

Competition law in the European Communities

Addendum to Volume IA Rules applicable to undertakings

Situation at 1 March 1995



EUROPEAN COMMISSION
DIRECTORATE-GENERAL IV
COMPETITION

EUROPEAN COMMISSION

**Competition law in the
European Communities**

Addendum to Volume IA
Rules applicable to undertakings

Situation at 1 March 1995

BRUSSELS • LUXEMBOURG, 1995

Cataloguing data can be found at the end of this publication

Luxembourg: Office for Official Publications of the European Communities, 1995

ISBN 92-827-0233-2

© ECSC-EC-EAEC, Brussels • Luxembourg, 1995

Reproduction is authorized, except for commercial purposes, provided the source is acknowledged

Printed in Luxembourg

Contents

Foreword	5
Legislation	7
Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications (OJ L 268, 19.10.1994)	9
Commission Decision of 12 December 1994 on the terms of reference of hearing officers in competition procedures before the Commission (OJ L 330, 12.12.1994)	17
Commission of the European Communities notice concerning the updating of the 1986 communication on agreements of minor importance (OJ C 368, 23.12.1994)	21
Commission Regulation (EC) No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17 (OJ L 377, 31.12.1994)	23
Annex (Part III) to the Council of the European Union Decision of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (OJ L 1, 1.1.1995 and C 241, 29.8.1994)	55
Commission Regulation (EC) No 70/95 of 17 January 1995 amending Regulation (EEC) No 2349/84 on the application of Article 85(3) of the Treaty to certain categories of patent licensing (OJ L 12, 18.1.1995)	61

Foreword

This volume is an addendum to the publication 'Competition law in the European Communities' — Volume IA — Rules applicable to undertakings — Situation at 30 June 1994, because several important acts were amended during the period 1.7.1994 - 1.3.1995.

Legislation about merger control, particularly the new Regulation 384/94 of 21 December 1994¹ and the explanatory notes,² will be found in another volume under publication, named 'Merger control law in the European Union'.

A new consolidated version of competition legislation in force is foreseen during the first months of 1996.

¹ OJ L 377, 31.12.1994, p. 1.

² OJ C 385, 31.12.1994, p. 1.

Legislation

COMMISSION DIRECTIVE 94/46/EC

of 13 October 1994

amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

Whereas :

1. The Green Paper on a common approach in the field of satellite communications in the European Community, adopted by the Commission in November 1990, set out the major changes in the regulatory environment necessary to exploit the potential of this means of communications. This Satellite Green Paper called for, *inter alia*, full liberalization of the satellite services and equipment sectors, including the abolition of all exclusive or special rights in this area, subject to licensing procedures, as well as for the free (unrestricted access to space segment capacity.
2. The Council Resolution of 19 December 1991 on the development of the common market for satellite communications services and equipment⁽¹⁾, gave general support to the positions set out in the Commission's Satellite Green Paper, and considered as major goals : the harmonization and liberalization of the market for appropriate satellite earth stations, including where applicable the abolition of exclusive or special rights in this field, subject in particular to the conditions necessary for compliance with essential requirements.
3. The European Parliament, in its Resolution on the development of the common market for satellite communications services and equipment⁽²⁾ calls upon the Commission to enact the necessary legislation in order to create the environment to enable existing constraints to be removed and new activities developed in the field of satellite communications, while stressing the need to harmonize and liberalize the markets in satellite equipment and services.
4. Several Member States have already opened up certain satellite communications services to competition and have introduced licensing schemes. Nevertheless, the granting of licences in some Member States still does not follow objective, proportional and non-discriminatory criteria or, in the case of operators competing with the telecommunications organizations, is subject to technical restrictions such as a ban on connecting their equipment to be switched network operated by the telecommunications organization. Other Member States have maintained the exclusive rights granted to the national public undertakings.
5. Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment⁽³⁾, as amended by the Agreement on the European Economic Area, provides for the abolition of special or exclusive rights to import, market, connect, bring into service and maintain telecommunications terminal equipment. It does not cover all types of satellite earth station equipment.
6. In its judgment in Case C-202/88, *France v. Commission*⁽⁴⁾, the Court of Justice of the European Communities upheld Commission Directive 88/301/EEC. However, in so far as it relates to special rights, the Directive was declared void on the grounds that neither the provisions of the Directive nor the preamble thereto specify the type of rights which are actually involved and in what respect the existence of such rights is contrary to the various provisions of the Treaty. As far as importation, marketing, connection, bringing into service and maintenance of telecommunications equipment are concerned, special rights are in practice rights that are granted by a Member State to a limited number of undertakings, through any legislative, regulatory or administrative instrument which, within a given geographical area,
 - limits to two or more the number of such undertaking, otherwise than according to objective, proportional and non-discriminatory criteria, or
 - designates, otherwise than according to such criteria, several competing undertakings, or
 - confers on any undertaking or undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect

⁽¹⁾ OJ No C 8, 14. 1. 1992, p. 1.

⁽²⁾ OJ No C 42, 15. 2. 1993, p. 30.

⁽³⁾ OJ No L 131, 27. 5. 1988, p. 73.

⁽⁴⁾ [1991] ECR I-1223.

the ability of any other undertaking to engage in any of the abovementioned activities in the same geographical area under substantially equivalent conditions.

This definition is without prejudice to the application of Article 92 of the EC Treaty.

7. The existence of exclusive rights has the effect of restricting the free movement of such equipment either as regards the importation and marketing of telecommunications equipment (including satellite equipment), because certain products are not marketed, or as regards the connection, bringing into service or maintenance because, taking into account the characteristics of the market and in particular the diversity and technical nature of the products, a monopoly has no incentive to provide these services in relation to products which it has not marketed or imported, nor to align its prices on costs, since there is no threat of competition from new entrants. Taking into account the fact that in most equipment markets there is typically a large range of telecommunication equipment markets there is typically a large range of telecommunication equipment, and the likely development of the markets in which there are as yet a limited number of manufacturers, any special right which directly or indirectly — for example by not providing for an open and non-discriminatory authorization procedure — limits the number of the undertakings authorized to import, market, connect, bring into service and maintain such equipment, is liable to have the same kind of effect as the grant of exclusive rights.

Such exclusive or special rights constitute measures having equivalent effect to quantitative restrictions incompatible with Article 30 of the EC Treaty. None of the specific features of satellite earth stations or of the market for their sale or maintenance is such as to justify their being treated differently in law from other telecommunications terminal equipment. Thus it is necessary to abolish all existing exclusive rights in the importation, marketing, connection, bringing into service and maintenance of satellite earth station equipment, as well as those rights having comparable effects — that is to say, all special rights except those consisting in legal or regulatory advantages conferred on one or more undertakings and affecting only the ability of other undertakings to engage in any of the abovementioned activities in the same geographical area under substantially equivalent conditions.

8. Satellite earth station equipment must satisfy the essential requirements harmonized by Council Directive 93/97/EEC⁽¹⁾ with special reference to the efficient use of frequencies. It will be possible to monitor the application of these essential requirements partly through the licences granted for the provision of the services concerned. Alignment on the essential requirements will be achieved mainly through the adoption of common technical rules and harmonization of the conditions attached to licences. Even where these conditions are not harmonized, Member States will nevertheless have to adapt their rules. In either case, Member States must in the meantime ensure that the application of such rules does not create barriers to trade.

9. The abolition of special or exclusive rights relating to the connection of satellite earth station equipment makes it necessary to recognize the right to connect this equipment to the switched networks operated by the telecommunications organizations so that licensed operators can offer their services to the public.

10. Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services⁽²⁾, as amended by the Agreement on the EEA, provides for the abolition of special or exclusive rights granted by Member States in respect of the provision of telecommunications services. However, the Directive excludes satellite services from its field of application.

11. In Joined Cases C-271/90, C-281/90 and C-289/90, *Spain v. Commission*⁽³⁾, the Court of Justice of the European Communities upheld this Commission Directive on 17 November 1992. However, in so far as it relates to special rights, the Directive was declared void by the Court of Justice on the grounds that neither the provisions of the Directive nor the preamble thereto specify the type of rights which are actually involved and in what respect the existence of such rights is contrary to the various provisions of the Treaty. Consequently, these rights must be defined in this Directive. As far as telecommunications services are concerned, special rights are in practice rights that are granted by a Member State to a limited number of undertakings, through any legislative, regulatory or administrative instrument which, within a given geographical area,

⁽¹⁾ OJ No L 290, 24. 11. 1993, p. 1.

⁽²⁾ OJ No L 192, 24. 7. 1990, p. 10.

⁽³⁾ [1992] ECRI-5833.

- limits to two or more, otherwise than according to objective, proportional and non-discriminatory criteria, the number of undertakings which are authorized to provide any such service, of
- designates, otherwise than according to such criteria, several competing undertakings as those which are authorized to provide any such service, or
- confers on any undertaking or undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same telecommunications service in the same geographical area under substantially equivalent conditions.

This definition is without prejudice to the application of Article 92 of the EC Treaty.

In the field of telecommunications services, such special legal or regulatory advantages may consist, among other things, in a right to make compulsory purchases in the general interest, in derogations from law on town-and-country planning, or in the possibility of obtaining an authorization without having to go through the usual procedure.

12. Where the number of undertakings authorized to provide satellite telecommunications services is limited by a Member State through special rights, and *a fortiori* exclusive rights, these constitute restrictions that could be incompatible with Article 59 of the Treaty, whenever such limitation is not justified by essential requirements, since these rights prevent other undertakings from supplying (or obtaining) the services concerned to (or from) other Member States. In the case of satellite network services, such essential requirements could be the effective use of the frequency spectrum and the avoidance of harmful interference between satellite telecommunications systems a other space-based or terrestrial technical systems. Consequently, provided that equipment used to offer the services satisfies the essential requirement applicable to satellite communications, separate legal treatment of the latter is not justified. On the other hand, special rights consisting only in special legal or regulatory advantages, do not, in principle, preclude other undertakings from entering the market. The compatibility of these rights with the EC Treaty must

therefore be assessed on a case-by-case basis, regard being had to their impact on the effective freedom of other entities to provide the same telecommunications service and their possible justifications regarding the activity concerned.

13. The exclusive rights that currently exist in the satellite communications field were generally granted to organizations that already enjoyed a dominant position in creating the terrestrial networks, or to one of their subsidiaries. Such rights have the effect of extending the dominant position enjoyed by those organizations and therefore strengthening that position. The exclusive rights granted in the satellite communications field are consequently incompatible with Article 90 of the EC Treaty, read in conjunction with Article 86.
14. These exclusive rights limiting access to the market also have the effect of restricting or preventing, to the detriment of users, the use of satellite communications that could be offered, thereby holding back technical progress in this area. Because their investment decisions are likely to be based on exclusive rights, the undertakings concerned are often in a position to decide to give priority to terrestrial technologies, whereas new entrants might exploit satellite technology. The telecommunications organizations have generally given preference to the development of optical-fibre terrestrial links, and satellite communications have been used chiefly as a technical solution of last resort in cases where the cost of the terrestrial alternatives has been prohibitive, or for the purpose of data broadcasting and/or television broadcasting, rather than being used as a fully complementary transmission technology in its own right. Thus the exclusive rights imply a restriction on the development of satellite communication, and this is incompatible with Article 90 of the Treaty, read in conjunction with Article 86.
15. However, where the provision of satellite services is concerned, licensing or declaration procedures are justified in order to ensure compliance with essential requirements, subject to the proportionality principle. Licensing is not justified when a mere declaration procedure would suffice to attain the relevant objective. For example, in the case of provision of a satellite service which involves only the use of a dependent VSAT earth station in a Member State, the latter should impose no more than a declaration procedure.

16. Article 90 (2) of the Treaty provides for an exception to Article 86 in cases where the application of the latter would obstruct the performance, in law or in fact, of the particular tasks assigned to the telecommunications organizations. Pursuant to that provision, Directive 90/388/EEC allows exclusive rights to be maintained for a transitional period in respect of voice telephony.

'Voice telephony' is defined in Article 1 of Directive 90/388/EEC as the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point. In the case of direct transport and switching of speech via satellite earth station networks, such commercial provision for the public in general can take place only when the satellite earth station network is connected to the public switched network.

As regards all services other than voice telephony, no special treatment under Article 90 (2) is justified especially in view of the insignificant contribution of such services to the turnover of the telecommunications organizations.

17. The provision of satellite network services for the conveyance of radio and television programmes is a telecommunications service for the purpose of this Directive and thus subject to its provisions. Notwithstanding the abolition of certain special and exclusive rights in respect of receive-only satellite earth stations not connected to the public network of a Member State and the abolition of special and exclusive rights in respect of satellite services provided for public or private broadcasters, the content of satellite broadcasting services to the general public or private broadcasters, the content of satellite broadcasting services to the general public provided via frequency bands defined in the Radio Regulations for both Broadcasting Satellite Services (BSS) and Fixed-Satellite Services (FSS) will continue to be subject to specific rules adopted by Member States in accordance with Community law and is not, therefore, subject to the provisions of this Directive.

18. This Directive does not prevent measure being adopted in accordance with Community law and existing international obligations so as to ensure that nationals of Member States are afforded equivalent treatment in third countries.

19. The offering by satellite operators of space segment capacity of national, private or international satellite systems to licensed satellite earth station network operators, is still, in some Member States, subject to regulatory restrictions other than those compatible with frequency and site coordination arrangements required under the international commitments of Member States. These additional restrictions are contrary to Article 59, which implies that such satellite operators should have full freedom to provide their services in the whole Community, once they are licensed in one Member State.

20. Tests to establish whether satellite earth stations of licensed operators other than national operators conform to specifications governing technical and operational access to intergovernmental satellite systems, are, in most of the Member States, carried out by the national Signatory of the nation upon whose territory the station is operating. These conformity assessments are therefore performed by service providers which are competitors.

This is not compatible with the Treaty provisions, notably Articles 3 (g) and 90, read in conjunction with Article 86. Member States therefore need to ensure that these conformity assessments can be carried out direct between the satellite earth station network operator concerned and the intergovernmental organization itself, under supervision of the regulatory authorities alone.

21. Most of the available space segment capacity is offered by the international satellite organizations. The charges for using such capacity are still high in many Member States because the capacity can be acquired only from the signatory for the Member State in question. Such exclusivity, permitted by some Member States, leads to a partitioning of the Common Market to the detriment of customers requiring capacity. In its resolution of 19 December 1991, the Council consequently called on the Member States to improve access to the space segment of the intergovernmental organizations. As regards the establishment and use of separate systems, restrictive measure taken under international conventions signed by Member States could also have effects incompatible with Community law, by limiting supply at the expense of the consumer within meaning of Article 86 (b). Within the international satellite organizations, reviews of the provisions of the relevant constituent instruments are under way, *inter alia*, in respect of improved access and in respect of the establishment and use of separate systems. In

order to enable the Commission to carry out the monitoring task assigned to it by the EC Treaty, instruments should be provided to help Member States to comply with the duty of cooperation enshrined in the first paragraph of Article 5, read in conjunction with Article 234 (2), of the Treaty.

22. In assessing the measures of this Directive, the Commission, in the context of the achievement of the fundamental objectives of the Treaty referred to in Article 2 thereof, including that of strengthening the Community's economic and social cohesion as referred to in Article 130 (a), will also take into account the situation of those Member States in which the terrestrial network is not yet sufficiently developed and which could justify the deferment for these Member States, as regards satellite services and to the extent necessary, of the date of full application of the provisions of this Directive until 1 January 1996,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Directive 88/301/EEC is hereby amended as follows :

- (a) The last sentence of the first indent is replaced by the following :

'Terminal equipment also means satellite earth station equipment'.

