European Community competition policy

1996

European Community competition policy

XXVIth Report on competition policy

1996

EUROPEAN COMMISSION
Directorate-General IV – Competition

A great deal of additional information on the European Union is available on the Internet.
It can be accessed through the Europa server (http://europa.eu.int)
Cataloguing data can be found at the end of this publication
Luxembourg: Office for Official Publications of the European Communities, 1997
ISBN 92-828-0298-1

Printed in Germany

INTRODUCTION BY MR KAREL VAN MIERT,
the Member of the Commission with special responsibility for competition policy

In 1996, as a result of the globalization of trade and the internationalization of economic phenomena, there continued to be a considerable need for adjustment of the structures of the European economy. In a rapidly changing world environment characterized by four main factors — the speeding-up of technical and scientific progress; population growth in the developing countries; the increase in the production of goods and services; and the intensification of trade in goods and of capital movements — the policy of the European Union, and more particularly Community competition policy, seeks to promote the indispensable adaptation of the Community economy to this new situation.

Globalization is in many respects an opportunity to be seized by those economies which have the means to do so. The liberalization of trade, both worldwide and within the single market, is a mainspring of growth that will benefit the European economy, European businesses and European consumers.

For all that, globalization is also sometimes seen as a threat by European citizens faced with a society which they perceive as being more complex the more global it becomes, less safe the more prosperous it grows, and more fragile the more open it is. These concerns are understandable. They are legitimate. They must be accommodated by government policies and especially by Community policy. They reflect the mounting uncertainties for both structures and individuals that stem from the need to adapt to a rapidly changing world.

Competition policy is a structural factor of great importance when it comes to helping Europe adapt to this new competitive environment brought about by globalization. This is because:

- it seeks to make our economic structures stronger and more competitive;

- it helps, through a policy of balanced liberalization, as in the telecommunications sector, to safeguard the solidarity and equality of treatment to which Europeans are so attached and which lie at the heart of the European model of society, thereby ensuring that European businesses and consumers are provided with the best possible services at the lowest possible prices while taking the general interest fully into account;

  it plays a key role in the implementation of the single market, whose mechanisms ensure a better allocation of resources and an optimum efficiency of the economy while paying due regard to the general interest.

If it is to play this essential role in an optimum manner, competition policy must likewise constantly adapt and be able to meet ever more exacting requirements in relation to the handling of competition cases, the scale of the operations concerned and the speed of changes in the markets being such that there is an increasing need for expertise and rapid decision-making. In 1996 the Commission accordingly pressed ahead with its drive to modernize its competition policy.

It concentrated its efforts on three areas:

- First of all, it voluntarily undertook to create suitable instruments and structures, both multilateral and bilateral, so as to be able to deal with competition issues at the appropriate level, be it national, European or worldwide. The Commission thus proposed, on my initiative, to step up its cooperation with Member States' competition authorities in order to promote the decentralized application of competition rules within the Community. It was with the same end in view that we continued to work for the gradual development of cooperation and minimum rules at world level.

- Secondly, the Commission applied itself to the task of speeding up the work on amending Community law so as to bring it more into line with economic reality, both as regards merger control, the conditions

under which Articles 85 and 86 are applied, and the monitoring of State aid.

- Thirdly, it started work on modernizing the rules of procedure in many areas so that it might be able to handle the numerous cases that come before it with the requisite speed and efficiency and increase the transparency and foreseeability of its decisions, notably in the State aid sphere.

This intensive modernization work, which will equip the Commission in its capacity as a competition authority with the means with which to face up to the challenges of a more global, more rapidly changing and more complex economy, has not diverted our attention from what is, in my view, our central task, which is to combat, in a manner in keeping with the general interest, any attempts to impair the proper functioning of markets.

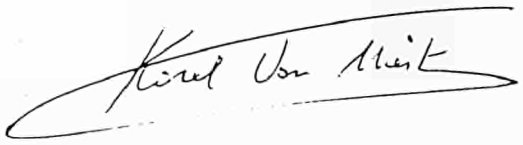
The campaign against restrictive practices thus remains at the forefront of the Commission's competition activities. For example, in 1996 we penalized the parties to price-fixing agreements in the transport sector, and a number of other agreements and abusive practices are currently under investigation. I intend to step up the campaign against secret cartels even more in future.

The same holds true for the application of stringent rules on State aid, where the number of negative decisions has increased considerably. Strict monitoring is needed above all in sectors suffering from structural overcapacity such as the motor industry, where, far from solving a particular problem, the granting of aid may simply have the effect of shifting it elsewhere in the Community. The Commission has nevertheless been mindful of the contribution some types of aid may make to the attainment of the objectives of other Community policies.

In the merger control sphere, the number of decisions taken by the Commission was again up on the previous year and in three cases we had to prohibit the planned operation.

To conclude, I should like to say that I hope this report will contribute to the transparency of competition policy. It is with such transparency in mind and in answer to a request from the European Parliament and the Economic and Social Committee that the 1996 Report contains a final chapter on what the Commission proposes to do in 1997. I should also like to give special thanks to all those who took part in 1996 in the various debates on competition matters: the European Parliament, the Economic and Social Committee, the Council, Member States, the business community, consumer organizations and the Commission's departments. I am convinced that their views and comments have helped to ensure that our competition policy is more clearly articulated, more readily understood and better implemented. I hope I can count on their active involvement again next year.

Thus, step by step, the Commission is preparing the ground actively and systematically so that it will be ready to take up the challenges that will be facing Europe in the world in 2000, foremost among which will be enlargement. I have set my sights on modernizing and developing the instruments of a competition policy which is not only effective but also transparent and democratic, while respecting fully the prerogatives of the European Parliament and the Council; a balanced competition policy which pays due regard both to the pressing need for economic efficiency and to the general interest.



XXVIth Report on competition policy 1996

(Published in conjunction with the 'General Report on the Activities of the European Union — 1996')

SEC(97) 628 final

CONTENTS

Introduction 11

I — Antitrust: Articles 85 and 86 19

A — Changes in the legislative and interpretative rules 19

1. Competition and the dissemination of innovation 19
2. Decentralizing the application of competition law 20
3. Notice on the non-imposition of fines 20
4. Agreements of minor importance 21
5. Access to the file 22
6. Green Paper on vertical restraints 23

B — Applying the competition rules to support market integration 24

1. Partitioning the common market by means of distribution agreements or practices 24
2. Vehicle distribution 25
3. Pharmaceutical products 26

C — Practices employed by dominant firms to eliminate competitors 26

D — Information society 27

1. Restructuring operations 28
2. Telecommunications tariffs 29
3. Access agreements 29
4. Mobile communications 30
5. Satellite communications 30
6. On-line services and competition 31
7. Competition policy in the media 31

E — Transport 32

1. Liner shipping consortia 32
2. Inland rate fixing by liner conferences 33
3. Price consultations between competitors 34
4. Cooperation between airlines 35

F — Energy 36

G — Sport and competition 37

H — Financial services 37

I — Statistics 38

II — State monopolies and monopoly rights 41

A — Introduction 41

B — Telecommunications 41

1. Mobile telephony liberalization Directive 41
2. Full competition Directive 42
3. Decision on mobile telephony in Spain 43
4. Decision to grant Ireland a supplementary transitional period for certain aspects of the liberalization of telecommunications 43

C — Energy 43

1. Directive on common rules for the internal market in electricity 43
2. Proposal for a Directive on common rules on the internal market in gas 44

D — Postal services 45

1. Proposal for a Directive on common rules for the development of postal services 45
2. Draft notice on the application of the competition rules to the postal sector 45

E — Transport 45

1. Airports 45
2. Ports 46

F — Other State monopolies of a commercial character 46

1. Austrian, Swedish and Finnish alcohol monopolies 46
2. Austrian manufactured tobacco monopoly 46

III — Merger control 47

A — Introduction 47

B — Merger review 47

C — New developments 48

1. Relevant product market 48
2. Relevant geographic market 48
3. Dominance assessment 49

D — The media 50

E — Referrals under Articles 9 and 22 51

F — Legitimate interests of Member States and application of Article 223 of the EC Treaty 52

G — Statistical overview 53

IV — State aid 55

A — General policy 55

1. Strict control of aid to certain sectors 55
2. Clarification of rules 55
3. Implementation of means of ensuring the effectiveness of existing rules 56

B — Concept of aid 56

1. Advantage to a firm 57
2. Origin of resources 58
3. Specificity of a measure 58
4. Distortion of competition and effect on intra-Community trade 59

C — Compatibility of aid with the common market: developments and trends 59

1. Sectoral aid 59
2. Horizontal aid 67
3. Regional aid 69
4. Direct investments abroad 70

D — Procedures 71

E — Statistics 72

V — International cooperation 75

A — Central and Eastern Europe 75

1. Opinions on accession 75
2. Implementing rules 75
3. Technical assistance 75

B — United States 75

1. Application of the Cooperation Agreement 75
2. Development perspectives 76

C — WTO 76

1. Trade and competition 76
2. State aid 77
3. Access to the Japanese market in photographic film and paper 77

D — OECD 77

1. Committee on law and competition policy 77
2. State aid 77

E — Other developments in international relations 77

1. Mediterranean countries 77
2. Japan 77
3. Latin America 78

VI — Information policy 79

Outlook for 1997 81

Annex: Cases discussed in the report 83

INTRODUCTION

1. Objectives of competition policy

1. The aim of competition policy, through its impact on the basic structures of the European economy, is to ensure that markets acquire or maintain the flexibility they need to allow scope for initiative and innovation and to allow an effective and dynamic allocation of society's resources. This structural action means that competition policy interacts with most other broadly based policies such as the development of the internal market, the policy on growth and competitiveness, the policy on cohesion, research and development policy, environmental policy and consumer protection.

2. Competition policy is thus both a Commission policy in its own right and an integral part of a large number of European Union policies and with them seeks to achieve the Community objectives set out in Article 2 of the Treaty, including the promotion of harmonious and balanced development of economic activities, sustainable and non-inflationary growth which respects the environment, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion.

3. In the final analysis, like all other Community policies, competition policy aims to enhance the economic prosperity of the European Union and the well-being of all its people. In a communication published on 11 September 1996 entitled 'Services of general interest in Europe',[1] the Commission forcefully reaffirmed these ideas stating that, 'market forces produce a better allocation of resources and greater effectiveness in the supply of services, the principal beneficiary being the consumer, who gets better quality at a lower price'. However, the Commission is also well aware that 'these mechanisms sometimes have their limits; as a result the potential benefits might not extend to the entire population and the objective of promoting social and territorial cohesion may not be attained. The public authority must then ensure that the general interest is taken into account'.

4. The positive interaction between competition policy and other Community policy areas was particularly evident on the employment front in 1996. On 5 June the Commission, acting on a proposal from Mr Santer, adopted the document entitled 'Action for employment in Europe: a confidence pact'.[2] Competition policy plays its part in the overall strategy set out in the document in order to boost economic growth and strengthen the link between job creation and growth. In line with the approach pursued through the Single European Act and the White Paper on growth, competitiveness and employment,[3] the pact proposes four types of structural action: 'to complete the internal market and implement it more effectively; to enhance the overall competitive environment in Europe; to help small and medium-sized enterprises; to open up wider access to the world market', the first three of which are closely linked to competition policy. The first two types of action involve essential competition policy objectives under Articles 85, 86 and 90 of the Treaty and the Merger Regulation. The third was pursued this year in the policy on State aid, with the adoption of a new, simpler and more broadly based *de minimis* rule, the introduction of new guidelines on aid for SMEs and a notice on the monitoring of State aid and reduction of labour costs.

5. If it is to perform its function fully, competition policy as a structural policy must work with and anticipate trends in the economy so as to ensure efficient operation of markets without acting unduly as a brake on their performance. It must in particular:

— take account of globalization;

— help to develop the full potential of the internal market;

— modernize its instruments.

2. Taking account of globalization

6. The quickening pace of technological advance and the rapid development of global competition in a large number of sectors are undoubtedly a challenge to public policies as a whole and to competition policy in particular, whether pursued by the European Union, individual Member States or countries elsewhere in the world.[4] In many sectors, the economic conditions prevailing today cannot be compared with those which existed even 10 years ago. Firms have to adjust to an economy in which discriminating consumers can compare daily the goods and services available in a world which has shrunk with the development of communications and trade. At the same time, the

[1] OJ C 281, 26.9.1996, p. 3.
[2] CSE(96) 1 final.
[3] White Paper entitled 'Growth, competitiveness and employment: the challenges and ways forward into the 21st century', COM(93) 700 final, 5.12.1993.
[4] See staff report of the US Federal Trade Commission (FTC): 'Competition in the new high-tech global market place'.

internationalization of trade and the growing integration of economies between the different areas of the world have prompted Community firms to shift their strategy towards international cooperation so as to become global actors at world level. These changes have been made possible only because they have gone hand in hand with extremely rapid advances in technology. These have altered the basis on which whole sectors operate. One example is the telecommunications sector, which it was still possible until recently to protect from international competition and the process of Community integration.

7. The Commission does not believe that this situation calls for less-strict application of the competition rules. Its experience, through its decision-making practice in all the areas covered by competition policy, shows that the competition-mindedness and efficiency required to be an effective competitor internationally are acquired through competition between firms on domestic markets. Moreover, although some markets are clearly global ones with, in some cases, a very small number of players (for example, the platinum market in the *Gencor/Lonrho* case), others remain European, or indeed national, for a variety of reasons (for example, the importance of language in the case of audiovisual and cultural products and services). Furthermore, even in sectors in which global strategies are pursued, competition does not necessarily, from the customer's point of view, take place at global market level; a notable example is telecommunications where, from the resident user's point of view, markets remain essentially national and are in some cases still dominated by monopoly operators.

8. For these reasons, the Commission's policy is to promote the competitiveness of European industry as a whole by strict enforcement of the competition rules applicable to Member States and those applicable to undertakings, looking at each market individually and taking account of its size.

Thus, in its policy on liberalization, through gradual and balanced liberalization of the network industries that are crucial to the competitiveness of European industry as a whole, such as telecommunications, energy and transport, the Commission's aim is to overcome the handicap created by the cost of such services for European firms, as set out in the second Ciampi report.[1] Parallel to this, in the policy it pursues on State aid, the Commission may take a positive view of aid that allows the rationalization of production and the restructuring of a firm in order to enhance its competitiveness and in the long term safeguard employment. On the other hand, it takes a negative view of aid which merely bales out a firm without providing any guarantee of its future viability.

In its antitrust and merger control policy, the Commission endeavours to prevent the foreclosure of European markets, and in particular of emerging or recently demonopolized markets, while at the same time fostering the development of a powerful European industry that can meet the challenges of world competition. The decisions taken by the Commission in 1996 provide numerous illustrations of this approach. Examples include the Commission decisions under Article 85(1) and (3) in the *Atlas/Global One* and *Lufthansa/SAS* cases. This concern also underlies the Commission's moves to assess the impact of the transatlantic air alliances on competition on Europe. Similarly, the Commission seeks to ensure that effective competition is maintained in Europe, to the benefit of European consumers, when it analyses merger transactions associated with global strategies, whether the relevant markets are worldwide (*Gencor/Lonrho*), European or national (*Kimberly-Clark/Scott Paper*).

3. Developing the full potential of the internal market

9. While globalization is undoubtedly an important feature of modern economies, it is not a universal phenomenon that affects the whole of the economy uniformly. In many areas, the dynamics of integration are essentially European.

The period during which the single market programme (SMP) has been completed has witnessed a significant intensification in trade relations between the Member States. Between 1985 and 1995, the share of intra-EU imports in total manufacturing imports increased from 61.2% in 1985 to 67.9% in 1995, while trade in services expanded by a smaller amount from 46.9% in 1985 to 50% in 1995. This intensification of intra-Community trade has not occurred at the expense of third-country producers.

[1] 'Improving European competitiveness', second report of the Competitiveness Advisory Group, presented to the Commission President and to the Heads of State or Government in December 1995.

Market share analysis demonstrates that both intra and extra-Community trade have expanded their share of consumption at the expense of domestic producers. Single market completion and globalization are working together to shake up established sourcing patterns and market structures, and are ushering in a period marked by competitive pressure.

Recent analysis, carried out for the Commission's review of the impact and effectiveness of the single market programme, highlights a general tendency towards reduced concentration in national markets, coupled with increased concentration at Community level.[1] This pattern is consistent with keener competition across frontiers accompanied by some restructuring at Community level. The trend is most marked in R&D-intensive sectors and sectors producing homogeneous goods. The increase in cross-border competition has also manifested itself in erosion of price-cost margins in sectors which were previously segmented by discriminatory procurement practices and technical barriers. Price-cost margins are found to be some 0.5% of the value of turnover below what they would have been in the absence of the single market. Furthermore, markets for consumer and equipment goods as well as market services sensitive to the single market programme exhibit a trend towards price convergence. Recent evidence therefore suggests that the single market has successfully unleashed a pro-competitive dynamic. Simulations suggest that the competition and productivity-enhancing effects of the single market programme have boosted economic activity and employment to levels which would otherwise not have been observed. Community income is estimated to be 1.1 to 1.5% higher than otherwise, while the SMP is estimated to have created up to 900 000 extra jobs. Inflation rates in 1994 were found to be 1.2% lower than would have prevailed in the absence of the single market.

The effects measured to date fall short of initial expectations regarding the potential growth and employment impact of the single market. The more modest impact can be attributed to the fact that the market-opening effects of single market legislation are only beginning to come on stream. The unpropitious macroeconomic consequences have also dampened responsiveness of operators to new commercial openings. However, the Commission's review has also identified shortcomings in the single market framework which must be remedied before the full benefits will be reaped. To this end, an action plan is currently under preparation and is scheduled for presentation at the Amsterdam European Council.

The Commission's review has highlighted the need for continued vigilance and commitment to upholding the principles of free movement and competition in order to optimize the potential of the single market. Consistent application of effective competition policy safeguards is of critical importance in this regard. The Commission is convinced of the need to pursue this policy and to prevent corporate conduct or State measures from excluding certain sectors from the advantages of the single market. This is the reasoning behind its decision in the *Adalat* case, and also the action it has taken in motor vehicle distribution, with the entry into force of the new block exemption Regulation on motor vehicle distribution, to put an end to practices that artificially segment the market. It is also the purpose of the steps taken by the Commission in 1996 to allow second mobile-telephone operators rapid, effective and non-discriminatory access to the licences that have to be issued by Member States.

10. Similarly, the Commission continues to pursue an active State aid policy with a particular view to preventing the granting of aid that facilitates or results in the partition of markets. On the basis of Article 90(3) of the EC Treaty, it also pursues a determined policy of opening up markets, both through general measures and through specific action against measures taken by Member States. In 1996 the Commission thus put in place the necessary framework for the functioning of a liberalized telecommunications market by adopting two Directives, one on mobile and personal communications and the other on the complete opening-up of the telecommunications market to competition.

4. Modernizing the instruments of competition policy

11. If it is to perform its function fully, achieve the objectives assigned to it and contribute effectively to the well-being of European citizens, competition policy must be able to

[1] This evidence was gathered as part of an extensive fact-finding exercise, entailing the completion of 39 specific studies and surveys. The individual studies are scheduled for publication in early 1997. The principal conclusions from this analysis are reported in the Commission's communication (COM(96) 520, 30.10.1996) entitled 'The impact and effectiveness of the single market' and are fleshed out in detail in a Commission working document. A detailed presentation of the economic impact of single market completion is provided in the Special Edition of the *European Economy* series (March 1997).

modernize and adapt to a rapidly changing environment. With the integration of markets at European level and globalization, firms are entering into mergers and cooperative arrangements in order to achieve the critical size required, notably in terms of financing, and for research and development purposes. This has resulted in an increase in the number of cases with which the Commission has to deal. Furthermore, the mergers and cooperative arrangements are often entered into on oligopolistic markets with substantial entry barriers. Given this trend, the complexity and growing size of the markets to be analysed, a greater tendency for competitors to lodge complaints with the Commission and increased transparency requirements, there is a risk that cases could take longer to process, at the very time when the size of the relevant transactions and the speed with which changes are taking place on the markets increase the need for rapid decisions.

12. In 1996 the Commission accordingly endeavoured to carry out the necessary modernization of its competition policy instruments:

— it endeavoured to take full account of the economic context and constraints specific to each market in dealing with the cases it examined, and this prompted it to look again at the concepts and instruments of economic analysis which it applies;

— it took steps to improve the arrangements for cooperation with the competition authorities of the Member States, and also of non-member countries, in order to ensure that each competition problem can be assessed within an appropriate framework and at an appropriate level;

— it embarked on a major review of the rules which it applies, culminating in the drawing-up and, in some cases, the adoption of new legislative provisions.

4.1. Developing analytical instruments

13. Defining markets and identifying the key factors governing competition are a permanent challenge to competition policy, particularly in markets which are in a state of rapid transition. A changing environment in which technological innovation is blurring the traditional distinctions between the various product markets (as is the case, in the 'information society', with the boundaries between the information technology, telecommunications and media markets), promoting the emergence of new markets whose geographical boundaries are similarly in a state of flux, places increased demands on the Commission and its staff in terms of economic analysis. This applies particularly to market definition, the analysis of market power, the taking into account of potential competition and, more generally, the economic assessment called for under Article 85(3).

These increased demands apply to the whole of competition policy, including vertical and horizontal restrictions of competition, mergers, Article 90 cases and the monitoring of State aid. They are one of the factors underlying the review of vertical restrictions of competition being carried out on the basis of the Green Paper.

4.2. Improving cooperation with Member States and international cooperation

14. The Commission endeavours to promote the establishment of appropriate institutional arrangements for analysing competition issues in a framework that is consistent with the nature and scale of the problems involved. Such consistency helps to ensure that the analysis takes greater account of the constraints and specific features associated with each sector. The Commission took a number of steps in this direction in 1996. In the first place, it published a draft notice on the decentralized application of the competition rules. Secondly, it cooperated with the competition authorities of non-member countries on the basis of existing bilateral agreements, and it entered into negotiations on new bilateral agreements. Lastly, on 18 June, it adopted a communication to the Council proposing the setting-up, within the World Trade Organization, of a working party to begin exploratory work, starting in 1997, on the establishment of an international framework of competition rules.

4.3. Modernizing legislative instruments

15. The Commission believes that, if it is to respond properly to the challenges of an economic environment that is changing more rapidly than in the past, it must reassess and, if necessary, recast the legislative and interpretative instruments at its disposal. It has accordingly taken a number of fundamental steps to modernize its legislative framework.

16. Thus, the block exemption Regulations on patent and know-how licences, which had expired, have been replaced by a Regulation on technology transfers. This lays down a more

flexible framework than previously so as to facilitate the rapid dissemination of innovation within the single market.

17. Similarly, the Commission adopted on 10 July a proposed amendment to the Merger Regulation. The aim of the proposal is to improve the division of tasks between the Commission and the Member States by lowering the thresholds, establishing arrangements that will allow firms to solve the problem of multiple notifications in cases having cross-frontier effects below the thresholds and by introducing more flexible arrangements for the referral of cases to Member States. The proposal also provides that all full-function joint ventures would be included in the scope of the new Regulation.

18. Lastly, in 1996 the Commission finalized its Green Paper on vertical restrictions of competition, which was published in January 1997. The Green Paper presents an analysis of the trend in vertical distribution agreements and sets out several options for reconciling the two conflicting objectives of introducing more economic analysis so as to assess more fully whether Article 85(1) has been infringed and maintaining the high degree of legal certainty which firms have a right to expect.

19. As regards air transport in particular, the growing number of alliances between the major European and non-European airlines prompted the Commission to look closely at such alliances, particularly those which affect air traffic across the North Atlantic. Its analysis showed that it lacks a standard means of directly examining infringements of Articles 85 and 86 in the case of services provided between the Community and other countries and that it has to rely on the interim arrangements provided for in Article 89 of the Treaty. This is because the relevant Council Regulations (EEC) Nos 3975/87 and 3976/87 do not apply to international transport between Community and non-Community airports. The Commission is therefore considering proposals for amending Council regulations so as to have similar instruments to those available for ensuring the application of Articles 85 and 86 of the EC Treaty on routes within the European Union.

20. The Commission continued its policy of focusing on those cases which it regards as having a significant market impact and involving a real Community interest, dealing with them in depth within as tight deadlines as possible. For this purpose, it adopted a number of notices, some in draft and others in final form.

On 10 July, with a view to stepping up its action against secret cartels, which remains a priority objective, the Commission adopted a notice on the non-imposition or reduction of fines for firms which cooperate with the Commission in providing information on certain types of unlawful agreements in which they have participated.

The Commission also recently adopted a *de minimis* notice on State aid and a draft *de minimis* notice on agreements covered by Article 85 so as to enable it to focus its action even more than previously on cases which are important from a competition policy point of view. In addition, the Commission continued its policy of asking the national authorities to deal with complaints that do not have sufficient Community relevance. The means of implementing this policy are one of the issues dealt with in the draft notice on the arrangements for cooperation with national competition authorities in handling cases coming under Articles 85 and 86. The main purpose of the notice is to decentralize further the application of the competition rules so as to make them more effective.

The Commission also presented to the Council a memorandum setting out various legislative measures designed to allow State aid projects of no economic importance or adequately covered by Community guidelines to be exempted from Community monitoring. These measures should allow the Commission to focus its resources on important cases or cases which raise doubts.

5. Pursuing a policy of balanced liberalization that takes account of the general interest

21. On 11 September the Commission adopted a communication on services of general interest in Europe which reaffirms that 'solidarity and equal treatment within an open and dynamic market economy are fundamental European Community objectives' and that these objectives 'are furthered by services of general interest'. By pointing out that 'the real challenge is to ensure smooth interplay between, on the one hand, the requirements of the single European market and free competition in terms of free movement, economic performance and dynamism and, on the other, the general interest objectives', the communication also makes it clear that the Community's approach to liberalization is balanced and takes the general interest into account.

22. The need to ensure that balance is maintained means that the Commission must adopt a prudent, gradual and balanced approach in applying Article 90 of the Treaty, which provides that the application of the rules contained in the Treaty, and in particular the rules on competition, must remain compatible with the performance of services of general economic interest.

In implementing Article 90 in the telecommunications and postal services sectors in 1996, the Commission stuck closely to these policy guidelines. The first Directives on telecommunications services, adopted in 1990, had recognized the need for operators to keep voice telephony under monopoly control for a certain period so as to allow a gradual shift to a system of competition.[1] It was only six years later, in 1996, when the results of consultations by the Commission with the various players in the sector showed clearly that a universal service could now be perfectly well maintained in the telecommunications sector without relying on exclusive rights, either for infrastructure or for voice telephony, that the Commission adopted, with the support of the European Parliament, a Directive on full liberalization of the sector. Similarly, as regards postal services, the Commission accepted as early as 1989,[2] well before the *Corbeau* judgment,[3] that exclusive rights for basic postal services were necessary in order to prevent private operators creaming off the most profitable activities and to maintain a universal service. It was on this basis that, in line with its policy of seeking broad agreement on liberalization, the Commission in 1996 initiated consultations on a draft Directive pursuant to Articles 57, 66 and 100a of the Treaty and a draft Commission notice on Articles 85, 86 and 90 of the Treaty.

23. Lastly, in its communication on services of general interest in Europe, the Commission came out against any amendment to Article 90 at the Intergovernmental Conference since Article 90 has proved itself fully capable of ensuring positive interaction between liberalization and the general interest. By contrast, the Commission gave its support to the inclusion of a reference to services of general interest in the Treaty, recommending that Article 3 of the Treaty should include a new point (u): 'a contribution to the promotion of services of general interest'.

6. Implementing competition policy in the new Member States

24. Two years after Austria, Finland and Sweden joined the European Union, it is striking that, probably because their previous inclusion in the European Economic Area (EEA) enabled them, even prior to accession, to incorporate a large proportion of Community legislation into their national laws, the new Member States and their enterprises have adjusted very rapidly to Community competition rules. This rapid adjustment has been accompanied by the introduction of appropriate legislative measures in each of the three Member States in order to bring their basic competition rules into line with those laid down by Community law, provide assistance to Community officials carrying out investigations on their national territory and transpose the directives adopted pursuant to Article 90(3). In addition, in the same way as in the other Member States, the Commission has established close and fruitful working relations with the Austrian, Finnish and Swedish competition authorities. This situation has allowed the new Member States to play their role fully and rapidly in Community competition policy. The only difficulties which have emerged involve the adjustment of monopolies of a commercial character to the requirements of Article 37 of the Treaty as interpreted by the Court. This is particularly the case with the tobacco monopoly in Austria, against which the Commission had to initiate proceedings under Article 169 of the Treaty.

7. Statistics[4]

25. The number of new cases in 1996, taking all the areas covered by competition policy (antitrust, mergers and State aid), is lower than in the previous year (down from 1 472 in 1995 to 1 246 in 1996). It should be borne in mind that the 1995 figure is due in large part to the cases previously handled by the EFTA Surveillance Authority being transferred to the Commission; the number of new cases in 1996 is still 15% higher than in 1994. In contrast to Articles 85 and 86 cases (where, nevertheless, the upward trend in the number of complaints continued) and State aid cases, the number of merger notifications rose again by almost 15%.

[1] Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, OJ L 192, 24.7.1990, paragraphs 18-20.

[2] Commission Decision 90/16/EEC of 20 December 1989 on the provision in the Netherlands of express delivery services, OJ L 10, 12.1.1990, p. 47.

[3] Judgment of the Court of Justice of 19 May 1993 in Case C-320/91 *Corbeau* [1993] ECR I-2533; see also judgment of the Court of Justice of 27 April 1994 in Case C-393/92 *Almelo* [1994] ECR I-1477.

[4] More detailed figures on the various areas of competition policy are given in the following chapters.

26. The total number of cases closed was down on the previous year: 1 064 cases were dealt with in 1996, as against 1 210 in 1995. This is partly due to the growing complexity of the cases (and the time taken by some proceedings). In addition, DG IV has had to assume a number of additional, important, and resource-intensive priority tasks without extra resources, in particular with respect to the preparation of new legislation measures, the Green Paper on vertical restraints and international cooperation. Finally, major efforts and time have been spent by DG IV staff preparing major reforms of management and administration to increase productivity. These reforms include increased use of priority/delegation in case handling, the introduction of targets for the speed of handling Article 85 cases, a new internal mechanism for quickly and effectively dealing with 'simple' cases, and the preparation of new entry level and ongoing training courses. Implementation of these important reforms will continue in 1997.

A — Changes in the legislative and interpretative rules

1. Competition and the dissemination of innovation

27. On 31 January, following a long consultation process with representatives of business and industry, the Commission adopted a new block exemption Regulation on technology transfer agreements.[1] The Regulation represents a step towards the creation of a legal environment that will promote technical innovation and its dissemination within the European Union, while at the same time ensuring that healthy competition and the completion of the single market are not affected.

A number of factors, including in particular the recognition that technology transfers are a driving force in the economic development of the European Union, prompted the Commission to carry out a substantial simplification of the rules which have hitherto governed technology transfer agreements.

