

Cover title:

Public procurement in the excluded sectors

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Supplement 6/88

**Commission communication accompanied
by two proposals for Council Directives
relating to water, energy, transport and
telecommunications**

Pages 5-79

**Communication on a Community regime for procure-
ment in the excluded sectors**

(presented by the Commission to the Council on 11 October 1988)

(Supplement based on COM(88) 376 final)

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Introduction

The Commission transmitted its communication on a Community regime for public procurement in the excluded sectors and the two proposals for Directives on procurement procedures in those sectors to the Council on 11 October 1988. They are part of the programme, envisaged in the White Paper on completing the internal market, to open up public procurement in the areas excluded from the Council Directives of 1971 and 1977 (coordinating procedures for the award of public works and public supply contracts respectively).

The communication discusses the industrial and economic aspects of the two proposals, the purpose of which is to open up to Community-wide competition supply and works contracts whose value is not less than ECU 200 000 and ECU 5 million respectively awarded by entities liable to be influenced in

their procurement policies by pressure deriving from the fact that they supply or administer an exclusive network, or have a monopoly in a specific geographical area — circumstances which tend to limit the impact of market forces significantly.

The sectors in question are:

- (i) the production, transport and distribution of drinking water and electricity;
- (ii) the transport and distribution of gas and heat;
- (iii) exploration for and production of oil, gas and solid fuels;
- (iv) urban and non-urban public road and rail transport;
- (v) ports and airports;
- (vi) the operation of public telecommunications networks or of certain telecommunications services.

Communication from the Commission on a Community regime for procurement in the excluded sectors: water, energy, transport and telecommunications

Summary

This communication has two purposes.

First, it provides an analysis of Community measures on public procurement in the context of the realization of the internal market and of their implications from an industrial policy point of view. The analysis, which draws on the results of a series of studies carried out under the supervision of Commission departments, reviews the industrial, social and commercial implications of opening up public procurement. It also examines for the water, energy, transport and telecommunications sectors, which are the subject of exemptions from Community Directives on public procurement, the organization and characteristics of the procuring of the industries and services which supply them. The relationship between the opening up of public procurement and other Community policies is examined, as is the external dimension of the policy.

Second, proposals are presented for the coverage by Community legislation of the sectors presently excluded from the Community regime. The reasons for the initiative, the entities which should be covered and the nature of the regime to be proposed are discussed.

Accompanying the communication are proposals for Directives establishing a Community regime for public procurement in the water, energy and transport sectors (COM(88) 377) and in the telecommunications sector (COM(88) 378). The proposals are accompanied by explanatory memoranda.

I — Introduction

1. This communication has two purposes. First, it provides an analysis of the role of Community measures on public procurement in the context of the realization of the internal market and their implications from an industrial policy point of view. Second, it

presents proposals for new Directives on procurement in the excluded sectors: energy, transport, water and telecommunications as announced in the White Paper on completing the internal market (p. 23, June 1985). These proposals are to be found, together with more detailed explanatory memoranda, in two separate documents: a proposal for a Council Directive on the procurement procedures of entities providing water, energy and transport services (COM(88) 377) and a proposal for a Council Directive on the procurement procedures of telecommunications entities (COM(88) 378).

II — Measures on public procurement: the realization of the internal market and industrial policy

A. Industrial, commercial and social implications of opening up public contracts

(1) The economic significance of public procurement

2. Public procurement as a whole amounted to some 15% of GDP or ECU 550 billion for the Community of Twelve in 1987. The breakdown of total public procurement as between undertakings and authorities varies substantially between Member States (public undertakings account for 63% of public procurement in Belgium, as against between 35% and 40% in France, Germany and Italy). Minor current expenditure, rents, heating and electricity costs, and charges for insurance, telephones and post are not covered by formal purchasing procedures. Public contracts subject to such procedures represented between ECU 250 billion and 360 billion in the Community (between 7% and 10% of GDP) in 1987; there too, there were marked differences between the Member States (see Table 1 at the end of Part II A p. 18).

3. It is widely believed that public contracts are distinguished by discriminatory practices. This would appear to be confirmed in so far as the level of imports in the economy as a whole is substantially higher than the level of imports for public contracts (see Table 2, p. 19), as shown by the survey of a sample of 4 000 public contracts in five Member States (Belgium, Germany, France, Italy and the United Kingdom) carried out by consultants in 1987.

4. For a variety of reasons, some of them historical, there are major differences in the structure of the public sector and in the organization of public procurement procedures as between Member States. Nevertheless, there are some features which are common. In all countries, procurement of military equipment, telecommunications, railways or postal equipment (between 20 and 35% of all public procurement) is essentially centralized, while procurement by local authorities is essentially decentralized.

5. In the cases where public procurement is highly decentralized, the amounts involved are often small and may accordingly be of little interest to foreign suppliers.

6. Public sector procurement is concentrated on a relatively small group of industrial sectors. Fewer than 20 subsectors out of the 60 surveyed (see Table 3, p. 20) account for more than 85% of public procurement, while construction and civil engineering account for nearly 30% of the total and energy products, mainly intended for power generation and heating, account for 16%. This concentration of procurement is particularly marked in the case of capital expenditure: 85% of expenditure is concentrated on two sectors — means of transport other than cars and building and civil engineering.

(2) Nature of the economic effects resulting from the opening up of public contracts

7. The studies carried out by the Commission clearly reveal that sizeable savings could be made by opening up public contracts. The effects fall under three headings:

A static effect (buying from the cheapest). This is the result of purchasing from the suppliers offering the best terms. Public contracting authorities would make savings in the short term on expenditure, assuming their total procurement remained unchanged and there would be increased interpenetration of products between the public markets of the Member States.

A competitive effect (downward pressure on prices because of stronger competition). In the face of more accessible public contracts and keener competition, domestic suppliers would tend to reduce their prices to meet the challenge of imports. Production costs would have to adapt to these price cuts.

A restructuring effect (longer-run effect of economies of scale). In branches where public authorities dominate buying, a change in their purchasing conduct is likely to cause significant structural changes. Under the pressure of competition, restructuring could bring productivity gains. The fall in production costs would bring down in the medium-long term the selling prices of all those producers who remained on the market.

8. There will be consequent savings for private sector buyers and there will also be general dynamic effects resulting from greater competition or innovation.

9. The economic effects resulting from the opening up of public contracts would be concentrated in sectors dominated by public contracting authorities, sectors distinguished above all by the existence of a limited number of producers. In this oligopolistic situation, which has resulted from the existence of considerable economies of scale, governments have tended to favour 'national champions' in order to guarantee security of supply or promote innovation and investment or to protect jobs (see Table 4, p. 21).

10. The sectors concerned tend to depend on support, whether because of stagnation or decline in the market or because of the need for massive investment in new technologies. They include:

coal;

iron and steel tubes; special steels;

heavy steel fabrication;

power generation equipment;
railway rolling stock;
computers;
telecommunications;
opto-electronics (specifically lasers);
aircraft;
avionics.

11. The macroeconomic consequences of opening up public contracts will spread throughout the whole economy:

(i) for the public authorities, opening up public contracts will bring budget savings;

(ii) for the public undertakings (mainly in the energy, telecommunications and transport services sectors) opening up public contracts will bring cuts in expenditure on investment and intermediate consumption, which should gradually bring down their production costs. This fall in the production costs will benefit the economy as a whole and reinforce European competitiveness;

(iii) for suppliers, through increased competition bringing about restructuring. The cost cuts resulting will benefit the authorities and public undertakings and private purchases of the products concerned.

(3) Sectoral and structural economic consequences

12. The effect of opening up public contracts will not be the same for all the sectors and products considered. While some sectors may lend themselves to rapid development of trade, it may be doubted how far this will develop in, for example, housing construction. Further, major changes may not appear rapidly in sectors where many public contracts are awarded for prototype products made at the customer's request and under his supervision (for example, military equipment).

13. For manufactured products, which account for one third of public procurement, a study has been carried out in five Member States (Belgium, Germany, France, Italy, United Kingdom), taking 1984 as the refer-

ence year. The prices actually charged for some 40 commonly used products were surveyed. It is striking how few suppliers generally compete for a particular project. After allowing for the cost of intra-Community trade, the survey shows how extensive are the gains that could result from more open procurement practices. After extrapolation to cover all products, the potential gain resulting from price differences and increased penetration, the estimate of the direct economic effects on each sector (see Table 5) comes close to some ECU 4 billion in 1984.

14. The direct effects are amplified by the indirect effects caused by the rationalization of production structures in those sectors where the public contracting authorities are dominant (see Table 5, p. 22).

15. In the short term, increased competition will tend to align the prices of domestic suppliers with those of the most competitive foreign suppliers. The competitive effect therefore presupposes that the reduction in prices will be entirely reflected in costs, for example by elimination of inefficiencies. If it were not the case, the net gain would be smaller. This price reduction should bring an economy of around ECU 2 billion.

16. In the medium term, a reduction in the number of producers should bring a marked increase in the rates of utilization of production capacity, which are currently very low in some of these sectors (20% in boiler-making, 50-80% in rolling stock, 60% in turbine generators or 70% in telephone switching equipment) (see Table 6, p. 23). At a later stage, mergers and associations of firms, rationalization of Community production and the fall in development costs resulting from the consolidation of research and development efforts will all help to bring costs down (see Table 7, p. 24). These restructuring effects are estimated at ECU 6 billion for the five Member States. It is obviously impossible, however, to quantify all the long-term dynamic effects.

17. Construction and public works procurement accounted for approximately 30% of all public procurement (ECU 150 billion in 1986) in the Community of Twelve. At present 'European' contracts are of only mar-

ginal importance to construction and public works companies. According to a study carried out in 1987 by the Commissariat général au plan (*Rapport du groupe stratégie industrielle; travaux publics*, Paris, September 1987), of all public works contracts for export signed by the Member States, the Community share represented only 2.9% for Germany, 1.5% for Spain, 3.2% for France and 1.8% for the United Kingdom. For Italy the figure was insignificant. The situation is paradoxical: in 1986, US construction companies signed contracts on European markets for ECU 6 billion, while the contracts signed by European companies on European markets outside their national territory are estimated at ECU 600 million.

18. In addition to small businesses and frontier-zone firms, highly specialized companies and large firms will find opportunities on an integrated internal market. Europe's needs for major infrastructure works are substantial, including the Rhine-Rhône link, European high-speed rail network, Channel tunnel, Splügen tunnel (providing a link between northern Italy and Germany), Messina bridge (Calabria-Sicily), tunnels under the Pyrenees and the Rhine-Main-Danube link. Joint operations by companies from several Member States could be arranged for these projects and also European funding. Assuming that the share of imports in domestic demand for building and public works rises to the order of 10% and that a potential economy of 10% is possible on these imports of building and public works, the resulting saving would be of the order of almost ECU 1 billion.

19. Procurement of services by the public authorities represents a substantial proportion (22%) of all procurement, but such procurement is generally of limited importance to the supplier companies. There is every reason to expect that public authorities and public undertakings will gain from the liberalization of services as will other economic operators. On the basis of the same assumptions as in the case of building and public works, economies of at least ECU 200 million for the five Member States were estimated.

20. The total economies for the five Member States associated with the opening up of

public contracts, excluding military needs, could thus be around ECU 12 billion at 1984 prices of 0.6% of Community GDP. Most of the effects ensuing from the opening up of public contracts would, however, probably come to light in the medium to long term, when all the restructuring had taken place. An extrapolation to 1987 prices would give an economy for the Community of Twelve of ECU 21.5 billion.

(4) Social and regional consequences of opening up public procurement

21. It is to be expected that opening up public procurement in sectors which are largely dependent on public purchasing will result in accelerated restructuring. Studies have identified a number of sectors and sub-sectors which are likely to be subject to such restructuring. These include a number of sectors and subsectors which are at present excluded from the Community procurement regime and for which public procurement accounts for at least 30% of output:

power generation equipment such as fossil boilers and steam turbine generators (energy sector);

switching equipment, telephone handsets and opto-electronics (telecommunications sector);

railway rolling stock, aircraft manufacture and avionics (transport sector);

22. The same studies have also given some indications which may be relevant to any preliminary assessment of the scope and limits of the consequences for employment within the most sensitive sectors for the five countries concerned:

(i) in the railway rolling stock industry, Germany, Italy and Belgium would be most likely to suffer serious changes; some 30% of capacity could be closed down in Europe;

(ii) in the manufacture of electrical plant and machinery, small firms are likely to have difficulties in surviving, and restructuring among large firms is likely;

(iii) in the telecommunications industry, some activities should be directly affected (telephone switchboards in particular); the

number of European producers is likely to fall.

23. The aircraft and avionics sectors, 50% dependent on public sector purchases, are also likely to experience some restructuring with attendant employment changes, whether or not they are subject to a Community regime on public procurement.

24. An internal study carried out by the Commission (Social Dimension Working Party) has presented a typology of various industrial sectors and subsectors in terms of the level of intra-Community trade and the significance of non-tariff barriers. The report concluded that, in the majority of cases, the social and employment effects of opening up public procurement will be quite limited. It did, however, emphasize that in certain hitherto excluded sectors, there may be an impact in loss of employment, which should be anticipated by supporting measures. The most sensitive sectors have been identified as telecommunications, though in this dynamic sector gains may be expected as well as losses, and in fossil boilers and railway rolling stock, where there is substantial underutilization of existing capacity (between 50 and 80%) and where intra-Community price differences (around 20%) are higher than the 13% Community average for manufactured products.

25. While for most of the sectors referred to regional data do not exist at such a detailed level, it has been possible to attempt an analysis of regional effects based on broader sectors (NACE 2 digit). Thus, telecommunications, opto-electronics and power generation equipment form part of the electrical engineering sector and on average represent about two thirds of the 2 500 000 employees in this sector for the Community as a whole. The map of regional concentration of this sector (Map 1, p. 25), however, indicates that the areas where the sector accounts for an important proportion of industrial employment are in the more favoured industrial parts of the Community. There are, however, several exceptions, of which Abruzzi is the most significant.

Recent losses in employment, also largely concentrated in these favoured areas, have

also, however, affected some declining industrial areas, such as Hainaut, parts of Arnsberg, Bremen, the North-West and Midlands of England. The metal manufacture sector (NACE 31, Map 2, p. 26), which includes heavy steel fabrication, also relevant to the equipment of the energy sector, shows a similar pattern, but with higher rates of job losses in some of the declining industrial regions of France, Spain and the United Kingdom.

26. Indications available for the electricity sector from consultants, who have mapped out production facilities for fossil boilers (Map 3, p. 27), steam turbine generators (Map 4, p. 28) and transformers (Map 5, p. 29) within the Member States of the Community, support the conclusion that these sectors are concentrated mainly in the most industrialized part of the Community.

27. In aircraft manufacture, production tends to be concentrated in the more favoured regions of a small number of Member States. In railway rolling stock, however, the situation is rather different, with major locations in the traditional industrial areas of Belgium, England (north-west Lancashire, Derbyshire, Yorkshire), France (Franche-Comté, Pays de la Loire and Poitou-Charente) and Italy (Lombardia and Piemonte). Further, the sector has suffered considerable job losses in the 1980s (Map 6, p. 30). Nearly half of total employment is now concentrated in the United Kingdom, and only in France, Belgium, Germany and Italy does the industry employ more than 10 000 people.

28. These indications do not suggest that the opening up of public procurement in the excluded sectors will result in an intensification of the problems of the most disadvantaged regions, generally situated at the periphery of the Community. The analysis, however, is incomplete in that forced conversion or restructuring of centrally located enterprises can have negative consequences for their subsidiaries or subcontractors in other sectors, which may be situated in disadvantaged regions. Even in the relatively favoured regions, restructuring of a number of sectors, which together dominate the industrial economy, could lead to such areas be-

coming problem areas. There is, therefore, a need for close monitoring of developments on a finer sectoral scale as has been proposed by the Social Dimension Working Party and for an assessment of their regional and social impact. This is the subject of a continuing study being undertaken by the Directorate-General for Regional Policy.

29. If problems were to arise in particular regions, appropriate social and regional policy measures could be taken by the Community under the aegis of the structural Funds, the European Investment Bank and the other financial instruments. Such operations could be implemented within the framework of multiannual programmes designed to promote the development and structural adjustment of the less-developed regions and to facilitate restructuring or conversion to other economic activities in regions, border regions and parts of regions seriously affected by industrial decline. There would be scope within such frameworks for special treatment of areas lacking in alternative employment opportunities and, where appropriate, of small and medium-sized enterprises as creators of employment.

(5) Small and medium-sized firms

30. The public procurement regime operated under the existing works and supplies Directives is of major assistance to small and medium-sized enterprises in three ways:

- (i) it ensures the availability of information on markets to all firms, irrespective of size, for a largely nominal fee, through the TED database and, recently, through the Euro Info Centres;
- (ii) it makes for specification of contracts in a way that prevents dominant firms from controlling the markets;
- (iii) it provides time delays which make quotations from small firms feasible.

31. It is accordingly not anticipated that bringing the excluded sectors within the framework of the basic Directives on supplies and public works will create particular problems for small and medium-sized enterprises. On the contrary, it should create new

opportunities for the more dynamic, not least as subcontractors to the enterprises awarded prime contracts for supplies and works.

32. It has been argued that regional preferences could, in certain circumstances, offer particular support to small firms in the peripheral regions, where they tend to predominate, and also in declining industrial areas. Any such measures would need to be in accordance with the strategy of structural Fund reform and should also help to ensure a balanced participation of peripheral and central, small and larger enterprises within an integrated internal market. The Commission is currently pursuing its reflections on how best to handle this issue.

(6) Trade relations with non-member States: progressive reciprocity

33. The Community has a considerable measure of choice as to how far it extends the direct benefits of open procurement to third-country partners. The impact of open procurement on the Community trade balance will therefore depend to a significant extent on the commercial policy strategy that is chosen. Two extreme policies could be envisaged.

34. On the one hand, a policy of 'fortress Europe' could conceivably be adopted. This would provide a commercially protected climate in which restructuring of industry could take place without the threat of increased competition from third-country suppliers. There can be little doubt that substantial benefits could be achieved from restructuring on a European scale alone. However, there is clearly some loss of efficiency in so far as third-country suppliers provide important competition in a number of sectors. Nor should it be overlooked that in some product areas, third-country suppliers are currently being awarded contracts on a routine basis. To cut these off would result in serious losses of a technological and an economic nature. Further, the potential of overseas markets for Community producers should not be underestimated. A protective policy towards the home market is hardly likely to facilitate access to extra-Community markets.

35. On the other hand, it cannot be overlooked that, in the absence of any measures to defend Community interests, the opening up of Community public procurement would create substantial opportunities for third-country suppliers. The Community operates a very liberal policy on establishment. As a result, third-country suppliers with subsidiaries established in the Community, many of them already playing an important role in the market, would be well placed to exploit the single market, without the Community acquiring corresponding access to foreign markets. Such a policy, although maintaining maximum competitive pressure, could weaken the position of Community producers relative to their third-country competitors at world level.

36. If the Community were to opt for a balanced and progressive opening up of its

public procurement in the excluded sectors to third countries, in the sense of securing concessions from third countries on a basis of mutual access and phasing the opening of its markets, it could hope to be in a position to achieve some of the benefits of internal reorganization before facing the challenge of a more open relationship with third countries.

37. At the same time, the existence of possible means of protection of the Community market would constitute a strong position from which to negotiate with the Community's trading partners for mutual access to markets, which could be expected to be of benefit to both sides — whether on a bilateral or a multilateral basis. This matter is considered in greater detail in Part II D and in Part III F below.

Table 1
Economic dimensions of public procurement, 1984

(billion ECU)

| | B | D | F | I | UK | Total for the five countries |
|---|------------------------|------------------------|------------------------|------------------------|--------------------------|------------------------------|
| Total purchasing by general government | 6.3 | 58.5 | 53.7 | 43.6 | 64.7 | 226.8 |
| Total purchasing by public enterprises | 10.6 | 34.4 | 34.2 | 24.8 | 54.2 | 158.2 |
| Total public purchasing (as % of GDP) | 16.9 (17.5) | 92.9 (11.8) | 87.9 (14.1) | 68.4 (13.1) | 118.9 (21.8) | 385.0 (15.0) |
| Total public procurement ¹ (as % of GDP) | 7.7-11.0 (8.0-11.4) | 42.5-62.6 (5.4-8.0) | 39.3-58.2 (6.3-9.3) | 31.1-43.4 (6.0-8.3) | 54.2-76.2 (10.0-14.1) | 174.8-251.4 (6.8-9.8) |

¹ Public procurement: that part of public purchasing which is the subject of contracts, estimated by Atkins at between 45 and 65% of total public purchasing.

Source: Eurostat, Atkins.

Table 2
Imports in public purchasing, 1985

(%)

| | B | D | F | I | UK |
|--|-----|-----|-----|-----|-----|
| National import penetration ¹ | 43 | 22 | 20 | 19 | 22 |
| Imports in public purchasing | 2.6 | 3.8 | 1.6 | 0.3 | 0.4 |

Source: National Accounts Eurostat, 1985. Atkins, 1987.

