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EUROPEAN ECONOMIC COMMUNITY
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Introduction

In times of economic difficulty competition policy must continue to make its influence felt alongside all the other Community policies. Its function is to preserve a situation in which the structural changes that are needed can take place. Although competition policy can make only an indirect contribution to solving the economic difficulties now besetting the Community—and then only if it achieves its objectives—there can be no solution without it. The Commission has tried to ensure that competition policy satisfies the demands made of it—in the measures it has taken as regards both State aids and the business conduct of firms.

The Commission considers that the proliferation of State aids as a means of mitigating economic difficulties and their social consequences carries with it the risk of preserving industrial structures that have failed to adapt to circumstances. Restrictive agreements offer no real solution to the crisis either. The Commission is paying particular attentio to the increasing popularity of joint ventures: they may in certain circumstances help industrial rationalization, but they can be a mere façade for anticompetitive agreements too. It is also clear that a more systematic control of large-scale mergers is essential if harmful developments in the structure of industry are to be prevented. The Commission has, in addition, set itself the task of following closely the effect of the growing tendency of Member States to intervene in their economies through the agency of public enterprises.

In the matter of *State aids* in 1975, as expected, the Commission had to deal with significantly more cases of assistance granted by Member States to offset the industrial and social effects of the serious economic crisis which the Community is experiencing. It has kept a close watch on the situation to ensure that the effect of the assistance was not simply to transfer from one Member State to another the difficulties it was intended to resolve or alleviate, and that it actively helped to solve structural problems rather than merely masking them.

Two factors have had to be borne in mind. First, a return to protectionist policies, however indirect, on the part of Member States cannot provide an effective solution to the crisis. Second, a return to normal necessarily involves a structural adaptation of the machinery of production in the Community to major changes in internal demand and in the international division of labour.

The Commission has worked out new principles for coordinating regional aids throughout the Community, which take account of the economic and social requirements of each region. In implementing these principles, under the powers conferred by the Treaty in respect of State aids, the Commission will ensure that competition is not unduly distorted and consequently that national aids are commensurate with the seriousness of the regional problems to be solved. In this way it will help to make national regional policies more effective, particularly as regards the future of Community regions facing the gravest difficulties.

As regards *restrictive agreements and abuse of dominant positions*, the Commission has taken action against attempts to divide the market, to prevent price decreases or to aggravate the rigidity of certain markets.

Apart from decisions taken on certain of the traditional anticompetitive practices prohibited by Article 85, the Commission has intervened on a whole range of sales strategies which, when operated by a *dominant firm*, tend to constitue an abuse within the meaning of Article 86. It attacked a dominant firm's discriminatory pricing policy not as a price control agency, but simply to enforce the clear prohibition on such practices contained in Article 86. In point of fact, the Commission did not impose a specific price reduction but merely gave an indication enabling the firm to decide an acceptable price level.

Similarly, the Commission has stated the limits within which it will tolerate *selective distribution systems*. The importance of the only decision issued on this subject in 1975 lies in the fact that it provides the consumer electronics industry with points of reference to bring their distribution systems into line with Article 85. The Commission had previously made similar decisions in relation to automobiles and perfumes.

The Commission has continued to clarify its policy on *patent licensing agreements*, which can be a classic means of separating markets. Now that seven decisions have been issued, it is possible to contemplate the preparation of a regulation exempting certain categories of patent licensing agreement, which should benefit small- and medium-sized firms in particular.

In parallel with its enforcement of the prohibition on restrictive practices, the Commission has made use of its powers under the provisions exempting *international cooperation* between firms to authorize a coordination of investment in the highly specific area of nuclear reprocessing and long-term specialization in the manufacture of penicillin. In the latter case, the authorization was given only after the firms had agreed to abandon their plan to form joint subsidiaries. In view of the nature of the relevant market, the Commission considered this step necessary to ensure that the two firms remained independent of each other in the market.

In 1975 there were fourteen decisions under Articles 85 and 86 of the EEC Treaty and twenty-two decisions under Articles 65 and 66 of the ECSC Treaty. In the EEC

field, therefore, approximately one hundred decisions have been issued since the Treaty's competition rules began to be enforced. Apart from restoring competition to a number of markets in the Community, the Commission's gradually developing case law has clarified the significance of the rules laid down by the Treaties. In 1975, as in previous years, a large number of cases were settled without a formal decision being made. Although this procedure is less well known and has less legal value than a formal decision, its importance should not be underestimated, as it enables some cases to be settled with a minimum of administrative intervention.

In 1975, for instance, it was used to separate the joint interests of two major continental glass manufacturers as regards safety glass for motor vehicles and to bring the marketing in the Community of Brazilian coffee into line with the rules of competition.

When the *oil crisis* arose in the autumn of 1973, the Commission publicly warned the oil companies to refrain from indulging in restrictive or abusive practices. The Commission has now nearly completed its examination of a complaint concerning a refusal to supply in a case which may well constitute abuse of a dominant position. The report on the behaviour of the oil companies in the Community during the crisis period sets out the results of the Commission's inquiries under Articles 85 and 86. The Commission has decided that there must be further investigation of the terms of sale of aviation jet fuel (kerosene) to the airlines and of naphtha to the chemical industry, the use of certain arrangements for publishing oil prices by the oil companies and public supply contracts with electricity companies.

The Commission has begun work on proposals to the Council for special regulations applying the rules of competition to *sea and air transport*, which will take account of the need for uniform application of these rules and at the same time of the specific features of these modes of transport. The Court of Justice has held that the general rules of the EEC Treaty apply to sea and air transport, so the rules of competition applying to firms under Articles 85 to 90 also apply.

Work on the *research programme on concentration* continued in 1975, and results have now been published in nearly a hundred studies on individual industries or markets. These reports have highlighted the need both for periodic updating and for further consideration of certain points which would help to explain how competition actually functions in the main product markets. This research is especially valuable in the current inflationary situation in that inflation is particularly rife in concentrated industries in the Member States.

Given the importance to the Community of the rapid introduction of a more systematic means of controlling large-scale mergers, which would help to maintain effective competition, the Commission has asked the Council to intensify its work on the proposed *merger control regulation.*

Part one

Competition policy towards enterprises

Chapter I

Main developments in the Community's policies

§1 — Impact of competition policy on prices and market structures

1. The main features of the economic situation in the Community during the period covered by this Report were a persisting inflationary trend and a drop in economic growth. If this situation were to continue it could have a damaging effect on the intensity of competition in the Community. In times of economic stagnation, weak, uncompetitive enterprises inevitably go out of business, driven out by a process of natural selection which is desirable only up to a certain extent. Where economic difficulties persist, there is a danger that structural changes would be undesirable for competition, because they intensify concentration and economic power.

2. If the decentralized structure of the market economy is to be safeguarded, competition policy must play a key role in the general field of Community policy. It must ensure that damage to the existing degree of competition is kept to a minimum. Its main function is to maintain and to promote competition so that competition can do its job of guiding and stimulating the economy. In this way it can help bring about the structural changes which the Community needs.

3. As regards competition policy's potential as a means of fighting inflation, the Commission has already stated its views a number of times.[1] It has no doubt that competition policy is an essential part of the armoury to be deployed against inflation, but there are limits to its effectiveness. For instance, measures to halt the abuse of dominant positions cannot be converted into systematic monitoring of prices. In proceedings against abuse consisting of charging excessively high prices, it is difficult to tell whether in any given case an abusive price has been set for there is no objective way of establishing exactly what price covers costs plus a reasonable profit margin.

[1] First Report on Competition Policy, point 16.
Third Report on Competition Policy, points 17 to 19.
Fourth Report on Competition Policy, points 1 to 10.

Likewise, the various views of what constitutes a comparable market may be used to establish that unfair prices are being charged only if the various cost factors are capable of precise quantification.

4. However, if it is successful, an active competition policy against price-fixing and market-sharing agreements, restrictions of competition and conduct of any kind which jeopardizes the unity of the common market and leads to market fragmentation, or any other practices which enhance economic power, will have the effect of moderating the level of prices.

This can be illustrated by the example of gramophone record prices in Germany. The view taken by the Court of Justice and the Commission that the national character of copyrights and similar industrial or commercial property rights must not be allowed to impede the free movement of goods within the Community certainly played a part in the reduction of about 15% in the price of gramophone records in Germany, representing a benefit to the consumer of DM 150 million or so a year.

5. However, the question arises whether the process of concentration has not already gone so far in the Community that major areas of the economy are substantially shielded from market forces and therefore beyond the reach of competition policy. All the available information shows that more and more business activity is accounted for by fewer and fewer enterprises. These are mainly multinationals, but there are also purely national firms which are in a position to decide product ranges and determine prices without much regard for market forces.

6. The Community rules of competition in their present form certainly enable the Commission to take action where dominant firms abuse their power. And there is market dominance where the firms in a given industry are in a position of joint dominance in relation to their customers.[1] Moreover, whatever the market share of the firms involved, the Commission can take action against concerted practices, and any type of practical cooperation may be prohibited even if it is not the subject of an actual plan.[2]

7. Nevertheless, experience has shown that the Commission is rarely in a position to avert structural changes which, by increasing the economic power of major firms, weaken the play of market forces. An effective Community competition policy aiming to prevent harmful structural changes is out of the question unless systematic merger control is introduced along the lines proposed by the Commission to the Council, making it possible to prohibit the creation of a dominant position.

[1] See Report on the Behaviour of the Oil Companies, point 9.
[2] Judgment of the Court of Justice in the *Sugar* case, see point 22.

§2 — The proposed merger control regulation

8. In 1975 the Council Working Party on Economic Questions continued its consideration of the proposed regulation at four meetings on 18 February, 25 June, 23 September and 10 and 11 November. The first stage of the work, which was completed by mid-year, was devoted to discussion of general aspects and was to some extent held back until the outcome of the June referendum in the United Kingdom was known. In July the Commission asked the Council to give the proposal priority.

Council discussions are at present concentrating on the definition of the scope of the regulation and the criteria for action set out in Article 1. On the question of decision-making power, the Commission reasserts that, as regards individual cases, the institutional equilibrium established by the Treaty must not be upset by the future regulation.

§3 — The conclusions of the Report on the Behaviour of the Oil Companies

9. The inquiry announced by the Commission on 21 December 1973[1] covered the period from October 1973 to March 1974—the period marked by the oil crisis stemming from the armed conflict which broke out in the Middle East on 6 October 1973. The inquiry's findings and conclusions as to the behaviour of oil companies during this period[2] do not necessarily apply to the situation which obtained before or after the crisis.

The purpose of the inquiry was to examine the behaviour of oil companies in the Community and assess it with regard to the rules on competition set out in the Treaty of Rome. The Commission's investigative powers extend to all member countries, but the inquiry also produced important information relevant to matters outside the Community, notably the formation of crude oil prices in producer countries and also the transfer prices charged by oil companies in respect of crude oil sold to their refineries and refined products sold to their distributing subsidiaries.

The sudden pressure on the market for oil products, its impact on the price of these products and the uncertainty as to the gravity and duration of the crisis rapidly produced within the Community a supply situation in respect of oil products which obliged the Commission to ensure, by the means of direct action available to it, that the situation was not being exploited by the oil companies in violation of the Treaty's rules on competition.

[1] See Third Report on Competition Policy, point 14.
[2] Commission Report on the Behaviour of the Oil Companies in the Community over the period from October 1973 to March 1974; Brussels, 14 December 1975.

The Commission's apprehension was justified because of the specific structure of the market in oil products, which is controlled by a small number of large international companies distributing a limited number of homogeneous products obtained from the same raw material to which they have privileged access. In proportions which may vary, all these companies purchase their oil from the same sources, often from enterprises in which they have a joint interest, at prices which are broadly similar for a given supply point. They load the oil at the same ports and ship it to the same destinations, where they manufacture the same products under the same conditions—sometimes even at the same refineries.

Whether in the case of actual joint ventures, exchanges of refining capacities or transfers of products, the large companies are linked by an extensive network of relationships which, even if there are good historical and economic reasons for them, constitute none the less a factor in strengthening their solidarity and consolidating their position.

The Commission will remain alert to the possibility that, by forging more and more of these links, the companies might create together a situation which would limit the scope for effective competition.

Alongside these large international companies, there are a smaller number of integrated companies, also with refineries in the Community, which, to a varying extent, depending on their requirements, have access to supplies of crude oil, but at generally higher prices.

Finally, as regards the supply of oil products, there are the independent wholesalers, who in normal circumstances are able to plan an active and effective role in that they are in a position to obtain supplies from the cheapest sources and to ask lower prices, thereby introducing a significant element of competition.

During the crisis, not only did the large oil companies continue to enjoy access to sources of supply on better terms than their competitors but their market position was reinforced by the relative scarcity of supply and even more by the fear of real shortage. This situation harboured increased risks of restrictive practices involving supplies or prices, notably market sharing, abusive price policies or the elimination of less well-placed competitors or independent dealers. These were, incidentally, risks which the authorities in Member States were concerned to limit by measures appropriate to the national markets.

Once the threat of a shortage appeared, the conditions of supply were seriously affected not only by the onset of the crisis but also by the attitude adopted by governments towards this threat.

In most member countries the refining capacities cover requirements. The authorities in those countries took steps to control price increases and to restrict exports of

refined products. However, for reasons stemming both from its economic tenets and from an appreciable shortfall in refining capacities in Germany, the Government of that country chose to rely to a large extent on the free interplay of market mechanisms to make up by imports the shortfall in national refining capacity.

The varied policy approaches adopted within the Community by the several Member States and the differing national measures implementing these policies affected the oil companies and explain certain facets of their behaviour in member countries.

Assessment in the light of Articles 85 and 86 of the EEC Treaty

The Commission examined whether the changes in the respective positions of the parties economically involved did not, during the crisis, lead to restrictive or unfair practices by companies as regards supplies and prices or towards independent dealers and users.

Assessment of the facts was often made difficult because the authorities in most Member States pursued a short-term oil policy which meant that they had to involve the oil companies—either themselves or through their trade associations—in determining or implementing national objectives. This concertation between companies obviously resulted in practices which, although they had the blessing of the Member States, could not avoid having some impact on competition and were therefore apt to fall within the relevant rules of the Treaty.

Subject to any conclusions to the contrary which the Commission may reach when it has completed the action it intends to take,[1] the findings of the inquiry were as follows.

1. *The dominant position of the oil companies*

The whole of the Report shows that the structure of supply was not fundamentally different during the oil crisis from what it had been previously but—bearing in mind the relative scarcity of oil products—inasmuch as certain oil companies had at their disposal the bulk of the crude oil produced, and transported and refined it, the position of the independents and even of some of the less powerful integrated companies was undermined. Nevertheless, at the same time, refiners in general saw their position strengthened to such an extent that, collectively, they acquired a dominant position on the oil market.

[1] See paragraph 5, p. 21.

In view of the scarcity of oil products and since dealers and consumers were, as a result, unable to rely on other supplies even in their own countries, each of the companies with refining capacities in a given country thus became the sole and imposed supplier of all dealers and consumers who were its traditional customers. In the context of their joint dominance, each of the refining companies was therefore in a monopolistic position towards its customers. A dominant position was created for the supplier in respect of these traditional customers, owing to the collective dominant position of all refiners on the entire national market. Such a situation existed in all Member States except Germany.

The definition of what constituted a company's traditional customers gives rise, of course, to some difficulty. In the context of actual problems raised by the crisis, the Commission has taken the view that a company should have considered as a traditional customer any buyer who, in the twelve months prior to the crisis, had in some way or another been its customer.

It was on this basis that the Commission made its assessment of the companies' behaviour in this field.

2. *The supply of oil products*

The information gathered on the overall supply of crude oil to all refineries in the common market showed that the contraction in supplies was the result of production cuts ordered by the producing countries and of their embargo directed at the Netherlands and Denmark.

The Commission's investigations did not reveal the existence of any practices forbidden under Articles 85 and 86 in the arrangements for supplying the Community with crude oil. All the oil companies experienced difficulties in their own supply systems in the oil-producing countries. Some of them, with a lower proportion of concession oil at their disposal, experienced greater difficulties than others in supplying their refineries.

The integrated companies which had no crude oil resources of their own, or whose resources were so inadequate that they had concluded supply contracts for crude oil with the large international companies, continued to be supplied on the basis of contracts.

By the same token, the Commission was unable to establish that there had been any agreement between oil companies in Europe, within the meaning of Article 85, to restrict deliveries of refined products. This does not contradict the fact that, locally, dealers or users had to face major supply problems during the most acute phase of the crisis—problems which were caused mainly by a steep rise in demand on the part of anxious customers and by interruptions in the rhythm of deliveries by the refineries and wholesalers. The national authorities did all they could to remedy this.

3. *Prices*

The transfer prices charged by the large oil companies, whether for crude oil or for refined products, relate to transactions between firms in the same group; that is to say, they are internal prices determined from tax, financial and economic considerations peculiar to the enterprise itself. Where such transactions are purely internal in their effect, they are not caught by the rules on competition.

However, the Commission could not rule out the possibility that certain internal practices in respect of transfer pricing might be indicative of an agreement or a concerted practice between the oil companies if they revealed coordinated behaviour. Nor could the Commission rule out the possibility that a policy of high or diversified transfer prices, applied to subsidiaries in countries where the authorities do not intervene in the market, might constitue an element of abuse through its effects on selling prices where the company in question was in a dominant position.

As a check on their behaviour among themselves, the oil companies' respective transfer prices, for both crude oil and refined products, were compared. This showed that all the oil companies had followed their own line and that the transfer prices of crude oil in particular, though differing very little from each other, nevertheless did reflect the differences between the supply situations of the various companies. They also reflected the differences between the price policies pursued by the companies, some of which charge the same transfer prices to all their refining subsidiaries throughout the Community, while others vary them to take account of conditions on national markets.

In view of the highly diversified supply arrangements in Germany and the market economy which prevails there, no oil company was able to abuse its position through the transfer prices it applied in transactions with its German subsidiaries.

An analysis of the various systems and levels of transfer prices did not reveal any concerted practices among the oil companies.

In respect of the selling price to consumers, the fact that most Member States set maximum prices made concerted practices between the oil companies impossible in these countries, once the prices had been fixed. It might have been thought that in Germany the oil companies would have come to an arrangement among themselves to increase their profits on the German market. Yet the trend taken by consumer prices on that market was the work of all those involved in making up that portion of Germany's oil requirements not covered by refineries located in that country, in particular importing dealers, who, faced with the threat of shortage and in the absence of prices fixed by the Government, accepted the level set by international demand.

Of course, the prices asked by importers and by the subsidiaries of the large oil companies in Germany were all gravitating towards this level. In a market where there is little variation between products and where prices move very swiftly, consumer

prices may temporarily assume a variety of levels from one company or region to another, but different price levels for the same product cannot be expected to obtain permanently throughout the market.

In any event, the Commission discovered no agreements between companies in connection with this aspect.

It is the Commission's view, however, that as certain systems of disseminating international prices, such as Platt's Oilgram, may have an effect on price levels in Germany or on any other free market, it must give attention to the operation and effects of these systems and, in particular, check whether the information system used by Platt's Oilgram[1] might not result in prices being published which do not correspond to the whole of the actual quotations.

An attempt may be made to estimate the excess price paid by Germany between October 1973 and April 1974 as compared with countries where the authorities set maximum prices. The Commission estimates that for those six months the excess price might have been in the region of $1 000 million for a consumption of 64 million tonnes of oil products, i.e. an average of about $15 per tonne. This may seem a large sum, but this additional expenditure on Germany's part is more than offset by the advantages which Germany has traditionally derived from its position as an importer of refined products bought at cheaper prices on the world market, the periods of depression on that market having in the past been considerably longer than the periods of pressure.

4. *Independent dealers and users*

During the crisis the independent companies experienced such difficulties that, in some cases, their very existence was threatened. This was particularly true where the level of maximum prices prevented the independents from buying freely and squeezed their margins to excess.

Many small and medium-sized firms engaged solely in distribution tried either to cover themselves against a recurrence of the same difficulties or to sell out.

The second alternative led to the buying-up of a certain number of medium-sized businesses by the big companies. Other firms concluded long-term supply contracts with the refiners, which gave them a large degree of security but deprived them at the same time of genuinely free access to the market.
Nevertheless, the total of such transactions was small in relation to the total of dealers in oil products in the common market, estimated at around 60 000 wholesalers and retailers.

[1] For a description of the working of this system, see the Report of the Commission on the Behaviour of the Oil Companies in the Community during the period from October 1973 to March 1974.

The crisis thus brought about structural changes in the oil business which are reflected, not in a noticeable reduction in the number of firms, but in the existence of new relationships between the oil companies and a certain number of wholesalers. Nevertheless, the Commission discovered nothing in this development indicating abuse by the oil companies of their joint dominance.

On the other hand, the Commission did examine cases of presumed abuse of single-firm dominance by certain companies in respect of independent dealers who are their customers.

The Commission takes the view that, during the crisis, all the large oil companies individually were in a dominant position, at least in respect of their traditional customers, who had no access to suppliers other than those with whom they had done business. A refusal to sell to such customers can constitute an abuse forbidden by Article 86 since it may affect trade between Member States, which is certainly the case when a sizable purchaser/dealer is in danger of being squeezed out of the market, a development which would mean appreciable change in the pattern of supply of oil products in a substantial part of the common market.

The question might even be asked whether, in a crisis in which State intervention in particular produces a degree of fragmentation of the market, companies enjoying joint dominance should not be obliged, according to their share of the market concerned, to supply in reasonable quantities and at reasonable prices buyers who, before this fragmentation of the market, obtained their supplies from other sources. Such an obligation should have the effect of maintaining the competitive marketing structure which existed before the crisis.

5. *Further investigations decided by the Commission*

Following a complaint of refusal to sell, the Commission is continuing its examination of a case which may involve an abuse of a dominant position under Article 86 of the Treaty of Rome.

The Commission ascertained, in respect of certain products, the existence of specific market situations and price differences which justify closer investigation.

This applies to kerosene and naphtha, on the markets for which there are both oligopolies and oligopsonies.

The Commission has decided to carry out inquiries in the following sectors under Council Regulation No 17:

(i) jet fuel (kerosene), with the airlines;
(ii) naphtha, with the chemical industry;
(iii) the use by oil companies of references to Platt's Oilgram quotations;
(iv) public supply contracts with electricity companies.

§4 — Patent licensing agreements

10. The Commission adopted a number of new decisions on patent licensing agreements during 1975.[1] Each case raised points not made in earlier decisions of the Commission and they have given rise to a certain amount of controversy about the Commission's attitude towards patent licensing in the Community.

One comment has been that the Commission regards some clauses in patent licences as *per se* infringements of Article 85(1) of the EEC Treaty. This is not so. The facts of each case have to be examined before it can be decided whether Article 85(1) has been infringed. The terms of the Article must be satisfied in each case. These in turn require the consideration of such features as the economic power of the parties, the nature of the market or business in which they are engaged, their share of the market, the number of competitors and the significance of the licensed invention or knowhow.

The recent decisions do not mark a new departure in the Commission's policy, which continues to stem from the Treaty of Rome. The Treaty does not oppose the existence of industrial property rights, but if they are used in a manner which infringes Article 85(1), the Commission will take appropriate action. The use of industrial property rights for the purpose of restrictive business practices does not alter the character of the infringement and cannot render such practices any less liable to attack from the Commission.[2]

11. The Convention for the European Patent for the Common Market, signed in Luxembourg on 15 December 1975,[3] contains rules on patent licences. Article 43(1) reads: 'A Community patent may be licensed in whole or in part for the whole or part of the territories in which it is effective. A licence may be exclusive or non-exclusive'. Article 43(2) continues: 'The rights conferred by the Community patent may be invoked against a licensee who contravenes any restriction in his licence which is covered by paragraph 1'.

In the course of the deliberations on the Convention, the Commission stated that the grant of an exclusive licence may fall within the scope of Article 85 of the Treaty, so that its legality would have to be assessed in the light of Article 85(3). The Commission was not able to give its approval to Article 43(2), since these provisions allow infringement proceedings to be brought against a licensee who supplies patented goods to customers outside his allotted territory but within the common market. The Commission's view is that the existence of the patent in no case gives the holder the right to shield one licensee against competition from another.

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[1] See point 69 *et seq.*
[2] See also Fourth Report on Competition Policy, points 19 to 32.
[3] OJ L 17 of 26.1.1976, p. 1.

A clause in a contract prohibiting a licensee from supplying the territory of another licensee may be taken to be within the prohibition in Article 85(1), and qualify for exemption only if the tests of Article 85(3) are satisfied, and then only for a limited period.

The Commission has recently expressed its view in its decision of 2 December 1975, in *AOIP v Beyrard.*[1] It will be for the Court of Justice of the European Communities to resolve this difficulty in the final instance.

§5 — Selective distribution

12. The Commission's practice on selective distribution has now developed far enough for a number of general principles to be laid down. Consideration of significant individual cases in various industries where selective distribution is commonly practised has clarified the following general guidelines:

(1) To ensure that his goods are sold in a satisfactory manner, a manufacturer may choose his dealers by setting objective qualitative requirements which must be met by the dealer as regards his own and his staff's qualifications and training and the nature of his premises if he is to be supplied with goods for resale. Even though supplies may be withheld from dealers who do not meet these requirements, a system along these lines is not caught by the prohibition in Article 85(1), provided that the same objective requirements are imposed on all potential purchasers and are applied without discrimination (*Kodak*).[2]

(2) In addition to ensuring that distribution arrangements are appropriate to the nature of the product, a manufacturer may impose qualitative criteria for the appointment of dealers. He may also bind dealers to accept certain sales promotional obligations, while undertaking, and requiring his dealers to undertake, not to supply approved dealers. This restricts the business freedom of the manufacturer and his appointed dealers, and accordingly restricts competition for the purposes of Article 85(1) where the result of the selection is to exclude a large number of dealers, who meet the qualitative requirements but are unable or unwilling to enter into these additional obligations (*SABA*).[3]

(3) Competition is restricted even more severely where the actual number of appointed dealers is limited by the manufacturer, either on general considerations (*Omega*)[4] or case by case (*BMW*)[5] on grounds of business policy. This even has the effect of excluding firms capable of selling the product in a manner satisfying the manufacturer's standards and willing to enter into the additional obligations.

[1] See points 63 to 65.
[2] OJ L 147 of 7.7.1970, p. 24.
[3] Point 54.
[4] OJ L 242 of 5.11.1970, p. 22; First Report on Competition Policy, point 86.
[5] OJ L 29 of 3.2.1975, p. 1; Fourth Report on Competition Policy, point 86.

13. As a rule, the Commission will intervene in situations of the kind outlined in (2) and (3), above especially in cases in which there are parallel sales systems in a number of Member States, unless the restrictions are clearly not substantial or where the structure of the relevant product market is such that intervention appears unwarranted on public interest grounds (*Dior* and *Lancôme*).[1]

Exemptions under Article 85(3) in respect of quantitative selection can be granted only in exceptional cases. The question in issue is whether the relevant product is of such a kind (by reason of its technical complexity, need for high-quality after-sales service, or inherent risks) that there must be close cooperation between manufacturer and dealer, of an order which no other distribution system could adequately secure.

A more lenient approach can be considered for exemption of distribution systems where selection is based on qualitative criteria combined with supplementary obligations. But even here Article 85(3) can be applied only if it is absolutely clear that the objectives of the system could not be attained through normal specialist trade arrangements (*Fachhandelsbindung*).

In general terms the *BMW* and *SABA* decisions can be regarded as an indication of the maximum limits for which exemption could be given in the two industries concerned. More restrictive arrangements will not normally be acceptable, even for luxury goods or branded prestige goods and even if considerations of quantity or low output are invoked.

§ 6 — Application of the rules of competition to sea and air transport

14. The Commission expects to put to the Council a proposal for a regulation which will apply the rules of competition to air transport. This need is underlined by a statement of the law by the Court of Justice, which, giving judgment on 4 April 1974 in Case 167/73 (*Commission v French Republic*),[2] held that, although under Article 84(2) sea and air transport were not covered by the provisions relating to the common transport policy until such time as the Council decided to include them nevertheless they were, on the same basis as other modes of transport, subject to the general provisions of the Treaty. Accordingly, Articles 85 to 90, which lay down the rules of competition applicable to enterprises, are applicable to sea and air transport without a decision by the Council under Article 84(2) being necessary.

Article 87 states that it is for the Council, acting on a proposal from the Commission after consulting the European Parliament, to adopt regulations to give effect to the

[1] Fourth Report on Competition Policy, point 93.
[2] [1974] ECR 371.

principles set out in Articles 85 and 86. Sea and air transport are the only areas of the economy where no provisions to this effect have yet been introduced, so Articles 88 and 89 still apply to these areas.

These two articles contain typical transitional provisions. Under Article 88, the relevant authorities in Member States are to rule on the admissibility of agreements, decisions and concerted practices and on abuses of dominant positions in accordance with the law of their country and with the provisions of Article 85, in particular paragraph 3, and the provisions of Article 86.

On the other hand, Article 89 states that it is the Commission's function to investigate suspected infringements of the principles laid down in Articles 85 and 86. If necessary, it must record actual infringements in a formal decision and propose appropriate measures to bring them to an end. Finally, the courts may, on application by any of the parties involved or by other persons, rule on the compatibility of an agreement or practice with the Community rules on competition; this follows from the direct applicability of Articles 85 and 86.

However, the law as it now stands does not allow for the consistent application of the rules of competition to sea and air transport in a manner reflecting the special features of these industries. Furthermore, the fact that there are no precise provisions for the application of Articles 85 and 86 to them makes for uncertainty in the law, and this is to the disadvantage of shippers, airlines and users. These are important reasons for issuing regulations under Article 87.

15. The Commission has already begun to examine, in close cooperation with the competent authorities of Member States, the most important technical and economic features of the air transport industry. Once the results of this examination have been assessed, the Commission will be better placed to decide how to solve the main problems arising in the preparation of its regulation. The thorniest of these are the scope of the regulation, the relationship between the prohibition on restrictive practices and exemptions from the prohibition, and the working-out of procedural rules.

The Commission's staff have also begun to study market conditions in sea transport. Because of the special nature of the problems in this industry, a separate proposal will have to be considerd.

§ 7 — Restrictive practices in international trade

16. In this field the Commission has played an active part in the OECD Committee of Experts on Restrictive Business Practice and in preparatory work for the fourth session of UNCTAD, with particular regard to restrictive practices which may affect the trade and development of developing countries.

17. The OECD is continuing with the application of the recommendations dated 10 October 1967 and 3 July 1973[1] concerning international cooperation on restrictive business practices affecting international trade. Work is also progressing on restrictive practices related to trademarks and the conduct of multinational firms. As regards the multinationals, guidelines are being worked out to help them comply with the basic objectives of host countries. The matters covered will include abuses of dominant positions, export restrictions and discriminatory pricing.

18. In UNCTAD, the Commission is mainly involved in the Committee on Manufactures and the Committee on the Transfer of Technology. Both committees are working on the identification of restrictive practices which are likely to affect international trade, particularly the developing countries' trade. They are also attempting to establish procedures for consultation and exchange of information between competition authorities, and to draw guidelines on the transfer of technology. This work could have major consequences both in legislation by developing countries which do not yet have competition laws, and in the development of international cooperation on the elimination of restrictive practices from international trade.

§8 — Cases decided by the Court of Justice

International sugar agreement

19. A Commission Decision of 2 January 1973 found that, since the common organization of the market in sugar took effect in 1968, the biggest sugar manufacturers in the Community had been infringing Article 85(1) and 86 of the EEC Treaty. Fines totalling 9 million u.a. were imposed on the firms.[2]

The firms—there were sixteen of them—appealed to the Court of Justice. The Court gave judgment on 16 December 1975, joining the cases for purposes of the judgment (Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73).

20. Essentially, the judgment upheld the Commission's findings as regards the firms' infringement of the rules of competition, notably through market sharing. An exception was made for the Italian market. Disagreeing with the Commission, the Court concluded that the measures taken by the Italian Government to control sugar imports—formation of the Cassa conguaglio zucchero, the imposition of a levy (*sovraprezzo*) and the tendering procedure for imports—placed business under such a tight rein that there was no longer any scope for independent action. The Court therefore decided that concerted action by the Italian, French, Belgian and German firms, in question could not be regarded as infringing Article 85(1). It

[1] See Third Report on Competition Policy, points 39 and 40.
[2] OJ L 140 of 26.5.1973, p. 17; Second Report on Competition Policy, point 28.

should be noted here, incidentally, that in 1975 the Commission initiated proceedings against the Italian Government under Article 169 for these measures.

