EUROPEAN COAL AND STEEL COMMUNITY
EUROPEAN ECONOMIC COMMUNITY
EUROPEAN ATOMIC ENERGY COMMUNITY

COMMISSION

Seventh Report on Competition Policy

(Published in conjunction with the 'Eleventh General Report on the Activities of the European Communities')

BRUSSELS LUXEMBOURG April 1978

This publication is also available in the following languages:

DA ISBN 92-825-0031-4
DE ISBN 92-825-0032-2
FR ISBN 92-825-0034-9
IT ISBN 92-825-0035-7
NL ISBN 92-825-0036-5

A bibliographical slip can be found at the end of this volume

Printed in Belgium

ISBN 92-825-0033-0 Catalogue No: CB-24-77-237-EN-C

Contents

Introduction

The economy of Europe is undergoing a difficult period of transition. Much structural weakness has become apparent or become worse following a reduction in demand accompanied by increased pressure of imports. If structural change is essential in order to reach a new economic balance, it is as well to realize that this will be difficult to achieve in a climate of poor economic growth unless clear perspectives are maintained.

The role of the Commission must therefore be to promote and establish structural change within a socially acceptable framework. The illusion must be resisted that enterprises can protect themselves against those necessary changes by coming to terms with their competitors or by seeking excessive protection from national authorities.

Competition policy plays an important role in the application of the basic rules which govern the integration of markets. The flow of trade creates the need for constant structural adaptation. The maintenance of non-competitive behaviour or anti-competitive practices, on the other hand, leads to partitioning of markets in the sectors directly involved, which then tends to spill over into related sectors in the downstream markets.

It is no coincidence that these simple but basic rules should be challenged at a time when the forces of competition seem to demand excessive sacrifices in certain sectors, particularly so far as employment is concerned, following a lasting slowing-down in the growth of or a switch in demand. Private arrangements for organizing markets or government intervention affecting the competitive ability of undertakings have the object of softening the rigours of market forces. If some of these measures are prompted by the market, others on the other hand substitute themselves for the market, the decisions in such cases being centralized, whether they concern production capacities or govern production itself or prices.

Whatever the means chosen to 'organize' a sector, that is to say protect it from competition, one should bear in mind that the direct or implicit object is always to re-establish at least temporarily an artificial profitability by raising prices. Thus the cost of the

salvage operation is supported by the market, that is the user, the processor and finally the ultimate consumer or the taxpayer. Measures for organizing the market therefore tend to have repercussions and to spread, especially to later stages in the manufacturing process, particularly when these remain exposed to the competitive pressure of imports.

Accordingly it is essential that public intervention in the markets should be governed by the rules and procedures which correspond best with the common interest in the sense of the Treaty. In particular, restrictions of competition should be part of a plan for reinforcing competitivity not only in the sector concerned but in the Community economy as a whole. The latter cannot support indefinitely the high costs of poorly adapted structures.

Market structures have been a priority concern of competition policy during the year 1977. The work of analysing degree of concentration, competition and price formation has been extended, the object being to highlight the underlying causes of the poor functioning of competition. About a hundred markets have been identified in which the most important undertaking holds more than a half-share. It has also been possible to establish that there is a strong tendency towards concentration in the distribution field and that there are some important price differences for the same product at all levels even on the purely local level.

The Commission has the firm intention of systematically applying Article 86 against undertakings in a dominant position which directly or indirectly impose discriminatory or unfair prices. It is not the Commission's objective to set itself up as a price control organization, nor to put an end to price variations which are an essential part of the competitive process, but solely to attack practices which become illegal when they are carried out by undertakings in a dominant position; the reason is the injury which these practices can cause to the user and the consumer.

The Commission considers that the recent Decision in the United Brands case is of great importance for the development of an effective policy regarding the control of abuse of dominant position. The considerations expounded by the Court of Justice have given concrete form to the question of the applicability of Article 86 to abnormal price situations. Though it may remain very difficult to specify in general terms the criteria which enable one to define an unfair price, nevertheless the Court has provided highly valuable pointers which will guide the Commission's work.

In its desire to safeguard competitive structures the Commission has also strengthened its policy of support for small and medium-sized firms. The Commission shares the view expressed by the European Parliament in its Resolution of 16 February 1978,

when it stated that the existence 'of a healthy and strongly developed sector of small and medium-sized firms is a condition for the smooth functioning of a modern economy'.

The Commission has therefore taken certain measures which enlarge the possibilities of extensive cooperation between such firms. It has revised in this direction the Notice on agreements of minor importance and the Regulation exempting certain categories of specialization agreements. The work undertaken in the field of sub-contracting agreements and of patent licensing has the same objective.

For the present it is in the area of State aids that competition policy has been subjected to the greatest pressures.

The general policy objectives remain valid. Aids should not be granted except where they are really necessary and only at an intensity proportionate to the real difficulties of each national situation. They should be accorded in such a manner that in practice they rapidly contribute to and provoke the necessary changes.

The aim is to assure the efficacity of the Community economy and society in facilitating free and equal competition between the different economic agents, to safeguard the mobility of the factors of production both temporally and spatially by preventing their sterilization which would inevitably be costly and to leave open possibilities for progress and innovation. Necessary corrective actions must, of course, be accepted: protective measures which are really transitory and which enable the break-down of threatened structures to be avoided during the time necessary to bring about a restructuring, regional aids, aids to industrial adaptation, compensatory measures for certain artificial distortions provoked by third countries, liberal social measures.

Nevertheless, as regards the latter, even in the context of the present employment position, it is necessary to avoid a situation where these measures would lead to a prolonged subsidization of undertakings or the production of goods the survival of which would not justify the sacrifice of resources for their benefit by the community in general. Such resources, if they were better utilized, would guarantee greater employment in the future.

The activities of the Commission concerning aids can appear to be excessively rigorous having regard to the social consequences of unemployment in the present economic situation. They are, however, completely justified when account is taken of the fact that the measures concerned are essentially palliatives. On the one hand, the Commission's activities enables the exporting of unemployment to be limited considerably and reactions by way of outbidding and escalation to be prevented. They also prevent the perpetuation

of hopeless situations and stimulate the public and private authorities to seek more positive solutions than the simple preservation of redundant jobs.

In this regard, action in relation to aids is an important element in the policy aimed at restoring employment. The criteria on which it is based ought to take account of the two major justifications mentioned above while at the same time facilitating the necessary transition. It is in this context that aids to employment have in particular been introduced; such aids, under different forms, have had a tendency to multiply. The Commission accepts that the present social circumstances can justify protective measures for employment in the sectors which are particularly stricken by the crisis when implemented in conjunction with measures favouring the creation of new employment. However, aids to the maintenance of employment must not be perpetuated in undertakings which can benefit in a manner which allows them to maintain without change non-competitive production likely to aggravate the crisis to the detriment of other undertakings.

These considerations influenced most of the positions taken by the Commission in 1977 in relation to State aids.

As regards sectoral aids, the Commission drafted a fourth directive on national aids in the shipbuilding sector. This retains the concept that aids in this sector should be abolished once the sector has re-established its competitivity on the basis of more limited and fundamentally renovated productive capacity. The present draft, while providing for adequate discipline, takes into consideration all the measures which could prove to be necessary in the context of the existing serious crisis.

In the case of steel, the Commission defined the principle orientations of its policy on aids to this sector which is also faced with a serious crisis. It is at present examining the need to complete this work by a more precise framework, based on Article 95 ECSC, after unanimous Council approval, for aids and other interventions by the Member States in this sector.

In the synthetic fibres sector, the Commission defined its policy on the basis of the existence of surplus productive capacity. It asked the Member States to suspend the granting of aids which would have the effect of leading to a further increase in productive capacity. It stressed that it envisaged not only the specific aids to the sector concerned, but in principle also all aids which could find their basis in general or regional aid systems.

In addition, the Commission considers that in these sectors the coordination of sectoral aids ought to be accompanied by a policy of thorough re-organization, defined at the

level of the Community, to resolve the structural problems common to several Member States.

The Commission will take initiatives of the same order in relation to aids when this is called for by the situation in a sector. It must be emphasized in this regard that this is not to be taken as a type of veiled industrial planning which would be effected by means of a general sectoral modulation of regional or general aids. The Commission considers that in certain cases, where at the level of the Community branches of industry face an extremely grave situation which appears destined to continue, aids which contribute to the development of capacity are harmful from the sectoral point of view and do not assure development on a sound basis from the regional point of view.

As regards regional aids, the Commission has pursued, with the experts from the Member States, the technical work necessary for the development of the coordination of regional aids both at the general level of the coordination principles applicable to such aids and at the level of the examination of the different systems of regional aids in force in the Member States.

It should be reaffirmed that all the disciplines which the Community fixes for aids to sectors in difficulty run the risk of being evaded where State intervention is already strong and is susceptible to be reinforced precisely to take account of the difficulties encountered. The Commission will use the possibilities available to it under Article 90(3) EEC to clarify the financial relationships between public undertakings and their responsible authorities. The Commission will also actively take account of this problem in the disciplines which it develops in relation to State aids.

Part One

Competition policy towards enterprises

Chapter I

Main developments in Community policy

§ 1 — Price disparities in the Community

1. The Commission continued its efforts to end those price disparities in the Community which are due to a lack of competition. The work proceeded on two levels. The price analyses the Commission is carrying out under the concentration study programme were extended and made more comprehensive, and the Commission continued to take decisions against firms which enter into restrictive agreements to keep prices up in the common market. The Court's judgment in United Brands Corporation (Chiquita bananas)[1] will be of fundamental importance for further decisions on abusive price policies followed by dominant firms.

1. Price analysis in the programme of studies on concentration

2. In order to make the results of the price analyses[2] more reliable for assessing the competitive situation of selected products of importance to consumers, a two-phase plan has been developed.[3] In the first phase prices and mark-ups at the different stages of distribution are to be collated in as detailed a form as possible, and price trends, broken down by sales point, country, brand and size of package, are to be investigated. The second phase follows on from the first and is intended to give a better idea of the competitive relationships between dealers and consumers and between dealers and manufacturers. The scale and growth of market power in distribution are described by reference to structural measures of concentration and indicators of the behaviour of dealers.

3. Preliminary results are beginning to take shape.[3] The process of concentration in distribution has gone so far now that there is a growing danger of substantial restriction of competition. The Commission will have to be very alert here. Price analyses have given some indication that consumers are in the end paying the price of insufficient competition. It remains to be seen whether or not the discernible increase in imports into high-price countries of some branded goods from low-price countries continues, and

---

[1] Commission Decision of 17 December 1975: OJ L 95 of 9.4.1976; Fifth Report on Competition Policy, point 71; judgment of 14.2.1978.
[2] Sixth Report on Competition Policy, points 306 to 318.
[3] Part Three of this Report.

broadens to include other branded goods, so that price disparities are narrowed. Short-term price alignments are already to be found at all events.

2. *Measures against individual firms*

4. In its administrative practice too the Commission has been taking particular care to ensure that firms do not enter into agreements to shore up price disparities between Member States. Examples are its BMW Belgium[1] and Distillers[2] decisions.

The importance of both cases goes beyond their individual circumstances, however, since they make it clear once again that on principle the Commission is not prepared to accept moves by firms to prevent parallel imports in order to maintain existing price differentials.

This applies to organizational measures used by a business to put pressure on retailers in order to prevent exports—through a distribution network, for instance (BMW Belgium). It also applies to terms of sale under which price concessions are given to dealers depending on whether they intend to sell on the domestic market or in other Member States (Distillers).

§ 2 — Information agreements

5. In times of economic difficulty firms are increasingly tempted to evade the tougher competition with which they are confronted. Information agreements are particularly important here.

Under information agreements firms work together to exchange information, through a central agency, on quantities, prices, discounts and other terms of business, and on their suppliers and customers. A distinction can be drawn between agreements which are for purely statistical purposes and those which identify individual firms—depending on how the central reporting agency collates and passes on the information.

6. In its Cobelpa/VNP[3] and Vegetable parchment[4] decisions the Commission further clarified its attitude to the exchange of information between competitors. Aspects of

[1] Point 126 of this Report.
[2] Point 125 of this Report.
[3] Point 101 of this Report.
[4] Point 103 of this Report.

this problem had already been treated in the VVVF decision,[1] in the IFTRA decisions,[2] and in other cases which were ended without a formal decision.[3]

In most cases it has been established that the parties to information agreements have also entered into further cooperation agreements. The cases have invariably arisen in markets with very few buyers and sellers; the information has always been accessible only to the sellers; and in every case the agreement weakened price competition on domestic and international markets.

7. The essential points in the assessment of an information agreement were stated by the Commission as long ago as 1968, in the Cooperation Notice.[4] There is an important distinction between information arrangements which do not affect competition and arrangements in which the exchange of information has to be regarded as being in restraint of competition. The distinction can of course only be drawn case by case, after consideration of all the circumstances. But the following general criteria may be stated.

(1) The type of information exchanged is the first material point. The provision of collated statistical material is not in itself objectionable from the point of view of competition policy. The Commission has no fundamental objection where national trade associations representing the same economic interests in different countries exchange statistics, either direct or through a reporting agency, which set out production and sales figures for the industry in question without identifying individual businesses, as is the practice in official statistics. Nor will the Commission as a rule object to a breakdown of data by product, country or period of time which goes beyond what is required in official statistics. But the Commission does reserve the right to investigate such cases where the breakdown of figures might enable an individual party to an information arrangement to identify the competitive behaviour of the other parties.

On the other hand, the organized exchange of individual data from individual firms, such as figures on quantities produced and sold, prices and terms for discounts, higher and lower rates, credit notes and general terms of sale, delivery and payment, will generally be regarded by the Commission as practices which have as their object or effect the restriction or distortion of competition within the common market, and which are therefore prohibited.

---

[1] OJ L 168 of 10.7.1969; First Report on Competition Policy, point 37.
[2] IFTRA-Glass containers: OJ L 160 of 17.6.1974, Fourth Report on Competition Policy, point 62; IFTRA-Aluminium: OJ L 228 of 29.8.1975, Fifth Report on Competition Policy, point 31.
[3] Dutch Sporting Cartridges Agreement: Third Report on Competition Policy, point 55; Ships' cables: Fifth Report on Competition Policy, point 40; Non-ferrous semi-manufactures: Fifth Report on Competition Policy, point 39; OFITOMEP: Sixth Report on Competition Policy, point 134.
[4] OJ C 75 of 29.7.1968.

The area between permissible and prohibited exchange of information is thus defined by the distinction between a purely statistical arrangement with a breakdown of data by product, country and period of time which is not conducive to collusion, and the kind of arrangement which clearly relates to individual firms. One circumstance which in the Commission's view would certainly suggest a prohibited agreement or practice would be the regular communication of invoices or other information on an individual firm to the central reporting agency. This sort of information normally constitutes a trade secret and is not required for the preparation of periodical statistics. The Commission believes that in such cases it is enough to provide the agency with collated figures on quantities supplied and turnover in the period covered.

Parties to an information agreement which lies in the area between what is permissible and what is prohibited must be prepared to have the Commission investigate their actions particularly closely if the trend on the relevant markets points to covert market sharing or price fixing.

(2) In assessing information agreements the Commission also pays close attention to the structure of the relevant market. The tendency for firms to fall in line with the behaviour of their competitors is particularly strong in oligopolistic markets. The improved knowledge of market conditions aimed at by information agreements strengthens the connection between the undertakings, in that they are enabled to react very efficiently to one another's actions, and thus lessens the intensity of competition.

(3) Lastly, the Commission also takes into account the fact that this form of cooperation between firms normally improves only the sellers' knowledge of the market. And that debars buyers from exploiting whatever 'concealed competition' subsists between sellers in oligopolistic markets and from thus preventing the price structure from becoming rigid.

8. The Commission's attitude to information agreements follows the line indicated by the Court of Justice in relation to concerted practices in its judgment against European sugar manufacturers:

'The criteria of coordination and cooperation ... must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that each economic operator must determine independently the policy which he intends to adopt on the common market ... Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is

either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.'[1]

§ 3 — Exclusive purchasing agreements

9. During 1977 the Commission further developed its guidelines for the assessment of exclusive purchasing agreements.
These are agreements under which the purchaser accepts an obligation to purchase particular goods from a single supplier only, over a relatively long period. They have an important business function in that they give a guarantee of ensured sales to one party and a guarantee of continuous supplies to the other. Exclusive purchasing agreements are consequently normal in almost all branches of the economy, as a rule in very large numbers; they are particularly common between manufacturers and processors of a particular product, and between manufacturers and dealers. In return for his part of the agreement, the purchaser is frequently given special privileges of the most varied kind, ranging from priority for deliveries and the assurance of technical assistance, through special prices, discounts, bonuses, premiums and fidelity rebates, and the guarantee of a specified margin, to long-term loans. These nearly always help to strengthen the exclusive links between the parties to the agreement.

Exclusive purchasing agreements may endanger competition, because they limit the purchaser's freedom of choice and therefore at least potentially restrict the sales outlets open to other suppliers. The Commission has grounds for intervention to the extent that in any given case competition within the common market and trade between Member States are in consequence appreciably affected.

The Commission has examined the compatibility of exclusive purchasing and similar agreements with the EEC rules of competition in cases where the arrangement operated to the advantage of a manufacturer in a dominant position and to the disadvantage of several industrial processors.

10. In the European sugar industry case, a fine was imposed on Südzucker Verkaufs-GmbH for infringement of Article 86, one reason being that the firm had given fidelity rebates to its customers. It emerges from the Commission decision[2] and the subsequent

[1] CJEC 16.12.1975 (Coöperatieve Vereniging 'Suiker Unie' UA and Others v Commission), 40 to 48, 50, 54 to 56, 111, 113 and 114/73: [1975] ECR 1663, 1942 (Grounds of Judgment 173 and 174); Fifth Report on Competition Policy, points 19 to 24.
[2] Decision of 2.1.1973: OJ L 140 of 26.5.1973; Second Report on Competition Policy, point 48.

judgment of the Court,[1] which affirmed the decision on this count, that such rebates, given by a dominant firm, constitute abuse for the following reasons:

(i) Firstly, they have the result that two customers who purchase the same quantity of a particular product from the producer pay different net prices if one of them also purchases the product from another producer.

This is an application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them—if they are competitors—at a competitive disadvantage (Article 86(c)).

(ii) Secondly, such rebates are likely to limit markets to the prejudice of consumers, because they remove or restrict other producers' opportunities of competing with the first producer in sales of his products (Article 86(b)).

(iii) Thirdly, they help to consolidate the producers' dominant position, which is incompatible with the concept inherent in Article 86.

11. In the Vitamins case[2] (Hoffmann-La Roche) the Commission further developed its views on the position of fidelity clauses with respect to Article 86, emphasizing the point that whether such clauses may appreciably restrict the customer's freedom of choice and thus the degree of competition between different manufacturers is a matter to be decided on economic considerations. The fact that the arrangements in question, individually or taken together, are such as to bind the customers to the dominant manufacturer for their supplies is of decisive importance. If the contract is liable to produce this result, its form, which may of course vary from case to case, is immaterial.

12. For a finding of abuse there is no need, in the Commission's view, to show that customers take their supplies of the products covered by the agreement exclusively from the dominant manufacturer. It is enough if supplies from him account for the major part of their requirements. Nor is there any need of a legal obligation on the customer to obtain his supplies exclusively or mainly from the dominant firm. Where there is no express provision to this effect in the agreement, it is sufficient if the expected result is actually achieved. There may be abuse if the dominant manufacturer's terms of sale make it economically attractive for customers to take their supplies exclusively or mainly from him. By what means this is done is immaterial. The dominant firm may offer financial

[1] CJEC 16.12.1975 (*Coöperatieve Vereniging* 'Suiker Unie' UA and Others v Commission), 40 to 48, 50, 54 to 56, 111, 113 and 114/73: [1975] ECR 1663, 2000 to 2005; Fifth Report on Competition Policy, points 19 to 24.

[2] Decision of 9.6.1976: OJ L 223 of 16.8.1976; Sixth Report on Competition Policy, point 170.

advantages (special prices or fidelity and other rebates) or threaten financial disadvantages (demands for the return of rebates already given, refusal to allow any price concessions in future).

13. The fact that a particular exclusive purchasing agreement falls within Article 86 does not necessarily mean that it will not be caught by Article 85 as well. If the tests of both provisions are satisfied, the Commission may after due consideration decide to base proceedings on Article 85, Article 86 or both. In the Billiton/Metal & Thermit Chemicals case[1] the Commission proceeded against a regularly notified exclusive agreement under Article 86. The agreement was between a dominant manufacturer and the largest industrial consumer of the product in question. Application of the expedited procedure of Article 15(6) of Regulation No 17 enabled the Commission to secure very quickly the deletion of all the restrictive clauses from the agreement.

14. The applicability of Article 85(1) to exclusive purchasing and other such arrangements depends on whether or not the arrangement, either alone or in conjunction with other similar arrangements between the same or different firms, may appreciably affect entry to the market and sales by third parties. The Commission felt that this was the case in Billiton/M & T, because both parties are large firms possessed of market power.

This rule applies not only to agreements between producers but also to agreements between producers and dealers. In the Liebig case,[2] the Commission applied the prohibition of Article 85(1) to exclusive purchasing agreements entered into by a spice manufacturer and three supermarket chains. The arrangements concerned the Belgian market, where the three chains, with a combined share of about 30% of the food distribution market, are the largest retailers of spices.

15. Exemption under Article 85(3) was refused in both Billition/M & T and Liebig, but the two cases do indirectly give some idea of the circumstances under which exemption can be given.

The Commission considers that exclusive purchasing agreements can contribute to improving the production and distribution of goods, because they make it possible for the parties to the agreement to plan their production and sales more precisely and over a longer period, to limit the risk of market fluctuation and to lower the cost of production, storage and marketing. And in many cases agreements of this kind give small and medium-sized firms their only opportunity of entering the market and thus increasing competition.

---

[1] See point 131 of this Report.
[2] Decision of 23 December 1977: OJ L 53 of 24.2.1978; point 129 of this Report.

However, exemption can only be given where the firms involved do not retain the whole of the benefit. Consumers must be allowed their fair share as well. The benefits must also be great enough to balance out the restrictions of competition they bring with them. These tests are not satisfied if the exclusive arrangements make it more difficult for other firms to sell on the market, and especially if they raise barriers to market entry. In such cases an application for exemption will usually fail, because the agreements will afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question, and this is in direct conflict with Article 85(3)(b).

In Billiton/M & T and Liebig it was these considerations which led the Commission to refuse exemption. In both cases particular attention was paid to the market share which the manufacturers had secured by means of exclusive purchasing agreements. The share of all manufacturers' sales on the relevant market accounted for by supplies covered by the agreements was 35% in the first case and 17% in the second.

16. Similar considerations lie behind the draft Regulation amending Regulation No 67/67/EEC.[1] The Commission intends that block exemption of exclusive purchasing agreements relating to products intended for resale should depend on the manufacturer's having a market share of not more than 15%.

§ 4 — Community-wide guarantee service

17. Leaving aside the question of imposing on manufacturers a general guarantee obligation[2] or a standardized set of guarantee terms for like products,[3] the Commission considers it necessary to ensure that guarantee terms are compatible with the rules of competition.

The guarantee offered as part of their after-sales service by manufacturers of consumer durables is an important factor—sometimes a decisive factor—in the consumer's choice. Refusal of a guarantee for products which have not been exported through the manufacturer's own network may be a substantial barrier to the normal development of trade

[1] OJ C 31 of 7.2.1978; point 38 of this Report.

[2] The consumer's right to benefit from satisfactory after-sales service is one of the items in the preliminary programme of the European Economic Community for a consumer protection and information policy: OJ C 92 of 25.4.1975.

[3] Differences in the extent and duration of the guarantee offered to customers by manufacturers and dealers are in some cases evidence of keen competition. See, for instance, the Commission answer to Written Question No 473/73 by Mr Fellermaier concerning the differing guarantee terms for motor vehicles: OJ C 14 of 12.2.1974.

within the Community. This barrier is particularly harmful to the consumer's interest where there are appreciable differences in the price for a given product from one Member State to another.

Accordingly the Commission considers that the manufacturer's guarantee of his products should be valid throughout the Community, irrespective of the place of purchase.

18. In the past, the Commission has checked compliance with this obligation in decisions exempting distribution systems in which manufacturers confine the sale of their products to dealers authorized selectively (selective distribution). In the various cases considered, covering clocks and watches,[1] motor vehicles[2] and consumer electronics,[3] the Commission ensured that where the manufacturer gave a guarantee on branded goods, guarantee service was available through any of the approved dealers, even if the product had been bought from another dealer.

19. In the electrical appliances industry the guarantee can be of particular importance.[4] But difficulties have arisen because of different technical and safety standards in the Member States of the Community. Certain manufacturers have invoked these differences as grounds for refusing to grant a guarantee for parallel imports or use of their products in a Member State other than that to which they were originally imported. The Commission has not accepted the argument. It has concluded that these differences are not so great as to raise an insurmountable barrier to trade in the relevant goods and that the relevant exporters ought to be free to assess the business value of making any alterations that may be necessary.[5]

20. It took action in one case[6] to have the terms of the guarantee given by SpA Industrie A. Zanussi, Pordenone, Italy, changed.

Zanussi operates primarily in the household appliances industry, as a manufacturer of refrigerators, cookers, dishwashers, washing machines and television sets, which its sub-

---

[1] Decision of 28.10.1970, Omega: OJ L 242 of 5.11.1970; First Report on Competition Policy, point 56.

[2] Decision of 13.12.1974, Bayerische Motoren Werke AG: OJ L 29 of 3.2.1975; Fourth Report on Competition Policy, point 86.

[3] Decision of 15.12.1975, SABA: OJ L 28 of 3.2.1976; Fifth Report on Competition Policy, point 54.

[4] In the Constructa case (Fourth Report on Competition Policy, point 109) the Commission persuaded the manufacturer to organize after-sales service in such a way that it would be available throughout the common market, regardless of the country of purchase.

[5] In 1974 the Commission got the German firm AEG-Telefunken to remove the export ban imposed on its German distributors of household electrical appliances. AEG-Telefunken had claimed that the German appliances did not conform to the safety regulations applying in the country of destination, the Dutch market: Fourth Report on Competition Policy, point 106.

[6] The Commission is also considering whether the guarantees offered by other manufacturers in the same industry are compatible with the rules on competition.

sidiaries in the common market countries distribute under a variety of trademarks, such as 'Zanussi', 'Rex', 'Castor' and 'Zoppas'.

Under the original version of the Zanussi guarantee, as notified to the Commission, a consumer could not have the manufacturer's guarantee unless the appliance had been imported by the Zanussi subsidiary for that Member State, or if the appliance had been re-exported. The Commission regarded these restrictions on guarantee service as incompatible with the EEC Treaty rules of competition because they were apt to discourage parallel imports. Zanussi altered its guarantee terms and set up a new system which will become fully operational on 15 February 1978. The guarantee will be available for all appliances bearing Zanussi's trademarks, regardless of their country of origin, and service will be provided by the Zanussi subsidiary in the Member State where the appliance is used.

The consumer can now obtain Zanussi appliances in any part of the Community, without running the risk of losing the guarantee on the appliance. The Commission has stated its intention[1] of taking a favourable decision on the amended guarantee terms.

§ 5 — Measures to assist small business

21. The gradual merging of national markets into a single Community market has given a new dimension to the field of action of small business. The importance of small and medium-sized firms to the economic, technical, industrial and business development of the Community is unquestioned, as is their ability to adapt to changing economic circumstances and to meet specific demands for goods or services. They employ more than half of the common market's labour force and are a factor making for equilibrium in the European economy.

Nevertheless, these firms are now facing a number of problems. For this reason the Economic and Social Committee and Parliament have begun to consider the position of small business in order to identify the line of action which should, in their opinion, constitute the policy to be followed.

The Commission is continuing its work to expand and add to measures already taken with the aim of assisting small and medium-sized undertakings to overcome their difficulties and to profit fully from the advantages which the single market of the EEC can offer. These measures will be implemented progressively, after discussion with relevant business circles and appropriate government bodies.

---

[1] Notice pursuant to Article 19(3) of Council Regulation No 17: OJ C 313 of 29.12.1977.

22. In applying the rules of competition the Commission has had to deal with various aspects of the economic activity of small and medium-sized firms ever since issuing its first individual decisions in 1964. Of the 125 or so decisions taken since then, roughly a third are directly in point in that at least one of the firms concerned could be regarded as small or medium sized. Of these decisions, forty gave negative clearance under Article 85(1) or exemption under Article 85(3), and sixteen were prohibition orders under Article 85.

Such firms also have a prime interest in all decisions affecting major firms and either open up markets or bring abuse of dominance to an end. As competitors, suppliers and customers they are the very first to suffer from restrictive or abusive practices of larger firms.

23. In the context of Community competition law, it must be emphasized that the importance of a firm is measured by the influence of its economic activity and by any restrictive effect it may have, which will vary in degree with a firm's market power. Yet market power basically depends on market share and turnover. Working from this assumption but without wishing to define the small or medium-sized firm, the Commission gave a practical and realistic interpretation of these two criteria in a notice published in 1970[1] to facilitate greater cooperation between small businesses. It specified that restrictive practices of firms below certain aggregate thresholds (5% market share, turnover of 15 million u.a. for manufacturing firms and 20 million u.a. for distributive firms) are regarded as having no appreciable effect on inter-State trade and competition. Agreements between firms below these thresholds are accordingly untouched by Article 85(1).

The Commission has recently raised the sales threshold to 50 million u.a., not only to take account of the impact of inflation but also to reflect experience to date, which shows that the aggregate turnover of small and medium-sized firms taking part in agreements of minor importance does not in fact exceed this new limit.[2]

24. There are other measures of general scope, which are of particular interest to small and medium-sized firms:

1. The 1968 notice concerning cooperation between undertakings[3] enumerates the types of agreement which by their very nature do not restrict competition and may be of great practical value, notably, joint market research; the joint establishment of statistics and statistical formulas; cooperation in book-keeping and accounting; the collec-

[1] OJ C 64 of 2.6.1970.
[2] Point 42 of this Report.
[3] OJ C 75 of 29.7.1968; corrigenda in OJ C 84 of 28.8.1968 (French and Dutch) and OJ C 93 of 18.9.1968 (German and Italian).

tion of revenue; research and development; advertising and the use of plant and machinery; storage and carriage; and the formation of temporary consortia for the joint performance of orders.

2. Regulation No 67/67 grants exemption under Article 85(3) for certain categories of exclusive dealing agreement[1] and thus enables efficient selling systems to be set up in other common market countries. This Regulation will shortly be amended in the light of a recent judgment of the Court of Justice. The value to small business of maintaining access to goods throughout the Community will be borne in mind.[2]

3. Regulation No 2779/72 grants exemption under Article 85(3) to certain specialization agreements between firms which do not exceed specified aggregate market shares (10%) and sales levels (150 million u.a.). These figures have been raised to 15% and 300 million u.a. by a recent Regulation[3] which will primarily benefit independent firms of medium size.

4. By its rapid growth subcontracting has become one of the modern forms of division of labour. As it has also become important in cross-frontier business relations in the Community, the Commission deems it necessary to inform firms of the general considerations which will guide its assessment of subcontracting agreements in relation to Article 85(1).[4] While it is accepted that subcontracting agreements in general do not intrinsically fall within the prohibition on cartels, there may be doubts where they impose restrictions on the subcontractor's freedom of action in order to protect the principal contractor's contribution to the manufacture of the subcontracted goods or the provision of the subcontracted services.[5] The Commission will publish its views during the first half of 1978.

25. Apart from all the measures that have been or are about to be taken to assist small and medium-sized firms, the Commission has been asked whether, to encourage cooperation between them even further, it should not simply publish a list of those forms of cooperation which can never be authorized.[6] However, the 1970 and 1977 notices on agreements of minor importance, based on the Commission's administrative practice and on judgments of the Court of Justice, make it clear that Article 85 does not contain an absolute prohibition. The operation of the Community competition rules has thus been relaxed quite considerably in favour of small business.

---

[1] OJ 57 of 25.3.1967; the validity of this Regulation was extended to 31 December 1982 by Regulation No 2591/72 (OJ L 276 of 9.12.1972).
[2] Point 38 of this Report.
[3] OJ L 338 of 28.12.1977; point 36 of this Report.
[4] Point 46 of this Report.
[5] Sixth Report on Competition Policy, points 5 to 9.
[6] Written Question No 675/76 by Mr Cousté: OJ C 50 of 28.2.1977.

26. Small and medium-sized undertakings which nevertheless, by combining, acquire aggregate market shares that enable them to impose appreciable restrictions on competition are caught by Article 85(1). This Article, which lists a number of forbidden practices by way of example, was actually applied in the sixteen decisions mentioned earlier which impose prohibition orders. The following infringements were found to have been committed:

(i) in five cases, export bans, market-sharing and quota-fixing;[1]

(ii) in two cases, aggregated rebate cartels taking account of purchases exclusively from home-based manufacturers;[2]

(iii) in three cases, national cartels involving manufacturers and dealers fixing prices and sales terms;[3]

(iv) in three cases, collective buying arrangements between manufacturers or importers and dealers in a single country;[4]

(v) in two cases, restrictions on admission and exclusive buying obligations at certain auction arrangements for farm produce.[5]

This list illustrates the fact that one of the main principles of Community competition policy is to ensure that the common market is an open market in which access to sources of supply and sales outlets is not appreciably restricted. An open market for goods and services is indispensable if small and medium-sized firms are to have any prospect of growth and they must not be allowed to put the market at risk by combining in large numbers to attain objectives which correspond to their mutual interests.

---

[1] OJ L 242 of 5.11.1970 (Julien/Van Katwijk); *First Report* on Competition Policy, point 3. OJ L 29 of 3.2.1975 (Preserved mushrooms); Fifth Report on Competition Policy, point 32. OJ L 6 of 13.1.1976 (AOIP/Beyrard); Fifth Report on Competition Policy, point 63. OJ L 231 of 21.8.1976 (Pabst & Richarz/Bureau national interprofessionnel de l'armagnac); Sixth Report on Competition Policy, point 117. OJ L 39 of 10.2.1977 (Theal/Watts); Sixth Report on Competition Policy, point 149.

[2] OJ L 10 of 13.1.1971 (German ceramic tiles manufacturers); First Report on Competition Policy, point 24. OJ L 217 of 6.8.1973 (Gas water heaters); Third Report on Competition Policy, point 53.

[3] OJ L 13 of 17.1.1972 (Vereniging van Cementhandelaren); First Report on Competition Policy, point 9. OJ L 303 of 31.12.1972 (GISA); Second Report on Competition Policy, point 32. OJ L 159 of 21.6.1975 (Haarden-/en Kachelhandel); Fifth Report on Competition Policy, point 43.

[4] OJ L 264 of 23.11.1972 (Central heating); Second Report on Competition Policy, point 33. OJ L 329 of 23.12.1975 (Bomee-Stichting); Fifth Report on Competition Policy, point 42. OJ L 20 of 25.1.1978 (Centraal Bureau voor de Rijwielhandel); point 105 of this Report.

[5] OJ L 237 of 29.8.1974 (Frubo); Fourth Report on Competition Policy, point 71. OJ L 21 of 26.1.1978 (Cauliflowers); point 108 of this Report.

§ 6 — Supply obligations of undertakings in a dominant position

27. In December 1972 the Commission published a decision finding that a *de facto* monopolist of an intermediate product abused a dominant position by refusing to continue to supply a firm operating on the market for the end product. The Commission found such refusal to sell likely to eliminate one of the few manufacturers in the market for the end product and hence likely to strike a serious blow at the maintenance of effective competition in the common market.[1] The Court of Justice upheld the Commission's decision by a judgment on 6 March 1974.[2] In its Chiquita decision[3] the Commission restated this principle, fining the United Brands Company for refusing, without objective reason, to supply its Chiquita brand of bananas to one of its main Danish customers.

The Commission has since taken two more decisions which deal with the supply obligations of undertakings in a dominant position.

28. In the first,[4] the Commission held that it is an abuse of a dominant position if, at a time of shortage, a dominant undertaking reduces supplies to a regular customer of long-standing more sharply than to other comparable customers. The differentiation was not justified on objective grounds taking account of the importance, continuity or regularity of business relations and was likely to result in a change in the structure of the market through the disappearance of that customer as a substantial, independent distributor of the relevant product.

In the second case,[5] the Commission considered a firm with a monopoly in the manufacture of spare parts for repairing and reconditioning the machines it makes, and absolute control of their distribution, abuses its dominant position by a refusal to supply independent, qualified repairers. The dominant firm was limiting or eliminating competition on after-sales services and repairs and also, in this case, preventing independent operators from renting out and selling or reselling its machines, strengthening its own already dominant position on the market. The Commission emphasized that there was no

---

1 Decision of 14.12.1972, Zoja v CSC-ICI: OJ L 299 of 31.12.1972; Second Report on Competition Policy, point 47.

2 Istituto Chemioterapico Italiano SpA and Commercial Solvents Corporation v Commission, Joined Cases 6 and 7/73: [1974] ECR 223.

3 Decision of 17.12.1975, Chiquita: OJ L 95 of 9.4.1976; Fifth Report on Competition Policy, point 71.

4 Decision of 12.4.1977, ABG/Oil companies operating in the Netherlands: point 144 of this Report.

5 Hugin/Liptons: point 146 of this Report.

objective reason for the refusal to supply a customer who had the ability and training required to maintain and repair the manufacturer's machines as well as competing machines.

It must also be emphasized that a dominant firm has to set the prices of products it is bound to supply to its customers in a way which allows them a reasonable margin, sufficient to enable them to stay in business long term, even if the customer is a competitor.[1]

§ 7 — Horizontal groups and economic entities

29. The question of the position of horizontal groups in relation to the EEC rules of competition was raised in the Commission's proceedings against a number of European zip-fastener manufacturers. As with joint ventures,[2] the main problem is to draw the line between a restrictive agreement and a merger. The difficulty arises because of the peculiar structure of the horizontal group: unlike the parent-and-subsidiary group, the horizontal group is not made up of a parent company and one or more companies dependent on it; the distinguishing legal feature of horizontal groups is that two or more firms set up—often by contract—a single body to manage them. This single management must actually run the participating firms. The formation of a horizontal group of this kind does not, however, affect the legal independence of the participants, and it does not necessarily bring their business independence to an end either.

The setting-up of a horizontal group often leads to coordination of the participants' market conduct. In addition, such a group depends for its foundation and continued existence not on the unilateral assertion of authority but on voluntary agreement, which can in principle be ended at any time. Because it is always possible for one of the firms taking part to withdraw, attempts to manage the group in the common interest may run into serious difficulties in practice. These considerations bring out the similarity which often exists between a horizontal group and a restrictive agreement of the classical type and they preclude in consequence any systematic categorization of such groupings as mergers. The choice of this legal form of grouping amounts to no more than inconclusive evidence of merger.

On the other hand, the formation of a horizontal group may be accompanied by coordination within the firms involved covering the major part if not the whole of their business

[1] National Carbonizing Company: point 148 of this Report.
[2] Sixth Report on Competition Policy, points 53 to 59.

and often amounting to a real merger to which Article 86 of the Treaty, rather than Article 85, may apply.

30. In the Commission's view horizontal groups are to be regarded as new economic entities once the member firms have finally given up their independence and have lost any real possibility of re-entering the market as independent buyers or sellers in the future. This point may coincide with the formation of the group; but it may come later, particularly if the participants' activities are integrated in stages, either in accordance with a timetable or with one line of business following another.

So in assessing the position of a horizontal group under competition law, it is necessary to look beyond the text of the agreement setting up the group. All the legal and economic circumstances, including the actual behaviour of those taking part, must also be considered. The question whether such a group is caught by Article 85 can therefore only be answered case by case. The Commission believes, however, that an economic entity, and hence also a merger, can be said to exist at least in cases where the following three tests are satisfied:

1. The joint management body provided for when any horizontal group is being formed must actually operate. It must control financial planning, investment and the most important areas of the business carried on by all participating firms.

2. The assets of all participants must be under the permanent control of the joint management.

3. There must also be a system for spreading business and financial risks, so that all those taking part have a similar interest in pursuing the common aims.

31. In the case concerning the European zip-fastener industry, the Commission received a complaint from the Japanese group Yoshida Kogyo KK (YKK), the largest zip-fastener manufacturer in the world, against the British group Imperial Metal Industries (IMI) and the German-Swiss group Heilmann. The main accusation in the complaint was that the European groups had entered into agreements and concerted practices which enabled them to monopolize the Community market in zip-fasteners. The Commission found the facts to be as follows:

(a) The IMI and Heilmann groups are two of the largest Community undertakings engaging in the development, production and sale of zip-fasteners and machines for making them, and both have extensive networks of subsidiaries; they were originally competitors in the common market and elsewhere. Faced with increasing competition from firms in non-member countries, IMI and Heilmann decided to

combine their interests in the zip-fastener market. They took a series of measures aimed at interlocking their finances and business, and coordinating the policies they followed.

(b) In 1964 and 1965 IMI and Heilmann each took a 50% share in the capital of each other's subsidiaries. The stated aim of this exchange was to share equally between both parties profits and losses made within the two groups.

(c) In 1965 IMI and Heilmann formed a joint management company, each holding half the capital. This company was to coordinate the activities of all the subsidiaries in certain important areas, particularly financial planning, investment, and the use made of industrial property rights. At the same time Heilmann was made responsible for running the day-to-day business of a number of subsidiaries based in certain specified countries, while IMI was to do the same in the case of subsidiaries in all other countries. The form of organization they had chosen enabled the participants to establish a single decision-making centre for all important policy measures, and to delegate the implementation of these decisions along with day-to-day running to the partner who was most familiar with each particular market.

(d) In 1967 IMI and Heilmann decided to grant each other licences in respect of all their existing and future patents. This resulted in common use of all the industrial and commercial property rights possessed by the two groups.

(e) More recently, IMI and Heilmann have continued to rationalize the development and production activities of their subsidiaries and to redefine the subsidiaries' objectives by reference to the overriding consideration of their common interest. Such a degree of mutual dependence has arisen between firms which formerly belonged either to the IMI or to the Heilmann group that a separation of the two groups would be difficult to imagine.

(f) In 1975 IMI and Heilmann finally announced in a joint statement that the combined assets of the whole of the IMI/Heilmann group would be used to cover the liabilities of any single subsidiary.

32. After considering these circumstances the Commission came to the conclusion that the formerly separate IMI and Heilmann groups had merged into a single economic entity. There were therefore no grounds for intervention under Article 85 against the agreements and decisions entered into for that purpose. Article 86 did not apply either, because the merged groups did not occupy a dominant position either in the common market as a whole or in a substantial part of it. The Commission was accordingly able to terminate its proceedings.

§ 8 — The Commission's policy on intra-Community dumping

Application of Articles 136 and 137 of the Treaty of Accession

1. Introduction

33. The First Report on Competition Policy included an account of the Commission's policy on dumping (application of Article 91 of the Treaty of Rome).[1] This section of the Report seeks to give a similar review of the corresponding Article in the Treaty of Accession.

Article 136 of the Treaty of Accession made provision (drawing upon the terms of Article 91(1) of the Treaty of Rome) for the regulation of intra-Community dumping. The currency of this Article was moreover five years as compared with the twelve years adopted by the original six Member States.

Intra-Community dumping could take place until 31 December 1977 between any two of the new Member States themselves or between a new and an original Member State. Obviously a complaint could not arise where both parties were original Member States.

Article 136 of the Treaty of Accession stated that if the Commission made a finding that dumping was being practised it should address recommendations to the originating parties to cease. In the case of the practice continuing the Commission should authorize the injured Member State to take protective measures which the Commission considered appropriate.

In addition to Article 136 the Treaty of Accession contained Article 137 which provided for unilateral action in cases of extreme urgency until 31 December 1977 on the part of Ireland, subject to an *ex post facto* abolition or modification by the Commission.

2. The application of Article 136 (Treaty of Accession)

There was no occasion on which it was necessary to make use of the provisions of Article 136. In practice where an investigation was initiated on receipt of a complaint either no dumping was found to be taking place, or the parties came to a voluntary agreement or the problem resolved itself during investigation. There can be little doubt that the existence of the Article inhibited dumping and that Commission interest was an important deterrent.

---

[1] First Report on Competition Policy, point 106 *et seq.*

The general question of defining intra-Community dumping arose once again when Ireland found difficulty in accepting the principles decided upon in 1961 by the original six Member States which allowed exporters to absorb import duties during the transitional period. Given the difficulty of comparing like with like in a meaningful fashion it has proved by experience necessary to adopt a flexible approach, as was the case in the first transitional period.[1]

Comparison with the transitional period of the original six Member States is difficult for many reasons, in particular economic circumstances and attitudes have changed substantially. The first year of the transitional period was notable for the number of cases originating in Ireland against United Kingdom firms whilst the latter end of the period saw many complaints arising in the United Kingdom against Italian producers. The number of complaints concerning Denmark has been very small. It is most noteworthy that during the transitional period no complaint was introduced by any of the six original Member States against any of the new Members, although the Treaty made provision for this.

Contrary to the situation experienced under Article 91(1) of the Treaty of Rome, complaints increased towards the end of the transitional period particularly if weight is given to the sizes of the industries involved, with the result that in the last months there were several major complaints still under examination which even if well founded could have led to only a very short period of protective action within the terms of Article 136 (Treaty of Accession).

During the five years that Article 136 was applicable the Commission received 31 allegations of dumping. Of these 9 showed misconceptions of the meaning of dumping and were rejected or, where appropriate were transferred to other Directorates of the Commission. There was one case under Article 137. In some cases it was not clear whether dumping or abuse of a dominant position, Article 86, or State aids, Article 92, of the Treaty of Rome, was involved and simultaneous consideration was adopted.

The large number of Irish cases started in 1973 against British companies was dominated by questions in the paper products industry. Perhaps more striking is the fact that no Irish organization saw the necessity to lodge an allegation against companies in any of the other seven Member States. This is believed to be due to the fact that the Irish economy is still very closely linked to the UK, either by trade or by British subsidiary companies operating in Ireland. The predominance of complaints arising in the United Kingdom in the last three years depended upon a number of factors. The transport sector had witnessed the container revolution and other improvements in door-to-door transportation; these had facilitated the importation of products which traditionally enjoyed a degree of

[1] First Report on Competition Policy, point 108.

natural protection in the United Kingdom. The highly concentrated nature of much United Kingdom wholesaling and retailing activity could also provide an external supplier with a single organization capable of distributing a significant percentage of his output. Investigation of complaints frequently led to the conclusion that the 'pull' from the United Kingdom importing organizations for the products in question was more important than the 'push' from the exporting country.

The Table below refers only to dumping complaints which warranted investigation:

Year of allegation	Allegation by an industry in		against an industry in	Product group
1973	Ireland	v	UK	Paper products
	Ireland	v	UK	Paper products
	Ireland	v	UK	Paper products
	Ireland	v	UK	Paper products
	Ireland	v	UK	Paper products (*Article* 137 case)
	Ireland	v	UK	Plastics
	Ireland	v	UK	Chemicals
	Ireland	v	UK	Pet foods
1974	Denmark	v	Germany	Non-ferrous metals
1975	UK	v	France	Security products
	UK	v	Italy	Textiles
	UK	v	Ireland	Plastics
	UK	v	Belgium	Wood-based products
	UK	v	Ireland	Textiles
1976	Denmark	v	Germany	Ceramics
	UK	v	Germany	Industrial cleaning equipment
	UK	v	Italy	Domestic appliances
	UK	v	Italy	Plastics
	UK	v	Germany	Specialized building products
	UK	v	Germany	Electronics
1977	UK	v	Italy	Bathroom equipment
	UK	v	Netherlands	Hand tools

The following are some of the cases of particular interest which arose during the transitional period. One involving paper products, produced in a large variety, caused so much confusion in the realm of comparing like with like that the alleged dumper agreed to use the same price list in Ireland as in the United Kingdom. A textile case involving British and Italian industries highlighted the significance of the 'pull' effect as mentioned above—to the point where many United Kingdom clothing manufacturers had become completely dependent upon imported material.

Modern transport methods and very different market structures rendered comparison of like with like extremely difficult in three cases: a case concerning United Kingdom and Irish producers of plastic products, a case concerning United Kingdom and Italian manufacturers of domestic appliances and in the same countries a case concerning a type of bathroom equipment. The common feature of these cases was that the domestic market of the alleged dumper was either small or fragmented (or both) whereas the United Kingdom market was dominated by a small number of large firms and transport to it was relatively simple to arrange.

A strange difficulty arose in a case concerning security products whereby a similar product rendered a service which was said to be valued differently for insurance purposes from one country to another thereby implying the need for a price structure to match. A textile case raised the question of how much local value must be added to a cheap non-Community material to render it a Community product and avoid 'back door' dumping.

By contrast, where international specifications for basic products permitted straightforward calculations as in a non-ferrous metal case between producers in Denmark and Germany the work of the Service of the Commission was much simplified. At the same time, the fluctuating nature of the prices of primary materials can raise problems concerning the stability of any settlement. Similarly, frequent fluctuations in rates of exchange have caused problems.

3. The application of Article 137 (Treaty of Accession)

The purpose of this Article was to give an additional safeguard to the small Irish market where, by reason of the size of the local industries, dumping could have a far more rapidly injurious effect than would be likely to larger economies.

Article 137 gave Ireland the power to take emergency measures. The decision of the Irish authorities and the measures taken were subject to review by the Commission which could decide to abolish or modify the measures.

In the event there was only one case introduced under Article 137 concerning two paper products. For one product it was concluded that there was no margin of dumping, and for the other the dumping had ceased before Ireland took its temporary measures. Duties on both products were abolished.

4. Conclusions

There was no general feature concerning the types of products involved. The most recurrent aspect was that the complaining enterprise was often located in an area of above average unemployment or was a major employer in a small area.

As no formal action was taken on the basis of dumping, the question of material injury did not have to be faced. However, it is clear that the separation of the effects of general market recession from the effect of any dumping would have been very difficult.

Finally, as indicated in earlier Reports the submission, or threat of submission, of a complaint to the Commission exerted a strong 'moral pressure'. This supported the adoption of flexible methods of investigation which usually involved a visit to one or both of the parties concerned.

§ 9 — Findings of the inquiry into the market for naphtha for petrochemical use and into the behaviour of the oil companies

1. Subject of the inquiry

34. In its report on the behaviour of the oil companies during the crisis[1] the Commission found that, for certain products such as kerosene and naphtha, there were 'specific market situations and price differences which justify closer investigation'.[2]

The naphtha inquiry was undertaken to consider the compatibility with the competition rules of the oil companies' behaviour in the Community market for non-energy naphtha between 1973 and 1975, the period immediately following the oil crisis.

The Commission has also carried out an inquiry into the use by oil companies of Platt's Oilgram quotations for naphtha. Platt's quotations are used as indicators of spot market trends for the various petroleum products. These quotations have a major influence on price formation in a variety of transactions, notably when period supply contracts are indexed to them.

The inquiry was inspired by the sudden pressure on naphtha prices following the oil crisis. Its origin also lay in the Commission's fear that, in this highly concentrated oligopolistic market, the major international companies might use their power and their privileged access to crude oil, the raw material for making naphtha, as the basis for conduct conflicting with the Treaty rules on competition.

2. Naphtha

Naphtha is a light fraction resulting from the distillation of crude oil. Like crude it is a variable mixture of various hydrocarbons—paraffins, olefins, naphthenes and aromatics

[1] Commission Report on the Behaviour of the Oil Companies in the Community during the period from October 1973 to March 1974, Brussels, 14 December 1975 (Studies, Competition Series No 26), p. 161; see also Fifth Report on Competition Policy, point 9.5.

[2] The Commission is still conducting an inquiry into the jet fuel (kerosene) market.

—and it has energy and petrochemical properties. These two-fold properties affect the use of and market for naphtha.

The energy property of naphtha is used in the production of manufactured gas and especially motor spirit, where those naphtha fractions richer in aromatics are used.

As a petrochemical base, which is the concern of this inquiry, naphtha is used for manufacturing major intermediate products such as ethylene, propylene and butadiene, which are olefins. These are then made into finished products, mainly plastics and synthetic rubber. Some man-made fibres and detergents are also derived from naphtha. Lastly, with the hydrogen obtained from the hydrocarbons in naphtha, methanol is produced, also ammoniac from which nitrogenous fertilizers are derived.

The price of naphtha currently represents about 70% of the cost of manufacturing basic petrochemicals.

3. Analysis of naphtha market trends from 1973 to 1975

The rise in total naphtha consumption in Western Europe came to a sudden halt at the end of 1974 and was followed by a decline in 1975, largely because of the drop in consumption by the petrochemicals industry. Petrochemical naphtha consumption fell sharply both in absolute terms and in relation to naphtha used for energy.[1]

The decline began in the Community only in the last quarter of 1974. According to the findings of the inquiry, annual petrochemical naphtha consumption[2] among the Nine was 33 070 000 tonnes in 1973 and stayed at much the same level in 1974 (33 779 000 tonnes), falling then to 24 195 000 tonnes in 1975.

The decline in demand for finished petrochemical products in the Community did not really affect the naphtha processing industry until 1975.

---

[1] According to figures based on OECD statistics and expert estimates, naphtha consumption in Western Europe developed as follows (in million tonnes):

	1973	*1974*	*1975*	*1976*	*1977*
Total naphtha consumption (excluding manufactured gas and solvents)	129	128	116	130	133
of which:					
(a) energy naphtha (%)	64	61	69	64	64
(b) petrochemical naphtha (%)	36	39	31	36	36

(including deliveries between refineries and petrochemical installations belonging to the same company).

[2] Excluding deliveries between refineries and petrochemical installations belonging to the same company.

But apart from the effect of demand for finished products and for motor spirit, other factors also influenced the naphtha market during the reference period: price controls in France, Italy and Belgium, trade between Community countries and with the rest of the world, demand for middle and heavy distillates, representing four-fifths of all refinery products in Europe, and, most important, the price of crude.

The rise in crude prices was the source of the pressure on the naphtha market which began to appear in 1973. From the second quarter of 1973 to the first quarter of 1974, naphtha prices rose steadily, increasing fourfold. Prices then fell again but were still more than twice the price for the second quarter of 1973; by the end of 1975 they were back up to three times their original level (Graph 1).

Users reacted rather slowly. Naphtha demand only began to fall in October 1974, reaching its lowest point in 1975. At a time when prices were rising, petrochemical users continued producing naphtha intermediates and increased their stocks, on the assumption that prices might rise even further. From October 1974 the effects of declining demand for finished petrochemical products as a result of price increases and anti-inflation measures (credit squeeze) made them run down their stocks and cut back production, which in turn caused a sharp drop in naphtha consumption from the end of 1974 to the end of 1975.

The drop in total imports directly affected not only intra-Community trade in naphtha but also imports from non-member countries. The consequences of the fall were felt by all exporting non-member countries except those in Europe and in North Africa, which expanded their exports to the Community because favourable geographical location gave them an advantage as regards freight costs; they thereby consolidated the traditional flows of trade between the Community and its neighbours.

4. Suppliers and users of naphtha in the European Community

4.1 The structure of naphtha production and processing

The production of naphtha (by refining crude oil) and its processing into basic petrochemical products are closely linked. The two stages may be integrated:

(i) either fully, in a single company or group of companies possessing the two kinds of plant-refining and naphtha transforming;

(ii) or by a combination of two or more companies or groups of companies which are in the petroleum or chemical industries, setting up a joint venture at one of the two stages.

These two forms of integration are practised both by oil companies and by chemical companies.