¹ Penetration = imports/internal demand.

Table 3
Breakdown of public purchasing of goods and services by product¹ in 1984.
Extrapolation of figures for five countries (B, D, F, I, UK) to EUR 12

| NACE-CLIO Group | billion ECU | | % of total public purchasing |
|--|--------------------------|--|------------------------------------|
| 01 <i>Agriculture, forestry and fishery products</i> | 2.7 | | 0.6 |
| 06 <i>Energy products</i> | 73.2 | | 16.3 |
| of which: 031 Coal and coal briquettes | 15.6 | | 3.5 |
| 073 Refined petroleum products | 36.0 | | 8.0 |
| 097 Electrical power | 9.9 | | 2.2 |
| 30 <i>Manufactured goods</i> | 147.2 | | 32.7 |
| of which: 170 Chemical goods | 14.5 | | 3.2 |
| 190 Metal goods | 9.8 | | 2.2 |
| 210 Agricultural and industrial machinery | 12.2 | | 2.7 |
| 230 Office equipment, etc. | 8.6 | | 1.9 |
| 250 Electrical goods | 19.9 | | 4.4 |
| 270 Motor vehicles | 8.2 | | 1.8 |
| 290 Other transport equipment | 37.5 | | 8.3 |
| 473 Paper and printing products | 10.5 | | 2.3 |
| 53 <i>Construction</i> | 129.1 | | 28.6 |
| 530 Building and construction | | | |
| 68 <i>Market services</i> | 98.3 | | 21.8 |
| of which: 570 Wholesale and retail distribution | 11.0 | | 2.4 |
| 590 Hotels and catering | 6.0 | | 1.3 |
| 611 Road transport | 5.4 | | 1.2 |
| 670 Communications | 8.0 | | 1.8 |
| 690 Banking and insurance | 8.4 | | 1.9 |
| 710 Business services | 20.7 | | 4.6 |
| 730 Letting of buildings | 6.2 | | 1.4 |
| 790 Market services n.c.s. | 12.1 | | 2.7 |
| Total | 450.2² | | 100 |

¹ Within each sector, only product groups accounting for over 1% of total public purchasing are listed.

² In 1984 the total of public purchasing at ECU 490.5 billion for EUR 12 was equivalent to 15% of GDP. The figure for 1984, assuming an unchanged proportion of GDP, is ECU 530 billion.

Source: Atkins, using input-output tables.

Table 4
Sectors with important public purchasing

| NACE | Sector | PP output of sector (%) | Proportion in total PP (%) |
|---------|---|-------------------------|----------------------------|
| 11 | Extraction and briquetting of solid fuels | 60 | 3.7 |
| 152 | Production and processing of fissionable and fertile materials | 20 | 0.3 |
| 221 | Iron and steel industry | 10 | 0.1 |
| 222 | Manufacture of steel tubes | 10 | 0.1 |
| 314/315 | Manufacture of structural metal products, boilers, reservoirs, tanks and other sheet-metal containers | 30 | 1.2 |
| 33 | Manufacture of office and data-processing machinery | 30 | 0.9 |
| 342 | Manufacture of electrical machinery | 30 | 0.9 |
| 344 | Manufacture of telecommunications equipment, measuring equipment and electro-medical equipment | 90 variable | 0.7 |
| 362 | Manufacture of standard and narrowgauge railway and tramway rolling stock | 90 | 0.9 |
| 364 | Aerospace equipment manufacturing and repairing | 50 | 2 |

Source: Atkins.

Table 5
Reductions in costs and prices associated with liberalization of public procurement, ¹ 1984
(billion ECU)

| | Direct static effect ² | Compartition effect ³ | Restructuring effect ³ | Total |
|---|-----------------------------------|----------------------------------|-----------------------------------|-------------|
| <i>Agriculture</i> | — | — | — | — |
| <i>Energy</i> ⁴ | — | — | — | — |
| <i>Manufactured goods</i> | 2.7 | 2.0 | 6.0 | 10.7 |
| Plant and machinery | 1.7 | 2.0 | 6.0 | 9.7 |
| Current consumption goods | 0.2 | — | — | 0.2 |
| Intermediate goods | 0.8 | — | — | 0.8 |
| <i>Building and construction</i> ⁵ | 0.8 | — | — | 0.8 |
| <i>Market services</i> ⁵ | 0.2 | — | — | 0.2 |
| Total | 3.7 | 2.0 | 6.0 | 11.7 |

¹ Calculated for five Member States (B, D, F, I, UK).

² Assuming that, in the public sector, the rate of import penetration from other EC countries rises to the level now found in the private sector, for 80% of public purchasing.

³ Atkins only estimated the effects of competition and restructuring in sectors where public purchasing is so significant as to be liable to influence producers' behaviour. This is only the case in the plant and machinery sector.

⁴ Energy is dealt with elsewhere.

⁵ In both these sectors, a 10% rise in import penetration and a 10% fall in prices are assumed for 80% of public purchasing.

Source: Atkins.

Table 6
Cases of industrial restructuring linked to the liberalization of public procurement

| | Community market (billion ECU) ¹ | Current capacity utilization (%) | Intra-EC trade | Number of EC producers | Number of US producers | Economies of scale ¹ (%) |
|---------------------|---|----------------------------------|---------------------|------------------------|------------------------|-------------------------------------|
| Boilermaking | 2 | 20 | very little | 12 | 6 | 20 |
| Turbine generators | 2 | 60 | very little | 10 | 2 | 12 |
| Locomotives | 0.1 | 50-80 | very little | 16 | 2 | 20 |
| Mainframe computers | 10 | 80 | 30-100 ² | 5 | 9 | 5 |
| Telephone exchanges | 7 | 70 | 15-45 ² | 11 | 4 | 20 |
| Telephone handsets | 5 | 90 | very little | 12 | 17 | — |
| Lasers | 0.5 | 50 | substantial | over 1 000 | over 1 000 | n.a. |

¹ Scale economies resulting from a doubling of output.

² Percentages of total demand.

Source: Atkins.

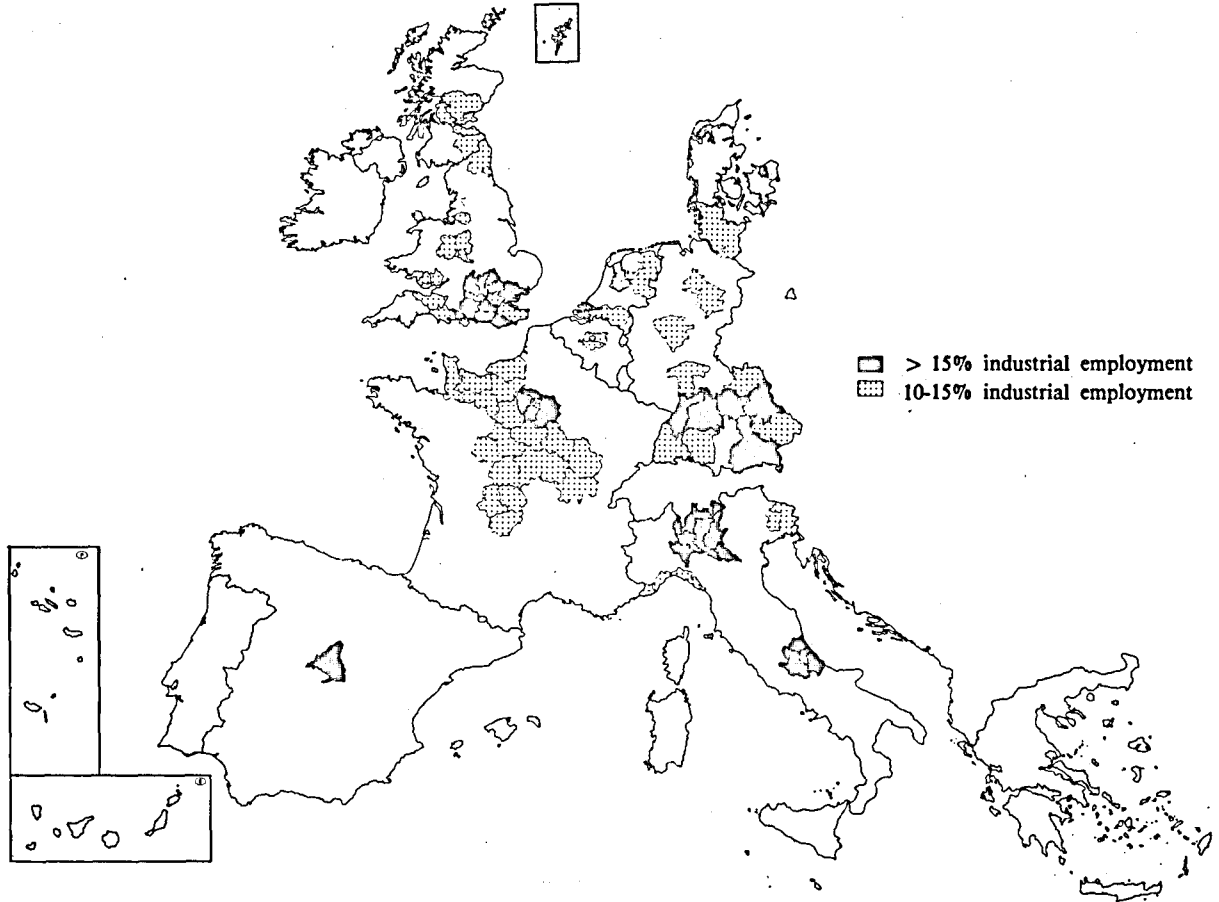
Table 7
Breakdown of the economic effects of liberalization of public procurement by country, 1984
(billion ECU)

| | B | D | F | I | UK | EUR 5 | EUR 12 ¹ |
|--------------------------------------|-------|-------|-------|-------|-------|-------|---------------------|
| Static effect | 0.4 | 1.0 | 0.3 | 1.0 | 1.0 | 3.7 | 4.4 |
| Competition effect | 0.2 | 0.8 | 0.3 | 0.4 | 0.3 | 2.0 | 2.3 |
| Restructuring effect | 0.5 | 1.0 | 1.4 | 1.0 | 2.1 | 6.0 | 7.2 |
| Total 1984 | 1.1 | 2.8 | 2.0 | 2.4 | 3.4 | 11.7 | 13.9 |
| (as % of GDP) | (1.1) | (0.4) | (0.3) | (0.4) | (0.6) | (0.5) | (0.5) |
| Additional savings in defence sector | | | | | | 3.7 | 4.0 |
| Total (including defence) | | | | | | 15.4 | 17.9 |

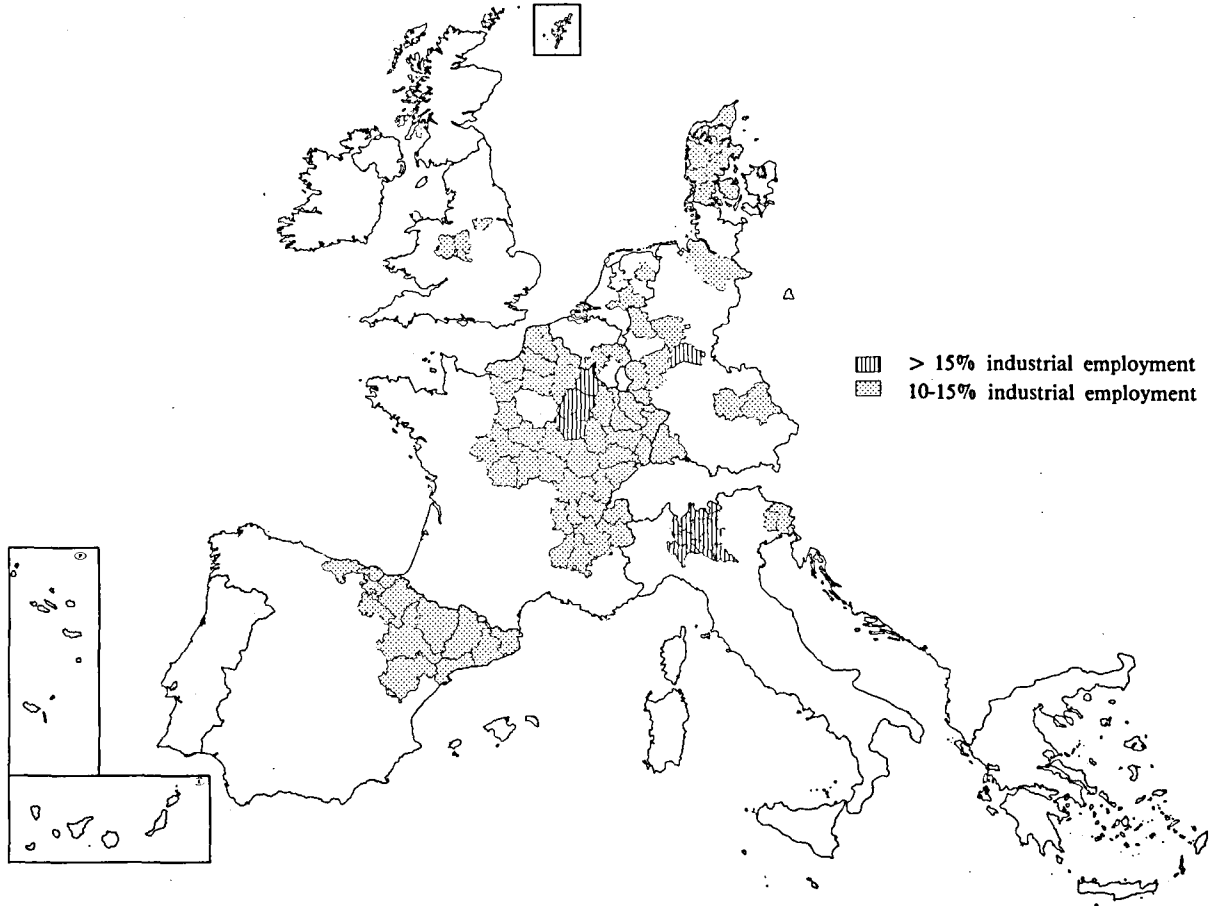
¹ The extrapolation of the figures to EUR 12 is based on the effects remaining constant as a % of GDP.

Source: Atkins, Commission departments.

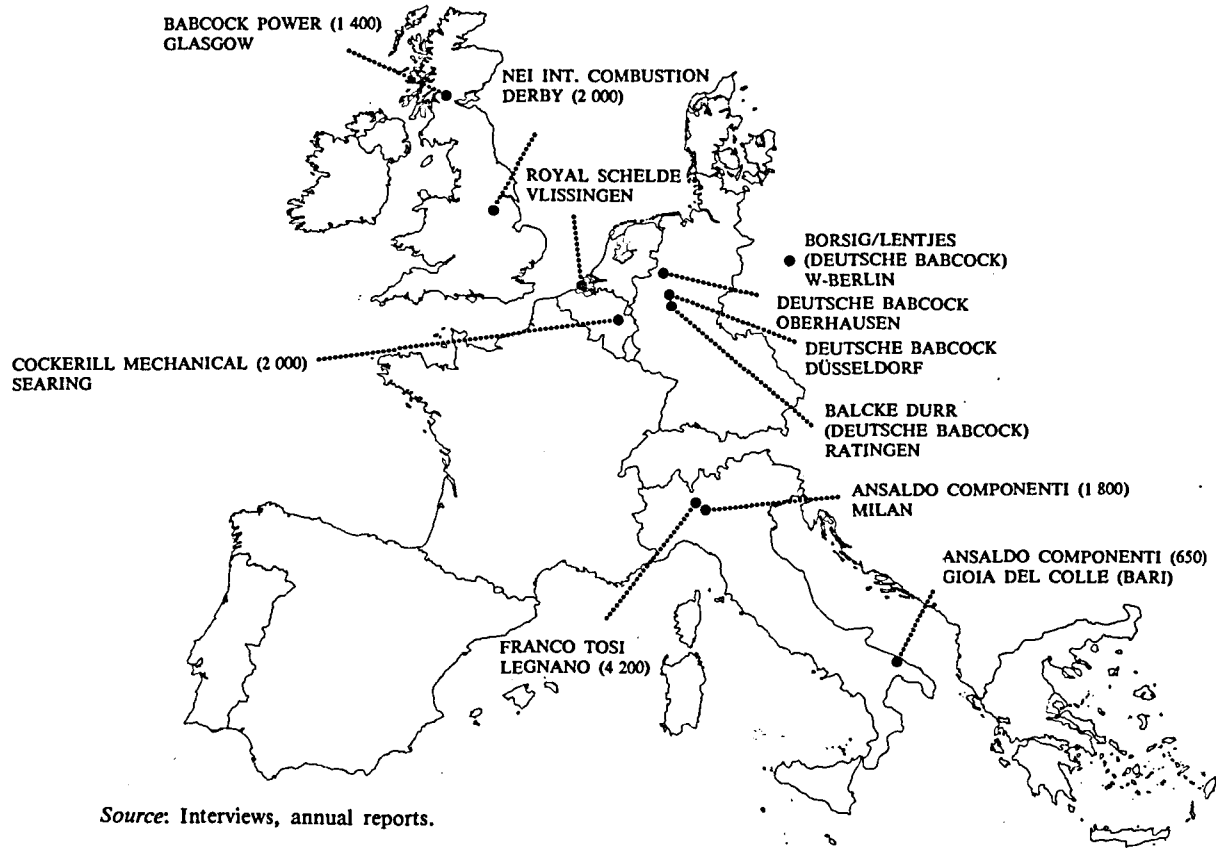
Map 1 - The regional concentration of employment in the electrical engineering sector, 1984



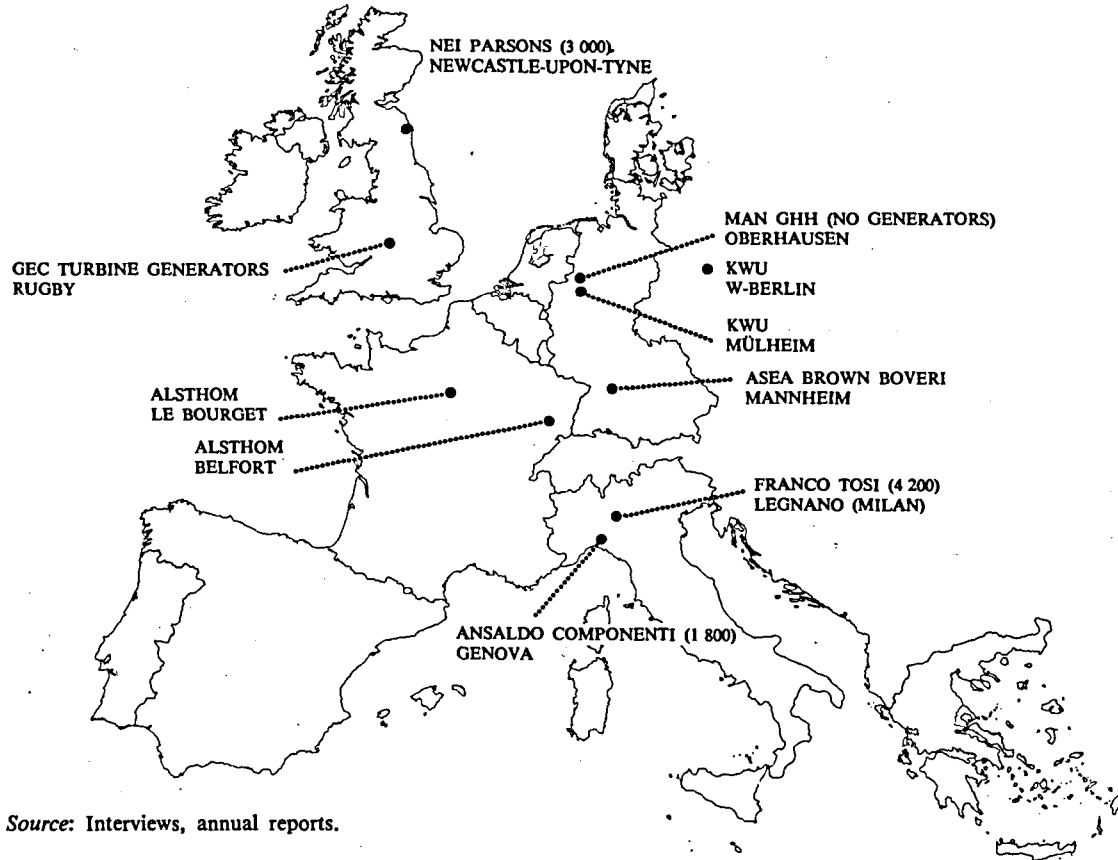
Map 2 - The regional concentration of employment in the metal manufacturing sector, 1984