As regards a number of other alleged infringements, the Court concluded that the Commission had not proved its case. Nevertheless, the judgment as a whole confirmed the Commission's findings and conclusions.

21. However, the Court made a sharp cut in the fines imposed by the Commission, bringing them down to 1 590 000 u.a. in all. It did this because, in assessing the gravity of the infringements, the Commission had not paid sufficient attention to the fact that competition between firms was already restricted by the common organization of the sugar market, under which national production quotas are fixed.

22. In this judgment, the Court had occasion to rule on a number of questions of principle which are of definite importance to the development of Community competition law.

It began by considering the elements of a concerted practice, elaborating upon its definition of the concept in the judgments it delivered on 14 July 1973 in the *Dyestuffs* cases.[1] The Court defines 'concerted practice' as a form of coordination between firms whereby, without going so far as to conclude a formal agreement, they knowingly eliminate the risks of competition by cooperating to ensure that normal market conditions (given the nature of the goods, the size and number of firms concerned and the size and nature of the relevant market) no longer obtain. Cooperation of this type constitutes a concerted practice, particularly when it enables the firms concerned to crystallize positions they have secured to the detriment of free movement of goods in the common market and freedom of consumers to choose their suppliers.

Here, the Court expressly dismissed the notion that concerted action requires some kind of plan to be prepared: the criteria for cooperation set out in the judgment are to be understood in the light of the requirement—inherent in the EEC Treaty rules on competition—that each trader must independently decide the policy he proposes to follows on the common market. Above all, although this requirement does not deny traders the right to adapt intelligently to the way their competitors are behaving or can be expected to behave, it does absolutely rule out any direct or indirect contact between traders where the object or effect is either to influence the market conduct of an existing or potential competitor or to reveal to him market policy decisions or intentions.

Finally, it was held that for the identification of a concerted practice the factors mentioned by the Commission must not be taken in isolation but must be considered

[1] [1972] ECR 619 *et seq.*; see also Second Report on Competition Policy, points 21 and 22.

together, with due regard for the nature of the relevant market. The Court thus approved the legal approach adopted by the Commission in seeking to establish the existence of a concerted practice, relying on a series of indicators such as deliveries from manufacturer to manufacturer and pressures exerted on dealers or refusal to supply. It stated, for instance, that 'if an economic operator accepts the complaints made to him by another operator in connection with the competition to which the products manufactured by the former operator expose the latter, the conduct of the operators concerned amounts to a concerted practice'.

In this connection the Court considered the evidential value of documents submitted by the Commission for the purpose of proving the existence of the offending concerted practice. It held that there is nothing to prevent the Commission or the Court from accepting correspondence between outsiders as evidence of a firm's behaviour, provided that the correspondence contains a reliable description of the behaviour in question and that this is reconcilable with the actual market behaviour of all the firms involved since, if this is so, the correspondence offers a set of consistent indications borne out in essence by the actual facts.

23. The Court then went on to find for the first time that, where there are tendering procedures to determine the refunds on export to non-member countries and Community firms act in concert in proposing figures for the refunds and for quantities—in other words, engage in concerted action relating to products to be exported from the common market—competition is restricted within the common market and trade between Member States may be affected for the purpose of Article 85(1). If there were no such concerted action, some firms would have been awarded smaller lots than those actually awarded to them and would thus have been given an incentive to sell more sugar in other Member States; this could not only change the pattern of trade within the Community but also intensify competition within the common market.

24. Finally, for the purpose of Article 86, the Court concluded that abuse is shown where any firm exploits its dominant position to force dealers to channel their exports to specific consignees or areas and to oblige their customers to accept these restrictions, thus limiting the dealers' (and indirectly their customers') markets; this is expressly prohibited in Article 86(b).

It was also confirmed that fidelity rebates granted by a firm dominating a substantial part of the common market may constitue abuse of its dominant position because they are liable to discourage its customers from obtaining supplies from other producers, especially in other Member States, for fear of losing a financial advantage. Furthermore, if the effect of the rebate is that different net prices are charged to two firms buying the same quantity of sugar from the same dominant firm, one of them purchased from another supplier as well, this constitutes abuse under Article 86(c).

General Motors Continental

25. Giving judgment on 13 November in Case 26/75 (*General Motors Continental NV v Commission*), the Court annulled the Commission's Decision of 19 December 1974,[1] holding that the Commission's action was not justified given the particular time and circumstances of the case. Nevertheless, it confirmed the principle that Article 86 may apply to any person holding an exclusive legal right for the performance of a statutory duty delegated by the State. The delegated duty in question was the issue of certificates of conformity for vehicles required by Belgian law, a duty reserved in respect of each make of vehicle to the manufacturer or his sole agent. The Court held that 'this legal monopoly, combined with the freedom of the manufacturer or sole authorized agent to fix the price for its service, leads to the creation of a dominant position within the meaning of Article 86...'.

The Court further observed that the possibility could not be ruled out that the holder of an exclusive right might abuse the market when fixing his price. 'Such an abuse might lie, *inter alia*, in the imposition of a price which is excessive in relation to the economic value of the service provided, and which has the effect of curbing parallel imports by neutralizing the possibly more favourable level of prices applying in other sales areas in the Community, or by leading to unfair trade in the sense of Article 86(2)(a).'

The Commission considers this judgment to be important to the development of competition policy in a number of respects. It confirms that once export prohibitions have been deleted from distribution agreements, parallel imports of motor vehicles must not be hampered by other measures taken by the firms concerned which have similar effects. It has been established that where holders of an exclusive right have been given an area of discretion by public authorities, they are still bound by the prohibitions of Article 86. Finally, the judgment provides a practical illustration of the applicability of Article 86 to abnormal price levels.

Papiers peints de Belgique

26. By a judgment given on 26 November in Case 73/74 (*Groupement des fabricants de papiers peints de Belgique v Commission*), the Court annulled Article 4 of the Commission Decision of 23 July 1974 relating to a proceeding under Article 85.[2] As the applicants, members of the Groupement des fabricants de papiers de Belgique, had decided not to appeal the prospective effects of the Decision, the Court considered only their application for annulment of that part of the Decision which imposed fines.

Article 4 was annulled because the reasoning of the Decision as regards the effect

[1] OJ L 29 of 3.2.1975, p. 14; Fourth Report on Competition Policy, point 110.
[2] OJ L 237 of 29.8.1974; Fourth Report on Competition Policy, point 65.

on trade between Member States was inadequate. The Court stated that when the Commission 'adopted a decision which went appreciably further than its earlier decisions, it ought to have supplied a more detailed statement of the grounds on which it was based'. In this case the Decision did not explain 'how the fact that 10% of Belgian imports, representing 5% of the total Belgian market, sold by the Groupement subject to its prices and conditions is, in the absence of exclusive arrangements between the members of the Groupement and foreign manufacturers, liable to affect trade between Member States'. Nevertheless, the Court confirmed the Commission Decision in that 'the control of the market exercised by the Groupement, characterized by its pricing and rebates policy, and supported by penalties in order to ensure strict compliance with the General Conditions of Sale, was intended to and did in fact restrict or distort competition in Belgium and, consequently, within the common market'. The Court also considered that the prohibition on publishing rebates was no less contrary to Article 85(1) than resale price maintenance.

Finally, the Court confirmed an earlier ruling[1] to the effect that an agreement extending to the whole territory of a Member State was likely, by its very nature, to have the effect of consolidating national barriers and thus to prevent the economic interpenetration required by the Treaty and to afford protection to national producers.

27. An important consequence of this judgment is that a more detailed explanation of the Commission's reasoning will be required where there is any broadening of the concept of effects on trade between Member States in cases involving national agreements. It will have to be shown from all the facts to what and in what manner the national market is protected by the various measures taken under such agreements.

Frubo

28. In a judgment given on 15 May 1975 in Case 71/74 (*Frubo v Commission*),[2] the Court of Justice dismissed an application against the Commission Decision of 25 July 1974 which had established the restrictive character of a provision of an agreement between two Dutch associations of citrus-fruit importers and wholesalers prohibiting wholesalers who obtained supplies from Rotterdam auction sales from themselves importing citrus fruit direct from non-member countries.[3]

The judgment gives important indications to the Commission for its interpretation of Council Regulation No 26 applying certain rules of competition to trade in agricultural products.[4] The applicants contended that the Commission should have issued a preliminary and separate decision on the applicability of this Regulation.

[1] Judgment of the Court of Justice of 17 October 1972 in Case 8/72 (*Vereeniging van Cementhandelaren v Commission*): [1972] ECR 977.
[2] [1975] ECR 563.
[3] OJ L 237 of 29.8.1974, p. 16; Fourth Report on Competition Policy, point 71.
[4] OJ 30 of 20.4.1962, p. 993.

The Court dismissed this argument. Article 2(2) of Regulation No 26 prescribed a formal decision only where the Commission found that an agreement qualified for exemption under Article 1 of the Regulation. To require a formal decision in other cases, where Article 85 is applicable, 'would oblige the Commission to fulfil unnecessary formalities'.

The judgment also considers the concept of the effect on trade between Member States. The Court stated that the offending provision, 'because it restricts the freedom of members to import direct into the Netherlands, ... is liable to interfere with the natural movement of trade and thus to affect trade between member countries'.

The Court also considered the requirement of Article 85(3)(a)—under which, in order to qualify for exemption, a restrictive agreement must not impose on the undertakings concerned 'restrictions which are not indispensable to the attainment of its objectives'. It placed the burden of proof entirely upon the applicants, who, according to the Court, had submitted arguments capable of demonstrating that the agreement reinforced the advantages of concentrating supply and demand but had not shown that such concentration was an indispensable condition for the proper working of the system established by the agreement and consequently for the advantages accruing therefrom.

Kali und Salz

29. In a judgment given on 14 May 1975 in Joined Cases 19 and 20/74 (*Kali und Salz AG and Kali-Chemie AG v Commission*),[1] the Court annulled the Commission Decision of 21 December 1973 in which the Commission had found that the agreement of 6 July 1970 between Kali und Salz (K+S) and Kali-Chemie (KC) concerning the sale by K+S of straight potash fertilizers manufactured by KC.[2]

The Court essentially considered that the Commission had shown 'insufficient reasons ... for the Decision ..., at least as regards the rejection of the application for exemption'. The Commission Decision stated that, by concentrating practically the whole supply of straight potash fertilizer in Germany, the agreement gave the parties the power to eliminate competition in respect of a substantial part of the products concerned. The Court considered that it had not been sufficiently demonstrated that the two types of fertilizer—straight and compound potash—constituted separate markets, nor that it was practicable for KC to distribute both straight and compound potash together. The Court drew attention to the fact that the part of KC's production supplied to K+S was diminishing steadily and that demand for straight potash fertilizers was declining in favour of compound fertilizers so that it would be increasingly difficult for KC to establish its own distribution system.

[1] [1975] ECR 499.
[2] OJ L 19 of 23.1.1974, p. 22; Third Report on Competition Policy, point 49.

Van Vliet v Dalle Crode

30. On 1 October, in Case 25/75 (*Van Vliet Kwasten- en Ladderfabriek NV v Fratelli dalle Crode*),[1] the Court gave a preliminary ruling on two questions of interpretation of Article 85 of the Treaty and of Article 3 of Commission Regulation No 67/67/EEC on the application of Article 85(3) to categories of exclusive dealing agreements.

These questions were concerned with the fact that exclusive dealing agreements must not impede parallel imports, i.e. direct imports by dealers from other Member States by means other than those provided by the principal for the territory. The Court stated that a prohibition on exports to the dealer's allotted territory applied solely by the manufacturer in his own Member State disqualified an exclusive dealing agreement with an importer in another Member State from block exemption even if parallel imports into that Member State from Member States other than that of the manufacturer were not affected by the agreement.

The Commission has thus received clear confirmation of the legal basis of its action to ensure that exclusive dealing agreements in trade between Member States do not restrict the possibility of obtaining supplies of the goods in question and do not insulate markets. Such agreements must not therefore obstruct parallel imports made direct from the manufacturer's State, which would otherwise be a most probable pattern of trade.

[1] [1975] ECR 1103.

Chapter II

Main decisions and measures taken by the Commission

§1 — Article 85 applied to restrictive practices

Price-fixing and market-sharing agreements

Agreement between producers of primary aluminium

31. In its Decision on the IFTRA rules for manufacturers of glass containers[1] the Commission had already made known its reservations on the adoption of private codes of conduct by particular industries designed to discourage competitors from taking any commercial initiative which might 'inconvenience' the other firms involved but which in the view of the Commission constituted normal methods of competition.

Finding against an agreement of this type for the second time, the Commission decided[2] that the agreement entitled 'IFTRA Rules for Producers of Virgin Aluminium' constituted an infringement of Article 85. The agreement was concluded in 1972, at a time when the economic situation in the industry was said by the parties concerned to have led certain among them to engage in unfair practices. The parties alleged that after 1972 market conditions had improved so much for aluminium producers that they had not felt the need to enforce the IFTRA rules. Nevertheless the agreement was kept as a 'safety net' to insure against any commercially aggressive action provoked by a recession in the primary aluminium market, and only abandoned in February 1975 after intervention by the Commission. The Commission proceeded to adopt a decision under Article 85 because of the seriousness of the restrictions of competition and the importance of the industry involved and because the agreement could not fail seriously to aggravate the rigidity already present in the aluminium market.

[1] Commission Decision of 15.5.1974: OJ L 160 of 17.6.1974, p. 1; Fourth Report on Competition Policy, point 62.
[2] Commission Decision of 15.7.1975: OJ L 228 of 29.8.1975, p. 3.

The agreement was signed by Alusuisse Deutschland GmbH, Gebrüder Giulini GmbH, Kaiser-Preussag Aluminium GmbH, Metallgesellschaft AG, Vereinigte Aluminium-Werke AG, Péchiney-Ugine Kuhlmann SA, Holland Aluminium NV and the British Aluminium Company Ltd—all established within the EEC and accounting with their subsidiaries and the EEC based subsidiaries of the other signatories for around 85% of the productive capacity of primary aluminium in the EEC. The agreement was also signed by major producers in Austria, Norway, Spain, Sweden and Switzerland.

Under the agreement the parties agreed to adhere to 'fair trade practice rules' administered by an agency in Liechtenstein known as the International Fair Trade Practice Rules Administration (IFTRA). The rules were presented in the guise of principles of fair trading but in fact they restricted price competition.[1]

In particular, the parties undertook to refrain from dumping and adopted private rules to this end. By these rules it was sought to discourage price competition in export sales. In accordance with its policy on voluntary import restraint agreements,[2] the Commission stated that it could not be left to firms or private agencies to decide what constituted dumping and whether it should be penalized.

Certain clauses which purported to protect customers against price discrimination had the necessary effect of making price structures more rigid and of leading competitors to exchange information on prices. Finally, the rules contained recommendations on the calculation of costs, the fixing of prices and the grant of rebates, their aim being to align the market conduct of the parties.

The rules as a whole enabled the parties, by means of contractual penalties imposed by IFTRA, to take joint action to prevent normal methods of competition, such as price cutting.

Franco-Taiwanese preserved mushroom agreement

32. The Commission ordered five of the most important French mushroom packers (SA Blanchaud, Groupement d'intérêt économique Euroconserves, Groupement d'intérêt économique Champifrance, SA Faval, Société d'intérêt collectif agricole Champex-Centre) and the Taiwan Mushroom Packers United Export Corporation (TMPUEC), which represents all mushroom exporters in Taiwan, to terminate the agreement which they had concluded in Taipei on 8 January 1973.[3]

[1] As in the IFTRA glass containers case, the Commission Decision dealt only with those parts of the IFTRA rules which discouraged competition between the parties or gave them the means of taking collective action against normal competitive practices; it did not address itself to the question whether firms might agree among themselves to comply with the existing law of fair competition.

[2] Commission Notice on the import into the Community of Japanese goods covered by the Treaty of Rome: OJ C 111 of 21.10.1972, p. 13; Second Report on Competition Policy, point 17.

[3] Commission Decision of 8.1.1975: OJ L 29 of 3.2.1975, p. 26.

The main purpose of the agreement was to partition the German market between French and Taiwanese packers, the principal world producers. The German market is the world's most important consumer market. The parties had agreed on annual export quotas and on a common pricing policy, so as to eliminate any real competition between them.

In view of the gravity of the infringement of the rules of competition involved in this sharing of markets and fixing of prices to the detriment of German consumers, the Commission fined the French producers.

The Commission considered that TMPUEC was less seriously culpable in that, when negotiating with the French producers, it may have been unaware of the principles to which the Commission had recently drawn attention in its Notice in the Official Journal[1] on the compatibility of such agreements with the rules of the Treaty.

In ruling against the Franco-Taiwanese agreement, the effect of which was to limit penetration of the common market by Taiwanese packers, the Commission intended to emphasize that private associations of producers must not assume the right to restrict or regulate imports into the Community by means of agreements between undertakings which distort competition within the common market.

This was the Commission's second ruling against an agreement of this type. In 1974 it had already adopted a similar decision prohibiting the Franco-Japanese agreement on price increases for Japanese ball-bearings imported into France.[2]

Sales organizations

Marketing policy of the Instituto Brasileiro do Café

33. In the course of its action to prevent discriminatory conditions of supply and price reinforced by restrictions on the freedom of intermediaries which tend to insulate markets,[3] the Commission caused the Instituto Brasileiro do Café (IBC) to change its marketing policy in the common market.[4] IBC controls virtually all Brazil's coffee production; its sales policy in the Community is administered mainly from its Milan office. In its investigation of a complaint made in 1973, the Commission ascertained that in several respects IBC's sales policy did not conform to the rules of competition.

[1] Commission Notice on the import into the Community of Japanese goods covered by the Treaty of Rome: OJ C 111 of 21.10.1972, p. 13; Second Report on Competition Policy, point 17.
[2] Commission Decision of 29.11.1974: OJ L 343 of 21.12.1974, p. 19; Fourth Report on Competition Policy, point 74.
[3] Second Report on Competition Policy, point 41.
[4] Bull. EC 12-1975, point 2128.

The Commission was able to establish that, by the expedient of the general terms prescribed for sales from its warehouse in Trieste, one of its largest warehouses abroad, IBC prohibited the export from Italy and France of green coffee and confined the sale of roasted coffee for direct consumption to those countries. In addition, the preferential sales agreements which IBC had concluded with numerous coffee-roasting firms in the Community discriminated between competitors and, in some respects, restricted trade.

At the Commission's request, IBC has granted access to the Trieste warehouse to all traders in the EEC, who will henceforth benefit from the special terms hitherto reserved for the Italian and French markets, and has terminated the preferential agreements.

IBC's new marketing policy in the EEC permits greater competition to the benefit of consumers throughout the Community. The economic importance of these modifications is evidenced by the fact that Brazil is by far the largest coffee producer in the world and that the Community, as the second-largest world importer of this widely consumed product, imports from Brazil some 30% of its total consumption of coffee.

Joint interest in automobile safety glass

34. Anxious to terminate relations between firms where these conflict with the rules of competition, and particularly where they occur in a highly concentrated market, the Commission has continued the action it had undertaken earlier in the glass industry.[1] It has agreed to a scheme adopted by the Saint-Gobain/Pont-à-Mousson (SGPM) and BSN/Gervais-Danone groups (by far the largest glass manufacturers in continental Europe) under which they agreed to divest themselves of their joint interests in the manufacture and sale in France and Germany of safety glass for automobile.[2]

This industry had been the object of attention by the Commission because it appeared to be sheltered from competition and trade between Member States. Close links existed between SGPM and BSN—evidenced either by agreements (in the German market, Sekurit Glas Union, fully owned by SGPM, sold glass manufactured by Flachglas AG/Delog/Detag, 68% of whose capital was owned by BSN) or the creation of joint subsidiaries (in France, Securiglas, 64% of its capital being held by SGPM and 36% by BSN).

In response to Commission representations the two groups prepared a scheme of divestiture by stages which they formally undertook to put into effect under Com-

[1] Fourth Report on Competition Policy, point 79.
[2] Bull. EC 7/8-1975, point 2124.

mission supervision. On the completion of this scheme sales in the two markets will be effected separately.

The Commission expects by these means to prevent the products of competing firms being supplied through a common organization which eliminates any competition with respect to such supplies.

Linoleum export agreement

35. Following representations by the Commission,[1] four large European floor covering manufacturers (Nairn Floors Ltd and Barry Staines (Sales) Ltd in the UK, Forbo AG in Switzerland, and DLW Aktiengesellschaft in Germany) terminated a linoleum export agreement (Linoleum Manufacturers' Export Convention) without a formal decision being necessary.

The firms involved based their conduct on the principles set out in the 'Linoleum Manufacturers' Export Convention Trade Practices'. Uniform prices and discounts were fixed at regular intervals, while terms of payment and standard thicknesses were harmonized.

Although the Convention operated primarily in non-member countries, the agreement also concerned Belgium, Luxembourg, Denmark and Ireland. France, Germany, Italy, the Netherlands and the United Kingdom were expressly excluded. The parties to the agreement market the bulk of their production in their respective home markets, in which Linoleumfabriek BV, Krommenie—accounts for 95% of the Dutch market and 80% of the Belgian and Luxembourg markets; DLW is the only linoleum manufacturer in the Federal Republic of Germany and has a market share of some 90%. In the UK, Nairn Floors accounts for nearly 67% of the market, the remainder being accounted for by Barry Staines (Sales) Ltd.

By providing for uniform prices and discounts, the Convention restricted competition in violation of Article 85.

The restrictions were felt not only in the Member States directly covered by the agreement but also, in view of the market shares of the parties in their home markets, the whole of the common market. The export agreement was therefore likely to encourage restrictive practices even in those markets expressly excluded from the operation of the 'Trade Practices'.

[1] Bull. EC 4-1975, point 2110.

Agreements concerning purchases and sales

Belgian agreement on industrial timber

36. The Commission's action against the Belgian agreement on industrial timber was inspired by its concern to preserve effective competition in the supply of raw materials. In 1970, for instance, it had already issued a prohibition under Article 65 of the ECSC Treaty, accompanied by fines, in respect of agreements and concerted practices on the German scrap metal market, where iron and steel producers had fixed uniform maximum buying prices.[1]

37. When the Commission took action in this new case under Article 85 of the EEC Treaty, the agreements concluded by the Belgian trade association of users of industrial timber, of which virtually all Belgium's board manufacturers were members, were terminated without a formal decision having to be issued.[2]

Under the agreements the parties undertook not to buy timber at prices above the maxima set by the association each year for each production area, to refrain from granting fidelity rebates, to compile a list of suppliers, to exchange the information needed for preparing harmonized buying programmes and to use a standard form of contract for their purchases.

The parties claimed that the agreements were intended to prevent disruptions of the market for industrial timber from adversely affecting the execution of agreements between forestry owners and users. They were also intended to prevent excessive speculation in this market which might so damage the competitive position of Belgian users as to expose them to absorption by foreign companies.

The Commission felt unable to authorize the agreements since they restricted competition between the members of the association not only in their purchases but also, because of probable effects on commercial policy, in their sales. The agreements affected Belgium and the contiguous areas of other Member States in which timber is produced.

Agreements restricting production and sale of fruit

38. Following action by the Commission, restrictions on production and outlets imposed by agreements between French producers of fresh and canned fruit and fruit cocktails and the European subsidiaries of a major American food company have been abandoned.

[1] First Report on Competition Policy, point 10.
[2] Bull. EC 10 1975, point 2104.

Certain provisions of these agreements were in breach of Article 85. In particular, the parties had agreed to restrict production by undertaking not to increase the areas of land given over to the growing of peaches for canning. Furthermore, the freedom of the French producers to decide where to sell their produce was restricted to the extent that they were required to transfer a certain percentage of their fresh fruit production to the other party and were prevented from selling their fruit to other firms processing similar fruits.[1]

Although the agreements did help to improve distribution by giving the French producers access to the American company's international distribution network, an exemption could not be given because the agreements also imposed restrictions which were not indispensable for attaining such an improvement of distribution.

In reply to a statement of objections from the Commission, the parties decided to terminate their agreements, so that the fruit producers concerned are now free to adapt to market conditions in planning production and sales policies.

Information agreements

Non-ferrous semimanufactures

39. Following Commission intervention, the German companies Kabel- und Metallwerke Gutehoffnungshütte AG and Wieland Werke AG and the French company Tréfimétaux SA terminated their information agreement covering semimanufactures of copper and its alloys, and substitute and processed products (with the exception of cables).[2]

The agreement was to have been implemented in two stages and, in the final stage, provided for close cooperation on matters connected with production, marketing and general business strategy. At the initial stage there were to be mutual assistance and the regular exchange of information on research and development, production, sales promotion, raw material supplies, commercial management and data processing and general business strategy. Although there were isolated instances of deliveries between the firms in order to fill out their ranges of products, cooperation was essentially limited to the exchange of information.

[1] In 1972 a Commission investigation culminated in the termination of a supply agreement between the world's largest manufacturer of mattress ticking and an engineering firm producing modern automatic looms used for its manufacture. For a three-year period the supplier had agreed not to sell looms to any competitor of the customer without the customer's consent (Bull. EC 10-1972, Part 2, Chapter I, point 18).

[2] Bull. EC 2-1975, point 2107.

In considering the case the Commission came to the conclusion that the firms concerned were an oligopoly with regard to a number of the products covered by the agreements, so that the extent of the obligation to exchange information contained in the initial stage of the agreement might have led the parties to act in a manner incompatible with Article 85(1). The Commission further considered that to exempt the agreement under Article 85(3) would enable the firms to extend their cooperation to areas where it would be impossible for the Commission either to foresee or to regulate the resultant effects on competition.

In view of the statement of objections and of intervening changes in the general economic situation, the firms abandoned their cooperation agreement and their application for exemption. The parties intend to seek new forms of cooperation which will be compatible with the rules of competition in the EEC Treaty. The Commission will therefore follow developments and keep this market under surveillance.

Ships' cables

40. Similarly in the course of proceedings brought by the Commission, the Association of Ships' Cable Manufacturers, with headquarters in Wassenaar, Netherlands, embracing seventeen firms together accounting for some 80% of Community production of ships' cables, ceased to recommend prices and to compile delivery schedules.[1]

These practices, which were part of an information exchange system organized by the Association, substantially restricted competition in the common market. In a number of countries domestic cable manufacturers had uniformly raised prices and foreign manufacturers had refrained from making competitive offers.

The activities of the Association are now confined to a number of technical fields such as standardization, the introduction of new types of steel and the maintenance of contacts with classification societies and shipowners.

41. Commission action on these agreements follows the measures taken in the *Dutch Sporting Cartridges Agreement* case,[2] in which a collective obligation to notify prices set up an open price system contrary to Article 85. The Commission's action is also in accordance with a ruling by the Court of Justice on the recommendation of resale prices in its judgment concerning the Dutch Cement Dealers' Association.[3]

[1] Bull. EC 9-1975, point 2107.
[2] Third Report on Competition Policy, point 55.
[3] Second Report on Competition Policy, point 23.

National market protection agreements

Dutch agreement concerning perfume, toiletry articles and cosmetics

42. As part of its action against national agreements which insulate home markets,[1] the Commission adopted a Decision prohibiting those provisions which restricted competition in the conditions of sale for the Dutch market of perfumes, toiletry articles and cosmetics established by Bomee-Stichting, a trade association.[2]

Most Dutch manufacturers and sole distributors are members of this association and sell their products through some eighty wholesalers and several thousand retailers who have accepted the sales conditions fixed by the association. All major brands of world repute are represented, and their aggregate share of the market is considerable: approximately 90% for perfumes, 70% for cosmetics and 40% for toiletries. Half of the products involved are imported into the Netherlands from other Member States.

In response to representations by the Commission and by the Dutch authorities — under Dutch legislation on resale price maintenance agreements — Bomee-Stichting gradually relaxed its original distribution and sales conditions. In particular, the general sales conditions were modified to allow wholesalers and retailers to obtain supplies direct from other Member States and to facilitate resale outside the Netherlands. However, the collective system of reciprocal exclusive sale and purchasing commitments which the association maintained in the Netherlands still formed a closed and rigid ring guaranteeing the member's market positions and denying free access by other dealers to the distribution system.

The Commission therefore required Bomee-Stichting to delete the restrictive provisions which it was still enforcing on the sale in the Netherlands of products imported by its members, since these provisions raised barriers to entry to the Dutch market for manufacturers and dealers in other Member States.

Dutch agreement concerning stoves and heaters

43. The Commission also adopted a Decision requiring Haarden- en Kachelhandel, an association of most Dutch manufacturers, importers, wholesalers and retailers of stoves and heaters, not to seek judicial enforcement of certain clauses of the agreement between its members, which agreement was found to infringe Article 85.[3]

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[1] Earlier decisions include those on ASPA (Association syndicale belge de la parfumerie) (First Report, point 10); Dutch Cement Dealers' Association (Second Report, point 23); Dutch Sporting Cartridges Agreement (Third Report, point 55).
[2] Commission Decision of 21.11.1975: OJ L 329 of 23.12.1975, p. 30.
[3] Commission Decision of 3.6.1975: OJ L 159 of 21.6.1975, p. 22.

The agreement imposed a collective and reciprocal obligation of exclusivity and resale price maintenance. It extended to over 90% of the Dutch market and made a major contribution to consolidating existing distribution structures and market shares in the trade in heating appliances, of which a large proportion was imported from other Member States.

The members dissolved their association on 1 January 1973. However, legal proceedings in two cases were still pending. These had been instituted by the Haarden- en Kachelhandelbureau in 1969 and 1971 against a wholesaler and a retailer who had not complied with certain clauses of the agreement, particularly by selling to unauthorized firms or to firms excluded from the distribution network. The defendants refused to pay the fines provided for by the agreement. After proceedings had commenced in the Dutch courts, each defendant made an application to the Commission. The court at Haarlem decided to adjourn the proceedings pending a decision by the Commission.

The Commission Decision required the Haarden- en Kachelhandelbureau to refrain from attempting, whether by legal action or other means, to collect fines imposed for alleged infringements of the agreement committed while it was still being applied. Apart from its prohibition of an agreement covering the entire territory of a Member State and reinforcing the barriers between national markets, the Commission Decision found that an arbitration clause in a restricted agreement may fall within Article 85 where it hinders undertakings from establishing a position in the market by competitive effort.

§2 — Encouragement of permitted forms of cooperation

Nuclear fuel reprocessing agreements

44. Considering that cooperation at a vital stage of the nuclear fuel cycle should be promoted,[1] the Commission exempted two reprocessing agreements notified in this field.[2]

(a) The first Decision authorizes an agreement between the two common markest operators of large-scale plants for the reprocessing of nuclear oxide fuels — British Nuclear Fuels Ltd (BNF) and the French Commissariat à l'Energie Atomique (CEA) — and an undertaking which has decided to build such a plant in the next decade — Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH (KEWA). The main

[1] The purpose of reprocessing nuclear fuels is to recover the fissile materials (uranium-235 and plutonium) which are still present after irradiation in a reactor and can be reused in nuclear fuel fabrication.

[2] Commission Decisions of 23.12.1975, OJ L 51 of 26.2.1976, pp. 7 and 15. See also Fourth Report on Competition Policy, point 84.

object of the agreement is the coordination of investment by the three parties, each party agreeing not to invest outside the programme prescribed by the agreement for the first few years and subsequently to be extended. The agreement also created a joint subsidiary, United Reprocessors Gesellschaft mbH (URG), for the joint marketing of the reprocessing services offered by the three parties and the distribution of the reprocessing workload between their plants.

(b) The second Decision authorizes a related agreement between four German firms — Bayer, Hoechst, Gelsenberg and Jukem — to establish KEWA as a joint subsidiary with equal shareholdings, through which they are to take a joint shareholding in URG. Under the first agreement, the four firms agree that they will not at present build the plant which they have planned for the future.

45. In adopting these Decisions the Commission considered the particular characteristics of the nuclear oxide fuel reprocessing industry, which are that the industry is new, that costs decrease sharply according to the size and load factor of the plant, that the industry is at a critical stage of the nuclear fuel cycle and is therefore regarded as economically vital by governments, and that there are numerous important unknown factors involved in developing technical processes and in solving the ecological problems arising from the storage of radioactive waste.