The rapid growth of petrochemicals which began in the 1960s was the reason for large-scale investment by petroleum companies. The price of naphtha exerts a decisive influence on the manufacture of basic petrochemical products, and the refining techniques are similar to those used in petrochemicals. The oil companies therefore set up either wholly owned subsidiaries or joint ventures generally with chemical groups to transform naphtha.

Certain chemical companies also did the same and, already having petrochemical plants, gained access to refineries either by integrating refinery companies into their own group (or company) or by taking shares in refinery joint ventures.

And so the chemical companies have played their part in the integration of the refining and transforming stages.

The extent of integration, measured in terms of the quantities of naphtha delivered within a group of companies or to joint ventures by parent companies as a proportion of total deliveries by all suppliers in a given country,[1] varies from country to country. The figures were 69% in the United Kingdom, 76% in France and 80% in Germany. The percentage was higher still is Belgium but much lower in the Netherlands and Italy being only 27% and 49% respectively. The transport structure also reflects this level of integration, since the volumes carried by pipeline in each country are very nearly in direct proportion to the degree of integration. Pipeline is the normal method of moving naphtha from refinery to petrochemical plant within an integrated group.[2]

Two-thirds of the petrochemical naphtha traded within the Community moves within completely integrated groups or between joint ventures and their parent companies. The remaining third is handled by non-integrated transactions, most of it under period supply contracts and a little through spot transactions. Although the non-integrated share of the market is less than one-third of total purchases of naphtha in the first four countries mentioned above, it is more than one-third in Italy and the Netherlands, these being countries where there is also a larger number of suppliers with substantial shares of the period supply contract market.

4.2 The position of the suppliers in the integrated and non-integrated markets for naphtha in the Community

To indicate clearly the pre-eminent position held by a limited number of suppliers on the integrated market and on the non-integrated (period supply contract) market, Table 1 breaks down suppliers into three categories:

---

[1] Volumes delivered by a refinery to a petrochemical plant where both are directly owned by the same company are disregarded for this purpose.

[2] But pipeline is not the only means of transport used by these groups for their internal deliveries, and in addition it may also be used for deliveries to third parties.

TABLE 1

The structure of the integrated market (wholly owned subsidiaries and joint ventures) and of the non-integrated market (period supply contracts) in the Community between 1973 and 1975

	Suppliers	Major international companies (1)							National companies (2)		
		D	F	I	NL	B	UK	EEC	D	F	I
Integrated market (Wholly owned subsidiaries and joint ventures)	Number of suppliers	4	2	1	3	—	4	6 [1]	1	3	2
	Per cent share of integrated market	94	48	31	100	—	83	71	1	52	69
	Per cent share of supplies to joint ventures	76	76	—	—	—	—	42	—	65	27
Non-integrated market (Period supply contracts)	Number of suppliers	2	2	5	6	—	3	6 [1]	2	2	5
	Per cent share of non-integrated market (period supply contracts)	19	95	20	46	—	49	41	46	5	32

[1] Groups of suppliers.

(i) the major international firms—Exxon, Shell, BP, Texaco, Gulf, Mobil Oil and Chevron;

(ii) national companies such as Elf, CFP, their joint ventures (Saarland Raffinerie and Antar), ENI, Moratti, Monti, Petrofina and VEBA;

(iii) other suppliers, and chiefly:
  (a) the independent American firms Phillips, Amoco and Conoco;
  (b) the chemical firms Dow and BASF;
  (c) companies in various countries, including those in Eastern Europe (Sojuznefte-export and Nafta USSR) and the Mediterranean region occupying a position of substantial power in the period supply contract market.

				Other companies (3)							All companies (1) + (2) + (3)						
NL	B	UK	EEC	D	F	I	NL	B	UK	EEC	D	F	I	NL	B	UK	EEC
—	1	—	7	2	—	—	—	1	1	4	7	5	3	3	2	5	1 17
—	60	—	21	5	—	—	—	40	17	8	100	100	100	100	100	100	100
—	100	—	58	95	—	—	—	100	100	99	76	70	19	—	100	17	50
2	—	2	1 8	10	—	15	6	6	7	44	14	4	25	14	6	12	1 58
17	—	6	18	35	—	48	37	100	45	41	100	100	100	100	100	100	100

The table shows the position occupied on the two markets—integrated and period supply contract—by all companies in each of these three categories of suppliers.

Market shares are calculated from the relative importance of supplies by one category of suppliers as compared with total integrated or contract supplies in a given Member State and in the Community.

The figure for supplies to joint ventures expresses internal deliveries between parent companies and joint ventures as a percentage of total integrated deliveries.

It can be seen from this table that a limited number of suppliers, consisting mainly of the international majors, account for the bulk of the integrated market and a sizeable share of the non-integrated market throughout the Community. But there is a perceptible

difference between countries with a high degree of integration (France, Germany, Belgium and United Kingdom) and the less-integrated countries (Italy and Netherlands).

The importance of the role played by certain national companies in the integrated market and in the period supply contract market is also evident. In the Community as a whole their share of the integrated market and their share of the non-integrated market are smaller though far from negligible. In the two markets they attain shares of 21% and 18% respectively.

Lastly, in all the Member States except Italy, the United Kingdom and the Netherlands, the joint venture is a more highly developed form of integration than the wholly owned subsidiary.[1]

Analysis of the structure of the market gives indications of the strategy adopted by petroleum companies on the European naphtha market. The major American oil companies face the competition on their own through wholly integrated subsidiaries, whereas Shell, BP, the other European oil companies and the independent American companies practise total integration or combination with other groups which are sometimes in the chemical industry and sometimes in the oil industry.

In the two countries where the degree of integration is low, the chemical firms have remained independent of the major international oil groups: in the Netherlands they are not associated with oil firms and in Italy they are associated with national oil groups.

The fact that users in these two countries have greater freedom of supply than users elsewhere in the Community can be explained by the greater variety of sources of supply available in their non-integrated markets.

4.3 The position of users in the Community

The number of user firms surveyed is thirty-seven, controlled by thirty oil or chemical groups.

Among the groups that are both suppliers and users of petrochemicals there are both petroleum firms and a few American or European chemical firms. These groups, with their subsidiaries and joint ventures, account for two-thirds of all petrochemical users. The major international firms control most of the users and, as groups, are the largest users in the Community.

Six major chemical firms are among the sixteen largest users.

---

[1] Belgium and the Netherlands each has only one form of integration - the joint venture in Belgium and the wholly owned subsidiary in the Netherlands.

In no Member State does the number of naphtha users exceed ten; there are only about half-a-dozen in Italy, the Netherlands and the United Kingdom, while there are three countries where user firms are either non-existent or only of minor importance.

It may be concluded that oligopoly in this market is confronted by oligopsony.[1]

5. *Naphtha prices*

In many cases the prices charged on the naphtha market differ appreciably, and this applies also to transfer prices, prices charged to joint ventures, contract prices and spot prices.

5.1 Transfer prices and prices charged to joint ventures

Prices in such dealings as these depend to a large extent on the degree of integration of the firms involved:

(i) Transfer prices generally tend to follow the prices for non-integrated dealings (period supply contracts), though they may be above or below, depending on the particular policy applied by the international company concerned.

(ii) Prices charged to joint ventures generally reflect the balance of interests between the two parent companies. Although these prices sometimes reflect contract prices more closely than transfer prices, there are other cases where the interests of the two parent companies are such that they will charge prices well below the prices charged on non-integrated dealings (period supply contracts).

5.2 Contract prices and the lack of information on them

There is no such thing as a market price for naphtha common to the whole Community.

Firstly, contract prices vary from one Member State to another.

Substantial differences over time and from one country to another, and, similarly, differences in regional naphtha markets, naturally affected prices and dealings on these markets between 1973 and 1975.

In France the official fixing of maximum prices curbed the rise in prices and kept them lower than in other Member States.

---

[1] Fifth Report on Competition Policy, point 9.

In Italy the same result was achieved but there it was due to the large number of sources of supply available to certain users rather than to price controls.

In the United Kingdom the highest prices paid at a time when the market was unsettled were those for imported naphtha, which helped to raise aggregate price levels. Imports from Eastern Europe and the Mediterranean countries helped to moderate price movements when the market was reverting to stability.

Secondly, it has been found that contract prices vary sharply even within the same country when the price of naphtha is not subject to controls.

Some of the larger-scale user firms find themselves with highly diversified sources of supply in the form either of refineries that they themselves own or of contracts with Eastern European countries involving very large volumes of naphtha. These sources of supply give the firms that have access to them a definite price advantage over other firms that do not enjoy such access.

Thirdly, there are also substantial differences in the prices charged by different suppliers in dealing with the same customer, especially when the customer is only a medium-sized firm. Prices charged to the largest customers are usually within a narrower range than those to medium-sized customers.

Observed differences in contract prices, often for deliveries made on broadly comparable terms, are explained not only by the specific circumstances of the market and of the inequality of bargaining strength of buyer and seller, but also by the absence of transparency, i.e. general information about the market. There is no arrangement for publication of contract prices. Certain prices are however, periodically renegotiated, which places the weaker customers at a disadvantage because they have less extensive sources of information than the larger customers.

5.3 Spot prices for naphtha and Platt's Oilgram quotations for this market

Spot prices are prices charged for occasional purchases of small quantities of naphtha, bought to complete supply requirements. Although these quantities are only marginal, representing no more than 5% of all purchases in the Community, they have expanded since the oil crisis.

Although the spot market concerns only fairly small quantities of naphtha, spot prices are used as market indicators through Platt's Oilgram quotations.

To a varying extent the quotations, which are the only daily indications available of the high and low prices charged in naphtha spot dealings on the preceding day, influence the prices in other dealings, i.e. period contracts and internal transactions, which together cover 95% of all naphtha dealings in the Community.

Platt's quotations for naphtha began in April 1973, when they completed the quotations for the European markets for petroleum products in Rotterdam and in Italy (European bulk quotations), published daily by the American publisher McGraw Hill in Platt's Oilgram.[1]

Platt's quotations for naphtha serve as a basis for indexing many period supply contracts but are also used by governments as a reference for setting maximum prices (Belgium) or for verifying cost analyses (Italy).

5.3.1. *Developments in Platt's quotations and real developments in spot prices*

Graph 1 reveals two important points—firstly, that Platt's quotations for Rotterdam and Italy move in parallel and, secondly, that most of the prices actually charged on the spot market sharply diverge from the quotations.

There are two distinct phases in the recent development of Platt's quotations:

(i) a first phase of instability, when naphtha prices rose sharply and then fell sharply again (April 1973 to August 1974);

(ii) a second phase which, in contrast, began with a period of price stability (August 1974 to February 1975) and was followed by two successive price rises, less marked than the first.

During the first phase most market prices lie below Platt's quotations while prices are rising and above them while they are falling. In the second phase prices that are outside the quotation bands are similar to those of the first phase in that they lie above quotations during periods of stability and below them when prices are rising.

Now if the two phases are compared, it is found that during the second phase spot prices diverge from the quotations less frequently than in the first phase: but even then they represent more than half of the spot prices and more than half the quantity of all the spot naphtha delivered.

In the second half of 1975, however, Platt's quotations give a much closer translation of European naphtha spot market trends.

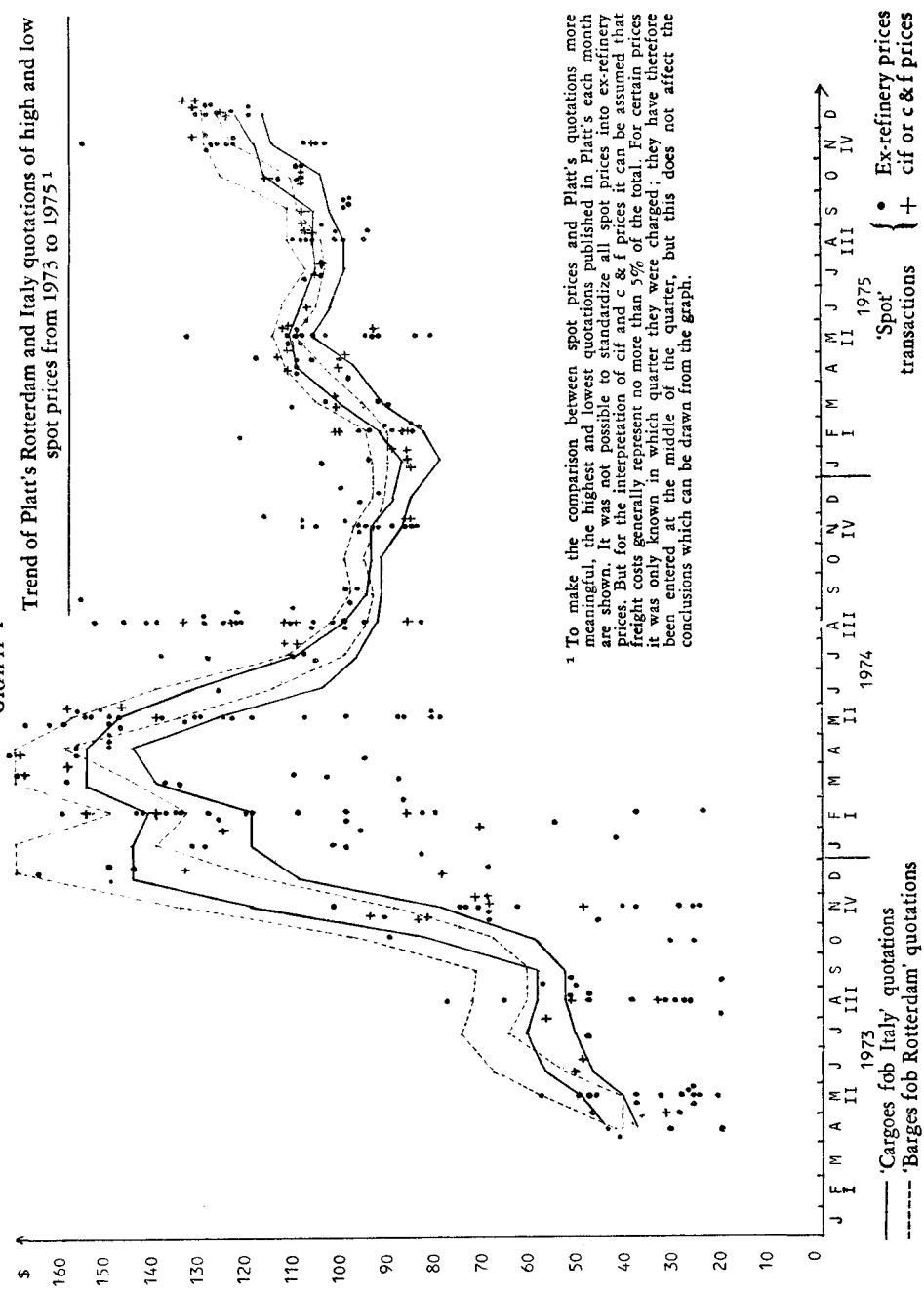
It may therefore be concluded that in general, before the second half of 1975, these quotations anticipated market trends—whether they were upward or downward.

---

[1] Until October 1975 there were two European bulk quotations - Barges fob Rotterdam and Cargoes fob (Mediterranean basis) Italy. Since October 1975 there has been a third - Cargoes cif (North West Europe basis) Rotterdam.

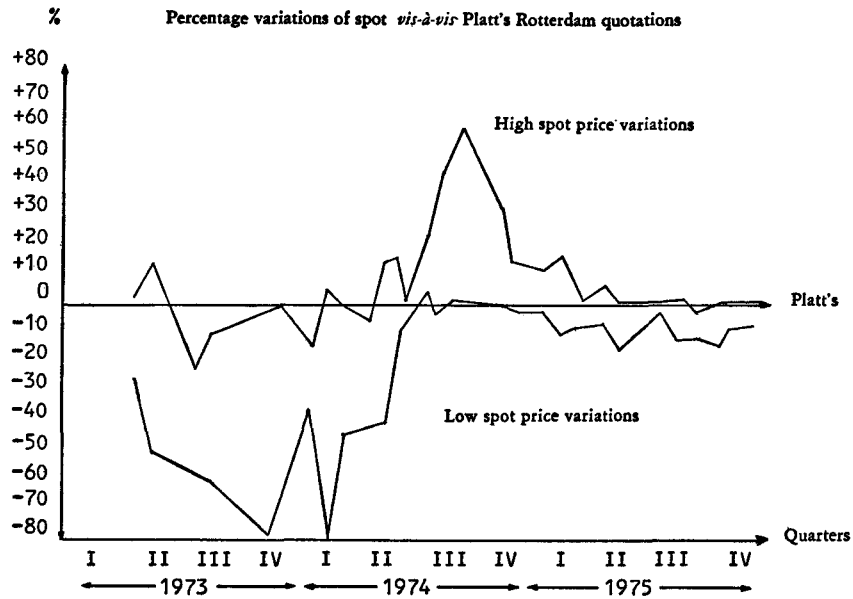
GRAPH 1

Trend of Platt's Rotterdam and Italy quotations of high and low spot prices from 1973 to 1975 [1]

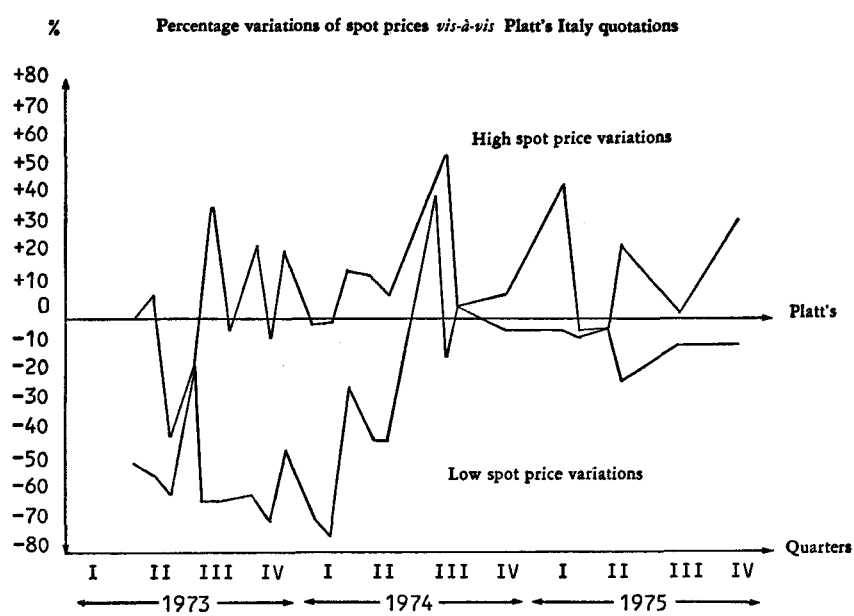


[1] To make the comparison between spot prices and Platt's quotations more meaningful, the highest and lowest quotations published in Platt's each month are shown. It was not possible to standardize all spot prices into ex-refinery prices. But for the interpretation of cif and c & f prices it can be assumed that freight costs generally represent no more than 5% of the total. For certain prices it was only known in which quarter they were charged; they have therefore been entered at the middle of the quarter, but this does not affect the conclusions which can be drawn from the graph.

GRAPH 2



GRAPH 3



The next two graphs highlight the extent of the gap between trends in actual spot prices and trends in Platt's quotations, contrasting Rotterdam and Italy spot price variations with Platts' quotations for those two markets.

Graphs 2 and 3 show that Platt's Rotterdam quotations are even less realistic than its Italian quotations as a reflection of the prices actually charged on the two spot markets during the period under review.

5.3.2. *The reliability of Platt's quotations for naphtha*

The analysis of Platt's quotations for naphtha raises a number of points which lead to reservations as to the reliability of these quotations.

(i) As spot dealings on the market are comparatively rare, most of the quotations published between April 1973 and December 1975 (1 147 out of 1 475) show that the price bracket was carried over unchanged from one day to the next.

(ii) The other 328 quotations, where the price bracket moved, roughly correspond to the 350 spot deals actually entered into by petrochemical users between 1973 and 1975.[1] There are, therefore, not enough of these deals to allow an equivalent number of quotations to be reliably established, assuming that several actual prices are needed if a price bracket is to be established.

(iii) Since it does not have a sufficiently ample spot price basis to establish its naphtha quotations, Platt's has to make fairly frequent use of offers for sale or purchase that are not followed up. This explains why Platt's quotations (making use of offers) amplify spot market trends.

(iv) This method, which may enable interested operators to influence the price quotation by launching speculative offers on the market, must therefore be treated with caution.

---

[1] Three other points should be made concerning the 350 deals and the 350 spot deliveries of naphtha to petrochemical users:
First, these deals are often the last in a chain of intermediate deals by speculators in the same parcels of naphtha; the prices in these intermediate deals are very often speculative prices concerning one and the same quantity.
Second, these 350 spot transactions concern petrochemical naphtha only; those concerning energy naphtha have been excluded. But since energy naphtha transactions represent only a very low percentage, the conclusions reached in this chapter are not affected.
Nor are the conclusions invalidated by the third point: a number of spot transactions are concluded by oil companies not as suppliers but as buyers of naphtha seeking to balance their operations.

6. Conclusions

Examination of the quantities of naphtha traded and of price trends has not led the Commission to conclude that there are restrictive practices between firms or abuses of dominant positions, calling for action under Articles 85 and 86 of the EEC Treaty.

One of the obvious reasons for this is to be found in the naphtha market structure, where competitive transactions, meaning those involving the free play of supply and demand, are somewhat rare. Furthermore, there are often considerable differences in the terms for these deals which makes it very difficult to compare prices.

In cases where the quantities delivered were smaller during the crisis, the Commission found that this was not because of restrictions operated by suppliers but because some users, with refinery capacity, preferred to produce more naphtha themselves.

In those countries where contract price analysis has shown substantial differences from one user to another, they have been found to be due to differences in the power of the users on the market. No actual instances of price discrimination have been revealed.

The Commission has also found that in those Member States where the structure of supply and demand for naphtha is most highly concentrated, joint ventures are very important users. Even if they are seen in relation to the Community as a whole, they are found to be as important as wholly owned subsidiaries in terms of the volume of naphtha handled. The Commission's attention will have to be directed to the way in which the controlling companies compete with each other.

Lastly, the period under review, with its different phases of price instability and relative stability, offered an opportunity for assessing the value of Platt's Oilgram quotations as naphtha market indicators over a reasonably significant time span. The comparative rarity of the spot transactions concluded in the period calls into question the reliability of Platt's quotations for naphtha.

Chapter II

General rules applying to firms

§ 1 — Amendment of existing regulations and notices

1. Extension and amendment of Regulation (EEC) No 2779/72 (specialization agreements)

35. Article 1 of Commission Regulation (EEC) No 2779/72 of 21 December 1972 on the application of Article 85(3) of the Treaty to categories of specialization agreements[1] states that that Regulation is to expire on 31 December 1977.
The Commission has extended the validity of the Regulation for a further five years.[2] The reasons for making the Regulation remain valid, notably the desire to promote cooperation between small and medium-sized firms so as to strengthen their ability to compete.

36. However, it was found necessary to make a number of changes to the quantitative thresholds for the operation of the Regulation:

(i) The limit for market share was raised from 10% in each Member State to 15% in a substantial part of the common market, and the limit for aggregate sales was raised from 150 million to 300 million u.a.

(ii) The method of calculating market shares was altered: account will now be taken not only of the products which are the subject of agreement, but also of other products manufactured by the participating undertakings and considered by consumers to be similar by reason of their characteristics, price or use. It was also necessary to establish the undertakings to be taken into account for this purpose: the undertakings that are party to the agreement and undertakings associated with them are now covered.

These amendments taken together will substantially broaden the scope of Regulation (EEC) No 2779/72, to the particular benefit of small business.

---

[1] OJ L 292 of 23.12.1972; Second Report on Competition Policy, point 8.
[2] Commission Regulation (EEC) No 2903/77 of 23 December 1977 extending the period of validity of and amending Regulation (EEC) No 2779/72 on the application of Article 85(3) of the Treaty to categories of specialization agreements: OJ L 338 of 28.12.1977.

2. *Amendment of Regulation No 67/67/EEC (exclusive dealing agreements)*

37. During the year the Commission continued its work[1] on the amendments to be made to the block exemption Regulation No 67/67/EEC.[2] After consulting the Advisory Committee on Restrictive Practices and Dominant Positions, it published the draft of an amending regulation in order to give interested parties the opportunity to make their views known.[3]

38. The planned amendments are all aimed at bringing Regulation No 67/67/EEC into line with the continuing development of Community law and the case law of the Court of Justice.

Experience gained in the application of the Regulation shows that some of its provisions allow of interpretations which are incompatible with its objects. These will have to be corrected. The Court has also newly defined the scope of the Regulation. With the Concordia judgment[4] it became clear that exclusive purchasing agreements qualify for the block exemption even where no defined resale territory is allocated to the purchaser. Concordia further confirmed that 'national' exclusive dealing agreements are covered by the Regulation[5] in so far as they may appreciably affect trade between Member States. The judgment makes it imperative that the text of the Regulation, which was originally tailored for exclusive distribution agreements and the like, be completely revised to embrace exclusive purchasing agreements.

The draft amending regulation would make the following changes:

(1) Article 1(2) of the Regulation, under which the block exemption does not apply to agreements to which undertakings from one Member State only are party and which concern the resale of goods within that Member State, would be deleted.

(2) Article 2(2) would make clear that the obligations to promote sales referred to may also be included in exclusive purchasing agreements.

(3) Article 3(a) would state that agreements between competing manufacturers containing exclusive supply or purchase obligations are in future excluded from block exemption, whether the obligations are on one side only or, as under the present text, are mutual.

---

[1] Sixth Report on Competition Policy, points 10 to 14.

[2] Commission Regulation No 67/67/EEC of 22 March 1967 on the application of Article 85(3) of the Treaty to certain categories of exclusive dealing agreements (OJ 57 of 25.3.1967), as amended by Regulation (EEC) No 2591/72 of 8 December 1972 (OJ L 276 of 8.12.1972).

[3] OJ C 31 of 7.2.1978.

[4] CJEC 1.2.1977 (A. de Norre and his wife Martine, née de Clerq v NV Brouwerij Concordia), 47/76: [1977] ECR 65 and 92.

[5] See also CJEC 3.2.1976 (Fonderies Roubaix v Fonderies Roux), 63/75: [1976] ECR 111 and 119.

(4) A new provision, Article 3(c), would state that the population of the territory covered by an exclusive dealing agreement may not as a rule exceed 100 million. Exceptions would be admissible only where intermediaries or consumers are able to obtain the goods to which the contract relates in the common market from at least three independent undertakings established in different Member States at the same stage of distribution as the exclusive dealer.

(5) Another new provision, Article 3(d), would tie block exemption of exclusive purchasing agreements to the condition that a producer who enters into such agreements with one or more dealers must not in a substantial part of the common market account for more than 15% of total sales of the relevant goods and of other goods considered similar by the consumer. This is intended in particular to prevent a single firm from raising substantial barriers to market entry by other undertakings by means of a network of exclusive purchasing agreements. It would thus ensure that the tests for exemption laid down by Article 85(3) are satisfied.

(6) Article 6 of the Regulation, which allows the Commission to withdraw block exemption of exclusive dealing agreements, would be reworded to apply to exclusive purchasing agreements as well. The main case where the Commission might consider withdrawing block exemption would be when the cumulative effect of several networks of such agreements, built up by different manufacturers, has the effect of shielding national markets from one another.

(7) In order to make the changeover to the new legal position easier for firms, the present form of the Regulation would continue to apply to existing agreements for a one-year transitional period.

39. Council Regulation No 19/65/EEC requires the Commission to consult the Advisory Committee a second time. This will be done at the beginning of 1978, and the Regulation could be adopted shortly afterwards.

3. Amendment of ECSC Decision No 25-67 (exemption from the requirement of prior authorization)

40. By Decision No 25-67, adopted on 22 June 1967 under Article 66(3) of the ECSC Treaty, the High Authority exempted from prior authorization certain mergers and takeovers which satisfied the tests of Article 66(2).[1]

Since that Decision came into force in 1967, Community steel output has expanded sharply, there have been major changes in the structure of the steel and coal industries

[1] OJ 154 of 14.7.1967.

and new Member States have joined the Community. For these reasons, and in the light of several years' experience of applying the 1967 Decision, it was found that the limits and terms laid down in the Decision should be brought into line with current economic realities.

Accordingly the Commission has transmitted for the Council's assent pursuant to Article 66(3) of the Treaty a draft decision to amend Decision No 25-67.[1]

As regards mergers between producers, the new thresholds for exemption represent the same percentages of Community production as in 1966 (approximately 5%). The new limits for mergers between distribution firms are set to take account of inflation (despite the crisis, steel prices have risen by nearly 90% since 1967).

This draft seeks mainly to adapt the Decision to changed market circumstances, not to extend the scope for exemption. There will accordingly be no change in the structure of the coal and steel markets to the detriment of small and medium-sized firms. If the existing Decision were retained unchanged the possibility of exemption would be restricted and the Commission would have to issue decisions under Article 66 even authorizing mergers that have no appreciable effect on the competitive state of the market.

4. Amendment of the Commission Notice of 27 May 1970 concerning agreements of minor importance

41. The Commission also decided[2] to amend its Notice of 27 May 1970 on agreements of minor importance.[3]

The object of this Notice is to encourage cooperation between small and medium-sized firms. It set limits—5% market share and aggregate annual turnover of 15 million u.a. for manufacturing firms and 20 million u.a. for distributive firms—below which restrictive practices in agreements between firms would not be regarded as appreciably affecting trade between Member States or competition.[4]

42. The amendments are designed:

1. To raise the limit for aggregate annual turnover of the parties to the agreement to 50 million u.a. in order to take account of inflation and also to define eligible firms

---

[1] Bull. EC 3-1977, point 2.1.33.
[2] Notice of 19 December 1977: OJ C 313 of 29.12.1977.
[3] Commission Notice of 27 May 1970 concerning agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Economic Community: OJ C 64 of 2.6.1970.
[4] First Report on Competition Policy, point 127.

in broader terms. This substantial increase also provides an opportunity to remove the distinction between industrial firms and commercial firms, which has caused difficulties in practice because many firms are engaged both in production and in distribution.

2. To align the definition of the relevant market—both product and geographic markets —with the definition used in the Commission Regulation amending Regulation (EEC) No 2779/72 of 21 December 1972 on the application of Article 85(3) of the Treaty to categories of specialization agreements.[1]

§ 2 — New regulations and notices

1. Proposed merger control regulation

43. In 1977 the Committee of Permanent Representatives considered the interim report submitted to it in 1976 by the Council's Working Party on Economic Questions. The report called for political guidelines on five main problems—the legal basis for the proposed regulation and the principle of premerger control, the scope of the regulation, the possibility of derogations from the concept of incompatibility with the common market, notification of planned mergers and decision-making powers.

At meetings held on 17 March, 11 May, 19 October and 25 November the Committee noted a growing convergence of views on the power to grant derogations and on the question of notification. All five items are still on the Committee's agenda.

2. Patent licensing agreements

44. In December 1977 the Commission sent the members of the Advisory Committee on Restrictive Practices and Dominant Positions a modified version of its draft Regulation on the application of Article 85(3) of the Treaty to certain categories of patent licensing agreements.[2] The amended version takes account of many suggestions made when the Advisory Committee was first consulted in December 1976, and others made by business and legal circles. The process of consultation required by Article 6(1)(a) of Regulation No 19/65[3] will be continued in 1978, so as to enable the draft to be published in the Official Journal with an invitation to all interested parties to submit any comments they may have to the Commission.

---

[1] Point 36 of this Report.
[2] Sixth Report on Competition Policy, point 3.
[3] OJ 36 of 6.3.1965.

In this respect, the assessment of exclusive and territorial licences, and the possibility of exempting such licences in favour of small and medium-sized firms, continue to be the main problems.

3. Subcontracting agreements

45. Having worked out the broad lines that it plans to follow in its Notice on certain subcontracting agreements which are not caught by Article 85(1) of the EEC Treaty,[1] the Commission has consulted a number of recognized European trade federations on the draft. In November it put the draft and the views of these trade federations before the 29th Restrictive Practices Conference of Government Experts of the Member States.

46. The aim is to encourage this type of division of labour for it can promote the interests of small and medium-sized firms. With this in mind a solution is sought which will reflect the legitimate interest of principal contractors in preserving the secrecy of their knowhow and ensuring that it is properly used, while offering subcontractors an assurance that they will be able to develop their business activities unhindered.

4. Proposed regulations applying the rules of competition to sea and air transport

47. The Commission has continued its work on a Regulation applying Articles 85 and 86 to air transport.[2] In the first half of 1978 it will be putting a preliminary draft to the Member States' governmental experts, when it has completed its examination of whether and to what extent certain forms of cooperation between airlines might be the subject of a block exemption.

48. When putting a proposal for a Regulation to the Council for accession to the United Nations Convention on a Code of Conduct for Liner Conferences, the Commission stated that it was not against the principle of liner conferences but wished to make more detailed examination of the way they operated. It stated that it would be transmitting to the Council a proposal for a Regulation applying the Treaty rules on competition to sea transport.

---

[1] Sixth Report on Competition Policy, point 5.
[2] Sixth Report on Competition Policy, point 16.

5. Periods of limitation for ECSC fines

49. After consulting the Advisory Committee and obtaining the unanimous assent of the Council,[1] the Commission has adopted an ECSC Decision on periods of limitation for proceedings and enforcement under the Treaty establishing the European Coal and Steel Community.[2] The Decision closes a gap in Community law. A large number of provisions in the ECSC Treaty empower the Commission to impose fines and periodic penalty payments on natural and legal persons that contravene Community law, and to enforce collection. There has not, however, been any specified period of time within which these penalties may be imposed or their enforcement may be sought.

The Decision now taken clarifies the legal position of the persons and firms concerned. In content it corresponds to the limitation regulation for EEC cases.[3] Details are to be found in earlier competition reports.[4]

[1] OJ C 316 of 31.12.1977.
[2] Decision of 6.4.1978: not yet reported.
[3] Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition (OJ L 319 of 29.11.1974).
[4] Sixth Report on Competition Policy, points 19 to 21; Fourth Report on Competition Policy, points 48 to 50.

60/61

Chapter III

Cases decided by the Court of Justice

50. In 1977 the Court of Justice clarified a number of important points concerning the interpretation and application of the rules of competition, making a significant contribution to the development of Community law in this field.

Two preliminary rulings given under Article 177 of the EEC Treaty dealt with the compatibility of national laws and regulations, and of certain business agreements or practices based on them, with Articles 85, 86 and 90 of the Treaty. In interpreting an earlier judgment, the Court of Justice removed certain doubts as to the way fines are to be paid.

In cases concerning distribution and supply agreements, the Court gave three important judgments whose significance reaches beyond the individual case.

Van Ameyde v UCI

51. In this case[1] the Court had been asked by a Milan court to answer several questions arising in litigation between an Italian loss-adjusting company,[2] the subsidiary of a Dutch firm, and the Italian National Insurance Bureau. The loss adjuster alleged that he had been excluded from the market for the settlement of claims arising from accidents caused by foreign vehicles in Italy.[3]

52. The Court held that, in the context of the green card system, a national provision or an agreement between national bureaux that the national bureau bears the sole responsibility for the settlement of claims for damage caused in the territory of a given Member State by vehicles insured with foreign insurance companies is not incompatible with Article 90(1) of the Treaty taken in conjunction with Articles 85 and 86. However, the national bureau or its members must retain the freedom to rely on undertakings

---

[1] CJEC 9.6.1977 (Srl Ufficio Henry Van Ameyde v Srl Ufficio centrale italiano di assistenza assicurativa automobilisti in circolazione internazionale (UCI), 90/76: [1977] ECR 109.

[2] Loss adjusters are firms whose normal function is to act as the agent of an insurer in investigating accidents and claims arising from them, the final decision as to payment being reserved for the insurer alone.

[3] The loss adjuster also filed a complaint with the Commission under Article 3 of Regulation No 17 for infringement of the rules of competition.

whose business consists solely in the settlement of accident claims on behalf of insurers, in the sense of the handling and investigation of claims.

Making a clear distinction between such measures in the green card system and private measures, the Court nevertheless held that a decision or a course of conduct of a national bureau or a concerted practice of its members which has the object or effect of excluding undertakings whose business consists solely in the settlement of accident claims on behalf of insurers, in the restricted sense referred to above, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86.

NV GB-Inno-BM v ATAB

53. In this case, between GB-Inno-BM and the Association of Tobacco Retailers (ATAB) in Belgium,[1] the Court of Justice was requested to answer questions from the Belgian Court of Cassation on, among other things,[2] the compatibility of Article 58 of the Belgian Value Added Tax Code with the Community rules of competition. Article 58 provides that the retail sales price set by the manufacturer or importer of a tobacco product as the basis for assessment to excise duty and VAT must also constitute the price for sales to consumers. Tobacco retailers cannot sell above or below that price.

54. The Court of Justice recalled that under Article 5(2) of the EEC Treaty the Member States must abstain from any measures which could jeopardize the attainment of the objectives of the Treaty, and notably the system of undistorted competition sought by Article 3(f). Accordingly, the Treaty requires the Member States to refrain from taking or maintaining in force measures that might conflict with the practical effect of Articles 85 and 86. The Member States, who by Article 90 are required to comply with the rules of competition in their relations with public undertakings, have no power to pass measures enabling private undertakings to evade these rules either.

The Court stated that Article 86 prohibits any abuse of a dominant position by one or more undertakings, even if such abuse is encouraged by a national legislative provision. In any event, such a provision would generally be incompatible with Articles 30 and 34 of the Treaty, which prohibit quantitative restrictions on imports and all measures having equivalent effect.

---

[1] CJEC 16.11.1977, Case 13/77: not yet reported.

[2] The aspects of this case dealing with the compatibility of Article 58 with other rules of the Treaty, notably Article 30 *et seq*, are dealt with in the Eleventh General Report, point 530.

SA Générale Sucrière and Société Béghin-Say v Commission and Others

55. In this judgment[1] the Court of Justice was asked to interpret the meaning of its earlier judgment in the sugar cartel case,[2] which had fixed the fines imposed for breaches of the rules of competition both in units of account and in the national currency of the judgment debtor's country of origin, using the official parities set out in the Financial Regulation. As a result there was a dispute between the firms concerned and the Commission. The German, Belgian, French and Dutch firms alleged that the extent of their debt was determined by the amount expressed in units of account and that they could settle their debt in the national currency of any Member State they chose. They therefore paid the fines in Italian lire at the official exchange rate (1 u.a. = LIT 625). The Commission, while agreeing that firms could settle their debt in a currency other than their national currency, considered that the extent of the debt was determined by the amounts fixed in the latter currency and that conversion should be made at the exchange rate actually ruling on the date of payment. It accordingly regarded the payments made in Italian lire as only part settlement.

The Court of Justice accepted this interpretation. After judgment had been given the firms concerned paid the remaining amount of the debts they owed.

Metro v SABA

56. By a judgment given on 25 October 1977 in Case 26/76[3] the Court of Justice dismissed an application from Metro to set aside the Commission's Decision of 15 December 1975[4] in the SABA case. The Commission had given exemption under Article 85(3) of the EEC Treaty for the selective distribution system operated in the EEC by SABA, a manufacturer of radios, television sets and tape recorders.

57. The SABA distribution system is based on a large number of agreements in standard form between the manufacturer and dealer. Both parties are prohibited from selling the relevant goods to unauthorized dealers. To qualify for appointment a SABA dealer must have a specialized shop or specialized department for consumer electronics, with trained staff and the means to provide the after-sales, repair and guarantee service

---

[1] CJEC 9.3.1977 (SA Générale Sucrière and Société Béghin-Say v Commission and Others), Joined Cases 41, 43 and 44/73 (interpretation): [1977] ECR 445.

[2] CJEC 16.12.1975 (Coöperatieve Vereniging 'Suiker Unie' and Others v Commission), Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73: [1975] ECR 1663; Fifth Report on Competition Policy, point 19.

[3] Firma Metro-SB-Großmärkte GmbH & Co. KG and Verband des SB-Großhandels eV v Commission of the European Communities and SABA, Case 26/76: [1977] ECR 1875.

[4] OJ L 28 of 3.2.1976; Fifth Report on Competition Policy, points 54 to 56.

prescribed by SABA. Approval also depends on whether the applicant dealer accepts certain additional obligations, notably the obligation to engage in sales promotion activities, to meet certain sales targets and to enter into long-term supply and cooperation agreements with the manufacturer.

The complainant alleged that the SABA distribution system was incompatible with Article 85, chiefly because it excluded price competition for goods of the same brand and because the criteria for admission to the distribution system prevented large self-service stores from dealing in the relevant goods.

58. The Court held that the complaint was admissible, particularly as Metro had been the complainant in the Commission's original administrative proceeding.

It is in the interests of the satisfactory administration of justice and of the proper application of Articles 85 and 86 that natural or legal persons entitled, pursuant to Article 3(2)(b) of Regulation No 17, to request the Commission to find an infringement of Articles 85 and 86, should be able, if their request is dismissed either wholly or in part, to institute proceedings in order to protect their legitimate interests. In these circumstances the applicant must be considered to be directly and individually concerned by the contested decision, even if it was not addressed to him.

59. Nevertheless, the Court dismissed the complaint against the SABA distribution system on the merits.

The judgment is based on the view that the requirement in Articles 3 and 85 of the EEC Treaty that competition shall not be distorted implies the existence on the market of 'workable competition'. It was acceptable in this context that 'the nature and intensiveness of competition may vary to an extent dictated by the products or services in question and the economic structure of the relevant market sectors'. In view of the peculiar features of the relevant goods (costly, technically advanced consumer durables) and of a market structure which does not preclude the existence of a variety of channels of distribution, the Commission was held to be justified in its view that selective distribution systems constituted, like other systems, an aspect of competition which accords with Article 85(1).

The Court agreed that in such distribution systems price competition is not generally emphasized either as an exclusive or indeed as a principal factor. Although price competition is so important that it can never be eliminated, it is not the only effective form of competition, or that to which absolute priority must in all circumstances be accorded. 'For specialist wholesalers and retailers the desire to maintain a certain price level, which corresponds to the desire to preserve, in the interests of consumers, the possibility of the continued existence of this channel of distribution in conjunction with new methods of distribution based on a different type of competition policy, forms one of the objectives

which may be pursued without necessarily falling under the prohibition contained in Article 85(1), and, if it does fall thereunder, either wholly or in part, coming within the framework of Article 85(3)'. But the Commission must ensure that this structural rigidity is not reinforced, as might happen if there were an increase in the number of selective distribution networks for marketing the same product.

The Court almost entirely upheld the Commission's views on the application of Article 85(3) to the contested obligations imposed on SABA wholesalers and retailers. However, it disagreed with the Commission's view that the obligation of wholesalers to build up the distribution network was not a restriction caught by Article 85(1). This did not take proper cognizance of the scope of that provision, 'since the function of a wholesaler is not to promote the products of a particular manufacturer but rather to provide for the retail trade supplies obtained on the basis of competition between manufacturers, so that obligations entered into by a wholesaler which limit this freedom in this respect constitute restrictions on competition'.

Even so, this did not vitiate the contested decision, because it appeared that the obligation to participate in the creation of the SABA distribution network was in fact connected with the obligations listed in the cooperation agreement, which the Commission considered to constitute a restriction on competition permissible only under Article 85(3).

In considering whether long-term supply agreements contributed to improving the production or distribution of goods or to promoting technical or economic progress, the Court expanded the Commission's statements on an important point. It stated that 'the establishment of supply forecasts for a reasonable period constitutes a stabilizing factor with regard to the provision of employment which, since it improves the general conditions of production, especially when market conditions are unfavourable, comes within the framework of the objectives to which reference may be pursuant to Article 85(3)'.

60. On the whole this judgment upholds the Commission's practice of authorizing certain forms of selective distribution for specified goods within predetermined limits, provided the result of the agreements is not to eliminate competition in respect of a substantial part of the relevant products.

Concordia

61. In the Concordia case,[1] the Court of Justice again had to answer questions on the status of brewery contracts with regard to the rules of competition.

[1] CJEC 1.2.1977 (A. de Norre and M. de Clercq v NV Brouwerij Concordia), 47/76: [1977] ECR 65.

These contracts, whereby firms in the hotel and catering business enter into long-term arrangements to obtain their supplies of beer exclusively from a particular brewery, are of considerable business significance. They are one of the brewery trade's best means of promoting sales. The Commission estimates that more than half the beer bought for consumption on the premises in the Community is bought under such exclusive purchasing agreements.

The problem for competition posed by brewery contracts is that individually they have no appreciable effect on the market situation nor on inter-State trade, but the cumulative effect of a large number of similar contracts can substantially distort competition and the pattern of trade within the Community. The danger is particularly sharp when large brewery groups with a high turnover cover the whole territory of one or more Member State with a network of exclusive agreements of this kind. The danger becomes even greater when several networks of agreements operated by different breweries exist side by side.

62. Against this economic background the Court of Justice had already decided in Haecht I[1] that agreements whereby an undertaking agrees to obtain its supplies from one undertaking to the exclusion of all others may be caught by the prohibition of Article 85(1) where, taken either in isolation or together with others, and in the economic and legal context in which they are made, they affect trade between Member States and have either as their object or effect the prevention, restriction or distortion of competition.

This judgment poses certain problems with regard to the certainty of the law. On the one hand, it follows from Haecht I that a brewery contract, which taken in isolation is entirely unobjectionable for competition purposes, may be caught by the prohibition in Article 85(1), and hence void under Article 85(2), by reason of the economic or legal environment in which it is made. On the other, the assessment of an individual contract very often depends on factors that the parties cannot reasonably be expected to know, such as the existence and effect of similar contracts involving other firms.

63. The Court of Justice first sought to solve this conflict by allowing provisional validity to 'national' brewery contracts, which represent the great majority. These a national court could strike down only with regard to future effects.[2] In Haecht II[3] the Court departed from its earlier judgment by stating that provisional validity applied only to 'old agreements'.

---

[1] CJEC 12.12.1967 (Brasserie de Haecht v Wilkin and Wilkin), 23/67: [1967] ECR 407, 416 and 417.
[2] CJEC 18.3.1970 (Brauerei A. Bilger Söhne GmbH v Jehle and Jehle), 43/69: [1970] ECR 127.
[3] CJEC 6.2.1973 (Brasserie de Haecht v Wilkin-Janssen), 48/72: [1973] ECR 77.

Against this background the Court of Justice in the Concordia case was asked a series of questions on the application both of Article 85(1) and (2) of the EEC Treaty and of the block exemption Regulation No 67/67 EEC.

64. Rejecting the submissions of the Commission and the Advocate-General, the Court decided that Regulation No 67/67 was applicable to brewery contracts. Consequently there was no need for the Court to answer the other questions. In considering the law it concentrated on the interpretation of Article 1(1)(b) and Article 1(2) of the Regulation.

Article 1(1)(b) of Regulation No 67/67/EEC exempts agreements to which only two undertakings are party and whereby one of the undertakings enters into obligations towards the other to obtain goods for resale, only from that other. The Commission took the view that the Regulation extends only to agreements which give the reseller a definite sales territory. It considered that this followed from the preamble and from systematic analysis of the text of the Regulation itself. There had been no intention to exempt all exclusive purchasing agreements. The Court of Justice, on the other hand, had regard to the actual words of the relevant Article, which, unlike Article 1(1)(a) and (c), made no specific reference to an allotted territory. An exclusive dealing agreement would not make sense without reference to a territory. However, an express delimitation of territory is superfluous in an exclusive purchasing agreement. It goes without saying that a publican buying drinks under a brewery contract will sell them on his own premises only, so that the agreements in issue satisfied Article 1(1)(b).

According to Article 1(2) of Regulation No 67/67, Article 1(1) does not apply to agreements to which undertakings from one Member State only are party and which concern the resale of goods in that Member State.

In the Roubaix v Roux judgment[1] the Court had held that this provision did not have the object of excluding purely domestic agreements from the block exemption. Rather the Regulation extended to these agreements where they were apt to have an appreciable effect on trade between Member States and otherwise satisfied Article 1 of the Regulation. In Concordia the Court clearly stated that the same principles applied to exclusive purchase agreements.

Finally the Court of Justice dismissed the argument that it would be contrary to the spirit and purposes of Regulation No 67/67 if it applied to agreements caught by the prohibition in Article 85(1) only by reason of the cumulative effect of one or more networks of comparable agreements. The Court found no authority for the argument in the text of the Regulation and felt that to put such a construction upon the Regulation would

[1] CJEC 3.2.1976 (SA Fonderies Roubaix-Wattrelos v Société nouvelle des Fonderies A. Roux and Société des Fonderies JOT), 63/75: [1976] ECR 111 and 119.

make it virtually meaningless, for it dealt with agreements which frequently did form part of such networks.

In this context, the Court noted that the Regulation afforded legal certainty to enterprises and simplified the application of the Community's rules of competition. There would be great value in making the block exemption applicable, as far as the EEC Treaty allowed, to agreements which were caught by Article 85(1) by reason only of the cumulative effect of large numbers of agreements. Circumstances beyond the agreement in question would generally be unknown to the parties, and the difficulties of proving them in the national courts would be nearly insurmountable. The need to preserve effective competition was already reflected in the Commission's power to withdraw the benefit of the block exemption in individual cases under Article 7 of Council Regulation No 19/65/EEC.

65. The Commission is planning to amend Regulation No 67/67/EEC to bring it into line with this judgment of the Court of Justice. It will pay particular attention to the general principle of ensuring an adequate degree of certainty as to the law. The draft amending Regulation has been published.[1]

66. In connection with its general inquiry into the brewery industry under Article 12 of Regulation No 17 and in accordance with the views it expressed in the Court of Justice, the Commission is also considering whether and in which cases the block exemption should be withdrawn. In order to get a precise picture of the current situation on the market for beer in the Community, it sent several requests for information to national brewery federations in the course of last year.

De Bloos v Bouyer

67. In a judgment given on 14 December 1977[2] by way of preliminary ruling under Article 177 of the EEC Treaty, the Court of Justice once again considered the problem of the provisional validity of old agreements. This case concerned the effectiveness of an exclusive dealing agreement between a French manufacturer and a Belgian wholesaler entered into before Regulation No 17 came into force and notified within the appropriate time limit.

---

[1] OJ C 31 of 7.2.1978; points 37 to 39 of this Report.
[2] Etablissements A. De Bloos Sprl, Leuze (Belgium) v Bouyer, Tomblaine (France), 59/77: OJ C 20 of 25.1.1978.

68. The judgment marks a progression over earlier judgments on this matter. In Haecht II[1] the Court decided that a national court could hold an old agreement void under Article 85(2) only after the Commission had given its decision by the Regulation No 17 procedure. This was so in particular where the agreement was properly notified. The ruling did not fully clarify the powers of the courts in Member States to apply Article 85 to old agreements. One point that remained open was whether the national court should stay proceedings to give the parties an opportunity to seek the Commission's views, particularly where there was reason to doubt whether the agreement was compatible with Article 85.

69. The Court has now ruled that during the period between notification and the Commission decision courts hearing actions concerning duly notified old agreements, or old agreements that do not have to be notified, must treat the agreements as having the same legal effects as are recognized by the law applicable in each case. These effects may not be questioned by objections based on the compatibility of the agreement with Article 85(1).

A national court must, therefore, treat an old agreement that has been duly notified, and is otherwise valid in accordance with municipal law, as fully valid, until the Commission has issued its decision. The Court derives this conclusion from the inseparability of the prohibition in Article 85(1) and the possibility of exemption provided in Article 85(3) as regulated in greater detail in Regulation No 17, and also from the general principles of legal certainty and protection of legitimate expectations which are enshrined in Articles 6 and 7 of Regulation No 17:

(i) Under Article 6(2) of Regulation No 17 the Commission can exempt a duly notified or non-notifiable old agreement from the prohibition in Article 85(1) with retrospective effect even beyond the time of notification, provided all the criteria or Article 85(3) are satisfied.

(ii) According to Article 7 of Regulation No 17, old agreements that are incompatible with Article 85 and do not qualify for exemption can be made lawful with retroactive effect if, at the Commission's request, they are brought into line with the rules on competition or are terminated. The agreements must have been notified, even if they are not notifiable, within the time limits set in Regulation No 17.

This system would become unworkable if the national courts could declare the agreement void for the purpose of Article 85(2) between the date of notification and the date of

[1] CJEC 6.2.1973 (Brasserie de Haecht v Wilkin-Janssen), 48/72: [1973] ECR 76 and 86. Third Report on Competition Policy, point 5.

the Commission's decision. The parties would be deprived of their hopes of obtaining exemption or retroactive legitimation.

70. The judgment also confirms that the full legal effect which the Court has thus given to old agreements duly notified is provisional and temporary. Only the powers of the national courts have been restricted. The Court explicitly confirmed the Commission's powers in relation to Articles 6 and 7 of Regulation No 17, including the power to dismiss applications for exemption or retroactive legitimation of the agreement in an individual case. It is unlikely to have practical significance in many cases. The proportion of old to new agreements is steadily declining. Where the Commission does issue an individual decision on an old agreement, it generally gives exemption under Article 85(3) following changes to the agreement or else retroactive legitimation under Article 7 of Regulation No 17. Only where the agreement does not satisfy the tests for exemption and the firms concerned refuse to alter the offending clauses is the Commission likely to make a negative decision, entailing nullity under Article 85(2).

Chapter IV

Restrictive practices in international trade

The Commission has continued[1] to take an active part in the work of international organizations concerned with issues affecting competition.

OECD

71. The Commission continued to be represented in the working group which is charged with the review of the operation of the two recommendations adopted by the OECD Council on 10 October 1967 and 3 July 1973 on cooperation in the field of restrictive business practices affecting international trade. The main topics for study this year were methods of overcoming problems flowing from restrictions on information exchanges imposed by the legislation of various countries and ways of preserving the secrecy of such information as is exchanged.

New working groups have begun studies on purchasing power, and also concentration and competition policy.

Work also continued on a report concerning restrictive business practices in relation to trademarks. The OECD Council adopted the report at the end of December.

UNCTAD

72. The Commission attended two meetings of the group of experts on restrictive business practices set up to prepare proposals and recommendations for multilaterally agreed equitable principles and rules for the control of restrictive business practices having adverse effects on international trade.

Little progress was made during the year because of the rather sharp differences of opinion between the industrialized countries with market economies (Group B) and the developing countries (Group of 77) as regards the scope of the code and the respective obligations of Group B countries and the Group of 77.

---

[1] Sixth Report on Competition Policy, points 40 to 44.

73. On the other hand, progress was made in the UNCTAD discussions on a code of conduct with the aim of facilitating the transfer of technology. Proposals were submitted by three groups of countries—Groups B, Group D comprised of Eastern European countries and the Group of 77.

Each proposal contains a central chapter on restrictive business practices. At the three meetings that were held in 1977 a sustained effort was made to clarify the principles underlying this part of the code. Fourteen clauses were drafted in the form of composite texts taking elements from each of the three proposals. The clauses concern:

(a) restrictions after expiration of arrangement;
(b) payments after expiration of industrial property rights;
(c) grantback provisions;
(d) challenges to validity;
(e) sales or representation arrangements relating to competing technologies or products;
(f) restrictions on research;
(g) restrictions on use of personnel;
(h) price fixing;
(i) restrictions on adaptations;
(j) exclusive sales and agency agreements;
(k) tying arrangements;
(l) export restrictions;
(m) cartels—patent pools or cross-licensing agreements;
(n) restrictions on publicity.

All these texts are subject, though in differing degrees, to conditions or reservations. Nevertheless, the basic principles have been clearly set out in each case. Following new negotiations it should be possible for certain of the conditions to be withdrawn.

Various questions remain to be settled, such as whether the code should cover restrictions on the transfer of technology between firms belonging to the same group, and the whole question of exceptions.