Map 3 - Fossil boiler production facilities

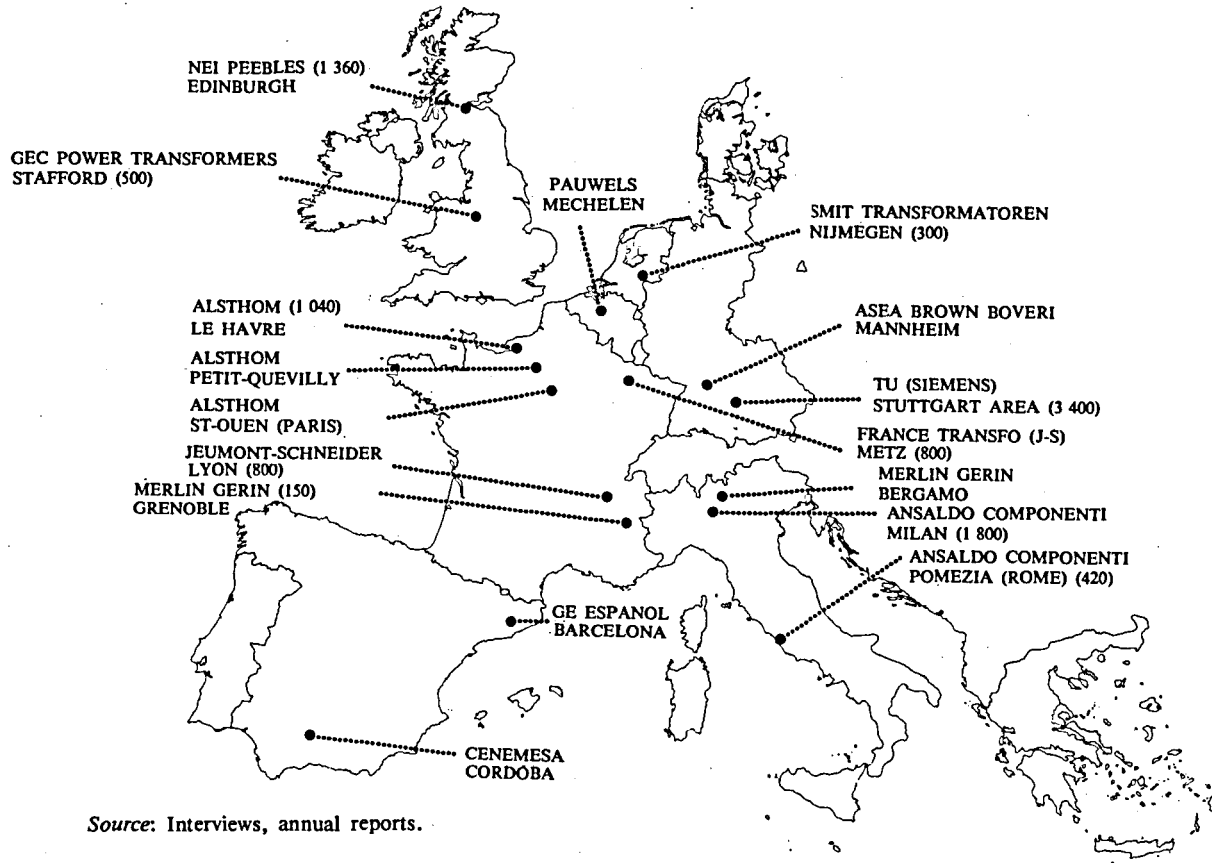


Map 4 - Steam turbine generator production facilities



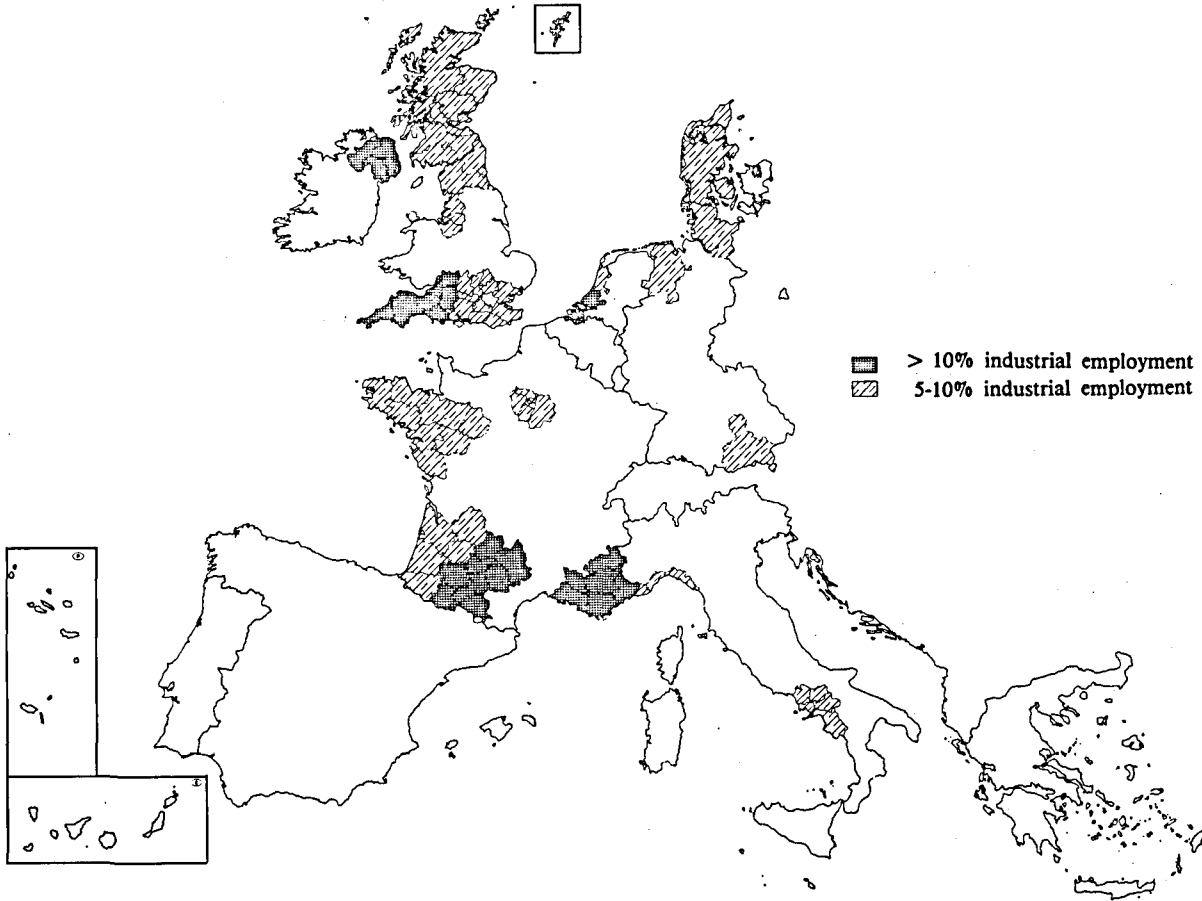
Source: Interviews, annual reports.

Map 5 - Transformers main production facilities



Source: Interviews, annual reports.

Map 6 - The regional concentration of employment in the other transport (NACE 36) sector, 1984



B. Sectors and subsectors concerned

(1) Water

Structure, ownership and control of the entities

38. The water sector involves three different stages of activity as regards drinking-water. Production involves harnessing surface water, pumping underground water, treatment and processing for consumption purposes. Transportation from the place of production to water tanks, towers and reservoirs or directly to the distribution networks is carried out by means of main pipes. Drinking-water is then distributed, in smaller networks, to customers by individual connections, equipped with valves and meters. In some cases, after production and transportation, untreated water is sold to distributors who themselves take care of the treatment.

39. The supply of drinking-water is considered as a public service, and responsibility for it is generally delegated to local, regional or provincial authorities. These operate the service under their own responsibility or delegate its management to associations or enterprises financed by public, mixed or private capital. In most Member States, there is a large number of entities, but there is a wide variation in size and legal structures, both between and within countries.

40. In all but one of the Member States, the local authorities are responsible for much of the supply of water. Whether they operate the service directly, or delegate it through concession, leasing, or management contracts, this results in a very large number of entities on a small scale. However, there have been further developments leading to the existence of a more limited number of larger entities, whether because of intercommunal associations (as in Belgium) or because of the development of enterprises which carry on the service on behalf of the local authorities. Such enterprises can take a variety of forms. In France, there are five large private companies, established under private law, between them serving 70% of the population (two of the companies and their subsidiaries serve 54% of the population). In Greece there are two large companies, established under private law, but pub-

licly financed. Italy has a number of water companies established under public law as well as private-law companies. There is also a mixture of public-law and private-law companies in the Netherlands, but the private-law companies are publicly owned. Portugal has one company in the Lisbon area, under public law, while Spain has a series of companies under private law, but whose ownership varies between public, private and mixed. To the great variety of systems coexisting in 11 Member States must be added that in the United Kingdom, the Member State with the smallest number of entities. In England and Wales, there are 10 statutory water authorities, now scheduled for privatization, covering 75% of the population. The remainder is shared among 29 privately owned companies. Regional, publicly controlled entities supply water in Scotland and Northern Ireland.

41. The entities producing, transporting or distributing drinking-water are not necessarily exclusively, or even primarily, involved in drinking-water supply. French private companies are also active in the distribution of energy, public works, communications, waste disposal and funeral services. In Germany, the distribution of electricity or gas is often linked to the management of drinking-water services. The water authorities in England are responsible for the total water cycle, including management of the water stock, supply of drinking-water, purification of waste water and aquatic recreational activities, including fresh-water fisheries and protection for the aquatic environment.

42. Sewage treatment deserves special attention because it is based on the existence of networks and some of the material used (flanges, valves, pipes, chemicals) or the works for laying pipelines or for hydraulic constructions are similar to the material used in the drinking-water sector. A significant number of entities are responsible for both drinking-water and sewage services. There is, therefore, a case for covering both activities by the same procurement procedures.

43. Whatever the structure of the entities concerned, they benefit from exclusive rights granted by the public authorities or hold a *de facto* monopoly in a certain geographic zone by virtue of their control of the network.

44. The contracts awarded by the territorial authorities to a private company are often concluded for a long period of up to 30 years so that competition is excluded until the contract is to be renewed. Even then, prior call for competition for the award and renewal of the contract is not compulsory in most Member States.

45. In all Member States, water tariffs are determined by the public authorities, whether year by year or on the basis of indicators included in the contract.

46. Even in the case of delegated management, investment planning remains a public prerogative whether it is achieved through public finance or is allowed for in tariffs.

Procurement patterns

47. In all Member States the main investment in the distribution network and other main drinking-water installations has been completed long ago. The population already connected to the distribution network varies between 80 and 95% for Denmark, Ireland, Greece and Portugal and between 95 and 100% for the other Member States. Therefore, current investment is mainly for repair or extension of the existing networks. In certain regions, new production installations may be needed to improve the service.

48. There is also new investment in relation to improved environmental control. The pollution of surface waters and, to a lesser extent, underground waters, together with increasingly stricter quality standards imposed by Community Directives, have obliged entities in all the Member States to invest in advanced installations.

49. Most investment (50-70%) is spent on works, followed by purchases of tubes, valves and other equipment (about 20%). Given the large number of entities operating in the sector and their highly diversified structures, many contracts are below the thresholds of the existing Directives.

50. Typical supplies purchases include:

(a) chemicals for water treatment;

(b) tubes, pipes, valves, joints and flanges;

(c) control equipment, including quality control (a large part of which is electronic);

(d) compressors, pneumatic drills, generating sets, signs;

(e) pumps and other electro-mechanical equipment.

51. Typical works contracts cover buildings as well as water treatment plants, reservoirs and networks.

52. In addition, significant water purchases are made by certain distributors who do not have their own production installations or when their own capacity is insufficient. This can involve important sums:

| <i>Entities</i> | <i>Annual amount in ECU per entity in 1986</i> |
|-------------------------|--|
| Stichting | |
| 10 Gemeenten (NL) | 4 370 000 |
| TMVW (Belgium) | 17 000 000 |
| Stuttgart (Germany) | 14 000 000 |
| Canal Isabel II (Spain) | 2 993 000 |

Despite the high sums spent on these purchases, there is little scope for competition in view of the need to purchase from nearby suppliers. Transborder purchases are practically non-existent and the rare exceptions (such as between Spain and France) are limited to the border regions.

53. Certain entities operating in the drinking-water supply sector are subject to national public procurement rules, notably in Belgium and Luxembourg.

54. Suppliers are mostly preselected on the basis of previous experience or references and they appear on informal lists. The water authorities in the UK, award contracts by a rotation system in which groups of three or four companies on top of the list are invited to compete with two or three companies selected on the basis of past contracts carried out. Lists of construction companies are often drawn up geographically. In Germany, the profession recommends the purchasing entities to submit their suppliers to a qualification procedure, developed by the association of pipe manufacturers.

55. The vast majority of contractors and suppliers are of the same nationality as the purchasing entity. This is particularly true for suppliers of hydraulic equipment and construction, for which each Member State has its own national or professional standards. The equipment is also of national origin except for electronic and computer equipment, chemicals, equipment such as water meters or certain pipes, which have suppliers established in several Member States.

The supply industry

56. Each Member State has a relatively large number of suppliers, generally with diversified activities and not operating exclusively in the area of drinking-water supply.

57. Vertical integration has taken place in France between water supplying companies and producers of specialized plastic pipes, civil and hydraulic engineering companies and producers of water treatment equipment. Thus Degrément, the world leader in water treatment, is a subsidiary of Lyonnaise des Eaux, which also has holdings in other Member States, both directly and through Degrément. The Compagnie Générale des Eaux is a leader in the construction and civil engineering sector and holds OTV which also has an important position in the water treatment market.

58. In the area of pipes, the dominant suppliers include British Steel, Mannesmann (steel pipes) and Pont-à-Mousson (castings). The plastic pipe suppliers tend to be smaller and associated with the major petrochemical groups. The numerous suppliers of concrete pipes also have outlets for their products in the oil and gas sectors and in urban heating.

59. The main suppliers of pumps and control equipment include electromechanical leaders such as Siemens and Pleufer.

60. The contractors in the field of civil engineering and other works are numerous and include firms specialized in water engineering.

Standards and technical specifications

61. Although water production, transport and distribution techniques are very similar in the Member States, there are few European standards. Existing ISO standards cover approximately 80% of the range of products used for water distribution, including pipes of cast iron, steel, copper alloy, PVC or polyethylene, valves and flanges; very few have been transposed into national standards, or completed with national technical specifications.

62. National common specifications have been developed by the national suppliers and buyers in the Member States. These specifications cover equipment, construction methods and laying of pipes and include safety rules.

Conclusion

63. The water sector varies widely in the size of the entities involved. With notable exceptions in the United Kingdom and France, they are mostly small. Their legal structure varies widely, but by their nature they have the character of monopolies forming part of, or in a close relationship with, the public administration.

64. The main infrastructure is largely complete and future investment is likely to be largely on replacement, modernization and better environmental control.

65. The water entities buy a very high proportion (95%) of their supplies from national suppliers. This practice is likely to continue to a great extent where contracts involve small-scale construction work or relatively low levels of value added at the manufacturing stage in the case of equipment.

66. However, for certain sophisticated, industrially produced equipment there is potential for intra-Community trade to the benefit of both procuring entities and industry. Industry suppliers are not, in general, dependent on the continuation of national orders, as they tend to be diversified into other sectors.

(2) Energy

(I) Electricity

Structure, ownership and control of the utilities

67. The electricity utilities are the primary suppliers of electricity in the Community, supplying electricity to customers for whom it makes no economic sense to produce it themselves and who have no short-term supply alternative. Some industrial companies do produce electricity, mainly for their own use, and at times sell some to the grid, as surplus electricity cannot be stored. However, although on average, 'auto-produced' electricity is about 8% of all the electricity produced in the Community, only a small fraction of this is sold to the grid. Only in Germany (5%), the Netherlands (1.5%) and Italy (2.5%) does this reach significant proportions.

68. Of the 1 551 Twh consumed by electricity sector customers in 1987, households accounted for 40% and industrial customers 45% of total consumption, with a further 7% going to transport users.

69. The main fuel sources for the Community's electric utilities are conventional (solid fuels, gas and oil) (54% in 1986) and nuclear (33%), with hydro accounting for 13%. The nuclear share is increasing and is projected to reach 38% by 1995.

70. Electricity production in the five largest Member States (Germany, France, the United Kingdom, Italy and Spain) dominates Community production, accounting for 87% of the total. The importance of fuel sources differs considerably as between countries: conventional production is predominant throughout the Community except in France, Belgium and Portugal; nuclear is the predominant production technology in France and Belgium, and is important in Germany and Spain; hydro accounts for a sizeable share of electricity production in France, Italy, Spain and Portugal.

71. Although the Community's electricity sector includes some 10 700 utilities, some 75% of these are involved only in distribu-

tion. Further, the industry is dominated by a few large companies. The top 10 companies account for 68% of production, the top 20 for 80%. In France, Germany, Greece and Ireland, operations are fully integrated across the production, transmission and distribution subsectors; although Germany (354 companies producing and distributing; 325 companies distributing only) and Spain (22 producers, 548 distributors) have the largest number of utility companies, they too have dominant utilities: RWE and VEBA produce over 50% of German supplies, while Endesa produces 32% of Spanish supplies.

72. A number of the large utilities are fully integrated, covering electricity production, transmission and distribution.

73. Public ownership is very widespread among the electric utilities, whether by central, regional or local government. This accounts for virtually all the industry in Denmark, the Netherlands, Italy, France, Greece, Ireland, Portugal and the United Kingdom (although plans for privatization of the United Kingdom industry have been announced).

74. There is widespread private participation in ownership in Germany, Belgium, Spain and Luxembourg. However, in Germany, Spain and Belgium, the government's ownership share of the electricity sector is significant. In Germany, public ownership accounts for the majority share in seven of the 'big eight' utilities (*Verbundgesellschaften*), which together account for 90% of total production. In Spain, through ownership of the only transmission utility (Redsa) and the holding company (Endesa) the government controls an important part of electricity production and transmission and coal production. In Belgium, the main distribution utilities are 66% owned by regional and city governments.

75. In Denmark, Germany, Luxembourg, the Netherlands and Spain, utilities operate with the legal status of private companies whatever the degree of public ownership.

76. The operating environment of the electric utilities is closely controlled by an extensive structure of laws and regulations. Thus

in Belgium, Denmark, Germany, the Netherlands and Spain, the electric utilities operate under concessions granted by the regional governments; in Greece, Ireland and Luxembourg, electricity supply monopolies have been set up; in France, Italy, Portugal and the United Kingdom, public monopolies have been set up under State ownership. Concessions in many cases include the obligation to supply electricity.

77. Critical operational aspects such as pricing and investments are heavily regulated, and all countries have some form of price regulatory mechanism. Government approval is required in all cases for major investments, particularly for new power plants. Extensive coordination structures ensure ongoing government involvement in operations in all Member States.

78. In view of the degree of private participation in the utilities in Belgium, Germany, Luxembourg and Spain, it is particularly interesting to note the legal environment in which these utilities operate.

79. In Belgium, distribution is carried out by the communes but private utilities were granted generating concessions under the law of 1925. Under this and subsequent legislation, the private utilities are subject to tariff control and regulation, ultimately by the Ministry of Economic Affairs, operating through a Central Committee on which the Minister has a power of veto. This regulation covers investment plans, siting of power plants and requirements for nuclear plant and dividend policies of the utilities.

80. In Germany, a concession is provided to the utilities under the cartel law to enable them to operate in closed areas. Further, concessions have been provided to give an exclusive right to grid operators. Although there is some supervision of tariffs, they are commercially determined by the utilities themselves. Investment plans are subject to the ultimate control of the Economics Ministry and licences and concessions are required to obtain approval for siting of new plant.

81. In Spain, the Ministry of Industry and Energy grants exploitation rights to utilities

for regions. There is an inter-company compensatory pricing system subject to government supervision. Approval is also required for investment and power plant siting.

Procurement patterns

82. The economic importance and concentration of electricity sector procurement make the acquisition of the major orders vitally important to the supply companies.

83. The electricity sector in the Community procures over ECU 20 billion per year, mostly by utilities in Germany, France, the United Kingdom and Italy. Investment-related spending is about 82% of total procurement, while repair and maintenance accounts for a further 9%.

84. A large number of contracts are awarded annually, but many of them are small. The 'big' contracts of ECU 200 000 or more represent less than 1% of the total number of contracts passed.

85. Obtaining these large contracts is of crucial importance for supply companies. Typically, contracts of the order of ECU 200 000 could cover a period of two to four years, while very big contracts may last six to eight years.

86. For whatever reasons, procurement in the main producing countries is, at present, almost exclusively from national suppliers. However, this may become less appropriate as investment patterns in the major countries evolve.

87. The achievement by the major consuming countries of their expansion programmes means that, with electricity demand growth expected to be low (approximately 2% per year), future investments will primarily be aimed at replacing existing capacities. This implies that the current overcapacity in electricity production can sustain demand growth for many years even though the age distribution of installed plant suggests that a significant level of capacity replacement-related investments are likely after 1990, especially in Germany and the United Kingdom.