Such rules were contained in two block exemption Regulations on know-how and patent licensing agreements. However, the implementation of the two former Regulations was not without difficulties. These were mainly due to the over-interventionist approach of the Regulations and to the uncertain legal arrangements applying to mixed agreements. The new Regulation sets out to overcome these difficulties: it combines the previous block exemption Regulations into a single legal instrument, with firms being covered by a single set of rules for patent licensing agreements, know-how licensing agreements and mixed patent and know-how licensing agreements.

At the same time, the new Regulation comprises a series of improvements and simplifications and adopts a more relaxed approach to certain types of clause which are current practice in contracts and which affect the balance of power between the parties rather than the forces of competition.

28. The structure of the new Regulation follows the established model for block exemptions by drawing a distinction between 'white', 'black' and 'grey' clauses. In the first place, the Regulation grants automatic exemption to all licensing agreements that include certain restrictions of competition normally caught by Article 85(1). These are essentially territorial restrictions between parties or between licensees, which are exempted for a limited period. Secondly, the Regulation contains a longer list of obligations that are not generally restrictive of competition and provides that, if they are caught by Article 85(1) because of the particular economic or legal context, they should also be covered by the exemption. Thirdly, there is a blacklist of clauses or restrictions whose inclusion in an agreement precludes the granting of the block exemption. This blacklist is much shorter than that contained in the two previous Regulations. It covers restrictions on prices and quantities, bans on exploiting competing technologies, customer restrictions between competing manufacturers, obligations on licensees to assign improvements to the relevant technology and territorial restrictions for a longer duration than those exempted. Lastly, the Regulation provides for an opposition procedure under which exemption may be granted to agreements containing additional restrictions of competition not specified in the Regulation, provided that such agreements are notified to the Commission (under a simplified procedure) and that the Commission does not oppose the application of the exemption within four months (as opposed to six previously). Previously blacklisted clauses, such as the requirement that the licensee procure from the licensor goods or services which are not essential to technically appropriate exploitation of the licensed technology, and no-challenge clauses are subject to the opposition procedure.

29. The Commission's concern to promote the rapid dissemination of technologies and innovation in Europe is accompanied by a clear warning to firms holding large market shares on the relevant markets. It must be ensured that interested firms which are very strong on a market do not block the introduction of innovations which might compete with their own products or processes and might benefit other firms, particularly innovatory SMEs. Accordingly, the new Regulation allows the Commission to withdraw the benefit of block exemption where the licensed products are not exposed to effective competition in the licensed territory. In its assessment of the conditions of competition, the Commission will pay particular attention to situations in which the licensee's market share exceeds a threshold of 40%.

[1] Commission Regulation (EC) No 240/96 of 31 January 1996 on the application of Article 85(3) of the Treaty to certain categories of technology transfer agreements, OJ L 31, 9.2.1996, p. 2.

2. Decentralizing the application of competition law

30. The Commission continued its efforts to promote decentralized application of Articles 85 and 86.

31. Thus, it replied to questions put by Belgian, French, German and Spanish courts pursuant to the notice on cooperation between national courts and the Commission in applying Articles 85 and 86.[1]

32. In September the Commission published a draft notice on cooperation between national competition authorities and the Commission in handling cases falling within the scope of Articles 85 or 86 of the EC Treaty.[2] The wording of the title of the notice reflects the Commission's desire to cover not only cases in which the national authorities apply Articles 85(1) and 86, but also those in which the national authorities cannot or do not wish to apply only their national law. Of the 15 Member States, only seven have at present legislation that allows the relevant national authority to apply Community law to cases falling within the scope of Community law, namely Belgium, France, Germany, Greece, Italy, Spain and Portugal (Portugal cannot, however, impose fines for infringements of Community law). The application of the notice to all cases falling within the scope of Community law is intended to ensure that national authorities do not adopt decisions which are incompatible with Community law, jeopardizing its uniform application throughout the European Union. For this purpose, the draft Commission notice provides for machinery to ensure close liaison with the national authorities and prevent contradictory decisions. However, the prevention of such conflicts is much easier if the national authorities apply Community law, and the Commission accordingly invites Member States which have not already done so to adopt legislation enabling their competition authorities to apply Articles 85(1) and 86 effectively.

The application of these provisions to all cases falling within the scope of Community law would be of great benefit to firms, since any such agreements they conclude or practices they enter into would be subject to only one set of rules throughout the Community. However, even if it does not provide the same legal certainty, the application of national laws that are closely modelled on Articles 85 and 86 may provide an alternative, provided that the way in which it is effected and the outcome achieved are sufficiently close to Community law. In this context, the Commission welcomes the continuing move towards alignment with Community rules that is evident in the amendments to several national laws.

33. Reactions to the Commission's draft notice by professional bodies and law firms have been generally positive. Reactions from the Directors-General for Competition, at their meeting on 2 October, were similarly positive, and several of the Directors-General presented useful written contributions. The Commission also welcomes the positive contribution of the Economic and Social Committee, which delivered a substantial opinion on the published draft. While welcoming the goal pursued by the Commission in its notice, the Economic and Social Committee considers that effective decentralization requires more incisive action, such as the revision of Regulation No 17 and the harmonization of national competition laws, especially procedural rules. The Commission will take careful account of the suggestions received in order to improve the clarity, speed and legal certainty of the arrangements provided for in the draft notice. However, it must emphasize that the draft notice is intended to form part of the current legal framework in which the Commission has sole power to grant exemptions under Article 85(3).

3. Notice on the non-imposition of fines

34. On 10 July the Commission adopted a notice on the non-imposition or reduction of fines in cartel cases.[3]

The notice, which is modelled on successful policies pursued in the United States and Canada, adjusted to suit the specific European situation, is intended to give the Commission an additional instrument in its campaign against the most harmful types of cartel. It applies to secret cartels aimed at fixing prices, production or sales quotas, sharing markets or banning imports or exports. Such agreements are the most harmful to consumers and, generally, to the European economy. They result in higher prices and less choice for the customers of the firms who engage in them and, ultimately, for

[1] Notice on cooperation between national courts and the Commission in applying Articles 85 and 86 of the EC Treaty, OJ C 39, 13.2.1993, p. 6.

[2] OJ C 262, 10.9.1996. See also *XXIIIrd Competition Report*, points 190-191; *XXIVth Competition Report*, points 40-42; *XXVth Competition Report*, points 94-95.

[3] OJ C 207, 18.7.1996, p. 4.

the final consumer. Such practices also dissuade firms from pursuing technical innovation and deprive them of the business dynamism that results from normal competition. Lastly, in the long term, they lead to a loss of competitiveness in those sectors of European industry in which they exist and, in an increasingly global market place, reduced employment opportunities.

Combating such agreements is thus a priority task for the Commission. However, it is also a difficult task and one which is costly in terms of human resources. Some firms use highly sophisticated methods to conceal such agreements. By reducing or indeed waiving the fine which would normally have been imposed, the Commission has sought to provide sufficiently strong incentives to break down the wall of silence surrounding secret cartels.

35. Following the publication of the draft notice inviting interested parties to submit their comments,[1] some business organizations objected that the proposed measures were unethical since they would institutionalize informing and denunciation. The Commission rejected this argument, which reversed the order of values. It felt that, on the contrary, it was the maintenance of silence on the most damaging types of cartel that was objectionable. It cited the position taken by the Court of First Instance, which held that, rather than participating in anti-competitive activities, a firm could complain to the competent authorities about the pressure brought to bear on it and lodge a complaint with the Commission under Regulation No 17.[2] Nor did the Commission accept criticisms that the proposed system was a new one that did not fit in with the European legal tradition. The absence of any similar provision in Member States' competition laws was not sufficient reason for not adopting a new approach that would give the Commission greater scope for taking action against the most serious infringements of the competition rules. In any case, the notice consolidates to a large extent an established practice which has long been accepted by the Court of Justice and the Court of First Instance, with many Commission decisions taking account of the degree of cooperation by firms during the investigation in determining the amount of the fine.

Lastly, it should be noted that a number of firms have approached the Commission on the basis of the notice since its publication. The Commission hopes that the notice will dissuade firms from engaging in the most harmful and reprehensible anti-competitive practices.

4. Agreements of minor importance

36. On 22 January 1997 the Commission adopted a draft revised notice on agreements of minor importance which do not fall under Article 85(1) of the EC Treaty.[3] The current 1986 notice,[4] which was first issued in 1970[5] and last amended in 1994,[6] gives tangible expression, with the help of quantitative criteria, to the established case-law of the Court of Justice under which agreements that restrict competition are not caught by the ban on restrictive agreements if they are unlikely to have an appreciable effect on trade between Member States and on competition within the common market.[7] The Commission took the view that agreements concluded between firms whose combined turnover does not exceed ECU 300 million a year and whose combined market shares do not amount to more than 5% are not covered by Article 85(1).

In practice, the notice has mainly served as an administrative instrument allowing the Commission to process rapidly an impressive number of cases that were of only minor importance.[8] However, it has not provided firms with a satisfactory degree of legal certainty. One of the main objectives of the review of the current notice is to remedy this shortcoming.

37. The Commission proposes to abolish the turnover threshold which restricted the scope of the notice to promoting cooperation between small and medium-sized enterprises (SMEs). There is no convincing economic or legal argument for excluding large firms holding modest market shares from the scope of the *de minimis* rule. Extending the notice to cover all firms will not harm the interests of SMEs. On the contrary, their interests will be furthered by the Commission's undertaking not to take any action in respect of SMEs even where their market shares exceed the new *de minimis* threshold that will apply in the revised notice. The new notice will thus also reflect the new policy on SMEs, as set

1 OJ C 341, 19.12.1995, p. 13.
2 Judgment of the Court of First Instance of 6 April 1995 in Case T-141/89 *Tréfileurope Sales SARL* v *Commission* [1995] ECR II-791, paragraph 58.
3 OJ C 29, 30.1.1997, p. 3.
4 OJ C 231, 12.9.1986, p. 2.
5 OJ C 64, 2.6.1970.
6 OJ C 368, 23.12.1994, p. 20.
7 Judgments of the Court of Justice in Case 5/69 *Völk* v *Vervaecke* [1969] ECR 295, at 302; Case 22/71 *Béguelin* v *GL Import Export* [1971] ECR 949, at 959; Case 30/78 *Distillers* [1980] ECR 2229, at 2265; and Case 22/87 *Erauw-Jacquerie* v *La Hesbignonne* [1988] ECR 1919, at 1940.
8 More than 7 000 cases since 1962.

out in the Commission recommendation of 3 April 1996.[1]

38. So as to take account of the economic realities of the single market, the new notice should draw a clear distinction between horizontal and vertical agreements. In the case of horizontal agreements, the market share threshold will be maintained at its current level of 5%. In the case of vertical agreements, which are generally less harmful to competition, the threshold should be increased to 10%. However, the applicability of Article 85(1) cannot be ruled out in the case of certain agreements which, by their very nature, represent serious restrictions of competition, including the fixing of prices, production quotas or sales quotas, and the sharing of markets or sources of supply. Even so, the Commission would take action on such agreements only, and exceptionally, to the extent that the Community interest so required, and in particular in cases where they affected the proper functioning of the single market. It is primarily for national authorities and courts to deal with serious restrictions of competition below the thresholds.

39. Before adopting the new notice, the Commission will carry out wide-ranging consultations with all interested parties, namely representatives of business and industry, consumers, Member States (already consulted on a preliminary draft) and the other Community institutions.

5. Access to the file

40. In the light of the case-law of the Court of Justice and the Court of First Instance, in particular the CFI judgments in the *Soda-ash* cases,[2] and in order to provide greater transparency for firms, the Commission decided to systematize and clarify its practice regarding access to the file by adopting a notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89.[3]

41. The notice deals with two questions, namely the scope and limits of access to the file, and the practical procedures for access.[4]

As the purpose of providing access to the file is to enable the addressees of a statement of objections to express their views on the conclusions reached by the Commission, the firms in question must have access to all the documents making up the 'file' of the Commission (DG IV), apart from the categories of documents identified in the *Hercules* judgment,[5] namely the business secrets of other undertakings, internal Commission documents and other confidential information.

Thus, not all the documents collected in the course of an investigation are communicable, and the notice sets out criteria for distinguishing between non-communicable and communicable documents.

42. A number of new administrative and practical provisions are introduced as from the initiation of investigations in order to facilitate subsequent access to the file. Firstly, in order to simplify administration and increase efficiency, internal documents will in future be placed in the file of internal documents relating to cases under investigation (non-accessible) containing all internal documents in chronological order. Some documents obtained by the Commission during investigations into firms will normally be returned to the firms as rapidly as possible if, following a detailed examination, they prove to be irrelevant to the case in question. New internal rules of procedure applied throughout the examination of a case are intended to make it easier to determine whether documents are accessible or non-accessible. Another new procedural rule relates to the drawing-up of an enumerative list of documents; the list will include consecutive numbering of all the pages in the investigation file and an indication of the degree of accessibility of the document and the parties with authorized access.

43. As a general rule, firms are invited to examine accessible documents on the Commission's premises. If the file is not too bulky, the Commission may ask the firm whether it wishes to have all the accessible documents sent by post.

44. These arrangements for access to files should be easily applicable except in the case of

[1] OJ L 107, 30.4.1996, p. 4.

[2] Judgments of the Court of First Instance of 29 June 1995 in Cases T-30/91 *Solvay* v *Commission*, T-36/91 *ICI* v *Commission* and T-37/91 *ICI* v *Commission* [1995] ECR II-1775, 1847 and 1901.

[3] OJ C 23, 23.1.1997, p. 3.

[4] It should be noted, however, that the internal rules of procedure set out in the notice relate essentially to the rights of firms being investigated for a presumed infringement; they do not relate to the rights of third parties, and of complainants in particular.

[5] Judgment of the Court of First Instance of 17 December 1991 in Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711.

ongoing files already compiled prior to the adoption of the new arrangements; such files will therefore have to be treated on a case-by-case basis.

45. Access to the file is a key element in administrative proceedings, enabling firms to defend themselves properly, while reconciling the need to protect sensitive information and the public interest in having infringements of the competition rules brought to an end. The Commission believes that the new procedures will provide a pragmatic and effective solution to most of the problems encountered in connection with access to the file, while ensuring that firms are fully able to exercise their right to be heard.

6. Green Paper on vertical restraints

46. The Commission adopted on 22 January 1997 the Green Paper on vertical restraints in EU competition policy.[1] With this paper all interested parties are invited to participate in the discussion on this important part of EU competition policy by submitting their comments before 31 July 1997.

47. The single market represents an opportunity for EU firms to enter new markets that may have been previously closed to them because of State barriers. This penetration of new markets takes time and investment and is risky. The process is often facilitated by agreements between the producer who wants to break into a new market and a local distributor.

However, arrangements between producers and distributors can also be used to continue the partitioning of the market or exclude new entrants who would intensify competition and bring about downward pressure on prices. Agreements between producers and distributors (vertical restraints) can therefore be used pro-competitively to promote market integration and efficient distribution or anti-competitively to block integration and competition.

48. Because of their strong links to market integration that can be either positive or negative, vertical restraints have been of particular importance to the Community's competition policy. Whilst this policy has been successful in over 30 years of application, a review is necessary because:

— the single market legislation is now largely in place;

— the Commission block exemption Regulations governing vertical restraints are to expire by the end of 1999;

— there have been major changes in methods of distribution that may have implications for competition policy in the field of vertical restraints; and

— current economic thinking suggests the importance of market structure in determining the impact of vertical restraints. The fiercer interbrand competition is, the more likely the pro-competitive and efficiency effects are to outweigh any anti-competitive effects of vertical restraints.

49. As part of the exercise to collect background information for the Green Paper, the Commission conducted a series of interviews with manufacturers, retailers, industry, trade and consumer associations and specialist academics. Certain criticisms were made about the structure and application of current Commission policy on vertical restraints and block exemptions, as well as several requests for changes or adaptations. The most commonly heard points were:

— the current block exemptions lacked flexibility, have a straitjacket effect and are over-regulatory;

— too much emphasis is put on analysis of clauses and not enough on the economic impact of the agreements. A more rigorous policy could be applied through a more active policy of withdrawal of block exemptions;

— one-stop-shopping is vital, as is legal certainty which might be lost if the block exemption approach were abandoned;

— if the block exemption approach is maintained, it should be more flexible, less dirigiste and wider in scope. For example, one non-exemptible clause should not cause nullity of the whole exemption, and block exemptions could include intermediate goods and not only goods for resale as at present.

[1] The Green Paper is published as document COM(96) 721. It is also available in all Community languages on the World Wide Web, on the Europa server at: http://europa.eu.int/en/comm/dg04/dg4home.htm.

50. The Green Paper asks for comments on four options:[1]

Option I — Maintain current system: This would preserve the current approach.

Option II — Wider block exemptions: This option consists of maintaining the current approach and the many advantages of block exemptions but responding to criticisms made by making them more flexible, cover more situations and be less regulatory.

Option III — More focused block exemptions: Because considerable price differences still remain in the single market, because vertical restraints can be anti-competitive when at least coupled with market power and because intrabrand competition is important especially when interbrand competition is not fierce, this option proposes to limit the exemption given by current block exemptions to companies with market shares below a certain threshold (for example 40%).

Option IV — Reduce scope of Article 85(1): As a response to the criticisms that block exemptions have had a straitjacket effect and that Article 85(1) has been applied too widely to vertical restraints without reference to their economic and market context, this option proposes for parties with a market share less than, for example, 20% to introduce a rebuttable presumption of compatibility with Article 85(1) ('the negative clearance presumption').

B — Applying the competition rules to support market integration

1. Partitioning the common market by means of distribution agreements or practices

51. A number of Commission decisions in 1996 bear witness to the fact that Community rules on restrictive practices and abuses of dominant positions continue to play a fundamental role in the creation and consolidation of the single market. In the distribution field, the underlying principle is that, while certain restrictions may be authorized with a view to improving distribution, they must not be excessive and, in particular, they must never lead to a total partitioning of markets.

52. The Commission again applied this well-established basic principle in a Decision of 4 December in which it fined Systemform GmbH, a German manufacturer of machinery for handling large computer printouts, for having operated a distribution system that divided up the European market for its products along national lines. The distribution contracts between Systemform and its exclusive distributors in several Member States contained a total ban on the distributor selling Systemform products outside its allotted territory. Most of the contracts also contained a ban on supplying customers established in the allotted territory who proposed to export the products. In addition, the contracts limited distributors' freedom to set their own resale prices.

53. A partitioning of the common market may also be the result of a commercial policy or strategy within a group of undertakings operating in different Member States through subsidiaries.

In such circumstances, the Commission's scope for action would be relatively limited. According to the case-law of the Court of Justice,[2] relations between undertakings in the same group are not covered by Article 85(1) of the EC Treaty. That is not to say that some methods of organizing distribution within a group of undertakings which is in a dominant position are not to be considered an abuse within the meaning of Article 86 where they have the effect of partitioning the common market. For this reason the Commission voiced its opposition to that part of a draft internal circular of the Belgian brewery Interbrew which governed the marketing policy to be followed by its subsidiaries in Europe, including the obligation on the part of those subsidiaries to transfer orders placed by purchasers of products intended for consumption in another country to the subsidiary responsible for that territory. The Commission considered that this commercial strategy would have the effect of partitioning the common market, thereby enabling Interbrew to exploit more readily its dominant position on the Belgian beer market by protecting that market from price competition from its own beers originating in other Member States.

[1] These options are not exhaustive and individual elements from the different options may be combined.

[2] Judgment of the Court of Justice of 24 October 1996 in Case C-73/95-P *Viho Europe BV* v *Commission* (not yet reported).

2. Vehicle distribution

54. Since 1 October 1996 the new block exemption Regulation relating to the distribution and servicing of motor vehicles[1] is fully applicable to all selective and exclusive motor vehicle distribution and servicing agreements described therein, irrespective of their date of conclusion. Like the previous one,[2] a core principle of the new Regulation is the freedom for European consumers to purchase a new motor vehicle, either directly or through an authorized intermediary, wherever they wish in the European Union. Contractual provisions which restrict this freedom by the manufacturer, the supplier or another undertaking within the network are blacklisted and are automatically void. Where such infringements take place, consumers can take action before the competent national courts, which can — in contrast to the Commission — grant more easily injunctions and award damages. However, the Commission is likely to intervene where undertakings, through anticompetitive agreements or practices, isolate national markets by restricting parallel trade. It will be recalled that, in its biannual studies on car price differentials,[3] the Commission found that car prices within the Community still differ substantially. As price differences are the strongest incentive for parallel trade, end consumers increasingly seek to purchase a vehicle in Member States where prices and other sale conditions are the most favourable.

55. Since the beginning of 1994, the Commission has received numerous complaints from final consumers who have experienced major difficulties in buying cars outside their own Member State. As a result, the Commission has carried out inspections to find out whether some motor vehicle manufacturers have developed a strategy, together with their Italian contract partners, aimed at hindering German, French and, in particular, Austrian final consumers from acquiring a vehicle on favourable terms in Italy and thus benefiting from the advantages of the internal market. On the basis of documents collected during these inspections, the Commission has concluded, on a provisional basis, that the undertakings concerned pursued such a strategy. It therefore sent, in October, a statement of objections to two car manufacturers, charging them with infringement of the competition rules and giving them the opportunity to present their point of view. A final conclusion in this case is expected in 1997.

Apart from complaints concerning the Italian market, the Commission has had to deal with a number of complaints by end consumers which concerned other Member States (such as Denmark, Finland, Sweden, the Netherlands and Spain), where dealers either refused to sell to non-residents or were prepared to sell only at a higher price or imposed certain requirements on end consumers or intermediaries acting on their behalf. Further complaints referred to dealers who refused to honour manufacturers' warranties for vehicles imported from other Member States. While some of these cases were settled after the Commission's active intervention, others required further investigation with manufacturers and/or their respective importers.

56. Manufacturers or suppliers usually give clear guidelines to their dealers on the kind of authorization which an intermediary, appointed by a final consumer, has to present. This is to ensure that unauthorized resellers do not masquerade as intermediaries.

Regulation (EC) No 1475/95 on motor vehicle distribution establishes a balance between the supplier's interest in safeguarding its selective dealer network and the interest of European consumers in buying a car within the Community wherever they wish to do so (see Article 3(10) and (11) and point 7 of Article 6(1) of the Regulation). When dealing with individual cases, the Commission takes the view that this balance has to be reflected in the requirements which manufacturers and suppliers demand of an intermediary's authorization. Certain requirements appear to exceed the limits of the block exemption Regulation as they may hinder parallel trade. They include limiting the validity for purchase and collection of a car together to a period of three months; asking for a witnessed signature or that the document be certified by a notary; and disclosing the amount of the intermediary's commission and the payment for the service provided. Thus, if manufacturers or suppliers ask their dealers to accept only authorizations containing such requirements, they risk automatically losing the benefit of the block exemption.

[1] Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, OJ L 145, 29.6.1995. See also *XXVth Competition Report*, points 31-34.

[2] Commission Regulation (EEC) No 123/85 of 12 December 1984, OJ L 15, 18.1.1985, p. 16.

[3] Press release IP/96/145, 15.2.1996, and press release IP/96/722, 29.7.1996.

3. Pharmaceutical products

57. In 1996 the Commission once more investigated restrictions on parallel trade in pharmaceutical products. The differences — often substantial — in the price charged for the same product from one Member State to another, which are due to a large extent to the diversity of national price control and social security systems, induce certain operators to make a profit by engaging in parallel trade. This may lead to cheaper drugs in those Member States where prices are high, thereby benefiting consumers, social security schemes and, ultimately, the exchequer.

In applying the competition rules in this sector, the Commission also follows the logic of the single market. It has waged a steady campaign against agreements and conduct restricting parallel trade in pharmaceutical products. In this it enjoys the support of the Court of Justice. In a recent case involving the principle of the free movement of goods and the protection of industrial and commercial property under Article 36 of the EC Treaty,[1] the Court found in favour of two British firms, Primecrown and Europharm, which wished to import pharmaceutical products sold in Spain with a view to reselling them in the United Kingdom. The existence of price controls and the lack of any patents in Spain and Portugal mean that drugs are cheap in those countries. The Court reaffirmed the preeminence of the principle of the free movement of goods and rejected the argument to the effect that parallel imports should be prohibited where national price control measures distort competition.

58. The Commission Decision of 10 January in the *Adalat* case exemplifies the application of this policy of combating measures which partition the common market. The price of the drug Adalat marketed by the Bayer group varies considerably from one Member State to another. In the United Kingdom in particular, the price at which it is sold is far higher than in France and Spain. Pharmaceutical wholesalers in France and Spain used to order larger quantities of Adalat than they required for supplying their domestic market, the surpluses being exported to the United Kingdom. To Bayer, these parallel exports were a major commercial problem. It reacted by setting up systems for identifying exporting wholesalers and by reducing the quantities supplied. The wholesalers for their part tried by various means to obtain additional quantities, for example by spreading orders intended for export between their various agencies and by placing orders through other wholesalers not subject to monitoring by Bayer. When one of the wholesalers was found to be exporting, Bayer penalized him by imposing successive reductions in the volumes supplied.

In its Decision the Commission found that the conduct of Bayer France and Bayer Spain showed that they had imposed an export ban which formed part of the continuing commercial relations between themselves and their respective wholesalers. There was thus an agreement within the meaning of Article 85(1) which had the object and effect of restricting parallel trade.[2] The Commission took account of the existence of various national rules and regulations on price formation in the pharmaceuticals sector as an attenuating factor in fixing the amount of the fine it imposed on Bayer.

C — Practices employed by dominant firms to eliminate competitors

59. Community law prohibits anti-competitive behaviour by firms that are in a dominant position on the market. Certain competitive behaviour, which would not normally infringe EC competition rules, may do so when implemented by firms in a dominant position. This approach is justified by the much more significant impact which the behaviour of such firms has on competition. This is all the more true where firms engage in exclusionary practices, i.e. conduct which eliminates a competitor or restricts or impedes its activities. While a dominant firm is entitled to defend its position by competing with rivals, it has a special responsibility not to further diminish the degree of competition remaining on the market.[3] Exclusionary practices may be directed against existing competitors on the market or they may be intended to impede market access by new entrants. Examples of such illegal behaviour include: refusal to deal as a means of eliminating a

[1] Judgment of the Court of Justice of 5 December 1996 in Joined Cases C-267/95 and C-268/95 *Merck & Co.* v *Primecrown, Beecham* v *Europharm* (not yet reported).

[2] In an order made in response to an application for interim measures, the Court of First Instance suspended Article 2 of the Commission Decision, which requires Bayer to send a circular to French and Spanish wholesalers stating that exports are permitted and will not cause any penalty to be incurred and to include that information in the general conditions of sale (order of the Court of First Instance of 3 June 1996 in Case T-41/96 R *Bayer AG* v *Commission* [1996] ECR II-383).

[3] Judgment of the Court of Justice of 9 November 1983 in Case 322/81 *Michelin* v *Commission* [1983] ECR 3461, at 3511.

competitor by a firm that is the sole or dominant source of supply of a product or that controls access to an essential technology or infrastructure; predatory pricing; exclusionary dealing agreements; discrimination as part of a wider pattern of monopolizing conduct designed to exclude competitors; and exclusionary rebate schemes.

60. A look at the cases dealt with by the Commission in 1996 shows that this type of restrictive conduct frequently occurs in different sectors. In particular, the Commission has been dealing more often with such problems in sectors which are in the process of liberalization such as telecommunications,[1] transport[2] and energy.[3] But other sectors are also concerned.

61. For example, the Commission intervened to establish competition in the Finnish market for amusement machines, a previously monopolized sector. The State monopoly for the operation of amusement machines in Finland ended at the beginning of 1995. However, Pelika RAY, the Finnish State-owned company that operates amusement machines in over 2 000 independently owned premises in Finland, had concluded contracts preventing the owners of the premises taking amusement machines from any of its new competitors. Following discussions with the Commission, Pelika RAY has voluntary lifted this restriction, so allowing effective competition between itself and other operators and increasing consumer choice.

62. Novo Nordisk, Europe's leading insulin producer, introduced in 1985 a new method of insulin self-injection, the so-called 'insulin pen' system. Other companies now also produce similar pen delivery systems, including manufacture of various components (i.e. injection devices, cartridges containing the insulin dosage, and disposable needles), some of which are compatible with the Novo Nordisk system. Following a complaint by a medical device manufacturer, the Commission found that Novo Nordisk abusively disclaimed liability for the malfunction of its pen products, or refused to guarantee such products, when they were used in conjunction with the compatible components of other manufacturers. Following discussions with the Commission, Novo Nordisk agreed no longer to use disclaimers in such circumstances.

63. Following a public statement by the Competition Commissioner, Visa International decided to abandon an exclusive dealing plan, i.e. a rule that would have banned its members from issuing competing cards in Europe. According to the Commission, the proposed rule would have impaired competition among banks and credit card systems.

64. In 1996 the Commission also opened a formal procedure against AC Nielsen Company (Nielsen) for infringement of Article 86. Following a complaint by Information Resources Inc. (IRI), the Commission found that Nielsen abused its dominant position in the European markets for retail tracking services in order to prevent IRI from establishing a competitive presence there. In particular, Nielsen had concluded exclusivity contracts for the purchase of market data from retailers as well as contracts including restriction of the retailer's freedom to supply data to any competing retail tracking services provider. Moreover, in relation to the sale of services to multinational customers, Nielsen applied discounts in exchange for commitments from customers to call upon its services in a wide range of countries. This involved the bundling of countries where Nielsen was in a dominant position in countries that IRI was entering.

Soon after receiving the Commission's statement of objections, Nielsen indicated its willingness to reach a settlement with the Commission. The case was finally settled in November by an undertaking from Nielsen which addresses the main competition concerns and ensures a level playing field in the European markets for retail tracking services. It should be noted that the Antitrust Division of the US Department of Justice was also investigating Nielsen's contractual practices. As most of the alleged abuses took place in Europe, the Commission took the lead in investigating them. This was done in close cooperation with the US Department of Justice, which included exchanges of confidential information with the consent of the parties. In view of the results achieved on the European side, the US Department of Justice also decided to close its investigation.

D — Information society

65. Competition policy continues to play a highly active role in enabling the information society to grow, both in terms of infrastructure

[1] See points D.2, D.3 and D.4 of this chapter.
[2] See Chapter II.E below.
[3] See Section F of this chapter.

and in terms of services. There were a number of significant developments in 1996, not only in relation to restrictive practices and dominant positions, but also in relation to liberalization[1] and merger control.[2]

The liberalization of most information society markets has, depending on the services, already been achieved, been set in train or been decided on for 1998 (with a few derogations). An important factor is the rapid pace of technological change, which necessitates substantial investment in order to develop products and the requisite infrastructure and considerable marketing expenditure in order to convince users to adopt the new services. Some aspects of the information society are rapidly becoming globalized, and in this context the European Union is pursuing a policy of openness (with the exception of certain cultural matters) which will increase both the growth of the European market, external competition and the need for competitiveness on the part of European enterprises in this sector.