The fundamental question still concerns the legal status of the code. Group B proposes that it should consist of voluntary guidelines, whereas the Group of 77 still seem to want a legally binding code. A diplomatic conference scheduled for autumn 1978 has the mandate to decide this point.

Cooperation between the Commission and the competition authorities of non-member States

74. As stated on a number of occasions, the Commission supports an increase in international cooperation in the field of restrictive or abusive business practices having an effect on international trade.

Apart from its participation in the work of OECD, UNCTAD and the United Nations, the Community as such implements the recommendations adopted by the Council of OECD in 1967 and 1973. The purpose of these recommendations was described in the Third Report on Competition Policy.[1]

In particular, the Competition Directorate and the American Anti-trust Authorities currently exchange, and have done for several years, non-confidential information on competition issues of mutual interest.[2]

[1] Third Report on Competition Policy, point 40.
[2] See in particular the Commission's reply to Written Question 653/77 of Mr Edwards, OJ C 42 of 20.2.1978.

74/75

Chapter V

Main developments in national competition policies

75. The tendency of the Member States to strengthen their means of implementing competition policy, mentioned in the Sixth Competition Report, was reflected once again in the new Acts and Bills introduced over the past year.

The most interesting example was the passing of a new French Act, which not only, strengthens existing provisions for the prevention of unlawful cartels and abuse of a dominant position, but also introduces merger control. A Belgian Government Bill to the same effect has not yet been laid before Parliament. In the Netherlands, a Bill was introduced to prohibit price-fixing agreements and resale price maintenance. The Federal German Government announced changes in the law to improve the facilities for controlling the acquisition and abuse of a dominant position. Lastly, the British Government announced a general review of the powers and machinery of its competition policy with the aim of increasing economic efficiency.

Everyone should be pleased at these efforts, which will ensure effective competition within the Community. They will also lead to a degree of harmonization of the measures available to the Member States to enforce their competition policy. Although there are differences in form, the controls actually exercised tend more and more to be comparable. It is to be hoped that Italy will also introduce legislation making an effective competition control possible.

The course of various proceedings concerning abuses in the pricing of tranquilizers,[1] and the different conclusions reached, show clearly the difficulty of devising uniform, objective criteria by which to assess prices. They also show that, when the effects of the restrictive practices of one or more firms are felt in several Member States, there is an urgent need for close cooperation between the Commission and the Member States if a uniform approach is to be taken to them.

Belgium

76. In Belgium the basic legislation on competition is still the Act of 27 May 1960 on protection against the abuse of economic power. A number of investigations have been

---

[1] See the items below on competition policy in the Federal Republic of Germany, Denmark and the Netherlands.

carried out at the request of the Reporting Commissioner (*Commissaire-rapporteur*). He proposed that one case be dropped and the Minister agreed. Various other cases are currently being investigated.

The Government holding office prior to June 1977 intended to lay before Parliament a bill on competition, the broad lines of which were mentioned in the last Report.

As a result of the Government's resignation, the bill was not tabled.

The present Government, conscious of the leading role that healthy competition can play in economic progress and of the gaps in the Act of 27 May 1960, has decided to take up the issue again with a view to formulating a new policy.

Article 58 of the Royal Decree of 22 April 1977 brought the Act of 14 July 1976 relating to public works, supply and services contracts into force on 1 January 1978. Article 7 of this Act prohibits any act, agreement or collusive practice which may distort normal conditions of competition in relation to such contracts.

Denmark

77. The Danish competition legislation and other legal provisions described in the Sixth Report have not been changed. There are, however, two new laws with some effect on the rules in force. These are the Electricity Supply Act and the Price Marking and Display Act.

(a) In February 1976 the Folketing passed the Electricity Supply Act, which is intended to ensure that electricity has an appropriate role in energy supplies as a whole. The Act entered into force on 1 January 1977. The administration of the Act's provisions on prices and other conditions for the sale of electricity, including charges payable on connection or extension, has been taken over by an Electricity Price Committee set up by the Ministry of Commerce, with secretarial services supplied by the Directorate of the Monopolies Control Authority. Where the Committee finds that prices or other conditions are unreasonable or in violation of more detailed rules on depreciation, allocations to reinvestment funds and so on laid down by the Ministry of Commerce, and the matter cannot be brought to an end by negotiation, the Committee can order that the prices or conditions be changed. Where prices or terms are deemed likely to bring about an uneconomic use of energy contrary to the public interest, the Committee may, after negotiation, order that they be changed. The prices and terms of trade of electricity companies are only subject to the provisions of the Monopolies Act where they are not covered by the Electricity Supply Act. Lastly, the Prices and Profits Act of 1974 no longer applies to electricity companies.

(b) The Price Marking and Display Act is intended to make it easier for consumers to compare and evaluate prices and other conditions, and thus to secure greater transparency of the market. The Act makes it obligatory for retailers to display prices. It also enables the Authority to lay down rules on signs displayed by persons offering commercial services.

78. Some examples of decisions of the Monopolies Control Authority are given below.

(a) A Copenhagen perfume shop complained to the Authority that the supplier of Chanel products had ceased deliveries, after the shop had sold them for many years. The Danish agent for Chanel said that deliveries had been stopped because the French producer had asked for a reduction in the number of dealers in Denmark so that distribution costs could be kept down. Before the Authority could intervene a restriction of competition infringing the provisions of the Act would have to be established. The Authority's view was that Chanel's market share was not large enough for the Chanel agent to be covered by the Act, and it therefore found no grounds for ordering a resumption of deliveries. The Monopolies Appeal Tribunal upheld this decision. It pointed out that a large number of different ranges of perfumes and beauty products exist, and that the plaintiff was an authorized dealer for several of them.

(b) In May 1976 the Authority required notification and inclusion on its register of a range of financial combinations. One of those covered by the demand was a large fertilizer company with shareholdings in a number of other firms. The company appealed this decision to the Monopolies Appeal Tribunal. It argued that shareholdings without cooperation between the firms were not subject to notification, and that its shareholdings did not give it a decisive influence on the other firms. The Monopolies Appeal Tribunal upheld the Authority's decision. Among other things it found that the company's connection in terms of capital with the firms in question, and the cooperation which this made possible, could exert such a contributory influence on price, production and distribution conditions that they were caught by Section 6(2) of the Monopolies Act.

(c) In autumn 1973 the Monopolies Control Authority ordered the three largest suppliers of radio and television equipment to sell supplies to two 'Bilka' discount houses, part of Dansk Supermarked A/S. The suppliers had refused to supply, saying that the stores did not fulfil their requirements on the layout, displays, demonstrations and so on. The Authority found that Bilka was not significantly different in these respects from many other businesses which were receiving supplies. The suppliers appealed the Authority's decision to the Monopolies Appeal Tribunal. On 30 May 1974 the Tribunal annulled the order to supply, pointing out among other things that Bilka's particular form of selling was difficult to reconcile with the need for individual customer service and gave its opinion that Bilka was not

significantly restricted in its business by having to do without supplies from the three suppliers. On 9 June 1977 the ruling of the Western High Court upheld the Appeal Tribunal's annulment of the order to supply, on the grounds put forward by the Tribunal. In view of the importance of the principle involved, the Authority has appealed the case to the Supreme Court.

(d) With respect to certain sedatives the Authority found that the prices charged to wholesalers by manufacturers and importers were unreasonable. Accordingly, the Authority ordered the prices of certain drugs to be reduced by 20% as a temporary measure. The undertakings concerned, Dumex, Roche and Pharma, appealed to the Monopolies Appeal Tribunal, which ruled that the price reductions should not become effective until a decision had been reached on its merits. In its final ruling the Tribunal annulled the Authority's decisions but confirmed that the Authority was entitled to take action on the prices of the preparations involved provided that the prices were unreasonable, and also provided, as a general rule, that calculations are based on the price of the individual product rather than on the firm's total profits. The Tribunal also accepted that overheads could be allocated on the basis of estimates or in accordance with criteria based on experience.

However, referring particularly to the method of allocating research costs, which play an important role in this industry, the Tribunal did not find that the fairest method was to work from the contribution to total turnover, or to the reduced turnover taken by the Authority, of individual products. In particular, the Tribunal found that export prices for Dumex's products could not be required to bear a share of research costs corresponding to the share of total turnover accounted for by exports. In the Tribunal's view, therefore, a firm must have a considerable degree of freedom in allocating its research costs as long as its total profits from medical products are not unreasonable. But the Tribunal did emphasize that the prices of particular drugs should not be based on a completely arbitrary calculation.

Federal Republic of Germany

79. In a general policy statement the Federal Government announced its intention of amending the legal basis of German competition policy—the Act against Restraints of Competition (GWB) 1957—for the fourth time. The central points of recent thinking on changes concern extension of the merger control provisions, improved supervisory powers over dominant firms and public utilities and tighter control of buying power so as to maintain competivity.

In its comments on the first main advisory opinion of the Monopolies Commission the Federal Government set out its initial views on stricter merger control arrangements and changes in the supervision of abuse by dominant firms and public utilities. Current

merger control law is to be improved to deal particularly with the growing preponderance of large firms on markets hitherto controlled by small and medium-sized firms, and with conglomerate and vertical mergers. The chief aim in connection with supervision of abuse by dominant firms is to close the 'penalty gap' that arises because, under the law as it stands, penalties apply only when a decision prohibiting some kind of conduct actually becomes enforceable and not when it is taken, the gap sometimes being of several years duration. Consideration of buying power is centred on ways of ensuring that the current prohibition on discriminatory treatment effectively catches discrimination practised by those who exercise market power on the demand side and on the establishment of a presumption that suppliers are dependent on their customers in certain specified circumstances.

80. In its special advisory opinion on abuse of buying power and possibilities for control under the GWB the Monopolies Commission came to the conclusion that, if fully employed, the current statutory provisions are quite adequate to deal with the anti-competitive effects of buying power. It was particularly firm in its opposition to the introduction of a general prohibition on discrimination and on any rule making the provisions of competition law generally mandatory.

81. Under its merger control powers, the Federal Cartel Office prohibited one merger and one planned merger.

Rescue mergers repeatedly arose for scrutiny. Since the Federal Cartel Office's scrutiny of mergers under cartel law proceeds entirely from considerations of competition, the strongest firm on any given market is generally disqualified from making a rescue bid for another firm. The Federal Minister of Economic Affairs can allow mergers previously prohibited by the Cartel Office for pressing considerations of public interest. He conditionally authorized the merger between Babcock and Artos, which had been prohibited by the Cartel Office, as a means of preserving jobs, but at the same time stated that the threatened loss of employment was not to be generally regarded as a legal justification for rescue mergers.

Dealing with another rescue merger, where the Cartel Office condemned the takeover by the Thyssen group of Hüller Hille, which had already taken place, the Minister of Economic Affairs authorized Thyssen to acquire a holding of up to 45% in the smaller firm. Here again, together with considerations of preserving the outstanding technical knowhow of the acquired firm, the job preservation argument was material to the authorization. The two firms have appealed to the Berlin Kammergericht (Court of Appeal) both against the complete prohibition by the Cartel Office and the part prohibition by the Minister. Should the appeal fail, the Cartel Office will for the first time have to consider what measures it must order for partial divestiture following a completed takeover.

82. Of particular interest as regards the control of abuse of a dominant position were the proceedings for price abuses in the pharmaceuticals market, for which in 1974 the Cartel Office had ordered Hoffmann-La Roche to decrease its manufacturer's sales prices for Valium and Librium by 40% and 35% respectively. The Kammergericht upheld the order, though it reduced the decrease to 28%. Upon a further appeal on a point of law the Federal Court of Justice, while recognizing that a price reduction order could be made in an abuse case, revoked the order since there were objections to the way in which a competitive price was determined; it remitted the case to the Kammergericht for rehearing.

83. The Federal Government has laid a report before the Bundestag on the experience to date of the application of the law on non-binding price recommendations. The second amendment of the Cartel Act in 1973 abolished resale price maintenance for branded goods and prohibited unrealistically high price recommendations (*Mondpreisempfehlungen*) and the use of price recommendations to circumvent the ban on resale price maintenance. It subjected non-binding price recommendations to more severe control by the Cartel Office against abuse. In general the report concludes that experience to date of the provisions on non-binding recommendations offers no firm basis for the making of proposals for a general prohibition on price recommendations for branded goods. However, it is proposed that the legal basis for effective controls on non-binding price recommendations should be improved by requiring that the Cartel Office be notified of all price recommendations and by giving the Cartel Office greater powers to seek information.

84. As to the application of the current ban on discrimination in the distribution of branded goods, the Cartel Office has published administrative guidelines reflecting cases decided by the Federal Court of Justice and its own previous practice. The aim of these guidelines is to preserve market entry at the same time ensuring that, despite the extension of the supplier's obligation to enter into contracts for branded goods, competition between the different types of distributor can remain as fair as possible, while respecting the need for different types of distribution channels.

France

85. The most important event in 1977 was, without doubt, the adoption by Parliament of Act No 77-806, promulgated on 19 July 1977, for the control of economic concentration, and the suppression of unlawful restrictive practices and abuses of a dominant position. The Act contains three principal measures:

(a) In place of the Technical Commission on Restrictive Practices and Dominant Positions, the Act sets up the Competition Commission, a new body, with extended

powers and improved resources. It consists of a Chairman and ten members assisted by a Chief Examiner and a team of Examiners and takes over all the responsibilities of the former Commission, but may also be consulted by the Government on any question relating to competition. It may also scrutinize proposed mergers and submit opinions on them.

(b) The Act establishes selective control of any mergers which are seriously prejudicial to competition without making an adequate contribution to economic and social progress. Merger control powers may be exercised where the sales in the home market on the enterprises involved exceed:

(i) either 40% of aggregate domestic consumption in the case of goods, products or services for which substitutes exist;

(ii) or 25% of aggregate domestic consumption for at least two of the firms or for each of them in the case of goods, products or services for which no substitutes exist.

Firms may notify mergers to the Minister for Economic Affairs. He, on his own initiative or at the request of the Minister responsible for the relevant economic sector, may refer merger cases to the Competition Commission. Within the limits set by the Commission's opinion, the Ministers are empowered to direct the firms to take whatever steps are needed to cancel or adjust their merger, whether it is still at the planning stage or has already taken place. If these directives are not complied with the firms may be fined.

(c) As regards the suppression of unlawful restrictive practices and abuse of dominant positions, the Act does not alter the basic principle of the control machinery but makes a number of changes, including:

(i) a system of administrative fines of up to 5% of sales before tax in France if the infringement is committed by a firm and FF 5 000 000 otherwise; there is also a mitigated procedure, whereby the Minister can fine each party to a minor restrictive practice in an amount not exceeding FF 100 000;

(ii) an injunction procedure: the Minister may order firms, on pain of fine, to comply with certain directions or modify certain agreements;

(iii) extended right of access to the Commission for local authorities, trade unions, trade associations and registered consumer organizations;

(iv) improved defence rights with the establishment of a full adversary procedure and the right of appeal to the Council of State against any ministerial decision.

In a different context, an Order of 2 September 1977, revoking an Order of 30 May 1970, substantially altered the rules governing the advertising of prices and price reductions to consumers. Two objectives are sought by this reform. Firstly, the conditions governing advertisements concerning price reductions are relaxed (there is no longer an obligation to specify net prices in advertising outside the place of

sale). Secondly, consumers are now better protected against misleading advertisements concerning prices and price reductions (the Order requires double marking of prices, forbids reference to 'full' prices that have not actually been charged before the advertisement is made, prohibits the advertising of products that are not available for sale and requires the seller to sell at the advertised price regardless of the date of delivery).

86. The authorities have continued to take action against individual restrictive trade practices.

They have intervened, for instance, in markets where distributive trades are very strongly based *vis-à-vis* manufacturers. In connection with the particularly aggressive strategies of certain distributors in relation to prices and margins on selected articles, they have issued a reminder that the practice known as decoy pricing may be regarded as a form of bad faith which would warrant refusal to deal by suppliers.

For several years the practice of selling at cost has been acquiring greater popularity, and a judgment given by the Tribunal de Grande Instance at Toulouse on 18 April 1977 confirms the interpretation of the concept used by public authorities, which is that 'cost' (below which sales would be at a loss) is the price at which the article is bought, less any rebates or discounts, plus VAT and any costs of carriage.

The number of individual measures taken to enforce the rules of competition as applied to restrictive practices rose substantially (2 717 in the first half of 1977, compared with 4 664 for the whole of 1976), leading to the initiation of 696 cases. Detailed analysis of the figures revealed a growing number of breaches of the rules on refusal to deal, loss leaders and sales at a premium. The number of infringements for failure to respect the rules on discriminatory practices has remained relatively stable.

On another front, the control of restrictive practices and dominant positions has continued apace. The Technical Commission on Restrictive Practices and Dominant Positions, having issued some 130 opinions in its 23 years of activity, issued 9 opinions in its last year of existence, of which only 3 had been published at the end of November. The Commission's other opinions have not been published, either because they were given in response to requests from courts or because the Minister has not yet taken his decision.

The three opinions approved by the Minister condemn restrictive practices in the wholesaling of soft drinks and beer, in the natural sweet wines business and between the owners of presses for straightening lorry chassis. None of these cases was referred to the criminal courts.

87. The courts have still not given very many judgments on restrictive practices and abuse of a dominant position. However, more cases are being litigated. Several are cur-

rently at the preliminary stages and some set down for final hearing. Three judgments were given this year. One, at first instance, passed a heavy sentence (fines and suspended prison sentences) on the managers of companies who had abused their dominant position on the bottle rack market. The other two, given on appeal, increased the sentence passed at first instance in the one case and, in the other, set aside the decision of the lower court on the grounds that the elements of the restrictive practice had not been adequately proved and that certain of the acts done were obligatory. Both cases related to school transport. Appeals have been lodged in the Court of Cassation by the accused persons and the Public Prosecutor respectively.

Ireland

88. During the year there have been no changes in the basic legislation regarding Restrictive Practices—the Restrictive Practices Act, 1972—or in the statutory orders relating to the supply and distribution of particular classes of goods. Proposals for far-reaching changes in the legislative approach to the control of Restrictive Practices made by the Restrictive Practices Commission are being considered but no final decision has been taken to date. The Mergers, Takeovers and Monopolies (Control) Bill, which was before Parliament at the dissolution in June, has not yet been reintroduced.

89. During 1977 the Examiner of Restrictive Practices investigated the operation of statutory orders relating to motor spirit, grocery goods, jewellery, watches and clocks and building materials. These investigations showed that the orders in question were operating effectively but in one case, namely grocery goods, an apparent breach of the relevant order came to light and the Examiner has reported the matter to the Minister for Industry, Commerce and Energy. In the case of motor spirit, oil companies are prohibited by order from operating new motor spirit retail outlets for a period of six years which will end in July 1978. The Examiner has requested the Restrictive Practices Commission to hold a public enquiry into the operation of the prohibition in order to ascertain whether or not it should be continued after that date.

In areas not involving statutory orders the Examiner carried out investigations into cinema films, newspapers and magazines, the legal profession, pharmaceuticals, cosmetics, fertilizers, the travel industry and motor insurance. In reports to the Restrictive Practices Commission the Examiner recommended that public enquiries be held into the supply and distribution of cinema films and of newspapers and magazines.

The Restrictive Practices Commission published an enquiry into fertilizers. They announced their intention of holding an enquiry into the supply and distribution of cinema films as well as their intention of holding a special review by means of enquiry into the operation of Article 3 of the Restrictive Trade Practices (Motor Spirit) Order, 1972 as

amended. Finally, a number of studies under Section 12 of the Restrictive Practices Act 1972 were advanced.

Italy

90. No developments worthy of note have taken place in Italy.

Luxembourg

91. Among the main developments this year was an inquiry conducted by the Restrictive Trade Practices Commission into banking, following a complaint from a bank which felt that its interests were being damaged by discriminatory practices on the part of other banks. The Commission delivered a detailed opinion which led to action being taken by the Minister of Economic Affairs. The discrimination in question has now ceased.

The Prices Office, a body which can take action against prices on the home market, particularly when they are a result of unfair competition, has made a number of orders since the end of 1976 concerning, among other things, milk products, meat products, beer, wine, pharmaceutical products and baker's wares.

Netherlands

92. In the Sixth Report on Competition Policy it was announced that two changes to the Economic Competition Act (Wet economische mededinging) were being prepared. One of them, for the replacement of supervision on the abuse principle by a system of authorizations for price-fixing and resale price maintenance agreements and conferring powers on the Minister of Economic Affairs to issue minimum price regulations, was introduced in the Second Chamber of the States-General on 13 December. The conditions which pricing agreements must satisfy in order to qualify for authorization were set out in the Sixth Report. The power to make minimum price regulations is aimed at curbing excessive forms of price competition where the general interest and the interests of the relevant industry so require. Such situations arise in cases of:

(i) price wars, where goods or services are temporarily offered at very low prices with the aim of driving competing suppliers out of the market or of forcing them to adopt a particular strategy;

(ii) decoy pricing techniques;

(iii) cut-throat competition between two forms of retailing, each having its own cost structure.

The Bill provides for the possibility of exemption for firms able to prove that for sound business reasons (such as cheap imports) they can sell at prices lower than those allowed by the minimum price regulations.

The other Bill, which would give the public access to the register of restrictive agreements, is now in the final stages of preparation and will shortly be introduced in Parliament.

93. In an opinion addressed to the Government, the Social and Economic Council supported the introduction of legal premerger control measures. The Council considers that the authorities should be empowered to prohibit mergers, or authorize them only conditionally, where there is a conflict with the public interest in terms of competition, social and regional policies.

For this reason the control powers should be conferred on the Government itself rather than on any independent agency.

The system envisaged by the Council would be built up on the following broad lines:

(i) all mergers between firms above a specified size (where at least one of them is established in the Netherlands) should be notified to the authorities;

(ii) there should be provision for prior scrutiny of all notified mergers exceeding certain quantitative thresholds (sales and employment);

(iii) notified mergers below these thresholds should be subject to premerger control only where information available to the authorities indicates that they may be in conflict with the public interest.

The Council's opinion also suggests giving statutory authority to its own merger code. This code, which dates from 1970, contains rules that have no legal force but which aim, by prescribing certain notification procedures, to protect the interests of shareholders and employees whenever a merger is contemplated.

The Minister of Economic Affairs has expressed agreement with the broad lines of the Council's opinion.

94. By Order dated 14 July 1977 the Minister of Economic Affairs and the Secretary of State for Public Health and Environmental Hygiene required Hoffmann-La Roche to reduce the prices charged for Valium and Librium imported on the Dutch market by 25% and 35% respectively.

This was the first case where the Government has made a price order against a firm that had abused its dominant position.

The relevant market here was the tranquillizer market. The structure of this oligopolistic market and conduct on it were characterized by the absence of any price competition.

Because of this fact, its market share, its ownership of patents and trademarks and the small volume of parallel imports, Roche had a substantial position of power on the relevant market.

The Order referred to the British market by way of comparison. The prices of Valium and Librium were considerably lower there than in the Netherlands. As it was adequately proved that the British prices did not create an economically unacceptable situation as regards the sale of Valium and Librium, the authorities—having regard to different sales promotion costs in Britain and the Netherlands and to British ex-works prices—concluded that the level of the prices charged by Roche on the Dutch market had consequences that conflicted with the public interest.

Roche appealed this decision to the College van Beroep voor het Bedrijfsleven (Business Appeals Tribunal). Roche also took summary proceedings against the State for breach of statutory duty.

The appeal to the Tribunal does not suspend the operation of the decision itself.

The judge at first instance in summary proceedings dismissed Roche's action. Roche also appealed against this decision.

United Kingdom

95. During 1977 it was found that, because of the application of the restrictive trade practices legislation to commercial services, a large number of loan-financing agreements fell within the scope of the legislation in that they contained restrictions on the freedom of action of borrowers, lenders or guarantors which were accepted by at least two parties to such agreements.

The purpose of these restrictions was not to restrict competition but to protect the security of loans and the ability of borrowers to repay. Accordingly the Restrictive Trade Practices Act 1977 made provision for the disregard of restrictions in such agreements, with the object of removing them from the scope of the legislation. The Act contains a broader exclusion for agreements under which restrictions are accepted by overseas parties and which relate to activities outside the UK. In addition, the order-making powers of the Secretary of State have been extended so that if any harmful agreements have been exempted inadvertently they may still be controlled.

It was announced in the Queen's Speech on 3 November 1977 that there would be a review of the legislation and institutions governing competition policy to see that they make their maximum contribution to improving industrial efficiency. This review has already started.

96. Up to 1 December 1977 the Director-General of Fair Trading made three references to the Monopolies and Mergers Commission. The Commission was required to investigate the supply of electricity supply meters, credit card franchise services and certain domestic gas appliances. In addition, the Secretary of State for Prices and Consumer Protection made a general reference to the Commission of discounts to retailers; the purpose is to investigate the general effect on the public interest of the practice of some retailers of obtaining larger discounts or similar benefits than those available to other retailers where the differences are not wholly attributable to savings in the suppliers' costs.

During the year the following reports of the Commission were published: the supply of diazonium sensitized copying materials; cat and dog foods; wheat flour and bread made from wheat flour; the regulation of charges by scale fees on the part of architects and on the part of surveyors. In the cases of architects and surveyors, the Director-General was asked to negotiate with the relevant professional bodies with a view to remedying the adverse findings in the reports.

97. During the period under review the Director-General has considered 178 mergers or merger proposals and tendered advice to the Secretary of State for Prices and Consumer Protection on whether or not they should be referred to the Monopolies and Mergers Commission.

Eight merger references were made to the Commission of which four were abandoned before the Commission could report. Four reports were received from the Commission in 1977 and in two cases, Pilkington Brothers Ltd/UKO International Ltd and British Petroleum Ltd/Century Oils Group, the Commission recommended against the mergers. Suitable undertakings were given by the companies concerned to the Secretary of State that they would not proceed with their acquisition plans.

Of the remaining cases, the Commission's majority conclusion was that the Babcock and Wilcox Ltd/Herbert Morris Ltd merger proposal was contrary to the public interest, but because this conclusion lacked a two-thirds majority there was no legal power under the Fair Trading Act to prevent the merger proceeding. In the case of the Fruehauf Corporation/Crane Fruehauf merger proposal, the Commission decided by a two-thirds majority that the merger would not be against the public interest.

Each proposed merger was however subject to a counter-bid neither of which was referred to the Commission. Davy International Ltd subsequently succeeded in its counter-offer for Herbert Morris Ltd, and Babcock and Wilcox sold its Herbert Morris shares to Davy. Fruehauf Corporation went ahead with its full bid but faced a counter-bid for Crane Fruehauf from Inchcape and Company Ltd. The Board of Crane Fruehauf later recommended acceptance of the Fruehauf Corporation offer.

Discussions on an earlier Commission report (1976) concerning the holdings of Eurocanadian Shipholdings Ltd in Furness Withy and Company Ltd and Manchester Liners Ltd concluded with Eurocanadian Shipholdings Ltd giving undertakings to restrict its holdings in both companies and its voting rights in Furness Withy and Company Ltd. The Director-General is now keeping these undertakings under review.

98. Up to 1 December 1977 some 200 registered agreements in the services sector have been under examination. They cover a wide range of activity and variety of restriction. Most involve members of services supply associations. The most common restrictions concern levels of charges, exclusive dealing arrangements, and standard terms and conditions and codes of practice. In evaluating these agreements priority has been given to the consideration of those restrictions in each agreement which would obviously not be allowed to continue without reference to the Restrictive Practices Court. This has led to the abandonment of major restrictions in many agreements.

Four of the outstanding agreements relating to telephone cables[1] were dealt with by the Restrictive Practices Court during the year: most of the remainder had already expired or been terminated by the parties. Application was made to the Court under Section 35(3) of the Restrictive Trade Practices Act 1976 seeking Orders to restrain certain parties from giving effect to 60 agreements concerning ready mixed concrete, and to prevent them giving effect to any other registrable agreements to which they might be a party, without first notifying the Office. Sixty ready mixed concrete agreements were also referred to the Court under section 1 of the Act. Section 35(3) proceedings were successfully taken against the major parties to seventy-seven bread agreements registered in 1976.

[1] Sixth Report on Competition Policy, point 107.

Chapter VI

Main decisions and measures taken by the Commission

99. In 1977 the Commission took seventeen decisions applying Articles 85 and 86 of the EEC Treaty[1] and twenty-one applying Articles 65 and 66 of the ECSC Treaty. In proceedings under the EEC Treaty 263 cases were settled without a decision being taken because the agreements brought into line with the rules on competition in the Treaty, were terminated or expired. Most of these were distribution agreements, the cases being terminated after amendments were made to the block exemption Regulation No 67/67/EEC.

On 31 December there were in all 4 117 pending cases, of which 3 862 were applications or notifications, 135 were complaints from firms and 120 were proceedings on the Commission's own initiative. Of the applications and notifications pending before the Commission, 59% concerned licensing agreements, 30% concerned distribution agreements and 11% concerned horizontal agreements. The size of the figure for licensing agreements illustrates the importance of the block exemption regulation currently being drafted to deal with many of the more straightforward cases.

100. In November the Advisory Committee on Restrictive Practices and Dominant Positions held its hundredth meeting. This Committee of anti-trust officials from the Member States has to be consulted under Article 10 of Council Regulation No 17/62 on any decision finding that Article 85 or 86 of the Treaty has been infringed, giving negative clearance or giving exemption under Article 85(3). It met thirteen times in 1977 and gave opinions on twenty or so cases under Articles 85 and 86.

---

[1] Not including the Commission Decision of 20.1.1977, Vacuum Interrupters, which was described in the Sixth Report on Competition Policy, point 175.

§ 1 — Article 85(1) applied to horizontal agreements

Market-sharing, price-fixing and information agreements

Printing paper and stationery manufacturers

101. The Commission issued a Decision[1] formally finding that agreements between manufacturers responsible for the production of 80 to 90% of Belgian and Dutch printing paper and stationery were infringements of the Treaty's competition rules. The manufacturers in question are members of the Association des fabricants de pâtes, papiers et cartons de Belgique (Cobelpa) and the Vereniging van Nederlandsche Papierfabrikanten (VNP).

These agreements, which were terminated following the Commission's intervention, provided for the firms involved to exchange details of their prices and general sales terms and to respect set distribution circuits. They also provided for the exchange of output and sales figures between certain firms.

102. With this Decision the Commission reaffirmed and clarified its opposition to 'open price systems' which have the object or effect of distorting competition and affecting trade between Member States.[2]

Vegetable parchment manufacturers

103. The Commission later issued a Decision[3] finding that the main European manufacturers of vegetable parchment (a kind of wrapping paper) had been engaging in concerted practices contrary to Article 85(1) of the EEC Treaty. Two of them are French (Alamigeon and Dalle & Lecomte), one is Italian (Cartiere Burgo), four are German (Feldmühle, Nicolaus, Rube and Schleipen & Erkens), one is British (Wiggins Teape) and one is Finnish (Serlachius).

When the then second-largest British manufacturer abandoned production in 1971, the French and German manufacturers engaged in a concerted practice consisting of reserving supplies on the British market for the remaining manufacturer there—Wiggins Teape.

---

[1] Decision of 8.9.1977, Cobelpa/VNP: OJ L 242 of 21.9.1977.

[2] Dutch sporting cartridges agreement (Third Report on Competition Policy, point 55); Non-ferrous semi-manufactures and ships' cables (Fifth Report on Competition Policy, points 39 and 40); and paper-machine wires (Sixth Report on Competition Policy, point 134). See also points 5 to 8 of this Report.

[3] Decision of 23.12.1977, vegetable parchment: OJ L 70 of 13.3.1978.

Working through the Genuine Vegetable Parchment Association, an international trade association to which they all belonged, the same manufacturers plus Burgo and Serlachius exchanged detailed price information and periodically informed each other of the volumes of vegetable parchment exported by each to their various export markets in third countries.

Lastly, at meetings held several times each year, the GVPA members discussed and set rates of increase in selling prices for EEC markets where there was no domestic manufacturer (Denmark and the Benelux countries).

104. The Commission has ordered the firms that engaged in concerted price increases and actually supplied the relevant markets to pay fines ranging from 10 000 to 25 000 u.a.

National market protection agreements

Regulation of the Dutch bicycle market

105. The Commission prohibited the regulation of the market organized by the Dutch trade association for bicycles and related goods.[1] By means of an 'Algemeen Reglement' (General Regulation) the association, the Centraal Bureau voor de Rijwielhandel (CBR), set up a private market organization for bicycles, which also covered goods imported from other Member States.

The Algemeen Reglement regulated access to the Dutch bicycle trade, established minimum requirements and confined the different categories of recognized firm to doing certain types of business (repair, retailing, wholesaling, supplying wholesalers, joint purchasing, representing manufacturers). The various categories also had to comply with exclusive purchase and supply obligations, and could not have business relations with non-member firms. Retailers had to add a minimum profit margin to their purchase prices. Discounts—which could have encouraged price competition, even if only indirectly through improved equipment of bicycles or part-exchange of second-hand bicycles —were prohibited. The association enforced the obligations by measures such as fines and publication of notices. Any disputes could not be dealt with in the ordinary courts.

The Algemeen Reglement covered the great majority of Dutch firms dealing in bicycles and bicycle parts—roughly 80% of bicycles sold on the Dutch market, of which about 35% were imported. Moreover, a substantial proportion of the parts for bicycles built in the Netherlands comes from other Member States.

---

[1] Decision of 2.12.1977: OJ L 20 of 25.1.1978.

106. The CBR amended the Algemeen Reglement in July 1976 in response to Commission objections to these serious uncompetitive practices. There are now only two categories of recognized firm—retailers and suppliers—and the Reglement applies only to goods for which a trademark has been registered with the CBR by a supplier.

107. The Commission's Decision concerned only the original arrangement applied until July 1976.[1] The operation of the new Reglement and its effects on competition on a market where numerous small and medium-sized firms do business is currently under scrutiny.

Vegetable growers and dealers

108. The Commission has continued to take action which throws light on how the rules on competition apply to the terms for admission to auction sales for farm produce.[2]

In a case concerning the admission of buyers it found that certain arrangements made by groups of vegetable growers and dealers based in Brittany for the marketing of Breton cauliflowers, artichokes and early potatoes were in breach of Article 85(1) of the Treaty.[3] The actual arrangements banned by the Commission imposed restrictions on dealers wishing to buy at the two main vegetable auction centres set up in the departments of Nord-Finistère and Ille-et-Vilaine by two growers' cooperatives (SICA of Saint-Pol-de-Léon and SICA-SIPEFEL of Saint-Méloir-des-Ondes).

Admission of dealers to the auction centres was conditional on their making all their purchases there and having a packing station close to the auction centre.

Further, in respect of Saint-Méloir-des-Ondes only, admission to the auctions was subject to formal approval by a majority of the dealers already admitted and a buyer was allowed to purchase and dispatch goods on his own account only.

These obligations, about which complaints had been made, appreciably restricted competition among Breton dealers and shippers by hampering, if not blocking, access to the auctions for new buyers and, in the case of Saint-Méloir-des-Ondes, by confining dealings in the vegetables to dealers already admitted.

---

[1] In January 1976 the Rotterdam Kantonrechter (judge at the cantonal court), pending a Commission Decision, stayed the action before him concerning a fine imposed for non-compliance with the Algemeen Reglement.

[2] See Decision of 25.7.1974 in Frubo: OJ L 237 of 28.9.1974 (Fourth Report on Competition Policy, point 71), upheld by Court of Justice in Case 71/74 (Frubo v Commission) by judgment given on 15.5.1975: [1975] ECR 563.

[3] Decision of 2.12.1977: OJ L 21 of 26.1.1978.

A very large quantity of Breton vegetables are marketed through these two auction centres (70% of the cauliflowers and artichokes and 25% of the early potatoes grown in France). A third of their production is exported to other Community countries, particularly Germany.

109. Since this case concerned farm produce, for which the Commission has made specific arrangements granting certain powers of organization to producer groups, and because this was the first time it had to give a decision concerning the behaviour of such groups, the Commission did not impose fines.

Agreements limiting production and sales

Video cassettes and video cassette recorders

110. The Commission issued a Decision[1] finding that certain clauses in agreements between manufacturers of video cassettes and video cassette recorders which took effect in May 1975, were notified to the Commission in December 1975 and were terminated after Commission representations in September 1977 constituted infringements of the EEC Treaty's rules on competition.

The parties to the agreements were the Dutch company NV Philips' Gloeilampenfabrieken and seven German firms—Blaupunktwerke GmbH, Bosch-Siemens Hausgeräte GmbH, Grundig AG, Loewe Opta GmbH, Norddeutsche Mende Rundfunk KG, Philips GmbH and SABA-Werke.

The agreements were for the uniform application of technical standards for the VCR system of video cassettes and vido cassette recorders based on Philips' patents.

The firms involved had undertaken to manufacture and sell no video cassettes or recorders other than those conforming to the system licensed by Philips. Also, any party which terminated the agreements immediately forfeited its licences under the patents of the others, while the remaining parties kept their rights under the terminating party's patents.

111. Because Philips is a leading manufacturer in this industry the restrictions of competition were held to be appreciable. The tests for exemption under Article 85(3) were not satisfied since there was in fact no improvement in the material goods. Even if such improvements had been achieved, the consumer was not allowed a fair share of the

[1] Commission Decision of 20.12.1977: OJ L 47 of 18.2.1978.

resulting benefit and restrictions were imposed that were not indispensable. Hence, although it is basically in favour of agreements whose purpose is to establish types and standards and apply them uniformly, the Commission could not see its way to giving exemption in this case.

Export cartels

Necomout

112. In response to Commission representations the Dutch maltsters' exporting syndicate, 'Necomout' (Coöperatieve Vereniging Centrale Organisatie van Nederlandse Exportmouterijen GA), to which almost all the Dutch malt-producers belong, discontinued its sales activities within the Community.

The syndicate, which had the legal status of a cooperative, had two main roles.

Its primary task was to export to other Community or non-member countries that portion of Dutch-produced malt which its members could not sell on the home market. The member companies themselves had undertaken to set aside part of their production capacity for export sales and to supply the syndicate with specified minimum quantities each year. They were not allowed to engage in any export business on their own account.

The combination of individual sales on the domestic market and joint export sales through the syndicate also meant that each member could at any one time count on at least 75% utilization of his production capacity. Whenever a member firm reported that less than 75% of its production capacity was being used, the syndicate would immediately farm out the orders placed with it according to the total available production capacity and not according to the capacity reserved for export purposes, as before.

This arrangement hindered competition between the affiliated malting-houses in deliveries to foreign customers, which accounted for about one-third of their total sales. It also distorted competition on the Dutch malt market, since profits and losses on export business were spread over the member firms in equal measure, since geographical location, whether favourable or unfavourable, ceased to be relevant and since any member who had trouble selling his output would be helped out by all the other members.

The Commission, whose investigations began as a result of a complaint from an ex-member of Necomout, also discovered a sales agreement between the Dutch malt-producers and their most important customers, the Dutch breweries. The breweries looked to Necomout members for a substantial proportion of their malt requirements, and in return the malt-producers purchased almost all the malting barley they needed through the breweries' syndicate, CBK (Coöperatieve Vereniging 'Centraal Brouwerij

Kantoor'). The Commission also discovered that the basic terms for the processing of malt by contract between individual breweries and malting-houses, including the basic charge for such processing, had been standardized in a framework agreement.

113. As a result of the Commission's intervention, the firms concerned terminated the agreements with the CBK and amended the articles and memorandum of their association in line with the EEC rules on competition. Since the agreements were of minor economic importance the Commission was able to close the case without issuing a formal decision.

§ 2 — Encouragement of permitted forms of cooperation

Sopelem/Vickers

114. The Commission authorized[1] an agreement for cooperation between the French company Société d'optique, précision, électronique et mécanique SA (Sopelem), Paris, the British company Vickers Ltd, London, and their joint venture Microscopes Nachet SA, Paris.

This agreement relates to technical cooperation, the exchange of knowhow, research and development and the joint distribution of microscopes. The particular aim is to help the firms involved develop more advanced and more sophisticated microscopes.

There is very keen competition on the microscopes market in the Community, which is dominated by large, powerful German manufacturers (Zeiss, Will and Leitz), accounting for nearly 50% of all microscope sales in the EEC, and by Japanese manufacturers (Nikon, Kyowa and Olympus), with a market share of between 30 and 35%. Although Sopelem and Vickers are both technically and economically important firms, neither has been able to attain a very substantial market share outside its home market: while Sopelem/Nachet has 20% of the French market and Vickers accounts for 16% of the United Kingdom market and 25% of the Irish market, their aggregate Community market shares are only 1.5% and 2% respectively.

The agreement is contrary to Article 85(1) of the EEC Treaty since the firms concerned are competitors and their technical cooperation and joint distribution through the joint venture therefore restricts competition on the microscope market.

But the Commission was able to give exemption because of the technical progress and improvements which are likely to result from the agreement as regards distribution in countries where the firms involved already do substantial business since they will obtain

[1] Decision of 21.12.1977: OJ L 70 of 13.3.1978.

access to each other's distribution networks and as regards sales in other countries, where both will be able to supply a fuller range of microscopes, technically comparable with the ranges offered by their major competitors. All this will be of benefit to the consumer. The Commission also took into consideration the keen competition on this market and the fact that the firms concerned have only very small market shares.

Exemption has been given for a five-year period expiring in 1981. It is subject to an obligation on the firms concerned to submit detailed reports to the Commission so that the effects of the agreement and the development of the relevant market can be monitored.

115. This Decision gave the Commission an opportunity to specify certain of the limits within which in exceptional circumstances cooperation between competing firms in research and development and the formation of a joint venture to handle distribution may be allowed.

Jaz/Peter

116. In July 1969 the Commission authorized,[1] until January 1977, a specialization agreement entered into in 1967 by two major clock manufacturers—Jaz SA, Paris, and Peter-Uhren GmbH, Rottweil.

The main point of the agreement is that Jaz abandons production of large mechanical alarm clocks and specializes in pendulum clocks and electric alarm clocks while Peter abandons the production of electric alarm clocks and specializes in large mechanical alarm clocks. Each party also agreed that in the other's territory it would supply only the other party.

Although all the restrictions in the agreement were within Regulation No 2779/72,[2] the agreement does not qualify for block exemption by reason of the quantitative hurdles—notably as regards Jaz's market share—that it could not clear.

But as all the tests for exemption under Article 85(3) are again satisfied, the Commission renewed its authorization for a ten-year period ending in January 1987.[3]

It found that in the ten years of the agreement's life the following benefits have resulted:

(a) production has been rationalized and productivity has improved considerably;

(b) quality has been improved and a large number of technical developments have been possible;

---

[1] Decision of 22.7.1969: OJ L 95 of 7.8.1969; First Report on Competition Policy, point 26.
[2] Points 35 and 36 of this Report.
[3] Decision of 23.12.1977: OJ L 61 of 3.3.1978.

(c) cost savings and productivity gains have been passed on to the consumer in the form of a substantial improvement in the quality of the clocks and of highly competitive prices that have risen less fast than the general level of consumer prices.

Regulations governing international motor shows

117. By a Decision following on from those already adopted in relation to fairs and exhibitions,[1] the Commission confirmed its broad policy of favouring the rationalization of such events, provided that there are no unnecessary restrictions on the freedom to exhibit.[2]

118. The Decision concerned the regulations adopted by the Bureau Permanent International des Constructeurs d'Automobiles (BPICA) governing the showing of motor vehicles at international exhibitions held in Europe.

BPICA, which is based in Paris, is an association of organizations of motor car manufacturers, assemblers and importers from twenty countries, including all Community countries other than Ireland and Luxembourg.

BPICA's rules are binding through their national organizations on almost all the world's motor manufacturers and through them on their representatives.

Each year BPICA draws up a schedule of international exhibitions at which motor vehicles may be shown. The schedule includes Europe's various annual motor shows.

Participation in international exhibitions not on the schedule is prohibited both for motor manufacturers and for their representatives. Non-international exhibitions are not covered.

Because of the advantage to both exhibitors (whose costs are kept down) and visitors (who have a full range before them) of concentrating international motor shows, the Commission was able to give an exemption, but only after BPICA had abandoned a clause giving it the right to decide arbitrarily whether an exhibition is international. In future this matter will be decided objectively by the competent authorities or bodies and BPICA will no longer be involved in the exhibition of motor vehicles at national or regional events.

---

[1] Decisions EEMO (OJ L 69 of 20.3.1969) and CEMATEX (OJ L 227 of 8.10.1971); (First Report on Competition Policy, points 42 and 43); Decision UNIDI (OJ L 228 of 29.8.1975; Fifth Report on Competition Policy, point 51).

[2] Decision of 7.11.1977: OJ L 299 of 23.11.1977.

EMI Electronics-Jungheinrich

119. Following intervention by the Commission, EMI Electronics Ltd (EMI), a United Kingdom company and H. Jungheinrich & Co. (JH), established in the Federal Republic of Germany, modified certain provisions in a joint development agreement notified some months previously and which amounted to infringements of the competition rules.

The agreement concerns joint development relating to electronic control devices for use by JH in the field of driverless tractor and forklift systems. Both companies are of international importance in their respective fields, EMI in electronic controls and JH in bulk handling systems. Under the agreement JH is to make financial contributions to mutually agreed development projects to be undertaken by EMI with JH assistance.

By one of the original provisions, JH was to be bound to order all its requirements of electronic elements for driverless tractor and forklift systems from EMI. This had the effect of depriving JH of access to products from other sources.

Following representations made by the Commission, the parties agreed to apply the purchase commitment of JH only to devices of the design developed by EMI under the agreement. Accordingly, JH is now to be free to purchase from third parties other types of electronic control devices for driverless tractor and forklift systems. If EMI is unwilling or unable on reasonable terms to supply to JH the products developed under the agreement, then JH is entitled to licences for their manufacture.

Under another provision of the original text of the agreement, EMI, which is experienced and widely diversified in the business of electronic control devices, had accepted a general limitation on its freedom to grant licences to third parties under patents which would be obtained through the cooperative development. This restriction was unlimited in scope of application and therefore extended also to patent licences in respect of possible uses outside the field of driverless tractor and forklift systems. In response to the Commission's disapproval, the parties agreed to amend the provision in question to enable EMI, without the consent of JH, to grant licences to third parties for use outside the field.

120. In this case the cooperative development work is still in its early stages and the restrictive provisions above referred to have not been implemented. Following the amendments of the agreement which remove these restrictions, the Commission was accordingly in a position to take no further steps in this matter. This view of the Commission again calls attention to its willingness to give favourable regard to cooperative development in fields of high technology, also in cases in which substantial firms are involved.[1]

[1] See also the joint venture cases described above, points 150 to 159 of this Report.

Specialization, joint buying and joint selling agreements in the coal and steel sector

121. Article 65 of the ECSC Treaty empowers the Commission to authorize specialization or joint buying or joint selling agreements in the coal and steel industries if they make for a substantial improvement in production or distribution and provided that certain specified conditions are fulfilled. This possibility is available, for example, for schemes which promote the more economic use or development of production facilities, which secure progress in the supply of new types of raw materials or which enable small and medium-size undertakings to maintain their competitive position *vis-à-vis* the larger undertakings in the sector concerned. Examples of such agreements authorized under Article 65 ECSC during the year are given below.

(a) Joint buying agreement in the coal trade[1]

122. In the solid fuels industry the Commission approved an agreement strictly analogous to a joint buying agreement between five independent German coal wholesalers designed to enable them to maintain their right of direct access to the collieries. This right is only available to firms which achieve specified sales volumes which vary from one colliery to another. Unlike the large wholesalers that often are or were linked with the collieries, the independent wholesalers, which are usually small, are finding it increasingly difficult to comply with this requirement as a result of the constant decline in demand for solid fuels. Under the agreement each of the wholesalers concerned surrenders one or more of his direct access rights to the other parties and then obtains supplies from them; this raises the annual purchases of the individual firms concerned from individual collieries and enables them to continue complying with the sales thresholds. The system is on a reciprocal basis and enables bulk discounts to be obtained.

The agreement is restrictive to some extent, but it also helps to preserve competition between independent and integrated wholesalers. This aspect of the agreement, together with the price reductions, which should result from it, are regarded as constituting a substantial improvement in distribution.

(b) Joint buying of pre-reduced iron ore[2]

123. The Commission authorized an agreement between several Italian steel-producing companies concerning the joint buying of pre-reduced iron ore through 'Consorzio Ita-

[1] OJ L 217 of 25.8.1977 and Bull. EC 9-1977, point 2.1.22.
[2] OJ L 309 of 2.12.1977.

liano dei minerali preridotti SpA' (COIMPRE). Pre-reduced iron ore is a high quality substitute for scrap, especially in electric steel furnaces and the pre-reduction processes are relatively new. The parties account for 38% of Italian electric steel production and 17% of total Italian steel production.

The main aim of COIMPRE will be to negotiate contracts for the joint buying of pre-reduced iron ore and possibly to set up and operate direct reduction plants in Italy, together with possible participation in the capital of companies active in this sector.

As regards joint buying, the agreement fulfilled the conditions for authorization because it will contribute to a substantial improvement in the production of high quality steel without enabling the parties to impede effective competition in the relevant markets.

As regards the possible construction and operation of direct reduction plants and capital participations in other companies, the agreement is only an outline agreement and the details will have to be filled in before the Commission can pronounce on its compatibility with Articles 65 or 66. Meanwhile, in order to be able to monitor future developments in this proposed cooperation, the Commission has attached certain conditions to the authorization. These include a requirement to notify the Commission of any plan for setting up or operating a direct reduction plant or for capital participation. Such plans may not take effect until the Commission is satisfied that they are within the terms of the existing authorization or until the Commission has separately authorized them.

(c) Joint buying of rolled steel products[1]

124. The Commission gave a further authorization, valid until 31 March 1982, for agreements between about 40 German steel stockholding companies for the joint buying of rolled steel products. These agreements were first authorized by the High Authority in 1967[2] and this authorization was extended by the Commission in 1972.[3]

The companies concerned are small and medium-sized steel stockholders who, by means of joint buying through Stahlring GmbH are seeking to achieve economies of scale in buying, carriage and stocking costs and thereby to improve their competitive position, particularly as against the larger steel stockholders. The agreement has been successful in this respect during the first ten years of its existence.

[1] OJ L 91 of 21.4.1977 and Bull. EC 4-1977, point 2.1.27.
[2] OJ L 127 of 27.6.1967.
[3] OJ L 85 of 11.4.1972.

§ 3 — Article 85 applied to distribution

Export bans and similar measures

Distillers Company Ltd

125. The Commission took a Decision[1] requiring the group companies of the Distillers Company Ltd to put an end to the price differentiation which hindered its customers in the United Kingdom from exporting Scotch whisky, gin, vodka and Pimm's. DCL's price terms, which had been the subject of complaints by United Kingdom dealers in spirits, and the bans on exports to other EEC countries previously contained in DCL's Conditions of Sale, amount to infringements of Article 85 of the EEC Treaty.

The DCL group is the most important producer and distributor of spirits in the United Kingdom and of Scotch whisky in the Community. During the last four years, its share in the production and sale of Scotch whisky in the United Kingdom has been between 40 and 50% and its share in sales of gin in the region of 70%

The DCL group has thirty-eight main subsidiary companies which deal in spirits (chiefly Scotch whisky, gin, vodka and Pimm's). They organize distribution through about a thousand wholesalers in the UK and through sole distributors, usually handling only one brand, in the other Community countries.

On behalf of these subsidiaries DCL notified the Commission of its Conditions of Sale to British customers. Bans on exports to other EEC countries which had been contained in these Conditions of Sale were withdrawn by DCL in June 1975 after the Commission intervened.

But DCL simultaneously put into effect price terms according to which allowances and rebates usually granted to United Kingdom customers were not to be extended to them if they exported the spirits to other EEC countries. Accordingly, a United Kingdom dealer wishing to export Scotch whisky has to pay a price which is approximately double that which applies to his purchases for resale in the United Kingdom.

These practices of differential pricing amount to an indirect export ban which is as detrimental to the establishment of a common market as the direct prohibitions previously contained in the Conditions of Sale and certainly as effective in restricting parallel exports. This was evidenced by complaints which were officially submitted to the Commission by a number of United Kingdom dealers.

On the other hand, practices of this nature also preclude price levels which are favourable to British customers by virtue of brisk competitive conditions in the United King-

[1] Decision of 20.12.1977: OJ L 50 of 22.2.1978.

dom, from affecting market conditions in other EEC countries and thus from benefiting consumers in those countries also.

The Commission did not accept the reasoning that, because of the higher distribution costs borne by DCL's sole distributors in other common market countries, the United Kingdom market had to be isolated in this way to protect such sole distributors from competition from other dealers.[1]

BMW Belgium

126. The Commission fined BMW Belgium (BMW Munich's general importer) and forty-seven Belgian BMW dealers who agreed to operate an export ban on new BMW vehicles.[2]

In 1975 the selling prices of private cars were lower in Belgium than in other common market countries, notably because of the Belgian Government's price controls. As a result new BMW vehicles were being re-exported from Belgium to other countries, both in the Community and elsewhere. But then the Commission's attention was drawn to the fact that Belgian BMW dealers were no longer prepared to deliver new BMW vehicles for export by complaints from two firms which import new vehicles from France and Belgium to Germany. The Commission established that BMW Belgium had sent a circular to its Belgian dealers on 29 September 1975 calling upon them to enter into an agreement to stop exporting new BMW vehicles. At the same time the eight members of the BMW Dealers' Advisory Committee sent a circular to the Belgian BMW dealers with BMW's full agreement, urging compliance with the export ban.

Forty-seven of the ninety BMW dealers in Belgium complied with the request and signed the BMW circular. This export ban was terminated on 20 February 1976 after the Commission had intervened and one of the complainants had brought a civil action against BMW Belgium.

The purpose of the general export ban agreed on the basis of the circulars issued on 29 December 1975 by BMW and by the Dealers' Advisory Committee was to restrict competition in the common market within the meaning of Article 85 of the EEC Treaty. By its very nature such a ban was apt to affect trade between the Member States. Many consumers and agents acting on their behalf try, when bying motor vehicles, to find out where in the common market the best terms are offered; they do not buy from their local dealers but from whoever quotes the lowest price.

---

[1] The Commission is of the view that certain sole distribution agreements concluded by DCL subsidiary companies with distributors in the common market cannot be exempted as long as these restrictions on parallel imports remain. It has informed those concerned.

[2] Decision of 23.12.1977, OJ L 46 of 17.2.1978.

127. On 13 January 1975 BMW Belgium had notified the Commission of its standard distribution agreement with approved dealers and applied for exemption under Article 85(3), but that standard agreement contained no export ban. It only prohibited sales of new BMW vehicles by approved to non-approved dealers. Most of the clauses in the standard agreement followed those of the selective distribution system operated by Bayerische Motoren Werke AG, Munich, in Germany and West Berlin and exempted by Commission Decision of 13 December 1974[1] from the prohibition in Article 85(1), notably because there was no export ban. The Commission has not yet issued a decision exempting BMW Belgium's standard distribution agreement.

128. This Decision reaffirms the Commission's view that export bans introduced under separate agreements to supplement selective distribution systems are in serious breach of the EEC Treaty's rules on competition and are punishable by fine. In deciding what fines to impose the Commission took into consideration the gravity of the offences, the short time they lasted and the part played by each of the parties. BMW Belgium, the instigator of the agreement and the major offender, was fined 150 000 u.a. (BFR 7 500 000). The eight dealers forming the Belgian Dealers' Advisory Committee were each fined 2 000 u.a. or 1 500 u.a. (BFR 100 000 or BFR 75 000) depending on their size, since they had supported BMW Belgium's demand for an export ban. The minimum fine of 1 000 u.a. (BFR 50 000) was imposed on each of the remaining thirty-nine dealers who signed the circular.

