrictions they contained. Unitel has undertaken to ensure that the making of films is not unduly delayed so that the non-competition clause entered into by the singers is not as a rule extended inordinately. In addition, Unitel has undertaken to waive its exclusive rights in the event of live broadcasts of particularly important cultural events. This undertaking has, moreover, already been put into effect, notably for the Bayreuth festival.

In these circumstances, the exclusive obligation which the singers entered into, limited to one work only and one type of exploitation only, television films, is not normally caught by Article 85.

At the same time it was pointed out to RAI that an appeal for a boycott was not a lawful response to the conduct of another company, even where said conduct could in good faith be regarded as a restriction of competition. Such appeals could be contrary to Articles 85 and 86 and, in the case of RAI, Article 90. Since RAI gave assurances that, in the overall context of its commercial policy,

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it will maintain its customary relations with Unitel, the proceedings were terminated.

*Trade mark rights*

**Toltecs/Dorcet**

91. Following a complaint by the proprietor of a trade mark—Mr Segers, a small Dutch manufacturer of fine-cut tobacco for hand-rolled cigarettes—the Commission adopted a Decision prohibiting the unjustified restrictions on competition resulting from the so-called trade mark delimitation agreement between Mr Segers and BAT Cigaretten-Fabriken GmbH (BAT) Hamburg.1

The complainant, who owns the Toltecs trade mark, had concluded an agreement with BAT, which owns the Dorcet trade mark, in order to induce the latter to withdraw the opposition it had entered at the Patent Office to the registration of the Toltecs mark on the grounds of an alleged risk of confusion with its own mark.

This agreement, which was not notified to the Commission, contains obligations which were held to be prohibited and which do not qualify for exemption because of their adverse effects on the distribution of the relevant products.

92. Firstly, Mr Segers undertook to sell fine-cut cigarette tobacco in Germany under the Toltecs mark only through importers approved by BAT or under other conditions imposed by BAT. The Commission considered that, since there is no serious risk of confusion between the two marks, such an obligation constitutes a restriction on competition inadmissible under Article 85.

In *Terrapin v Terranova*2 the Court held that it was permissible for the owner of a trade mark to prevent the importation of products of a firm established in another Member State and bearing a name giving rise to confusion, provided that there are no agreements restricting competition nor legal or economic ties between the undertakings, and that their respective rights have arisen independently of one another.

93. Secondly, Mr Segers undertook not to exercise his rights arising from the registration and use of his Toltecs mark as against BAT, even if BAT’s Dorcet mark remained unused for a period exceeding the five-year period during

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2 BAT has appealed to the Court of Justice (Case 35/83) against this decision.

which, under German law, a trade mark must be used to avoid any risk of cancellation.

As a result of this no-challenge clause, Mr Segers cannot release himself from the restriction to which he has agreed by availing himself of the priority acquired by his Toltecs mark over Dorcet; the latter, which had already been registered for five years when the agreement was concluded, has never been used to date.

The Commission considers that such a clause constitutes a particularly serious restriction as it enables firms to avoid the obligation to use trade marks and, by congesting national trade mark registers, to impede penetration by new branded products. In view of the fact that this was the only clause involved and that this was the first penalty imposed in the field of industrial property, the Commission fined BAT 50 000 ECU.¹

§ 5 — Article 86 applied to abuse of dominant position

Ban on retransmission of telex messages

British Telecommunications

94. Applying the Community rules of competition for the first time to the telecommunications industry, the Commission found, following a complaint, that British Telecommunications, which is entrusted with the running of telecommunications systems in the United Kingdom, had abused its dominant position by prohibiting private message-forwarding agencies in the United Kingdom from relaying telex messages received from and intended for other countries.²

However, British Telecommunications informed the Commission late in October 1982 that it had decided to withdraw the measures objected to, and that it would communicate its decision to telecommunications authorities in other countries and to message-forwarding agencies in the United Kingdom.

The restrictions in question prevented users established in other Community Member States from taking advantage of differences in tariff structures or real costs, or indeed currency fluctuations, to relay telex messages for countries

¹ In its Penneys Decision (23.12.1977: OJ L 60, 2.3.1978; Seventh Report on Competition Policy, point 141) the Commission opposed a no-challenge clause relating to trade marks on the ground that its effects were prolonged beyond five years.
outside Europe via the United Kingdom. The prohibition of such traffic had no technical or commercial links with the provision of telecommunication systems.

British Telecommunications acted partly in implementation of a recommendation by one of the Consultative Committees of the International Telecommunications Union (ITU) and in response to pressure from other national telecommunications authorities about possible loss of revenue. However, British Telecommunications had not attempted to enforce compliance with the restriction by disconnecting message-forwarding agencies in the United Kingdom from the public network. In view of the special circumstances of this case the Commission did not impose a fine.

§ 6 — Merger control (Article 66 ECSC and Article 86 EEC)

Merger control in the steel industry

95. Once again in 1982 the Commission authorized, pursuant to Article 66 of the ECSC Treaty, mergers aimed at enabling steel companies to increase their competitiveness and to improve the balance between supply and demand for steel products. These mergers form part of the restructuring of the Belgian (Cockerill-Sambre), French (Usinor-Sacilor-Normandie), Italian (Finsider-Teksid) and British (Sheffield Forgemasters) steel industries.

Cockerill-Sambre

96. The Commission authorized the two largest steel firms in Belgium, Cockerill SA, Liège, and Hainaut-Sambre SA, Charleroi, to merge all their assets to form a new group, Cockerill-Sambre SA.

The product lines of the two groups are broadly complementary, with Cockerill producing mainly flat products and Hainaut-Sambre mainly long products, the only exceptions are hot-rolled wide strip and wire rods, in which they are in competition. The fact that its product ranges are complementary will enable the new group to operate on the market with a more comprehensive rolling programme and so strengthen its position vis-à-vis its competitors. Rationalization and specialization are planned in a number of areas, together with capacity reductions.

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1 Eleventh Report on Competition Policy, point 104 et seq.
2 Other Decisions are listed in the Annex to this Report.
3 Decision of 24.3.1982; Bull. EC 3-1982, point 2.1.27.
The Commission's investigation of the merger has shown that it satisfies the competition rules laid down in Article 66 of the ECSC Treaty. However, since the new group will be the eighth largest producer in the Community, the Commission must ensure that any present interlocks, either financial or of personnel, between Cockerill or Hainaut-Sambre and other steel groups are severed or modified so as to guarantee that these groups and the new entity operate entirely independently on the oligopolistic steel market. In line with its established policy, therefore, the Commission has attached the following conditions to the authorization:

- members of the management bodies of the new group must not also be members of management bodies of competing steel firms, unless the Commission has given its authorization for special reasons; and

- the new group must bring to an end the control it exercises jointly with the Arbed group over two steel stockholders in France, Cofrafer and Hardy Tortuaux.

Usinor, Sacilor, Normandie.

97. The Commission also authorized the link-up between the steel firms Usinor, Sacilor and Normandie under Article 66 of the ECSC Treaty: \(^1\) under its general nationalization programme, the French Government had increased its equity shareholdings in Usinor and Sacilor from 64.6% to 92.6% and from 76.9% to 86.7% respectively, as a further move in a strategy embarked upon in 1978.

At that time the French Government had decided to acquire substantial majority stakes in Usinor and Sacilor under its restructuring programme for the steel industry. It then stressed that this was a temporary operation linked to the completion of the restructuring programme and that both firms would retain full freedom of manoeuvre, both vis-à-vis the Government and in their relations with each other. The Commission took note of these statements and informed the French Government that, provided these were not contradicted by events, and solely for the period needed to complete the restructuring under way, it would have no grounds for finding that, through its holdings, the French Government had brought about a concentration between Usinor and Sacilor within the meaning of Article 66.

At the end of 1981 the companies decided, in the context of the nationalization programme, on increases in their capital; only the major shareholder, the State, subscribed, by contributing the claims it held on the two of them. As a

result, the State's involvement was no longer temporary in nature. Furthermore, it was decided to set up a coordination committee to allow the public authorities to ensure the necessary coordination in the policies applied by the two companies. Thus some of the grounds upon which the Commission had relied in finding that there was no concentration between Usinor and Sacilor within the meaning of Article 66 ceased to apply. Accordingly the matter had to be re-examined.

Usinor and Sacilor also sought authorization from the Commission under Article 66(2) for a joint venture, Société Métallurgique de Normandie (Normandie), to acquire the steelmaking division of Société Métallurgique et Navale Dunkerque Normandie. This operation, which is also contributing to the re-structuring of the French steel industry, strengthens the positions of Usinor and Sacilor only marginally.

98. Scrutiny showed that both operations satisfy the tests of Article 66(2), as they will not produce the negative effects on competition referred to in that Article, even though the entity formed by Usinor, Sacilor and Normandie will be the leading producer in the Community, some way ahead of the British Steel Corporation (BSC), Thyssen and Finsider.

- In a Community context BSC had previously accounted for an equally large share of total production capacities. Moreover, the Community's integrated steel industry will continue to have an oligopolistic structure within which a large enough number of firms enjoying much the same degree of market power will compete effectively with one another, while the keen pressure of imports will continue.

- As regards the French market, it should be remembered that, given the high degree of interpenetration of different national markets, the Commission generally takes the view that, when it comes to assessing the effects of dominance, the relevant geographic market is the Community market and not a particular national market. Usinor, Sacilor and Normandie will obviously be in a very strong position on their domestic market, but 36% of supplies on the French market are imported (31% from other Community countries). It seems unlikely, therefore, that the new entity will be in a position to hinder effective competition on the French market.
Finsider-Teksid

99. The Commission authorized the acquisition by Finsider SpA, an Italian State holding company, of a controlling interest in the steel business of Teksid Acciai SpA, a steel holding company in the Fiat group.\(^1\)

Because of the crisis affecting both the Community and the national steel industries, Teksid Acciai has decided to abandon the production of ordinary and special steels. It has therefore closed down some plants permanently and set up other companies to take over the remaining assets and liabilities, which it will transfer, totally or partially, to the Finsider group.

These mergers will not significantly alter either Finsider’s overall position or the existing balance between the various groups in the common market. In one sector (stainless steel), Teksid’s contribution will help to improve the balance on this oligopolistic market by adding Finsider to the number of large groups in this sector.

Sheffield Forgemasters

100. Authorization was also granted to the British Steel Corporation (BSC) and Johnson & Firth Brown (JFB) to set up a joint company under the name ‘Sheffield Forgemasters’.\(^2\)

The decision to merge was taken against the background of recent trading losses in the forgings and castings sector. It aims to rationalize production facilities and to create a company capable of competing profitably with other forgers and foundries in the Community and in non-member countries.

The parent companies are to withdraw completely from the businesses in which the new firm is to operate, and they do not compete in the supply of intermediate products, which takes this joint venture outside the scope of Article 65 of the ECSC Treaty and Article 85 of the EEC Treaty.

The ECSC Treaty products involved in the merger are forging ingots and stainless steel bars. So far as forging ingots are concerned, Sheffield Forgemasters will be the main UK producer but it will have to face competition from several other large producers elsewhere in the Community; in fact, 25% of the supplies to the UK market are imported from other countries inside and outside the Community. This percentage could well increase, bearing in mind the surplus capacity and the contracting market for this product. For stainless bars, the merger will have no perceptible effect on competition, as JFB alone is contribu-

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ting facilities for this product, and it has only a small share of the Community market. As far as the ECSC products are concerned therefore, the conditions for authorization laid down in Article 66(2) ECSC are satisfied.

101. The main products concerned in the merger—namely open-die forgings, drop forgings, heavy steel castings and forged or cast iron and steel rolls—come within the ambit of the EEC Treaty. Hence the Commission checked on the possible applicability of Article 86, taking into account the fact that a merger may constitute an abuse of a dominant position if it strengthens a pre-existing dominant position for the relevant products in a substantial part of the common market. The examination concluded that the joint venture would not have this effect.

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

102. The Commission continued to supervise mergers at Community level on the basis of Article 86.¹

During the report period it terminated investigation of two cases in respect of which complaints were lodged in 1981 and 1982 respectively; the second case also involved an application for interim measures.

**Eagle Star-Allianz Versicherung**

103. The concentration resulting from the acquisition of the British insurance company, Eagle Star Holdings Ltd, by Allianz Versicherung AG does not constitute abuse of a dominant position. The Commission arrived at this conclusion following a complaint filed by Eagle Star in respect of Allianz's purchase of 28% of its share capital and with a view to a takeover bid for the remaining shares.

The Commission assumed in its working hypothesis that Allianz held a dominant position on the German insurance market and checked whether the control over Eagle Star was liable to strengthen this dominant position to such an extent that application of Article 86 could be warranted. The Commission concluded that this was not so, given the market share held directly by Eagle Star itself in the Federal Republic, where it was active only in the transport assurance sector, and the small amount of premium income from the insurance contracts it arranged through Nordstern, a German insurance company linked to Eagle Star by a cooperation agreement.

¹ Eleventh Report on Competition Policy, point 111 et seq.
The Commission also found that the addition of the international network belonging to each firm was not likely to strengthen indirectly Allianz’s position in the Federal Republic enabling it to provide its German customers, in particular industry, with services over a more extensive area. Eagle Star and Allianz were, in fact, operating in the same countries, both inside and outside the Community, and in consequence their networks were not complementary. In addition, in the countries concerned they faced competition from other insurance companies with international networks. Nor did, moreover, the elimination of Eagle Star as a potential competitor in the German insurance market, notably in the life and in the non-life sector, lead to any appreciable strengthening of Allianz’s market position in view of the presence of other major insurance companies both with headquarters in the UK and elsewhere. These conclusions were notified to Eagle Star, in accordance with Article 6 of Regulation No 99/63/EEC,\(^1\) and the file was closed.

**British Sugar-Berisford**

104. Following purchase by S. & W. Berisford Ltd (Berisford) of a controlling shareholding in British Sugar Corporation Ltd (BSC), the latter lodged a complaint on grounds of infringement of Article 86.\(^2\) BSC asked the Commission to obtain an undertaking from Berisford not to purchase other shares in BSC and not to exercise the rights arising from the shares in its possession, so long as the Commission had not taken a decision on the substance of the case. In the event of Berisford’s refusal, BSC asked the Commission to take interim measures to the same end. The complainant alleged that the acquisition in question would eliminate all competition between Berisford, both the most important merchant and importer of refined sugar in the United Kingdom, and BSC, the larger of the only two sugar producers in the same market (the other producer being Tate & Lyle).

Berisford considered the complaint unfounded and therefore refused to give the requested undertaking, so BSC gave notice to the Commission to define its position on the application for the adoption of interim measures within two months, in accordance with Article 175 of the Treaty. Having looked into the

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\(^1\) Where the Commission considers that it can not take up a complaint filed under Article 3 of Regulation No 17, it informs the complainant of the reason for rejection and fixes a time limit for submission of any further comments in writing.

\(^2\) In accordance with UK law the concentration between Berisford and British Sugar had already been examined by the Monopolies and Mergers Commission, which came to the conclusion early in 1981 that this transaction was not contrary to the public interest; it authorized Berisford to renew its takeover bid and after having acquired some of the BSC shares which had previously been held by the British Government, Berisford’s stake in BSC was over 40%; since the remaining shares were held by numerous other parties, it was thus in a position to control British Sugar.
manner, the Commission notified BSC, under Article 6 of Regulation No 99/63/EEC that on the basis of the information in its possession, there were no grounds for taking up the complaint; accordingly, the request for interim measures could not be met.

105. In examining this transaction, the Commission started with the working hypothesis that BSC and Berisford held dominant positions in refined sugar manufacturing and distribution respectively, but was able to check that the concentration in question did not have the effect of eliminating or appreciably reducing competition in the distribution market to such an extent as to warrant application of Article 86. The Commission took the view that Berisford’s conduct up to then, which consisted in compelling the only two UK sugar manufacturers to charge it competitive prices so that it could avoid importing sugar from other Member States, could be practised by other merchants and major consumers in the United Kingdom and also by traders and manufacturers on the continent. The concentration would not therefore give the BSC/Berisford group the power to determine the price of sugar in the United Kingdom. Moreover elimination of Berisford as an independent distributor would rather have the effect of restoring balance to the structure of the distribution market, since the other merchants are mainly of a similar size.

106. However, third parties intervened in support of BSC and it put forward fresh evidence (statistics and financial and economic appraisals) seeking to demonstrate that no firm, whether British or continental, could compete with BSC/Berisford by importing continental sugar on a regular basis; the Commission then decided to take steps to institute a formal procedure, although not to take interim measures.

While the enquiries were under way Berisford sold its entire sugar distribution business in the United Kingdom to another merchant, Napier Brown, thus limiting itself to manufacturing and thereby rendering BSC’s complaint invalid.\footnote{The Commission is examining Napier Brown’s purchase of Berisford’s sugar distribution business for compatibility with Article 86 of the Treaty.}
§ 7 — Principal Decisions on procedural matters

Interim measures

Ford Werke AG

107. The Court of Justice has confirmed that the Commission is entitled to take interim measures in applying Articles 85 and 86 and in making use of this power for the first time the Commission required Ford Werke AG, Cologne, to resume sales in the Federal Republic of right-hand drive vehicles forming part of its delivery range.¹

In view of the difference in the selling prices of vehicles as between the Federal Republic and other Member States, notably the United Kingdom where prices were on average 20% higher, British and Irish customers had been buying new right-hand drive vehicles in the Federal Republic in increasing numbers.

By a circular dated 27 April 1982 Ford Werke AG informed its German dealers that it was ceasing all deliveries of right-hand drive vehicles in the Federal Republic with effect from 1 May 1982. Contracts notified in 1976 formed the legal basis of the selective distribution system linking Ford Werke AG and its dealers. These contracts restricted competition, but their application up to that time had appeared to satisfy the tests for exemption under Article 85(3). The Commission took the view that the circular altered the distribution system and that Ford’s action undermined the freedom of European consumers to take advantage of the benefits of the common market and to buy new vehicles wherever they are cheapest. It amounted to a partitioning of markets, resulted in discrimination between European consumers and represented a violation of the basic principles of the common market.

The Commission considered that Ford had created a situation which was harmful to the Community’s general interest; in view of the urgency of the situation and the importance of the interests at stake it adopted the above-mentioned interim measures so as return to the situation existing before 1 May 1982. They are to apply until a definitive decision is taken on Ford’s distribution system.²

¹ Decision of 18.8.1982: OJ L 256, 2.9.1982. Ford Werke AG and Ford of Europe Inc. brought two actions before the Court of Justice; an application for suspension of the operation of the above-mentioned Decision (Joined Cases 229/82-R and 228/82-R), see point 55 of this Report; and an application for annulment of the Decision (Cases 228/82 and 229/82).
² On 24 August 1982 the Commission sent Ford Werke AG a statement of objections pursuant to the procedure leading to a final decision on the application for exemption under Article 85(3) of the EEC Treaty.
Request for information by Decision

Fire insurance (D)

108. Following a request for information by formal Decision, a British insurance company, represented in the Federal Republic by a branch office, supplied the information the Commission requested on its position and conduct on the German insurance market at the beginning of 1982.

The Commission made its request in the context of investigations directed mainly at an association of German insurers in relation to the effects of its recommendations concerning insurance premiums.

The information in question was collected from a total of 17 Community insurers conducting business in the Federal Republic but represented there only by branches. The Commission considers that these insurers are engaging in intra-Community trade constituting trade between Member States within the meaning of Article 85.

109. The Commission is now pursuing its examination of the substance of the case on the basis of the information thus obtained.

Fine for incomplete information

FNICF

110. The Commission took a Decision imposing a fine of 5,000 ECU on the Fédération Nationale des Industries de la Chaussure en France (FNICF) for having intentionally produced the required business records in incomplete form during an investigation carried out under Article 14(1) of Council Regulation No 17.

While formally agreeing to submit to a full investigation carried out in March 1982, the FNICF withheld from inspection certain business records in its possession which were indispensable to the proper conduct of the enquiry.

As soon as an undertaking submits to an investigation, it is bound to accept all the ensuing obligations and to produce the requested books and other business records in complete form.

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Not only a deliberate act whereby an undertaking seeks to make a choice between the documents produced for inspection and those withheld, but also simple negligence in making them unavailable for inspection, constitute infringements liable to fines under Article 15(1)(c) of Regulation No 17.¹
III. During the period under review no major changes took place in the basic competition legislation in force in any of the Member States. Measures relating to the enforcement and implementation of the relevant laws as well as certain legislative developments having a direct effect on competition did, however, occur in Greece, Luxembourg and Denmark.

In Greece, measures aimed at strengthening the operation of competition both in the public and in the private sector, included amendments in the legislation relating to the powers and composition of the body entrusted with applying and enforcing competition policy. Also, with respect to the application of competition policy in specific areas, a significant decision was taken regarding the obligatory prior notification of mergers of any form and laying down criteria for permissible mergers.

In the Netherlands and Belgium, efforts continued to formulate amendments to the existing competition laws, although no final results were achieved in either. In Belgium, related legislation did, however, undergo a modification in the form of a royal decree regarding the role of State agents involved in investigation procedures.

Consultation and cooperation on competition matters have continued as in the past at Community level between the Commission and Members States, helping to avoid conflicts between national and Community legislation and enforcement.

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Belgium

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

The review of legislation is still in progress. The draft amendment mentioned in the previous Report\(^1\) lapsed following government changes, so a new Bill is now being drafted with the aim of accommodating the present Government's concern to combat abuse of economic power, cartels, and other practices which distort competition, as well as the resulting distribution and profit margins. The administrative departments have completed their drafting of the new text.

113. In addition, with regard to the implementing provisions of the Act of 27 May 1960, the Royal Decree of 23 January 1981 mentioned in the last Report\(^2\) 'designating the State officials authorized to assist in the investigation of abuses of economic power', which enabled officials of the Department of Trade with special responsibility for competition matters to assist the Commissaire-rapporteur in his task, was repealed and replaced by the Royal Decree of 20 August 1982 (Moniteur belge of 4 September 1982), allowing officials of the General Economic Inspectorate or the Department of Trade responsible for matters of economic competition to assist the Commissaire-rapporteur in his tasks of information-gathering and investigation.

114. The previous Report\(^3\) mentions four cases in which the Commissaire-rapporteur was of the opinion that economic power had been abused; they are still pending before the Council for Economic Disputes.

The Commissaire-rapporteur also found evidence of abuse in two new cases during the report period; his opinions were likewise submitted to the Council. The first concerns a ban on taking part in fairs and exhibitions, while the second relates to an exclusive distribution system and price maintenance in book-selling.

The Council, whose members were appointed on 11 June 1982, proceeded to look into these cases and opinions on most of them should be delivered some time in 1983.

115. During the course of the year, only one case occurred in which the Minister ordered the Commissaire-rapporteur, on the basis of Article 7 of the Act of

\(^1\) Point 120.
\(^2\) Point 121.
\(^3\) Point 122.
27 May 1960, to continue the procedure where the latter, at the end of the investigation, informed the Minister of his intention to formally close the file.

The case involves a retailer and a manufacturer of silversmiths’ wares and the latter’s refusal to fulfil an additional order for silver-plated cutlery. The Commissaire-rapporteur has been asked to provide further information before the case is passed on to the Council for Economic Disputes.

**Denmark**

116. During the period considered no changes have been made to the Monopolies Act of 1955.

117. The activities of the Monopolies Control Authority covered a number of sectors:

(i) its decision against A/S Ferrosan’s pricing policy for contraceptive pills\(^1\) was upheld by the Court of Appeal. Subsequently, pursuant to Articles 11 and 12 of the Monopolies Act it ordered Schering Kemi A/S to reduce their prices for contraceptive pills as of 15 March 1982 to the level at which Ferrosan markets its pills. This decision has been appealed to the Monopolies Appeal Tribunal.

(ii) it took action against a discount system operated since 1964 by Aalborg—Portland-Cement—Fabrik (APCF), under which discounts were given to cement distributors on the basis of their sales, invoicing and credit activities. APCF also sold cement directly to industrial users who had to pay the full list price. The Authority found that the discount system led to unequal conditions for the trade in cement and with effect 1 March 1982 APCF stopped the system.

(iii) pursuant to Article 12 of the Monopolies Act the Monopolies Control Authority intervened against an agreement between Danish export pigmeat slaughter houses containing an obligation to supply at least 60% of weekly slaughterings of pigmeat to their sales association, ESS-Food, at the settling price and the right to repurchase up to 20% of the slaughterings at a higher price (the repurchase price).

The decision concerning the tying of motor car dealers to one make only\(^2\) has been appealed to the Monopolies Appeal Tribunal which will not consider the case until the Commission Regulation on the application of Article 85(3) to

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\(^1\) Eleventh Report on Competition Policy, point 128.
\(^2\) Eleventh Report on Competition Policy, point 129.
certain categories of motor vehicle distribution and servicing agreements has been adopted.¹

Pursuant to Article 1 of the Monopolies Act, the Monopolies Control Authority has published two studies about market structure, competition, pricing and profits in the cereals and foodstuffs sector and the wholesale sector for convenience goods.

118. The Monopolies Appeal Tribunal has upheld the decision against the Ironmongers Association ordering the association to end its practice of requiring suppliers to the trade to give an account of their business with discount houses and of circulating the replies among its members.²

Federal Republic of Germany

119. No changes were made to Federal competition legislation in 1982. In pursuance of its task under antitrust law the Monopolies Commission submitted its fourth main advisory opinion on the development of concentration between undertakings. In contrast to previous enquiries the Commission arrived at the conclusion that for the first time its analysis of statistics on concentration no longer provided any clear indication that the increasing tendency towards concentration was continuing. In its first study of the causes of concentration the Commission also pointed out that certain taxes and subsidies could promote concentration. As required by law, the Federal Government will deliver its opinion to Parliament early in 1983.

120. During the report period the Federal Cartel Office banned two mergers. In one case relating to a foreign merger, it prohibited Philip Morris Inc., New York, from acquiring a 50% shareholding in Rothmans Tobacco Holdings Ltd, London, insofar as the repercussions of the takeover would be felt in the Federal Republic. This merger involved the third and fourth largest suppliers on the German market, namely Martin Brinkmann AG, Bremen, and Philip Morris GmbH, Munich. The decision taken by the Cartel Office should prevent any further tightening of the oligopoly on the German cigarette market. The legal effect of the decision was accordingly confined to obviating the strengthening of a dominant position which, in the opinion of the Cartel Office, had taken place on the domestic market.

¹ See point 16 of this Report.
² Eleventh Report on Competition Policy, point 127.
While concentration gains ground in food retailing—particularly by large companies and trading groups at the expense of smaller competitors and suppliers—the report period saw the first prohibition of a planned merger between food retailers. The Cartel Office took the view that by its planned takeover of the food retailing outlets of a smaller competitor, Coop AG, one of the leading food retailers, would have attained, together with a few other trading companies, a dominant position on a regional basis and also further strengthened its position as a buyer. Following the prohibition, the companies concerned abandoned their merger proposals. Considerable importance is attached in the Cartel Office’s decision-making—particularly as far as food retailing is concerned—to consistent application of the revised merger control provisions.¹

In five cases during the report period the firms concerned gave up their merger plans on account of opposition from the Cartel Office on antitrust grounds.

121. The Cartel Office continues to base its assessment of purchasing pools on the principle that joint purchasing constitutes an essential, admissible means for small and medium-sized businesses to safeguard their competitiveness.