1. Restructuring operations

66. These developments are triggering numerous restructuring operations in the telecommunications and media sectors in the form of mergers, alliances and joint ventures. The Commission is favourably disposed towards this process of adjustment. Such restructuring is on the whole necessary if firms are to benefit fully from liberalization, carry out the necessary research and development, launch new services and reduce costs. On the other hand, the liberalization process must not be called into question by restructuring operations which would have the effect of perpetuating excessive price levels, preventing new companies from entering previously monopolistic markets, or any other abuse or strengthening of a dominant position. Competition policy as it relates to the information society is therefore a balance between, on the one hand, a liberal attitude towards restructuring and, on the other, the need to keep a watchful eye on how such restructuring is carried out, or even to impose a ban in some cases. There is also a link between the degree of actual liberalization of the relevant markets, which evolves over time, and the conditions which may be attached to restructuring operations. In particular, the acceptability of alliances, which are often pro-competitive outside domestic markets, must be assessed in the light of the extent to which those markets have been liberalized.

67. Proceeding on this basis, in July the Commission authorized the Atlas project, a joint venture between France Télécom (FT) and Deutsche Telekom (DT) aimed at providing telecommunications services to large users in Europe. The services provided by Atlas include network services, outsourcing and very small aperture satellite (VSAT) services. The Commission also authorized the proposed GlobalOne joint venture, an alliance between Atlas and Sprint Corporation for the supply of the above services worldwide. Within GlobalOne, the parties will also provide traveller services and telecommunications services to other telecommunications organizations.

In the relevant markets, the services provided to corporate users raise important issues to do with competition in the EEA. This is the case, for example, with the market for the transmission of data via terrestrial networks, DT and FT having market shares there well in excess of 70% in Germany and France respectively, buttressed by a legal monopoly over the supply of infrastructure. In addition, the Atlas project provided for the elimination of a competitor of DT in Germany, namely FT's local subsidiary, Info AG.

In the course of the proceedings, France and Germany first of all undertook to liberalize the alternative infrastructures, thereby making competitors less dependent on the networks of FT and DT. The Commission made the Atlas/GlobalOne authorization conditional on the granting of the first two infrastructure licences in France and Germany. This condition was met on 1 December 1996.[3] Secondly, DT and FT have postponed the transfer of their domestic data transmission networks to the joint venture pending full liberalization of infrastructure in France and Germany. Thirdly, FT has undertaken to sell Info AG.

This modified contractual framework, and the strict conditions and obligations, will help to ensure that Atlas/GlobalOne does not eliminate competition. Exemption is also conditional on there being no discrimination or cross-subsidization. Should these conditions no longer be fulfilled, the exemption will be withdrawn. More generally, the two projects will satisfy the burgeoning demand for telecommunications services and will compete head-on with the few providers of such services worldwide.

[1] See Chapter II below.
[2] See Chapter III below.
[3] OJ C 47, 15.2.1997, p. 8.

68. The Commission proposes to adopt the same approach in its scrutiny of the notifications of the Unisource and Uniworld alliances, which is now under way.

It has published two notices which indicate that it intends to take a favourable view of the *Unisource/Telefónica* and *Uniworld* cases, subject to the comments of interested third parties. Unisource is an alliance between PTT Telecom of the Netherlands, Telia of Sweden and Swiss PTT, which is being joined by Telefónica of Spain. The Uniworld transaction is an alliance between Unisource and AT&T. The Commission's favourable view follows discussions with all the companies concerned as well as with the governments of Spain, Sweden, the Netherlands and Switzerland.

Both notices explain in detail changes to the original agreements and undertakings given by the parties to make the transactions acceptable under EU competition law. In addition, the Unisource-Telefónica notice explains discussions with the governments of the four countries directly involved in Unisource.

The main features of the outcome of the discussions are as follows:

— full liberalization of the telecommunications market in Spain by 30 November 1998, with three licences being granted by 1 January 1998 plus limited licences for the cable TV companies to offer telecommunications within their areas;

— full liberalization of telecommunications in Switzerland from 1 January 1998; and

— in respect of the Uniworld transaction, a series of undertakings have been offered by AT&T in respect of its conduct on interconnection, access and accounting rates.

2. Telecommunications tariffs

69. Until 1 January 1998 national operators will retain their monopoly over the provision of public voice telephony. The Commission has already indicated on a number of occasions that it will keep a particularly watchful eye during the intervening period on such operators under the Treaty's competition rules. It will try to prevent them from gaining a competitive advantage over new market entrants by employing abusive practices and from imposing unjustified price increases on residential customers.

70. In many European Union countries, however, a rebalancing of tariffs might be justified in the light of costs. Local tariffs are often lower than costs and long-distance and international tariffs are generally much higher in the EU, whereas the nascent competition in international communications is forcing the corresponding prices downwards. The Commission encourages the rebalancing of tariffs in so far as it reflects commercial adaptation to competition. Nevertheless, until full liberalization is achieved, close attention must be paid to the effects and motivation of tariff reforms. In this run-up period there is a risk that incumbent telecommunications operators may restructure their tariffs in such a way as to exploit the difference between increasing price elasticities in the competitive markets and the lower price elasticity (due to the absence of competition) in the others. This could harm the new suppliers of liberalized services, by 'price squeezing' them out of the market. Lastly, the rebalancing of tariffs must respect the universal service principle, a crucial aspect of the liberalization of telecommunications in Europe.

71. A concrete example of the application of this policy concerns the introduction by Deutsche Telekom of new business customer tariffs. DT originally planned to reduce substantially its tariffs for large users, where it faced competition from new market entrants. At the same time, it maintained at the same level its telephone tariffs for other users and for lines leased to new entrants. Following scrutiny by the Commission of increases DT proposed to introduce on 1 January, a deferral of the tariff reform was secured, as were commitments on the part of DT and the German Government to the effect that the rebalancing would not go beyond what was objectively justified and that the universal service would be maintained. The Commission made the introduction of the new tariffs conditional on DT concluding network access agreements with its competitors and on additional regulatory steps being taken to ensure competitive network access in the German market. These measures are being closely monitored by DG IV, notably through a formal request for information from DT and the firms concerned and through consultations with the German Government. What action is taken will depend on the outcome of the analysis of the replies.

3. Access agreements

72. On 10 December the Commission approved a draft notice on the application of the

competition rules to access agreements in the telecommunications sector.[1] The draft notice will be published in the Official Journal for a two-month consultation period, following which the final version of the notice will be prepared and published. It does not establish new principles of competition law, but gives an overview of how the principles existing in current case-law apply to the new types of problems arising in the context of the liberalization of the telecommunications sector.

73. The draft notice has three main objectives. First, it sets out the relationship between the competition rules and the sector-specific regulation of the telecommunications sector. Second, it briefly examines relevant markets in the context of access agreements, and particularly the distinction between access and service provision. Third, it sets out the substantive rules — most importantly under Article 86 of the EC Treaty — relevant to access agreements.

The draft notice is not limited to physical access issues — such as interconnection to the telecommunications network of incumbent operators — but looks at the notion of access generally, i.e. that of access to facilities.

4. Mobile communications

74. In this sector competition is progressing well and is leading to strong growth rates, new services, better coverage and lower prices. There is still a need for vigilance, however, as regards the conditions governing the granting of new licences so as to avoid discriminatory conditions for new entrants which might act as a brake on these developments.[2] The interests of users must also be safeguarded by guaranteeing their freedom of choice. Certain technical or commercial processes may be used to 'lock' users to a given operator, which means there is no longer any incentive for tariff reductions once the commercial promotion stage is over. Some processes are accordingly being examined with a view to reducing their anti-competitive effects.

75. For example, in August the Commission wrote a letter to GSM/DCS1800 handset manufacturers and network operators in the EEA to ensure that 'SIM locked' handsets are only supplied and used if they can be unlocked upon demand by consumers themselves. In fact, while the SIM lock feature is beneficial for both consumers and operators as it helps to deter theft of handsets, it should not have anti-competitive effects *vis-à-vis* existing or new operators. In particular, the Commission wants to take steps to ensure that the feature cannot 'lock' a mobile phone handset to a particular operator or service provider, thereby preventing consumers who have purchased the mobile phone handset from later choosing which mobile phone service best fits their needs.

5. Satellite communications

76. Interpenetration is particularly strong in this sector between implementation of the liberalization policy, cases notified or investigated *ex officio*, the reforms of international satellite organizations such as Intelsat, and the negotiations within the World Trade Organization on basic telecommunications. There is a need for foresight, given the new technologies and massive investment that are in the offing, inasmuch as these might increase satellite communications tenfold and bring about a high level of concentration in the sector.

77. With regard to recent satellite alliances, a number of *ex officio* proceedings were initiated to see whether they were in keeping with the European competition rules. The companies involved are Iridium, Globalstar and Odyssey.

78. In 1996 the Commission authorized the creation of Iridium, which intends to provide from the last quarter of 1998 global digital wireless communications services using satellites, to be launched and placed during the next 24 months. Among the strategic investors involved in Iridium, which is led by the American Motorola, are Stet (Italy) and Vebacom (Germany). Each of the two has its own gateway service territory covering different parts of Europe and the associated exclusive right to construct and operate a gateway within its respective territory.

In its Decision the Commission concluded that the creation of Iridium falls outside the scope of Article 85(1) since none of the strategic investors could be reasonably expected to separately assume the huge investments required and the high technical and commercial risk associated with the new system. In addition, no investor has all the necessary licences to operate the system. The Commission also considered that the exclusive rights granted to gateway

[1] OJ C 76, 11.3.1997, p. 9.
[2] See Chapter II.B.3 below.

operators are a necessary incentive for investors to assume these risks. However, in view of Stet's strong position in the provision of satellite services in Italy, the Commission requested the parties to confirm that the Iridium agreements will not affect the ability of third companies to gain access to the telecommunications infrastructure of Stet other than those parts specifically developed for the Iridium system.

6. On-line services and competition

79. These interactive services are at the forefront of the information society. Developments today may shape to a large extent the services and freedom of choice of tomorrow. In this sector also, it is necessary to pursue a balanced policy between preventive action before competition problems arise, which might slow down the new services in Europe, and remedying the situation after the establishment of dominant positions leading to abuses, which might be too late. So far there have been relatively few notified cases, major complaints or *ex officio* proceedings, but the position could change rapidly. This balanced policy therefore consists of (i) communication to draw attention to the conditions of competition to be complied with, and (ii) close monitoring of certain new practices and technologies.

7. Competition policy in the media

80. The European audiovisual sector is currently undergoing profound and rapid change in the form of:

— technological developments enabling an increase in the number of distribution channels (including pay-TV) for products and programmes;

— strategic alliances between operators, and agreements between operators, programme owners and sometimes even the owners of infrastructure (e.g. cable);

— ever-increasing investment (notably in rights).

81. Faced with this highly volatile situation, European competition policy must be particularly vigilant as the sector has a strong growth potential and entry barriers may be very substantial (cost of rights, physical and commercial investment and infrastructure). Steps must therefore be taken to ensure that the market is not foreclosed and that competition is not distorted by certain alliances or concentrations or by difficulty in gaining access to programmes.

82. At present, more and more cross-border alliances are being planned or forged, typified by a pan-European outlook.[1] If all these projects come to fruition, most major television distributors in Europe may well be linked through networks of alliances. The Commission will accordingly have to examine these transactions carefully. In particular, it will have to evaluate the alliances' overall impact at European level, going beyond the direct consequences for the specific national markets.

83. The question of content is assuming increasing importance in the audiovisual sector. Following the introduction of digital technology, numerous special-interest channels may be launched on the pay-TV market using digital compression. The pioneers on this market are currently negotiating the purchase of exclusive rights in fiction and sport — the two pillars of pay-TV — with a view to amassing vast catalogues of rights over particularly attractive programmes.

The problem of content and exclusive rights in the media sector is not a new one as far as the Commission is concerned. It has already had occasion in the past to decide on the compatibility with the competition rules of agreements involving exclusive rights: while acknowledging the importance of exclusivity as a means of safeguarding the value of a programme, it takes particular care to ensure that neither the duration nor the scope of such agreements restricts third-party access to rights for too long a period or risks foreclosing the market.

In relation to sport, the problem of access to rights is particularly important owing to the ephemeral nature of televised broadcasts of sports events, the concentration of rights in the hands of sports federations, thereby reducing the number of rights available on the market, and the relative inelasticity of viewer demand. Given the importance of questions to do with sporting rights and the growing number of cases relating thereto, DG IV has embarked upon a wide-ranging consultation exercise involving the application of the competition rules in this area.

[1] This is the case, for example, with the Bertelsmann-CLT alliance (see Chapter III.D. below).

E — Transport

1. Liner shipping consortia

84. On 20 April 1995 the Commission adopted a Regulation granting a block exemption to liner shipping consortia.[1] This new block exemption entered into force on 22 April 1995 and applies for a period of five years.

In order to benefit from the block exemption, a consortium must fulfil the conditions and obligations set forth in Articles 5 to 9 of the Regulation. These are intended to ensure compliance with the provisions of Article 85(3) of the EC Treaty and seek above all to ensure that consortia operate in trades where they are subject to effective competition, so as to enable shippers to obtain a fair share of the benefits resulting from these agreements. To qualify automatically for block exemption, a consortium must possess a share of less than 30 or 35% of the trade depending on whether or not it operates as part of a liner conference. A consortium whose share of the trade exceeds the 30 or 35% limit but does not, however, exceed 50% of the direct trade may also, pursuant to a simplified opposition procedure provided for in Article 7 of the Regulation, qualify for block exemption provided that it fulfils the other conditions laid down in the Regulation and that the Commission does not oppose such exemption within a period of six months from the date of notification. Where a consortium holds more than 50% of the trade or where it does not fulfil the other conditions laid down in the Regulation for the granting of block exemption, the agreement in question must be notified to the Commission with a view to obtaining an individual exemption under Article 85(3) of the Treaty.

85. Since the Regulation entered into force, the Commission has received 30 or so notifications or prenotifications. In seven cases,[2] including five in 1996, it confirmed that the notified consortium agreements qualified automatically for exemption under the Regulation given that they held a share of the trade of less than 30 or 35% and that they fulfilled the conditions and obligations attaching to the granting of exemption. It informed the parties in another case[3] that the notified agreement did not constitute a consortium agreement within the meaning of the Regulation but was merely a slot charter agreement. The Commission has as yet been unable to reach a decision on some of the other notifications that have been submitted as they were incomplete.

86. Five other consortium agreements were authorized in 1996. Four of the agreements,[4] which existed prior to the entry into force of the Regulation, were authorized under the simplified opposition procedure provided for in Article 7 of the Regulation and may operate until 21 April 2000, the date on which the Regulation expires. The Commission found that, by helping to rationalize the activities of their members, each of these consortia had helped in practice to improve substantially the quality and frequency of the liner transport services offered to shippers and, in some cases, to increase the number of ports served. The consortia nevertheless remained subject to effective competition on the trades in which they operated, thereby ensuring that shippers received a fair share of the benefits resulting from the agreements.

87. Inasmuch as it is not a consortium agreement falling within the scope of the exemption Regulation, the fifth agreement, that between Finncarriers Oy Ab and Poseidon Schiffahrt AG setting up the Baltic Liner Conference, was granted an individual exemption. The agreement provides that the parties are to operate a joint service consisting in the provision of regular ferry services for ro-ro, container and rail/ferry traffic between ports and points in Finland and (i) ports and points in Germany (and other continental points via German ports), and (ii) ports and points in Scandinavia (Sweden, Denmark and Norway), with a small volume of traffic between Russia and those countries via Finland.

Such an agreement, establishing as it does a highly integrated joint service, does not constitute a consortium agreement within the meaning of Regulation (EC) No 870/95 as it is not concerned exclusively with the carriage of cargo chiefly by container. It is a largely

---

[1] Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92, OJ L 89, 21.4.1995. See also *XXVth Competition Report*, points 68-70.

[2] The G&C, Medway, Medipag, Medesc, Medsap, Maersk/P&O, and Euro/Asia (Maersk/Sealand) consortia in trades with the Far East.

[3] Agreement for the chartering of space by Lloyd Triestino on Contship vessels operating a service in conjunction with another shipowner.

[4] The St Lawrence Coordinated Service consortium (Canada Maritime Limited and Orient Overseas Container Line (UK); the East African Container Service (EACS) consortium (Charent Steam-Ship Co. Ltd, DSR-Senator Lines, Ellerman Lines Ltd, P&O Containers Ltd, WEC Lines, Mediterranean Shipping Company); the Joint Mediterranean Canada Service consortium (Canada Maritime Limited and DSR-Senator Lines); the Joint Pool Agreement (Andrew Weir Shipping Ltd and Euro Africa Shipping Line Co. Ltd).

non-containerized consortium which does not therefore qualify for block exemption and must accordingly, if it is to be authorized, be granted individual exemption.

The Commission sought the views of third parties by publishing a summary of the application.[1] No comments were forthcoming so the Commission considered, at the end of the allotted 90-day period, that the requirements of Article 85(3) were met and accordingly did not oppose the agreement, with the result that the maritime activities carried on under it are exempted for a period of six years and the inland activities, which are minor in this case, are exempted for three years.

2. Inland rate fixing by liner conferences

88. The Commission attaches the utmost importance to this question as can be seen from the adoption in 1994 of two Decisions prohibiting price-fixing agreements on the land leg of a transport operation, the *TAA (Trans-Atlantic Agreement)* Decision[2] and the *FEFC (Far Eastern Freight Conference)* Decision,[3] and from a report dated 8 June 1994[4] describing the broad thrust of the policy the Commission intended to pursue in relation to this practice.

During the discussions within the Council on this report in November 1994, Mr Van Miert agreed to report to the Council on the implementation of the policy, taking as a basis the work of a wise men's committee. In February 1996 the committee, known as the Multimodal Group, submitted an interim report to the Commissioner which the latter transmitted to the Council.[5]

89. The Multimodal Group concluded in its report that it had yet to be convinced that the joint fixing of inland rates was indispensable for the purpose of supplying multimodal transport services or fostering closer cooperation between shipowners on the inland segment; nor was there any reason so far to grant an exemption, whether block or individual, in respect of that conference practice.

In the Group's opinion, the joint fixing of inland rates by conferences had not in the past led to any improvement in the efficiency of the inland transport services offered, nor had it induced shipowners to invest in the inland segment.

The argument to the effect that the joint fixing of inland rates should be authorized as being indispensable for the purpose of facilitating the investment needed to enable shipowners to establish closer inland cooperation was rejected on the ground that it was in shipowners' interests to undertake investment which might lead to closer inland cooperation and to cost reductions, even if the authority to carry out such rate fixing were withheld from conferences.

In the final part of the report, the Group asked the shipping industry to submit to it specific proposals for cooperation on the inland segment and to explain to it the resulting benefits for shippers and the indispensability of the joint fixing of inland rates with a view to producing those benefits. In the light of these proposals, and after analysing their content, the Group intends to send Mr Van Miert a final report in the summer of 1997.

90. The interim report firmly supports the Commission's drive to establish a new, more efficient system for the inland transport of containers which ensures a better balance between the interests of shippers and shipowners while being compatible with the Community competition rules. The Commission is not, of course, bound by it in its day-to-day application of the competition rules, but it is nevertheless an important factor shaping the Commission's current policy towards this practice on the part of the shipping industry.

91. On 26 November 1996 the Commission decided to lift the immunity from fines in respect of inland rate fixing in Europe brought about by the notification of the Trans-Atlantic Conference Agreement (TACA). The parties to the TACA are all liner shipping companies and the TACA applies to their operations on the trades between northern Europe and the United States.

In its Decision the Commission states that it has arrived at the preliminary conclusion that the TACA provisions on the joint fixing of prices for the inland portions of a transport service constitute a manifest and serious infringement of Article 85(1) of the Treaty and that there is no possibility of individual exemption for the TACA provisions as they stand.

---

1 OJ C 44, 16.2.1996
2 Decision of 19 October 1994, OJ L 376, 31.12.1994.
3 Decision of 21 December 1994, OJ L 378, 31.12.1994.
4 SEC(94) 933. See also *XXVth Competition Report*, point 71.
5 Interim report of the Multimodal Group, published by the Office for Official Publications of the European Communities, 1996, 56 pp., ISBN 92-827-6964-X.

3. Price consultations between competitors

3.1. Consultations on tariffs for the carriage of freight by air

92. On 24 July the Commission adopted Regulation (EC) No 1523/96[1] excluding from the scope of Regulation (EEC) No 1617/93[2] consultations on tariffs for the carriage of freight.

Regulation No 1617/93 exempts from the prohibition in Article 85(1) agreements between undertakings which have as their purpose *inter alia* the holding of consultations on tariffs for the carriage of passengers and of freight on scheduled air services. The reasons behind the Regulation's adoption were, firstly, the need to give airlines time to adjust to the introduction of competition and, secondly, the wish to facilitate interlining agreements.

Since Council Regulation No 3976/87 was adopted, airlines have had eight years in which to adapt to a more competitive environment. Over that period market conditions have changed considerably owing, among other things, to the gradual liberalization of the industry. The Commission accordingly considered that airlines had had sufficient time to adapt to the new environment and that there was no longer any justification for an exemption.

93. In the case of interlining, information furnished by airlines revealed that the rate of interlining expressed in terms of the number of consignments had fallen by more than 60% between 1991 and 1994. It was also established that tariff consultations led to the adoption of recommended tariffs which were excessively high compared with market rates and which therefore had as their object a favouring of higher tariffs. The information furnished by the airlines also showed that interlining operated in some cases with tariffs which differed considerably from those set during consultations.

The Commission accordingly came to the conclusion that, in the cargo transport sector, tariff consultations were no longer indispensable with a view to making interlining work and that the exemption enjoyed by airlines in this respect should therefore be withdrawn. The withdrawal of the exemption will, however, not take effect until 1 July 1997. Airlines may still submit an application for individual exemption if they consider that certain limited forms of tariff consultation fulfil the requirements of Article 85(3).

3.2. Price fixing

94. On a more general level, tariff consultations between undertakings are one of the most serious forms of anti-competitive behaviour and they can therefore be exempted from the prohibition on restrictive practices only in exceptional circumstances. The fact that the resulting tariffs are presented as being 'recommended' tariffs makes them no less anti-competitive.

95. The Commission applied this basic principle when it adopted on 5 June a Decision censuring the Dutch forwarding agents' association Fenex for having drawn up and circulated among its members recommended tariffs for shipping services in seaports and at land frontiers. These recommended tariffs were fixed uniformly without regard to any differences in firms' cost structures.

96. During the proceedings Fenex argued that the tariffs in question had merely the force of a recommendation which did not restrict the freedom of forwarding agents to set their tariffs. Such a recommendation did not constitute a decision by an association of undertakings within the meaning of Article 85(1). In the Commission's view, the drawing-up and circulation of the tariffs recommended by Fenex had to be interpreted as the faithful reflection of the association's resolve to coordinate the conduct of its members on the relevant market. Fenex had regularly and consistently engaged in the practice of drawing up and circulating recommended tariffs for very many years. The association's member companies clearly had a common interest in coordinating their behaviour in relation to the tariffs for the services in question. The tariff recommendations were accompanied by circulars expressing the association's firm desire that its recommendations should be put into effect. The drawing-up and circulation of recommended tariffs was, moreover, an activity for which Fenex was clearly empowered. In accordance with the established case-law of the Court of Justice, the Commission considered that Fenex's practice of recommending tariffs had

[1] Commission Regulation (EC) No 1523/96 of 24 July 1996, amending Regulation (EEC) No 1617/93, OJ L 190, 31.7.1996.

[2] Commission Regulation (EEC) No 1617/93 of 25 June 1993, on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports, OJ L 155, 26.6.1993. The Regulation was adopted by the Commission on the basis of Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector, OJ L 374, 31.12.1987

an anti-competitive object as it was likely to induce firms to align their tariffs irrespective of their costs.

On the other hand, the Commission accepted the system for calculating costs henceforth employed by Fenex inasmuch as it enables each firm to determine its selling prices on the basis of its own costs. Trade associations may lawfully give such assistance to their members, especially where the latter are of modest size.

97. In another Decision dated 30 October, the Commission fined five cross-Channel ferry companies, P&O, Stena-Sealink, Brittany Ferries, Sea France and North Sea Ferries, a total of ECU 645 000 for having operated a price cartel in 1992. The companies had agreed on the amount and introduction date of a surcharge on freight shipments following the devaluation of the pound sterling in September 1992. Although the practice had been of short duration, the Commission considered that purely symbolic fines would be inappropriate given the flagrant nature of the infringement.

4. Cooperation between airlines

4.1. European alliances

98. In its *XXVth Competition Report*, the Commission already mentioned its favourable attitude towards cooperation between airlines provided it does not rule out opportunities for real competition from new operators on the main routes.[1] On 16 January the Commission therefore conditionally approved for a period of 10 years a cooperation agreement between Lufthansa and SAS setting up an operationally and commercially integrated air transport system. The agreement will have the effect of appreciably restricting competition, particularly on routes between Germany and Scandinavia, but it will enable the two airlines to reduce their costs and broaden their range of services to the benefit of consumers. The Commission nevertheless considered it necessary to impose conditions aimed at allowing other airlines to operate services on routes between Germany and Scandinavia. These conditions concern in particular the giving-up of slots at certain saturated airports.

4.2. Transatlantic air agreements

99. A number of European airlines have recently concluded alliance agreements with US airlines as follows: British Airways with American Airlines; Lufthansa with United Airlines; SAS with United Airlines; and Swissair/Sabena/Austrian Airlines with Delta. Prior to this, KLM had concluded an agreement with Northwest. These agreements are presented as being code-sharing agreements on routes between Europe and the United States. In reality, they institute close cooperation in the areas of capacity, commercial policy, pricing, schedule coordination, revenue sharing, frequent flyer programmes, etc. They relate essentially to routes between the Community and the United States, but intra-Community traffic is also affected. The objective of the parties to the agreements is to function on certain routes as a single entity while retaining their legal autonomy.[2]

Although the Commission did not adopt a final position in 1996 on the applicability of Articles 85 and 86, it is felt that these agreements could have appreciable anti-competitive effects on routes between the United States and Europe and on certain intra-Community routes. In analysing these cases, account must be taken of the regulatory barriers (in particular rights of access to the transatlantic and intra-Community routes of the parties to the agreements compared with the rights of third airlines) and of the existence of non-regulatory barriers, notably the scarcity of slots at certain airports or the pooling of frequent flyer programmes. It will accordingly have to be considered whether the agreements comply with Articles 85 and 86 of the EC Treaty and, if appropriate, under what conditions they may be authorized.

100. The Commission initiated proceedings based on three separate instruments.

For services within the Community, Council Regulation No 3975/87 determines, for the air transport sector, the procedure for applying Articles 85 and 86.[3] Following confirmation by the Court of Justice in its *Nouvelles Frontières* judgment of the Commission position that Articles 85 et seq. are applicable to air transport,[4] it was considered necessary to adopt specific

[1] *XXVth Competition Report*, points 76-78.
[2] OJ C 289, 2.10.1996.
[3] Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ L 374, 31.12.1987, p. 1), as amended by Council Regulation (EEC) No 1284/91 of 14 May 1991 (OJ L 122, 17.5.1991, p. 2) and by Council Regulation (EEC) No 2410/92 of 23 July 1992 (OJ L 240, 24.8.1992, p. 18).
[4] Judgment of the Court of Justice of 30 April 1986 in Joined Cases 209 to 213/84 *Ministère Public* v *Asjès and Others* [1986] ECR 1425.

implementing provisions to the extent that Regulation No 17 of 1962 was not applicable to the sector. Such was the aim of Regulation No 3975/87 and of Regulation No 3976/87 empowering the Commission to grant block exemptions in respect of cooperation agreements between airlines.[1] However, these Regulations apply only to air services within the Community.[2] They accordingly do not apply to services between the Community and third countries.

For services between the Community and third countries, the Commission must therefore rely on the interim arrangements laid down in Article 89 of the Treaty. The Court confirmed in *Nouvelles Frontières* that the Commission could base itself on Article 89 when checking whether these services complied with Articles 85 et seq.

In the case of services not directly related to air transport (e.g. computerized reservation systems), the Commission applies Regulation No 17.

In parallel with the proceedings initiated by the Commission, the United Kingdom authorities opened an investigation under Article 88 of the Treaty in the *BA/AA* case to determine whether Articles 85 and 86 had been complied with, and the German authorities opened a similar proceeding in relation to the agreement between Lufthansa, SAS and United Airlines. These proceedings are limited, however, to services between the Community and the United States since in respect of all other services Regulation No 3975/87 (for intra-Community services) and Regulation No 17 (for services not directly related to air transport) provide that Member States may not open or carry on with proceedings based on Community law once the Commission has decided to initiate such proceedings.

101. The *Nouvelles Frontières* and *Ahmed Saeed*[3] cases pointed out the difficulties inherent in the current arrangements for the application of the competition rules to agreements on services with third countries.

These difficulties show there is a need to extend the scope of Regulations Nos 3975/87 and 3976/87 to include all services between the Community and third countries. Such an extension would confer on the Commission powers to apply Articles 85 and 86 directly to restrictive agreements concerning such services rather than indirectly through the Article 89 procedure. The Commission thus proposes to present two proposals for Council Regulations in 1997. The first seeks to extend Regulation No 3975/87 to third countries, and the second is an *ad hoc* Regulation, broadly similar to Regulation No 3976/87, extending the Commission's power to grant certain block exemptions so as to cover third countries. The latter Regulation should also help to increase legal certainty for airlines.

102. The extension of the scope of Regulation No 3975/87 must also be examined in the light of another factor. On 17 June the Commission was authorized by the Council to negotiate with the US Government an agreement establishing between the EU and the United States a common airspace. If such an agreement, in which competition would play a significant part, were to be concluded, it would enable the airlines of both parties to carry on their activities freely in the EU and in the United States on the basis of commercial principles which ensure that they operate under fair and equivalent conditions of competition.[4]

F — Energy

103. The Commission investigated several cases in this sector (agreements for the sale to the network of electricity generated by independent power stations and contracts for the supply of gas to fuel power stations in Italy and Portugal).

As regards electricity, the Commission authorized, during the current run-up to a liberalized market,[5] long-term contracts for the sale of electricity produced by independent generators to the national network inasmuch as the producers had, in fact, few alternative takers for their output and the scale of the investment necessitated a stable outlet. The Commission will, however, have to take into account in future such alternative possibilities for independent generators as may present themselves in the countries

[1] Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (OJ L 374, 31.12.1987, p. 9), as amended by Council Regulation (EEC) No 2344/90 of 24 July 1990 (OJ L 217, 11.8.1990, p. 15) and by Council Regulation (EEC) No 2411/92 of 23 July 1992 (OJ L 240, 24.8.1992, p. 19).

[2] Originally, they applied only to international flights between Community airports, but at the time of the third package of air transport liberalization measures they were extended with effect from 25 August 1992 by Council Regulations (EEC) Nos 2410/92 and 2411/92 of 23 July 1992 to cover flights within a Member State (cabotage).

[3] Judgment of the Court of Justice of 11 April in Case 66/86 [1989] ECR 803.

[4] See also Chapter V.B below.

[5] See Chapter II.C below.

concerned following implementation of the electricity liberalization Directive.