88. The structure of the future investment programme in some of these countries may result in a national imbalance between supply and demand. This can be expected to add to the pressure for non-national procurement. For example, with the completion of the major French nuclear expansion programme, there may not be enough demand within France for the national industry. Italy has also developed a nuclear industry for which there will be no new domestic orders following the referendum cancelling nuclear programmes. At the same time the United Kingdom is planning a new construction programme for the 1990s and it is unclear in respect of nuclear, for example, if adequate domestic supply capacity exists.

89. As might be expected in an industry which spends so heavily, the utilities take considerable care in purchasing equipment or contracting works, maintenance and repairs.

90. Inclusion on a list of qualified suppliers is practically indispensable to obtain contracts with the largest utilities. Emphasis is placed on ability to meet detailed specifications and reliability of the supplier. Pricing is not, in general, the primary criterion. Selective tendering appears to be the norm. Negotiation with a single supplier accounts for the rest. Open tenders are rarely used. In a sample of 200 contracts of over ECU 200 000, 25% involved only one tenderer, 57% involved two to four tenderers.

91. There is little in the way of European standardization, with the result that the highly detailed specifications established by the major utilities may differ widely, according to established practices. Although this must make some difference, it does not appear to create an insurmountable barrier to major suppliers, provided the specifications are readily available.

92. In those Member States where there exists a well developed supply industry, procurement is almost wholly national. Inevitably, imports play a bigger role in the smaller countries. Thus the approved suppliers to utilities in France, the United Kingdom, Germany and Italy would appear to be over 90% national, while a still higher percentage

of contracts were awarded to national firms. In subcontracting, too, the same pattern was found. It should be noted that subcontracting often accounts for a large share of the work.

93. A number of reasons for this would appear to exist over and above normal economic considerations. These include the need to obtain government approval for contracts, political interest of board members (most large contracts require board approval), the desire to maintain relations with existing suppliers and the wish to support local industry (which can help the image of the utility, for example if it must face a planning enquiry).

The supply industry

94. Power equipment is supplied by an extensive group of industries, which includes some dominant firms. Spending by the electricity sector on purchases from the equipment industries, almost entirely capital investment, is well over ECU 20 billion annually. Capital expenditure is concentrated in a few key segments. Typically, for a new power plant, about 50% of the investment requirements are turbine generators, boilers, major mechanical equipment and nuclear reactors. For transmission and distribution, investments are concentrated in cables (50%) and switchgear (20%).

95. The supply industries are dominated by a small number of companies with integrated activities across the major industry segments. The majority of leading Community companies in the key supply industries have concentrated their activities in the large electricity-producing countries.

96. The production of heavy, complex investment items such as turbine generators and boilers is concentrated in a few locations in the leading countries. Production of items like transformers and cables is more widely dispersed.

97. Nine companies are particularly important in the Community power supply industries: ABB, KWU-Siemens, GEC, Alstom, Framatome, Deutsche Babcock, Ansaldo,

NEI and Babcock International. With the exception of Deutsche Babcock and Babcock International, which are concentrated on mechanical equipment, they provide a broad range of power equipment and services. Together these nine companies generate a turnover in excess of ECU 20 billion annually in power business; they are therefore very important in economic terms. Further, they are involved in other industries and markets outside their home countries and provide a significant number of jobs. It is interesting to compare the size of their power business with that of the major US and Japanese companies (GE, Westinghouse, Toshiba and Hitachi). In effect, only ABB and Siemens are on the same scale as their US and Japanese competitors.

98. Virtually all of the major companies are suffering from the adverse structural developments in the power business, where orders have been declining significantly for some time. As a result, these industry segments are operating at very low capacity utilization rates.

99. Reacting to these developments, Community supply companies are pursuing opportunities in export markets, where they compete with major US and Japanese companies. The European industry has an important share in world markets: 33% for nuclear power plant, 42% for turbine generators, 20% for fossil boilers. In some cases export consortia have been formed in order to approach particular markets. Thus UK and French firms, UK, German and Italian firms and German and Italian firms have been involved in joint bids. It is alleged that strong State support is sometimes provided by national governments to promote export activities.

100. Another area where companies are seeking opportunities is in relatively small, high-growth 'specialist' markets such as flue gas desulphurization and cogeneration.

101. Profitability levels in the power industry give cause for concern. Overall the profitability of the major companies has been relatively stable, but the average profitability of the power business is low and is notably inferior to that of its US rivals.

102. As a result of the major restructuring which already took place within national boundaries in the 1970s, key industries in the Community are now concentrated at national level. Further restructuring seems inevitable in view of the continuing low levels of demand. The existing degree of concentration at national level makes restructuring across national boundaries likely. Indeed, it has already begun with the formation of ABB, the company with by far the largest capacity in Europe, through the merger of ASEA and Brown-Boveri.

Conclusion

103. Despite the wide differences in status and structure, the electrical utilities in all the Member States are under substantial government influence or control.

104. At the same time, there is a marked preference for national procurement in which the existence of long-standing relationships, political influence and economic considerations all play a part. The result is a significant limit on access to markets.

105. What is also clear, however, is that the current shortage of orders and low profitability of the supplying industries imply serious rationalization in the very near future. The pressure towards that rationalization is further increased by the competitive pressure from the major US and Japanese suppliers. With the virtual exhaustion of the capacity for restructuring at national level, development across national boundaries looks increasingly likely. If this were to reduce the number of major producers, it would not necessarily have an adverse effect on competition, in view of the existing segmentation of the market and the fact that the high cost of preparation of tenders and the detailed long-drawn-out nature of negotiations make it impracticable to involve too many tenderers in large, complex contracts.

106. For this reason, it is particularly important that potential suppliers should have the possibility to establish a working relationship with the utilities. Where approved lists of suppliers are maintained, access to the list is the first hurdle to be overcome. A second

hurdle concerns access to the specifications for equipment required by individual utilities.

107. It is to be noted that the supply industry has developed considerable exports to third countries, including, in some cases, to the USA. The need to avoid undermining this situation would certainly have to be borne in mind in considering any measures to develop or maintain any form of European preference or protection for European industry.

108. Finally, mention should be made of the significant purchases of fuels and of electricity itself which utilities make and which include important sales between Member States. This is a matter which the Commission has already considered in the context of the communication on the internal market in energy (COM(88) 238). As explained below (Part II C(5)), these transactions appear to raise issues better dealt with in that context than in a new instrument on procurement of supplies and works in the excluded sectors.

(II) Oil and petroleum products

Structure, ownership and control of the entities

109. The activities of this sector are analysed under three headings: exploration and production of crude oil; refining; distribution (including transport and storage) of liquid oil and petrol. In general, it may be said that the contracting authorities consist of the large, publicly quoted major oil companies. These are integrated organizations competing with each other on an international level, although frequently concerned to maintain a powerful base in their home country.

(1) Exploration and production of crude oil

110. Exploration and production are found mainly in the United Kingdom and the Netherlands, which produce almost 90% of the Community's crude oil. Of the 10 other Member States, four (Belgium, Ireland, Luxembourg and Portugal) have very limited exploration and production activities. In the six others (Denmark, Germany, Spain, France, Greece and Italy), exploration and production activities are fairly extensive.

| Country | National production of crude (million tonnes) | Investment (million ECU) | Number of drills (estimated for 1987) |
|----------------|---|--------------------------|---------------------------------------|
| Belgium | — | — | — |
| Denmark | 2 | 220 | 20 |
| Germany | 4 | 250 | 38 |
| Greece | 1 | — | — |
| Spain | 2 | 450 | 16 |
| France | 4 | 420 | — |
| Ireland | — | 8 | 4 |
| Italy | 2 | 990 | 165 |
| Luxembourg | — | — | — |
| Netherlands | 5 | 1 600 | 80 |
| Portugal | — | — | — |
| United Kingdom | 127 | 3 900 | 285 |

111. In each Member State, exploration and production is regulated by law and provides for the discretionary award of a concession subject to limits in time and place, as well as to certain obligations. These laws or the procedures under which concessions are awarded contain, in a number of Member States, explicitly discriminatory provisions. Thus the Greek, Spanish and Irish laws provide for consideration to be given to the contribution which will be made to national economic development, while in Portugal there is provision for the employment of a minimum percentage of Portuguese labour.

112. The systems of award of concessions in the United Kingdom and the Netherlands, the largest producers, merit particular attention.

113. In the Netherlands, exploration and production concessions are awarded at the discretion of the Minister for Economics, with the approval of Parliament. It is necessary to apply for the licences to be renewed at each stage in the development of an oil-field. Applications for licences must include certain information as to previous contributions to exploration and production in the Netherlands, the intended work programme and commitments regarding the involvement of Dutch industry. Exploration and production activities are dominated by three companies: Nederlandse Aardolie Maatschappij (NAM), Petroland and DSM Aardgas BV. Of these, NAM holds 45% of the licences and accounts for 83% of the gas and 27% of the oil produced in the Netherlands. When

the central government grants an exploitation licence it has the right to take a 50% stake in production and in the installations. This interest, which is held by DSM, has always been exercised, save in the case of the first production licences.

114. In the United Kingdom, the prospecting area is divided into blocks offered to operators for the grant of exploration and production licences. There are currently 37 operators, including the eight major oil companies, 17 US companies, five other Community companies and seven private UK companies. Three companies extract almost 50% of UK oil; BP (20%), Shell (15%), and Esso (15%). The five other Community companies operating within the area open for prospecting are Agip, Denimex, Elf, Fina and Hydrocarbons GB.

115. The Ministry of Energy has an agreement with UKOOA (UK Offshore Operators Association), a body representing operators with authority to negotiate on their behalf, to regulate competition among bidders 'to ensure that UK suppliers are given a full and fair opportunity to tender for and win orders'. This agreement is supervised by the Offshore Supply Office (OSO), which requires applicants to give information on the UK share in their anticipated expenditure; is entitled to alter the applicant's list of suppliers; and examines, twice a year, the expenditure of operators, in particular the share of their supplies and works contracts awarded to UK firms. In all, the share of UK industry in the supply of installations and work to the exploration and production sub-sector has gone up from 25% in 1973 to 75% in 1984 and to 87% in 1987.

(2) Refining

116. Apart from Luxembourg, where there are no refineries, all the Member States possess refining capacity, about three quarters of which belongs to the following 10 companies: BP (9%), Elf (8%), Exxon (14%), Petrofina (2%), Mobil (4%), Shell (13%), Texaco (4%), Total (8%), INH (5%), Banco Central (3%).

*Refining activities in the 12 Member States
(million tonnes)*

| Country | Refining capacity | Capacity used in 1986 |
|----------------|-------------------|-----------------------|
| Belgium | 35 | 28 |
| Denmark | 9 | 7 |
| Germany | 85 | 81 |
| Greece | 19 | 15 |
| Spain | 62 | 50 |
| France | 96 | 72 |
| Ireland | 3 | 1 |
| Italy | 112 | 86 |
| Luxembourg | — | — |
| Netherlands | 69 | 50 |
| Portugal | 14 | 7 |
| United Kingdom | 90 | 80 |
| Total | 594 | 478 |

117. In response to the fall in consumption since 1973, the refining companies have undertaken major rationalization aimed at reducing excess primary capacity and adapting output to the changing pattern of product demand and in particular to the rising proportion of light products required. Few further investments for this purpose are now planned and in future the emphasis in investment will move to plant for improving the quality of products, for example by the phasing out of lead from petrol and the reduction in the sulphur content of gasoil.

(3) Retail distribution

118. In retail distribution, a small number of companies lease or own the majority of the sales outlets (Agip, Aral, BP, Campsa, Exxon, Elf, Fina, Kpc, Mobil, Shell, Texaco, Total). Twelve companies account for more than 70% of the distribution network in the Community, numbering some 130 000 outlets, the remaining 30% being owned by independent operators. The number of service stations has declined by more than 30% since 1975, a trend which is widely expected to continue within the Community although two countries, Spain and Portugal, may see their relatively smaller distribution networks expand in the next few years.

119. National companies have an important position in their countries of origin, with the exception of Fina and BP. However, even in their home countries, these distributors are

in direct competition with others, with the exception of Campsa, which accounts for 90% of the retail outlets in Spain. The Spanish authorities have nevertheless just adopted measures of progressive liberalization, allowing non-national firms to enter the retail distribution market.

Procurement patterns

120. Procurement for the oil industry covers a very wide range of supplies, works and services. One refinery unit alone involves equipment and work for some 300 suppliers. The facilities involved in building a drilling or production rig are even more complicated and require extensive logistic support.

121. The heaviest expenditure is in the area of exploration and production and is concentrated particularly in the United Kingdom.

*Investments by the oil companies in 1986
(million ECU)*

| | <i>Exploration/ production</i> | <i>Refining</i> | <i>Distribution</i> |
|-----------------------|------------------------------------|-----------------|---------------------|
| Germany | 270 | 150 | 100 |
| Spain | 455 | 60 | 85 |
| France | 200 | 120 | 50 |
| Italy | 900 | 340 | 50 |
| Netherlands | 1 600 | 500 | 250 |
| United Kingdom | 3 900 | 470 | 135 |
| Rest of the Community | 875 | 120 | 100 |
| Total | 8 200 | 1 760 | 770 |

122. Works contracts account for a very large part of exploration and production investments. In refining and distribution, supplies contracts tend to dominate.

*Shares of different types of procurement
(%)*

| | <i>Exploration/ production</i> | <i>Refining</i> | <i>Distribution</i> |
|---------------------------------|------------------------------------|-----------------|---------------------|
| Studies and management services | 10 | 20 | 5 |
| Supplies | 43 | 57 | 57 |
| Works | 47 | 23 | 38 |
| | 100 | 100 | 100 |

123. Equipment and works related to the oil sector come under eight main categories, for which the estimated annual procurement in the three subsectors is set out in the table below.

Standards, inspection and safety

124. As a result of the nature of the activity, much of the works and supplies are subject to strict safety regulations involving observance of standards and safety regulations and giving rise to inspections at the point of

*Supplies and works markets in the Community in 1986
(million ECU)*

| <i>Group</i> | <i>Extraction/ production</i> | <i>Refining</i> | <i>Transportation/ distribution</i> | <i>Total</i> |
|---|-----------------------------------|-----------------|---|--------------|
| <i>Equipment</i> | | | | |
| 1. Tubes, valves and drilling equipment | 794 | 169 | 44 | 1 007 |
| 2. Processing plant | 374 | 317 | 15 | 706 |
| 3. Compressor/pump, etc. | 365 | 211 | 132 | 708 |
| 4. Electrical equipment | 456 | 197 | 29 | 682 |
| 5. Regulation/telecom/security installation | 461 | 113 | 220 | 794 |
| 6. Structures offshore, including cranes | 1 100 | — | — | 1 100 |
| <i>Works</i> | | | | |
| 7. Land works and installations | 1 290 | 401 | 292 | 1 983 |
| 8. Marine works and installations | 2 540 | — | — | 2 540 |
| Total value | 7 380 | 1 408 | 732 | 9 520 |

manufacture or execution of works, frequently by both inspectors for the purchasing company and the public authorities. It has been pointed out that, within the Community, there is no system of mutual recognition of test certificates at this stage, a situation which gives rise to additional costs.

125. Many of the standards used in the sector are American, or are national standards derived from US standards. However, some standards, such as those for different steel qualities, vary from country to country and differ from US standards.

126. It is also to be noted that anti-pollution regulations give rise to differences in requirements, whether as regards accident prevention or as regards exhaust emissions from motors and turbines.

The supply industry

127. The most important Community tubes supplier remains British Steel, supplying some 40% of the total market, thanks to the large number of orders received for exploration in the UK part of the continental shelf. German steelmakers (Mannesmann, Thyssen) supply some 20% of the market and operate mainly in the Dutch part of the continental shelf or export to non-Community countries (Norway, Middle East and Far East). The importance assumed by Japanese suppliers (20%) is noteworthy, particularly in respect of underwater oil pipelines.

128. The market in oil valves is highly diversified. However, either directly or through their subsidiaries, the US firms hold a dominant position. The market in drilling and field equipment is controlled entirely by US companies; the main ones are: Hydril, Bowen Tools, Baker, National Supply, all of which have major production and repair facilities in Europe.

129. The market for processing equipment (tanks, pressure vessels and heat exchangers) concerns massive equipment the manufacture of which is complex. For certain types

of refinery reactors a few manufacturers only, or possibly only one, will have recent references at any given time, a major concern to purchasers. For smaller equipment, there appear to be suppliers in all of the Member States, in some cases using converted shipyards.

130. Non-electrical machinery (compressors, turbines, combustion engines equipment) is very specific to the oil industry, mainly on account of special standards. There are major European companies working in this field. A number of US companies also have well-established manufacturing or distribution subsidiaries in the major producing countries, the United Kingdom, the Netherlands, and Germany. Where major plant and machinery is concerned, the invitations for tender bring a number of major firms into competition. There are many domestic manufacturers for less powerful equipment and minor supplies.

131. The supply of high-power electrical equipment depends mainly on the major companies working also with the electricity supply industry although there may be more direct competition than in that sector. The trend towards concentration of the industry is marked.

132. Servocontrol, monitoring, communications and remote-control equipment is covered by companies specializing in control and regulation, including both European and US firms. The major telecommunications suppliers of the Community also provide specialized equipment to the oil industry. It is to be noted that procurement by the major oil companies is highly centralized in these areas, since telecommunications and data-processing equipment are widely used throughout the company systems.

133. The Community market in offshore steel structures is dominated by UK groups (including subsidiaries of US companies), which account for 60% of the market for North Sea oil rigs. Other Community companies are also active, but there is a notable tendency for companies to operate almost exclusively on a national basis, although

subcontracting may blur this picture. Modular construction involves a much wider range of contractors, from both Europe and elsewhere.

134. In all the Member States there are companies capable of performing onshore works, and the market is dominated by local contractors.

135. The market for offshore works including maritime services is in the hands of companies which possess the very substantial facilities required to carry out such work (barges, cranes, etc.). Further, national regulations on working conditions can have a major impact on operators. Together with the assistance provided by major national works contracts outside the oil area, but requiring similar skills, these may have played a role in the development of national firms. It is to be noted that two of the major North Sea operators in this area are subsidiaries of US firms.

Conclusion

136. Although the contracting entities in exploration and production consist mainly of private companies operating in competition with each other, the discretionary nature of the licences awarded to enable exploration and production to take place and the indispensability of these licences to the oil companies create the possibility for governments to influence procurement decisions. Particularly when supply industries are in a growth phase, such assistance may make a significant difference to their development, without necessarily incurring major extra costs for the contracting entities. There seems to be evidence that some Member States do exert such pressures and have succeeded in achieving development of national firms at the expense of a wider Community market.

137. When it comes to refining and distribution, there is less evidence of such pressure. Although to some extent there may be network links between the source of refined products and the commercial outlets, alternative sources of supply, transport and distribution are readily available.

138. The surplus facilities available both in refining (in general, if not in all products) and in distribution as well as the number of alternative, competing sources of such products suggests that there is little scope for national influence on procurement and therefore little need or justification for Community measures.

139. In the area of exploration and production, there is also scope for development of Community standards, notably as regards safety regulations (both working conditions and quality standards) and pollution control. US standards, with some adaptations, appear to constitute effective common standards in some sectors of the industry, but elsewhere international or European standards are noticeably absent.

140. The supply side is marked by its diversity. It is also noteworthy that in some products and services, non-Community enterprises have an important role, although sometimes through an established Community subsidiary. Any attempt to develop a form of obligatory Community preference in this area would undoubtedly meet with considerable resistance both from the suppliers affected and from the procuring companies. In view of the highly technical nature of much of the work undertaken and the potentially very serious consequences of failure, it is easy to understand why the procuring companies should want unrestricted choice in such matters. Any preference scheme would have to leave purchasers free to choose the offer which they consider provides the best technical guarantees.

(III) Gas

Structure, ownership and control of the entities

141. The natural gas sector, like the oil sector, can be broken down between exploration and production, transmission and distribution. Exploration and production are covered by the same rules as the corresponding activities of the oil industry. The trans-

mission and the supply companies buy the gas from producers and resell to industrial customers, power stations and public distribution companies. Distribution undertakings convey the gas via the distribution network to the final consumer. The transmission companies play a crucial role in this system, as described below.

142. By virtue of the economies of scales of pipeline transport, the transport of natural gas is characterized by monopoly or quasi-monopoly. The arrangements adopted in the Member States do, however, take differing legal forms. Transport of gas is ensured in most Member States by a network for the distribution of natural gas by a single company in which the State has at least a controlling interest. The exceptions are Germany, where there are 17 regional companies, a number of which are publicly owned (one company, Ruhrgas, supplies 79% of the market directly or indirectly); France, where in addition to the publicly owned Gaz de France, which controls 90% of transport, the Société Nationale des Gaz Sud Ouest, indirectly in public ownership, has a significant regional share; and the United Kingdom, where the privatized British Gas has an effective monopoly.