Supply agreements

Spices (Liebig)

129. The Commission issued a Decision[2] finding that certain clauses in the spice distribution agreements between the main manufacturer in Belgium—Brooke Bond Liebig Benelux NV, Antwerp, Benelux subsidiary of the British group Brooke Bond Liebig Ltd —and the three main Belgian food distributors—GB-Inno-BM, Delhaize Frères et Cie Le Lion and Sarma-Penney—are incompatible with Article 85(1) of the EEC Treaty.

The clauses to which the Commission took objection prohibit the distributors from selling any spices other than those manufactured by Liebig or sold under the shops' own labels. In return, the distributors are given certain financial favours (fidelity rebates, other premiums and profits guarantee). Resale prices are fixes by Liebig.

---

[1] OJ L 29 of 3.2.1975; Fourth Report on Competition Policy, point 86.
[2] Decision of 21.12.1977: OJ L 53 of 24.2.1978.

This arrangement restricts competition because the distributors are deprived of the freedom to decide what makes of spice they will buy and sell, while other manufacturers cannot supply them. Since many of these manufacturers are established in other Community countries, Community inter-State trade is also affected.

The Belgian market for prepacked spices for household consumption (ranges generally cover forty or fifty varieties) is rapidly expanding and is to all intents and purposes shared out between four main manufacturers—Liebig, the French company Ducros and two Belgian companies, India Specerijen and Topo.

As a full range of spices can only be sold properly, or even introduced to a given market in self-service supermarkets, Liebig's competitors, who are denied access by the distribution agreements to the three main self-service supermarket chains that alone handle 30% of the grocery business in Belgium, are having serious difficulty in promoting their sales or even, in some cases, gaining a foothold on the market at all. Liebig's competitors could do more intensive and more efficient business if they had access to the major distributors instead of being confined to a large number of smaller retailers. The difficulties are all the more serious as Liebig is already very strongly placed *vis-à-vis* other manufacturers on the Belgian market by virtue of its market share and reputation.

Ultimately the effects of these restrictive practices are felt most sharply by the consumer. Liebig spices are considerably more expensive than the other brands, but the consumer cannot buy cheaper spices from the supermarket shelves except the supermarkets' own brands. Furthermore, since there is resale price maintenance on Liebig spices, the consumer is unable to benefit from price competition between retailers, which might have induced them to sell more cheaply.

130. The Commission's Decision is interesting not only in that a specific restrictive practice is to be terminated, but also in that the relevant branch of industry, other branches in a similar position, and consumers, are given notice that certain restrictive practices in distribution are incompatible with the Community anti-trust rules, especially where their result is a high degree of market segregation.[1]

Billiton and Metal & Thermit Chemicals

131. Following representations by the Commission, the Dutch firms Billiton, a member of the Royal Dutch/Shell Group, and Metal & Thermit Chemicals (M & T), a member of the American Can Group, which specializes in packaging, terminated an exclusive purchase agreement for tin tetrachloride—an intermediate product used in the manufacture

[1] See also points 9 to 16 of this Report.

of non-ferrous metal alloys—which they had concluded in October 1976 and notified to the Commission.

Billiton is the Community's largest manufacturer of this material, while M & T is the largest consumer and takes half of Billiton's output. After preliminary scrutiny, the Commission indicated to the firms concerned that a number of provisions in their agreement were incompatible with Article 85 of the EEC Treaty. The provisions in question were an undertaking on the part of M & T to purchase exclusively from Billiton, an obligation on the part of M & T not to manufacture tin tetrachloride as long as Billiton could guarantee supplies and a prohibition on the resale of this material supplied by Billiton to M & T.

After the Commission intervened the firms altered their agreement. In future, Billiton will supply tin tetrachloride to M & T on the basis of normal commercial relations involving no restrictive arrangements.

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

Patent and knowhow licence

AGA Steel Radiators

132. In response to Commission representations two manufacturers of central heating radiators altered the patent and knowhow licensing agreement that they had notified. They were the Swedish firm AGA Radiator AB, Helsingborg, which belongs to the important AGA Group, and the British firm Steel Radiators Ltd, Henley-on-Thames. Until 30 August 1967 the latter was a subsidiary of AGA-Plåtförädling AB. Following a series of share dealings it is now part of the Stelrad Group Ltd, which is owned by Metal Box Ltd.

When Steel Radiators was an AGA subsidiary there was no licensing agreement between them. But to assure the subsequent owners of the British firm that they would be able to continue manufacturing and selling the relevant goods in the United Kingdom, a patent and knowhow licensing agreement was entered into, whereby AGA gave Steel Radiators an exclusive licence for the manufacture and sale of its radiators in the United Kingdom.

The agreement contained the following clauses in restraint of competition:

(i) grant of an exclusive patent and knowhow licence for the manufacture, use and sale of radiators in the United Kingdom; undertaking by AGA to refrain from manufacturing or selling the relevant products in the United Kingdom and from

supplying customers who were likely to sell the relevant products in the United Kingdom;

(ii) prohibition upon Steel Radiators exporting the licensed products to other European countries in the common market or elsewhere;

(iii) prohibition upon Steel Radiators challenging the validity of the licensed patents; obligation upon Steel Radiators to continue paying royalties even if one or more of the licensed patents were annulled on the application of a third party; prohibition upon Steel Radiators taking legal proceedings against any third party holding a patent competing with one of AGA's patents where AGA had a reciprocal no-challenge agreement.

Having received the Commission's statement of objections the parties to the agreement deleted all these restrictive clauses. AGA now gives the Stelrad Group as successor to Steel Radiators a non-exclusive manufacturing and sales licence valid for the whole world with the exception of a few countries, some of which are non-Community European countries. It authorizes Stelrad to use the knowhow already given to Steel Radiators in the same territories and undertakes to continue supplying knowhow. Steel Radiators is free to export the licensed goods where it wishes, both in the common market and to non-member countries.

133. With this case the Commission reaffirms its policy on certain clauses that are frequently found in licensing agreements, such as exclusivity clauses, export bans and no-challenge clauses.[1]

For exclusive manufacturing licences, the Commission considers that exemption may be given where it is found that the licensed territory is not too extensive, that there are similar products which compete in that territory and that parallel imports are still possible.

But exclusive sales licences and export bans constitute direct barriers to the free movement of goods in the common market, and the Commission will consider giving exemptions only in special circumstances, as where new products are to be manufactured and sold or a new market is to be penetrated, entailing heavy investment and hence considerable risk.

It should be noted that in this case the restraints on competition imposed on the licensor as vendor of shares in the company could not be justified by the need to protect the goodwill assigned to the acquirer, as a considerable period of time had elapsed since the sale.

---

[1] See Decision of 2.12.1975, AOIP/Beyrard: OJ L 6 of 13.1.1976 and Fifth Report on Competition Policy, point 63; and Peugeot/Zimmern, Sixth Report on Competition Policy, point 159.

As for bans on exports from the common market, they may be caught by Article 85(1) if their effects are felt within the common market.

Trademark licence

Campari

134. The Commission took a favourable Decision on the agreements whereby Davide Campari-Milano SpA granted an exclusive licence over its Bitter Campari trademark to Ognibeni & Co, Hans Prang, Campari-France SA, Sovinac SA and Johs M. Klein & Co in the Netherlands, Germany, France, Belgium and Luxembourg and Denmark respectively.[1] The licensees are required by these agreements to comply scrupulously with the assignor's instructions as to the manufacture of the relevant products, to ensure that the quality of the raw materials used meets the assignor's requirements and to buy from the assignor the herbal mixtures whose composition, a business secret, gives Bitter Campari its characteristic taste.

The Bitter Campari trademark and label were registered for use in most of the Community countries at the Bureau International de Berne at the beginning of this century.

135. The main point of interest in this decision is that the Commission can extend to exclusive trademark licences the favourable attitude it has taken on exclusive patent licences as in Davidson Rubber[2] and Kabelmetal Luchaire.[3] The Commission draws particular attention to two clauses—the ban on business in competing products by the licensees and the ban on active sales policies by all the parties outside their allotted territories. The Commission noted that these clauses allow the same benefits as can be obtained from exclusive distribution agreements authorized by the block exemption Regulation No 67/67/EEC.[4]

136. The Decision also imposes obligations enabling the Commission to verify in good time what effects the agreements are having on exports between Community countries. The earlier version of the agreements prohibited exports to EEC countries. In response to Commission representations the parties deleted this clause and instead undertook to do all they could to meet export orders from EEC countries. They also undertake to help customers who wish to export the products to other EEC countries to obtain redemption

[1] Decision of 23.12.1977: OJ L 70 of 13.3.1978.
[2] OJ L 143 of 23.6.1972; Second Report on Competition Policy, point 46.
[3] OJ L 222 of 22.8.1975; Fifth Report on Competition Policy, point 66.
[4] OJ No 57 of 25.3.1967.

from excise duties on alcohol where permitted by tax regulations.[1] They are required to report annually to the Commission on this point.

Use of trademark and business name

137. In the Sirdar/Phildar case the Commission expressed opposition to the use of trademarks as a means of market-sharing.[2] The Commission clarified its policy on this by giving favourable treatment to two agreements concerning the use of trademarks and business names which did not hinder the free movement of the relevant products and did not require the firms concerned to build up new goodwill with a different trademark.

Persil washing powder

138. At the Commission's request Henkel KGaA, Dusseldorf, and Unilever NV, Rotterdam, acting for the Unilever Group, stated that they would not prevent the marketing of Persil washing powder manufactured by either of them even in Member States where the Persil trademark belonged to the other.

Henkel holds the Persil trademark in Germany, Belgium, Luxembourg, the Netherlands, Italy and Denmark. The trademark is compounded from the words PER(borate) and SIL(icate). The Unilever Group holds the trademark in the United Kingdom and France, either directly, or indirectly through group subsidiaries.

The British trademark belonging to Lever Brothers Ltd, a member of the Unilever Group, has the same origin as Henkel's German trademark. It was registered in 1907 by the company whose name at the time was Henkel & Co. and was assigned to Joseph Crossfield & Sons Ltd in 1911. The latter firm was subsequently taken over by the Unilever Group.

The French Persil trademark registered by Lever SA, Paris, a member of the Unilever Group, is of dual origin. Henkel & Co. registered it in 1907, but since 1906 there had already been a registered trademark of a very different appearance; it represented a sprig of parsley (*persil* in French) with the word Persil accompanying it, rather than just the word Persil on its own. Later the two trademarks came into the hands of a single holder and were assigned to the Unilever Group after the First World War. The first application for renewal of the trademark in 1923 was based expressly on the two registrations of 1906 and 1907; the appearance of the trademark in the application for renewal corresponds to the 1907 registration by Henkel & Co. The Commission concluded that the

[1] The Commission secured a similar undertaking as regards the tax on spa waters from French operators of spa water sources. See Sixth Report on Competition Policy, point 156.
[2] Sixth Report on Competition Policy, point 165.

French Persil trademark has the same origin as the German mark, but this was contested by the Unilever Group. However, the question can, in the meantime, remain unanswered, in view of the statement made by the two firms.

139. According to the judgments given by the Court of Justice in the Cafe Hag[1] and Terrapin v Terranova[2] cases, the holder of a trademark in a Member State is not entitled to prevent the importing and marketing of goods from another Member State when they lawfully bear a trademark having the same origin.

Despite this the two firms used their trademarks in order to prevent imports: Henkel KGaA tried, sometimes successfully, to prevent imports of cheaper Persil from the UK into Germany; the courts before whom the resulting dispute was brought referred sometimes to trademark law and sometimes to the law relating to unfair competition. The Unilever Group for its part tried, again with some success, to prevent imports of Henkel's Persil from Belgium and Luxembourg into France, working through its French subsidiary Lever SA. There was correspondence between the two firms in 1975, and Henkel wrote it would 'do all we can to prevent the sale of these goods from both Belgium and Luxembourg in France'.[3] Unilever replied that 'we have asked our companies in UK and France to take equally stringent precautions to try to avoid any flow of Persil from their country into those areas of Europe where the trademark belongs to the Henkel company'.

Henkel also obtained written confirmation from a large number of German distributors that they would no longer distribute Persil originating in the UK.

140. The Commission concluded that geographical market-sharing was being practised and that Article 85(1) of the EEC Treaty was therefore being infringed. In the course of the case the two firms agreed to make the statement referred to above.

The two firms have been in contact to discuss the presentation of their respective trademarks. They have reached a solution which will not involve any formal agreement or undertaking. Henkel and its group companies now have the word Persil in red letters with the word Henkel in smaller letters in a red oval. The Unilever Group uses a green Persil trademark.

Even if these contacts between Henkel and Unilever were to constitute a concerted practice within the meaning of Article 85(1), the Commission does not believe that the Treaty rules on competition are violated. An agreement on the presentation of certain trademarks aiming to ensure that there can be no confusion in the consumer's mind as to

---

[1] CJEC 3.7.1974, Case 192/73: [1974] ECR 731.
[2] CJEC 22.6.1976, Case 119/75: [1976] ECR 1039.
[3] '... alles in seiner Macht stehende tun wird, um einen Abfluss der Ware nach Frankreich sowohl von Belgien als auch von Luxemburg aus zu unterbinden'.

the difference between the relevant goods, which can then be circulated freely throughout the Community with none of the manufacturers being prevented from using his own trademarks, is clearly inspired by the desire to preserve the existence of the trademark and is accordingly outside the prohibition in Article 85(1).

Having received the statement made by the two firms, the Commission terminated the proceedings that it had initiated. It acknowledges the concern of these firms to reach a solution that is consistent with the constraints of the common market, even in a difficult situation involving a well-known brand name.

'Penneys' trademark and business name

141. In this second case the Commission issued a Decision[1] authorizing an agreement entered into in February 1976 by J.C. Penney Inc., New York (Penney America), and Penneys Ltd, Dublin (Penneys Ireland), a subsidiary of Associated British Foods (ABF). The object of the agreement is to settle a conflict which arose between the two companies in most of the Community Member States concerning their respective rights to use the name Penneys as a trademark and as a business name.

The two companies operate large clothing and textile retail shops. Penney America, which is one of the largest distribution firms in the United States, distributes its goods in the Community under the Penneys trademark, notably through the Sarma chain of supermarkets in Belgium and its sales subsidiaries in other Member States. Penneys Ireland is one of the largest textile distributors in Ireland.

Under the agreement all rights to the Penneys trademark in the Community are conferred on Penney America. Penneys branded products can thus circulate freely throughout the common market. The agreement imposes the following obligations:

(i) Penneys Ireland assigns the French Penneys trademark, already registered, and the Irish Penneys trademark, currently in the process of registration, to Penney America;

(ii) Penneys Ireland will not contest the validity of Penneys' trademarks registered by Penney America in the Community during the first five years following the date of the agreement;

(iii) Penneys Ireland undertakes to refrain from using the name Penneys either as a business name or as a trademark except in Ireland, and then only as the name of its retail shops;

[1] Decision of 23.12.1977: OJ L 60 of 2.3.1978.

(iv) Penney America may sell its Penneys branded products in all Member States, including Ireland;

(v) Penney America undertakes to pay a determined amount of money to Penneys Ireland.

As a result, the voluminous litigation between the two companies came to an end. Had there been no agreement, Penneys Ireland was likely to have won the battle in Ireland and France whereas Penney America would have been successful in other Member States, as was already the case in England and Wales following an injunction issued by the High Court of England. Each would then have had a reserved territory which the other side's branded products could not have penetrated.

142. The Commission considers that firms in this sort of position must seek the least restrictive solution so that the free movement of goods in the Community is not hampered.

A contractual obligation upon the parties to assign or renounce their trademark or business-name rights, which would entail recreating their goodwill under other names, can have substantial anti-competitive effects for the purpose of Article 85(1) of the EEC Treaty and must therefore be exempted under Article 85(3) in order to be valid.

143. But in the present case the Commission considered that the agreement was not substantially anti-competitive and therefore qualified for negative clearance. The agreement does not require Penneys Ireland to recreate its goodwill under another name, as it was already doing substantial and quite successful business with another trademark, even before the agreement.

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

ABG

144. By a Decision[1] taken after a complaint had been lodged by ABG (Aardolie Belangen Gemeenschap BV—central purchasing agency for the Avia associates in the Netherlands) and Avia Nederland CV (controller of the Avia trademark in the Netherlands), the Commission found that three BP subsidiaries in the Netherlands abused their dominant position during the critical period of the oil crisis between November 1973 and March 1974.

[1] Decision of 12.4.1977, ABG/Oil companies operating in the Netherlands: OJ L 117 of 9.5.1977.

Avia is one of the few internationally known independent trademarks for oil products. It belongs to Avia International, a Zurich-based group with local companies in Switzerland, the Federal Republic of Germany, Austria, Netherlands, Belgium/Luxembourg, France and Italy.

BP (British Petroleum Company Ltd) is the parent company of the three Dutch subsidiaries referred to in the Decision, one being concerned with distribution, one with refining and the third coordinating the activities of the first two. BP is among the seven major international integrated oil companies.

The Commission considered that the integrated majors with their own refineries in the Netherlands held a dominant position *vis-à-vis* their respective customers in the Netherlands during the most difficult phase of the crisis.

The Commission held that an infringement was committed in that BP abused its dominant position when it cut supplies of petrol to ABG in a way which was discriminatory compared with its behaviour towards other customers in a similar situation, jeopardizing the very existence of ABG.

145. The Decision does not carry a fine, since it makes allowance for the uncertainty which may have existed when the infringement was committed particularly as regards BP's obligations in the light of the steps taken by the Dutch authorities[1] in attempting to resolve the supply difficulties caused by the crisis.

Hugin/Liptons

146. Acting on a complaint in another case[2] of refusal to sell, the Commission imposed a fine of 50 000 u.a. (UKL 20 833) on Hugin Kassaregister AB, Stockholm, one of the five major manufacturers of cash registers which supply the common market.[3]

The Decision finds that Hugin AB prohibited its various subsidiaries and distributors within the common market from selling its spare parts outside the Hugin network and also, together with its United Kingdom subsidiary, Hugin Cash Registers Ltd, London, refused without valid objective reasons to supply such spare parts to the complainant company, Liptons Cash Registers & Business Equipment Ltd, London, a former distributor of Hugin cash registers in the United Kingdom.

Hugin AB is wholly owned by the Federation of Swedish Consumers, Kooperativa Forbundet, a very large organization supplying 20% of Swedish retail trade. Although

[1] BP has appealed to the Court of Justice (Case 77/77) against the Decision.
[2] Points 27 and 28 of this Report.
[3] Decision of 8.12.1977: OJ L 22 of 17.1.1978.

Hugin AB's share of the EEC market for cash registers is only about 12%, it enjoys a monopoly for the supply of spare parts for its own cash registers through its total control of their manufacture and supply. These spare parts are manufactured to Hugin's designs with Hugin's tools, and are sold exclusively through Hugin's sales network. They are essential for the maintenance, repair and reconditioning of Hugin cash registers. Hugin AB's policy of refusing to supply even qualified independent operators not only precludes all competition in the business of service and repair but also effectively contains any independent market for leasing Hugin cash registers or for the sale of used machines.

Liptons is a small company specializing in the sale, leasing, servicing, repairing and reconditioning of all makes of cash register, including those manufactured by Hugin AB, for which purposes it requires spare parts. Liptons had been supplied until 1977 with substantial quantities of spare parts by Hugin AB's United Kingdom importer and subsequently by Hugin UK. Liptons had also acted as distributor for Hugin cash registers from 1969 to 1972. Thereafter, from October 1972 Liptons was refused the supply of spare parts by Hugin AB, Hugin UK and every other Hugin subsidiary and distributor within the EEC to which Liptons applied.

147. The Commission found that there was a separate market for the supply of spare parts, where Hugin holds a dominant position. Hugin abused its dominant position by refusing to supply Liptons without valid objective reason.

National Carbonizing Company

148. This case centred on the conflicting interests of National Carbonizing Company (NCC) and the National Coal Board (NCB) with regard to the structure of prices for coking coal and household coke.

It will be recalled[1] that NCC complained that the NCB was exploiting its dominance on the markets for coking coal and coke in the United Kingdom by selling its output at such prices that NCC, an independent producer buying coal from the NCB for processing into coke, could no longer make a profit and survive in business.[2]

After examining the facts and information available to it, the Commission notified NCC that it regarded as unfounded its complaint that NCB had abused its dominant position. NCC then applied to the Court of Justice under Article 35 of the ECSC Treaty, alleging that the Commission had failed in its duty to apply Article 66(7) ECSC[3] by not taking

[1] Fifth Report on Competition Policy, point 77.
[2] Bull. EC 10-1975, points 2105, 2435 and 2449.
[3] Article 66(7) requires the Commission to take action whenever a dominant firm abuses its dominance for purposes incompatible with the objectives of the Treaty.

action to end NCB's infringement of the Treaty. At the same time, NCC called on the Court to take interim measures that would enable it to produce domestic coke on an economic basis.

149. Although this case did not come to judgment in the Court of Justice, NCC having withdrawn, it nevertheless gave the Commission an opportunity to clarify its policy on the obligations of dominant firms with regard to the ECSC Treaty.

In 1975,[1] working from the Order given by the President of the Court of Justice, the Commission issued a decision adopting interim measures in favour of NCC.

In its decision the Commission stated that 'an undertaking which is in a dominant position as regards the production of a raw material (in this case coking coal) and therefore able to control its price to independent manufacturers of derivatives (in this case coke) and which itself produces the same derivatives in competition with these manufacturers, may abuse its dominant position if it acts in such a way as to eliminate competition from these manufacturers in the market for the derivatives'.

This was based on the judgment given by the Court of Justice on 6 March 1974.[2]

The Commission deduced that a dominant firm 'may have an obligation to arrange its prices so as to allow a reasonably efficient manufacturer of the derivatives a margin sufficient to enable it to survive in the long term'.

However, the Commission considered that the fundamental question was whether NCB's conduct in relation to household coke, this being the subject of NCC's complaint, might eliminate a coke producer who produced primarily industrial coke or, in other words, whether this conduct itself was such as to affect competition. The Commission felt that account had to be taken of all the facts in assessing the effects on independent coke producers of NCB's prices for household coke. Thus it would have been unjust to ignore the fact that not one coke producer produced household coke only.

The Commission considered that NCB's conduct was not in itself of such a nature as to eliminate a coke producer as the producer was not prevented by NCB from selling industrial coke at a profitable price.

The Commission therefore took no action on NCC's complaint, with the exception of the interim measures already mentioned and of certain other measures not directly relevant to the main question.

---

[1] Decision of 29.10.1975: OJ L 35 of 10.2.1976; Fifth Report on Competition Policy, loc. cit.

[2] Joined Cases 6 and 7/73, Istituto Chemioterapico italiano and Commercial Solvents Corporation v Commission: [1974] ECR 223.

§ 6 — Joint ventures

150. The Commission has continued[1] to study the problems surrounding joint ventures with a view to developing its policy on the matter. In the course of the year it issued decisions in three important cases,[2] defining the scope of Article 85(1) and setting limits within which large firms may be authorized under Article 85(3) to cooperate with each other through a joint venture. The Commission has taken a favourable stance on the joint formation of new business units that will enable the participants either to penetrate new geographic markets or to overcome the technical difficulties and face the major financial risks linked with the development of advanced-technology products, or to place the manufacture of intermediate products used by the parent companies on a profitable footing.

De Laval/Stork

151. In the first case the Commission took a favourable Decision[3] in respect of an agreement between the American company De Laval and the Dutch company Stork. They formed a joint venture at Hengelo, Netherlands, with the object of combining their production and marketing activities for Europe and the Middle East. Their cooperation covers turbines and compressors used in large-scale plants such as oil refineries.

Under the agreement Stork made part of its Hengelo manufacturing plant available to the joint venture and De Laval provided technical knowhow. Both De Laval and Stork remain in business as independent manufacturers.

Cooperation between Stork and De Laval restricts competition in the Community turbine and compressor industry, since the production and marketing activities of two competitors have been merged into a single joint undertaking, thus reducing European customers' choice. The venture is therefore caught by the prohibition in Article 85(1).

It does, however, bring with it appreciable economic advantages such as increased know-how and a wider product range for Stork and easier penetration of the European market for De Laval which justify exemption under Article 85(3). The various agreements between the two companies do not lead to market dominance; there are a number of important suppliers in the market larger than De Laval and Stork, whose own combined market share is between 10 and 15%.

---

[1] Sixth Report on Competition Policy, point 53.
[2] The Vacuum Interrupters Decision of 20.1.1977 is described in the Sixth Report on Competition Policy, point 175.
[3] Decision of 25.7.1977: OJ L 215 of 23.8.1977.

The joint venture was initially formed in 1971 for a period of five years, renewable with the consent of both parties. The period of exemption has been set at nine years in order to ensure that the cooperation does not last longer than is economically justified.

152. The Decision imposes conditions and obligations which will ensure that the ability of De Laval and Stork to compete with the joint venture is not unnecessarily limited, that the parent companies are able to make unrestricted use of jointly acquired knowhow after the joint venture comes to an end and that the cooperation does not lead to any further restriction of competition in the turbine and compressor industry.

The General Electric Company Ltd/The Weir Group Ltd

153. In the second case, the Commission, by decision,[1] exempted a joint venture entered into by agreement between The General Electric Company Ltd and The Weir Group Ltd which was notified in April 1977. Prior to the grant of exemption and on the initiative of the Commission, the parties had abandoned a number of restrictive provisions which could not have been exempted. The purposes of the joint venture are to develop, manufacture and sell sodium circulators for use in nuclear fast reactors. The parties are of considerable industrial significance in the United Kingdom and are established also in other Community countries and elsewhere. The exemption was made subject to a number of reporting obligations upon the parties.

The joint venture arrangements were made wholly by agreement and do not depend for their validity or enforceability on the control of a separate company. However, the arrangements provide for the unified, joint and equal control by the parties of all their activities relating to sodium circulators, including planning, financing, research, development, construction and sale.

The agreement and the joint venture fall within the scope of Article 85(1) of the EEC Treaty, primarily because, prior to the agreement, both parties were competitors and, following expiry of the agreement, both parties will again become competitors in respect of sodium circulators. Moreover, for the continuance of the agreement, both parties independently retain, not only horizontally competitive but also vertically overlapping activities in related markets, specifically in the power engineering field.

154. The Commission found that in these circumstances the very creation of the joint venture in which the parties took joint control amounted to a restriction of competition, regardless even of the specific restrictive provisions of their agreement. These were viewed by the Commission as reinforcing the implicit restrictive effects of the joint venture.

[1] Decision of 23.11.1977: OJ L 327 of 20.12.1977.

In addition, the existence of the joint venture was seen by the Commission as providing opportunities and inducements to the parties to enlarge their common activities so as to impair free competition between themselves also in areas outside sodium circulators where they retain independent interests.

155. The Commission was able to grant an exemption in this case for a number of reasons and notably because of the high risks involved in this particular development work, the complementary expertise of the parties and the urgency to achieve safe and satisfactory technical performance of nuclear reactors in this field. As seen by the Commission, the twelve-year duration of the agreement and of the joint venture is relatively short-term, if considered against the projected long-term future of fast reactor programmes. On completion of the development and on termination of the agreement and the joint venture, both parties will be competitors at arm's length in the manufacture and sale of sodium circulators with enhanced technical versatility and competence.

The Commission also took the view that the conditions for exemption would probably not have been satisfied if the parties had been in a position to manufacture and sell sodium circulators jointly for the entire time or for a significantly long time during the term of the agreement. But in this case the current development work is likely to take some eight years before questions of manufacture and sale can in practice arise. This underlines that while the Commission is willing in appropriate cases to view favourably cooperative development projects in fields of high technology, it will closely assess the possible restrictive effects of joint manufacture and, even more particularly, joint sales arrangements.

This decision of the Commission marks an important step in the development of its policy towards joint ventures and also calls to mind its recent Communication to the Council[1] which encouraged research and development projects in the field of fast reactors.

Imperial Chemical Industries/Montedison

156. The last case concerned an agreement between ICI of the United Kingdom and Montedison of Italy relating to the establishment and operation of a joint subsidiary (Anilina SpA) for the production of nitrobenzene and aniline. No formal Decision was taken because the venture was not in fact carried into operation.

Both companies are major manufacturers of intermediate products for polyurethanes and elastomers, which have many applications in the manufacture of a wide range of products in everyday use such as automobiles, building materials, footwear, furniture, paints and refrigerators.

---

[1] COM(77) 361, 28.7.1977, Bull. EC 7/8-1977, point 1.3.4.

These intermediates, the manufacture of which involves complicated processes requiring considerable resources available only to a few large undertakings, include two major groups of chemicals that are only partly interchangeable. One of them, diphenyl methane diisocyanate (MDI), is a widely used product manufactured from aniline, a benzene derivative. ICI is one of the world's largest producers of MDI, but Montedison has only recently decided to enter this market as a producer.

Both companies needed substantial quantities of aniline, ICI wished to increase its production capacity of aniline and Montedison required aniline for the manufacture of MDI. According to the parties, the quantities required by each was more then was available on the open market but less than the amount which would economically justify the construction of a new plant. They estimated, however, that their combined requirements would justify such investment.

The parties claimed that most of the production would be required for their own use but a significant proportion of capacity would be surplus and available for production of aniline which could be sold on the open market.

They therefore agreed to set up Anilina to supply each of them with the necessary aniline. ICI was to provide the knowhow and Montedison the necessary benzene and the infrastructure for the plant.

157. The Commission considered that the agreement as notified was caught by Article 85(1) of the EEC Treaty. Each party holds an important position in the petrochemical industry. In the field of polyurethanes the parties are competitors in both the upstream and downstream markets and could become competitors in the market for aniline.

The Commission concluded that the joint venture would therefore have the effect of substantially reducing competition between two very large undertakings within the EEC and of appreciably affecting trade between Member States.

It carefully examined whether the benefits of the joint venture were such that they outweighed the disadvantages produced by the restrictions on competition. The Commission considered that the joint venture did enable Montedison to enter a new market as a producer of aniline at the same time permitting ICI to expand its existing capacity. The cooperation by means of a joint venture therefore offered the parties the opportunity of overcoming urgent problems in the short term and could in the long term increase competition in the common market, improve production and technology, and consumers would be able to enjoy a fair share of the resulting benefit. The total potential market share of the two companies would not have the effect of eliminating competition in respect of a substantial part of the products in question in view of the strong position of Bayer and other suppliers both within the Community and elsewhere.

The Commission accordingly took the provisional view that an exemption under Article 85(3) could in principle be granted. It therefore expressed a favourable opinion in respect of an application made to the European Investment Bank for a loan to cover part of the capital expenditure envisaged by the agreement provided the agreement was made to conform to EEC rules on competition.

158. However, in order to ensure that the amendments to the agreement as notified were adhered to and that the restrictions on competition still resulting from the agreement were kept to what was indispensable for the attainment of its objectives and also, in particular, to ensure that as between the parties themselves the effects of their cooperation did not lead to unnecessary limitations of their freedom to settle their production and marketing policies independently, the Commission considered that exemption could be granted only on certain conditions and subject to certain obligations to be fulfilled by the parties.

To this end the Commission's proposals included as a matter of precaution a condition agreed to by the parties before notification that Anilina should not sell any of its surplus production to third parties. In the view of the Commission this might lead to the parties concerting their sales policies, since the parties envisaged that a significant part of their overall production of aniline would be available for sale on the open market. This condition therefore also required that the two parties should cooperate in no other way in the sale of such production to third parties.

Similarly, exemption would be granted only on the clear understanding that Anilina would adhere to the intention of the parties expressed in the agreement that neither was in any way to be impeded from seeking to take more aniline than the other, either from surplus production (or unused capacity) or even, if it so wished, from capacity increased at its own expense.

The Commission also considered that it was extremely important that the cooperation between two such large and competing companies should not last longer than was absolutely essential for them to overcome their problems and therefore concluded that continued exemption would not be justified if independent production by ICI and Montedison became reasonably practicable. In addition, the Commission considered that on the termination of the agreement Montedison should be in a position to continue as an independent producer of aniline if it wished, thereby increasing competition in an oligopolistic market.

159. At this stage the joint venture was abandoned—for reasons not related to the Commission's action—before all the specific conditions and obligations to be imposed had been settled. The Commission consequently closed its proceedings.

§ 7 — Merger control (Article 66 of the ECSC Treaty)

Belgian and French steel firms

160. Acting under Article 66 of the ECSC Treaty the Commission authorized[1] Compagnie Bruxelles-Lambert pour l'Industrie et la Finance (CBL), Brussels, Compagnie Financière de Paris et des Pays-Bas (Paribas), Paris, and Établissements Frère-Bourgeois (Frère), Charleroi, to merge the French firms Châtillon-Commentry-Biache (Châtillon), controlled by Paribas, Neuves-Maisons, controlled by Paribas and Frère, and Chiers, controlled by Paribas and CBL, into a single company to be known as Compagnie Industrielle Chiers-Châtillon under the control of Paribas and of Financière du Ruau. The aim is to form a diversified steel group producing the long products of Chiers and Neuves-Maisons and the flat products of Châtillon.

161. The same Decision authorizes CBL to acquire shares in Financière du Ruau, a Belgian holding company that has extensive interests in Belgian and French steel firms. The holding company was hitherto controlled by Paribas and Frère. CBL's buying into Financière du Ruau will enable it to share in the control of a large number of steel firms in France, Belgium and Luxembourg on the same terms as Paribas and Frère.

162. In assessing the effects of these mergers on the steel market, the Commission took into consideration the group effect resulting from the fact that CBL, Paribas and Frère are among the firms that together control Cockerill, and of the possibility that the business of Cockerill and firms under its control might be coordinated with that of the firms linked with CBL, Paribas and Frère.

In certain product categories the position of the group-effect firms will be particularly strong. But in the common market there are other manufacturers with similar or greater market shares, and more and more products are being imported at highly competitive prices from non-member countries. The fact that major financial groups have holdings in these firms will help to improve the extremely serious financial situation in which some of them find themselves.

163. This Decision is entirely without prejudice to any other decision the Commission may take under Article 65 or 66 of the ECSC Treaty concerning other structural organization plans still under scrutiny.

---

[1] Decision of 14.12.1977: Bull. EC 12-1977, point 2.1.58.

Hoesch/Herzog

164. The Commission also authorized Hoesch Werke AG, steel manufacturers of Dortmund, to acquire a 75% holding in Walter Herzog, Eisen- und Röhrenhandelsgesellschaft KG, Stuttgart, as the proposed transaction satisfied the tests of Article 66(2) of the ECSC Treaty.[1]

Walter Herzog, a steel stockholder with a turnover of approximately DM 320 million in 1975, markets some 310 000 tonnes of steel products annually, practically all of it in Germany. The companies' joint share of the steel stockholding market in Germany totals approximately 7.7%.

[1] Decision of 19.7.1977: Bull. EC 7/8-1977, point 2.1.34.

Part Two

Competition policy and government assistance to enterprises

Chapter I

State aids

§ 1 — General

165. The technical work which will enable the Commission to submit to the Council a communication redefining the principles of coordination for regional aids is nearing completion. These principles will then apply to all types of regional assistance. In addition, the Commission has stated its views on a number of national regional aid schemes.

As regards aid to specific industries, the Commission transmitted to the Council a proposal for a fourth Directive on aids to shipbuilding. It also took major decisions on assistance for new investments in the synthetic fibres industry and State aids for the iron and steel industry.

The Commission once again confirmed its general position that export aids may not be applied in trade between Member States. It also dealt with certain employment aids which could have adverse consequences not only on the balance of certain industrial sectors but also on the employment situation itself when considered from a Community rather than a purely national angle.

§ 2 — General regional aid schemes

Principles of coordination of national regional aid schemes

166. Technical work on the measurability of opaque aids was continued with the assistance of experts from the Member States.[1]

Following initial proposals two working documents which took account in particular of the comments and additional information provided by the Member States were prepared by the Commission and discussed at multilateral meetings on 21 April and 22 June.

These documents have improved certain aspects of the initial proposals and introduced a number of innovations. In the main, they define amounts for new aid ceilings per job

[1] Sixth Report on Competition Policy, point 197.

created (in European units of account) for the four different categories of regions defined in the Commission Communication to the Council of 26 February 1975.[1] They may henceforth be used as a basis in calculations concerning new investment assistance. They also consider the pros and cons of fixing a limit expressed as a percentage of investment to be used with the new ceilings. The proposals include fixing a common aid ceiling for Ireland, Northern Ireland, the Mezzogiorno, West Berlin, and the French overseas departments of Guadeloupe, Guiana, Martinique, Reunion and St-Pierre and Miquelon expressed as a percentage of initial investment and covering all assistance granted; as in other assisted areas, a ceiling per job created would also be used.

Member States may continue to grant aids towards operating costs until decisions are taken on their compatibility with the common market under the review of existing aid schemes carried out by the Commission as required by Article 93(1) of the EEC Treaty. In the light of these decisions the Commission would specify, if necessary, the conditions in which, despite its general reservations on this type of assistance, it could be considered compatible with the common market in certain situations. In the meantime, the intensity, duration and geographical coverage of any such assistance being granted may be neither increased nor extended and no new assistance of this type may be introduced without the Commission's authorization.

On the basis of this work and in view of the need to redefine the principles of coordination adopted in 1975,[1] a draft Commission Communication to the Council has been prepared for submission at a multilateral meeting in January 1978.

Specific statements on certain national regional aid schemes

167. At the same time, pursuant to Article 92 *et seq* of the EEC Treaty, the Commission continued scrutinizing the compatibility with the common market of certain national regional aid schemes.

When the Commission analyses the socio-economic situations in various regions in order to assess the assistance granted them it comes up against the problem that adequate regional statistics are not always available at the appropriate levels and are rarely comparable from one Member State to another; various aspects of this problem have been studied. A first proposal for measures to improve the situation was submitted to the representatives of the appropriate national statistical offices at a multilateral meeting held in Luxembourg on 10 and 11 November. It concerned in particular the handling and distribution of basic data currently available and the further processing of fuller employment statistics. This work will continue.

---

[1] Fifth Report on Competition Policy, point 85 to 87.

Federal Republic of Germany

168. Discussions continued[1] on the German general regional aid scheme.[2] On 8 March 1977 the Commission forwarded to the German authorities the first results of its scrutiny of the scheme, to be used as a basis for the Commission's decision. By verbal note on 11 October the Federal Government submitted its comments. These are being examined at present by the services of the Commission.

Meantime, on 8 August 1977, the Federal Government informed the Commission of its sixth general plan to improve regional economic structures,[3] a slightly amended version of the fifth general plan. On 7 October 1977 the Commission informed the Federal Government that it raised no objection to retroactive introduction from 1 January 1977, although it would be re-examining the changes in its future overall decision on the German regional aid scheme.

The Commission also commenced its review of assistance granted by the Länder. In addition to the regional assistance administered jointly by the Bund and the Länder as tasks of common interest,[4] translated into practice each year as an outline plan, each Land grants its own regional assistance. In cases where the Land authorities' assisted areas coincide with the assisted areas designated under the outline plans, the overall intensity of regional assistance (Federal and/or Land) is restricted to the maximum rates of assistance laid down by the outline plan. The Commission only proceeds to a specific scrutiny of assistance granted by the Land authorities when the assisted areas in question are not covered by the outline plan. Thus on 8 June 1977 the Commission informed the German authorities of its observations on the assisted areas in one Land and requested additional information on the schemes and assisted areas in other Länder.

Belgium

169. Article 2 of the Commission Decision of 26 April 1972[5] on the Law on Economic Expansion of 30 December 1970 required the Belgian Government to send the Commission a new plan designating development areas. Work undertaken since then by the Belgian authorities and the bilateral contacts with the Commission were again broken off in early 1977 on account of the government crisis and the subsequent elections. At the Commission's initiative contacts were recently resumed.

---

[1] Sixth Report on Competition Policy, point 200.
[2] Bundesdrucksache 7/4742 of 13.2.1976.
[3] Bundesdrucksache 8/759 of 15.7.1977.
[4] Fifth Report on Competition Policy, point 89.
[5] OJ L 105 of 4.5.1972.

Moreover, the complementary regional aid[1] provided for in the Law on Economic Expansion of 30 December 1970—which the Belgian Government had granted for six months in 1975 on account of the economic recession in Belgium[2]—was extended for the fifth time in June 1977. On account of the persistence of social and economic difficulties in the areas concerned, the Commission raised no objection to this further extension.

Denmark

170. By letter dated 3 May the Commission informed the Danish Government of its decision on the current regional aid scheme.[3] This decision—generally favourable—followed overall review, as required by Article 93(1) of the EEC Treaty, of the socio-economic situation in the Danish regions and the related measures of assistance.

Denmark generally enjoys a higher standard of living than most Community countries. However, there are regional disparities, notably caused by the exceptional concentration of population in Copenhagen and the surrounding region (Zealand). 31% of the Danish population lives in the capital, and the density there is almost seventy times higher than the national average.[4] Until quite recently the trend towards concentration was continuing. The rural areas in the west were losing part of their inhabitants through emigration, while people settled near the big towns, attracted by job prospects. Although this trend now seems to have come to a halt, it is still too early to decide whether the causes are linked with the economic crisis or whether a real structural change has taken place.

The problems created by this geographical distribution of the population are aggravated by the structure of economic activities. Although there has been a considerable drop in the numbers employed in farming over the last twenty-five years, it still accounted for 11.1% of jobs in 1970 and 9.6% in 1973 (as against 6.6% in the Netherlands, 3.6% in Belgium and 2.7% in the United Kingdom). This structure is also extremely unbalanced in regional terms. In the assisted areas alone, employment in farming varies from 14 to 47%, while the average is roughly 20%.

In addition to these structural difficulties, those regions where farming is the main activity suffer from an inherent drawback: the most fertile soil is in eastern Denmark where urban concentration is greatest; the land to the west is poor. In the counties where most of the population is employed in farming, the yield from the soil is lowest.

---

[1] *Moniteur belge* of 1.1.1971.
[2] Sixth Report on Competition Policy, point 201.
[3] System introduced by Law No 219 of 7.6.1972, *Lovtidende* A of 7.6.1972.
[4] By way of comparison, 20% of the French population lives in the Paris area, while population density in The Hague is twenty times higher than the average for the Netherlands.

As regards unemployment, the latest comparable statistics available (1975) reveal that it affected 6.8% of the Danish working population as against an average Community rate of 3.7%. Although the regional disparities in this connection are tending to subside, at times of economic crisis, higher structural unemployment persists in certain areas of Jutland.

171. As previously mentioned,[1] the Danish scheme provides for three categories of assistance: grants, loans at concessionary interest rates and State guarantees. Assisted areas fall into two categories—ordinary and special development areas—which are roughly equal in size and together cover about 50% of the country and 30% of the population.

The special areas are those with the greatest problems; investment grants may only be granted in these areas, where the maximum aid intensity is therefore higher than that applicable to the ordinary areas. The special areas are located in north and south-west Jutland and in certain islands where farming is the main activity (Bornholm, Samsø, Langeland and Aerø, Lolland and Falster).

The ordinary areas are located in western and south-eastern Jutland.

As regards funds earmarked, among Community countries Denmark grants the least regional aid, whether as a proportion of gross domestic product or of the number of inhabitants in assisted areas. Most financial support in Denmark takes the form of loans and investment grants.

172. In view of the regional disparities revealed by the socio-economic analysis and the fact that the intensity of aid granted seemed well adapted to the specific structural problems of each region, the Commission felt that, all in all, the Danish regional aid scheme could be considered compatible with the common market and qualified for the derogation provided for in Article 92(3)(c) of the EEC Treaty as 'aid to facilitate the development of ... certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

However, the Commission felt that its decision should be qualified by certain restrictions and proposals, mainly concerning the duration of the scheme.

The previous regional difficulties of certain areas seem to be easing, and recent socio-economic developments gives reason to hope for rapid disappearance of persisting disparities. This is true not only of central and south-eastern Jutland, where structural changes from a predominantly agricultural society to an industrial society can be observed, but also of the island of Lolland and Falster.

---

[1] Sixth Report on Competition Policy, point 203.

The Commission has therefore restricted the grant of regional aid in these areas and also the Grenå area to two years; before the end of this period, these areas' economic development will be reviewed again.

The Commission also requested confirmation that the Danish scheme's administrative arrangements would ensure observance of the Community ceilings fixed by the 1975 principles of coordination in the few areas where, by combining all types of regional aids, the ceilings would be exceeded. The Commission also requested prior notification of significant cases of application of the assistance (investment over 3 million EUC or projects for which combined intensity of all regional aid reaches or exceeds 15% of investment in net grant equivalent) in areas bordering on the existing assisted areas. It also asked for an annual report on the application of the scheme, detailing the total cost of aided investment and the different categories of assistance. It reminded the Danish authorities that assistance relating to products listed in Annex II to the EEC Treaty—which may concern the food industries—are subject to the rules of competition as applied in agriculture.

Finally, as regards the categories of assistance under the Danish scheme considered as opaque within the meaning of the common method of evaluating aid (State guarantees, compensatory grants and transfer grants), the Commission reserves the right to take a decision when the technical work now in progress on possible methods of measuring all opaque aids in the Community is completed.[1]

173. By letter dated 18 October 1977, the Danish authorities notified the Commission of proposals to amend the existing delimitation of assisted areas.

The measures reduce the coverage of assisted areas, both as regards population and surface area.

On 20 December 1977, the Commission decided in favour of these amendments but imposed certain conditions on the Danish Government concerning attribution of assisted area status to some new municipalities; these conditions concern the duration of the measures, observance of Community ceilings and notification of significant individual cases of application.

France

174. By letter dated 22 December 1976 the Commission informed the French Government of its views on the reform of the French regional aid scheme which came into

[1] Sixth Report on Competition Policy, points 194 and 195.

force in April.[1] The changes introduced conform to the new guidelines of French regional policy and the Commission took a generally positive view.[2] However, it could not take a final decision on the premium for the location of certain service industries (PLAT) and the special rural aid, for the intensity measured in terms of jobs created was not comparable with that of other aids. The Commission will state its definitive view on this assistance in the light of the new principles of coordination for general regional aid schemes.

Turning to other aspects, although the Commission raised no objections to the general measures of assistance granted by the French Government, the coverage of certain measures gives cause for concern.

175. This applies first of all to the reasons for granting the regional development premium (PDR) in the areas of Charleville-Mézière and Sedan in Champagne-Ardennes and the duration of the assistance. These areas, where PDR has been granted since 1974 at its lowest level of intensity, have been classed as assisted areas for the entire duration of the eighth plan, until 1980. The Commission feels that the problems of these areas are not sufficiently extensive to warrant classing them as assisted areas for such a long time. As regards population, although outward migration of 0.7% per year was registered between 1968 and 1975 in the Ardennes Department, population in the areas concerned increased by roughly 2% between the last two censuses. As regards the job situation, the increase in unemployment, mainly among women and young people, has gone hand in hand with the drop in job vacancies; this development cannot be acknowledged as structural for it is too recent and coincides too closely with the recession. Taking account of the region's high degree of industrialization, demonstrated both by the position of industry with respect to total employment (48% for the Ardennes Department in 1968) and by the variety of branches represented, and reconsidering these areas' difficulties in the light of the general situation of the Champagne-Ardennes region (they only account for roughly 7.4% of surface area and 15% of the region's total population), it becomes clear that the gravity of the situation must not be overestimated and that the status of these areas should be reviewed in two years' time.

176. The amounts to be granted by way of the new regional development premiums (PDR) and the premium for the location of research activities (PLAR) in cases involving investment below FF 10 million are to vary according to the seriousness of the regional situation; the Commission attaches great importance to this principle.

---

[1] Decrees Nos 76-326 and 76-327 of 14.4.1976, concerning the PDR, PLAT and PLAR respectively (Journal officiel de la République française of 15.4.1976); Decree No 76-795 of 24.8.1976 (Journal officiel de la République française of 25.8.1976).

[2] Sixth Report on Competition Policy, point 206.

Different provisions apply to investment over FF 10 million. In this case, the Decree of 14 April 1976 specifies that the amount of the premium is fixed without any such variation. In practice, however, the French authorities do have regard to it and only depart from the principle in certain specific circumstances which have been notified to the Commission. The Commission consequently decided to raise no objection to the procedure for granting the PDR and PLAR, but to monitor its implementation. For this reason, it requested the French Government to submit an annual report on the application of these two aids. The report's contents are to be set out in such a way as to enable the level of assistance by region to be checked.

The data in the report also disclose two other types of information: the breakdown by category of expenditure (land, buildings, machinery and plant) on aided investments and the total amount of investments and related assistance for cases in which, by way of exception, the premium is not granted on a standard basis for investment below FF 10 million. On the basis of this information the Commission intends to check on the feasibility of the standard basis used to measure French regional aid and to make sure that the assistance granted exceptionally without reference to the standard basis is indeed of an exceptional nature.

177. A new feature of the PDR system provides for the granting of the premium in exceptional circumstances outside regions with assisted status. This facility applies to projects located in the proximity of an assisted area which help to overcome its economic and social problems. It is extended to firms introducing schemes apt to solve the serious problems arising in a non-assisted area from the closure of one or more firms or by serious disturbances in the employment situation. These measures are hard to assess on account of their very nature. They could well divert regional assistance from its objective, for they could be used to solve local, economic or sectoral problems to the consequent detriment of regions classed as priority assisted areas on account of their structural weaknesses.

For this reason the Commission requested advance notification of significant individual cases of application. This request concerns all cases in which aided investments exceed 3 million EUC and cases in which the intensity of regional aid exceeds 15% of the investment in net grant equivalent.

178. Finally, evaluation of the combined amount of French regional aids in the various assisted areas has revealed that, in the part of the country subject to an aid ceiling of 20% in net grant equivalent under the 1975 principles of coordination,[1] the combined

[1] Fifth Report on Competition Policy, points 85 to 87.

amount of regional aids could exceed this percentage if PDR is granted at the nominal limit of 25%, i.e. 17% of investment. The same applies to the research centres where PLAR is granted at the nominal limit of 20% of investment. The Commission requested the French Government to inform it of steps taken to exclude the grant of aid in excess of the ceiling.

On 23 November the French Government informed the Commission that it was ready to comply.

Ireland

179. Now that the technical work carried out with the cooperation of the Member States on the opaqueness[1] of regional aids has been completed the results will be used in establishing the new principles of coordination. Progress has thus been made on the transparency of certain regional aids granted in Ireland. Work may now be undertaken on analysing the compatibility with the common market of the Irish general regional aid system.[2]

Italy

180. To put into effect the Italian Law No 183 of 2 May 1976[3] introducing new rules on Italian regional aids, notably for the Mezzogiorno, for the five-year period from 1976 to 1980, the Italian Government had to introduce implementing measures[4] following authorization by Parliament. In the meantime assistence was granted on the basis of earlier legislation.[5] The Commission waited for details of these measures before taking a decision on the new system.

The Italian Government informed the Commission of some of the new scheme's implementing measures. These include a decree setting up a single fund for granting industrial credit (low-interest loans).[6] A series of principles have also been introduced: degressive granting of assistance according to the seriousness of the regional situations concerned,

---

[1] Sixth Report on Competition Policy, points 194 and 195.
[2] Principal statutes: Industrial Development Act 1969, Finance (Miscellaneous Provisions) Act 1956, Finance Act 1969.
[3] Gazzetta Ufficiale della Repubblica italiana No 121 of 8.5.1976.
[4] Sixth Report on Competition Policy, point 208.
[5] Principal statutes: Law No 853 of 6.10.1971 (Gazzetta Ufficiale No 271 of 26.10.1971), Law No 623 of 30.7.1959 (Gazzetta Ufficiale No 198 of 19.8.1959), Law No 614 of 22.7.1966 (Gazzetta Ufficiale No 200 of 12.8.1966).
[6] Decree No 902 of 9.11.1976 (Gazzetta Ufficiale No 8 of 11.1.1977).

setting an overall limit on intensity in cases where national and local aids are combined, discontinuing a number of previous types of national aid, limiting support for Central and Northern Italy to one single type of assistance: low-interest loans. Although the Commission appreciated that these rationalization measures were in accordance with Community guidelines on assistance it deferred its definitive assessment of the decree for two reasons: it could not evaluate the assistance granted by means of low-interest loans since the reference rate, corresponding to the commercial interest rate, required to calculate the amount of aid had not been fixed and since the eligible areas in Central and Northern Italy had not been designated.

Two further decrees[1] on procedures for granting financial assistance to the Mezzogiorno were also notified to the Commission. Since they concerned procedures to be followed when applying for assistance, the Commission considered that scrutiny of the decrees pursuant to Article 92 of the EEC Treaty was not required.

The Commission has organized a multilateral meeting of experts to complete the Member States' information on the definitive coverage of the new system; the only information they have formally received is that given on the preliminary draft in 1974.[2]

181. The Commission also took decisions on two regional Bills notified in January and May. The first applies to the autonomous province of Trento; pending implementation of the country's new rules on State aids, the Bill provides for assistance to industry and small businesses for one year only.

Since the grants concern previously approved assisted areas and are to apply for a limited period of time, the Commission did not raise objections to their introduction.

The other Bill concerns the autonomous Valle d'Aosta region and amends the Regional Law No 33 of 8 October 1973,[3] previously approved by the Commission,[4] subject to certain conditions. It concerns the granting of low-interest loans to encourage industrial investment in the region. The previous law restricted eligibility to firms employing up to 500 persons with invested capital of up to LIT 5 000 million. As a result of inflation this amount is now too low and the Bill is designed to raise it. The Commission considered that this adjustment did not warrant amending its previous favourable decision on the scheme, all the more so since intensity in the meantime had dropped considerably.

---

[1] Decrees of 22 and 24 January 1977 (Gazzetta Ufficiale No 63 of 7.3.1977).
[2] Fifth Report on Competition Policy, point 95; Sixth Report on Competition Policy, point 208.
[3] Gazzetta Ufficiale No 320 of 13.12.1973.
[4] Bull. EC 11-1973, point 2112.

Netherlands

182. As previously mentioned[1] the Dutch Government substantially modified its regional aid system (Investeringspremieregeling-IPR)[2] notably by extending the geographical coverage to one further region and eighteen new growth points.

On 18 May the Commission initiated the procedure of Article 93(2) of the EEC Treaty in respect of these amendments[3] expressing reservations on the warranting of assistance in six of these new growth points: Goes, Vlissingen-Oost and Terneuzen (located in Zeeland), and Cuyk, Oss and Bergen-op-Zoom (located in North Brabant).

The socio-economic situation of the Goes, Vlissingen-Oost and Terneuzen growth points is satisfactory. The unemployment rate is below that of areas usually classified as assisted and is no more than 80% of the national average. *Per capita* incomes are also distinctly higher than those of assisted areas—roughly the same as the national average and an index of 110 compared with the Community level. Farming, which in 1973 provided employment for 11.5% of the working population of the province of Zeeland, is not experiencing any particular difficulties. At Goes, the only growth point where farm workers (14.5%) are above the national average (7.5%), agriculture is prosperous.

The increase in unemployment at Cuyk and Oss has been too recent and coincided too closely with the general economic crisis to be definitely acknowledged as structural. Although *per capita* income is relatively low, manufacturing and service industries have made progress; the increase in employment in these two sectors between 1973 and 1975 equalled or even exceeded the national average. The building industry is experiencing some difficulty, but then there is a nationwide recession. Finally, although farms are small, there are no particular problems in agriculture.