As regards gas, the Commission authorized a long-term contract for supplying a high-capacity power station inasmuch as the commitment guaranteed a stable and sufficiently sizeable outlet to enable the emergent gas market in a Member State to develop. The emergence of a market and the need to secure a basis on which a network may develop were taken into account by the Commission. Nevertheless, this does not prejudge the position it may adopt in respect of other long-term agreements which might foreclose the market.

G — Sport and competition

104. Following the judgment of the Court of Justice in *Bosman,*[1] the Commission has on a number of occasions expressed its firm intention of ensuring, by all the means at its disposal, that the principles laid down therein are respected. An official warning was thus sent on 19 January to FIFA and UEFA in connection with an infringement proceeding based on Article 85(1) of the EC Treaty and on Article 53(1) of the Agreement on the European Economic Area concerning rules of the two organizations which the Court had censured under Article 48 of the EC Treaty.

The warning letter informed the two organizations that, in the light of the *Bosman* judgment, their international system of transfers as notified to the Commission on 28 July 1995 did not qualify for exemption under Article 85(3) of the EC Treaty and Article 53(3) of the EEA Agreement. Moreover, had it been notified, the limit on the number of foreign players in national or international competitions between clubs (the so-called '3 + 2' rule) could not have been exempted under the same provisions.

105. FIFA and UEFA informed the Commission's departments that the international system of transfers would no longer be applied to players who, at the end of their contract, changed clubs (in different countries) within the EEA. UEFA confirmed that its Executive Committee had decided to abolish formally with immediate effect the nationality clauses ('3 + 2' rules) applicable to UEFA competitions between clubs within the EEA.

106. Nevertheless, following the abolition of the international system of transfers operated by FIFA and UEFA within the Community and the EEA, the legality of certain situations under the Treaty's rules still remains to be clarified. FIFA and UEFA had notified the international system of transfers to the Commission before it was censured by the Court under Article 48 of the Treaty. The notification therefore relates to decisions (rules and regulations) of FIFA and UEFA which implement an international system of transfers imposing the payment of transfer, promotion or training fees for professional players or players who have turned professional, irrespective of their nationality, who at the end of their contract form the subject-matter of an international transfer within the Community or the EEA. The obligation imposed by FIFA on national football associations to implement similar systems at national level is contained in the notified provisions.

107. Faced with such a notification, the Commission had to decide on the compatibility with Article 85 of situations which the Court has not condemned since they do not infringe Article 48 of the Treaty, namely the making of payments at the time of the international transfer, within the EEA, of third-country players at the end of their contracts with a club from a country of the Community or of the EEA, and the obligation imposed by FIFA on national associations in the Community and the EEA to implement national transfer systems. The notification was, however, withdrawn by UEFA and FIFA. No alternative system has been notified or formally presented to the Commission.

H — Financial services

108. On 24 June the Commission authorized for a period of 10 years a full and, in principle, exclusive cooperation agreement at world level between Banque nationale de Paris and Dresdner Bank. Although it is concerned mainly with international business, the agreement provides that, in France and in Germany, each party will make its products available to the other in order that it might distribute them through its network. On this point, the Commission insisted on an amendment of the clause of the agreement as originally notified which gave each party an unlimited right to veto any cooperation agreement which the other wished to conclude with a competitor present on its domestic market.

[1] Judgment of the Court of Justice of 15 December 1995 in Case C-415/93 *Union royale belge des sociétés de football association* v *Bosman* [1995] ECR I-4921.

109. Last year the Commission adopted a notice concerning the applicability of the competition provisions of the EC Treaty to cross-border credit transfers.[1] It will be recalled that the notice deals with non-price competition as well as price competition issues.

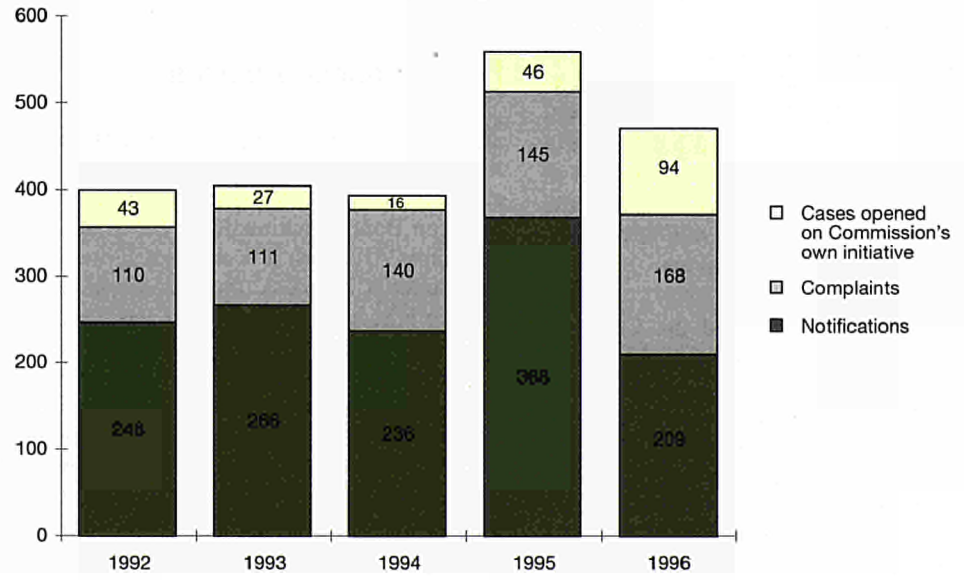
As to the former, rules concerning membership of cross-border credit transfer systems raise antitrust concern, in particular when the system constitutes an essential facility. In the course of 1996, the Commission's departments scrutinized the ECU Banking Association's clearing and settlement system for ecu transactions in the light of the requirements set forth in the notice. They concluded that the system met these requirements and closed the case by way of a comfort letter. Two other systems dealing specifically with cross-border credit transfers, namely IBOS and Eurogiro, though containing restrictive membership rules, were cleared by way of a comfort letter because they did not appear to constitute an essential facility within the meaning of the notice.

For these two cases, as well as for a third case notified by the Danish Bankers' Association, the Commission's departments also considered whether they raised price competition concerns. They queried, in particular, whether the banks participating in these payment systems had multilaterally agreed on an interchange fee and, if so, whether such a fee was exemptable. In IBOS there appeared to be no such fee. In Eurogiro, there was initially a multilateral interchange fee (MIF) to be paid by the sender's bank to the beneficiary's bank in case of urgent transfers but parties decided on their own initiative to drop this fee. Finally, in the Danish case, the system did contain a multilateral fee (paid by the beneficiary's bank to the correspondent bank) but the view was taken that it did not restrict competition to an appreciable extent within the meaning of Article 85(1).

I — Statistics

110. During the year the Commission registered 471 new cases, including 209 notifications, 168 complaints and 94 cases opened on the Commission's own initiative. Although the number of new cases is lower than in 1995, it exceeds the average number of incoming cases over the last nine years by more than 10%. In 1996 notifications were sharply down, whereas complaints and own-initiative proceedings showed a substantial increase.

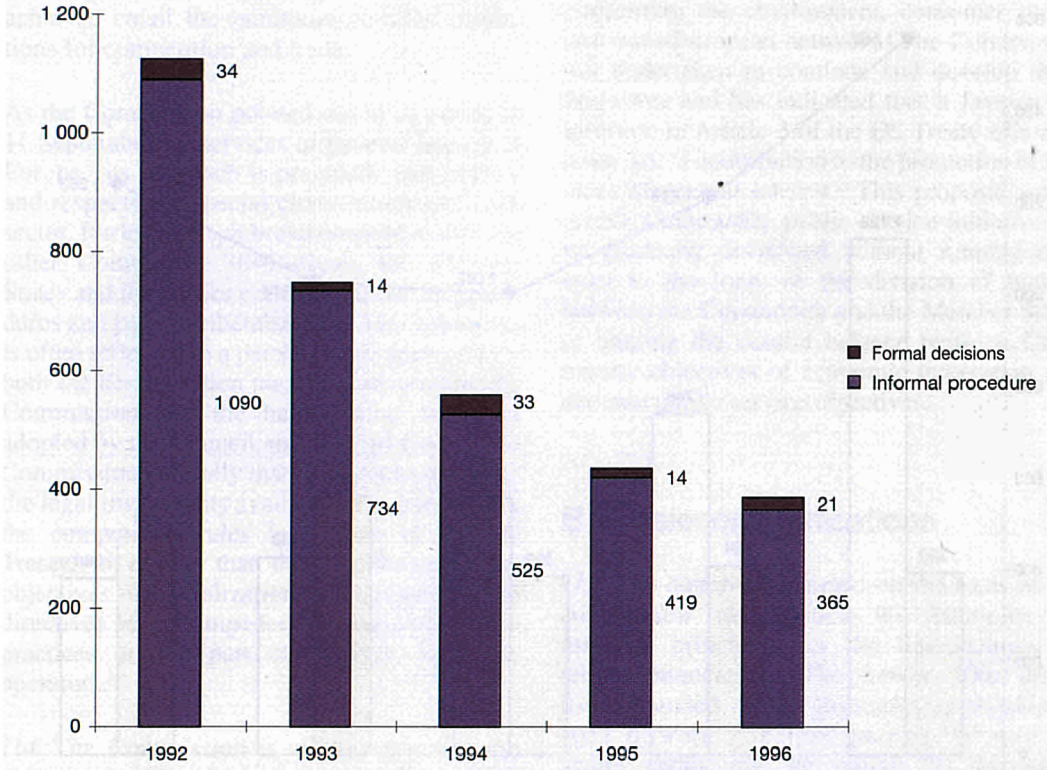
Graph 1
New cases



[1] OJ C 251, 27.9.1995. See *XXVth Competition Report*, points 45-48.

111. During the year the Commission closed 386 cases in all, of which 365 through an informal procedure (including comfort letter, discomfort letter, rejection of complaint without a decision and administrative closure of the file)[1] and 21 by formal decision. In 1996 the number of cases closed fell slightly compared with 1995.

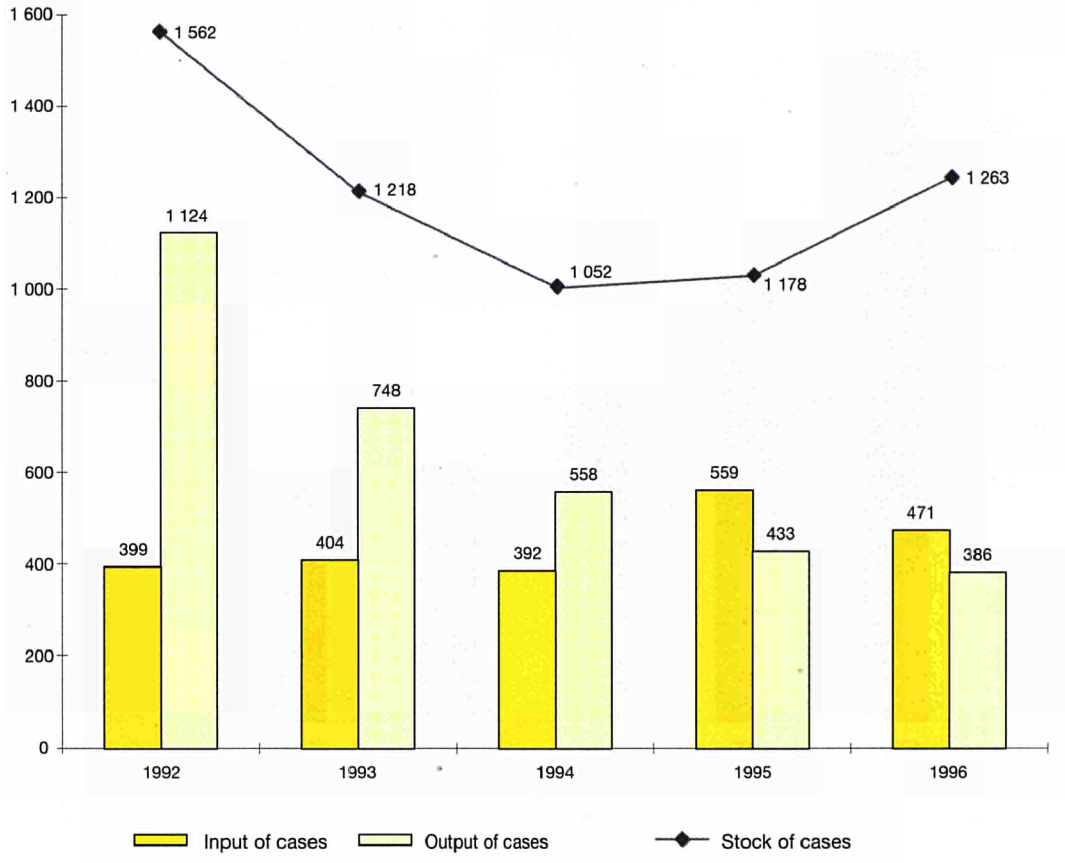
Graph 2
Cases closed



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

112. The overall net balance of input over output in 1996 shows an increase of 7% compared with the stock of cases remaining open at the end of 1995.

Graph 3
End-of-year stock of cases over time



II — STATE MONOPOLIES AND MONOPOLY RIGHTS

A — Introduction

113. Liberalization of the traditionally monopolized sectors is a crucial step in the establishment of a real single market for the benefit of European consumers. Nevertheless, the Commission is aware that the particular way these sectors are organized very often reflects legitimate concerns to ensure social cohesion; in its liberalization strategies it therefore seeks to keep in view objectives of public service whilst ensuring that the means by which they are achieved entail the minimum possible restrictions for competition and trade.

As the Commission pointed out in its notice of 11 September on services of general interest in Europe,[1] its approach is pragmatic and gradual and respects the special characteristics of each sector. It tries to reach broad consensus with the other Community institutions, the Member States and the parties concerned as to the procedures and pace of liberalization. This consensus is often reflected in a parallel basic approach for both the liberalization measures adopted by the Commission and the harmonizing directives adopted by the Council and the Parliament. The Commission naturally intends to make use of all the legal instruments available to it, particularly the competition rules laid down in the EC Treaty, to ensure that the attainment of the objectives of liberalization as expressed by the directives is not impeded by anti-competitive practices on the part of Member States or operators.[2]

114. The Commission is of the view that the objectives of liberalization and of public service can be kept fully compatible under the existing Community rules. It has therefore opposed the proposals to amend Article 90 of the Treaty put forward within the framework of the Intergovernmental Conference. Any such amendment would not in any way meet the real needs of protecting the public service; indeed, it would risk exempting certain operators in key sectors of the European economy from all Community control, thereby creating unfair competitive conditions between operators in different Member States and between public and private operators, which might have an adverse effect on the competitiveness of European industry and on the price and quality of services provided for consumers.

The Community has also a positive role to play in the development of the public service, of course. As the Commission pointed out in its notice of 11 September, many Community initiatives taken on the basis of existing powers are already making a positive contribution to attaining public service objectives, in parallel with the Member States. This is the case with sectoral initiatives seeking to specify a minimum level for universal service for all citizens of the Union; determination of these minimum levels can only be meaningful in the light of the circumstances of each sector at a particular point in time and logically be done by provisions contained in directives, not in the EC Treaty. This also applies in the case of numerous initiatives concerning the environment, consumer policy and trans-European networks. The Commission has undertaken to continue and develop these initiatives and has indicated that it favours the insertion in Article 3 of the EC Treaty of a new point (u): 'a contribution to the promotion of services of general interest'. This proposal would enable Community public service initiatives to be gradually developed without running contrary to the logic of the division of powers between the Community and the Member States or altering the current balance between Community objectives of economic integration and national public service objectives.

B — Telecommunications

115. The directives adopted on the basis of the competition rules (Article 90) determine the essential principles for the liberalization of telecommunications. The Article 100a directives, founded on the principles applicable to open network provision, prepare the way for and/or supplement the Article 90 directives, ensuring that new applicants can obtain leased lines, licences and interconnection, and determining their contribution to the universal service.

1. Mobile telephony liberalization Directive

116. On 16 January the Commission adopted a Directive[3] opening up to competition the European market in mobile and personal

[1] Commission notice of 11 September 1996 on services of general interest in Europe, OJ C 281, 26.9.1996, p. 3.

[2] This chapter is basically focused on Community initiatives dealing with State measures affecting competition. The behaviour of businesses is dealt with in other chapters of the Report.

[3] Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications, OJ L 20, 26.1.1996. *XXVth Competition Report*, point 104.

communications along the lines set out in the Green Paper on mobile and personal communications. The Directive followed consultations with interested parties on the basis of a draft adopted in August 1995. The Directive, which was adopted on the basis of Article 90 of the Treaty, requires the Member States to abolish special or exclusive rights still remaining in this field and to establish licensing procedures which are in accordance with Community law. It makes provision for the abolition of regulatory restrictions applicable, on the one hand, to the use of operators' own infrastructure or the infrastructure of third parties (such as that of electricity and railway companies) for the establishment of mobile networks and, on the other, to direct cross-frontier interconnection between fixed and mobile systems on the basis of Article 4 of the Directive. Member States with less-developed networks (Portugal, Greece, Spain and Ireland) were given the opportunity to request an additional implementation period for the abolition of these restrictions. Only Ireland and Portugal did so.[1]

The introduction of competition in the mobile market is particularly important in the run-up to the complete liberalization of the telecommunications sector on 1 January 1998 since it will reduce the potential for increases in local fixed-network charges to consumers. In view of the cost of establishing fixed local loops for voice telephony networks, new entrants will be able to use mobile technologies like DECT or DCS 1800 to reach their clients without passing through the former monopolies' local loops. Current operators of fixed networks will probably be tempted to make the most of their local loop monopoly before the effects of full network competition make themselves felt. Here, the rapidly decreasing price of mobile services will set an effective ceiling for wire-based local tariffs.

2. Full competition Directive

117. On 13 March the Commission adopted a Directive opening up to competition the entire European market in telecommunications services and infrastructures.[2]

This Directive, which was adopted on the basis of Article 90 of the Treaty following widespread consultations, provides for the implementation of full competition in the last monopoly segments of the Community telecommunications market by 1 January 1998, with improved provision of universal service. Exclusive rights to provide voice telephony and public telecommunications networks must be eliminated before that date. The Directive also provides that by 1 July 1996 the use of alternative infrastructures (such as the telecommunications networks of railway and power and water distribution companies) must be liberalized for the provision of telecommunications services other than public voice telephony, for which the deadline remains set at 1 January 1998. Under Article 2 of the Directive, additional transitional periods may be granted for Member States with less-developed or smaller networks. Ireland, Spain, Portugal, Greece and Luxembourg have requested derogations.[1]

The Directive also defines the principles with which the national rules must comply from 1998, in particular concerning interconnection, the granting of licences and the financing of universal service. These rules must be transparent, non-discriminatory and restrict competition as little as possible, while enabling important public service objectives to be achieved.

118. On 13 March, the date of adoption of the full competition Directive, the Commission also issued a communication on the concept of universal service and its development in the new, fully liberalized telecommunications environment.[3]

The communication defines 'universal service' as the obligation to provide access to the public telephone network and to deliver an affordable telephone service to all users reasonably requesting it. The Commission is aware that, despite the progress made with universal service, legitimate concerns remain, particularly regarding the affordability of prices, universal service in less-developed and less-densely populated regions and the need to set quality standards. These concerns could justify the establishment of specific mechanisms. In this regard, the Directive provides that the Member States must notify to the Commission the measures envisaged to ensure universal service.

119. On 27 November the Commission published the criteria it will apply in assessing national schemes for financing the provisions of

[1] On 27 November the Commission granted Ireland an additional period (see below, point 4).

[2] Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets, OJ L 74, 22.3.1996, p. 13.

[3] Commission communication on a universal service for telecommunications in the perspective of a fully liberalized environment, COM(96) 73 final.

universal service.[1] Some Member States may of course consider that such schemes are unnecessary, either because universal service obligations do not result in a net cost or the net cost does not represent an unfair burden for the operator or operators concerned. In cases where universal service obligations do represent a burden, Member States can opt to finance them directly themselves or to establish a specific financing scheme. Such financing schemes may cover only the net costs of universal service obligations as defined in Community law. Regarding the bodies which are required to contribute to the financing of these costs, Member States must justify any extension of the obligation to new entrants or mobile telephony operators. The national schemes must apportion the burden of the contributions equitably among the various operators according to their activity on the relevant market, and in particular their substitutability with the universal telephone service. The Commission will ensure that the operation of the mechanisms is objective, non-discriminatory, transparent and proportionate.

3. Decision on mobile telephony in Spain

120. On 18 December the Commission adopted a Decision on the basis of Article 90 of the Treaty addressed to Spain concerning the initial licence fee imposed on Airtel Móvil for the granting of a second concession of GSM services in Spain. Airtel Móvil, which began operations in October 1995, was selected on the basis of a tendering procedure requiring it to pay ESP 85 billion while the public operator, Telefónica, was granted its GSM licence without an initial licence fee. The sum of ESP 85 billion corresponds to one third of the investments necessary to cover the whole of Spain. The Commission therefore considers that Telefónica has a competitive advantage allowing it to strengthen its dominant position to the detriment of the second GSM operator. With this cost advantage, Telefónica will be able to delay the deployment of its network, thereby limiting production, markets or technical development regarding GSM or to lower its tariffs and extend its dominant position on the GSM market since Airtel will not be able to match it. The Commission considered that the measure distorted competition, infringing Articles 90 and 86 of the Treaty, and therefore requested the Spanish Government to refund the ESP 85 billion paid by Airtel or to take equivalent corrective measures. The Commission's action follows on from similar cases in Austria, Belgium, Ireland and Italy.[2]

4. Decision to grant Ireland a supplementary transitional period for certain aspects of the liberalization of telecommunications

121. In its Decision of 27 November, the Commission responded to a request presented by Ireland for a longer transitional period for the liberalization of its telecommunications.[3] Ireland's application was made on the basis of the scope for derogation which the Directives on mobile telephony and full competition allow the countries with less well-developed networks. Following wide-ranging consultations, the Commission decided to accede to part of the request put forward. The alternative infrastructures will have to be liberalized from 1 July 1997 and full liberalization must be in place by 2000. Direct international connections for suppliers of GSM mobile telephony will be liberalized from 1 January 1999 and voice telephony will be entirely liberalized from 1 January 2000.

In adopting its Decision, the Commission considered the comments it received from interested parties, almost all of whom opposed granting the derogations. It also gave careful consideration to the Irish Government's argument that the development of telecommunications networks carried out had required significant capital investment, leading to high levels of debt for Telecom Éireann.

122. The Commission is examining other requests for derogations presented by Portugal, Greece, Luxembourg and Spain.

C — Energy

1. Directive on common rules for the internal market in electricity

123. On 19 December the Council adopted the Directive on common rules for the internal market in electricity.[4] The Directive provides for a gradual opening of the electricity market over

1 COM(96) 608 final.
2 *XXVth Competition Report*, points 109 and 110.
3 OJ L 41, 12.2.1997.
4 Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, OJ L 27, 30.1.1997, p. 20.

six years. The first opening, to be effective by the beginning of 1999 at the latest, provides for the market in each Member State to be opened for a proportion which is represented by the share of Community consumption accounted for by customers using more than 40 GWh/year per site in 1997. This threshold will be reduced progressively until reaching 9 GWh/year after six years. The required percentage market opening is expected to be of the order of 23% initially, reaching 33% from the sixth year. A further opening will be proposed later by the Commission, to be given effect in the ninth year.

As regards the method of opening the market, the Directive incorporates the option of a single-buyer system as an alternative to negotiated third-party access to the network. The single-buyer system in effect allows electricity buyers to benefit from differences between the prices offered by their supplier and those available from an alternative supplier, inside or outside their Member State, while remaining a customer of the monopoly supplier. In electricity systems for which a Member State chooses the single-buyer option, independent producers and auto-producers can use third-party access to supply their own premises and those of their subsidiaries situated within the system and to supply any eligible customer outside the system. There is also provision for supply through direct lines by any producer or electricity supplier (where these are authorized) of their own premises, subsidiaries and eligible customers under certain conditions.

The categories of electricity buyers who will be able to choose a supplier under the Directive ('eligible customers') will be decided by the Member States. The Directive provides that customers using more than 100 GWh/year must be included. It also provides that distributors will be eligible to purchase electricity from alternative suppliers in order to supply it to their own customers who are themselves eligible. In order to meet the market opening thresholds provided for in the Directive, it is likely that certain Member States will enlarge the categories of major customers which are eligible.

The Directive provides that customers may be prevented from obtaining electricity in another Member State if they would not be eligible there. However, the Commission may overrule such a refusal at the request of the Member State where the customer is situated. This provision will be valid for nine years, though the Commission will review its application after half this period.

The provisions relating to the protection of public service obligations have been brought together within a single article of the draft Directive. It allows Member States to define public service obligations imposed upon electricity undertakings. These obligations may relate to security, including security of supply, regularity, quality and price of supplies, as well as environmental protection. The article only allows Member States to derogate from the rules of the Directive if the performance of those public service obligations would otherwise be obstructed.

The Commission considers that the initial market opening provided for in the Directive is a positive step as it is expected to create a dynamic towards the completion of a fully competitive single market for electricity in the Community. At all events, the Commission is prepared to use also the powers conferred upon it to apply the competition rules of the Treaty in order to achieve this objective and to ensure that competition in this sector is not restricted by the action of undertakings in a manner contrary to the Treaty. In this respect, the recitals to the Directive specifically state that it will affect the application of the competition rules of the Treaty.

2. Proposal for a Directive on common rules on the internal market in gas

124. Following its adoption of a common position on the electricity Directive, the Council turned its attention to the proposal for a Directive concerning common rules for the internal market in gas. The Irish Presidency proposed a compromise text after consultations with Member States and interested parties.

The discussions at the Energy Council on 3 December focused on some key issues. They resulted in unanimous conclusions. It was agreed that public service obligations may be imposed on undertakings provided they do not unduly hamper competition. The principles of unbundling and transparency of accounts were also accepted but must be considered with regard to issues of commercial confidentiality and the imposition of unnecessary administrative processes. As regards access to the system, the Presidency proposed that it should be effected either through a system of regulated third-party access or negotiated third-party access. Further work is needed on other issues related to the opening of the market and to long-term supply contracts ('take or pay' contracts). The Council stated that it would adopt a common position in May 1997.

D — Postal services

1. Proposal for a Directive on common rules for the development of postal services

125. An agreement in principle on the key elements of the proposal for a Directive based on Articles 57, 66 and 100a of the Treaty establishing common rules for the development of postal services was reached at a Council meeting held on 18 December. The reserved sector is to cover, in so far as necessary to maintain the universal service, items of correspondence weighing less than 350 grammes and/or costing less than five times the basic tariff, including domestic mail, cross-border mail and direct mail. The size of the reserved sector will be reviewed in the year 2000, for adjustment as from 2003, on the basis of new proposals which the Commission is required to present before 1999. The new proposals are to be drawn up taking account of, *inter alia*, economic, social and technological developments and may result in more extensive liberalization of postal activities. Unless the Directive is subsequently amended, it will cease to be applicable on 31 December 2004.

Discussions on other aspects of the proposal are currently under way. The proposal will also be discussed in the European Parliament in accordance with the usual legislative procedures.

2. Draft notice on the application of the competition rules to the postal sector

126. In order to secure transparency and improved legal certainty for the various parties concerned, the Commission is considering publishing a notice on the interpretation which it will place on the competition rules of the EC Treaty as applied to the postal sector. The notice will take account of the progress in discussions on the proposal for a Directive and comments it has received after publication of the draft notice in 1995.[1]

E — Transport

127. In the transport sector, the Commission attaches particular importance to ensuring that the benefits of liberalization are not jeopardized by monopolistic and/or discriminatory practices regarding infrastructure and essential services. Such practices very often result from State measures and must be examined in the light of Article 90 of the EC Treaty.

1. Airports

128. On 15 October the Council adopted a Directive on ground-handling activities at airports in the European Union.[2] It provides for opening up to competition ground-handling services in airports, including self-handling by airlines. In the case of certain services (baggage handling, ramp handling, fuel and oil handling), Member States may limit operators to two, of whom at least one must be independent of the airport and the dominant carrier. In any event, suppliers of ground-handling to third parties must maintain transparency as to accounts and the airport may not finance ground-handling services from income deriving from its monopoly position.

The various parts of the Directive will enter into force gradually, depending on the type of activity involved and the size of the individual airports. The Commission may authorize derogations, after it has examined the position, in the case of serious problems concerning capacity and available space in particular airports.

129. The Commission is also continuing its application of the competition rules to the activities of enterprises and State measures involving airport activities, such as landing charges and ground-handling. With particular reference to ground-handling activities, it initiated proceedings under Articles 90 and 86 against Greece concerning the exclusive right granted to Olympic Airways to provide services to third parties. As a result of the proceedings, the Greek Government undertook to liberalize airport services a year earlier than envisaged under the Council Directive and to introduce quality standards and quality control, tariffs more closely linked to cost, separate accounting for ground-handling activities and improved infrastructures.

130. Regarding landing charges, the Commission instituted infringement proceedings under Article 169 of the EC Treaty against Belgium for its continued failure to notify it of the measures adopted to terminate the system of

[1] OJ C 322, 2.12.1995, p. 3. See also *XXVth Competition Report*, point 118. A summarized version of the comments was published on 17 October in COM(96) 480.

[2] Council Directive 96/67/EC of 15 October 1996 on access to the ground-handling market at Community airports, OJ L 272, 25.10.1996, p. 36.

discounts operated at Brussels-National Airport. In a Decision adopted in 1995 under Article 90, the Commission considered that this was contrary to Articles 90 and 86 of the EC Treaty.[1]

2. Ports

131. Following a complaint by a Danish ferry company, Mercandia, the Commission secured an undertaking from the Danish Government that competition between car ferries between Denmark and Sweden would not be restricted unjustifiably by State measures. The measures involved took the form of a refusal by the authorities to grant access to the harbour facilities at Helsingør to other operators able to compete against ScandLines A/S, a company jointly controlled by the Danish State enterprise DBS and the Swedish enterprise SweFerry, which enjoyed exclusive rights to carry motor vehicles by ferry between Helsingør and Helsingborg in Sweden.

The Commission considered that the refusal to grant access to essential infrastructure constituted a State measure protecting and strengthening the position of a public operator and a breach of Articles 90 and 86 of the EC Treaty. The Commission's conclusions broadly concurred with those of a recommendation presented by the Danish Competition Board to the Danish Government in 1993. Following discussions with the Commission, the Danish Government agreed to provide access to the harbour facilities at Helsingør to a new ferry operator selected on the basis of a tendering procedure.

F — Other State monopolies of a commercial character

132. The Commission continued its efforts to secure compliance with Article 37 of the EC Treaty. The adjustment of national monopolies of a commercial nature in the new Member States received particular attention.