In this context the URG agreement, with its coordination of investment, centralization of the supply of services and pooling of research work, aims to organize the reprocessing industry at a European level as rationally as possible in its economic and technical aspects and to prepare for the establishment of effective competition. In the absence of the agreement, users would most probably have suffered considerable harm through the creation of unprofitable capacities financed from public funds and through dispersal of research work. It is for this reason that the agreement received the support of the three Governments concerned. In particular, the agreement satisfied the concern of the German Government that German firms be able to enter this market without being obliged to build a domestic plant at short notice. Likewise it has been recognized that coordination of investment is essential for a period enabling each of the plants covered by the agreement to reach an economically satisfactory load factor before a new plant comes on stream.

Although the Commission is aware that, during the transitional period, URG will hold a strong position as supplier of reprocessing services in Western Europe, the Commission authorized the URG agreement under Article 85(3) since the agreement does not afford those concerned the means of eliminating competition: the certainty that the parties will become effective competitors after a period fixed by the Decision (by 1968 at the latest) must affect their present conduct. In any event, their customers, primarily electricity generating companies, have sufficient economic power to have a similar effect on the parties' conduct since competition would be in their best interests. No general precedent is hereby set as regards the interpretation of the words 'elimi-

nating competition' in Article 85(3). The reprocessing industry is a new advanced-technology industry posing safety and environmental problems and is likely to come under total State control. These highly specific aspects, set out in detail in the reasoning of the Decision, severely limit the scope of any precedent.

46. The KEWA agreement will enable the firms concerned to proceed as rapidly as possible to the industrial stage of nuclear oxide fuel reprocessing by enabling them to pool their activities in research and development and to transfer technology between them in a new industry which is of such a kind that isolated effort by one firm alone is ineffective. The Commission recognized that the agreement restricts competition between four potential competitors who agree to operate exclusively through their joint subsidiary. However, the Decision prescribes a term — the end of 1986 — for the authorization. Furthermore, when the URG agreement expires (by the end of 1986 at the latest) BNF, CEA and KEWA will be in effective competition.

47. In view of the strong market position which URG will hold during this transitional period, the Commission attached conditions and obligations to its Decision so that it can monitor URG's commercial policy and ensure that users enjoy a fair share of the benefit of the agreement.

Bayer/Gist-Brocades agreement

48. The Commission authorized long-term specialization agreements relating to penicillin production between two large European drug manufacturers, Bayer in Germany and Gist-Brocades in the Netherlands.[1]

In this industry distinctions must be made between different market levels for the various manufacturing stages: that of raw penicillin, of 6 APA (6 aminopenicillanic acid) an intermediate product (obtained by biological or chemical process), of processing into ampicillins and other semisynthetic penicillins, and of the finished product (the various branded preparations sold to hospitals and dispensing chemists). Before they entered into the agreements, Bayer and Gist-Brocades were large manufacturers operating independently at these various stages of manufacture. Since raw penicillin can be processed into an intermediate product or into a branded preparation for direct sale, and since the intermediate product is sold as such to outsiders while semisynthetics are sold in bulk, the various manufacturing stages each constitute a separate market.

In order to increase production, the two firms entered into a long-term agreement under which raw penicillin manufacture was undertaken mainly by Gist-Brocades, with its superior experience of fermentation techniques, while Bayer was made res-

[1] Commission Decision of 15.12.1975: OJ L 30 of 5.2.1976, p. 13.

ponsible for the production of intermediate products, partly by its own biological process and partly by the chemical process developed by Gist-Brocades. Gist's raw penicillin output is largely for processing into an intermediate product by Bayer, the remainder being processed into traditional penicillin preparations by Gist itself. Bayer uses part of its 6 APA production for its own purposes and processes part under subcontracting agreements with Gist-Brocades.

49. The firms have thus achieved a measure of specialization, supported by reciprocal long-term supply contracts and arrangements for joint investment. In view of their size and technical knowhow, each could have manufactured both products but in fact have decided provisionally to abandon part of their business. Competition between the parties in research is also restricted. The agreements are therefore within Article 85(1). However, after amendments had been made, the Commission was able to regard this specialization as deserving exemption.

Where a production specialization agreement is concluded between two large firms both having good market knowledge and financial power, it cannot automatically be assumed that each is incapable of acting alone, without help from a major competitor, in bearing the costs and economic risks inherent in extending its production capacity so as to rationalize manufacture. In this case, however, the Commission concluded that production could be more economic as a result of the specialization. Bayer, using a low-quality and low-yield raw penicillin strain, needed the assistance of a firm experienced in fermentation techniques in order to improve its product. For technical reasons it was more rational to contribute to financing the extension of production capacities at Gist-Brocades and to convert its own plants to the manufacture of the intermediate product on a larger scale.

Most important, once amended, the agreements contained no restrictions which were not indispensable to the attainment of their objectives. The two parties retain full freedom to decide how to use and extend their production capacities and, apart from their firm supply commitments, to decide how much to produce. Only should one of the companies wish the other to supply it with quantities exceeding the capacity of the jointly financed plant will the other have to make an appropriate contribution to financing the extension.

50. Before amendment, the agreements contained no such provision for independent action in the market outside the specialization arrangements. The plants were to be transferred to joint subsidiaries in which the two parties were to own equal shares and appoint an equal number of directors. The inevitable result would have been joint control over production and investment. Such an extensive restriction of competition between the two firms could not have been regarded as necessary to their specialization.

This is the first case in which firms have of their own accord abandoned a plan to form joint subsidiaries in response to objections by the Commission. In a market having various levels it was important that, despite the long-term specialization, the firms remain independent of each other in respect of the quantities to be manufactured and the investments to be made.

In fixing the period of validity of the exemption at eight years, the Commission took account both of the extensive investment required in order to operate the specialization scheme and of the oligopolistic structure of the market. Conditions were attached to the Decision so that the Commission would be able to monitor the practical effects of cooperation, particularly the position of other firms on the market, and to verify that competition is not affected by financial connections or interlocking directorates either between the two parties or between them and other persons in this market.

Expo Dental rules

51. In the field of fairs and exhibitions[1] the Commission, having caused the restriction on participating in other exhibitions to be relaxed, authorized the rules governing dental equipment exhibitions (Expo Dental) organized in Italy by UNIDI (Unione nazionale industrie dentarie italiane), to which almost all the manufacturers of dental equipment in Italy belong.[2]

The Commission had received complaints against the conditions governing admission for exhibitors to an Expo Dental which was to take place in Genoa. The rules of the exhibition stated that all manufacturers, representatives of foreign suppliers and dealers who wished to exhibit were to refrain from exhibiting their products at other similar events in Italy during the twelve months preceding Expo Dental. As Expo Dental had been an annual event since 1971, it was made virtually impossible to exhibit dental equipment in Italy at both Expo Dental and other exhibitions.

The complainant exhibitors were in fact allowed to participate both in the Genoa Expo Dental and in another exhibition held the same year in Italy. UNIDI then amended the rules so that the Expo Dental is now held every eighteen months and manufacturers and their agents are allowed to show their goods throughout Italy during the nine months following an Expo Dental. A restriction on exhibiting during the nine months before an Expo Dental still exists, but the Commission considered this restriction could be exempted under Article 85(3) since the remaining restriction on the freedom of exhibitors was no more extensive than was required for the rationalization of participation in fairs and exhibitions.

[1] See First Report on Competition Policy, point 42.
[2] Commission Decision of 17.7.1975: OJ L 228 of 29.8.1975, p. 17.

This ruling is consistent with previous decisions[1] on machine tools and textile machinery in that it is intended to establish a balance between the period of restriction and the period of freedom to exhibit.

This Decision is of importance not only to those concerned in this particular case but also as a general guide on the terms for participation in dental equipment exhibitions in other Member States, notably in the United Kingdom and Germany.

Intergroup Trading

52. Pursuing its policy on joint purchasing arrangements,[2] the Commission issued a Decision authorizing the national Spar chains in various countries of Europe to form Intergroup Trading, Amsterdam, through which they may make purchases in countries other than their own.[3]

The Spar chains are voluntary chains using the Spar trademarks and emblem, to which 180 wholesalers and some 35 000 retailers in Europe are currently affiliated. Their main business is in food products.

Intergroup, which acts primarily as an intermediary, was authorized by the founder Spar chains and affiliated wholesalers to conclude supply contracts for products bearing Spar trademarks. It can do business in these products for the Spar chains only, since only they are entitled to market them. But in respect of other products it may act for any customer it wishes. The Spar chains for their part are not obliged to buy from abroad through Intergroup. There is no form of sales coordination between Intergroup and its customers, who are free to determine their own resale prices.

Apart from the openness of the agreement, the Commission also took account, in giving negative clearance, of the fact that Intergroup's business is only on a small scale. It concluded that the agreement does not at present have any perceptible effect on the position of suppliers of the relevant products and is unlikely to do so in the foreseeable future; it therefore found that it had no grounds for action under Article 85(1) of the EEC Treaty.

The consumer benefits by the cooperation between Intergroup customers, and particularly the Spar chains, in that retailers working together can enter foreign markets more easily and import on better terms which can then be passed on to the consumer.

The Commission's action in approving this open cooperation agreement also shows that, from the point of view of its competition policy in general, the Commission is

[1] Commission Decisions of 13.3.1969 (European Machine Tool Exhibitions) and 24.9.1971 (CEMATEX): OJ L 69 of 20.3.1969, p. 13, and L 227 of 8.10.1971, p. 26.
[2] See First Report on Competition Policy, point 40.
[3] Commission Decision of 14.7.1975: OJ L 212 of 9.8.1975, p. 23.

paying attention to agreements between purchasers, which can be prohibited under Article 85 if they entail appreciable restrictions of competition. But in this case the Commission concluded that the scope for choice on the part of suppliers of the relevant products was not appreciably restricted.

Société française des minerais préréduits

53. Under Article 65 of the ECSC Treaty the Commission authorized [1] an agreement between several French steel-producing companies concerning the joint buying of prereduced iron ore through Société française des minerais préréduits SA (SFMP). The participating firms account for nearly all the crude steel manufactured in France. Prereduced iron ore is a high-quality substitute for scrap, especially in electric steel furnaces. The processes are relatively new, and the Federal Republic of Germany is the only Community country where prereduction of iron ore has been used industrially so far. The main aim of SFMP will be to negotiate supply contracts for prereduced iron ore and possibly to set up and operate direct reduction plants. In its Decision the Commission stated that it would be desirable for prereduced iron ore to be made available in larger quantities, either by importing it from outside the Community or by producing it in plants to be set up inside the Community, so as to make up part of the serious shortage of scrap which is likely to occur in the medium term.

Scrutiny of the agreement revealed that, as regards joint buying, it satisfies the tests of Article 65(2). It will enable the member firms to order greater tonnages and thereby cut their supply costs. The medium-term contracts will enable them to stabilize supplies and prices, particularly in times of shortfall. The Commission also took account of the fact that the agreement does not give SFMP exclusive buying rights and does not give the firms concerned the power to determine the general level of prices or production of prereduced iron ore, this being determined rather more by the world supply and demand situation and by current actual and relative prices for scrap and pig iron.

As regards the possibility of building and operating direct reduction plants, the agreement is only an outline agreement and the details will have to be filled in before the Commission can decide finally whether it is compatible with Article 65(2) or, as the case may be, Article 66(2). Since the Commission needs to be in a position to monitor developments in cooperation between steel firms regarding the joint buying of prereduced iron ore, the following conditions were applied to its authorization:

— the firms concerned must notify the Commission of any plan to set up or operate a direct reduction plant, any change in the number of shareholders in SFMP and any change in the agreement or in the memorandum and articles of association of SFMP;

[1] Commission Decision of 3.7.1975: OJ L 249 of 25.9.1975, p. 22.

— any such plans or changes may not take effect until the Commission is satisfied that they are within the terms of the existing authorization or until the Commission has separately authorized them.

§ 3 — Article 85 applied to distribution

SABA

54. The Commission gave exemption for the various agreements forming the selective distribution system operated in the EEC by SABA, Villingen-Schwenningen, after it had been brought into line with the requirements of Article 85 at Commission instigation.[1]

SABA, a subsidiary of General Telephone & Electronics Corp., New York, manufactures radios, television sets and tape recorders. It markets them through a network of selected dealers in all the Community countries. In Germany SABA equipment is sold through wholesalers and retailers, and in the other EEC countries through sole distributors and retailers.

To organize its common market sales along uniform lines, SABA has entered into standard contracts with its dealers at the separate levels of distribution. These contracts govern matters such as the conditions for approval as a SABA dealer and the distribution channels to be followed.

There are two aspects to the approval process:

— Any dealer wishing to retail SABA equipment must keep a specialized shop or, in the case of a department store, have a department specializing in the sale of radios, television sets and tape recorders; he must have suitable premises, employ trained staff and be capable of providing the after-sales and guarantee services prescribed by SABA.
— Of firms meeting these requirements, SABA appoints only those which further undertake to engage in certain sales promotion activities and to meet certain sales targets. All SABA dealers must attain an 'adequate' turnover on SABA equipment, and SABA decides what is meant by adequate in line with the size, local importance and reasonable sales possibilities of the relevant firm. Account is also taken of SABA's current market share and of foreseeable developments. SABA dealers must further undertake to stock the SABA range as fully as possible in quantities reflecting this turnover level. Those SABA dealers (sole distributors, wholesalers and a few large retailers) who obtain their supplies direct from the manufacturer are obliged to enter into six-month supply contracts for fixed quantities determined by agreement and to take delivery of the goods ordered at the appropriate dates.

[1] Commission Decision of 15.12.1975: OJ L 28 of 3.2.1976, p. 19. An interested third company has brought a case before the Court of Justice for the annullment of this decision.

The standard contracts also ensure that SABA equipment can be resold only by appointed SABA dealers. SABA undertakes not to supply outsiders, and its dealers are prohibited from supplying other dealers outside the SABA system.

There are no restrictions on sales between members of the SABA network. All dealers are free to set their own resale prices and SABA wholesalers and retailers may also distribute competing products.

55. The Commission's view is that SABA's distribution system is anticompetitive because by reason of the contractual obligations by SABA and its dealers a large number of dealers satisfying all the general technical and professional requirements for the sale of home electronics equipment are excluded from becoming SABA dealers and dealing in SABA equipment. The contracts go beyond straightforward specialist trade arrangements operating on objective criteria without discrimination (*Fachhandelsbindung*), which would be irreproachable from the competition viewpoint. Their ultimate effect is qualitative selection of suitable dealers, with those who are unable or unwilling to engage in special sales promotion activities being excluded.

In this case, however, the Commission was able to give the exemption requested since the distribution system as a whole helps to rationalize production and distribution, with the consumer reaping the ultimate benefit. The SABA distribution system is based on close two-way cooperation between the manufacturer and his wholesalers and sole distributors. The result is cost savings through improved production and sales planning; at the same time the consumer is assured of the ready availability of high-quality equipment meeting market demand and his own specific requirements. Furthermore, the consumer can be sure of obtaining satisfactory after-sales service for these technically complex goods.

So that it can keep a close watch on the practical implications of this selective distribution system and act against any abuse, the Commission attached a condition to its Decision: SABA must report to the Commission each year those cases where it refuses to appoint a firm as a SABA dealer or terminates such an appointement, refuses to conclude a supply contract or withholds supplies from such a dealer.

56. The main importance of this Decision for competition policy in general lies in the fact that it gives the radio and television industry guidelines so that they can adjust their distribution systems to conform to the rules of competition in the EEC Treaty. The Decision also sets basic criteria for establishing the circumstances in which the selection of dealers, which is common to so many distribution systems, is to be regarded as anticompetitive for the purpose of Article 85(1).

Perfume industry

57. In two test cases the Commission had previously set out its views on the selective distribution systems applied in the perfume industry. In view of the characteristics of the market for perfumes and beauty and toiletry products in the EEC (many competing firms of similar size, each holding a fairly modest market share), the Commission felt that it need not intervene against the restrictive selection of sales points provided that all restrictions tending to partition the market were abandoned. The Commission indicated that this solution could be adopted for the industry as a whole if individual firms would follow the guidelines suggested.[1]

58. The matter is now well on the way to being settled. Having stated its position in these terms, the Commission immediately began considering a large number of notifications received from firms in the industry. More than 120 cases involving forty or so firms have been examined. The firms have been invited to delete those restrictive clauses to which the Commission has taken exception in general terms and also to delete any other clause with like effects in the contracts governing their sales organizations. All the firms contacted have stated that they are willing to make the changes called for by the Commission and have submitted drafts of the contracts which they propose operating with their distributors. These draft contracts can all be regarded as satisfactory from the competition angle. As each of these firms informs the Commission that it is now operating the new contract, it will be informed that the Commission no longer has any grounds for action and is closing its file in the case.

New sales organizations have so far been put into operation by Guerlain, Chanel, Barbara Gould, Orlane (formerly Jean d'Albret), Parfums Caron and Bourjois.

59. Here, then, for the first time, the Commission will be in a position to apply a uniform general arrangement throughout an entire industry, the perfume industry, without having to issue formal decisions.

Motor industry

60. In its Decision on the distribution system operated by BMW in Germany, the Commission had suggested limits within which certain clauses in restraint of competition in distribution agreements in the motor industry might be acceptable.[2]

61. The last year has seen progress in bringing such agreements into line with Article 85(3). A number of car manufacturers, in laying down their sales policy, not

[1] Fourth Report on Competition Policy, point 35.
[2] Fourth Report on Competition Policy, point 86.

only determine what type of contract they will themselves use on their home and export markets but also influence the distribution contracts operated in other Member States by independent importers and by their own associated or subsidiary companies. This influence can be seen in the wording of anticompetitive clauses in these agreements. At the Commission's instigation a series of sales systems operating throughout the common market have now been adjusted.

The Commission has also taken action in fourteen cases where parallel importers were having difficulty in dealings from one Member State to another.[1] The barriers to parallel imports which were found to exist have all been removed at the Commission's insistence.

§4 — Article 85 applied to agreements concerning industrial and commercial property rights

62. In line with principles enunciated by the Court of Justice and with its own practice, the Commission has continued to oppose any attempt to keep national markets separate through manipulation of industrial and commercial property rights, especially trademarks. There have also been developments in the assessment under Article 85 of clauses frequently found in patent licensing and knowhow agreements. In particular, a decision has been issued for the first time against an export ban imposed on a licensee.

Admissibility of clauses in patent licensing agreements

AOIP/Beyrard

63. The Commission issued its first 'cease and desist' decision relating to a patent licensing agreement.[2] This prohibits, as incompatible with Article 85, a number of clauses frequently found in patent licensing agreements. Four of the restrictions (no-challenge clause, non-competition clause, automatic extension of the duration of the agreement, payment of royalities even if the patent is not exploited) were held not to be capable of exemption, whereas two others (exclusivity and export ban) might have been exempted in different circumstances.

The Decision concerns a licensing agreement between the Association des Ouvriers en Instruments de Précision (AIOP), the licensee, and an inventor — Mr Beyrard[3] — relating to existing and future patents for a number of liquid variable resistor electrical devices used principally in automatic starters for electric motors.

[1] See also point 25.
[2] Commission Decision of 2.12.1975: OJ L 6 of 13.1.1976, p. 8.
[3] The Decision establishes that a private inventor is an undertaking for the purpose of Article 85 if by licensing his patents he has commercially exploited his invention.

64. The agreement contained the following clauses which were regarded as within the prohibition and unable to qualify for exemption because of their harmful effects on technical progress.

— Every newly lodged improvement patent extended the duration of the agreement. The Commission could not accept an extension of a patent licensing agreement beyond the duration of the most recent patent held at the time of the agreement, if the extension was automatic or was imposed unilaterally. The parties remained free, however, to enter into a subsequent agreement to extend the term of the original licence.

— The licensee was obliged to pay full royalties even after the expiry of the original patent and even if he was not exploiting any of the improvement patents. Litigation was initiated in the French courts on the subject of this clause, for on the expiry of the original patent the licensee decided to cease paying royalties whereas the licensor demanded payment until the expiry of the latest improvement patent. This clause could not be authorized, for its effect was to increase production costs with no economic justification and to weaken the licensee's competitive position. If subsequent improvement patents are exploited after expiry of the original patent, Community law does not prevent national law from recognizing the right to a royalty reflecting the economic value of these patents as compared with that of the patents existing at the date of the agreement.

— The licensee was prohibited from challenging the validity of the licensor's patents. The Decision prohibits the no-challenge clause because it deprives the licensee of a means of removing an obstacle to his freedom of action. In any case it is not in the general interest that anyone concerned, including the licensee, be denied the opportunity to challenge patents wrongfully issued.

— The two sides were to refrain from competing with each other in the relevant markets. The Commission regarded this as a brake on technical progress, because the development of new and possibly better manufacturing processes in related areas was thereby made unprofitable.

65. The agreement contained two more clauses to which the Commission took exception:

— the licensee could not export to countries where the licensor had granted licences or assigned his patents to other firms (export ban);

— the licensor could not issue a manufacturing or sales licence to any other licensee in France (exclusivity).

The Commission considered that the licensor's obligations resulting from the grant of exclusive manufacturing and sales rights to the licensee were not of the essence of the patents and that the exclusive grant was caught by the prohibition in Article 85(1). However, the Commission has already stated that in certain circumstances this

restriction may be granted an exemption under Article 85(3). In two earlier cases,[1] exclusive manufacturing licences were exempted because they assured the licensees of an adequate return on their investment.

In more general terms, an exclusive manufacturing and sales licence of limited duration qualifies for exemption if, for instance, it provides the licensee with an incentive to penetrate a geographic or product market not yet worked by the licensor.

With the regard to the export ban, the Commission has reinforced its stand against a growing tendency by declaring that the protection of one licensee against competition from another licensee is not necessary to guarantee the existence of the patent right. Such bans are therefore caught by Article 85(1) and can be let through only if the tests of Article 85(3) are satisfied, as where a licensee is to be temporarily protected against the licensor or against other licensees and this is necessary in order to reduce the risk inherent in initial investments on a new market.

In this case the exclusivity clause and export ban were not allowed through the net because they formed an indivisible part of a set of restrictions which could not be exempted as a whole.

Kabelmetal/Luchaire

66. In pursuance of its policy of encouraging the grant of patent and knowhow licences where they provide for the transfer of technology under suitable conditions and where the parties remain free to sell throughout the common market, the Commission gave exemption to an exclusive patent and knowhow licensing agreement between the German firm Kabel- und Metallwerke Gutehoffnungshütte AG (Kabelmetal) and the French firm Ets Luchaire SA.[2]

The agreement covers the use of Kabelmetal's cold extrusion processes, the main principles of which were covered by secret patents registered in Germany before the war; these have since expired. Under the agreement Kabelmetal gave Luchaire an exclusive licence for the manufacture in France of extruded steel components (pistons, shock-absorbers, tubes) for the electrical engineering industry in general and the motor industry in particular, coupled with a non-exclusive licence for the sale of these goods in all common market countries.

The Commission exempted the agreement from the prohibition in Article 85 on the grounds that the exclusivity it granted would help to promote technical and economic progress by providing the licensee with an incentive to work on the development of

[1] *Davidson Rubber:* OJ L 143 of 23.6.1972; see Second Report on Competition Policy, point 46. *Kabelmetal:* OJ L 222 of 22.8.1975; see point 66.
[2] Commission Decision of 18.7.1975: OJ L 222 of 22.8.1975, p. 34.

the licensed techniques although this required new investment. The Commission also took account of the fact that the firms concerned had deleted all the other restrictive clauses in the agreement—concerning the licensee's obligation to refrain from exporting to other EEC countries, to assign to the licensor property rights in any improvements to the processes and to refrain from challenging the patents.

The Commission drew particular attention to two provisions of the agreement: the most-favoured-licensee clause (whereby the licensor undertakes not to grant other licensees better terms than those granted to the first licensee) and the grantback clause (whereby the licensee undertakes to grant the licensor or other licensees licenses in respect of improvements it may make to the basic processes). In certain circumstances, particularly on an oligopolistic market, these clauses might be anticompetitive, but this was not the case here since the clauses could not be regarded as having perceptible effects on market conditions in the EEC.

Dutch drainage equipment manufacturers (Bronbemaling/Heidemaatschappij)

67. In a provisional Decision under Article 15(6) of Regulation No 17, the Commission stated that in its opinion a clause in a patent licensing agreement relating to drainage of the water table, wherby the patentholder undertook not to grant additional licences without the prior consent of the majority of the parties — himself and the existing licensees — was caught by the prohibition in Article 85(1) and could not be exempted under Article 85(3).[1]

The Decision was addressed to five Dutch firms in the drainage industry, one of them being the patentholder in question — Heidemaatschappij Beheer NV. The facts were as follows.

In 1965 and 1967 Heidemaatschappij applied to the Dutch Patent Office for the grant of a patent in respect of a process for the installation of a well-point drainage system consisting of filter tubes connected to pumps and of a well-point drainage system installed in this way. The process is designed to lower the water table and is of considerable economic importance, especially in the Netherlands, where both public authorities and private firms awarding contracts often specify that it must be used for major projects. The process is also used for construction projects extending beyond Dutch frontiers, such as long-distance oil and gas pipelines.

The four other firms had opposed the grant of the patent to Heidemaatschappij on the ground that the process was already in general use. However, Heidemaatschappij reached an agreement with these firms, granting a licence to each of them and also undertaking to issue no further licence to other firms without first obtaining the consent of at least two of the four.

[1] Commission Decision of 25.7.1975: OJ L 249 of 25.9.1975, p. 27.

When another Dutch firm applied for a licence in 1971, the licensees withheld consent. The same occurred when a second firm, Zuid-Nederlandsche Bronbemaling, also applied for a licence in 1973.

The Commission's provisional Decision was issued in response to a complaint filed by Bronbemaling.

Market fragmentation through exploitation of industrial and commercial property rights

Agreement between two knitting-yarn manufacturers

68. In a provisional Decision under Article 15(6) of Regulation No 17, the Commission stated that in its opinion a market-sharing agreement between two knitting-yarn manufacturers, wherby each undertook not to use its own trademark on the other's home market, could not be authorized even if the two trademarks (Sirdar and Phildar) could be regarded as being so similar as to be capable of confusion.[1]

In 1964 Sirdar Ltd, Wakefield, Yorkshire, and Les Fils de Louis Mulliez SA, Roubaix, agreed that the former would not market its knitting yarn in France under its Sirdar trademark while the latter would refrain from marketing its Phildar yarn in the United Kingdom. The agreement was notified to the Commission in 1973.

Following United Kingdom accession to the European Communities, the French firm decided that the agreement was void as infringing the rules of competition in the EEC Treaty and began selling yarn on the British market under its Phildar trademark. Sirdar thereupon brought an action in the High Court in London, based *inter alia* on the 1964 agreement.

Shortly after the adoption of the provisional Decision by the Commission, the High Court dismissed Sirdar's application for an interim injunction restraining the French firm from using its Phildar trademark in the United Kingdom.

Standard agreement for the protection of designs and models

69. In response to representations by the Commission a standard agreement drawn up by the Stichting Instituut voor Industriële Vormgeving (an Amsterdam industrial design institute) has been terminated by the thirty or so Dutch firms party to it.[2] This was an agreement between competing firms relating to a number of products —

[1] Commission Decision of 5.3.1975: OJ L 125 of 15.5.1975, p. 27. Sirdar Ltd has applied to the Court of Justice for annulment of this Decision on grounds of a procedural defect.
[2] Bull. EC 3-1975, point 2112.

including furniture, lighting equipment, tableware and heaters — which could be protected by registered designs. Under the agreement an office was to be set up where each of the firms could register its designs and models. The firms undertook not to manufacture, sell or import products similar to the designs and models they had registered with the institute.

Some of the clauses of the agreement were clearly market-sharing clauses, since they protected products which would not normally be protected under Dutch law. They therefore ran counter to the economic integration aimed at by the EEC Treaty. The agreement also extended the protection of the registered design for products which were legally protected to cover cases which would have constituted disguised restrictions on trade between Member States and thereby distorted the free play of competition in the common market.

As a consequence of the termination of this standard agreement, there is once again freedom of movement for goods covered by designs and free competition between their manufacturers on the Dutch market; the protection of designs and models is currently provided by the Benelux uniform law.

Abandonment of an action for trademark infringement

70. The Commission was able to terminate proceedings which it had initiated in response to another complaint; here, too, the point was to decide whether the exercise of trademark rights was being used in order to fragment the market.[1]

The case began with a complaint filed by Ets Léopold, Paris, against AFS, Strasbourg, and Kamei, Wolfsburg, Léopold were distributing in France Porotherm and Avus-Porotherm branded steering-wheel covers purchased in Germany from one of Kamei's wholesalers, Kamei holding the trademarks there. AFS, which held the trademarks in France, brought proceedings for infringement in the French courts in order to stop these imports. Léopold contended that the registration and use of the marks in France by AFS, despite the allegations of AFS and Kamei, constituted the object, means or consequence of a restrictive agreement between those companies.

The Commission considered that the existence of an agreement, or at least a concerted practice, falling within Article 85 was quite possible in view of the following facts:

— Kamei had not opposed registration of identical trademarks applied for subsequently by AFS in France to designate the same products;
— it could be presumed from the name Avus (a motor-racing track in Berlin) that the mark was of German origin;

[1] Bull. EC 11-1975, point 2122.

— AFS and Kamei used virtually identical packaging and presentation for the product;
— before it began making steering-wheel covers in France, AFS bought them from Kamei, and since then it had stocked up with materials from Kamei and used its patented manufacturing processes.

However, while proceedings were still in progress, the two firms reached a settlement to the effect that the sale in France of products imported by Léopold would no longer be opposed in view of the Court of Justice's rulings concerning the free movement of trademarked goods.[1]

§5 — Article 86 of the EEC Treaty and Article 66(7) of the ECSC Treaty applied to abuse of dominant positions

Chiquita

71. The Commission adopted an important Decision finding that United Brands Co. (UBC) had been abusing its dominant position in respect of sales of Chiquita bananas in the common market, in violation of Article 86 of the EEC Treaty.[2]

UBC is a conglomerate, born of the merger between United Fruit Co. and AMK Corp., a major US meat producer, which derives only some 20% of its total turnover from the sale of bananas. As the world's largest seller of bananas, it holds, in the Commission's opinion, a dominant position on the banana market in a substantial part of the Community. Apart from the fact that it handles 40% of the trade in bananas within the EEC, it wields overwhelming economic power, due largely to the vertical integration of its banana business, and holds other advantages resulting from its multinational and conglomerate character. It owns numerous plantations in tropical banana-growing countries and a fleet of refrigerated banana boats. It also controls banana ripening in consumer countries and takes direct charge of the advertising campaigns and sales promotion activities related to its brand of bananas. It is the only firm on the banana market to have all these advantages and is in a position to use them to place major obstacles in the way of effective competition by its present business rivals, while potential competitors find themselves confronted with major barriers to market entry.

Investigation showed that the market shares held by this company in the northern area of the EEC — Germany, Denmark, Ireland and the Benelux countries — backed up by the marketing policy it pursues, give it a dominant position in these countries. Although UBC also has sizeable market shares in the United Kingdom, France and

[1] Fourth Report on Competition Policy, point 60.
[2] Commission Decision of 17.12.1975: OJ L 95 of 9.4.1976. The company intends to bring an action for the annullment of this Decision of the Commission.

Italy, the Commission did not consider them in its Decision since different marketing and importing arrangements obtain there.

72. The Commission took the view that UBC had been abusing its dominant position in the following ways:

— it prohibited its distributors and ripeners from reselling green bananas, which meant there was market fragmentation;[1]
— it charged its customers prices which differed according to the Member State in which they were located, although there were no objective reasons for such discrimination; for equivalent transactions, prices were found to have differed between the ports of Bremerhaven and Rotterdam in some cases by as much as, or more than, 100%;
— it charged unfair prices for sales to its customers in Germany, Denmark and the Benelux countries;
— finally, for no objectively valid reason, it refused, for nearly two years, to supply one of its main Danish customers.