However, objections may be raised where a few large undertakings combine solely for joint purchasing purposes. The Court of Appeal upheld the Cartel Office’s decision on the break-up of such a buyers’ cartel in the foodstuffs sector. The cartel members were four multiple food retailers previously having separate purchasing arrangements for supplies to the value of DM 5,000 million; they had formed a joint trading company (HFGE) and purchased a large proportion of their stocks from certain selected suppliers.²

In its ruling the Court of Appeal pointed out that the attainment of the common goal of securing the most favourable terms was rendered possible for each of the four only by a general renunciation of individual negotiations on purchasing. The competition which existed between them in relation to purchasing was thereby restricted. If a purchaser managed to make other competitors go for individual purchasing arrangements, he would strengthen his position at the suppliers’ expense. Such an outcome ran counter to the aim of the law; to guarantee free competition for all taking part in the market process. The decision is not yet final.

Large trading companies and department store groups have recently joined leading cooperatives (Rewe, Edeka, Coop) and other central clearing organizations (e.g. Selex, Tania, HKG); investigations are in progress to check whether

1 Tenth Report on Competition Policy, point 75.
2 Eleventh Report on Competition Policy, point 135.
restrictive practices contrary to anti-trust law are involved and whether their preferential conditions were obtained through abuse of buying power.

122. The Cartel Office's revision of its view on aggregated rebate cartels\(^1\) was upheld at supreme court level, so that most remaining such arrangements expired at the end of 1982. Two cases are still pending before the Court of Appeal.

A negative conclusion was reached following consideration as to whether several marketing cartels for natural stone, which had been in existence for many years, could be brought within the law. The undertakings concerned therefore abandoned their cooperation in its original form.

123. The Court of Appeal upheld the Cartel Office's decision ordering Telefunken Fernseh- und Rundfunk GmbH, a member of the AEG group, to discontinue the new distribution arrangements (called 'Telefunken partnership contracts')\(^2\) it had introduced in 1981. The Court held that the ban on resale price maintenance is one of the fundamental provisions of cartel law and, with a view to free competition, that this provision safeguards firms' freedom to make their own arrangements when entering into agreements with other parties. Telefunken's partnership contracts further secured resale price maintenance by the ban on dealers selling the products in their own name and the entitlement to cancel the contract without notice for failure to adhere to the agreed prices. The case is now pending before the Federal Supreme Court.

124. Once again the Cartel Office imposed a number of fines during the report period on firms which had concluded anti-competitive agreements on prices, quantities, quotas and market-sharing, notably a fine of DM 11 million on five manufacturers of container glass who had entered into agreements on production quantities and prices.

**France**

125. There have been no major changes in the legislation applicable to competition during the reference period.

However, as far as the implementation of policy is concerned, three new features merit attention. Firstly, by stepping up information surveys, a fresh stimulus was given to the acquisition of knowledge on how markets operate. Secondly, it was decided to opt for consultation between various trade catego-

\(^1\) Tenth Report on Competition Policy, point 80.
\(^2\) Eleventh Report on Competition Policy, point 134.
ries rather than laying down rules, with a view to eliminating the anti-competitive effect of the imbalance in relation between suppliers and purchasers. The aim is to develop a competitive system based on transparent terms of sale, so as to prevent discrimination and abuse of buying power without inhibiting freedom in commercial negotiations. Finally, the role of the consumers was enhanced not only as regards monitoring prices, but also to enable demand to exert a beneficial effect on competition.

Checks on individual restrictive practices and also on restrictive agreements and dominant positions were increased considerably in 1982, continuing the trend started in the second half of 1981.

126. In accordance with their guidelines, the authorities concentrated their activities in priority consumer goods areas (foodstuffs, clothing and knitwear, shoes, leather goods) and in the most sensitive service sectors (hotels, restaurants). At the same time, they continued their checks in the customary fields of activity (supermarkets, department stores, sports goods, home accessories).

In most cases the authorities used their powers to impose fines on those committing infringements. However, to draw attention to the exceptionally serious nature of certain actions and to set an example, some were referred to the courts, which can thus clarify certain points of law. The interested parties may also take action before the courts.

Three decisions recently taken by the courts in this context are worthy of note. When considering a case concerning price advertising, the Court of Cassation explained the definition of the availability of goods, upholding the concept of ‘effective availability’ and rejecting that of ‘legal availability’; this decision reinforces the ban on loss-leading. The Court of Cassation also confirmed that the manager of a corporate body is responsible for an infringement which the latter has committed, but that he may exonerate himself by establishing that he delegated his powers to an agent invested with competence and authority. Finally, a Court of Appeal pointed to the confidential nature of the correspondence between a lawyer and his client, irrespective of whether it relates to legal consultation or to a defence action; investigators may therefore not have access to such correspondence.

127. Both the administrative departments and the Competition Commission intensified their measures to combat collective restrictive practices.

Almost 150 enquiries were organized; over one third aimed to seek accurate information on the structure and operating methods of various sectors, from production to the final stages of distribution. This knowledge of markets ap-
pears essential with a view to taking steps to deal with the structural causes of distortion and the effects of certain practices which have come to light.

Between October 1981 and October 1982 evidence was gathered on over 120 restrictive agreements and dominant positions; 142 reports were drawn up. Following these investigations, the authorities decided to refer 11 cases to the Competition Commission; in other cases it issued a warning.

In addition to the 11 referrals from the Minister, the courts referred 14 cases to the Competition Commission, three were referred by diverse bodies and it dealt with one case on its own initiative: 29 cases in all.

During the same period the Competition Commission delivered seven opinions which resulted in published decisions. It also issued two opinions at the request of the courts, one of which covered several of the above-mentioned cases.

In these opinions the Competition Commission developed its decision-making with regard to services and clarified its approach in the more traditional field of product markets.

As regards services, it stated its views on the grounds for a case it had dealt with on its own initiative, affirming its competence and holding that the recommendations of the bar council laying down minimum fees were caught by Article 50 of Order No 45-1483 of 30 June 1945. This was also true of the fee tables of legal counsels published by two of their professional associations. In both cases, however, no penalties were imposed. Furthermore, the Competition Commission recommended greater flexibility in the scales of charges for a computerized system used in car valuation services.

In relation to products, the Competition Commission clarified its position in a case relating to the titanium oxide market. It noted that parallel conduct as regards delivery periods and the amounts of a series of price changes over a number of years was not itself sufficient evidence of a concerted practice aimed at restricting competition; the misconduct presumed on account of these similarities could be ruled out.

Finally, during this reference period, the Competition Commission did not deal with any cases of abuse of a dominant position giving rise to published opinions.

Rather than increasing the number of penalties imposed, the Competition Commission advocated application of corrective measures designed to restore competition; nevertheless, it imposed fines whenever it believed that the practices condemned were particularly serious.

During the period in question all of the Minister's decisions were in line with the Competition Commission's proposals on the above principle, and the
amounts of fines were accordingly limited. These decisions included two cases of particular importance. One concerned the market in retreads; on a proposal from the Competition Commission the Minister ultimately decided not to impose any penalty but to require the firms in question to determine their respective price trends independently in the future. The latter case related to the manufacture and marketing of fertilizers; fines totalling FF 4 500 000 were inflicted on the firm involved which had used identical price lists in spite of differing costs.

It is possible to appeal to the Conseil d'État against ministerial decisions taken under the Act of 19 July 1977. Two decisions handed down by the Conseil d'État in 1982 establish precedent as regards evidence. In these cases (one relating to glassware and the other to throwaway lighters) the Conseil d'État affirmed its right to control the validity of evidence used against bodies penalized.

128. Following referral by the Minister for Economic and Financial Affairs, the Competition Commission delivered an opinion pursuant to the supervision of concentration; this was the first opinion delivered in application of the special conciliation procedure on a takeover bid for Jacques Borel International (eating houses and luncheon vouchers).

The authorities also continued its policy of giving advice to firms planning mergers.

Greece

129. The Greek Government is determined in the context of its economic policy to apply an anti-monopoly policy and to strengthen the operation of competition not only in the private sector but also in the public sector, which is now being extended.

Implementation of Act No 703/77 on the protection of free competition requires a distinction to be made between the economic fields where the rules of competition must be applied fully and those fields where for particular reasons the rules of competition will have to be replaced by other economic policy measures.

The bodies applying competition policy must be versatile and effective. For this reason Act No 703/77 has been amended by Interdepartmental Decision No B 3/395 in respect of the powers, composition and appointment of the Committee for the Protection of Competition. The powers of the Committee are limited to
the giving of opinions. All the decision-making powers provided for by Act No 703/77 devolve upon the Minister of Commerce.

130. In 1982 the Committee for the Protection of Competition took 10 decisions. The most important of these was Decision No 17/82, by which the Committee, upon a request for a negative clearance, set certain guidelines for the approval of mergers. The Committee decided that notification of mergers of any form (formation of a new company, absorption, takeover) is obligatory, whereas in the case of other agreements notification is obligatory where there is infringement of Act No 703/77.

This arises from the fact that special mention is made of the obligation to notify mergers (Section 21(3)), although this is not indispensable since there is another provision (Section 21(1)) referring to all agreements and concerted practices.

In addition, this decision lays down criteria for lawful mergers, such as; the creation through the merger of a strong and viable economic entity (for timber in the case in question) with broader manufacturing and trading aims, the achievement of lower production costs and the development of the competitive capacity of the new unit with the possibility of acquiring new equipment, improving the products manufactured and marketing them at better prices.

It should be noted that before the merger in question there was no competition between the enterprises concerned since they were not in the same line of business.

Ireland

131. The basic legislation relating to competition has not altered in the course of 1982.

132. No orders were made during the year by the Minister for Trade, Commerce and Tourism under the Restrictive Practices Act 1972.

The Restrictive Practices Commission submitted two reports of enquiries to the Minister during 1982 which will be published in due course, concerning, respectively, the restrictions on conveyancing and the restrictions on advertising by solicitors and the statutory restrictions on the provision of dental prostheses.

The Commission has announced its intention of holding an enquiry into the provision of tour operator and travel agency services insofar as they are affected by the activities of associations in the travel trade.
133. Early in the year, the Examiner of Restrictive Practices concluded his investigation into the operation of the Restrictive Trade Practices (Electrical Appliances and Equipment) Order, 1971. The analysis revealed that the Order was operating effectively.

In February, the Examiner commenced an investigation into the practice by building societies of insisting that insurance cover for mortgaged properties be placed with a specific insurance company or with one of a restricted list of specified insurance companies. The investigation is still under way.

More recently, in the course of an investigation into a complaint regarding the supply of pharmaceutical goods, the Examiner became aware of the existence of retail price maintenance clauses and prohibition of export clauses in the terms and conditions of trading of certain pharmaceutical companies. As a result, the investigation was extended and trading terms were requested from 75 companies in all. Amendments, at the Examiner’s request, were effected in the terms of eight companies; decisions have still to be reached on the terms of nine companies.

134. At the beginning of the year, seven proposals were on hand and a further 53 proposals were notified during the year under review in accordance with Section 5 of the Mergers, Take-overs and Monopolies Control Act. 15 of these did not fall within the scope of the Act. In six cases the proposals did not receive any further consideration as the deals fell through. Decisions had still to be reached on five cases at 30 September, 1982. 34 proposals were considered and cleared during the year.

The manufacturing sector accounted for 12 cases, the manufacturing/distribution sector for nine, the distribution sector for four, the agriculture sector for three, the newspaper and construction sector for two each, and the services and energy sectors for one each.

With respect to the Order by the Minister for Trade, Commerce and Tourism prohibiting a proposal involving the newspaper sector except on compliance with certain conditions, a subsequent revocation Order was made following a claim by the applicant that significant changes had taken place in the market sector involved, so that the proposal was allowed to proceed uninhibited.

No action regarding apparent monopolies was carried out under Section 10 of the Act during the year.

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1 Eleventh Report on Competition Policy, point 144.
2 Eleventh Report on Competition Policy, point 145.
Italy

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

Luxembourg

136. Luxembourg competition legislation was amended and supplemented somewhat during the report period. The Prices Office's legislative measures included a Grand Ducal Regulation on the general price freeze and Regulations fixing maximum and minimum prices for certain products.

137. Between February and October 1982 the Prices Office settled a fairly large number of cases concerning infringements of the price freeze and various infringements relating to prices by the imposition of agreed penalties.

138. No applications relating to antitrust were made to the Restrictive Trade Practices Commission in 1982, but an important case involving distribution is under preliminary investigation.

Netherlands

139. On 18 March 1982 the Second Chamber's standing committee on economic affairs delivered its final report on the amended Bill amending the Economic Competition Act (Wet economische mededinging) dealing with price maintenance and minimum prices. As far as the price maintenance aspect is concerned, the amended Bill relates only to vertical price maintenance. Horizontal price maintenance is to be covered by a separate Bill, with the authorization system put forward in the initial Bill being abandoned and an assessment system introduced that will no longer be based on prohibition failing specific authorization.

Under the assessment system announced, horizontal price maintenance agreements will be allowed until such time as, on the basis of criteria to be laid down in the Act, it is decided that they are not acceptable and are consequently prohibited.

It has also been announced that this type of assessment system will also apply to other restrictive practices involving horizontal arrangements. Consideration is still being given to the question of whether the same criteria should be applied for this purpose.
140. On 7 September 1982 the Government presented to the Second Chamber the memorandum of reply in response to the interim report delivered by the Second Chamber’s standing committee on economic affairs on a Bill concerning a public register of restrictive agreements. The Bill would amend the Economic Competition Act, and would involve compulsory notification of horizontal agreements, followed by entry on a public register. The standing committee delivered its final report on the Bill on 10 November.

141. A Bill amending the Economic Competition Act and providing for extension of the right of appeal and the introduction of a provision whereby, in urgent cases, the administrative judge may be asked to take an interim decision will, it now seems likely, be presented to Parliament early in 1983.

United Kingdom

142. In the period since the last report, the Director-General of Fair Trading (DGFT) completed three investigations under the Competition Act 1980, and initiated three more.

Two investigations mentioned in last year’s report, involving, respectively, the London Electricity Board (LEB) and W M Still were included.

In the first case, the DGFT found that although the LEB had sold electrical appliances at significant losses over a five year period, it was in a position to absorb those losses and had failed to take remedial action to eliminate them. By charging prices which did not reflect its costs, the LEB had thus distorted competition. The Monopolies and Mergers Commission (MMC) will consider the report and the public interest issues involved.

The W M Still report concluded that the company had pursued anti-competitive practices in refusing to supply parts for catering equipment to independent service firms and in granting additional discounts on spare parts only to appointed distributors of equipment. The DGFT has accepted undertakings from Still, and the report will therefore not be referred to the MMC.

The third report concluded that the British Railway Board’s arrangements relating to the restricted admission of taxis to ply for hire at Brighton railway station were anti-competitive.

Of the three new investigations, the first concerns the arrangements between the British Railways Board (BRB) and Godfrey Davis Europcar Ltd for esta-

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1 Eleventh Report on Competition Policy, point 151 et seq.
2 Eleventh Report on Competition Policy, point 151.
blishing and maintaining exclusive rights for car hire facilities at stations and BRB's criteria for allowing car hire advertising at stations. Also under investigation is BRB's policy towards the use of their Motorail Service for the carriage of goods for hire or reward. The third new investigation, Scottish and Universal Newspapers Ltd (SUNL), is examining the terms and conditions for the supply of advertising in SUNL's newspapers in the Lanarkshire region of Scotland.

143. The MMC has made two reports under the Competition Act on cases referred to it by the DGFT. Following its report of 16 December 1981, TI Raleigh Industries Ltd and TI Raleigh Ltd gave undertakings to the DGFT that they would supply Raleigh made, but not necessarily Raleigh branded, bicycles to discount stores who could provide adequate services and spares. In its report of October 1982 the MMC found the exclusivity terms in the conditions under which Sheffield Newspapers Ltd (SNL) was prepared to supply newsagents to be contrary to the public interest. The DGFT is to seek undertakings. Particular discount arrangements for advertising were found not to be anti-competitive. SNL had already given undertakings to the DGFT in respect of two other anti-competitive practices, following his report of October 1981.

144. At the request of the Minister of State for Consumer Affairs, the DGFT is undertaking a review of certain aspects of the Opticians Act 1958, in particular the ways in which the Act operates with regard to competition in the supply of spectacles and contact lenses.

145. As a result of investigation by the DGFT, a number of unregistered agreements registrable under the Restrictive Trade Practices Act (RTP Act) 1976 were disclosed, relating to prices for secondary aluminium ingots and to the supply of milk in cartons to retail shops. Following the contempt proceedings before the Restrictive Practices Court in 1980, the British Steel Corporation notified details of a number of agreements which had not been submitted within the time limits specified by the Act, six of which have now been entered on the public register. BSC has appealed against the judgment given in these proceedings. The DGFT has announced that he proposed to refer all the above agreements to the Restrictive Practices Court.

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1 Bicycles—A report on the application by TI Raleigh Industries Ltd and TI Raleigh Ltd of certain criteria for determining whether to supply bicycles to retail outlets. HC 67, 16.12.1981. See also Eleventh Report on Competition Policy, point 151.
2 Sheffield Newspapers Ltd, Cmnd 8664, October 1982. See also Eleventh Report on Competition Policy, point 151.
3 Eleventh Report on Competition Policy, point 151.
4 Eleventh Report on Competition Policy, point 153.
In October 1981 the Court of Appeal upheld the decision of the Restrictive Practices Court\(^1\) that there was not a registrable agreement operating between those persons licensed by the stewards of the National Greyhound Licensing Club.

In proceedings brought by the DGFT under section 1 of the RTP Act 1976, the British Reinforcement Manufacturers Association on behalf of 11 of its members, the principal suppliers in the UK of processed steel reinforcement material for concrete structures, gave an undertaking in the Restrictive Practices Court on 7 August 1982 concerning an agreement which provided for agreed floor prices and market share allocations. The undertaking, in which the Association bound each of the members not to enforce the restrictions in the agreement and not to make any agreement to the like effect, was accepted by the Court in lieu of an order.

146. In the period since the last report the DGFT has made one monopoly reference to the MMC under the Fair Trading Act 1973. This concerns an investigation into the collection of animal waste in Great Britain following allegations of discriminatory pricing policies pursued in the industry and, in some circumstances, of parallel pricing. Several other cases are under consideration. The MMC made three reports under the Fair Trading Act. In its report of 26 May 1982 on the supply of replacement car parts\(^2\) the MMC recommended the removal from franchise agreements of exclusive buying requirements, subject to limited exemptions. An Order which was laid before Parliament on 16 August provided for the implementation of the MMC’s recommendation, except in relation to work done under warranty.

147. The MMC report on trading check franchise and financial services published on 10 December 1981,\(^3\) recommending that the Provident Financial Group should not restrict a retailer’s freedom to acquire trading check services from other similar companies, resulted in Provident’s undertaking not to do so.

The second MMC report on Contraceptive Sheaths\(^4\) concluded that LRC Products Ltd’s pricing of contraceptive sheaths might be expected to become excessive and to operate against the public interest. The report recommended that LRC’s average realized prices should increase at a rate below that of a composite index related to their input costs.

\(^1\) Tenth Report on Competition Policy, point 99.
\(^2\) Car Parts, HC 318, 26.5.1982.
\(^3\) Trading Check Franchise and Financial Services, HC 62, 10.12.1982.
\(^4\) Contraceptive Sheaths, Cmnd 8689, November 1982.
148. The DGFT received undertakings from companies as a result of an earlier MMC investigation. In its report of 2 August 1979 on the supply of ice cream and water ices the MMC made a number of recommendations concerning practices by suppliers which prevented the retailing of a wide range of brands of ice cream. Undertakings were given by Walls, Lyons and other suppliers of ice cream to cancel or modify such practices. Following the MMC report on roadside advertising, undertakings were received from each of the former members of British Posters Ltd (which has now ceased trading) to provide the DGFT with particulars of any joint selling arrangements with another contractor to which it is, or becomes, party, and, at the DGFT's request, with details of sales revenue and stock of panels both in relation to sales effected through joint selling arrangements and direct sales.

149. On 10 December 1981 the Government announced that it did not intend to act on the recommendation of the MMC that credit card and trading check companies should abandon their 'no discrimination' policy. This policy prohibits traders from charging different prices for goods and services bought by credit cards as compared with other means of payment.

150. The DGFT gave advice to the Secretary of State on 180 mergers and prospective mergers, and the Secretary of State referred 10 cases to the MMC. Of these, three have lapsed following abandonment of the merger by the parties (Argyll Foods Ltd/Linfood Holdings Ltd, Rowntree Mackintosh PLC/Huntley & Palmer Foods PLC, and Prosper de Mulder Ltd/Midland Cattle Products Ltd). Of the remainder, the MMC have so far reported on three: BTR Ltd/Sercle Ltd, Imperial Chemical Industries PLC/Arthur Holden & Sons Ltd and Nabisco Brands Inc/Huntley & Palmer Foods PLC. All three were found unlikely to operate against the public interest. The MMC also reported on four cases referred to them during 1981: Lonrho Ltd/House of Fraser Ltd, European Ferries/Sealink UK Ltd, Standard Chartered Bank/Royal Bank of Scotland Ltd. In each case it was found that the merger would be likely to operate against the public interest, and the Secretary of State obtained undertakings from the bidder not to proceed with the merger. The merger between S & W Berisford PLC and British Sugar Corporation PLC, conditionally cleared by the MMC in 1981, has now taken place.

1 Ice Cream and Water Ices, Cmd 7632, August 1979.
2 Roadside Advertising Services, HC 365, 1.7.1981.
3 Credit Card Franchise Services, Cmd 8034, 17.9.1980.
Chapter V

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

151. As in previous years the Commission took an active part in work and negotiations on restrictive practices and State aids liable to affect international trade, and on methods of strengthening international cooperation in these areas.

§ 1 — OECD

152. The Working Party studying the difficulties encountered in the restrictive practices field when enquiries have to be made abroad has completed its work. Its report is to be submitted to the Committee of Experts on Restrictive Business Practices at its meeting in January 1983.

While it recognizes that investigatory powers in the competition field vary from country to country, reflecting such things as political choices and legal procedures in the particular State, the Working Party puts forward a number of suggestions relating in particular to the systematic application and the strengthening of the OECD Council Recommendation of 25 September 1979 on cooperation between member countries on restrictive practices affecting international trade.¹

Subject to its duty to protect business secrets, the Commission itself regularly informs the appropriate authorities in non-Community countries, in accordance with the Recommendation, when proceedings under Articles 85 and 86 concern firms based in those countries; it has recently entered into consultations of this kind in two individual cases.

¹ Third Report on Competition Policy, point 40; Ninth Report on Competition Policy, point 33; Eleventh Report on Competition Policy, point 157.
The OECD Council meeting at ministerial level in June asked the Committee of Experts on Restrictive Business Practices

(a) to consider how the Recommendation of 25 September 1979 already referred to might be improved, and

(b) in consultation with the OECD's Trade Committee, to study possible longer-term approaches to developing an improved international framework for dealing with problems arising at the frontier of competition and trade policies.

153. In Working Party No 9 of the Committee of Experts on Restrictive Business Practices, the Commission made an active contribution to the drawing up of a report on policy towards mergers and on recent trends in the merger field.

The report describes measures taken or envisaged for the control of mergers, and the observed trends in industrial concentration. It makes a number of recommendations for effective merger control.

The report supports the view that merger control is an essential component of competition policy. It emphasizes the desirability of premerger control, which it considers preferable to measures taken after the merger is completed. Experience has shown, it argues, that it is easier to prevent undesirable mergers taking place than to undo them afterwards.

The report will be published.

154. The Commission continued its participation in the work of the Committee for International Investment and Multinational Enterprises, which is studying the effects on international cooperation of measures to encourage or hinder international investment.

§ 2 — UNCTAD

Principles and rules on restrictive business practices

155. The second meeting of the Intergovernmental Group of Experts on Restrictive Business Practices, the institutional mechanism set up under the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, which was to be held in autumn 1982, has been postponed. As agreed at the first meeting, held from 2 to 11 November 1981, the Community has sent the secretariat of UNCTAD a report on the problem of exclusive dealing agreements, and certain other States in Group B, which
comprises the industrialized countries, have done likewise; the Intergovernmental Group will consider the reports at its second meeting, which is now to be held in October 1983.¹

The Community report sets out the Commission's general approach and its experience in dealing with exclusive distribution agreements, emphasizing the positive contribution such agreements have to make as a means of promoting distribution at international level, particularly when small and medium-sized businesses are involved.

The experience gained within the Community, based on the establishment and maintenance of a single market, cannot be applied directly to relations between independent countries, but it nevertheless shows that while such agreements must be assessed in their economic and legal context having regard to the competitive structures within which they operate, they do constitute an important channel for the development of international trade.

*International code of conduct on transfer of technology*

156. The interim committee which is pursuing the negotiations held several meetings in 1982 without reaching agreement on a number of outstanding questions.²

§ 3 — *Cooperation between the Commission and the antitrust authorities of non-member countries*

157. There have been bilateral contacts with the antitrust authorities of several OECD member countries in the course of Community proceedings involving firms from those countries. With the agreement of the Member States' authorities, non-Community antitrust authorities were for the first time admitted as observers at the oral stage of proceedings concerning firms from their countries; this was done in two cases.

¹ Eleventh Report on Competition Policy, point 161.
² Tenth Report on Competition Policy, point 64. Eleventh Report on Competition Policy, point 162.
Part Two

Competition policy and government assistance to enterprises
State aids

§1 — General

158. The pressures on Member States to grant State aids, and on the Commission in assessing the proposals submitted to it for their compatibility with the common market, increased markedly in 1982 in the face of a deepening recession reflected in falling production, rising unemployment, increasingly fierce international competition for market shares and a growth of protectionist forms and pressures. State aids may contribute to engendering economic growth, the adaptation of industrial structures to changing market conditions, to regional development, the amelioration of social conditions resulting from economic changes, and to improvement of the employment situation in a particular country. State aids can also be used as a form of protectionism, to benefit national producers, to give them competitive advantages, to avoid necessary structural adaptation: in short, to transfer difficulties onto competitors in other States. In view of the importance of trade in industrial products in the Community, such aids, however beneficial they may appear from a short-term national point of view, could endanger and weaken the unity of the common market, the very existence and development of which provides the best opportunity of overcoming the recession. In this situation, the control exercised by the Commission under the powers granted to it by Article 92 et seq. of the EEC Treaty over the granting of State aids are of increasing importance in the development of the Community and in particular the maintenance of the unity of the common market. The very existence and operation of these powers provides a brake on the growth of these protectionist aids. In applying the State aid rules, the Commission follows a well established policy in which the determinant factor is the Community interest. While under current circumstances more aids than in the past may be considered to be in the Community interest, the very fact of the

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¹ For State aids concerning the products listed in Annex II to the Treaty, see Sixteenth General Report, point 438.
control system may influence Member States to refrain from proposing aid measures which meet only national interests.