The socio-economic difficulties of Bergen-op-Zoom are mainly caused by the Rijnmond region.[4] It draws workers from the north-west of the province of North Brabant and from Bergen-op-Zoom and it is now suffering the consequences of the general recession. The unemployment rate there is higher and the *per capita* income lower than the national average, but the area is less badly off than the traditional assisted areas. Moreover, between 1973 and 1975 jobs in manufacturing and the services went up by 5.5% and 2.2% respectively. Progress has therefore been made despite the decline in activities in certain industries—furniture, clothing and building (the latter for the same reasons as at Cuyk and Oss). Farming has also registered a drop in employment, but it accounts for few jobs in the area.

---

[1] Sixth Report on Competition Policy, point 212.
[2] Ministerial Notice No 1275/III/1260 PI POR/REP of 7.5.1975; Staatscourant No 90 of 14.5.1975; Staatscourant No 175 of 11.9.1975.
[3] OJ C 129 of 2.6.1977.
[4] Area situated at the mouth of the Rhine and the Meuse, extending from Dordrecht to the coast.

The Commission therefore felt that the granting of regional assistance should be discontinued in the growth point of Goes, Vlissingen-Oost and Terneuzen and restricted to a two-year period in the growth points of Cuyk, Oss and Bergen-op-Zoom, where structural difficulties cannot be acknowledged with certainty.

183. Following the Commission's decision, the Dutch Government informed it that from 8 June Goes, Vlissingen-Oost and Terneuzen would no longer be considered as growth points with regard to the IPR system.

By letter dated 11 July it also notified the Commission of further amendments to the IPR system. The two major innovations are the extension of the system to cover the growth points of Oldenzaal, Deventer and Venlo; however, maximum theoretical intensity of aid for Deventer and Venlo would be 10.1% in net grant equivalent instead of the 20% rate generally applied. In addition, for investment in manufacturing in the growth points of Kampen, Zwolle, Uden, Venray, Cuyk, Oss and Bergen-op-Zoom, and for key investment in the services industry in the Roermond, Melick and Herkenbosch growth points, maximum theoretical aid intensity would be brought down from 20% in net grant equivalent to 10.1%.

The Dutch Government also slightly amended maximum theoretical intensities of the various premiums provided by the scheme but they remain below the ceilings fixed by the 1975 principles of coordination. It also introduced two new possible applications of the IPR scheme: one for investments which, within the meaning of the basic scheme, do not constitute investments establishing or extending firms but which are of exceptional social importance and the other for new industrial plant established at Terneuzen and Vlissingen-Oost and of vital importance for the area; the Commission would receive prior notification of individual cases.

The Commission is now scrutinizing all these amendments.

184. In March 1977 the Dutch Government also informed the Commission of its Investment Account Bill (Wet Investeringsrekening) providing for the introduction of six new investment premiums, notably:

(i) a general regional premium of 12% of the cost of investment in building and 6% of that in outside plant; this premium would be payable in a certain part of the Netherlands, the designation to be fixed by administrative procedure (probably the whole country outside the Randstad);

(ii) a special regional premium of 20% of the cost of investment in buildings and 10% of that in outside plants; this premium would be payable in certain municipalities selected according to socio-economic criteria, notably severe employment difficulties;

(iii) a premium to be payable in accordance with town and country planning considerations of 20% of the cost of investment in buildings and 10% of that in outside plant; this premium would be payable in certain municipalities only to improve the balance of local population and economic development.

Having examined the Bill, on 24 May the Commission initiated the procedure of Article 93(2) of the EEC Treaty with respect to these three premiums. It could not assess whether the assistance qualified for derogation under Article 92(3) of the EEC Treaty, since vital information was lacking. It therefore requested the Dutch Government to provide further information and inform it of the areas eligible for the first two premiums with details of their socio-economic difficulties and the growth points where the third premium could be granted.

The Commission also expressed doubts on the compatibility of the premiums with the common market, since they could all be granted for replacement investment. They would thus permanently reduce firms' running costs and therefore their manufacturing costs. This assistance could not be considered to encourage recipient firms to adjust to the true conditions of competition in which they must operate and therefore did not qualify for derogation under Article 92(3)(c) of the EEC Treaty as aid to 'facilitate the development of certain economic activities or certain economic areas'.

United Kingdom

185. The completion of technical work carried out with the cooperation of the Member States on the opaqueness of some of their regional aids enabled work to continue on the examination of compatibility with the common market of the British regional aid scheme.[1]

Assistance under the scheme includes the regional development grant, an automatic investment subsidy granted for all investment (including replacement investment) over an unlimited period. Many in-depth discussions were held on this aid—both bilateral, at different levels between the Commission and the British authorities, and multilateral.

186. Meantime in April and May two amendments to the aid scheme were notified to the Commission. The first concerns changes in the status of certain assisted areas: the maximum assistance granted is in some cases reduced and in other cases increased. The areas where aid has been reduced are Aberdeen, Inverurie, Stonehaven, Malton, Northal-

[1] Principle statutes: Great Britain - Industry Act 1972, Local Employment Act 1972, Scottish Development Agency Act 1975, Welsh Development Agency Act 1975; Northern Ireland - Industrial Investment (General Assistance) Acts (Northern Ireland) 1966-71, Industrial Development Acts 1966-71, Selective Employment Payment Act 1966.

lerton, Pickering, Richmond and Thirsk. The areas where the level has been increased are Shotton 'travel to work' area, Hull 'travel to work' area, Grimsby Employment Office Area, Arbroath, Cumnoch, Dundee, Kilbirnie and Lanark Employment Office Areas. The second concerns an increase in assistance for Special Development Areas: an extension from two to five years for the government factories' rent-free periods and an increase in the intensity of aid granted in the form of low-interest loans. The Commission raised no objections to the introduction of these amendments but postponed final assessment pending an overall decision on the British scheme.

However, since the second amendment could cause assistance to be granted beyond the aid ceilings laid down by the 1975 principles of coordination,[1] the Commission drew the attention of the British Government to its obligation in this respect. By letter dated 7 September the British authorities assured the Commission that assistance granted would not exceed the ceilings.

187. Finally, on 3 October 1977 the Commission took a decision on the amendments to the regional aid scheme for Northern Ireland which had been notified in August 1977 by the British Government. This system, set up by the Industrial Investment (General Assistance) Acts (Northern Ireland) 1966-71 provides for a series of grants, interest-free or low-interest loans and interest relief grants.

In the main these amendments involve an increase in the capital grants for investments and increase the ceiling on job creation grants. Since the Commission has not yet stated its views on the compatibility of the Northern Ireland aid scheme with the common market, it decided to raise no objection to the introduction of these amendments, but reserved its definitive position pending an overall assessment. It therefore authorized derogation from the regional aid ceiling fixed for Northern Ireland by the 1975 principles of coordination.[2] It felt that an increase in assistance was warranted in current circumstances on account of Northern Ireland's worsening unemployment and low *per capita* gross domestic product.

§ 3 — Aid systems for specific industries

Shipbuilding

188. Although world shipbuilding production was at a record level in 1976, this was a result of orders placed in previous years; it was already evident that the dearth of new

[1] Fifth Report on Competition Policy, points 85 to 87.
[2] Fifth Report on Competition Policy, points 87 and 99.

orders heralded a serious worldwide crisis characterized by a structural surplus of production capacity. In 1977 the progressive reduction in orders on hand obliged many shipyards to start reducing production and consequently to lay off workers on a significant scale.

The experience of the Community's shipyards has been comparable to that of world shipyards as a whole, with orders on hand falling by about 40% during 1976 and by a further 20% in the first half of 1977. Orders on hand in Community shipyards for delivery in 1978 amount to only about half of 1976 production.

The medium term outlook is also extremely adverse. Even in 1980 world orders are unlikely to be greatly in excess of 60% of 1976 production, and the Community's yards, being at a considerable competitive disadvantage in relation to shipyards in third countries and more particularly in the Far East, may be obliged to accept an even greater reduction in activity. The consequences for employment in the Community industry could well be a loss of over 50 000 jobs, or about one third of its employment; there would, in addition, be significant indirect effects on employment in other industries.

189. These unfavourable prospects have led the Community, both internally and externally in contacts at an international level, particularly within the OECD, to seek the development of policies to deal with the crisis.

Within the OECD the Community participated in the preparation of the general guidelines, approved on 4 May 1976, which provide that, in order to remedy the serious structural disequilibrium existing in this industry, efforts are needed in all shipbuilding countries in order that the inevitable reduction in world shipbuilding capacity may be achieved in the least damaging and most equitable way possible.

The principle of equity led the Community to request the Japanese Government to make special efforts, since shipbuilding capacity has grown particularly rapidly in that country. The Japanese Government responded to this request by advising its shipbuilders to increase prices by 5% so as partially to reduce the gap between EEC and Japanese prices, which was estimated to be around 40% on average, and by taking measures to reduce hours worked in Japanese shipyards by 30% by 1978.

While these measures may contribute to a more equitable distribution of new orders between Japan and the Community, they cannot be considered as more than a temporary palliative. The fundamental problem is the continuing reduction in the volume of new orders to be shared out. This trend, which appears unlikely to be halted before 1980 at the earliest, is made more acute for members of the OECD by the increasing share of world production accounted for by non-member nations.

190. The Community is now faced with the need to achieve the necessary adjustments of its shipbuilding industry to the prospective world market situation. These adjustments

must evidently take account of the problems which may result for workers in the industry, which are particularly serious because of the current high levels of unemployment and because the shipyards are generally to be found at coastal locations where there are few alternative job opportunities.

Moreover, such adjustment is bound to require major structural changes since it will involve both reduction of capacity and conversion towards the production of those types of ships, such as product carriers, Ro-Ro vessels and container ships, for which there is still some demand. Those Community yards which invested in facilities to produce large and relatively simple vessels, such as bulk carriers and oil tankers, will have to make this latter adjustment.

Most Member States have considered that transformations on the scale necessary could not be achieved in an orderly manner without State intervention. Their interventions have been varied, as will be seen in the descriptions of national aid schemes set out below, and the Commission has been particularly concerned to ensure that they are linked to the realization of the required structural changes and that they do not distort competition within the Community to an extent contrary to the common interest. In addition to its examinations of national schemes the Commission has transmitted to the Council a proposal for a fourth Directive on aid to shipbuilding.

191. The first Directive on aid to shipbuilding was principally designed to harmonize aids to shipbuilding and to reduce the intensity of those aids, such as production aid, which create the greatest distortions of competition between Member States.[1] Successive Directives, moreover, had extended the coverage to include virtually all forms of aid to the industry.

Since the third Directive was due to lapse on 31 December 1977, the Commission prepared and transmitted to the Council on 8 November 1977 a proposal for a fourth Directive, which follows the same general lines as the earlier Directives but is adapted to the present particularly difficult circumstances of the industry.[2]

The following are the main provisions of this proposal, whose principal objectives are to ensure that aids are of limited intensity and that they make a real contribution to restoring the industry's viability:

(i) following the progressive reduction in the ceilings for production aids in previous Directives, these are no longer authorized except as anti-crisis measures and subject to the Commission's approval. The proposal provides in particular that aids of this

[1] First Report on Competition Policy, point 168; Second Report on Competition Policy, point 95; Fifth Report on Competition Policy, point 104.
[2] OJ C 294 of 7.12.1977.

kind must be progressively reduced and linked to the restructuring of the industry and for the advance notification of individual cases involving direct competition between Member States so as to enable the Commission to verify that the aids do not in such cases affect trading conditions to an extent contrary to the common interest;

(ii) whereas the third Directive provided for an examination of aids for investment after the event, the Commission's proposal provides in addition for prior notification in the case of aids for investment which would lead to an increase in a shipyard's capacity;

(iii) aids to rescue an undertaking can be considered compatible with the common market under this proposal provided that they are necessary in order to avoid serious employment problems and are a step towards an acceptable longer term solution;

(iv) aids in the form of credit facilities for the sale of ships must, as in previous Directives, respect the relevant conditions of the Resolution of the OECD Council of 18 July 1974;

(v) the proposal breaks new ground on aid for the purchase of ships which must not be granted to shipowners in one Member State in a way which discriminates against shipyards in other Member States; the proposal provides for Member States to give regular reports on aids to shipowners.

This Directive would remain in force until the end of 1980, at which time it would, almost certainly, be necessary to modify it so as to take account of developments on the world market. The proposal, moreover, specifically provides that such modifications may be made before the expiry date of the Directive if they are warranted.

In its examinations of the national aid plans described below the Commission sought in particular to ensure that the proposed provisions on anti-crisis measures were respected.

United Kingdom

192. The United Kingdom shipbuilding industry, which is principally located in areas with particularly serious unemployment problems, where it is an important employer, had, in common with other shipbuilding industries, experienced a rapid rundown in its order books, which was likely to lead to a number of closures and redundancies in the short term.

193. The United Kingdom Government therefore informed the Commission that in order to enable the industry to obtain some new orders in the present depressed world market, it intended to introduce an Intervention Fund, with a budget of UKL 65 million, which would be used to give grants to shipbuilders so as to enable them to align

their quoted prices with those ruling on the world market. The Intervention Fund would provide grants up to a maximum of 30% of contract prices for orders obtained up to March 1978 and on which work commenced by December 1978. The available funds would, however, be used as far as possible for those cases where United Kingdom tenders were most competitive with those made by yards in third countries and for those yards which could be expected to become most competitive in the future.

The United Kingdom Government estimated that the sum available to the Intervention Fund would enable the shipbuilding industry to secure orders equivalent to about half the industry's annual production.

194. This proposal raised two main problems: the lack of any link with a plan to restructure the industry and the danger that the aids could distort competition within the Community and thereby aggravate the difficulties of shipyards in other Member States.

The Commission recognized that it had not been possible to prepare a plan to restructure the United Kingdom shipbuilding industry because it had only just been nationalized, but it considered the criteria for selecting the yards to be aided were not sufficiently restrictive to guarantee that aids would be limited to yards with a real chance of becoming competitive in the future. In order to ensure that aids were granted on a sufficiently selective basis and that competition between shipyards in the Community was not distorted, the Commission decided to authorize the use of the Intervention Fund provided that each case was notified to it for prior approval. It indicated, moreover, that it would review this authorization after six months in the light of experience with the scheme and of the progress made in preparing the restructuring plan for the industry.

195. Up to November 1977 the Commission received 14 notifications involving proposed use of the Intervention Fund. In its appraisal of each case it took account of any competition for the order from other Member States and of the prospects for the viability of the yard concerned as well as of its workload, of its location and of any recent rationalization. The Commission was satisfied that these criteria were met in practice. In particular, competition from shipyards in other Member States was exceptional and in all cases the orders would otherwise probably have gone to third countries.

The Commission did not therefore raise any objections in these cases.

For the cases where the use of the Intervention Fund was successful in obtaining the order, the effects of the use of the Fund have been to win orders amounting to some 403 000 gross registered tonnes, equivalent to 37% of United Kingdom annual production capacity at a cost of UKL 51 million. Assuming the UKL 14 million remaining available achieves proportionally similar results, the total effect of the scheme will have been to secure orders amounting to about 53% of annual production capacity.

Netherlands

196. The shipbuilding industry in the Netherlands has been among those in the Community that have been most severely affected by the present crisis, and early in 1977 the level of orders on hand indicated that about one third of the industry's direct and indirect employees would be redundant within 12 months.

197. The Netherlands Government informed the Commission of its intention to intervene to promote the restructuring of its shipbuilding industry. It had drawn up a general restructuring policy providing for a reduction in capacity of 30% between 1976 and 1980 and had laid down more detailed employment and capacity reduction targets for various groups of shipyards, which were to prepare more detailed programmes to achieve these targets. On a preliminary assessment some HFL 1 000 million of investment for rationalization and modernization would be required in order to restore the industry's competitiveness and viability.

Aid would be provided in the context of this restructuring plan over the period 1977-80. The following are the main measures involved:

(i) an improvement in the sales credit facilities for small ships and dredgers within limits compatible with the provisions of the OECD Understanding on Export Credits for ships and hence with the third Directive on aids to shipbuilding; these favourable credit facilities were also to be extended to offshore drilling equipment;

(ii) State guarantees for performance bonds and instalments paid before delivery;

(iii) State guarantees for the financing of investment needed to restructure and rationalize production;

(iv) a State contribution to the industry's redundancy fund; and

(v) the compensation of losses incurred on individual orders.

198. As far as shipbuilding was concerned, the first four measures raised relatively few problems from a Community viewpoint. The sales credit arrangements would be compatible with the third Directive; the State guarantees for performance bonds and for instalments paid before delivery would have a minor effect on competition and were principally designed for orders obtained from third countries and the aids for investment and for the redundancy fund would facilitate the industry's restructuring while being of relatively minor intensity.

On the other hand the extension of sales credit facilities to offshore drilling equipment was not covered by the third Directive and, if applied within the Community, would be incompatible, not only with the Commission's principle that there should be no aid to exports to other Member States but also with its analysis of the competitive situation in the offshore supplies industry and of the risks of distortions of competition. The Com-

mission had already initiated the procedure of Article 93(2) in respect of the aids granted by the United Kingdom to finance purchases of fixed offshore installations.[1] The Netherlands Government accordingly agreed that this scheme would not be applied in the case of sales to the other Member States.

The Commission examined the arrangements for the compensation of losses in some detail as these were the most important of the proposed measures and the aids most likely to distort competition within the Community. The proposal provided that the shipyard would bear 25% of the expected loss at the time the order was taken, the State covering the remaining 75%. Half of the State's share would be in the form of a grant and half in the form of an unsecured interest-free loan repayable after 1980. The ceiling for aid would be 30% of the contract price, and the total volume of aid would be limited in each year to a certain percentage of the industry's turnover, this percentage being fixed at 20% initially and falling to 10% in 1980. The estimated budgetary cost of this compensation would be HFL 300 million (equal to 108 million u.a.) in the first year and diminish thereafter.

The Commission considered that these arrangements would make an effective contribution to restructuring the industry and reducing its capacity in an orderly way, since the aids would be granted in the framework of the general plan for restructuring the industry and would be progressively reduced so as to provide an incentive to the preparation and implementation of the more detailed plans by groups of shipyards.

The Commission wished also to be satisfied that this aid would not distort competition within the Community. Although the Netherlands Government had undertaken not to grant aid where this would enable a yard in the Netherlands to secure an order which would otherwise have gone to a yard in another Member State, the Commission considered it necessary for it to check this point. It therefore required the Netherlands Government to agree to notify to it in advance every proposal to aid a yard to secure an order where there was a competing tender from a shipyard in another Member State.

Following the agreement of the Netherlands Government to this procedure the Commission informed it that it had no objections to the implementation of the proposals, but it requested that it be regularly informed of the progress in restructuring the industry and of the aids granted to it.

France

199. With the prospect of significant redundancies in the short-term, the French Government decided to intervene to enable its shipbuilding industry to secure new orders.

[1] Sixth Report on Competition Policy, points 219 to 221.

The proposal was for aids to be given in the form of grants for orders up to a total of around 300 000 gross registered tonnes taken up to July 1978 for delivery by the end of 1980. The rate of grant would vary with the size of yards and was set at a maximum of 15% of the contract price for small yards and for other yards at from 13% to 20%, according to the type of ship, of the contract price plus direct aid less certain costs. The budget for the scheme would be FF 360 million.

This aid would be accompanied, on the one hand, by a number of modifications to the price guarantee scheme designed to make its terms more restrictive as required by the provisions of the third Directive on aids to shipbuilding[1] and, on the other hand, by efforts to restructure the industry and to amalgamate the seven major yards into two diversified groups, each with a broad financial base and benefiting from backward integration into areas such as marine engines and electrical engineering. The grant of the aid would to some extent be dependent on progress made in this restructuring.

200. This proposal raised two problems. First, as in the case of the Netherlands and United Kingdom aid schemes, it would be necessary for the Commission to verify that competition between Member States was not distorted. For this purpose a procedure of advance notification of individual proposals to grant aid would be required in cases where a tender from a French shipyard was in competition with one from another Member State. Second, under the proposal for a fourth Directive, the price guarantee scheme would be authorized subject to the same conditions as other anti-crisis aids, and in particular to there being a clear link with the industry's restructuring. As the French proposals did not provide for such a link the Commission considered that, as in the case of the United Kingdom's Intervention Fund, it could only authorize the implementation of the scheme for a short period, in this case up to February 1978, after which it would review the scheme in the light of a report supplied by the French Government on the use made of the aids, of the progress achieved in restructuring the industry and of the solution adopted for this type of measure in the fourth Directive. Subject to these conditions the Commission decided to raise no objections to the French Government's proposal.

Denmark

201. The Danish shipbuilding industry is faced with the same problems as other Member States which threaten to have particularly serious consequences in Denmark in view of the industry's importance in the economy. Employment in shipyards had in fact already been significantly reduced by the beginning of 1977.

[1] Fifth Report on Competition Policy, point 104.

The Danish Government therefore decided to intervene to assist its yards to obtain new orders by offering shipowners in Denmark favourable credit facilities for ships purchased from Danish shipyards. While these credit facilities, being in the form of buyer's credit, were not in conflict with the provisions of the third Directive on aids to shipbuilding, which only refer to seller's credit, the Commission considered that the discrimination in favour of Danish shipyards would amount to a means of bypassing the discipline imposed by this Directive on seller's credit, and would, in any case, be contrary to the non-discrimination provision in the third Directive.[1] In view of these objections, the Danish Government decided to modify its original proposal and to grant the aid for ships purchased from Community yards. The Commission, therefore, having satisfied itself that the aid was not such as to have appreciable adverse effects on competition between Member States in the shipping industry, was able to inform the Danish Government that it had no objections to the proposed aid scheme.

Textiles

202. The problems of the textiles industry have been discussed in previous reports,[2] as have the general principles, first elaborated in 1971[3] and recently adapted and refined,[4] whose purpose is to provide a framework for Member States in the preparation of aid plans for the industry and the Commission in its appraisals of such plans.

These principles require Member States to abstain from grainting aids which would lead to an increase in productive capacity in sectors where there is structural overcapacity or where demand is stagnating. Moreover, in the case of sectors where overcapacity and low demand have caused a collapse in prices throughout the Community, aids should only be granted to companies converting to other activities. On the other hand, in order to increase the industry's competitiveness, aids may be given to improve production techniques and for applied research, provided, in the latter case, that the results are made available on commercial terms and without discrimination throughout the Community.

The Commission has applied these principles not only in its examination of the national aid proposals notified to it but also in the preparation of proposals that it made to the Member States on aids to the synthetic fibre industry.

---

1 Fifth Report on Competition Policy, point 104.
2 Most recently in the Sixth Report on Competition Policy, point 222.
3 First Report on Competition Policy, point 171.
4 Sixth Report on Competition Policy, point 223.

Synthetic fibres

203. The Community's synthetic fibre industry experienced very rapid growth in Community demand in the 1960s and in the early years of the current decade. This growth was largely a result of substitution of natural by synthetic fibres in the textile industry to the point where the latter provide nearly half the industry's fibre input. In the last few years, however, demand has failed to increase and although the 1973 peak in Community demand was regained in 1976, the industry now faces serious problems, both in its home and in its export markets.

On the home market the increasing penetration within the Community of textile imports of all fibres from third countries has led to a significant deterioration in the Community's balance of trade in textiles in the 1970s and hence, because of the slow growth of demand for textiles, to a stagnation of demand for Community producers of synthetic fibres. Outlets have also been lost in export markets as new capacity has been installed in third countries, so that export business has been reduced and much of what remains has to be done at unremunerative prices.

Although these changes are to some extent a conjunctural phenomenon, they clearly involve a number of structural changes which make it impossible for the industry to grow at the rate at which it did in the past. Despite this change in the industry's prospects the long gestation period for new investment projects has meant that significant new capacity has continued to come on stream in the Community in recent years as a result of investment decisions taken on the basis of the more favourable conditions and prospects prevailing up to the end of 1973.

As a result the rate of capacity utilization is only about 70% and, despite increases in raw material, labour and other production costs, prices have fallen to levels at which significant losses are being experienced. On current demand forecasts it would appear unlikely that capacity utilization will return to a satisfactory level other than in the long term.

204. In these circumstances the Commission was particularly concerned about the potential effects on competition within the Community of any national aids granted to the industry. Hitherto such aids have frequently been granted under regional systems of aid to which the Commission has given its agreement and over whose use in individual cases it does not usually have any control. In the case of general aid systems, which are also sometimes applied to this industry, such control exists with certain exceptions (for instance in the case of aids to maintain or create employment).

The Commission therefore requested the Member States to abstain, for a period of two years from granting any regional or other aids to investment projects which would result in an increase in production capacity, even where the plan to grant such aid would not

normally have to be notified. Since, however, such abstention would only serve to avoid a further exacerbation of the existing situation but would not eliminate the existing and prospective problems of overcapacity, the Commission decided that it would be essential for it to exercise control over all aids granted to the industry and therefore informed the Member States that it expected them to notify it in advance of all proposals to grant aid. The Commission intends to examine each such proposal with a view to ensuring that aids are used to encourage a reduction in capacity to a level where actual and prospective demand and potential supply are more nearly in balance.

Netherlands: Cotton and allied textiles

205. In 1976 the Commission decided to initiate the procedure provided for in Article 93(2) of the EEC Treaty in respect of a proposal by the Netherlands Government to introduce an aid scheme for the cotton and allied textiles sector.[1] The objectives of this aid scheme was to increase productivity and to improve product quality, without any increase in the production capacity of the sector in the Netherlands. The aids proposed were to take two forms:

(i) interest-free loans related to companies' 1974 fiscal depreciation and to employment at January 1976. These loans were to be repayable in equal instalments in 1980 and 1981, unless the companies presented restructuring programmes, in which case the loans would be converted into grants.

(ii) investment grants to meet up to 20% of the costs of restructuring programmes proposed in the period 1976-78.

While the objectives of the Netherlands' proposal were in line with the Commission's principles on aids to the textile industry, the scheme itself raised two problems. First the interest-free loans would amount to stop-gap production aid in the case of undertakings which did not subsequently engage in restructuring and this was in contradiction with the principles on aids. Second, the Netherlands Government had already introduced an aid to restructure this and other sectors of the textile industry to which the Commission had not objected and under which restructuring programmes were to have been prepared without delay.[2]

The Commission had at that time requested that these programmes be submitted to it for approval but had not yet received them.

Following the initiation of the procedure provided for in Article 93(2) the Netherlands Government clarified its intentions and made certain modifications to its original propo-

[1] Sixth Report on Competition Policy, points 227 and 228.
[2] Fifth Report on Competition Policy, points 110 and 111.

sals. First, the loans would no longer be free of interest but would bear a rate of interest equal to that charged by the National Investeringsbank[1] for loans guaranteed by the State, and for companies presenting a restructuring programme their conversion into grants would correspondingly reduce eligibility for the investment grants. Second, the sum of grants available under this aid scheme and under other aid schemes would in no case exceed 35% of the cost of aided projects. Third, despite the additional aids to the sector as a result of this scheme, its production capacity and employment were expected to be significantly reduced in the medium term. The Netherlands Government argued that the aids were in fact essential in order to avoid such a drastic reduction in capacity that restructuring would become virtually impossible. Fourth, the aid scheme would be concentrated on undertakings in the Twente area where serious employment problems are being experienced and where the textile industry is a major employer. Finally, the Netherlands Government also undertook to transmit the restructuring plans to the Commission for its approval in advance of any decision on the grant of aids for restructuring.

The Commission re-examined the Netherlands proposal in the light of these clarifications and amendments.

Since the loans under the proposed scheme would now benefit only from a State guarantee, the intensity of this aid would be much lower and not such as to affect trade between Member States to an extent contrary to the common interest. This aid was justified by the need to maintain sufficient production units in existence for valid restructuring of the sector to be possible. Moreover, the obligation to pay interest on the loans would induce undertakings rapidly to prepare their restructuring programmes. The limitation on the sum of grants available under all aid schemes would further limit the effect on competition and trade within the Community.

These modifications, taken together with the prospective decline in the sector's capacity, brought the proposed aid scheme into line with the Commission principles on aids to the industry. Moreover, since the restructuring programmes would be transmitted for prior approval, the Commission would be able to verify that they were well adapted to the sector's problems and would make a real contribution to restoring the sector's viability.

For these reasons the Commission decided that there were no longer any grounds for it to oppose the implementation of the aid scheme and it accordingly closed the Article 93(2) procedure.

Netherlands: Clothing industry

206. The Netherlands Government informed the Commission of a proposal to introduce an aid scheme for the clothing industry. This proposal raised similar problems to those

[1] Third Report on Competition Policy, points 118 and 119.

which had led the Commission to initiate the Article 93(2) procedure in the case of the same Government's proposals for cotton and allied textiles.

The scheme would be the Netherlands' third aid scheme for the clothing industry since 1975, when it had introduced a scheme to facilitate the industry's restructuring.[1] This original scheme provided for aids to be given to undertakings which agreed to participate in the restructuring of the industry when the restructuring programmes had been drawn up. Aids were available under the scheme in the form of grants for up to 20% of investment for projects started in 1975 and 1976 and for up to 7.5% of investment for projects started at a later date. Aids were also available for employment in the form of a grant of HFL 1 000 for each worker kept on the payroll throughout the year.

The latter measure was extended in 1976, when a further grant of HFL 600 per worker was instituted.

Since the grant of these various aids was conditional on an express undertaking by firms to participate in subsequent restructuring and since they were necessary in order to permit firms to survive until the restructuring programmes had been drawn up, the Commission took the view that they could be considered as being in line with its principles on aids to the textile industry and did not therefore raise any objection to their implementation. However, it requested the Netherlands Government to transmit the restructuring programmes to it for approval.

207. The third measure proposed by the Netherlands Government had the same objectives as these earlier schemes: to maintain employment and to restructure the industry. The new aid scheme was essentially a continuation of the earlier measures and provided for further grants at a rate of 20% for replacement investment. In addition, there was provision for aids to meet the losses of undertakings engaging in restructuring and for loans towards the cost of restructuring. The precise content of the proposal was, however, very unclear. It emerged, moreover, that work on the restructuring programmes which were to have been prepared without delay in 1975, had hardly begun and the Netherlands authorities were still awaiting the submission of specific plans by undertakings which they would then have to examine and approve.

The Commission considered that the proposed scheme amounted to a stop-gap measure. It recognized that such measures were justifiable in exceptional circumstances in order to give time for the preparation of restructuring programmes and could therefore accept them provided that there was a clear link between the receipt of the aids and the realization of a restructuring programme. Since this was, however, the third successive scheme of this kind to assist this industry, the Commission considered that this justification could no longer be invoked.

---

[1] Fifth Report on Competition Policy, point 110.

In the Commission's view, a continuation of aid of this kind for a further three-year period would be equivalent to the introduction of a protective measure for the Netherlands clothing industry and would have serious adverse effects on intra-Community trade. The Commission therefore decided to initiate the procedure provided for in Article 93(2) of the EEC Treaty.

Electronics: United Kingdom

Instrumentation and automation industry

208. The United Kingdom Government informed the Commission that it planned to introduce a scheme of aid for the instrumentation and automation industry. This industry comprises a variety of sectors which produce industrial and electronic instruments for analysis, measurement of process control scientific instruments for research or industrial use, electromedical equipment, automatic gauging and testing instruments and automation systems.

The United Kingdom Government argued that, although the industry's past performance in terms of production and exports appeared to be satisfactory, its future prospects were uncertain because of the fragmentation of the industry and its relatively low levels of profitability and research and development expenditure. It therefore proposed to intervene to assist the restructuring and rationalization of companies in the industry, investment in new capital equipment, plant, machinery and buildings and the design, development and launching of new products and systems. The scheme would have a budget of UKL 25 million.

209. The Commission examined the arguments advanced by the United Kingdom Government to justify its intervention in this industry. First, the industry's fragmented structure appeared to be the result both of the creation of small business by innovative entrepreneurs, reflecting the industry's dynamism rather than a failure to perform adequately, and of the diversity of its output. Second, the level of profitability, although below the United Kingdom average, was nevertheless positive and did not appear to indicate a need for State aid. Third, it was thought necessary to verify by means of thorough international comparisons the United Kingdom contention that the level of research and development expenditure was low.

Finally, even if it were demonstrated that real weaknesses exist in these areas, they would be difficult to explain other than in terms of more fundamental factors, for instance managerial deficiencies, which would not be affected by the proposed aid scheme.

The Commission also examined the prospective effects of these aids on trade between Member States. It noted that there is very substantial trade in the products of certain

sectors of the industry. Although some specialization probably existed within the Community so that trade levels might overstate the extent of competition between Member States, there was a clear risk that the aid scheme would affect trade to an extent contrary to the common interest.

On the basis of this preliminary examination the Commission therefore concluded that an adequate case had not been made for the proposed aid scheme and that it might adversely affect intra-Community trade. It therefore decided to initiate the procedure provided for in Article 93(2) for the EEC Treaty in order to enable it thoroughly to examine the justification for the aids to the industry and their likely effects on intra-Community trade.

210. Following the initiation of this procedure the Commission examined with the United Kingdom authorities both the justification for the proposed aid scheme and its potential effects on the basis of a more detailed analysis of the industry's structure and of intra-Community trade.

The fragmented structure of the United Kingdom industry is mirrored in other Member States, where small companies predominate and the number of large companies is limited. The United Kingdom, in fact, has rather more large companies although this difference is largely accounted for by the presence in the United Kingdom of subsidiaries of multinational companies principally owned and controlled outside the Community. Such companies are estimated to be responsible for about half the United Kingdom industry's output. Since the Commission's original conclusion was confirmed by this analysis it concluded that there was no adequate justification for the aids to restructuring.

The evidence on research and development expenditure by the United Kingdom industry suggested that this was rather lower in other Member States. However, such evidence may merely reflect the importance of multinational companies in the United Kingdom and the consequent import of technology from parent companies. This evidence is therefore inconclusive. Moreover, aids to encourage research and development, particularly if concentrated, as the United Kingdom intended, on development and related activities, would be expected to have a particularly direct effect on competition in this industry, where the technical characteristics and performance of products are an important facet of competition.

A low level of profitability is common in this industry and may reflect the intensity of competition and management deficiencies in small companies. Nevertheless, inadequate profitability poses obvious problems for financing investment whether from internal sources or from the capital market, particularly for United Kingdom companies of European origin, whose profitability is in general lower than that of the United Kingdom industry as a whole.

An increasing proportion of the United Kingdom's trade in the products of this industry is with the other Member States. More detailed analyses tended to confirm the Commission's provisional conclusion that the proposed aids could adversely affect trade between Member States.

211. In the light of this analysis the United Kingdom Government decided to revise its original proposals and informed the Commission of the following modifications:

(i) aids would not be available for product development or for restructuring; the scheme would be limited to investment aids;

(ii) the budget for the scheme would therefore be reduced to UKL 10 million; and

(iii) priority under the scheme would be given to companies of European origin and there would be encouragement for collaboration between United Kingdom and other Community companies.

212. The Commission considered that these modifications met the objections it had had to the original proposal. In particular, there was a justification for aids to encourage investment by the industry and the new proposal would involve aids being focused on that part of the industry, companies of European origin, where this justification was strongest. Moreover, in view of the more limited form and extent of the proposed aids and of the encouragement to be given to collaboration between United Kingdom and other Community companies, any effects on trade would be much smaller than the Commission had originally feared and would not be such as to be contrary to the common interest.

The Commission therefore decided to close the procedure of Article 93(2).

Electronic components

213. Demand for electronic components has grown rapidly as their use has become increasingly widespread in the fields of data processing, telecommunications, consumer goods and industrial equipment, public health and transport. Technical progress in the industry is rapid, especially in the case of active components, and manufacturers therefore need to recoup their substantial research and development expenditures by selling on a large scale before their products become obsolete.

In certain third countries the industry has been supported by Government research and development contracts, by large Government orders for military or other purposes as well as by more direct aids. Some of these countries' firms have reaped the benefits of

large scale production and have used this advantage to establish a degree of technical superiority in the manufacture of the most advanced components.

Community firms are therefore at a certain competitive disadvantage in this industry, in particular in the case of active components, and there is a danger that this may constitute a handicap for user industries as the component manufacturers of third countries expand into the manufacture of equipment using their components and thus enter into competition with their customers. In these circumstances, security of supply is also an important consideration particularly in periods of peak demand for certain types of component.

A number of Member States therefore grant aids to the industry especially for research and development. The Commission's position on the German Government's aid scheme for this sector was described in a previous report.[1] In the Commission's view the Community industry will only be able to overcome its competitive handicap with State support, but such support should be coordinated at the Community level so as to avoid a duplication of the efforts to individual Member States.

214. As in other Member States the industry faces two principal and interrelated problems in the United Kingdom: the difficulty of financing research and development and an excessively fragmented structure. The United Kingdom Government therefore decided to intervene to aid the industry to overcome these difficulties with a view to making it viable in competition with producers in third countries.

The aid scheme proposed by the United Kingdom Government would have a total budget of UKL 25 million, of which UKL 15 million would be available to support the design, development and production launching of new products and key process materials or production technologies and would be in the form of either a 25% grant or of a shared-cost contract with a levy on subsequent sales. The remaining UKL 10 million would be used to aid rationalization and restructuring projects by means of concessionary loans or interest relief grants. Where fixed investment was associated with expenditure on projects eligible for either category of aid, grants would be available at a rate of 20% for new equipment, plant and machinery and 15% for new buildings and for extensions or modifications to buildings.

The Commission considered that the United Kingdom's proposal was in line with the needs of the Community industry on the basis of its own diagnosis of the industry's problems, and could therefore be regarded as compatible with the common interest. It requested the United Kingdom Government to focus its intervention under the scheme on European based firms since the financing problems of these firms are particularly serious.

---

[1] Fifth Report on Competition Policy, points 120 and 121.

Ferrous and non-ferrous founding

Netherlands and United Kingdom

215. Founding is a metal-casting process which produces a wide variety of finished and semi-finished castings in either ferrous or non-ferrous metals, the principal non-ferrous metals used being copper, zinc and aluminium and their alloys. These castings are components sold in widely different markets principally in the engineering and allied industries. The foundry industry thus occupies an important place in the economy.

Since most castings have to be produced to meet the particular requirements of individual customers, foundries and their customers have to work closely together. This factor has led some customers to establish their own integrated foundry operations and, together with the normally high weight: value ratio and consequently relatively high transport costs of castings, has meant that foundries, and especially the independent foundries, tend to be small and to serve predominantly local markets. They have therefore enjoyed some natural protection from competition, but their dependence on the fortunes of a small number of customers makes them particularly susceptible to the effects of cyclical fluctuations in the level of economic activity. The latter factor has affected the profitability of foundries and has in consequence reduced investment to very low levels, particularly for independent foundries; the integrated foundries have been able to draw on the larger financial resources of the groups to which they belong. Integrated foundries have the further advantage that the managerial resources available to them are also more extensive.

The obsolescence of many buildings and of much plant and equipment used by foundries affects not only their productivity but also their ability to meet customer requirements for more sophisticated castings. Moreover, founding is a process which involves generally unpleasant working conditions so that foundries have difficulties in attracting and retaining manpower; it also pollutes the environment and foundries are therefore being increasingly required to meet the costs of stricter anti-pollution regulations.

216. For these reasons the Commission considers that there is some justification for aids to the foundry industry. Moreover, for the reasons outlined above (the need for customers to be in close contact with foundries and the relatively high transport costs of castings) international trade in castings is relatively limited: typical export figures are of the order of 5% of production and imports generally account for a similar percentage of apparent consumption. The effect of any aids, provided that they are kept within reasonable limits, on competition between the industries in the different Member States and on intra-Community trade is therefore much smaller than would be the case for other sectors. These arguments, however, have greater force in the case of independent foundries

than in the case of integrated foundries. For the latter, the justification for aid is limited by the larger managerial and financial resources available to them and there is some risk that any aids would have a greater effect on competition and trade between Member States in the products in which the castings are incorporated.

The Commission's position on three aid schemes, those for ferrous foundries in the Netherlands and for ferrous and non-ferrous foundries in the United Kingdom, was based on these considerations.

217. The Netherlands Government informed the Commission of its intention to introduce an aid scheme for the ferrous foundry industry in order to encourage the restructuring of the industry, to improve its financial position and to protect the environment. The scheme provided for aids to be given to promote the implementation of the restructuring plan for the industry, which had been approved by the Netherlands Government. Grants at a rate of 20% would be available for investment expenditure and associated preparatory work and at a rate of 25% for investment to reduce pollution. Grants of 20% would also be provided towards the costs of employing consultants to improve company organization. Finally, there was also provision for State guarantees to be given on loans where funds available would otherwise be inadequate. The budgetary allocation to the scheme was to be HFL 31 million.

The Commission considered that these proposals were generally in line with its own analysis of the industry's situation and problems, but that the scheme should be concentrated on independent rather than integrated foundries so as to bring it more into line with this analysis and that the consultancy grants should only be available for small and medium-sized undertakings. The Netherlands Government having agreed to the latter request and to a limit on the total aids available under the scheme for any integrated foundry, the Commission was able to indicate that it had no objections to the proposed aid scheme.

218. For the same reasons the Commission had raised no objections to the United Kingdom's aid scheme for the ferrous foundry industry when it was introduced in 1975. The scheme, whose objectives were to encourage modernization, restructuring and an improvement in working conditions, provided for grants at a rate of 25% for investment in new plant and equipment and at a rate of 15% for investment in buildings. In addition loans on advantageous terms or equivalent interest relief grants were available towards the cost of restructuring or rationalization. The scheme was allocated UKL 25 million.

By the time the scheme closed at the end of 1976 applications for aid had greatly exceeded the number that had been anticipated. The United Kingdom Government therefore informed the Commission in two stages of its intention to increase the budgetary allocation to the scheme, first to UKL 40 million and then to UKL 95 million.

The Commission examined these two successive increases in some depth since it was concerned that aids granted on this scale might lead to an increase in capacity greater than that warranted by market prospects. Such a development would call into question the effectiveness of the aid scheme since it would oblige foundries to accept unremunerative prices for their castings and thus tend to perpetuate the industry's financial problems and threaten its viability. Moreover, such overcapacity could have evident effects on intra-Community trade. The fact that the vast bulk of the aids granted under the scheme had been for investment in new plant and equipment and that very few restructuring projects had been submitted served to increase the Commission's concern on this score.

Since all applications for aid had already been submitted it was possible to examine the effects of the projects concerned on the industry's capacity in the light of an analysis of the applications outstanding. On the basis of this analysis it was concluded that prospective capacity and demand would not be out of balance, since capacity increases in aided foundries would be largely offset by the closure of other foundries.

The Commission therefore informed the United Kingdom Government that it had no objections to the two increases in the budgetary provision for the scheme.

219. The United Kingdom Government also informed the Commission of an aid scheme it planned to introduce for the non-ferrous foundry industry. This scheme had the same objectives as that for ferrous foundries and the aids were to be provided in the same forms for the same purposes. In addition provision was made in the case of small and medium-sized firms for consultancy grants to meet 50% of the costs of investigating firms' problems and formulating proposals for improving productivity and efficiency. The budget for the scheme was UKL 20 million.

As in the case of the Netherlands Government's scheme for the ferrous foundry industry, the Commission's principal concern was that this scheme should be focused on the independent foundries. The United Kingdom Government having modified its original proposal so as to set a limit on aids available under the scheme for any integrated foundries, the Commission indicated that it had no objection to the proposed aid scheme being put into effect.

Aids financed by quasi-fiscal charges

France: Clock and watch industry

220. In the Commission's view an aid scheme which in itself gives rise to no objections is nevertheless incompatible with the common market if the aids are financed by quasi-fiscal charges levied not only on the domestic products of the industry concerned but also

on competing imports from the other Member States. This view, the reasons for which are set out in previous reports,[1] was confirmed by the Court of Justice in its Judgment of 25 June 1970 in Case 47/69.

The Commission has therefore acted on a number of occasions to ensure that in cases where aid schemes, to which it has no objections as such, are financed by quasi-fiscal charges, these charges are not levied on products imported from other Member States. Thus, in 1973, it had required the French Government to modify in this way the basis on which it levied the quasi-fiscal charge used to finance industrial research establishments in the clock and watch and leather and hide industries.[2]

221. Following a complaint the Commission was led to examine a Decree of 28 March 1977[3] promulgated by the French Government by which the latter had instituted a new aid scheme for the clock and watch industry financed by a quasi-fiscal charge whose proceeds are allocated to the industry's research establishment and to its trade association. The French Government had not, as required by the Treaty, given the Commission advance notification of its intention to introduce this aid scheme.

The quasi-fiscal charge is levied on all commercial transactions in products of the clock and watch industry, including products imported from other Member States.

The Commission therefore decided to initiate the procedure of Article 93(2) in respect of this aid scheme in order to oblige the French Government to exempt products imported from the other Member States from the charge. At the same time it reminded the French Government that it should suspend all levies on products imported from the other Member States irrespective of the stage at which they were collected and reserved its right to require reimbursement of any amounts already collected on these products.

§ 4 — General aid schemes

222. Previous reports on competition policy[4] have described the characteristics of general aid schemes, the main features of national systems falling under this heading and the Commission's reasons for considering that it is necessary for it to monitor them in advance (prior notification of both industry and regional programmes or, failing this,

---

[1] First Report on Competition Policy, points 181 to 183; Second Report on Competition Policy, points 108 to 111; Third Report on Competition Policy, points 102 to 104.
[2] Fourth Report on Competition Policy, point 162.
[3] No 77-348; Journal officiel de la République française of 1.4.1977, p. 1832.
[4] Second Report on Competition Policy, point 116 *et seq;* Third Report on Competition Policy, point 112 *et seq;* Fourth Report on Competition Policy, point 166 *et seq;* Fifth Report on Competition Policy, point 135 *et seq.*

significant individual cases of application). This monitoring procedure now applies to all general aid schemes in the nine Member States. In 1977 the Commission also stated its views on new measures introduced by two Member States.

Significant cases of application of general aid schemes

223. In addition to certain industry schemes introduced in the Member States under their general schemes and described in this report in the section on aid schemes for specific industries, the Commission examined some forty significant individual cases in 1977. The following table shows the Member States and industries concerned.

	Number of cases examined	*General aid schemes*
Belgium	10	Acts of 17 July 1959 and 30 December 1970[1]
Denmark	2	
Federal Republic of Germany	0	
France	2	Economic and Social Development Fund (FDES)[2]
Ireland	0	
Italy	13	Act No 464 of 8 August 1972[3]
Luxembourg	1	Act for the promotion of economic expansion[4]
Netherlands	0	
United Kingdom	12	Industry Act 1972

Industries	*Cases*
Chemicals and plastics	8
Mechanical engineering	8
Building materials	4
Foodstuffs	3
Shipbuilding and ship-repair	3
Textiles and clothing	3
Others (including one service enterprise)	11

[1] Fifth Report on Competition Policy, points 135 and 136.
[2] Third Report on Competition Policy, points 113 and 114.
[3] Fourth Report on Competition Policy, point 168.
[4] Third Report on Competition Policy, points 120 to 123.

224. The Commission raised no objection to the planned measures in most of these cases. However, four cases concerning Belgium, Italy and the United Kingdom caused certain difficulties.

The Commission could agree to aid for the telecommunications industry only after intensity had been reduced. Given the considerable overcapacity in the domestic appliances industry, a proposal concerning the extension of a firm caused certain problems; following the Commission's objections the Member State concerned abandoned the proposed assistance.

In the last two cases, the Commission initiated the procedure of Article 93(2) of the EEC Treaty. These concerned:

(i) aid to rescue a shipbuilding and repair yard; it was a stop-gap measure not accompanied by measures to ensure the yard's viability or its conversion to other activities;

(ii) assistance for a major manufacturer of domestic appliances and textile machinery; this assistance would have increased the Community capacity in the industry, where there was already an excess. The initial scheme was amended to avoid increase in capacity and the procedure was finally closed.

Italy

225. In October 1976 the Italian Government informed the Commission of a Bill reorganizing assistance for the restructuring and conversion of industrial firms. This Bill has since passed into law as Act No 675 of 12 August 1977,[1] and forms part of the Italian Government's programme to re-establish overall economic equilibrium (fight against inflation, measures to improve the balance of payments) by renewing industrial structures and thereby reinforcing industry's competitiveness and reducing the country's dependence on imports. The Act mainly provides for setting up a new Interministerial Committee on Industrial Policy (CIPI) to give greater consistency to industrial policy and an Industrial Restructuring and Conversion Fund.

The Ministry for Industry would be responsible for the Fund; it was to be granted LIT 2 630 thousand million for four years and would replace the various previous acts on assistance for the same purpose which were to be repealed: Act No 1470 concerning firms in difficulties,[2] Act No 1101 concerning the reorganization and conversion of the

[1] Gazzetta Ufficiale No 253 of 7.9.1977.
[2] Fifth Report on Competition Policy, point 148; Gazzetta Ufficiale of 24.1.1962, p. 339.

textile industry[1] and Acts Nos 464 and 184 (Title I) on the restructuring and reorganization of firms,[2] on which the Commission had previously stated its position.

The Fund would provide assistance for the restructuring and conversion of existing firms and the creation of new industrial plant in the Mezzogiorno in consideration for the closure of plants inadequately developed areas in central and northern Italy. At least 40% of the sum allocated to the Fund would be earmarked for the Mezzogiorno.

226. Assistance from the Fund would be granted in the form of:

(i) low-interest loans covering no more than 30% of the cost of projects, granted for up to fifteen years with a five-year period of grace for projects in the Mezzogiorno and ten years with a three-year period of grace for projects elsewhere;

(ii) interest relief grants covering no more than 70% of the cost of projects in the Mezzogiorno and 40 to 60% of projects elsewhere. The maximum period of grant was to be the same as for the loans. If combined with low-interest loans, the maximum ceilings still applied.

Combination with other types of assistance for industry would be possible only in the case of grants under Act No 183 of 2 May 1976 for the development of the Mezzogiorno.

Eligibility for the proposed assistance was to be defined later under the intervention programme for certain sectors and industries to be drawn up by the new Interministerial Committee (CIPI).

227. The Commission welcomed the new Act's rationalization of Italian measures of assistance for industrial restructuring and conversion. However, it constituted a general aid scheme and terms of eligibility were not clearly defined. In accordance with previous decisions on general aid schemes in all Member States, in December 1976 the Commission initiated the procedure of Article 93(2) of the EEC Treaty, requesting the Italian Government for prior notification, as in the case of previous general aid schemes with similar objectives, of:

(i) programmes for specific industries to be defined by the new Interministerial Committee (CIPI) or, failing this;

---

[1] Second Report on Competition Policy, point 98; Gazzetta Ufficiale of 23.12.1971, p. 8170.
[2] Second Report on Competition Policy, points 119 to 124; Gazzetta Ufficiale of 23.8.1972, p. 5954; Gazzetta Ufficiale of 28.4.1971, p. 2466; Fourth Report on Competition Policy, point 168; Fifth Report on Competition Policy, point 148.

(ii) significant cases of application concerning individual firms, i.e. cases involving aided investment up to 3 000 000 EUC or aid intensity of up to 15% in net grant equivalent of the amount of aided investment, without any reference to the amount of the latter.

The Act also provided financing for the Fund for Applied Research (LIT 600 million) to promote research and development projects in industrial firms, on which the Commission had taken a favourable decision in 1972. The Commission felt that it should stand by its favourable attitude to assistance to promote firms' research and development.[1]

228. In November 1977 the Italian Government formally undertook to comply with the Commission's request and provide prior notification of:

(i) decisions whereby the Interministerial Committee (CIPI) determines the branches of industry which it considers qualify for assistance;

(ii) programmes for specific industries which the CIPI approves in this connection laying down criteria and procedures for granting assistance from the Fund;

(iii) the annual programme for the distribution of finance from the fund and the guidelines on the specific industries and geographical areas eligible for assistance.

(iv) As regards applications for assistance from the Fund for individual projects falling outside the industry programmes, the Italian Government emphasized that this type of aid was not covered by Act No 675.

In view of the Italian Government's undertakings, the Commission decided to close the procedure of Article 93(2) of the EEC Treaty.

United Kingdom: National Enterprise Board

229. The Commission examined the clauses of the Industry Act 1975 dealing with the establishment and operation of the National Enterprise Board (NEB) in the light of Article 92 *et seq* of the EEC Treaty. This Act extends certain provisions of the Industry Act 1972 which sets out the conditions in which the British Government may provide financial assistance to develop and modernize British industry, improve its efficiency or provide support for production capacity in a particular sector or firm. The various types of financial assistance provided are outlined in two Sections of the Act: Section 7 concerning the development of certain regions and Section 8 concerning government intervention outside these regions. The Commission considers Section 8 as a general aid

[1] Fourth Report on Competition Policy, points 171 to 174.

scheme and the British Government has undertaken to observe the Commission's monitoring procedures on general aid schemes[1] of this type where both Section 7 and Section 8 are used for rescue measures for certain firms.

230. The National Enterprise Board (NEB) was set up to provide the British Government with greater scope for intervention with the aim of regenerating British industry.

The NEB's purposes are 'the development or assistance of the economy of the United Kingdom or any part thereof', 'the promotion... of industrial efficiency and international competitiveness' and 'the provision, maintenance or safeguarding of ... employment'. In attaining these aims, the NEB's functions are to establish, maintain, develop, promote or assist industrial firms; to promote or assist the reorganization or development of certain sectors; to extend public ownership into profitable areas of manufacturing industry; to take over and manage publicly owned firms and those that are taken over. Upon the authorization and instruction of the British Government the NEB may grant the assistance provided under Sections 7 and 8 of the Industry Act 1972. To carry out its tasks the NEB may acquire shareholdings in firms, form bodies corporate or partnerships, grant loans to firms or provide guarantees for loans contracted with others.

The NEB's funds were initially fixed at UKL 700 million which could be brought up to UKL 1 000 million, constituted by Treasury loans taken from the National Loans Fund, the body responsible for all State loans and public dividend capital taken from funds provided by Parliament. The NEB can also borrow funds, guaranteed by the Treasury. As regards the rate of return obtained by the NEB, from the funds made available to it, the Secretary of State determines 'the financial duties of the Board and different determinations may be made in relation to different assets and activities of the Board'.

The NEB is a statutory body; members are appointed and dismissed by the Secretary of State for Industry, who lays down general guidelines (published after consultation with Parliament) and also 'directions of a general or specific character'.

231. The Commission's scrutiny of the NEB's functions, powers and funds revealed that its objectives were consistent with the definition of a general aid scheme outlined in its Second Report on Competition Policy.[2] It covered the same ground as Section 8 of the Industry Act 1972 considered as constituting a general aid scheme.

In practice the NEB is subject to the authority of the Secretary of State for Industry since he appoints and dismisses members of the Board, issues general and specific guidelines and directives, determines general or specific financial duties and provides funds.

---

[1] Fifth Report on Competition Policy, point 146.
[2] Point 116 of this Report.

The Board obtains funds at concessionary interest rates—whether public borrowings through the National Loans Fund, borrowings guaranteed by the Treasury or public dividend capital without fixed costs or interest rates. Intervention in firms could therefore include assistance. Firms qualifying for intervention could receive such assistance if they had not been able to obtain sufficient equivalent funds at that time from normal commercial channels or could have obtained them only by agreeing to a higher rate of interest.

However, countering this argument is the British Government's affirmation during talks on the NEB with the Commission that it would be an independent body, managed on a commercial basis under an obligation to look for an adequate rate of return on its operations. These intentions have been put into effect in some of the general guidelines already given to the Board by the British Government.

232. In view of the foregoing the Commission considered that a distinction should be made between the various principal types of NEB intervention.