Because of the seriousness of these violations of Article 86, the Commission imposed a fine of one million u.a. It also ordered UBC to put an end to its infringements of the Treaty (except the refusal to supply, which had already ceased). So that the Commission could check on compliance, UBC was ordered to notify the Commission once it had withdrawn the ban on resale of green bananas by its distributors and ripeners in Germany, Denmark, Ireland and the Benelux countries and to keep the Commission informed of the prices actually charged in those countries over the next two years. Penalty payments amounting to one thousand u.a. per day of delay from the dates stipulated in the Decision were imposed.

73. The importance of the Decision lies in the fact that the Commission investigated a firm's entire marketing policy in the light of Article 86, not so as to attack its commercial dynamism and economic performance, since this is not the purpose of Article 86, but because a dominant firm has an obligation not to indulge in business practices which are at variance with the goals of integrated markets and undistorted competition in the common market.

74. The Decision is also significant in that it finds abuse within the meaning of Article 86 on two counts: customers were charged different prices for identical transactions, and unfair prices were imposed.

75. In an attempt to justify the considerable differences in the prices which it charged its customers in different Member States, UBC asserted that it had adjusted its prices to the maximum the market would bear. The Commission took the view that for a

[1] As bananas are perishable, only green bananas can be sold to medium- or long-distance customers.

dominant firm systematically to charge the highest price it could get, entailing substantial price differences, was not an objective justification for discriminatory prices.[1] particularly if the firm used its dominance to keep markets separated.

76. In reaching the conclusion that the prices imposed by UBC on its customers were unfair, the Commission relied essentially on the following facts.[1]

In the first place, UBC by its own admission was making a profit on the lowest price quoted for bananas, the price at which it sold to its Irish customers.

Also, UBC was selling bananas without the Chiquita trademark 30 to 40% cheaper than those with, although they were only slightly inferior to Chiquita bananas; furthermore, UBC's main competitors, selling their own brands of bananas of comparable quality, generally sell them at prices below those of Chiquita bananas.

These facts brought the Commission to the view that the prices of this brand of bananas were excessive in relation to the economic value of the commodity supplied.[2] As a guide, it suggested that UBC's prices in Germany, Denmark and the Benelux countries would be acceptable if they came down to not less than 15% below the prices currently charged in Germany.

In taking this action, the Commission had no wish to set itself up as a price-control authority or to interfere in internal price setting by examining cost components or the like. On the other hand, it did wish to make it clear that the provisions of Article 86 which prohibit discriminatory and unfair prices must be enforceable.

National Carbonizing Co. Ltd.

77. The Commission issued a Decision adopting interim measures aimed at enabling the National Carbonizing Co. Ltd (NCC) to continue operating its coking plants until the outcome of proceedings now before the Court of Justice.[3] The issue revolves around a conflict of interest between NCC and the National Coal Board (NCB) over the price structure of coking coal and domestic hard coke.

These interim measures specify that NCB is temporarily to reduce by £2.79 per tonne the effective price of coal supplied to NCC for the production of domestic hard coke

[1] The Court of Justice had already ruled that a price disparity, if it is big enough and objective justification is lacking, may be an indication of abuse within the meaning of Article 86 (Judgment of 8.6.1971 in Case 78/70 (*DGG v Metro*); [1971] Recueil 487).

[2] See also the judgment given by the Court of Justice on 13.11.1975 in Case 26/75 (*General Motors Continental v Commission*); see point 25.

[3] Decision 76/185/ECSC of 29.10.1975: OJ L 35 of 10.2.1976, p. 6.

for sale in the Community, provided that, to ensure fairness to NCB, NCC provides adequate financial guarantees. This Decision is, of course, without prejudice to the final judgment of the Court of Justice.

NCC is a private-sector limited company producing *inter alia* industrial and domestic hard coke. It accounts for approximately 7% of the total hard coke market in the United Kingdom, including 9% of the domestic coke market. NCB is a publicly owned undertaking with a virtual monopoly of coal production in the United Kingdom and about 95% of the market for coal. Its wholly owned subsidiary, National Smokeless Fuels Ltd (NSF), produces *inter alia* industrial and domestic hard coke, holding some 84% of the industrial coke market and 88% of the domestic coke market in the United Kingdom.

NCC buys all the coal it needs for coke production from NCB. As NSF is the price leader for industrial and domestic coke in the United Kingdom, NCC is unable to sell its identical products above NSF's prices. NCC complained to the Commission that it was having difficulty in covering its production costs for domestic coke. It claimed that its losses resulted from the narrowness of the margin between too high coking coal prices and too low domestic coke prices. It charged that NCB's behaviour amounted to an abuse of a dominant position within the meaning of Article 66(7) of the ECSC Treaty.

After examining the facts and information available to it, the Commission notified NCC that it regarded as unfounded its complaint that NCB had abused its dominant position. NCC then applied to the Court of Justice under Article 35 of the ECSC Treaty, alleging that the Commission had failed in its duty by not taking action to end NCB's infringement of the Treaty. At the same time, NCC called on the Court to take interim measures that would enable it to produce domestic coke on an economic basis.

The President of the Court made an order ruling that the Commission should take such interim measures as it deemed strictly necessary for the survival of NCC until proceedings in the main action had been completed and should determine adequate guarantees for the repayment by NCC of the costs of the interim measures, should the Court ultimately find against it.

The Decision adopted by the Commission thus imposes reciprocal obligations on the parties to maintain the *status quo* during the proceedings before the Court and to share out equitably the obligations and risks which the interim measures entail for them both.

§ 6 — Merger control under Article 66 of the ECSC Treaty

Main mergers authorized

78. The three main mergers authorized in 1975 by the Commission — exercising its power of prior control under Article 66 of the ECSC Treaty — were CLIF/Marine, Krupp/Südwestfalen and Fiat/Klöckner-Humboldt-Deutz.[1]

CLIF/Marine

79. Taking the view that the transaction would help to strengthen and diversify the Lorraine steel industry while satisfying the tests of Article 66, the Commission authorized Compagnie lorraine industrielle et financière (CLIF), the holding company of the Wendel Group, to take over Marine-Firminy SA.[2]

Under the terms of the agreement between CLIF, which held 19.4% of Marine's capital, and Schneider, which held 32%, CLIF was to transfer its total assets to Marine. CLIF then took a controlling interest in the new holding company (Marine-Wendel) combining its assets and those of Marine, Schneider's participation being reduced to about 15%.

By the same Decision the Commission repealed the interim measures taken with regard to Schneider and Marine on 5 April 1974 and with regard to CLIF on 21 December 1974. A further Commission Decision revoked the interim measures taken on 21 December 1974 in respect of Denain Nord-Est Longwy.[3] The aim of these measures had been to maintain the *status quo* between the companies pending the Commission's final Decision under Article 66.

80. The CLIF-Marine merger was authorized for the following reasons.

CLIF and Marine already jointly controlled the Sacilor Group, which accounts for most of their steel production. Marine and Schneider jointly controlled Creusot-Loire, a company producing special steels which has a majority holding in Framatome, France's largest nuclear power station constructor.

The only effects on competition were thus those arising from the combination of companies controlled separately by CLIF and Marine, whether alone or with other parties.

The companies controlled separately by CLIF at the time produce scarcely any steel: they are rerollers, particularly of sheet and tinplate. The companies in the Marine Group produce special steels at the Creusot-Loire works and heavy and medium plate at the Dillingen works.

[1] The other Decisions taken under Article 66 of the ECSC Treaty are listed in an Annex to this Report.
[2] Commission Decision of 5.3.1975: OJ L 196 of 26.7.1975, p. 27.
[3] See Fourth Report on Competition Policy, point 142.

The CLIF/Marine merger therefore brought together complementary production lines, which for the most part do not compete with each other.

81. To maintain effective competition on the oligopolistic steel market, the Commission attached to the merger authorization the following conditions, aimed at ensuring the independence of the major steel-manufacturing groups:

— Schneider had to dispose of its holding in excess of 10% in the new Marine-Wendel holding company by 31 December 1976 (but has in fact since then chosen to give up all its holdings in Marine-Wendel);
— apart from joint Marine-Wendel and Schneider control of Creusot-Loire no representative of either Marine-Wendel or Schneider may carry out similar duties in companies belonging to the other group;
— no director of the Marine-Wendel Group may hold a similar position in any other steel company;
— Commission authorization must be obtained before the Marine-Wendel Group can acquire holdings of 10% or more in firms which are producers, distributors or large-scale users of steel.

While authorizing the CLIF/Marine merger, the Commission reserved its position on any resulting concentration in industries other than steel, notably in metal containers. The Marine-Wendel Group undertook to put forward a reorganization plan which will guarantee effective competition on the French market.

Krupp/Südwestfalen

82. The Commission authorized the acquisition by Fried. Krupp Hüttenwerke AG (FKH) of a majority shareholding in Stahlwerke Südwestfalen AG (SSW).[1]

FKH is the steel-producing subsidiary of Fried. Krupp GmbH, Essen (Krupp), the latter being engaged mainly in plant and mechanical engineering, shipbuilding and steel stockholding. FKH had concluded agreements to buy the shares of the three major SSW shareholders — Agricola Verwaltungsgesellschaft KG (Merck, Fink & Co.), Allianz Versicherungs-AG and the steel-producing company Hoesch Werke AG.

The transaction is of particular significance for special steels, since both FKH and SSW are among the biggest producers in this field (jointly controlling about 10% of Community production); it will have no significant effect on the market for ordinary steels.

The Commission took the view that the merger could be authorized because, thanks to other Community producers and the importance of imports from outside the Community, there would still be effective competition in steel products, even for those

[1] Commission Decision of 2.4.1975: OJ L 130 of 21.5.1975, p. 13.

special steel products in respect of which Krupp and SSW are in a very strong market position. However, to guarantee the new group's independence of its competitors and to maintain genuine competition on the oligopolistic markets for alloy bars, alloy hot-rolled strip and alloy cold-rolled sheets, certain conditions were imposed.

No member of a management organ of any of the companies of the Krupp/SSW Group may be a member of a management organ of any similar Community company not in that Group; and prior authorization is required for acquisition of a holding of 10% or more in the capital of companies manufacturing, marketing or (if they use more than 10 000 tonnes a year) processing the products in question.

Fiat/Klöckner-Humboldt-Deutz

83. The Commission also adopted a Decision under Article 66 authorizing Fiat SpA and Klöckner-Humboldt-Deutz (KHD) to form a holding company in the Netherlands to be known as Industrial Vehicle Corporation (IVECO) and to transfer to it all their industrial and commercial assets relating to the production of commercial vehicles, buses and articulator tractors.[1]

With an 80% shareholding in IVECO, Fiat acquired control of the company. The transaction was thus a merger between Fiat, which as a steel producer is an undertaking subject to the ECSC Treaty, and the companies transferred by KHD to IVECO.

As regards its steel industry aspects, the transaction satisfied the tests of Article 66. The effects of the merger on the market for commercial vehicles, buses and articulator tractors were examined in the light of Articles 85 and 86 of the EEC Treaty, and this revealed that KHD's production, while strengthening Fiat's position, did not change the ranking of the major Community manufacturers in this field.

For lorries and vehicles of more than six tonnes, Fiat, with a Community market share of 19.01%, ranks second behind the German Daimler-Benz/Hanomag-Henschel Group (24.74%). The transaction gives the IVECO Group an aggregate of 22.29% of the Community market (an increase of 3.28%) without changing its ranking.

The same applies to articulator tractors, where the IVECO Group, with 18.10% of the Community market, continues to hold second place behind the Daimler-Benz Group (23.56%). As for buses, the available figures for companies show that IVECO controls 9.17% of the market, after Daimler-Benz's 20.17%.

Consideration was also given to the fact that Fiat and KHD deleted from IVECO's Memorandum of Association two clauses, concerning limitations on the use of industrial property rights not included in the transfer made by the two companies, which had constituted restraints on competition.

[1] Commission Decision of 7.4.1975: OJ L 196 of 26.7.1975, p. 41.

Part two

Competition policy and government assistance to enterprises

Chapter I

State aids[1]

§1 — General

84. The new principles for coordinating regional aid laid down by the Commission in 1975 for the Community as a whole are designed both to prevent regional aid from causing undue distortion of competition and to make regional policies more effective.

As regards specific industries, the Council adopted a third Directive on aids to shipbuilding, which takes account of the need to preserve a competitive shipbuilding industry in the Community and marks a new step towards eliminating distortions of competition caused by national aid schemes in that industry. Several Member States have taken action to help the motor industry, which is facing serious economic and structural difficulties. The Commission has tried to ensure that the schemes help to bring about improvements in the industry without affecting the terms of trade to an extent contrary to the common interest.

Faced with a serious economic recession and resulting employment difficulties, Member States have extended the scope of their general regional aid schemes and taken temporary measures to boost the economy. While the Commission did not object to these schemes, it kept a close watch on how they were applied to ensure that they did not simply preserve obsolete industrial structures or transfer difficulties from one Member State to another.

§2 — General regional aid systems

Principles of coordination of national regional aid systems

85. On 26 February 1975 the Commission adopted and informed the Council of the new principles of coordination for regional aids which it had undertaken to define in its Communication to the Council of 27 June 1973.[2]

[1] For State aids in the agricultural sector, see points 226 to 268 of the Ninth General Report on the Activities of the Communities.
[2] Third Report on Competition Policy, points 82 and 83.

These new principles are valid for three years with effect from 1 January 1975 and apply to all regions of the enlarged Community.[1] They supersede the coordination principles laid down by the Commission in 1971[2] and supplemented in 1973,[3] which applied only to the most heavily industrialized ('central') regions of the Community.

The new coordination machinery has five aspects which form one whole — differentiated ceilings of aid intensity, transparency, regional specificity, the sectoral repercussions of regional aids and a system of supervision. As regards the last three aspects the new principles maintain the arrangements laid down in the coordination principles adopted in 1971 and supplemented in 1973.

86. As regards the transparency of aids, an essential prerequisite to the coordination and assessment of general regional aid systems, the new coordination principles, which now apply to all regions of the Community, had to take account of new difficulties involved in evaluating certain forms of aid.

In the first set of principles a regional aid was considered transparent if it could be expressed as a percentage of investment by reference to the common method for evaluating regional aids worked out jointly by the Commission and the Member States. Any aid which was not transparent in accordance with this method had to be made transparent or, if this could not be done, terminated by the Member State concerned within a given period. The adoption of this concept of transparency was made easier at the time by the fact that the coordination principles applied only to the central regions, where the most important regional aids were already transparent. However, difficulties arose when the principles were to be extended to all parts of the Community — including the former peripheral regions, where opaque aids, particularly those relating directly or indirectly to the creation or maintenance of jobs, are much more prevalent. The need to consider these aids in the light of the coordination principles and as part of the general assessment of whether the national aid schemes are compatible with the common market made the problem of evaluating them particularly acute.

Italy and the United Kingdom, which are particularly interested in the measurability of aids in respect of employment, suggested modifying the existing common method of evaluation in such a way as to relate these aids to factors other than investment. These proposals have been given an initial examination at multilateral meetings of experts. Further more detailed examinations must still be made. The new coordination principles therefore specify that the technical work must be continued with a view to establishing possible measurement criteria which could make comparison possible between all forms of regional aid being granted in the Community.

[1] The coordination principles do not, however, apply to aids provided by these systems in so far as they concern products listed in Annex II to the Treaty.
[2] First Report on Competition Policy, points 143 to 153.
[3] Third Report on Competition Policy, points 82 and 83.

87. As regards the ceilings of intensity of aids, the extension of the coordination principles to the entire Community meant that the regions had to be classified in several categories relating to the different ceilings to take account of their different levels of development and their particular problems. There are four categories of regions. All the ceilings are fixed in terms of percentages representing the relative size of the aid (expressed as a net grant-equivalent after taxation) in relation to the investment. They apply to all regional aids granted in respect of a single investment. However, there is at present no ceiling fixed for Greenland because of its special situation. In the first category are Ireland, the Mezzogiorno, Northern Ireland and West Berlin.

It was decided to freeze the ceilings for these regions at the maximum level of intensity attainable by the measurable aids being granted there at 1 January 1975. The Commission did, however, reserve the right—except in the case of West Berlin—to carry out a prior examination of individual cases of application where there are specific sectoral problems or where it is necessary to do so for reasons relating to the functioning of the common market. The Commission may therefore ask to be informed of investment projects involving more than 25 million u.a., where the proposed aid exceeds 25% in net grant equivalent.

The Commission and the Member States concerned have already worked together this year (see below) on fixing these ceilings of intensity.

The following areas are in the second category: in France — the assisted areas known as PDI (industrial development premium) areas; in the United Kingdom — those parts of the country which on 1 January 1975 were assisted areas (except the areas known as 'intermediate areas' and Northern Ireland); in Italy — the assisted areas in the regions Friuli-Venezia-Giulia, Trentino-Alto-Adige, Val d'Aosta, Latium, Marches, Tuscany, Umbria and Veneto. The intensity ceiling for these areas is fixed at 30%. It is provided that this ceiling will be observed as soon as possible and in any case no later than 1 January 1978.

In the third category are: The Zonenrandgebiet in the Federal Republic of Germany, and North Jutland and the islands of Bornholm, Ærø, Samsø and Langeland in Denmark. The intensity ceiling for this category is fixed at 25%.

For all the other regions the ceiling remains at 20%, as laid down in the first coordination principles, on the understanding that the trend should, as far as possible, be towards a reduction in the level of aids.

These ceilings will re-examined at the end of the three-year period in the light of the socio-economic development of the various regions and other factors. In addition, and as provided in the 1971 principles, derogations from these ceilings may be allowed by the Commission in exceptional cases if the Member State concerned provided the Commission in advance with the necessary justification in accordance with the procedure laid down in Article 93(3) of the EEC Treaty.

Specific statements of view on certain national regional aid systems

In its application of Article 92 *et seq* of the EEC Treaty the Commission has continued its examination of whether certain regional aid systems introduced in the Member States are compatible with the common market.

France

88. In June 1972 the Commission initiated the procedure provided for in Article 93(2) in respect of the French system of regional development premiums (PDR, *primes de développement régional*) and premiums for the location of certain service industries (PL, *primes de localisation*). This procedure was extended in April 1973 to the tax concessions arrangements (AF, *allègements fiscaux*) following changes in the scope of their geographical applicability in December 1972.[1]

The French system was subsequently amended on a number of occasions from the point of view of the geographical applicability of certain aids, the variations in the levels of these aids and the conditions for eligibility.

In particular, in July 1974, the French Government reclassified some PDR areas as AD areas, in which areas the assistance granted is the lowest under the regional aid system concerned.

In 1975 there were several exchanges between the Commission and the French authorities, who provided evidence and supporting statistical data in justification of the system. Progress was made towards solving the problems involved. However, since the aid system expired on 31 December 1975, a number of the outstanding issues, such as the tax concessions will have to be considered in the context of the examination of the new French regional development system.

Federal Republic of Germany

89. The Federal Government and Land authorities decided a number of years ago to work together to improve the economic structure of the regions in Germany. This common approach is translated into practice each year, on the basis of laws passed in 1969, by a general plan which includes a series of action programmes for the assisted regions. The German legislation defines these regions as follows: the Zonenrandgebiet; the Saar mining region; regions whose economic potential is, or is in danger of falling, well below the federal average; and regions where the main economic sectors are faced with reorganization problems on such a scale that adverse socio-economic effects are already being felt or can be expected to occur in the future.

[1] Second Report on Competition Policy, point 91; Third Report on Competition Policy, point 86.

The main form of regional aid provided for in these general plans is an investment grant up to 15%, 20% or 25% of the investment, depending on the category of the growth points designated within the assisted areas.

At the same time as the first regional action programmes were being prepared, systematic studies were carried out at the suggestion of the Federal Government with a view to providing a single system of indicators — income, employment deficit and infrastructure levels in each region — to help to determine, at the federal level, the regions which were economically weak or threatened with structural decline.

90. In the 1975-78 general plan the German authorities introduced a new approach to regional problems and a new method of designating development regions based on these studies.

The new approach basically involves anticipating — by means of forecasts prepared by economic research institutes — the socio-economic problems which could arise in the country and taking the necessary preventive regional measures in time.

The new method of designating development regions draws on the geographical and economic concept of labour markets, which supersede administrative divisions as the reference unit for such designation. One hundred and seventy-eight labour markets were delineated on the basis of statistics on commuter patterns, employment density and population. The three criteria referred to above — regional income, employment deficit and infrastructure level of the region — were then applied to each of the labour markets, thus giving three statistical assessments for each of them. These were then added together to give an index for each labour market, the highest index corresponding to the most economically depressed labour market. A threshold index was then fixed, regions with indices higher than this being classified as development regions. Within these development regions a total of 327 towns and cities were declared growth points by the Land authorities in accordance with guidelines agreed with the Federal Government.

The general plan also provided for systematic supervision at the end of which the aids granted for a given growth point or region could be adjusted or withdrawn depending on the socio-economic results obtained.

91. Following notification by the German Government of the draft general plan for 1975-78, a multilateral meeting of national experts on aids was held for discussion and information purposes. The Commission embarked on a study of the aid scheme and has asked the German authorities for certain further information, particularly as regards the social and economic justification for granting regional aids in certain areas.

92. For the purpose of applying the new coordination principles, bilateral contacts took place between Commission and German officials to fix, for West Berlin, the maximum intensity ceiling for measurable aids being granted at 1 January 1975.

Italy

93. The Commission went on with its examination of two Italian aid systems — one for small- and medium-sized business introduced by Law No 623 of 30 July 1959, the other being the provisions being prepared to promote industrialization in the Mezzogiorno.

94. As part of the general effort undertaken in respect of the main general regional aid systems in the original Member States aimed at obtaining prior notification of the most significant cases of application of those systems,[1] the Commission, in 1968, initiated the procedure provided for in Article 93(2) in respect of Italian Law No 623.

This law provides for assistance in the form of low-interest loans for investment by small- and medium-sized industrial firms, which are defined very broadly. In practice, priority has always been given to certain regions: the loans are granted on different conditions, particularly as regards the rates of interest, depending on whether the investment is in the Mezzogiorno or in the Centre-North of Italy, and most of the aid has gone to the Mezzogiorno and the depressed areas of the Centre-North. There was also some uncertainty as to the conditions in which assistance under Law No 623 was granted in other areas of the Centre-North.

To boost the economy and industrial investment, the Italian Government decided in 1975 to refinance the aid system in question (Lit 305 000 million for 1975-83) which had been virtually inoperative for a few years because of a lack of finance. Although the conditions for granting the loans remained almost unchanged and the regional specificity of the system is still, at present, inadequate, the Italian Government informed the Commission that, as regards individual cases of application of Law No 623 in areas outside the Mezzogiorno, it would respect the control procedure which the Commission exercises on the implementation of general aid systems. It undertook to give prior notification of actual cases where:

(i) the investment is 3 million EUA or more;[2]
(ii) the aid amounts to 15% or more of the investment in net grant equivalent.

The Commission therefore informed the Italian Government that in view of this undertaking it was terminating the Article 93(2) procedure; it pointed out, however, that the Law should be applied in the Mezzogiorno in accordance with the new coordination principles.

[1] First Report on Competition Policy, point 143.
[2] Point 136.

95. The Mezzogiorno which is a typical peripheral area as defined in the 1971 coordination principles, has always been recognized by the Commission as a region with particularly acute socio-economic problems. An appropriate solution therefore had to be found which would take account both of the region's socio-economic situation and of the requirements of the Treaty in the matter of aids. After bilateral consultations, the Italian authorities decided to base themselves to a certain extent on the Commission's guidelines on regional aids when preparing legislation (the preliminary draft of which was notified to the Commission in 1974) to reframe the aid system in the Mezzogiorno for the period 1976-80. These guidelines involve increased transparency and regional specificity of aids and better coordination between measures taken at the national level and at the level of the autonomous regions of the North and South of Italy to safeguard the preferential treatment which must be accorded the Mezzogiorno because of its special situation.

This preliminary draft law is still being studied by the Italian Government, which agreed, when asked by the Commission, to take account of the Community guidelines when drafting the final bill.

As part of the technical work being done with a view to implementing the coordination principles adopted this year, discussions were held with the Italian Government to set intensity ceilings for measurable aids being granted in the Mezzogiorno at 1 January 1975. Different ceilings are to be set according to the area involved, the type of project (for example, setting up, expanding, converting or modernizing business) and the size of the recipient firms.

Belgium

96. The Belgian Government adopted two measures for the purposes of applying some of the provisions of the Law on Economic Expansion of 30 December 1970.[1] One concerns the employment premium for small- and medium-sized firms while the other involves complementary regional aid. The small-business employment premium (Bfrs 15 000 a year for three years for each job created) is intended to encourage firms employing fewer than ten workers to create jobs in development areas and thus prevent a rise in unemployment. The complementary regional aid is designed to encourage firms to go ahead with investment schemes they would otherwise tend to postpone because of the economic situation.

The Commission did not object to the introduction of the employment premiums.[2] The principle of such premiums which were intended to involve small firms in the regional expansion effort was contained in the Law on Economic Expansion, which

[1] Second Report on Competition Policy, point 90.
[2] Royal Decree of 23.1.1975 (*Moniteur Belge*, 5.1.1975).

the Commission had studied at the time. In view of the sums involved and the size of the eligible firms, the premiums seem unlikely to have more than a limited effect on competition and trade between Member States.

In theory, the complementary regional aid introduced by the Decree of 25 May 1975 for a period limited to 31 December of the same year, could raise the aggregate of Belgian regional aids to more than 20% of investment in net grant equivalent. Since the coordination principles for general regional aid systems set a 20% ceiling for the Belgian regions, the Commission asked the Belgian Government to ensure that the ceiling is respected in practice and was given the necessary assurances.

With reference to the abovementioned Law on Economic Expansion of 30 December 1970 the Commission reminded the Belgian Government of the importance it attached to the Government's carrying out its obligations under Decision 72/173/EEC of 26 April 1972 as regards the designation of development areas. Pursuant to Article 2 of that Decision of the Commission, the Belgian Government must send the Commission a new plan of the designation of these areas. The Belgian Government informed the Commission that it had not lost sight of this and would be contacting the Commission by the end of the year with a new plan. Initial contact was in fact made in November.

Netherlands

97. The Dutch Government has modified its general regional aid system. Basically, this involves extending the assisted regions by setting up growth points outside the assisted areas in the North and South of the country. Aid was already being granted to some of these growth points between 1967 and 1971. A number of changes were also made to the aids themselves and to the terms on which assistance is granted. The Commission is currently studying the changes. On the other hand the Commission decided on a Dutch measure involving a 5% reduction on the industrial tariff for natural gas supplied to firms situated in the three northern provinces of Groningen, Friesland and Drenthe (close to the Groningen natural gas field). In 1974 the Commission, acting on the information it had at the time, initiated the Article 93(2) procedure in respect of this measure on the grounds that it was a regional operating aid which could not be considered compatible with the common market because its character was purely protective.

However, information supplied by the Dutch authorities, within the abovementioned procedure showed that the tariff reduction was in fact an entirely commercial operation: the natural gas distribution company had decided quite independently to give the reduction to consumers in the vicinity of the Groningen field because its own transport costs were lower there. The Dutch authorities also pointed out that this was confirmed by the fact that the cheaper rates did not apply throughout the regional

development area in the north of the country. In the light of this supplementary information the Commission decided to terminate the procedure.

Denmark, Ireland and the United Kingdom

98. Although it has not yet stated whether it considers the general regional aid systems of the three new Member States compatible with the common market, the Commission has nevertheless had to deal with certain aspects.

In accordance with the coordination principles the Commission has decided to agree to the United Kingdom Government's application for a derogation from the intensity ceiling for regional aids specified in the coordination principles in respect of a Scottish region for which the Highlands and Islands Development Board (HIDB) is responsible.

Although the intensity ceiling for this region was fixed at 30% in net grant equivalent in the principles of coordination, the Commission took account of the fact that the region is undeniably lagging behind in development, that the HIDB provides assistance for small projects only, and that there are strict limits on allocating aid. However, the Commission asked the United Kingdom authorities to report annually on the HIDB's activities in the field of regional aids, since the region's socio-economic situation is likely to improve as a result of the benefits of exploiting the oil fields in the North Sea.

99. As in the case of the Mezzogiorno and West Berlin, the Commission was concerned to set maximum intensity ceilings for measurable aids being granted in Ireland, and Northern Ireland at 1 January 1975. Contact has been made with the Irish authorities with a view to fixing eight ceilings covering the whole country which will be divided for these purposes into the following four categories of regions: designated areas (mainly the west, which faces the most acute socio-economic problems), non-designated areas (the rest of the country apart from the areas which follow), the Shannon area and the Gaeltach. Each of these four categories would have two ceilings — one for the setting-up of firms, the other for the modernization or conversion of firms.

100. Denmark expressed concern about the different maximum rates for regional aids obtaining on either side of the frontier with Germany. The regional aid granted in a growth point near the German-Danish frontier can go up to about 19%, whereas on the Danish side in South Jutland the limit is about 13% (in net grant equivalent of the investment). The Danish authorities feel that this situation has harmful socio-economic consequences for their border area. The German and Danish authorities have begun talks to try to find a solution to this problem. The Commission, for its

part, will follow developments closely and take any necessary action in the context of its study of the German general regional plan.[1]

§ 3 — Aid systems for specific industries or sectors

Shipbuilding

101. The proposal for a third Directive on aids to shipbuilding,[2] which the Commission sent to the Council at the end of 1973, met with difficulties which prevented the Council from reaching agreement by 31 December 1973, the time set in the second Directive. The second Directive had therefore to be extended on three occasions, the latest date set being 30 June 1975,[3] so as to avoid the absence of specific Community rules in this area.

In view of the difficulties in the Council, developments in the industry and a slight reduction of production aids granted by Member States since the drafting of the initial proposal, the Commission re-examined its proposal and presented an amended version to the Council on 7 May 1975.

102. The original proposal for a third Directive was part of a series of measures including proposals to develop a coordinated restructuring and investment policy at the Community level. With the aim of restoring the balance between the supply of and demand for ships, the Commission would first of all have examined the national financial assistance granted to major shipbuilding investment projects and ruled on the compatibility of such assistance with the aids and provisions of the Treaty in the light of the guidelines for the sector worked out in collaboration with the Member States.

However, some Member States questioned the usefulness and feasibility of working out industrial policy guidelines of this kind, preferring initially to confine Community action to aids. Others were reluctant to agree to a more restrictive framework in this field, since this would have deprived them of some of their means of intervention or at least limited their scope.

The Commission's amended proposal for a third Directive was consequently less ambitious with respect to the control of investments, but it retained the initial guidelines on aids as such.

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[1] Points 89 and 90.
[2] Third Report on Competition Policy, points 90 to 97; Fourth Report on Competition Policy, point 150.
[3] OJ L 349 of 28.12.1974, p. 62.

103. Nevertheless, serious problems arose in connection with some forms of direct aid when the amended proposal was discussed in the Council. The schemes in question were those for insuring against exceptional cost increases, under which shipyards in some Member States receive assistance to offset cost increases above a specified level occurring during the construction of ships. Although premiums are paid by the builders, these schemes are during a period of rapid inflation largely financed by government contributions. They are of considerable advantage to the yards concerned, which can in consequence offer their customers firm prices. A compromise laying down certain conditions for the operation of these schemes was finally reached. On 10 July[1] the Council adopted the third Directive, the text of which corresponds in substance to the Commission's proposal. This third Directive specifies the conditions on which national aids to and intervention in shipbuilding may be considered compatible with the common market. It represents a further step towards eliminating the distortions of competition on the shipbuilding market caused by national aids, and at the same time takes account of the need to preserve a sound and competitive shipbuilding industry in the Community.

104. The basic provisions of this Directive, which will be in force until 31 December 1977, are as follows:

(i) aids for the building of ships may not be granted after 31 December 1975. Such aids may however be granted beyond this date in Ireland, Italy and France (in France in the form of insurance against cost increases) provided that they are gradually reduced; the Member States must send the Commission at regular intervals a table containing the individual cases in which assistance has been granted;

(ii) aids for the sale of ships, which will be granted in the form of credit facilities (low-interest loans or interest-relief grants), must satisfy the conditions laid down in the Resolution of the OECD Council of 18 July 1974, or in any agreement replacing it;

(iii) the Commission must be notified at regular intervals of assistance granted in respect of important investment projects in shipyards;

(iv) the Commission must be given prior notification of individual aids and intervention of a conservatory nature intended to ensure the temporary rescue of shipbuilding firms pending a final solution to their problems;

(v) finally, as in the previous Directive, Member States are to refrain from any other measures to promote shipbuilding, ship conversion or the manufacture of components to be incorporated in ships on their national territory.[2]

[1] Directive 75/432/EEC: OJ L 192 of 24.7.1975, p. 27.
[2] Third Report on Competition Policy, point 99.