159. In its last report on Competition Policy, the Commission drew attention to the dangers posed by the growth of what might be regarded as an aid mentality, i.e. the danger that firms when they get into difficulties turn immediately to the State for assistance rather than rely on their own resources and efforts to overcome their difficulties. In its Communication to the Council on Initiatives for Promoting Investment, the Commission drew attention to the necessity to scrutinize the efficiency of aids and to ban those having a limited, even doubtful, efficiency, in view of the necessity of general budgetary restraint. In its examination of aid proposals, the Commission is deeply conscious of the negative aspects of aids, as well as the contribution they might make to the promotion of Community policies. The derogations the Commission may apply in raising no objection to a particular aid proposal from a Member State are exceptions from the rule of no aids. As will be seen below from the discussion of two particular proposals involving aid to various aspects of innovation technology and small and medium-sized undertakings, areas where the Commission normally exercises a favourable prejudgement, limits have to be applied even in such areas if the common interest is to be guarded and the unity of the common market maintained.

160. Just in the present conditions of recession and rising pressures for protectionism, the role of the Commission as the guardian of the common interest and especially the unity of the internal market, the development of which, through the elimination of all types of barriers to trade, provides the best avenue for escape from recession, assumes ever increasing importance. In examining State aid proposals, where it must pay particular attention that competition is not distorted to a degree contrary to the common interest, the Commission takes into account three sets of factors:

(i) that the aid should promote a development which is in the interest of the Community as a whole. Member States propose to grant aid primarily to further national interests. The promotion of such a national interest is not enough to justify the Commission exercising its discretionary powers under Article 92(3) EEC;

(ii) that the aid is necessary to bring about that development, in that without the aid the measure in question would not be realised;

1 COM(82) 641 final.
2 Philip Morris Case—Tenth Report on Competition Policy, points 214 to 216.
(iii) that the modalities of the aid, i.e. its intensity, its duration, the dangers it creates of transferring difficulties from one Member State to another, the degree of distortion of competition, etc., must be commensurate with the importance of the objective of the aid.

The overall policy on State aids, particularly in respect of sectoral and horizontal measures, which the Commission has developed in administering the State aid rules, was outlined in the Eleventh Report on Competition Policy.\(^1\)

161. In order to guide Member States on those aids which may meet Community objectives, the Commission has increasingly made use of policy statements outlining the objectives and forms of aid which may be given under particular circumstances. Such statements exist in various forms for regional aids, textiles and the environment. In the case of steel it takes the form of a decision (2320/81) under the ECSC Treaty, in that of shipbuilding a Council directive. Proposals for such policy statements are under examination for research and development, and the energy field. In addition a policy statement is being prepared for the air transport sector, based on information received from Member States in the context of a series of meetings with national experts, convened by the Commission during 1981 and 1982. The Commission has made known the importance it attaches to the development of small and medium-sized enterprises. Even if the Commission exercises a favourable prejudgement towards proposals for aid in certain domains, this does not mean however that it can ignore the wider implications on competition, convergence or similar aspects of the proposals it examines. The modalities of the aid must match the objectives for which it is granted, both at national and Community levels. Thus for example, the Federal Government of Germany has notified its second five-year programme on aid to Energy Research and Energy Technology. The Commission has opened the procedure of Article 93(2) against this proposal. Although aid both to research and development and for energy development are considered favourably, the high intensities of aid and the volume of funds involved in this programme (DM 13 415 million) as well as the fact that most of the funds will go to large firms, in addition to apparent infractions of other Community rules in the implementing regulations, means that there are considerable reservations as to the compatibility with the common market of the proposal as it stands. Similarly, the Belgian Government notified a scheme to establish special employment zones. These zones, of limited size in areas of high structural unemployment, effectively combined aids for high technology and SMEs. However, the intensity of aid, the size of benefiting undertakings, the open-ended nature of availability of aid and the danger to competition for mobile investment pro-

\(^1\) Points 179 to 183.
jects were such that the Commission had to obtain substantial modifications to the proposal before it could agree not to raise any objections to the scheme.

162. The Commission has been increasingly concerned in recent years over the implications for its control of State aids of the financial relationship between Member States and their public undertakings, given the rising tide of State participation in the ownership of undertakings. Such financial relationships where they involve the State in its role of proprietor making funds available do not necessarily involve the grant of State aids, if these are granted on a commercial basis. On the other hand, the Commission has to ensure that the State aid rules are being observed, and particularly that of prior notification of cases where an aid element may be involved. It therefore issued its directive on the transparency of financial relationships between Member States and their public undertakings (80/723/EEC) which allows it to obtain the relevant information and evaluate the flows of government or government controlled funds. The challenge to this directive by three Member States in the European Court, France, Italy and the United Kingdom has been rejected totally by the Court (see point 222 below). The Commission has now begun to apply the directive by requesting information for the automobile, synthetic fibres, textile machinery, shipbuilding and tobacco manufacturing industries.

Furthermore, measures are currently under consideration, which would achieve a degree of transparency, equivalent to that ensured by Commission Directive (80/723/EEC) for those sectors, including air transport and the credit institutions, which were excluded from its scope. Consultations with interested parties are in progress so that any special characteristics of air transport may be taken into account.

163. The following table summarizes the activities of the Commission in the field of industrial aid proposals for the years 1970-82. Other aids, e.g. to agriculture and to transport, are considered, where appropriate, in other reports of the Commission. The figures for 1982 show a substantial increase in the number of aids proposed. This demonstrates the necessity of a strict control of aids by the Commission. This control will allow a strengthening of the common market and an intensification of measures aiming at eliminating practices which entail a restriction of trade and a distortion of competition. This important aspect has been underlined both by the European Council in its December 1982 meeting and the European Parliament.
Positions taken by the Commission concerning State aids from 1970 to 1982

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>No objection</th>
<th>Procedures under Article 93(2) or Article 8(3) of Decision 2320/81 ECSC</th>
<th>Formal negative decisions published in the OJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>21</td>
<td>15</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>1971</td>
<td>18</td>
<td>11</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>1972</td>
<td>35</td>
<td>24</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>1973</td>
<td>22</td>
<td>15</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>1974</td>
<td>35</td>
<td>20</td>
<td>15</td>
<td>—</td>
</tr>
<tr>
<td>1975</td>
<td>45</td>
<td>29</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>1976</td>
<td>47</td>
<td>33</td>
<td>14</td>
<td>2</td>
</tr>
<tr>
<td>1977</td>
<td>112</td>
<td>99</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>1978</td>
<td>137</td>
<td>118</td>
<td>19</td>
<td>—</td>
</tr>
<tr>
<td>1979</td>
<td>133</td>
<td>79</td>
<td>54</td>
<td>3</td>
</tr>
<tr>
<td>1980</td>
<td>105</td>
<td>72</td>
<td>33</td>
<td>2</td>
</tr>
<tr>
<td>1981</td>
<td>141</td>
<td>79</td>
<td>62</td>
<td>14</td>
</tr>
<tr>
<td>1982</td>
<td>233</td>
<td>104</td>
<td>129</td>
<td>13</td>
</tr>
</tbody>
</table>

1 Excludes agricultural aids. The comparable figures for these for 1982 are: Notified 170; no objections 165; procedures under Article 93(2); 8; procedures under Article 169: 2; negative decisions 8; notifications on which decisions pending 21. Also excludes transport aids.

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

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

4 Of which 95 were steel cases. By way of comparison the figure includes 23 steel cases.

§2 — Sectoral and general aid schemes

Introduction

164. The Commission has noted a marked increase, especially in the past year, in the degree of intervention in industry by Member States. Governments have not only been providing State aid in order to encourage the recipient firms to carry out a specific project which would contribute to some objective for the industry or the region, but have also come to guarantee some firms' very existence. The continued contraction in a large number of markets, which has persisted beyond what could originally be anticipated makes it more difficult to finance the restructuring operations necessary, and threatens the continued existence of many businesses.

The consequence is that Governments frequently step in to provide rescue aid on a selective basis, in order to provide urgent refinancing for firms whose capital base has been eroded by several years of poor results. In an increasingly large number of cases, the State financing operation takes the form either of a
State holding in company’s equity, or of participatory (i.e. equity-type) loans or direct grants aimed at restoring its capital. There is often a serious danger of distortion of competition in such operations, not only because of the intensity of the aid, but also because of the industrial consequences of the rescue. If no rescue operation were mounted, the production capacity of the firm involved would be withdrawn from the market or would be substantially reduced if, following liquidation, the business was taken over in a reorganized form by another company. This would allow other Community manufacturers to expand their markets and in many cases improve their competitiveness.

In order to prevent intervention of this kind from holding back the necessary structural adaptation, the Commission has been particularly vigilant in its handling of such rescue aids which have been proposed in a number of industrial sectors.

I
t and steel (application of the ECSC Treaty)

The crisis in the steel industry deepened markedly in the second half of 1982 as Community demand, and therefore production, fell and price competition accentuated: by the end of the year prices had again fallen to levels which were unremunerative even for the most competitive undertakings in the Community. Moreover, the outlook for 1983 was that there would be a further decline in demand within the Community, at least during the first half of the year.

The medium term prospect is equally sombre. The revised General Objectives indicate that Community demand in 1985 is likely to be slightly below 1980 levels even on rather optimistic assumptions, while export sales will also be limited by the existence of surplus capacity at world level, by competition in export markets from other industrialized countries and by the growth of steel industries in the less developed countries. In these circumstances the volume of production in 1985 is likely to be lower than in 1980.

On the supply side the Commission’s investment intentions surveys, taken at the beginning of each year, show only a very modest reduction (about 1.5% according to the 1982 survey) in hot-rolling capacity between 1980 and 1985. In order to reach a 70% average rate of capacity utilization, which is considered to be the minimum level required for undertakings to be viable without aid, some 30 to 35 million tonnes of hot-rolling capacity will have to be eliminated by 1985.

The Community’s steel policy during the crisis has been on the one hand to seek to stabilize the internal market by limiting production (mandatory and volun-
tary quotas), by publishing guide prices and by avoiding disruptions from imports by arrangements with third-countries, and on the other hand to promote restructuring of the industry, through the modernization of plant that is viable in the long run and the disappearance of other plant so as to bring supply and demand more nearly into balance. The principal restructuring instrument is the code for aids to the steel industry originally introduced in 1980 and substantially reinforced in 1981.\(^1\) The aids code provides as a precondition for the grant of aid, that undertakings must be engaged in restructuring programmes which lead to a reduction in their production capacity and which will restore their competitiveness and financial viability. Of the other criteria the most important are those linking the amount and intensity of aid to the restructuring effort made and requiring that conditions of competition should not be distorted to an extent contrary to the common interest. The code, which applies to all aids, also provides for complete transparency.

In application of the provisions of the first and second aids code the Commission has since 1980 authorized the aids shown in the table on page 121. The aids that remain subject to examination procedures are shown in the table on page 123.

The following paragraphs describe the way in which the Commission applied the provisions of the code during 1982.

**Capacity reductions**

166. It is possible to form a first view of the effect of the aids code on the restructuring of the steel industry and in particular on the achievement of a reasonable capacity reduction.

The aid plans notified to the Commission by 30 September 1982, the last date on which such notifications could be made, are associated with restructuring plans which would reduce hot-rolling capacity by some 14 million tonnes in the Community as a whole by 1985. These plans are, however, in many cases provisional, and it is likely that further reductions in capacity will be proposed by national Governments in the course of negotiations with the Commission in order to obtain the latter’s approval for their aid plans. A final judgment on the effectiveness of the aids code in reducing the capacity of the steel industry can therefore only be made once these negotiations have been completed, that is by 1 July 1983, which, as provided in the aids code, is the last date on which the Commission can authorize aid to the steel industry.

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\(^1\) Tenth Report on Competition Policy, point 194; Eleventh Report on Competition Policy, point 187.
The additional capacity reductions should in the Commission's view be made principally by undertakings which require aid, and in particular by those undertakings using the most obsolete or least economic plant, registering the heaviest losses and receiving the most State aid. However, since all undertakings will benefit from the re-establishment of equilibrium, the Commission considers that all undertakings, including those receiving little or no aid, should contribute to the common effort towards reducing production capacity. In any event, the achievement of 30 to 35 million tonnes of capacity reduction presupposes the closure not only of obsolete plant but also of some more modern plant.

The aids authorized by the Commission up to the end of 1982 were associated with the following major net capacity reductions between 1980 and 1985 in millions of tonnes of hot-rolled products. (Reductions made by some other undertakings are not included because no aids have yet been authorized).

<table>
<thead>
<tr>
<th>Country</th>
<th>Capacity Reduction (m.tonnes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium (Cockerill-Sambre, Forges de Clabecq and Laminoirs de Jemappes, ALZ and Antwerpse Walserijen)</td>
<td>2.2</td>
</tr>
<tr>
<td>Denmark (Det Danske Stålvalessværk)</td>
<td>0.1</td>
</tr>
<tr>
<td>Federal Republic of Germany (Arbed Saarstahl and Maxhütte)</td>
<td>0.9</td>
</tr>
<tr>
<td>France (Sacilor and Usinor)</td>
<td>4.7</td>
</tr>
<tr>
<td>Italy (Finsider)</td>
<td>0.1</td>
</tr>
<tr>
<td>Luxembourg (Arbed)</td>
<td>0.5</td>
</tr>
<tr>
<td>United Kingdom (British Steel Corporation)</td>
<td>3.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11.7</strong></td>
</tr>
</tbody>
</table>

With the exception of a few cases involving smaller undertakings, the Commission has only approved part of the aids notified to it for these undertakings on the basis of the capacity reductions so far offered by them. The remaining capacity reductions (by other undertakings), which make up the 14 million tonnes figure referred to earlier, had not led to aid authorization by the end of 1982 since in general they had not been sufficiently specified as regards the identity of the plant to be closed or the timing of the closure, or had not yet been formally approved by the national authorities.

In order to avoid double-counting, the table does not include a number of reductions in cold-rolling capacity in respect of which the Commission has also authorized aids for certain undertakings (British Steel Corporation, Irish Steel Limited, Hoesch, Phénix Works and Sidmar in particular). Virtually, all the hot-rolling capacity reductions shown result from the permanent closure of specific plant, but in two cases the plants in question had yet to be specified.
(575,000 tonnes at Cockerill-Sambre by 31 March 1983 and 500,000 tonnes at Arbed Saarstahl by 30 April 1983), the Governments concerned having given undertakings to cut capacity by these amounts but being unable to identify the plants to be closed until synergy negotiations with other undertakings had been completed.

The Commission does not generally consider reductions in crude steel capacity alone as a justification for aid unless the undertaking in question has no ECSC rolling capacity. Thus, the Commission authorized an aid for Benteler AG, a producer of tubes (a non-ECSC product) on the basis of a reduction in its crude steel capacity. On the other hand, in the case of a producer of wire-rod, the Commission did not consider that a reduction in crude steel capacity unaccompanied by any reduction in rolling capacity could constitute a capacity reduction justifying aid, since it would be possible for the undertaking to purchase semi-finished products for rolling in its mills.

Similarly, in the case of the aids proposed for an integrated works, the Commission refused to take into consideration the part of the capacity reductions for hot-rolled products alleged to result from the closure of crude steel capacity and the resulting bottleneck at this stage.

The Commission will only take account of bottlenecks on rolling capacity which are the result of clearly defined technical factors; it excludes from consideration reductions resulting, for instance, from demanning (i.e. reducing the number of shifts worked), shortages in the supply of semi-finished products and changes in product mix, since such changes do not result in an irreversible adjustment of capacity to demand and cannot, therefore, be considered as contributing to the achievement of the Community's restructuring objectives.

Financial viability

167. The viability of Community steel undertakings in general will depend, inter alia, on their ability to achieve a reasonable rate of capacity utilization, which in turn depends largely on the achievement of an adequate reduction in the Community's capacity. At the level of the individual undertaking viability in the future depends critically on the adequacy of its restructuring programme. The Commission has recognized that the adjustments required for many undertakings to become viable are so profound that their definition, approval and implementation can only be undertaken over a period of time. In these cases, restructuring plans usually consist of a series of adjustments, each of which brings the undertaking closer to the objective of viability. Where Member States have proposed such 'tranches' of restructuring to the Commission, the latter has been prepared to approve tranches of aid provided that the restruc-
turing proposed leads to a reduction in capacity and represents a step towards viability. Authorization of such tranches has always been conditional on agreement by the Member State concerned to prepare a more radical restructuring plan.

The authorization of tranches of aid is, however, an interim measure. The Commission felt that, as the deadline for its final decisions approached, it should have available information enabling it to judge the viability of the various Community undertakings on a standard basis. The Commission, therefore, prepared a detailed financial questionnaire which it has required Member States to complete (or to have completed) and return to it in respect of undertakings whose viability appears to it to be in doubt and to which Member States have proposed to grant aid. At the end of the year the Commission had only received returns in respect of a few undertakings. When it appraises the viability of an undertaking the Commission is particularly concerned to ensure that the forecasts submitted to it are not based on assumptions which, in the light of the forecasts contained in the General Objectives, appear over optimistic. The questionnaire has been designed so as to make explicit the assumptions on which forecasts are based to facilitate a sensitivity analysis to test the impact of introducing alternative assumptions.

The restructuring effort

168. When deciding on the amount of aid to authorize in an individual case the Commission takes particular account of the restructuring effort made. This evaluation is qualitative rather than quantitative and is based on an analysis of a variety of factors including the following:

(i) the size of the capacity reduction offered, its timing (the sooner the reduction is made the greater its impact) and the product concerned (overcapacity is greater for some products than for others);

(ii) the modernization and other efficiency and cost-reducing measures adopted and their costs; and

(iii) the location of the capacity reduction, its effects on employees and the difficulties that will result for the workers made redundant.

Since therefore, the restructuring effort is many-faceted, since the intensity of different forms of aid differs and since there are other criteria that must also be respected (for instance, the Commission must not authorize more aid than is required by the undertaking), the Commission has not accepted the proposal made to it from a variety of quarters that it should establish a fixed ceiling in...
monetary terms for aids per tonne of capacity reduction. This proposal is contrary both to the spirit and the letter of the aids code.

The Commission has stressed to the Member States that employment and regional problems cannot be an argument for postponing the necessary adaptation of the industry. Where such problems exist action must be taken to assist the Commission of the steel areas concerned by creating alternative job opportunities. The Commission will contribute to the achievement of this objective by concentrating the use of its financial instruments in areas where such support is needed and will also, as indicated elsewhere in this Report, look favourably on any aid plans submitted to it by Member States.

**Distortions of Competition**

169. The Commission seeks to ensure that unwarranted distortions of competition do not occur by rigourously applying the provisions of the aids code and in particular:

(i) by limiting the amount and intensity of the aids it authorizes to what is fully justified by the restructuring effort made by an undertaking; and

(ii) by authorizing only the aid which it considers necessary to achieve the restructuring in question.

Thus, in a number of cases, the Commission has required a Member State to reduce the aids it proposes to give to an undertaking either because they were not justified by the restructuring effort or because the undertaking did not really require aid on this scale or for a combination of the two reasons. Such reductions were required, for instance, in the case of a regional investment aid to Sidmar for the construction of a continuous annealing plant. Given the relatively limited scope of the capacity reduction offered and the strong competitive position of the undertaking, which would be reinforced by the investment project in question, the Commission required the Belgian Government to reduce the interest relief grant it had proposed to offer the company from 7 points for five years to 3 points for the same period.

170. Following the informal meeting of Industry Ministers at Elsinore (Denmark) in November 1982, the Commission decided to take measures to ensure that the payment of aids for investment was linked to investment expenditure so that these aids were not diverted to other purposes, in particular to cover operating losses. Its subsequent authorizations of investment aid therefore require Member States to inform the Commission at the beginning of each quar-

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1 Point 202.
ter of the aid payments they intend to make during the quarter and to justify these payments. The Commission reserves the right to oppose unjustified payments. For operating aids the Commission also decided to act to ensure that aided undertakings did not pursue a disruptive price policy.

Scope of the aids code

171. As already indicated the aids code subjects all aids to the same criteria, whatever the form of the aid in question, whatever its amount and whatever its purpose (whether general, regional or sectoral). Thus aids, usually of rather low intensity, for environmental protection or for energy saving, research and development aids, employment aids, and regional aids are all subject to the same criteria as purely sectoral aids.

In its examinations of aids the Commission makes no distinction between the treatment of aids granted to the steel industry on the basis of the aid system that is used. Where an aid is justified on sectoral grounds the Commission in its appraisal of the intensity of the aid does take account of regional aspects of the case and of any contribution made to other Community objectives for instance promotion of innovation or environmental protection.

The aids code specifies that it also applies to any aid elements contained in finance provided to public undertakings and indicates that the criteria for judging whether aid elements are present is whether the financial measure can count as the provision of risk capital according to standard company practice in a market economy. The Commission has taken the view that the financial circumstances of virtually all public sector steel undertakings and the market prospects for the industry as a whole are such that equity and quasi-equity finance to these undertakings inevitably contain aid elements. The procedures it has initiated and the aid packages it has approved therefore include such aid elements. Public undertakings concerned include the British Steel Corporation, Cockerill-Sambre, Finsider, Sacilor and Usinor.

The Commission has generally taken a similar position on proposed State participations in undertakings which are in private ownership. However, in the case of the Belgian Government’s proposal to increase its share-holding in Sidmar, the Commission considered that no aid element would be contained in such a measure unless the price of acquisition was higher than would be paid by a private entrepreneur, and it acted to verify that this would not be the case. This position was consistent with its view, referred to above, that, as a highly competitive undertaking, Sidmar did not require any significant aid.
Steel aid authorized by the Commission in application of the provisions of the first and second aids codes (since 1 February 1980) - By country and form of aid.

<table>
<thead>
<tr>
<th>Country</th>
<th>Grants/interest relief grants</th>
<th>Capital/participatory loans</th>
<th>Conversion of debts into capital</th>
<th>Reduced interest rate loans</th>
<th>Guarantees/market rate loans</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(BFR 1 000 million)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
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<td>2 256.3</td>
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<tr>
<td>(LIT 1 000 million)</td>
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<tr>
<td>(LFR million)</td>
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<tr>
<td>(HFL million)</td>
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<tr>
<td>Hoogovens</td>
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<td>200.0</td>
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<tr>
<td>(UKL million)</td>
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<td>British Steel Corporation</td>
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<td>12.4</td>
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COMP. REP. EC 1982
Transparency

172. In accordance with the provisions of the aids code transparency is assured in a number of ways:

(i) the Commission consults the Member States on all important cases before approving any aid either by initiating a procedure under Article 8(3) of the code or by putting the case on the agenda for discussion at a multilateral meeting of national experts. For most major cases consultation is carried out in both ways. Eight multilateral meetings were held during 1982;

(ii) whenever a procedure is opened, a notice is published in the Official Journal so as to give other parties concerned an opportunity to comment. The information published in the notice is inevitably rather limited, but efforts have been made to provide more complete data and, in case this is insufficient, the Commission is willing to supply additional information in response to a request from a party concerned;

(iii) the Commission informs Member States of each decision taken by it on aid cases;

(iv) the Commission makes regular reports to the Council on the implementation of the code. These reports are also transmitted to the Consultative Committee and to the European Parliament. In February 1982 the Commission made its second report (for the year 1981) and an addendum to this second report covering the first five months of 1982 was sent in June 1982.

(v) the Commission monitors aid payments by means of a questionnaire which is sent out to Member States twice a year. On the basis of the returns made by the Member States the Commission will update the report it sent to the Council in May 1982 on aid payments to the steel industry during the period 1975-80. This data will enable the Commission to check that aid levels are in practice progressively reduced as required by the code.
Steel aid remaining subject to examination procedure by the Commission in application of the first and second aids codes (since 1 February 1980) - By country and form of aid

<table>
<thead>
<tr>
<th>Country</th>
<th>Grants/ interest relief grants</th>
<th>Capital/ participatory loans</th>
<th>Conversion of debts into capital</th>
<th>Reduced interest rate loans</th>
<th>Guarantees/ market rate loans</th>
<th>Others</th>
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<td>—</td>
<td>37.2</td>
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<td>8 779.0</td>
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<td>—</td>
<td>1 977.2</td>
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<td>—</td>
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<td>8.3</td>
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<td>—</td>
<td>485.0</td>
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<td>901.0</td>
<td>294.3</td>
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Shipbuilding


173. The Fifth Directive on aid to shipbuilding adopted by the Council on 28 April 1981,\(^1\) contains a Community code for State aids to the shipbuilding industry; this is based on Articles 92(3)(d) and 113 of the EEC Treaty, and is designed to promote the reorganization and restructuring of the industry which has been hard hit by the crisis. Like its predecessors it embodies the Community's response to the structural crisis in the industry, which has been reflected

\(^1\) OJ L 137, 23.5.1982.
in very short order books and has produced a more and more marked loss of competitiveness in the Community yards as compared with those in certain non-member countries.

174. Not least because of the social repercussions of this situation the Community’s objective remains:

(i) to avoid distortion of competition between the yards in the Member States, by curbing the escalation of State aids;

(ii) eventually to reduce the scale of the problem by making progressive reductions in capacity and returning to a level of efficiency and competitiveness which will allow the industry to operate without assistance.

The Directive was to expire on 31 December 1982, although it had not been possible to fully achieve its objectives, the restoration to competitiveness of the Community shipbuilding industry and the ending of State aid. The crisis in Community shipbuilding has deepened, and in order to allow Member States to pursue restructuring and consolidation measures designed to make the industry competitive while gradually ending all aid, the Commission proposed to the Council that the Directive be extended. It also took a number of practical steps to help attain these objectives more rapidly. On 21 December the Council decided to extend the Fifth Directive for a period of two years.

National aid schemes

175. The Commission was notified of schemes of assistance to the shipbuilding industry by several Member States—the Netherlands, Germany, the United Kingdom and Italy.

In line with the policy pursued since the crisis in the industry began, the Commission has continued to promote reorganization of the industry, which is an essential counterpart for public assistance. Despite the worsening crisis the Commission’s administration of the Fifth Directive has thus secured a real progressive reduction in aid to production. However, indirect forms of assistance, particularly aid to shipowners, are still widely used in some Member States.

In applying Directive 81/363/EEC, therefore, the Commission is seeking to secure real transparency of aid to the industry, and to monitor efforts to cut capacity in the various Member States so as to ensure that the burden of the crisis is shared equitably, as required by that Directive. The Commission has

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1 See Eleventh Report on Competition Policy, point 202 et seq.
2 Article 6(2).
therefore authorized some Member States to grant aid for a limited period when it helps consolidate the efforts already made.

176. The Commission authorized a scheme to assist shipbuilding in the Netherlands for a period ending on 31 December 1982. The scheme provided for grants up to a maximum of 10.5% in 1982, towards the construction of vessels or by way of exception up to 20% in the case of two particular yards; it had a total budget of HFL 140 million in 1982. The Commission also authorized specific investment aid for the modernization of three groups of shipyards in the Netherlands.

The Dutch Government argued that it had closed the least viable yards, which among other things meant abandoning the building of large ships, so that it was not at present possible to cut the industry back any further. The emphasis was now being placed on modernization, rationalization and the improvement of productivity, without any further capacity reductions, so as to allow the restructuring carried out in previous years to produce results.

177. In the case of the Federal Republic of Germany, the Commission authorized a credit facilities scheme within the terms of the OECD Resolution of 30 January 1980, and grants, through financing arrangements, representing a production subsidy of 5%. Here too it was the notion of consolidation which was invoked in justification of this assistance.