- (b) The following indents are added after the second indent :

— "special rights" means rights that are granted by a Member State to a limited number of undertakings, through any legislative, regulatory or administrative instrument, which, within a given geographical area,

— limits to two or more the number of such undertakings, otherwise than according to objective, proportional and non-discriminatory criteria, or

— designates, otherwise than according to such criteria, several competing undertakings, or

— confers on any undertaking or undertakings, otherwise than according to such criteria, any legal or regulatory advantages which substantially affect the ability of any other undertaking to import, market, connect, bring into service and/or maintain telecommunication terminal equipment in the same geographical area under substantially equivalent conditions ;

— "satellite earth station equipment" means equipment which is capable of being used for the transmission only, or for the transmission and reception ("transmit/receive"), or for the reception only ("receive-only") of radiocommu-

nication signals by means of satellites or other space-based systems'

2. The first paragraph of Article 2 is replaced by the following text.

'Member States which have granted special or exclusive rights to undertakings shall ensure that all exclusive rights are withdrawn, as well as those special rights which

(a) limit two or more the number of undertakings within the meaning of Article 1, otherwise than according to objective, proportional and non-discriminatory criteria, or

(b) designate, otherwise than according to such criteria, several competing undertakings within the meaning of Article 1.'

3. The first indent of Article 3 is replaced by the following text :

— in the case of satellite earth station equipment, refuse to allow such equipment to be connected to the public telecommunications network and/or to be brought into service where it does not satisfy the relevant common technical regulations adopted in pursuance of Council Directive 93/97/EEC (*) or, in the absence thereof, the essential requirements laid down in Article 4 of that Directive. In the absence of common technical rules of harmonized regulatory conditions, national rules shall be proportionate to those essential requirements and shall be notified to the Commission in pursuance of Directive 83/189/EEC where that Directive so requires.

— in the case of other terminal equipment, refuse to allow such equipment to be connected to the public telecommunications network where it does not satisfy the relevant common technical regulations adopted in pursuance of Council Directive 91/263/EEC (**) or, in the absence thereof, the essential requirements laid down in Article 4 of that Directive.

(*) OJ No L 290, 24. 11. 1993, p. 1.

(**) OJ No L 128, 23. 5. 1991, p. 1.'

Article 2

Directive 90/388/EEC is hereby amended as follows :

1. Article 1 is amended as follows :

- (a) Paragraph 1 is amended as follows :

- (i) the second indent is replaced by the following :

— "exclusive rights" means the rights that are granted by a Member State to one undertaking through any legislative, regulatory or administrative instrument, reserving it the right to provide a telecommunication service or undertake an activity within a given geographical area.'

(ii) The following is inserted as the third indent :

— "special rights" means the rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area,

— limits to two or more the number of such undertakings authorized to provide a service or undertake an activity, otherwise than according to objective, proportional and non-discriminatory criteria, or

— designates, otherwise than according to such criteria, several competing undertakings as being authorized to provide a service or undertake an activity, or

— confers on any undertaking or undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same telecommunications service or to undertake the same activity in the same geographical area under substantially equivalent conditions.'

(iii) The fourth indent is replaced by the following :

— "telecommunications services" means services whose provision consists wholly or partly in the transmission and routing of signals on a public telecommunications network by means of telecommunications processes, with the exception of radio- and television-broadcasting to the public, and satellite services.'

(iv) the following indents are inserted after the fourth indent :

— "satellite earth station network" means a configuration of two or more earth stations which interwork by means of a satellite ;

— "satellite network services" means the establishment and operation of satellite earth station networks ; these services consist, as a minimum, in the establishment, by satellite earth stations, of radiocommunications to space segment ("uplinks"), and in the establishment of radiocommunications between space segment and satellite earth stations ("downlinks") ;

— "satellite communications services" means service whose provision makes use, wholly or partly, of satellite network services ;

— "satellite services" means the provision of satellite communications services and/or the provision of satellite networks services ;

(v) the second sentence of the sixth indent is replaced by the following text :

'Those reasons are security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services, data protection and, in the case of satellite network services, the effective use of the frequency spectrum and the avoidance of harmful interference between satellite telecommunications systems and other space-based or terrestrial technical systems.'

(b) Paragraph 2 is replaced by the following :

'2. This Directive shall not apply to the telex service or to terrestrial mobile radiocommunications.'

2. Article 2 is amended as follows :

(a) The first paragraph is replaced by the following :

'Without prejudice to Article 1 (2), Member States shall withdraw all those measures which grant :

(a) exclusive rights for the supply of telecommunications services otherwise than voice telephony and

(b) special rights which limit to two or more the number of undertakings authorized to supply such telecommunication services, otherwise than according to objective, proportional and non-discriminatory criteria, or

(c) special rights which designate, otherwise than according to such criteria, several competing undertakings to provide such telecommunication services.

They shall take the measures necessary to ensure that any operator is entitled to supply any such telecommunications services, otherwise than voice telephony'.

(b) The following paragraphs are added :

'Member States shall communicate the criteria on which authorizations are granted, together with the conditions attached to such authorizations and to the declaration procedures for the operation of transmitting earth stations.

Member States shall continue to inform the Commission of any plans to introduce new licensing procedures or to change existing procedures'.

3. Article 6 is amended as follows :

(a) The following paragraphs are added after the second paragraph :

'Member States shall ensure that any fees imposed on providers of services as part of authorization procedures, shall be based on objective, transparent and non-discriminatory criteria.

Fees, the criteria upon which they are based, and any changes thereto, shall be published in an appropriate and sufficiently detailed manner, so as to provide easy access to that information.

Member States shall notify to the Commission no later than nine months after publication of this Directive, and thereafter whenever changes occur, the manner in which the information is made available. The Commission shall regularly publish references to such notifications.'

(b) The following paragraph is added :

'Member States shall ensure that any regulatory prohibition or restrictions on the offer of space-segment capacity to any authorized satellite earth station network operator are abolished, and shall authorize within their territory any space-segment supplier to verify that the satellite earth station network for use in connection with the space segment of the supplier in question is in conformity with the published conditions for access to his space segment capacity.'

Article 3

Member States which are party to the international conventions setting up the international organizations

Intelsat, Inmarsat, Eutelsat and Intersputnik for the purposes of satellite operators shall communicate to the Commission, at its request, the information they possess on any measure that could prejudice compliance with the competition rules of the EC Treaty or affect the aims of this Directive or of the Council Directives on telecommunications.

Article 4

Member States shall supply to the Commission, not later than nine months after this Directive has entered into force, such information as will allow the Commission to confirm that Articles 1 and 2 have been complied with.

Article 5

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 13 October 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 12 December 1994

on the terms of reference of hearing officers in competition procedures before
the Commission

(Text with EEA relevance)

(94/810/ECSC, EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Coal and Steel Community,

Having regard to the Treaty establishing the European
Community,

Whereas the treaties establishing the Communities and
the rules implementing those treaties in relation to
competition matters provide for the right of the parties
concerned and of third parties to be heard before a final
decision affecting their interests is taken;

Whereas the Commission must ensure that that right is
guaranteed in its competition proceedings;

Whereas it is appropriate to entrust the organization and
conduct of the administrative procedures designed to
protect the right to be heard to an independent person
experienced in competition matters, in the interest of
contributing to the objectivity, transparency and efficiency
of the Commission's competition proceedings;

Whereas the Commission created the post of Hearing
Officer for these purposes in 1982 and laid down his
terms of reference;

Whereas it is necessary to adapt and consolidate those
terms of reference in the light of subsequent develop-
ments in Community law,

HAS DECIDED AS FOLLOWS:

Article 1

1. The hearings provided for in the provisions imple-
menting Articles 65 and 66 of the ECSC Treaty, Articles
85 and 86 of the EC Treaty and Council Regulation
(EEC) No 4064/89⁽¹⁾ shall be organized and conducted by
the Hearing Officer in accordance with Articles 2 to 10 of
this Decision.

2. The implementing provisions referred to in para-
graph 1 are:

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1 (corrected version OJ No L
257, 21. 9. 1990, p. 13).

(a) Article 36 (1) of the ECSC Treaty;

(b) Regulation No 99/63/EEC of the Commission of
25 July 1963 on the hearings provided for in Article
19 (1) and (2) of Council Regulation No 17⁽²⁾;

(c) Regulation (EEC) No 1630/69 of the Commission of
8 August 1969 on the hearings provided for in Article
26 (1) and (2) of Council Regulation (EEC) No
1017/68 of 19 July 1968⁽³⁾;

(d) Commission Regulation (EEC) No 4260/88 of 16
December 1988 on the communications, complaints
and applications and the hearings provided for in
Council Regulation (EEC) No 4056/86 laying down
detailed rules for the application of Articles 58 and 86
of the treaty to maritime transport⁽⁴⁾;

(e) Commission Regulation (EEC) No 4261/88 of 16
December 1988 on the complaints, applications and
hearings provided for in Council Regulation (EEC) No
3975/87 laying down the procedure for the applica-
tion of the rules on competition to undertakings in
the air transport sector⁽⁵⁾;

(f) Commission Regulation (EEC) No 2367/90 of 25 July
1990, on the notifications, time limits and hearings
provided for in Council Regulation (EEC) No 4064/89
on the control of concentrations between under-
takings⁽⁶⁾.

3. Administratively the Hearing Officer shall belong to
the Directorate-General for Competition. To ensure the
independence of the Hearing Officer in the performance
of his duties, he has the right of direct access, as defined
in Article 9, to the Member of the Commission with
special responsibility for competition.

4. Where the Hearing Officer is unable to act, the
Director-General, where appropriate after consultation of
the Hearing Officer, shall designate another official, who

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

⁽³⁾ OJ No L 209, 21. 8. 1969, p. 11.

⁽⁴⁾ OJ No L 376, 31. 12. 1988, p. 1.

⁽⁵⁾ OJ No L 376, 31. 12. 1988, p. 10.

⁽⁶⁾ OJ No L 219, 14. 8. 1990, p. 5.

is least in the grade A3 and is not involved in the case in question, to carry out the duties described herein.

Article 2

1. The Hearing Officer shall ensure that the hearing is properly conducted and thus contribute to the objectivity of the hearing itself and of any decision taken subsequently. The Hearing Officer shall seek to ensure in particular that in the preparation of draft Commission decisions in competition cases due account is taken of all the relevant facts, whether favourable or unfavourable to the parties concerned.

2. In performing his duties the Hearing Officer shall see to it that the rights of the defence are respected, while taking account of the need for effective application of the competition rules in accordance with the regulations in force and the principles laid down by the Court of First Instance and the Court of Justice.

Article 3

1. Decisions as to whether third parties, be they natural or legal persons, are to be heard shall be taken after consulting the Director responsible for investigating the case which is the subject of the procedure.

2. Applications to be heard on the part of third parties shall be submitted in writing, together with a written statement explaining the applicant's interest in the outcome of the procedure.

3. Where it is found that an applicant has not shown a sufficient interest to be heard, he shall be informed in writing of the reasons for such finding. A time limit shall be fixed within which he may submit any further written comments.

Article 4

1. Decisions whether persons are to be heard orally shall be taken after consulting the Director responsible for investigating the case which is the subject of the procedure.

2. Applications to be heard orally shall be made in the applicant's written comments on letters which the Commission has addressed to him and shall contain a reasoned statement of the applicant's interest in an oral hearing.

3. The letters referred to in paragraph 2 are those :

- communicating a statement of objections,
- inviting the written comments of a natural or legal person having shown sufficient interest to be heard as a third party,
- informing a complainant that in the Commission's view there are insufficient grounds for finding an

infringement and inviting him to submit any further written comments,

- informing a natural or legal person that in the Commission's view that person has not shown sufficient interest to be heard as a third party.

4. Where it is found that the applicant has not shown a sufficient interest to be heard orally, he shall be informed in writing of the reasons for such finding. A time limit shall be fixed within which he may submit any further written comments.

Article 5

1. Where a person, an undertaking or an association of persons or undertakings who or which has received one or more of the letters listed in Article 4 (3) has reason to believe that the Commission has in its possession documents which have not been disclosed to it and that those documents are necessary for the proper exercise of the right to be heard, he or it may draw attention to the matter by a reasoned request.

2. The reasoned decision on any such request shall be communicated to the person, undertaking or association that made the request and to any other person, undertaking or association concerned by the procedure.

3. Where it is intended to disclose information which may constitute a business secret of an undertaking, it shall be informed in writing of this intention and the reasons for it. A time limit shall be fixed within which the undertaking concerned may submit any written comments.

4. Where the undertaking concerned objects to the disclosure of the information but it is found that the information is not protected and may therefore be disclosed, that finding shall be stated in a reasoned decision which shall be notified to the undertaking concerned. The decision shall specify the date after which the information will be disclosed. This date shall not be less than one week from the date of notification.

5. Where an undertaking or association of undertakings considers that the time limit imposed for its reply to a letter referred to in Article 4 (3) is too short, it may, within the original time limit, draw attention to the matter by a reasoned request. The applicant shall be informed in writing whether the request has been granted.

Article 6

1. Where appropriate in view of the need to ensure that the hearing is properly prepared and particularly that questions of fact are clarified as far as possible, the Hearing Officer may, after consulting the Director responsible for investigating the case, supply in advance to the firms concerned a list of the questions on which he or she wishes them to explain their point of view.

2. For this purpose, after consulting the Director responsible for investigating the case which is the subject of the hearing, the Hearing Officer may hold a meeting with the parties concerned and, where appropriate, the Commission staff, in order to prepare for the hearing itself.

3. For the same purpose the Hearing Officer may ask for prior written notification of the essential contents of the intended statement of persons whom the undertakings concerned have proposed for hearing.

Article 7

1. After consulting the Director responsible for investigating the case, the Hearing Officer shall determine the date, the duration and the place of the hearing, and, where a postponement is requested, the Hearing Officer shall decide whether or not to allow it.

2. The Hearing Officer shall be fully responsible for the conduct of the hearing.

3. In this regard, the Hearing Officer shall decide whether fresh documents should be admitted during the hearing, what persons should be heard on behalf of a party and whether the persons concerned should be heard separately or in the presence of other persons attending the hearing.

4. The Hearing Officer shall ensure that the essential content of the statement made by each person heard shall be recorded in minutes which, where appropriate, shall be read and approved by that person.

Article 8

The Hearing Officer shall report to the Director-General for Competition on the hearing and the conclusions he draws from it. The Hearing Officer may make observations on the further progress of the proceedings. Such observations may relate among other things to the need

for further information, the withdrawal of certain objections, or the formulation of further objections.

Article 9

In performing the duties defined in Article 2, the Hearing Officer may, if he deems it appropriate, refer his observations direct to the Member of the Commission with special responsibility for competition.

Article 10

Where appropriate, the Member of the Commission with special responsibility for competition may decide, at the Hearing Officer's request, to attach the Hearing Officer's final report to the draft decision submitted to the Commission, in order to ensure that when it reaches a decision on an individual case it is fully apprised of all relevant information.

Article 11

This Decision revokes and replaces the Commission Decisions of 8 September 1982 and 23 November 1990 on the implementation of hearings in connection with procedures for the application of Articles 65 and 66 of the ECSC Treaty and Articles 85 and 86 of the EC Treaty.

Article 12

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Done at Brussels, 12 December 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

Commission of the European Communities notice concerning the updating of the 1986 communication on agreements of minor importance

(94/C 368/06)

The Commission has decided to update its 1986 notice on agreements of minor importance which do not fall under Article 85 (1) of the Treaty establishing the European Economic Community⁽¹⁾. It proposes to raise to ECU 300 million the turnover threshold below which undertakings may benefit from the advantages of the application of that notice.

Consequently, the figure of ECU 200 million mentioned at point 7, second indent, of that notice is replaced by the figure of ECU 300 million.

⁽¹⁾ OJ No C 231, 12. 9. 1986, p. 2.