Textiles

105. The Community's textile industry has for many years and for a variety of reasons suffered from structural difficulties.[1] The progressive opening-up of the Community market and the development of traditional textile industries in non-member countries, in many of which labour costs are low, have played a particularly important role by giving rise in some cases to a massive increase in imports at prices much lower than those which Community firms are in a position to charge. The slowdown in both internal and external demand during the present economic recession has highlighted still further the structural problems.

In view of this situation, a number of Member States have felt obliged to intervene to assist their own firms, usually with the aim of safeguarding employment or preventing excessive redundancies in an industry which is still an important source of employment. Initially, these interventions were often of a disparate nature and, at the same time, too rigidly geared to national requirements, whether they were new measures designed specifically for the textile industry as a whole or for certain parts of it, or measures taken under existing general aid systems to assist certain firms in a critical situation.

106. In each case the Commission tried to ensure that these national measures were in line with Community objectives, in particular those set out in its Communication to Member States in 1971,[2] in which it laid down the conditions and limits for any national aids which the Member States might wish to introduce to assist the textile industry. The principles then established remain valid:

(i) aids of a conservatory nature must be excluded; however, assistance may be given to facilitate joint research and development activities, eliminate excess production capacity, convert firms to activities outside the textile industry, or promote horizontal merger and vertical integration between firms;

(ii) aids to investment must be warranted by particularly acute employment problems; they must be confined to those areas of the textile industry facing serious adjustment problems and must in no circumstances lead to an increase in production capacity.

To the extent that any of the proposed national aids did not meet these criteria, the Commission took steps to ensure that the Member State concerned amended them.

[1] First Report on Competition Policy, point 171.
[2] First Report on Competition Policy, point 172.

United Kingdom: Clothing industry

107. The Community clothing industry is one of the branches of the textile industry which has been most seriously affected by massive imports from non-member countries. Because of structural inadequacies, due mainly to their small size, the existence of many firms in this sector was threatened by the reduction in demand coupled with the pressure of imports.

This was especially the case in the United Kingdom, where the industry employs more than 300 000 people in over 6 000 firms, many of which are small and not really capable either technically or financially of carrying out the necessary structural reforms. The productivity of the firms is generally inadequate, mainly because their level of investment is low in relation to their turnover (annual investment is £20 million as against an annual turnover in excess of £1 000 million).

108. The United Kingdom Government informed the Commission that, in view of the need to remedy these structural weaknesses, it intended to introduce a £20 million scheme of aids for the industry. The main features of the scheme were a 20% grant for the purchase of new plant and machinery, a 50% grant for the use of consultants to investigate modernization and reorganization problems and a Productivity Centre for the industry.

While the Commission did not object to the last two measures (provided the aids intended to cover consultants' fees was confined to small- and medium-sized firms), it did not approve of the 20% grant for the purchase of new plant and machinery since firms receiving grants were not required to introduce restructuring or reorganization programmes or to give an undertaking that they would not increase their production capacity. In the difficult situation faced by this industry throughout the Community, the proposed assistance was liable to affect trading conditions to an extent contrary to the common interest, by causing further difficulties for firms in the other Member States, and was unlikely to promote real structural adjustments among United Kingdom firms.

In the light of the Commission's comments, which took account of the views expressed by the other Member States during consultations, the United Kingdom Government presented a new scheme to the Commission containing amendments designed to meet the objections to the original scheme.

109. The aims of the scheme were now clearly defined as the rationalization and reorganization of the industry within the limits of existing production capacity. Consequently, the investment subsidies would only be granted to firms which had supplied specific programmes involving the concentration or specialization of their activities, restructuring and reorganization. The implementation of these programmes would be required to bring about a genuine improvement in their competitive strength

and provide sound guarantees as to their future viability. Priority would be given to cases where, if the proposed investment were not carried out, the firms concerned might have to lay off workers and thereby create acute employment problems. Provision was made for a new form of aid to be financed from the total funds originally set aside: low-interest loans or interest-relief grants would be provided to encourage firms to merge or to close down unprofitable establishments.

Since the United Kingdom aid scheme was now consistent with the principles and conditions contained in its Communication, the Commission withdrew its objections.

Netherlands: Textile industry

110. As part of its general efforts to enable declining industries to adapt to the changed conditions of international competition, the Netherlands Government informed the Commission of the action it intended to take to assist several sectors of the textile industry.

The sectors concerned are wool, cotton, textile printing and clothing, whose markets, in spite of some attempts at reorganization, have continued to shrink, particularly as regards exports. A sudden acceleration of this decline could provoke serious employment problems in the country. The aim of the scheme was to reorganize these sectors around the most viable firms so as to enable the latter, by seeking new markets for more advanced products and using the most modern production techniques, to stay competitive or to regain their competitiveness. At the same time the transfer of some of their former activities to the developing countries would continue.

Recovery programmes for each of the branches concerned had been or would be prepared by the Nederlandse Herstructureringsmaatschappij (NEHEM) and by *ad hoc* bodies set up for this purpose by the industry on which the government will be represented. These programmes would be financed largely by the industry, the State providing less than one third of the funds. They would be based on a series of operations, which, depending on the individual sector would involve contraction or closure of firms or plants, amalgamation of the remaining firms, modernization by investment in new plant and machinery embodying more modern techniques, joint action in the field of marketing, productivity or research and development, and improvement of working conditions in the firms themselves.

The State's financial contribution would be made in return for an explicit undertaking by the firms to carry out these operations in accordance with the guidelines and, in some cases, under the supervision of the bodies referred to above.

The assistance, which would be provided over a period of years, would be in the form of grants for up to 20% of the cost of operations begun in 1975 and 1976, with a ceiling of 7.5% for those started at a later date. State guarantees might be given in addition to these grants.

After the completion of these programmes only sound firms with a strong probability of remaining competitive would survive. The overall result would be a reduction of production capacity and employment in each sector.

111. This Dutch measure is in many respects in line with the views expressed on several occasions by the Commission on the subject of assistance for specific industries, especially the textile industry. The aids would be conditional upon an express undertaking by the sectors and individual firms concerned that they would carry out radical structural reforms, they would complement the efforts made by the sectors and firms themselves and would be granted for operations which the firms, because of a lack of adequate funds, could not otherwise have carried out and which would not entail an increase in production capacity.

The Commission therefore informed the Dutch authorities that it did not object to the implementation of the proposed measures provided that the detailed reorganization programmes for each branch were transmitted to it for approval.

112. The Commission took a similar view with regard to measures of the same kind taken by the Dutch Government to assist other industries which are also in decline because of the gradual changes taking place in the international distribution of industry. These measures concerned the footwear, graphics, paper and board and wood panelling industries. All the measures taken have similar objectives and terms to those for the textile industry: the encouragement of mergers and cooperation between firms in order to create economic units better adapted to market conditions, specialization in products of higher quality or of greater sophistication (footwear, wood panelling), abandonment of current product lines facing keener competition from non-member countries, provision of aids which require existing firms to make an effort and take action on their own behalf rather than the grant of large-scale financial support, re-use or better use of raw materials available in the Community (leather, waste paper, wood), and, in some cases, maintenance of an improved national capacity (in order to avoid total dependence on non-member countries for supplies (newsprint).

Aircraft industry: Italy

113. The Italian Government informed the Commission of a bill providing for financial assistance to Italian aircraft manufacturers who have combined to form Aeritalia and have begun developing a medium-haul aircraft in collaboration with the American firm Boeing. The aids granted would assist the financing of studies, research and development and the construction of prototypes required to develop this aircraft, which is scheduled to enter service in the 1980s. A total of Lit 150 000 million would be allocated for this purpose in the budget and would be granted to Aeritalia in stages

between 1975 and 1980. As in most European countries which manufacture aircraft equipment, the aids would take the form of grants repayable when the aircraft came onto the market.

114. In its assessment of these proposed aids the Commission took account of the following factors:

The type of aircraft planned has different technical specifications from the aircraft currently being manufactured or developed in the Community, though when brought into service it may compete to some extent with other medium-haul aircraft.

This is the first assistance to be granted in Italy for commercial aircraft construction, an activity which has been on a relatively small scale in this country hitherto. It will assist the industry to become technologically and industrially more competitive by enabling it to take a 20% share in a large international project. It will also create about 4 000 new jobs, mainly in research and production establishments in the Mezzogiorno, and thereby contribute to the improvement of the employment situation in this region.

Before deciding to participate in this programme, the Italian authorities and the firms concerned tried without success to persuade other Member States to cooperate in developing a medium-haul aircraft to meet market requirements after 1980. This kind of cooperation would not exclude non-member countries, which in the case of certain programmes might facilitate the development of new technologies, ensure a better spread of financial risks and give European firms access to those external markets which are essential for commercial success. Some Member States have already cooperated successfully with the United States in the development of new jet engines and it is planned to instal one of these engines in the aircraft which Aeritalia will help to build.

115. In these circumstances the Commission decided not to oppose the aids proposed by the Italian Government. However, it stressed that its position applied only to the aids currently planned for the development of the aircraft concerned, and it asked the Italian Government to keep it informed of further developments in the programme since all the technical details had not yet been worked out. This would enable it, when the time came to assess whether the aircraft in its final form would be likely to compete with other aircraft which might be built in the Community. There is an obvious need to avoid wasteful duplication of projects supported by different Member States.

Motor industry: Federal Republic of Germany, France and the United Kingdom

116. During the period 1970-73 the outlook for the motor industry became less favourable because of various factors, both external and internal, which were to increase in importance. Among the external factors were environmental and safety

requirements, the pressure on infrastructures, particularly in urban areas, and the long-term depletion of the relevant energy sources. Internal factors included the gradual saturation of the market by 1985 in countries with a high standard of living, or the growth of competition from third countries, a result mainly of the establishment of assembly lines outside Europe. There were already signs that radical changes in the industry's structures and activities would inevitably take place in the medium and long term.

The motor industry was among those most seriously affected by the sharp increase in energy prices during the crisis of 1973, which increased the cost of running vehicles and led to the introduction of speed limits. The need for structural changes therefore became more urgent. The economic recession which followed resulted in a serious drop in sales, which in turn led to a reduction in the industry's liquidity at a time when their financial costs were increasing (particularly because of their increased stocks of unsold vehicles).

Faced with the fall in demand, mainly within the Community, manufacturers had to reduce production. In the Community as a whole production fell by 14% in 1974 and further in 1975 (despite a recovery at the end of the year). This had significant repercussions on employment in the industry and in ancillary industries, in the form either of short-time working or of redundancies. This in turn had a considerable impact on the general employment situation, because of the numbers employed in the industry (over a million in the Community as a whole) or in ancillary industries.

The effects on employment and the general level of industrial activity explain the concern of Member States about the difficulties faced by certain firms.

However, in a generally difficult period, the situation of the individual firms differed, depending in particular on their financial soundness and competitive strength before the crisis, on their range of models and on their ability to adapt to the changes which had taken place or were to take place. The national measures with which the Commission had to deal reflect these disparities.

117. Citroën's large-scale investment in earlier financial years had resulted in the replacement of virtually all its productive assets. However, because of the market situation, gaps in its model range and an insufficiently dynamic sales policy, it was unable to exploit this advantage and absorb the resulting financial costs. Its losses had been estimated at almost FF 800 million for 1974 when the French Government decided to encourage the association of its car manufacturing activities with those of Peugeot, under the latter's management, and at the same time to arrange a reorganization of the heavy vehicles industry by enabling Renault, which was already represented in this sector by its subsidiary Saviem, to purchase Berliet, then controlled by Citroën. For this purpose the French Government granted a loan of FF 1 000 million to Citroën to fund its short-term liabilities, and a loan of FF 450 million to Renault for

the purchase of Berliet. These loans were granted for a fifteen-year period at an interest rate of 9.75%; in the case of Citroën there was a condition that the State should receive a share of the firm's profits if these are satisfactory.

The United Kingdom Government indicated its intention to make available a total of £900 million to assist British Leyland to undertake a major restructuring programme between now and 1982. This programme is intended to restore the company's competitiveness and enable it to maintain its position on the UK market and increase its exports, thus halting the decline of the group, whose models have not always been well adapted to market requirements and whose level of productivity is inadequate owing to the age of its plant and machinery and difficult labour relations.

The financial support to be provided by the United Kingdom Government up to 1978 will include:

(i) a guarantee of up to £200 million;
(ii) subscription of a £200 million increase in share capital, which will give the government a majority holding in British Leyland;
(iii) £500 million in long-term loans, which will be made available depending on the stage reached in the restructuring programme, the investment required for the various stages and the increases in productivity achieved during each stage.

The United Kingdom Government was also faced with the problem of rescuing Chrysler (UK) Ltd when the American parent company, Chrysler Corp., announced that it intended to cease production in the United Kingdom because of the heavy losses it had been incurring.

In view of the general situation outlined above and the serious employment problems which would have been caused by the closure of certain factories, particularly in Scotland, the United Kingdom Government decided to grant Chrysler UK aids amounting to £162.5 million made up as follows:

(i) £72.5 million in the form of a grant to meet part of the firm's possible losses between 1976 and 1979;
(ii) a guarantee of £35 million to enable the firm to convert short-term liabilities into longer-term bank loans;
(iii) a low-interest loan of £55 million to finance the development and construction of a new model.

Chrysler, for its part, undertook to make the investment required for the assembly and, perhaps, the construction of another new model in the United Kingdom.

This rescue programme is intended to improve its competitive position and thus to secure the long-term viability of the firm by reducing its labour force by almost a third and renewing its range of models.

The German Government tried to solve the employment problems arising from the redundancies made necessary at Volkswagen by a fall in its sales and by certain

reorganization measures. These redundancies affected several regions, some of which were already experiencing difficulties. A three-year programme, involving the expenditure of DM 210 million will encourage the creation of new activities in these regions with the objective of creating 18 000 new jobs and thus ensuring the re-employment of the redundant workers.

118. The Commission studied the objectives pursued and means used in each of these cases.

The Commission has hitherto always held the view that aids granted by public authorities to individual firms may be justified in so far as it is likely that the recipients, after reorganization, will be commercially viable and able to compete successfully, and if the measures taken do not aggravate existing problems at Community level or merely transfer these problems to other Member States.

Since this was in fact the case for Citroën, British Leyland and Chrysler, the Commission decided not to object to the general terms of the proposed aids in France and the United Kingdom. The merger of Citroën and Peugeot should create a group which is sufficiently competitive for its future development to be based on its own resources. This will also be true of British Leyland, whose rationalization is necessary in view of the essential role which the motor industry plays in the United Kingdom economy as an employer and its contribution to the trade balance. For similar reasons, and because of the employment problems which would have been caused by plant closures in Scotland, the Commission did not oppose the aids granted to Chrysler UK.

However, since the terms and scope of the various stages of the proposed restructuring plans for Citroën and British Leyland can be worked out only gradually, the Commission asked the French and United Kingdom Governments to inform it of each of the stages in sufficient time.

The Commission noted with satisfaction that the German authorities planned to promote regional development as the sole means of resolving the socio-economic difficulties which had arisen or been accentuated in certain parts of Germany because of Volkswagen's decision to dismiss workers — State aids will not be given to Volkswagen itself. The Commission therefore informed the German authorities that it had no objection to the proposed measures.

Electronic components industry: Federal Republic of Germany

119. This is one of the key advanced-technology industries. The use of electronic components is rapidly becoming more widespread in the fields of data processing, telecommunications, electronic consumer goods, industrial equipment (such as precision instruments and automation processes), public health and transport.

According to some forecasts, total annual world sales should double by 1980.

The rapid rate of technical development and obsolescence of these products accounts for the importance of research and development activities, involving considerable expenditure by manufacturers, and the need to sell rapidly on a large scale in order to recover this initial outlay. Another feature of this industry is the support provided by the authorities in certain third countries, whether in the form of research and development contracts, large government orders for military or other purposes, or even trade protection measures or direct aids to the industry. These countries' firms have in consequence achieved a degree of technical superiority and reaped the benefits of larger-scale production in the manufacture of the most advanced components (semiconductors and integrated circuits).

Community firms must overcome these handicaps in an industry which have an important effect, which will increase in the future, on the competitiveness of many other industries. The widespread use of integrated circuits will make many of these industries dependent on component manufactures, who, by vertical expansion into the manufacture of the equipment using these components, are already beginning to compete with their customers. Security of supplies is also an important consideration since periods of peak demand for certain types of components could pose problems for firms (particularly for small- or medium-sized firms) who are totally dependent for their supplies of components on manufacturers situated at great distances.

120. Some government assistance has already been granted to the electronic components industry in Germany under research and development programmes for certain industries. In 1972 the Commission commented on the second German programme[1] for the data-processing industry, which included aids for components used in computers.

The aim of the new German measure is to make the industry's structure competitive by granting State aids for research and development. The German Government plans to make grants equal to 50 or 100% of research and development expenditure, depending on whether this expenditure is borne by industrial firms. A total of DM 280 million will be allocated from the budget for the five-year period 1974-78 covered by the programme.

The aids should permanently increase the international competitiveness of German components manufacturers. In some cases they will be conditional upon cooperation between firms, particularly at the European level in view of the restricted size of national markets. Aid will no longer be granted if it is found that a firm is not capable of maintaining or achieving a sufficient competitiveness in certain areas.

[1] Second Report on Competition Policy, point 106.

121. The Commission considered that this German measure was justified in view of the industry's growth prospects and the need to strengthen Community structures in the face of competition from the firms of certain non-member countries. The form of aid chosen should provide an effective stimulus, since success in this field depends upon research and development expenditure, on a scale which most European firms would not be able to afford.

However, in adopting this position, the Commission stressed the necessity of developing cooperation between Member States. It intends to study the various national programmes with a view to establishing a framework for coordination or Community action in the field of components.

Oil and gas industry: Federal Republic of Germany

122. The Commission raised no objection to the German programme of aid to launch a domestic oil industry being extended to cover the period 1975-78.

When introducing this aid scheme in 1969 for an initial period of six years, the German Government was pursuing the following objectives:

(i) to secure and diversify the Federal Republic's sources of supply of oil and gas by promoting the development of its own resources;
(ii) to strengthen non-integrated oil companies, which were a potential instrument of this policy but whose share of refining and distribution in Germany was shrinking;
(iii) to overcome the handicaps suffered by these firms, either because their financial resources were not commensurate with the risks involved in oil exploration, because their operations were not integrated from the production to the final distribution stage, or because they did not benefit from the tax concessions given to the major international groups.

The German programme provided for launching aids in the form of loans for exploration projects (up to 75% of the expenditure involved, at 5% interest, repayable if the ventures were successful) and grants to cover 30% of the cost of acquiring crude oil concessions or holdings in companies exploiting these deposits.

This assistance would be granted only in respect of operations outside the Community. A total of DM 575 million was set aside for this purpose for the period 1969-74. Believing that this injection of public funds would encourage recipient firms to invest their own resources, the German authorities hoped that an own crude oil output potential of about 10 million tonnes per annum could be developed.

123. At the time the Commission had no grounds for raising objection to the German programme.

On the one hand, the objectives of the programme were in line with the policy set out in the First Guidelines for a Community Energy Policy it had presented to the Council, which stressed three requirements.

(i) maintaining a sufficient number of healthy firms competing on an equal footing in the Community;
(ii) facilitating the acquisition of crude oil resources by Community firms which were not sufficiently integrated;
(iii) improving the security and diversity of Community supply sources and promoting exploration and development of new oil and gas deposits.

On the other hand, this form of assistance was not likely to raise serious problems, since it provided recipient firms with only short-term support to improve their competitive position within a reasonable time; nor was its intensity, if the amount of aid provided by the German Government was seen in the context of the requirements of the oil industry, where exploration for and production of crude oil required large-scale capital investment.

On the basis of the Community rules on the right of establishment, however, the Commission asked the German Government, which agreed with this request, not to grant the proposed assistance for operations by German firms on parts of the Continental Shelf under the sovereignty of other Member States. These rules specify that the conditions of establishment in the Community must not be distorted by State aids, and this applies to the Continental Shelf as much as to any other part of Member States' territory.

124. In 1975 the German Government informed the Commission that it intended to allocate DM 800 million for these launching aids for a further four years (1975-78), the objectives and terms of the second programme being the same as those of the first.

When submitting the second programme to the Commission, the German Government stressed that in the present energy situation any oil and gas resources to be found in 'safe' areas, particularly in the Community, should be developed rapidly so as to reduce the Community's dependence on outside sources. In view of the high cost of exploration in the North Sea, non-integrated oil firms cannot engage in such activities without government support. The German Government therefore asked the Commission to reconsider its ruling that assistance should not be granted for projects in areas of the Continental Shelf on the territory of other Member States.

125. The Commission felt that this second programme was consistent with the energy policy guidelines it had presented to the Council (Communication to the Council of 5 June 1974 on a new energy policy strategy for the Community), which stressed the need for the Community to reduce as far as possible its dependence on the rest of the world for its energy supplies, to promote the development of new sources which offer

the Community maximum security, and to develop as far as possible the relative contribution of Community oil and gas to the Community's energy requirements.

The Commission also took the view that, in present circumstances, subject to later checks, the German aid is not such as to distort the conditions on which oil companies can start operating on the Continental Shelf. There were two reasons for this view: first, the small amount of aid involved by comparison with the cost of exploration and development on the Continental Shelf and, second, the fact that the German companies concerned are competing against oil groups from other countries which may well grant other incentives, notably tax concessions.

For these reasons, the Commission agreed to the start-up programme being extended for a further period and removed its initial restriction in respect of projects located on parts of the Continental Shelf within the jurisdiction of other Member States.

Sale of hard wheat at reduced prices to pasta manufacturers: Italy

126. In July 1973, as part of its anti-inflation policy, the Italian Government decided to freeze the producer and retail prices of certain major consumer products, including pasta made from hard wheat, which account for a significant part of Italian households' spending on food. Simultaneously, it made provision for AIMA (the State Intervention Agency for Agricultural Markets) to 'regularize' the Italian markets in wheat and meat by means of purchasing operations on the domestic and foreign markets backed up by resale operations on the domestic market in accordance with conditions fixed by the administration.

Hence the purchase by AIMA from late 1973 onwards of large quantities of hard wheat (more than 10 million quintals), mostly from outside the Community, to offset the shortfall between national production and domestic requirements. Purchase terms varied considerably depending on the particular time and country of origin, as the period in question coincided with a sharp rise in international prices of hard wheat due to a period of intense speculation coming on top of a shortage. AIMA was then authorized to sell the bulk of its hard wheat (more than 8 million quintals) in instalments to Italian semolina and pasta manufacturers, generally at prices well below the market rate.

The Italian Government, which was of the opinion that such action did not constitute aid within the meaning of Article 92(1) of the EEC Treaty, did not give the Commission prior notification. The matter was first brought to the attention of the Commission via a series of complaints lodged by certain Member States and manufacturers to the effect that Italian firms were benefiting from cut-price hard wheat to sell their finished products at low prices on the markets of other Member States, thus placing themselves in a more advantageous position than other Community manufacturers, who were obliged to buy their hard wheat at world rates.

127. In the course of the Commission's inquiry the Italian Government claimed that from the time of its decision, which had been taken in the interest of Italian consumers, to set a maximum price for pasta sold on the home market, it was clear that the national industry could not satisfy consumer demand unless they had some means of procuring their raw materials on terms compatible with this maximum price. During the period following its decision, hard wheat prices rose sharply both on the Italian market and on the world market with the result that, had there been no intervention on the part of the public authorities in respect of purchase terms for the raw material, either it would have been necessary to increase the maximum consumer price very considerably and to accept the consequences in social and inflationary terms, or the Italian manufacturers would have stopped supplying the home market or at the very least cut back supplies.

In a situation of shortage and speculation AIMA had merely acted to ensure that the manufacturers concerned were in a position to meet domestic demand through being able to purchase their supplies of hard wheat at a reasonable price compatible with the controlled price laid down for their pasta.

128. The Commission inquiry revealed that a series of administrative and tax controls had in fact been introduced to ensure that the information provided by the Italian manufacturers regarding the quantities of pasta sold on the home market at the controlled price was accurate and that the aid granted by AIMA was used for these quantities only and was neither less nor more than the loss of profits actually suffered by each manufacturer in respect of these quantities.

It therefore followed that exports of Italian pasta, in particular to other Member States, derived no financial benefit from the AIMA operations and that the hard wheat used in the manufacture of such pasta was purchased at the market rate. This was confirmed by the statistics for Italian exports to other Member States, from which it was clear that there had in general been no significant increase and that what slight increase there had been could be readily explained by the lira's weakness against certain currencies and the fact that Italian exporters had been forced to concentrate their efforts on the Community market, Community levies acting as a disincentive to pasta exports to non-member countries. The Commission inquiry also revealed a sharp increase in export prices which reflected the rise in market prices for hard wheat.

129. The Commission consequently accepted the Italian Government's argument that the sale of reduced-price hard wheat by AIMA to Italian pasta manufacturers to cover quantities of pasta sold on the home market could not have distorted competition or affected trade in the common market for the purposes of the EEC Treaty provisions relating to State aids. Moreover, the Italian Government discontinued the scheme with effect from August 1975 when the market in hard wheat began to stabilize and informed the Commission that it had no itention of reintroducing it.

However, one French manufacturer, acting under Article 215 of the EEC Treaty, instituted proceedings before the Court of Justice against the Community, as represented by the Commission, for damages suffered as a result of the Commission's failure to require the Italian Government to stop assisting Italian pasta manufacturers, thereby permitting distortion of competition on the markets on which the French company did business.[1] Because of these abnormal conditions of competition the French company claimed to have lost some of its traditional outlets and to have been obliged, in an attempt to avoid further loss, to cut its profit margin excessively.

Giving judgment on 21 January 1976, the Court held that the action was admissible but accepted the Commission's defence and found against the applicant on the merits.

§4 — General aid schemes and economic recovery measures

General

130. The second half of 1974 marked the opening stages of the worst recession to be experienced by Community countries since the Second World War, and the situation deteriorated still further in the first six months of 1975. It was characterized by a sharp fall in demand and production, by under-utilization of existing production capacity and a significant reduction in investment by companies.

The economic downturn was first evident in Germany and Italy; it then spread to the Benelux countries and later to France. The United Kingdom, which had only just recovered from the strikes of 1974, was also affected. By mid-1975 industrial production in most of the Member States had dropped to its 1972 level and in the Community as a whole it had fallen by approximately 12.5% in one year.

This was accompanied by an alarming deterioration in the situation on the labour market, the number of wage and salary earners dropping sharply in all Member States throughout the year. By August 1975 the number of unemployed in the Community as a whole had reached almost the 5 million mark—more than 4.5% of the working population, an increase of nearly 2 million over the same period of 1974. Short-time working and hidden unemployment (firms keeping on more workers than was justified by their level of production) became more widespread in most Member States. The number of situations vacant dwindled and school-leavers had difficulty finding work.

The economic downturn aggravated the situation in certain industries or undertakings with structural problems dating from the energy crisis or earlier and made their solution more difficult. Even in sectors free from such problems a number of relatively

[1] Case 40/75.

thriving undertakings were caught unawares by the seriousness of the crisis and found themselves in financial difficulties which put their existence at risk.

131. Faced by this situation most of the Member States attempted to prevent a further falling-off in economic activity and employment, and followed this—balance of payments and fight against inflation permitting—by measures to reactivate the economy. Varying in scope depending on the Member State but often far-reaching, these measures involved the granting of financial benefits to undertakings, subsequently examined by the Commission within the framework of the Treaty provisions relating to State aids.

Such benefits, which varied in form, scope and method of operation, were all part of a general effort to safeguard or improve employment in one of the following ways:

(i) encouraging an upturn in investment, either in general terms or by favouring projects which appeared most capable of restoring national trade balances (investment in predominantly exporting growth industries or investment promoting energy conservation);
(ii) alleviating the difficulties facing specific industries or undertakings with structural problems dating from the energy crisis or earlier by granting aid in respect of rationalization operations carried out under restructuring programmes, irrespective of whether or not there is any investment involved;
(iii) granting in certain cases purely financial aid to certain basically sound undertakings to enable them to survive the economic downturn;
(iv) encouraging recruitment and discouraging redundancies by offering employment premiums (to cover part of the wage costs involved) for every job created or maintained.

132. Member States have not necessarily set up new machinery for the implementation of these measures. In some cases they have continued to apply the existing general aid schemes [1] providing aid for general economic expansion, the modernization of national industry or the restructuring of undertakings with adjustment problems. They have, however, increased the funds available and extended their scope of application. In some Member States such schemes have been used not only to encourage new investment by undertakings but also to grant them the necessary respite pending economic recovery or the successful outcome of restructuring operations.

In other cases Member States have introduced economic recovery measures valid for a limited period only, this period being determined on the basis of the estimated duration of the crisis, or the determination to encourage the undertakings concerned to proceed promptly with the desired operations regardless of whether these involved additional investment or restructuring operations.

[1] See Third Report on Competition Policy, point 112 *et seq.* and Fourth Report on Competition Policy, point 166 *et seq.*

133. Both in the case of general aid schemes (in the form of industry programmes or individual measures for specific undertakings) and in the case of new economic recovery measures, the Commission, bearing in mind the exceptional economic and social situation confronting the Member States, has agreed to certain measures which, in this particular phase of the Community's existence, it deemed eligible for the derogation provided for under Article 92(3)(b) of the Treaty, according to which aid 'to remedy a serious disturbance in the economy of a Member State' may be considered to be compatible with the common market.

The Commission thus concluded that Member States, in an attempt to protect employment, were justified in boosting investment by granting firms financial benefits (in the form of tax deductions or low-interest loans) on an automatic or quasi-general basis for a limited period. Similarly, it agreed to financial aid being granted to ensure the survival of firms which have run into difficulties, thereby avoiding redundancies. It did insist, however, that such aid, which in itself is neither aimed at nor resulted in structural improvement, would be allowed only in the case of two categories of undertaking—those which are basically sound and whose problems will disappear as soon as the economy picks up and those where rationalization is called for but which need a respite while the necessary programmes are studied, formulated and initiated.

On the basis of the same considerations the Commission has also permitted Member States, for the duration of the present economic situation, to reimburse a part of the wage costs incurred by firms creating new jobs, for young people in particular, or refraining from staff cuts which would be justified by lower production figures. Aid granted on the basis of investment only may well encourage firms to undertake labour-saving operations or at least favour investment programmes involving the creation of very few jobs.

134. In line with previous practice in respect of general aid schemes, the Commission has required Member States, with regard to certain such schemes, to notify it of the more important specific cases where aid is granted. This is to enable the Commission to check:

— that aid to promote investment, by undertakings, does not expand production capacity in industries whose chances are already at risk, nor merely shift the problem without finding a genuine solution to the social and industrial difficulties facing the Community, or even aggravate the situation still further in the immediate or not so distant future;
— that the financial aid granted for rescue operations for certain undertakings satisfies certain requirements, namely that it is used to benefit firms which are basically sound or, if this is not the case, that it is accompanied by the implementation of restructuring operations, that it does not result in the recipients' undertakings being kept in business at the expense of competitors in other Member States who have run into the same difficulties, and that it fulfils genuine and important requirements with regard to employment.

This control procedure has been applied effectively during 1975 in respect of a relatively large number of applications of sectoral or individual cases of general aid schemes and of certain economic recovery measures.

General aid schemes

135. The characteristics of general aid schemes, the fundamental features of national schemes falling under this heading and the Commission's reasons for considering it necessary to insist on prior notification of cases of implementation of such schemes (in respect both of sectoral programmes and of significant individual cases) have been described in previous reports on competition policy.[1] This control procedure is now applied in respect of all such aid schemes being implemented throughout the nine Member States of the Community.