As regards the NEB's routine operations, i.e. those undertaken at its own initiative under the general guidelines: shareholdings in the capital of industrial firms and/or loans or guarantees, the Commission asked the British Government for an annual report giving full details of its operations. The Commission took two factors into consideration when making its request:

In the past Commission decisions, for example in the cases of GEPI (Italy) and IDI (France)[1] involving the acquisition of capital of certain firms, the Commission considered that in principle this type of intervention could not *a priori* be classed as State aid, since Article 222 of the EEC Treaty allows for public ownership. Generally speaking, a shareholding can only be classed as a State aid or considered equivalent *a posteriori:* if for example sustained losses are written off by the State or if systematic provision of assistance follows on from the original acquisition. The Commission can therefore decide whether shareholdings by bodies like the NEB have the effect of assistance only by scrutinizing its actual activities. It can then decide whether conditions and restrictions should be imposed in the future.

Similarly, the loans and guarantees granted to certain firms, with or without shareholdings, could, depending on the procedure used, also constitute aids. The funds to which the NEB will have access could constitute aid, for it could use funds costing less than those used by similar bodies with no State support. Whether or not this advantage is passed on to certain firms will depend on the public authorities' handling of the NEB's

[1] Second Report on Competition Policy, point 122 *et seq.*

financial duties. Only after actual NEB operations have been terminated will it be possible to determine whether these loans and guarantees involve an element of assistance.

The second principal type of NEB intervention will take place under the specific directions given by the Secretary of State for Industry under Section 7 of the Industry Act 1975; these cannot be considered without reference to the Secretary of State's power to adjust the NEB's financial duties according to its funds and activities. His instructions could compel the NEB to undertake unprofitable measures including State aid.

For this reason the Commission requested that all NEB operations undertaken following specific directions should be notified in advance.

Finally, the Commission stressed that as regards cases of assistance under Sections 7 and 8 of the Industry Act 1972 of which the British Government had undertaken to notify the Commission in advance, the undertaking should also be respected in all cases where assistance was to be granted whether through the NEB or by the Secretary of State for Industry himself. The Commission also requested the British authorities to inform it of all general or specific directions or guidelines on financial duties given to the NEB.

§ 5 — Aids to employment

233. In order to combat unemployment and restore economic growth, after first trying to improve guaranteed benefits for the jobless and sometimes making firms avoid redundancies, the Member States made use of assistance for job creation, and occasionally on job preservation.[1]

National assistance for job creation covers either all job seekers or certain categories only (the young, the handicapped, those over a certain age). It may take the form of premiums or of relief from certain social or tax liabilities; the State takes over part of the wage costs incurred for newly-recruited workers which employers would normally have to bear.

The system is introduces for a limited period of time and as a percentage of wage costs; it is sometimes paid as a lump sum on recruitment, but the payments or relief may also continue for a certain period after recruitment.

234. Certain doubts persist as to the real economic and social consequences of these premiums.

[1] Fifth Report on Competition Policy, points 137 to 147.

They may cause employers to bring forward recruitment in times of uncertain demand when they might otherwise postpone it. They are also apt to restore a certain balance between relative costs of labour and investment, for certain aspects of labour costs often upset this balance on account of tax and social legislation or assistance to promote investment. When they only cover certain categories of workers they offset some of their handicaps. But they are likely, especially when granted for a lengthy period, to encourage firms to adopt labour-intensive methods which, in the light of the world labour market, are unlikely to ensure Community prosperity. They can also artificially maintain uncompetitive production by delaying necessary modernization; this is the main problem caused by aids to preserve employment. Finally, they can—in certain conditions of demand—have a displacement effect; it is therefore difficult to assess their positive contribution to the employment situation for it is hard to evaluate the extent to which job creation or preservation in certain Member States, certain industries (notably those in difficulty), certain firms or certain categories of workers is similarly offset by the disappearance or failure to create corresponding jobs in other Member States, other firms or other categories of workers.

In view of the problems and the features peculiar to each system the Commission has taken decisions, as in past years, on various new measures taken by the Member States and expressed its concern on the effects of an existing system.

Ireland: Aids to employment in farming and industry

235. In June 1975 the Irish Government introduced an aid scheme to improve the employment situation; the Commission initially raised no objection to the scheme.[1] In June the Irish Government informed the Commission that it had decided to extend the scheme and slightly amend its terms from 28 February 1977 to 28 February 1978.

Under the new terms employers increasing their staff over a reference period will receive for each person out of work recruited, a premium of:

(i) IRL 10 per week for a young person under twenty having left school at least four months previously;

(ii) IRL 20 per week for a young person of twenty or over out of work for over four weeks and having received unemployment benefit.

The premium is to be paid for twenty-four weeks for each worker.

IRL 4 100 000 was set aside for the scheme, affecting 10 000 to 15 000 workers.

---

[1] Fifth Report on Competition Policy, point 147.

The assistance was only to be granted for a limited period (six months) for each worker. Moreover, of all Member States Ireland has the worst unemployment problem, 9.4% of the working population without jobs as against 5.1% for the Community as a whole. The Commission accordingly raised no objection to the extension of this scheme.

United Kingdom: Employment subsidies for young workers

236. To attenuate the difficulties of many young workers seeking jobs, towards the end of 1975 the British Government introduced a system of premiums to encourage employers to take on young workers under the Employment and Training Act 1973. The Commission raised no objection to these measures when first introduced.[1]

The scheme was to expire on 31 August and the British Government decided to extend it until 31 March 1978. The subsidy is paid at the rate of UKL 10 per week for twenty-six weeks and covers all young unemployed people under twenty. Extending the scheme required UKL 4.5 million additional funds and affected 20 000 young people.

These employment subsidies for young people are apt to offset some of the drawbacks in their recruitment i.e. lack of experience and inadequate training for jobs offered them. They are likely to counterbalance employers' preferences for other categories of workers and their usefulness cannot be questioned.

The Commission therefore raised no objection to this extension, particularly since it was in line with the fourth medium-term economic policy programme[2] advocating the granting of allowances for on-the-job training or measures to help unskilled young people.

United Kingdom: Temporary employment subsidy - TES

237. In the Fifth Report on Competition Policy,[3] the Commission stated that it had no objection to the introduction of a temporary employment subsidy (TES) by the United Kingdom. The system was to apply for twelve months to firms who would otherwise have to make workers redundant and the subsidy was to be paid at the rate of UKL 10 per week for twenty-six weeks to keep in employment groups of fifty workers or more. Roughly UKL 7 million was allocated for the scheme.

On account of the very rapid increase in United Kingdom unemployment, the Commission felt that the system could be considered compatible with the common market as aid 'to remedy a serious disturbance in the economy of the Member State'.

---

[1] Bull. EC 12-1975, point 2132; Fifth Report on Competition Policy, point 145.
[2] OJ L 101 of 25.4.1977.
[3] Point 145 of this Report.

The scheme has been extended on a number of occasions. Payments under the scheme have been doubled to UKL 20 per worker per week for twelve months with a possible further extension at a rate of UKL 10 (eighteen months in all). It may be applied until 31 March 1978 and payments under allocation for decisions taken before that date could extend it until March 1979. Funds allocated for the TES were raised to UKL 431 million.

238. In accordance with Article 93(1) of the EEC Treaty, which requires it to keep all existing aid systems under constant review, the Commission monitored application of the scheme.

Statistics supplied by the British authorities from June 1977 revealed that the payments were being increasingly concentrated on certain sectors, already covered by other British aid schemes,[1] and hard hit in all the Member States, mainly textiles, clothing and footwear. Although they only account for 4.2% of UK jobs, these three sectors have alone received half the payments (over UKL 200 million). This amount far exceeds funds earmarked under all other industry schemes applied in the Community. Out of the 185 000 workers now covered by the scheme, 92 000 are working in these three sectors:

(i) in textiles 8.5% of the workforce is affected (17.3% in cotton weaving); the assistance accounts for roughly 30% of wage costs for the workers covered and 6% of turnover for plants employing them;

(ii) in clothing, 12.8% of the workforce is concerned (22% in women's and girls' outerwear); the assistance accounts for 40% of wage costs and 10% of turnover;

(iii) in footwear, 6.3% of the workforce is concerned; the assistance amounts to 33% of wage costs and 6% of turnover.

This concentration has given cause for concern in a number of Member States. It gave rise to a recent question in the European Parliament.[2] Complaints were sent to the Commission by trade associations in many other Member States which considered they were seriously harmed.

239. The nature of the scheme has been changed since it was introduced. It was set up as a short-term counter-cyclical instrument and intended to encourage firms to keep their workers off the unemployment register, but now has the effect of maintaining in production a large proportion of firms in industries that are declining throughout the Community.

---

[1] Fourth Report on Competition Policy, points 153 to 155; Fifth Report on Competition Policy, points 107 to 109; Sixth Report on Competition Policy, point 223.

[2] Written Question No 723/77.

Although the recipient employer does not benefit from the assistance—owing to the fact that he has to keep on the workers for whom he receives it—he can still maintain all or part of his production thanks to the artificial reduction in labour costs.

In contrast to existing job creation assistance in the United Kingdom and certain other Member States, TES is a purely stop-gap aid. Since it is granted on the basis of the number of existing jobs maintained, it enables certain industries with excess capacity to carry on with uncompetitive production. Its negative consequences are twofold:

(i) it does not really help to solve the problems of the recipient firms and plants, but simply postpones their solution. It makes no mention of encouraging recipient firms to restructure or reorganize to adapt to market conditions;

(ii) it exerts a depressive influence on the markets, production and employment situation of uncompetitive firms not receiving assistance both in the United Kingdom and other Member States.

As regards employment, the British authorities acknowledge that the assistance has a displacement effect, i.e. the fact that jobs maintained in recipient firms are artificially offset by the disappearance of failure to create jobs in other firms; this may be quantified at 33% on the United Kingdom scale alone without taking account of job displacement in other Member States. If the Community as a whole is considered, and if attention is confined solely to industries in difficulty, the main recipients of the system, the positive contribution made by this aid to the employment situation at Community level must be virtually or even non-existent, for the TES merely transfers unemployment from the United Kingdom to the other Member States.

From an industrial standpoint, assistance thus granted to production in these sectors under pressure is in manifest conflict with the Commission's previous rulings imposed on other Member States, notably in cases concerning textiles. Its principles[1] exclude the grant of purely stop-gap aids since, in view of the sector's difficult situation throughout the Community, all they achieve is to transfer difficult business situations from one Member State to another.

240. The Commission therefore took action in respect of this scheme, both in view of the above considerations and, more particularly, because there was information to suggest that the British authorities intended to maintain the system in some form or other after its planned expiry date (31 March 1978).

As required by Article 93(1) of the EEC Treaty it requested the British Government to take without delay certain 'appropriate measures' concerning application of the scheme

[1] Third Report on Competition Policy, point 101; Fourth Report on Competition Policy, points 156 and 157; Fifth Report on Competition Policy, points 105 and 106; Sixth Report on Competition Policy, point 222.

required by the functioning of the common market since, in the case of a proposed extension of the scheme beyond the above date not taking account of these 'appropriate measures', it would be obliged to initiate the procedure of Article 93(2) of the EEC Treaty in respect of the proposal.

These appropriate measures concern the following main changes: finding a way of avoiding undue concentration on any one sector; amending procedures to remove the purely stop-gap aspects; prior notification to the Commission of significant cases of application.

241. It must be stressed that the Commission's action takes account of the scheme's social repercussions. It does not object to the scheme as a whole, but feels that certain restrictions should be introduced on its application in industries which throughout the Community are experiencing the same social and industrial problems. It is true that unemployment rates have increased sharply in the United Kingdom, but trends have been similar in other Member States; the job situation in the United Kingdom is no worse than elsewhere in the Community.

The Commission's aim is therefore to eliminate the scheme's negative sectoral consequences which cause undue displacement of industrial and employment difficulties from the United Kingdom to other Member States without any improvement in the overall Community situation. The proposed restrictions should allow the scheme's really positive social advantages to be maintained.

§ 6 — Aids to exports

242. The Commission restated its views on the granting of export aids in its Sixth Report on Competition Policy.[1] It considers that this type of assistance is incompatible with the general principles of a common market in which a customs union has existed since 1968, and particularly with free movement, in that a Member State can in this way artificially boost its sales in other Community countries. These aids cannot qualify for derogation whatever their intensity, form, grounds or purpose. This view was confirmed by the Court of Justice[2] in its Judgment of 1969 on French preferential rediscount rates.

The Commission confirmed this general position when on 14 March 1977 a decision was adopted at the 439th Council meeting on the guidelines to be applied to credits for exports to non-member countries. The Commission made a statement to the effect that it had always considered export aids granted by Member States in intra-Community trade as incompatible with the common market within the meaning of Article 92 of the EEC

[1] Sixth Report on Competition Policy, point 241.
[2] Joined Cases 6 and 11/69: [1969] ECR 523.

Treaty. The decision, based on Article 113 and concerning credits for exports to non-member countries, did not affect this position. In particular it did not legitimate assistance granted by Member States using the credit terms provided for by the decision in their trade with other Member States. The Commission reserved the right to take the measures required, pursuant to its powers under Article 92 of the Treaty, to put an end to such aids if they still existed or prohibit them if the Member States intended to introduce any further aids.

243. In 1976 unofficial information both from national authorities and trade circles indicated that certain Member States were disregarding the Commission's rules and might be applying in intra-Community trade aid schemes really designed to promote their exports to non-member countries.

In the difficult economic circumstances we are now facing (slack industrial activity, considerable unemployment, surplus production capacity in many industries, and, in many countries, imbalance in trade figures) to tolerate such practices would amount to allowing each Member State to seek to export part of its difficulties, notably its unemployment, to other Member States and allowing the outbidding in export credit terms which occurs on non-Community markets to spread to the Community market, which has so far remained free of it, at least as regards the Member States.

Accordingly in September 1976 the Commission asked the Member States to confirm within two months that they did not 'either directly or indirectly make available funds to reduce the cost of export credits for sales to other Member States or for products used on the continental shelf'.

The explicit reference to the continental shelf (which is to be regarded as forming part of the territory of the Member States and is therefore subject to all the rules of the Treaty, notably those relating to State aid) was necessary since—as one of the appropriate measures provided for in Article 93(1) of the EEC Treaty—the Commission had asked the British Government to entitle installations manufactured in other Member States to the assistance it granted to finance off-shore installations manufactured in the UK for the exploitation of oil reserves in the UK continental shelf. When refusing to extend the assistance, the British Government pleaded that, under cover of their export aid schemes, certain Member States were granting similar assistance for supplies of such installations to the UK continental shelf.

244. The situation after receiving replies from the Member States to the Commission's letter was as follows:

Seven Member States (Belgium, Denmark, Germany, Ireland, Italy, Luxembourg, Netherlands) stated that they applied no measures to reduce the cost of credit on their sales to the other Member States (including their continental shelves).

It appeared that the situation in France did not comply with the Commission's principles. The Banque Française du Commerce Extérieur (BFCE) is a government agency, all the shares being held directly or indirectly by the State; it has the function of promoting export dealings between France and other countries notably by:

(i) refinancing or financing long-term credits granted by suppliers to purchasers, the requisite resources being raised partly by the Treasury in the form of loans and partly by bank loans and bond issues; the rates of interest charged to the supplier or purchaser depend on the scales set by the Minister for Economic and Financial Affairs; the debit balance between the cost to the BFCE of the financial resources it uses for this purpose and the proceeds of the interest it charges is made good by the Treasury;

(ii) refinancing of bank loans (with the Treasury's agreement and at Treasury determined interest rates) to suppliers or purchasers for the purposes of bridging loans during the production of certain machinery for export, (production and engineering costs), this refinancing being granted by the BFCE at rates corresponding to those charged by the banks from funds obtained by rediscounting at the Banque de France, any shortfall being made up by the Treasury.

According to certain budgetary papers these operations cost the Treasury FF 358 million (64 million EUC) in 1975, FF 549 million (98 million EUC) in 1976 and FF 400 million (71 million EUC) in 1977.

After prolonged discussion the French Government informed the Commission by letter dated 10 June that it had decided to settle the question by putting an end to these cuts in rates granted by the BFCE in the case of loans for sales in other Member States.

In the United Kingdom, the ECGD (Export Credits Guarantee Department) uses State funds placed at its disposal to refinance or pay interest relief grants on medium and long-term credit opened by banks to British exporters at an interest rate set by the Government. The rate is calculated in such a way as to ensure that British products will be competitive on export markets; in September 1976 it was 4.5 points below a reference rate which the ECGD and the banks agreed to regard as the rate which would be available on an unregulated financial market.

The Commission drew the British Government's attention to the contradiction between its theoretical position and application of the system in trade between Member States; it also asked what measures were proposed to remedy this situation. Proposals were accordingly put before the Commission concerning termination of assistance for British sales to other Member States. Certain problems have still to be ironed out and discussions are still in progress between the British authorities and the Commission. A successful outcome will probably be achieved early in 1978.

§ 7 — Aids to energy

245. The Commission stated its views on a number of cases concerning assistance for the energy industry, notably assistance to oil refining, measures to promote more rational use of energy and measures to diversify sources of energy used in the Community.

Belgium: Oil refining

246. The Commission Decision of 17 June 1975[1] specified that the Belgian Government should inform the Commission in advance of cases implementing the Act of 17 July 1959 'introducing and coordinating measures to encourage economic expansion and the creation of new industry'. As required by this decision the Belgian Government informed the Commission in June 1976 of its intention to grant assistance for anti-pollution investment by a major international oil company extending production capacity at one of its refineries in Antwerp.

The extension work mainly consisted in modernizing the existing refinery and raising distillation capacity from 4.5 to 13.5 million tonnes per year, investment amounting to BFR 12 000 million. The Belgian Government had originally stated that of this amount BFR 1 900 million covered the cost of environmental protection facilities. Work on modernization and extension was started in 1973 and, taking account of certain delays, the new refinery was to commence operations in the summer of 1976.

The proposed aid for this project was a 4% interest relief grant for four years on BFR 1 270 million, designed to reduce the cost of the environmental protection equipment.

247. In 1973 the Commission had already raised objections to the Belgian Government's intention to grant similar assistance for the same project and the establishment of a new refinery at Kallo.[2]

The Belgian Government originally planned to give assistance to the whole of the investment made by the Esso group to extend its Antwerp refinery. When the Commission reacted by initiating the procedure of Article 93(2) of the EEC Treaty, the Belgian Government offered to confine the assistance to anti-pollution investment.

The Commission then concluded[3] that even in these circumstances the assistance could not be justified: neither as a regional aid, in view of the social and economic prosperity of the Antwerp area; nor as an industry aid in view of the surplus refining capacity al-

---

[1] Decision 75/397/EEC, OJ L 177 of 8.7.1975; Fifth Report on Competition Policy, point 135.
[2] Decision 73/293/EEC: OJ L 270 of 27.9.1973.
[3] Third Report on Competition Policy, point 105.

ready becoming evident in Belgium as elsewhere in the Community; nor as an environmental aid, for firms should normally be responsible for bearing the costs of eliminating their own nuisances, unless they have difficulties in doing so and this may lead to serious economic or social problems. By means of the abovementioned Decision therefore, the Commission had ordered the Belgian Government not to grant the proposed assistance for the project in question.

248. When in 1976 the Commission initiated the procedure of Article 93(2) of the EEC Treaty in respect of the new project—which in many respects was exactly the same as the previous project—it felt that there was no reason for changing its views. The situation in the Antwerp region, which is still relatively prosperous, did not warrant the assistance in its new form any more than in 1973; moreover, the oil refining industry in Belgium and the Community was giving increasing cause for concern. In a Communication to the Council in March 1977 concerning a Community approach to oil refining problems in the Community, the Commission stressed that surplus distillation capacity in the Community could be estimated at 140 million tonnes, or 15% of total existing capacity, so that its 1973 forecast was substantially outdated.

On 6 November 1974[1] the Commission sent a memorandum to the Member States on a Community approach to State aids in environmental matters, stating that assistance should generally not be granted to investment for the establishment of new production installations, the 'polluter pays' principle should be fully applied in such cases and if such assistance were granted to firms in operation on 1 January 1975 in cases involving an increase in existing production capacity only that part of the investment that related specifically to anti-pollution facilities could qualify.

In initiating the procedure the Commission felt that it was extremely important that these principles be observed in an industry under pressure, where the proportion of anti-pollution investment tends to be quite large (16% in this case). If the public authorities were to subsidize this investment in would be tantamount to contributing to the development of production capacities in an industry where such development is contrary to the common interest.

249. The procedure continued and the Belgian Government submitted its comments, stressing that from 1972, on account of new obligations imposed in respect of environmental protection, either activities in Antwerp had to be discontinued, or processing capacity greatly extended, since the cost of the required anti-pollution investment could not be amortized by a production capacity of 4.5 million tonnes per year; the whole operation could accordingly be compared to the adaptation of an existing firm without reference to former and new capacity. Although the sum of BFR 1 900 million had

[1] Fourth Report on Competition Policy, point 180.

originally been put forward as representing the cost of anti-pollution equipment for the new refinery, the true cost had had to be revised to BFR 4 500 million.

The Commission however considered that:

(i) an oil company would not triple the capacity of an already large refinery and invest BFR 12 000 million merely to comply with local environmental protection requirements;

(ii) in estimating the cost of the anti-pollution equipment at BFR 4 500 million, the Belgian Government had included equipment worth more than BFR 3 000 million to improve product quality (desulphurization, lead content); all refineries need such equipment to meet standards required by public authorities and consumers both in Belgium and elsewhere.

Bearing in mind the tripling of the refinery's capacity the Commission considered that only one-third of the cost of the anti-pollution installations strictly speaking (i.e. BFR 1 300 million) could qualify for assistance to protect the environment and decided on 22 March 1977[1] that the proposed interest relief grant should be applied to no more than BFR 460 million (instead of the BFR 1 270 million originally envisaged by the Belgian Government).

In taking this decision the Commission considered that the rest of the assistance would have borne part of the cost of investment required to extend refining capacity and, in view of the refining industry's current situation, that such assistance—although not to be allocated for all investments required for the extension but only certain equipment—would adversely affect trading conditions to an extent contrary to the common interest.

Energy-saving aids

250. The energy crisis highlighted the need and the opportunity for more efficient use of energy in the Community, as regards both domestic and industrial consumption. Despite the programme for the rational use of energy and various measures introduced in the Community since 1974, much greater efforts could be made to save energy. Action in this respect can not only make a considerable contribution to the basic objective of reducing Community dependence on imported energy but also, as a secondary effect, stimulate the economy by encouraging investment and thus job creation.

In certain cases, notably among small and medium-sized firms, it would appear that in current economic circumstances the increase in energy prices has not in itself been suf-

[1] Decision 77/260/EEC: OJ L 80 of 29.3.1977.

ficient to stimulate adequate energy-saving efforts and that the State must offer financial incentives to encourage firms to take the necessary steps without too much delay.

Bearing these considerations in mind and also the guidelines drawn up under the Community energy policy,[1] the Commission took favourable decisions on a number of bills providing for assistance for firms' investments in energy-saving schemes. It considered that such schemes qualified for exemption under Article 92(3)(b) of the EEC Treaty as 'aid to promote the execution of an important project of common European interest', an improvement in the Community's energy situation being considered as constituting such a project.

Denmark

251. The Danish Government notified the Commission of a series of Bills[2] concerning the granting of assistance for property investments designed to save energy. These Bills extended an aid scheme previously set up as part of a set of temporary measures taken by the Danish Government in September 1975 to reduce unemployment; the Commission did not object to these measures when they were first introduced.[3]

The last of these Bills, which became Act No 477 of 14 September 1977,[4] raised the total funds earmarked for financing this assistance to DKR 1 150 million (172 million EUC), as against an initial allocation of DKR 100 million. Half the amount was to be used for investments to improve residential property and half for investments in industrial, commercial and farm buildings in operation before 1974. The assistance would be granted in the form of non-reimbursable cash grants for up to 30% of the cost of investments, the maximum amount in each individual case not exceeding DKR 100 000 (15 000 EUC).

Work on heat insulation, improvement or replacement of heating systems and other energy-saving measures qualify for the assistance and the scheme applies until 1980.

In its assessment the Commission took account both of the provisional nature of the scheme (the funds set aside for financing would have to be exhausted by 1981) and the relatively low maximum amount in each individual case, making the scheme above all suitable for small and medium-sized firms.

---

[1] Council Resolutions of 17 September 1974 concerning a new energy policy strategy for the Community and of 17 December 1974 on a Community action programme on the rational utilization of energy (OJ C 153 of 9.7.1975); Commission Communication to the Council of 25 May 1977 containing a Community action programme for the rational use of energy (COM(77) 185 final).

[2] Lovtidende A 1976, p. 1310 (Act No 423 of 25.8.1976); Bull. EC 11-1976, point 2122; Lovtidende A 1977, p. 322 (Act No 112 of 30.3.1977).

[3] Fifth Report on Competition Policy, point 143.

[4] Lovtidende A 1977, p. 1361.

252. Neither did the Commission raise objection to a second Bill, which became Act No 261 of 8 June 1977 providing investment grants to promote more rational use of energy by replacing or modernizing manufacturing processes in manufacturing and craft firms consuming large amounts of energy.

DKR 80 million (12.2 million EUC) has so far been earmarked for this assistance, which may not exceed DKR 800 000 (120 000 EUC) in each individual case.

Netherlands

253. The Dutch Government notified the Commission of a similar Bill providing for assistance in the form of premiums at the rate of 25% of the cost of investment and a maximum in any individual case of HFL 1 million (360 000 EUC). HFL 20 million (7.2 million EUC) has been set aside for the scheme.

Firms' investment schemes saving considerable quantities of energy (plant for the rational use of residual heat, thermo-electrical plant, plant exploiting solar energy and wind power and any other system reducing energy consumption or required to distribute it) qualify for assistance.

Applications for the premiums must be made by 15 December 1977 and the plant must come into operation in the year following the decision to grant it.

254. Another Dutch Bill provides for assistance for energy-saving demonstration projects. A sum of HFL 1 million (360 000 EUC) was earmarked to finance them in 1977.

These schemes qualify both for a grant covering 25% of investment and engineering costs and a special loan of up to 25% of these costs at an interest rate of 5%, reimbursable if the project should prove viable.

Firms or businessmen carrying out demonstration projects involving new energy-saving appliances, equipment or techniques qualify for the assistance. The new development must introduce a new technique not previously applied in the Netherlands, involve a major technological and economic risk and result in considerable energy savings. The results must be published and available to all.

The Commission felt that the Bill complied with its energy policy guidelines and also, since it was designed to promote demonstration projects concerning new energy-saving techniques, with the guidelines of the 'proposal for a Regulation on the granting of financial aids to demonstration projects in the field of energy-saving' submitted to the Council by the Commission on 31 May 1977.[1] In this proposal for a Regulation, the

[1] COM(77) 187 final of 25.5.1977.

Commission argued that Community assistance was warranted for such demonstration projects both because of the economic advantages that the introduction of new energy-saving techniques could bring to society as a whole and of the technical and commercial risks run by manufacturers and consumers. It also stressed that these projects aim to put new energy-saving techniques on the market; while they differ, therefore, from research and development programmes aimed at the conception and design of new technologies, they are a natural complement to them.

Moreover, since the amount set aside for the financing of the Dutch scheme is small, and since the number of projects qualifying for the limited sums is also small, and in view of the publicity given to the results of the aided projects, the assistance would not adversely affect trading conditions.

Aids to diversify sources of energy

255. The Commission also stated its views on bills designed to maintain or increase diversification of Community energy sources, following the guidelines it advocates for Community energy policy.

Italy: Solar energy

256. The Italian Government informed the Commission of a bill concerning the Region of Sicily designed to promote the utilization of solar energy. Certain grants are to be awarded to encourage the production and utilization of plant enabling solar energy to be used in Sicily and to promote research and development activities in this field.

The total funds set aside for the grants amount to LIT 3 700 million for the period from 1978-82, distributed as follows:

(i) research and development activities in Sicilian universities and public research centres (LIT 700 million);

(ii) low-interest loans for small and medium-sized firms to encourage them to manufacture equipment using solar energy; they will be granted for a fifteen-year period at a rate of 7% and may cover up to 60% of expenditure (LIT 900 million);

(iii) grants at the rate of 30% for the establishment of plant using solar energy in public organizations, farming and small and medium-sized industrial firms (LIT 1 500 million);

(iv) a grant at the rate of 50% for the study and construction of experimental installations (LIT 450 million).

Aids to develop power production from Community coal

257. In its Fourth Report on Competition Policy[1] the Commission took stock of the various systems applied in the Member States to promote the use of coal in electricity generation.

In its Communication to the Council of 26 June 1974 entitled 'Towards a new energy policy strategy for the Community'[2] it recommended that measures be taken to encourage the use of coal, which would also help to diversify Community energy supply sources. On 14 January 1977 it submitted a proposal for a Council Regulation[3] on Community financial measures to promote the use of coal for electricity generation.

258. In 1977 the Commission was informed by the German Government of various amendments it intended to make to the German Act to promote the use of Community coal in power stations. The scheme was set up in 1965 and has been amended on various occasions in 1966, 1972, 1974[4] and 1976.[5]

The assistance provided is mainly intended to ensure a stable outlet for approximately 30 million tonnes of Community coal per year for electricity generation.

Electricity producers using coal (either German or from other Member States) receive a subsidy to offset the difference between the cost price per calorie from coal and from fuel oil or natural gas. The subsidy is financed by an equalization charge levied on all German electricity producers and calculated on the basis of the value of the electricity produced.

The German Government also grants a subsidy of DM 150 per kW installed capacity; it is intended to offset the additional costs incurred in building coal-fired power stations as against those using fuel oil or natural gas.

The Commission was requested to authorize the following amendments:

(i) extension until 31 December 1987 of the equalization system which should have expired at the end of 1977. New coal-fired power stations built between 1974 and 1985 are to receive a ten-year subsidy guarantee paid under the equalization system and designed to offset the higher costs per calorie of coal;

(ii) the equalization system will now also cover the additional costs of using anthracite; the domestic market does not provide sufficient outlets for this quality coal;

---

[1] Points 163 to 165.
[2] Bull. EC 12-1974, points 1201 to 1203.
[3] COM(76) 648 final.
[4] Bull. EC 7/8-1974, point 2131; Fourth Report on Competition Policy, points 163 to 165.
[5] Bull. EC 3-1976, point 2113.

(iii) finally, the subsidy of DM 150 per kW installed capacity has been raised to DM 180 and granting has been extended until 31 December 1981.

The Commission decided that electricity producers using coal gained no advantage over those using fuel oil or natural gas; it therefore raised no objection to the scheme under the ECSC and EEC Treaties.

§ 8 — Application of the ECSC Treaty to State aids for the steel industry

259. The recession affecting the Community steel industry deepened in 1977. New orders in the first half were lower than they had been a year earlier and certainly well below the 1974 peak. Production also fell and capacity utilization remained very low averaging less than 65% during the year. The recession has been due principally to the low level of Community demand, but the deterioration in the balance of trade has been a further contributory factor.

The effects of these volume changes on steel undertakings' finances have been exacerbated by the need to align their prices on those of imported steel in order to remain competitive, so that prices have fallen significantly despite rises in labour, raw material and other costs.

Although the recession has led the industry to delay new investment projects and to slow down the completion of projects already under way, new capacity continues to come on stream as a result of decisions taken in 1973 and 1974.

The prospect of a slight acceleration in economic growth in 1978 affords some hope of an improvement in the steel industry's fortunes, provided that it manages to contain imports to a more reasonable market share.

However, the crisis in the industry is not solely a conjunctural phenomenon; its main characteristics are structural. The medium term outlook is for persistent problems owing to an excess of production capacity and a lack of competitiveness of many production units.

260. Against this background of a structural crisis, exacerbated by conjunctural problems, the Commission's policies have been designed to achieve a number of objectives:

(i) to reduce the impact of the adverse conjuncture by a variety of direct measures, such as fixing voluntary delivery quotas;

(ii) to promote the restructuring of the industry so as to ensure its future competitiveness;

(iii) to minimize the effects of the conjuncture and of industrial restructuring on the labour force by encouraging the establishment of new industries in steel producing areas; and

(iv) to avoid distortions of competition against the common interest by coordinating any State aid measures taken by the Member States to enable their industry to survive the immediate crisis or to assist its restructuring.

261. In order to achieve the last of these objectives, the Commission considered that it should, as a first step, remind the Member States of their obligation to notify all aid proposals to the Commission in advance of their implementation and indicate to them the manner in which it intended to apply the ECSC Treaty's provisions during the period of the crisis. The Commission, therefore, informed the Member States by letter dated 20 April 1977 that any aid measures taken by them should respect the following general principles:

(i) aids should not be accorded for the sole purpose of preserving existing structures;

(ii) aids for modernizing, rationalizing or restructuring the industry should not lead to increases in capacity in sectors or subsectors in which there is manifest overcapacity;

(iii) aids to rescue a steel undertaking so as to enable an orderly adaptation to the new market situation should be of strictly limited duration and should take account of the structural modifications that are required; and

(iv) the form and intensity of aids should always be appropriate to their objectives and to the problems the aids are intended to resolve.

The definition of principles of this kind cannot be regarded as more than a first step. In view of the critical situation of the industry, there is a risk that these principles will not be adequate to avoid distortions of competition against the common interest. The Commission is therefore examining with the Member States the possibility of introducing a greater degree of Community discipline by means of a decision under Article 95 of the ECSC Treaty, which enables action to be taken by the Community in cases not provided for by the Treaty itself.

Belgium

262. The Commission applied the general principles outlined above for the first time in its examination of an aid scheme notified to it by the Belgian Government.

The Belgian steel industry is strongly export-oriented and has therefore been among the most seriously affected by the present crisis. Its capacity utilization rates in 1975 and

1976 were 61% and 64% respectively whereas the corresponding figures for the Community as a whole were 65% and 68%. A major part of the industry therefore found itself in grave financial difficulties and the Belgian Government decided to intervene immediately to enable the undertakings concerned to survive for the period during which a plan to restructure the industry would be drawn up. The measures taken to implement the restructuring plan would constitute a second stage in its intervention, but could only be determined once the restructuring plan had been prepared.

The first stage of the Belgian Government's intervention involved the use of the economic expansion laws[1] to grant State guarantees and interest rebates on one year loans amounting to nearly BFR 12 000 million. The bulk of this sum was to provide working capital while the remainder was to finance current investments which did not increase production capacity. To qualify for these aids undertakings had to agree to postpone any investment decisions which would lead to an increase in production capacity and any decisions on mass redundancies. They would also have to agree to participate in the implementation of the restructuring plan.

263. The Commission considered that these measures were compatible with the aids provisions of the ECSC Treaty and with general principles outlined above. The aids were not solely intended to preserve existing structures, since the beneficiaries would have to support the restructuring plan. The implementation of this plan would be facilitated by the suspension of investment decisions involving increases in capacity.

[1] Second Report on Competition Policy, point 90; Fourth Report on Competition Policy, point 170.

Chapter II

Adjustment of State monopolies of a commercial character

264. This year the Commission continued its work with respect to State monopolies of a commercial character with a view to putting an end to the last remaining practices that conflict with Article 37 of the EEC Treaty and other Articles relating to the free movement of goods. The investigations pursued and action taken concerned the French and Italian manufactured tobacco monopolies, the French petroleum products and alcohol monopolies and the Italian matches monopoly.

265. As regards the French alcohol monopoly, the French Government took measures on 25 July to comply with the reasoned opinion issued by the Commission under Article 169 of the EEC Treaty.[1] The measures consisted of Decree No 842 adjusting the marketing system for alcohol, two Ministerial Orders and a notice to importers, all of which took effect on 29 July.[2]

The exclusive right to import and market ethyl alcohol was terminated by the extension of Article 269 of Annex II to the General Tax Code to Community importers, who are now free to import and market the product provided they file an import declaration and pay an amount of money equal to that payable by French manufacturers also qualifying for Article 269. The non-discretionary and non-discriminatory nature of this is ensured by the following measures:

(a) there is no need for prior administrative approval in the import declaration procedure;

(b) the notice to importers published in the French Journal officiel also constitutes a directive to the customs authorities concerning the removal of the need for administrative approval;

(c) the form of the import declaration requires only such information as is essential for determining tariff classification and the amounts payable;

(d) the amount then payable depends neither on the raw material nor on geographical origin.

---

[1] Sixth Report on Competition Policy, point 265.
[2] Journal officiel de la République française No 172 of 27.7.1977, p. 3928 *et seq.*

The discriminatory aspects of the tax scheme applicable to potable spirits and spirituous beverages imported from the Member States have also been eliminated by the abolition of the countervailing charge levied only on imported spirituous beverages and the special payment due on certain imported spirits.

Since in France there are no more restrictions on imports of ethyl alcohol from the original Member States, the Commission has suspended its Article 169 proceeding against France for infringement of Article 37 and will terminate it when the French authorities have formally amended the relevant legislation as required.

These measures apply to products imported from the Member States with effect from 1 January 1978, so that France has also complied with its obligation under Article 44 of the Act of Accession.

266. Turning to the French and Italian manufactured tobacco monopolies, the Commission, following detailed scrutiny of the new regulations governing them, has concluded that certain provisions are not in line with Articles 30 and 37 of the EEC Treaty. On 1 August it accordingly initiated infringement proceedings under Article 169 against the two governments for their maintenance of the exclusive right to export. In France there is a further infringement at the wholesale stage which consists of maintenance of the exclusive right to import and market manufactured tobacco originating in non-member countries and already in free circulation in another Member State.

The Commission has also expressed reservations as to whether certain other aspects of the new regulations conform to Treaty requirements and has asked the two governments for their views.

The main reservation concerned the retail monopoly which still exists in both countries. On the basis of recent Court of Justice judgments the Commission argues that compliance with Article 37 and the principle of the free movement of goods require that any provision which may allow for discriminatory treatment between home-produced and imported goods at some stage between importation and purchase by the consumer must be cancelled.

In the case of France, there were further reservations as to the system used for determining prices and margins, the rules governing the approval of importers and wholesalers and those concerning advertising, for they are likely to hinder the market penetration of imported products.

As for Italy, reservations were expressed on the regulations governing packaging, pricing and the establishment of wholesale depots, and on the arrangements for supplying tax seals to importers.

267. The Italian matches monopoly has certain features in common with the manufactured tobacco monopoly: they share the same exclusive wholesale and retail distributors —the AAMS and the official network of retail tobacco outlets respectively. Doubts as to whether the exclusive wholesale selling right referred to by the Commission in its letter giving formal notice really had been abolished have now been cleared up. At the present stage of scrutiny of the Italian reply, the retail marketing system, that used for determining prices and the role played for tax purposes by the Consorzio Industrie Fiammiferi would still seem contrary to Article 37 of the EEC Treaty.

268. Lastly, there have been further talks with the French authorities on the petroleum monopoly, and the Commission hopes that a solution can be reached in 1978. The legal position until then is conditioned by the direct effect of Articles 30 to 37 of the Treaty, which is to say that any national provisions incompatible with these Articles are deprived of their binding force.

Chapter III

Public undertakings

269. In its last report[1] the Commission considered the practical and legal implications of Article 90. Having pursued its theoretical work, it has also continued practical measures on several fronts. Its action here has followed three main lines.

270. First, consideration of a number of cases raising, among other things questions concerning the application of Article 90 has begun. The problems at issue are the following:

(a) the grant of special or exclusive rights;

(b) possible abuse of a dominant position and concerted practices contrary to Article 85;

(c) failure of public authorities to act on conduct such as this;

(d) one complaint concerning illegal subsidies to a public undertaking;

(e) application of the EEC Treaty rules on competition where a body doing commercial business is structurally part of a public authority.

271. In the Sixth Report the Commission also mentioned the difficulties which it faces in carrying out to the full its duties under Article 90(3) in view of the difficulty of understanding certain information in the accounts of certain undertakings.[2] It referred to the possibilities offered by the same Treaty Article for taking measures to remedy the situation.

With this in mind, and in response to Parliament's wishes,[3] the Commission has had a directive drafted under Article 90(3); the draft is now at an advanced stage of preparation.

It has discussed the principles at issue with those of the Member States which wished to make their views known at this stage. The need for these discussions arose from the importance of the public sector in certain Member States and the scope for economic

---

[1] Sixth Report on Competition Policy, point 272 *et seq.*
[2] Sixth Report on Competition Policy, point 275.
[3] Resolution on the Sixth Report on Competition Policy: Written Question No 701/77 by Mr Müller-Hermann.

intervention thereby offered. Moreover, the use of Article 90 entails reference to legal principles on which the Court of Justice has as yet had very little opportunity to elaborate.

272. Lastly, working with an outside research establishment, the Commission has prepared a study which will give it an up-to-date and at the same time precise picture of the public sector in the Community. The study will be published early in 1978.

Part Three

The development of concentration in the EEC

Introduction

273. The first section below (§ 1) deals with national and international takeovers and mergers, share purchase and joint ventures in the Community.

The second (§ 2) gives a number of pointers to the development of concentration: the trend of domestic concentration in a series of industries, the analysis of patterns of dominance that are characteristic of certain product markets in certain countries, and a similar analysis for certain regional and local markets illustrated by reports taken from the daily press.

Then follows a survey on the relationship between firm size and performance in selected industries and countries (§ 3).

Recent research on the workings of competition in distribution is then outlined (§ 4), with a summary of findings on price trends and the differences in prices for selected products. There is also an analysis of the development in the relative market power between manufacturers and retailers.

Part Three ends with a summary and conclusions (§ 5).

§ 1 — National and international takeovers and mergers, share purchase and joint ventures in the Community from 1973 to 1976

Comparison between national and international operations

274. The statistics that follow have been obtained from the business and financial press in the EEC Member States. While not all operations of this kind are mentioned in these sources, the figures published here may be assumed to give a reasonably faithful picture of recent trends.

As in previous years, it has not been possible to reflect the relative importance of the various operations; and the figures that follow have not been weighted to take account of the varying sizes of the economic and financial transactions.

Subject to these two reservations, the information below illustrates an important aspect of EEC business life.

TABLE 1

National and international operations in the EEC, 1973-76

Year	Type of operation								Breakdown of operations by number of firms involved	
	Takeovers and mergers		Share purchase		Joint ventures		Totals			
	Number of operations	Number of firms involved	Number of operations	Number of firms involved	Number of operations	Number of firms involved	Number of operations	Number of firms involved	Bilateral operations	Multilateral operations
National operations										
1973	138	318	384	836	119	478	641	1 632	544	97
1974	165	404	607	1 293	151	509	923	2 206	789	134
1975	231	548	1 118	2 356	237	1 157	1 586	4 061	1 387	199
1976	136	324	977	2 102	213	785	1 326	3 211	1 137	189
International operations										
1973	0	0	568	1 153	429	998	997	2 151	751	246
1974	0	0	411	918	401	1 106	812	2 024	578	234
1975	0	0	382	865	313	1 044	695	1 909	484	211
1976	0	0	369	778	362	1 106	731	1 884	502	229
Total										
1973	138	318	952	1 989	548	1 476	1 638	3 783	1 295	343
1974	165	404	1 018	2 211	552	1 615	1 735	4 230	1 367	368
1975	231	548	1 500	3 221	550	2 201	2 281	5 970	1 871	410
1976	136	324	1 346	2 880	575	1 891	2 057	5 095	1 639	418

275. Table 1 sets out the actual numbers of national and international takeovers and mergers, acquisitions and joint ventures that took place in the EEC from 1973 to 1976.

A minimum of two firms were involved in each operation and the actual number of firms involved is shown in a separate column for each type of transaction. The total column of the 'Number of firms involved' takes account of the fact that a given firm may have been involved in more than one operation in the course of the report period.

The breakdown in the last two columns of Table 1 gives the number of national and international operations involving only two firms (bilateral operations) and those involving more than two firms (multilateral operations).

The reason for the absence of international takeovers or mergers is that the company law of the Member States does not allow cross-frontier firms.

The total number of operations fell from 2 281 to 2 057 between 1975 and 1976; this was the first fall since 1973. In each of the years considered, share purchase was the most frequent form of operation, followed by joint ventures, and lastly by takeovers and mergers. In 1976, 65% of all operations were share purchase, 28% were joint ventures and only 7% were takeovers and mergers. The development of the total number of operations broken down by number of firms involved shows that between 1973 and 1975 bilateral operations increased in number, only to fall in 1976, whereas the number of multilateral operations kept rising throughout the period. In 1976, 80% of all operations were bilateral. Trends in types of operation are dealt with in greater detail in Table 3.

276. For each year between 1973 and 1976 (see Table 2), it will be seen that, of the three types of operation considered, joint ventures involved on average the largest number of companies followed by takeovers and mergers and by share purchase. In 1976 on average 3.29 firms were involved in the formation of a joint venture, 2.38 in a takeover or merger and 2.14 in a share purchase transaction.

277. The numbers for national and international operations shown in Table 1 are given in index-number terms in Table 3, 1973 being taken as the base year. The index numbers for share purchase and joint ventures show that by the end of the period national operations were above their 1973 level whereas international operations were below the 1973 level. However, a comparison between 1975 and 1976 shows that the only increase between these two years was in international joint ventures which were 16% up, whereas a sharp fall of 41% took the number of takeovers and mergers back down to its 1973 level.

TABLE 2

Average number of firms involved by type of operation in the EEC, 1973-76

Year	Type of operation											
	Share purchase			Joint ventures			Takeovers and mergers			Totals		
	National	Inter-national	Total	National	Inter-national	Total	National	Inter-national	Total	National	Inter-national	Total
1973	2.18	2.03	2.09	4.02	2.33	2.69	2.30	—	2.30	2.54	2.16	2.31
1974	2.13	2.23	2.17	3.37	2.76	2.93	2.45	—	2.45	2.39	2.49	2.44
1975	2.11	2.27	2.15	4.88	3.33	4.00	2.37	—	2.37	2.56	2.75	2.62
1976	2.15	2.11	2.14	3.68	3.06	3.29	2.38	—	2.38	2.42	2.58	2.48

TABLE 3

Indices of national and international operations, by type of operation in the EEC (1973 = 100)

Year	Type of operation			
	Takeovers and mergers	Share purchase	Joint ventures	Total
National operations				
1973	100	100	100	100
1974	120	158	127	144
1975	167	291	199	247
1976	99	254	179	207
International operations				
1973	—	100	100	100
1974	—	72	93	81
1975	—	67	73	70
1976	—	65	84	73
Total				
1973	100	100	100	100
1974	120	107	101	106
1975	167	158	100	139
1976	99	141	105	126

278. The national and international breakdown of operations can be seen from Table 4. Although, on the whole, national operations have been more numerous than international operations since 1974 with 64% national against only 36% international in 1976, there is a marked difference between share purchase on the one hand and joint ventures on the other. Since 1974 national share purchases have been far more numerous than international purchases, and in 1976 they represented 73% of the total, whereas international joint ventures have been more numerous than national joint ventures in every year except 1975, when 52% were national and 48% were international. By 1976 the ratio had reversed again, with 63% of all joint ventures being international. The major proportion of all operations accounted for by share purchase explains why nearly two out of every three operations in 1976 were purely national.

Breakdown of international operations showing share of firms from non-member countries compared with total share of EEC firms

279. Table 5 shows the nationality of firms involved in international operations. The percentage figures given there are calculated from the number of individual firms involved and reveal that firms from non-member countries have substantially increased their share when compared with firms from the EEC. The number of Community firms involved fell from 77% to 67% between 1975 and 1976. By contrast the share of American firms, which had been on the decline since 1973, rose from 7% to 8%, while Swiss firms raised their share from 5% to 6%, Japanese firms from 1% to 2% and Scandinavian firms from 2% to 3%.

280. The increasing role played by firms outside the EEC in international operations is further illustrated by Table 6. The percentages for all operations show that by 1976 the share of EEC firms had fallen to equal that of firms from non-member countries. The decline in the involvement of EEC firms showed similar movements in both types of operation—share acquisitions and joint ventures. Between 1973 and 1976 non-EEC firms raised their share of acquisitions from 40% to 46% and their share of joint ventures from 46% to 54%. The change in figures between 1975 and 1976 is most striking in the field of joint ventures, where EEC firms' share declined from 55% to 46%.

281. Table 7 shows the Member States in whose territory firms were acquired or joint ventures were established. In 1975 Belgium headed the list with one quarter of all such international operations. Germany ranked second with 23% and France ranked third with 16%. Since 1975, Germany has expanded its share by 3 percentage points while France's share has declined by four points. The United Kingdom was the scene of 11% of operations, showing a similar decline of four percentage points. Italy's share rose by one point from 1975 to 1976, but it is still very low at 5%. However this figure

TABLE 4

Share of national and international operations in all operations in the EEC, 1973-76

(%)

Year	Type of operation											
	Takeovers and mergers			Share purchase			Joint ventures			Total		
	National	International	Total	National	International	Total	National	International	Total	National	International	Total
1973	100	0	100	40	60	100	22	78	100	39	61	100
1974	100	0	100	60	40	100	27	73	100	53	47	100
1975	100	0	100	75	25	100	52	48	100	69	31	100
1976	100	0	100	73	27	100	37	63	100	64	36	100

TABLE 5

Share of firms from various non-member countries compared with total share of EEC firms in international operations in the EEC, 1973-76

(%)

Year	EEC	USA	Switzerland	Japan	Scandinavia [1]	Other	Total
1973	73	12	6	2	2	5	100
1974	79	10	4	1	3	3	100
1975	77	7	5	1	2	8	100
1976	67	8	6	2	3	14	100

[1] Norway, Sweden and Finland.

TABLE 6

International operations in the EEC, 1973-76 - Operations involving EEC firms only and operations involving non-Community firms

Year	Type of operation								
	Share purchase			Joint ventures			Total		
	EC	NMC	Total	EC	NMC	Total	EC	NMC	Total
Number of operations:									
1973	340	228	568	233	196	429	573	424	997
1974	234	177	411	207	194	401	441	371	812
1975	200	182	382	173	140	313	373	322	695
1976	198	171	369	165	197	362	363	368	731
As percentage of total:									
1973	60	40	100	54	46	100	57	43	100
1974	57	43	100	52	48	100	54	46	100
1975	52	48	100	55	45	100	54	46	100
1976	54	46	100	46	54	100	50	50	100

EC = operations involving EEC firms exclusively.
NMC = operations involving either firms from non-member countries exclusively or such firms in combination with EEC firms.

TABLE 7

International operations in the EEC, by Member State, 1973-76

(%)

Year	Federal Republic of Germany	France	Italy	Netherlands	Belgium	Luxembourg	United Kingdom	Ireland	Denmark	Total
1973	14	22	6	11	19	14	12	1	1	100
1974	22	22	7	8	16	7	16	1	1	100
1975	20	20	4	7	21	9	15	3	1	100
1976	23	16	5	8	25	8	11	2	2	100

TABLE 8

National and international operations in the EEC, by industry, 1973-76

(%)

Year	Metal-lurgical industries	Energy	Chemicals	Textiles	Other manu-facturing industries	Food industry	Banks and insurance companies	Holdings Companies	Other service industries	Total
1973	27	2	8	4	11	9	—	—	39 [1]	100
1974	21	3	9	4	9	4	—	—	50 [1]	100
1975	28	2	9	4	14	7	10	3	23	100
1976	27	2	9	5	15	8	10	3	21	100

[1] All services, including banks, insurance companies and holding companies.

should be viewed with caution as the sources of information used for this survey may not be wholely reliable for Italy.

Industrial breakdown of national and international operations

282. The industrial breakdown changed very little in 1976 (Table 8). Operations in metallurgical industries ranked first of all manufacturing industries in all the four years and accounted for 27% of operations in 1976. The percentage of operations in both the food and textile industries rose by one point from 1975 to 1976, to 8% and 5% respectively.

§ 2 — The development of concentration in selected industries and sub-industries in the EEC

General survey of research

283. The studies on the development of concentration and on the working of competition in the various Member States have continued at a steady rate this year. As can be seen from Table 9 the number of reports published by the Commission was particularly high in 1977—twenty-one in all.

These reports highlight every aspect of the industrial structures analysed. Most of them also contain a detailed econometric section.

The present report is intended to bring out the aspects and problems of concentration which are not dealt with by the traditional type of economic analysis.

Concentration in selected industries

284. Examination of the studies that have been undertaken since the research programme began in 1970 (Table 10) leads to a fairly general conclusion—that industrial concentration is tending to 'stabilize'. This trend is particularly evident from Table 11, and thus confirms the forecasts made in the last report (point 293).

The three following definitions and symbols have been used:

(a) there is *stability* (=) when the share of the four largest firms in the total sales of a given industry (C_4 index) does not change or changes by one percentage point or less (e.g. where C_4 moves from 45% to 46%);

TABLE 9

New reports in 1977

Title	Research establishment
(a) Completed and published:	
Studio sull'evoluzione della concentrazione della industria cartaria in *Italia*	SORIS Torino
Studio sull'evoluzione della concentrazione nel settore della costruzione di macchine per l'industria tessile *in Italia*	SORIS Torino
A study of the evolution of concentration in the *Dutch* paper products industry	Universiteit van Amsterdam
A study of the evolution of concentration in the *Danish* food distribution industry	Institute for Future Studies Copenhagen
A study of the evolution of concentration in the food distribution industry for the *UK*	Development Analysts Ltd Croydon
Etude sur l'évolution de la concentration dans la distribution des produits alimentaires en *France*	IAM Montpellier
L'évolution de la concentration dans l'industrie de la brasserie et des boissons en *Belgique*	CRIDE - Prof. Jacquemin Louvain-la-Neuve
A study of the evolution of concentration in the *Dutch* beverage industry	Prof. de Jong Stichting Nijenrode Breukelen
Entwicklung der Konzentration in der Getränke-Industrie der Bundesrepublik *Deutschland*	Institut für Wirtschaftsforschung (IFO) München
Studio sull'evoluzione della concentrazione nell'industria delle bevande in *Italia*	SORIS Torino
Etude sur l'évolution de la concentration dans les industries des boissons et des boissons non alcoolisées en *France*	Inst. Nat. de la Recherche Agronomique (INRA) Montpellier
Untersuchung der Konzentrationsentwicklung in der Reifenindustrie sowie ein Branchenbild der Kraftfahrzeug-Elektrikind. in *Deutschland*	Kienbaum GmbH Düsseldorf
Untersuchung zur Konzentrationsentwicklung in der Nahrungsmitteldistribution in *Deutschland*	IFO München
Untersuchung zur Konzentrationsentwicklung in ausgewählten Branchen und Produktgruppen der Ernährungsindustrie in *Deutschland*	IFO München
Studio sull'evoluzione della conc. nel settore delle costruzione di macchine per l'industria tessile in *Italia*	SORIS Torino
A study of the evolution of concentration in the *Danish* food processing industry	Institute for Future Studies Copenhagen

TABLE 9 (contd)

Title	Research establishment
Studio sull'evoluzione della conc. nell'industria della costruzione di macchine non elettriche in *Italia*	SORIS Torino
Untersuchung zur Konzentrationsentwicklung in verschiedenen Untersektoren der Elektrotechnischen Industrie in *Deutschland*	IFO München
Studio sull'evoluzione della concentrazione industriale in *Italia* (1968-74) (pneumatici, candele, accumulatori)	FIS-ATOR Milano
A study of the evolution of concentration in the electrical appliances industry for the *UK*	MLH London
A study of the evolution of concentration in the beverages industry in the *UK* (Industry structure and concentration, 1969-74)	Development Analysts Ltd Croydon
(b) Completed and being printed:	
Studio sull'evoluzione della concentrazione nella distribuzione dei prodotti alimentari in *Italia*	SORIS Torino
Etude sur l'évolution de la concentration dans l'industrie des pneumatiques en *France*	DAFSA Paris
A study of the evolution of concentration in the manufacture and supply of tyres, sparking plugs, and motor-vehicle accumulators for the *UK*	Cranfield School of Management Bedford
Etude sur l'évolution de la concentration dans l'industrie des pâtes, papiers et cartons en *France*	DAFSA Paris
Die Distribution von alkoholischen und nichtalkoholischen Getränken in der Bundesrepublik *Deutschland* unter besonderer Berücksichtigung konzentrativer Entwicklungstendenzen	IFO München
Studio sull'evoluzione della concentrazione nel settore dei detersivi per uso domestico in *Italia*	ISVET Roma
A study of the evolution of concentration in the food distribution industry for the *United Kingdom* - Volume 1 - Industry structure and concentration	Development Analysts Ltd Croydon
A study of the evolution of concentration in the press and general publishing industry in the *UK*	Cranfield School of Management Bedford
Etude de l'évolution de la concentration dans le secteur de la pâte, du papier et du carton en *Belgique*	Université de Mons Prof. Labeau

Note: A series of reports on the press, publishing and school books is at an advanced stage. Publication is planned for the first half of 1978.
All reports are published in the original language version only.