COMMISSION REGULATION (EC) No 3385/94

of 21 December 1994

on the form, content and other details of applications and notifications provided for in
Council Regulation No 17

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

notifications relating to agreements, decisions or practices of associations of undertakings should be submitted only by such association;

Having regard to the Treaty establishing the European Community,

Whereas it is for the applicants and the notifying parties to make full and honest disclosure to the Commission of the facts and circumstances which are relevant for coming to a decision on the agreements, decisions or practices concerned;

Having regard to the Agreement on the European Economic Area,

Whereas, in order to simplify and expedite their examination, it is desirable to prescribe that a form be used for applications for negative clearance relating to Article 85 (1) and for notifications relating to Article 85 (3); whereas the use of this form should also be possible in the case of applications for negative clearance relating to Article 86;

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 24 thereof,

Whereas Commission Regulation No 27 of 3 May 1962, First Regulation implementing Council Regulation No 17 ⁽²⁾, as last amended by Regulation (EC) No 3666/93 ⁽³⁾, no longer meets the requirements of efficient administrative procedure; whereas it should therefore be replaced by a new regulation;

Whereas the Commission, in appropriate cases, will give the parties, if they so request, an opportunity before the application or the notification to discuss the intended agreement, decision or practice informally and in strict confidence; whereas, in addition, it will, after the application or notification, maintain close contact with the parties to the extent necessary to discuss with them any practical or legal problems which it discovers on a first examination of the case and if possible to remove such problems by mutual agreement;

Whereas, on the one hand, applications for negative clearance under Article 2 and notifications under Articles 4, 5 and 25 of Regulation No 17 have important legal consequences, which are favourable to the parties to an agreement, a decision or a practice, while, on the other hand, incorrect or misleading information in such applications or notifications may lead to the imposition of fines and may also entail civil law disadvantages for the parties; whereas it is therefore necessary in the interests of legal certainty to define precisely the persons entitled to submit applications and notifications, the subject matter and content of the information which such applications and notifications must contain, and the time when they become effective;

Whereas the provisions of this Regulation must also cover cases in which applications for negative clearance relating to Article 53 (1) or Article 54 of the EEA Agreement, or notifications, relating to Article 53 (3) of the EEA Agreement are submitted to the Commission,

Whereas each of the parties should have the right to submit the application or the notification to the Commission; whereas, furthermore, a party exercising the right should inform the other parties in order to enable them to protect their interests; whereas applications and

HAS ADOPTED THIS REGULATION:

Article 1

Persons entitled to submit applications and notifications

1. The following may submit an application under Article 2 of Regulation No 17 relating to Article 85 (1)

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 35, 10. 5. 1962, p. 1118/62.

⁽³⁾ OJ No L 336, 31. 12. 1993, p. 1.

of the Treaty or a notification under Articles 4, 5 and 25 of Regulation No 17:

- (a) any undertaking and any association of undertakings being a party to agreements or to concerted practices; and
- (b) any association of undertakings adopting decisions or engaging in practices;

which may fall within the scope of Article 85 (1).

Where the application or notification is submitted by some, but not all, of the parties, referred to in point (a) of the first subparagraph, they shall give notice to the other parties.

2. Any undertaking which may hold, alone or with other undertakings, a dominant position within the common market or in a substantial part of it, may submit an application under Article 2 of Regulation No 17 relating to Article 86 of the Treaty.

3. Where the application or notification is signed by representatives of persons, undertakings or associations of undertakings, such representatives shall produce written proof that they are authorized to act.

4. Where a joint application or notification is made, a joint representative should be appointed who is authorized to transmit and receive documents on behalf of all the applicants or notifying parties.

Article 2

Submission of applications and notifications

1. Applications under Article 2 of Regulation No 17 relating to Article 85 (1) of the Treaty and notifications under Articles 4, 5 and 25 of Regulation No 17 shall be submitted in the manner prescribed by Form A/B as shown in the Annex to this Regulation. Form A/B may also be used for applications under Article 2 of Regulation No 17 relating to Article 86 of the Treaty. Joint applications and joint notifications shall be submitted on a single form.

2. Seventeen copies of each application and notification and three copies of the Annexes thereto shall be submitted to the Commission at the address indicated in Form A/B.

3. The documents annexed to the application or notification shall be either originals or copies of the originals; in the latter case the applicant or notifying party shall confirm that they are true copies of the originals and complete.

4. Applications and notifications shall be in one of the official languages of the Community. This language shall also be the language of the proceeding for the applicant or notifying party. Documents shall be submitted in their original language. Where the original language is not one of the official languages, a translation into the language of the proceeding shall be attached.

5. Where applications for negative clearance relating to Article 53 (1) or Article 54 of the EEA Agreement or notifications relating to Article 53 (3) of the EEA Agreement are submitted, they may also be in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority. If the language chosen for the application or notification is not an official language of the Community, the applicant or notifying party shall supplement all documentation with a translation into an official language of the Community. The language which is chosen for the translation shall be the language of the proceeding for the applicant or notifying party.

Article 3

Content of applications and notifications

1. Applications and notifications shall contain the information, including documents, required by Form A/B. The information must be correct and complete.

2. Applications under Article 2 of Regulation No 17 relating to Article 86 of the Treaty shall contain a full statement of the facts, specifying, in particular, the practice concerned and the position of the undertaking or undertakings within the common market or a substantial part thereof in regard to the products or services to which the practice relates.

3. The Commission may dispense with the obligation to provide any particular information, including documents, required by Form A/B where the Commission considers that such information is not necessary for the examination of the case.

4. The Commission shall, without delay, acknowledge in writing to the applicant or notifying party receipt of the application or notification, and of any reply to a letter sent by the Commission pursuant to Article 4 (2).

Article 4

Effective date of submission of applications and notifications

1. Without prejudice to paragraphs 2 to 5, applications and notifications shall become effective on the date on which they are received by the Commission. Where, however, the application or notification is sent by registered post, it shall become effective on the date shown on the postmark of the place of posting.

2. Where the Commission finds that the information, including documents, contained in the application or notification is incomplete in a material respect, it shall, without delay, inform the applicant or notifying party in writing of this fact and shall fix an appropriate time limit for the completion of the information. In such cases, the application or notification shall become effective on the date on which the complete information is received by the Commission.

3. Material changes in the facts contained in the application or notification which the applicant or notifying party knows or ought to know must be communicated to the Commission voluntarily and without delay.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 December 1994.

4. Incorrect or misleading information shall be considered to be incomplete information.

5. Where, at the expiry of a period of one month following the date on which the application or notification has been received, the Commission has not provided the applicant or notifying party with the information referred to in paragraph 2, the application or notification shall be deemed to have become effective on the date of its receipt by the Commission.

Article 5

Repeal

Regulation No 27 is repealed.

Article 6

Entry into force

This Regulation shall enter into force on 1 March 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

INTRODUCTION

Form A/B, as its Annex, is an integral part of the Commission Regulation (EC) No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17 (hereinafter referred to as 'the Regulation'). It allows undertakings and associations of undertakings to apply to the Commission for negative clearance agreements or practices which may fall within the prohibitions of Article 85 (1) and Article 86 of the EC Treaty, or within Articles 53 (1) and 54 of the EEA Agreement or to notify such agreement and apply to have it exempted from the prohibition set out in Article 85 (1) by virtue of the provisions of Article 85 (3) of the EC Treaty or from the prohibition of Article 53 (1) by virtue of the provisions of Article 53 (3) of the EEA Agreement.

To facilitate the use of the Form A/B the following pages set out:

- in which situations it is necessary to make an application or a notification (Point A),
- to which authority (the Commission or the EFTA Surveillance Authority) the application or notification should be made (Point B),
- for which purposes the application or notification can be used (Point C),
- what information must be given in the application or notification (Points D, E and F),
- who can make an application or notification (Point G),
- how to make an application or notification (Point H),
- how the business secrets of the undertakings can be protected (Point I),
- how certain technical terms used in the operational part of the Form A/B should be interpreted (Point J), and
- the subsequent procedure after the application or notification has been made (Point K).

A. In which situations is it necessary to make an application or a notification?

I. *Purpose of the competition rules of the EC Treaty and the EEA Agreement*

1. Purpose of the EC Competition Rules

The purpose of the competition rules is to prevent the distortion of competition in the common market by restrictive practices or the abuse of dominant positions. They apply to any enterprise trading directly or indirectly in the common market, wherever established.

Article 85 (1) of the EC Treaty (the text of Articles 85 and 86 is reproduced in Annex I to this form) prohibits restrictive agreements, decisions or concerted practices (arrangements) which may affect trade between Member States, and Article 85 (2) declares agreements and decisions containing such restrictions void (although the Court of Justice has held that if restrictive terms of agreements are severable, only those terms are void); Article 85 (3), however, provides for exemption of arrangements with beneficial effects, if its conditions are met. Article 86 prohibits the abuse of a dominant position which may affect trade between Member States. The original procedures for implementing these Articles, which provide for 'negative clearance' and exemption pursuant to Article 85 (3), were laid down in Regulation No 17.

2. Purpose of the EEA competition rules

The competition rules of the Agreement on the European Economic Area (concluded between the Community, the Member States and the EFTA States ⁽¹⁾) are based on the same principles as those contained in the Community competition rules and have the same purpose, i. e. to prevent the distortion of competition in the EEA territory by cartels or the abuse of dominant position. They apply to any enterprise trading directly or indirectly in the EEA territory, wherever established.

Article 53 (1) of the EEA Agreement (the text of Articles 53, 54 and 56 of the EEA Agreement is reproduced in Annex I) prohibits restrictive agreements, decisions or concerted practices (arrangements) which may affect trade between the Community and one or more EFTA States (or between EFTA States), and Article 53 (2) declares agreements or decisions containing such restrictions void; Article 53 (3), however, provides for exemption of arrangements with beneficial effects, if its conditions are met. Article 54 prohibits the abuse of a dominant position which may affect trade between the Community and one or more EFTA States (or between EFTA States). The procedures for implementing these Articles, which provide for 'negative clearance' and exemption pursuant to Article 53 (3), are laid down in Regulation No 17, supplemented for EEA purposes, by Protocols 21, 22 and 23 to the EEA Agreement ⁽²⁾.

II. *The scope of the competition rules of the EC Treaty and the EEA Agreement*

The applicability of Articles 85 and 86 of the EC Treaty and Articles 53 and 54 of the EEA Agreement depends on the circumstances of each individual case. It presupposes that the arrangement or behaviour satisfies all the conditions set out in the relevant provisions. This question must consequently be examined before any application for negative clearance or any notification is made.

1. Negative clearance

The negative clearance procedure allows undertakings to ascertain whether the Commission considers that their arrangement or their behaviour is or is not prohibited by Article 85 (1), or Article 86 of the EC Treaty or by Article 53 (1) or Article 54 of the EEA Agreement. This procedure is governed by Article 2 of Regulation No 17. The negative clearance takes the form of a decision by which the Commission certifies that, on the basis of the facts in its possession, there are no grounds pursuant to Article 85 (1) or Article 86 of the EC Treaty or under Article 53 (1) or Article 54 of the EEA Agreement for action on its part in respect of the arrangement or behaviour.

There is, however, no point in making an application when the arrangements or the behaviour are manifestly not prohibited by the abovementioned provisions. Nor is the Commission obliged to give negative clearance. Article 2 of Regulation No 17 states that '... the Commission may certify...'. The Commission issues negative clearance decisions only where an important problem of interpretation has to be solved. In the other cases it reacts to the application by sending a comfort letter.

The Commission has published several notices relating the interpretation of Article 85 (1) of the EC Treaty. They define certain categories of agreements which, by their nature or because of their minor importance, are not caught by the prohibition ⁽³⁾.

2. Exemption

The procedure for exemption pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement allows companies to enter into arrangements which, in fact, offer economic advantages but which, without exemption, would be prohibited by Article 85 (1) of the EC Treaty or by Article 53 (1) of the EEA Agreement. This procedure is governed by Articles 4, 6 and 8 and, for the new Member States, also by Articles 5, 7 and 25 of Regulation No 17. The exemption takes

⁽¹⁾ See list of Member States and EFTA States in Annex III.

⁽²⁾ Reproduced in Annex I.

⁽³⁾ See Annex II.

the form of a decision by the Commission declaring Article 85 (1) of the EC Treaty or Article 53 (1) of the EEA Agreement to be inapplicable to the arrangements described in the decision. Article 8 requires the Commission to specify the period of validity of any such decision, allows the Commission to attach conditions and obligations and provides for decisions to be amended or revoked or specified acts by the parties to be prohibited in certain circumstances, notably if the decisions were based on incorrect information or if there is any material change in the facts.

The Commission has adopted a number of regulations granting exemptions to categories of agreements⁽¹⁾. Some of these regulations provide that some agreements may benefit from exemption only if they are notified to the Commission pursuant to Article 4 or 5 of Regulation No 17 with a view to obtaining exemption, and the benefit of the opposition procedure is claimed in the notification.

A decision granting exemption may have retroactive effect, but, with certain exceptions, cannot be made effective earlier than the date of notification (Article 6 of Regulation No 17). Should the Commission find that notified arrangements are indeed prohibited and cannot be exempted and, therefore, take a decision condemning them, the participants are nevertheless protected, between the date of the notification and the date of the decision, against fines for any infringement described in the notification (Article 3 and Article 15 (5) and (6) of Regulation No 17).

Normally the Commission issues exemption decisions only in cases of particular legal, economic or political importance. In the other cases it terminates the procedure by sending a comfort letter.

B. To which authority should application or notification be made?

The applications and notifications must be made to the authority which has competence for the matter. The Commission is responsible for the application of the competition rules of the EC Treaty. However there is shared competence in relation to the application of the competition rules of the EEA agreement.

The competence of the Commission and of the EFTA Surveillance Authority to apply the EEA competition rules follows from Article 56 of the EEA Agreement. Applications and notifications relating to agreements, decisions or concerted practices liable to affect trade between Member States should be addressed to the Commission unless their effects on trade between Member States or on competition within the Community are not appreciable within the meaning of the Commission notice of 1986 on agreements of minor importance⁽²⁾. Furthermore, all restrictive agreements, decisions or concerted practices affecting trade between one Member State and one or more EFTA States fall within the competence of the Commission, provided that the undertakings concerned achieve more than 67 % of their combined EEA-wide turnover within the Community⁽³⁾. However, if the effects of such agreements, decisions or concerted practices on trade between Member States or on competition within the Community are not appreciable, the notification should, where necessary, be addressed to the EFTA Surveillance Authority. All other agreements, decisions and concerted practices falling under Article 53 of the EEA Agreement should be notified to the EFTA Surveillance Authority (the address of which is given in Annex III).

Applications for negative clearance regarding Article 54 of the EEA Agreement should be lodged with the Commission if the dominant position exists only in the Community, or with the EFTA Surveillance Authority, if the dominant position exists only in the whole of the territory of the EFTA States, or a substantial part of it. Only where the dominant position exists within both territories should the rules outlined above with respect to Article 53 be applied.

The Commission will apply, as a basis for appraisal, the competition rules of the EC Treaty. Where the case falls under the EEA Agreement and is attributed to the Commission pursuant to Article 56 of that Agreement, it will simultaneously apply the EEA rules.

⁽¹⁾ See Annex II.

⁽²⁾ OJ No C 231, 12. 9. 1986, p. 2.

⁽³⁾ For a definition of 'turnover' in this context, see Articles 2, 3 and 4 of Protocol 22 to the EEA Agreement reproduced in Annex I.

C. The Purpose of this Form

Form A/B lists the questions that must be answered and the information and documents that must be provided when applying for the following:

- a negative clearance with regard to Article 85 (1) of the EC Treaty and/or Article 53 (1) of the EEA Agreement, pursuant to Article 2 of Regulation No 17, with respect to agreements between undertakings, decisions by associations of undertakings and concerted practices,
- an exemption pursuant to Article 85 (3) of the EC Treaty and/or Article 53 (3) of the EEA Agreement with respect to agreements between undertakings, decisions by associations of undertakings and concerted practices,
- the benefit of the opposition procedure contained in certain Commission regulations granting exemption by category.

This form allows undertakings applying for negative clearance to notify, at the same time, in order to obtain an exemption in the event that the Commission reaches the conclusion that no negative clearance can be granted.

Applications for negative clearance and notifications relating to Article 85 of the EC Treaty shall be submitted in the manner prescribed by form A/B (see Article 2 (1), first sentence of the Regulation).

This form can also be used by undertakings that wish to apply for a negative clearance from Article 86 of the EC Treaty or Article 53 of the EEA Agreement, pursuant to Article 2 of Regulation No 17. Applicants requesting negative clearance from Article 86 are not required to use form A/B. They are nonetheless strongly recommended to give all the information requested below to ensure that their application gives a full statement of the facts (see Article 2 (1), second sentence of the Regulation).