By the beginning of 1975 only one scheme had not conformed. This was the Belgian Law of 17 July 1959 introducing and coordinating measures to encourage economic expansion and the creation of new industries. This law provides a number of benefits (interest-relief grants, State guarantees, tax exemptions) for investments which contribute to the creation, extension, conversion or modernization of industrial undertakings. The Commission had been unable to elicit compliance by the Belgian Government with the control procedure which it had none the less had to accept in the case of similar aids provided for in the Economic Expansion Law of 30 December 1970.[2]

Having initiated the procedure under Article 93(2), the Commission eventually adopted a Decision requiring the Belgian Government to notify it of any future aids granted under the law in question.[3]

136. The Belgian Government subsequently informed the Commission that it would comply with this Decision but requested that the criteria used to define the cases of application requiring prior notification be reviewed. The Commission had hitherto requested notification of:

— programmes for a particular sector that could be undertaken within the framework of each general aid scheme;
— or, failing this, significant individual cases where aids are granted to such given undertakings, significant cases being defined as follows: cases where the value of the investment is 2 million u.a. or more and cases where the value of the aid, expressed as net subsidy equivalent, is 15% or more of the value of the investment.

[1] Second Report on Competition Policy, point 116 *et seq.*; Third Report on Competition Policy, point 112 *et seq.*; Fourth Report on Competition Policy, point 166 *et seq.*
[2] Second Report on Competition Policy, point 90.
[3] Decision 75/397/EEC, OJ L 177 of 8.7.1975, p. 13.

The Belgian Government, together with other Member States, pointed out that the figure of 2 million u.a. had not been altered since 1972 and consequently did not take account of the intervening rise in investment costs. Realizing that this comment was justified, and also the need to apply the new European unit of account (EUA) in this sector, the Commission decided to raise the notification threshold to 3 million EUA.

Economic recovery measures

137. It is not possible within the necessarily restricted confines of this report to analyse in detail all the economic recovery measures which Member States have been obliged to adopt in the past year to maintain or boost economic activity and employment and on which the Commission has expressed its views. The measures described below are therefore quoted only by way of example.

Federal Republic of Germany

138. The Heads of Government of the nine Member States of the Community, meeting in Paris on 10 September 1974, had expressed the view that 'Member States which have a balance of payments surplus must implement an economic policy of stimulating domestic demand and maintaining a high level of employment, without creating new inflationary conditions'. Several days later the German Government notified the Commission of an economic programme to encourage employment and stable economic growth. This was at a time when the unemployment level in Germany was the highest in the Community after Italy.

The main objectives of the German programme, to which the Commission raised no objections, included a significant increase in public investment, higher unemployment benefits and the granting of a number of financial benefits to undertakings, notably:

— a 7.5% subsidy for investment operations carried out between 31 November 1974 and 1 July 1975;
— a grant to encourage the recruitment by 1 May 1975 of persons out of work; firms recruiting on this basis were entitled to an allowance equivalent to 66% of gross wage costs, payable for a six month period. This subsidy was granted only in those areas where the unemployment level was half a point higher than the national average; budgetary credits of DM 500 million were allocated for this subsidy, which was intended to provide jobs for about 90 000 unemployed;
— the allocation of considerable additional funds to encourage investment by small and medium-sized firms.

France

139. In May 1975 the French Government adopted a series of important measures aimed at boosting productive investment by both private and public undertakings, in an attempt to safeguard employment and at the same time continue the programme of industrial modernization and redeployment that was essential in the aftermath of the energy crisis.

These measures involved primarily:

— a subsidy equal to 10% of the value of firm orders for capital goods and tools placed by firms (whether agricultural or commercial, smallscale craft businesses or industrial undertakings) between 30 April and 31 December 1975, such subsidies to take the form of a deduction in the VAT payable by these firms in 1975. This benefit was granted automatically, irrespective of the origin of the equipment ordered (national or otherwise). Similar measures had been taken in France in 1966 and 1969 with the same aim;

— long-term financing assistance to help firms carry out their investment programmes. A number of credit institutions (Crédit national, Crédit hôtelier et commercial, Société de développement régional, Caisse nationale des marchés de l'État) floated a FF 5 000 million loan, on the proceeds of which they granted long-term loans (15 years) to help finance company investment programmes to increase production capacity, create new jobs or conserve energy. Such programmes were to be started by 31 December 1975. The interest rate is the rate prevailing on the bond market, reduced however for the first five years to 8.5% as the result of a government interest-relief grant.

  The same institutions were also able to grant long-term loans on the same terms up to an overall ceiling of FF 1 500 million, likewise eligible for the same interest-relief grant, for investment programmes to increase production capacity carried out by firms undertaking to increase their exports by 5% over the next three years. Examination of the applications and the selection of suitable applicants lay with the credit institutions concerned; the public authorities did not interfere to impose sectoral, regional or specific preferences.

The Commission found that the measures adopted by the French Government were in keeping with the 'adjustments to the economic policy guidelines for 1975' which it had suggested in a communication to the Council and to which the Council had agreed on 18 March 1975. In view of the short-term economic problems (negative trend in the employment level, drop in industrial output) facing the Government, and of the conditions governing the aid planned (investment subsidies for a limited period), the Commission raised no objection to the application of these measures by the French Government, on condition that prior notification was given of significant cases where long-term subsidized-interest loans were granted.

140. From June, grants payable for a six-month period have been given to firms creating new jobs for young workers under 25 and for persons who have been unemployed for more than six months. The grant was fixed at FF 500 per month for persons recruited by 30 September 1975 and FF 300 per month for those recruited between 1 October and 20 November 1975. In order to avoid redundancies it had previously been decided that the State, acting within the framework of agreements concluded with trade associations representing certain industries or with the firms themselves, would bear part of the costs in respect of the additional allowances payable to workers on short time.

Attempts to promote economic recovery were intensified in September as follows: the payment dates for certain direct company taxes were deferred by six months; the funds allocated to loans granted by the Economic and Social Development Fund (a general aid scheme subject to Commission control)[1] were increased by FF 3 000 million; and the abovementioned 10% subsidy in the form of a VAT deduction, which was initially restricted to capital goods being paid off over a period of less than eight years, was extended to all such goods paid off on a decreasing instalment basis,

Belgium

141. A scheme similar to this French and to the German schemes described above[2] was introduced in Belgium on 1 July 1975 to encourage additional investment during the period from 1 July to 31 December 1975. Under this scheme firms will be entitled to deduct 15% of the value of such investments from the profits on which they are liable to income tax; this is the equivalent of a net subsidy of up to 6%.

Denmark

142. In April 1975 the Commission was advised of a draft Danish law setting up a Fund for the assistance of companies which are structurally sound but have run into difficulties as the result of the economic situation.

The Fund, whose initial resources are to consist of a State contribution of Dkr 100 million (approximately 12.5 million u.a.), was to operate for a temporary period only, until such time as it was then expected economic activity would recover, i.e., 1 July 1976. Aid granted under the Fund is to take the form of loans at market rates and guarantees on loans granted by third parties to the firms concerned. Commitments in each particular case may not exceed Dkr 25 million (approximately 3 million u.a.),

[1] Third Report on Competition Policy, point 113.
[2] Points 138 to 140.

with a maximum term of eight years. Aid will be restricted to firms which fulfil a key function in terms of economic activity and employment and which, apart from the problems due to the economic situation, are seen to be structurally viable.

The Commission originally decided not to raise objections to this scheme on condition that significant cases where it was used — defined as cases where aid was granted to firms employing more than 300 persons, or, failing this, having an annual turnover of more than 10 million u.a.[1] — be notified in advance.

On account of the Danish Government's failure to agree to this proviso and of the extension of the period of application to 1 July 1977 without its being consulted, the Commission was subsequently obliged to initiate the procedure under Article 93(2) of the EEC Treaty. Having received satisfactory undertakings from the Danish Government that such specific cases would be notified and that the Commission would be informed, should the aid scheme be extended beyond the original expiry date of 1 July 1976, so that it will be able to give an opinion in the light of the prevailing social and economic conditions, the Commission decided to terminate the procedure.

143. The Commission also decided to raise no objections to the implementation of a second draft Danish law to stimulate activity and thereby reduce unemployment in the building sector by encouraging property investment by Danish firms (industrial, commercial and agricultural).

A total of Dkr 520 million has been set aside for the implementation of this aid scheme, which will terminate on 31 March 1977, by which date investment projects receiving assistance will have to be completed. The following operations will be eligible for assistance in the form of capital grants of up to 25%: those permitting the conservation of energy in buildings used for industrial, commercial or agricultural pruposes; those aimed at improving working conditions in such buildings; and those for the construction of buildings to be used by small, industrial or commercial enterprises.

The Commission's decision was based on the consideration that this scheme could help bring about a recovery in the economic and social situation in Denmark and that it was particularly advantageous to small- and medium-sized firms by virtue of the upper limit on aid granted in each specific case.

144. In addition, in Denmark as in France and Belgium, assistance in the form of tax concessions has been introduced to encourage investment in fixed and movable assets under two laws enacted in June and September 1975. The aid granted will represent the equivalent of a 3.6% or 7.2% subsidy depending on whether the investment is in fixed or movable assets. Such investment operations must be completed by 31 December 1976.

[1] The nature and scale of the investment, because of the type of aid scheme involved, could not be used as criteria for the determination of significant cases.

United Kingdom

145. In August the United Kingdom Government informed the Commission of its intention to amend the Employment and Training Act 1973 with a view to improving the employment situation by means of the following temporary aid measures:

— a temporary employment subsidy to be paid to employers at the rate of £10 per week per person to keep in employment groups of 50 or more workers who would otherwise have been made redundant; the subsidy is to be paid for a period of 3 months, with a possibility of an extension for a further 3 months; the aid will be available for a 12-month period and can be renewed for a further year;
— a recruitment subsidy scheme to help young people to find employment; a payment of £5 per week will be made over a 26-week period for each newly recruited young person who was registered as unemployed and who left school before the end of July 1975.

The recipient firms must be structurally sound, thus providing an assurance that the employees for whom these subsidies are paid will be able to stay with the firm on a long-term basis.

The Commission informed the UK Government that it had no objection to these measures as long as they were justified by the economic situation.

146. At the same time the British Government took steps to stimulate industrial investment by authorizing the allocation of additional funds to the existing general aid scheme provided by Section 8 of the Industry Act 1972. The sum of £180 million has been made available to encourage firms to proceed at an early date with their investment and industrial modernization programmes.

Section 8 of the Industry Act 1972 makes provision for various forms of financial assistance (grants, loans, guarantees, temporary acquisition of share capital) to be granted by the British Government to promote the development or modernization of an industry, to promote its efficiency, to create, expand or sustain productive capacity in an industry or in undertakings in an industry. This constitutes a general aid scheme, and the UK Government for its part complies with the control procedure imposed by the Commission in respect of the implementation of such schemes.[1] The Commission therefore raised no objection to the allocation of additional funds, as the procedure referred to above enabled it to comment on the purpose for which they are used to finance industry programmes or assist individual firms.

[1] Point 134.

Ireland

147. The Irish Government also has introduced, with effect from June 1975, an aid scheme to improve the employment situation. Under this scheme manufacturing firms recruiting persons out of work are eligible for temporary premiums of £12 per week per person up to 31 March 1976 and £6 per wekk up to 30 June 1976, when payment will cease. A total of £27 million has been set aide for these measures. As in the case of the British scheme referred to above, the Commission has raised no objection.

Italy

148. In an attempt to combat the recession the Italian Government decided in May to allocate further funds under certain existing laws creating general aid schemes for manufacturing industry. These include:

— Law No 464 of 8 August 1972 for aid to firms which, having run into difficulties, may have to dismiss workers or put them on short time; this aid basically consists of grants reducing the rate of interest on loans contracted by firms to carry out restructuring plans to prevent unemployment.

  Additional funds totalling Lit. 16 000 million for 1975 and Lit. 28 000 million per year for 1976-89 are to be allocated for the implementation of this law;

— Law No 1470 of 18 December 1961 for aid to firms which have run into difficulties or have already discontinued operations and are unable therefore to obtain funds through the usual channels; under this law provision is made for the Istituto Mobiliare Italiano (IMI) to grant low-interest loans to ensure the survival of these firms, on condition that the loans are used to finance reorganization or restructuring operations.

  An additional sum of Lit. 30 000 million has been allocated to IMI for this purpose.

The Italian Government had previously agreed to give the Commission prior notification of significant specific cases where aid was granted under these two laws.[1] In view of this undertaking and of the problems currently facing the Italian economy, the Commission raised no objection to provision of additional funds for these two laws.

[1] Fourth Report on Competition Policy, points 168 and 169.

Chapter II

Adjustment of State monopolies of a commercial character

149. The Commission continued the work it had been engaged in since the end of the transitional period with respect to State monopolies of a commercial character.[1]

In Case 59/75 the Commission restated before the Court of Justice its view that Article 37(1) of the EEC Treaty had been directly applicable since the end of the transitional period and that this necessarily implied the extinction of a State monopoly's exclusive rights to import and market goods which the monopoly itself manufactured.[2]

150. As regards the French potash monopoly, the obligation to give prior notification of imports of straight fertilizers containing potash or potassium salts was abolished on 1 May 1975.[3] The monopoly, therefore, has now been fully adjusted in accordance with Article 37(1). The Commission consequently decided on 25 July 1975 not to continue with the infringement procedure initiated in this case.

151. The Commission felt obliged to review its position on the French and German alcohol monopolies following the judgment given by the Court of Justice on 10 December 1974 in Case 48/74.[4] The Court had rejected the Commission's view that barriers to trade forming an integral part of a national market organization for agricultural products may be maintained until the national market organization is replaced by a common organization. As regards trade between Member States the provisions of the EEC Treaty on the abolition of quantitative restrictions and measures having equivalent effect, which have been directly applicable since the end of the transitional period, have therefore applied in full since then both to agricultural and to industrial

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[1] First Report on Competition Policy, point 195 *et seq.*; Second Report on Competition Policy, point 150 *et seq.*; Third Report on Competition Policy, point 125 *et seq.*; Fourth Report on Competition Policy, point 184 *et seq.*

[2] Giving judgment on 3.2.1976, the Court ruled that Article 37(1) required the exclusive right of a State monopoly of a commercial character to import from other Member States to be abolished by 31.12.1969, and that the provisions of this Article had been directly applicable since that date.

[3] *Arrêté* of 28.11.1974.

[4] [1974] ECR 1383 *et seq.*

products. The Commission had found that France and Germany, each having an alcohol monopoly with rules designed to make it easier to dispose of agricultural products or obtain for them the best return, did not allow imports of alcohol of either agricultural or non-agricultural origin. For this reason the Commission on 31 July 1975 urged the French and German Governments to abolish these restrictions on the free movement of goods from other Member States. So far they have taken no step to comply. However, the Commission has not initiated infringement procedures against these two Member States, since two requests have been made to the Court of Justice for a preliminary ruling on whether the German alcohol monopoly could be considered compatible with the provisions of the EEC Treaty, in particular Article 37, after the end of the transitional period.[1]

152. Following complaints by foreign manufacturers concerning excessively long delays on the part of the Italian manufactured tobacco monopoly in paying for imports, the Commission had again initiated an infringement procedure against the Italian Government in accordance with Article 169 of the EEC Treaty.[2] Having been informed by the manufacturers concerned that the payments situation had returned to normal, the Commission decided on 26 July 1975 not to continue with the above procedure.

Apart from this, the Commission continued its examination of adjustments to the Italian manufactured tobacco monopoly. In response to numerous complaints by exporters it made representations to the Italian authorities on several occasions, urging that certain adjustments should be put into effect, and that the undertaking given when the Council Resolution of 21 April 1970 was adopted — to the effect that free movement of manufactured tobacco would be secured by 31 December 1975 — should be respected.

A law adjusting the monopoly arrangements for the importation and marketing of manufactured tobacco at wholesale level was enacted on 10 December 1975.[3] The Commission informed the Italian Government that certain aspects of the law did not conform to the provisions of the EEC Treaty on the free movement of goods. It also asked the Italian Government to give an assurance that these provisions would be respected during the interim period following the entry into force of the new arrangements, and until importers, with full knowledge of the facts, had time to take any steps they considered necessary.

153. The Italian authorities informed the Commission that, under the Decree issued by the Minister of Finance on 25 June 1973 the State monopoly's exclusive wholesaling right for matches would cease at the same time as its exclusive right for mark-

[1] Cases 45/75 (Rewe) and 91/75 (Miritz). The Court is expected to give a ruling early in 1976.
[2] Commission Decision of 20.12.1974; Fourth Report on Competition Policy, point 188.
[3] Law No. 724: *Gazzetta Ufficiale*, 7.1.1976.

eting manufactured tobacco at wholesale level, namely by 31 December 1975. The Commission asked the Italian Government to provide assurances regarding the tax arrangements to be applied once the new provisions took effect. The necessary assurances were given.

154. The Commission urged the French Government on several occasions to ensure that the undertaking given when the Council Resolution of 21 April 1970 was adopted to the effect that free movement of manufactured tobacco would be established by 31 December 1975, was respected. It also asked the French Government for assurances that the principle of free movement of goods would be upheld during the interim period following the entry into force of the new arrangements, until importers had time to take any steps they considered necessary having full knowledge of the facts.

155. In the light of the comments made by the Italian Government under the infringement procedure, the Commission re-examined the arrangements concerning the bergamot oil consortium and compulsory storage of begamot oil introduced by the Law of 28 November 1973.[1] The Italian Government informed the Commission that any Community national may purchase an unlimited quantity of bergamot oil from the consortium on the same terms as its members. Furthermore, the consortium does not have the exclusive right, in law or in fact, to authorize exports of bergamot oil to other Member States, and buyers are therefore free to sell the oil not only on the Italian market but also on other Community markets.

Bearing this information in mind, the Commission is now considering whether the Italian bergamot oil arrangements can in fact be said to be a State monopoly of a commercial character within the meaning of Article 37(1).

156. The Commission continued its efforts to ensure that the adjustment of monopolies in the original Member States in relation to the new Member States was progressing in accordance with Article 44 of the Act concerning the Conditions of Accession.[2]

In its Recommendation of 2 August 1974[3] concerning the French manufactured tobacco monopoly, the Commission had asked the monopoly to open import quotas for the new Member States and to increase them gradually each year up to the end of the transitional period (31 December 1977), in accordance with Article 44. The French Government informed the Commission of its reactions to this Recommendation, stating that for administrative reasons new brands of manufactured tobacco from the new Member States could not be introduced until the beginning of 1976. The Commission informed the French Government that this was not in line with Article 44: the

[1] *Gazzetta Ufficiale* No 333, 28.12.1973.
[2] Fourth Report on Competition Policy, point 190.
[3] OJ L 237 of 29.8.1974, p. 35.

adjustment of the monopoly, and hence the gradual opening-up of the market, should have been started as soon as the Act concerning the Conditions of Accession came into force on 1 January 1973. The Danish Government has also lodged a complaint in this connection.

157. Following the Recommendation[1] of 19 July 1974 the French Government stated that it was prepared to start importing matches from the new Member States in 1975 in accordance with the arrangements laid down in the Recommendation.

Since the Commission was not informed of the measures taken by the authorities regarding the Italian manufactured tobacco monopoly following the Recommendation of 25 November 1974,[1] it reminded the Italian Government of its obligations under Article 44 of the Act concerning the Conditions of Accession.

158. Adjustment of the French and German alcohol monopolies *vis-à-vis* the new Member States is closely bound up with the question whether a national organization of the market in alcohol is compatible with the Treaty, and the matter had been referred to the Court of Justice. If it proves to be necessary, the Commission will send a further Recommendation to the French Government and a Recommendation to the German Government, asking them chiefly to open up the French and German markets to imports of ethyl alcohol from the new Member States.

[1] OJ L 237 of 29.8.1974, p. 2.
[2] OJ L 326 of 6.12.1974, p. 29.

Chapter III

Public undertakings

159. At the beginning of Chapter I of this part of the Report, dealing with government assistance to undertakings, mention was made of the fact that Member States had been stepping up measures to help cope with the difficulties facing them in the present economic crisis.

These measures neither necessarily nor exclusively take the form of regional or sectoral aids but also include the injection of additional funds into individual firms, notably in the form of loans or the acquisition of holdings. Clearly, such assistance is granted mainly to firms which would find it difficult to survive without this support.

But although the Commission is given the opportunity, at least in significant cases, to rule on whether assistance of this type is compatible with the EEC Treaty before it is granted, the business conduct of public undertakings, which may be supported by public funds for fairly long periods, could lead to distortions of competition. Public undertakings are not always bound by the same considerations of profitability as private firms in the same sector; in many cases, indeed, they could not be so bound given the operating conditions imposed on them by the State. Complaints on this score have been lodged with the Commission departments concerned by firms or groups of firms which feel they have a grievance, and three Written Questions on the subject have been put to the Commission by Members of the European Parliament[1]. Some of the points raised are still being examined. However, the work of the Commission departments in this field is often hampered by the lack of transparency in the financial links between governments and undertakings as referred to in Article 90(1) of the EEC Treaty, whose conduct may be influenced by governments.

Consequently, the Commission departments concerned are preparing a directive based on Article 90(3) of the EEC Treaty with the three-fold aim of clarifying for Member States their responsibilities under Article 90 introducing rules which will put the Commission in a better position to check on compliance with the Treaty by Member States operating through public undertakings and by the undertakings themselves, and finally making the financial links between governments and public undertakings more transparent.

[1] Written Question No. 699/74 by Mr. Spénale: OJ C 86 of 17.4.1975, p. 66; Written Question No. 63/75 by Mr. Schwörer: OJ C 209 of 11.9.1975, p. 2; Written Question No. 108/75 by Mr. Giraud: OJ C 192 of 22.8.1975, p. 10.

Part three

The development of concentration in the Community

Introductory remarks

160. This part of the report reviews the results of the Commission's research programme on concentration in the Community.

The first section deals with national and international mergers, share acquisitions and joint ventures in 1973 and 1974.

The second section deals with the development of concentration in a number of Community industries and countries; it gives figures summarizing the results obtained so far and a comparative analysis of the various aspects of concentration based on selected illustrations.

The accent is on concentration in product markets, and, for the first time, industrial and commercial structures in the United Kingdom are the centrepiece.

A number of general remarks and conclusions complete Part three.

§1 — National and international mergers, share acquisitions and joint ventures in the Community in 1973 and 1974

Comparison between national and international operations

161. The figures given in this Fifth Report on Competition Policy for the number and type of mergers and similar operations in the Community in 1974 are directly comparable with those for 1973 given in the Fourth Report (points 194 to 200).

The figures for 1974, like those for 1973, were obtained from the specialist press. Not only international operations but also purely domestic operations are covered. Figures are given exclusively for the number of operations which took place.

Since there is no indication of the economic scale of each operation, it is not possible to tell whether there is a correlation between the frequency of such operations and changes in the degree of concentration.

162. Table 1 sets out the total number of national and international operations in the Community for 1973 and 1974; separate figures are given for takeovers and

TABLE 1

National and international operations in the Community

	Breakdown of operations and firms involved by type of operations						Totals		Breakdown of operations by number of firms involved	
	Takeovers and mergers		Share acquisitions		Joint ventures				Bilateral operations	Multilateral operations
	Number of operations	Number of firms involved	Number of operations	Number of firms involved	Number of operations	Number of firms involved	Number of operations	Number of firms involved		
1973	138	318	952	1 989	548	1 476	1 638	3 783	1 298	340
1974	165	404	1 018	2 241	552	1 615	1 735	4 260	1 367	369
of which purely national operations (%):										
1973	100	100	40	42	22	32	39	43	42	29
1974	100	100	60	58	27	32	53	52	58	36

mergers, share acquisitions and joint ventures in each of the two years. The number of firms involved in each type of operation is also given. There is a further breakdown, on the basis of the number of firms involved, into bilateral (two-firm) and multilateral three-or-more firm operations. While the figures show the number of firms taking part in these operations, it should not be forgotten that in any given year one firm may have been involved in several share acquisitions or joint ventures and may have merged with one or more other firms.

Finally, Table 1 relates purely national operations in percentage terms to the total number of operations for each of the two years.

163. Comparison of the 1973 and 1974 figures shows that there was a sharp increase (20%) in the number of takeovers and mergers, whereas the increase in share acquisitions was slight (7%) and there was virtually no increase in the number of joint ventures (barely 1%). As for the number of firms involved, the figures are more emphatic: there is a 27% increase as regards takeovers and mergers, 13% for share acquisitions and 9% for joint ventures. There was a bigger increase from 1973 to 1974 in the number of firms involved in operations of this kind (13%) than in the number of operations themselves (6%).

164. As for the relative importance of the various types of operation, it will be seen that acquisitions rank first with 59% of all operations; joint ventures account for just under a third (32%). It also emerges from Table 1 that two-firm operations (79% of the total) were considerably more frequent than operations involving three firms or more.

165. In 1973 international operations (61% of the total, 57% of those taking part) were rather more numerous than purely national operations, but the situation was reversed in 1974, when national operations accounted for 53% of the total and for 52% of the firms taking part.

However, the period of observation is too short to warrant the conclusion that there is a trend for purely national operations to grow in statistical importance at the expense of international operations.

Geographical breakdown of international operations

166. A little more than half (54%) of all international operations in 1974 concerned exclusively Community firms (Table 2). The percentage had been larger in 1973. But the percentage of Community firms in the total number of firms taking part in these operations rose sharply from 73% in 1973 to 83% in 1974.

TABLE 2

Breakdown of international operations

(a) *Number of operations*

Year	Share acquisition		Joint ventures		Total	
	% EC	% NMC	% EC	% NMC	% EC	% NMC
1973	60	40	54	46	57	43
1974	57	43	52	48	54	46

EC = operations involving exclusively Community countries.
NMC = operations also involving firms from non-member countries.

(b) *Number of firms involved*

Year	Share acquisition		Joint ventures		Total	
	% EC	% NMC	% EC	% NMC	% EC	% NMC
1973	78	22	66	34	73	27
1974	91	9	72	28	83	17

EC = firms from Community countries.
NMC = firms from non-member countries.

167. In the enlarged Community, German and French firms were the most frequent participants in international operations in 1974 (Table 3), Germany now having caught up with France, the leader since 1971. With a one-third increase in its share from 1973 to 1974, the United Kingdom has joined Belgium in third place. The Benelux countries taken together still lead the field despite a notable drop from 1973 to 1974. These three countries alone accounted for 44% of international operations in 1973, 31% in 1974.

TABLE 3

Geographical breakdown of international operations in the Community

Year	D	F	I	NL	B	L	UK	IRL	DK	Total
1973	14	22	6	11	19	14	12	1	1	100
1974	22	22	7	8	16	7	16	1	1	100

168. From information available on the nationality of firms taking part in international operations in the Community, it is possible to determine the share of the total number of firms involved in 1973 and 1974 accounted for by non-member countries (Table 4). As was the case when the Community had only six members, American firms head the list, followed by Swiss firms. But, in line with a trend which began some years ago, their share in 1974 was one sixth lower than in 1973 while the Swiss influence fell off by a third. Indeed, the number of non-member-country firms in general was nearly 20% down on 1973: at that time Community firms represented less than three-quarters of those taking part in international operations, but this rose to nearly four-fifths in 1974.

TABLE 4

Share of Community and non-Community firms involved in international operations in the Community

Year	EC	USA	Switzerland	Japan	Scandinavia	Others	Total
1973	73	12	6	2	2	5	100
1974	79	10	4	1	3	3	100

Breakdown by industry of national and international operations

169. From 1973 to 1974 the share of a number of industries in total national and international operations in the EEC declined (Table 5): the main examples are the metal-using industries (down from 27% to 21%) and the food industry (down from 9% to 4%). On the other hand the services sector confirmed a trend which had been gathering momentum for some years with an upsurge from 39% to 51%. Future reports may well take this into account by giving separate figures for individual service industries.

TABLE 5

National and international operations in the Community, by industry

Year	Metal-using industries	Energy	Chemicals	Textiles	Other manufacturing industries	Food industry	Services	Total
1973	27	2	8	4	11	9	39	100
1974	21	3	9	4	9	4	51	100

§2 — The development of concentration in selected industries

The methods used

170. With five years of research into concentration behind it, the Commission is now in a position to give a statistical summary of progress and results so far, though this will inevitably be concise. The analysis incorporates the findings of all the industry studies carried out for the Commission since 1970 and will be confined to the most widely used measure of concentration—the concentration ratio, which is the percentage of an industry's total sales accounted for by the four largest firms in that industry. Nevertheless, in certain tables the concentration ratio will be corrected and refined by the coefficient of disparity, designed to show whether these four firms are of more or less the same size (at least as regards the variable selected) or whether one or more of them wields superior economic power.

The coefficient of disparity is expressed as a percentage, like the concentration ratio the maximum concentration ratio (100%) being at the same time the minimum coefficient of disparity. This minimum corresponds to the situation where the four leading firms are of exactly the same size.

Hence the concentration ratio and coefficient of disparity will both be 100% in an industry where there are only four firms and each accounts for exactly the same share of sales. Where, on the other hand, the size distribution of the four leading firms is sharply asymmetric, the coefficient of disparity will be closer to 400%, and the presumption of a partial and imperfect monopoly situation will become stronger as the coefficient reaches or exceeds 1 000%.[1]

Use of the coefficient of disparity together with the concentration ratio not only enables international comparisons to be made on relatively homogeneous and simple

[1] *Technical note.* The coefficient of disparity (4L) is derived from the ratio between the index of disparity (L_4) and the 'competitive model' (CM) which in the present case is 0.250. In this situation $4L = 4L_4$. As regards the denominator of the ratio, it will be borne in mind that, if the four firms ($n^* = 4$) account for the same share in the variable or are of the same size (hypothesis of absolute equality), $L4 = \frac{1}{n^*} = \frac{1}{4} = 0.250$, i.e., the CM.

See Y. Morvan, *La concentration de l'industrie en France* (Collection U, Colin, Paris 1972), page 190.
If, on the other hand, the L index is taken in relation to only three or two firms, the competitive model—corresponding to the hypothesis of absolute equality—would be $L_3 = \frac{1}{n^*} = \frac{1}{3} = 0.333$ and $L_2 = \frac{1}{n^*} = \frac{1}{2} = 0.500$ respectively.

bases but also (where it approaches or exceeds 400%) allows the amber or the red light to be activated without actually revealing figures for individual firms.

The economist and the lawyer will then be able to say whether or not this disparity of size reflects a situation of dominance or of leadership. An analysis of concentration on product markets will highlight, through the figures and their interpretation, the way these two measures of concentration complement each other.

171. Table 6 gives a summary of what studies have so far been carried out under the Commission's concentration research programme.

Some of the industries have been reported on twice, the first report covering the period from 1962 to 1970 (the reference period for the first round of reports) and the second bringing the picture up to date for subsequent years.

172. The new reports incorporated in Table 6 this year were prepared by the following national research institutes and experts:

Germany:	IFO-Institut für Wirtschaftsforschung, Munich, (manufacture of non-electrical machinery, electrical engineering) Kienbaum Unternehmensberatung, Gummersbach, (cycles and motorcycles).
France:	DAFSA Analyse SA, Paris (wool, cotton, pharmaceuticals).
Italy:	FIS-ATOR Consulenza Aziendale, Milan (pharmaceuticals, electrical engineering, cycles and motorcycles) SORIS SpA Studi e ricerche di economia e marketing, Turin (cotton, textile machinery).
Netherlands:	Prof. H. W. de Jong, Stichting Nijenrode, Breukelen (pharmaceuticals).
Belgium:	STUDIA vzwd, Brussels (wool, cotton, knitted and crocheted goods, pharmaceuticals).
United Kingdom:	Cranfield School of Management, Cranfield, Bedford (wool, cotton, knitted and crocheted goods) Prof. J. B. Heath, London School of Business, London (pharmaceuticals, photographic products, non-electrical machinery) Development Analysts Ltd, Croydon (food industry).
Ireland:	Louis Smith Res. Ltd, Dublin (food industry).