1. Austrian, Swedish and Finnish alcohol monopolies

133. The adjustment of the Austrian alcohol monopoly was completed by the discontinuance with effect from 1 January 1996 of the exclusive rights of importation and wholesale distribution of alcoholic beverages originating in other Member States.[2]

134. Since the exclusive rights of importation, exportation, wholesale distribution and production were discontinued in Sweden and Finland in 1995, the Commission has concentrated on retail sales. It does not consider that the exclusive rights regarding retail sales in these two countries are contrary to Community law, taking account of the objectives pursued, provided that there is no discrimination between national products and products imported from other Member States.[3]

Monitoring arrangements have been developed in the two countries in order to ensure compliance with this basic objective. Periodic reports on retail-sales activities are drawn up by the Swedish competition authority and the Finnish product-control agency. The Commission is monitoring the activities of those monopolies on the basis of the reports while reserving the right, in response to any complaints submitted to it, to initiate formal proceedings if non-discrimination is not being secured effectively.

2. Austrian manufactured tobacco monopoly

135. Under Article 71 of the Act of Accession, Austria is required gradually to adjust its monopoly of manufactured tobacco so that, by 31 December 1997 at the latest, all discrimination between nationals of Member States in the conditions of supply and outlets is eliminated.

The Commission considers that the gradual opening-up has not been progressing satisfactorily. Although Austria has already repealed the exclusive rights of importation and wholesale marketing of Community products from the beginning of 1996, the new legislation lays down unjustified conditions for new operators, entailing discrimination in favour of the former national monopoly.[4] The Commission therefore initiated infringement proceedings against Austria.

---

1 *XXVth Competition Report*, point 120.
2 Section 106(1) and (2) of Law No 703/1994 of 31.8.1994.
3 *XXVth Competition Report*, point 126.
4 Law No 830 of 21.12.1995 (BGBl. 279).

III — MERGER CONTROL

A — Introduction

136. This year, concentrations falling under the Merger Regulation[1] increased substantially over 1995. This indicates the continuing trend towards further integration of the European companies and markets. Notwithstanding this development, a number of concentrations with cross-border effects are still not caught by the Merger Regulation as the undertakings concerned do not meet the required turnover thresholds.

137. The Commission received 131 notifications (1995: 114) and took 125 final decisions (1995: 109). Activity in 1996 was, again, significantly higher (about 15%) than the previous year. A total of six second-phase investigations were completed compared with seven a year earlier. Three operations (Gencor/Lonrho, Kesko/Tuko and Saint Gobain/Wacker Chemie/NOM) were prohibited compared with two in 1995, two operations (Kimberly-Clark/Scott and Ciba-Geigy/Sandoz) were given the green light after an in-depth investigation subject to conditions (1995: three) and in one case (Telefónica/Sogecable/Cablevision), the operation was aborted by the parties. Also, two Commission decisions taken pursuant to Article 8 of the Merger Regulation (Shell/Montecatini and RTL/Veronica/Endemol) were amended after significant structural changes were made to the two operations. The Commission referred three cases to the competent competition authorities of Member States and one Commission decision was taken on the basis of a referral from a Member State. As far as concentrations in the coal and steel industries are concerned, the Commission took seven decisions under Article 66 of the ECSC Treaty.

138. In the six years since the Merger Regulation's entry into force, the Commission has taken 508 final decisions. The sectoral breakdown of cases indicates that high numbers of notifications reflected a particularly dynamic economic development in some business sectors, notably in telecommunications, financial services, pharmaceuticals, insurance and the media.

B — Merger review

139. Six years of experience with the Merger Regulation have shown that, despite the effectiveness of the instrument, an important number of concentrations with significant cross-border effects do not meet the thresholds of the Merger Regulation and hence are not notified under it. In order to remedy this situation as well as to address other problems identified, notably, multiple national filings and the issue of cooperative and concentrative joint ventures, the Commission initiated a broad consultation and published a Green Paper in January 1996, which subsequently led to a proposal for a review of the Merger Regulation.

Key issues proposed by the Commission include: (i) the lowering of the required turnover thresholds (ECU 3 billion instead of 5 for worldwide turnover and ECU 200 million instead of 250 for Community-wide turnover); (ii) the introduction of reduced turnover thresholds (ECU 2 billion and 100 million respectively) for concentrations which would require simultaneous notification in at least three Member States, in order to create a 'one-stop shop' for companies; (iii) the extension of the application of the procedural regime of the Merger Regulation to all full-function joint ventures, i.e. both to concentrative JVs and to those which raise cooperative aspects (i.e. to which Article 85 of the EC Treaty applies); (iv) a simplification of the conditions for referral of cases both from the Commission to a Member State (Article 9) and from a Member State to the Commission (Article 22); (v) the introduction of a provision which explicitly foresees the possibility of commitments in the first phase of investigation; and (vi) several other more minor elements such as a change of the definition of turnover for banks and financial institutions.

Following the transmission of the Commission proposal to the Council, the European Parliament and the Economic and Social Committee in September 1996,[2] discussions have been pursued in the Council working group on the different amendments proposed by the Commission. On 13 November the Industry Council had an exchange of views on the Commission proposal. It came to the conclusion that there was no qualified majority on the reduction of the turnover thresholds but agreed on the need to find a solution to the problem of concentrations which currently require simultaneous notification in at least three Member States. To this effect it agreed a range of criteria to be used to define the Commission competence in this field. The Commission has been working on these

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

[2] Proposal for a Council Regulation (EC) amending Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings, OJ C 350, 21.11.1996, p. 8.

criteria while maintaining its current proposal. The Economic and Social Committee issued its report on the Green Paper on 17 May and on the proposed review on 31 October. The European Parliament adopted its report both on the Green Paper and on the review on 12 November. Both the European Parliament and the Economic and Social Committee's reports are favourable to the Commission's proposal.

C — New developments

1. Relevant product market

140. A number of new developments have occurred with regard to product market definition, particularly in the pharmaceutical and retail sectors. In the area of pharmaceuticals, it was the first second phase case in this sector, the merger between the two large Swiss companies Ciba-Geigy and Sandoz into a new entity called Novartis, which gave rise to more refined market analysis, and which was finally cleared by the Commission subject to an undertaking in the area of animal health. In the retail field, these developments occurred with regard to the approved acquisition of the Austrian retailer Billa by the German company Rewe as well as in the first second phase case in that sector, which involved the two Finnish companies Kesko and Tuko, and which resulted in a prohibition decision.

141. Following Commission practice, pharmaceuticals can be divided according to the 'Anatomical Therapeutic Classification' (ATC) which is endorsed and used by the WHO. In particular, the third level of the ATC classification allows for a regrouping of pharmaceuticals based on therapeutical indication, i.e. intended use. It therefore constitutes a useful tool for a first screening of the possible relevant markets. In the case *Ciba-Geigy/Sandoz* the Commission addressed for the first time in more depth the issue that, while market definition on this basis should be appropriate in many cases, the analysis should not necessarily be limited to a delimitation according to the third level of the ATC classification. Such a delimitation may be too narrow in some cases and too wide in others. The substitutability of products depends ultimately on the indication for which they are approved or prescribed or on their demand-side substitutability from the point of view of the consumer for OTC products. In the case of prescription drugs, it would depend therefore on the point of view of the prescribing doctors who regularly base their prescription decision on objective scientific findings about efficacies and similarities between drugs. For this reason, in the present case the Commission took into account whether the pharmaceuticals grouped in a particular ATC class, third level, really have the same intended use, or whether pharmaceuticals in other ATC classes have similar intended use and efficacies.

142. In the *Rewe/Billa* and *Kesko/Tuko* cases the Commission stated, in line with previous practice, that there is an overall market for food retailing which comprises all the retail stores with a typical range of food and non-food daily consumer products excluding specialized shops. In food retailing there are different types of distribution systems which differ according to breadth and depth of product ranges and to size of shops. There are competitive relations between these types of distribution systems.

143. On the procurement market in food retailing, i.e. daily consumer goods, where the food retailers are on the demand side and the producers are on the supply side, the Commission took the view in the *Rewe/Billa* case that it may be necessary to distinguish between the demand for different groups of products which are partly distributed by different distribution channels. In the *Kesko/Tuko* case, the Commission confirmed this approach, and considered that from the demand-side point of view each product group constitutes a separate relevant market. In this case it was also stressed that producers of goods other than food had other distribution channels at their disposal.

2. Relevant geographic market

144. While assessing the proposed concentration between Rewe/Billa and Kesko/Tuko, the Commission also had to deal with the geographical definition of retail markets in food retailing and daily consumer goods. From the direct point of view of the consumer, the relevant geographic markets are local markets in which the companies concerned have their retail outlets. These markets can be defined in the Commission's view as markets covering a circle with a radius of approximately 20 car minutes. However, an assessment limited to these local markets is considered inappropriate if a large number of local markets affected by the concentration are so closely interlinked that they overlap and thus cover a larger region or even

the entire territory of a Member State. In this context it is necessary to take into account that the competitive relations between the large retail chains are not limited to local competition, but take place on a much wider geographic dimension. This can be seen for example through the largely centralized decisions taken by the large retail chains about the product ranges on offer.

3. Dominance assessment

3.1. Single dominance

145. The Commission addressed the issue of single dominance in the consumer goods sector in the *Kimberly-Clark/Scott* case. It came to the conclusion that the concentration would lead to a dominant position of the merged entity on the UK and Irish markets for toilet paper, kitchen paper and handkerchiefs/facial tissues. The finding as to Kimberly-Clark/Scott's post-merger dominance was based on the parties' high shares of UK/Irish tissue products' sales and production capacity and on the competitive strength of the parties' brands, Kleenex and Andrex, numbers 1 and 2 in the UK and Ireland. The parties' control of the two leading brands, which are essential brands for retailers to stock, coupled with their position as the leading supplier of private label products and overall market strength, combined to create a dominant position. In particular, the Commission considered that after the merger there would no longer be sufficiently strong interbrand competition, which is an essential competitive dynamic in the UK/Irish tissue markets. Tied sales and marketing policy, linking branded and private label products on the one hand and the two major brands on the other, would likely lead to anti-competitive behaviour resulting from the creation of a dominant position. These concerns were finally removed by the parties offering a complex divesture package including both production capacity and brands.

3.2. Duopolistic dominance

146. The Commission decided to oppose the proposed merger of Gencor's and Lonrho's platinum mining interests, finding that the merger would create a position of duopolistic dominance in the worldwide platinum and rhodium markets. It is estimated that most of the global platinum and rhodium reserves are controlled by only four suppliers: the Anglo-American Platinum Corporation (Amplats), Impala Platinum, Lonrho Platinum Division (LPD) and the Russian producer from the Noril'sk mine in northern Siberia. In 1995, these four suppliers accounted for almost 90% of total sales of platinum and rhodium. The platinum and rhodium markets presented many of the characteristics of an oligopolistic market:

— On the demand side, there is moderate growth, demand is inelastic (relative to price) and there is insignificant countervailing buyer power. Buyers are therefore highly vulnerable to potential abuse.

— The supply side is highly concentrated with high transparency for a homogeneous product, mature production technology, high entry barriers (including high sunk costs) and producers with financial links and multimarket contacts.

The main elements of competition in recent years have been the expansion of LPD and Russian sales from stocks partly motivated by its currency needs. The present merger would have led to the elimination of LPD as a competitor; furthermore, Russian stocks are expected to be depleted in the near term. The Commission's investigation demonstrated that Amplats and Impala/LPD would have had no incentive to compete after the merger.

3.3. Demand-side power

147. Demand-side power can be of relevance to the assessment of concentrations from two points of view. It can limit supplier power and can therefore act as a counterweight. It can also lead, where a dominant position results on a market, to the creation of buying power *vis-à-vis* suppliers. For this reason, it may also be necessary to assess concentrations from the point of view of whether they lead to a dominant market position on the demand side. In the *Rewe/Billa* case, the Commission explained that the demand-side power of a retail company is determined by the degree to which a producer needs to sell his products via a retail company. However, in the context of merger control, the key issue is not the possible dependence of single individual suppliers. What is decisive is the extent to which suppliers have on average the possibility to substitute supplies to the retailer in question by supplies to other buyers. In this respect, in the *Rewe/Billa* and *Kesko/Tuko* cases, the Commission made three broad statements. The demand-side power depends essentially on the market share which

the retailer has on the retail market. However, it is also necessary to take into account that demand-side power expressed through the market share in food retailing can have different consequences for certain groups of products, depending on whether other distribution channels exist. Finally, countervailing power could stem from the market position of certain brands indispensable for the retailer.

D — The media

148. In recent years, there has been a significant increase in the number of cases in the media sector dealt with by the Commission under the Merger Regulation.

Until recently, the notified concentrations concerned mainly joint ventures which focused on a national media market. The critical cases were related mainly to alliances of national players resulting in a competition problem on a specific national market or in a specific European region. Lately, there has been a trend towards cross-border alliances in the TV sector with a European-wide perspective. These alliances are to a great extent complementary in terms of national markets where the parties are active. They may, however, lead to a substantial change in the TV landscape in the EU. The *Bertelsmann/CLT* case is an example of this type of concentration. By this operation UFA, the holding company for the television, film and radio activities of Bertelsmann, and the CLT group will merge into a joint venture, thereby creating a leading European player in free-access TV. The concentration was cleared by the Commission given that there is an overlap in the TV activities of the parties only in Germany, where CLT/UFA faces strong competition from the commercial TV channels linked to the Kirch group.

149. As reported last year,[1] in recent years there have been prohibition decisions in three media cases. One of these prohibition decisions concerned the Dutch TV joint venture Holland Media Groep (HMG) between RTL, Veronica and Endemol. HMG was prohibited in September 1995 because of the vertical integration between the leading Dutch TV producer and the leading Dutch commercial broadcaster and the horizontal integration of three general-interest channels resulting in a dominant position on the TV advertising market. In 1996 the concentration could, however, be cleared in a substantially modified form. The complete withdrawal of the TV producer Endemol from HMG and the proposed transformation of RTL5 from a general-interest channel into a thematic channel removed the competition problems in both the TV production market and the TV advertising market.

150. In July 1995, Telefónica and Sogecable (Canal Plus Spain) agreed to merge their activities relating to the supply of services to operators of cable, audiovisual and television services into a joint venture, Cablevision. This joint venture also had indirect effects on the voice telephony and data communications markets. At the time, the companies concerned considered the operation to be of a purely national dimension and no notification was made to the Commission. On 1 March 1996 the Spanish Government authorized Cablevision as a concentration with a national dimension. The operation was completed and Cablevision had been active on the market for several months. However, the Commission took the view that the operation required notification under the Merger Regulation, given that the undertakings concerned whose turnover should be taken into account were, on the one hand, Telefónica and, on the other, Canal Plus Spain, to whose turnover should be added that of Canal Plus France and the Prisa group (both, in the Commission's view, jointly controlling Canal Plus Spain with 25% of the holdings each).

On 29 March the Commission sent a statement of objections in accordance with Article 18 of the Regulation to Telefónica and Canal Plus Spain. This was to give the undertakings concerned the opportunity of replying to the Commission's objections, prior to the possible adoption of decisions based on Article 8 (including previous interim measures) and Article 14 of the said Regulation because of Cablevision's failure to notify the Commission and because it had implemented the operation. The latter sanction procedure under Article 14 is following its course.

The parties finally submitted a notification on 31 May. The Commission decided to initiate an in-depth investigation of the operation because of serious doubts about its compatibility with the common market. The Commission stated in

[1] *XXVth Competition Report*, points 132-134.

particular that the concentration could, on the one hand, lead to foreclosure effects by preventing the entry of new competitors into the market for services to operators of cable, audiovisual and television services and, on the other, delay the effects of the forthcoming liberalization of the market for voice telephony in Spain. On 4 November the Advisory Committee on Concentrations delivered an opinion on the case stating that the concentration had a Community dimension, and that it should be declared incompatible with the common market because it caused the creation or strengthening of dominant positions of Telefónica and Canal Plus Spain in several markets in Spain in the field of cable infrastructures and services, pay-TV and voice telephony. Three days later Telefónica and Canal Plus Spain announced the demerger of Cablevisión, which henceforth would be under 100% control of Sogecable, and the revocation of the strategic alliance between the two companies.

151. This operation also gave rise to a court case. In July the President of the Court of First Instance (CFI) decided to reject the request from Sogecable for interim measures by declaring the application inadmissible.[1] Sogecable asked the Court to decide, *inter alia,* that the Commission should not take any final decision on the compatibility of the concentration with the common market or impose any fines on the undertakings before the Court could rule on the validity of the Commission's earlier 'decision' that Cablevision was a concentration with a Community dimension within the meaning of the Merger Regulation.

The President of the Court ruled that, in the context of interim measures, it was not possible for the Court to take a decision that would impede the Commission in the exercise of its powers of investigation and sanction immediately after the commencement of an administrative procedure and before the Commission had adopted the provisional or definitive decisions that the parties wanted to avoid. Moreover, if the plaintiff's application were allowed, the judiciary would not be performing the role of controlling the Commission, but would rather be replacing the Commission in the exercise of its administrative functions. The granting of interim measures in the context of an administrative Commission procedure would only be possible under exceptional circumstances, evidence of the existence of which had to be furnished by the parties.

E — Referrals under Articles 9 and 22

152. Pursuant to Article 9 of the Merger Regulation, the Commission may refer a notified concentration to the competent authority of a Member State on its request if, on a distinct market in the Member State concerned, the concentration threatens to create or strengthen a dominant market position.

153. The Commission decided that the public bid by Gehe for Lloyds Chemists should be referred to the UK competition authorities for further investigation. Both Gehe and Lloyds are large players in the UK business of pharmaceutical wholesaling and retailing. At the time of the Gehe bid, Lloyds was already subject to a bid by UniChem, another leading British pharmaceutical wholesaler/retailer, which did not fall under the Merger Regulation and which had already been referred by the UK competition authorities to the Monopolies and Mergers Commission (MMC). Referral of the *Gehe/Lloyds* case to the UK authorities therefore presented the advantage of allowing both bids to be examined by the same regulatory authority in a coordinated timeframe.

154. The Commission also decided to refer the *RWE/Thyssengas* and *Bayernwerk/Isarwerke* cases to the Bundeskartellamt with a view to the application of German national competition law. RWE Energie AG intended to acquire a share of 50% in Thyssengas GmbH from VIAG's subsidiary Bayernwerk AG. As a countermove, Bayernwerk AG was to acquire RWE's share in Isarwerke GmbH. Both of the proposed concentrations fell within the scope of the EC Merger Regulation and were therefore notified to the Commission. The electricity and gas markets in Germany are still currently characterized by a system of geographic monopolies. Thyssengas is a supplier of gas piped over a long distance, whose supply area covers the western part of North Rhine-Westphalia. RWE, one of the leading German electricity companies, has shares in a number of local energy suppliers of towns and cities, which are located in the supply area of Thyssengas and are supplied with gas by the latter. Bayernwerk is an energy producer whose supply area covers most of

[1] Order of the President of the Court of First Instance of 12 July 1996 in Case T-52/96 R *Sogecable SA* v *Commission* (not yet reported).

Bavaria. The holding company Isarwerke is the majority shareholder of Isar-Amperwerke AG, a regional energy supplier. Because of the threat of a strengthening of dominant market positions in regional gas and electricity markets, the Bundeskartellamt requested referrals in both cases. In both of these cases the possible competition problems concerned regional markets within Germany. The Commission therefore regarded it as appropriate to refer the cases back to the Bundeskartellamt for further investigation.

155. The Commission's examination of the acquisition of Tuko by Kesko, both Finnish companies active in the sale of daily consumer goods in Finland, was initiated following a request from the Finnish Office of Free Competition, in the absence of which the Commission would have had no jurisdiction to deal with the case since the requisite turnover thresholds set out in the Merger Regulation are not attained by the parties concerned. However, in the latter event a Member State is entitled under Article 22 of the Regulation to request the Commission to examine the case. The detailed investigation showed that the operation created a dominant position which significantly impeded effective competition on the retail and cash and carry markets for daily consumer goods in Finland. Moreover the operation affected intra-EC trade through its influence on the importation of daily consumer goods into Finland, and the creation of barriers to entry by potential competitors from other Member States. The Commission therefore prohibited the concentration.

F — Legitimate interests of Member States and application of Article 223 of the EC Treaty

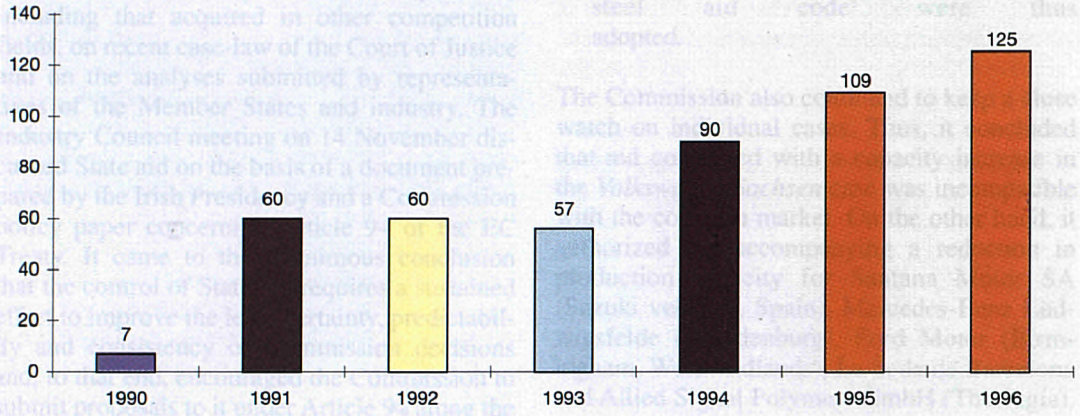
156. Article 21(3) of the Merger Regulation (legitimate interests of Member States) was applied in the *Sun Alliance/Royal Insurance* case, where, alongside the Commission's competition assessment of the proposed merger, the UK authorities were considering the change of control in the light of the requirements of insurance legislation. In so doing, they were exercising their right under Article 21(3) of the Merger Regulation to protect the UK's legitimate interests with regard to prudential rules.

157. In the *GEC/Thomson-CSF (II)* and *British Aerospace/Lagardère* cases, the Commission took the view that Article 223(1)(b) of the EC Treaty could apply. This provision gives a Member State the right to protect its essential security interests connected with the production of or trade in arms, munitions and war material as long as the concentration does not adversely affect conditions of competition for products not intended for specifically military purposes. In its decisions in both cases, the Commission followed its previous practice by assessing the civilian activities involved in the concentrations ('dual-use technology').[1]

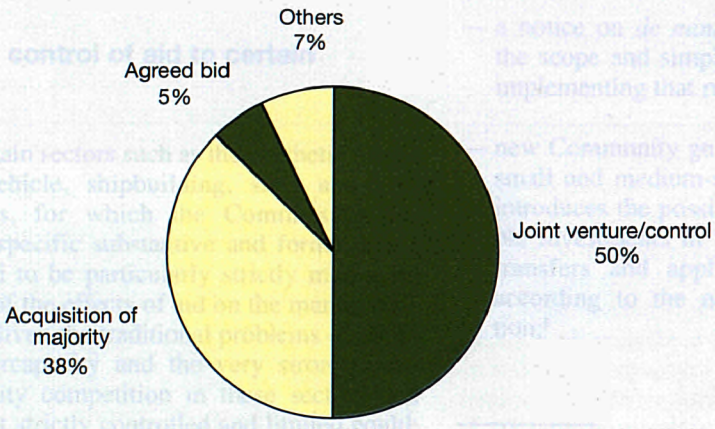
[1] *XXIVth Competition Report*, point 336.

G — Statistical overview

Graph 4
Number of decisions



Graph 5
Breakdown by type of operation (total 1990-96)



A — General policy

158. The increasing number and complexity of aid cases examined by the Commission and the evermore active involvement of interested parties prompted the Commission to undertake an in-depth review of the most effective method of controlling aid and improving the transparency and legal certainty of its procedures. The review is based on the Commission's own experience, including that acquired in other competition fields, on recent case-law of the Court of Justice and on the analyses submitted by representatives of the Member States and industry. The Industry Council meeting on 14 November discussed State aid on the basis of a document prepared by the Irish Presidency and a Commission policy paper concerning Article 94 of the EC Treaty. It came to the unanimous conclusion that the control of State aid requires a sustained effort to improve the legal certainty, predictability and consistency of Commission decisions and, to that end, encouraged the Commission to submit proposals to it under Article 94 along the lines developed in the policy document.

159. The Commission continued in 1996 to impose strict discipline whilst maintaining a balance between, on the one hand, compliance with the rules and principles of State aid and, on the other, the contribution made by some aid to the objectives of other Community policies. Its activities can be grouped under three main headings:

1. Strict control of aid to certain sectors

160. Certain sectors such as the synthetic fibres, motor vehicle, shipbuilding, steel and coal industries, for which the Commission has adopted specific substantive and formal rules, continued to be particularly strictly monitored because of the effects of aid on the market concerned. Given the traditional problems of structural overcapacity and the very strong intra-Community competition in these sectors, aid that is not strictly controlled and limited could, instead of solving a particular problem, simply result in difficulties being transferred from one firm to another, or from one region or country to another. This is why the Commission:

— again set out its *a priori* negative position with regard to employment aid targeted at certain sectors in a notice on the monitoring of State aid and reduction of labour costs;[1]

— in a new notice on *de minimis* aid, continued to exclude certain sectors from the benefit of this rule;[2]

— extended a series of instruments which had expired in order to maintain specific control in the fields concerned and in some cases avoid a legal vacuum. A new code on aid to the synthetic fibres industry,[3] a new Council Regulation on aid to shipbuilding[4] and a new steel aid code[5] were thus adopted.

The Commission also continued to keep a close watch on individual cases. Thus, it concluded that aid connected with a capacity increase in the *Volkswagen Sachsen* case was incompatible with the common market. On the other hand, it authorized aid accompanying a reduction in production capacity for Santana Motor SA (Suzuki vehicles, Spain), Mercedes-Benz Ludwigsfelde (Brandenburg), Ford Motor (Birmingham, West Midlands), La Seda de Barcelona and Allied Signal Polymers GmbH (Thuringia).

2. Clarification of rules

161. In order to ensure that its decisions are transparent and straightforward, and that Member States are treated equally, the Commission continued to publish and update the texts containing its criteria for assessing aid under Articles 92 and 93 of the Treaty. Thus in 1996 it adopted:

— a notice on *de minimis* aid[6] which extends the scope and simplifies the procedures for implementing that rule;

— new Community guidelines on State aid for small and medium-sized enterprises[7] which introduces the possibility of aid for intangible investments in the form of technology transfers and applies to aid for SMEs, according to the new Community definition;[8]

---

1 OJ C 1, 3.1.1997, p. 10.
2 OJ C 68, 6.3.1996, p. 9. The sectors are those covered by the ECSC Treaty, shipbuilding, transport, agriculture and fisheries. The other sectors are therefore eligible under the *de minimis* rule.
3 OJ C 94, 30.3.1996, p. 11.
4 OJ L 251, 3.10.1996, p. 5.
5 OJ L 338, 28.12.1996, p. 42.
6 OJ C 68, 6.3.1996, p. 9.
7 OJ C 213, 23.7.1996, p. 4.
8 Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises, OJ L 107, 30.4.1996, p. 4.

— a framework for State aid to firms in deprived urban areas[1] which takes a favourable view of certain aid measures aimed at encouraging investment and job creation through the development of small businesses in rundown neighbourhoods;

— a communication on aid elements in land sales by public authorities[2] which defines a series of principles making it possible to determine rapidly whether any State aid is involved in publicly owned land sales to the private sector.

3. Implementation of means of ensuring the effectiveness of existing rules

162. The higher number of negative or partially negative final decisions ordering the repayment of illegal and incompatible aid confirms the Commission's determination to enforce compliance with the rules and principles of State aid. The statistics show a marked increase in the number of negative (or partially negative) final decisions in 1996 in cases under the EC Treaty (12 against 6 in 1995) and under the ECSC Treaty (12 against 3 in 1995). Furthermore, the number of decisions ordering the repayment of aid granted in breach of the Treaty rose sharply in 1996.[3] The Commission takes the view that national laws or regulations cannot prevent decisions from being carried out. Thus it adopted a negative final decision in respect of an Italian scheme extending the law on the extraordinary administration of firms in difficulty to cover firms whose insolvency arises from the obligation to repay unlawful aid.

163. The Commission also continued its work on other texts which may be adopted in 1997, for example codification of the rules on regional aid, revision of the guidelines concerning the motor vehicle industry, guidelines on short-term export credit insurance, a multisectoral framework on regional aid for major investment projects, and studies on aid in the textile industry and on systemic risks in banking. A multilateral meeting took place in May with experts from the Member States and the European Free Trade Association Surveillance Authority which examined the question of the codification of regional aid and the need to retain the framework for aid to the textile and clothing industry.

164. The Commission continued its efforts to facilitate access to information: Volume IIA 'Competition law in the European Communities — Rules applicable to State aid' is now available in English, on-line via the Internet in a regularly updated version. It finalized a user's guide to the rules in Volume IIB 'Explanation of the rules applicable to State aid', to be published in early 1997. Lastly, it published a compendium of negative final decisions taken in the period 1964-95.

165. In July the Commission adopted a notice on the method for setting the reference and discount rates[4] used to calculate the grant equivalent of various forms of aid. In future, they will be based on the average rate of yield on State bonds on the secondary market, harmonized by the European Monetary Institute (EMI), multiplied by a premium specific to each Member State. This method avoids the principal disadvantages of the previous method, namely the variety of definitions and the difficulty of collecting data on the rates every month. A study is also under way to check the current level of the premium on the EMI rates and the possibility of taking account of other medium-term rates of yield.

B — Concept of aid

166. For a measure to be regarded as aid that is subject to the principle of incompatibility with the common market set out in Article 92(1) of the EC Treaty, it must satisfy four criteria: it must provide the firm with an advantage; it must be granted by the State or through State resources; it must have particular characteristics, i.e. it must favour only 'certain undertakings or the production of certain goods'; lastly, it must affect trade between Member States. The four conditions are cumulative, i.e. if one of them is not satisfied, Article 92 is not applicable.

The decisions taken in 1996 removed some of the uncertainties surrounding the concept of aid which various parties involved in the control of State aid continued to encounter. The way in which State aid is defined is of vital importance as, although it is solely for the Commission to determine whether derogations may be made

[1] SEC(96) 1706/2.
[2] SEC(96) 2090/2.
[3] See in particular Alti Forni Servola, Breda Fucine, Neue Maxhütte Stahlwerke, Mercedes-Benz Ludwigsfelde, Volkswagen Sachsen, Siemens Nixdorf, Mediterraneo Tecnica Textil SA (ex-Hytasa), and Cellulose du Rhône et de l'Aquitaine.
[4] OJ C 232, 10.8.1996, p. 10.

from the principle of incompatibility of aid, defining a measure as State aid directly or indirectly affects a large number of players: first, the national courts and tribunals that have jurisdiction to decide on actions to determine the existence of State aid and, if necessary, whether it was granted in breach of the Treaty (in 1995, the Commission published a notice[1] encouraging the national courts to make use of their powers concerning State aid and inviting them to cooperate with it in order to facilitate their task: see the Commission notice on cooperation between national courts and the Commission in the State aid field); second, the Member States, required as they are to notify the Commission of any plans to amend or introduce State aid; and lastly, recipient firms, required as they are to check whether the measure from which they benefit constitutes aid and, if so, whether the aid complies with the formal and substantive conditions applicable, as legitimate expectation cannot replace retroactively the normal diligence which all economic operators must display in checking the lawfulness of aid granted to them.