The applications or notifications made on the form A/B issued by the EFTA side are equally valid. However, if the agreements, decisions or practices concerned fall solely within Articles 85 or 86 of the EC Treaty, i. e. have no EEA relevance whatsoever, it is advisable to use the present form established by the Commission.

D. Which chapters of the form should be completed?

The operational part of this form is sub-divided into four chapters. Undertakings wishing to make an application for a negative clearance or a notification must complete Chapters I, II and IV. An exception to this rule is provided for in the case where the application or notification concerns an agreement concerning the creation of a cooperative joint venture of a structural character if the parties wish to benefit from an accelerated procedure. In this situation Chapters I, III and IV should be completed.

In 1992, the Commission announced that it had adopted new internal administrative rules that provided that certain applications and notifications — those of cooperative joint ventures which are structural in nature — would be dealt with within fixed deadlines. In such cases the services of the Commission will, within two months of receipt of the complete notification of the agreement, inform the parties in writing of the results of the initial analysis of the case and, as appropriate, the nature and probable length of the administrative procedure they intend to engage.

The contents of this letter may vary according to the characteristics of the case under investigation:

- in cases not posing any problems, the Commission will send a comfort letter confirming the compatibility of the agreement with Article 85 (1) or (3),
- if a comfort letter cannot be sent because of the need to settle the case by formal decision, the Commission will inform the undertakings concerned of its intention to adopt a decision either granting or rejecting exemption,

- if the Commission has serious doubts as to the compatibility of the agreement with the competition rules, it will send a letter to the parties giving notice of an in-depth examination which may, depending on the case, result in a decision either prohibiting, exempting subject to conditions and obligations, or simply exempting the agreement in question.

This new accelerated procedure, applicable since 1 January 1993, is based entirely on the principle of self-discipline. The deadline of two months from the complete notification — intended for the initial examination of the case — does not constitute a statutory term and is therefore in no way legally binding. However, the Commission will do its best to abide by it. The Commission reserves the right, moreover, to extend this accelerated procedure to other forms of cooperation between undertakings.

A cooperative joint venture of a structural nature is one that involves an important change in the structure and organization of the business assets of the parties to the agreement. This may occur because the joint venture takes over or extends existing activities of the parent companies or because it undertakes new activities on their behalf. Such operations are characterized by the commitment of significant financial, material and/or non-tangible assets such as intellectual property rights and know how. Structural joint ventures are therefore normally intended to operate on a medium- or long-term basis.

This concept includes certain 'partial function' joint ventures which take over one or several specific functions within the parents' business activity without access to the market, in particular research and development and/or production. It also covers those 'full function' joint ventures which give rise to coordination of the competitive behaviour of independent undertakings, in particular between the parties to the joint venture or between them and the joint venture.

In order to respect the internal deadline, it is important that the Commission has available on notification all the relevant information reasonably available to the notifying parties that is necessary for it to assess the impact of the operation in question on competition. Form A/B therefore contains a special section (Chapter III) that must be completed only by persons notifying cooperative joint ventures of a structural character that wish to benefit from the accelerated procedure.

Persons notifying joint ventures of a structural character that wish to claim the benefit of the aforementioned accelerated procedure should therefore complete Chapters I, III and IV of this form. Chapter III contains a series of detailed questions necessary for the Commission to assess the relevant market(s) and the position of the parties to the joint venture on that (those) market(s).

Where the parties do not wish to claim the benefit of an accelerated procedure for their joint ventures of a structural character they should complete Chapters I, II and IV of this form. Chapter II contains a far more limited range of questions on the relevant market(s) and the position of the parties to the operation in question on that (those) market(s), but sufficient to enable the Commission to commence its examination and investigation.

E. The need for complete information

The receipt of a valid notification by the Commission has two main consequences. First, it affords immunity from fines from the date that the valid notification is received by the Commission with respect to applications made in order to obtain exemption (see Article 15 (5) of Regulation No 17). Second, until a valid notification is received, the Commission cannot grant an exemption pursuant to Article 85 (3) of the EC Treaty and/or Article 53 (3) of the EEA Agreement, and any exemption that is granted can be effective only from the date of receipt of a valid notification⁽¹⁾. Thus, whilst there is no legal obligation to notify as such, unless and until an arrangement that falls within the scope of Article 85 (1) and/or Article 53 (1) has not been notified and is, therefore, not capable of being exempted, it may be declared void by a national court pursuant to Article 85 (2) and/or Article 53 (2)⁽²⁾.

⁽¹⁾ Subject to the qualification provided for in Article 4 (2) of Regulation No 17.

⁽²⁾ For further details of the consequences of non-notification see the Commission notice on cooperation between national Courts and the Commission (OJ No C 39, 13. 2. 1993, p. 6).

Where an undertaking is claiming the benefit of a group exemption by recourse to an opposition procedure, the period within which the Commission must oppose the exemption by category only applies from the date that a valid notification is received. This is also true of the two months' period imposed on the Commission services for an initial analysis of applications for negative clearance and notifications relating to cooperative joint ventures of a structural character which benefit from the accelerated procedure.

A valid application or notification for this purpose means one that is not incomplete (see Article 3 (1) of the Regulation). This is subject to two qualifications. First, if the information or documents required by this form are not reasonably available to you in part or in whole, the Commission will accept that a notification is complete and thus valid notwithstanding the failure to provide such information, providing that you give reasons for the unavailability of the information, and provide your best estimates for missing data together with the sources for the estimates. Indications as to where any of the requested information or documents that are unavailable to you could be obtained by the Commission must also be provided. Second, the Commission only requires the submission of information relevant and necessary to its inquiry into the notified operation. In some cases not all the information required by this form will be necessary for this purpose. The Commission may therefore dispense with the obligation to provide certain information required by this form (see Article 3 (3) of the Regulation). This provision enables, where appropriate, each application or notification to be tailored to each case so that only the information strictly necessary for the Commission's examination is provided. This avoids unnecessary administrative burdens being imposed on undertakings, in particular on small and medium-sized ones. Where the information or documents required by this form are not provided for this reason, the application or notification should indicate the reasons why the information is considered to be unnecessary to the Commission's investigation.

Where the Commission finds that the information contained in the application or notification is incomplete in a material respect, it will, within one month from receipt, inform the applicant or the notifying party in writing of this fact and the nature of the missing information. In such cases, the application or notification shall become effective on the date on which the complete information is received by the Commission. If the Commission has not informed the applicant or the notifying party within the one month period that the application or notification is incomplete in a material respect, the application or notification will be deemed to be complete and valid (see Article 4 of the Regulation).

It is also important that undertakings inform the Commission of important changes in the factual situation including those of which they become aware after the application or notification has been submitted. The Commission must, therefore, be informed immediately of any changes to an agreement, decision or practice which is the subject of an application or notification (see Article 4 (3) of the Regulation). Failure to inform the Commission of such relevant changes could result in any negative clearance decision being without effect or in the withdrawal of any exemption decision⁽¹⁾ adopted by the Commission on the basis of the notification.

F. The need for accurate information

In addition to the requirement that the application or notification be complete, it is important that you ensure that the information provided is accurate (see Article 3 (1) of the Regulation). Article 15 (1) (a) of Regulation No 17 states that the Commission may, by decision, impose on undertakings or associations of undertakings fines of up to ECU 5 000 where, intentionally or negligently, they supply incorrect or misleading information in an application for negative clearance or notification. Such information is, moreover, considered to be incomplete (see Article 4 (4) of the Regulation), so that the parties cannot benefit from the advantages of the opposition procedure or accelerated procedure (see above, Point E).

G. Who can lodge an application or a notification?

Any of the undertakings party to an agreement, decision or practice of the kind described in Articles 85 or 86 of the EC Treaty and Articles 53 or 54 of the EEA Agreement may submit an application for negative clearance, in relation to Article 85 and Article 53, or a notification requesting an exemption. An association

⁽¹⁾ See point (a) of Article 8 (3) of Regulation No 17.

of undertakings may submit an application or a notification in relation to decisions taken or practices pursued into in the operation of the association.

In relation to agreements and concerted practices between undertakings it is common practice for all the parties involved to submit a joint application or notification. Although the Commission strongly recommends this approach, because it is helpful to have the views of all the parties directly concerned at the same time, it is not obligatory. Any of the parties to an agreement may submit an application or notification in their individual capacities, but in such circumstances the notifying party should inform all the other parties to the agreement, decision or practice of that fact (see Article 1 (3) of the Regulation). They may also provide them with a copy of the completed form, where relevant once confidential information and business secrets have been deleted (see below, operational part, question 1.2).

Where a joint application or notification is submitted, it has also become common practice to appoint a joint representative to act on behalf of all the undertakings involved, both in making the application or notification, and in dealing with any subsequent contacts with the Commission (see Article 1 (4) of the Regulation). Again, whilst this is helpful, it is not obligatory, and all the undertakings jointly submitting an application or a notification may sign it in their individual capacities.

H. How to submit an application or notification

Applications and notifications may be submitted in any of the official languages of the European Community or of an EFTA State (see Article 2 (4) and (5) of the Regulation). In order to ensure rapid proceedings, it is, however, recommended to use, in case of an application or notification to the EFTA Surveillance Authority one of the official languages of an EFTA State or the working language of the EFTA Surveillance Authority, which is English, or, in case of an application or notification to the Commission, one of the official languages of the Community or the working language of the EFTA Surveillance Authority. This language will thereafter be the language of the proceeding for the applicant or notifying party.

Form A/B is not a form to be filled in. Undertakings should simply provide the information requested by this form, using its sections and paragraph numbers, signing a declaration as stated in Section 19 below, and annexing the required supporting documentation.

Supporting documents shall be submitted in their original language; where this is not an official language of the Community they must be translated into the language of the proceeding. The supporting documents may be originals or copies of the originals (see Article 2 (4) of the Regulation).

All information requested in this form shall, unless otherwise stated, relate to the calendar year preceding that of the application or notification. Where information is not reasonably available on this basis (for example if accounting periods are used that are not based on the calendar year, or the previous year's figures are not yet available) the most recently available information should be provided and reasons given why figures on the basis of the calendar year preceding that of the application or notification cannot be provided.

Financial data may be provided in the currency in which the official audited accounts of the undertaking(s) concerned are prepared or in Ecus. In the latter case the exchange rate used for the conversion must be stated.

Seventeen copies of each application or notification, but only three copies of all supporting documents must be provided (see Article 2 (2) of the Regulation).

The application or notification is to be sent to:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
The Registrar,
200, Rue de la Loi,
B-1049 Brussels.

or be delivered by hand during Commission working days and official working hours at the following address:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
The Registrar,
158, Avenue de Cortenberg,
B-1040 Brussels.

I. Confidentiality

Article 214 of the EC Treaty, Article 20 of Regulation No 17, Article 9 of Protocol 23 to the EEA Agreement, Article 122 of the EEA Agreement and Articles 20 and 21 of Chapter II of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and of a Court of Justice require the Commission, the Member States, the EEA Surveillance Authority and EFTA States not to disclose information of the kind covered by the obligation of professional secrecy. On the other hand, Regulation No 17 requires the Commission to publish a summary of the application or notification, should it intend to take a favourable decision. In this publication, the Commission '... shall have regard to the legitimate interest of undertakings in the protection of their business secrets' (Article 19 (3) of Regulation No 17; see also Article 21 (2) in relation to the publication of decisions). In this connection, if an undertaking believes that its interests would be harmed if any of the information it is asked to supply were to be published or otherwise divulged to other undertakings, it should put all such information in a separate annex with each page clearly marked 'Business Secrets'. It should also give reasons why any information identified as confidential or secret should not be divulged or published. (See below, Section 5 of the operational part that requests a non-confidential summary of the notification).

J. Subsequent Procedure

The application or notification is registered in the Registry of the Directorate-General for Competition (DG IV). The date of receipt by the Commission (or the date of posting if sent by registered post) is the effective date of the submission (see Article 4 (1) of the Regulation). However, special rules apply to incomplete applications and notifications (see above under Point E).

The Commission will acknowledge receipt of all applications and notifications in writing, indicating the case number attributed to the file. This number must be used in all future correspondence regarding the notification. The receipt of acknowledgement does not prejudice the question whether the application or notification is valid.

Further information may be sought from the parties or from third parties (Articles 11 to 14 of Regulation No 17) and suggestions might be made as to amendments to the arrangements that might make them acceptable. Equally, a short preliminary notice may be published in the C series of the *Official Journal of the European Communities*, stating the names of the interested undertakings, the groups to which they belong, the economic sectors involved and the nature of the arrangements, and inviting third party comments (see below, operational part, Section 5).

Where a notification is made together for the purpose of the application of the opposition procedure, the Commission may oppose the grant of the benefit of the group exemption with respect to the notified agreement. If the Commission opposes the claim, and unless it subsequently withdraws its opposition, that notification will then be treated as an application for an individual exemption.

If, after examination, the Commission intends to grant the application for negative clearance or exemption, it is obliged (by Article 19 (3) of Regulation No 17) to publish a summary and invite comments from third parties. Subsequently, a preliminary draft decision has to be submitted to and discussed with the Advisory Committee on Restrictive Practices and Dominant Positions composed of officials of the competent authorities of the Member States in the matter of restrictive practices and monopolies (Article 10 of Regulation No 17) and attended, where the case falls within the EEA Agreement, by representatives of the EFTA Surveillance Authority and the EFTA States which will already have received a copy of the application or notification. Only then, and providing nothing has happened to change the Commission's intention, can it adopt the envisaged decision.

Files are often closed without any formal decision being taken, for example, because it is found that the arrangements are already covered by a block exemption, or because they do not call for any action by the Commission, at least in circumstances at that time. In such cases comfort letters are sent. Although not a Commission decision, a comfort letter indicates how the Commission's departments view the case on the facts currently in their possession which means that the Commission could where necessary — for example, if it were to be asserted that a contract was void under Article 85 (2) of the EC Treaty and/or Article 53 (2) of the EEA Agreement — take an appropriate decision to clarify the legal situation.

K. Definitions used in the operational part of this form

Agreement: The word 'agreement' is used to refer to all categories of arrangements, i. e. agreements between undertakings, decisions by associations of undertakings and concerted practices.

Year: All references to the word 'year' in this form shall be read as meaning calendar year, unless otherwise stated.

Group: A group relationship exists for the purpose of this form where one undertaking:

- owns more than half the capital or business assets of another undertaking, or
- has the power to exercise more than half the voting rights in another undertaking, or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or
- has the right to manage the affairs of another undertaking.

An undertaking which is jointly controlled by several other undertakings (joint venture) forms part of the group of each of these undertakings.

Relevant product market: questions 6.1 and 11.1 of this form require the undertaking or individual submitting the notification to define the relevant product and/or service market(s) that are likely to be affected by the agreement in question. That definition(s) is then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the notifying parties are referred to in this form as the relevant product market(s). These words can refer to a market made up either of products or of services.

Relevant geographic market: questions 6.2 and 11.2 of this form require the undertaking or individual submitting the notification to define the relevant geographic market(s) that are likely to be affected by the agreement in question. That definition(s) is then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the notifying parties are referred to in this form as the relevant geographic market(s).

Relevant product and geographic market: by virtue of the combination of their replies to questions 6 and 11 the parties provide their definition of the relevant market(s) affected by the notified agreement(s). That (those) definition(s) is (are) then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the notifying parties is referred to in this form as the relevant geographic and product market(s).

Notification: this form can be used to make an application for negative clearance and/or a notification requesting an exemption. The word 'notification' is used to refer to either an application or a notification.

Parties and notifying party: the word 'party' is used to refer to all the undertakings which are party to the agreement being notified. As a notification may be submitted by only one of the undertakings which are party to an agreement, 'notifying party' is used to refer only to the undertaking or undertakings actually submitting the notification.