TABLE 6

Studies used for analysis of concentration (situation at 31 December 1975)

Industry (NICE nomenclature)	Country							
	D	F	I	NL	B	GB	IRL	DK
23 Manufacture of textiles								
232 Wool	×	× +	×		× +	0		
233 Cotton	×	× +	× +		× +	0		
237 Knitted and crocheted goods	×	×	×		× +	0		
27 Paper industry and manufacture of paper products								
271 Manufacture of pulp paper and paperboard	× +	×	×	× +		×		
272 Processing of paper and paperboard	×	×	×	×		×		
31 Chemical industry								
313.1 Manufacture of pharmaceutical products	×	× +	× +	× +	× +	0		×
313.2 Manufacture of photographic products	×	×	×	×	×	0		
313.5 Manufacture of cleaning and maintenance products (waxes, polishes, metal polishes, etc.)			×	×	×			
36 Manufacture of machinery other than electric machines								
361 Manufacture of agricultural machinery and tractors	× +	×	×			0		
362 Manufacture of Office machinery	× +	×	×			0		
364.1 Manufacture of textile machinery	× +	×	× +			0		
366.3 Manufacture of equipment for civil engineering and of machinery for 366.4 the mechanical working of building materials	× +	×				0		
366.5 Manufacture of hoisting and handling equipment	× +	×	×			0		
37 Electrical engineering								
375 Manufacture of electronic equipment, audio equipment, radio and television receivers	× +	×	× +		×			×
376 Manufacture of electrical appliances	× +	×	× +		×			×
38 Manufacture of transport equipment								
385.1 Manufacture of motorcycles, cycles and power-assisted cycles	× +[1]	×	× +	×				
20-B Food manufacturing industries	×	×	×	×	×	×	×	

[1] In Germany the industry was subdivided into (i) cycles and (ii) motor cycles and mopeds.

× Given in the Fourth Report on Competition Policy.

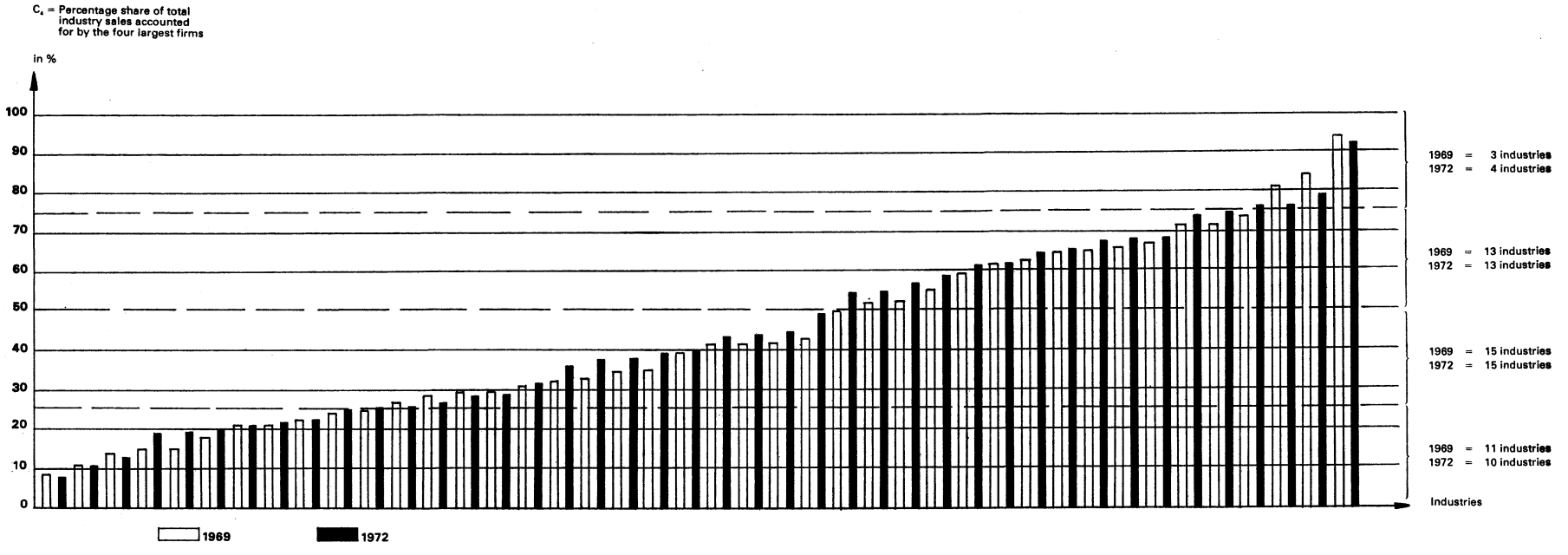
0 New studies.

\+ Updating of existing studies.

FIGURE 1

Changes in concentration in the community

Concentration ratios (C_4) in forty-two industries



Main results as regards concentration by industry

173. Of all the studies used in the concentration analysis, forty-two contain data, whereby levels of concentration in 1969 and 1972 can be compared. These data, giving the share of the top four firms in total industry sales (C_4 = concentration ratio) have been put in ascending order for each of the two years. The juxtaposition of these two series in Figure 1 shows that the level of concentration did not change substantially between 1969 and 1972.[1]

Both in the low-concentration area (the first two cases in these series) and in the high-concentration area (the three cases at the right of the scale), it can be seen that the level of concentration was higher in 1969 than in 1972. In the bulk of the survey, excluding these two extremes, the trend generally seems to be for concentration to have intensified by 1972, but the gap was a small one, if indeed there was one, and in certain cases 1972 figures are lower. Even more can be learned from this summary if the statistical base, i.e., the various national industries making up the graph, is specified. Table 7 lists these forty-two industries in descending order of concentration ratio (C_4) in 1972, the 1969 figures being given for comparison.

In interpreting this table, it must be borne in mind that:

(i) cases were selected according to what information was available, and a number of industries in certain countries have not yet been studied (such as electrical engineering in the United Kingdom and the Netherlands);
(ii) when the units to be analysed were selected (firms and economic activity units), account had to be taken of the differing statistical nomenclatures and usages in the various countries, giving consideration to the United Kingdom concept of 'group of enterprises' and leaving out firms below a certain size.

This being said, it can nevertheless be seen that throughout the Community, electrical engineering (both the electronics, radio and TV area and the domestic electrical appliances area) and office machinery are the most highly concentrated industries, whereas the food industry is the least concentrated.

174. Table 8 aims to give an up-to-date picture (in some industries figures for as recently as 1973) of changes in concentration, comparing the situation of a given industry in different countries in terms of a set of two measures (concentration ratio and coefficient of disparity) calculated on net sales.

It should be recalled here that when the coefficient of disparity is between 300% and 400%, the leading firm possesses greater economic power than the others in the group of the four largest. This was the case in 1972 and/or 1973 for cotton in Belgium, for

[1] For a comparison of 1969 with 1962, see Figure 1 in the Third Report on Competition Policy.

TABLE 7

Level of concentration in various Community industries and countries
(Ranking and concentration ratio (C_4))

In 1972		Industry and country		In 1969	
Ranking	C_4			Ranking	C_4
1	92.9	Domestic electrical appliances	DK	1	94.1
2	79.0	Agricultural machinery and tractors	UK	3	81.3
3	76.8	Office machinery	UK	4	73.6
4	76.4	Electronic and audio equipment, radio and television receivers	DK	2	84.1
5	74.6	Domestic electrical appliances	D	9	65.0
6	74.0	Textile machinery and accessories	UK	5	71.8
7	68.7	Pharmaceutical products	NL	6	71.6
8	68.2	Electronic and audio equipment, radio and television receivers	F	8	65.8
9	67.8	Motorcycles, cycles and power-assisted cycles	I	10	64.5
10	65.5	Pharmaceutical products	DK	7	66.5
11	64.4	Office machinery	D	23	34.7
12	61.4	Domestic electrical appliances	I	16	51.4[1]
13	61.0	Pharmaceutical products	UK	12	61.4
14	58.9	Motorcycles, cycles and power-assisted cycles	D	11	62.7
15	56.6	Cotton	UK	14	55.0
16	54.5	Electronic and audio equipment, radio and television receivers	D	13	59.1
17	54.0	Equipment for civil engineering and machinery for the mechanical working of building materials	UK	15	52.1
18	49.0	Paper industry	UK	17	49.7
19	44.2	Pharmaceutical products	B	18	42.8
20	43.5	Wool	UK	21	41.0
21	43.2	Electronic and audio equipment, radio and television receivers	I	27	30.8[1]
22	40.0	Paper industry	D	22	39.6
23	39.2	Food manufacturing industries	UK	20	41.1
24	37.4	Hoisting and handling equipment	UK	19	41.9
25	37.2	Agricultural machinery and tractors	D	26	31.4
26	35.8	Wool	B	24	34.0
27	31.2	Pharmaceutical products	I	25	32.1
28	28.9	Wool	F	36	20.8
29	28.6	Paper industry	NL	28	29.7
30	26.4	Equipment for civil engineering and machinery for the mechanical working of building materials	D	34	22.0
31	25.3	Textile machinery and accessories	D	31	26.3
32	25.1	Hoisting and handling equipment	D	32	24.6
33	24.8	Cotton	F	30	28.3
34	22.0	Food manufacturing industries	B	35	20.9
35	21.2	Cotton	I	38	14.5
36	20.3	Cotton	B	29	29.3
37	19.6	Textile machinery and accessoiries	I	37	17.9
38	19.0	Food manufacturing industries	NL	39	14.1
39	18.8	Food manufacturing industries	IRL	33	23.9
40	12.4	Pharmaceutical products	F	40	13.5
41	10.1	Food manufacturing industries	I	41	10.3
42	7.5	Food manufacturing industries	F	42	8.2

[1] Economic activity units rather than firms.

agricultural machinery and tractors and office machinery in the United Kingdom, electrical engineering—both radios and TVs and domestic electrical appliances—in Denmark, motorcycles and cycles in Italy. Nevertheless, it must be emphasized that whatever the level of concentration and disparity in production terms, these are the industries which in general are relatively open to world competition.

TABLE 8

Changes in concentration in various Community industries and countries
(Concentration ratio (C_4) and coefficient of disparity (4L))

Industry (NICE nomenclature)		Country	1969		1972		1973	
			C_4	4L	C_4	4L	C_4	4L
232	Wool	F	21	282	29	308	—	342
		B	34	173	36	195	30	127
		UK	41	193	43	210	42	222
233	Cotton	F	28	197	25	192	—	194
		I	14	144	21	117	22	107
		B	29	546	20	495	18	431
		UK	55	171	57	256	56	235
27	Paper industry	D	40	276	40	278	40	294
		NL	30	140	29	172	31	288
		UK	50	200	49	200		
313.1	Pharmaceutical products	F	13	152	13	138	20	147
		I	32	160	31	155	—	—
		NL	72	152	69	154	73	162
		B	43	272	44	243	42	200
		UK	61	358	61	354	—	—
		DK	66	140	65	198	66	221
361	Agricultural machinery and tractors	F	31	134	37	103		
		UK	81	554	79	450		
362	Office machinery	D	35	195	64	138		
		UK	74	216	77	382		
364.1	Textile machinery and accessories	D	26	182	25	142		
		I	18	115	20	116	22	120
		UK	72	145	74	353		
366.3-366.4	Equipment for civil engineering and machinery for the mechanical working of building materials	D	22	200	26	219		
		UK	52	210	54	230		
366.5	Hoisting and handling equipment	D	25	244	25	261		
		UK	42	184	37	200		

TABLE 8 (continued)

Industry (NICE nomenclature)	Country	1969		1972		1973	
		C_4	4L	C_4	4L	C_4	4L
375 Electronic equipment audio equipment, radio and television receivers	D	59	140	54	130	51	134
	F	66	132	68	236	—	—
	I	31	183	43	191	45	178
	DK	84	567	76	550	75	403
376 Domestic electrical appliances	D	65	256	75	270	73	260
	I	51	182	61	222	62	268
	DK	94	562	93	315	94	400
385.1 Motorcycles cycles and power-assisted cycles	D	63	141	59	150		
	I	64	592	68	536		
20-B Food manufacturing industries	F	8	116	7	130		
	I	10	128	10	115		
	NL	14	245	19	296		
	B	21	248	22	229		
	UK	41	252	39	247		
	IRL	24	140	19	159		

Table 8 confirms that, despite a slight upward tendency, the level of industry concentration remained fairly stable between 1969 and 1972. Of the forty-two industries considered, the concentration ratio remained virtually unchanged in eight cases (variation of less than 2%), increased in nineteen and fell in fifteen.

The coefficient of disparity was almost perfectly stable over the same period: the figure was virtually unchanged (variation of less than 20 percentage points) in twenty-three cases out of forty-two, went up in ten cases and went down in nine. In other words, the power relationships between the four leading firms in the industries selected underwent no change.

Is this the effect of a reasonably well-balanced competitive situation or simply of the big firms' preference for peaceful coexistence? The absence of competitive dynamism might at first sight seem to be a source of concern, even if the analysis is based on aggregated data such as those relating to complete industries. Analysis of product markets will provide more detailed pointers in a number of specific cases.

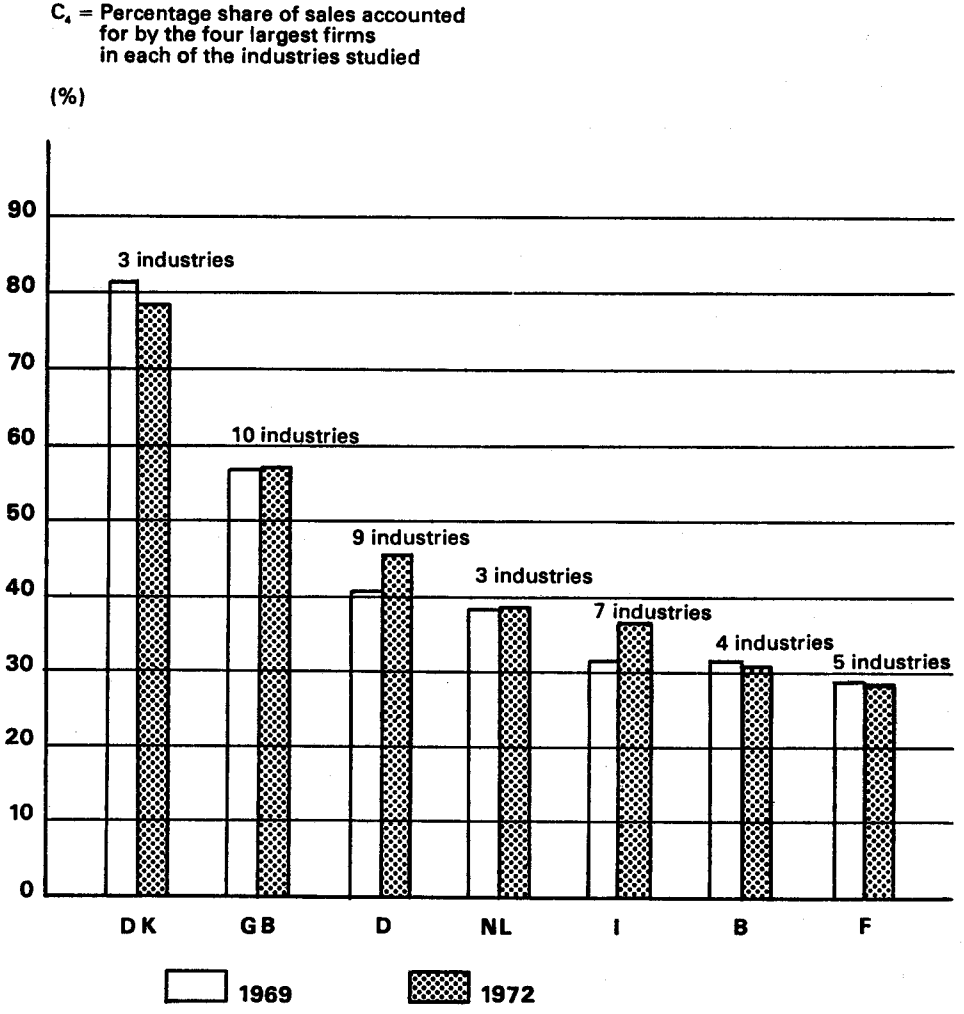
As regards the differences in concentration and disparity levels between the various countries considered, Figure 2 provides useful information.

To judge from the selected cases, and with due regard for the remarks already made, Italy and France would seem to have been the least concentrated countries in 1972 and Denmark the most concentrated.

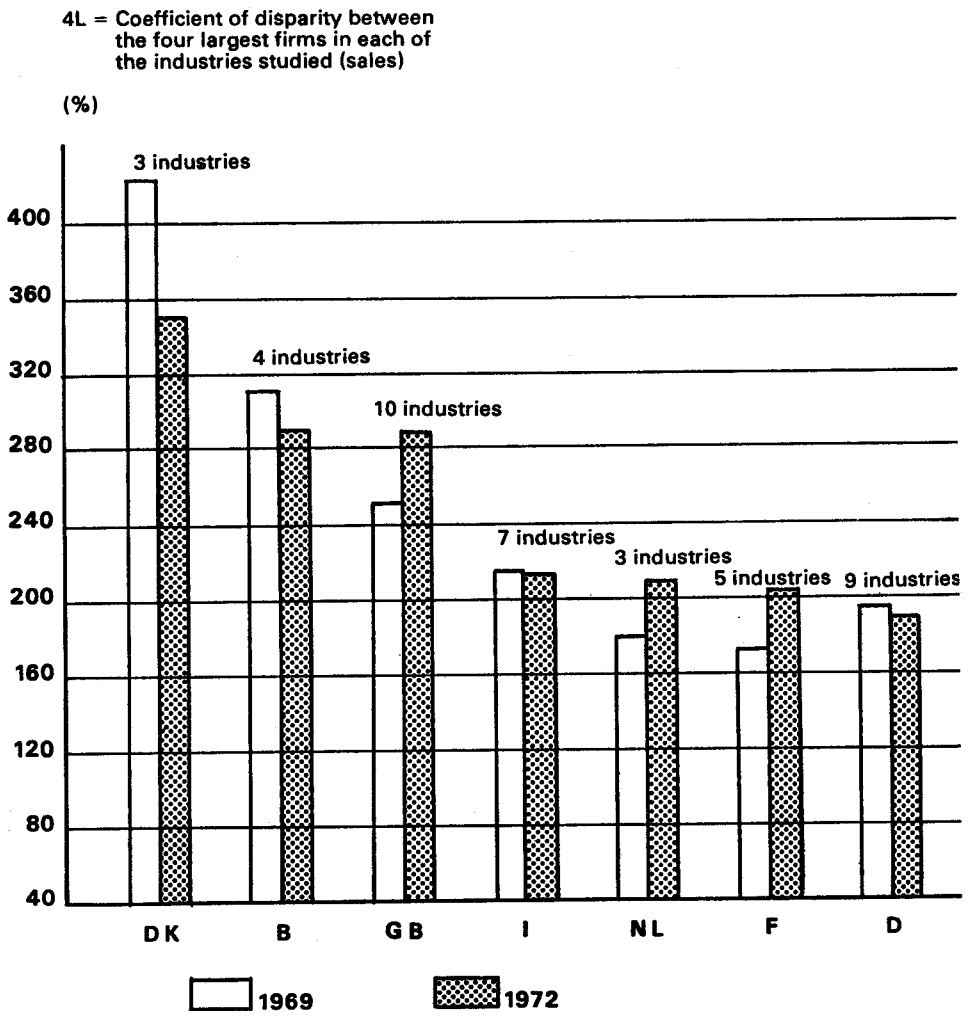
FIGURE 2

Changes in concentration in the Community

A. Average concentration ratios (C_4) in industries studied in the various Community countries



B. Average coefficients of disparity (4L) in industries studied in the various Community countries



As regards coefficients of disparity, a distinction can be made between two groups of countries: first there are those where the size distribution between the four leading firms is reasonably symmetric (Germany first of all, followed by the Netherlands, France and Italy) and then there are those where the largest firm stands out as a clear leader and can therefore exert greater influence on how the market operates (Denmark, followed by Belgium and the United Kingdom).

Analysis of various aspects of concentration

175. If the full complexity of this problem is to be grasped, the foregoing general picture must be supplemented by specific analysis of a number of aspects of concentration.

The analysis below, working from a number of selected cases, will aim to give:

(i) a general horizontal section through each industry, throwing up the disparities in index values revealed when different variables are used;
(ii) a differentiated vertical section through each industry, highlighting the situation as regards concentration on a number of product markets forming part of or related to the industry.

176. For practical reasons, concentration in production is generally measured in terms of sales or employment. However, the methods used by the Commission since 1970 have enabled other important variables to be referred to — particularly the 'financial' variables such as net profits, cash flow and own capital.

For technical reasons it has been possible to obtain and process these figures only (a) for a sample of major firms in (b) certain industries in (c) certain countries.

177. Figures are given here for 1969 to 1972 inclusive in three industries — cotton, pharmaceuticals and food. The countries used for this intervariable comparative analysis are France, Italy, Belgium and the United Kingdom (which makes forty-eight cases, i.e. three industries in four countries for four years) with the addition, for the food manufacturing industries only, of the Netherlands (four cases).

This gives a total of fifty-two cases; a number of assumptions have been made to simplify matters, and some of the figures are estimates.

178. For the purposes of the comparison use was made of Linda indices, weighted for the number and size of the largest firms forming the sample for the industry selected; the same indices were used in previous Competition Reports.

It is now, however, impossible to use the concentration ratio (C_4) since the difficulty in obtaining financial information on small firms meant that the entire industry could not be covered and, as we have seen, the sample of the major firms in each industry was alone taken.

179. The relative degrees of concentration in terms of each of the five variables which emerge from analysis of these fifty-two cases are shown in the following table:

Variable	Ranking of the variable					Total cases
	I	II	III	IV	V	
Sales	4	3	5	18	22	52
Employment	1	7	7	20	17	52
Net profits	29	13	2	4	4	52
Cash flow	8	21	14	6	3	52
Own capital	10	8	24	4	6	52

A number of points will be noted:

(a) Concentration in terms of net profits is far higher than that in terms of the other variables, followed by cash flow and own capital.

(b) Concentration in terms of sales and employment is considerably lower than that in terms of any of the financial variables (and not only net profit).

(d) Hence the measures of concentration most commonly used, applied either to sales or to employment, tend to understate the degree of concentration and the real and latent economic and financial power of big companies.

(d) Furthermore, the fact that the financial variables (especially net profits) give much higher degrees of concentration than the other variables points to a marked asymmetry of structures, which comprise firms with widely divergent technological bases and performance levels.

(e) The results of the analysis in overall terms are remarkably consistent whatever industry is taken, for the net profits variable gives the highest degree of concentration of the five variables:
— in eight cases out of sixteen in the cotton industry,
— in ten cases out of sixteen in the pharmaceutical industry,
— in eleven cases out of twenty in the food industry.

§3 — The development of concentration on selected product markets

Aims and methods

180. The structure of an industry is defined by reference to the number of units or firms manufacturing certain products, the industry link being established either on technological lines (production aspect) or on commercial lines (market aspect).

Analysis of an industry inevitably leads to analysis of the main product markets and the firms doing business on them as a means of assessing the effects of the concentration process on competition.

This part of the report offers a series of tables showing a differentiated vertical section through selected industries, in each case beginning with an industry as a whole (considered from the production angle) and then working down towards a series of subindustries and product markets.

181. The methods and objectives of the tables on concentration in individual industries and product markets can be illustrated briefly as follows:

I. By working on three distinct levels of concentration (industry, subindustry and product market), each table aims to give a meaningful picture of the structure being analysed, using three units of measurement:

(i) C_4 = the aggregate share of the four largest firms;
(ii) 4L = the coefficient of disparity, indicating the size distribution among these four firms, where the hypothesis of absolute equality (all four firms having exactly the same market share) gives 4L = 100%;
(iii) the ranking of each of the four leading firms within each subindustry or product market.

II. It should be remembered that:

(a) figures relating to subindustries and product markets are based on sales on the domestic market (thus excluding exports but including imports), whereas those for the industry as a whole are based on domestic output and aggregate sales;

(b) where possible, the table gives figures for at least two or three years.

III. This means that a picture can be given of:

(a) the position and importance of each of the four leaders and their aggregate quantitative impact on industrial structure;

(b) their degree of specialization and diversification;

(c) changes over time in the ranking of each of these firms on each market in response to competitive forces;

(d) the effects of imports on market structure, for it may be that one or more of the leading firms on a product market is an importer or a foreign manufacturer (as in the case of butter in the United Kingdom: see Table 14).

182. For practical reasons these new methods are applied below to the United Kingdom only; but they are to be extended to other countries and new industries in the next few years.

The following industries are covered: textiles (wool, cotton, knitting), paper, pharmaceuticals, photographic goods, mechanical engineering and food processing.

This is the first time that the Commission has published such an extensive range of figures on concentration in the United Kingdom.

Industry and market structure in the United Kingdom

183. The following series of Tables (9 to 14) on industrial and market structure in the United Kingdom must be qualified by a number of specific remarks if they are to be interpreted correctly.

184. To give a better idea of concentration in the *textiles industries* (Table 9), it should be noted that ICI has a majority shareholding in Carrington-Viyella Ltd, while Courtaulds and ICI have large shareholdings in Tootal and one other major textile manufacturer. However, control over sales of textiles manufactured in the United Kingdom does not necessarily entail control of the market, since roughly 40% of the market is supplied by imports.

185. As regards the *paper industry* (Table 10), particularly the conversion side, it is necessary to bear in mind not only the high level of imports (43% of UK consumption) but also the importance of competition from substitute products (plastics, timber, textiles, etc.).

186. As regards the *pharmaceuticals industry* (Table 11), the concentration figures relate to thirty broad therapeutic classes in 1964 and 1973.

On twelve of these thirty product markets, the first-ranking firm in 1964 was still the market leader in 1973. These are the markets in 'other hypertensives', non-nar-

TABLE 9

Market concentration in the textiles industries in the United Kingdom
Concentration ratios (C_4) and coefficients of disparity (4L)

Industry or market	Year	Measure of concentration		Leading firms and their rank			
		C_4	4L	I	II	III	IV
		(%)					
All three subindustries: wool, cotton and knitting	1968	50	232	Courtaulds	Tootal	Coats P.	Viyella
	1970	48	220	Courtaulds	Coats P.	Viyella	Tootal
	1973	49	256	Courtaulds	Carr-Viy.	Coats P.	Tootal
Wool and worsted							
Spinning and weaving of wool and man-made fibres on the same systems	1968	36	120	Coats P.	Lister	Wst Rding	Ill. Morris
	1970	39	216	Coats P.	Lister	Ill. Morris	Woolcmbrs
	1973	41	220	Ill. Morris	Coats P.	Bulmer	Lister
Cotton							
Spinning and weaving of cotton and man-made fibres on the same systems	1968	56	160	Courtaulds	Viyella	Tootal	Carrington
	1970	53	180	Courtaulds	Viyella	Tootal	Carrington
	1973	56	236	Courtaulds	Car.-Viy.	Tootal	Vantona
Cotton etc. spinning	1968	47	564	Courtaulds	Tootal	Viyella	Carrington
All woven cloth	1968	33	188	Courtaulds	Carrington	Tootal	Viyella
Woven filament	1968	60	344	Carrington	Courtaulds	Viyella	Tootal
Sewing thread[1]	1972	75	200	Coats P.	Tootal		
Hosiery and knitting							
	1968	53	332	Courtaulds	Coats P.	Tootal	Carrington
	1970	53	352	Courtaulds	Coats P.	Nottingham	Tootal
	1973	52	284	Courtaulds	Nottingham	Coats P.	Carr.-Viy.
Warp-knitted fabrics	1968	64	436	Courtaulds	Viyella	Carrington	Tootal
Women's hose[1]	1974	60	560	Courtaulds	Tillings		

[1] C_2 (not C_4).

NB: Tootal is linked financially both to Courtaulds and to ICI and ICI controls the Carrington-Viyella group.

Carr.-Viy = Carrington-Viyella.
Coats P. = Coats Patons.
Ill. Morris = Illingworth Morris.
Woolcmbrs = Woolcombers.
Wst Rding = West Riding.

cotic analgesics, tranquillizers, cough remedies, antinauseants, penicillins, laxatives, ACT-systemic hormones, oral diabetic preparations, antispasmodics, antihistamines and oral cold preparations.

TABLE 10

Market concentration in the paper industry in the United Kingdom
Concentration ratios (C_4) and coefficients of disparity (4L)

Industry or market	Year	Measure of concentration		Leading firms and their rank			
		C_4	4L	I	II	III	IV
		(%)					
Paper manufacture	1968	50	164	Wiggins T.	Bowater	Reed	Unilever
	1970	50	200	Wiggins T.	Bowater	Reed	DRG
	1972	49	200	Wiggins T.	Bowater	Reed	DRG
Printing and writing papers	1968	71	232	Bowater	Reed	Wiggins T.	Inveresk
	1972	65	336	Bowater	Reed	Wiggins T.	Inveresk
Paper board[1]	1968	78	320	Unilever	Wiggins T.	Mardon	
	1972	71	248	Unilever	Wiggins T.	Mardon	
Paper conversion	1968	55	240	DRG	Reed	Bowater	Mardon
	1970	53	216	DRG	Reed	Mardon	Bowater
	1972	53	216	DRG	Reed	Mardon	Bowater
Manufactured stationery[2]	1968	84	468	DRG	Wiggins T.		
	1972	83	620	DRG	Wiggins T.		
Packaging other than board[2]	1968	54	344	DRG	Reed		
	1972	57	376	DRG	Reed		
Board packaging	1968	58	232	Reed	Bowater	Mardon	Unilever
	1972	51	212	Reed	Mardon	Bowater	Unilever

[1] C_3 (not C_4).
[2] C_2 (not C_4).
DRG = Dickinson-Robinson Group Ltd.
Wiggins T. = Wiggins Teape Ltd (subsidiary of BAT Ltd).

187. As regards the *photographic industry* (Table 12), attention is drawn to the strong position held by Kodak both in the industry as a whole and in the two main markets for sensitized surfaces (still and cine). Kodak's approximate market shares are given in brackets. It should be noted that competition between the other firms in this industry is not likely to affect Kodak's market shares, since Kodak also has the most impressive profit margins of the whole industry.

TABLE 11

Market concentration in the pharmaceuticals industry in the United Kingdom

Concentration ratios (C_4) and coefficients of disparity (4L)

Industry or market	Year	Measure of concentration		Industry or market	Year	Measure of concentration	
		C_4	4L			C_4	4L
		(%)				(%)	
Broad-spectrum antibiotics	1964	99	224	Systemic antibiotics	1964	86	264
	1973	80	268		1973	90	188
Systemic anti-inflammatories	1964	98	1 304	Haematinics	1964	51	238
	1973	88	244		1973	81	232
Bronchodilators	1964	63	256	Antinauseants	1964	91	406
	1973	82	516		1973	82	243
Other hypertensives	1964	98	1 496	Penicillins	1964	69	158
	1973	91	782		1973	74	156
Diuretics	1964	75	466	Corticosteroids	1964	64	110
	1973	80	310		1973	59	202
Non-narcotic analgesics	1964	68	228	Anti-obesity preparations	1964	77	132
	1973	70	290		1973	94	479
Antidepressants	1964	89	224	Laxatives	1964	72	191
	1973	61	215		1973	70	274
Tranquilizers	1964	88	241	ACT-systemic hormones	1964	76	183
	1973	83	657		1973	60	469
Antiangina	1964	74	246	Oral diabetic	1964	99	780
	1973	93	562		1973	93	213
Plain skin hormones	1964	88	464	Parkinson anticonvulsants	1964	87	486
	1973	87	592		1973	89	239
Cough remedies	1964	66	452	Antispasmodics	1964	73	260
	1973	69	656		1973	54	128
Plain antacids	1964	68	204	Systemic antihistamines	1964	83	176
	1973	65	277		1973	66	217
Contraceptives	1964	65	155	TB preparations	1964	86	358
	1973	82	290		1973	95	182
Non-Barbiturate sedatives	1964	86	218	Oral cold preparations	1964	92	247
	1973	95	856		1973	90	377
Peripheral vasodilators	1964	85	242	Other vitamins	1964	93	441
	1973	80	252		1973	92	229

TABLE 12

Concentration in the photographic industry in the United Kingdom

Concentration ratios (C_4) and coefficients of disparity (4L)

Industry or market	Year	Measure of concentration		Leading firms and their rank			
		C_4	4L	I	II	III	IV
		(%)					
Whole industry	1968			Kodak (63%)			
	1970			Kodak (64%)			
	1972	92	1 490	Kodak (65%)	Ilford	Gratispool	Smith
Still (sensitized surfaces for cameras)	1971	100	665	Kodak (73%)	Ilford	Agfa-Gev.	Boots
	1973	95	599	Kodak (71%)	Agfa-Gev.	Ilford	Boots
Cine (8, Super 8, etc.)	1971	98	679	Kodak (71%)	Ilford	Agfa-Gev.	Gratispool
	1973	90	828	Kodak (72%)	Ilford	Agfa-Gev.	Boots

Kodak = subsidiary of Eastman Kodak (USA).
Ilford = subsidiary of Ciba-Geigy since 1969.
Agfa-Gev. = Agfa-Gevaert (Germany/Belgium).
Gratispool = wholesaler.
Smith = Smith & Nephew Plastics — plastic film manufacturer.
Boots = own-label retailer.