1. Advantage to a firm

167. The Court and the Commission have consistently held[2] that the concept of aid to a firm must be viewed in the broadest possible sense. Irrespective of the form it takes, a measure must be regarded as State aid under the Treaty if it gives the firm in question an economic or financial advantage which it would not have enjoyed in the normal course of events and which reduces the charges it would otherwise have borne.[3] However, as the *Financing of Portuguese Radio and Television* case confirms, compensation for the extra costs connected with public service obligations is not in itself a State aid. Similarly, the Commission confirmed its position that the public financing of infrastructure — in the case in point transport and energy or water distribution — at certain industrial sites in Austria did not involve any aid provided the utilization of the infrastructure was open to all the firms in those areas without discrimination.

Furthermore, tax increases that are lower for certain products were regarded as tax deductions and thus equivalent to State aid, even if the rate had increased across the board for everyone, as in the case of the Danish waste-water tax law.

168. In November the Commission adopted a notice on the possible aid content of sales of publicly owned land to the private sector.[4] A distinction is made between cases where the sale is the outcome of a bidding procedure, which must be open and sufficiently advertised, and cases where there was no such procedure. In the former case, if the successful bid was the best or only offer, the Commission will assume that no aid was contained in the sale, the latter necessarily having taken place at the market price. In the second case, the Commission will ask an independent expert to establish the minimum value of the land: if the land is subsequently sold at that price or a higher price, the sale will not normally be regarded as containing an element of aid.

169. As regards privatizations, the Commission continues to apply the principle that there is no aid when shares are sold to the highest bidder following an open and unconditional bidding procedure. In the absence of such a procedure, the case must be notified to enable the Commission to decide whether aid is present and, if so, whether it is compatible with the common market. The privatization of Belgacom and British Energy, where the Member States concerned transferred to the new owners all the liabilities as well as the assets of the firm, was regarded as not containing aid.

According to the principle of neutrality provided for in Article 222 of the EC Treaty in relation to the system of public or private property ownership in the Member States, privatization cannot justify the granting of aid or be imposed as a condition of compatibility. However, where firms in difficulty are concerned, privatization may make it more credible that a firm will return to long-term viability. Thus, in the case of *Head Tyrolia Mares (HTM)*, the Commission considered that the privatization of the company following an injection of ECU 118 million by its public parent, and subsequent sale for ECU 0.7 million, contained State aid which it nevertheless approved owing, in particular, to the conditions imposed.

170. The principle of a private investor in a market economy is often used in order to determine the presence of State aid in cases where public authorities transfer funds to public or

[1] OJ C 312, 23.11.1995, p. 8.

[2] See in particular Cases C-61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205 and C-173/73 *Italy* v *Commission* [1974] ECR 709.

[3] See in particular Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraphs 12 and 13.

[4] SEC(96) 2090/2.

private companies on more favourable terms than the recipients would find on the market in normal circumstances.[1] On the basis of this principle, the Commission considered that the repeated loans, capital injections and debt write-offs enjoyed by Breda Fucine Meridionali would not have been available to a firm with private owners and therefore constituted State aid. As the aid was intended only to ensure the industrial survival of the firm, without any compensatory benefits, the Commission decided to prohibit it.

In other cases, however, public measures were not regarded as State aid. The Commission concluded that the sale to the private sector of British Coal Enterprise (BCE), a subsidiary of the public British Coal Corporation (BCC), at a price below the nominal value of BCE's debts to BCC, did not contain State aid. BCE had no own capital and had also undertaken a number of social measures to promote employment; BCC could not therefore expect that the sums owed to it by BCE should be totally reimbursed within a reasonable, foreseeable period. The Commission therefore concluded that, inasmuch as the sale had been the outcome of a transparent and non-discriminatory bidding procedure and that the highest bid had been chosen, BCC had acted like a private investor whose primary aim was to maximize profits. In the *Servola SpA* case, the acquisition of a minority stake of 35% in the capital of the private steel company Servola by two public holding companies (Friulia SpA and GEPI) was not regarded as containing State aid. In view of the company's healthy economic, financial and industrial position and prospects[2] and the legal conditions governing the acquisition, the latter was deemed to have taken place in accordance with the criteria adopted by a private operator making a similar investment under normal market conditions.

2. Origin of resources

171. The financial or economic advantages enjoyed by a firm must be granted by the State, in the broadest possible sense, or through State resources.[3] Cross-subsidization between a public company operating on a non-competitive market and one of its subsidiaries operating on a market where there is free competition may constitute aid granted through State resources. In the *Société Française de Messagerie Internationale (SFMI)/Chronopost* and *Sécuripost* cases, the Commission, in response to several complaints, initiated the Article 93(2) procedure against the French Government in order to examine in closer detail the extent to which the provision of premises and staff, the transfer of customers and promotional and advertising measures taken by the parent company, the Post Office, a public undertaking, could constitute State aid. The Court of Justice considered, in its judgment in *Syndicat français de l'Express international (SFEI)* v *la Poste*, that the provision of logistical or commercial support without a fair counter-concession by a public undertaking to a private subsidiary engaged in an activity open to free competition constituted State aid within the meaning of Article 92(1) of the EC Treaty.[4]

3. Specificity of a measure

172. In order for a measure to be regarded as State aid, it must assist only certain firms or certain products.[5] Thus, although measures of economic, tax or general social policy may give a competitive edge to firms in the country implementing them, they are not covered by the competition rules on State aid as they constitute general measures which may be subject to the Treaty provisions on the approximation of laws. The distinction between these two concepts is difficult to establish in advance according to universal criteria. The Commission is accordingly endeavouring to refine the definition inductively on the basis of actual cases it deals with. In *Maribel bis/ter*, the Commission considered that the additional reduction in social security contributions provided for in the Belgian law in question constituted State aid as it was restricted to firms chiefly engaged in those industries most exposed to international competition. In a similar vein, the Court of Justice upheld the Commission's position in *Kimberly-Clark Sopalin*[6] and found that, in order for a measure to be described as general, it was necessary in particular that the State should have no

1 See in particular Cases C-305/89 *Italy* v *Commission* [1991] ECR I-1603 and C-234/84 *Belgium* v *Commission* [1986] ECR 2263.

2 As a result of investments aimed at improving its productivity, Servola SpA anticipates an increase in its turnover, average gross profit margin and operating profits.

3 See in particular Cases C-67, 68 and 70/85 *Van der Kooy* v *Commission* [1988] ECR 219 and C 78/76 *Steinike und Weinlig* v *Germany* [1977] ECR 595.

4 Judgment of the Court of Justice of 11 July 1996 in Case C-39/94 *SFEI* v *la Poste* (not yet reported).

5 See in particular Cases 203/82 *Commission* v *Italy* [1983] ECR 2525; 173/73 *Italy* v *Commission* [1974] ECR 719 and C-189/91 *Petra Kirsammer* [1992] ECR I-6185.

6 Judgment of the Court of Justice of 26 September 1996 in Case C-241/94 *France* v *Commission* (not yet reported).

discretionary power enabling it to vary the application of the measure according to such considerations as the choice of recipient, the amount or the conditions of the intervention. The fact that the measure in question was in principle available to all firms, sectors or regions but was limited by the possibility for the State to refuse to grant it, even on the sole basis of objective conditions defined limitatively by the laws and regulations, was sufficient for the measure to be deemed aid.

The Commission also clarified the distinction between aid and general measures in its notice on monitoring of State aid and reduction of labour costs.[1] It states there that national labour cost reduction measures are not covered by Article 92(1) of the EC Treaty where, despite being targeted at certain categories of worker (e.g. low-wage earners), they apply to all firms, or where they concern activities not involving trade between Member States (e.g. local services).

4. Distortion of competition and effect on intra-Community trade

173. The last condition that must be met if a measure is to be considered aid is that it affects competition and intra-Community trade. Aid that favours certain firms to the detriment of others is almost automatically regarded as distorting competition. The Commission thus considered in *Tourisme social en Belgique* that grants to associations organizing leisure activities aimed at affording underprivileged persons access to tourism infrastructure could distort competition in the hotel trade. Apart from their social role of promoting low-budget tourism and holidays for workers, the centres also operate traditional hotels which are in direct competition with others in the same category. In *Institut Français du Pétrole (IFP)*, on the other hand, the parafiscal charge levied on certain petroleum products and paid to IFP did not constitute State aid to the latter (as it was a public non-profit-making establishment) or to the firms benefiting from the results of the research, as there was no discrimination in access to the results. As the facts of the case rebutted the presumption of discrimination according to which a parafiscal charge 'necessarily' benefits national firms in particular, the measure did not lead to any distortion of competition.

As regards the impact of aid on intra-Community trade, in the *Zone franche Corse* and *Pacte de relance pour la ville* cases the Commission concluded in part that intra-Community trade was not affected inasmuch as the tax exemption for existing firms was limited to small firms carrying out purely local activities or falling below the *de minimis* threshold.

174. Finally, on a more general level, the Commission confirmed this year, in its new notice on *de minimis* aid,[2] that it considered that very small amounts of aid do not have much impact on trade between Member States. All aid of less than ECU 100 000 per firm over a period of three years, with the exception of export aid, will be regarded as not subject to Community control and need not therefore be notified to the Commission.

C — Compatibility of aid with the common market: developments and trends

1. Sectoral aid

1.1. Sectors subject to specific rules

1.1.1. Shipbuilding

175. On 27 September[3] the Council decided that, since the OECD agreement on normal competitive conditions in commercial shipbuilding and ship repair had not entered into force due to delays in US ratification, the seventh Directive on aid to shipbuilding[4] should be prolonged *ad interim* until 31 December 1997 at the latest. If the agreement has still not entered into force by 1 June 1997 the Commission will put forward appropriate proposals to enable the Council to decide on future policy before 31 December 1997.

Against this background the Commission decided to keep the common production aid ceiling at 9% for large vessels and 4.5% for vessels costing less than ECU 10 million and for conversions.

176. The most important individual case examined by the Commission this year concerns the diverting of aid intended for the former East German shipyards MTW and Volkswerft to their parent Bremer Vulkan AG. Having initiated proceedings in February, the Commission

[1] OJ C 1, 3.1.1997, p. 10.
[2] OJ C 68, 6.3.1996, p. 9.
[3] Council Regulation (EC) No 1904/96, OJ L 251, 3.10.1996, p. 5.
[4] Council Directive 90/684/EEC, as last amended by Directive 94/73/EC.

is now closely examining the 'spillover' procedure and the possibility of re-establishing the aid in accordance with the conditions on which it was authorized.

177. The financing of ships in Denmark in the period 1987-93 was also examined. In addition to authorizing aid under Article 4(1) of the seventh Directive for the period from 1 January to 31 December in the various Member States, the Commission also approved restructuring aid in France and Italy. Under Article 4(7) of the Directive — which concerns aid granted in the form of development aid — 18 cases were approved, of which three in Germany, six in Spain and nine in the Netherlands. The procedure provided for in Article 92(3) was initiated in respect of an application from the Spanish Government under Article 4(3) of the Directive for a derogation from the three-year period between signature of the contract and delivery of the ship. Lastly, a partly negative decision was taken in respect of a French law on the application of tax-reduction measures to investments in overseas departments, where they apply to shipbuilding.

1.1.2. Steel

178. During 1996 the Commission continued to be vigilant in applying the fifth steel aid code.[1] The Commission adopted 19 partially negative or negative decisions, for example *Alti Forni e Ferriere di Servola, Breda Fucine Meridionali* and *Forges de Clabecq*. With regard to the 'Bresciani' cases in Italy, the Commission decided to authorize 33 aid cases and not to authorize aid in 10 cases. Where aid had already been paid in breach of rules of procedure, it also ordered the recovery of the aid.[2]

The close monitoring of eight Article 95 ECSC aid cases[3] was maintained with half-yearly reports being submitted to the Council.

The fifth steel aid code expired at the end of 1996. In December the Commission adopted a new steel aid code to cover the period until the ECSC Treaty expires in July 2002. It brings the rules on State aid for research and development and on aid for environmental protection into line with the revised Community framework on State aid for research and development and the 1994 Community guidelines on State aid for environmental protection respectively. Although in the latter case extensive limitations were imposed, the Commission allows aid for partial closures and aligns the procedural rules of the steel aid code on new developments in the EC.

As regards non-ECSC areas, one case[4] was examined in the metal tube production field.

1.1.3. Coal

179. Decision No 3632/93/ECSC[5] of 28 December 1993 establishes the Community rules on State aid to the coal industry covering the period from 1994 to 2002. In accordance with Article 2(2) of the Decision, Germany abolished its 'Kohlepfennig' levy on 1 January 1996. This leaves Spain as the only Member State that has not yet complied fully with the Community rules.

180. On 20 March, the Commission authorized the United Kingdom to grant financial assistance for 1996 totalling ECU 455.5 million (GBP 378 million) to cover inherited liabilities.

181. On 30 April, the Commission authorized Germany to grant financial assistance for 1996, totalling ECU 5 498.7 million (DEM 10 454.6 million), in compensation to the electricity generators under the fifth Electricity-from-coal Law of 12 December 1995 for maintaining the underground workforce in the mines ('Bergmannsprämie'), for the supply of coal and coke to the Community steel industry, and to cover the exceptional costs of a number of coal undertakings relating to inherited liabilities and restructuring. In addition, the Commission authorized additional aid of ECU 1 508.5 million (DEM 2 826.9 million) for 1995 for the supply of coal and coke to the Community steel industry and to cover the exceptional restructuring costs of a number of coal enterprises. In assessing the aid, the Commission nevertheless recognized that the reduction in costs, of the order of 3.6% between 1992 and 1995, was inadequate and confirmed the need for a firm approach to capacity reduction.

182. On 30 April the Commission authorized France to grant aid for 1996 totalling ECU 681.9 million (FRF 4 415 million) to cover operating losses, inherited liabilities resulting from the modernization, rationalization and restructuring of the coal industry and for research and development.

---

1 Commission Decision 3855/91/ECSC of 27 November 1991.

2 See for instance Commission Decision 484/96/ECSC of 13 March 1991, *Neue Maxhütte Stahlwerke GmbH*, OJ L 198, 8.8.1996, p. 40.

3 *Ilva* in Italy, *CSI* and *Sidenor* in Spain, *Irish Steel* in Ireland, *Siderurgia Nacional* in Portugal, *EKO Stahl* and *SEW Freital* in Germany and *Voest Alpine Erzberg* in Austria.

4 Initation of procedure in the French *Ecopipe* case; procedure ended with a positive final decision, C 16/96 (not yet published).

5 OJ L 329, 30.12.1993, p. 12.

183. On 30 April the Commission also authorized Spain to grant financial assistance amounting to ECU 884.6 million (ESP 141 377 million) for 1996, and amounting to ECU 867 million (ESP 141 316 million) for 1995. The aid is intended to cover operating losses by coal undertakings, exceptional welfare aid paid to workers who lose their jobs as a result of restructuring, the technical costs of closing down mining installations, for research and development projects and for environmental protection. Moreover, Spain was also authorized to grant additional financial assistance for 1994 totalling ECU 65.2 million (ESP 10 362 million) to cover operating losses by coal undertakings. In authorizing the aid for 1996, the Commission noted that Spain is bringing its aid mechanism into line with the provisions of Article 2(2) of Decision No 3632/93/ECSC by 31 December 1996 at the latest.

184. On 29 May the Commission authorized Portugal to grant financial assistance totalling ECU 1.8 million (PTE 345.95 million) for 1995 and 1996, to cover the compensation to be paid to workers who have lost their jobs as a result of the closure of the last Portuguese mine.

1.1.4. Motor vehicle industry

185. In 1996 the Commission took 20 decisions in this sector and made several general contributions in the form of communications or studies with the aim of bringing the framework on State aid to the motor vehicle industry into line with the main developments in the industry. A communication on the motor vehicle industry, which also discusses utilization of production capacity in the Union, was adopted by the Commission in June in the form of a decision. The Council resolution of November concerning the communication asked the Commission to pursue its efforts to improve the transparency of State aid rules and ensure that the aid authorized did not entail distortion of competition. Lastly, with the support of independent consultants, the Commission initiated an analysis of the conditions for the application and the effectiveness of the framework on State aid to the motor vehicle industry. The Commission will decide by the end of 1997 on future methods of controlling aid in this sector.

186. The decisions concerning regional development aid, which formed a majority of the cases, confirmed that the principle of equivalence between the amount of aid granted and the level of regional handicaps had been complied with where production capacity was created, as demonstrated in the *Volkswagen Sachsen* case. Several notifications concerned regional aid in conjunction with other types of aid (innovation, environment, training, etc.), for example the *MCC-Swatch* case, where the Commission took account not only of the contribution to regional development but of the highly innovative nature of the project and the fact that the proposed environmental investments went well beyond statutory requirements in this area.

187. The *Suzuki Manzanares* decision produced a more specific definition of the motor vehicle industry. According to the framework, the motor vehicle sector includes the manufacture of engines but excludes all parts and accessories for motor vehicles and engines. In view of the possible changes in the prices of components, the small part played by Manzanares in the total net cost of the engines and the fact that no subassembling takes place on site, the Commission agreed to regard the plant as a components factory which is thus not covered by the framework on State aid to the motor vehicle industry. Thus the aid granted to Suzuki Manzanares was examined solely in the light of the normal criteria applicable to regional aid.

188. The motor vehicle sector continues to be affected by structural overcapacity in Europe. In order to prevent surplus production capacity from further distorting competition, the Commission, if necessary, studies the impact of a project on capacities in the sector in the member countries of the Union. In practice, a 'top-up' of 3% of the eligible regional investment is authorized where the recipient of the aid does not create extra production capacity in a saturated market segment. In the case of MCC-Swatch, a top-up was allowed because the special characteristics of the new Smart car will create a new production segment on the vehicle market. The experts consulted considered, in addition, that the Smart would have a limited impact on existing market segments. It should be noted that in cases such as Mercedes-Benz Spain and Opel Portugal, the question of top-up did not arise as the intensity of the regional handicaps, as assessed in the cost/benefit analysis, was greater than the intensity of the aid proposed by the Member State.

189. As regards restructuring aid, the Commission decided to terminate the Article 93(2) procedure against aid granted to Mercedes-Benz for the restructuring of a truck manufacturing plant at Ludwigsfelde (Germany). The Commission concluded that the part of the aid representing 51.8% of the restructuring costs, i.e. an

intensity that was in proportion to the cut in production capacity, complied with the motor vehicle framework and the guidelines on rescue and restructuring aid and could therefore be authorized. On the other hand, it took a negative decision in respect of the amount of aid equal to the difference between the real value of the truck firm, FBG, on the market and the price fixed for the sale of the latter to Mercedes-Benz by the Treuhandanstalt. The Commission required that part of the aid to be recovered, and interest paid from the date of the sale, i.e. 1 January 1994. In the case of *Santana Motor SA*, after examining the restructuring plan drawn up in April 1995 with a view to restoring the viability of the firm, the Commission decided to terminate the procedure initiated in January 1995 in respect of the aid planned, and already partly granted, by the Spanish authorities. The cut in production capacity and the aid intensity were in proportion. The Commission therefore authorized the two loans and the social aid for redundant workers contained in the measure in question.

190. At the international level, the agreements signed or in the process of being signed with the countries of Central and Eastern Europe allow the Commission to investigate the conditions under which State aid is granted outside the Union. Thus the *Daewoo* and *General Motors* cases are being studied in cooperation with the Polish authorities.

191. Some Commission decisions provide expressly for assisted projects to be followed up. Essentially, the aim is to validate investments, and the numbers of jobs created or safeguarded, and to check, possibly on site, the limits on installed production capacity. The *NedCar, Seat Barcelona* and *Fiat Mezzogiorno* cases are examples of active monitoring by the Commission.

1.1.5. Synthetic fibres industry

192. Since 1977 aid to this industry has been subject to supplementary control through the code on aid to the synthetic fibres industry. Following reports carried out by an independent consultant in 1995, and the views expressed by Member States and ESA, the Commission informed Member States by letter dated 25 January of its decision to introduce new measures to control State aid to this sector.[1] The new code came into effect on 1 April and all Member States agreed to the notification obligations imposed therein on the basis of Article 93(1) of the EC Treaty. The code is valid for three years. Under the previous code, regional investment aid was authorized only if the investments assisted led to a significant reduction in capacity. Under the new code, the state of the market is a key consideration in the assessment of proposals to award regional aid. Aid may be authorized for projects when there is a structural shortage of supply of the relevant product, provided the aid will not lead to a significant increase in capacity. However, the new code also limits the aid which may be authorized. Larger firms, i.e. firms that are not SMEs, are unable to receive investment aid of more than 50% of the applicable aid ceiling. SMEs may receive aid of 75% or 100% of that ceiling depending on the state of the market concerned, the effect on capacity and the innovative nature of their products.

193. In this transitional year, the Commission dealt with an unusually low number of State aid cases in the synthetic fibres industry. The most notable case concerned the final conditional decision taken in April in respect of unnotified restructuring aid granted by the Spanish authorities to a synthetic fibres producer La Seda de Barcelona (LSB). In this case the aid was authorized, on condition an annual report was submitted, since it would result in an overall net reduction of 25% in LSB's total production capacity. The reduction was regarded as 'significant' within the meaning of the code, in particular in view of the company's likely long-term viability, and its location in an area affected by serious industrial decline.

1.1.6. Textiles and clothing

194. At the multilateral meeting held in May with the Member States, the Commission presented the results of the study that had been commissioned on the need for maintaining a specific framework in this industry. The study concluded that the sectoral framework should be abolished and the industry became subject to the same regime as all the others, possibly under a new, horizontal framework. As a large majority of Member States (11 out of 15) were in favour of abolishing it, and in view of the position of the Court of Justice,[2] it was necessary to find a solution combining the requirements of legal certainty and the need to maintain specific monitoring of this sector. The Commission finally decided to await the result of a forthcoming multilateral meeting at the beginning of 1997, at which a final decision on whether or

[1] OJ C 94, 30.3.1996, p. 11.

[2] Judgment of the Court of Justice of June 1995 in Case C-135/93 *Spain* v *Commission* [1995] ECR I-1673.

not to introduce a multisectoral framework would be taken.

1.1.7. Transport

195. In 1996 the number of transport aid cases dealt with by the Commission remained relatively unchanged compared with 1995, a year which saw an increase of more than 40% in the number of such cases (48 decisions adopted by the Commission in 1996). This is partly the result of the constant opening-up of the transport market and the increase in competition in this sector, together with the progress of the single market for transport services. Under the circumstances, the control of State aid is of particular importance to ensuring that fair conditions of competition are maintained between public or private enterprises.

196. In the field of air transport, the Commission continued to maintain strict control of State aid. Most of the national airlines were recapitalized and subjected to restructuring plans. The Commission therefore gave priority to controlling the implementation of these plans and verifying that all the conditions laid down in the decisions authorizing aid for the restructuring of the airlines were effectively complied with.

— On 31 January, the Commission raised no objections in respect of the plan of the Spanish-owned holding company Teneo to invest ESP 87 billion in the national airline Iberia. The Commission regarded this investment as a normal commercial transaction which satisfies the market economy investor principle. The Commission, in assessing the amount of capital injection into Iberia pursuant to the market investor principle, insisted on a rate of return in excess of 30%. This high rate includes a premium for the specific risk of an investment in Iberia (e.g. the company's restructuring plan is not fully implemented). The capital injection is limited to redundancy payments and a reduction in excessive gearing. Funds from the capital injection may not be used in any way that impedes the Iberia cost reduction programme or brings about a significant change in its overall price strategy and fleet capacity.

— On 30 April, the Commission reopened the Article 93(2) procedure in respect of restructuring aid to be paid in instalments to Olympic Airways. Greece must abstain from paying the second instalment of aid pending the Article 93(2) procedure. The aid was authorized in October 1994 under certain conditions. While Olympic Airways is largely meeting the objectives of the restructuring programme, the Commission is concerned that Greece is not fully complying with a number of conditions. In particular, Greece seems to have granted further aid to Olympic and to have interfered in the management of the airline to an extent which goes beyond its role of shareholder.

— On 24 July, the Commission raised no objections in respect of the payment of the third and last instalment, amounting to FRF 5 billion, of the FRF 20 billion State aid to Air France. The Commission considered that the restructuring progress and the results already achieved by Air France were satisfactory. In spite of the additional restructuring measures adopted by the company to cut its operating costs further, the Commission considered that there was uncertainty due to the fact that the restructuring period had not ended at the time the decision was taken and that some of the new restructuring measures ('the pact for competitiveness and growth') had not yet been fully approved. In order to control the development of the restructuring of Air France, the Commission decided to block an amount of FRF 1 billion out of the FRF 5 billion of the third instalment. The French Government will submit a report by 1 March 1997 at the latest, setting out the actual results achieved by Air France and the new restructuring measures. The Commission will verify by 31 March 1997 the information transmitted. Should the Commission have no objections, the FRF 1 billion will be incorporated into Air France's equity.

— On 27 March, the Commission raised no objections in respect of the payment of the third instalment of State aid to TAP. It concluded that the airline had successfully implemented its restructuring plan during the period under review, and that Portugal had strictly complied with the conditions set out in the decision. However, the Commission insisted on TAP increasing its efforts to improve efficiency to match the greater productivity gains achieved by its competitors.

197. In the maritime transport sector, the Commission communication 'Towards a new maritime strategy' reassesses Community maritime policy. Briefly, it concluded that, although the objective of improving safety and achieving international open markets and fair competition would help to reduce distortion of competition,

whilst efforts in training and employment policy and in research and development would enhance the competitiveness of the EC shipping sector, support measures may nevertheless be required for the present to maintain and to develop the Community's shipping industries. Among other things, therefore, the Commission will issue revised State aid guidelines on shipping, which should be available in early 1997.

198. In 1996, the Commission authorized various aid schemes aimed at making Community shipping lines more competitive in relation to third-country fleets:

— On 21 February, for example, the Commission raised no objections in respect of an aid scheme proposed by the United Kingdom Government for a special tax measure for shipowners, extending the period allowed for reinvesting excess allowances in replacement vessels.

— On 2 October and 6 November, the Commission raised no objections in respect of two German aid schemes extending or modifying previously approved measures: a special depreciation scheme for ships — including second-hand tonnage ships — which will be in force until the end of 1999 and financial contributions for the year 1995 to ship-operating companies aimed at encouraging shipowners to keep their vessels under the German flag and to promote training.

— On 20 March, the Commission authorized several measures notified by the Dutch Government aimed at reducing the costs involved in employing Dutch nationals on board Dutch vessels, and at reducing the tax burden on shipping companies established in and operating from the Netherlands by allowing them to choose between two methods of taxation, i.e. taxation of profits at the normal rate or taxation on the basis of tonnage.

— On 22 April, the Commission authorized French tax proposals concerning maritime co-ownership aimed at encouraging the registration of vessels under the French flag. The scheme, which allows a tax deduction for the acquisition of shares in vessels, is limited to investments made before 31 December 2000.

— On 17 July, the Commission finally approved a scheme, against which it had initiated proceedings in 1995, concerning restructuring aid for the French company CGM, subject to certain conditions imposed until completion of the company's privatization in order both to prevent aggressive market tactics and avoid keeping loss-making activities afloat. The Commission considered that the aid made an effective contribution to the radical restructuring and eventual viability of the company.

199. In the ports sector, the Commission continued to examine complaints about public assistance for certain ports in several Member States. It also decided on 12 June to extend the Article 93(2) procedure initiated in July 1993 in respect of measures adopted subsequently by the Italian authorities within the framework of the restructuring of the ports sector.

200. In the road transport sector, and with increasingly intense competition between operators in the different Member States, the Commission took a firm attitude in 1996 to State aid measures, in particular by concluding ongoing assessment procedures:

— Having studied at great length the question of restructuring aid for road transport in Italy, the Commission, faced with contradictory information, decided on 30 April to require Italy to send it all the documents, information and data needed to examine the compatibility of the aid with the common market and to suspend immediately the payment of any fresh aid pending the termination of the Article 93(2) procedure. The Italian authorities subsequently withdrew the measures incompatible with Article 92(1), and a final decision was taken by the Commission on 20 November.

— Again with regard to Italy, the Commission adopted a negative final decision on 22 October against a tax credit scheme for road hauliers applied by the Italian authorities to the tax years 1993 and 1994. The aid, regarded as operating aid by the Commission, will have to be repaid. This decision is in line with that adopted in 1993 for the fiscal year 1992 which is the subject of an action before the Court of Justice brought against Italy in 1995 for failure to implement the Commission's decision.

— On 29 May the Commission initiated the Article 93(2) procedure against a Spanish Government scheme to provide aid for the purchase of commercial vehicles, in view of its doubts as to the compatibility of the measure with the common market.

On the other hand it authorized on 7 February the extension of a series of measures aimed at restructuring the Spanish road transport sector by improving its competitiveness and reducing existing overcapacity. The measures are applicable on the same terms as those authorized by the Commission in 1992.

201. With regard to rail transport, in July the Commission adopted its White Paper on a strategy for revitalizing the Community's railways which deals in particular with financing of the railways and sets out the principal guidelines which the Commission will follow when analysing aid in this field. The Commission's aim is gradually to arrive at a system where the only public financing of railways will be in the form of financing for infrastructure or compensation for public service obligations, or where it is part of an overall restructuring plan aimed at restoring the financial viability of the firm. In the meantime, the Commission continued to examine aid cases on the basis of the rules in force:

— On 30 March the Commission decided not to object to the aid proposal notified by the UK authorities for financing the construction, maintenance and management of CTRL, the rail infrastructure for the high-speed train between London and the Channel Tunnel. The Commission considered that the State resources did not constitute aid within the meaning of Article 92 of the Treaty.

— On 18 December the Commission authorized the financing of the investments in the TGV infrastructure in Belgium. The measures are aimed, on the one hand, at financing the construction of the Belgian section of the Paris-Brussels-Cologne-Amsterdam-London line, one of the 14 priority projects in the development of the trans-European networks and, on the other hand, at the acquisition of the specialized rolling stock.

202. In the area of inland waterways, the structural reorganization aimed at reducing existing overcapacity by scrapping vessels, provided for in Council Regulation (EEC) No 1101/89 of 27 April 1989, is to gain fresh impetus following the adoption by the Council on 19 November 1996 of Regulation (EC) No 2254/96 organizing extensive additional scrapping. Overcapacity will be cut by some 15% in the period 1996-98 and will be part-financed in 1996 by the Community, the Member States concerned and the trade. No Community financing is planned for 1997 and 1998. The new Community measures on the structural reorganization of inland waterways are an important measure accompanying the gradual liberalization of the waterway transport market which was the subject of Directive 96/75/EC adopted by the Council on 19 November 1996.

203. In 1996 the Commission authorized several aid measures intended to facilitate, in the Member States concerned, capacity cuts, the restructuring of the inland waterways sector and the development of the latter on the transport market.

204. With regard to combined transport, the Commission authorized the Austrian Government on 27 March to grant loans at preferential rates for investments in combined transport infrastructure in order to promote the transfer of goods carriage from road to rail or inland waterway.