178. The Commission is currently studying the measures proposed by the United Kingdom under the fifth tranche of the Intervention Fund for Shipbuilding (UKL 55 million, 17% and 18% in grants, and offsetting of the losses of the public sector shipbuilders). It has authorized implementation of the programme on a provisional basis up to 31 December 1982.

179. In the case of Italy, the Commission has not yet taken a definitive decision on a number of measures to assist shipbuilding and ship repairing to be taken under Act No 599/82, covering the period 1981 to 1983.

As in the United Kingdom case, these measures raise the problem of the conduct of the State towards a firm partly or wholly in public ownership; the problem is particularly evident where the State offsets losses incurred by yards which belong to it.¹

180. In addition, the Commission authorized assistance which was to be granted by the Belgian Government to underpin the amalgamation of the two

¹ See also Directive 80/723/EEC on the transparency of the financial relations between Member States and public undertakings, OJ L 195, 29.7.1980, point 222 of this Report.
major Belgian shipyards following the liquidation of one of them. Integration of the two yards was linked to a large reduction in the workforce and the scrapping of some plant.

**Ship repairing**

181. 1982 saw the disquieting situation in the Community ship repair industry worsen; the decline was caused both by the fall in sea-going traffic as a result of the general economic recession and by the shift in the centre of gravity of sea transport, in terms both of sea-lanes and of commercial activity, towards South-East Asia. Increased en route maintenance and changing methods and habits in the industry led to a contraction of the market share held by Community repair yards. Many Community ship repair yards, including conversion and demolition firms here are in difficulty.

The Commission received notification from the Dutch Government of planned aid totalling HFL 35 million to a repair yard which was intended to enable the yard to overcome serious liquidity problems; it initiated the procedure provided for in Article 93(2) of the EEC Treaty in respect of the plan. In the same way it is considering the Italian Government's plans for the ship repairing industry under Act No 599/82 referred to above; it is checking in particular that the restructuring of the industry takes sufficient account of the reduced volume of sea traffic to be expected in the future.

**Textiles and clothing**

182. The Community has accepted the renewal of the Arrangement regarding international trade in textiles, as contained in the protocol extending the Arrangement and its conclusions adopted by the GATT Textiles Committee in December 1981. In the course of 1982 the Community concluded new bilateral agreements with supplier countries regarding trade in textiles. These will protect the Community textile and clothing industry from excessive imports from low-wage countries for a further period of four years. The industry should use this period to adapt its structures to current world market conditions, and thus facilitate the return to international competitiveness.

The Commission's policy towards aid to the textile industry is therefore aimed at cutting back the current overcapacity and preventing assistance which would shift difficulties from one Member State to another. Assistance granted by Member States must be linked to restructuring plans which contribute to rehabilitation of the industry and facilitate the adaptation of production capacity to prevailing market conditions. The Commission gives special attention to the
effects of assistance in branches of the industry where a particular Member State exports a great deal to the rest of the Community or where the majority of Community firms face contracting markets.

The Commission therefore cannot authorize aid to the most sensitive branches of the industry: this would considerably worsen the situation in the Community, and would be contrary to the common interest.

In other branches of the industry, which are not amongst the most sensitive but which are nevertheless more sensitive than the industry as a whole, the Commission requires prior notification of individual cases.

France

183. In May 1982 the Commission initiated the scrutiny procedure provided for in Article 93(2) of the EEC Treaty in respect of French Government plans for fresh aid to the textile and clothing industry, to take the form of relief on employers’ social security contributions. The French authorities consider this assistance necessary in order to ease the difficult situation in the industry, which results in an insufficient level of investment. A major factor here, so the French authorities argue, is the high level of social security contributions.

But while the burden of social security contributions in France is indeed high, the total wage costs which French employers have to pay are among the lowest in the Community.

The Commission takes the view that social security costs in a Member State form part of the general economic environment in which firms operate in that country, and that the relative burden cannot in itself justify the granting of aid. This does not mean that the Commission is opposed to the reduction of social security costs as a means of granting aid. But the Commission considers that in this particular case the assistance would be contrary to the common interest, as the investment and employment objectives set would automatically produce an increase in output. This must be regarded as dangerous if it is borne in mind that penetration of the French market by non-Community imports is one of the lowest in the Community, while Community countries are important suppliers to the French market. The scheme does not take sufficient account of the need to link assistance, particularly in an industry like textiles and clothing, to the necessary effort to reduce the current level of overcapacity both in the industry as a whole and in certain branches of it. There is no direct link between the aid to be granted and investment to be carried out under a restructuring plan, so that the aid would have a direct effect on French firms’ production costs, with all the dangers this implies for firms in other Member States. Lastly, the possibility of combining this assistance with other aids to the industry or with general...
aids would allow the total intensity to rise to a level which the Commission considers unacceptable.

The Commission is currently continuing its examination of the French aid plan and of the comments which it has received on the scheme.\(^1\)

**Belgium**

184. Under the Belgian scheme of assistance to the textile and clothing industry in operation since 1 January 1982, which the Commission has approved for a period of one year,\(^2\) 12 individual cases in particularly sensitive branches of the industry were notified. The Commission raised no objection in seven of these cases, but initiated the Article 93(2) procedure in five of them. There were 161 cases of application of the scheme notified *a posteriori* to the Commission. The total amount of aid committed by the end of September 1982 is of the order of BFR 4 000 million (all forms of assistance together: State holdings, loans and interest subsidies).

In March 1982 the Belgian Government notified a plan for an alternative scheme under which aid would be restricted to a loan facility, aid in the form of a shareholding being dropped. Low-interest loans could reach 50% of the investment, as opposed to 30% previously. Individual cases would have to be notified if the recipient firm employed more than 500 people, rather than 50 as at present, or where the investment exceeded BFR 200 million. The Commission decided to initiate the scrutiny procedure in respect of the plan.

Apart from this alternative scheme, the Belgian Government has also asked for authorization to extend the scheme now in force for another year. The Commission will be adopting a position shortly on these aid proposals.\(^3\)

**Paper industry**

185. Not only does the Community paper industry face contracting markets as a result of the slowdown in economic activity, but it must also make special preparations for the deadline of 1 January 1984, when customs barriers to products from certain non-Community countries will have disappeared.

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\(^1\) On 12 January 1983 the Commission decided under Article 43(2) of the EEC Treaty that, in its present form, the French aid plan was incompatible with the common market.

\(^2\) Eleventh Report on Competition Policy, point 253.

\(^3\) In the framework of the procedure of Article 93(2) of the EEC Treaty, the Commission informed the Belgian Government of the conditions for which aid, only to be granted during 1983, could be considered compatible.
Structural adaptations must be made rapidly, and the Commission takes the view that against this background, it would not be in the Community interest to use State aid to rescue certain firms facing serious difficulties. However, State aid granted to firms which can eventually become viable and designed to facilitate their efforts to switch to products with better market prospects, particularly having regard to the 1984 deadline, will receive sympathetic consideration from the Commission.

186. This approach led the Commission to take negative decisions in respect of three proposed rescue aid schemes for firms in this industry. Two of the firms involved were Belgian, one manufacturing wall coverings (acquisition of a holding of BFR 120 million), and the other manufacturing printing and writing paper (acquisition of a holding of BFR 2350 million). The third case concerned a Dutch firm which processed paperboard (acquisition of a holding of HFL 4 million). In all three cases, the aid took the form mainly of an equity holding acquired by the State through regional bodies, and was designed essentially to maintain in existence firms facing serious financial difficulties.

187. Apart from three decisions under Article 93(2)EEC, finding that the aid in question was incompatible with the Treaty, the Commission initiated the scrutiny procedure in respect of French Government aid measures aimed at keeping the business of the main newsprint manufacturer afloat. Here too the rescue aid, which was granted after the firm had filed its balance sheet, took the form of an injection of capital designed to allow urgent financial liabilities to be met. The aid involves equity-type loans totalling FF 200 million.

188. On the other hand, the Commission took a favourable decision on a plan to assist a Dutch manufacturer of printing and writing paper by granting a loan of HFL 4 million at 0.25% above market rates. The aid was intended to facilitate a cut in production capacity in a field in which the paper industry will in future have to face increased competition from non-Community imports.

Electrical and electronic manufacture

189. Falling demand for capital goods and consumer goods in the electrical and electronic manufacturing industry have led some firms to review their strategy for dealing with an unfavourable situation which has lasted longer than originally anticipated.

1 Decision 312/82/EEC of 10.3.82: OJ L 138 of 19.5.82.
2 Decision 670/82/EEC of 22.7.82: OJ L 280 of 2.10.82.
Particular emphasis is therefore being placed on research and development, industrial restructuring and greater penetration of certain new markets.

It was in the latter context that the German Government, with the approval of the Commission, introduced an aid scheme taking the form of grants of up to 40% of the cost of the development of micro-electronic technology in the Community, in line with the Commission’s communication to the Council concerning Industrial Development and Innovation.

The Commission also had to consider assistance to be granted by the German Government to the AEG-Telefunken group which, because of its precarious situation, had to seek settlement with creditors through composition proceedings. The aid was to take the form of a State guarantee on a loan of DM 600 million to finance contracts for exports to non-Community countries, and DM 1 million to allow the group to carry out a restructuring programme under which it would expand its capital goods business and cut back its consumer goods operations.

In the course of the restructuring operation, jobs provided by the group in Germany would fall from 92,000 in 1982 to 75,000 in 1984. The Commission authorized the German Government to give these guarantees, but required to keep the Commission informed of the implementation of the plan.

The Commission’s position here was based on the following considerations:

(i) the need to allow this industrial group to embark on gradual adjustment to market conditions;

(ii) the shedding of some of the group’s capacity in the electrical consumer goods and consumer electronics field, which would be a contribution towards the capacity reduction needed in Community industries facing considerable overcapacity;

(iii) the stronger position the group was seeking to secure in the electrical and electronic capital goods business.

190. The Commission initiated the Article 93(2) procedure in respect of an aid scheme proposed by the Italian Government pursuant to Act No 63/82, under which a public holding company could acquire a stake in firms manufacturing consumer electronic equipment and components. The Commission took the view that neither the text of Act No 63/82 nor the information supplied by the Italian Government suggested that the scheme could in its present form be considered compatible with the common market. It could be accepted as compatible only if it was shown that the restructuring of the industry would in fact
take account of the Community interest in this area, and that distortions of competition which harmed the common interest could be ruled out.

**Motor industry**

191. As announced in the Eleventh Report on Competition Policy, the Commission has taken the initiative of setting up an *a posteriori* monitoring system covering both specific national aids to the motor industry and the use of other schemes to assist the industry.

The Commission's concern is to increase the transparency of national aids to the industry, and thus to help avoid surplus capacity arising which could subsequently lead to protectionist measures and State aids liable to distort competition and to interfere with free movement.

The Commission has entered into a dialogue with the Member States concerned in an effort first of all to identify the practical problems, particularly of a statistical and administrative nature, which may arise as the notification system is set up.

In the first few months of 1983 it should be in a position to define the content and the final form in which the information is to be supplied to it.

**Food and drink industry**

**Belgium**

192. On 22 July 1982, the Commission adopted three negative decisions under Article 93(2) of the EEC Treaty prohibiting the Belgian Government from granting aid under the Act of 17 July 1959 towards investment projects proposed by three soft-drinks manufacturers. The investments planned by two of these firms (in the Province of Liège) concerned the expansion of productive capacity and of storing and dispatching facilities for their products; the investment by the third firm (in Brabant) concerned the setting up of new manufacturing, bottling and distribution facilities for its products.

The Commission considered that the three firms concerned, which are healthy and expanding, were operating in a profitable industry with a definite potential market and that it was therefore in their own interests to make the investments in question. In addition, the Commission found that these aids would serve to

1 Point 215.
relieve the firms of costs which they would otherwise have to bear, and that accordingly, the aids were likely to distort competition and affect trade within the meaning of Article 92(1) of the EEC Treaty. The Commission decided that there were no grounds which would allow the aids in question to qualify for exemption under Article 92(2) and (3) of the EEC Treaty.

**Aids to the energy sector**

**Aids to the coal industry**

193. State aids to the energy sector are dominated in volume terms by aid amounting to 2 226 million ECU in four coal producing Member States to their coal industries. These aids are examined by the Commission under the terms of Decision 528/76/ECSC\(^1\) and an annual report on them is submitted to the Council.\(^2\) The breakdown of these aids for 1981 and 1982 is on the next page.

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

The background of these aids lay originally in the need to ameliorate the social consequences of the adaptation, i.e. the contraction, of the Community coal producing industry. Because of difficult geological conditions, Community coal producing costs compare unfavourably with those of other suppliers to the world market. In addition, the low prices prevailing in the oil markets up to 1973-74 placed quite exceptional pressures on the Community coal industry. In the light of the energy crisis that has prevailed since 1974, it has become a fundamental objective of Community energy policy to reduce dependence on imported oil and increase the use of coal. The need to ensure a security of supply, plus the social aspects, are considered to justify aiding the coal sector. Despite the fact of rising prices of competing energy sources, as has been shown by the analysis in the Commission’s report to the Council on the ‘Role of Coal in the Framework of Community Energy Policy’,\(^3\) these problems and the associated aids are likely to continue in the foreseeable future.

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\(^1\) OJ L 63, 11.3.1976.
\(^3\) Doc. COM(82) 31 of 27.1.1982.
## Breakdown of aids

<table>
<thead>
<tr>
<th></th>
<th>1981 (million ECU)</th>
<th>1982 (million ECU)</th>
<th>Amounts per tonne (ECU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Republic of Germany</td>
<td>1 162.3</td>
<td>754.8</td>
<td>12.42¹</td>
</tr>
<tr>
<td>Belgium</td>
<td>281.6</td>
<td>199.4</td>
<td>46.16</td>
</tr>
<tr>
<td>France</td>
<td>404.2</td>
<td>553.8</td>
<td>23.10</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>845.7</td>
<td>718.4</td>
<td>6.77</td>
</tr>
<tr>
<td><strong>Community</strong></td>
<td>2 693.8</td>
<td>2 226.4</td>
<td>11.12</td>
</tr>
<tr>
<td><strong>of which:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— indirect measures</td>
<td>40.0</td>
<td>48.2</td>
<td>0.17</td>
</tr>
<tr>
<td>— aids to coking coal</td>
<td>844.2</td>
<td>432.2</td>
<td>3.49</td>
</tr>
<tr>
<td>— direct measures</td>
<td>1 809.6</td>
<td>1 746.0</td>
<td>7.47</td>
</tr>
<tr>
<td><strong>of which:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— Article 7 (Investments)</td>
<td>309.2</td>
<td>236.3</td>
<td>1.28</td>
</tr>
<tr>
<td>— Article 8 (Personnel)</td>
<td>98.7</td>
<td>111.2</td>
<td>0.41</td>
</tr>
<tr>
<td>— Article 9 (Stocks)</td>
<td>25.0</td>
<td>23.0</td>
<td>0.10</td>
</tr>
<tr>
<td>— Article 10 (Strategic reserves)</td>
<td>50.6</td>
<td>59.1</td>
<td>0.21</td>
</tr>
<tr>
<td>— Article 11 (Power station coal)</td>
<td>25.0</td>
<td>6.8</td>
<td>0.10</td>
</tr>
<tr>
<td>— Article 12 (Loss coverage)</td>
<td>1 301.1</td>
<td>1 309.6</td>
<td>5.37</td>
</tr>
</tbody>
</table>

¹ While the sum of 12.42 ECU per tonne (1981) and 7.97 ECU per tonne (1982) for the Federal Republic of Germany in this international comparison following the provision of Decision 528/76 is correct statistically and according to the definition, it is only partly valid for genuine comparison with the other Community countries. This is due to the third electricity-from-coal law, which lays down that German power stations must buy steam coal from the coal industry at break-even prices. The additional cost incurred by the electricity companies using Community coal (mainly German coal) is offset by increasing electricity prices. In 1981, this offset levy amounted to some DM 1 800 million (7.54 ECU per tonne). A figure of DM 1 700 million (7.40 ECU per tonne) is estimated for 1982.

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### Belgium: aid to an oil refinery

194. In November 1982, the Commission prohibited a proposed aid by the Belgian Government to an oil refinery at Antwerp,¹ undertaking a conversion programme involving capacity reduction, installation of additional catalytic cracking plant to raise the production of light products, and the construction of a methyl-tertiary butyl ether plant which produces an additive which reduces the lead content of petrol. Aid was to take the form of a capitalized interest-relief grant at BFR 307 million on an investment of BFR 4 093 million. The Commission considered that the conversion of the refinery, although in line with Community policy, was sufficiently in the commercial interest of the en-

enterprise for it to carry it out on its own account. Similar reasoning applied to the methyl-tertiary butyl ether plant. The fact that it presents technological innovation in Belgium was, by itself, not sufficient reason for the Commission to use its powers of discretion and raise no objection to the granting of aid. There were no regional reasons justifying the proposed aid.

**Participatory loans and provision of risk capital**

**Netherlands**

195. In September 1981, the Commission received notification of a Dutch plan to grant assistance in the form of participatory loans. The Dutch Government proposed this scheme as a means of overcoming the shortage of risk capital in Dutch firms. The interest rate on these loans would vary with the annual profits of the firm, ranging from a minimum equal to half the market rate to a maximum three points above the market rate. The loans would be junior-ranking, would carry a 100% State guarantee and their duration would be for 15 years. The amount of the loan could not exceed 50% of the cost of the investment project; it could not be less than HFL 250 000, and in general, could not exceed HFL 50 million. The total budget set aside for financing these loans was to be HFL 1 500 million.

To be eligible, a firm would need own capital equal to at least 20% of its balance sheet total. The firm would have to be basically sound, profitable and well-managed. Banks and insurance companies, investment companies and property companies would not be eligible. Applications would have to be submitted by 31 December 1983. Loans would be granted only towards new investments projects, and would not be used to finance towards investment replacement. Projects would have to be in one of the following five areas: energy-saving, savings of raw materials; innovation; protection of the environment; development and application of new technologies.

The Commission took the view that these loans constituted State aids within the meaning of Article 92(1) of the EEC Treaty. They carried a State guarantee and the State agreed to rank after other creditors. If the recipient firm were to make very little profit or no profit at all, it would not have to face the financial cost which it would otherwise have to bear, but would have substantial funds available at a favourable rate of interest.

The Commission recognized, however, that the types of investment which would be assisted were not solely in the interests of the Netherlands but also in the interests of the Community itself. It decided that the assistance could be exempted under Article 92(3)(c) of the EEC Treaty. The Dutch Government
undertook to give the Commission prior notification, in accordance with the procedure described in Article 93(3) of the EEC Treaty, in all cases where the loan exceeded HFL 10 million and all cases of investment aimed at raw material savings and innovation, as the Commission felt that the danger of distortion of competition was greater in these two categories.

The Dutch Government also undertook to fully respect the Community codes on steel, shipbuilding, textiles and environmental aid.

It was decided that no loans would be given in favour of the man-made fibre sector.

Six-monthly reports would be supplied to the Commission stating the number and cost of the investments receiving loans, with a breakdown by industry, region, size of firm and type of investment. These reports would enable the Commission to ensure that the aids were not concentrated in particular industries or regions, thereby distorting competition and trade within the Community.

**Aids to employment**

**France: aids to be granted by the regions**

196. In February and July 1982, the French Government notified the Commission of several planned aids to be granted by the regions, three of which were linked to improvements in the employment situation. These were:

(i) a regional premium towards the setting up of new firms, up to a maximum of FF 150 000, against creation of a minimum number of new jobs laid down by the Regional Council;

(ii) a regional employment premium towards the creation or maintenance of jobs, with FF 20 000 being granted for each job, for a maximum of 30 jobs created or maintained; in urban areas the grant is FF 10 000, and in those which previously qualified for special rural aid, it is FF 40 000;

(iii) loans, advances and interest subsidies towards projects to set up new establishments, creating not more than 30 jobs, or to extend an establishment, creating not more than 10 new jobs;

(iv) aid towards the purchase or rental of buildings in areas qualifying for the regional planning premium, taking the form of a discount of up to 25% of the purchase price or rental of property belonging to the regional authorities.
The Commission did not object to the regional premium towards the setting up of firms or to the job creation aspects of the regional employment premium scheme because their object was to create new jobs and because the conditions for eligibility confined them in practice to the expansion of small businesses.

The Commission also raised no objection to aid towards the purchase or rental of buildings whose objectives are regional ones, in view of the French Government’s assurances that the ceilings for regional aid laid down under the EEC Treaty rules would be respected.

In the case of the aid in the form of loans, advances and interest subsidies, the basic Government order lacked detail and was to be supplemented by a later ministerial order; the Commission reserved its position pending prior notification of the ministerial order.

It initiated the Article 93(2) of the EEC Treaty procedure in respect of job maintenance aspects of the regional employment premium; in the absence of clauses restricting the grant of these aids and of any compensatory justification in the Community interest, they did not at that stage appear to be compatible with the common market.

The Commission also studied certain provisions of the Act of 2 March 1982 on the rights and freedoms of municipalities, departments and regions which empowers these authorities to give firms in difficulty any direct or indirect aid they may consider appropriate. It asked the French Government for further information and reserved its position in the meantime.

**United Kingdom: aid to promote job splitting.**

The Commission decided to raise no objection to a British plan to promote job splitting by subsidizing the dividing of full-time jobs. Employers who do this and who thereby take on an unemployed person or a worker threatened with unemployment will receive a grant of UKL 750 per job divided.

In reaching this decision, the Commission took account of the fact that job splitting work can help to secure better sharing of work as part of the fight against unemployment. However, it reminded the United Kingdom Government of the need to ensure that those working part-time had volunteered to do so and that they be treated without discrimination.
Aid in trade between Member States

France

198. When Greece became a member of the European Economic Community the Treaty rules on State aid became applicable to Greece and to relations between it and existing Member States. In the field of export credits this meant that Member States could no longer apply so-called ‘Consensus’ interest rates for export credits in respect of sales by their undertakings to Greece, as these aids which, when applied to promote exports between Member States, would constitute State have always been held to be incompatible with the common market. This situation was known well in advance of Greece’s accession and had been discussed in the Policy Coordination Group for Credit Insurance, Credit guarantees and Financial Credits of the Council (whose competence is exclusively in the field of export credits in relation to third countries).

When it turned out two months before the accession that several Member States nevertheless had entered into prior commitments vis-à-vis their exporters going beyond that date, a compromise formula to the effect that Article 92 would not be formally implemented in respect of contracts signed before 28 February 1981 was envisaged and, in practice, kept.

When France continued to offer preferential credits after that date the Commission decided to initiate the procedure under Article 93(2) of the EEC Treaty against 121 prior commitments to grant subsidized export credits entered into by the French government with respect to contracts for Greece with a stated date of expiry of 30 June 1981. Pursuant to Article 93(3) of the EEC Treaty the French Government could not put the aid into operation until the Commission had given a final decision and the date, at which the prior commitments expired, passed.

In a declaratory ruling on the case the Commission stated the incompatibility of these aids with the common market.1 It underlined that a reintroduction of export aids within the Community would be to renounce the principle of the unity of the common market which requires that sales in the markets of other Member States should not be treated differently from domestic transactions. To accept that undertakings in one Member State may receive a compensation for one disadvantageous cost factor would lead rapidly to the necessity to compensate in other Member States for other disadvantageous cost factors. This is unacceptable under Article 92 of the EEC Treaty, under which derogations from the general principle of the incompatibility of aids with the common mar-

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1 OJ L 159, 10.6.1982, p. 44.
ket are reserved to aids contributing to the attainment of one of the objectives specified therein.

**Denmark**

199. Following complaints received, the Commission opened the procedure of Article 93(2) of the EEC Treaty on 20 July 1982 against the Danish Government's financing mechanisms in respect of Danish sales of capital goods to other Member States.

The main part of medium and long-term credits in respect of such sales can be financed through a specialized autonomous institution, the Danish Export Financing Corporation (DEFC). The DEFC was created in 1977 by commercial and savings banks and the central bank with the object 'to facilitate the financing of long export credits on terms equivalent to those prevailing abroad'.

The DEFC extends credits in Danish Crowns at a rate termed by the Danish Government as the 'long SDR rate' (Special Drawing Rights), with an added 0.5% annual fee for administrative charges, risk etc. This rate is set in advance at the beginning of every quarter. It is based on yields on certain 5-year public sector issues in five countries (USA, Germany, France, Japan, United Kingdom), weighted according to the relative importance of each currency in the SDR basket. The Danish central bank refinances these loans at the SDR rate less 0.5%. If the sales contract is made out in another currency but Danish Crowns, the exporter can obtain an exchange rate guarantee with the Export Credit Council, an autonomous body which is responsible to the Minister of Commerce.

These facilities are not open to Danish undertakings for comparable domestic sales. They appear to constitute an export aid which would be incompatible with the common market. A final decision will be taken in 1983.

**§ 3 — Regional aid schemes**

**General**

200. In 1982 the Commission continued to scrutinize regional aid schemes, focusing mainly on the central regions of the Community.

After having, in 1981, initiated the procedure of Article 93(2) of the EEC Treaty in respect of schemes in Germany, Belgium and Denmark, in 1982 the Commission took the same step with regard to schemes in France and the Netherlands.
On the other hand, the Commission has terminated the procedures concerning Belgium and Denmark by formal decisions. In both countries it refused assisted area status for certain areas proposed by the Governments and asked them to reduce the intensity of aid in others. The Commission reached these conclusions after scrutinizing the aid schemes on the basis of the socio-economic situation in the areas concerned relative to other parts of the country and to the Community as a whole. In assessing the regions in the Community context, the main criteria used by the Commission were gross domestic product per capita and unemployment. These are by and large the most significant indicators. In analysing the regions in their national contexts the Commission took into account indicators such as the trend of employment, net migration, demographic pressure, population density, activity rate, productivity, the structure of economic activity (the relative importance of declining industries, for example) and investments. The Commission has endeavoured—and will continue to do so in forthcoming cases—to use the same method of analysis for all the Member States despite differences in national selection methods and in the national statistics available.

Principles of coordination of regional aid systems

201. At the end of 1981 the Commission had held an initial discussion with the Member States on the subject of lowering the aid ceilings applicable in central regions under the principles of coordination. It emerged from that discussion that the majority of Member States in which the central regions are located were opposed to any such reduction. In the meantime, the Commission has considered the problems posed by Member States' freedom to grant several aids to the same firm. This cumulation of aids has gained in importance as the general economic crisis has prompted Member States to introduce new aid schemes.\(^1\) The Commission will shortly be transmitting to the Member States a description of the scope for cumulating aids in the various countries, together with proposals for closer supervision of the effects which cumulation of aids may have on competition. At the same time it will propose aid ceilings for the regions of Greece.

\(^1\) Eleventh Report on Competition Policy, points 175 and 176.
Specific statements on certain national regional aid schemes

Federal Republic of Germany

202. At the end of 1981 the Commission had initiated the procedure of Article 93(2) of the EEC Treaty in respect of the German regional aid system, the Tenth General Plan for the joint Federal Government/Länder task of improving regional economic structures (Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur).\(^1\) This Plan was replaced in 1982 by the Eleventh General Plan. Consequently, on 26 May 1982 the Commission extended the procedure to the Eleventh Plan, which includes all the aid measures to which exception was taken in connection with the Tenth Plan.\(^2\)

On 30 June 1982 the Commission stated its position on a special aid programme designed to create alternative employment to offset job losses caused by the restructuring of the steel industry in the labour market regions particularly affected (Stahlstandorteprogramm). The programme covers the period 1982 to 1985 and forms part of the Eleventh General Plan for the joint Federal Government/Länder task (Gemeinschaftsaufgabe).