OPERATIONAL PART

PLEASE MAKE SURE THAT THE FIRST PAGE OF YOUR APPLICATION OR NOTIFICATION CONTAINS THE WORDS 'APPLICATION FOR NEGATIVE CLEARANCE/NOTIFICATION IN ACCORDANCE WITH FORM A/B'

CHAPTER I

Sections concerning the parties, their groups and the agreement (to be completed for all notifications)

Section 1

Identity of the undertakings or persons submitting the notification

- 1.1. Please list the undertakings on behalf of which the notification is being submitted and indicate their legal denomination or commercial name, shortened or commonly used as appropriate (if it differs from the legal denomination).
- 1.2. If the notification is being submitted on behalf of only one or some of the undertakings party to the agreement being notified, please confirm that the remaining undertakings have been informed of that fact and indicate whether they have received a copy of the notification, with relevant confidential information and business secrets deleted ⁽¹⁾. (In such circumstances a copy of the edited copy of the notification which has been provided to such other undertakings should be annexed to this notification.)
- 1.3. If a joint notification is being submitted, has a joint representative ⁽²⁾ been appointed ⁽³⁾?
If yes, please give the details requested in 1.3.1 to 1.3.3 below.
If no, please give details of any representatives who have been authorized to act for each or either of the parties to the agreement indicating who they represent.
 - 1.3.1. Name of representative.
 - 1.3.2. Address of representative.
 - 1.3.3. Telephone and fax number of representative.
- 1.4. In cases where one or more representatives have been appointed, an authority to act on behalf of the undertaking(s) submitting the notification must accompany the notification.

Section 2

Information on the parties to the agreement and the groups to which they belong

- 2.1. State the name and address of the parties to the agreement being notified, and the country of their incorporation.
- 2.2. State the nature of the business of each of the parties to the agreement being notified.
- 2.3. For each of the parties to the agreement, give the name of a person that can be contacted, together with his or her name, address, telephone number, fax number and position held in the undertaking.

⁽¹⁾ The Commission is aware that in exceptional cases it may not be practicable to inform non-notifying parties to the notified agreement of the fact that it has been notified, or to provide them a copy of the notification. This may be the case, for example, where a standard agreement is being notified that is concluded with a large number of undertakings. Where this is the case you should state the reasons why it has not been practicable to follow the standard procedure set out in this question.

⁽²⁾ Note: For the purposes of this question a representative means an individual or undertaking formally appointed to make the notification or application on behalf of the party or parties submitting the notification. This should be distinguished from the situation where the notification is signed by an officer of the company or companies in question. In the latter situation no representative is appointed.

⁽³⁾ Note: It is not mandatory to appoint representatives for the purpose of completing and/or submitting this notification. This question only requires the identification of representatives where the notifying parties have chosen to appoint them.

- 2.4. Identify the corporate groups to which the parties to the agreement being notified belong. State the sectors in which these groups are active, and the world-wide turnover of each group ⁽¹⁾).

Section 3

Procedural matters

- 3.1. Please state whether you have made any formal submission to any other competition authorities in relation to the agreement in question. If yes, state which authorities, the individual or department in question, and the nature of the contact. In addition to this, mention any earlier proceedings or informal contacts, of which you are aware, with the Commission and/or the EFTA Surveillance Authority and any earlier proceedings with any national authorities or courts in the Community or in EFTA concerning these or any related agreements.
- 3.2. Please summarize any reasons for any claim that the case involves an issue of exceptional urgency.
- 3.3. The Commission has stated that where notifications do not have particular political, economic or legal significance for the Community they will normally be dealt with by means of comfort letter ⁽²⁾. Would you be satisfied with a comfort letter? If you consider that it would be inappropriate to deal with the notified agreement in this manner, please explain the reasons for this view.
- 3.4. State whether you intend to produce further supporting facts or arguments not yet available and, if so, on which points ⁽³⁾.

Section 4

Full details of the arrangements

- 4.1. Please summarize the nature, content and objectives pursued by the agreement being notified.
- 4.2. Detail any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding:
- buying or selling prices, discounts or other trading conditions,
 - the quantities of goods to be manufactured or distributed or services to be offered,
 - technical development or investment,
 - the choice of markets or sources of supply,
 - purchases from or sales to third parties,
 - whether to apply similar terms for the supply of equivalent goods or services,
 - whether to offer different services separately or together.

If you are claiming the benefit of the opposition procedure, identify in this list the restrictions that exceed those automatically exempted by the relevant regulation.

⁽¹⁾ For the calculation of turnover in the banking and insurance sectors see Article 3 of Protocol 22 to the EEA Agreement.

⁽²⁾ See paragraph 14 of the notice on cooperation between national courts and the Commission in applying Articles 85 and 86 of the EC Treaty (OJ No C 39, 13. 2. 1993, p. 6).

⁽³⁾ Note: In so far as the notifying parties provide the information required by this form that was reasonably available to them at the time of notification, the fact that the parties intend to provide further supporting facts or documentation in due course does not prevent the notification being valid at the time of notification and, in the case of structural joint ventures where the accelerated procedure is being claimed, the two month deadline commencing.

- 4.3. State between which Member States of the Community and/or EFTA States⁽¹⁾ trade may be affected by the arrangements. Please give reasons for your reply to this question, giving data on trade flows where relevant. Furthermore please state whether trade between the Community or the EEA territory and any third countries is affected, again giving reasons for your reply.

Section 5

Non-confidential Summary

Shortly following receipt of a notification, the Commission may publish a short notice inviting third party comments on the agreement in question⁽²⁾. As the objective pursued by the Commission in publishing an informal preliminary notice is to receive third party comments as soon as possible after the notification has been received, such a notice is usually published without first providing it to the notifying parties for their comments. This section requests the information to be used in an informal preliminary notice in the event that the Commission decides to issue one. It is important, therefore, that your replies to these questions do not contain any business secrets or other confidential information.

1. State the names of the parties to the agreement notified and the groups of undertakings to which they belong.
2. Give a short summary of the nature and objectives of the agreement. As a guideline this summary should not exceed 100 words.
3. Identify the product sectors affected by the agreement in question.

CHAPTER II

Section concerning the relevant market

(to be completed for all notifications except those relating to structural joint ventures for which accelerated treatment is claimed)

Section 6

The relevant market

A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.

The following factors are normally considered to be relevant to the determination of the relevant product market and should be taken into account in this analysis⁽³⁾:

- the degree of physical similarity between the products/services in question,
- any differences in the end use to which the goods are put,
- differences in price between two products,
- the cost of switching between two potentially competing products,
- established or entrenched consumer preferences for one type or category of product over another,
- industry-wide product classifications (e. g. classifications maintained by trade associations).

⁽¹⁾ See list in Annex II.

⁽²⁾ An example of such a notice figures in annex 1 to this Form. Such a notice should be distinguished from a formal notice published pursuant to Article 19 (3) of Regulation No 17. An Article 19 (3) notice is relatively detailed, and gives an indication of the Commission's current approach in the case in question. Section 5 only seeks information that will be used in a short preliminary notice, and not a notice published pursuant to Article 19 (3).

⁽³⁾ This list is not, however, exhaustive, and notifying parties may refer to other factors.

The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant geographic market include⁽¹⁾ the nature and characteristics of the products or services concerned, the existence of entry barriers or consumer preferences, appreciable differences of the undertakings' market share or substantial price differences between neighbouring areas, and transport costs.

6.1. In the light of the above please explain the definition of the relevant product market or markets that in your opinion should form the basis of the Commission's analysis of the notification.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account. In particular, please state the specific products or services directly or indirectly affected by the agreement being notified and identify the categories of goods viewed as substitutable in your market definition.

In the questions figuring below, this (or these) definition(s) will be referred to as 'the relevant product market(s)'.

6.2. Please explain the definition of the relevant geographic market or markets that in your opinion should form the basis of the Commission's analysis of the notification. In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account. In particular, please identify the countries in which the parties are active in the relevant product market(s), and in the event that you consider the relevant geographic market to be wider than the individual Member States of the Community or EFTA on which the parties to the agreement are active, give the reasons for this.

In the questions below, this (or these) definition(s) will be referred to as 'the relevant geographic market(s)'.

Section 7

Group members operating on the same markets as the parties

7.1. For each of the parties to the agreement being notified, provide a list of all undertakings belonging to the same group which are:

7.1.1. active in the relevant product market(s);

7.1.2. active in markets neighbouring the *relevant product market(s)* (i.e. active in products and/or services that represent imperfect and partial substitutes for those included in your definition of the relevant product market(s)).

Such undertakings must be identified even if they sell the product or service in question in other geographic areas than those in which the parties to the notified agreement operate. Please list the name, place of incorporation, exact product manufactured and the geographic scope of operation of each group member.

Section 8

The position of the parties on the affected relevant product markets

Information requested in this section must be provided for the groups of the parties as a whole. It is not sufficient to provide such information only in relation to the individual undertakings directly concerned by the agreement.

8.1. In relation to each relevant product market(s) identified in your reply to question 6.1 please provide the following information:

⁽¹⁾ This list is not, however, exhaustive, and notifying parties may refer to other factors.

- 8.1.1. the market shares of the parties on the *relevant geographic market* during the previous three years;
- 8.1.2. where different, the market shares of the parties in (a) the EEA territory as a whole, (b) the Community, (c) the territory of the EFTA States and (d) each EC Member State and EFTA State during the previous three years ⁽¹⁾. For this section, where market shares are less than 20 %, please state simply which of the following bands are relevant: 0 to 5 %, 5 to 10 %, 10 to 15 %, 15 to 20 %.

For the purpose of answering these questions; market share may be calculated either on the basis of value or volume. Justification for the figures provided must be given. Thus, for each answer, total market value/volume must be stated, together with the sales/turnover of each of the parties in question. The source or sources of the information should also be given (e.g. official statistics, estimates, etc.), and where possible, copies should be provided of documents from which information has been taken.

Section 9

The position of competitors and customers on the relevant product market(s)

Information requested in this section must be provided for the group of the parties as a whole and not in relation to the individual companies directly concerned by the agreement notified.

For the (all) relevant product and geographic market(s) in which the parties have a combined market share exceeding 15 %, the following questions must be answered.

- 9.1. Please identify the five main competitors of the parties. Please identify the company and give your best estimate as to their market share in the relevant geographic market(s). Please also provide address, telephone and fax number, and, where possible, the name of a contact person at each company identified.
- 9.2. Please identify the five main customers of each of the parties. State company name, address, telephone and fax numbers, together with the name of a contact person.

Section 10

Market entry and potential competition in product and geographic terms

For the (all) relevant product and geographic market(s) in which the parties have a combined market share exceeding 15 %, the following questions must be answered.

- 10.1. Describe the various factors influencing entry in product terms into the *relevant product market(s)* that exist in the present case (i.e. what barriers exist to prevent undertakings that do not presently manufacture goods within the relevant product market(s) entering this market(s)). In so doing take account of the following where appropriate:
- to what extent is entry to the markets influenced by the requirement of government authorization or standard setting in any form? Are there any legal or regulatory controls on entry to these markets?
 - to what extent is entry to the markets influenced by the availability of raw materials?
 - to what extent is entry to the markets influenced by the length of contracts between an undertaking and its suppliers and/or customers?
 - describe the importance of research and development and in particular the importance of licensing patents, know-how and other rights in these markets.
- 10.2. Describe the various factors influencing entry in geographic terms into the relevant geographic market(s) that exist in the present case (i.e. what barriers exist to prevent undertakings already

⁽¹⁾ i.e. Where the relevant geographic market has been defined as world wide, these figures must be given regarding the EEA, the Community, the territory of the EFTA States, and each EC Member State. Where the relevant geographic market has been defined as the Community, these figures must be given for the EEA, the territory of the EFTA States, and each EC Member State. Where the market has been defined as national, these figures must be given for the EEA, the Community and the territory of the EFTA States.

producing and/or marketing products within the relevant product market(s) but in areas outside the relevant geographic market(s) extending the scope of their sales into the relevant geographic market(s)?). Please give reasons for your answer, explaining, where relevant, the importance of the following factors:

- trade barriers imposed by law, such as tariffs, quotas etc.,
- local specification or technical requirements,
- procurement policies,
- the existence of adequate and available local distribution and retailing facilities,
- transport costs,
- entrenched consumer preferences for local brands or products,
- language.

- 10.3. Have any new undertakings entered the relevant product market(s) in geographic areas where the parties sell during the last three years? Please provide this information with respect to both new entrants in product terms and new entrants in geographic terms. If such entry has occurred, please identify the undertaking(s) concerned (name, address, telephone and fax numbers, and, where possible, contact person), and provide your best estimate of their market share in the relevant product and geographic market(s).

CHAPTER III

Section concerning the relevant market only for structural joint ventures for which accelerated treatment is claimed

Section 11

The relevant market

A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.

The following factors are normally considered to be relevant ⁽¹⁾ to the determination of the relevant product market and should be taken into account in this analysis:

- the degree of physical similarity between the products/services in question,
- any differences in the end use to which the goods are put,
- differences in price between two products,
- the cost of switching between two potentially competing products,
- established or entrenched consumer preferences for one type or category of product over another,
- different or similar industry-wide product classifications (e.g. classifications maintained by trade associations).

The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant geographic market include ⁽²⁾ the nature and characteristics of the products or services concerned, the existence of entry barriers or consumer preferences, appreciable differences of the undertakings' market share or substantial price differences between neighbouring areas, and transport costs.

⁽¹⁾ This list is not, however, exhaustive, and notifying parties may refer to other factors.

⁽²⁾ This list is not, however, exhaustive, and notifying parties may refer to other factors.

Part 11.1

The notifying parties' analysis of the relevant market

- 11.1.1. In the light of the above, please explain the definition of the relevant product market or markets that in the opinion of the parties should form the basis of the Commission's analysis of the notification.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account.

In the questions figuring below, this (or these) definition(s) will be referred to as 'the relevant product market(s)'.

- 11.1.2. Please explain the definition of the relevant geographic market or markets that in the opinion of the parties should form the basis of the Commission's analysis of the notification.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account.

Part 11.2

Questions on the relevant product and geographic market(s)

Answers to the following questions will enable the Commission to verify whether the product and geographic market definitions put forward by you in Section 11.1 are compatible with definitions figuring above.

Product market definition

- 11.2.1. List the specific products or services directly or indirectly affected by the agreement being notified.
- 11.2.2. List the categories of products and/or services that are, in the opinion of the notifying parties, close economic substitutes for those identified in the reply to question 11.2.1. Where more than one product or service has been identified in the reply to question 11.2.1, a list for each product must be provided for this question.

The products identified in this list should be ordered in their degree of substitutability, first listing the most perfect substitute for the products of the parties, finishing with the least perfect substitute⁽¹⁾.

(1) Close economic substitute; most perfect substitute; least perfect substitute these definitions are only relevant to those filling out Chapter III of the form, i.e. those notifying structural joint ventures requesting the accelerated procedure).

For any given product (for the purposes of this definition 'product' is used to refer to products or services) a chain of substitutes exists. This chain is made up of all conceivable substitutes for the product in question, i.e. all those products that will, to a greater or lesser extent, fulfil the needs of the consumer in question. The substitutes will range from very close (or perfect) ones (products to which consumers would turn immediately in the event of, for example, even a very small price increase for the product in question) to very distant (or imperfect) substitutes (products to which consumers would only turn to in the event of a very large price rise for the product in question). When defining the relevant market, and calculating market shares, the Commission only takes into account close economic substitutes of the products in question. Close economic substitutes are ones to which customers would turn to in response to a small but significant price increase for the product in question (say 5 %). This enables the Commission to assess the market power of the notifying companies in the context of a relevant market made up of all those products that consumers of the products in question could readily and easily turn to.

However, this does not mean that the Commission fails to take into account the constraints on the competitive behaviour of the parties in question resulting from the existence of imperfect substitutes (those to which a consumer could not turn to in response to a small but significant price increase (say 5 %) for the products in question). These effects are taken into account once the market has been defined, and the market shares determined.

It is therefore important for the Commission to have information regarding both close economic substitutes for the products in question, as well as less perfect substitutes.