1.1.8. Agriculture

205. After publication at the beginning of 1996 of a new framework for research and development concerning all sectors, including agriculture, [1] the Commission adopted a modification of this document which clarifies and redefines its policy on such aid in the agricultural sector. After entry into force of the modification, the framework will, in certain circumstances, allow public financing of up to 100 % in the agricultural sector. Cases which do not satisfy these conditions are to be examined under the other rules of the framework.

206. In order to verify compliance with its policy on publicity aid in agriculture, the Commission now asks Member States to submit samples of the logos, trade marks and slogans which they plan to use. Previous experience has shown that assurances given by the Member States are not sufficient to guarantee compliance with mandatory Community rules in this field.

207. The Commission is contemplating a modification of its current practice concerning agricultural safeguard aid. A key issue in this debate is whether operators in agriculture should be given different treatment from other operators and, if so, what special treatment would be justifiable. In order to obtain the views of the Member States, the Commission organized a meeting with them. Irrespective of the outcome

[1] OJ C 45, 17.2.1996. p. 5.

of the present discussions, the Commission will continue to apply its existing practice in regard to agricultural safeguard aid until a new policy line is determined and communicated to the Member States.

208. As before, the Commission will continue to oppose any State aid relating to support measures that would be liable to upset the Community market machinery and which, as operating aid, would not have any lasting effect on the development of the sector in question.

1.1.9. Fisheries

209. In 1996 the Commission registered 50 new aid schemes and 12 cases that were not notified or were notified late.

It decided not to object to the aid in 68 cases, of which three were started in 1994, and 26 in 1995. It also decided to initiate the Article 93(2) procedure in respect of two aid measures, one Italian and the other Spanish. In the same period, the Commission decided to terminate the procedure with a positive decision in respect of aid to Denmark notified in 1995. It also decided to take a negative decision in respect of a German aid measure notified in 1995.

1.2. Specific sectors not subject to special rules

1.2.1. Financial sector

210. The position set out by the Commission in the *XXVth Competition Report*,[1] namely, that the substantive and procedural rules concerning State aid should apply to banking, although account should be taken of the particularities of this sector, was confirmed by a group of experts composed of former central bank directors. The Commission is aware that the banking sector is particularly sensitive and the national authorities should take great care to ensure that serious difficulties in a major institution do not spread through the financial links between firms in this sector and provoke a systemic crisis.

211. The *Crédit Lyonnais* decision of 26 July 1995[2] thus constitutes an important precedent in the sector as it confirmed the full applicability of the State aid rules to banks. It also introduced the principle that the counter-concessions which must be offered in order to compensate competitors for the distortions caused by the aid must be greater if the radical solution of a statutory winding-up is out of the question as such a solution, although feasible in the case of an industrial firm, would be more difficult or inadvisable in the case of major banks owing to the disproportionately negative effects it could have on other financial institutions and the payment system, even if the OECD countries have monitoring bodies whose aim is to prevent such crises.

This case had a number of repercussions in 1996. First, the Commission's 1995 decision was the subject of two appeals to the Court of First Instance, one presented by Crédit Lyonnais, which it subsequently withdrew, and the other by Société Générale. The CFI has not yet given its judgment. Second, in September, the Commission decided to approve an urgent grant of FRF 3.9 billion to Crédit Lyonnais and to examine any future restructuring aid. The approved measures are essentially aimed at preventing Crédit Lyonnais from announcing losses that are large enough to affect the French banking sector. The measures are strictly conservatory, aimed at maintaining the status quo until the Commission takes a formal decision on new restructuring measures for the bank. From this point of view, the approval of urgent aid does not prejudice the Commission's final decision concerning new restructuring aid.

212. Lastly, the Commission recorded sharp increases in the number of State aid cases in the financial sector in 1996. It approved, after deeming them compatible with the common market, the aid grants to the financial institutions Comptoir des Entrepreneurs (specializing in real estate) and GAN (insurance). It decided, however, to initiate the Article 93(2) procedure in respect of aid granted to other financial institutions such as Société Marseillaise de Crédit, Crédit Foncier de France, SDBO, Crédit Lyonnais and Banco di Napoli.

1.2.2. The audiovisual sector

213. The Commission received several complaints and was the subject of several actions for failure to act in the audiovisual field. In the *Financing of Portuguese State Radio and Television* case, the Commission took a positive decision after conducting a study of the Portuguese audiovisual sector. It decided that the system of financing Portuguese State broadcasting did not rank as State aid as the assistance was subject to a counter-concession, i.e. the provision of non-competitive services: coverage

[1] See point 197 of that Report.
[2] See *XXVth Competition Report*, point 197.

of the entire national territory, supply to the autonomous regions of Madeira and the Azores, maintenance of audiovisual archives, cooperation with countries where Portuguese is the official language, provision of air time for religious broadcasts, operation of an international channel, financing of a public theatre and maintaining of offices and correspondents in places where private channels are not available. As analytical accounting had been introduced, the Commission was able to determine that the public financing of the channels did not exceed the costs of their obligations.

1.2.3. The postal sector

214. The liberalization of the postal market — which would give competitors access to the networks of the national postal operators for non-letter post — is progressing slowly. A degree of liberalization, however, already exists which allows alternative postal operators to enter the markets for express post, parcel post and direct mail. The Commission is in the process of assessing several complaints concerning the postal operators in Belgium, France and Germany. The complainants allege that the national postal operators are cross-subsidizing their competitive activities with revenues from the monopoly letter post sector. Although in some files considerable progress has been made and two procedures have been initiated,[1] this has not yet resulted in a final decision in any of the cases.

2. Horizontal aid

2.1. Research and development

215. The implementation of the new framework for State aid for research and development (R&D) adopted at the end of 1995 and published in 1996[2] resulted in a reduction in the number of notifications concerning the refinancing of existing schemes and in the approval of a number of notified schemes on the ground of their compatibility with the framework. In applying the framework to four cases, *Olivetti SpA, SGS Thomson, Philips* and *Océ*, the Commission expressed serious doubts that the aid was needed as an incentive, since at first sight the project appeared to constitute a natural business operation and did not go beyond a normal R&D effort; it therefore decided to initiate the Article 93(2) procedure. The other R&D cases studied by the Commission did not raise any particular difficulties.

2.2. Employment

216. In the first full year of application of the guidelines on employment aid, the Commission addressed appropriate measures to Sweden concerning two recruitment and employment aid schemes. The cases are typical of the policy the Commission intends to follow in this area, in particular by taking a series of measures in order to help fulfil the objective of a net creation of stable employment. Thus, in the first case, the aid should be better targeted on the most disadvantaged unemployed persons and should be granted only for jobs left vacant by voluntary departures; in the second case, aid should be given only when new jobs are created. In both cases, the Swedish authorities were asked to reduce the original scope which was too broad and, among other things, to ensure that the jobs created are stable, either by means of contracts of indefinite duration and training, or by maintaining newly created jobs for a minimum period. Similarly, the Commission authorized Denmark to set up a system of aid for the recruitment of the unemployed under the guidelines on employment aid.

2.3. Environment

217. As planned, the Commission carried out a review before the end of 1996 on the functioning of the guidelines on State aid for environmental protection[3] over the last three years. Its review revealed, in general, the large number of positive Commission decisions in the area, which reflects the high level of compliance with the framework rules by the Member States responsible for preparing and notifying aid plans. The Commission had serious doubts only in regard to two cases, prompting it to initiate the Article 93(2) procedure: *Cellulose du Rhône et de l'Aquitaine* and *Hoffmann La Roche*. The review confirmed that aid to productive investment in the manufacture of environmentally sound products does not enjoy exemption under the guidelines in view of the considerable distortions of competition which production aid may entail for competitors on the same market; secondly, the application of the guidelines established the principle that only the extra costs of investment for environmental improvements are covered by the guidelines. Thirdly, it is for the Member States to demon-

[1] Case NN 187/85, OJ C 206, 17.7.1996, and Case NN 48/96, OJ C 311, 22.10.1996.
[2] OJ C 45, 17.2.1996, p. 5.
[3] OJ C 72, 10.3.1994, p. 3.

strate that an investment significantly improves on the environmental standards in force if the firm is to benefit from higher aid intensities, the exact amount of the increase depending on the positive externalities of the investment; lastly, the exception that is made for waste treatment and environmental taxes from the prohibition on operating aid was confirmed in the *GAV* case.

In the light of the conclusions of the overall assessment of the application of the guidelines, the Commission decided it was advisable to wait until they expired at the end of 1999 before making any necessary amendments.

2.4. Small and medium-sized enterprises

218. In April the Commission adopted a new version of its Community guidelines on State aid for small and medium-sized enterprises (SMEs).[1] It confirmed its favourable view of certain State aid for SMEs inasmuch as they are a factor of social stability and economic dynamism but are, compared with large firms, faced with a series of handicaps liable to impede their development. The new text also introduces certain amendments to the preceding guidelines, in particular under the impetus of the White Paper on growth, competitiveness and employment: the definition of an SME was based on that adopted at Community level in the Commission recommendation[2] concerning the definition of SMEs in Community policies; in addition, its favourable view was extended to cover intangible investment aid in the form of technology transfers. It is also worth noting the growing interest being shown by many SMEs in intangible investments. Lastly, the *de minimis*[3] rule was separated from the guidelines and now forms a separate text concerning all enterprises. However, SMEs continue to be the main beneficiaries of the *de minimis* rule.

2.5. Rescue and restructuring aid

219. The Commission continued in 1996 to apply the criteria of the Community guidelines on State aid for rescuing and restructuring firms in difficulty adopted by the Commission on 27 July 1994.[4]

Albeit often linked to similar kinds of situations when an enterprise is facing severe difficulties, rescue aid and restructuring aid show basic differences. Rescue aid temporarily maintains the position of a firm that has suffered from a substantial deterioration in its financial position while long-term solutions aimed at overcoming the company's difficulties can be found. The guidelines allow for rescue aid to be granted during a limited period of time, normally only up to a period of six months. Given that rescue aid is often necessary to relieve a troubled enterprise from its acute problems while an appropriate restructuring plan is being drawn up, the Commission normally takes a positive view and authorizes such aid provided that the criteria comply with the guidelines.

Restructuring aid is, on the other hand, subject to strict conditions. Such aid must be linked to a restructuring plan in order for the long-term viability of the company in difficulties to be restored within a reasonable period of time. Moreover, such aid should normally be a one-off operation, so that further aid is not subsequently required.

220. In this context, it is worth noting that the Commission has started to reflect on the impact of non-compliance by Member States with the State aid rules when dealing with enterprises in difficulty. It has emerged in certain cases that contrary to Commission decisions, illegally awarded incompatible aid has not been recovered (or has been recovered only to a limited extent) from the beneficiaries which, having encountered severe financial problems, have been put into liquidation.

2.6. Underprivileged urban areas

221. In October, following the notification by France of the 'Urban renewal pact' ('Pacte de relance pour la ville'), the Commission stated that it would take a favourable view in principle of aid to deprived urban areas by adopting a specific framework on the subject. The existing Community framework, whether in respect of aid to small and medium-sized enterprises, aid to employment or regional aid, did not allow the particular geographic and socio-economic situation of these areas to be taken properly into account. Yet some financial assistance from the State may be necessary owing to the structural handicaps and the extra costs of setting up businesses in such areas.

1 OJ C 213, 23.7.1996, p. 4.
2 Commission recommendation on the definition of small and medium-sized enterprises of 3 April 1996, OJ L 107, 30.4.1996.
3 OJ C 68, 6.3.1996, p. 9.
4 OJ C 368, 23.12.1994, p. 12.

The new text is based on social and economic considerations inasmuch as the aim of the aid in question is to help to reduce or even to resolve a variety of problems (employment, development, etc.) affecting certain urban areas. As such, it forms one of the priorities of the White Paper on growth, competitiveness and employment and is within the terms of reference of the Community URBAN initiative.

In the guidelines, the Commission states that it will take a favourable *a priori* view of State aid which helps to develop deprived urban areas, provided that it satisfies certain conditions. Thus, in order to ensure maximum effectiveness of the measures introduced whilst maintaining a competitive balance and respect for the general interest, general conditions have been imposed as to the eligibility criteria applicable to the areas, the beneficiaries of the aid and the form and intensity of the authorized aid. Examples of these conditions are as follows: the total national population covered by these areas will normally be limited to 1%; the aid will be limited to small enterprises (under 50 employees); at least 20% of the jobs created will be reserved for persons residing in the deprived urban area; lastly, the maximum intensity of the aid is fixed at 26% net of the investment or at ECU 10 000 per job created.

The Commission considers, furthermore, that in a number of cases, the public measures will not be covered by the Community competition laws as trade between Member States will not be affected. It has therefore established a list of activities which, owing to their traditionally local and non-transnational nature, should fall outside the scope of these rules.

3. Regional aid

222. Apart from its regular monitoring of aid schemes, the Commission continued its analysis of the map of regions eligible for regional aid and the relevant aid rates. It approved new maps for Luxembourg, the Netherlands and Germany and is continuing its work with regard to Denmark and Italy. With a view to strengthening economic and social cohesion, the analysis essentially concerns two aspects: geographic cover and aid intensity. With regard to the former, the Commission's aim is to reduce the percentage of population covered which should enable a greater concentration of aid, thus improving its financial effectiveness, limiting its impact on competition and making more effective use of limited budgetary resources. As regards aid intensity, the Commission sees to it that the difference between the ceilings in the different regions is maintained according to their macroeconomic situations. As regards the new Member States, the Commission paid equal attention to new schemes and the amendments which, in accordance with the accession agreements, were made to schemes in force at the time of accession in order to bring them into line with Community rules in 1997. Thus, the transport aid scheme in Finland and Sweden was analysed in the light of the Commission communication of 20 December 1994[1] which lays down special rules for areas with a low population density.

The Commission also examined the compatibility with the Treaty of the measures provided for in the single programming documents relating to Community Structural Fund assistance in the Objective 2 regions in the period 1997-99. In addition to this particular aspect, the Commission pursued its efforts to check the compatibility of Structural Fund assistance with the competition rules under Articles 92 and 93 of the EC Treaty.

At a multilateral meeting on 15 May the future guidelines concerning regional aid were discussed. While meeting the need for codification in this area that is due to the multitude of existing texts, the draft document also includes new rules, some of which have emerged in Commission policy in recent years, and should help to strengthen cohesion between, on the one hand, competition policy with regard to State aid and, on the other, the activities of the Structural Funds.

3.1. A specific case: post-Treuhandanstalt

223. The Commission again confirmed that it did not intend to extend the old 'Treuhand' scheme. The normal notification rules are applicable as from 1 January 1996. The Commission acknowledges that the new *Länder* continue to have problems of adjustment, essentially due to the consolidation of a large number of firms that were part of the massive privatizations. The Commission does not intend to delay the process as State aid is a tool for facilitating

[1] Changes to the method for the application of Article 92(3)(c) of the EC Treaty to regional aid, OJ C 364, 20.12.1994, p. 9, point 6.

readjustment. The number of cases and the urgency of some of them remain a problem. The Commission considered, however, that the number of cases was now sufficiently small to be able to move to a more detailed level of legal and economic analysis of each case. It believed that cases could in future be dealt with on the basis of existing legal instruments. Organizational changes were able to satisfy the problems posed by the number and urgency of cases. In particular, the Commission set up a task force to deal with cases and adopted rules of procedure for rapid processing.

Apart from the usual problems of development also facing the other Member States, adaptation in the new *Länder* poses three particular problems for aid policy:

— The management of privatization contracts by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS). This system is necessary because in most privatization contracts, ties between the BvS and investors continue well after privatization. Each year, some 3 000 contracts must be adapted. Most adaptations are not caught by Articles 92 and 93 of the EC Treaty, although some of them may be regarded as aid and must be notified. However, in minor cases involving SMEs, a system of exceptions was proposed to simplify the process and is awaiting approval. As the BvS is endeavouring to terminate the management of contracts, this activity will gradually disappear. The BvS should have completed its work by the end of 1998.[1] The German Government systematically informs the Commission, in accordance with Article 5 of the EC Treaty, of all changes to contracts. The Commission is thus able to check whether or not there is any aid.

— Secondly, completion of the remaining privatizations by the BvS or the BMGB (BeteiligungsManagement-Gesellschaft Berlin GmbH, another successor to the Treuhand). The BvS and BMGB are making a particular effort to privatize the remaining 40 firms. For obvious reasons, the last privatizations can cause difficulties with regard to Community State aid policy. Potential investors in companies that have been 'for sale' for a long while will often be attracted only with the help of aid measures. In practice, therefore, virtually all the remaining privatizations will be subject to the notification requirement. The Commission analyses most of the cases on the basis of its guidelines on State aid for rescuing and restructuring firms in difficulty. When it is convinced that the restructuring plan will lead to the recovery of the firm without distorting competition, it usually approves the aid unless it is covered by one of the sectoral frameworks. In that case, the Commission applies its sectoral rules. Several decisions have authorized amounts of aid that seem very large in relation to the size of the firm. This is due to the financing over a long period of the business of the firm by means of loans. The amounts provide for debt write-offs. Financially speaking, there are few links between the activity of the new, privatized firm and that of the old firm which benefited from the aid.

— Thirdly, the rescue and restructuring of specific firms ('Auffanglösungen') where the privatization has failed or where a simple corrective measure taken under the contract was not sufficient to restore the viability of the company. Where the firm encounters serious difficulties, it is not rare for either the entire company or a part of its assets to return to the BvS portfolio. New owners must therefore be found for the firm or, more frequently, for part of it. Depending on the circumstances, these acquisitions may be accompanied by aid measures. In certain cases, the acquirer may be satisfied with a classic investment aid under a regional scheme; in others, more substantial restructuring efforts are required. The latter cases are analysed on the basis of the guidelines on State aid for rescuing and restructuring firms in difficulty. It is worth noting that the *Sket* case falls into this category.

4. Direct investments abroad

224. Although the Commission regards export aid, i.e. aid related to the volume of products exported, as being contrary to the common market on the basis that it does not promote any Community objective and leads to unjustified distortions of competition, a type of aid for what is generally referred to as 'direct investments abroad' is becoming increasingly widespread and has prompted the Commission to formulate an appropriate policy. The Commission is currently developing its position on a pragmatic basis as it needs a sufficient number of cases in

[1] Some 600 contracts a month are being terminated out of a total of 38 000.

order to have the breadth of experience to allow it to define generally applicable principles.

Direct investments abroad result from a firm's desire to develop new business outlets by investing and selling on foreign markets rather than by exporting. Investment generally takes the form of setting up a joint venture or a subsidiary abroad, either by acquiring shares or purchasing a local firm. Whilst such aid is certainly State aid, it may in certain cases, apart from its effects on the competitiveness of Community industry and the development of cooperation with third countries, promote other Community objectives such as the development of SMEs. It is possible, on the other hand, that such aid could run counter to the objective of economic and social cohesion inasmuch as it could encourage the siting of subsidiaries or production plants in third countries, to the detriment of investment within the Union.

In three final decisions taken in June concerning aid for direct investment abroad, the Commission decided to apply the existing rules for aid to SMEs irrespective of the location of the investments and to assess aid to large firms on a case-by-case basis.

D — Procedures

225. In 1996 the Commission took several decisions ordering a Member State to recover aid from recipients that had been granted in breach of the rules of procedure and which it had deemed incompatible with the common market. The decisions confirmed the precarious nature, for all recipients, of aid granted unlawfully and the need for firms to be vigilant when accepting aid. The system of *a priori* monitoring of aid is intended to prevent the implementation of aid that is incompatible with the common market and to protect competitors from the effects of such aid.

226. The Court again examined the role of the national courts in safeguarding the rights of competitors of the recipients of illegal aid. It also specified that, save in exceptional circumstances, determining that an aid is unlawful should lead to its recovery in accordance with national procedures. Furthermore, national courts are not required to wait for the Commission to come to a decision on the compatibility of the aid in order to take the necessary measures.

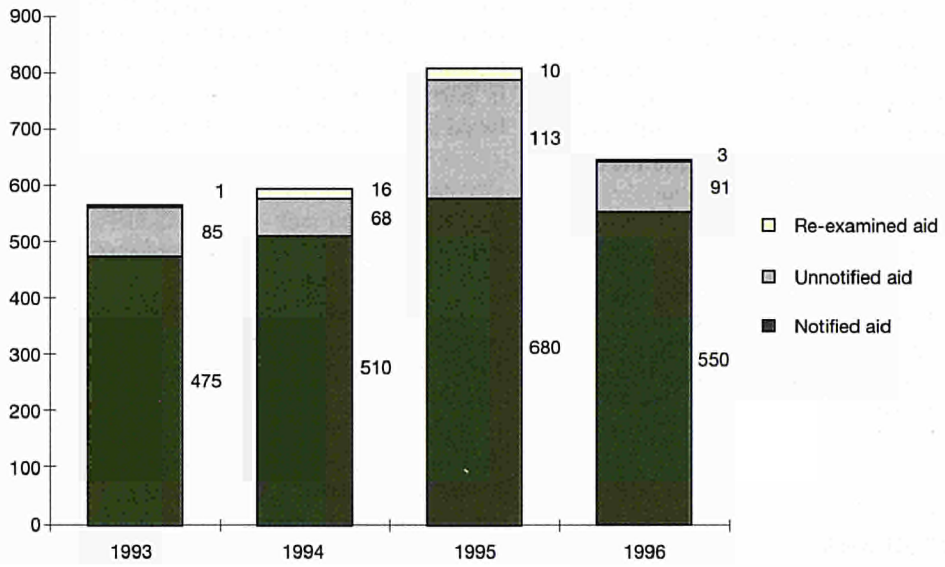
227. In November 1995 the Commission published a notice on cooperation between national courts and the Commission in the State aid field. The notice seeks in particular to encourage courts to exercise their powers and companies to make use of the legal remedies available under domestic law. Only two requests for consultation of the Commission were lodged in 1996 under the notice.

The Commission plans in 1997 to collect detailed information on the treatment given hitherto to State aid cases in national courts. The review will concern both the application of the direct effect of the 'standstill' clause contained in Article 93(3) and any disputes relating to compliance with final decisions. It will seek in particular to identify the types of problems faced by third parties in national courts.

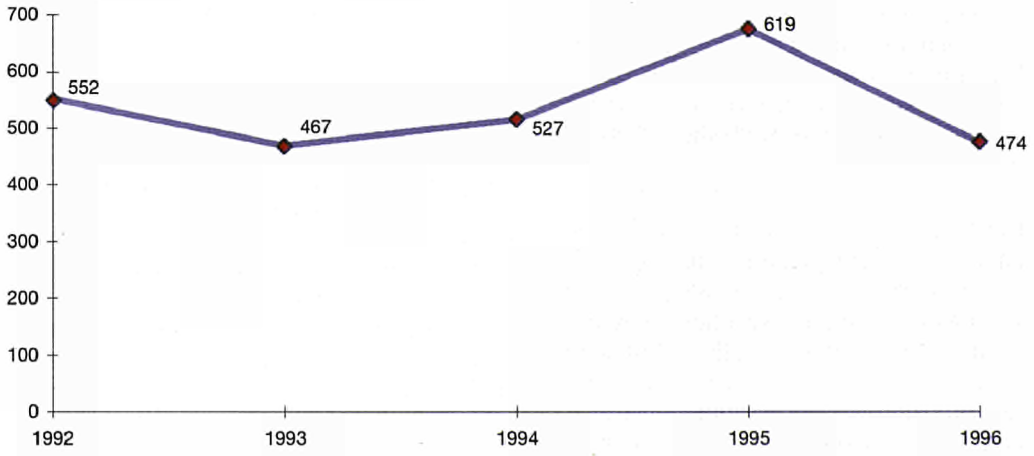
E — Statistics

228. Over the year, the Commission registered 553 notifications of new aid measures or changes to existing aid measures and 91 cases of unnotified aid.[1] In the same period, it decided in 373 cases not to raise objections. In 43 cases it decided to initiate the procedure provided for in Article 93(2) of the EC Treaty or in Article 6(4) of Decision 3855/91/ECSC. This detailed analysis procedure resulted in 14 positive final decisions, 23 negative final decisions and three conditional final decisions. Lastly, the Commission decided to propose appropriate measures under Article 93(1) of the EC Treaty in respect of four existing aid measures.

Graph 6
New cases in 1996

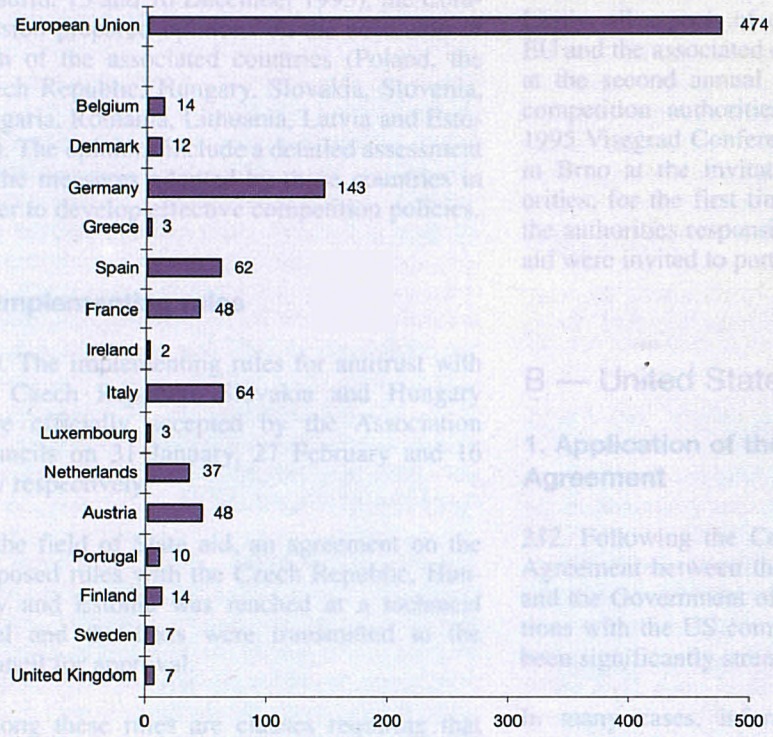


Graph 7
Decisions taken by the Commission



[1] These figures do not include aid cases in agriculture, fisheries, transport and coal.

Graph 8
Decisions by Member State



V — INTERNATIONAL COOPERATION

A — Central and Eastern Europe

1. Opinions on accession

229. At the request of the European Council (Madrid, 15 and 16 December 1995), the Commission prepared opinions on the accession of each of the associated countries (Poland, the Czech Republic, Hungary, Slovakia, Slovenia, Bulgaria, Romania, Lithuania, Latvia and Estonia). The opinions include a detailed assessment of the measures adopted by those countries in order to develop effective competition policies.

2. Implementing rules

230. The implementing rules for antitrust with the Czech Republic, Slovakia and Hungary were officially accepted by the Association Councils on 31 January, 27 February and 16 July respectively.

In the field of State aid, an agreement on the proposed rules with the Czech Republic, Hungary and Estonia was reached at a technical level and the texts were transmitted to the Council for approval.

Among these rules are clauses requiring that each of the associated countries should adopt:

— national rules on the granting of State aid;

— a supervisory authority responsible for enforcing those rules and with effective power to obtain information.

3. Technical assistance

231. The technical assistance provided by the Commission together with the authorities of the Member States was more closely focused than in the past on supporting the development of a State aid policy, either through advice and training provided *in situ* or through training courses in the Commission or in Member States.

This year was the first time that the four-week joint training course, held annually in Brussels and the Member States, for some 40 young civil servants from associated countries has focused equally on antitrust and merger policy, on the one hand, and State aid policy, on the other.

A start was made to compiling an inventory of State aid granted in various forms in the associated countries.

Consultations were also initiated on putative aid which was incompatible with the Europe Agreements (e.g. export aid) or liable to be incompatible with them (certain aid for industries to which guidelines apply).

Lastly, all aspects of cooperation between the EU and the associated countries were discussed at the second annual conference of heads of competition authorities which, following the 1995 Visegrad Conference,[1] was held this year in Brno at the invitation of the Czech authorities; for the first time, senior officials from the authorities responsible for monitoring State aid were invited to participate.

B — United States

1. Application of the Cooperation Agreement

232. Following the Council's approval of the Agreement between the European Community and the Government of the United States, relations with the US competition authorities have been significantly strengthened.

In many cases, information was exchanged (within the limits permitted by the national rules on confidentiality). Moreover, the competition authorities consulted each other in the analysis of cases and possible remedies and endeavoured to coordinate procedures when they were both investigating the same cases. In some cases, the competition authorities were able, with the agreement of the businesses concerned, to exchange information obtained during their investigations, which made for more effective cooperation.

In addition, the Commission and the US antitrust authorities had regular exchanges of views, in particular at the bilateral, high-level meeting held in Washington on 16 October dealing with various aspects of the competition policies pursued by both parties and other matters of common interest.

On 8 October the Commission adopted a report to the Council and the European Parliament on the application of the Agreement over the period from 10 April 1995 to 30 June 1996. Such reports will henceforth be published annually.

[1] *XXVth Competition Report*, point 221.

2. Development perspectives

233. The Commission, collaborating closely with the competition authorities of the Member States, began work with a view to tightening up bilateral cooperation.

Two possibilities were explored:

— to extend information exchange with the competition authorities of certain third countries (primarily the United States authorities, with whom close cooperation already exists); this would enable competition policy to be implemented more effectively, with the rights of the parties, particularly the confidentiality of information handled, being fully secured;

— to reinforce 'positive comity' procedures. With this in view, the Council adopted on 25 October a negotiating brief for the reinforcement of certain provisions contained in the Agreement with the United States. The negotiations pursued on this basis should result in an agreement on when and how a competition authority should normally defer or suspend the application of its competition rules (if this discretion is open to it under national law) in order to allow the competition authority of the other party, proceeding under its own rules, to terminate distortions of competition affecting the interests of both parties.

234. On 17 June the Council also gave the Commission a negotiating brief for an agreement with the United States establishing a common airspace so that the two parties' airlines can engage freely in their activities in the European Community and the United States on the basis of commercial principles ensuring conditions of fair and equivalent competition. It is envisaged that the application of competition rules, in addition to other regulatory aspects, will be discussed in the negotiations. The establishment of stronger cooperation with the United States authorities, in particular concerning the control of alliances between airlines, may follow from the negotiations.

C — WTO

1. Trade and competition

235. On the basis of the report of the group of experts entitled 'Competition policy in the new trade order: Strengthening international cooperation and rules',[1] the Commission proposed in a communication to the Council dated 18 June[2] that the World Trade Organization should set up a working group which would be responsible for initial work on the development of an international framework of competition rules.

Following this initiative, which was approved by the Council and supported by several other States, a decision was adopted by the Singapore Conference on 11 December '[to] establish a working group to study issues ... relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit consideration in the WTO framework'. Discussions can begin early in 1997 but, as proposed by the Commission, these will be exploratory discussions and not negotiations. Negotiations are seen as a possibility only, after the group's two-year term of office expires, if there is a wide consensus within the WTO.