The regions concerned are Bochum, Dortmund, Duisburg, Osnabrück, Braunschweig-Salzgitter, Amberg, Schwandorf, Saarland and part of the neighbouring labour market regions.

The socio-economic analysis revealed that in these regions, with the exception of Osnabrück, unemployment was already well above the national average and represented a serious regional problem. The figures for future job losses in the region of Osnabrück supplied by the German Government indicate that this region can be expected to face problems comparable to those in the other regions covered by the programme. That is why the Commission also authorized the grant of aid to Osnabrück.

203. On 15 December 1982 the Commission stated its proposition on the regional economic development programme planned by the Government of North Rhine-Westphalia, which had rescheduled the areas which it intended to assist from its own budget.

The areas concerned are the labour market regions of Aachen and Borken-Bocholt, included because of their general socio-economic situation and, as a temporary measure until the end of 1985, the labour market regions of Gelsen-

\(^1\) Gesetz über die Gemeinschaftsaufgabe ‘Verbesserung der regionalen Wirtschaftsstruktur’; Eleventh Report on Competition Policy, point 226.
\(^2\) OJ C 147, 11.6.1982.
Kirchen, Hagen and Siegen, because of the restructuring of the steel industry located in those regions. With regard to the Gummersbach region which, from April 1981 had ceased to be aided under the Joint Task, it is planned to include it in the Land's scheme for a transitional period expiring at the end of 1983.

After scrutiny, the Commission initiated the procedure of Article 93(2) in respect of the assistance proposed for the labour market regions of Borken-Bocholt, Siegen and Gummersbach, whose socio-economic situation can be regarded as good in terms of both Community and national averages. By contrast, the Commission did not oppose the grant of aid in the Aachen and Gelsenkirchen labour market regions, since its scrutiny had shown that unemployment in those areas had been high for years and was on the increase, and also that there was net outward migration from Gelsenkirchen. The Commission also agreed to the assistance planned in the Hagen labour market region and the Lengerich section of the Osnabrück labour market region, where job losses caused by the restructuring of the steel industry threatened to create regional problems similar to those in the regions covered by the Stahlstandorteprogramm under the Joint Task; this assistance is to the end of 1985 only.

204. The Commission also approved a number of amendments to the scheme for aiding the Berlin economy. These concern:

(i) two amendments to the Act on Aid to Promote the Berlin Economy (Berlin-förderungsgesetz),\(^1\) including a new scheme for turnover tax relief;

(ii) the structural programme to create new jobs.

**Belgium**

205. Following notification by the Belgian Government of a proposed list of development areas which would be eligible for the regional aids provided for in the Economic Expansion Act of 30 December 1970, the Commission had, on 11 November 1981, initiated the procedure of Article 92(2) of the EEC Treaty in respect of parts of the proposed list of areas, certain regional provisions of the Act, and some local aid measures.

On 22 July 1982 the Commission took a final Article 93(2) decision on the new designation of development areas.\(^2\) As changes in the regional and local provisions are currently being drafted, that decision dealt only with the first category of measures described above.

\(^1\) Gesetz zur Förderung der Berliner Wirtschaft (Berlinförderungsgesetz) as published on 23 February 1982, Bundesgesetzblatt 1982 I, p. 225.

In order to determine whether aid to these areas was compatible with the common market, the Commission considered the Belgian regions in a Community context, by comparing gross domestic product and the employment situation—and other aspects such as the structure of economic activities—in the regions concerned with corresponding community averages. The Commission then examined for disparities between the regions at national level. For this purpose the Commission used certain indicators of economic development and employment, namely taxable income, unemployment, employment trends, the structure of economic activities, net migration and demographic factors.

At the end of its scrutiny, the Commission took its final decision the main points of which may be summarized as follows. Development area status may not be conferred on the areas proposed by the Belgian authorities in the arrondissements (administrative districts) of Kortrijk, Ostend, Roeselare and Tielt in the Province of West Flanders; Oudenaarde, Aalst, Eeklo, Sint-Niklaas and Dendermonde in the province of East Flanders; Antwerp and Mechelen in the province of Antwerp; Halle-Vilvoorde, Leuven and Nivelles in the province of Brabant; Huy, Verviers (except for their southern parts) and Waremmme in the province of Liège; Namur (except for its southern part) and Tournai in the province of Hainaut.

However, the Commission took the view that the situation was sufficiently serious in the following regions and sub-regions to justify the derogation provided for in Article 92(3)(c) of the EEC Treaty: the sub-region of Westhoek (arrondissements of Diksmuide, Veurne and Ieper); the Kempen region (province of Limburg, arrondissement of Turnhout, and the Noord-Hageland area in the arrondissement of Leuven); the Liège iron and steel area (arrondissement of Liège); the Hainaut coalfields and iron and steel area arrondissements of Charleroi and Mons, southern part of the arrondissement of Soignies, northern part of the arrondissement of Thuin); the Ardennes-Condroz-Gaume region (province of Luxembourg, southern parts of the arrondissement of Thuin, Namur, Huy and Verviers); and the textile area of Mouscron-Comines (arrondissement of Mouscron).

The Commission considered that the intensity of the aid must be limited to 15% of the investment in net grant equivalent, or 2 500 ECU per job created up to a maximum of 20% of the investment in net grant equivalent, in the following areas: the province of Luxembourg, the arrondissement of Dinant, Philippeville and the southern part of the arrondissements of Huy, Namur, Thuin and Verviers (Ardennes-Condroz-Gaume region); the arrondissement of Diksmuide, Veurne and Ieper (the Westhoek area); the arrondissement of Turnhout and the Noord-Hageland area in the arrondissement of Leuven (part of the Kempen region); and the arrondissement of Mouscron. The Commission
considered that the problems facing the rest of the Kempen region and the Liège and Hainaut iron and steel areas justified the retention of a maximum aid ceiling of 20% of the investment in net grant equivalent, or 3 500 ECU per job created up to a maximum of 25% of the investment in net grant equivalent.

As a transitional measure regional aid may still be granted up to the end of 1983, at a lower intensity, in the arrondissement of Oudenaarde, while the designation of Mouscron and of Noord-Hageland in the arrondissement of Leuven is limited to a period of three years, and the Commission is to review the socio-economic situation there before the end of that period.

Finally, the Commission may allow exemptions to the prohibition on regional aids, after prior notification, in the arrondissements of Ath, Tournai and Waremmme and in the northern parts of the arrondissements of Huy and Verviers if it finds that the investment projects in question would have the effect of directly alleviating the employment situation brought about by the crisis in the ECSC industries in the neighbouring coalfields and iron and steel areas.

**Denmark**

206. On 22 July 1982 the Commission took a final decision¹ under Article 93(2) concerning a new designation of areas eligible for regional aids in Denmark against which it had originally initiated the Article 93(2) procedure in December 1981.²

After considering the comments submitted by the Danish Government as well as by governments of the other Member States in the course of the procedure, and the socio-economic situation in the regions concerned the Commission concluded that by 31 December 1983 at the latest assisted-area designation should cease for the municipalities of Møn, in the county of Storstrøm and for Blåbjerg, Blavandshuk, Ølgod and Varde in the County of Ribe. Likewise aid should be brought to an end by 31 December 1983, unless the Commission decided otherwise after a review of their socio-economic situation just before that date, in the municipalities of Hørjeby, Nakskov, Ravnsborg, Rudbjerg, Holeby, Maribo, Nysted, Rødby and Sakskøbing in the County of Storstrøm. By 31 December 1982, the municipalities of Ringkøbing and Skjern in the County of Ringkøbing should be downgraded to ordinary assisted areas. Lastly, the aggregate intensity of regional aid is not to exceed 20% net grant equivalent of the investment for the setting up of firms, or 15% net grant equivalent of investment for other purposes, in the municipalities of Bredebro, Højer, Lø-

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² Eleventh Report on Competition Policy, point 230.
The Commission took the view that Article 92(3)(c) permitted an exemption from the general ban on State aids for the other areas which according to the Danish Government's notification would be designated as assisted areas for a period of five years until the end of 1986.

France

207. On 25 February 1982 the Commission was notified of the French Government's intention to reform the system of regional development premiums applicable in France by introducing a new type of aid referred to as the regional planning premium (prime à l'aménagement du territoire).

The Commission has examined the new aid scheme under Articles 92 and 93 of the EEC Treaty. The Commission noted that the proposed budget for the regional planning premium involved no increase on the level of expenditure of recent years. It considered that this was a generally favourable aspect but did not settle the question of the volume and intensity of assistance any particular region may receive.

The Commission had reservations as to the geographical selectivity of the assistance: over the last 10 years the map of assisted areas had expanded considerably, while regional disparities seemed to have lessened. The Commission therefore undertook a case-by-case analysis of the socio-economic situation in the various regions concerned, in the national and the Community contexts.

In the outlying regions of the West, the South-West, the Massif Central and Corsica, despite some improvement, the socio-economic situation still reflects development problems, whose main symptoms are slow population growth, continued heavy dependence on the primary sector, and relatively low productivity and living standards.

The Commission found that the regional planning premium scheme was compatible with the common market when applied to these areas, except for the arrondissement of Angers, in Maine-et-Loire.

In the central regions, more substantial differences emerged between the assessment made by the French authorities and that carried out by the Commission.

On completion of its scrutiny the Commission informed the French Government on 9 June 1982 of its decision to initiate the procedure provided for in Article 93(2) of the EEC Treaty in respect of the proposal to include the follow-
ing regions or areas in the scheme: the departments of Doubs and Eure, the "arrondissement" of Angers (Maine-et-Loire), the department of Haute-Marne, the "arrondissements" of Lunéville, Nancy and Toul (Meurthe-et-Moselle), the department of Nièvre, the "arrondissement" of Vesoul (Haute-Saône), the departments of Sarthe and Seine-Maritime, excluding the "arrondissement" of Dieppe, and the department of Territoire de Belfort.

The Commission also considered that the socio-economic problems in certain central areas were not serious enough to justify aid at the maximum rate of 25% proposed by the French authorities. Although the designation of these areas could be considered compatible with the common market, they should not be aided at the maximum 25% rate but at the ordinary 17% rate at most. Consequently, the Commission also initiated the Article 93(2) procedure in respect of the proposal to designate the relevant areas of the department of Loire as eligible for the maximum rate of aid.

Furthermore, whenever the French Government planned to grant a higher rate of premium in an area designated as eligible for the 17% rate, the proposal to grant such aid should be notified to the Commission in advance to enable it to express any objections it might have.

The Commission has also noted that the regional planning premium scheme provides for the possibility of granting aid, by way of exception, to investment projects located outside the designated areas. This possibility could not be accepted without reservation by the Commission, which has asked the French Government to notify it in advance of any cases where it intends to grant such exceptional aid for investment projects costing 3 million ECU or more or which would receive total regional aid of more than 10% of the investment in net grant equivalent.

Ireland

208. The Irish regional aid system provides for higher maximum levels of investment aid in the less developed areas which are mainly situated in the Western half of the country. In March the Irish authorities informed the Commission that they proposed to extend that higher maximum level of aid for a period of at most five years to investments by small and medium enterprises (those employing less than 100) in the Inner City area of Dublin. The area in question has a population of 108 000 and an area of 17.5 square kilometres.

Analyses by the Government show the Inner City to be suffering from multidimensional deprivations: high unemployment, low incomes, poor housing, derelict sites and buildings, high levels of vehicular traffic, vandalism and crime. The high level of unemployment is mainly due to the inability of residents to
compete, because of their low level of educational attainment, for the skilled and specialized jobs available in Dublin. It is hoped that the proposed increase in aid will encourage the provision of less-skilled jobs through increased investment by small and medium manufacturing enterprises.

The Commission therefore decided not to raise any objection to the Irish authorities' proposals. The Commission did, however, request that it be provided with an annual report giving an analysis of the size of firms which in practice have received the higher level of grant and the extent to which jobs arising from its implementation have actually benefitted Inner City residents. In addition, the Commission stated that its position in this matter was without prejudice to the outcome of its review of the Irish aid system under Article 93(1).

Italy

209. In July 1981 the Commission had initiated the procedure of Article 93(2) of the EEC Treaty in respect of some of the aid measures contained in Bill No 101 of the autonomous province of Trento. The Commission had found that the compatibility with the common market of these measures could not be established.¹

After the Italian Government had submitted its comments and given certain undertakings, the Commission decided in March 1982 to terminate the above procedure under the following conditions:

(i) as regards the investment aid for modernization, the Commission has reserved the right to study the practical application of a number of specific cases;

(ii) sensitive industries such as textiles, clothing, footwear and leather must be excluded from the aid scheme for female employment.

210. In December 1981 the Commission had also initiated the procedure of Article 93(2) of the EEC Treaty in respect of aid for female employment and aid for industrial restructuring and conversion provided for in a Bill of the autonomous province of Bolzano.²

Discussions between the competent Italian authorities and the Commission, together with undertakings given by the Italian Government, enabled the Commission to terminate the above procedure in June 1982.

¹ Eleventh Report on Competition Policy, point 238.
² Eleventh Report on Competition Policy, point 239.
211. On 22 July the Commission decided to raise no objection to a Bill before the legislature of the autonomous region of Friuli-Venezia-Giulia which amended and provided new financing for Regional Act No 25/65, which had already been amended with the Commission's agreement in 1971.\(^1\) The existing scheme makes provision for interest relief grants on loans contracted for the construction, extension and technological modernization of industrial plant, the rate varying according to the degree of development of the particular area within the region.

On the modernization projects, the Commission told the Italian authorities that it intended to exercise its right to study several major specific cases.

Another favourable decision was taken on 1 October concerning a different Bill of the region of Friuli-Venezia-Giulia introducing aids (interest subsidies and grants) for the installation of small hydro-electric power stations and for the leasing of plant and machinery.

In its favourable opinion the Commission stated that it had taken account of the socio-economic problems of the region,\(^2\) and also of the limited scope of the measures in question.

212. Finally, the Commission endorsed certain measures in the Lombardy region introducing an aid programme for the Valtellina, since this involved aid for infrastructural development of industrial and craft industry.

**Netherlands**

213. On 5 May the Commission stated its view\(^3\) on the aid schemes which the Dutch Government notified following its four-yearly review of its regional policy programme.

The schemes in question are the investment premium scheme (Investeringspremiegeregelings-IPR) and the Investment Account Act scheme (Wet Investeringsrekening-WIR).

After considering the socio-economic situation in the areas and centres involved, the Commission found itself unable to agree to the notification in its entirety. It expressed doubts as to the compatibility with the common market of assistance in the regions of Noord-Drenthe, Zuid-West Drenthe, Noord-Overijssel (including the Zwolle growth point), Twente, and the Doetinchem growth point in the Achterhoek area. It took the view that the level of aid in the

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\(^1\) Bull. EC 2-1972, point 32.

\(^2\) See Decision of 22 July 1982, supra.

\(^3\) Bull. EC 5-1982, point 2.1.18.
province of Friesland and in the Nijmegen growth point should be restricted to 10.5% of investment in net grant equivalent. Finally, it considered that the level of aid in the Helmond growth point should not be increased, but held at its present level.

The Commission consequently informed the Dutch Government that it had decided to initiate the procedure of Article 93(2) of the EEC Treaty in respect of these two schemes.

On 30 July 1982 the Dutch Government submitted its comments to the Commission.

United Kingdom

214. The Commission decided to raise no objection to amendments which the Government of the United Kingdom proposed to make to the changes in its regional aid system for industry (Industry Act of 1972) initially announced in July 1979.

The proposed amendments involved:

(i) upgrading the Travel to Work Area (TTWA) of Teeside from Development Area to Special Development Area;

(ii) upgrading the TTWAs of Rochdale and Rossendale from Intermediate Areas to Development Areas;

(iii) upgrading the TTWAs of Llanelli and Pontypool in Wales from split Development Area/Intermediate Areas to full Development Areas;

(iv) retaining the TTWAs of Leigh, Bolton, Northwich, Forres, Nairn, Kirkwall and Lerwick as Intermediate Areas;

(v) allowing the Development Board for Rural Wales to make discretionary grants in respect of industrial projects which will create or safe-guard employment in that part of the region under its responsibility which lost Assisted Area status on 1 August 1982.

The alterations would slightly increase the aided proportion of the working population from 26% to 27%.
Adjustment of State monopolies of a commercial character

215. The French Government undertook to make the necessary adjustments to the French manufactured tobacco monopoly to comply with the reasoned opinion served upon it, and the Commission was therefore able to suspend its decision to bring the matter before the Court of Justice. The relevant measures were to be implemented between 1982 and 1984. In accordance with the timetable drawn up, certain legislative measures have now been adopted. These relate to rules on advertising and to the abolition of fixed dealer retail margins and credit terms (minimum levels being introduced at the same time). The obligation for suppliers of products from other Member States to deliver to retailers carriage-paid is also removed. The French authorities are in the process of producing appropriate implementing texts which will be communicated to the Commission shortly, whilst the modifications to the disciplinary rules covering retailers will be effected by means of an ‘arrêté’, already communicated to the Commission in draft form. The administrative instruction enabling nationals from all Member States to become tobacco retailers in France will also be communicated.

The Commission considers that, without prejudice to the direct application of Article 37 of the EEC Treaty, the measures concerned are such as to bring the monopoly into line with the Treaty’s provisions.

216. In the case of the Italian manufactured tobacco and match monopolies, the Commission, in view of commitments entered into by the Italian Government, also decided to postpone referring to the Court of Justice all except one of the infringements concerned. On 3 February 1982 the Italian Government had adopted a Decree implementing Act No 724/75 on the importation and wholesale marketing of manufactured tobacco. On 2 April 1982 it also approved proposals for legislation completing the adjustment of these monopolies.

These proposals, brought before the Italian Parliament by emergency procedure, deal with access to the trade of tobacco retailer by nationals of other Member States, the abolition of the possibility of setting up shops managed directly by the State, and the introduction of new arrangements for collecting

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1 Eleventh Report on Competition Policy, points 248 and 249.
3 Eleventh Report on Competition Policy, points 248 and 250.
5 Atto Camera No 3368 of 27.4.1982.
tax on imported tobacco products. The proposals also concern rules for fixing the prices of matches imported from other Member States and the extension to the matches market of the rules on the importation and wholesale marketing of manufactured tobacco.

However, the Commission has referred to the Court of Justice the one problem which remains unresolved, namely fixed retail margins.¹

217. Adjustment of the German matches monopoly has had to await full repayment of the ‘Kreuger’ loan contracted in 1930 and covered by an international agreement which fell within Article 37(5) of the EEC Treaty. As repayment of the last instalment of the loan is scheduled for 15 January 1983, the Federal Republic, in line with its obligations under Article 37, passed an Act on 27 August 1982 terminating this monopoly with effect from 16 January 1983.² This means that the last exclusive import and export right remaining in the Community of Nine will have been eliminated.

218. In examining complaints about the French alcohol monopoly, the Commission studied the operation of the system, and in particular pricing policy. It found that the purchasing prices for alcohol of agricultural origin manufactured within the official quota are calculated by the ‘Service des alcools’ in such a way as to cover distilleries’ total fixed costs. This enables distillers to sell alcohol manufactured outside the quota both in France and in other Member States at a price which is based only on variable costs and is thus lower than the real costs of the product. The Commission will shortly have to decide on the action to be taken in this matter, bearing in mind that the fixing of these prices is linked to the existence of a monopoly within the meaning of Article 37 of the EEC Treaty.

219. With regard to State monopolies of a commercial character in Greece, on 8 July 1982 the Commission initiated the procedure of Article 169 of the EEC Treaty against the Greek Government for failing to fulfil its obligations under Article 5 of the EEC Treaty. Article 40 of the Act of Accession³ requires the Hellenic Republic progressively to adjust its State monopolies and to abolish, from 1 January 1981, all exclusive export rights and certain exclusive import rights. It should be noted that the Commission has received a complaint from a private Greek company concerning the absence of any measures to adjust the Greek monopoly in petroleum products. As the Greek Government did not react to the letter giving official notice, the Commission decided on 10 Novem-

¹ Case 78/82 registered on 24.02.1982.
ber 1982 to press ahead with the infringement procedure by sending a reasoned opinion. Subsequently the Greek authorities supplied the texts of the legal instruments governing the existing monopolies and informed the Commission that a circular had already been sent to Greek customs offices informing them that exclusive export rights were no longer applicable in Greece. The Greek authorities have promised to inform the Commission officially of these steps and to notify it also of their intention to commence the adjustment process in accordance with Article 40(1) of the Act of Accession.

220. Still in the context of Article 37 of the EEC Treaty, a complaint was lodged with the Commission concerning a Greek Bill dealing in particular with the reorganization of the pharmaceuticals industry. This Bill was in the last stage of its way through Parliament. Although its objective was in itself perfectly consistent with the EEC Treaty and the Act of Accession, the Commission nevertheless found that several of its provisions were liable to infringe Articles 37, 85, 86 and 92 of the Treaty. The Greek Government was so informed by emergency procedure, but despite the few changes made subsequently, the Act as passed does not meet the requirements of Community law. Consequently, the Commission will probably have to initiate infringement proceedings.

221. As a result of Parliamentary questions, the Commission examined the scope of certain exclusive rights granted by Belgium to SA Distrigaz in the field of natural gas and gas obtained from natural products, together with the financial relations between the Belgian State and the company.

On 13 October 1982, the Belgian Government notified the Commission of proposals designed to restrict the scope of these exclusive rights. Scrutiny is in progress.

Public undertakings

222. On 6 July 1982 the Court of Justice delivered its judgment in Joined Cases 188 to 190/80 (France, Italy and the United Kingdom v the Commission), with the Federal Republic of Germany and the Netherlands intervening in support of the Commission,¹ concerning Commission Directive 80/723/EEC of 25 June 1980 on the transparency of social relations between Member States and public undertakings.²

¹ Tenth Report on Competition Policy, point 235.
² Eleventh Report on Competition Policy, point 251.
The Court dismissed the applications by the three Member States in their entirety.

The submissions relied upon by the applicant Governments were as follows:

(i) lack of competence on the part of the Commission;
(ii) absence of necessity and breach of the principle of proportionality;
(iii) discrimination against public undertakings;
(iv) infringement of Articles 90, 92 and 93, in as much as the Directive defines the concepts of public undertakings and State aid;
(v) failure to respect the rules defining the scope of the EEC, ECSC and EAEC Treaties.

With regard to the competence of the Commission under Article 90(3) of the EEC Treaty in relation to the Council's power under Article 94 of the EEC Treaty, the Court ruled that the Commission's power to issue the contested Directive depended on the needs inherent in its duty of surveillance provided for in Article 90 and that the possibility that rules might be laid down by the Council, by virtue of its general power under Article 94, containing provisions impinging upon the specific sphere of aids granted to public undertakings did not preclude the exercise of that power by the Commission.

With regard to the necessity for a Directive, the Court referred to the diverse forms of public undertakings in the various Member States and the ramifications of their activities and concluded that their financial relations with public authorities were very diverse, often complex and therefore difficult to supervise, even with the assistance of sources of published information. In those circumstances there was an undeniable need for the Commission to seek additional information on those relations by establishing common criteria for all the Member States and for all the undertakings in question.

On discrimination against public undertakings as compared with private undertakings, the Court pointed out that the principle of equality, to which the three Governments referred, presupposed that the two categories of undertaking were in comparable situations. But private undertakings determined their industrial and commercial strategy by taking into account in particular requirements of profitability. Decisions of public undertakings, on the other hand, might be affected by factors of a different kind within the framework of the pursuit of objectives of public interest by public authorities which might exercise an influence over those decisions. The economic and financial consequen-
ces of the impact of such factors led to the establishment between those undertakings and public authorities of financial relations of a special kind which differed from those existing between public authorities and private undertakings. As the Directive concerned precisely those special financial relations, the submission relating to discrimination could not be accepted by the Court.

As to the definition of a public undertaking, the Court emphasized that this concerned the concept of public undertaking 'for the purpose of this directive' and the object of the provisions was not to define that concept as it appeared in Article 90 of the EEC Treaty.

Finally, the Court observed that it would undoubtedly have been preferable in the interest of legal clarity if undertakings covered by the ECSC Treaty had been expressly excluded, although it found that the Directive was not, for that reason, vitiated by any illegality.

223. In view of the terms of Article 8 of the Directive referred to above, the Commission had to remind Member States of their obligation to take the necessary steps to comply with that Directive. With the exception of Greece which, despite reminders, has not so far replied, all the Member States have confirmed that they are in a position to meet the Commission's requests for information.

224. The Commission then informed the Member States that it intended to apply the Directive first to the motor vehicle, man-made fibres, textile machinery, manufactured tobacco and shipbuilding industries. Apart from the lack of transparency in the use of public resources, these industries were chosen either because they face particular difficulties at Community level which make them sensitive from a competition point of view, or because of complaints which the Commission has received.

The Commission's action with regard to public undertakings is not restricted to ensuring that Member States comply with the aid rules of the EEC Treaty. It also aims to ensure that public undertakings themselves observe the Treaty provisions, not only those directly concerning all firms, such as Article 85 et seq., but also the provisions concerning the Member States, in particular Article 30. For although Member States are entitled to follow policies in which economic and social objectives are assigned to public undertakings, it is essential that these undertakings are not used for purposes which are incompatible with the provisions of the EEC Treaty. Consequently, as far as public undertakings are concerned, the Commission is pursuing a competition policy which, by

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1 See Decision on British Telecommunications, point 94 of this Report.
virtue of the EEC Treaty, is closely linked to the other Community policies. Thus, in line with the powers conferred on it by Article 90(3) of the EEC Treaty, the Commission will, where necessary, address appropriate directives or decisions to Member States.
Part Three

The development of concentration, competition and competitiveness
Introduction

225. After the usual examination of takeovers, mergers, share purchases and joint ventures in the Community, this third part of the Report attempts to analyse the impact of the development of market structures on the intensity of competition. This analysis also covers the other competition factors affecting competitiveness.

The empirical data which have been used stem mainly from information available on the 1 000 largest firms in the Community. They are also derived from the results of the Commission’s programme of studies on the development of concentration, competition and competitiveness.

This approach focuses mainly on the Community market as a whole without, however, neglecting the national peculiarities which still exist largely as a result of imperfections in the internal market.

§ 1 — National and international takeovers and mergers, share purchases and joint ventures in the Community from 1979 to 1981

226. In contrast to the practice followed in previous Reports, national and international takeovers and mergers, share purchases and joint ventures in the Community have been analysed in detail on the basis of relative rather than absolute figures; this is due to a reorganization of the samples used.

Nevertheless, the information available shows a marked downward trend in the number of operations in 1981, continuing the movement already observed in previous years.