TABLE 10

Industries and countries studied, and reference periods
(situation at 31.12.1977)

Industry	Country					
	Federal Republic of Germany		France		Italy	
Textile industry						
Wool	1962-69		1962-69	1970-74	1962-69	
Cotton	1962-69		1962-69	1970-74	1962-69	1969-73
Knitted goods and hosiery	1962-69		1962-69		1962-69	
Paper industry and paper products industry						
Manufacture of paper and cardboard	1962-69	1969-73	1962-69	1970-74	1962-69	1968-73
Processing of paper and cardboard	1962-69	1969-73	1962-69	1970-74	1962-69	
Chemical industry						
Manufacture of pharmaceutical products	1962-69		1962-69	1970-74	1962-69	1969-73
Manufacture of machinery other than electrical machines						
Agricultural machinery and tractors	1962-69	1969-73	1962-69		1962-70	1968-74
Office machinery	1962-69	1969-73	1962-69		1962-70	1968-74
Textile machinery	1962-69	1969-73	1962-69		1962-70	1968-74
Equipment for civil engineering and machinery for the mechanical working of building materials	1962-69	1969-73	1962-69			
Hoisting and handling equipment	1962-69	1969-73	1962-69		1962-70	1968-74
Electrical engineering						
Electronic equipment, audio equipment, radio and television receivers	1962-69	1968-73	1962-71		1962-70	1970-74
Household electrical appliances	1962-69	1968-73	1962-71		1962-70	1970-74
Manufacture of transport equipment						
Cycles, motorcycles and power-assisted cycles	1962-69	1970-74	1962-69		1962-69	1970-72
Tyres for motor vehicles						
Certain car accessories (batteries, sparking plugs)	1968-74		1970-74		1968-74	
Food industries (excluding beverages)	1962-70	1968-73	1968-72		1962-71	
Beverages in general	1968-74		1968-72		1968-74	
Brewing	1968-74		1968-72			
Publishing					1970-75	
Press	1970-75		1970-76			

Country									
Netherlands		Belgium		United Kingdom		Ireland		Denmark	
		1962-69	1968-72	1968-73					
		1962-69	1968-72	1968-73					
		1962-69	1968-72	1968-73					
1963-69				1968-72					
1963-69	1968-74			1968-72					
1963-69	1970-73	1962-69	1970-73	1964-73				1968-73	
				1968-72					
		1969-76		1968-72					
				1968-72					
		1969-76		1968-72					
		1962-69		1968-75				1968-73	
		1962-69		1968-75				1968-73	
1963-69									
				1969-75					
1964-71		1967-72		1969-72		1968-73		1969-74	
1970-74		1969-74		1969-74					
1970-74		1969-74		1969-74					
				1970-75					
						1970-75		1970-76	

TABLE 11

Development of concentration in various countries and industries of the EEC *

Industry	Country	1970-72	1972-73	1972-74
Wool	F	+ [1]		
	B	+ [1]		
	UK	+ [1]	—	
Cotton	F	— [1]		
	I	+ [1]	=	
	B	— [1]	—	
	UK	+ [1]	=	
Paper and cardboard manufacturing and processing	B	+ [1]		= [2]
	F	=		=
	NL	= [1]		+
Paper and cardboard manufacturing	D	= [1]	=	
	I	= [1]	=	
Paper and cardboard processing	D	= [1]	=	
	F	= [1]	=	
	NL	= [1]		+
Pharmaceutical products	F	—	+	
	I	= [1]		
	NL	— [1]		+
	B	= [1]	—	
	UK	= [1]		
	DK	= [1]	=	
Agricultural machinery and tractors	F	+		= [2]
	D	+ [1]		
	UK	— [1]		
	I	=		—
Office machinery	D	+ [1]		
	I	=		=
	UK	+ [1]		
	B	=		— [2]
Textile machinery	D	= [1]		
	I	+ [1]	+	
	F	=		
	UK	+ [1]		
Equipment for civil engineering and machinery for the mechanical working of building materials	D	+ [1]		
	UK	+ [1]		

TABLE 11 (contd)

Industry	Country	1970-72	1972-73	1972-74
Hoisting and handling equipment	D	= [1]		
	I	— [1]		+
	UK	— [1]		
Electronic and audio equipment, radio and television receivers	D	+ [1]		—
	F	=		= [2]
	I	+ [1]	+	
	DK	— [1]	=	
Household electrical appliances	D	+ [1]	—	
	I	+ [1]	=	
	UK	+		+
	DK	= [1]	=	
	F	=		= [2]
Manufacture of cycles	D	— [1]		—
Manufacture of motorcycles and power-assisted cycles	D	= [1]		=
Tyres for motor vehicles	D	=		+
	F	=		—
	I	=		=
	UK	+		=
Food industries	D	+	=	
	F	= [1]		
	I	+ [1]		
	NL	+ [1]		
	B	= [1]		
	UK	— [1]		
Beverages	D	+	=	
	F	+	—	
	I	+		=
	UK	+		+
	DK	=		— [2]
of which:				
— Brewing	D	+	=	
	F	+		
	NL	=		=
of which: bottled beer	NL	—		=
draught beer	NL	+		+
	UK	+		+
	B			= [3]
— Non-alcoholic beverages	D	=	—	
	F	+		
	NL	=		+

TABLE 11 (contd)

Industry	Country	1970-72	1972-73	1972-74
— Alcoholic beverages other than beer:				
spirits	D	+	=	
wine-based aperitifs	D	+	—	
liqueur aperitifs	F	=		
potable spirit	F	—		
wines and spirits	UK	=		=
distilleries	NL			+
Publishing	UK	—		= [2]
	I	=		= [2]
Press	F	—		— [4]
	DK	= [5, 6]		= [4, 6]
	IRL	= [5, 7]		= [2, 7]

* Measured by the concentration ratio C_4 - percentage share of the four largest firms in the total sales of a given industry or market or of a representative sample of that industry or market.

[1] 1969 instead of 1970.
[2] 1975 instead of 1974.
[3] The share of the four largest firms is calculated on employment.
[4] 1976 instead of 1974.
[5] 1968 instead of 1970.
[6] The share of the four largest firms is calculated on circulation.
[7] The share of the four largest firms is calculated on number of copies printed.

(b) there is an *increase* (+) where the upward variation in share exceeds one percentage point of the total;

(c) there is a *fall* (—) where the downward variation in share exceeds one percentage point of the total.

With these definitions, the following conclusions have been reached:

(i) of a total of 83 cases between 1970 and 1972, there were 35 of stability (approximately 42%), 34 increases and 14 falls in the concentration ratio;

(ii) of a total of 24 cases from 1972 to 1973, the concentration ratio remained stable in 14 cases (approximately 58%), increased in 3 and fell in 7;

(iii) in a total of 36 cases from 1972 to 1974, the concentration ratio was stable in 17 cases (approximately 47%), rose in 11 and fell in 8.

285. Since 1972 the process of industrial concentration has been moving clearly towards stability and is in some cases even slowing down in those industries which are already highly concentrated. According to modern economic theory when the level of concentration passes a certain point in a given industry, a trend towards re-equilibrium emerges in the form of declining concentration; it has also been found that maturity in an industry generally entails a degree of stability.

However, it should be noted that certain groups have developed strategies of establishing interlocking shareholdings, of entering into specialization or market-sharing agreements, of setting up joint ventures, and so on. While such strategies have the effect of reducing the number and the independence of decision-making centres, this trend cannot be reflected in the statistics which are based on the assumption that each firm counted is autonomous.

Market concentration

286. A better understanding of the degree of concentration in a market can perhaps be reached by considering the following:

(i) the identification of the market for the product;

(ii) the share of the entire market accounted for by either the leading brand or the leading manufacturer;

(iii) the identity of the manufacturer or brand that is the market leader.

For the first time the Commission has attempted, in Table 12, to put forward a tentative list of markets that it considers to be characterized by a high level of concentration. In this table however markets where the market leader has a market share of less than 25% have not been considered.

287. The reasoning behind the choice of this threshold of 25% is based on two assumptions:

(i) a concentration ratio $C_4 = 100$;

(ii) a coefficient of disparity $4L = 100$. This means that there is a closely balanced oligopolistic situation in which just four firms of equal size share the market between them.[1]

Here, then, there is a simplifying assumption that where a given firm attains a 25% share of a given market, the trend towards oligopoly has begun. This is because smaller firms are likely to try to achieve a share equal to that of the market leader and this course may well lead to a four-firm market—incontestably an oligopoly.

The fact that the name of the firm or brand is given together with its market share will be especially useful in assessing the degree of concentration and market power of large diversified companies operating in a large number of different markets.

---

[1] Sixth Report on Competition Policy, point 292.

TABLE 12

List of markets where the market leader holds more than 25% of the total national market
(based on a small sample of the products and countries in these markets)

Ranking	C_1 (%)	Market	Industry	Country	Year	Brand leader or market leader
1	86	Sugar	ALI	DK	1975	De danske sukkerfabrikker
2	>85	Cola beverages	ALI	B	1976	Coca-Cola
2	>85	Spirits	ALI	DK	1976	
2	85	Beer	ALI	DK	1975	United Breweries [1]
2	85	Threads for needlework	TEX	F	1973	Dollfus Mieg
2	85	Chewing gum	ALI	F	1972	General Foods
7	84	Electric coffee machines	ELE	F	1975	Moulinex
8	82	Unworked filter paper	PAP	B	1975	Intermills
9	>80	Refrigerators and freezers	ELE	F	1974	Thomson - Brandt
9	80	Dishwashers	ELE	F	1974	Thomson - Brandt
9	80	Hairdryers	ELE	F	1975	Moulinex
9	80	Cotton sewing threads	TEX	F	1973	Dollfus Mieg
9	80	Automobile ignition systems	TRA	D	1974	Bosch
9	80	Floor detergent powders	CHI	I	1976	Spic-Span (Procter & Gamble)
9	80	White rum	ALI	UK	1974	Bacardi - Bass Charrington
16	75	Jute yarn and fabrics	TEX	F	1972	Agache-Willot
16	75	Concentrated milk, unsweetened	ALI	F	1972	Gloria (Carnation)
16	75	Baby foods	ALI	DK	1975	Nestlé
16	75	Sparking plugs (as originally fitted)	TRA	I	1974	Marelli
20	74	Coffee grinders	ELE	F	1975	Moulinex
21	73	Frozen foods	ALI	I	1973	Sages [2]
22	72	Cine film (8, super 8, etc.)	CHI	UK	1973	Kodak
23	71	Still films	CHI	UK	1973	Kodak
24	>70	Non-barbiturate sedatives	PHA	UK	1973	Roche
24	70	Chocolate powders	ALI	F	1972	Poulain
24	70	Breakfast cereals (flakes)	ALI	F	1972	Kellogg
24	70	Milk powder	ALI	UK	1973	Cadbury Schweppes
24	70	Dog and cat food	ALI	F	1972	Mars (Unisabi)
24	70	Instant coffee	ALI	F	1972	Nestlé
24	70	Condensed milk	ALI	F	1972	Lait Mont Blanc [3]
24	70	Tranquillizers	PHA	NL	1973	
24	70	Sulphite paper	PAP	B	1974	Denayer
33	69	Detergent for dishwashers	CHI	I	1976	Finish (Soilax) [4]
34	67	Margarine	ALI	UK	1973	Van der Bergh & Jurgens [2]
34	67	Detergent powders	CHI	UK	1975	Unilever
36	66	Canned spaghetti, etc.	ALI	UK	1973	H.J. Heinz
37	65	Kraft paper and the like	PAP	I	1972	Imports
37	65	Newsprint	PAP	B	1975	Imports
37	65	Vermouth	ALI	UK	1974	Martini
37	65	Corrugated board	PAP	B	1974	Imports
37	65	Sparkings plugs (replacements market)	TRA	UK	1975	Champion
42	63	Car batteries (as originally fitted)	TRA	I	1972	Marelli
43	61	Frozen foods	ALI	UK	1973	Unilever
44	>60	Stationery	PAP	UK	1972	Dickinson-Robinson Group
44	>60	Other hypertensive drugs	PHA	UK	1973	MSD
44	60	Bulbs and lamps for motor vehicles	TRA	D	1974	Osram
44	60	Margarines, oils and edible fats	ALI	D	1974	Unilever
44	60	Puffed cereals	ALI	F	1972	Kellogg
44	60	Whisky	ALI	UK	1974	Distillers
44	60	Canned soups	ALI	UK	1973	H.J. Heinz
44	60	Dietetic products and baby foods	ALI	F	1972	Fali [5]
44	60	Dried potato powder	ALI	F	1972	Nestlé
44	60	Margarine	ALI	F	1972	Astra-Calvé [2]
44	60	Canned meats	ALI	I	1973	Simmenthal
44	60	Sparking plugs	TRA	D	1974	Bosch
44	60	Malted beverages	ALI	F	1972	Sopad - Nestlé

TABLE 12 (contd)

Ranking	C_1 (%)	Market	Industry	Country	Year	Brand leader or market leader
57	58	Edible oils	ALI	F	1972	Groupe Lesieur
57	58	Processed cheese	ALI	F	1972	Bel
59	57	Prepared potatoes	ALI	D	1974	Pfanni-Werk
59	57	Car tyres	TRA	F	1975	Michelin
59	57	Analgesics	PHA	DK	1972	The Danish Pharmacies
59	57	Powered scythes	MAC	I	1974	BCS
63	56	Board from recycled paper	PAP	B	1975	Imports
63	56	General-purpose computers	MAC	I	1973	IBM
65	55	Soups	ALI	D	1974	Maggi [3]
65	55	Milk powder	ALI	F	1972	France-Lait
65	55	Instant chocolate drinks	ALI	F	1972	Nestlé
65	55	Canned soups	ALI	F	1972	Liebig
65	55	Mustard and condiments	ALI	F	1972	Générale Alimentaire
65	55	Mopeds and scooters 50 cc	TRA	I	1972	(Cavenham - UK)
65	55	Canned prepared beans	ALI	UK	1973	Piaggio
65	55	Lining materials	TEX	F	1972	Heinz
65	55	Newsprint	PAP	F	1974	Dollfus, Mieg & Cie
74	54	Sugar	ALI	UK	1973	Imports
75	53	Tranquillizers	PHA	DK	1972	Tate & Lyle
76	> 52	General-purpose computers	MAC	UK	1973	Dumex
76	> 52	General-purpose computers	MAC	D	1973	IBM
76	52	Car batteries (as originally fitted)	TRA	UK	1975	IBM
79	51	Electric cookers	ELE	DK	1973	Lucas
80	> 50	Cola beverages	ALI	NL	1974	Ernst Voss
80	> 50	Slimming preparations	PHA	UK	1973	Coca-Cola
80	> 50	Refrigerators	ELE	I	1973	Zanussi
80	> 50	Anti-angina drugs	PHA	UK	1973	ICI
80	> 50	'Plain-skin' hormones	PHA	UK	1973	Glaxo
80	> 50	Tranquillizers	PHA	UK	1973	Roche
80	50	Tinned salmon	ALI	UK	1973	John West [2]
80	50	Flax yarn	TEX	F	1972	Agache-Willot
80	50	Dietetic food preparations	ALI	I	1973	Plasmon [6]
80	50	Precooked meals	ALI	F	1972	Buitoni-Perugina
80	50	Chocolate biscuits	ALI	UK	1973	United Biscuits
80	50	Crisps	ALI	F	1972	Flodor
80	50	Ice-cream	ALI	D	1974	Langnese-Iglo [2]
80	50	Printing paper and stationery	PAP	B	1975	Imports
80	50	Electric vacuum cleaners	ELE	F	1975	Moulinex
80	50	Rice	ALI	F	1972	Cofrariz
96	49	Condensed and evaporated milks, sterilized creams	ALI	UK	1973	Carnation Foods
96	49	Vacuum cleaners	ELE	UK	1975	Hoover
98	48	General-purpose computers	MAC	B	1973	IBM
99	47	Dry-cleaning machines	ELE	DK	1973	Fisker og Nielsen
99	47	Biscuits	ALI	F	1972	Aliment Essentiel
99	47	Synthetic detergents	CHI	UK	1975	Unilever
102	46	Ice-cream	ALI	DK	1975	Frisko [2]
102	46	Canned meat (corned beef)	ALI	UK	1973	*Fray Bentos*
102	46	General-purpose computers	MAC	F	1973	IBM
105	45	Dried soups	ALI	F	1972	Maggi (Nestlé)
105	45	Spa waters	ALI	F	1972	Groupe Perrier
105	45	Special soups	ALI	UK	1973	Baxters
105	45	Cocoa (butter and powder)	ALI	NL	1973	De Zaan (Grace Cy.)
105	45	Motor vehicle lighting systems	TRA	D	1974	Westfalische Metallindustrie
105	45	Frozen foods	ALI	F	1972	Findus [3]
105	45	Beer	ALI	F	1972	BSN
105	45	Sedatives and hypnotics	PHA	NL	1973	Hoffmann-La Roche
113	44	Colour television sets	ELE	I	1973	Germany (FR)
113	44	Cardio-vascular drugs (non-reserpinic)	PHA	F	1972	
113	44	Canned fish	ALI	UK	1974	Unilever
116	43	Ice-cream	ALI	UK	1973	J. Lyons & Co.

TABLE 12 (contd)

Ranking	C_1 (%)	Market	Industry	Country	Year	Brand leader or market leader
116	43	Pasta	ALI	F	1972	Panzani-Milliat [4]
116	43	Mayonnaise	ALI	F	1972	Mayolande
119	42	Colour television sets	ELE	DK	1973	Philips Pope
119	42	School and students' exercise books	PAP	B	1975	Papeterie de Belgique
121	40	Kraft paper for large-capacity sacks	PAP	F	1975	Imports
121	40	Washing machines	ELE	UK	1975	Hoover
121	40	Condensed milk	ALI	UK	1973	Carnation Foods
121	40	Canned tuna	ALI	UK	1973	John West [2]
121	40	Sauces	ALI	F	1972	Générale Alimentaire (Cavenham UK)
121	40	Washing machines	ELE	I	1973	Zanussi
121	>40	Large and medium-sized EDP systems	MAC	I	1974	
121	>40	Vodka	ALI	UK	1974	Grand Metropolitan Ltd
121	>40	Electric cookers	ELE	I	1973	Zanussi
121	>40	Bottled beer	ALI	NL	1974	Heineken
121	>40	Computer terminals	MAC	I	1974	IBM
121	>40	Beer	ALI	NL	1974	Heineken
121	>40	Other vitamins	PHA	UK	1973	Ciba
121	>40	Professional calculating machines	MAC	I	1974	
121	>40	Scientific mini-calculators	MAC	I	1974	
121	>40	Ladies' stockings	TEX	UK	1974	Courtaulds
121	>40	Cold-cure preparations	PHA	UK	1973	B. Wellcome
121	40	General-purpose computers	MAC	NL	1973	IBM
121	40	Tomato ketchup	ALI	F	1972	Générale Alimentaire (Cavenham UK)
121	>40	Bronchial dilators	PHA	UK	1973	
121	40	Tufted carpets	TEX	F	1972	Agache-Willot
121	40	Industrial sewing yarns	TEX	F	1973	Dollfus Mieg & Cie
121	40	Dried and powdered soups	ALI	UK	1973	Unilever
121	>40	Cough remedies	PHA	UK	1973	Parke Davis
121	40	Brandy	ALI	UK	1974	Martell
121	40	Psychotropic drugs	PHA	NL	1973	Hoffmann-La Roche
121	>40	Baby foods (vegetables, meat, fruit)	ALI	D	1975	Hipp
121	>40	Woven yarn	TEX	UK	1968	Carrington
121	40	Car batteries	TRA	D	1974	Bosch
150	39	Breakfast cereals (flakes)	ALI	UK	1973	Kellogg
151	38	Sewing thread	TEX	UK	1972	Coats-Paton
151	38	Yoghurt	ALI	UK	1973	Express Dairy Co.
151	38	Knitting machines	MAC	I	1973	Germany (FR)
151	38	Television sets (all types)	ELE	F	1974	
151	38	Agricultural tractors	MAC	I	1974	Fiat
156	37	Diabetic drugs	PHA	NL	1973	Hoechst
156	37	Recorders	ELE	DK	1973	Philips
158	36	Washing machines	ELE	F	1975	
158	36	Vitamins	PHA	DK	1972	The Danish Pharmacies
158	36	Hyper-cholesterolaemic drugs	PHA	F	1972	
158	36	Fruit and vegetable condiments	ALI	F	1972	Générale Alimentaire (Cavenham UK)
158	36	Colour television sets	ELE	F	1974	
163	35	Cardboard	PAP	I	1972	Verona
163	35	Batteries (replacement market)	TRA	UK	1975	Chloride
163	35	Crackers and sandwich biscuits	ALI	UK	1973	ABM (Ass. Biscuits Man. Ltd)
163	35	Sparking plugs (replacement market)	TRA	I	1973	Marelli
163	35	Diuretic drugs	PHA	NL	1973	Hoechst
163	35	Cotton velour	TEX	F	1972	Agache-Willot
163	35	Fishing nets	TEX	F	1972	Agache-Willot
163	35	Tents	TEX	F	1972	Agache-Willot
163	35	Bed linen	TEX	F	1973	Dollfus Mieg & Cie
163	35	Antibiotics	PHA	NL	1973	Beecham

TABLE 12 (contd)

Ranking	C_1 (%)	Market	Industry	Country	Year	Brand leader or market leader
163	35	Envelopes	PAP	B	1975	Enveleo (Intermills)
163	35	Sanitary and household paper	PAP	F	1975	Béghin-Say
175	34	Car tyres (as originally fitted)	TRA	I	1974	Michelin
175	34	Gynaecological drugs	PHA	NL	1973	Organon
175	34	Baby foods	ALI	UK	1973	H.J. Heinz
175	34	Black and white television sets	ELE	UK	1975	Thorn
179	33	Electric cookers	ELE	UK	1975	Thorn
179	33	Snack foods	ALI	F	1972	Générale Alimentaire (Cavenham UK)
179	33	Oral diabetic drugs	PHA	DK	1972	Hoechst
179	33	Ice-cream	ALI	F	1972	Ortis
179	33	Psychotropic drugs (non-narcotic tranquillizers)	PHA	F	1972	
179	33	Sugar	ALI	I	1973	Eridania
179	33	Spinning machines	MAC	I	1973	Germany (FR)
179	33	Spa waters	ALI	DK	1976	
179	33	Pepper and spices	ALI	F	1972	Générale Alimentaire (Cavenham UK)
188	32	Canned meat	ALI	DK	1974	Jaka
188	32	Weaving machines	MAC	I	1973	Suisse
188	32	Newsprint	PAP	I	1972	Timavo/Arbatax
188	32	Cardboard	PAP	F	1975	Imports
192	31	Refrigerators and freezers	ELE	UK	1975	Thorn
192	31	Liquid detergents	CHI	I	1976	Sole Piatti
192	31	Combine harvesters	MAC	I	1974	Laverda
192	31	Woollen knitting yarn	TEX	F	1974	Lainière de Roubaix
192	31	Carded wool	TEX	F	1974	Peignage Amédée
192	31	Sulfonamides	PHA	DK	1972	Hoffmann-La Roche
198	>30	Cardboard	PAP	UK	1972	Unilever
198	>30	Anti-tubercolosis preparations	PHA	UK	1973	
198	>30	Oral diabetic drugs	PHA	UK	1973	Pfizer
198	>30	Systemic antibiotics	PHA	UK	1973	
198	>30	Parkinson anticonvulsants	PHA	UK	1973	Geigy
198	>30	Systemic anti-inflammatory drugs	PHA	UK	1973	MSD
198	>30	Dishwashers	ELE	D	1972	Miele
198	>30	Draught beer	ALI	NL	1974	Heineken
198	30	Cocoa powder	ALI	F	1972	Nestlé
198	>30	Non-board packaging materials	PAP	UK	1972	DRG
198	30	Contraceptives	PHA	DK	1972	Schering
198	>30	Broad-spectrum antibiotics	PHA	UK	1973	Beecham
198	>30	Hematinic drugs	PHA	UK	1973	
198	>30	Diuretic drugs	PHA	UK	1973	Hoechst
198	>30	Contraceptives	PHA	UK	1973	Schering
198	>30	Anti-nauseants	PHA	UK	1973	
198	>30	Gramophones	ELE	DK	1973	Bang & Olufsen
198	30	Lemonades	ALI	NL	1974	Heineken
198	30	Batteries (replacement market)	TRA	I	1972	FAR
198	>30	General analgesic drugs	PHA	F	1972	
198	>30	Non-narcotic analgesics	PHA	UK	1973	
198	>30	Laxatives	PHA	UK	1973	
198	30	Radios	ELE	DK	1973	Bang & Olufsen
198	30	Peripheral vasodilators	PHA	F	1972	
198	>30	Straight antacids	PHA	UK	1973	Boehringer
198	>30	Knitted fabric	TEX	UK	1968	Courtaulds
198	30	Antibiotics (penicillin and derivatives)	PHA	F	1972	
198	30	Jonge Genever (Holland's gin)	ALI	NL	1974	Bols
226	29	Motorcycles	TRA	D	1974	BMW
227	28	Detergents for washing machines	CHI	I	1976	Dash (Procter & Gamble)
227	28	Mushrooms	ALI	F	1972	Euro-conserves
227	28	Sugar	ALI	F	1972	Béghin-Say
227	28	Frozen foods	ALI	DK	1974	FDB

TABLE 12 (contd)

Ranking	C_1 (%)	Market	Industry	Country	Year	Brand leader or market leader
227	28	Lager beer	ALI	UK	1974	Bass Charrington
227	28	Margarine	ALI	DK	1974	Unilever
227	28	Psychopharmacological drugs	PHA	DK	1972	Dumex
234	27	Canned meats for serving hot	ALI	UK	1973	Fray Bentos
234	27	Black and white television sets	ELE	DK	1973	Bang & Olufsen
234	27	Non-alcoholic beverages	ALI	F	1974	Perrier
234	27	Fishing industry	ALI	D	1974	Nordsee [2]
234	27	Tyres (as originally fitted)	TRA	UK	1975	Dunlop - Pirelli
234	27	Rotary cultivators	MAC	I	1974	MPM - *Sicilia*
240	26	Tyres (replacement market)	TRA	UK	1976	Dunlop - Pirelli
240	26	Colour television sets	ELE	UK	1975	Thorn
240	26	Anti-rhumatismatic drops	PHA	F	1972	
240	26	Fruits in syrup	ALI	F	1972	Roussillon Alimentaire
244	25	Car tyres (replacement market)	TRA	I	1974	Michelin
244	25	Ice-cream	ALI	I	1973	Algel-Findus [2]

[1] Tuborg-Carlsberg.
[2] Controlled by Unilever.
[3] Controlled by Nestlé.
[4] Economics Laboratory Inc. Delaware (USA).
[5] Controlled by BSN - Gervais - Danone.
[6] Controlled by H.J. Heinz - USA.

Abbreviations

(a) *Industry*

ALI = Food and beverages
CHI = Chemicals
ELE = Electrical appliances (radio and TV sets, record players, tape decks, etc; household electrical appliances)
MAC = Non-electrical machinery (agricultural, office, textile, building, hoisting and handling machines)
PAP = Paper manufacturing and processing
PHA = Pharmaceuticals
TEX = Textiles
TRA = Vehicles, aircraft, etc.

(b) *Country*

B = Belgium
D = Federal Republic of Germany
DK = Denmark
F = France
I = Italy
NL = Netherlands
UK = United Kingdom

In the case of certain markets on which imports predominate, reference is made simply to 'Imports', or the name of the country of origin is given, rather than the name of the leading firm.

288. Table 12 has two purposes:

(i) first, to show the importance and number of dominant positions, ranking the various markets by decreasing order of share held by the market leader;

(ii) and then to highlight the fact, giving actual figures, that markets in the several member countries are already often so highly oligopolistic that any further increase in the degree of concentration would seriously endanger competiton.

What is particularly striking is the number of national markets in which the market leader controls more than 50%; this is the case in 100 or so of the 250 markets listed in Table 12 and would seem to indicate that dominant market power is widespread.[1]

289. Table 12 is incomplete and provisional for two reasons:

(i) The studies so far carried out by or for the Commission have covered only a sample of industries, and they are not necessarily the most highly concentrated; a large number of oligopolistic and even monopolistic markets have not yet been surveyed.

(ii) In several of the industries surveyed, business secrecy made it impossible to establish the share held by the market leader, so that the concentration ratio reflecting the four top firms together (C_4) or the coefficient of disparity (4L)[2] had to suffice. These markets had to be left out of the table. Apart from that, many of the figures are only estimates, and in many cases it was not possible to give an exact figure but only an approximation, e.g. more than 40%.

290. The information in Table 12 may be useful to firms planning to penetrate markets that appear profitable precisely because of the existence of dominance. The arrival of such firms on these markets would activate the competitive mechanism and hence lead to price cutting which would benefit the consumer.

Lastly, research has shown that there is little change over the years in dominant market positions. It is nearly always the same firm that continues to maintain the position of leader in a market, and sometimes in the same market in several member countries.

Regional and local concentration: the example of the daily press

291. Since the degree of concentration has to be measured primarily in market terms, the geographical scope of the market has to be determined. An empirical yardstick for

[1] This definition of dominant market power is not relevant to the rules of competition in the EEC Treaty.

[2] Sixth Report on Competition Policy, point 292.

TABLE 13
Daily press
Regional or local concentration: France 1975-76

Ranking	Indices				City or region	Number of copies sold (1 000)	Market leader
	C_1 (%)	C_2 (%)	C_3 (%)	C_4 (%)			
1	79	83	86	87	Auvergne	264	La Montagne
2	69	75	78	81	Aquitaine	442	Sud-Ouest
3	68	76	81	84	Midi Pyrénées	329	La Dépêche du Midi
4	61	72	79	85	Franche Comté	145	Est-Républicain
4	61	87	90	92	Bretagne	515	Ouest-France
6	58	80	84	87	Languedoc Roussillon	297	Midi-Libre
7	48	66	77	80	Centre	386	Nouvelle République du Centre Ouest
8	46	84	88	90	Rhône Alpes	731	Le Progrès
9	43	55	65	69	Région Nord Picardie	877	La Voix du Nord
10	42	55	65	75	Champagne Ardenne	245	L'Union
10	42	58	74	85	Pays de Loire	489	Ouest-France
12	35	64	71	75	Haute et Basse Normande	426	Paris Normandie
13	33	62	70	77	Provence Côte d'Azur Corse	764	Le Provençal
14	32	54	72	83	Limousin	149	Le Populaire du Centre
14	32	55	69	78	Poitou Charente	237	Nouvelle République du Centre Ouest
16	27	42	57	70	Région Parisienne	1 727	France-Soir
17	26	52	69	84	Alsace Lorraine	763	Les Dernières Nouvelles d'Alsace
18	15	30	44	57	Bourgogne	279	Le Bien Public

TABLE 14

Daily press

Regional or local concentration: Germany 1975

Ranking	Indices				City or region	Number of copies sold (1 000)
	C_1 (%)	C_2 (%)	C_3 (%)	C_4 (%)		
1	99	100	—	—	Kassel	55
1	99	100	—	—	Karlsruhe	61
1	99	100	—	—	Hagen	57
1	99	100	—	—	Mannheim	70
5	98	100	—	—	Braunschweig	70
6	95	100	—	—	Hannover	145
7	94	99	100	—	Bremen	203
8	93	95	98	100	Augsburg	58
9	90	100	—	—	Bochum	109
10	87	100	—	—	Wüppertal	86
10	87	100	—	—	Köln	314
12	86	93	98	100	Wiesbaden	68
12	86	93	97	99	Stuttgart	148
12	86	88	89	100	Kiel	79
15	85	94	100	—	Aachen	53
16	77	94	100	—	Mülheim	51
16	77	97	100	—	Hamburg	711
18	76	89	97	100	Berlin	855
18	76	100	—	—	Bielefeld	81
20	75	100	—	—	Bottrop	54
21	71	88	99	100	Mönchen-Gladbach	54
21	71	87	100	—	Gelsenkirchen	82
23	70	100	—	—	Oberhausen	57
24	69	92	100	—	Essen	180
25	66	83	98	99	Nürnberg	148
26	64	99	100	—	Lübeck	86
27	62	92	100	—	Duisburg	140
28	59	75	94	100	Krefeld	58
29	57	84	100	—	Bonn	79
30	55	100	—	—	Münster	59
31	53	100	—	—	Dortmund	172
31	53	87	100	—	Frankfurt	216
33	44	76	91	100	Düsseldorf	219
34	29	56	83	100	München	561

TABLE 15

Daily press

Regional or local concentration: Denmark 1976

Ranking	Indices				City or region	Number of copies sold (1 000)	Market leader
	C_1 (%)	C_2 (%)	C_3 (%)	C_4 (%)			
1	54	70	—	89	Funen plus surrounding islands	141	Fynske Bladfond
2	53	69	—	85	West Jutland	75	Vestkysten
3	46	86	—	94	Metropolitan Copenhagen	520	Berlingske Hus
3	46	79	—	98	Bornholm	19	Bornholms Tid.
3	46	75	—	98	Lolland-Falster	46	Lolland-Falster Folketid'de
6	45	66	—	88	South Jutland	96	Berlingske Hus
7	39	57	—	72	North Jutland	178	Aalborg Stifts.
8	29	52	—	82	North Zealand plus Samsø	165	Politikens Hus
9	28	47	—	68	East Jutland	251	Aarhuus Stifts.
10	27	43	—	69	Mid Jutland	116	De Bergske Bl.
11	21	41	—	78	South Zealand	117	Næstved Tid'de

TABLE 16

Daily press

Regional or local concentration: Ireland 1975

Ranking	Indices				City or region	Number of copies sold (1 000)	Market leader
	C_1 (%)	C_2 (%)	C_3 (%)	C_4 (%)			
1	75	88	95	100	Part of Munster including Cork	78	Cork Examiner
2	50	75	95	100	Dublin	98	Irish Independent
2	50	75	95	100	Rest of Leinster	98	Irish Independent
2	50	75	95	100	Rest of Munster, Connacht and part of Ulster	117	Irish Independent

this is that where the same market leaders dominate a given market—with similar market shares—in several cities or regions of a given country, it can be deduced that we are considering a single, national market. But where the identities and shares of the leading firms in control of the relevant market change from one city or region to another in the same country, the conclusion is that there are a number of clearly distinct local markets. Such is the case of a specific product—the daily press.

292. The importance that concentration in the market for the daily press can have on the dissemination of news has led the Commission to undertake a survey of this industry in the various countries of the EEC. The first results for the following countries are shown in Table 13 for France (1975-76), Table 14 for Germany (1975), Table 15 for Denmark (1976), and Table 16 for Ireland (1975).

The tables show the shares of each of the four largest firms and as a means of assessing the relative size of each regional or local market they also show the number of copies sold.

In all the four countries surveyed, dominance, with the market leaders having a share of more than 50% of the daily press, is widespread either regionally or locally.[1]

If Table 14, on the situation in Germany, slightly understates the position, this is because it reports only on cities where more than 50 000 copies are sold, whereas the vast majority of dominant positions—and frequently, cases of virtually absolute monopoly—are found in cities where sales total less than 50 000 copies.

293. It has also become clear that the danger that monopoly positions will emerge in markets where there is unlikely to be much trading (such as the daily press) is more serious and more immediate than in markets where there is the possibility of international as well as domestic competition. Were it not for trade between Member States, dominant positions in national, regional or even local markets would be still more frequent, stronger and less susceptible to change.

§ 3 — The relationship between the size of a firm and its performance

Measures of efficiency

294. In the previous report (points 297 to 305) the Commission considered the relationship between the size of a firm and its performance, highlighting one particular fact—

[1] This definition of dominant market power is not relevant to the rules of competition in the EEC Treaty.

the largest firms are hardly ever among the most profitable nor, usually, among the most efficient.

These conclusions are based on an econometric method[1] designed to estimate the performance of a firm from its reported return on equity, and on the application of this method to all Community-wide industrial activities represented by a sample of 292 industrial firms. These firms were selected from the 1975 rankings published by the magazine *Vision*.[2]

The method itself is based on:

(i) two size variables (01: sales; 07: own capital);

(ii) two performance variables (04: net profit; 05: cashflow);[3]

(iii) four ratios obtained from these variables, which are:

$$R_1 = \frac{\text{net profit}}{\text{sales}} \frac{(04)}{(01)} \text{ for a given firm, expressed as a percentage,}$$

$$R_2 = \frac{\text{net profit}}{\text{own capital}} \frac{(04)}{(07)} \text{ for a given firm, expressed as a percentage,}$$

$$R_3 = \frac{\text{cash flow}}{\text{sales}} \frac{(05)}{(01)} \text{ for a given firm, expressed as a percentage,}$$

$$R_4 = \frac{\text{cash flow}}{\text{own capital}} \frac{(05)}{(07)} \text{ for a given firm, expressed as a percentage.}$$

By adding together each firm's ranking on each of these four performance ratios, we obtain the profitability score for each firm expressing its degree of profitability compared with the other sample firms.

The measure of efficiency applied to the food industry in the Western nations

295. The analysis of industry in the EEC in general (Sixth Report on Competition Policy, points 299 to 303) cannot be updated in this report, as it is necessary to study a period that is long enough to reveal meaningful trends.

---

[1] Commission, *'Methodology of concentration analysis applied to the study of industries and markets'*, September 1976, points 32 to 39.

[2] Vision, 52 rue Taitbout, 75009 Paris.

[3] The symbols 01, 07, 04 and 05 relate to the codes used by the Commission for computer calculation of the various variables. However the definitions of these variables as given by *Vision* will not necessarily coincide with those used for the Commission's specific industry studies, which are based in particular on net profit (04) and cashflow (05) *before* tax (on income and capital), dividends, etc.

TABLE 17

The twenty most profitable food firms in the Western nations, 1974
(Sample: n* = 64)

Profitability score		Ratios								Ranking by variable				Firm	Country
		$R_1 = \frac{04}{01}$		$R_2 = \frac{04}{07}$		$R_3 = \frac{05}{01}$		$R_4 = \frac{05}{07}$		01 Sales	04 Net profit	05 Cash flow	07 Own capital		
Ranking	Value	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)						
1	23	5	7.77	4	19.18	7	10.10	7	24.94	10	3	3	3	Coca-Cola	USA
2	26	8	7.13	3	20.40	9	8.85	6	25.31	34	17	22	31	Kellogg	USA
3	28	6	7.52	6	18.70	8	9.99	8	24.86	33	14	20	26	Beecham	UK
4	44	3	8.24	9	15.88	4	10.71	28	20.64	29	9	12	15	National Distillers	USA
5	47	15	5.59	5	18.80	17	7.22	10	24.31	36	26	31	37	Heublein Inc.	USA
6	51	11	6.01	13	15.54	10	8.68	17	22.42	46	28	30	36	Jos. Schlitz Brewing Co.	USA
7	61	14	5.66	12	15.57	14	7.88	21	21.66	48	31	33	39	Castle & Cook	USA
8	64	23	4.20	11	15.70	21	6.51	9	24.32	12	10	8	16	PepsiCo	USA
9	76	25	3.86	8	16.65	31	5.46	12	23.55	8	6	7	14	CPC International	USA
10	77	1	14.82	27	12.69	1	17.88	48	15.32	64	20	27	20	Hiram Walker-Gooderham	CAN
11	81	26	3.76	13	15.54	28	5.57	14	23.06	14	15	14	23	General Mills	USA
12	82	22	4.22	10	15.85	27	5.70	23	21.39	15	13	17	21	Carnation	USA
13	88	13	5.81	25	13.65	13	8.08	37	18.98	23	11	11	12	Campbell Soup	USA
13	88	12	5.90	26	13.01	12	8.38	38	18.48	59	39	45	45	Scottish Newcastle Breweries	UK
15	95	17	4.53	32	11.90	15	7.72	31	20.28	25	22	16	18	Anheuser-Busch	USA
15	95	34	3.06	7	17.15	41	4.20	13	23.50	35	37	44	49	Oscar Mayer & Co.	USA
15	95	4	8.12	41	10.14	3	12.35	47	15.43	45	18	19	10	Allied Breweries	UK
18	97	29	3.39	19	14.38	33	5.37	16	22.78	18	25	23	28	Standard Brands	USA
19	99	19	4.47	19	14.38	25	6.04	36	19.41	24	21	26	25	Heinz	USA
20	104	21	4.38	29	12.45	20	6.92	34	19.65	53	41	40	44	Arthur Guinness	UK

TABLE 18

The twenty largest food firms in the Western nations, ranked by sales, 1974
(Sample: n* = 64)

Name	Sales (million dollars)	Ranking by sales	Ranking in profitability score
Unilever (UK/NL)	13 667	1	36
Nestlé Alimentana (CH)	5 603	2	31
Swift (Esmark) (USA)	4 616	3	46
Kraftco (USA)	4 471	4	49
Beatrice Foods (USA)	3 541	5	23
Ralston Purina (USA)	3 073	6	26
General Foods (USA)	2 987	7	23
CPC International (USA)	2 570	8	9
Associated British Foods (UK)	2 526	9	28
Coca-Cola (USA)	2 522	10	1
United Brands (AMK) (USA)	2 230	11	53
PepsiCo (USA)	2 081	12	8
Gervais Danone (F)	2 035	13	47
General Mills (USA)	2 000	14	11
Carnation (USA)	1 887	15	12
CSR (Colonial Sugar Refining) (AUS)	1 680	16	44
Ranks Hovis McDougall (UK)	1 652	17	59
Standard Brands (USA)	1 648	18	18
Norton Simon (USA)	1 600	19	29
Tate & Lyle (UK)	1 552	20	33

On the other hand it can be especially useful to apply the above analytic method to specific industries, particularly on a national basis. This is all the more interesting as the structure of firms in a given industry, taken at national level, is likely to be more closely comparable than at worldwide level, where industry is inevitably much more highly differentiated and therefore much more heterogeneous.

296. Table 17 replaces Table 11 of the Sixth Report on Competition Policy (point 304). It gives the main characteristics for the twenty most profitable food firms in the world ranked in decreasing order of the measured results according to the ranking held by each firm in the profitability score.

The profitability score ranking for each sample obtained by each of the twenty top firms in the sales ranking is given in Table 18.

Comparison of Tables 17 and 18 shows that American firms heavily dominate the food industry worldwide, since they account for fifteen out of twenty in the ranking of most profitable firms and twelve out of twenty in the ranking of firms in decreasing order of sales.

Among these American firms there are six—CPC International, Coca-Cola, PepsiCo, General Mills, Carnation and Standard Brands—that appear in both rankings (profitability and size measured by sales).

Profitability and size of firm in the United Kingdom

297. The analysis of the relation between size and profitability is based on the figures given in Tables 19 to 23[1] for the United Kingdom.

Table 19 lists the twenty most profitable food firms in the United Kingdom in 1970, taken from a sample of 85 food firms excluding those that are primarily in the beverage business. The profitability ratios in Table 19 are not the same as those in Table 17, since the latter refer to *net* profit *after tax* and *net* cash flow whereas all research in the United Kingdom has been based on net profit *before* tax and *gross* cash flow (gross income).

The rate of corporate income tax tends to vary around 50%, so that ratios calculated on pretax profits are roughly double the ratios on taxed profits. In general terms it would be better if research into business performance was based on figures not affected by tax considerations.

---

[1] Explanatory notes to Tables 19, 20, 21 and 22: Ratios (1): Ratios are calculated from net profit (04) *before tax* and *gross* cash flow (05); IN (2): The IN ratio is calculated between own capital (07) and sales (01) for each firm *i* in the table (i = 1, 2, 3 ...) so as to reveal the degree of (own) capital intensity of each of these firms in relation to its sales.

TABLE 19

The twenty most profitable food firms in the United Kingdom, 1970
(Sample: n* = 85)

Profitability score		Ratios								Ranking by variable				Firm	IN (2) : $\frac{07\ x_1}{01\ x_1} \times 100$
		$R_1 = \frac{04}{01}$		$R_2 = \frac{04}{07}$		$R_3 = \frac{05}{01}$		$R_4 = \frac{05}{07}$		01 Sales	04 Net profit	05 Cash flow	07 capital Own		
Ranking	Value	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)						
1	8	2	16.89	1	61.84	3	18.62	2	68.17	72	38	48	69	Walkers Crisps	27.3
2	22	4	14.46	7	43.50	4	17.69	7	53.22	67	37	39	56	Warburtons	33.2
3	24	5	13.97	6	43.52	5	16.24	8	50.59	35	14	19	27	Kellogg Co. of Great Britain	32.1
4	31	12	8.93	3	53.05	13	10.98	3	65.19	52	34	38	60	Scot Meat Products	16.8
5	34	1	17.60	14	31.05	2	21.21	17	37.42	56	27	28	39	Weetabix	56.7
6	35	13	8.36	4	47.55	14	10.73	4	61.05	65	49	52	74	Haverhill Meat Products	17.6
7	40	9	9.89	10	34.66	9	12.02	12	42.11	57	39	45	54	Carnation Foods Co.	28.5
8	42	6	11.23	15	30.57	6	14.50	15	39.47	83	62	67	82	J.W. Thornton	36.7
9	49	21	6.88	2	61.24	25	8.15	1	72.52	8	5	5	14	Brooke Bond Liebig	11.2
10	54	16	7.27	9	34.83	19	9.31	10	44.62	63	51	54	67	O. P. Chocolate	20.9
11	66	18	7.13	10	34.66	24	8.22	14	39.92	49	35	40	50	Clover Dairies	20.6
12	67	14	7.78	17	29.27	17	9.55	19	35.92	48	31	36	43	Quaker Oats	26.6
13	74	19	6.96	8	36.85	34	7.67	13	40.59	51	42	49	57	Marshall's Universal	18.9
14	75	11	9.34	23	22.92	10	11.69	31	28.67	19	9	10	12	H.J. Heinz & Co.	40.8
14	75	7	10.93	25	22.52	7	12.65	36	26.06	78	57	63	64	R. Paterson & Sons	48.5
16	82	22	6.44	19	25.93	20	8.59	21	34.58	76	63	69	78	Sayers (Confectioners)	24.8
17	83	17	7.24	30	19.88	11	11.38	25	31.26	54	47	41	47	Cranfield Bros.	36.4
18	84	36	5.44	5	43.75	38	7.53	5	60.57	14	11	13	21	Mars	12.4
19	96	20	6.93	34	19.67	15	10.66	27	30.27	81	76	78	80	Midland Cattle Products	35.2
20	108	43	4.60	13	32.09	43	6.73	9	46.98	2	2	2	5	Associated British Foods	14.3
Average			9.41		36.47		11.70		45.50						28.0

Table 20 gives the twenty most profitable drinks firms in the United Kingdom in 1974, taken from a sample of 58 firms. The top firm in profitability terms (Macallan-Glenlivet) appears right at the bottom of the size ranking, whereas the largest firm (the diversified Grand Metropolitan Group) ranks last but one in terms of its profitability score.

Two further tables complete this picture of the profitability of firms in various industries in the UK:

(i) Table 21 concerns food distribution (1974);

(ii) Table 22 concerns household electrical appliances (1975).

298. Taken together, Tables 19 to 22 suggest two series of comments on the question of capital intensity (IN figures):

(i) It is not necessarily industries with the highest degree of (own) capital intensity that are the most profitable. Food distribution (Table 21) would seem to be more profitable than the other industries considered, which have a far higher degree of capital intensity.

(ii) Within each industry, it is not necessarily the firms with the highest degree of (own) capital intensity that rank highest in performance.

It can be seen from the various rankings that the largest firms—as measured by sales—are hardly ever the most profitable.

299. Table 23 completes the picture painted by Tables 19 to 22. The ranking approach does not reflect the difference between the size of the largest firms and the size of the small firms, in other words the size disparity. This disparity can be defined in the following way:

(i) the sales of a given firm i expressed as a percentage of the aggregate sales (01) of the largest firm in the sample, the formula being $\frac{01\ x_i}{01\ x_1} \times 100$;

(ii) the own capital of a given firm i expressed as a percentage of the aggregate own capital (07) of the largest firm in the sample, the formula being $\frac{07\ x_i}{07\ x_1} \times 100$.

The table also indicates the number of firms constituting each sample and the corresponding values of sales (01) and own capital (07) for the top firm.

In view of the large number of firms in the food industry sample ($n^* = 85$), only the twenty most profitable firms have been given. In general, as has already been seen, these tend to be smaller or medium-sized firms.

TABLE 20

The twenty most profitable beverages firms in the United Kingdom, 1974
(Sample: n* = 58)

Profitability score		Ratios								Ranking by variable				Firm	IN (2) : $\frac{07\ x_i}{01\ x_i} \times 100$
		$R_1 = \frac{04}{01}$		$R_2 = \frac{04}{07}$		$R_3 = \frac{05}{01}$		$R_4 = \frac{05}{07}$		01 Sales	04 Net profit	05 Cash flow	07 Own capital		
Ranking	Value	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)						
1	14	2	29.3	5	27.1	1	33.5	6	30.9	58	53	54	56	Macallan-Glenlivet	112.5
2	15	4	24.3	3	29.0	4	26.8	4	31.9	30	15	15	23	Highland Distilleries Co.	84.26
3	24	1	30.1	7	24.8	2	31.9	14	26.3	14	9	9	10	Hiram Walker & Sons	121.33
4	40	10	18.3	11	23.4	8	21.9	11	26.9	25	19	19	21	Glenlivet Distillers	77.87
5	47	25	11.6	4	27.4	16	15.0	2	35.2	24	26	25	38	North British Distillery Co.	42.19
6	48	20	12.4	6	26.2	17	14.9	5	31.4	8	6	6	8	Scottish & Newcastle Brew.	47.47
7	50	11	18.0	14	22.8	10	20.6	15	26.2	32	23	23	27	Mansfield Brewery Co.	78.64
7	50	8	19.4	10	23.7	11	19.9	21	24.4	41	27	29	35	Boddingtons' Breweries	80.52
9	55	13	15.9	17	22.5	13	19.0	12	27.0	16	13	13	15	Wolverhampton & Dudley (Brew.)	70.37
10	56	7	20.8	16	22.6	9	21.1	24	23.8	56	40	44	50	Oldham Brewery Co.	94.44
11	58	6	21.5	21	21.3	6	23.5	25	23.4	51	33	34	40	Hardys & Hansons	102.00
12	59	28	11.4	1	44.0	29	13.3	1	51.4	39	35	37	55	Tomatin Distillers Co.	25.6
13	63	9	19.0	24	20.4	7	22.2	23	23.8	26	17	17	19	Home Brewery	93.3
14	65	20	12.4	12	23.1	20	14.4	13	26.7	19	22	22	24	Greene, King & Sons	53.8
15	68	16	14.2	19	21.8	14	16.3	19	24.8	46	35	38	43	Burtonwood Brewery Co.	65.2
16	75	3	26.8	28	18.6	3	26.8	41	18.6	57	52	57	53	Robert MacNish & Co.	144.4
17	80	23	12.4	15	22.7	24	13.6	18	25.0	2	1	1	2	The Distillers Co.	54.5
18	82	12	17.2	27	18.7	12	19.3	31	21.0	22	18	20	17	Marston, Thompson & Evershed	91.7
19	89	39	9.2	2	30.1	45	10.3	3	33.9	50	55	56	57	St Austell Brewery Co.	29.4
20	90	22	12.4	18	22.5	28	13.4	22	24.3	43	39	41	46	S.A. Brain & Co.	54.9
Average			17.8		25.8		19.9		27.8						76.2

TABLE 21

The twenty most profitable food distribution firms in the United Kingdom, 1974
(Sample: n* = 40)

Profitability score		Ratios								Ranking by variable				Firm	IN (2) : $\frac{07\ x_i}{01\ x_i} \times 100$
		$R_1 = \frac{04}{01}$		$R_2 = \frac{04}{07}$		$R_3 = \frac{05}{01}$		$R_4 = \frac{05}{07}$		01 Sales	04 Net profit	05 Cash flow	07 Own capital		
Ranking	Value	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)						
1	9	2	6.53	2	83.03	2	6.89	3	87.63	25	9	14	27	Kwik Save Discount Group	7.9
2	17	4	4.49	5	53.93	3	5.99	5	65.38	35	22	26	31	Bejam Group	9.2
3	30	6	4.10	8	45.92	6	4.87	10	54.64	24	16	21	23	F.J. Wallis	8.9
4	39	5	4.12	12	40.63	7	4.86	15	47.96	30	20	23	25	Wm. Morrison Supermarkets	10.1
4	39	3	4.60	15	34.36	4	5.78	17	43.24	1	1	1	2	Tesco Stores (Holdings)	13.4
6	42	16	2.29	1	90.91	23	2.49	2	98.75	10	7	8	26	Union International (Dist.)	2.5
7	44	11	3.26	9	43.90	13	4.03	11	54.27	31	26	27	32	Lennons Group	7.4
7	44	18	2.22	4	55.05	18	3.14	4	78.01	4	4	4	6	Assoc. British Foods (Dist.)	4.0
9	57	13	2.63	11	41.51	19	3.12	14	49.18	17	15	20	21	Kinloch (Provisions Merchants)	6.3
10	59	27	1.52	3	76.90	28	2.20	1	111.42	37	34	33	39	Morgan Edwards	2.0
11	61	20	2.02	7	47.10	25	2.34	9	54.72	13	12	16	20	Nurdin & Peacock	4.3
11	61	12	2.75	16	29.47	14	3.62	19	38.81	16	10	13	13	Matthew Holdings	9.3
11	61	1	9.05	26	20.41	1	10.92	33	24.63	40	27	28	22	Walter Duncan & Goodricke	44.3
14	64	24	1.80	6	49.50	27	2.22	7	61.00	29	31	30	36	Hillards	3.7
15	68	10	3.30	22	25.87	12	4.21	24	32.97	28	21	24	19	Gateway Securities	12.8
16	69	14	2.61	20	27.24	14	3.62	21	37.82	32	29	29	28	Amos Hinton & Sons	9.6
17	77	18	2.22	23	24.83	16	3.40	20	38.03	14	13	11	11	Safeway Food Stores	8.9
18	79	28	1.39	13	38.38	30	1.99	8	54.73	8	11	9	15	Linfood Holdings	3.6
19	81	8	3.81	31	14.23	8	4.81	34	18.00	23	18	18	7	Baxters (Butchers)	26.7
20	83	25	1.71	10	41.87	32	1.96	16	47.81	34	32	32	37	Joseph Stocks & Sons (Holdings)	4.1
Average			3.3		44.3		4.1		55.0						9.95

TABLE 22

The twenty most profitable manufacturers of electrical appliances in the United Kingdom, 1975
(Sample: n* = 18)

Profitability score		Ratios								Ranking by variable				Firm	IN (2) : $\frac{07\ x_1}{01\ x_1} \times 100$
		$R_1 = \frac{04}{01}$		$R_2 = \frac{04}{07}$		$R_3 = \frac{05}{01}$		$R_4 = \frac{05}{07}$		01 Sales	04 Net profit	05 Cash flow	07 Own capital		
Ranking	Value	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)	Ranking	Rate (%)						
1	14	5	11.64	1	70.44	7	13.60	1	82.32	6	6	7	10	Hoover	16.51
2	18	7	10.91	2	27.74	6	14.35	3	35.00	18	13	14	17	Pifco	39.60
2	18	8	9.85	5	22.99	3	18.33	2	43.70	2	2	2	3	Thorn	42.83
4	19	2	15.46	10	14.58	1	29.03	6	27.38	8	7	6	6	Rediffusion	106.07
5	21	3	12.99	6	22.11	4	15.12	8	25.73	10	8	9	8	BSR	58.75
6	26	4	12.50	7	20.87	5	14.97	10	24.98	1	1	1	1	GEC	59.91
7	28	6	11.05	4	23.19	9	12.11	9	25.42	11	9	10	9	Electrolux	47.66
8	29	11	8.41	3	25.30	11	10.19	4	30.65	15	12	12	15	Lec	33.33
8	29	1	20.60	12	12.95	2	23.42	14	14.73	5	3	3	2	Rank	158.97
10	32	9	9.64	8	20.52	8	13.15	7	25.95	7	10	8	7	Decca	50.62
11	40	10	8.97	9	16.86	10	10.88	11	20.45	3	4	4	4	Tube Investments	53.17
12	47	15	2.48	13	12.44	14	6.08	5	30.44	16	15	16	18	Colston	20.16
13	48	12	5.37	11	14.04	13	6.86	12	17.93	13	11	11	11	United Gas	38.17
14	53	13	4.47	15	8.04	12	8.74	13	17.39	4	5	5	5	Philips [1]	50.27
15	62	14	2.99	16	6.67	15	4.88	17	10.88	17	16	17	16	Dimplex	44.74
15	62	16	2.23	14	9.55	16	2.72	16	11.65	12	14	15	12	Wilkins & Mitchell	23.31
17	66	17	−0.40	17	−3.83	17	1.48	15	14.09	9	17	13	13	General Motors	10.53
18	72	18	−1.98	18	−5.00	18	−0.75	18	−0.76	14	18	18	14	Belling	39.60
Average			8.17		17.80		11.39		25.44						49.67

[1] 1974.