The discussions within the WTO do not preclude continued cooperation both in the OECD and at bilateral level, but it is important to initiate discussions within the WTO so as to get the developing countries to introduce competition rules. Furthermore, the discussions will be carried on in close cooperation with the WTO and the OECD. The working group will have to take account of the important work, previous, current and future, carried out in those bodies.

236. In concrete terms, the Commission considers that the discussions should focus on the following points:

— an undertaking by all WTO members to develop active domestic competition structures;

— the identification and adoption of common competition principles at international level (most harmful practices);

— the creation of the means of cooperation between competition authorities;

— the adapting of the WTO rules for the settlement of disputes to the competition area.

[1] Usually known as the Van Miert report.
[2] COM(96) 284 final.

2. State aid

237. Following the adoption in 1995 of the Joint Notification and Reporting Procedure, an improvement was seen in the reporting of State aid and subsidies during 1996. In fact, a growing number of Member States computerized the transfer of such information to the Commission.

3. Access to the Japanese market in photographic film and paper

238. On 13 June the United States requested the WTO to initiate consultations concerning access to the Japanese market in photographic film and paper.

Part of the procedure concerns practices in restraint of trade. The actions of the Japanese competition authorities which are complained of include tolerating, or indeed promoting, the anti-competitive practices observed in this field. The practices complained of are alleged against Fuji (vertical imposition of selling prices, abusive practices concerning targeted discounts, exclusive dealing agreements and horizontal agreements on prices) and against various professional associations (pressure on distributors to make them refrain from promotional activities).

The Community asked to be associated in these consultations.

D — OECD

1. Committee on law and competition policy

239. The OECD's work, in which the Commission took an active part, extended to various issues concerning categories of business operations (application of the competition rules to 'essential infrastructures', SMEs, the liberal professions and enterprises holding a dominant position) and industries (application of the competition rules to telecommunications, electricity, broadcasting, motor vehicle distribution, etc.). A round-table conference, attended by a number of senior judges, was also held on the courts' application of the competition rules. Lastly, the Commission participated in a large-scale study by the OECD of the role of 'competition advocate' played by the various competition authorities; among the findings of the study was that, regarding the Community, DG IV plays an active role within the Commission to ensure that the competition dimension is taken into account when other Community policies are developed.

240. At the end of the year the OECD also initiated work on the reinforcement of international cooperation against cartels; this work covered the implications of more extensive information exchange between competition authorities along the lines of those carried out within the Community.

2. State aid

241. Finally, with respect to State aid, the Commission took part in the OECD's working party on public support measures and contributed to the successful completion of the OECD report, 'Public support to industry'.

E — Other developments in international relations

1. Mediterranean countries

242. The new agreement on customs union with Turkey came into effect at the beginning of 1996. It contains detailed binding rules on competition policy and forms the basis for close cooperation between the Commission and the Turkish authorities.

243. Negotiations on association agreements with Egypt, Jordan, Lebanon, the Palestinian Authority and Algeria are under way. Like the Euro-Mediterranean agreements already concluded, for example with Morocco on 26 February and the interim agreement with Israel which entered into force on 1 January, these agreements should contain provisions on the alignment of competition rules. This entails the development of technical assistance activities for those countries.

2. Japan

244. The annual bilateral meeting between DG IV and the Japanese Fair Trade Commission was held in Brussels on 29 October. The two parties discussed the principal developments in legislation and the application of the competition rules. The meeting also covered various issues concerning bilateral relations.

3. Latin America

245. Relations with Latin American competition authorities intensified during 1996. This came about, on the one hand, through the development of competition policies in this region (all the major countries have adopted competition rules and established authorities responsible for their enforcement) and, on the other, through the development of regional cooperation (involving Mercosur). Lastly, significant agreements have been or are being negotiated by the EU with countries in the region and with Mercosur; the development of closer links heightens the need for greater cooperation on competition. With this in view, new contacts were made, in particular with Brazil, Argentina, Mexico and Peru (and the Andean Pact countries).

246. During 1996 the Commission continued its information campaign on competition policy, employing various channels.

First of all, it has issued press releases on competition-related issues.

In addition, DG IV, in cooperation with the Office for Official Publications of the European Communities, published a number of reference works on competition law and continued to bring out the *EC Competition Policy Newsletter;* issued three times a year and with a current print-run of 30 000 copies, this journal forms a leading source of information in the field.

Moreover, since July, DG IV has been placing information concerning European competition policy on Europa, the European Union's World Wide Web server (site: http://europa.eu.int). Europa contains information on the activities of the Union's institutions, and DG IV's homepage may be accessed through the section dealing with the European Commission's activities. DG IV's homepages contain information on the main aspects of competition policy, namely antitrust, mergers, liberalization, State aid and international aspects. Under each of these headings, the user can find sections containing press releases published in the previous two weeks, acts published in the Official Journal in the previous month, the full texts of current legislative provisions and a list, with references, of Commission decisions and of judgments delivered by the European Court of Justice and the Court of First Instance. Separate sections set out speeches given and articles published by the Member of the Commission with special responsibility for competition policy, the Director-General of DG IV and DG IV officials, previous issues of the *EC Competition Policy Newsletter,* the Annual Report on Competition Policy, an updated list of Community publications on competition available to the public, plus other documents of interest, links with the websites of other national and international competition authorities, etc.

Lastly, it should be noted that the Directorate-General for Competition (DG IV) has an information unit responsible for responding to questions from the public by providing the appropriate documents or information. The replies to requests for information usually take the form of standard letters referring to the publications mentioned above and to DG IV's homepages on Europa.

247. At the request of the European Parliament and in keeping with its policy of transparency, the Commission has decided to include in its annual report a chapter on future policy and initiatives which it intends to take in the year reported on.

248. The underlying objective in the field of competition policy in 1997 will be to secure effective competition within the single market for the benefit of European consumers and citizens and contribute to the competitiveness of European industry. This objective is reflected in all of the proposals and actions that will be pursued in 1997: the need for a substantive approach based on a sound assessment of the market, reducing regulatory costs and effective monitoring of sectors newly opened to competition.

1. Legislative priorities

249. With respect to horizontal actions, seven areas of priority policy development can be identified.

250. First, the Commission will continue and intensify the process begun in 1996 of ensuring that the Community's competition policy is applied taking full account of the rapidly evolving nature of the market place. As markets integrate, both in the EU and globally, it is vital that this evolution be reflected in the substantive approach taken by the Commission. Thus, the adoption and publication of a Green Paper on vertical restraints in EC competition policy has opened a wide-ranging debate on the manner in which the Commission's policy in this area should be revised.

251. With respect to liberalization, the second priority area, the main task will be to follow up the Directives adopted in the telecommunications sector in recent years, and in particular the full competition Directive adopted in 1996. The Commission will ensure that these Directives are fully and effectively implemented by the Member States, pursuant to Articles 86 and 90, in order to prepare a swift opening of voice telephony to competition on 1 January 1998.

252. Third, the Commission will continue the process of modernizing procedural rules and simplifying and increasing the transparency of its policy. For example, it will commence an examination of the simplification of the procedure for oral hearings. It will also pursue the preparation of measures to improve the existing implementing rules in the air transport sector, in particular with respect to air transport between the EU and third countries. Furthermore, it will continue its work on guidelines for market definition applied in competition policy. Finally, as the Commission's practice regarding restrictions ancillary to concentrations has evolved since 1990, when the existing notice was adopted, it is intended to carry out a comprehensive review with the aim of revising the existing notice.

253. The ongoing structural difficulties facing Europe, in particular with respect to employment, makes the continuation of the policy of strictly limiting aid to those projects of real interest for the EU of vital importance. In addition to the resultant case work, particular efforts will be made in this area during 1997 towards a more efficient and transparent control as well as increased legal certainty. Proposals to the Council are envisaged under Article 94, on the one hand, to enable the Commission to define categories of aid exempted from the notification procedure and, on the other hand, to lay down procedural rules. Also envisaged for adoption by the Commission are the codification of regional aid rules and the multisectoral framework on regional aid for major investment projects. New texts will need to be adopted to replace the shipbuilding Regulation and the car framework Regulation expiring in 1997. Finally, a communication is also envisaged on short-term export credit insurance.

254. The fifth priority area concerns the decentralized application of the Community competition rules. It is expected that the final text of the notice on cooperation between the Commission and the national competition authorities will be adopted in early 1997. The effective implementation of this notice in practice will be an important priority for the Commission.

255. Sixth, in international cooperation the Commission will continue its efforts on three main priorities:

— preparation for enlargement and ongoing actions to promote antitrust instruments and policies in the CEECs through technical assistance; in 1997, the main emphasis will be put on the development and enforcement of rules on State aid compatible with the EC rules and adapted to the particular circumstances of the economies in transition;

— cooperation in antitrust with our main trade partners, with the completion of negotiations with the United States on a new cooperation

agreement, which will reinforce the existing provisions on 'positive comity'. Moreover, an agreement on cooperation with Canada is to be concluded in 1997;

— promotion of effective competition policies all over the world through discussions in the working party set up by the WTO Ministerial Conference in Singapore (December 1996) and in the framework of the OECD.

256. Finally, in line with its objective of reducing regulatory costs for European industry to the minimum possible while maintaining an effective enforcement system, the Commission will concentrate available resources on cases of major legal, economic or political interest for the EU. In order to do so, the Commission intends to revise the *de minimis* notice. The intention is to widen the scope of the notice by focusing more closely on the economic consequences of agreements. Depending on comments, particularly of Member States and of other interested parties such as economic and professional organizations and consumers on the Commission's draft notice, final adoption of a revised notice is envisaged in 1997.

2. Enforcement policy

257. Contrary to most sectors of Community action, in the competition field the main area of the Commission's work concerns case work. In 1997 the Commission will continue to concentrate on the effective treatment of notifications, complaints and *ex officio* proceedings regarding Articles 85, 86 and 90, mergers and State aid.

258. With respect to the application of Articles 85 and 86, the identification, prohibition and fining of cartels represent the Commission's highest priority. A major challenge in this field is the allocation of the necessary resources to investigate known cases within short time limits and to uncover other cartels. At the beginning of 1997 there were active investigations into 14 cartels, most of which cover all or a large part of the Community.

The Community approach of outlawing private restrictions of parallel trade between Member States, and fining companies infringing this rule severely, has made a major contribution to the single market process and continues to play a major role in its completion. The Commission will continue, therefore, to pursue actively such arrangements.

As the single market develops, the Commission is already beginning to receive an increasing number of complaints concerning attempts by dominant firms to prevent the entry or expansion of new or fledgling market entrants into 'their' markets. This trend is likely to continue with the entry into force of the various liberalization measures taken by the Community in the telecommunications, transport and energy sectors. Such cases, many of which are based on Article 90 together with Article 86, include complex issues such as access to networks and to infrastructure of incumbent dominant operators, long-term exclusive supply arrangements and strategic alliances.

259. The vigour and complexity of merger and acquisition activity associated with globalization, restructuring and rationalization reveal few signs of falling off and so a further significant increase in cases to be appraised, several with in-depth, second-stage investigations, are expected in 1997. All cases must be dealt with within the imperative deadlines fixed in the Merger Regulation and a formal decision must be taken. It is further expected that in 1997 procedural adaptations will be brought to a conclusion, so that formal decisions under Article 66 of the ECSC Treaty are adopted in a streamlined manner similar to decisions under the Merger Regulation.

260. Finally, in relation to State aid, the increase in the number of new cases and decisions between 1993 and 1995 was not confirmed in 1996. However, the growing complexity of these cases has been reflected by a 150% rise in the number of negative decisions. This confirms the need for Article 94 proposals allowing the Commission to concentrate its resources on the more complex cases, exempting the more routine ones from the requirement of notification.

The complexity of cases is linked both to problems of compatibility and to the sectors concerned, which include the banking sector, industries in structural crisis (shipbuilding) as well as gradually liberalized industries presenting problems of cross-subsidization from reserved to competitive activities.

ANNEX: CASES DISCUSSED IN THE REPORT

1. Articles 85 and 86

Case	Publication	Point numbers
Systemform GmbH	OJ L 47, 18.2.1997	52
Interbrew	EC Competition Policy Newsletter, summer 1996, pp. 24-25	53
Adalat	OJ L 201, 9.8.1996	58
Pelika RAY		61
Novo Nordisk	EC Competition Policy Newsletter, summer 1996, pp. 25-26	62
Visa International	IP/96/585	63
IRI/Nielsen	IP/96/1117	64
Atlas	OJ L 239, 19.9.1996	67
Phoenix/GlobalOne	OJ L 239, 19.9.1996	67
Unisource	OJ C 44, 12.2.1997	68
Uniworld	OJ C 44, 12.2.1997	68
Deutsche Telekom	IP/96/1089	71
SIM Lock	IP/96/791	75
Iridium	OJ L 16, 18.1.1997	78
St Lawrence Coordinated Service	IP/96/400	86
East African Container Service	IP/96/400	86
Joint Mediterranean Canada Service	IP/96/400	86
Joint Pool Agreement	IP/96/400	86
Baltic Liner Conference	IP/96/400	87
TACA	IP/96/1096	91
Fenex	OJ L 181, 20.7.1996	95
Ferry Operators	OJ L 26, 29.1.1996	97
Lufthansa/SAS	OJ L 54, 5.3.1996	98
British Airways/American Airways		99, 100
FIFA — UEFA	IP/96/62	104
BNP/Dresdner Bank	OJ L 188, 27.7.1996	408
ECU Banking Association		109
IBOS		109
Eurogiro		109
Danish Bankers' Association		109

2. Article 90

Case	Publication	Point numbers
GSM Spain	IP/96/1175	120
Olympic Airways		129
Brussels-National Airport		130
Helsingør harbour	IP/96/205; IP/96/456	131

3. Merger control

Case	Publication	Point numbers
Gencor/Lonrho	OJ L 11, 14.1.1997	137, 146
Kesko/Tuko		137, 142, 143, 144, 147, 155
Saint Gobain/Wacker Chemie/NOM		137
Kimberly-Clark/Scott	OJ L 183, 23.7.1996	137, 145
Ciba-Geigy/Sandoz		137, 140, 141
Shell/Montecatini	OJ L 294, 19.11.1996	137
RTL/Veronica/Endemol	OJ L 294, 19.11.1996	137, 149
Rewe/Billa		140, 142, 143, 144, 147
Bertelsmann/CLT		148
Telefónica/Sogecable		150
Gehe/Lloyds Chemists		153
RWE/Thyssengas		154
Bayernwerk/Isarwerke		154
Sun Alliance/Royal Insurance		156
GEC/Thomson-CSF (II)		157
British Aerospace/Lagardère		157

4. State aid

Case	Publication	Point numbers
Volkswagen Sachsen	OJ L 308, 29.11.1996, p. 46	160, 186
Santana Motor SA	OJ L 6, 10.1.1997, p. 34	160, 189
Mercedes-Benz Ludwigsfelde	OJ L 5, 9.1.1997, p. 30	160, 189
Ford Motor		160
La Seda de Barcelona	OJ L 298, 22.11.1996, p. 14	160, 193
Allied Signal Polymers GmbH	OJ C 113, 18.4.1996, p. 8	160
Italian Law on firms in difficulties	OJ L 180, 19.7.1996, p. 31	162
Financing of Rádio Televisão Portuguesa (RTP)		167
Commercial and industrial sites in Austria	OJ C 300, 10.10.1996, p. 4	167
Danish Law on the taxation of waste water		167
Belgacom		169
British Energy		169
Head Tyrolia Mares		169
Bredo Fucine Meridionali	OJ L 272, 25.10.1996, p. 46	170
British Coal Enterprise		170
Servola SpA	OJ C 273, 19.9.1996, p. 4	170
Société Française de Messagerie Internationale/Chronopost	OJ C 206, 17.7.1996, p. 3	171
Sécuripost	OJ C 311, 22.10.1996, p. 12	171
Maribel bis/ter		172
Social tourism in Belgium		173
Institut Français du Pétrole	OJ L 272, 25.10.1996, p. 53	173
Corsican free zone		173
Urban redevelopment pact	OJ C 215, 25.7.1996, p. 7	173
MTW and Volkswerft/Bremer Vulkan AG		176
Alti Forni e Ferriere di Servola	OJ L 216, 27.8.1996, p. 11	178
Forges de Clabecq		178
Ecopipe	OJ C 199, 9.7.1996, p. 5	178
United Kingdom coal industry (Decision 95/514/ECSC)	OJ L 216, 27.8.1996	180

German coal industry (Decision 96/560/ECSC)	OJ L 244, 25.9.1996	181
French coal industry (Decision 96/458/ECSC)	OJ L 191, 1.8.1996	182
Spanish coal industry (Decision 96/575/ECSC and Decision 96/591/ECSC)	OJ L 253, 5.10.1996; OJ L 259, 12.10.1996	183
Portuguese coal industry (Decision 96/576/ECSC)	OJ L 253, 5.10.1996	184
MCC-Swatch	OJ C 391, 28.12.1996, p. 11	186, 188
Suzuki Manzanares	OJ C 150, 24.5.1996, p. 3	187
Mercedes-Benz Spain	OJ C 276, 21.9.1996, p. 3	188
Opel Portugal	OJ C 343, 15.11.1996, p. 2	188
Daewoo		190
General Motors		190
Iberia	OJ L 104, 27.4.1996, p. 25	196
Olympic Airways	OJ C 176, 19.6.1996, p. 5	196
Air France	OJ C 374, 11.12.1996, p. 9	196
TAP		196
UK special tax measure for shipowners		198
German aid schemes for ships		198
Netherlands aid for ships		198
French tax measures to encourage co-ownership of ships		198
CGM		198
Restructuring of ports in Italy		199
Restructuring of road transport in Italy		200
Italian tax-credit scheme for road hauliers		200
Aid for the purchase of commercial vehicles in Spain		200
Restructuring of the transport industry in Spain		200
CTRL	OJ C 168, 12.6.1996, p. 9	201
TGV		201
Combined transport in Austria	OJ C 123, 26.4.1996, p. 9	204
Comptoir des Entrepreneurs	OJ C 70, 8.3.1996, p. 7	212
GAN	OJ C 334, 8.11.1996, p. 9	212
Société Marseillaise de Crédit		212
Crédit Foncier de France	OJ C 275, 20.9.1996, p. 2	212
SDBO	OJ C 346, 16.11.1996, p. 5	212
Crédit Lyonnais	OJ C 390, 24.12.1996, p. 7	211, 212
Banco di Napoli	OJ C 328, 1.11.1996, p. 23	212
Olivetti SpA	OJ C 306, 15.10.1996, p. 9	215
SGS Thomson	OJ C 358, 27.11.1996, p. 3	215
Philips	OJ C 393, 31.12.1996, p. 6	215
Océ	OJ C 58, 25.2.1997, p. 4	215
Swedish schemes for aid for recruitment and employment	OJ C 225, 2.8.1996, p. 5; OJ C 188, 28.6.1996, p. 2	216
Danish scheme for aid to take on unemployed persons	OJ C 300, 10.10.1996, p. 5	216
Cellulose du Rhône et de l'Aquitaine	OJ L 144, 18.6.1996, p. 39	217
Hoffmann La Roche	OJ C 168, 12.6.1996, p. 2	217
GAV	OJ C 144, 16.5.1996, p. 9	217

European Commission
European Community competition policy — 1996
Luxembourg: Office for Official Publications of the European Communities
1997 — 85 pp. — 21.0 x 29.7 cm
ISBN 92-828-0298-1

Venta • Salg • Verkauf • Πωλήσεις • Sales • Vente • Vendita • Verkoop • Venda • Myynti • Försäljning

BELGIQUE/BELGIË

Moniteur belge/Belgisch Staatsblad

Rue de Louvain 40-42/
Leuvenseweg 40-42
B-1000 Bruxelles/Brussel
Tél. (32-2) 552 22 11
Fax (32-2) 511 01 84

Jean De Lannoy

Avenue du Roi 202/
Koningslaan 202
B-1060 Bruxelles/Brussel
Tél. (32-2) 538 51 69
Fax (32-2) 538 08 41
E-mail: jean.de.lannoy@infoboard.be

Librairie européenne/Europese Boekhandel

Rue de la Loi 244/
Wetstraat 244
B-1040 Bruxelles/Brussel
Tél. (32-2) 295 26 39
Fax (32-2) 735 08 60

DANMARK

J. H. Schultz Information A/S

Herstedvang 10-12
DK-2620 Albertslund
Tlf. (45) 43 63 23 00
Fax (45) 43 63 19 69
E-mail: schultz@schultz.dk
URL: www.schultz.dk

DEUTSCHLAND

Bundesanzeiger Verlag

Breite Straße 78-80
Postfach 10 05 34
D-50667 Köln
Tel. (49-221) 20 29-0
Fax (49-221) 20 29 278

GREECE/ΕΛΛΑΔΑ

G.C. Eleftheroudakis SA

International Bookstore
Panepistimiou 17
GR-105 64 Athens
Tel. (30-1) 331 41 80/1/2/3
Fax (30-1) 323 98 21
E-mail: elebooks@netor.gr

ESPAÑA

Mundi Prensa Libros, SA

Castelló, 37
E-28001 Madrid
Tel. (34-1) 431 33 99/431 32 22
Fax (34-1) 575 39 98
E-mail: mundiprensa@tsai.es
URL: www.tsai.es/mprensa

Boletín Oficial del Estado

Trafalgar, 27-29
E-28071 Madrid
Tel. (34-1) 538 22 95 (Libros)/
384 17 15 (Suscripciones)
Fax (34-1) 538 23 49 (Libros)/
384 17 14 (Suscripciones)
URL: www.boe.es

Mundi Prensa Barcelona

Consell de Cent, 391
E-08009 Barcelona
Tel. (34-3) 488 34 92
Fax (34-3) 487 76 59

FRANCE

Journal officiel

Service des publications des CE
26, rue Desaix
F-75727 Paris Cedex 15
Tél. (33-1) 40 58 77 01/31
Fax (33-1) 40 58 77 00

IRELAND

Government Supplies Agency

Publications Section
4-5 Harcourt Road
Dublin 2
Tel. (353-1) 661 31 11
Fax (353-1) 475 27 60

ITALIA

Licosa SpA

Via Duca di Calabria, 1/1
Casella postale 552
I-50125 Firenze
Tel. (39-55) 64 54 15
Fax (39-55) 64 12 57
E-mail: licosa@ftbcc.it
URL: icl382.cilea.it/Virtual_Library/bibliot/vetrina/licosa/tt1.htm

GRAND-DUCHÉ DE LUXEMBOURG

Messageries du livre Sarl

5, rue Raiffeisen
L-2411 Luxembourg
Tél. (352) 40 10 20
Fax (352) 490 661
E-mail: mdl@pt.lu

Abonnements:

Messageries Paul Kraus

11, rue Christophe Plantin
L-2339 Luxembourg
Tél. (352) 499 88 88
Fax (352) 499 888 444
E-mail: mpk@pt.lu
URL: www.mpk.lu

NEDERLAND

SDU Servicecentrum Uitgevers

Christoffel Plantijnstraat 2
Postbus 20014
2500 EA 's-Gravenhage
Tel. (31-70) 378 98 80
Fax (31-70) 378 97 83
E-mail: sdu@sdu.nl
URL: www.sdu.nl.

ÖSTERREICH

Manz'sche Verlags- und Universitäts-buchhandlung Gmbh

Siebenbrunnengasse 21
Postfach 1
A-1050 Wien
Tel. (43-1) 53 161 334 / 340
Fax (43-1) 53 161 339
E-mail: auslieferung@manz.co.at
URL: www.austria.EU.net:81/manz

PORTUGAL

Imprensa Nacional-Casa da Moeda, EP

Rua Marquês de Sá da Bandeira, 16 A
P-1050 Lisboa Codex
Tel. (351-1) 353 03 99
Fax (351-1) 353 02 94/384 01 32

Distribuidora de Livros Bertrand Ld.ª

Rua das Terras dos Vales, 4 A
Apartado 60037
P-2701 Amadora Codex
Tel. (351-1) 495 90 50/495 87 87
Fax (351-1) 496 02 55

SUOMI/FINLAND

Akateeminen Kirjakauppa /

Akademiska Bokhandeln
Pohjoisesplanadi 39/
Norra esplanaden 39
PL/PB 128
FIN-00101 Helsinki/Helsingfors
Tel. (358-9) 121 41
Fax (358-9) 121 44 35
E-mail: akatilaus@stockmann.mailnet.fi
URL: booknet.cultnet.fi/aka/index.htm

SVERIGE

BTJ AB

Traktorvägen 11
PO Box 200
S-22100 Lund
Tel. (46-46) 18 00 00
Fax (46-46) 18 01 25
E-mail: btj_tc@mail.btj.se
URL: www.btj.se/media/eu

UNITED KINGDOM

The Stationery Office Ltd (Agency Section)

51, Nine Elms Lane
London SW8 5DR
Tel. (44-171) 873 9090
Fax (44-171) 873 8463
URL: www.the-stationery-office.co.uk

ICELAND

Bokabud Larusar Blöndal

Skólavördustig, 2
IS-101 Reykjavik
Tel. (354) 55 15 650
Fax (354) 55 25 560

NORGE

NIC Info A/S

Østenjoveien 18
Boks 6512 Etterstad
N-0606 Oslo
Tel. (47-22) 97 45 00
Fax (47-22) 97 45 45

SCHWEIZ/SUISSE/SVIZZERA

OSEC

Stampfenbachstraße 85
CH-8035 Zürich
Tel. (41-1) 365 53 15
Fax (41-1) 365 54 11
E-mail: urs.leimbacher@ecs.osec.inet.ch
URL: www.osec.ch

ČESKÁ REPUBLIKA

NIS CR - prodejna

Konviktská 5
CZ-113 57 Praha 1
Tel. (42-2) 24 22 94 33
Fax (42-2) 24 22 94 33
E-mail: nkposp@dec.nis.cz
URL: www.nis.cz

CYPRUS

Cyprus Chamber Of Commerce & Industry

38, Grivas Digenis Ave
Mail orders:
PO Box 1455
CY-1509 Nicosia
Tel. (357-2) 44 95 00/46 23 12
Fax (357-2) 361 044
E-mail: cy1691_eic_cyprus@vans.infonet.com

MAGYARORSZÁG

Euro Info Service

Európa Ház
Margitsziget
PO Box 475
H-1396 Budapest 62
Tel. (36-1) 11 16 061/11 16 216
Fax (36-1) 302 50 35
E-mail: eurojnfo@mail.matav.hu
URL: www.euroinfo.hu/index.htm

MALTA

Miller Distributors Ltd

Malta International Airport
PO Box 25
LQA 05 Malta
Tel. (356) 66 44 88
Fax (356) 67 67 99

POLSKA

Ars Polona

Krakowskie Przedmiescie 7
Skr. pocztowa 1001
PL-00-950 Warszawa
Tel. (48-2) 26 12 01
Fax (48-2) 26 62 40

TÜRKIYE

Dünya Infotel A.S.

Istiklâl Cad. No: 469
TR-80050 Tünel-Istanbul
Tel. (90-212) 251 91 96
(90-312) 427 02 10
Fax (90-212) 251 91 97

BĂLGARIJA

Europress-Euromedia Ltd

59, Bld Vitosha
BG-1000 Sofia
Tel. (359-2) 80 46 41
Fax (359-2) 80 45 41

HRVATSKA

Mediatrade Ltd

Pavla Hatza 1
HR-10000 Zagreb
Tel. (385-1) 43 03 92
Fax (385-1) 44 40 59

ROMÂNIA

Euromedia

Str. G-ral Berthelot Nr 41
RO-70749 Bucuresti
Tel. (40-1) 210 44 01/614 06 64
Fax (40-1) 210 44 01/312 96 46

SLOVAKIA

Slovenska Technicka Kniznica

Námestie slobody 19
SLO-81223 Bratislava 1
Tel. (42-7) 53 18 364
Fax (42-7) 53 18 364
E-mail: europ@tbb1.sltk.stuba.sk

SLOVENIA

Gospodarski Vestnik

Zalozniska skupina d.d.
Dunajska cesta 5
SI-1000 Ljubljana
Tel. (386) 61 133 03 54
Fax (386) 61 133 91 28
E-mail: belicd@gvestnik.si
URL: www.gvestnik.si

ISRAEL

R.O.Y. International

17, Shimon Hatarssi Street
PO Box 13056
61130 Tel Aviv
Tel. (972-3) 546 14 23
Fax (972-3) 546 14 42
E-mail: royil@netvision.net.il

Sub-agent for the Palestinian Authority:

Index Information Services

PO Box 19502
Jerusalem
Tel. (972-2) 27 16 34
Fax (972-2) 27 12 19

RUSSIA

CCEC

60-letiya Oktyabrya Av. 9
117312 Moscow
Tel. (095) 135 52 27
Fax (095) 135 52 27

AUSTRALIA

Hunter Publications

PO Box 404
3167 Abbotsford, Victoria
Tel. (61-3) 9417 53 61
Fax (61-3) 9419 71 54

CANADA

Uniquement abonnements/
Subscriptions only:

Renouf Publishing Co. Ltd

1294 Algoma Road
K1B 3W8 Ottawa, Ontario
Tel. (1-613) 741 73 33
Fax (1-613) 741 54 39
E-mail: renouf@fox.nstn.ca
URL: fox.NSTN.Ca/~renouf

EGYPT

The Middle East Observer

41, Sherif Street
Cairo
Tel. (20-2) 39 39 732
Fax (20-2) 39 39 732

JAPAN

PSI-Japan

Asahi Sanbancho Plaza #206
7-1 Sanbancho, Chiyoda-ku
Tokyo 102
Tel. (81-3) 3234 69 21
Fax (81-3) 3234 69 15
E-mail: psijapan@gol.com
URL: www.psi-japan.com

SOUTH AFRICA

Safto

5th Floor Export House,
CNR Maude & West Streets
PO Box 782 706
2146 Sandton
Tel. (27-11) 883 37 37
Fax (27-11) 883 65 69

UNITED STATES OF AMERICA

Bernan Associates

4611-F Assembly Drive
MD20706 Lanham
Tel. (301) 459 2255 (toll free telephone)
Fax (800) 865 3450 (toll free fax)
E-mail: query@bernan.com
URL: www.bernan.com

MÉXICO

Mundi-Prensa Mexico, SA de CV

Río Pánuco, 141
Delegación Cuauhtémoc
ME-06500 México DF
Tel. (52-5) 553 56 58/60
Fax (52-5) 514 67 99
E-mail: 104164.23compuserve.com

RÉPUBLIQUE DE CORÉE

Kyowa Book Company

1 F1. Phyung Hwa Bldg
411-2 Hap Jeong Dong, Mapo Ku
121-220 Seoul
Tél. (82-2) 322 6780/1
Fax (82-2) 322 6782
E-mail: kyowa2@ktnet.co.kr.

ANDERE LÄNDER/OTHER COUNTRIES/ AUTRES PAYS

Bitte wenden Sie sich an ein Büro Ihrer Wahl / Please contact the sales office of your choice / Veuillez vous adresser au bureau de vente de votre choix

01 06 08 CM-03-97-967-EN-C

OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg

ISBN 92-828-0298-1