The following figures for net pre-tax profits as a percentage of turnover in the last few years speak for themselves:

	Kodak	Rest of the industry
1968	22%	5%
1969	26%	7%
1970	22%	6%
1971	22%	3%
1972	21%	5%

188. As regards *mechanical engineering* in the United Kingdom, Table 13 simply gives a brief view of the average concentration on selected agricultural-machinery and mechanical-handling-equipment markets.

TABLE 13

Market concentration in the mechanical engineering industry in the United Kingdom

Concentration ratios (C_4) and coefficients of disparity (4L)

Industry or market	Year	Measure of concentration		Leading firms and their rank			
		C_4	4L	I	II	III	IV
		(%)					
Tractors	1972	81	239	Massey F.	Ford	D. Brown	Int. Har.
	1973	74	170	Ford	Massey F.	D. Brown	Int. Har.
	1974	71	150	Ford	Massey F.	D. Brown	Int. Har.
Combine harvesters	1972	90	196	New Holl.	Claas	Massey F.	J. Deere
	1973	90	196	New Holl.	Claas	Massey F.	J. Deere
	1974	82	195	Claas	New Holl.	Massey F.	J. Deere
Cranes, hoists, lifting and winding devices	1970	72	161	C. Cranes	Cl-Chap.	H. Morris	Matterson
	1972	68	181	C. Cranes	Cl-Chap.	H. Morris	NCK Rapid
Lifts and escalators	1970	84	307	Otis Elev.	Exp. Lift	Marryot	H & C
	1972	85	297	Otis Elev.	Marryot	Exp. Lift	H & C
Powered industrial trucks	1970	59	178	L. Bagnall	Hyster	Conveyance	Cov. Climax
	1972	59	234	L. Bagnall	Lanc. Boss	Cov. Climax	Hyster

C. Cranes = Coles Cranes Ltd.
Cl-Chap = Clarke Chapman Ltd.
Cov. Climax = Coventry Climax.
D. Brown = David Brown.
Exp. Lift = Express Lift Company.
H & C = Hammond and Champness.
H. Morris = Herbert Morris Ltd.
Int. Har. = International Harvester.
J. Deere = John Deere.
Lanc. Boss = Lancer Boss Group.
L. Bagnall = Lansing Bagnall.
Massey F. = Massey Ferguson.
New Holl. = New Holland.
Otis Elev. = Otis Elevator Group.

189. In the *food industry*, finally, although the concentration indices for the industry as a whole are remarkably stable, it can be seen that on individual product markets (Table 14) there have been changes in rank order, identity and above all in market shares for the four most important groups between 1969 and 1972. Here the food industry differs from all the other selected industries in the competitive dynamism which is a feature of flexible oligopolistic structures. Let it also be remembered that the firms in control of the various markets are frequently powerful multinationals.

The most highly concentrated product markets here include condensed milk, dried milk, breakfast cereals, margarine, frozen foods, soups and preserved fish products.

TABLE 14

Market concentration in the food industry in the United Kingdom

Concentration ratios (C_4) and coefficients of disparity (4L)

Industry or market	Year	Measure of concentration		Leading firms and their rank			
		C_4	4L	I	II	III	IV
		(%)					
Whole industry	1969	41	252	Unilever	ABF	RHM	Unigate
	1972	39	248	Unilever	ABF	Cavenham	RHM
Butter	1969	41	196	Danish	New Zealand	Australian	Irish
	1972	62	236	New Zealand	Danish	Australian	Irish
Condensed milk[1]	1970	93	384	Carnation	Nestlé	Libby	
	1973	89	276	Carnation	Nestlé	Libby	
Milk powder[1]	1970	91	1 272	Cadbury	Sainsbury	Nestlé	
	1973	90	2 532	Cadbury	Sainsbury	Nestlé	
Yoghurt	1971	77	384	Express	Unigate	M & S	Sainsbury
	1974	72	296	Express	Unigate	Unilever	M & S
Infant foods[1]	1973	70	196	Heinz	Glaxo	Unigate	CPC
Ice cream[2]	1971	82	488	Unilever	Lyons		
	1973	84	420	Lyons	Unilever		
Packet flour	1970	94	776	RHM	Spillers	CWS	Sainsbury
	1973	95	920	RHM	Spillers	Sainsbury	
Breakfast cereals	1969	95	484	Kelloggs	Weetabix	Nabisco	Quaker
	1973	89	512	Kelloggs	Weetabix	Nabisco	Quaker
Biscuits	1969	82	364	UB	ABM	Cadbury	M & S
	1973	74	392	UB	ABM	M & S	Cadbury
Margarine[1]	1969	89	1 896	Unilever	Kraft	CWS	
	1973	82	1 096	Unilever	Kraft	CWS	
Sugar[1]	1968	97	1 488	T & L	BSC	M & G	
	1973	96	340	T & L	BSC	M & G	
Frozen foods[1]	1967	73	1 204	Unilever	Lyons	Nestlé	
	1973	87	600	Unilever	Nestlé	Imperial	
Soups[1]	1969	76	132	Heinz	Nestlé	Campbell	
	1973	80	700	Heinz	Campbell	Nestlé	
Canned fish	1970	68	384	Unilever	Bibbys	Libby	Cucumber
	1973	72	668	Unilever	Ind. Buitoni	Cucumber	Guthrie

[1] C_3 (not C_4).
[2] C_2 (not C_4).
ABF = Associated British Foods.
ABM = Associated Biscuit Manufacturers.
BSC = British Sugar Corporation.
CWS = Cooperative Wholesale Society.
M & G = Manbre & Garton.
M & S = Marks & Spencer.
RHM = Rank Hovis Macdougall.
T & L = Tate & Lyle.
UB = United Biscuit.

Main results as regards concentration on product markets

190. Tables 9 to 14 show the degree of concentration on sixty-five product markets. They can be used as a basis for a summary of the most recent situation ascertainable (1972/73).[1]

As this is a summary, we must enter the necessary reservations called for both by the differences in the extent to which the various industries were broken down into sub-industries and by the differences between the size of each product market in relation to the others.

[1] Figures for 1968 had to be used for certain textile product markets only.

TABLE 15

Average product market concentration in selected industries in the United Kingdom in 1972/73

Concentration ratios (C_4) and coefficients of disparity (4L)

Industry	Average merket concentration[1]		Number of product markets selected	Leading firms involved[1]	Rank (number of cases[2])	
	C_4	4L			First	Second
	(%)					
Textiles	61	340	8	Courtaulds	5	1
				Tootal	—	2
				Coats-P.	1	2
				Ill. Morris	1	—
				Carrington-Viyella	1	3
				Tillings	—	2
Paper	69	332	6	Wiggins Teape Ltd (subsidiary of BAT)	—	2
				Bowater	1	1
				Unilever	1	—
				Dickinson-Robinson Group Ltd	3	—
				Reed	1	3
Pharmaceuticals	79	353	30			
Photographic goods	92	714	2	Kodak	2	—
				Agfa-Gevaert	—	1
				Ilford	—	1

[1] Product or product group markets or subindustries used for Tables 9 to 14.
[2] Number of cases in which the firm takes first or second place.

TABLE 15 (continued)

Industry	Average market concentration[1]		Number of product markets selected	Leading firms involved[1]	Rank (number of cases[2])	
	C_4	4L			First	Second
	(%)					
Mechanical engineering	76	229	5	Massey Ferguson	1	—
				Ford	—	1
				New Holland	1	—
				Claas	—	1
				Otis elevator	1	—
Food industry	88	656	14	Unilever	3	1
				Heinz	2	—
				New Zealand	1	—
				Carnation	1	—
				Cadbury	1	—
				Express	1	—
				Lyons	1	—
				Rank Hovis MacDougall	1	—
				Kelloggs	1	—
				United Biscuit	1	—
				Tate & Lyle	1	—
				Danish	—	1
				Nestlé	—	2
				Unigate	—	1
Average concentration in the sample and total number of markets	77	437	65			

[1] Product or product group markets or subindustries for Tables 9 to 14.
[2] Number of cases in which the firm takes first or second place.

The breakdown and selection of these markets to give the sixty-five cases for study were governed by practical considerations concerning the collection and processing of accessible information.

However, even if the sample is too small to be taken as a guide to the entire structure of manufacturing industry, the results so far obtained do at least provide useful working hypotheses.

For each industry Table 15 gives average concentration figures, obtained by taking the arithmetic mean of the figures for each of the two measures of concentration used on the various product markets included in the industry.[1] The three right-hand columns name the leading firms (where they rank first or second) on the individual product markets.

[1] A number of simplifying assumptions and estimates were made in calculating the concentration measures for duopolies and triopolies.

191. The average of the concentration ratios calculated for the selected product markets is generally higher than the concentration ratio calculated for the industry as a whole, and this is especially true of the paper industry (69% as against 49%), pharmaceuticals (79% as against 61%) and the food industry (88% as against 39%). The textile industry does not follow this trend, probably because the main corporate groups are highly diversified.

192. The average of the coefficients of disparity calculated on product markets shows that in a number of markets there are firms wielding substantial power.

193. The averages of the coefficients of disparity in the consolidated table appear to be rather high in the following industries (concentration ratios are given in brackets for comparison):

— pharmaceuticals: 353% ($C_4 = 79\%$);
— photographic goods: 714% ($C_4 = 92\%$);
— food: 656% ($C_4 = 88\%$).

All these are figures which in themselves should activate the amber or perhaps even the red light, especially in the photographic and food industries, particularly if three points are taken into consideration:

(i) firstly, these figures are averages, which means that there must in fact be situations where the coefficient of disparity is much higher;
(ii) secondly, a market is frequently defined in a fairly broad sense, taking in products which are not always necessarily in competition with each other, so that a stricter definition of the relevant market could yield even higher concentration and disparity figures;
(iii) thirdly, the coefficients of disparity, like the concentration ratios, have not been calculated by reference to production, as they are in the industry analysis but by reference to the markets themselves, so that they also take in the shares accounted for by imports.

194. Another point can be made on the basis of the foregoing. Analysis of concentration on product markets has shown that the fact of very high concentration ratios is not in itself very informative. Interpretation from the point of view of the operation of the relevant markets is ambiguous in such cases: it can be quite worthless for operational purposes. The concentration ratio alone gives no indication of the position of the leading firm, which in practice is the most interesting point, since a C_4 of 80% may be a reflection of two diametrically opposed structures:

(i) a symmetrical oligopoly of four firms with 20% each;
(ii) or a partial monopoly where the first firm holds 77% and the three others 1% each. The coefficient of disparity is thus the natural extension and logical adjunct of the concentration ratio in any analysis of a highly concentrated structure in which a small number of large units vie with each other.

195. The analysis of the rank order of the first four firms covers too short a period for any useful general conclusions to be drawn.

With the exception of a few food product markets, the selected cases studied reveal a degree of rigidity in market shares to the advantage of the leading firm, which generally maintains its position; such rare changes as there are in market share and rank order tend to involve the third and/or fourth firm(s). But this conclusion may be confirmed or modified by subsequent research.

A few comparisons and conclusions in international terms

196. The foregoing analysis raises two fundamental questions:

(i) Can principles and conclusions valid throughout the Community be obtained from the analysis of the selected cases studied in the United Kingdom?

(ii) To what extent can the UK sample results be applied to structures in other Community countries?

While the analysis of product markets shows that in various countries, industries and markets a wide range of differing situations can be found, it has also shown that:

(i) the new Member States of the Community generally have a higher level of concentration than those of the original Member States;

(ii) there are industries and markets on which the concentration ratios and coefficients of disparity are fairly similar in the various countries;

(iii) the *same* large multinational firms are often in business on the *same* markets in different countries; they usually occupy a leading position, sometimes alongside national firms.

These three statements can be illustrated with examples taken from the pharmaceuticals, photographic and food industries.

197. As regards the *pharmaceuticals industry*, it is interesting to compare the situation in the Netherlands and Denmark, working from a number of product markets.

Using the same measures of concentration as in the United Kingdom, the average concentration ratio for eleven product markets or medicinal categories in *the Netherlands* in 1973 was 63% and the average coefficient of disparity 397% (for further details on the individual markets see Table 16).

The average concentration ratio for *Denmark*, calculated on seven product markets or medicinal categories, was 81% in 1972 and the coefficient of disparity 374%.

This shows that in both countries the structure of the industry, given the measure selected, is similar to that in *the United Kingdom*, whereas in Italy concentration is substantially lower, in terms of both concentration ratio and coefficient of disparity.

198. An important factor in the pharmaceuticals industry is the relative stability of concentration in the separate product markets.

TABLE 16

Concentration in the pharmaceuticals industry in the Netherlands

Industry or market	Year	Measure of concentration		Leading firms and their rank			
		C_4	4L	I	II	III	IV
		(%)					
Whole industry	1970	66	150	AKZO-Pharma	Gist-Brocades	MSD	Philips
	1972	69	153	AKZO-Pharma	Gist-Brocades	MSD	Philips
	1973	73	162	AKZO-Pharma	MSD	Gist-Brocades	Philips
Antibiotics	1970	71	954	Beecham	Pfizer	Mycofarm	Schering
	1972	61	544	Beecham	Pfizer	Mycofarm	Hoffmann
	1973	65	560	Beecham	Pfizer	Mycofarm	Hoffmann
Cardiovascular drugs	1970	39	221	MSD	Sandoz	ICI	Hoechst
	1972	45	177	MSD	Sandoz	ICI	Astra
	1973	48	166	MSD	Sandoz	ICI	Astra
Psychotropics	1970	65	580	Hoffmann	Wyeth	MSD	Ciba-Geigy
	1972	64	483	Hoffmann	Wyeth	Ciba-Geigy	MSD
	1973	64	467	Hoffmann	Wyeth	Ciba-Geigy	MSD
Antirheumatics	1970	82	653	MSD	Ciba-Geigy	Midy	Byk
	1972	80	532	MSD	Ciba-Geigy	Boots	Midy
	1973	79	509	MSD	Boots	Ciba-Geigy	Midy
Dermatologicals	1970	44	250	Schering	Ciba-Geigy	Labaz-Lederle	Glaxo
	1972	42	244	Schering	Ciba-Geigy	Labaz-Lederle	Glaxo
	1973	42	243	Schering	Ciba-Geigy	Labaz-Lederle	Glaxo
Gynaecologicals	1970	76	554	Organon	Schering	Wyeth	Noury Pharma
	1972	66	298	Organon	Schering	Wyeth	Noury Pharma
	1973	80	336	Organon	Schering	Wyeth	Noury Pharma
Diuretics	1970	81	230	Hoechst	RIT	Ciba-Geigy	Searle
	1972	78	270	Hoechst	RIT	Ciba-Geigy	Searle
	1973	78	261	Hoechst	RIT	Ciba-Geigy	Searle
Antidiabetics	1970	74	221	Hoechst	Novo	Boehringer	Organon
	1972	73	293	Hoechst	Novo	Organon	Winthrop
	1973	73	342	Hoechst	Novo	Organon	Winthrop
Hormones	1970	38	224	Organon	Philips	Schering	Labaz-Lederle
	1972	36	268	Organon	Schering	Philips	Ayerst
	1973	38	245	Organon	Philips	Schering	Ayerst
Sedatives and hypnotics	1970	54	349	Hoffmann	UCB	Kali-Chemie	Ciba-Geigy
	1972	60	568	Hoffmann	UCB	Kali-Chemie	Ciba-Geigy
	1973	65	752	Hoffmann	UCB	Kali-Chemie	Ciba-Geigy
Spasmolytics	1970	57	200	Gist-Brocades	Boehringer	Hoffmann	Philips
	1972	49	125	Gist-Brocades	Hoffmann	Philips	Boehringer
	1973	57	163	Gist-Brocades	Hoffmann	Philips	Boehringer

Hoffmann = Hoffmann-La Roche.
ICI = Imperial Chemical Industries.
MSD = Merck Sharp Dohme.
Philips = Philips-Duphar.
RIT = Recherche et Industrie Thérapeutique.
UCB = Union Chimique Belge.

Average concentration ratios and coefficients of disparity ran as follows:

— Netherlands: 62% and 404% in 1970, 60% and 346% in 1972, 63% and 397% in 1973;
— Denmark: 80% and 504% in 1970, 81% and 375% in 1972.

The 1964 and 1973 figures for the United Kingdom were:

— 1964: 79% and 362%
— 1973: 79% and 353%.

It is curious to note the absolute stability of average concentration over a ten-year period in the United Kingdom in an industry as dynamic as pharmaceuticals, where innovation is the rule and new products are constantly being launched.

199. Finally, let us emphasize the fact that in virtually every Community country three highly powerful groups of companies everywhere hold extremely strong positions, generally on the same markets or in the same therapeutic classes—MSD, Hoffman-La Roche and Ciba-Geigy.

Other groups with extensive business at Community level are Glaxo, Hoechst, Beecham, Pfizer, Sandoz, Schering, ICI, Bayer, Rhöne-Poulenc, Dow Chemical, Boehringer, Roussel-Uclaf, Lederle, AKZO, Organon, Parke-Davis, Warner Lambert. In addition, a large number of smaller groups (mostly under American control) operate in two or more Community countries.

200. As regards the *photographic industry*, the latest figures show Kodak dominating virtually several Community countries, with Afga-Gevaert in second place (generally some way behind).

201. The *food industry* is so large that analysis here is rather more complex.

In the industry as a whole, the level of concentration is low in every Community country except the United Kingdom. In this industry, therefore, it was the product markets analysis which gave the most useful results.

Of the countries analysed so far, the United Kingdom appears to be highly concentrated even at the individual market level (Table 14), but on product markets in other Member States too positions of economic power are beginning to emerge.

For example, the measures used for Table 14 were also applied to the French food industry, which (apart from the drinks side) appears to be the least concentrated of the national food industries so far studied. The average concentration ratio in France on thirteen product markets[1] in 1972 was 46% and the average coefficient of disparity

[1] These were the markets for preserved foods, preserved vegetables, preserved fish, milk products, products of the grain milling industry, fine bakers' wares, pasta, sugar, oils and fats, chocolate and confectionery, frozen products, spices and condiments and soups and broths.

250%, though this is a good deal higher than the figures obtained for the industry as a whole (7% and 130%: see Table 8).

However, it should not be forgotten that these are always averages calculated for a set of markets, whereas much higher figures are obtained if certain markets are analysed individually for 1972. In France, for instance, where the food industry is least concentrated, 1972 concentration ratios and coefficients of disparity for certain amber- or red-light markets were as follows:

— oils and fats	54% and 390%
— sugar	56% and 288%
— frozen foods, ice creams, etc.	65% and 263%
— meat broths, soups	84% and 256%.[1]

§4 — Summary and future outlook of the research programme

202. To sum up, the following conclusions can be drawn from the results so far obtained:

In 1973 and 1974 the number of national and international operations in the Community continued to rise, the highest increase being in takeovers and mergers.

In 1974, unlike 1973, the number of purely national megers, share acquisitions and joint ventures was higher than the number of international operations. However, the reference period is too short to draw up worthwhile conclusions as to a possible change in the trend.

As regards international operations, more than half involved Community firms exclusively.

Concentration in the various industries studied rose only very slightly between 1969 and 1972/73; the size distribution between each industry's four leading firms remained virtually unchanged.

[1] The following remarks are called for on these four markets.

I. Oils and fats: the margarine market is dominated by Unilever both in France (60% of the market) and in the United Kingdom (67%). Lesieur dominates the French cooking-oils market.

II. Sugar: in France, there are three groups each controlling some 25% of the market (Béghin-Say, Générale Sucrière, Sucre Union); in the United Kingdom the Tate and Lyle group has a market share of 54% and in Italy the Monti group has about 35%.

III. Cold foods: Findus (subsidiary of Nestlé and BSN-Gervais Danone) controls roughly 50% of the French frozen-foods market; Unilever controls 60% in the United Kingdom and about 70% in Italy.

IV. Dried soups: Nestlé has a market share of about 40% in France, followed by Knorr with about 30%; in the United Kingdom, Heinz has a 60% market share, followed by Campbell with 20%.

Throughout the Community, the absolute level of concentration measured on the sales variable is generally fairly high, and indeed the level would be even higher if concentration were measured by reference to profits and other financial variables.

The level of concentration in a large number of industries and markets is higher in the new Member States than in the founder Member States, and this is illustrated by a particularly well-researched analysis of industrial structure in the United Kingdom.

The analysis of a number of product markets reveals that there are very high levels of concentration reflecting the existence of extensive economic power held by the leading firm on the same markets in different Member States; it also shows that economic power or dominance is frequently in the hands of the major multinational firms.

On a number of these markets it has been found that market shares are very rigid, in other words that the market leader tends to maintain its position of power throughout the reference period.

203. Progress to date confirms the need to do more:

(i) research into concentration in the industries and markets already studied must be brought up to date from time to time;
(ii) this research must then be taken a stage further to cover all the multiple aspects of the concentration process — particularly market performance, and the role and impact of major firms in the working of competition on the main product markets;
(iii) market analysis, especially in the food and drinks industries, must be extended to the distribution stage so as to find out how distribution channels operate and how prices are formed for some of these products and so as to obtain a few small pointers to the main factors behind the spread of inflation;
(iv) finally, the research must be extended to other industries and markets of interest.

Annex

List of individual decisions of the Commission and rulings of the Court of Justice made in 1975 concerning the application of Articles 85 and 86 of the EEC Treaty and of Articles 65 and 66 of the ECSC Treaty-

DECISIONS ON INDIVIDUAL CASES

1. *Concerning Articles 85 and 86 of the EEC Treaty*

Decision of 8 January 1975 on a proceeding under Article 85 of the EEC Treaty 'Preserved mushrooms'	OJ L 29 of 3.2.75, p. 26 IP (75) 11 of 22.1.75 Bull. EC 1-1975, point 2108
Decision of 5 March 1975 on a proceeding under Article 85 of the EEC Treaty 'Sirdar/Phildar'	OJ L 125 of 16.5.75, p. 27 IP (75) 87 of 7.5.75 Bull. EC 3-1975, point 2111
Decision of 3 June 1975 on a proceeding under Article 85 of the EEC Treaty 'Haarden- en Kachelhandel'	OJ L 159 of 21.6.75, p. 22 IP (75) 115 of 13.6.75 Bull. EC 6-1975, point 2117
Decision of 14 July 1975 on a proceeding under Article 85 of the EEC Treaty 'Intergroup'	OJ L 212 of 9.8.75, p. 23 IP (75) 128 of 18.7.75 Bull. EC 7/8-1975, point 2120
Decision of 15 July 1975 on a proceeding under Article 85 of the EEC Treaty 'IFTRA Aluminium'	OJ L 228 of 29.8.75, p.3 IP (75) 148 of 31.7.75 Bull. EC 7/8-1975, point 2122
Decision of 17 July 1975 on a proceeding under Article 85 of the EEC Treaty 'UNIDI'	OJ L 228 of 29.8.75, p. 17 IP (75) 146 of 23.7.75 Bull. EC 7/8-1975, point 2121
Decision of 18 July 1975 on a proceeding under Article 85 of the EEC Treaty 'Kabelmetal'	OJ L 222 of 22.8.75, p. 34 IP (75) 151 of 24.7.75 Bull. EC 7/8-1975, point 2123
Decision of 25 July 1975 on a proceeding under Article 85 of the EEC Treaty 'Bronbemaling'	OJ L 249 of 25.9.75, p. 27 IP (75) 172 of 3.10.75 Bull. EC 9-1975, point 2106
Decision of 23 October 1975 on a proceeding under Article 85 of the EEC Treaty 'Transocean'	OJ L 286 of 5.11.75, p. 1
Decision of 21 November 1975 on a proceeding under Article 85 of the EEC Treaty 'Bomee-Stichting'	OJ L 329 of 23.12.75, p. 30 IP (75) 208 of 25.11.75 Bull. EC 11-1975, point 2121
Decision of 2 December 1975 on a proceeding under Article 85 of the EEC Treaty 'AOIP/Beyrard'	OJ L 6 of 13.1.76, p. 8 IP (75) 219 of 18.12.75 Bull. EC 11-1975, point 2120
Decision of 15 December 1975 on a proceeding under Article 85 of the EEC Treaty 'Bayer/Gist'	OJ L 30 of 5.2.76, p. 13 IP (75) 228 of 18.12.75 Bull. EC 12-1975, point 2127

Decision of 15 December 1975 on a proceeding under Article 85 of the EEC Treaty 'SABA'	OJ L 28 of 3.2.76, p. 19 IP (75) 234 of 18.12.75 Bull. EC 12-1975, point 2125
Decision of 17 December 1975 on a proceeding under Article 86 of the EEC Treaty 'United Brands Co.'	OJ L 95 of 9.4.1976, p. 1. IP (75) 232 of 18.12.75 Bull. EC 12-1975, point 2124
Decisions of 23 December 1975 on a proceeding under Article 85 of the EEC Treaty 'United Reprocessors GmbH' and 'KEWA'	OJ L 51 of 26.2.76, p. 7-15 IP (76) 4 of 14.1.76 Bull. EC 12-1975, point 2126

2. *Concerning Articles 65 and 66 of the ECSC Treaty*

Decision of 8 January 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing DEUMU GmbH to acquire the majority of the capital of Ernst Biskupek KG.	Bull EC 1-1975, point 2110
Decision 75/157/ECSC of 24 January 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing the establishment of a joint control over Marcoke by Sollac, Usinor and August Thyssen-Hütte AG.	OJ L 65 of 12.3.75, p. 19 Bull. EC 1-1975, point 2111
Decision of 24 January 1975 on a proceeding under Article 66 of the ECSC Treaty on the acquisition of the entire share capital of Brennstoffhandel Hohendahl KG, Wiesbaden, by Hugo Stinnes AG, Mülheim (Ruhr).	
Decision of 7 February 1975 on a proceeding under Article 66 of the ECSC treaty authorizing the acquisition by Guest Keen & Nettlefolds Ltd of the entire share capital of W. Brealey and Co. Ltd.	Bull. EC 3-1975, point 2116
Decision of 5 March 1975 on a proceeding under Article 66 of the ECSC Treaty repealing the interim measures relating to Denain Nord-Est Longwy.	Bull. EC 3-1975, point 2114
Decision 75/448/ECSC of 5 March 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing the concentration between Compagnie Lorraine Industrielle et Financière and Marine-Firminy.	OJ L 196 of 26.7.75, p. 27 Bull. EC 3-1975, point 2114
Decision of 5 March 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing Marine-Firminy SA to acquire a majority shareholding in Aktien-Gesellschaft der Dillinger Hüttenwerke.	Bull. EC 3-1975, point 2115
Decision 75/298/ECSC of 2 April 1975 on a proceeding under Article 66 of the ECSC Treaty approving the acquisition by Fried. Krupp Hüttenwerke AG of a majority shareholding in Stahlwerke Südwestfalen AG.	OJ L 130 of 21.5.75, p. 13 Bull. EC 4-1975, point 2111
Decision 75/452/ECSC of 7 April 1975 on a proceeding under Article 66 of the ECSC Treaty, authorizing the formation of a holding company in the commercial vehicle, bus and articulator tractor industry.	OJ L 196 of 26.7.75, p. 41 Bull. EC 4-1975, point 2112

Decision of 4 June 1975 on a proceeding under Article 66 of the ECSC Treaty on the formation by Korf Stahl AG, Von Moos Acier SA and Sacilor SA of a joint undertaking to be known as Aciéries et Laminoirs du Rhin SA.	Bull. EC 6-1975, point 2118
Decision 75/569/ECSC of 3 July 1975 on a proceeding under Article 65 of the ECSC Treaty authorizing an agreement between several steel industry undertakings concerning the joint buying of prereduced iron ore.	OJ L 249 of 25.9.75, p. 22 Bull. EC 7/8-1975, point 2126
Decision of 7 July 1975 on a proceeding under Article 66 of the ECSC Treaty on the formation by Usines Gustave Boël SA and Helical Bar Ltd of Queensborough Steel Company Ltd.	Bull. EC 7/8-1975, point 2128
Decision of 7 July 1975 on a proceeding under Article 66 of the ECSC Treaty on the formation by Usinor SA, Ets P. Experton Revollier SA and Best GmbH of Aciéries et Laminoirs du Rhône et de l'Isère (Rhônacier).	Bull. EC 7/8-1975, point 2129
Decision of 11 July 1975 on a proceeding under Article 66 of the ECSC Treaty on the acquisition by the EGAM Group of the share capital of Vetrocoke Cokapuania.	OJ L 7 of 14.1.76, p. 13 Bull. EC 7/8-1975, point 2127
Decision of 16 July 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition of the entire share capital in N. Greening & Sons Ltd. by Johnson & Firth Brown Ltd.	Bull. EC 7/8-1975, point 2130
Decision of 25 July 1975 on a proceeding under Article 65 of the ECSC Treaty authorizing an agreement on scrap between Sicaworms SA and Ets Léon Giron SA.	Bull. EC 7/8-1975, point 2125
Decision of 27 October 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition by Klöckner & Co. of the entire share capital of BV Gemeenschappelijk Bezit Metaalmaatschappij van SA Vles & Zonen.	Bull. EC 10-1975, point 2106
Decision of 29 October 1975 on a proceeding under Article 66 of the ECSC Treaty adopting interim measures concerning the National Coal Board, National Smokeless Fuels Ltd and the National Carbonizing Company Ltd.	OJ L 35 of 10.2.1976, p. 6. Bull. EC 10-1975, point 2105
Decision of 24 November 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing three exceptions from Article 3 (3) of the Commission's Decision No 74/153/ECSC of 20 December 1973 authorizing August Thyssen-Hütte AG to acquire the majority of the shares of Rheinstahl AG.	
Decision of 24 November 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing an exception from Article 2 (1) of the Commission's Decision No 75/298/ECSC of 2 April 1975 authorizing Fried. Krupp Hüttenwerke AG to acquire the majority of the share capital in Stahlwerke Südwestfalen AG.	

Decision of 12 December 1975 on a proceeding under Article 66 of the ECSC Treaty authorizing the British Steel Corporation to acquire the stainless steel stockholding business carried on by Alfred Simpson Ltd.	Bull. EC 12-1975, point 2130
Decision of 18 December 1975 on a proceeding under Article 66 of the ECSC Treaty on the acquisition by Compagnie Française des Ferrailles SA of a majority shareholding in Ets F. Vernerey SA.	Bull. EC 12-1975, point 2129

RULINGS OF THE COURT OF JUSTICE

Ruling (14 May 1975) in Joined Cases 19 and 20/74: 'Kali und Salz v Commission of the European Communities'	OJ C 159 of 16.7.75, p. 2 Bull. EC 5-1975, point 2441 [1975] ECR 499
Ruling (15 May 1975) in Case 71/74 R and RR: 'Nederlandse Vereniging voor de Fruit en Groenten-importhandel, Nederlandse Bond van Geïmporteerd Fruit v Commission of the European Communities'	OJ C 188 of 20.8.75, p. 2 Bull. EC 5-1975, point 2442 [1975] ECR 563
Ruling (1 October 1975) in Case 25/75: 'Van Vliet v Dalle Crode'	OJ C 266 of 20.11.75, p. 2 Bull. 10-1975, point 2445 [1975] ECR 1103
Ruling (13 November 1975) in Case 26/75: 'General Motors v Commission of the European Communities'	OJ C 23 of 3.2.76, p.2 Bull. 11-1975, point 2440 [1975] ECR 1367
Ruling (26 November 1975) in Case 73/74: 'Papier peints v Commission of the European Communities'	OJ C 3 of 7.1.76, p. 7 Bull. 11-1975, point 2437 [1975] ECR 1491
Ruling (15 December 1975) in Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73: 'Générale Sucrière etc. v Commission of the European Communities'	OJ C 43 du 25.2.76, p. 2 [1975] ECR (to be published)

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