300. It is clear from Table 23 that the five most profitable food and beverage firms in the United Kingdom each account for well below 5% of aggregate sales and, with one exception, of own capital of the top firm in the industry. This points to a very high size disparity in the relevant industries. The largest firm stands out as an isolated giant, surrounded by a mass of far more efficient firms.

Size disparity is, on the other hand, far less pronounced in food distribution, while in the electrical appliances industry there is some measure of equilibrium, and a sort of oligopolistic arena can be observed: six or seven of the eighteen groups studied are roughly comparable in size on several of the variables.

TABLE 23

Corporate profitability and size disparity in the United Kingdom

United Kingdom: Food industry [1]

Year: 1970 (see Table 19) Sample: n* = 85

Profitability ranking	Firm	Size ranking	$\frac{01\ x_1}{01\ x_1} \times 100$	$\frac{07\ x_1}{07\ x_1} \times 100$
— First firm 01 (sales) UKL 1 292 million = 100: Unilever				
— First firm 07 (own capital) UKL 388 million = 100: Unilever				
1	Walkers Crisps	16	0.38	0.34
2	Warburtons	13	0.49	0.54
3	Kellogg - Great Britain	5	2.30	2.46
4	Scot Meat Products	12	0.80	0.45
5	Weetabix	9	0.63	1.18
6	Haverhill Meat Products	15	0.52	0.31
7	Carnation Foods	11	0.60	0.57
8	J.W. Thornton	20	0.17	0.21
9	Brooke Bond Liebig	2	17.79	6.64
10	O.P. Chocolate	14	0.54	0.39
11	Clover Dairies	7	1.00	0.69
12	Quaker Oats	6	1.04	0.93
13	Marshall's Universal	10	0.82	0.51
14	H.J. Heinz & Co.	3	6.46	8.75
14	R. Paterson & Sons	17	0.25	0.41
16	Sayers (Confectioners)	18	0.29	0.24
17	Cranfield Bros	8	0.70	0.85
18	Mars	4	8.21	3.40
19	Midland	19	0.19	0.22
20	Associated British Foods	1	45.29	21.59

[1] Excluding firms engaged mainly in the beverage business.

TABLE 23 (contd)

United Kingdom: Beverages

Year: 1974 (see Table 20) Sample: n* = 58

Profitability ranking	Firm	Size ranking	$\frac{01\ x_1}{01\ x_1} \times 100$	$\frac{07\ x_1}{07\ x_1} \times 100$
	— First firm 01 (sales) UKL 970 million - Grand Metropolitan Group — First firm 07 (own capital) UKL 817 million - Grand Metropolitan Group			
1	Macallan-Glenlivet	58	0.16	0.22
2	Highland Distillers Co.	25	1.11	1.11
3	Hiram Walker & Sons	11	3.57	5.15
4	Glenlivet Distillers	21	1.25	1.16
5	North British Distillery Co.	31	1.31	0.66
6	Scottish & Newcastle Breweries	8	20.59	11.60
7	Mansfield Brewery Co.	29	1.06	0.99
7	Boddingtons' Breweries	38	0.79	0.76
9	Wolverhampton & Dudley Breweries	14	2.23	1.86
10	Oldham Brewery Co.	55	0.37	0.42
11	Hardys & Hansons	45	0.52	0.62
12	Tomatin Distillers Co.	50	0.85	0.26
13	Home Brewery	20	1.24	1.37
14	Greene, King & Sons	19	1.61	1.03
15	Burtonwood Brewery Co. (Forshaws)	43	0.68	0.53
16	Robert MacNish & Co.	57	0.19	0.32
17	The Distillers Co.	2	63.64	41.13
18	Marston, Thompson & Evershed	18	1.36	1.48
19	St Austell Brewery Co.	56	0.53	0.18
20	S.A. Brain & Co.	43	0.73	0.48
21	Matthew Brown & Co.	27	0.87	1.41
22	Allied Breweries	3	61.27	38.96
23	James Shipstone & Sons	34	0.92	0.84
24	Arthur Guinness Son & Co.	6	28.03	12.11
25	Drambuie Liqueur Co.	34	0.95	0.83
26	James Burrough	24	1.98	0.81
27	McMullen & Sons	40	0.65	0.71
27	Eldridge, Pope & Co.	41	0.69	0.55
29	Frederic Robinson	54	0.65	0.28
30	J.A. Devenish	39	0.88	0.61
31	Hall & Woodhouse	49	0.77	0.39
32	Vaux Breweries	13	3.73	2.91
33	Bass Charrington	3	59.00	4.09
34	Higsons Brewery	25	1.00	1.24
35	Teacher (Distillers)	17	4.96	1.15
35	MacDonald Martin Distilleries	46	0.46	0.65
37	Buckley's Brewery	51	0.42	0.48
38	Daniel Thwaites & Sons	22	1.36	0.98
39	H.P. Bulmer	22	1.54	0.95
40	Border Breweries (Wrexham)	46	0.68	0.47
40	Seagram Distillers	9	7.49	4.23

TABLE 23 (contd)

Profitability ranking	Firm	Size ranking	$\frac{01\ x_i}{01\ x_1} \times 100$	$\frac{07\ x_i}{07\ x_1} \times 100$
42	Fuller, Smith & Turner	46	0.80	0.37
43	Long John International	14	2.60	1.65
44	Davenports C.B. & Brewery (Holdings)	32	1.11	0.72
45	Greenall Whitley & Co.	9	5.38	6.40
46	Morland & Co.	51	0.42	0.50
47	J.W. Cameron & Co.	14	1.95	2.12
48	Charles Wells	53	0.47	0.43
49	Arthur Bell & Sons	11	6.22	2.07
50	Courage	6	22.97	14.92
51	Whitbread & Co.	5	35.04	32.31
52	Everards Brewery	37	0.61	1.00
53	Sam Smith (Tadcaster)	28	1.24	0.92
53	A.G. Barr & Co.	36	1.33	0.43
55	Dalmore, Whyte & MacKay	41	1.20	0.16
56	Young & Co.'s Brewery	29	1.00	1.02
57	Grand Metropolitan	1	100.00	100.00
58	Tollemache & Cobbold Brew.	32	1.09	0.78

TABLE 23 (contd)

United Kingdom: Food distribution

Year: 1974 (see Table 21) Sample: n* = 40

Profitability ranking	Firm	Size ranking	$\frac{01\ x_1}{01\ x_1} \times 100$	$\frac{07\ x_1}{07\ x_1} \times 100$
— First firm 01 (sales) UKL 514 million - Tesco Stores (Holdings)				
— First firm 07 (own capital) UKL 114 million - Sainsbury				
1	Kwik Save Discount Group	24	8.05	2.86
2	Bejam Group	35	4.78	1.97
3	F.J. Wallis	22	8.51	3.42
4	Wm Morrison Supermarkets	25	6.78	3.10
4	Tesco Stores (Holdings)	1	100.00	60.30
6	Union International (Distrib.)	19	27.17	3.09
7	Lennons Group	31	5.73	1.92
7	Associated British Foods (Distrib.)	4	64.41	11.70
9	Kinloch (Provisions Merchants)	20	13.41	3.83
10	Morgan Edwards	39	3.88	0.34
11	Nurdin & Peacock	18	20.02	3.87
11	Matthews Holdings	14	16.18	6.80
11	Walter Duncan & Goodricke	29	1.87	3.74
14	Hillards	33	6.91	1.14
15	Gateway Securities	22	7.18	4.14
16	Amos Hinton & Sons	27	5.58	2.41
17	Safeway Food Stores	11	17.67	7.11
18	Linfood Holdings	9	31.72	5.19
19	Baxters (Butchers)	15	8.82	10.64
20	Joseph Stocks & Sons (Holdings)	36	4.88	0.90
21	Fitch Lovell (Distrib.)	4	53.98	17.18
22	J. Sainsbury	1	86.59	100.00
23	Booker McConnell (Distrib.)	13	24.62	5.15
23	Cullen's Stores	33	1.85	3.31
25	Geest Industries	16	9.59	7.37
26	Cavenham (Distrib.)	3	83.25	48.07
27	Wheatsheaf Distribution & Trading	7	44.19	6.85
27	Bishops Stores	20	10.04	4.19
29	Fyffes Group	12	12.62	8.53
29	Glass Glover & Co.	40	2.41	0.50
31	International Stores	6	43.42	35.69
32	A.J. Mills (Holdings)	25	8.03	2.03
33	Waitrose	17	16.57	5.14
34	RCA Corporation (Distrib.)	8	25.99	7.87
35	Towers & Co.	36	4.04	1.28
36	Danish Bacon Co.	9	29.78	6.14
37	Spar Food Holdings	29	9.11	0.29
38	Laws Stores	38	2.86	0.02
39	Deltec Foods	31	5.20	2.01
40	R.H. Thompson & Co.	27	7.63	1.83

TABLE 23 (contd)

United Kingdom: Electrical appliances

Year: 1975 (see Table 22) Sample: n* = 18

Profitability ranking	Firm	Size ranking	$\frac{01\ x_i}{01\ x_1} \times 100$	$\frac{07\ x_i}{07\ x_1} \times 100$
— First firm 01 (sales) UKL 1 752 million - GEC (General Electric Co.)				
— First firm 07 (own capital) UKL 1 049 million - GEC				
1	Hoover	8	9.30	2.56
2	Pifco	18	0.58	0.38
2	Thorn	3	48.24	34.49
4	Rediffusion	6	6.96	12.33
4	BSR	9	5.22	5.12
6	GEC	1	100.00	100.00
7	Electrolux	10	4.16	3.31
8	Lec	15	0.98	0.54
9	Rank	2	20.13	53.42
10	Decca	5	35.32	31.34
11	Tube Investments	7	8.81	7.44
12	Colston	17	0.74	0.25
13	United Gas	12	1.93	1.23
14	Philips	3	32.09	26.92
15	Dimplex	16	0.65	0.49
15	Wilkins & Mitchell	12	2.62	1.02
17	General Motors	11	5.64	0.99
18	Belling	14	1.15	0.76

The fact that in the industries studied in the United Kingdom a large number of the most profitable firms have a degree of (own) capital intensity below that of the largest firm may well be explained by the nature of the econometric method and the figures used. But Table 23 does make a contribution to the current controversy about the comparative performance of large firms, though the complexity of the industrial structures concerned means that much more detailed analyses and research will be necessary in the future. The results obtained in the United Kingdom cannot be extrapolated to other countries or industries. In food distribution in France, for instance, and in the beverage industry in Italy, there is a fairly high degree of size equilibrium between the majority of the most profitable firms.

§ 4 — The research programme on distribution and prices: purpose and results

Purpose

301. The Commission's research programme on distribution and prices (Sixth Report on Competition Policy, point 306 *et seq.*) seeks to analyse the development of:

(i) power relationships between manufacturers and distributors (chiefly large retailers);

(ii) national, regional and local distribution structures, their degree of concentration and the various forms and types of marketing;

(iii) prices and mark-ups for the same products in different shops, both in the same town or region and in comparison with other towns or regions, sometimes in other countries.

Power relationships between manufacturers and consumers

302. For the first time the Commission can now give some idea of the development of these power relationships.

Following the substantial increase in the degree of concentration in distribution in the last ten years, several manufacturers of food products now have to contend with major buying groups.

303. Table 24 sets out the results of replies given by ten major food manufacturers to a questionnaire put out by the European Association of Branded Goods Industries (AIM) in each of the countries studied (Germany, France, Italy and Belgium).

The results of the survey have been set out in such a manner as to illustrate the power on the demand side with which each of the ten domestic manufacturers is confronted in his home country. In 1976, for example, 54% of the home market sales of one German manufacturer (Code No I) went to only five major retailers or distributors (29% in 1967), and 72% to only 10 customers (40% in 1967).

The manufacturers identified by Code No X had the advantage of being confronted with the least-concentrated demand.

304. Table 24 shows that Belgium and Germany are the countries where the concentration of demand is most developed, whereas Italy is the least oligopsonistic country.

TABLE 24

Degree of dependence of manufacturers and sellers on demand from major distributors and buyers of food products
(decreasing order, situation in 1976)

Manufacturer/ seller	Share of five top buyers								Share of ten top buyers							
	in the aggregate sales of the manufacturer/seller															
	Germany		France		Italy		Belgium		Germany		France		Italy		Belgium	
	1967	1976	1967	1976	1972	1976	1967	1976	1967	1976	1967	1976	1972	1976	1967	1976
I	29	54	14	34	7	12	22	47	40	72	26	48	10	18	29	57
II	33	44	16	23	—	12	13	45	49	66	26	36	9	16	31	56
III	20	43	8	22	6	12	15	44	25	65	11	35	—	16	21	56
IV	6	36	11	21	6	11	13	44	—	34	18	33	—	15	18	54
V	—	23	9	20	—	10	17	43	9	22	16	32	8	14	20	53
VI	6	15	18	19	7	10	11	43	10	20	22	30	11	13	25	52
VII	5	15	16	18	—	8	10	39	8	20	21	29	8	12	35	51
VIII	6	14	1	18	5	7	15	37	9	20	3	27	—	12	20	50
IX	7	14	12	16	3	7	17	36	12	19	18	25	6	10	15	50
X	5.4	11.4	8	12	3	6	25	35	8	17	11	17	4	10	26	45

Source: Figures derived from a sample of ten manufacturers in each country which answered the questionnaire from the European Association of Branded Goods Industries (AIM).

In all these countries there is a clear trend towards a higher degree of concentration and power on the buying side (major retailers or distributors), whose multiple effects on the working of competition require analysis. Three particular questions are posed:

(i) To what extent can buyers and major distributors obtain exceptionally favourable discounts and terms by bringing their bargaining power to bear on their suppliers?

(ii) To what extent do the advantages obtained by the major retailers from the manufacturers find practical expression in lower prices to the ultimate consumer?

(iii) What are the resulting effects on the structures, the profitability and even the viability of manufacturers and suppliers on the one hand and, on the other, of buyers who are not in a position to obtain these discounts and exceptional terms?

The first question is easy enough to answer in general terms but particularly difficult when put in specific or quantitative terms. It is well known that major retailers and buyers can obtain exceptional terms from the manufacturers that supply them, but the attempt to quantify these advantages raises two highly complex series of problems. First, it is very difficult to express certain benefits (such as prolonged storage at the seller's cost, sale-or-return arrangements) in terms of figures. Secondly, any question concerning discounts and premiums falls within the general area of 'business secrecy'.

Briefly, what we need is knowledge of the actual mark-up, which entails not only knowledge of the retail selling price but also the actual price at which the product was bought, and this is often treated as a business secret.

Determining the actual purchase price also entails determining the date when the product was bought, which raises a whole series of problems in connection with products whose prices fluctuate sharply.

The results of this second stage of the research will enable an answer to be offered to the second and third questions posed above.

Trends in distribution and concentration in selected Member States

France

305. It is not yet possible to give an assessment in competition terms of the effects of the recent wave of cooperation, integration and diversification agreements such as the formation of the Savezo-Viniprix-Euromarché group, built up around Félix Potin, a department store, Primistère, a chain store, Euromarché et Promodes, a wholesale and chain store company, which also took over another chain store, l'Economie Bretonne, to handle, among other things, supplies to Prisunic shops.

What can be observed in 1976 is that the distributive trades in France were going through an expansionary phase at the retail level which, by raising the number of self-service sales points, should help to curb the general rise in prices and reduce mark-ups, provided there are no anti-competitive agreements between the major distributive groups and chains.

The total number of self-service shops, which, with sales of FF 103 000 million, handled 51% of all the grocery business in France, has been tending to rise. In only four years (from 1973 to the end of 1976) shops of this type raised their aggregate sales area by 35% (from about 5 million to 6.7 million square metres). In 1976, 1 146 new self-service shops were opened.

The trend is towards larger selling points, for 80% of these 1 146 new self-service shops belonged to department stores with a sales area of more than 400 square metres (48% supermarkets and 32% hypermarkets).

Germany

306. The process of concentration in the retail trade and in the wholesale trade has developed steadily in recent years. At the central wholesale stage—which has maintained a constant increase in its degree of involvement in distribution—the central organizations of the voluntary chains and groups have considerably expanded their market shares.

At the local wholesale stage the wholesale organizations of the voluntary chains still rank first with a market share of about 25%.

The number of retail food shops has continued to come down. In 1976 there were only some 110 000 left—a 7% fall on the previous year. Most of the closures were in small and medium-sized self-service stores. The main beneficiaries were the supermarkets and the like.

Trading competition works on regional markets. But the various aspects of inter-firm competition are increasingly dominated by the peculiar features and parameters of non-regional business strategies.

Regional price surveys in the Greater Munich area have revealed that concentration processes generally occur on a regional plane. A whole series of sales points included in the survey changed hands after the price surveys began in 1975. This impression of intensifying regional concentration of the activities of various groups and of a kind of compensation mechanism between them applies not only to the Munich area but also to other parts of the Federal Republic.

This is the general context in which we must consider the results of the six-monthly regional surveys in Munich of prices and mark-ups on food products, beverages and, for

the first time, washing powders, detergents and toiletries. The results of this series of surveys show the preponderant role that supermarkets and cut-price stores continue to play in relation to prices in general. For washing powders in particular promotion campaigns were observed for imported products bearing trademarks similar to those of German products sold in Germany. Although these imports are still relatively few and far between, they manifestly reflect a new intensification of competition as cross-frontier trade flows swell. Even if German manufacturers seem to attach little importance to them, these imports can help to stabilize prices.

United Kingdom

307. The figures for the level of concentration in the United Kingdom given in the last report call for a few comments. The structure of the British grocery trade is highly complex by reason of the industry's integration into manufacturing industry in general and also into the service industries (notably the hotel and restaurant trades).

According to certain estimates, five major retailers alone controlled 40% of sales in 1976 (30% in 1971), while the ten top retailers handled 54% (39% in 1971). Other sources reveal that 5% of shops accounted for 44% of aggregate sales in 1976, and 10% of shops for 56% of sales.

The number of grocery-trade buying points fell sharply from 647 to 327 between 1970 and 1976. The power of buyers as compared with the power of sellers or manufacturers is constantly growing.

All these factors indicate the trend towards oligopolization of distribution in the United Kingdom. But the information given above needs amplifying with further, more specific information.

The report on concentration in food distribution in the United Kingdom makes it clear that there is a long-term trend for expansion in the market share held by chain stores to the detriment of cooperative societies and independent firms. At the same time the largest of these chain stores did not increase their combined market share between 1969 and 1974. This was because the largest retail firms tended to expand more slowly than the medium-sized groups during that period.

The study shows that the actual effects of economic power may be stronger than is suggested by the level of concentration and variations in it. Large-scale purchasing power is increasingly concentrated in the hands of a steadily declining number of groups. A fairly large number of chains operate nationwide, so that in certain areas regional concentration is far higher than would appear from the national analysis.

Price differences between sales points

308. The food and beverages surveys that began in January 1976 continued in 1977 (January and July) and 1978 (January). The sample was extended by the addition of other household products sold in food shops.

309. The surveys confirm that there are very wide differences in prices between sales points in the same town or region in a given country.

The situation in January 1977 is given for several Community countries in Tables 25 and 26. The corresponding figures for January 1976 are given in brackets for comparison purposes.

The tables are based on calculation of the relative percentage difference between the maximum price observed for a given product at a given sales point and the minimum price observed for the same product at another sales point.[1]

The tables show that Germany and Italy are the countries where price differences are the widest between the various sales points (and where the change on 1976 is greatest). In these two countries competition in retailing is extremely intensive.

310. Three kinds of price categories can be distinguished, by reference to differences in price observed between the sample sales points, corresponding to:

(i) the 'normal case', with a difference between the maximum and minimum prices expressed as a percentage of the minimum price of 10% or more, but less than 40%;

(ii) the 'divergent case', with a difference of 40% or more;

(iii) the 'uniform case', with a difference of less than 10%.

It can be seen from these tables that price differences for the same product from one sales point to another are neither cyclical nor temporary but structural and characteristic of competition as it works in retailing.

311. The following questions therefore have to be answered:

(i) What in practical terms are the specific products whose prices differ widely between sales points at a given moment in time?

(ii) Do these price differences always apply to the same products or do they shift from month to month and from year to year?

---

[1] The formula is: $\varepsilon Rp = \frac{\text{maximum price - minimum price}}{\text{minimum price}} \times 100.$

TABLE 25

Price surveys based on a small sample of food products and sales points, January 1977 (1976 figures in brackets)

Price differences between sales points

Class	ε^{Rp}	Germany		Denmark		France		Italy		United Kingdom	
		Number of cases		Number of cases		Number of cases		Number of cases		Number of cases	
		Per class	Cumulative	Per class	Cumulative	Per class	Cumulative	Per class	Cumulative	Per class	Cumulative
1	$\geqslant$ 100%	2 (5)	2 (5)	0 (1)	0 (1)	0 (1)	0 (1)	0 (1)	0 (1)	0 (0)	0 (0)
2	$\geqslant$ 80%	1 (4)	3 (9)	3 (9)	3 (10)	0 (0)	0 (1)	2 (2)	2 (3)	0 (1)	0 (1)
3	$\geqslant$ 40%	28 (17)	31 (26)	22 (18)	25 (28)	10 (12)	10 (13)	23 (16)	25 (19)	23 (19)	23 (20)
4	$\geqslant$ 10%	18 (24)	49 (50)	38 (27)	63 (55)	20 (16)	30 (29)	19 (24)	44 (43)	113 (101)	136 (121)
5	$>$ 0	0 (0)	49 (50)	9 (2)	72 (57)	0 (1)	30 (30)	2 (0)	46 (43)	13 (23)	149 (144)
6	0	2 [1] (1)	51 (51)	0 (0)	72 (57)	0 (0)	30 (30)	0 (1)	46 (44)	2 (10)	151 (154)

[1] Product sold at one sales point.

TABLE 26

The three degrees of price difference: normal case, divergent case and uniform case

	Total cases	Normal case $10\% \leqslant \varepsilon Rp < 40\%$		Divergent case $\varepsilon Rp \geqslant 40\%$		Uniform case $\varepsilon Rp \leqslant 10\%$		
		Number of cases	% of total	Number of cases	% of total	Number of cases	% of total	
Germany	51 (51)	18 (24)	35.3 (47.0)	31 (26)	60.8 (51.0)	2 [1] (1)	3.9 (2.0)	= 100 (100)
Denmark	72 (57)	38 (27)	52.8 (47.4)	25 (28)	34.7 (49.1)	9 (2)	12.5 (3.5)	= 100 (100)
France	30 (30)	20 (16)	66.7 (53.4)	10 (13)	33.3 (43.3)	0 (1)	0 (3.3)	= 100 (100)
Italy	46 (44)	19 (24)	41.5 (54.5)	25 (19)	54.5 (43.2)	2 (1)	4.0 (2.3)	= 100 (100)
United Kingdom	151 (154)	113 (101)	74.9 (65.6)	23 (20)	15.2 (13.0)	15 (33)	9.9 (21.4)	= 100 (100)

[1] Product sold at one sales point.

312. The surveys of price differences between sales points in selected Member States carried out in January and July 1977 reveal that:

(i) the products whose prices varied widely from one sales point to another at a given moment were generally not the same in all the Member States;

(ii) in a given country and sample of shops, very often it was the same products which both in January and July differed most widely between the various sales points;

(iii) the widest shop-to-shop price differences did not necessarily apply to the products whose prices had risen most sharply; thus there is no automatic correlation between price increases in any given period and price differences (between shops) at a given moment.

Among the various products surveyed, sharp price differences, in excess of a 40% relative difference, were commonly observed for the following 23 products:

instant coffee (France, Italy, United Kingdom, Germany),
tea, generally tea bags (Italy, United Kingdom),
cola beverages (Italy, United Kingdom, Germany),
fruit juices (France, United Kingdom) and orangeades (Italy, Germany),
tonic and spa water (France, Italy),
chocolate (France, Denmark),
preserved tuna and salmon (United Kingdom, Italy) and tinned sardines (United Kingrom),
pasta (France, Denmark, Italy),
rice (Italy, United Kingdom),
flour (Italy, United Kingdom) and cornflakes (Germany),
dessert creams (France, Denmark),
powdered and concentrated milk (France),
certain kinds of cheese, varying from one country to another (France, Denmark, United Kingdom, Italy), particularly sandwich cheese slices (Italy and Germany),
baby foods (Denmark, United Kingdom),
crackers (France, United Kingdom, Germany),
certain kinds of biscuit (France, Germany),
dried soups (France, Germany),
dried potatoes (France, Germany),
stock cubes (Italy, Denmark, Germany),
margarine and deep-frying fat (France, Denmark, United Kingdom),
mayonnaise in tubes (Germany, Denmark),
tomato ketchup (Germany, Italy),
certain kinds of marmalade and jam (United Kingdom, Denmark, Germany).

Divergent price movements

313. Consideration of the most recent survey results (Table 27) confirms the hypothesis of divergent retail price movements between products, countries and sales points.

314. The way prices developed varied sharply according to the group of products and according to the time—whether in 1976 or in the first half of 1977, when the rate of increase began to slow down in most countries. In 1976 there was a considerable Community-wide increase in the price of tinned foods, baby foods, prepacked vegetables, cereals and above all certain beverages (chiefly coffee and tea). In Italy and the United Kingdom there were also sharp increases in the price of soups, meat extracts and condiments, oil, fat, biscuits and cakes, dairy products and frozen food. The rising prices intensified in the first half of 1977 for certain products in certain countries, notably the United Kingdom, France and Denmark.

On the other hand, the price of certain products in certain countries (chiefly Germany) actually fell, though only slightly.

Obviously these results are valid only for the very small sample of products and sales points that had been analysed and cannot be extrapolated into general conclusions as to price trends in the Member States.

315. Furthermore, the differences in the degree of price variation are very wide. Of a total of 120 cases of price variation (Table 28) there are 102 divergent variations for the same product. In other words, in 102 cases out of 120, or in about 90% of cases, the consumer would have noticed that the price had gone up if he had bought the products in one shop, but he would have observed that the price had fallen if he had bought the same product in another shop in the same town or region of the same country. The United Kingdom is the only exception to this rule: inflation there has proceeded at such a sustained rate that synchronous variations are far more common than divergent variations.

Furthermore, the gaps or differences are not negligible. Taking just the first ten products on which the widest difference in price variations was observed, we find that the differences ranged from 72.3% to 39.5% in France and from 188.7% to 55.1% in Germany.

316. Most of the products for which a divergent price movement was recorded are the same products whose prices in absolute terms varied most widely between sales points at any given time.

There is a definite relationship, then, between the divergent movement of the price of a given product at a given time between different sales points and divergent prices of the same product at a given time between different shops.

TABLE 27

Variations in average prices of articles surveyed in the limited sample of food products by product group (in %)

Ranking	Product	Group [1]	Average variation (%) between January 1976 and January 1977 and between January 1977 and July 1977									
			Germany		United Kingdom		France		Denmark		Italy	
			Jan. 1976 Jan. 1977	Jan. 1977 July 1977	Jan. 1976 Jan. 1977	Jan. 1977 July 1977	Jan. 1976 Jan. 1977	Jan. 1977 July 1977	Jan. 1976 Jan. 1977	Jan. 1977 July 1977	Jan. 1976 Jan. 1977	Jan. 1977 July 1977
I	Tinned foods	CON	+ 9.15	— 5.7	+ 8.60	+ 13.22	+ 7.7	+ 3.7	+ 8.90	+ 6.37	+ 50	+ 4
II	Baby foods	LAI	+ 7.96	+ 0.94	+ 19.24	+ 18.84			+ 20.69	+ 10.60	+ 16	— 1
III	Soups	SOU	+ 5.18	+ 9.5	+ 20.51	+ 12.21			+ 13.07	+ 5.33	+ 24	+ 13
IV	Prepacked vegetables	LEG	+ 17.81	+ 2.21	+ 19.61	— 1.72	+ 44.9	— 3.6				
V	Meat extracts and condiments	EPI	— 1.9	— 4.4	+ 20.49	+ 10.17	+ 2.5	+ 1.7	+ 5.60	+ 6.14	+ 29	+ 3
VI	Oils, fats, margarine	GRA	— 4.2	+ 2.48	+ 29.46	+ 27.67	+ 1.3	+ 24.5	+ 14.81	+ 17.13	+ 25	+ 3
VII	Biscuits, cakes, etc.	FAR	— 2.8	+ 3.5	+ 9.94	+ 10.75	+ 5.9	+ 21.2	+ 9.94	+ 5.17	+ 48	+ 5
VIII	Rusks, crackers, etc.	FAR	+ 2.37	+ 2.25	+ 16.69	+ 16.08	+ 0.5	+ 1.4	+ 26.44	+ 4.04	+ 22	+ 3
IX	Cereals	CER	+ 10.81	— 8.18	+ 20.84	+ 8.50			+ 1.19	+ 4.97	+ 80	— 1
X	Jams, marmalades, etc.	MAR	+ 2.5	+ 3.2	+ 15.15	+ 0.64			+ 7.22	+ 4.70	+ 31	+ 3
XI	Beverages	BOI	+ 18.23	+ 17.72	+ 65.38	+ 49.24	+ 11.9	+ 17.0	+ 25.18	+ 29.22	+ 34	+ 11
XII	Dairy produce	LAI	+ 1.64	+ 2.51	+ 15.26	+ 6.25	+ 7.7	+ 4.7	+ 6.52	+ 4.68	+ 26	0
XIII	Frozen foods	FRO	+ 2.55	— 0.19	+ 24.76	+ 12.14			— 4.47	+ 3.22	+ 33	+ 2
XIV	Pasta	SPA					+ 0.5	+ 6.2		— 0.18	+ 19	+ 2
XV	Beer	BIE					+ 5.2	+ 5.1	+ 9.75	+ 6.12		
XVI	Alcoholic beverages, etc.	ALC					+ 9.1	+ 7.8				

[1] See Sixth Report on Competition Policy, point 307, Table 12.

TABLE 28

Scale of divergent price variations in selected Community countries

	Period	Number of cases		
		Variations [1]		
		Synchronous	Divergent	Total
France	1976	3	16	19
	1977 (1st half)	3	16	19
Germany	1976	0	14	14
	1977 (1st half)	0	16	16
United Kingdom	1977 (1st half)	12	7	19
Italy	1977 (1st half)	0	17	17
Denmark	1977 (1st half)	0	16	16
Total		18	102	120

[1] There is a synchronous price variation when the maximum and minimum price observed at two extreme sales points move in the same direction, either upward or downward. There is a divergent variation when the maximum rises and the minimum falls.

Mark-ups

317. It is now possible to give some advance information on current research into mark-ups in France, Germany and Italy. This analysis is based on information obtained from retailers and manufacturers and from relevant publications and price scales.

The question of special discounts and terms obtained by large buyers bringing their bargaining strength to bear on the manufacturers is still wide open, as serious difficulties are being met in the compilation of information on this point.

318. In France, the largest mark-ups were observed for certain types of preserved food (vegetable salads and Cassegrain peas), at rates of up to 80% of the purchase price.

319. For Germany and Italy, full series of mark-ups have been obtained from estimates based on the assumption that no special buying conditions existed. Table 29 shows the article, the product group and the maximum mark-up recorded during the reference period in order of magnitude.

These are maximum rates, sometimes observed at only a single sales point, but more often in three or four or even more shops from the sample, which generally covered about thirty shops.

Whereas the mark-ups for these ten products seem to be increasing in Germany, the medium-term trend in Italy appears to be towards stabilization.

TABLE 29

The ten products with the largest mark-ups in Germany (1977 and 1976) and Italy (1977) [1]

Germany			Italy	
Article	1977	1976	Article	1977
* Birnenkonserven Del Monte 825 g (CON)	96%	86%	Chewing gum Brooklin, Dolcificio Lombardo, 7 strisce 19 g (BIS)	134%
Marmorkuchenteig Dr. Oetker 400 g (BIS)	80%	25%	Minestra preparata Ortofresco, Liebig, 50 g (SOU)	133%
* Ketchup von Kraft 340 g (EPI)	79%	79%	* Pesche sciroppate, De Rica 400 g (CON)	90%
* Klare Fleischsuppe von Maggi 4 Stück (SOU)	77%	32%	Coca-Cola, 1 l (BOI)	83%
Suppengemüse Iglo 400 g (LEG)	75%	63%	* Dadi per doppio brodo, Star, 6 cubetti 66 g (EPI)	77%
Fanta 0.33 l (BOI)	75%	67%	* Piselli in scatola (sgocciolati) Cirio, 260 g (CON)	74%
* Konserve Junge Erbsen von Bonduelle 280 g (CON)	71%	50%	Olive verdi Olipak, Saclà, 90 g (EPI)	66%
Kornflakes von Kellogg's 340 g (CER)	67%	67%	Riso Arborio, Frugone e Preve, 950 g (CER)	65%
Kakao Kaba 800 g (BOI)	67%	50%	* Tomato Ketchup, Cirio, 340 g (EPI)	61%
Bücklingsfilet von Norda 200 g (CON)	67%	63%	Maionese Calvé, Unilever, tubetto 90 g (EPI)	55%

[1] The articles are specified by the name they bear in the country where they are sold (Germany or Italy).
* The same article or a similar product appears in the list for the other country.

Here we are considering the development of average mark-ups and not the maximum mark-ups indicated in Table 29, the average being calculated on all sales points in the sample.

Movement of average mark-ups for the ten products in Italy[1]

		1976		1977	
		January	*July*	*January*	*July*
Chewing gum Brooklin, 7 Strisce 19 g	(BIS)	61%	—	54%	61%
Minestra preparata Ortofresco 50 g	(SOU)	26%	21%	44%	80%
Pesche sciroppate, 400 g	(CON)	36%	24%	68%	68%
Coca-Cola 1 l	(BOI)	34%	22%	39%	38%
Dadi per doppio brodo 6 cubetti 66 g	(EPI)	30%	27%	24%	22%
Piselli in scatola sgocciolati 260 g	(CON)	28%	—14%	25%	3%
Olive verdi Olipak 90 g	(EPI)	31%	15%	35%	40%
Riso Arborio, 950 g	(CER)	21%	38%	13%	30%
Tomato Ketchup, Cirio, 340 g	(EPI)	29%	35%	19%	30%
Maionese Calvé, tubetto, 90 g	(EPI)	40%	6%	27%	31%

It will be observed that even average mark-ups (calculation of which takes account of a number of 'negative mark-ups' observed at certain shops) would seem to be quite 'comfortable'.

In 1977 there were sharp increases in several beverages (chiefly coffee and tea).[2] In our consideration of the structure of mark-ups, our comparative study extended to:

(i) Germany (Table 30A) and Italy (Table 30B);

(ii) only a few typical beverages—coffee, instant coffee, Coca-Cola, orangeade, tonic water (Schweppes) and tea;

(iii) not only the largest but also the second, third and fourth, the minimum and the average, specifying the shop code number;[3]

[1] The articles are specified by the name they bear in the country where they are sold (Italy).

[2] The value of considering mark-ups here is all the greater as the most profitable manufacturing firms in the world food industry actually make beverages (Coca-Cola, PepsiCo and others - see Table 17).

[3] The maxima are the four highest mark-ups given in decreasing order. From them it is possible to establish the number of shops charging one of these four highest mark-ups and their names (or code numbers), and hence the possible existence of identical mark-ups at different shops.

TABLE 30A

Order of magnitude of mark-ups - Germany

Product	Month	Mark-ups												Selling price (DM)					
		Maximum								Minimum		Average		Maximum		Minimum		Average	
		I		II		III		IV											
		Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Price	% change	Price	% change	Price	% change
Jacobs 'Leichte Ernte' coffee (500 g)	June 1976	18	3 4 6	15	11	13	16	12	5	± 0	18	10		9.95		8.49		9.42	
	July 1977	33	15	22	3 11	13	26	8	17 18 19 20 32	8	17 18 19 20 32	14		18.50	+ 85.9	13.95	64.3	15.70	+ 66.7
Nescafé Gold (200 g)	June 1976	25	21	21	15	18	7	14	30	— 14	14	5		15.98		10.85		13.33	
	July 1977	49	14	34	5 6	27	11	17	3	0	7 8 12	12		25.50	+ 59.6	15.98	47.3	19.23	+ 44.3
Coca-Cola (disregarding bottle deposit) (1 l)	June 1976	13	26	1	32					1	32	7		1.12		1.10		1.10	
	July 1977	30	16	14	26	9	13	8	32	8	32	15		1.12	0.0	0.79	— 28.2	0.97	— 11.9
Fanta (0.33 l)	June 1976	67	16	63	10	11	4	2	21	+ 0	3	28		0.85		0.49		0.63	
	July 1977	75	10	66	21	22	3 4 6 27 28	9	8	4	17 19	26		0.80	— 5.9	0.45	— 8.2	0.57	— 9.5
Indian Tonic Water (Schweppes) (0.7 l)	June 1976	33	16	24	15 17	18	4 5 6 7 8	17	26	± 0	32	13		1.79		1.28		1.51	
	July 1977	68	20	33	15	20	16	18	3 4 5 6 7 8	0	26	14		2.29	+ 27.9	1.16	— 9.4	1.52	+ 0.7

Teebeutel 'Teefix' (25 tea bags)	June 1976	40	16	35	27 28 29	34	3 4 5 6	33	10 15	1	20	22		2.69		1.89		2.26	
	July 1977	34	3 4 5 6 10 13 27 29	32	21	29	15 16	25	7 8 31	1	17 18 19 26 32	20		2.99	+ 11.2	2.25	+ 19.0	2.70	+ 19.5

TABLE 30B

Order of magnitude of mark-ups - Italy

Product	Month	Mark-ups												Selling price (LIT)					
		Maximum								Minimum		Average		Maximum		Minimum		Average	
		I		II		III		IV											
		Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Rate (%)	Sales pt	Price	% change	Price	% change	Price	% change
Paulista Coffee (250 g)	Jan. 1977	24.2	28	21.7	31	21.2	24	19.2	15	— 7.2	2	12.2		2 450		1 830		2 211	
	July 1977	22.7	31	20.7	8	18.7	6 16 18	17.0	20	— 1.0	1	8.6		3 000	22.4	2 420	32.2	2 654	20.0
Nescafé instant coffee (10 bags of 18 g)	Jan. 1977	44.9	5	34.6	18 20 33	30.4	11 15	24.2	4 6 10 12 16 22 23 29	1.4	9	18.4		700		490		572	
	July 1977	53.4	9	35.4	6	26.4	3 4 5 7 21	22.7	35	— 2.5	40	14.7		850	21.4	540	10.2	635	11.0
Coca-Cola (1 l)	Jan. 1977	86.9	21	63.6	4 18	58.9	28	54.2	9 10 24	14.5	2	38.9		400		245		297	
	July 1977	82.9	21	70.7	35	66.7	2	58.5	1	15.9	15	38.3		450	12.5	285	16.3	340	14.5
Aranciata San Pellegrino (0.21 l)	Jan. 1977	50.8	20	42.9	3 9 21	38.9	5 10 22	31.0	36	3.2	14	29.7		190		130		163	
	July 1977	28.2	18 21	18.6	20	15.4	3 9 24	12.2	5	— 10.3	14	7.2		200	5.3	140	7.7	167	2.5
Acqua Tonica Schweppes (0.18 l)	Jan. 1977	44.9	18	34.1	4	30.4	6 21	19.6	5 20	— 20.3	39	11.3		200		110		153	

	July 1977	28.2	4 6 18 21 37	18.6	20 26	15.4	8	12.2	5 10	— 7.1	40	11.1		200	0.0	145	31.8	173	13.1					
ATI Tea (10 bags of 17.5 g)	Jan. 1977	47.9	16 18 24	36.1	10 20	30.2	36 39	27.2	1 2 14	— 5.9	40	29.9		250		159		219						
	July 1977	32.2	18 27	10.1	2 16 24 29	5.7	34 38	1.3	20	—11.9	7	4.8		300	20.0	200	25.8	237	8.2					

(iv) the selling price to the public (maximum, minimum and average);

(v) figures for June 1976 and July 1977 for the Federal Republic of Germany and January and July 1977 for Italy.

The result is a considerable increase in mark-ups and selling prices for coffee in Germany during the relevant period (first half of 1977). It was also found that there was a series of identical maximum mark-ups charged by several sales points, for which there are two possible explanations—alignment or concerted pricing.

§ 5 — Summary and conclusions

320. The following conclusions can be drawn from the studies and research undertaken on concentration, competition and prices.

The total number of national and international takeovers and mergers, share acquisitions and joint ventures fell in 1976, for the first time since 1973.

The number of international joint ventures was far greater than the number of national ones, whereas there was a preponderance of national operations of the other types.

Companies from EEC countries played a smaller role in international operations, of which they accounted for only a half in 1976. Once again Belgium was the country where the largest number of international operations took place.

Of the various manufacturing industries, the metallurgical industries were the most affected.

321. Analysis of recent developments in concentration confirms that the tendency is now towards structural stability. One of the reasons for this is the very high degree of concentration in certain product markets.

Nearly 250 markets were counted where the top firm has a market share of more than 25%, and a hundred or so where the top firm has more than a 50% market share.

322. Analysis of the daily press has highlighted the large number of dominant positions in regional and local markets that are not exposed to the competition inherent in international trade. In distribution it is again, for the most part, regional and local markets that present a high degree of concentration in certain countries. Although this is an area that is open to international competition, concentration may nevertheless pose a serious threat to competition.

323. The detailed analysis of the relation between size and performance, primarily in the United Kingdom, confirms that the largest firms are hardly ever the most profitable.

Again in the UK, it was also observed that companies and industries with a high degree of capital intensity in relation to sales are not necessarily the most profitable.

324. Studies on the distributive trades have revealed that the bargaining power of major retailers (buyers) *vis-à-vis* the manufacturers (sellers) has grown substantially in all Community countries in recent years.

For a large number of mass consumption products, analysis of the divergent price movements shows that depending on the shop where the consumer does his shopping in any given town or region he may end up paying twice the price he paid six or twelve months earlier. Lastly, it has been observed that mark-ups are very high, and still rising, on certain products—notably beverages (coffee, tea, etc.), whose prices have risen sharply. These findings will be given a broader and more solid foundation with further research into competition and the structure of prices.

Annex

List of individual Decisions of the Commission and rulings of the Court of Justice made in 1977 concerning the application of Articles 85 and 86 of the EEC Treaty and of Articles 65 and 66 of the ECSC Treaty.

DECISIONS ON INDIVIDUAL CASES

1. Concerning Articles 85 and 86 of the EEC Treaty

Decision of 12.4.1977 on a proceeding under Article 86 of the EEC Treaty 'ABG/Oil companies operating in the Netherlands'	OJ L 117 of 9.5.1977, p. 1 IP (77) 97 of 6.4.1977 Bull. EC 4-1977, point 2.1.26
Decision of 25.7.1977 on a proceeding under Article 85 of the EEC Treaty 'De Laval/Stork'	OJ L 215 of 23.8.1977, p. 11 IP (77) 196 of 3.8.1977 Bull. EC 7/8-1977, point 2.1.32
Decision of 8.9.1977 on a proceeding under Article 85 of the EEC Treaty 'Cobelpa/VNP'	OJ L 242 of 21.9.1977, p. 10 IP (77) 210 of 16.9.1977 Bull. EC 9-1977, point 2.1.21
Decision of 7.11.1977 on a proceeding under Article 85 of the EEC Treaty 'BPICA'	OJ L 299 of 23.11.1977, p. 18 IP (77) 265 of 14.11.1977 Bull. EC 11-1977, point 2.1.38
Decision of 23.11.1977 on a proceeding under Article 85 of the EEC Treaty 'GEC/Weir Sodium Circulators'	OJ L 327 of 20.12.1977, p. 26 IP (77) 287 of 2.12.1977 Bull. EC 11-1977, point 2.1.39
Decision of 2.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Centraal Bureau voor de Rijwielhandel'	OJ L 20 of 25.1.1978, p. 18 IP (77) 308 of 16.12.1977 Bull. EC 12-1977, point 2.1.45
Decision of 2.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Cauliflowers'	OJ L 21 of 26.1.1978, p. 23 IP (77) 293 of 6.12.1977 Bull. EC 12-1977, point 2.1.46
Decision of 8.12.1977 on a proceeding under Article 86 of the EEC Treaty 'Hugin/Liptons'	OJ L 22 of 27.1.1978, p. 23 IP (77) 304 of 16.12.1977 Bull. EC 12-1977, point 2.1.57
Decision of 20.12.1977 on a proceeding under Article 85 of the EEC Treaty 'The Distillers Company Ltd'	OJ L 50 of 22.2.1978, p. 16 IP (77) 306 of 21.12.1977 Bull. EC 12-1977, point 2.1.47
Decision of 21.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Sopelem/Vickers'	OJ L 70 of 13.3.1978, p. 47 IP (77) 313 of 23.12.1977 Bull. EC 12-1977, point 2.1.54
Decision of 21.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Liebig spices'	OJ L 53 of 24.2.1978, p. 20 IP (77) 312 of 23.12.1977 Bull. EC 12-1977, point 2.1.51
Decision of 23.12.1977 on a proceeding under Article 85 of the EEC Treaty 'BMW Belgium'	OJ L 46 of 17.2.1978, p. 33 IP (77) 310 of 16.12.1977 Bull. EC 12-1977, point 2.1.48
Decision of 23.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Vegetable parchment'	OJ L 70 of 13.3.1978, p. 54 IP (77) 315 of 23.12.1977 Bull. EC 12-1977, point 2.1.49

Decision of 23.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Jaz-Peter'	OJ L 61 of 3.3.1978, p. 17 IP (77) 316 of 23.12.1977 Bull. EC 12-1977, point 2.1.53
Decision of 23.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Campari'	OJ L 70 of 13.3.1978, p. 69 IP (78) p. 17 of February 1978 Bull. EC 12-1977, point 2.1.56
Decision of 23.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Penneys'	OJ L 60 of 2.3.1978, p. 19 IP (78) p. 17 of February 1978 Bull. EC 12-1977, point 2.1.55
Decision of 20.12.1977 on a proceeding under Article 85 of the EEC Treaty 'Video cassettes'	OJ L 47 of 18.2.1978, p. 42 IP (77) 303 of 23.12.1977 Bull. EC 12-1977, point 2.1.52

2. Concerning Articles 65 and 66 of the ECSC Treaty

Decision of 26 January 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition of a majority shareholding in Franz Kirchfeld GmbH KG and Franz Kirchfeld GmbH by Ferrostaal AG	
Decision of 26 January 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition by Johnson & Firth Brown Ltd of a controlling shareholding in Dunford & Elliott Ltd	Bull. EC 1-1977, point 2.1.21
Decision 77/251/ECSC of 4 March 1977 on a proceeding under Article 65 of the ECSC Treaty extending the authorization of the joint selling of fuels from Houillères du Bassin de Lorraine and Saarbergwerke AG by Saarlor	OJ L 78 of 26.3.1977, p. 20 Bull. EC 3-1977, point 2.1.36
Decision of 7 March 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition by Fiat SpA of the entire capital of Cofermet Acciai Speciali e Inossidabili SpA	Bull. EC 3-1977, point 2.1.34
Decision of 29 March 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition of 67.5% of the capital of Etablissements Vidal & Champredonde by Otto Lazar SA	Bull. EC 3-1977, point 2.1.35
Decision 77/290/ECSC of 5 April 1977 on a proceeding under Article 65 of the ECSC Treaty authorizing the joint-buying of rolled steel products by the steel distribution undertakings participating in 'Stahlring GbR' and the purchasing company called 'Stahlring GmbH, Stahleinkaufsgesellschaft'	OJ L 97 of 21.4.1977, p. 33 Bull. EC 4-1977, point 2.1.27
Decision of 10 May 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing Eisen und Metall AG to acquire a majority shareholding in Süddeutsche Rohprodukten GmbH	

Decision of 25 May 1977 on a proceeding under Article 66 of the ECSC Treaty extending the Decision of 23 February 1976 authorizing an exception from Article 2(1) of the Decision of 31 July 1969 authorizing the acquisition of shares in SA Métallurgique d'Espérance-Longdoz and in Société de participations industrielles de Winterslag by a number of other companies	
Decision of 9 June 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing Klöckner & Co. to acquire all the shares in the capital of Schrottag Bayerische Schrottgesellschaft mbH, Südferrum Eisenhandelsgesellschaft mbH and Fränkischer Eisenhof GmbH	Bull. EC 6-1977, point 2.1.42
Decision of 13 June 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the formation by Moncheret Aciers SA and A. Devis et Cie of a joint trading venture to be known as DEMA	Bull. EC 6-1977, point 2.1.43
Decision 77/437/ECSC of 17 June 1977 on a proceeding under Article 65 of the ECSC Treaty renewing its authorization of an agreement between United Kingdom steelmaking undertakings concerning a joint buying agency for steelmaking materials	OJ L 173 of 13.7.1977, p. 19 Bull. EC 6-1977, point 2.1.41
Decision of 29 June 1977 on a proceeding under Article 66 of the ECSC Treaty on the acquisition by Europäische Brennstoffhandelsgesellschaft mbH, Essen, and Hugo Stinnes AG, Mülheim (Ruhr), of shareholdings in Bruno Fechner & Co KG, Bottrop	
Decision 77/548/ECSC of 12 July 1977 on a proceeding under Article 65 of the ECSC Treaty authorizing an agreement between coal wholesalers strictly analogous to a joint buying agreement for solid fuels	OJ L 217 of 25.8.1977, p. 11 Bull. EC 9-1977, point 2.1.22
Decision of 19 July 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing Hoesch Werke AG to acquire a 75% holding in Walter Herzog KG	Bull. EC 7/8-1977, point 2.1.34
Decision of 21 September 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing Gebr. Röchling KG to acquire a 50% shareholding in Flamm-Stahl GmbH, steel stockholder	
Decision 77/737/ECSC of 14 November 1977 on a proceeding under Article 65 of the ECSC Treaty authorizing an agreement between several Italian steel firms concerning the joint buying of pre-reduced iron ore	OJ L 309 of 2.12.1977, p. 18 Bull. EC 11-1977, point 2.1.41
Decision 77/774/ECSC of 23 November 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the formation of Framtek, a vehicle-springs manufacturing company	OJ L 320 of 15.12.1977, p. 52 Bull. EC 11-1977, point 2.1.42
Decision of 1 December 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing Thyssen Edelstahlwerke AG to acquire a majority shareholding in Stinox SA	

Decision of 13 December 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing Stahlwerke Röchling-Burbach to acquire a majority shareholding in Lech Stahlwerke GmbH	
Decision of 14 December 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the merger of several steel firms belonging to the Bruxelles-Lambert, Paribas and Frère-Bourgeois Groups	Bull. EC 12-1977, point 2.1.58
Decision of 19 December 1977 on a proceeding under Article 66 of the ECSC Treaty authorizing the acquisition of 67% of the capital of Levacier SA by the British Steel Corporation	

RULINGS OF THE COURT OF JUSTICE

Ruling (1.2.1977) in Case 47/76 'de Norre v Brouwerij Concordia'	OJ C 60 of 10.3.1977, p. 5 Bull. EC 2-1977, point 2.3.43 [1977] ECR 65
Ruling (9.3.1977) in Cases 41, 43 and 44/73 (Interpretation) 'Société anonyme Générale Sucrière v Commission of the European Communities'	OJ C 111 of 7.5.1977, p. 2 Bull. EC 3-1977, point 2.3.56 [1977] ECR 445
Ruling (24.5.1977) in Case 107/76 'Hoffmann-La Roche v Centrafarm'	OJ C 142 of 16.6.1977, p. 5 Bull. EC 5-1977, point 2.3.67 [1977] ECR 957
Ruling (9.6.1977) in Case 90/76 'Henry van Ameyde v UCI'	OJ C 158 of 6.7.1977, p. 6 Bull. EC 6-1977, point 2.3.54 [1977] ECR 1091
Ruling (25.10.1977) in Case 26/76 'Metro v Commission of the European Communities'	OJ C 285 of 26.11.1977, p. 2 Bull. EC 10-1977, point 2.3.5 [1977] ECR 1875
Ruling (16.11.1977) in Case 13/77 'GB-Inno-BM v ATAB'	OJ C 301 of 14.12.1977, p. 4 Bull. EC 11-1977, point 2.3.38 Not yet reported in ECR
Ruling (14.12.1977) in Case 59/77 'De Bloos v Bouyer'	OJ C 20 of 25.1.1978, p. 3 Bull. EC 12-1977, point 2.3.55 Not yet reported in ECR

European Communities — Commission

Seventh Report on Competition Policy

Luxembourg: Office for Official Publications of the European Communities

1978 — 260 pp. — 16.2 × 22.9 cm

DA, DE, EN, FR, IT, NL

ISBN 92-825-0033-0

Catalogue number: CB-24-77-237-EN-C

BFR	DKR	DM	FF	LIT	HFL	UKL	USD
220	38,80	14,20	32	6 000	15,30	3.60	7

The Report on Competition Policy is published annually by the Commission of the European Communities in response to the request of the European Parliament made by a Resolution of 7 June 1971. This Report, which forms an annex to the General Report on the Activities of the Communities, is designed to give a general view of the competition policy followed during the past year. Part One covers the application of this policy to enterprises. Part Two deals with State aids, adjustment of State monopolies of a commercial character and public undertakings. Part Three is concerned with the development of concentration in the Community.