Structure of operations and number of firms involved

227. An analysis of the structure of these operations and of the number of firms involved (Table 1) also shows similar results in 1981 to those in previous years, namely the continued predominance but relative decline of share purchases, an appreciable increase in joint ventures, an increase in the relative impor-
### TABLE 1

Share purchases, joint ventures, takeovers and mergers in the Community from 1979 to 1981

Number of operations (a) and average number of firms involved in each operation (b)

<table>
<thead>
<tr>
<th>Operations</th>
<th>Year</th>
<th>Share purchases</th>
<th>Joint ventures</th>
<th>Takeovers and mergers</th>
<th>Total</th>
<th>Bilateral operations</th>
<th>Multilateral operations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(a)</td>
<td>(b)</td>
<td>(a)</td>
<td>(b)</td>
<td>(a)</td>
<td>(b)</td>
</tr>
<tr>
<td>National operations</td>
<td>1979</td>
<td>62.3</td>
<td>2.1</td>
<td>7.4</td>
<td>3.7</td>
<td>5.0</td>
<td>2.2</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>58.0</td>
<td>2.1</td>
<td>7.9</td>
<td>3.4</td>
<td>6.1</td>
<td>2.2</td>
</tr>
<tr>
<td></td>
<td>1981</td>
<td>51.1</td>
<td>2.1</td>
<td>9.0</td>
<td>2.8</td>
<td>7.1</td>
<td>2.2</td>
</tr>
<tr>
<td>International</td>
<td>1979</td>
<td>17.7</td>
<td>2.2</td>
<td>7.6</td>
<td>2.8</td>
<td>25.3</td>
<td>2.4</td>
</tr>
<tr>
<td>operations</td>
<td>1980</td>
<td>20.8</td>
<td>2.1</td>
<td>7.2</td>
<td>2.7</td>
<td>28.0</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>1981</td>
<td>21.7</td>
<td>2.0</td>
<td>11.1</td>
<td>2.4</td>
<td>32.8</td>
<td>2.2</td>
</tr>
<tr>
<td>All operations</td>
<td>1979</td>
<td>80.0</td>
<td>2.1</td>
<td>15.0</td>
<td>3.3</td>
<td>100.0</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>78.8</td>
<td>2.1</td>
<td>15.1</td>
<td>3.0</td>
<td>100.0</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>1981</td>
<td>72.8</td>
<td>2.1</td>
<td>20.1</td>
<td>2.6</td>
<td>100.0</td>
<td>2.2</td>
</tr>
</tbody>
</table>
It is very difficult to advance explanations for these results. However, the fact that the data available for 1981 appear to resemble those for 1980 suggests that the two possible explanations put forward in the Eleventh Report are still plausible: the apparent lack of change in the level of acquisition of financial stakes in other firms may indicate a certain degree of saturation, and the economic situation in 1981 may have again prompted firms to switch to forms of investment considered more profitable or less risky.

The increase in joint ventures, bilateral operations and international operations must also be attributed to economic factors: while these operations appear more selective and may be more complex than simple share purchases in a national context, they also reflect attempts to find the best possible industrial or service sector partner or a financial investment providing the best possible return.

**International operations by Member State**

228. The breakdown of international share purchases and joint ventures by Member State (Table 2a) shows the same trends in 1981 as in previous years. These operations are thus becoming more and more uniformly spread among the Member States.

However, given their respective economic positions, the shares of Italy and Denmark appear to be lagging behind those of their Community partners.

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

229. In 1981, the involvement of non-Community firms in international operations (Table 2b) showed a similar trend to that in the previous year. Once again, operations involving non-Community firms outnumbered others, accounting for almost 60% of the total.

This pattern may be due to the strength and frequency of existing financial or industrial relations between firms in the member countries or to a decline in their interest in such operations in the current economic climate or to the fact that non-Community operators may be particularly attracted to European firms or markets.
### TABLE 2a

**International operations in the Community, 1979-81**

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

<table>
<thead>
<tr>
<th>Member State</th>
<th>1979</th>
<th>1980</th>
<th>1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>FR of Germany</td>
<td>14</td>
<td>19</td>
<td>18</td>
</tr>
<tr>
<td>France</td>
<td>19</td>
<td>23</td>
<td>21</td>
</tr>
<tr>
<td>Italy</td>
<td>6</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Netherlands</td>
<td>10</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Belgium</td>
<td>17</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>7</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>21</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>Ireland</td>
<td>5</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Denmark</td>
<td>1</td>
<td>—</td>
<td>2</td>
</tr>
<tr>
<td><strong>EEC</strong></td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

### TABLE 2b

(b) Breakdown by type of operation, with indication of operations involving non-Community firms (as % of total)

<table>
<thead>
<tr>
<th>Type of operation</th>
<th>Year</th>
<th>Operations involving Community firms only</th>
<th>Operations involving non-Community firms</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1979</td>
<td>36.8</td>
<td>33.1</td>
<td>69.9</td>
</tr>
<tr>
<td>Share purchases</td>
<td>1980</td>
<td>33.5</td>
<td>40.7</td>
<td>74.2</td>
</tr>
<tr>
<td></td>
<td>1981</td>
<td>29.4</td>
<td>36.9</td>
<td>66.3</td>
</tr>
<tr>
<td>Joint ventures</td>
<td>1979</td>
<td>18.3</td>
<td>11.8</td>
<td>30.1</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>10.9</td>
<td>14.9</td>
<td>25.8</td>
</tr>
<tr>
<td></td>
<td>1981</td>
<td>13.4</td>
<td>20.3</td>
<td>33.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1979</td>
<td>55.1</td>
<td>44.9</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>1980</td>
<td>44.4</td>
<td>55.6</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>1981</td>
<td>42.8</td>
<td>57.2</td>
<td>100</td>
</tr>
</tbody>
</table>

1 Operations involving non-Community firms, either exclusively or in combination with Community firms.
Breakdown by sector of national and international operations in the Community

230. The breakdown by sector of operations in the Community (Table 3) shows, for 1981, that almost three quarters were carried out in the industrial field, particularly in electrical and electronic engineering, precision engineering, mechanical engineering and chemicals.

The relative share of operations involving the more traditional industries would seem to be declining appreciably, witness the textile, footwear, glass and paper industries.

While the divergent trends in individual sectors may be due to specific cyclical factors, it would appear that in 1981, as in the two previous years, operations increased in industries in which large firms predominate, at the expense of more traditional industries made up to a larger extent by small and medium-sized firms.

TABLE 3

National and international operations in the Community, 1979-81
By sector (as % of total)

<table>
<thead>
<tr>
<th>Industry</th>
<th>1979</th>
<th>1980</th>
<th>1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extractive industries</td>
<td>7.6</td>
<td>7.1</td>
<td>7.7</td>
</tr>
<tr>
<td>Glass/paper</td>
<td>5.3</td>
<td>6.7</td>
<td>4.5</td>
</tr>
<tr>
<td>Chemicals</td>
<td>6.5</td>
<td>8.8</td>
<td>9.7</td>
</tr>
<tr>
<td>Metal industries</td>
<td>5.3</td>
<td>4.3</td>
<td>4.9</td>
</tr>
<tr>
<td>Mechanical engineering</td>
<td>9.1</td>
<td>9.1</td>
<td>11.3</td>
</tr>
<tr>
<td>Electrical, electronic and precision engineering</td>
<td>7.2</td>
<td>7.3</td>
<td>11.8</td>
</tr>
<tr>
<td>Transport equipment</td>
<td>4.2</td>
<td>3.8</td>
<td>4.4</td>
</tr>
<tr>
<td>Agri-foodstuffs industries</td>
<td>7.8</td>
<td>8.1</td>
<td>7.1</td>
</tr>
<tr>
<td>Textiles/footwear</td>
<td>6.2</td>
<td>6.8</td>
<td>4.8</td>
</tr>
<tr>
<td>Other manufacturing industries</td>
<td>8.9</td>
<td>8.7</td>
<td>7.2</td>
</tr>
<tr>
<td>Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit institutions</td>
<td>20.4</td>
<td>18.9</td>
<td>17.8</td>
</tr>
<tr>
<td>Insurance companies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renting, leasing and hiring</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>11.5</td>
<td>10.4</td>
<td>8.8</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>
Factors relating to joint ventures

231. The information available shows that joint ventures in the Community constitute an instrument of international cooperation favoured by firms.

An empirical study of this type of operation, which goes beyond a general and purely quantitative approach, has been carried out using a sample which guarantees that the main new international joint ventures in 1980 are included.

**TABLE 4**

Breakdown by sector of joint ventures (involving at least one Member State) based on the turnover of firms involved in 1980

<table>
<thead>
<tr>
<th>Sectors</th>
<th>Breakdown by sectors in %</th>
<th>Percentage of cases in which the turnover of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>all firms involved is &gt; 300 million u.a.</td>
</tr>
<tr>
<td>Extractive industries</td>
<td>2.7</td>
<td>100</td>
</tr>
<tr>
<td>Glass/paper</td>
<td>8.8</td>
<td>80</td>
</tr>
<tr>
<td>Chemicals</td>
<td>10.5</td>
<td>83</td>
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<tr>
<td>Metal industries</td>
<td>2.6</td>
<td>67</td>
</tr>
<tr>
<td>Mechanical engineering</td>
<td>8.8</td>
<td>80</td>
</tr>
<tr>
<td>Electrical, electronic and precision engineering</td>
<td>14.0</td>
<td>88</td>
</tr>
<tr>
<td>Transport equipment</td>
<td>7.9</td>
<td>100</td>
</tr>
<tr>
<td>Agri-foodstuffs industries</td>
<td>6.1</td>
<td>43</td>
</tr>
<tr>
<td>Textiles/footwear</td>
<td>3.5</td>
<td>50</td>
</tr>
<tr>
<td>Other manufacturing industries</td>
<td>7.9</td>
<td>67</td>
</tr>
<tr>
<td>Total manufacturing industries</td>
<td>72.8</td>
<td>78</td>
</tr>
<tr>
<td>Financial activities/real estate activities</td>
<td>21.1</td>
<td>92</td>
</tr>
<tr>
<td>Other services</td>
<td>6.1</td>
<td>86</td>
</tr>
<tr>
<td>Total of services</td>
<td>27.2</td>
<td>90</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>82</td>
</tr>
</tbody>
</table>

The following conclusions can be drawn from the results obtained:

(a) joint ventures generally cover several types of economic activity; those relating to research and development normally extend also to production or marketing;
(b) joint ventures are unevenly distributed among the various activity sectors (Table 4). Highly capital-intensive or advanced-technology industries appear to be particularly attractive sectors for such operations;

(c) in the sample chosen, the parties involved in joint ventures themselves differ widely in terms of turnover (Table 4). Partner firms appear to vary significantly in size in such sectors as the extractive industries or motor vehicle manufacture, whereas they are less unequal in such sectors as the textile or agri-food industries.

(d) the study finally shows that the average number of firms involved per operation was 2.7, both in industry and in the services sector. However, there are wide disparities between one sector of activity and another. It is particularly noticeable that the number of firms involved per operation is higher than average in chemicals, in electrical, electronic and precision engineering and in the transport equipment sector.

The empirical results thus highlight the extreme diversity of international joint ventures in the Community. This situation suggests that joint ventures may have widely differing effects on the working of competition.

§ 2 — Development of concentration in Community industry

Analysis of market structures from a competition viewpoint

While it is true that there is no automatic link between the structures of a market and the competitive conditions obtaining there, an analysis of these structures must of necessity begin with an examination of the development of concentration. The aim of such an examination is to establish to what extent the state and trend of market structures are able to provide pointers to the intensity of competition and possibly to competitiveness in the sectors in question.

Such an analysis necessarily means detecting through measures of concentration and dominance, market structures that are critical from the viewpoint of competition. For each market investigated, various indicators should be used. A particularly satisfactory approach\(^1\) might consist in the simultaneous calculation of several concentration ratios (CRi), of at least one composite concentra-

\(^1\) See 'Die Verwendbarkeit von Konzentrationsmassen in der Europäischen Wettbewerbspolitik', Evolution of concentration and competition series, working paper No 35.
tion index (such as the Herfindahl index)\(^1\) and in the delimitation of the oligopolistic or quasi-monopolistic nucleus by applying measurements of dominance such as the Linda index or the enlarged Herfindahl index.

Where such an analysis shows that critical thresholds have been reached,\(^2\) it is necessary, in order to assess whether competition is threatened, to supplement it by examining the behaviour of firms on these markets, adopting a dynamic multicriteria approach. Firms' behaviour may depend in particular on the pressure of international competition, which, in some sectors or on some markets, is exercising an increasingly decisive influence. This approach is particularly suitable for the application of competition rules on specific markets.

For the purpose of this report, however, a general analysis of concentration is presented from two angles:

(a) first, a look is taken at manufacturing industry generally, based on the statistical data available for the 1,000 largest firms in the Community measured by turnover;\(^3\) the findings relate both to manufacturing as a whole and to the eight most important aggregate sectors within it: the food industry, chemicals, electrical engineering, mechanical engineering, metal industries, transport equipment, wood and paper, and textiles and clothing;\(^4\)

(b) second, a review is given of a number of specific sectors chosen for 1981 for the Commission's programme of studies on the development of concentration, competition and competitiveness.\(^5\) These studies covered the following sectors: the manufacture and processing of paper, agricultural machinery, telecommunications, motor vehicles and motor vehicles parts, detergents and book publishing. The situations in these industries differ widely,

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\(^1\) An approach based on the level of concentration as measured by the Herfindahl index has been recommended in the United States by the Department of Justice ('Anti-Trust Merger Guidelines' published in June 1982).

\(^2\) According to empirical studies (see working paper No 35 already mentioned), these thresholds would be reached where \(CR_4\) exceeds 50% and \(CR_8\) exceeds 70%, where the Herfindahl index is above 10% and where the oligopolistic nucleus is made up of fewer than 10 firms.

\(^3\) These statistics are taken from the magazine *Le Nouvel Economiste*. The Commission is aware that this information, like all company statistics based on consolidated accounts, contain imperfections, particularly as regards the financial links between companies. Consolidation was based on the following principles: full consolidation in the case of groups in which the parent company has its head office in the Community; partial consolidation in other cases. While the level of concentration is therefore under-estimated, this does not seriously affect the assessment of the development of concentration, which is the prime objective of analysis. These imperfections are therefore unlikely to invalidate the cautious interpretation of the results in this Report.

\(^4\) Despite the diversity of the products manufactured, such a level of aggregation adequately ensures that almost all the firms achieve the bulk of their sales in one of the eight sectors chosen. In no case do these correspond to specific markets.

\(^5\) These studies are published in full by the Commission, either in the 'Working papers' collection or in the 'Evolution of concentration and competition' series.
TABLE 5

Industry breakdown of firms in the sample: Number of firms in absolute terms (N), their percentage (%) of the total number and their percentage share in the industry's turnover (T) in the Community of Nine

<table>
<thead>
<tr>
<th>Industry</th>
<th>Abbreviation</th>
<th>NACE classification</th>
<th>YEARS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>abs</td>
<td>%</td>
</tr>
<tr>
<td>1. Food and drink industry</td>
<td>Food</td>
<td>41/42</td>
<td>N</td>
</tr>
<tr>
<td>2. Chemicals and man-made fibres, glass, ceramic goods, rubber</td>
<td>Chemicals</td>
<td>25+26</td>
<td>N</td>
</tr>
<tr>
<td>3. Electrical and electronic engineering, office machinery and data processing</td>
<td>Electrical engineering</td>
<td>33+34</td>
<td>N</td>
</tr>
<tr>
<td>4. Mechanical and instrument engineering</td>
<td>Mechanical engineering</td>
<td>32+37</td>
<td>N</td>
</tr>
<tr>
<td>5. Production and preliminary processing of metals, manufacture of metal articles</td>
<td>Metal industries</td>
<td>22+31</td>
<td>N</td>
</tr>
<tr>
<td>6. Manufacture of motor vehicles and other means of transport</td>
<td>Transport equipment</td>
<td>35+36</td>
<td>N</td>
</tr>
<tr>
<td>7. Wood, furniture and paper</td>
<td>Paper</td>
<td>46+47</td>
<td>N</td>
</tr>
<tr>
<td>8. Textiles, clothing, leather and footwear</td>
<td>Textiles</td>
<td>43+44</td>
<td>N</td>
</tr>
<tr>
<td>Total</td>
<td>Total</td>
<td>43+45</td>
<td>N</td>
</tr>
</tbody>
</table>

Sources: Le Nouvel Economiste; Eurostat: annual survey: 'Structure and Activity of Industry'; Calculations by the Commission of the European Communities.

1 The total number of firms per industry has been estimated.
2 A number of firms carrying out related activities are sometimes included in the sample.
both as regards the level of concentration reached and the trend observed and according to whether markets in question are fragmented or open to European or world competition. They are also subject to the influence of various exogenous factors, particularly in the shape of rules and regulations. The studies carried out, which attempt to meet current and general needs, increasingly use the whole of the Community as their reference market without, however, disregarding the regional differences which still exist. This approach makes it possible in particular to take account of competition from non-Community countries and to draw conclusions as to competition and competitiveness at European level.¹

**General development of concentration in industry**

233. Table 5 provides an industry breakdown of the largest industrial firms in the Community of Nine for the period 1973-81; For the sub-period 1973-77, it was possible, by using the annual Eurostat survey, to calculate the number of these firms and their market share² as a proportion of the total.

The results obtained show that a tiny proportion of the total number of firms (0.4% in 1977) accounts for a very large share of the total turnover (52%) on the Community market, excluding imports. However, this general finding does not apply uniformly to all sectors, as can be seen from a comparison between such sectors as the chemical and metal industries on the one hand and the agri-foodstuffs and mechanical engineering industries on the other: the discrepancies noted are probably due to differences in the capital intensiveness of their production processes and in the economies of scale.

It should also be noted that in 1975, the low point of the recession, the major firms increased their market share in seven of the eight sectors in question (transport equipment being the sole exception).

If an analysis is made of concentration in Community industry by reference to turnover (Table 6), it can be seen that between 1973 and 1981 the level of concentration measured by the different indices chosen remains very low throughout the period; there is nothing surprising in this, since the measure-

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¹ While it is true that the two statistical sources in question apply different criteria, their simultaneous use nevertheless allows a tentative assessment to be made of the importance of the sample chosen. Moreover, it is current practice to compare different types of aggregate where an analysis of their trends reveals some measure of independence. Such is the case whenever the growth of an aggregate is compared to that of GDP.

² Relying on the consolidated turnover of firms in some cases artificially increases the percentage of the turnover recorded; however, this increase is not large, since the firms making up the sample achieve only a small part of their turnover outside the Community.
ments made relate not to a specific market but to the aggregate market for the eight sectors considered.

For the sub-period 1973-77, a comparison between these concentration ratios shows that the level of concentration in the whole of industry or in the whole of the eight sectors is almost one half lower than that in the sample.

**TABLE 6**

Concentration of turnover in Community industry: concentration ratios (CR) and Herfindahl index (H)

<table>
<thead>
<tr>
<th>Year</th>
<th>In the sample</th>
<th>In all eight sectors of the sample</th>
<th>In the whole of manufacturing industry of the Community of Nine</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CR₄</td>
<td>CR₁₂</td>
<td>H¹</td>
</tr>
<tr>
<td>1973</td>
<td>8.75</td>
<td>20.27</td>
<td>0.71</td>
</tr>
<tr>
<td>1974</td>
<td>8.87</td>
<td>20.95</td>
<td>0.74</td>
</tr>
<tr>
<td>1975</td>
<td>9.18</td>
<td>22.07</td>
<td>0.75</td>
</tr>
<tr>
<td>1976</td>
<td>9.02</td>
<td>21.73</td>
<td>0.72</td>
</tr>
<tr>
<td>1977</td>
<td>9.53</td>
<td>23.53</td>
<td>0.80</td>
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<tr>
<td>1978</td>
<td>9.45</td>
<td>22.94</td>
<td>0.74</td>
</tr>
<tr>
<td>1979</td>
<td>9.53</td>
<td>24.28</td>
<td>0.81</td>
</tr>
<tr>
<td>1980</td>
<td>9.14</td>
<td>23.75</td>
<td>0.78</td>
</tr>
<tr>
<td>1981</td>
<td>8.88</td>
<td>22.79</td>
<td>0.72</td>
</tr>
</tbody>
</table>

¹ The Herfindahl index is expressed as a percentage and may therefore vary between 0 and 100.

Sources: *Le Nouvel Economiste*;
Eurostat annual survey: 'Structure and Activity of Industry';
Calculations by the Commission of the European Communities.

Over the entire period from 1973 to 1981, the concentration ratios and the Herfindahl index for the sample were relatively stable. During the 1975 recession, there was a significant increase in concentration in manufacturing industry as a whole and in the eight sectors examined, which squares with the trend already revealed by analysis of Table 5.

Overall, therefore, the four or 12 largest firms considerably increased their market share during the 1975 recession at the expense of all other industrial firms. This may mean that very large firms are better than others at weathering a recession; yet this finding would have to be confirmed by means of more thorough dynamic multicriteria analyses and be checked for other periods of recession. These additional analyses might reveal the reasons why large firms can withstand cyclical fluctuations—reasons which may well include their market power, their financial strength and their ability to compensate for the effects of recession on certain markets by expanding output in other markets.
A more detailed analysis can be made by examining the situation and development of concentration in each of the eight sectors based on the concentration ratios CR$_4$ and CR$_{12}$ and on the Herfindahl index\(^1\) (Table 7).

The highest levels of concentration are noted in the chemicals, electrical and electronic engineering and transport equipment sectors. These findings are consistent with those based on the data in Table 5, which show the market shares of the sample in relation to the whole of the sectors concerned.

With regard to the development of concentration in each sector, the trends shown in Table 7 are reflected in the variations in the Herfindahl index plotted in Graphs A and B.\(^2\)

In the sample as a whole (Graph A), the stability of the Herfindahl index masks differences between the various sectors involved. Thus, while concentration is increasing in the transport equipment, electrical and electronic engineering and chemicals sectors, it is decreasing significantly in the agri-foodstuffs and textile industries. This means that even within the sample itself, which is made up of large firms only, a redistribution of market shares is taking place.

Graph B confirms the increase in concentration already observed on the basis of the sample in the three sectors transport equipment, electrical and electronic engineering and chemicals; in each of the sectors examined (with the exception of transport equipment), Graph B again shows a sharp increase in concentration in 1975.

**Development of concentration in the sectors chosen for the programme of studies**

234. The situations in the sectors in question vary very widely, both as regards the level of concentration reached and the trend observed. The level of concentration varies considerably according to whether the market in question is one which is open to European or world competition or is one which is fragmented. In addition, although the sectors chosen here are much more strictly defined than in the previous analysis, the diversity within each sector makes it impossible to identify them automatically with a reference market.

The highest concentration ratios are found in the sectors telecommunications (CR$_4$ = 64%, CR$_8$ = 92%), motor vehicles (CR$_4$ = 61%, CR$_8$ = 93%), and

---

\(^1\) It should again be pointed out here that these measurements cannot be compared with those made on specific markets.

\(^2\) Graph A shows the trend of concentration in the sample and Graph B indicates the trend actually observed in the whole of each sector.
**TABLE 7**

Concentration of turnover in each sector of the sample (S) and in the whole of each of these sectors in the Community of Nine

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<td>Electrical engineering</td>
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<td>Mechanical engineering</td>
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</tbody>
</table>

**Sources:** *Le Nouvel Economiste*

Eurostat annual survey: 'Structure and Activities of Industry';
Calculations by the Commission of the European Communities
Graph 1

Graphs showing the Herfindahl index in each sector of the sample (A) and in the whole of these sectors in the Community of Nine (B)

Graph A

Graph B

1 = Food
2 = Chemicals
3 = Electrical engineering
4 = Mechanical engineering
5 = Metal industries
6 = Transport equipment
7 = Paper
8 = Textiles
9 = Total

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detergents (CR₃ = 70% for washing powders, CR₃ = 60% for toilet soaps, with the exception of Italy¹).² The feature which is common to these sectors and which explains the high level of concentration is the existence of very high barriers to entry, although these differ from one sector to another: in the telecommunications sector, they consist principally of national rules and regulations relating to standards and of procurement policy pursued by the postal and telecommunications authorities in each Member State, which give undue preference to a small number of national manufacturers; in the detergents industry, the entry barriers tend to be financial because of the considerable amount of promotional expenditure incurred. These barriers to entry also explain the multinational or very large firms in these sectors.

Book publishing is a sector in which small and medium-sized firms have an important role to play, as is shown by the examples of the Netherlands and the United Kingdom.³ Taking the geographic markets in question as a whole the concentration ratios are as follows: on the English-speaking market,⁴ the four largest publishing groups have some 35% of the market; the corresponding percentage is 52% in the Netherlands and 49% in the Dutch-speaking part of Belgium (the only figure available for Belgium). On none of these markets does the dominant group achieve a turnover of more than 18% of the national market. The situation is somewhat different in France where, despite the atomistic structure of publishing houses, the four largest groups account for 70% of sales, with two of them each having more than 25% of the national market.

The other sectors studied show lower concentration ratios: such is the case with paper manufacture (CR₅ = 23%, CR₁₀ = 35%), paper processing,⁵ agricultural machinery (CR₄ = 29%, CR₈ = 42%) and motor vehicle parts (CR₄ = 21%, CR₈ = 32%).

In the paper processing, agricultural machinery and motor vehicle parts sectors, the barriers to entry are lower than those referred to above, which may explain the low concentration ratios observed: the proximity of manufacturers to consumers makes for an unconcentrated structure of these sectors; diversity of demand and demand renewal because of the specific needs of users, encour-

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¹ The market considered covers Belgium, France, Italy, the United Kingdom and the Federal Republic of Germany.
² It might be interesting in this regard to compare the concentration ratios with the critical thresholds laid down in the United States in the 'Anti-Trust Merger Guidelines' already mentioned. Given that the European market is comparable in size to the American market and assuming that the figures quoted related to reference markets, a merger in the sectors in question would have been challenged by the Department of Justice.
³ The output of Irish publishers represents less than 1%, in value terms, of the output of United Kingdom publishers.
⁴ The studies so far carried out cover only the English-, French- and Dutch-speaking markets.
⁵ It was not possible to calculate the concentration ratios with precision here.
age specialization and provide scope for a larger number of manufacturers; furthermore, neither economies of scale nor rules and regulations relating to standards constitute major barriers to entry.

In the case of paper manufacture, the low level of concentration may well be due to the presence in the Community of a large number of firms operating world-wide (in the processing sector too), given the progressive opening up of the European market and this industry's dependence so far as its raw material sources are concerned; the firms here are frequently large owing to the highly capital-intensive nature of mass production in this industry and the economies of scale achieved, even though smaller firms are also represented.

Concentration has tended to increase in the paper manufacture, motor vehicle and motor vehicle parts sectors; there appears to be little change in the telecommunications, detergents and book sectors, while concentration is decreasing in the agricultural machinery and paper processing sectors. A number of factors may be responsible for these developments: in the case of paper manufacture and the motor vehicle industry, the growing pressure of international competition is causing firms to rationalize; this is leading, in the first case, to a tendency for European manufacturers to move closer to their sources of raw materials outside the Community, which only the large firms can do; in the second case, motor vehicle manufacturers are attempting to increase the scale of their production and to reduce the cost of components by making them inter-changeable and by limiting the number of their suppliers, which explains the increase in concentration in the components sector. In the case of sectors in which concentration is diminishing, this trend again appears to be due mainly to the specialization of manufacturers in response to users' diversified demand; this trend also appears to be reinforced by the pressure exerted by new entrants into the Community market from non-Community countries. In the sectors in which there is little change in the level of concentration, this may well be due directly to the nature of the competition encountered.