For example, assume two companies active in the luxury watch sector conclude a research and development agreement. They both manufacture watches costing ECU 1 800 to 2 000. Close economic substitutes are likely to be watches of other manufactures in the same or similar price category, and these will be taken into account when defining the relevant product market. Cheaper watches, and in particular disposable plastic watches, will be imperfect substitutes, because it is unlikely that a potential purchaser of a ECU 2 000 watch will turn to one costing ECU 20 if the expensive one increased its price by 5 %.

Please explain how the factors relevant to the definition of the relevant product market have been taken into account in drawing up this list and in placing the products/services in their correct order.

Geographic market definition

- 11.2.3. List all the countries in which the parties are active in the relevant product market(s). Where they are active in all countries within any given groups of countries or trading area (e.g. the whole Community or EFTA, the EEA countries, world-wide) it is sufficient to indicate the area in question.
- 11.2.4. Explain the manner in which the parties produce and sell the goods and/or services in each of these various countries or areas. For example, do they manufacture locally, do they sell through local distribution facilities, or do they distribute through exclusive, or non-exclusive, importers and distributors?
- 11.2.5. Are there significant trade flows in the goods/services that make up the relevant product market(s) (i) between the EC Member States (please specify which and estimate the percentage of total sales made up by imports in each Member State in which the parties are active), (ii) between all or part of the EC Member States and all or part of the EFTA States (again, please specify and estimate the percentage of total sales made up by imports), (iii) between the EFTA States (please specify which and estimate the percentage of total sales made up by imports in each such State in which the parties are active), and (iv) between all or part of the EEA territory and other countries? (again, please specify and estimate the percentage of total sales made up by imports.)
- 11.2.6. Which producer undertakings based outside the Community or the EEA territory sell within the EEA territory in countries in which the parties are active in the affected products? How do these undertakings market their products? Does this differ between different EC Member States and/or EFTA States?

Section 12

Group members operating on the same markets as the parties to the notified agreement

- 12.1. For each of the parties to the agreement being notified, provide a list of all undertakings belonging to the same group which are:
- 12.1.1. active in the relevant product market(s);
- 12.1.2. active in markets neighbouring the relevant product market(s) (i.e. active in products/services that represent imperfect and partial substitutes⁽¹⁾ for those included in your definition of the relevant product market(s);
- 12.1.3. active in markets upstream and/or downstream from those included in the relevant product market(s).

Such undertakings must be identified even if they sell the product or service in question in other geographic areas than those in which the parties to the notified agreement operate. Please list the name, place of incorporation, exact product manufactured and the geographic scope of operation of each group member.

Section 13

The position of the parties on the relevant product market(s)

Information requested in this section must be provided for the group of the parties as a whole and not in relation to the individual companies directly concerned by the agreement notified.

⁽¹⁾ The following are considered to be partial substitutes: products and services which may replace each other solely in certain geographic areas, solely during part of the year or solely for certain uses.

- 13.1. In relation to each relevant product market(s), as defined in your reply to question 11.1.2, please provide the following information:
- 13.1.1. the market shares of the parties on the relevant geographic market during the previous three years;
- 13.1.2. where different, the market shares of the parties in (a) the EEA territory as a whole, (b) the Community, (c) the territory of the EFTA States and (d) each EC Member State and EFTA State during the previous three years⁽¹⁾. For this section, where market shares are less than 20 %, please state simply which of the following bands are relevant: 0 to 5 %, 5 to 10 %, 10 to 15 %, 15 to 20 % in terms of value or volume.
- For the purpose of answering these questions, market share may be calculated either on the basis of value or volume. Justification for the figures provided must be given. Thus, for each answer, total market value/volume must be stated, together with the sales/turnover of each the parties in question. The source or sources of the information should also be given, and where possible, copies should be provided of documents from which information has been taken.
- 13.2. If the market shares in question 13.1 were to be calculated on a basis other than that used by the parties, would the resultant market shares differ by more than 5 % in any market (i.e. if the parties have calculated market shares on the basis of volume, what would be the relevant figure if it was calculated on the basis of value?) If the figure were to differ by more than 5 % please provide the information requested in question 13.1 on the basis of both value and volume.
- 13.3. Give your best estimate of the current rate of capacity utilization of the parties and in the industry in general in the relevant product and geographic market(s).

Section 14

The position of competitors and customers on the relevant product market(s)

Information requested in this section must be provided for the group of the parties as a whole and not in relation to the individual companies directly concerned by the agreement notified.

For the (all) relevant product market(s) in which the parties have a combined market share exceeding 10 % in the EEA as a whole, the Community, the EFTA territory or in any EC Member State or EFTA Member State, the following questions must be answered.

- 14.1. Please identify the competitors of the parties on the relevant product market(s) that have a market share exceeding 10 % in any EC Member State, EFTA State, in the territory of the EFTA States, in the EEA, or world-wide. Please identify the company and give your best estimate as to their market share in these geographic areas. Please also provide the address, telephone and fax numbers, and, where possible, the name of a contact person at each company identified.
- 14.2. Please describe the nature of demand on the relevant product market(s). For example, are there few or many purchasers, are there different categories of purchasers, are government agencies or departments important purchasers?
- 14.3. Please identify the five largest customers of each of the parties for each *relevant product market(s)*. State company name, address, telephone and fax numbers, together with the name of a contact person.

Section 15

Market entry and potential competition

For the (all) relevant product market(s) in which the parties have a combined market share exceeding 10 % in the EEA as a whole, the Community, the EFTA territory or in any EC Member State or EFTA State, the following questions must be answered.

⁽¹⁾ i.e. Where the relevant geographic market has been defined as world wide, these figures must be given regarding the EEA, the Community, the territory of the EFTA States, and each EC Member State and EFTA State. Where the relevant geographic market has been defined as the Community, these figures must be given for the EEA, the territory of the EFTA States, and each EC Member State and EFTA State. Where the market has been defined as national, these figures must be given for the EEA, the Community and the territory of the EFTA States.

- 15.1. Describe the various factors influencing entry into the relevant product market(s) that exist in the present case. In so doing take account of the following where appropriate:
- to what extent is entry to the markets influenced by the requirement of government authorization or standard setting in any form? Are there any legal or regulatory controls on entry to these markets?
 - to what extent is entry to the markets influenced by the availability of raw materials?
 - to what extent is entry to the markets influenced by the length of contracts between an undertaking and its suppliers and/or customers?
 - what is the importance of research and development and in particular the importance of licensing patents, know-how and other rights in these markets.
- 15.2. Have any new undertakings entered the relevant product market(s) in geographic areas where the parties sell during the last three years? If so, please identify the undertaking(s) concerned (name, address, telephone and fax numbers, and, where possible, contact person), and provide your best estimate of their market share in each EC Member State and EFTA State that they are active and in the Community, the territory of the EFTA States and the EEA territory as a whole.
- 15.3. Give your best estimate of the minimum viable scale for the entry into the relevant product market(s) in terms of appropriate market share necessary to operate profitably.
- 15.4. Are there significant barriers to entry preventing companies active on the relevant product market(s):
- 15.4.1. in one EC Member State or EFTA State selling in other areas of the EEA territory;
- 15.4.2. outside the EEA territory selling into all or parts of the EEA territory.
- Please give reasons for your answers, explaining, where relevant, the importance of the following factors:
- trade barriers imposed by law, such as tariffs, quotas etc.,
 - local specification or technical requirements,
 - procurement policies,
 - the existence of adequate and available local distribution and retailing facilities,
 - transport costs,
 - entrenched consumer preferences for local brands or products,
 - language.

CHAPTER IV

Final sections

To be completed for all notifications

Section 16

Reasons for the application for negative clearance

If you are applying for negative clearance state:

- 16.1. why, i.e. state which provision or effects of the agreement or behaviour might, in your view, raise questions of compatibility with the Community's and/or the EEA rules of competition. The object of this subheading is to give the Commission the clearest possible idea of the doubts you have about your agreement or behaviour that you wish to have resolved by a negative clearance.

Then, under the following three references, give a statement of the relevant facts and reasons as to why you consider Article 85 (1) or 86 of the EC Treaty and/or Article 53 (1) or 54 of the EEA Agreement to be inapplicable, i.e.:

- 16.2. why the agreements or behaviour do not have the object or effect of preventing, restricting or distorting competition within the common market or within the territory of the EFTA States to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position; and/or
- 16.3. why the agreements or behaviour do not have the object or effect of preventing, restricting or distorting competition within the EEA territory to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position; and/or
- 16.4. why the agreements or behaviour are not such as may affect trade between Member States or between the Community and one or more EFTA States, or between EFTA States to any appreciable extent.

Section 17

Reasons for the application for exemption

If you are notifying the agreement, even if only as a precaution, in order to obtain an exemption under Article 85 (3) of the EC Treaty and/or Article 53 (3) of the EEA Agreement, explain how:

- 17.1. the agreement contributes to improving production or distribution, and/or promoting technical or economic progress. In particular, please explain the reasons why these benefits are expected to result from the collaboration; for example, do the parties to the agreement possess complementary technologies or distribution systems that will produce important synergies? (if, so, please state which). Also please state whether any documents or studies were drawn up by the notifying parties when assessing the feasibility of the operation and the benefits likely to result therefrom, and whether any such documents or studies provided estimates of the savings or efficiencies likely to result. Please provide copies of any such documents or studies;
- 17.2. a proper share of the benefits arising from such improvement or progress accrues to consumers;
- 17.3. all restrictive provisions of the agreement are indispensable to the attainment of the aims set out under 17.1 (if you are claiming the benefit of the opposition procedure, it is particularly important that you should identify and justify restrictions that exceed those automatically exempted by the relevant Regulations). In this respect please explain how the benefits resulting from the agreement identified in your reply to question 17.1 could not be achieved, or could not be achieved so quickly or efficiently or only at higher cost or with less certainty of success (i) without the conclusion of the agreement as a whole and (ii) without those particular clauses and provisions of the agreement identified in your reply to question 4.2;
- 17.4. the agreement does not eliminate competition in respect of a substantial part of the goods or services concerned.

Section 18

Supporting documentation

The completed notification must be drawn up and submitted in one original. It shall contain the last versions of all agreements which are the subject of the notification and be accompanied by the following:

- (a) sixteen copies of the notification itself;
- (b) three copies of the annual reports and accounts of all the parties to the notified agreement, decision or practice for the last three years;

- (c) three copies of the most recent in-house or external long-term market studies or planning documents for the purpose of assessing or analysing the affected markets) with respect to competitive conditions, competitors (actual and potential), and market conditions. Each document should indicate the name and position of the author;
- (d) three copies of reports and analyses which have been prepared by or for any officer(s) or director(s) for the purposes of evaluating or analysing the notified agreement.

Section 19

Declaration

The notification must conclude with the following declaration which is to be signed by or on behalf of all the applicants or notifying parties ⁽¹⁾.

'The undersigned declare that the information given in this notification is correct to the best of their knowledge and belief, that complete copies of all documents requested by form A/B have been supplied to the extent that they are in the possession of the group of undertakings to which the applicant(s) or notifying party(ies) belong(s) and are accessible to the latter, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

They are aware of the provisions of Article 15 (1) (a) of Regulation No 17.

Place and date:

Signatures:'

Please add the name(s) of the person(s) signing the application or notification and their function(s).

⁽¹⁾ Applications and notifications which have not been signed are invalid.

ANNEX I

TEXT OF ARTICLES 85 AND 86 OF THE EC TREATY, ARTICLES 53, 54 AND 56 OF THE EEA AGREEMENT, AND OF ARTICLES 2, 3 AND 4 OF PROTOCOL 22 TO THAT AGREEMENT

ARTICLE 85 OF THE EC TREATY

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations or undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

ARTICLE 86 OF THE EC TREATY

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

ARTICLE 53 OF THE EEA AGREEMENT

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

ARTICLE 54 OF THE EEA AGREEMENT

Any abuse by one or more undertakings of a dominant position within the territory covered by this agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

ARTICLE 56 OF THE EEA AGREEMENT

1. Individual cases falling under Article 53 shall be decided upon by the surveillance authorities in accordance with the following provisions:

- (a) individual cases where only trade between EFTA States is affected shall be decided upon by the EFTA Surveillance Authority;

- (b) without prejudice to subparagraph (c), the EFTA Surveillance Authority decides, as provided for in the provisions set out in Article 58, Protocol 21 and the rules adopted for its implementation, Protocol 23 and Annex XIV, on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33 % or more of their turnover in the territory covered by this Agreement;
 - (c) the EC Commission decides on the other cases as well as on cases under (b) where trade between EC Member States is affected, taking into account the provisions set out in Article 58, Protocol 21, Protocol 23 and Annex XIV.
2. Individual cases falling under Article 54 shall be decided upon by the surveillance authority in the territory of which a dominant position is found to exist. The rules set out in paragraph 1 (b) and (c) shall apply only if dominance exists within the territories of both surveillance authorities.
 3. Individual cases falling under paragraph 1(c), whose effects on trade between EC Member States or on competition within the Community are not appreciable, shall be decided upon by the EFTA Surveillance Authority.
 4. The terms 'undertaking' and 'turnover' are, for the purpose of this Article, defined in Protocol 22.

ARTICLES 2, 3 AND 4 OF PROTOCOL 22 TO THE EEA AGREEMENT

Article 2

'Turnover' within the meaning of Article 56 of the Agreement shall comprise the amounts derived by the undertaking concerned, in the territory covered by this Agreement, in the preceding financial year from the sale of products and the provision of services falling within the undertaking's ordinary scope of activities after deduction of sales rebates and of value-added tax and other taxes directly related to turnover.

Article 3

In place of turnover the following shall be used:

- (a) for credit institutions and other financial institutions, their total assets multiplied by the ratio between loans and advances to credit institutions and customers in transactions with residents in the territory covered by this Agreement and the total sum of those loans and advances;
- (b) for insurance undertakings, the value of gross premiums received from residents in the territory covered by this Agreement, which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total value of premiums.

Article 4

1. In derogation of the definition of the turnover relevant for the application of Article 56 of the Agreement, as contained in Article 2 of this Protocol, the relevant turnover shall be constituted:
 - (a) as regards agreements, decisions of associations of undertakings and concerted practices related to distribution and supply arrangements between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which are the subject matter of the agreements, decisions or concerted practices, and from the other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use;
 - (b) as regards agreements, decisions of associations of undertakings and concerted practices related to arrangements on transfer of technology between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which result from the technology which is the subject matter of the agreements, decisions or concerted practices, and of the amounts derived from the sale of those goods or the provision of those services which that technology is designed to improve or replace.
2. However, where at the time of the coming to existence of arrangements as described in paragraph 1 (a) and (b) turnover as regards the sale of products or the provision of services is not in evidence, the general provision as contained in Article 2 shall apply.

ANNEX II

LIST OF RELEVANT ACTS

(as of 1 March 1995)

(If you think it possible that your arrangements do not need to be notified by virtue of any of these regulations or notices it may be worth your while to obtain a copy.)

IMPLEMENTING REGULATIONS ⁽¹⁾

Council Regulation No of 6 February 1992: First Regulation implementing Articles 85 and 86 of the Treaty (OJ No 13, 21. 2. 1962, p. 204/62, English Special Edition 1959-1962, November 1972, p. 87) as amended (OJ No 58, 10. 7. 1962, p. 1655/62; OJ No 162, 7. 11. 1963, p. 2696/63; OJ No L 285, 29. 12. 1971, p. 49; OJ No L 73, 27. 3. 1972, p. 92; OJ No L 291, 19. 11. 1979, p. 94 and OJ No L 302, 15. 11. 1985, p. 165).

Commission Regulation (EC) No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17.

REGULATIONS GRANTING BLOCK EXEMPTION IN RESPECT OF A WIDE RANGE OF AGREEMENTS

Commission Regulation (EC) No 1983/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements (OJ No L 173, 30. 6. 1983, p. 1, as corrected in OJ No L 281, 13. 10. 1983, p. 24), as well as this Regulation as adapted for EEA purposes (see point 2 of Annex XIV to the EEA Agreement).

Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive purchasing agreements (OJ No L 173, 30. 6. 1983, p. 5, as corrected in OJ No L 281, 13. 10. 1983, p. 24), as well as this Regulation as adapted for EEA purposes (see point 3 of Annex XIV to the EEA Agreement).

See also the Commission notices concerning Regulations (EEC) No 1983/93 and (EEC) No 1984/83 (OJ No C 101, 13. 4. 1984, p. 2 and OJ No C 121, 13. 5. 1992, p. 2).

Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements (OJ No L 219, 16. 8. 1984, p. 15, as corrected in OJ No L 113, 26. 4. 1985, p. 34), as amended (OJ No L 12, 18. 1. 1995, p. 13), as well as this Regulation as adapted for EEA purposes (see point 5 of Annex XIV to the EEA Agreement). Article 4 of this Regulation provides for an opposition procedure.

Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distributing and servicing agreements (OJ No L 15, 18. 1. 1985, p. 16); as well as this Regulation as adapted for EEA purposes (see point 4 of Annex XIV to the EEA Agreement). See also the Commission notices concerning this Regulation (OJ No C 17, 18. 1. 1985, p. 4 and OJ No C 329, 18. 12. 1991, p. 20).

Commission Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of specialization agreements (OJ No L 53, 22. 2. 1985, p. 1), as amended (OJ No L 21, 29. 1. 1993, p. 8), as well as this Regulation as adapted for EEA purposes (see point 6 of Annex XIV to the EEA Agreement). Article 4 of this Regulation provides for an opposition procedure.

Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of research and development cooperation agreements (OJ No L 53, 22. 2. 1985, p. 5), as amended (OJ No L 21, 29. 1. 1993, p. 8), as well as this Regulation as adapted for EEA purposes (see point 7 of Annex XIV to the EEA Agreement). Article 7 of this Regulation provides for an opposition procedure.

⁽¹⁾ As regards procedural rules applied by the EFTA Surveillance Authority, see Article 3 of Protocol 21 to the EEA Agreement and the relevant provisions in Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85 (3) of the Treaty to categories of franchise agreements (OJ No L 359, 28. 12. 1988, p. 46), as well as this Regulation as adapted for EEA purposes (see point 8 of Annex XIV to the EEA Agreement). Article 6 of this Regulation provides for an opposition procedure.

Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85 (3) of the Treaty to certain categories of know-how licensing agreements (OJ No L 61, 4. 3. 1989, p. 1), as amended (OJ No L 21, 29. 1. 1993, p. 8), as well as this Regulation as adapted for EEA purposes (see point 9 of Annex XIV to the EEA Agreement). Article 4 of this Regulation provides for an opposition procedure.

Commission Regulation (EEC) No 3932/92 of 21 December 1992 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ No L 398, 31. 12. 1992, p. 7). This Regulation will be adapted for EAA purposes.

NOTICES OF A GENERAL NATURE (1)

Commission notice on exclusive dealing contracts with commercial agents (OJ No 139, 24. 12. 1962, p. 2921/62). This states that the Commission does not consider most such agreements to fall under the prohibition of Article 85 (1).

Commission notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ No C 75, 29. 7. 1968, p. 3, as corrected in OJ No C 84, 28. 8. 1968, p. 14). This defines the sorts of cooperation on market studies, accounting, R & D, joint use of production, storage or transport, ad hoc consortia, selling or after-sales service, advertising or quality labelling that the Commission considers not to fall under the prohibition of Article 85 (1).

Commission notice concerning its assessment of certain subcontracting agreements in relation to Article 85 (1) of the Treaty (OJ No C 1, 3. 1. 1979, p. 2).

Commission notice on agreements, decisions and concerted practices of minor importance which do not fall under Article 85 (1) of the Treaty (OJ No C 231, 12. 9. 1986, p. 2) as amended by Commission notice (OJ No C 368, 23. 12. 1994, p. 20) — in the main, those where the parties have less than 5 % of the market between them, and a combined annual turnover of less than ECU 300 million.

Commission guidelines on the application of EEC competition rules in the telecommunications sector (OJ No C 233, 6. 9. 1991, p. 2). These guidelines aim at clarifying the application of Community competition rules to the market participants in the telecommunications sector.

Commission notice on cooperation between national courts and the Commission in applying Articles 85 and 86 (OJ No C 39, 13. 2. 1993, p. 6). This notice sets out the principles on the basis of which such cooperation takes place.

Commission notice concerning the assessment of cooperative joint ventures pursuant to Article 85 of the EC Treaty (OJ No C 43, 16. 2. 1993, p. 2). This notice sets out the principles on the assessment of joint ventures.

A collection of these texts (as at 31 December 1989) was published by the Office for Official Publications of the European Communities (references Vol I: ISBN 92-826-1307-0, catalogue No: CV-42-90-001-EN-C). An updated collection is in preparation.

Pursuant to the Agreement, these texts will also cover the European Economic Area.

(1) See also the corresponding notices published by the EFTA Surveillance Authority.

ANNEX III

LIST OF MEMBER STATES AND EFTA STATES, ADDRESS OF THE COMMISSION AND OF THE EFTA SURVEILLANCE AUTHORITY, LIST OF COMMISSION INFORMATION OFFICES WITHIN THE COMMUNITY AND IN EFTA STATES AND ADDRESSES OF COMPETENT AUTHORITIES IN EFTA STATES

The Member States as at the date of this Annex are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

The EFTA States which will be Contracting Parties of the EEA Agreement, as at the date of this Annex, are: Iceland, Liechtenstein and Norway.

The address of the Commission's Directorate-General for Competition is:

Commission of the European Communities
Directorate-General for Competition
200 rue de la Loi
B-1049 Brussels
Tel. (322) 299 11 11

The address of the EFTA Surveillance Authority's Competition Directorate is:

EFTA Surveillance Authority
Competition Directorate
1-3 rue Marie-Thérèse
B-1040 Brussels
Tel. (322) 286 17 11

The addresses of the Commission's Information Offices in the Community are:

BELGIUM
73 rue Archimède
B-1040 Bruxelles
Tel. (322) 299 11 11

Av. Diagonal, 407 bis
18 Planta
E-08008 Barcelona
Tel. (343) 415 81 77

DENMARK
Højbrohus
Østergade 61
Postboks 144
DK-1004 København K
Tel. (4533) 14 41 40

FRANCE
288, boulevard Saint-Germain
F-75007 Paris
Tel. (331) 40 63 38 00

FEDERAL REPUBLIC OF GERMANY
Zitelmannstraße 22
D-53113 Bonn
Tel. (49228) 53 00 90
Kurfürstendamm 102
D-10711 Berlin 31
Tel. (4930) 896 09 30
Erhardtstraße 27
D-80331 München
Tel. (4989) 202 10 11

CMCI
2, rue Henri Barbusse
F-13241 Marseille, Cedex 01
Tel. (3391) 91 46 00

GREECE
2 Vassilissis Sofias
Case Postale 11002
GR-Athina 10674
Tel. (301) 724 39 82/83/84

IRELAND
39 Molesworth Street
IRL-Dublin 2
Tel. (3531) 71 22 44

SPAIN
Calle de Serrano 41
5a Planta
E-28001 Madrid
Tel. (341) 435 17 00

ITALY
Via Poli 29
I-00187 Roma
Tel. (396) 699 11 60
Corso Magenta 61
I-20123 Milano
Tel. (392) 480 15 05

LUXEMBURG
Bâtiment Jean-Monnet
rue Alcide de Gasperi
L-2920 Luxembourg
Tel. (352) 430 11

NETHERLANDS
Postbus 30465
NL-2500 GL Den Haag
Tel. (3170) 346 93 26

AUSTRIA
Hoyosgasse 5
A-1040 Wien
Tel. (431) 505 33 79

PORTUGAL
Centro Europeu Jean Monnet
Largo Jean Monnet, 1-10º
P-1200 Lisboa
Tel. (3511) 54 11 44

FINLAND
31 Pohjoisesplanadi
00100 Helsinki
Tel. (3580) 65 64 20

SWEDEN
PO Box 16396
Hamngatan 6
11147 Stockholm
Tel. (468) 611 11 72

UNITED KINGDOM
8 Storey's Gate
UK-London SW1P 3AT
Tel. (4471) 973 19 92
Windsor House
9/15 Bedford Street
UK-Belfast BT2 7EG
Tel. (44232) 24 07 08
4 Cathedral Road
UK-Cardiff CF1 9SG
Tel. (44222) 37 16 31
9 Alva Street
UK-Edinburgh EH2 4PH
Tel. (4431) 225 20 58

The addresses of the Commission's Information Offices in the EFTA States are:

NORWAY
Postboks 1643 Vika 0119 Oslo 1
Haakon's VII Gate No 6
0161 Oslo 1
Tel. (472) 83 35 83

Forms for notifications and applications, as well as more detailed information on the EEA competition rules, can also be obtained from the following offices:

AUSTRIA
Federal Ministry for Economic Affairs
Tel. (431) 71 100

FINLAND
Office of Free Competition
Tel. (3580) 73 141

ICELAND
Directorate of Competition and Fair Trade
Tel. (3541) 27 422

LIECHTENSTEIN
Office of National Economy
Division of Economy and Statistics
Tel. (4175) 61 11

NORWAY
Price Directorate
Tel. (4722) 40 09 00

SWEDEN
Competition Authority
Tel. (468) 700 16 00

ANNEX (PART III)

to the Council of the European Union decision of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union

III. COMPETITION

A. ENABLING REGULATIONS

1. *365 R 0019*: Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices (OJ No 36, 6.3.1965, p. 533/65), as amended by:

— *172 B*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Denmark, Ireland and the United Kingdom (OJ No L 73, 27.3.1972, p. 14),

— *179 H*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Hellenic Republic (OJ No L 291, 19.11.1979, p. 17),

— *185 I*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23).

In Article 4:

— the following subparagraph is added to paragraph 1:

'The provisions of the preceding subparagraphs shall apply in the same way in the case of the accession of Austria, Finland and Sweden.'

— paragraph 2 is supplemented by the following subparagraph:

'Paragraph 1 shall not apply to agreements and concerted practices to which Article 85 (1) of the Treaty applies by virtue of the accession of Austria, Finland and Sweden and which must be notified within six months of accession, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within that period. The present paragraph shall not apply to agreements and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

2. *371 R 2821*: Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices (OJ No L 285, 29.12.1971, p. 46), as amended by:

— *372 R 2743*: Council Regulation (EEC) No 2743/72 of 19 December 1972 (OJ No L 291, 28.12.1972, p. 144),

— *179 H*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Hellenic Republic (OJ No L 291, 19.11.1979, p. 17),

— *185 I*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23).

In Article 4:

— paragraph 1 is supplemented by the following subparagraph:

'The provisions of the preceding subparagraphs shall apply in the same way in the case of the accession of Austria, Finland and Sweden.'

— paragraph 2 is supplemented by the following subparagraph:

'Paragraph 1 shall not apply to agreements and concerted practices to which Article 85 (1) of the Treaty applies by virtue of the accession of Austria, Finland and Sweden and which must be notified within six months of accession, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within that period. The present paragraph shall not apply to agreements and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

3. *387 R 3976*: Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (OJ No 374, 31.12.1987, p. 9), as amended by:

— *390 R 2344*: Council Regulation (EEC) No 2344/90 of 24 July 1990 (OJ No L 217, 11.8.1990, p. 15),

— *392 R 2411*: Council Regulation (EEC) No 2411/92 of 23 July 1992 (OJ No L 240, 24.8.1992, p. 19).

The following Article is inserted:

'Article 4a

A Regulation pursuant to Article 2 may stipulate that the prohibition contained in Article 85 (1) of the Treaty shall not apply, for such period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at the date of

accession to which Article 85 (1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 85 (3). However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.’

4. *392 R 0479*: Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner companies (consortia) (OJ No L 55, 29.2.1992, p. 3).

The following Article is inserted:

‘Article 3a

A Regulation pursuant to Article 1 may stipulate that the prohibition contained in Article 85 (1) of the Treaty shall not apply, for such period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at the date of accession to which Article 85 (1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 85 (3). However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.’

B. PROCEDURAL REGULATIONS

1. *362 R 0017*: First Council Regulation No 17 of 6 February 1962 implementing Articles 85 and 86 of the Treaty (OJ No 13, 21.2.1962, p. 204/62), as amended by:

— *362 R 0059*: Council Regulation No 59 of 3 July 1962 (OJ No 58, 10.7.1962, p. 1655/62),

— *363 R 0118*: Council Regulation No 118/63/EEC of 5 November 1963 (OJ No 162, 7.11.1963, p. 2696/63),

— *371 R 2822*: Council Regulation (EEC) No 2822/71 of 20 December 1971 (OJ No 285, 29.12.1971, p. 49),

— *172 B*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Denmark, Ireland and the United Kingdom (OJ No L 73, 27.3.1972, p. 14),

— *179 H*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Hellenic Republic (OJ No L 291, 19.11.1979, p. 17),

— *185 I*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23).

The following paragraph is added to Article 25:

‘6. The provisions of paragraphs 1 to 4 still apply in the same way in the case of the accession of Austria, Finland and Sweden. However, they do not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 of the EEA Agreement.’

2. *368 R 1017*: Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ No L 175, 23.7.1968, p. 1), as amended by:

— *172 B*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Denmark, Ireland and the United Kingdom (OJ No L 73, 27.3.1972, p. 14),

— *179 H*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Hellenic Republic (OJ No L 292, 19.11.1979, p. 17).

In Article 30:

— paragraph 3 is supplemented by the following subparagraph:

‘The prohibition in Article 85 (1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Articles 4 and 5 of this Regulation. This subparagraph does not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.’

3. *386 R 4056*: Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ No L 378, 31.12.1986, p. 4).

The following Article is inserted:

'Article 26a

The prohibition in Article 85 (1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Articles 3 to 6 of this Regulation. However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

4. 389 R 4064: Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ No L 395, 30.12.1989, p. 1), as corrected by OJ No L 257, 21.9.1990, p. 13.

The following paragraph is added to Article 25:

'3. As regards concentrations to which this Regulation applies by virtue of accession, the date of accession shall be substituted for the date of entry into force of this Regulation. The provision of paragraph 2, second alternative, applies in the same way to proceedings initiated by a competition authority of the new Member States or by the EFTA Surveillance Authority.'

C. IMPLEMENTING REGULATIONS

1. 362 R 0027: Commission Regulation No 27 of 3 May 1962: First Regulation implementing Council Regulation No 17 of 6 February 1962 (OJ No 35, 10.5.1962, p. 1118/62), as amended by:
- 375 R 1699: Commission Regulation (EEC) No 1699/75 of 2 July 1975 (OJ No L 172, 3.7.1975, p. 11),
- 179 H: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Hellenic Republic (OJ No L 291, 19.11.1979, p. 17),
- 385 R 2526: Commission Regulation (EEC) No 2526/85 of 5 August 1985 (OJ No L 240, 7.9.1985, p. 1),
- 185 I: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23),

— 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ No L 336, 31.12.1993, p. 1).

In Article 2 (1) 'fifteen' is replaced by 'eighteen'.

2. 369 R 1629: Commission Regulation (EEC) No 1629/69 of 8 August 1969 on the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14 (1) of Council Regulation (EEC) No 1017/68 (OJ No L 209, 21.8.1969, p. 1), as amended by:

— 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ No L 336, 31.12.1993, p. 1).

In Article 3 (5), 'fifteen' is replaced by 'eighteen'.

3. 388 R 4260: Commission Regulation (EEC) No 4260/88 of 16 December 1988 on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ No L 376, 31.12.1988, p. 1) as amended by:

— 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ No L 336, 31.12.1993, p. 1).

In Article 4 (4), 'fifteen' is replaced by 'eighteen'.

4. 388 R 4261: Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints, applications and the hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ No L 376, 31.12.1988, p. 10), as amended by:

— 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ No L 336, 31.12.1993, p. 1).

In Article 3 (4), 'fifteen' is replaced by 'eighteen'.

5. 390 R 2367: Commission Regulation (EEC) No 2367/90 of 25 July 1990 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ No L 219, 14.8.1990, p. 5), as amended by:

— 393 R 3666: Commission Regulation (EC) No 3666/93 of 15 December 1993 (OJ No L 336, 31.12.1993, p. 1).