143. The gas transporting companies frequently have important shareholdings in upstream or downstream aspects of the industry, including transit pipelines and gas terminals. In Germany and France, these shareholdings extend in some cases to a controlling interest in gas engineering companies, while in Italy the SNAM, responsible for 98% of natural gas transport, is part of the ENI group, whose holdings include major engineering and works companies operating in the gas sector.

144. Several of the transporting companies also have a monopoly of distribution, but distribution is carried out by regional or local companies in Denmark, Germany, Spain, France (alongside GdF), Italy and the Netherlands.

145. Price controls are widespread but not universal. There is a supervision to some

degree of prices, import contracts and investments in Belgium, Spain, France, Ireland, and the Netherlands.

Procurement patterns

146. Natural gas is mainly transported by gas pipelines. Only 5% of natural gas is imported in liquefied natural gas (LNG) form. The main network within the Community is complete apart from the Zeebrugge terminal and a possible German project at Wilhelmshaven. The major part of the expansion in supply capacity will be transport by pipeline (USSR-Greece, Spain-Troll field, the future Zeepipe).

147. The pipeline transport market can be broken down into a number of segments, including the pipelines themselves, their casing, laying and compressors. The relative size of these market segments varies with the diameter of the pipe and its flow rate. A breakdown of the various items is set out in the table for a standard 1 000 km pipeline and shows the relative significance of the various items. As flowrates increase, the cost share of the conduit itself increases.

Breakdown of pipeline costs (in %) for a flowrate of 2 billion cubic metres/year

| | |
|---------------------------|------------|
| Conduit | 41 |
| Casing | 2 |
| Laying | 26 |
| Compressors | 4 |
| Fittings | 4 |
| Engineering | 8 |
| Miscellaneous investments | 15 |
| Total | 100 |

148. At the current stage of network development in most Member States, future investments will consist of a large number of projects of similar size. The table below shows the extent of the existing transport and distribution networks in the main gas-using Member States. This effectively represents the distribution of investment between the two subsectors as well. The largest contracts are likely to be in international transport.

Length of gas pipeline (in km)

| | Transport | Distribution | Total |
|----------------|-----------|--------------|---------|
| Belgium | 3 377 | 29 973 | 33 350 |
| Germany | 49 777 | 124 851 | 174 628 |
| France | 25 764 | 102 066 | 127 830 |
| Italy | 18 000 | 77 000 | 85 000 |
| Netherlands | 5 391 | 83 762 | 89 153 |
| United Kingdom | 17 725 | 215 712 | 233 437 |

149. The natural gas market is gradually reaching maturity in the Community; the major international and national transport systems have given the Community a comparatively highly interconnected network, as against North America and Asia where transport is mainly by LNG. From capacity increases of 2 500 km in 1978, network development went through peaks of 5 000 km in 1979 and 20 000 km when the Transmed and distribution networks in Denmark were being built, to fall back to investment levels of between 1 300 km and 2 500 km between 1983 and 1985.

The supply industry

150. The industries supplying the gas industry have fallen into a slack period, when capacity rationalization rather than expansion will be the order of the day. The tube industry for oil and gas transport is operating at 60 to 65% of capacity in Western Europe, while utilization rates attain 100% in countries where domestic utilization of natural gas is expanding vigorously (USSR and Latin America).

151. To provide for gas transport over even greater distances, the industry has developed towards operation at increasingly high pressure, which requires more resistant steel and larger diameters and thicknesses, in particular for the crossing of difficult areas (rivers, sounds, etc.). The steels required for transport within the Community are carbon steels produced by all steelmakers, which meet the commonly recognized API (American Petroleum Institute) standards. There are some 20 pipe manufacturers in the Community, although they may not all be able to produce the heaviest products.

152. The role played by oil and gas in national economies has determined the structure of the market in engineering and works. In offshore production in the United Kingdom, there are a large number of operators both independent and belonging to multinational oil groups.

Further, there has been increased use of gas as primary energy, prompting companies to develop into gas-related activities. This has ensured fierce competition. Many such firms also operate on the international market.

153. In contrast, the centralization of the oil and gas industry in Italy around ENI has led to domination by two of the group's companies, Snamprogetti and Salpem, on the engineering and works markets. An examination of a sample of contracts awarded in Italy reveals that these two companies and Nuovo Pignone, another ENI subsidiary operating on the compressor market, have a quasi-monopoly in large projects. A sample of 62 large-scale operations carried out by AGIP and SNAM (and in one case the Regione Toscana) shows that all the contractors for engineering and construction were not only Italian, but in the vast majority of cases belonged to the ENI group (other firms are SICIM, Bonetti and Unione SpA). For example, the valuable compressor contract for Transmed was awarded entirely to Nuovo Pignone. However, only a few companies could supply this special equipment. The number of subsidiaries of firms in the ENI group operating outside Italy highlights their competitiveness. It is probable that the policy followed by the ENI group has enabled its companies not only to develop economies of scale, but also to offer highly specialized services (for example, the laying of the underwater pipeline by Castoro Sel).

154. The Netherlands, France and Germany have efficient industries, distinguished by a number of operators that are well represented on the international market. The engineering and works market in Germany is dominated by a comparatively small number of operators specializing in major onshore transport work; the subsidiary of the main transporter plays a predominant role in operations. It also intervenes in all international transport projects where Ruhrgas is in-

volved. France has a relatively greater number of companies covering the market of GdF. Only the compressor market is not entirely covered by French firms. Such firms are also well represented on other markets. The contracting policy in the Netherlands is similar. Gasunie deals mainly with its subsidiary and the oil companies with other Dutch (HAK, NACAP) or International (R.J. Brown) companies.

155. On the other hand, in Member States such as Denmark, Ireland, Spain and Greece the number of operators is relatively small and development is often by way of association between local industries and established operators from other Member States. The Danish system was developed by Dancon-Hak, an association of Danish firms and the Dutch Hakpljpleidingen, while Spain is distinguished by associations between national firms and firms from Italy, France and Germany. This openness to cross-frontier co-operation is not necessarily a sign of an open competitive approach, since the firms in countries that developed their gas industries in the past have already been able to benefit from economies of scale.

156. It should be noted that the firms in countries that have highly developed gas industries often operate jointly on international markets as in the case of the development of the large Yugoslav network. Current overcapacity has also led to cross-frontier mergers. A number of Community suppliers in the natural gas market have attained sufficient competitiveness to win contracts across national frontiers.

Conclusion

157. The markets for all three aspects of the natural gas business are subject to influence of the public authorities whether through ownership or through a structure of regulation. Unlike the hydrocarbons sector, this extends beyond the exploration and production activities to include the transport and distribution activities. The dependence of the industry on the transmission network creates a substantial barrier to entry and a consequential reduction in the direct competitive pressures on operators.

158. The market is approaching maturity and future demand for extension of the system is unlikely to be on the scale of the 1970s, and 1980s.

159. The supplying industries include many of those active in other sectors involving pipeline transmission. Although they have often developed on the basis of a closed national market, it is apparent that many of them have attained a degree of efficiency as evidenced by their ability to win contracts in other Member States and in third countries.

160. The decline of the market for new pipelines ensures that there will be continuing commercial pressure on such firms, no doubt leading to some degree of rationalization. There is clearly a risk that, with a small number of companies already operating in certain specialized areas, the scope for competition would become more limited.

161. The degree of integration in some aspects of the market is significant, with close links between both sides of the industry. The extent of the ENI group is particularly striking.

(IV) Solid fuels

Structure, ownership and control of the coal industry

162. Solid fuels are covered by two Treaties: the Treaty of Rome (EEC) in the case of peat, lignite and brown coal and the Treaty of Paris (ECSC) in the case of coal, brown-coal briquettes and semi-coke derived from brown coal.

163. Community production of coal (203 million tonnes in 1986) is concentrated geographically in the United Kingdom (43%) and Germany (41%) with Spain (7%), France (6%) and Belgium (3%) providing the remainder. The production of peat, lignite and brown coal (46 million tonnes in 1986) is concentrated in Germany (68%), Greece (16%), Spain (9%) and Ireland (4%). Solid fuels account for about 30% of Community energy production.

164. Coal imports from third countries (the United States, Australia, South Africa and

Poland) have been increasing throughout the Community for many years, the share of imported coal in total coal consumption increasing from 10% in 1973 to more than 30% in 1986.

165. Intra-Community trade is very small, about 3% of Community consumption. Most of this consists of traditional supplies of coking coal and coke from Germany. There is little intra-Community trade in lignite, brown coal and peat.

166. The industry involves private, public and semi-public companies. Thus much of the coal produced in Germany and Spain is extracted by private companies, several of which are subsidiaries of major coal users (steel and electricity producers). In Belgium, the remaining coal production is in the hands of a semi-public company in which the State holds the majority of the capital. In the other producing countries, public ownership is general.

167. The coal market is characterized by the existence of vertical agreements between producers and consumers. These agreements provide coal producers with a long-term guaranteed market enabling them, in principle, to maintain production capacities in the long term. At the same time, they largely rule out competition from other coal suppliers and other forms of energy. They also provide users with a guaranteed supply of coal regardless of market fluctuations and, in the case of the iron and steel industry (*Hüttenvertrag* in Germany), regardless of short-term fluctuations in its own demand.

168. However, such agreements often mean that prices are fixed at levels which do not necessarily correspond to market realities. Thus, in Germany, the *Jahrhundertvertrag* requires that electricity producers undertake to consume about 640 million tce of German coal until 1995. A compensation fund financed by a 7.25% charge on electricity consumption (*Kohlepfennig*) refunds to the electricity producers, in respect of 22 million tonnes a year, the price difference between Community coal and heavy fuel oil and, in respect of 11 million tonnes, the price difference between Community-produced and imported coal.

169. In Spain, a method of awarding contracts for coal supplies to power stations was agreed in 1986 which may conclude long-term contracts with the electricity producers at a reference price. Mining companies whose production costs exceed the reference price may ask the electricity producers for a price supplement to cover the gap between their production costs and the reference price. The additional price paid by the electricity producers will be reimbursed from a fund to which the electricity producers pay contributions.

170. In the United Kingdom, there is an understanding between British Coal and the Central Electricity Generating Board (CEGB) whereby the CEGB will, until 1991, consume as much coal as technically possible and obtain 95% of its supplies from British Coal.

171. Although these agreements do not explicitly rule out the use of Community-produced coal from other countries, they do considerably restrict competition from imported coal and from other energy sources, thereby achieving the same result as those coal-producing Member States where the price of nationally produced coal is aligned on imported coal prices, the price difference being met directly from public funds.

172. Another type of agreement, with the purpose of cutting marketing costs for household coal, tertiary and small-scale industrial consumption, provides exclusive territorial rights to coal traders while sale and resale prices are fixed by the producer, thus eliminating any possible price-based competition from other coal traders.

173. These practices constitute a barrier to the free movement of coal, chiefly within the Member States but also occasionally between Member States.

174. Despite areas of profitability, the overall financial situation of the coal industry is poor and has worsened recently as a result of a fall in the price of imported coal expressed in national currencies.

*Financial situation of the coal industry, 1986
(ECU/tonne)*

| | Production costs | Revenue |
|----------------|------------------|-----------------|
| Belgium | 120 | 63 |
| Germany | 116 | 103 |
| Spain | 80 ¹ | 56 ¹ |
| France | 100 | 60 |
| United Kingdom | 78 | 62 |

¹ Estimate.

175. Thus between 1965 and 1986, some ECU 50 billion was spent on aid schemes and other measures to support current production, and this figure has recently increased significantly. Whereas, in 1986, the average price for imported coal was about USD 50/tonne (approximately ECU 40), the average cost price of Community-produced coal was more than USD 100/tonne (approximately ECU 80)

176. Commission Decision No 2064/86/ECSC establishing Community rules for State aid to the coal industry allows the Commission to authorize such aids only where they contribute to the achievement of one of the following aims:

- (i) improvement of the competitiveness of the coal industry, which will help to ensure greater security of supply;
- (ii) creating new capacities, provided that they are economically viable;
- (iii) solving the social and regional problems related to developments in the coal industry.

Procurement patterns and the equipment supply industry

177. Equipment and works related to the solid-fuel extraction industries include:

- surface and underground works, structures;
- mining equipment;
- earth-moving equipment;
- transport and material-handling equipment;
- electrical equipment;
- compressors, pumps, pipes and ventilation ducts;
- telecommunications equipment, computers, security and safety equipment.

178. There is a certain amount of specific equipment associated with the special characteristics of mining works. Further, there are particular requirements in connection with safety. However, much of the equipment used is not sector-specific and supplies are available from a variety of sources, including traditional equipment suppliers located in the main producing countries. There is a certain amount of overlap with equipment and suppliers used in the oil and gas extraction industries.

Conclusion

179. The solid-fuel extraction industries are, by virtue of their ownership, mining concessions and marketing arrangements, protection from imports and extensive direct aids, under the influence of government as to their procurement policies. The granting of State aids to further desired objectives may be a valid objective of government policy, but is no reason to restrict competition among suppliers.

(3) Transport

(I) Rail

Structure, ownership and control of the entities

180 The railway sector is the most obvious example of a *de facto* national monopoly in the excluded sectors. All the major railway authorities have very strong ties with their governments, which normally support them financially and regulate them tightly, not least in regard to the setting of tariffs.

Procurement patterns

181. A major part of public procurement in the railway sector goes on civil engineering and other works projects. Despite the tendency for the network of secondary lines to decline, major renewal of main lines has been undertaken in many places. In some cases work connected with track and operating systems has traditionally been carried out by the railway companies themselves.

However, although special experience may be required to carry out work without interrupting the system, the experience of several companies shows that it is feasible to contract works out.

182. Furthermore, major infrastructure developments, sometimes cofinanced by government (TGV), sometimes awarded as concessions to private developers (Eurotunnel), have been a major source of large works contracts, attracting the interest of specialized contractors across national frontiers. Such projects provide important potential for the future opening of markets.

183. As a source for supplies contracts, the railway sector is very important: in 1985 it accounted for about 15% by volume of all international transport traffic in the Community. Its share is, however, declining.

184. International freight movements by rail decreased by about 9% between 1980 and 1985, while road traffic increased by 18%. This decline in traffic, which to some extent is explained by the continuing recessions in industries with close traditional links to the railways, such as steel, is reflected in a decrease in the total park of rolling stock. However, despite this overcapacity, some new orders continue to be placed to cope with modernization, as for example new demands for specialized wagons or special rolling stock for new high-speed networks.

185. Combined transport has, on the other hand, tended to increase. It is carried out in all Member States through container transport and in six of them also by 'piggyback' transport. Container transport refers to containers transported by wagon, ship, lorry or even aircraft. 'Piggyback' transport refers to lorry trailers transported by special wagons. There is a tendency to transfer combined transport to separate companies having private legal status, in order to offer more flexible management, in competition with road transport. These companies are either subsidiaries, still under the influence of their parent companies (container transport), or independent companies with minority railway participation which hold *de facto* monopolies (piggyback traffic). Further, intercontainer acts as an owner of flat cars and

containers which are operated across railway company boundaries. Although the share of combined transport is still comparatively low, there are important investment plans in this area in some countries.

186. Demand for locomotives is relatively small: 84 locomotives were purchased in the Community in 1987, compared to some 500 in the USA. Current demand is mainly for the replacement of existing stock by new higher-technology systems such as the TGV in France, the ETR450 in Italy and the class 91 locomotive in the United Kingdom. In specifying the locomotive to be provided, the purchases may take account of alternative traction systems, mechanical parts and subassemblies such as bogies, braking systems and electronic controls. As regards traction systems, the companies are locked into different systems with consequent difficulties of interoperation. At present, only the SNCB operates multivoltage locomotives capable of travelling on neighbouring systems. As a result, there are a large number of different systems and designs in operation throughout the Community, perhaps as many as 50 different classes of locomotive.

187. A similar situation exists regarding passenger carriages. There has been a practice of each railway company designing and procuring its own vehicles. There are many different types in operation with wide divergences between them. Orders have typically been for short production runs, and interoperability has generally not been possible.

188. A notable exception arose in the case of Eurofima. It was decided to design and order a large number of interoperable passenger vehicles to a common design. The results of this experiment are, however, generally held to have been disappointing. A number of reasons have been suggested. On the one hand, despite the scale of the overall order, it was parcelled out in small lots to a series of national suppliers, thereby losing the potential economies of a long production run. Further, a considerable measure of freedom was left to purchasers within the overall design concept, with the result that interoperation was made difficult. Finally, in the course of maintenance, there was a tendency to replace common components with specifically national components.

Standards

189. Differences in standard track gauges (Ireland, Spain and Portugal differ from the rest of Europe), loading gauges (UK dimensions are more constrained than those of continental operators) and electrical systems constitute fundamental differences between Member States. Nevertheless, there is already a considerable degree of compatibility and cooperation between railway authorities, indispensable for ensuring uninterrupted transport by rail across borders for passengers and freight, and there is both scope and demand for standards. Indeed, a significant number of ISO standards already exist.

190. The area of combined transport, as a growth area, inevitably calls for the development of common standards. Although some progress has already been made in this area, further development is called for.

191. Thus cranes and heavy lifting appliances are important for rapid transshipment of containers in terminals. Yet their manufacturers, (united in the European Federation of Handling Industries) established common specifications of their own, without awaiting the official CEN standard that entered into force at the beginning of 1988.

192. Sea containers (20 and 40 feet containers) are standardized in accordance with ISO freight containers, and these containers are also suitable for combined road/rail transport. However, container wagons normally permit larger and higher containers having bigger loading volumes which, as a result, no longer comply with ISO standards. A special committee for new standards in this sector has been set up within CEN and is to complete its work by the end of 1988.

The supply industry

193. With the exception of Greece, Ireland, Luxembourg and the Netherlands, the Community countries each have their own railway supply industry with which the national railway company has tended to maintain a close, dependent relationship. Procurement procedures therefore depend largely on

whether supplies can be obtained from domestic sources.

194. The Community railway equipment industry, which is heavily dependent on domestic orders, is currently operating far below optimal capacity. A figure of the order of 50% capacity utilization is widely quoted. Further, production runs are typically well below optimum levels, a situation which no doubt results from the multiplicity of classes and designs of rolling stock and locomotives. It must be said that this situation is exacerbated by the lack of intra-Community trade: contrary to most sectors, trade figures indicate that intra-Community exports are only some 20 to 30% of the level of extra-Community exports.

195. There are some surprising differences in the price structure for products similar in all respects and made under largely comparable manufacturing conditions in the Community, for example, container wagons. This cannot altogether be explained by differences in labour costs or higher levels of efficiency and rationalization of production. This gives some credibility to the suggestion that the market is distorted by State aids. However, the fact remains that there are extensive economies to be made from shopping around. In the case of container vehicles, cases have been noted where the highest bidder was quoting prices double those of the lowest Community bidder, for essentially similar products. The same wide distribution applies to delivery dates.

196. It may be that these discrepancies indicate that bidders in the lower price range can produce more cheaply by virtue of greater capacity (economies of scale) and can also adapt to demand with greater flexibility. Certainly large series production at something approaching full capacity with more rationalized product ranges could bring substantial economies, perhaps of the order of 20%. It has been suggested that more collaboration, with consequent mergers and consolidation, could bring a reduction of the order of 25% in capacity. It is not, however, clear where such changes would have their impact. It is widely suggested that such developments would give rise to greater specialization on particular sites, with increased trade in subassemblies.

197. The commercial pressure towards some form of rationalization is reinforced by a number of developments in the industry. Thus the Eurotunnel system will give rise to joint BR/SNCF orders for locomotives. At the same time, the development of the TGV system on an international basis gives an advantage to existing manufacturers with a technological lead. This and other developments have been associated with the emergence of manufacturing groups such as the 50 Hertz Group.

198. Undertakings from Eastern Europe have recently made bids well below the Community manufacturers' average. There can be no doubt about their ability as State-owned enterprises with low cost bases to offer very competitive prices, a situation that would need to be taken into account in the context of a more open Community market.

Conclusion

199. The reluctance of railway authorities to move beyond their traditional national suppliers seems to reflect the familiar inertia of a mature, monopolistic industry having a long-established, often dominant relationship with its national suppliers, combined with a real concern about the effects of secular decline in demand on an important industry.

200. There is, nevertheless, a widespread recognition in the industry of the desirability of such a development. Developments in technology and transport patterns already favour it: the opening-up of public procurement could help encourage the trend towards rationalization, bringing a reduction in costs and improving the railways' competitive position in the transport market.

201. This trend could be further aided by developments in standardization, particularly in the growth areas.

202. Rationalization of an industry with production facilities widely distributed across the Community could give rise to localized employment problems. The development of rationalization is hard to predict and would

have to be carefully monitored to enable appropriate social measures to be taken. In such circumstances, it would also be particularly desirable to ensure that competition with third countries was fair and gave rise to mutual access to markets.