§ 3 — Analysis of competition intensity and competitiveness

235. In this section, it is proposed to discuss the conclusions that might be drawn from the sample described and to examine the findings of the above-mentioned studies.
Analysis of oligopolistic structure in industry as a whole

As has already been stated, the multiplicity and diversity of the aggregate specific markets in the industries making up the sample are such that no definitive conclusions can be drawn on the intensity of effective competition. Nevertheless, the analysis carried out on the basis of measures of concentration can be supplemented by applying measures of dominance.

The question being looked at here is whether there is any group of large firms which stands out clearly from the others because of their market power, but whose market shares are mutually balanced. Any such oligopolistic nucleus may be detected by calculating the two measures of dominance, the enlarged Herfindahl index and the Linda index, the values for which in respect of the sample are set out in Table 8. The enlarged Herfindahl index is a measure of dominance which can be used to determine the oligopolistic nucleus, even in situations in which one or two firms hold a dominant position.

The values for the enlarged Herfindahl index show that, throughout the period 1973-81, a single firm was in a dominant position in the food and textile industries, while two firms held a dominant position in the paper industry. In the other industries, the number of firms making up the oligopolistic nucleus was both higher and more variable; of particular note is the difference of trend between the mechanical engineering industry, where the oligopolistic nucleus tended to expand, and the transport equipment industry, where it tended to contract.

In assessing the state of competition, however, account must be taken not only of any oligopolistic structure that may be detected, but also of the measures of concentration which reflect the influence of firms not belonging to the oligopolistic nucleus.

A look at the development of oligopolistic nuclei as shown in Table 8 and the development of concentration as shown in Graph A reveals that there are differences of trend which might shed light on the intensity of competition.

For example, in the textile and agri-food industries, the continued presence of a firm in a dominant position despite the decrease in concentration in the sector could mean that, over time, the gap between the market shares of the other firms and that of the dominant firm was narrowing.

By contrast, in the transport equipment industry, the decrease in the number of firms making up the nucleus was accompanied by an increase in concentration, which could indicate that the large firms in this industry strengthened their position.
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</tbody>
</table>

1 Where no value is given for the Linda index, this means that it is not possible to calculate the minimum of the Linda curve. For the methodology of the enlarged Herfindahl index and the Linda index, see Working Paper No 35 referred to earlier.
Overall, it would appear difficult to conclude that there have been shifts in structure that intensify or weaken competition without a thorough knowledge of the industries concerned. This should not cast doubt on the validity of an approach based on measurements of concentration and dominance, but it does mean that such measurements must be used in the more restricted framework of the individual markets under consideration.

**The findings of the studies**

236. The programme of studies allowed detailed examination of the intensity of competition and competitiveness in the industries selected. Determining competitiveness in a given industry is a more complex task than making an overall assessment of the state of competition because competitiveness is liable to vary from one sector to another or from one Member State to another. Nevertheless, a number of trends regarding competitiveness can be identified taking the following categories of factors into account:

(i) factors determining the volume of output (labour, capital, raw materials, infrastructure);

(ii) factors relating to costs and prices (wages and salaries, capital costs);

(iii) factors determining the use and effectiveness of the factors of production (industry and regional circumstances, market structures and company structures, productivity, quality of management).

The results of the Commission’s programme of studies enabled a more detailed examination to be carried out of competition intensity and competitiveness in industries marked by very different situations as regards both the level of concentration reached and the trend observed, depending on whether the markets were fragmented markets or markets open to European or world competition.

Although the results of the studies highlight a multitude of factors explaining competition intensity and competitiveness, some of them are general in their scope and are common to several sectors: most striking among the exogenous factors are the harmful effects of certain institutional arrangements. Thus, competition intensity and competitiveness are generally affected by any national rules and regulations that encourage the participating of markets, by the behaviour of certain public monopolies that give preferential treatment to na-

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2 A detailed analysis of these factors is given in the ‘Rapport sur la capacité concurrentielle de la Communauté Européenne’, Commission document, November 1971.
tional supplies and by protectionist practices with regard to imports from non-
Community countries, and sometimes indeed from other Member States. This
is particularly evident in the studies covering the telecommunications industry
and the motor vehicle industry. Other harmful effects may also result from raw
material supply constraints, as may be seen in the case of paper production.
Endogenous factors also influence the degree of competition intensity and com-
petitiveness: domination of a market by a small number of multinationals may
reduce price competition and lead to downward price rigidity, as is the case in
the detergent industry. Conversely, the existence of a large number of small
and medium-sized firms, combined with free access to the international market
is accompanied by a high degree of competition and generally satisfactory com-
petitiveness on the part of European manufacturers: this can be seen in the
paper processing, agricultural machinery and motor vehicle parts industry.

§ 4 — Pricing policy in the motor vehicle industry and in the book
trade

Pricing policy as a factor in business strategy

237. Previous Reports on Competition Policy included analyses of the struc-
ture of consumer prices in the Community. These showed that there were signi-
ficant price differences between Member States caused by a large number of
factors, including differences in tax systems, exchange rate variations, differen-
ces in the business cycle or in rates of inflation, differences in consumer prefe-
rences and national purchasing power disparities.

The analysis given in this Report focuses on another aspect of the structure of
prices in the Community by examining to what extent prices are included as a
competitive element in the strategy of firms. This approach thus calls for an
examination of the mechanisms for price formation at the various stages of the
production and distribution process.

The following examination relates to two sectors having very different
characteristics, namely the motor vehicle industry and book publishing.

The motor vehicle industry has a European or world-wide market, in which
prices are not systematically regulated. Because of the unit value of cars, even
moderate price differences may give rise to parallel imports by consumers bet-
ween Member States where such differences persist. Another special feature of
the market is the fact that the free movement of cars is in some cases impeded
by differences in the technical standards applicable in Member States.
Considerable progress has been achieved here since 1970 through the adoption
of a large number of directives. Nevertheless, motor vehicle type-approval requirements still vary from country to country. A number of practices brought about by these differences are being examined by the Commission in the light of Articles 30 to 36 of the Treaty. Further technical harmonization should solve much of this problem, since it will allow the entry into force of Community type-approval for each vehicle category once the directives at present under discussion have been adopted.

In the other sector analysed, book publishing, the specific market is smaller than the Community, prices are subject to differing rules and regulations, and parallel imports are by the very nature of things of little or no significance. Book pricing thus takes place in a very specific competitive context.

**Pricing policy in the motor vehicle industry**

**The situation on the European market**

During recent years, the Commission's attention has on a number of occasions been drawn to significant differences in prices net of tax for motor vehicles as between one Member State and another.

Table 9 shows that price differences were less pronounced in 1975 but became quite marked in 1980. In the last three years covered, and in all the engine capacity categories, prices were highest in the United Kingdom and lowest in Denmark. In 1982, prices before tax in the United Kingdom were practically twice as high as prices before tax in Denmark. Table 9 also shows that prices on the Benelux market were lower than those in the main manufacturing countries, i.e. the Federal Republic of Germany, France and Italy. It can also be seen that the gap in price levels narrowed between Ireland and the United Kingdom. Although the effects of taxation are not shown in the table, it should also be noted that the international differences in prices would be further amplified if purchasing power disparities in the Member States were also taken into account: in 1980, for example, the difference between the United Kingdom and the Federal Republic of Germany would then have been 108 to 70 instead of 100 to 80.7; between Ireland and Luxembourg, the difference would have been 133 to 62, instead of 82 to 73.7.

In theory, a number of reasons could be put forward to explain these differentials, including differences in the trend of exchange rates and inflation rates, differences in purchasing power, in consumer preferences, in the extras with which models are equipped, in tax systems, in specification requirements, in price control arrangements and in transport and distribution costs.
TABLE 9

Motor vehicle before tax prices in the Community in three engine capacity categories
(UK index = 100 for each year)

<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>UK</th>
<th>D</th>
<th>F</th>
<th>I</th>
<th>NL</th>
<th>B</th>
<th>L</th>
<th>IRL</th>
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<td>91.1</td>
<td>86.4</td>
<td>87.3</td>
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<tr>
<td></td>
<td>b</td>
<td>100</td>
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<td>99.0</td>
<td>100.6</td>
<td>91.5</td>
<td>89.9</td>
<td>90.2</td>
<td>90.2</td>
<td>84.3</td>
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<tr>
<td></td>
<td>d</td>
<td>(100)</td>
<td>(97.8)</td>
<td>(101.3)</td>
<td>(103.4)</td>
<td>(93.4)</td>
<td>(90.2)</td>
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<td>(86.4)</td>
</tr>
<tr>
<td>1980</td>
<td>a</td>
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<td>81.0</td>
<td>79.0</td>
<td>85.0</td>
<td>69.0</td>
<td>65.0</td>
<td>72.0</td>
<td>75.0</td>
<td>58.0</td>
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<tr>
<td></td>
<td>b</td>
<td>100</td>
<td>83.0</td>
<td>81.0</td>
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<td>78.0</td>
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<td>87.0</td>
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<tr>
<td></td>
<td>d</td>
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<td>(87.0)</td>
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<td>(61.4)</td>
<td>(62.8)</td>
<td>(93.5)</td>
<td>(55.0)</td>
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a < 1 000 cc; b 1 000 to 1 500 cc; c > 1 500 cc; d = average

Sources: For 1975 and 1980, Eurostat survey; for 1980 and 1982, BEUC survey. Commission calculations. The prices in national currencies were converted into ECU. The sample used comprises some 15 models in their standard version for each country, without any adjustment for the different equipment supplied as standard.
In practice, none of these variables can adequately explain the scale of the price differentials noted; it would seem, however, that in extreme cases, such as in Denmark, where taxes on motor vehicles may amount to nearly 180% of the price before tax, the influence of taxation takes on greater importance in the formation of a basic price, possibly including manufacturers to charge very low prices so as to prevent demand from falling to a level which would make it impossible to maintain a distribution network on the market.

In the case of the different inflation rates, for example, the lack of correlation may be seen by comparing the situation on the German market and the Italian market; the same is true of exchange rate variations, which will be discussed below. Transport costs have only a negligible effect on the level of prices: for example, motor vehicles manufactured in the United Kingdom are sold at a lower price in Italy than in their country of origin. The differences in equipment for the standard version of the models marketed in each country explain only a small proportion of the price differences noted, except in Denmark where the basic models have very simple equipment because of the high level of tax on the price of cars. Nor, lastly, do price controls appear capable of explaining the price differences noted: the application of price controls in Belgium in particular does not prevent importers from raising their prices when the market seems to permit this. It is evident, on the contrary, that the main factor in the formation of prices on the European market is the competitive situation.

This situation depends firstly on whether or not there are any national manufacturers which dominate the national market and, in particular, have a generally more extensive dealer network than importers. Where there are no national manufacturers, there is keen competition between importers, as is the case in the Benelux countries and Denmark. At the same time, the various non-tariff barriers do not have any decisive influence. Conversely, in other Member States where the market is dominated by national manufacturers, importers align their prices on the national manufacturers' prices, endeavouring to maximize their profits. The price differentials between these countries are, however, limited by the significant levels which parallel imports may reach. The competitive situation is different in the case of countries with right-hand drive vehicles, where the market is dominated by British manufacturers and where importers align their prices on British manufacturers' prices. Moreover, in contrast to the countries with left-hand drive vehicles, actual or potential parallel imports do not make a sufficient contribution to the balance, since they are hampered by specific obstacles connected with legislative requirements and right-hand drive.
The situation in the United Kingdom

239. The example of the United Kingdom market provides an illustration of the partitioning of the European market referred to above. Table 9 has already shown the size of the price differentials between the United Kingdom market and markets in the other Member States. So as to bring out the special features of the United Kingdom market, a comparison was made with the Belgian market (Table 10 and Graph 2), since the Belgian market may be the source of considerable parallel imports into the United Kingdom market.

Up to 1976, the price differential between Belgium and the United Kingdom varied on average between 9% and 14%; in 1979, the gap began to widen, reaching over 40% by 1982.¹ There are a number of reasons for this situation. At least one United Kingdom manufacturer has relatively high production costs and limited competitiveness. The appreciation of sterling added to this handicap. This cost trend was reflected in the national manufacturers' prices which, calculated in ECU, increased more than continental manufacturers' prices. In addition, price inertia probably meant that prices expressed in national currency only partially reflected international price variations attributable to the exchange rate.

Such price rigidity also seems to have been one of the reasons for the low level of prices in Denmark, although the Danish currency was devalued several times.

National manufacturers in the United Kingdom continue to act as price leaders, even though their market share has fallen significantly from 85% in 1970 to 42% in 1982.

It can thus be seen that the rise in sterling, which could in theory have resulted in a decline in import prices, did not in practice have this effect. This pricing strategy was made possible only by the limited volume of parallel imports, due firstly to technical and administrative factors (notably the basic obstacle of right-hand drive and specification standards) and secondly to dissuasive practices by European manufacturers (such as the refusal to sell right-hand drive cars in continental countries, the alignment of prices for right-hand drive cars on the continent with those charged in the United Kingdom, and very long delivery dates).

However, there has been a recent tendency for United Kingdom manufacturers' prices to fall in absolute terms. This new trend may be partly due to the

¹ These differentials may sometimes be reduced through the discounts granted by some distributors.
**TABLE 10**

Comparison of motor vehicle before tax prices in Belgium and the United Kingdom
(UK index = 100 for each year)

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</tr>
<tr>
<td>Average</td>
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<td>88.3</td>
<td>91.0</td>
<td>89.0</td>
<td>89.3</td>
<td>81.3</td>
<td>74.0</td>
<td>68.3</td>
<td>59.5</td>
</tr>
</tbody>
</table>

**Graph 2**

Movement of motor vehicle prices before tax according to Table 10.
information campaign conducted by the United Kingdom consumers’ associations, the effect of which has been to increase sharply the flow of parallel imports by final consumers. In addition, the measures taken by the Commission in a number of cases where parallel imports into the United Kingdom were being impeded may also have contributed to the downward pressure on prices in the United Kingdom market.

This has been further reinforced by the recent depreciation of sterling and by the fall in inflation and interest rates, which, together with the rationalization measures taken, have improved the competitiveness of United Kingdom manufacturers.

\textit{Pricing policy in the book publishing sector}

\textbf{Economic factors determining book prices}

240. The analysis carried out relates to the book market in three linguistic areas of the Community, namely the English-speaking areas (United Kingdom and Ireland), the French-speaking areas (France and the French-speaking part of Belgium) and the Dutch-speaking areas (the Netherlands and the Dutch-speaking part of Belgium).

While the organization of the book market, notably where price control is concerned, differs from one Member State to another (as will be seen below), the book market does none the less have common economic characteristics specific to the publishing industry.

The following are some of the key features which to a large extent determine the nature and degree of competition on the book market:

(i) books are particularly heterogeneous products which are not substitutable one with another except in terms of categories and then within very narrow limits; it is very difficult on this market to identify any replacement demand;

(ii) compared with other industries, there are no major technical or economic barriers to entry in book publishing;

(iii) publishing is largely dependent upon the printing industry upstream and on book distribution downstream; despite this dependence, vertical integration in publishing is variable, but often moderate.

Another feature of the book market is the role played by distribution networks in the promotion and marketing of the products. During the last 10 years, the traditional distribution networks have been meeting competition through the
emergence and growth of new distributors, such as book clubs, chain stores, department stores and supermarkets. As a result, traditional bookshops now account for only some 50% of the volume of retail sales in France and the Netherlands, a little less in Belgium (some 50% on the French-speaking market and 41% on the Dutch-speaking market) and still less in the United Kingdom (some 31%). This trend is of particular interest since distribution costs probably represent somewhere between 45% and 60% of the final selling price of books. For example, on the market for books in French, manufacturing costs represent 18% to 20% of the selling price before tax, overhead expenses 20% to 22%, authors’ royalties and distribution costs around 50%.

In all the Member States concerned, the organization of the book market is firmly based on price control.

The pricing systems applicable to books

241. In each of the countries examined, the retail price of books is not determined by market forces, but is subject to specific rules which are summarized below:

(i) In the United Kingdom, the pricing system applicable to books is an exception to the general ban on resale price maintenance; although each publisher is free to decide whether or not a book will be published under the terms laid down by the Net Book Agreement, the prices of the vast majority of books sold in the United Kingdom are established in accordance with that agreement, under which a minimum retail price is set for a twelve-month period.

If a publisher has decided that a book is to be a ‘net’ book, the minimum price must be observed by all retailers. On the other hand, retailers remain free to charge a higher price.

While the fixing of a minimum price for twelve months is thus the basic principle determining book prices in the United Kingdom, there are exceptions to this system, relating principally to public libraries (where a 10% discount is allowed), school books and certain religious books. In addition, after the twelve-month period has elapsed, any unsold books may be sold off at lower prices in the annual remainder sales; it would appear that some distributors also sometimes apply price reductions before the end of the twelve-month period agreed.

(ii) In Ireland, where the book trade is largely dominated by imports from the United Kingdom, the Net Book Agreement also applies, and minimum prices are accordingly set. However, application of the Net Book Agree-
ment has been complicated by exchange rate variations between sterling and the Irish pound and by the problem which these fluctuations pose in setting the retail prices of the books. Although Irish retailers are required, on the basis of a conversion rate notified to them each week, to determine the prices of books imported from the United Kingdom at the time when they are received, application of this principle comes up against difficulties in practice. Consequently, in contrast to the situation in the United Kingdom, the Net Book Agreement does not result in the establishment of a single price for each book sold in Ireland.

(iii) France has had three different pricing systems since 1975. The first pricing system applicable to books was the recommended price system; in practice the recommended price, which was set by the publisher as a guide, became a maximum price in most cases. Subsequently, book prices were established without any reference to a recommended price set by the publisher, with each retailer being left free to set the retail price of each book on sale (system known as the ‘net price’ system). The current system, which has been in force since January 1982, is the imposed price system, under which retailers may grant a discount of no more than 5% on the selling price which the publisher or importer sets for each book.

The imposed price system also provides that direct sales by book agents or by mail order, must, for nine months following first publication, be carried out under the same conditions as sales in bookshops; remainder sales may involve only books which have been imported or published more than two years previously and last supplied more than six months previously.

(iv) In the Netherlands, the rules governing book prices, which were updated in 1978 (Reglement voor het Handelsverkeer van Boeken in Nederland), stipulate that each publisher must set a selling price applicable in all sales to the final consumer.

The system of book pricing in the Netherlands is thus a minimum price system, with the minimum price applying for two years. However, exceptions are allowed to this system, the main one being in the case of book clubs, which have since 1978 been free to set their prices independently. The rules also stipulate that books may not be included in remainder sales before a two-year period has elapsed.

(v) In the Dutch-speaking part of the Belgian market, the situation is in many ways similar to that in the Netherlands, and retailers belonging to the VBVB (Vereniging ter Bevordering van het Vlaamse Boekwezen) are required to charge the prices set by publishers. In the French-speaking area of the country, rules are also set by the booksellers’ associations, with
members being required to charge the recommended price set by the publisher.

Unlike the situation in the Netherlands, France, the United Kingdom or the Federal Republic of Germany, book pricing in Belgium is not governed by laws, regulations or administrative provisions. Apart from any general provision applying to prices, government intervention is confined to the setting of the conversion rate for the prices of imported books, which means that the maximum prices of such books are determined on the basis of the retail prices charged in the country of origin.

There are a number of significant exceptions to the book pricing arrangements in Belgium, the main one being that the prices set do not have to be observed by book clubs or, as far as books in French are concerned, by supermarkets, whether or not specialized, since supermarkets are not subject to the rules laid down by the booksellers' associations and can therefore grant discount to purchasers.

**The effects of book pricing rules**

242. The effects of the various pricing systems described above may be discussed on the basis of the following questions:

(i) What variations are there in the relative prices of books under the existing rules?

(ii) To what extent is the setting of minimum prices for books harmful to competition?

(iii) Have the pricing systems in force had a restrictive effect on trade between Member States?

Analysis of the movement of relative book prices comes up against methodological difficulties due to the heterogenous nature of the product. The growth in demand for cheaper books (paperbacks, pocket-size books) may, for example, make it difficult to compare the trend of book prices with the general price trend. Despite these reservations, the setting of minimum prices does not seem, during the last few years, to have resulted in book price increases that were in excess of the average inflation rate: the situation in the United Kingdom, the Netherlands and Belgium bears this out. In the case of France and Ireland, no clear pattern can be identified: in France, because of the diversity of the pricing systems successively applied, and in Ireland, because of the changes in the rates of VAT on books and the fluctuations in the exchange rate as between sterling and the Irish pound.
in assessing the effects which the setting of minimum prices for books has on competition, account must be taken of the special features of this sector. The arguments advanced in favour of setting minimum prices for books are not directly economic arguments, but have to do with the special nature of the market: books are heterogenous products and competition in them is not based on prices alone; books are cultural products and it is generally accepted that their dissemination should be encouraged; bookshops, or more generally book distribution networks, thus serve the cause of cultural dissemination and their existence can be justified without reference to economic factors alone. Those in favour of the setting of minimum prices for books thus argue principally that such a practice makes for a greater range of products, notably of difficult works; better remuneration for authors of works with a limited readership; the maintenance of a wide network of bookshops; a greater range in the stocks kept by bookshops; and better quality in the services provided by them.

Restoring full competition, by abolishing the system of minimum prices, would probably result in a fall in average book prices and could thus have a favourable impact on the growth of reading and on the growth of publishing as a whole; on the other hand, a system of free prices could result in higher prices for books printed in a limited number for a limited readership and in the emergence of significant price disparities from one sales outlet to another. However, it should be stressed that, while the setting of minimum prices considerably restricts competition between distributors, the situation is different upstream from distribution, since there is no regulatory impediment to competition between publishers.

With regard to trade between Member States, two examples may be cited to illustrate the particular features of exports in the book trade. In the United Kingdom, the turnover of the publishing industry in 1980 was approximately UKL 700 million and the value of exports some UKL 238 million. The export market is thus an important market for the United Kingdom publishing industry, but it should be noted that 80% of its exports are to countries outside the Community, its main customers being the United States (18.6%), Australia (14%) and Nigeria (12.8%). Also in 1980, the turnover of the French publishing industry was some FF 6 200 million, of which approximately FF 1 300 million was in exports. Although the Belgo-Luxembourg Economic Union takes 25% of French exports of books, two thirds of such exports go to countries outside the Community, with Switzerland accounting for 13%, Canada 10% and the Ivory Coast a little under 5%. These two examples show that international trade in books is essentially based on linguistic areas and that at present the European Community does not in itself provide the main market for such trade.
§ 5 — Thrust of future work

243. While the methodology used in analysing the competitive situation has now been fairly well developed, the need to deepen its empirical application should be reflected more in future work.

The Commission is therefore considering conducting a more detailed analysis of cooperation between firms, so as to obtain as complete a picture as possible of the economic impact of such operations.

Similarly, thought might be given to examining more closely the potential links between structural factors and the performance of various sectors. Given the increased importance of service sector activities in the European economy, the Commission could give them greater prominence in its programme of studies, which already includes plans for an analysis of the state of competition in banking and insurance.

Finally, in future work a more consistent attempt should be made to incorporate the specific results of the programme of studies into the overall assessment of the competitive situation in the Community.
Annex

Commission Regulation (EEC) No 3604/82 on the application of Article 85(3) of the Treaty to categories of specialization agreements

List of individual Decisions of the Commission and Rulings of the Court of Justice made in 1982 concerning the application of Articles 85 and 86 of the EEC Treaty and of Articles 65 and 66 of the ECSC Treaty

Final negative Decisions adopted by the Commission under Article 93(2) of the EEC Treaty and under Article 8(3) of Decision No 2320/81/ECSC

Cases in which the Commission raised no objection

Cases in which the procedure under Article 93(2) of the EEC Treaty was initiated

Cases in which the procedure under Article 93(2) of the EEC Treaty was terminated

Aids in the steel sector—1982.


COMP. REP. EC. 1982
COMMISSION REGULATION (EEC) No 3604/82
of 23 December 1982
on the application of Article 85 (3) of the Treaty
to categories of specialization agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices, as amended by Regulation (EEC) No 2743/72 and by the Acts concerning the conditions of accession and the adjustments to the Treaties of 1979, and in particular Article 1 thereof,

Having published the draft of this Regulation,

Having consulted the Advisory Committee, on Restrictive Practices and Dominant Positions,

1. Whereas Regulation (EEC) No 2821/71 empowers the Commission to apply Article 85 (3) of the Treaty by Regulation to certain categories of agreements, decisions and concerted practices concerning specialization, including agreements necessary for achieving it, which fall within Article 85 (1);

2. Whereas agreements for the specialization of present or future production may fall within the prohibition contained in Article 85 (1);

3. Whereas agreements for the specialization of production lead in general to an improvement in the production or distribution of goods, because the undertakings can concentrate on the manufacture of certain products, thus operate on a more rational basis and offer these products at more favourable prices; whereas it is to be anticipated that, with effective competition, consumers will receive a fair share of the profit resulting therefrom;

4. Whereas these advantages arise in the same way out of agreements whereby each participant gives up manufacture of certain products in favour of another as out of agreements whereby participants undertake to only manufacture or have manufactured certain products jointly;

5. Whereas this Regulation must determine what restrictions on competition may be included in a specialization agreement; whereas the restrictions on competition, going beyond reciprocal giving up of manufacture, which are thus permitted are normally essential for the entering into, and implementation of, the agreement; whereas these restrictions are therefore, in general, indispensable for the purpose of ensuring that the desired benefits accrue to undertakings and consumers; whereas it may be left to the contracting parties to decide which of these provisions they include in their agreements;

6. Whereas, in order to ensure that competition is not eliminated in respect of a substantial part of the goods in question, this Regulation applies only if the share of the market held by the participating undertakings and the size of the undertakings themselves do not exceed a specified limit;

3 OJ No L 291, 19.11.1979, p. 94.

COMP. REP. EC 1982
7. Whereas, in order to facilitate the conclusion of long-term specialization agreements, which can have an impact on the structure of the participating undertakings, it is appropriate to fix the period of validity of the Regulation at 15 years; whereas, if the circumstances on the basis of which this Regulation was adopted should change within this period, the Commission will undertake the necessary amendments;

8. Whereas agreements, decisions and concerted practices which satisfy the conditions set out in this Regulation need not be notified; whereas an undertaking may nonetheless in a particular case, where justified doubt exists, require the Commission to declare whether its agreements comply with this Regulation,

HAS ADOPTED THIS REGULATION:

**Article 1**

Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to any agreement whereby, with the object of specialization and for the duration of the agreement, undertakings mutually undertake either:

(a) not to manufacture themselves, or to have manufactured by other undertakings, certain products and to leave to other contracting parties the task of manufacturing, or of having manufactured, such products; or

(b) to only manufacture or have manufactured certain products jointly.

**Article 2**

1. Apart from the obligation referred to in Article 1, no restriction on competition shall be imposed on the contracting parties other than:

(a) the obligation not to conclude with other undertakings specialization agreements relating to identical products or to products considered by users to be similar by reason of their characteristics, price or use, except with the consent of the other contracting parties;

(b) the obligation to supply the other contracting parties with the products which are the subject of specialization, and in so doing to observe minimum standards of quality;

(c) the obligation to purchase products, which are the subject of specialization, solely from another contracting party or from an undertaking which the contracting parties jointly charged with the manufacture, except where more favourable terms of purchase are available elsewhere and the other contracting party, or the undertaking charged with manufacture, are not prepared to offer the same terms;

(d) the obligation to grant to other contracting parties the exclusive right to distribute the products which are the subject of specialization provided that intermediaries and users can also obtain these products from other suppliers and that the contracting parties do not render it difficult for intermediaries or users to thus obtain the products.