In Article 2 (2), 'twenty-one' shall be replaced by 'twenty-four' and 'sixteen' by 'nineteen'.

D. BLOCK EXEMPTION REGULATIONS

1. 383 R 1983: Commission Regulation (EEC) No 1983/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements (OJ No L 173, 30.6.1983, p. 1), as amended by:

— 185 I: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23).

The following Article is inserted:

'Article 7a

The prohibition in Article 85 (1) of the Treaty shall not apply to agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53 of the EEA Agreement.'

2. 383 R 1984: Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive purchasing agreements (OJ No L 173, 30.6.1983, p. 5), as corrected by OJ No L 281, 13.10.1983, p. 24, as amended by:

— 185 I: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23).

The following Article is inserted:

'Article 15a

The prohibition in Article 85 (1) of the Treaty shall not apply to agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regu-

lation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

3. 384 R 2349: Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements (OJ No L 219, 16.8.1984, p. 15), as amended by:

— 185 I: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23),

— 393 R 0151: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ No L 21, 29.1.1993, p. 8).

The following paragraph is added to Article 8:

'4. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, Articles 6 and 7 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963, 1 January 1967 and 1 April 1985. The amendment made to these agreements in accordance with Article 7 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

4. 385 R 0123: Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ No L 15, 18.1.1985, p. 16), as amended by:

— 185 I: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23).

The following paragraph is added to Article 9:

'4. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, Articles 7 and 8 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963, 1 January 1967 and 1 October 1985. The amendment made to the agreements in accordance with Article 8 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

5. *385 R 0417*: Commission Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of specialization agreements (OJ No L 53, 22.2.1985, p. 1), as amended by:

— *185 I*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23),

— *393 R 0151*: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ No L 21, 29.1.1993, p. 8).

The following paragraph is added to Article 9a:

'As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, the preceding paragraph shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession of those countries and six months after the date of accession respectively. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

6. *385 R 0418*: Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of research and development agreements (OJ No L 53, 22.2.1985, p. 5), as amended by:

— *185 I*: Act concerning the conditions of accession and the adjustments to the Treaties — Accession of the Kingdom of Spain and the Portuguese Republic (OJ No L 302, 15.11.1985, p. 23),

— *393 R 0151*: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ No L 21, 29.1.1993, p. 8).

The following paragraph is added to Article 11:

'7. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, paragraphs 1 to 3 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963, 1 January 1967, 1 March 1985 and 1 September 1985. The amendment made to these agreements in accordance with the provisions of paragraph 3 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

7. *388 R 4087*: Commission Regulation (EEC) No 4087/88 of 30 November 1988 on the application of Article 85 (3) of the Treaty to categories of franchise agreements (OJ No L 359, 28.12.1988, p. 46).

The following Article is inserted:

'Article 8a

The prohibition in Article 85 (1) of the Treaty shall not apply to the franchise agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of this accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

8. *389 R 0556*: Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85 (3) of the Treaty to certain categories of know-how licensing agreements (OJ No L 61, 4.3.1989, p. 1), as amended by:

— *393 R 0151*: Commission Regulation (EEC) No 151/93 of 23 December 1992 (OJ No L 21, 29.1.1993, p. 8).

The following paragraph is added to Article 10:

'4. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, Articles 8 and 9 shall apply *mutatis mutandis* on the understanding that the relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963 and 1 January 1967. The amendments made to the agreements in accordance with Article 9 need not be notified to the Commission. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

9. *392 R 3932*: Commission Regulation (EEC) No 3932/92 of 21 December 1992 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ No L 398, 31.12.1992, p. 7).

The following paragraph is added to Article 20:

'4. As regards agreements covered by Article 85 of the Treaty as a result of the accession of Austria, Finland and Sweden, Articles 18 and 19 shall apply *mutatis mutandis* on the understanding that the

relevant dates shall be the date of accession instead of 13 March 1962 and six months after the date of accession instead of 1 February 1963, 1 January 1967, 31 December 1993 and 1 April 1994. The amendments made to the agreements in accordance with Article 19 need not be notified to the Commission. However, the present paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

10. 393 R 1617: Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports (OJ No L 155, 26.6.1993, p. 18).

The following Article is inserted:

'Article 6a

The prohibition in Article 85 (1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the

scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

11. 393 R 3652: Commission Regulation (EC) No 3652/93 of 22 December 1993 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings relating to computerized reservation systems for air transport services (OJ No L 333, 31.12.1993, p. 37).

The following Article is inserted:

'Article 14a

The prohibition in Article 85 (1) of the Treaty shall not apply to agreements which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in this Regulation. However, this Article shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.'

COMMISSION REGULATION (EC) No 70/95
of 17 January 1995
amending Regulation (EEC) No 2349/84 on the application of Article 85 (3) of the
Treaty to certain categories of patent licensing

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 1 thereof,

Having published the draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas, under Regulation No 19/65/EEC, the Commission has power to apply Article 85 (3) of the Treaty by Regulation to certain categories of bilateral licensing agreements and concerted practices coming within Article 85 (1);

Whereas Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements ⁽³⁾, as last amended by the Act of Accession of Spain and Portugal and by Commission Regulation (EEC) No 151/93 ⁽⁴⁾, is valid only until 31 December 1994;

Whereas the Commission published on the 30 June 1994 a draft Regulation on the application of Article 85 (3) of the Treaty to certain categories of technology transfer

agreements requesting all interested persons to submit their comments by 28 August 1994 at the latest ⁽⁵⁾;

Whereas the number and significance of the comments which the Commission has received following this publication have made it necessary to examine further the problems raised; whereas it will not be possible to complete this examination within the time limits for adoption and publication of the proposed new Regulation by 31 December 1994;

Whereas it is therefore necessary to extend for six months the validity of Regulation (EEC) No 2349/84,

HAS ADOPTED THIS REGULATION :

Article 1

In Article 14 of Regulation (EEC) No 2349/84 for the date '31 December 1994' there shall be substituted the date '30 June 1995'.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 January 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ No 36, 6. 3. 1965, p. 533/65.

⁽²⁾ OJ No C 313, 10. 11. 1994, p. 6.

⁽³⁾ OJ No L 219, 16. 8. 1984, p. 15.

⁽⁴⁾ OJ No L 21, 29. 1. 1993, p. 8.

⁽⁵⁾ OJ No C 178, 30. 6. 1994, p. 3.

European Commission

Competition law in the European Communities
Addendum to Volume IA: Rules applicable to undertakings

Luxembourg: Office for Official Publications of the European Communities

1995 — 61 pp. — 16.2 x 22.9 cm

ISBN 92-827-0233-2

Price (excluding VAT) in Luxembourg: ECU 7

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

BELGIQUE / BELGIE

**Moniteur belge/
Belgisch Staatsblad**
Rue de Louvain 42/Louvenseweg 42
B-1000 Bruxelles/B-1000 Brussel
Tel (02) 512 00 26
Fax (02) 511 01 84

Jean De Lanroy

Avenue du Roi 202/Koningslaan 202
B-1060 Bruxelles/B-1060 Brussel
Tel (02) 538 51 69
Fax (02) 538 08 41

Autres distributeurs/
Overige verkooppunten:

Librairie européenne/ Europese boekhandel

Rue de la Loi 244/Wetstraat 244
B-1040 Bruxelles/B-1040 Brussel
Tel (02) 231 04 35
Fax (02) 735 08 60

Document delivery

Credoc

Rue de la Montagne 34/Bergstraat 34
Boite 11/Bus 11
B-1000 Bruxelles/B-1000 Brussel
Tel (02) 511 69 41
Fax (02) 513 31 95

DANMARK

J. H. Schultz Information A/S

Herstedvang 10-12
DK-2620 Albertslund
Tel 43 63 23 00
Fax (Sales) 43 63 19 69
Fax (Management) 43 63 19 49

DEUTSCHLAND

Bundesanzeiger Verlag

Breitsch StraÙe 76-80
Postfach 10 05 34
D-50445 Köln
Tel (02 21) 20 29-0
Fax (02 21) 2 02 92 78

GREECE/ΕΛΛΑΔΑ

G.C. Eleftheroudakis SA

International Bookstore
Nikos Street 4
GR-10563 Athens
Tel (01) 322 63 23
Fax 323 98 21

ESPAÑA

Boletín Oficial del Estado

Tratado, 27-29
E-28071 Madrid
Tel (91) 538 22 95
Fax (91) 538 23 49

Mundi-Prensa Libros, SA

Castello, 37
E-28001 Madrid
Tel (91) 431 33 99 (Libros)
431 32 22 (Suscripciones)
435 36 37 (Dirección)
Fax (91) 575 39 98

Sucursal

Librería Internacional AEDOS

Consejo de Ciento, 391
E-08009 Barcelona
Tel (93) 483 34 82
Fax (93) 487 76 59

Librería de la Generalitat de Catalunya

Rambla dels Estudis, 118 (Palau Moja)
E-08002 Barcelona
Tel (93) 302 68 35
Tel (93) 302 64 62
Fax (93) 302 12 99

FRANCE

Journal officiel

Service des publications
des Communautés européennes
26, rue Desaix
F-75727 Paris Cedex 15
Tel (1) 40 58 77 01/31
Fax (1) 40 58 77 00

IRELAND

Government Supplies Agency

4-5 Harcourt Road
Dublin 2
Tel (1) 86 13 111
Fax (1) 47 80 645

ITALIA

Licosa SpA

2500 EA 's-Gravenhage
Casella postale 552
I-50125 Firenze
Tel (055) 64 54 15
Fax 64 12 57

GRAND-DUCHÉ DE LUXEMBOURG

Messageries du livre

5, rue Raiffaisen
L-2411 Luxembourg
Tel 40 10 20
Fax 49 06 61

NETHERLAND

SDU Servicecentrum Uitgeverijen

Postbus 20014
2500 EA 's-Gravenhage
Tel (070) 37 89 880
Fax (070) 37 89 783

ÖSTERREICH

Manz'sche Verlags- und Universitätsbuchhandlung

Kohlmarkt 16
A-1014 Wien
Tel (1) 531 610
Fax (1) 531 61-181

Document delivery

Wirtschaftskammer

Wiedner Hauptstraße
A-1045 Wien
Tel (0222) 90105-4356
Fax (0222) 50206-297

PORTUGAL

Imprensa Nacional

Casa da Moeda, EP
Rua Marquês Sa da Bandeira, 16-A
P-1069 Lisboa Codex
Tel (01) 353 03 99
Fax (01) 353 02 94

Distribuidora de Livros Bertrand, Ld.ª

Grupo Bertrand, SA
Rua das Terras dos Vales, 4-A
Apartado 37
P-2700 Amadora Codex
Tel (01) 49 59 050
Fax 49 60 255

SUOMI/FINLAND

Akateeminen Kirjakauppa

Akademiska Bokhandeln
Polytejs-Esplandadi 39 / Norra esplanaden 39
PL / PB 128
FIN-00101 Helsinki / Helsingfors
Tel (90) 121 4322
Fax (90) 121 44 35

SVERIGE

BTJ AB

Traktörsvagn 13
S-22100 Lund
Tel (046) 18 00 00
Fax (046) 18 01 25
39 79 47

UNITED KINGDOM

HMSO Books (Agency section)

HMSO Publications Centre
51 Nine Elms Lane
London SW8 5DR
Tel (0171) 873 9090
Fax (0171) 873 8463

ICELAND

BOKABUD

LARUSAR BLÖNDAL

Skiávorustig, 2
IS-101 Reykjavík
Tel 11 56 50
Fax 12 55 60

NORGE

Narvesen Info Center

Bertrand Narvesens vei 2
Postboks 61 25 Etterstad
N-0602 Oslo 6
Tel (22) 57 33 00
Fax (22) 68 19 01

SCHWEIZ/SUISSE/SVIZZERA

OSEC

Stampfenbachstraße 85
CH-8035 Zurich
Tel (01) 365 54 49
Fax (01) 365 54 11

BÁLGARJA

Europress Klassica BK Ltd

66, bd Vitoshia
BG-1463 Sofia
Tel/Fax (2) 52 74 75

ČESKÁ REPUBLIKA

NIS ČR

Havelkova 22
CZ-130 00 Praha 3
Tel/Fax (2) 24 22 94 33

HRVATSKA

Mediatrade

P Hatza 1
HR-4100 Zagreb
Tel (041) 43 03 92
Fax (041) 45 45 22

MAGYARORSZÁG

Euro-Info-Service

Honvéd Europá Ház
Margitsziget
H-1138 Budapest
Tel/Fax (1) 111 60 61. (1) 111 62 16

POLSKA

Business Foundation

ul. Krucza 38/42
PL-00-512 Warszawa
Tel (2) 621 99 83, 628 28 82
International Fax&Phone (0-39) 12 00 77

ROMÂNIA

Euromedia

65, Strada Dionisie Lupu
RO-70184 Bucuresti
Tel/Fax 1-31 29 646

RUSSIA

CEEC

9-60-Ielnya Oktyabrya Avenue
117312 Moscow
Tel/Fax (095) 135 52 27

SLOVAKIA

Slovak Technical Library

Nám. slobody 19
SLO-812 23 Bratislava 1
Tel (7) 52 204 52
Fax (7) 52 957 85

CYPRUS

Cyprus Chamber of Commerce and Industry

Chamber Building
38 Grivas Drogitis Ave
3 Delgiorgis Street
PO Box 1455
Nicosia
Tel (2) 44 95 00, 46 23 12
Fax (2) 36 10 44

MALTA

Miller Distributors Ltd

PO Box 25
Malta International Airport LQA 05 Malta
Tel 66 44 88
Fax 67 67 99

TURKIYE

Pres AS

Istiklal Caddesi 469
TR-80050 Tunel-Istanbul
Tel (1) 520 92 96, 528 55 66
Fax (1) 520 64 57

ISRAEL

ROY International

1, Habarzel Street
69710 Tel Aviv
Tel (3) 49 78 12
Fax (3) 49 78 12

Sub-agent (Palestinian authorities)

INDEX Information Services

PQ Box 19502
Jerusalem
Tel (2) 27 16 34
Fax (2) 27 12 19

EGYPT/ MIDDLE EAST

Middle East Observer

41 Shent St
Cairo
Tel/Fax (2) 393 97 32

UNITED STATES OF AMERICA/ CANADA

UNIPUB

4611-F Assembly Drive
Lanham, MD 20706-4391
Tel Toll Free (800) 274 48 88
Fax (301) 459 00 56

CANADA

Subscriptions only
Uniquement abonnements

Renouf Publishing Co. Ltd

1294 Algoma Road
Ottawa, Ontario K1B 3W8
Tel (613) 741 43 33
Fax (613) 741 54 39

AUSTRALIA

Hunter Publications

58A Gipps Street
Collingwood
Victoria 3066
Tel (3) 417 53 61
Fax (3) 419 71 54

JAPAN

Procurement Services Int. (PSI-Japan)

Kyoko Dome Postal Code 102
Tokyo Kojimachi Post Office
Tel (03) 32 34 69 21
Fax (03) 32 34 69 15

Sub-agent

Kinokuniya Company Ltd

Journal Department
PO Box 55 Chitose
Tokyo 156
Tel (03) 34 39-0124

SOUTH and EAST ASIA

Legal Library Services Ltd

Orchard
PO Box 0523
Singapore 9123
Tel 243 24 96
Fax 243 24 79

SOUTH AFRICA

Safo

5th Floor, Export House
Cnr Mauds & West Streets
Sandton 2146
Tel (011) 883-3737
Fax (011) 883-6569

ANDERE LANDER OTHER COUNTRIES AUTRES PAYS

Office des publications officielles des Communautés européennes

2, rue Mercier
L-2985 Luxembourg
Tel 29 29-1
Telex PUBOF LU 1324 b
Fax 48 85 73, 48 68 17

Price (excluding VAT) in Luxembourg: ECU 7

ISBN 92-827-0233-2



OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg



9 789282 702338 >