(II) Regional and local public-transport systems (including bus/coach, trams, light railways and underground)

Structure, ownership and control of the entities

203. There are more than 300 entities having more than 50 fleet vehicles operating urban and regional bus and coach services in the Community. These are, for the most part, in central or local government ownership. The systems of public ownership vary widely between the Member States, where entities can take the form of municipal departments, municipal companies, limited companies owned by the government, city councils or consortia of city councils or transport companies under exclusive local authority franchise. These entities normally have some form of exclusive right to operate the services, owning the vehicles and employing the staff. In Belgium, part of the services are contracted out to private operators, who run their own buses with their own staff but under the same conditions as the services run directly by the authorities themselves.

204. In a number of Member States, including Spain, France, Ireland and the United Kingdom, private firms operate some urban or regional services. Such services normally operate on the basis of one exclusive concession. However, in the United Kingdom outside London and Northern Ireland, there is in effect free competition, with minimal regulation of firms operating services under contract to urban and regional authorities and with free entry to competitors on all such routes.

205. In France and Germany there are also a limited number of mixed-equity (public/private) operators.

206. There are 74 urban rail operators in the Community. With a small number of excep-

tions for mixed-equity operators in France, they are in State or local authority ownership.

207. As a general rule, urban and regional bus/coach and rail transport in the Community is still considered an essential public service, to be provided by local or central governments which exercise control on the operations of the transport entities by setting fares and determining the quality of service and routes to be served. Services are widely unprofitable and are accordingly dependent on public subsidies for their maintenance. Half of the entities surveyed derived 50% or less of their revenue from fares.

Procurement patterns

208. Both the operational expenditure and the investment plans of the entities are typically subject to extensive public supervision.

209. Operational expenditure, which includes items such as fuel, power, tyres and spare parts, is continuous and important in the budget of the entities. There is a marked tendency for local procurement, which in some cases is seen as a necessary counterpart to locally financed subsidies.

210. Investment expenditure, covering the purchase of fleet vehicles and, notably in the case of tramways and urban railways, significant infrastructure costs for building and civil engineering works, is subject in general to strict control by the authority responsible for funding the investment.

211. Investment tends to be highly irregular in its patterns. Buses have an average life of around 12 years, coaches something less on account of the need to sustain a generally higher standard of passenger comfort. Trams and railway vehicles typically have a much longer useful life, of the order of 25 to 30 years.

212. In view of the serious financial situation of many of the entities, there has been a tendency to keep capital investment to minimum levels required to meet essential replacements. It is notable that many entities have little or no forward planning for new investment.

213. Against this, there have been a number of developments affecting urban rail and tramway systems, involving substantial long-term investment in both infrastructure and operating equipment. London, Lyons, Brussels, Mannheim and Athens are among the cities where such investments has taken place.

The supply industry

214. There is a general distinction to be made between suppliers of rail equipment and suppliers of buses and coaches.

215. As far as rail equipment is concerned, the main suppliers are those referred to in the chapter on main-line rail and they are experiencing similar difficulties. Markets are partitioned on a national basis, there is major overcapacity in the industry and there is fierce competition to obtain orders in non-Community countries.

216. As far as buses and coaches are concerned, a distinction is drawn between the manufacture of engines and chassis, which is subject to substantial economies of scale, and coachwork, which tends to be labour intensive. Each country has its domestic supply industry and, with few exceptions, the industry is confined to supplying national markets, or to extra-Community markets. Notable exceptions occur in the United Kingdom and Portugal, where the purchase of equipment from non-national suppliers occurs. In the case of the United Kingdom, this tendency seems to have been reinforced by deregulation. It is to be noted that a number of suppliers are in public ownership. The fear has been expressed that fair competition with such suppliers would not be possible. Potentially competitive suppliers exist in a number of EFTA countries as well as in Eastern European countries. The opening of procurement within the Community would inevitably raise the question of the appropriate treatment of non-Community suppliers.

Standards

217. The problem of divergences in railway standards and specifications has been dis-

cussed elsewhere. The problems of main-line railways are repeated for urban rail.

218. As regards buses and coaches, suppliers have tended to emphasize the divergence of national standards, each Member State imposing its own safety and operating requirements. The tendency for long-standing relationships to have grown up between suppliers and operators has no doubt tended to reinforce the existing separation of markets by the accumulation of company specifications and practices. However, significant progress has been achieved in agreeing Community weights and dimensions for road vehicles. The consequences of existing Community legislation in this area have been reinforced by the decisions of the Court of Justice, while the adoption of further Community measures in the near future seems likely. Further, there has been progress as regards certain aspects of safety requirements and type approval at Community level.

Conclusion

219. With the notable exception of the urban and regional bus and coach services in the United Kingdom outside London, there is a high degree of public supervision of procurement. Whether for explicit political reasons or for reasons of a mixed technical, economic and political nature, which have accumulated over time, there is a marked tendency to 'buy national'. The capacity of Community firms to cooperate in third-country markets suggests that more widespread cooperation is possible within the Community, while progress in type-approval and interoperational requirements should help reduce the obstacles to such developments. It is clear that, for market opening to be a reality, care would be needed to ensure that competition within the Community took place on a fair basis.

220. At the same time, any consideration of the role of trade with third countries needs to take account of both suppliers in market economies and those in other economic systems.

(III) Maritime and inland waterway transport

(a) Shipping

Structure, ownership and control of the entities

221. Some 95% of the tonnage of Community trade with non-Member States and some 30% of intra-Community traffic is carried by sea. However, the absolute size of the merchant fleet operating under the flags of the Community countries has decreased substantially, as has the Community's share of the world fleet, down from 31% in 1970 to 19% in 1986. Within the Community the most marked changes in growth rates have been the steady rise in Greek tonnage up to 1981, since when it has fallen, and the decline in the UK tonnage.

222. The relative decline in the Community fleet has been caused both by a loss of comparative advantage and the growth of third-country protectionist policies. Lower technical, manning and employment standards have contributed to this position as well as fiscal and financial advantages given to some non-Community fleets. The surplus capacity in world shipping was aggravated further by the world recession and in some sectors by the introduction of larger, more technologically advanced ships.

223. Most European shipping companies are fully private. There are, however, some notable exceptions, a number of which operate in specialized markets.

224. In Belgium, the RMT (Régie Maritime des Transports) is an autonomous body under government supervision providing ferry transport to and from the United Kingdom, in competition with other lines.

225. In Denmark, the DSB (Danish State Railways) operates a fleet of vehicle and train ferries. Although since 1984 required to behave as a private company, the ferry division of DSB is under the control of the Ministry of Transport and policy decisions are subject to ministerial control. Nevertheless, its management is to a considerable extent free in making investment decisions and on several occa-

sions during the last few years contracts for the repair and conversion of ferries were placed with foreign shipyards.

226. In Ireland, two of the three shipping companies are State owned. B + I Line operates ferries to and from the United Kingdom, in competition with other operators. It has recently received substantial State aid. The other publicly owned shipping company, Irish Shipping, is in liquidation.

227. In France, the CGM (Compagnie Générale Maritime), which accounts for 16% of the French merchant fleet, is 99% State owned. Although it is managed like a private company, it depends on State assistance to cover its operating losses. The CGM appears to operate in direct competition with other (private) shipping lines. The SNCF and the SNCM (subsidiary of SNCF and CGM) operate passenger, rail and vehicle ferries between France and the United Kingdom and Corsica. The former operation is in competition with other lines.

228. In Spain, 25% of the tonnage of the fleet is in the hands of the State, although it is intended to reduce this by the sale of ships.

229. Three Italian lines are in public ownership. Lloyd Triestino di Navigazione, the largest Italian line, accounting for 29% of the Italian market, Italia di Navigazione (10%) and Adricatica di Navigazione (2%) are under the control of Finmare, the State maritime holding company.

230. In Portugal, 85-90% of the capacity of the merchant fleet belongs to companies under State control.

231. In the United Kingdom, the fleet of Caledonian MacBrayne, operating ferry services to the Scottish Islands, and the bulk carrier fleets of British Steel Corporation and the Central Electricity Generating Board are in public ownership. The UK Government has indicated its intention to privatize the latter two of these.

Procurement patterns

232. As regards shipbuilding and repairs, bunkering and other supplies, the great majority of shipping lines appear to place their

contracts on a commercial basis. This is influenced by the pressure of competition under which European Community lines find themselves operating and the fierce price competition within the shipbuilding sector. State aids for shipbuilding are regulated at Community level by the sixth Directive (Directive 87/167/EEC: OJ L 69, 12.3.1987).

233. However, among State-owned or State-controlled operators providing ferry services in home waters, there are clear signs of a tendency to buy national. The procurement patterns of RMT, DSB, SNCF and SNCM and Caledonian MacBrayne appear to be purely national and to result from policy decisions to that end.

234. The decline in the Community merchant fleet has contributed to that of the Community shipbuilding industry, which suffers from worldwide overcapacity. Over the last 10 years total employment in Community shipyards has fallen by over 50%, with a 59% reduction in new merchant shipbuilding and 33% in repairs. The Community market share in the world shipbuilding industry has declined from 23% in 1975 to 15% in 1984. During 1987 tonnage completed in the Community decreased further, although the drop in percentage was lower than the world's average decline; as a result the market share rose to 18.6%.

235. The industry therefore remains heavily dependent on public support. State aids, at a relatively high level, are regulated by the sixth Directive. Nevertheless, despite the high volume of surplus capacity available, a high proportion of orders from Community shipowners are placed in third countries.

236. There are no evident links between major shipping lines and particular shipbuilders, except for Denmark where the principal shipyards are in the hands of the country's major shipowners.

(b) Ports

Structure, ownership and control of the entities

237. The wide range of institutional structures of Community ports led the Commis-

sion's Port Working Group to classify ports under four headings: State ports, directly dependent on the competent central authorities; municipal ports, coming under local authorities; autonomous ports, publicly owned but less directly controlled than State or municipal ports; and private ports.

238. In terms of relative importance, State, municipal and autonomous ports predominate, accounting for 92% of tonnage handled. Private ports have been identified in four Member States: Denmark (37% of national tonnage); Ireland (3%); United Kingdom (28%); and Greece (32%).

239. With the notable exception of ports in the United Kingdom and the Netherlands, there are widespread subsidies or special aids. The various forms of financial assistance have included aid to major schemes of infrastructure development, which provides a basis for State influence.

Procurement patterns

240. Ports typically award works contracts for the construction of piers, jetties, sea-locks, etc. and for dredging; supplies contracts for the provision of cranes, navigational aids and other equipment; and services contracts for stevedoring and other services.

241. A particular situation exists in France where the association of a number of autonomous ports with a dredging company in a *Groupement d'intérêt économique* effectively prevents competition.

242. Elsewhere, although competitive award of contracts appears to be the rule, the great majority of contracts appear to be awarded to local or national suppliers.

The supply industry

243. There are a great many companies involved in the provision of services and supplies to ports. The nature of many of the markets lends them readily to provision by local companies.

244. However, among supplies, electronic aids, mobile equipment and cranes concern sophisticated products. At the same time the specialized nature of much of the construction and civil engineering work involved in port maintenance and development is of potential interest to contractors outside the national market. Differences in international standards do not appear to pose a major problem in this sector.

Conclusion

(a) Shipping

245. The major procurement of the shipping industry is ships. The competitive situation on world markets has meant that, despite significant State aids, a high proportion of European orders have gone to third-country suppliers.

246. Further, recent developments regarding the regulation of intra-Community sea trade should lead to a greater openness in that market.

247. In these circumstances it is not apparent that there is a strong case to be made for coverage of procurement by shipping companies. At the same time, the provision of State aids to cover losses on particular ferry runs could lead to discrimination when contracts are awarded and consequently needs to be carefully monitored. This matter is considered further in Part III C (6) below.

(b) Ports

248. Ports, on the other hand, are operated for the most part in a manner which makes them subject to government influence, either directly or indirectly. Some aspects of port procurement are already subject to the Community rules on public procurement. Where ownership, investment control and tariffs are in public hands, the case for coverage is very strong. A case for exception could perhaps be made for a number of entirely privately owned ports, where these are clearly not subject to other means of State influence through State aids, controls on development and tariffs, or other techniques. It has not

proved possible as yet to identify with precision the circumstances which would permit such an exclusion to be formulated.

(IV) Air transport

(a) Airlines

Structure, ownership and control of the entities

249. Each Member State has its own national carrier operating scheduled flights on national and international routes. Seven of the Community national carriers (British Airways, Air France, Lufthansa, KLM, Iberia, Alitalia and SAS) are among the top 20 leading carriers worldwide. There are other airlines operating scheduled services, but only France has two major carriers operating on domestic and international routes alongside the national carrier.

250. In most countries there are large, privately owned charter airlines competing with the charter operations of the daughter companies of national airlines.

251. In most Member States, the State holds a majority stake in the national carriers. In France, Greece, Ireland, Portugal and Spain, this is effectively 100%. In Luxembourg (21%) and the Netherlands (39%), the State holding is important, while Denmark holds 27% of the total 50% State holdings in SAS. Air Inter is owned jointly by private and public transport companies such as Air France and SNCF. Of the leading national carriers, only British Airways is without State participation.

252. All major national carriers control other companies operating charter airlines, travel agencies, catering services, and other related activities.

253. In certain Member States, national airlines are established by a particular law (Belgium, Denmark, Greece, Spain), but in most cases, the national airlines have gradually developed over the years, sometimes through mergers, but always in close contact with their governments.

254. The international airline industry is subject to a high degree of government regulation covering most aspects of airline operations, including route flying rights, fare setting and operating standards.

255. The present basis for the international regulation of airline operations derives from the Chicago Convention of 1944. Under this, rules establishing minimum operational standards are normally agreed on a multilateral basis. However, rights to carry traffic between countries and the regulation of fares are agreed on a bilateral basis between governments. Under these agreements, each government grants to the other the right to designate an operator for scheduled services between specified points in their respective countries. Normally, each State designates its national carrier. For traffic between Member States, however, most traffic rights and approval procedures for air fares are now established multilaterally.

256. At international level there are some important cooperative arrangements among the major carriers. These include the maintenance and repair of aircraft, where two major groupings are in operation. The groupings are Atlas (which includes Air France, Lufthansa, Alitalia, Iberia and Sabena) and KSSU (with SAS, KLM, UTA and Swissair). The object of each member is to obtain economies of scale by specializing in a particular aircraft type. National airlines also cooperate at international level to run computer reservation systems. There are two European groups. Amadeus, which includes Air France, Lufthansa, SAS, Iberia, Air Inter and hopes to expand to include Luxair, UTA and Finnair, cooperates with System One of Eastern Airlines/Texas Air. Galileo, which includes British Airways, KLM, Alitalia, Air Lingus, Sabena, TAP, Swissair and Austrian Airways, cooperates with United Airlines Apollo system. The cost of developing any one of these systems is very high. Participation is of major strategic importance to any airline as it enables it to market the greatest possible number of its flights.

257. The typical situation for intra-European scheduled air traffic is a duopoly on routes between two countries. Maximum seat capacity is restricted and was shared on

a 50-50 basis until recently. The Community in 1987 agreed on total route flexibility but with a bilateral capacity split of 45-55, which will be broadened to 40-60 in October 1989.

258. National carriers generally have a near monopoly on many domestic routes. In recent years there has been a sharp increase in the number of small regional airlines operating in such countries as the United Kingdom, France, Italy and Germany. These airlines have been reasonably successful in securing concessions for small aircraft operating on routes where national carriers find it uneconomical to use their larger planes. The regional carriers are usually barred from high-volume routes.

259. In most bilateral agreements both governments concerned have to approve fares, rates and charges for scheduled services. Following its agreement to allow greater flexibility in capacity splitting, the Community has now set up criteria for air fares and is allowing special promotional air fares.

260. The investment policy of most of the leading entities is under an important degree of government control by virtue of its ownership. However the extent to which procurement is influenced by 'buy national' considerations depends on the product category, size of investment and availability of domestically produced alternatives.

261. Due to the nature of their product requirements many special products are available only from a very limited number of suppliers worldwide (aircraft, engines, airborne electronics).

262. Most carriers are under heavy financial pressure, but only a few Community governments provide financial assistance to their national carriers. The capital stock of airlines consists mainly of their fleets. Thus 78% of the tangible fixed assets of British Airways, the largest Community carrier, is accounted for by the value of its fleet. In addition, British Airways has capital commitments of USD 1 190 million for the acquisition of 16 Boeing 747 aircraft.

Procurement patterns

263. The main categories of airline procurement are:

aircraft, engines, airborne systems and flight simulators;

spare parts for aircraft;

fuel and lubricants;

maintenance and repair equipment;

construction, for example, of hangars and administrative buildings;

services and other goods.

264. Over the next 15 years the worldwide market for civil aircraft is estimated at some 5 400 units with a value in excess of USD 250 billion, of which some 20% will be accounted for by Community countries.

265. Estimated procurement by airlines in the Community per year:

| | |
|-----------------------|--------|
| aircraft, engines | 20-30% |
| spare parts | 15-20% |
| services | 20-30% |
| maintenance equipment | 2- 5% |
| construction | 2- 5% |
| other goods | 5-10% |
| fuel | 20-30% |

Total ECU 15-25 billion

266. For the procurement of aircraft components and spare parts, the choice of suppliers is very limited. In some cases, (for example, fuel) there is apparently some pressure to buy national or a strategy to use particular domestic products to enhance the 'national' image of a carrier (for example, food and drink for on-board service).

267. Nearly all aircraft related products are subject to international standards. Standards are established by the Joint Airworthiness Requirements (JAR). JAR is already a generally accepted standard in Europe as is the US Code of Federal Regulations of the Federal Aviation Administration. The European Association of Suppliers, AECMA, is working on a European standard (largely based on the US standard).

The supply industry

268. A principal characteristic of the aviation supply industry is the strong connection

between the civil and the military sector. Between 70 and 80% of the value of Community aerospace production is accounted for by the military sector.

269. A second principal characteristic is the extent to which the world market for aircraft is dominated by three suppliers. In 1986 Boeing held a 49% share of the aircraft market, with Airbus at 25% ahead of McDonnell Douglas with 17%. US companies also dominate the aircraft components market. Even in Airbus, some 30% of components are US-made. The three largest Community aerospace manufacturing companies (British Aerospace, Aerospatiale and MBB) together with Spain's CASA, are partners in the Airbus Consortium. Very large economies of scale, restricting the market entry of new competitors, are a fundamental feature of aircraft manufacture, because R&D costs for new aircraft and main components such as engines are immense, and therefore restrict the market entry of new competitors. In general, national markets and even the whole Community market are considered too small by many suppliers to recoup increasing R&D costs for complex high-tech products or complete systems. This leads to more national and international cooperation and mergers, a trend which can be observed also outside the aircraft industry.

270. Despite the dominance of world markets by US aerospace manufacturers, there are many important and competitive suppliers to the air-transport sector from within the Community. In addition to the participants in the Airbus project, the United Kingdom, France, Germany and Italy and, to a lesser degree, Spain and the Benelux countries, have national producers of worldwide repute. These companies specialize either in a range of air transport related products or serve this sector among many others — for example, large construction or electronic companies such as Thomson, Philips or Siemens. Large companies in common with other specialist suppliers, holders of patents or producers of specialist products, generally have an international sales organization which enables them to be included in lists for restricted tenders. It is the smaller or medium-sized companies, whose products though specialized are not unique (e.g. fork-

lifts or hydraulic platforms), to which tendering in other countries poses special difficulties.

(b) Airports

Structure, ownership and control of the entities

271. Each Community Member State has at least one major international airport. Of these London Heathrow, Frankfurt, Paris Roissy and Orly and London Gatwick are listed among the top 20 airports worldwide.

272. The Community airports which handled more than 1 000 000 passengers each in 1986 are 53 in number (UK, 11; Spain, 10; Germany, 9; France, 7; Italy and Greece, 5 each; Portugal, 2; Belgium, Denmark, Ireland and the Netherlands, 1 each). The number of passengers passing through Luxembourg airport was just below the 1 000 000 mark. In addition, there are many secondary airports handling significant volumes of passengers and freight.

273. Airports form a natural oligopoly. Moreover, in all the Member States except the Netherlands and the United Kingdom, the State or local government has full control of the principal airports. Even in the Netherlands, the State owns the majority of the capital in the principal airports. In the United Kingdom, seven major airports are owned and operated by BAA plc, a private company established in 1987. Elsewhere, although there is variation in the system of ownership, all but a few small airfields are publicly owned and controlled. Further, in Spain, Portugal and Greece airports are administered centrally.

274. Landing charges, passenger charges and commercial activities (such as concessions for shops, restaurants, offices, etc.) provide the main sources of revenue for airport companies. The level and structure of airport revenues varies substantially between and within the various Member States. Landing and passenger charges are normally determined by State authorities, or with their approval. Even the private BAA is subject to strict limits on the charges it can levy.

275. The financial self-sufficiency of an airport depends, to a high degree, on the annual volume of traffic. Various studies on this subject indicate that the break-even point, to cover operating costs only, can be reached at 150 000 to 200 000 passengers per year, while not less than 1 000 000 passengers per year is required to cover both operating and investment costs. Many of the smaller regional airports are therefore subsidized either by the central government or regional or local authorities, who are anxious to maintain and expand their operation in recognition of their importance in providing access and assisting the economic development of the regions they serve.