2. Article 1 shall apply notwithstanding that the following obligations are imposed:

(a) the obligation to maintain minimum stocks of the products which are the subject of the specialization and of replacement parts for them;

(b) the obligation to provide customer and guarantee services for the products which are the subject of the specialization.
Article 3

Article 1 shall apply only:

(a) if the products which are the subject of the specialization and other products of the participating undertakings considered by users to be similar by reason of their characteristics, price or use do not represent, in a substantial part of the common market, more than 15% of the market for all such products; and

(b) if the total annual turnover of the participating undertakings does not exceed 300 million ECU.

Article 4

1. For the purposes of Article 3 (b) of this Regulation, the ECU is the unit of account used for drawing up the budget of the Community pursuant to Articles 207 and 209 of the Treaty.

2. Article 1 of this Regulation shall remain applicable where during any period of two consecutive financial years the share of the market or the turnover referred to in Article 3 is exceeded by no more than 10%.

3. For the purpose of calculating total annual turnover within the meaning of Article 3 (b), the turnovers achieved during the last financial year by the participating undertakings in respect of all goods and services excluding all taxes and duties shall be added together. In this connection, no account shall be taken of dealings between the participating undertakings or between these undertakings and the undertaking charged with manufacture.

Article 5

For the purpose of Articles 3 (1) (a) and (b) and 4 (3), participating undertakings are:

(a) the undertakings party to the agreement;

(b) undertakings in which a party to the agreement, directly or indirectly:
   — owns more than half the capital or business assets, or
   — has more than half the voting rights, or
   — is able to appoint at least half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
   — is able to manage the affairs;

(c) undertakings which directly or indirectly have in or over the undertakings party to the agreement, the rights or powers listed in (b);

(d) undertakings in which an undertaking referred to in (c) directly or indirectly has the rights or powers listed in (b).

Article 6

The Commission may withdraw the benefit of this Regulation pursuant to Article 7 of Regulation (EEC) No 2821/71 when it finds in a particular case that an agreement exempted by this Regulation nevertheless has effects which are incompatible with the conditions set out in Article 85 (3) of the Treaty and in particular where the specialization is not yielding significant results or that consumers are not receiving a fair share of the resulting profit.
Article 7

This Regulation shall apply by analogy to the categories of decisions of associations of undertakings and concerted practices defined in Article 1.

Article 8

This Regulation shall enter into force on 1 January 1983.
It shall apply until 31 December 1997.
This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels, 23 December 1982.

For the Commission
Frans ANDRIESEN
Member of the Commission
List of Decisions and Rulings

1. Pursuant to Articles 85 and 86 of the EEC Treaty (other than procedural decisions)

Decision of 30.4.1982 on a proceeding under Article 85 of the EEC Treaty
'BPICA'
Decision of 15.7.1982 on a proceeding under Article 85 of the EEC Treaty
'SSI'
Decision of 29.10.1982 on a proceeding under Article 85 of the EEC Treaty
'Amersham Buchler'
[Decision of 4.11.1982 amending Decision 82/371/EEC relating to a proceeding under Article 85 of the EEC Treaty 'Navewa/Anseau']
Decision of 7.12.1982 on a proceeding under Article 85 of the EEC Treaty
'National Panasonic'
Decision of 10.12.1982 on a proceeding under Article 85 of the EEC Treaty
'Cafeteros de Colombia'
Decision of 10.12.1982 on a proceeding under Article 86 of the EEC Treaty
'British Telecommunications'
'Rolled zinc products and zinc alloys'
Decision of 15.12.1982 on a proceeding under Article 85 of the EEC Treaty
'UGAL/BNIC'
Decision of 15.12.1982 on a proceeding under Article 85 of the EEC Treaty
'Toltecs-Dorcet'

2. Procedural decisions pursuant to Regulation No 17

'Fire insurance (D)'

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Decision of 18.8.1982 on a proceeding under Article 85 of the EEC Treaty
‘Distribution system of Ford Werke AG—interim measure’

Decision of 27.10.1982 imposing a fine pursuant to Article 15 of Council Regulation No 17
‘Fédération nationale de l’industrie de la chaussure de France’

3. Decisions concerning Articles 65 and 66 of the ECSC Treaty

Decision 82/146/ECSC of February 1982 on a proceeding under Article 65 of the ECSC Treaty extending the authorization of the joint selling of fuels from Houillères du Bassin de Lorraine and Saarbergwerke AG by ‘Saarlor’

Decision of 22 February 1982 on a proceeding under Article 66 of the ECSC Treaty relating to the acquisition by Benzine en Petroleum Handel Maatschappij BV, Amsterdam, of the entire share capital of Holding Van Ingen BV, Heerlen

Decision of 24 March 1982 on a proceeding under Article 66 of the ECSC Treaty authorizing the merger of the steel undertakings Cockerill SA and Hainaut-Sambre SA

Decision 82/317/ECSC of 2 April 1982 on a proceeding under Article 66 of the ECSC Treaty authorizing the concentration between the Usinor, Sacilor and Normandie undertakings


Decision of 8 July 1982 on a proceeding under Article 66 of the ECSC Treaty authorizing British Steel Corporation to acquire London Works Steel Company Ltd Tipton, and the steelmaking plant of Duport Steels Ltd at Llanelli.

Decision 82/544/ECSC of 26 July 1982 on a proceeding under Article 65 of the ECSC Treaty extending the authorization of the joint buying of rolled steel products by the steel distribution undertakings participating in Stahlring GbR and the purchasing company called Stahlring GmbH, Stahleinkaufsgesellschaft

Decision of 22 September 1982 on a proceeding under Article 66 of the ECSC Treaty authorizing Finsider SpA to acquire the control of Societa Laminazione a Freddo SpA LAF, Industria Acciai Inox SpA and Industria Acciai Speciali SpA, belonging to the Teksid-Fiat Group

OJ L 256, 2.9.1982, p. 20
IP (82) 206 of 19.8.1982
Bull. EC 7/8-1982, point 2.1.31

IP (82) 267 of 4.11.1982
Bull. EC 10-1982, point 2.1.25

OJ L 63, 6.3.1982, p. 25
Bull. EC 2-1982, point 2.1.22

OJ L 139, 19.5.1982, p. 1
Bull. EC 4-1982, point 2.1.18

OJ L 237, 12.8.1982, p. 34
Bull. EC 7/8-1982, point 2.1.33

Bull. EC 9-1982, point 2.1.17

COMP. REP. EC 1982
Decision of 9 December 1982 under Article 66 of the ECSC Treaty authorizing the creation of the joint venture ‘Sheffield Forgemasters’ by ‘British Steel Corp.’ and ‘Johnson and Firth Brown’

4. Rulings of the Court of Justice

Order (6.5.1982) in Case 107/82 R
‘AEG-Telefunken AG v Commission of the European Communities’

Order (7.5.1982) in Case 86/82 R
‘Hasselblad (GB) Limited v Commission of the European Communities’

Ruling (18.5.1982) in Case 155/79
‘AM & S Europe Limited v Commission of the European Communities’

Ruling (8.6.1982) in Case 258/78
‘L.C. Nungesser K.G., Kurt Eisele v Commission of the European Communities’

Ruling (10.6.1982) in Case 246/81
‘Nicholas William, Lord Bethell v Commission of the European Communities’

Ruling (14.9.1982) in Case 144/81
‘Keurkoop BV v Nancy Kean Gifts BV’

Order (29.9.1982) in joined Cases 228/82 R and 229/82 R
‘Ford of Europe Incorporated and Ford Werke AG v Commission of the European Communities’

Ruling (6.10.1982) in Case 262/81
‘Coditel v Cine-VOG films SA’
Final negative Decisions adopted by the Commission under Article 93(2) of the EEC Treaty

Belgium

Decision (82/295/EEC) of 10 March 1982 on an aid scheme by the Belgian Government in respect of certain investments carried out by a Belgian undertaking to increase its production capacity for high-density polyethylene.

Decision (82/312/EEC) of 10 March 1982 concerning the aid granted by the Belgian Government to an industrial and commercial group manufacturing wall coverings

– Corrigendum

France

Decision (82/364/EEC) of 17 May 1982 concerning the subsidizing of interest rates on credits for exports from France to Greece after the accession of that country to the European Economic Community.

Belgium

Decision (82/670/EEC) of 22 July 1982 on aid granted by the Belgian Government to a paper manufacturing undertaking.

Decision (82/740/EEC) of 22 July 1982 on the designation of development areas pursuant to Article 11 of the Belgian Law of 30 December 1970

Decision (82/774/EEC) of 22 July 1982 on a Belgian Government aid scheme concerning the setting-up of a new factory by a soft drinks manufacturer
Decision (82/775/EEC) of 22 July 1982 on a Belgian Government aid scheme concerning the expansion of the production capacity of an undertaking manufacturing mineral water and soft drinks

Decision (82/776/EEC) of 22 July 1982 on a Belgian Government aid scheme concerning the expansion of the production capacity of an undertaking manufacturing mineral water, hot spring water and soft drinks

Denmark

Decision (82/691/EEC) of 22 July 1982 on the designation of areas eligible for regional aid in Denmark from 1 January 1982

Netherlands

Decision (82/653/EEC) of 22 July 1982 on aid granted by the Netherlands Government to a paperboard-processing firm

Belgium

Decision of 14 September 1982 on aid which the Belgian Government proposes to grant to a combed wool spinning firm

Decision 82/829/EEC of 27 October 1982 on a proposed aid by the Belgian Government in respect of certain investments carried out by an oil company at its Antwerp refinery.

Final Negative Decision adopted by the Commission under Article 8(3) of Decision 2320/81/ECSC

Decision (82/951/ECSC) of 20 October 1982 concerning the aids which the Belgian Government proposes to grant to the steel firm Laminoirs de Jemappes SA.

COMP. REP. EC 1982
Cases in which the Commission raised no objection

Federal Republic of Germany

30.12.1981 Coal exploitation programme—aid to gasification
12. 1.1982 Aid to microelectronics
15. 1.1982 Aid to economic development of small and medium-sized businesses in Lower Saxony
27. 1.1982 Aid to industrial antipollution investment in Hamburg
27. 1.1982 Amendment of Berlin Promotion Act (Berlinförderungsgesetz)
   1. 3.1982 Environmental aid in Schleswig-Holstein
   4. 3.1982 Aid to the setting up of small and medium-sized businesses and professional practices
   5. 3.1982 Renewal of shipbuilding aid scheme (credit facilities on the purchase of vessels)
15. 3.1982 Aid to small and medium-sized businesses’ investment projects in Lower Saxony
23. 3.1982 Aid to farmhouse holidays in Hesse
19. 4.1982 Subsidies towards R & D staff costs
28. 6.1982 Aid to small and medium-sized businesses in North Rhine-Westphalia
30. 6.1982 Creation of alternative employment in steel areas
23. 8.1982 Aid towards restructuring of AEG (first tranche)
13.10.1982 Aid towards restructuring of AEG (second tranche)
   5.11.1982 Aid towards job creation in Berlin
   8.11.1982 Fourth space programme
21.12.1982 Amendment of Berlin Promotion Act (Berlinförderungsgesetz)

Belgium

3. 3.1982 Aid to rescue a shipyard
30. 6.1982 Aid to a textile and clothing firm
22. 7.1982 Aid to a textile and clothing firm
17. 8.1982 Restructuring of major shipyards
21.12.1982 Aid to the creation of employment zones

Denmark

22. 4.1982 Act on the building of small cargo ships
France
21. 1.1982 Renewal of PDR regional aid scheme
4. 5.1982 Aid to essential oils venture in Réunion
28. 7.1982 Aid to furniture industries
10.11.1982 Special aid to the building of a container ship
24.11.1982 Aid to be granted by the regions (part of proposal)
17.12.1982 Regional development premium outside assisted area, to a firm in Longpré (Somme)

Ireland
24. 2.1982 Aid to recruitment of unemployed in Dublin
16. 6.1982 Scheduling of Dublin's inner city as a designated area
15. 7.1982 Employment incentive scheme (renewal and amendment)
27.10.1982 Aid to man-made fibres industry
18.11.1982 Inclusion of further areas in Gaeltacht

Italy
17. 2.1982 Aid to industrial, craft and distributive trade firms in the regions affected by the June 1981 earthquake
12. 3.1982 Extension to 30 June 1982 of the special assistance measures in the Mezzogiorno
15. 6.1982 Special assistance programme for Lombardy
22. 7.1982 Amendment and refinancing of Act No 25/65 Friuli-Venezia-Giulia
1.10.1982 Measures to assist regional industry (Friuli-Venezia-Giulia)
13.10.1982 Aid to Trapani region following 1982 earthquake

Luxembourg
27.10.1982 Aid to chemicals firm (thermoplastic elastomers)

Netherlands
14. 1.1982 Aid to mechanical engineering firm
26. 1.1982 Aid to tourist firms' infrastructures
23. 2.1982 Extension of aid to management and technical development in small and medium-sized businesses
24. 2.1982 Investment programme for three shipyard groups
25. 2.1982 Aid to small and medium-sized businesses for research and development contracts
4. 3.1982 Footwear industry aid programme
6. 3.1982 Loans to strengthen firms' risk capital base
12. 3.1982 Aid to mechanical engineering group

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26. 3.1982 Aid to wood processing firm
31. 3.1982 Aid to firms polluting the environment in residential areas
19. 4.1982 Aid to a bicycle firm
4. 6.1982 Loans for small and medium-sized businesses: amendment of an existing scheme
24. 6.1982 Amendment of some provisions of the WIR scheme
14. 7.1982 Aid to electrical industry firm
31. 7.1982 Aid to the paper industry
11. 8.1982 Renewal of scheme of assistance to small and medium-sized firms' export cooperatives
13. 9.1982 Measures to encourage improvements in innovation policy in the furniture industry
20.10.1982 Aid to the man-made fibres industry
4.11.1982 Aid to new technologies favourable to the environment
30.11.1982 Aid to a motor vehicle and mechanical engineering firm
8.12.1982 Aid to flexible manufacturing processes

United Kingdom
1. 2.1982 Aid to youth employment
25. 3.1982 Aid to a firm in London under the Inner Urban Areas Act 1978
20. 4.1982 Aid to investment in small and medium-sized engineering firms
22. 4.1982 Aid to a firm in Leicester under the Inner Urban Areas Act 1978
22. 7.1982 Aid to computer aided design
28. 7.1982 Aid to Scottish wool industry
8. 8.1982 Aid to tourism
7. 9.1982 Amendment of main regional aid scheme
27.10.1982 Aid to a man-made fibres firm
10.11.1982 Programme of aid to flexible manufacturing processes
24.11.1982 Aid for part-time working
24.11.1982 Aid to a firm in the London Borough of Haringey
2.12.1982 Aid to youth employment (renewal)
8.12.1982 Aid to closures by manufacturers of non-ECSC steel products (part of proposal)
21.12.1982 Aid to an investment in the video-tape industry
Cases in which the procedure provided for in Article 93(2) of the EEC Treaty was initiated

Federal Republic of Germany

6. 4.1982 Aids to shipbuilding
26. 5.1982 Eleventh Outline Plan: Joint Federal Government/Länder Task
27.10.1982 Second energy R & D aid programme
1.12.1982 Guarantees for investment in Lower Saxony
15.12.1982 Aid to investments in the improvement of economic structures in North Rhine Westphalia

Belgium

24. 2.1982 Aid to a textile and clothing group
17. 3.1982 Aid to an Antwerp refinery
19. 5.1982 Alternative textile and clothing plan
12. 8.1982 Aid to two textile and clothing firms
14. 9.1982 Aid to a firm making ceramic sanitary ware
8.12.1982 Aid to a textile and clothing firm
21.12.1982 Aids to two firms in the textile and clothing industry

Denmark

30. 6.1982 Financing of exports within the Community

France

19. 5.1982 Aid to the textile and clothing industry
9. 6.1982 Regional planning premium (PAT)
16. 6.1982 Aid to newsprint manufacturers
24.11.1982 Regional employment premium—job maintenance aspects

Italy

6. 4.1982 Aid to the press and to newsprint manufacturers
19. 5.1982 Aid to the electronics industry
6. 7.1982 New shipbuilding aid programme
Luxembourg
9. 6.1982 Aid to an aluminium foil manufacturer

Netherlands
5. 5.1982 Amendment of IPR and WIR regional aid schemes
12. 5.1982 General shipbuilding aid scheme
19. 5.1982 Aid to a firm in the credit sector
19. 5.1982 Aid to a paper manufacturing firm
14. 9.1982 Aid to a mechanical construction firm
22. 9.1982 Aid to a ship repairing yard

United Kingdom
16. 6.1982 Aid programme for ship building
20.10.1982 Aid to a firm manufacturing diesel engines
8.12.1982 Aid to closures by manufacturers of non-ECSC steel products (part of proposal)
Cases in which the procedure provided for in Article 93(2) of the EEC Treaty was terminated

Federal Republic of Germany
10. 3.1982 Aid for the publication of a scientific journal
22. 7.1982 Aid to shipbuilding

Belgium
13. 1.1982 Aid to the textile and clothing industry
10. 3.1982 Aid to a firm manufacturing wall coverings
10. 3.1982 Aid to a chemicals firm (high-density polyethylene)
22. 7.1982 Aid to a paper-manufacturing firm
22. 7.1982 Aid to a soft drinks manufacturer
22. 7.1982 Aid to a firm manufacturing mineral water and soft drinks
22. 7.1982 Aid to a firm manufacturing mineral water, hot spring water and soft drinks
22. 7.1982 New designation of development areas pursuant to Article 11 of the Law of 30 December 1970
2. 9.1982 Supplementary regional aid
14. 9.1982 Aid to a textiles and clothing group
27.10.1982 Aid to a refinery

Denmark
22. 7.1982 New designation of assisted areas

France
13. 1.1982 Productive investment support
17. 5.1982 Export credits for contracts concluded with Greece

Italy
10. 3.1982 Public assistance for the industrial sector—Province of Trento
10. 3.1982 Emergency aid for a shipyard
16. 6.1982 Measures of financial assistance for the industrial sector—Province of Bolzano

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14. 7.1982 Tax relief for banking consortia
14. 7.1982 Special economic support for Sicily

Netherlands
27. 1.1982 Amendment of regional aid programme
20. 4.1982 Aid to a shipyard
22. 7.1982 Aid to a paperboard-processing firm¹
14. 9.1982 General shipbuilding aid scheme
28. 9.1982 Aid to a paper-manufacturing firm
13.10.1982 Aid to a firm’s property business
24.11.1982 Aid to a firm in the credit sector

United Kingdom
22. 7.1982 Aid towards the construction of merchant ships

¹ Final negative decision: see previous list.
Aids in the steel sector—1982

Listed on the following pages are steel aid cases examined by the Commission during 1982. Most cases were dealt with under Decision 2320/81/ECSC; however some of the procedures closed (list 3) had been initiated in the first instance under Article 6(2) of Decision 257/80/ECSC or under Article 93(2) of the EEC Treaty in conjunction with Article 67 of the ECSC Treaty.

List 1 covers those cases in which the Commission raised no objection to the release of aid.

List 2 covers those cases in which the procedure under Article 8(3) of Decision 2320/81/ECSC was initiated.

List 3 covers those cases in which procedures were partially or completely terminated by the Commission.
1. Cases in which the Commission raised no objection

**Federal Republic of Germany**

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<th>Industry</th>
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<td>1.82</td>
<td>Iron and steel industry</td>
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<td>Saar steel industry</td>
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<td>19</td>
<td>5.82</td>
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<td>3</td>
<td>6.82</td>
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**France**

<table>
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<th>Company</th>
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**Ireland**

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**Luxembourg**

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<tr>
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<td>Arbed</td>
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</tr>
</tbody>
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1 Authorized pursuant to Article 70(4) of the ECSC Treaty.
United Kingdom

10. 3.82 Private sector steel scheme Investment and closure scheme
10. 8.82 British Steel Corporation Aids for continued operation and closures (tranche)
10. 8.82 Rigidized Metals Aids for a closure
8. 9.82 Aurora Steels Aids for investment, continued operation and a closure
24.11.82 Manchester Steel Aids for investment and closure
Queenborough Rolling Mill
24.11.82 British Steel Corporation Aids for investment, continued operation and closures (tranche)
24.11.82 Spear and Jackson Aid for a closure
GKN Brymbo
24.11.82 Hadfields Aids for investment and a closure
Lilleshall

2. Cases in which the procedure under Article 8(3) of Decision 2320/81/ECSC was initiated

Federal Republic of Germany

28. 4.82 Peine-Salzgitter Aid for investment
22. 7.82 Arbed Saarstahl Aid for continued operation
10.11.82 Hoesch, Krupp Stahl and P.W. Lenzen (Ruhrstahl concept) Aids for investment and research and development
10.11.82 Dillinger Hüttenwerke Aids for investment and research and development
24.11.82 Arbed Saarstahl Aids for continued operation, closures, investment, and research and development
24.11.82 Peine-Salzgitter Aids for investment and research and development
24.11.82 Hamburger Stahlwerke and Korf Stahl Aids for investment and research and development
24.11.82 Klöckner and Maxhütte Aids for investment and research and development
24.11.82 Thyssen Gruppe Aids for investment and research and development
24.11.82 Badische Stahlwerke and Korf Industrie Aids for investment and research and development
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24.11.82 Becker Gruppe Aid for investment
24.11.82 Mannesmann Aids for investment and research and development
24.11.82 Dörrenberg Edelstahl Aids for investment and research and development
24.11.82 Friedr. Lohmann Aid for investment
24.11.82 Boschgotthardshütte Aids for investment and research and development
24.11.82 Duisburger Kupferhütte Aid for investment
24.11.82 Schmidt & Clemens Aids for investment and research and development
24.11.82 Max. Aicher—Annahütte Aid for investment
24.11.82 Halberghütte Aid for investment
24.11.82 Moselstahlwerke Aid for investment

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24.11.82 Buderus Aid for research and development
24.11.82 Eschweiler Bergwerkverein Aid for investment
24.11.82 National and regional non-specific schemes Energy saving, environmental protection and research schemes

Belgium

24. 2.82 Laminoirs de Jemappes and Laminoirs de St. Eloi Aids for investment and continued operation
6. 4.82 Cockerrill-Sambre and Carlam Aids for continued operation
22. 9.82 Usines Gustave Boël and Fabrique de Fer de Charleroi Aid for investment
22. 9.82 Laminoirs du Ruau Aid for investment
22. 9.82 Forges de Clabecq Aid for investment
24.11.82 Laminoirs d’Anvers Aid for continued operation
24.11.82 Sidmar Aid for an investment project
24.11.82 Usines Gustave Boël and Fabrique de Fer de Charleroi Aid for investment
24.11.82 Forges de Clabecq Aid for continued operation
24.11.82 Cockerrill-Sambre and Phénix Works Aids for investment and continued operation

France

24. 2.82 Compagnie Française des Aciers Spéciaux (CFAS) Aid for investment
6. 4.82 Société Métallurgique de Normandie Aid for investment
6. 4.82 Ugine Aciers Aid for investment
24.11.82 Usinor and Sacilor Aids for investment and continued operation

Greece

24.11.82 Halyvourgia Thessalias Aid for an investment project
24.11.82 Hellenic Steel Aid for an investment project

Ireland

24.11.82 Irish Steel Aid for continued operation
Italy

20. 1.82 Finsider Aid for investment and continued operation
20. 1.82 Private sector Aid for closures
24.11.82 Sisma Aid for investment
    Lucchini Aid for an investment project
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    La Magona Aid for an investment project
    Ilssa Aid for an investment project
    Fit-Ferrotubi Aid for an investment project
24.11.82 Crema Aid for an investment project
    ICMi Aid for an investment project
    Feroni Aid for an investment project
    Ita-Tubi Aid for an investment project
    Alto Adriatico Aid for an investment project
    Seta Aid for an investment project
    Valbruna Aid for an investment project
    Bertoli Aid for an investment project
    Tassara Aid for an investment project

Luxembourg

24.11.82 Arbed and MMRA Aids for investment and continued operation
24.11.82 Arbed Aid for an investment project

Netherlands

24.11.82 Hoogovens Aids for investment, continued operation, and research and development
24.11.82 Nedstaal Aid for investment

United Kingdom

10. 8.82 British Steel Corporation Aids for investment, continued operation and closures
8. 9.82 British Steel Corporation and the private sector Regional and general aids for investment
24.11.82 British Steel Corporation Aids for investment, continued operation and closures

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### Federal Republic of Germany

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<td>Maxhütte</td>
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<td>8.12.82</td>
<td>Arbed Saarstahl</td>
<td>Aid for continued operation</td>
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### Belgium

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<tr>
<td>8. 2.82</td>
<td>Sidmar</td>
<td>Aid for an investment programme</td>
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<td>17. 3.82</td>
<td>Cockerill-Sambre and Phénix Works</td>
<td>Aids for investment and continued operation (tranche)</td>
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</tbody>
</table>

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1. Most cases were either conditionally terminated and/or were subject to modification of the originally notified aid, after discussions between the Commission and the Member State concerned.
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<td>ALZ and Usines à Tubes de la Meuse</td>
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**France**

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<td>Aid for investment</td>
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<td>Ugine Aciers</td>
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**United Kingdom**

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<tr>
<td>24.11.82</td>
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List of study reports published in the
'Evolution of concentration and competition' series in 1982,
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<th>Research institute</th>
<th>Expert(s)</th>
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<td>Stichting voor Economisch Onderzoek, Universiteit</td>
<td>Prof. Dr H. W. de Jong, Drs R. Hengeveld, W. A. de Jong, Drs R. J. Spierenburg</td>
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<tr>
<td>A study of the evolution of concentration in the UK insurance Industry with special reference to life assurance</td>
<td>Economic Consultancy and Research Associates</td>
<td>Prof. S. Aaronovitch, London</td>
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<td>Studio sull'evoluzione della concentrazione nel settore assicurativo in Italia</td>
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<td>Giancarlo Martelli</td>
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<tr>
<td>Etude sur l'évolution de la concentration dans le secteur des assurances en France</td>
<td>Centre de Recherches en Économie Industrielle Université Paris-Nord</td>
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<td>A study of the evolution of concentration in the Danish insurance industry</td>
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<td>Studio sulla distribuzione dei prodotti alimentari e sua evoluzione in Italia</td>
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(51) Étude sur la concentration, Les prix et les marges dans la distribution des produits alimentaires

Institut Agronomique Méditerranéen

M. Padilla
G. Ghersi
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(52) A study of the evolution of concentration and competition in the Greek insurance sector

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(53) Étude du secteur des Assurances aux Pays-Bas

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(54) Production and distribution of books in the Netherlands and Flanders

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(63) L'evoluzione della contrazione e della concorrenza nell'industria dei trattori e delle macchine agricole nella Comunita'

TEPRO - Bologna

Prof. Riccardo Varaldo
Prof. Roberto Zavatta
European Communities—Commission

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