Procurement patterns

276. Estimated procurement by airports in the Community per year amounts to ECU 2 to 3 billion in the following fields:

construction (renewal and expansion of buildings and runways);

vehicles and equipment for runway use;

customized installations (baggage-handling systems, lighting, etc.);

spare parts and other goods;

services (security, cleaning, catering, etc.);

other goods.

277. Competitive tendering is not uncommon in airport procurement. Tenders are invited for some 30 to 40% of the total value of contracts and are especially common in construction work, which accounts for a high percentage of airport investment. The principal criteria for the selection of a supplier are low prices, product quality, technical and financial reliability and product compatibility with existing systems or equipment. In some countries, domestic suppliers have a big advantage in being able to conform to national standards.

278. Approximately 50% of airport procurement is subject to national standards (buildings, electricity, etc.) and 25% to international standards adapted to national standards. International standards are mainly relevant to air traffic control, where procure-

ment is the responsibility of national authorities and not the airports themselves, and to other safety equipment.

The supply industry

279. There are many important and competitive suppliers to the sector from within the Community. These companies either specialize in a given range of products or serve this sector among many others. For example, large vehicle manufacturers such as Daimler Benz or Iveco supply airports, even though this business represents a very small part of their overall turnover. The same is true of large construction or electrical and electronic companies such as Thomson, Philips or Siemens. There are also many smaller or medium-sized companies, whose products though specialized are not unique, such as forklifts or hydraulic platforms.

280. Some countries are now regarded as fairly closed to foreign competitors, in particular Germany, France, Italy and the United Kingdom where there are strong national suppliers and extensive national standards for airport supply.

Conclusions

(1) Airlines

281. The airlines, particularly those flying on major national and international routes, are heavily influenced by government, whether by virtue of their ownership, or by virtue of their dependence on government bodies to award traffic licences and determine tariffs.

282. Nevertheless, the situation in this sector has been evolving rapidly, with significant steps being taken towards more ready access to secondary routes and towards more flexible and competitive operation on major routes within the Community.

283. At the same time, the particular nature of the supply industry for aircraft, engines and avionics suggests that the imposition of procedures intended to ensure transparency would not significantly improve the effi-

ciency of the market. In effect, the limited range of available products is well known to the main airlines, which may even be operating the alternatives alongside each other, not least due to the need to operate the aircraft best suited to the characteristics of a particular route.

284. There is therefore a strong case for the time being for not seeking to cover the airlines by new Community procurement procedures. This matter is considered further in Part III C (6) below.

(2) Airports

285. Airports are under the control of the public authorities and depend on them for their ability to operate. This applies whatever the formal ownership of the airport. The case for their inclusion seems evident. Application of the existing Directives to airports has not been free of problems of interpretation. It has therefore seemed appropriate to include them in a very explicit manner in the new proposals.

286. It is not apparent that more open procurement would give rise to problems of competition. Nor, indeed, is it easy to predict what the extent of the consequences would be among the many suppliers and contractors who meet airport procurement, except to encourage the more dynamic among them.

(4) Telecommunications

Structure, ownership and control of the entities

287. The telecommunications sector has been revolutionized by electronic switching and digitization, the introduction of electronics and opto-electronics, microwave links, modems and multiplexers for transmission, the computerization and digitization of transmission and reception equipment and the evolution of networks towards integrated services networks (ISDN).

288. The repercussion of these technological changes have been described in the Green

Paper of June 1987. They include rapid growth of equipment markets, changes in industrial structures and questioning of the role of public utility monopolies, as well as a more varied supply of products and services, in conjunction with further demand segmentation (telephony, telex, remote data processing and 'advanced' services).

289. The Commission has defined priority areas in which markets are to be opened to competition and specific proposals to be worked out (COM(88) 48 final). These cover:

(i) the terminal equipment market — to be opened up by 31 December 1990 in accordance with Commission Directive 88/301/EEC;

(ii) the market in telecommunications services other than those for which special or exclusive rights enjoyed by telecommunications administrations will be temporarily maintained as far as the supply and operation of the network infrastructure and the voice telephony service are concerned, from 1989 onwards; from 1 January 1992 onwards, the exclusive supply of services and the commercial activities of the administrations must not be detrimental to the Community's interests;

(iii) the telecommunications supplies markets; Council Recommendation 84/550/EEC, which had as its objective the voluntary opening-up of procurement of terminal and switching apparatus, is currently being reviewed (see Annex I).

290. Furthermore, the Commission decided to support a number of measures to prepare the ground for liberalization. These include the separation of operating and regulatory activities, to prevent telecommunications administrations abusing regulatory powers while acting as competing operators; establishment of a European Telecommunications Standards Institute; and mutual recognition of the type approval of terminal apparatus by the extension of Directive 86/361/EEC.

291. The institutional form taken by the telecommunications authorities, which are still monopolies, practically everywhere varies

greatly between the Member States. Certain Member States have already separated the regulatory and operating functions; the United Kingdom has granted licences to two competing operators of public telecommunications services, while in other Member States there is either a single operator or several non-competing operators. Moreover, the postal service is sometimes separate from the telecommunications operation (in Belgium, Greece, Ireland, the Netherlands and the United Kingdom) and sometimes forms part of one and the same organization. The Spanish, Italian and United Kingdom telecommunications administrations may take part in production activities, while in the Federal Republic of Germany, the Deutsche Bundespost is not allowed to pursue any manufacturing activities. British Telecom was privatized in 1984.

Procurement patterns

292. Purchasing involves works, equipment and software services. The importance of software services is to be seen in modern switching equipment, where 70-80% of the total development cost is related to software.

293. A particular problem arises concerning public works contracts in the telecommunications sector, which are not excluded from the existing works Directive. Provided an entity is covered by the relevant provisions of that Directive, its provisions are applicable. Telecommunications administrations in at least France, Germany, Italy and Luxembourg are so covered.

294. It is to be noted that certain entities are covered by national public procurement regulations for their works and supplies contracts.

295. Telecommunications consist of a set of transmission and switching equipment and interfaces enabling users to communicate via public or private terminal equipment. The basic functional elements of the system consist of switching, transmission and terminal equipment.

296. The normal lifetime of networks (transmission and switching equipment) is approx-

imately 40 years. Operators can halve that period where technological progress warrants earlier replacement by enabling revenue to be increased or operating and maintenance costs to be reduced. Nevertheless, the renewal of network equipment (5% per year, giving a lifetime of 20 years) is much slower than that of the services carried by the network and the replacement of terminal equipment (10% per year, giving a lifetime of 10 years).

297. A number of characteristics of the systems have an important influence on the way the markets operate:

(i) The technical specificity of switching apparatus or cables does not favour competition.

(ii) Contracting authorities will insist on meticulously examining a newcomer's products to see whether they are compatible with existing equipment and whether the guarantees offered are adequate. If the equipment offered is innovative, the administration will have to carry out a detailed study of the indirect costs which would be incurred by introducing the new equipment alongside existing installations.

(iii) Technology is constantly evolving and products are constantly being improved. Manufacturers have to invest large amounts of money in research and development and the prospective purchaser frequently takes part in the research process, sometimes directly funding it. In such circumstances, there are strong incentives to both sides to commercialize the product together.

(iv) The choice of a technical solution is a crucial decision which always benefits a given industrial group.

The supply industry

298. The telecommunications industry reflects the main feature of the relationship between the telecommunications services and their suppliers. The relationship is one of near-monopsony in procurement counterbalanced by an oligopolistic supply industry.

299. The telecommunications equipment sector is very highly concentrated, suggesting

that there are major barriers to be overcome by firms wishing to penetrate the production sector. Concentration in the telecommunications sector has increased since 1985, in particular due to the sale of ITT's subsidiaries to CGE, enabling the new group Alcatel NV to control nearly 20% of the world market; the acquisition of GTE's activities outside the United States by Siemens; the agreement between ATT and Philips; and restructuring in Italy. Three reasons can be put forward for this: economies of scale as on printed circuit board assembly; the monopsonistic purchaser favouring a small number of national manufacturers; and high R&D costs.

300. Barriers to entry include the working relationship between British Telecom and GEC and Plessey; the Direction Générale des Télécommunications and Alcatel; the Deutsche Bundespost and Siemens; SIP and Italtel; Telefonica and SESA; and the Régie des Télégraphes et des Téléphones and Bell Telephone. This is a situation that is repeated in most Member States to a great degree.

301. In fact between 70 and 90% of contracts awarded by telecommunications administrations have gone to national producers.

302. The swift pace of technological innovation in the production sector makes R&D work in that area a precondition for survival and competitiveness on the world market. The R&D costs involved in developing digital exchanges have been estimated at between USD 500 and 1 400 million; it is also estimated that it will take some USD 2-3 billion to develop the next generation of exchanges. According to these estimates, it would thus be necessary to have between 15 and 20% of the world market in order to recoup such expenditure.

303. It is interesting to compare the situation in Europe, with several telecommunications systems, and the United States, where there are only two systems. Europe has spent some USD 7 billion on developing at least eight different switching systems, as against USD 3 billion spent by the United States on two systems and USD 2 billion by Japan on one main system. No more than four such systems are likely to survive until 1990. This is

no doubt an element in the reality that led Plessey, Alcatel, Siemens and Italtel to sign an agreement in 1985 to cooperate in R&D on interfaces and software for the future ISDN.

Standardization

304. The CCITT (International Telegraph and Telephone Consultative Committee) draws up recommendations on standards at international level. In September 1987, it was decided that European standardization efforts should be placed within an institutional framework, and the European Conference of Postal and Telecommunications Administrations decided to set up a European Telecommunications Standards Institute. This body is open to participation by industry, representatives of users and network operators and has the task of drawing up European standards to replace national ones.

Conclusion

305. The telecommunications equipment market is largely closed to competition from suppliers from other Member States, the main barrier to entry being the power of the purchasing entities. As a result, national telecommunications networks are supplied on average for more than 70% by national producers. This figure rises as high as 90% in certain cases where the national industry is strong. This has contributed to concentration and vertical integration at national level. Recent analyses conclude that thorough rationalization of the sector is indispensable for its survival. The key element for such a rationalization is the opening-up of the markets for all telecommunications equipment. Steps have already been taken to bring about complete liberalization of the market for terminal equipment.

306. The highly integrated nature of the supply industry means that opening of the market across the Community will tend to increase competition, even if rationalization of the number of entities takes place.

307. Opening of the procurement market is an integral part of the approach to the telecommunications sector at Community level.

C. Other policies that should complement Community measures on procurement procedures

(1) Liberalization of markets

308. The Commission is committed to the establishment of a competitive market in telecommunications, to provide the efficient infrastructure necessary for the development of the Community's information technology sector and the growth and flexibility of the economy as a whole. Such a strategy requires market conditions which favour innovation, experimentation and a high degree of flexibility in response to consumer choice, but at the same time guarantee substantial investment in the expansion of basic network infrastructure and services.

309. To this end, the Commission has already committed itself to the phased liberalization of the terminal equipment market and the clear separation of the regulatory and operational functions of telecommunications administrations, so that the latter are free to play a role in the competitive market.

310. This scenario, outlined in the Commission's Green Paper on the development of the common market of telecommunications services and equipment (COM(87) 290 final of 30 June 1987; see also COM(88) 48 final of 9 February 1988), underlines the future role for telecommunications administrations, not only as providers of basic network infrastructure, but also as innovators.

311. The movement of the telecommunications administrations' procurement policies away from a purely national base, towards a European base, and towards efficient and open public procurement should complement the restructuring of the supply side of the Community's telecommunications market, where new transnational alliances have been formed in reaction to changes in world market requirements.

312. In the field of energy policy, the Council's resolution of 16 September 1986 sets out a similar orientation, reviewing national energy policies within a wider Community perspective of market liberalization. The Commission's communication on the internal market in energy (COM(88) 238 of 19 April 1988) recognizes the special monopolistic characteristics of the energy sector, with its exclusive rights of production, transport and distribution and its lack of transparency in prices and costs, which combine to deprive consumers of alternative sources.

313. The Communication recommends that these characteristics, traditionally justified by the obligation of governments to secure national energy supplies, should now be examined to determine their compatibility with the Treaty provisions on obstacles having the effect of quantitative restrictions on trade (Article 30), non-discrimination against nationals of other Member States (Article 37) and operation of services of general economic interest (Article 90). This review and the opening of public procurement are policies which reinforce each other in leading towards the achievement of greater liberalization of energy markets.

314. The transport sector is distinguished by the application of specific Treaty provisions envisaging the framework of a common transport policy. Article 80, which provides that the imposition of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries should be prohibited unless authorized by the Commission, can be taken to imply both an ending of unjustified restrictions in public procurement and also the liberalization of the transport market.

315. Such liberalization has been pursued in various fields, for example in promoting the commercial operation of the railways, the liberalization of combined road and rail services, greater freedom of movement for air charter traffic and the opening of new scheduled routes, and the expansion of exemptions from bilateral road haulage authorization systems.

316. Opening up of public procurement will enhance the contribution of greater liberalization to the establishment of good commercial practice and a more dynamic Community transport sector.

(2) Application of competition policy

317. As has been made clear at a number of points in the sectoral analysis, it is difficult to separate the discussion of open public procurement from considerations regarding the maintenance of competition and the avoidance of illegal payment of State aids. In addition to the liberalization of markets subject to State monopolies or involving undertakings to which States grant special or exclusive rights just discussed, Community competition policy should be used to support competition in the procurement markets now to be opened in the excluded sectors as well as to address problems of concentration on the supply side and vertical integration which, in some of the sectors concerned, could limit the effect of the procurement measures now being proposed. Finally, it is important that the Community's procurement policy itself should not create now incentives for enterprises to collude in the bidding process.

318. As regards State aids, there is a concern, quite widespread in some sectors, that while market-opening will bring increased competition from commercial rivals, the latter will still be falsified by different levels of aid given to the supply side in different Member States, be it for research, promotion or other purposes. These aids are difficult to detect when they are given to public undertakings or by undertakings to whom public authorities have granted special or exclusive rights. These rights, particularly when they are exclusive, give the undertakings concerned independence in the choice of their tariffs to the consumer and consequently a large freedom in the choice of their suppliers. The opening up of their procurement markets will limit this freedom, establish transparency and increase competition to the benefit not only of consumers but also of the supply industry all over the Community. The Commission on the other hand will need to reinforce its control to ensure that

competition in the newly opened markets will be not only free but on equal terms.

319. As to concentration on the supply side, strong pressures towards rationalization of production have already produced progressive consolidation at national level. The heavy electrical industry is an example of a sector in which this process has in some cases reached its limits within the framework of a single national market. Further consolidation across frontiers is now to be expected. The scale of the single market clearly provides an opportunity for further rationalization, where it makes industrial sense, while workable competition should always be maintained. Scope for such consolidation appears to exist, for example, in both the telecommunications and heavy electrical sectors. Clearly, there are certain risks inherent in such developments. Their elevation to the level of the single market emphasizes the need for appropriate Community measures.

320. Vertical integration must also be subject to scrutiny since, in some areas, it could constitute an important obstacle to further development of competition. Some existing examples demonstrate the reality of the problem. The ENI group is in some fields self-sufficient, embracing as it does both procuring entities and potential suppliers of relevant equipment in some sectors such as gas. The same or similar situations arise elsewhere. Vertical linkages were noted in France, Germany, the Netherlands, the United Kingdom. Continued vigilance will be required regarding mergers and the development and use made of dominant positions.

321. Finally, the maintenance of competition in markets is an objective pursued systematically by procurement regimes. However, effective competition may require sufficient bidders, but not too many. After a certain point, the chances of success in a market are reduced. Since tendering is a costly business (for some of the sophisticated procurement which has been discussed, the bid cost might account for as much as 10% of the final contract), there is a clear interest for both suppliers and purchasers to avoid an excessive number of failed bids: for the supplier, because of the loss involved; for the purchaser, because the suppliers losses on failed

bids will ultimately be made up by increased margins when he is successful. Further, for purchasers, the direct costs of evaluating complex bids are significant.

322. One corollary of the costs of tendering is the continuing risk of collusion in restraint of trade among suppliers. Any attempt to force an excessive degree of costly tendering tends to encourage this. There is therefore a need for vigilance in two respects: first, not to impose an artificial degree of competition would invite collusion as a way of avoiding wasted tender costs; second, to impress on firms that illegal collusion will not be tolerated.

(3) Research programmes

323. Many activities within the Framework Programme for 1987-91, the Energy Demonstration Programme and the Hydrocarbon Technology Development Programme are of relevance to the sectors under review. These include:

radiation protection (basic work for establishing standards);

the environment;

basic research on industrial technologies (Brite);

technical standards (including measurement methods and reference materials);

telecoms (RACE);

energy (particularly, energy savings, alternative energy, hydrocarbon technology and nuclear energy).

324. These programmes are examples of the systematic development of transnational cooperation between enterprises, with varying terms of partnership and financial participation by the Community, at the stage of precompetitive research or demonstration. In practice, such cooperation builds links between such enterprises, helps them build up specialization in or demonstrate new processes and products and thus contributes to the evolution of the structure, organization and distribution of activity within the Community.

325. Certain programmes are integrated within a wider Community strategy for the creation of a competitive European industry. Thus, in the case of telecommunications, the RACE programme aims at the conciliation of national interests and approaches within an agreed framework and the objective of establishing a technological base for the introduction of a Community-wide international Broadband Communications Network.

326. The Brite programme, on the other hand, is much more general in its terms of reference. Nevertheless, it includes precompetitive research on the 'improved reliability of industrial materials, components, systems'. Two projects within the framework are of interest as examples relevant to the sectors under review. They concern the use of lasers to treat surfaces of alloy components in steam and gas turbines in order to improve wear and resistance to corrosion and membrane technology for water treatment.

327. The latter project is being carried out by the Société Lyonnaise des Eaux and Dansk Sukkerfabriker with three British and Danish universities and institutes of research. Its object is to determine the best fibre membrane for the 'ultrafiltration' of raw waters (tapwater, river waste, coagulated water, turbulent bioreactors and activated sludge) to obtain drinking-water. The membrane would be site tested by the Société Lyonnaise des Eaux on a plant which supplies drinking-water to Paris.

328. Such programmes, whether general or sectoral in character, can only promote the process of consensus-building on which the acceptance of Community policy, including the effective opening of public procurement, rests.

329. Further consideration should be given to enhancing the relevance of the various research programmes to the sectors under review.

(4) Standards and common technical specifications

330. Transparent procedures will not suffice to ensure opening of the procurement mar-

kets, if the technical specifications and standards used in the purchasing procedures are in practice discriminatory.

331. The prescription of the detailed requirements for products and systems, especially those with higher technological content, can be very complicated and have a tendency to accumulate divergent national or company practice over time. Such specifications are not necessarily discriminatory, but their accumulation can serve to give an important advantage to an established supplier familiar with their characteristics.

332. Discrimination arises when the insistence on the respect of the specifications or national standards is not justified by the operational or functional needs of the buyer, in other words, when the purchaser could very well satisfy his needs with products produced according to other specifications. The tendency of specialists to overspecify is one that is well recognized among industrial procurement experts as both limiting the market and increasing costs.

333. A further, explicit, discrimination arises when detailed specifications, well known to existing suppliers, are not readily available to would-be bidders.

334. Unless divergences in specifications can be reduced as far as possible, they will continue to constitute a significant obstacle to the full exploitation of the single market. At the same time, entities should be required to make their technical specifications available as technical pre-information to interested enterprises.

335. The purpose of common technical specifications and standards is to provide a common reference point reflecting the state of the art, which ensures that a product or service will be adequate for a particular task.

336. The objective must therefore be to ensure the establishment of a core of European common technical specifications and standards. While not necessarily sufficient to meet all the needs of the purchasers in detail, they will provide a shared starting point, known and accessible to all, on which necessary further specifications can be built. The

more standards can figure in detailed specifications, the less is the obstacle to suppliers. However, it should not be supposed that standards can completely replace the specifications of particular purchasing entities. It has been suggested, in the heavy electrical sector, that out of some 2 000 specifications, used by a major utility, some 500 might be susceptible to replacement by appropriate standards, if they are developed.

337. A work programme has been agreed and is about to be assigned to CEN/Cenelec, in the form of a mandate for the establishment of an inventory of existing standards in each of the sectors and sub-sectors concerned, with the exception of telecommunications. On the basis of this survey, CEN/Cenelec will establish detailed standardization programmes, including proposing priorities, taking account of economic importance, technical feasibility and timeliness. They will also make proposals as to the appropriate characteristics for such standards. An interim report is expected later in 1988 and a final report in early 1989.

338. Further, mandates for standardization in the areas of transport of water and high-voltage cables and switchgear are likely to be assigned to CEN/Cenelec in the near future, as pilot cases to demonstrate the feasibility of extending European standards in the area of public procurement.

339. Some of the work may give rise to pre-standards which, although not having the same degree of recognition as European standards, enable progress to be made in particularly sensitive or difficult areas. After a two to three year period in use, they may be readily transformed into full standards if experience shows that they merit recognition.

340. In the telecommunications field, the activities of the European Telecommunications Standards Institute (ETSI) will produce the specifications and standards which will provide the basis for more open procurement in that sector.

341. Although the establishment of European common specifications and standards will take some time, the work has at least

been started. However, it would be wrong to assume that once the standards are established, the problem will be resolved. There is a very important stock of material and experience attached to existing specifications, which will only be replaced progressively as the economic interest of doing so becomes evident.

(5) Structural instruments

342. The reform of the structural instruments of the European Community, at present under way, has as its objective to support the economic and social cohesion objectives set out in Articles 130a to e of the Treaty. To this end five priority objectives have been retained for the activities of the structural instruments. These objectives consist of:

- (i) promoting the development and structural adjustment of the structurally less-developed regions;
- (ii) converting regions, frontier zones or parts of regions (including employment areas and urban communities) seriously affected by industrial decline;
- (iii) combating long-term unemployment;
- (iv) assisting in the integration of young people at work;
- (v) In the context of the reform of the common agricultural policy, speeding up the adjustment of agricultural structures and promoting the development of rural areas.

343. As has been made clear above (see Part II A(4)), there is at present no reason to believe that restructuring as a result of the opening up of public procurement will cause critical problems of a regional or employment nature. However, the need for continuing vigilance and study in this area is clear and continuing analysis is in hand.

344. Should it become clear that such problems are likely to arise, there is scope in the context of the use of the structural instruments, as described above, for measures to assist in handling these problems.

(6) Convincing those directly concerned

345. The question also arises as to how it should be brought home to the public authorities and to companies that the opening up of public procurement will in the long run have more advantages than disadvantages for Community industry as a whole.

346. Two possible difficulties in this task could be the preoccupation of both the public authorities and companies with the short run rather than the long run; and their lack of responsibility for the condition of Community industry as a whole.

347. Neither of these considerations is trivial nor, in itself, unreasonable. The public authorities know well that crises arise and have to be dealt with in the short term, even if more fundamental solutions may have to be found over the long term. Further, a company which cannot manage the short term may not have a long term.

348. It is only at Community level that anyone is responsible for the condition of Community industry as whole. Elsewhere, public authorities are responsible for a more limited part of the whole, while the direction of particular purchasing entities is preoccupied with much more specific problems.

349. This is not to put in issue the importance of convincing those concerned of the merits of opening public procurement nor to deny that the prosperity of individuals derives from the well-being of the group. Rather, it is to give a perspective to the likelihood of finding a complete answer.

350. In order to assess the best approach, it is helpful to consider the likely perceptions of those involved at different levels.

351. Among the public authorities, the perceived advantages of more liberal procurement are likely to include:

- (i) budgetary savings in both short and long run;
- (ii) greater choice and more ready availability of supplies because of the extension of the market, again in both short and long run;

(iii) greater dynamism and innovation among suppliers, in the medium to long term;

(iv) clarification of the nature and purpose of contract award decisions.

352. Against this, there are certain disadvantages:

(i) the danger of losing home markets to third-country suppliers, without seeing the reciprocal benefit;

(ii) the problem of coping with firms and sectors which are losers in the single market;

(iii) the need to impose procurement procedures on certain entities not traditionally in the public sector;

(iv) the loss of the patronage power of contract award.

353. Among the contracting authorities, there may be quite different perceptions. Among the advantages are:

(i) the elimination (or reduction) of political interference, leaving the commercial decisions to be taken by the entity;

(ii) increased competition among suppliers, making for better products under better conditions (including prices);

(iii) the availability of European standards as a reference point for all suppliers.

354. Among the disadvantages are:

(i) widespread concern that the contract award procedures will be rigid and burdensome and expensive to operate;

(ii) unwillingness to use European standards rather than the specifications built up and used in procurement over many years;

(iii) loss of the close relationship between the purchaser and his traditional supplier (whether this relationship was wholly positive, or simply gave a quiet life).

355. The position seen from the point of view of suppliers and contractors may be quite different. Among the advantages are:

(i) potential access to new markets;

(ii) information regarding available contracts (perhaps mainly of advantage to smaller firms);

(iii) more ready complicity with specifications based on European standards;

(iv) the possibility of obtaining feedback when bids fail.

356. Against this it must be recognized that suppliers will have to face:

(i) the potential loss of previously secure markets and close relationships with purchasers;

(ii) tougher competition in order to win orders, with inevitable pressure on profit margins;

(iii) the burden of adopting their production to meet European standards rather than traditional standards.

357. In drawing up the proposals presented in this communication, a considerable effort has been made to meet, as far as possible, points that give rise to genuine concern (notably as regards the position of third-country suppliers, adjustment problems, the flexibility of procedures and the problems of adaptation to European standards). Measures have also been outlined to ensure that the increased competition is carried on in a way that is fair.

358. Further, the studies undertaken have shown the extent of the gains which can be made as well as pointing to some of the likely developments.

359. Convincing the parties concerned is not a task that can be achieved early or once and for all. Perhaps the most that can be said is that the successive interventions so far made by the Commission and the discussions, contacts and consultations which have already been undertaken have excited interest and that this process must continue, using every possibility available to bring home the message that more open procurement is feasible and will bring significant benefits to the Community's economic efficiency and industrial competitiveness.

D. *The external dimension*

360. In creating the conditions whereby domestic industry can exploit the single European market, the Community cannot avoid the issue of how far it is thereby making its domestic market more accessible to third-country firms.

361. In the first place, the Community's liberal policy on establishment would give full access to those third-country firms which have established subsidiaries in the Community. Since many subsidiaries established in the Community import an important part, if not all, of their products from outside the Community, that would constitute a very substantial opening of the market towards third countries.

362. Products imported in accordance with commercial policy obligations could not be the subject of discrimination. However, there are objective grounds for believing that the problem may be manageable not least because penetration of the Community market by third-country firms would be progressive, not a one-off affair. Thus, it is clear that those firms with an existing track record of dealing with public sector contracts will have a strong starting position in exploiting the new opportunities. Further, in so far as European standards are established, competition will take place on European terms. The priority given to respect for European standards in the Directives means that public contracting authorities would not be allowed to set aside a relevant European standard in favour of one imposed by a major producer in a third country and that, in appropriate cases, certification of conformity of products to European standards would have to be obtained.

363. It is nevertheless clear that domestic producers would, increasingly, have to face competition from the established subsidiaries of third-country enterprises. The Community regime for establishment of firms based in third countries is very liberal. It must beware of a situation in which its markets become open *de facto* and it no longer has bargaining power with which to achieve the opening of third-country markets. For that reason alone, it is necessary to take an

active position in GATT from the beginning, to ensure that a counterpart is obtained for the Community's liberal regime on establishment.

The GATT Agreement on government procurement

364. Access to government procurement for third countries is regulated by a Code, adopted in GATT in 1980. This provides for equality of access, for firms in signatory States, to government contracts placed by an agreed list of entities. The list at present comprises the main purchasing branches of central government. It excludes, for the most part, the sectors which are the main subject of this paper. Two notable exceptions concern Japan National Railways and its successor companies and the Nippon Telephone and Telegraph Public Corporation.

365. The parties are bound, under the terms of the agreement, to negotiate with a view to extension of the coverage of the agreement. Discussions preliminary to such a negotiation are at present under way. It is already clear that telecommunications procurement is a major element in the aims of a number of the parties, some of whom are also interested in the procurement of power generation equipment.

366. One of the questions which will have to be faced in the context of Code enlargement concerns how far the procurement of entities in the form of public enterprises or other enterprises subject to political influence, in the commercial or semi-commercial area, should be subject to the Code.

367. It is important that the benefits of the Code should not be overlooked. Public procurement in the main contracting parties — the USA-Canada, Japan and the EFTA countries are the most economically important — is of considerable importance and the disciplines of the Code help Community enterprises overcome the difficulties of selling in these important third countries. For example, the 'Buy American' legislation is inapplicable to Code-covered procurement.

368. At the same time, it would make no sense at all to further open procurement to third countries before it was effectively open within the Community.

369. The Community's objective must be to create the domestic conditions for the vitality of European industry and to seek, through the Code, to obtain the best international opportunities for its industry. Since free establishment means that there is already substantial access for third-country producers to Community markets, there is a strong case for moving ahead steadily in the context of the Code, not with a view to preempting domestic opening but to ensuring that as the internal market becomes a reality, Community industry is well placed to exploit its new found strength in third-country markets. The implementation of such a principle will have to be worked out in the light of the situation in each sector, particularly as regards measures to apply in the period prior to the enlargement of the Code on a genuinely reciprocal basis.

A basis for ensuring progressive reciprocity

370. The legislation for opening up procurement in the excluded sectors should therefore include provisions which will ensure that the equilibrium of the Community's commercial relations with third countries is maintained. Access to relevant Community markets should not be conceded until equal access to similar markets in third countries is guaranteed. Different possibilities exist for dealing with this problem and are considered in Part III F below.

E. Defence procurement

371. Neither this communication nor the new proposals on the excluded sectors address the question of defence procurement. Purchases of equipment by the armed forces of the Member States are already included in Council Directive 88/295/EEC of 22 March 1988 except for the products to which Article 223(1)(b) applies, namely, those intended for specifically military purposes. In addition, in the provisions of the Single European Act on

European cooperation in the sphere of foreign policy, the High Contracting Parties, considering that closer cooperation in questions of European security would contribute in an essential way to the development of a European identity in external policy matters, indicated their readiness to coordinate their positions more closely on the political and economic aspects of security (Article 30(6)(a)). Determined to maintain the technological and industrial conditions necessary for their security, they undertook to work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies (Article 30(6)(b)).

372. The Commission accordingly now has to address as a matter of priority the question of defence procurement in the light of the provisions of both the EEC Treaty and the European cooperation provisions of the Single European Act with a view to the development of policy initiatives that will ensure the coherent realization of their objectives. Such initiatives will need to be considered by those responsible in the near future so that their adoption and implementation are in concordance with the realization of the internal market by 31 December 1992.

III — The excluded sectors

A. The problem in general and the need for a new initiative

373. The Directives in force on the public procurement of supplies and works specifically exclude certain areas of activity from their scope.

374. Thus, the supplies Directive 77/62/EEC does not apply to contracts awarded by bodies which administer transport services; production, distribution and transmission or transport services for water; or energy and telecommunications services.¹ The modification of the supplies Directive adopted in March 1988 reformulates the exclusion so that the Directives provisions will not apply

¹ Article 2 of Directive 77/62/EEC.

to contracts awarded by carriers by land, air, sea or inland waterway or in so far as those contracts concern the production, transport and distribution of drinking-water or those awarded by authorities whose principal activity lies in the production and distribution of energy or is to offer telecommunications services.¹ The purpose of these changes in formulation was to clarify the interpretation of the text, in particular, by limiting the transport exclusion to carriers as distinct from public providers of transport infrastructure such as ports and airports, the coverage of which by the basic texts was not explicit.

375. The works Directive 71/305/EEC does not apply to bodies which administer transport services nor to contracts awarded by the production, distribution, transmission or transportation services for water and energy.² The proposed modification of the works Directive³ seeks to clarify the interpretation of these texts by modifications similar to those recently adopted in the case of the supplies Directive.

376. As regards telecommunications, Council Recommendation 84/550/EEC provided for an experimental phase of opening up telecommunications equipment procurement to suppliers in other countries. The results of this experiment are disappointing as to the amount of contracts published, as to the level of response from suppliers in other Member States and even as to the information made available by Member States on their implementation of the Recommendation (see Annex). It should also be recalled that bodies responsible for telecommunications services were not specifically excluded from the works Directive with the result that at least four such bodies which have the status of State authorities⁴ are covered, while others are not.

377. The reason given for the exclusions was indeed that some bodies with activities in the sectors concerned had public status while others were private. With the exception of works contracts in the telecommunications sector, therefore, it was felt necessary to exclude these sectors from the field of application of the Directive, pending the development of solutions to take account of these special circumstances.

378. The realization of the internal market by 1992 requires that the complementary measures contemplated when the exclusions were first made now be taken. The economic justification for so doing is clear, as already explained above (see Part II). In addition, the governments of the Member States meeting in the European Council have repeatedly recognized the importance of completing the opening up of public procurement.

B. The two sides of the equation: the field of application and the obligations to be imposed

379. As explained above, the main reason given for excluding the relevant sectors in the first place was that a particular activity may be allocated to a 'public' entity in some States, to a 'private' entity in others or indeed to both. In addition, even the concept of a public entity is highly variable depending on the precise context, national and regulatory. As a result any Community approach to the problem which sought to base itself simply on a distinction between public and private entities would confront enormous difficulties at the outset and probably be doomed to failure. A concept must be developed which addresses the procurement problem in terms which transcend the public/private distinction and permit situations which are in substance the same to be treated equally regardless of differences in legal form.

380. Accordingly, as regards the field of application, the proposal is based on identification of those underlying, objective conditions which lead entities in these sectors to pursue procurement policies that are uneconomic in the sense that they do not ensure that the best offer from any supplier or contractor in the Community is systematically preferred but privilege national suppliers.

¹ Directive 88/295/EEC 22.3.1988; OJ L 127, 20.5.1988.

² Article 3 of Directive 88/295/EEC.

³ Article 3(4) and (5) of Directive 71/305/EEC; COM (88) 354 20.6.1988.

⁴ The French *Ministère des Postes et Télécommunications*, the German *Bundespost*, the Italian *Ministero Poste e telecomunicazioni* and Luxembourg *Administration des Postes et Télécommunications*.

381. Two types of condition are of particular relevance.

382. First, barriers to entry for potential competitors, whether technical, economic or legal, often place an entity, public or private, in a situation in which it is sufficiently insulated from the force of the market that it can pursue other goals than that of always securing the best offer, including the protection of national suppliers and contractors.

383. This position of relative privilege can arise in a number of ways. The entity may have a formal legal monopoly of a territorial character, which is the clearest case, to be found, for example, in the telecommunications field. Even in the absence of a true monopoly, the number of participants may be restricted by technical, legal or economic factors, or some combination of all of these, so that the competitive environment is fundamentally qualified and the comportment of the entities concerned is not market led.

384. Where a good or service is made available by means of a technical network, for example, the system has a natural tendency to develop into a monopoly or oligopoly. That natural tendency may well be reinforced by the allocation by the State of special rights or powers relating to the management of the network. Regardless of whether they are public or private, the entities supplying or managing the network are in a position in which competitive forces are so qualified that regulatory or other governmental measures are considered necessary to redress the balance.

385. Indeed, the second type of condition leading to uneconomic procurement, which is often but not always associated with barriers to entry, consists in the means available to a State to influence the present or future operations of an entity. Such means take multiple forms. The public character of an entity often automatically involves such means of influence: control of the entity's management by the State or of its financing, for example. But private entities too can equally be subject to State influence, particularly where a vital activity depends on the States' continued approval, for example, a concession or authorization to carry out that

activity. In such cases, it is hardly surprising that, even in the absence of explicit demands, an entity may decide that it is in its long-term interest to accept the States' objectives as its own, despite the short-term cost, and direct procurement to national firms rather than those from other Member States.

386. Where the two conditions, insulation from the market and exposure to State influence, are both present to a significant degree, and perhaps for a period of very many years, the result is that substantial markets are essentially closed to suppliers or contractors from other Member States, however competitive they may be. Indeed, the result in some cases appears to be a firmly closed, vicious circle in which outside firms do not even try, since to do so would be a waste of resources and impossible for a responsible manager to justify.

387. Of course, the two conditions to which reference has been made can be present to a greater or lesser degree. In some cases, it is relatively easy to conclude that, given the known characteristics of a particular area of activity, it should certainly be dealt with as a matter of priority. At the other extreme, some situations clearly do not require attention at the present time. In the middle are cases in which the correct judgement is more difficult and different views can be advanced. The particular circumstances of each case are considered in Part III C (6) below.

388. The obligations to be imposed on entities to be covered by new Community instruments must take fully into account their particular character. Public or private, they differ from the essentially administrative organizations typically covered by the existing Directives in having economic or industrial purposes. In addition, to achieve their goals, they frequently rely upon the exploitation of a technical infrastructure which can be complex and highly specialized. They are in a real sense enterprises having much in common with ordinary enterprises that are not subject to the particular conditions outlined above.

389. Accordingly, the obligations to be imposed should not be those long applied to

the administrative bureaucracies. More flexibility is required to permit the entities concerned to manage their procurement activities effectively in the light of their particular circumstances. The requirements should not be conceived as a comprehensive regulation of the procurement function, but as the minimum safeguards needed to permit the entities concerned to secure the best offer from all Community firms that are in a position to compete.

390. The proposed regime is a framework for sound commercial practice. Much of the detail will be settled by the purchasing entities themselves in accordance with their particular needs and circumstances. Flexibility is provided as to the choice of open, restricted or negotiated procedures and the particular manner in which the procedures are opened to competition. Traditional open tender notices, periodic notices of procurement intentions, invitations to suppliers who have qualified through an accessible qualification system all find their place in the system. The counterpart of this flexibility is that, whatever procedures are used, they will have to be non-discriminatory; to rely on objective criteria that are compatible with certain framework provisions in the directive; and, above all, to be transparent and capable of being monitored by the Commission. The main requirements are considered in greater detail in Part III D below.

C. The field of application

(1) The general approach

391. As explained above, nationalist procurement practices cannot be identified simply with entities having formal public status. Private entities, insulated from market forces and in a close relationship with both the State and their traditional national suppliers, in some cases for very long periods of time, pursue the same kind of policy.

392. The draft proposals seek to identify those situations in the excluded sectors in which, whatever the public or private status of the entities concerned, the objective conditions leading to nationalist purchasing practices can be identified.

(2) The legal mechanism

393. In addition, in order to ensure a high degree of legal certainty, the provisions formulating those conditions, which are of necessity drafted in rather general terms,¹ are applied by a series of annexes which identify with the maximum degree of precision possible for each Member State the entities concerned.² The national legislator needs a precise identification of the organizations subject to the Community regime. It will also facilitate the Commission's task of applying the Directives once they are in force. A mechanism for keeping the annexes up to date is also provided.³

(3) The sectors concerned

394. The first category of situations covered are those in which a service is provided to the public through a technical network which, by its very existence, limits the scope for competition. Once one network is in place the prospects for competition through an alternative network or new entrants are in practice small. They are non-existent when the natural monopoly or oligopoly receives legal reinforcement through the grant of special or exclusive rights or through mechanisms of public authorization which exclude new entrants.

395. This kind of situation is to be found in a number of contexts in the excluded sectors, including those networks providing a service to the public through the production, transport or distribution of drinking-water, electricity, gas or heat.⁴ It also arises in relation to those telecommunications services to the public which, in the language of the telecommunications Green Paper,⁵ are to remain

¹ Article 2 of the proposal on water, energy and transport; Article 1 of the telecommunications proposal.

² Annexes I to IX to the proposal on water, energy and transport; Annex I to the telecommunications proposal.

³ Article 26 of the proposal on water, energy and transport; Articles 8 and 9 of the telecommunications proposal.

⁴ Articles 2(1) and 2(3)(a) of the proposal on water, energy and transport.

⁵ COM(87) 290 final 30.6.1987: see also COM(88) 48 final 9.2.1988.

reserved — in particular, the provision and operation of the network structure and voice telephone.

396. The second category of cases is in many ways analogous to the first: networks providing a service to the public in the field of transport. Indeed, when the service is provided by a single technical network such as a railway or a metro, the situation is exactly the same. However, in the transport field, the network concept needs to be somewhat broader to include also those systems in which the 'network' is not a technical system like a railway for trains or trams but, as in the case of a municipal bus service, a system of interconnecting routes along which vehicles pass in accordance with conditions laid down by public authorities. Where the State restricts access to such networks, the operating entities, whether they are public or private, are insulated from market forces and subject to State influence, not least as regards their procurement. Accordingly, the proposals cover entities providing services to the public in the field of transport by railway, tramway or trolleybus as well as bus services provided under operating conditions laid down by a public authority including conditions on the routes to be served.¹ The question of the possible inclusion of airlines is discussed in Part III C(6) below.

397. The third category of cases concerns those situations in which an entity exploits a geographical area for a given purpose, subject to some form of State concession or authorization. Once again the entities concerned find themselves in a situation in which the impact of market forces is often significantly reduced and they are exposed to the influence of the State through a variety of means, not least their need to have the concession or authorization renewed or to secure other similar concessions or authorizations. Even when competitive forces are still present to a degree, though qualified, the exposure to State influence through the need to retain the concession or obtain new ones is frequently sufficient to influence their procurement behaviour.

398. The proposals accordingly cover two types of situation of this kind: the exploitation of geographical areas either for the pur-

pose of exploring for or extracting oil, gas, coal or other solid fuels or for the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea, land or inland waterway.²

(4) Exceptions for competitive activities

399. The entities so far identified are insulated from market forces to different degrees. However, the existence of a degree of competition is not sufficient by itself to ensure open procurement.

400. Several of the activities identified above are to a certain extent in competition with each other (substitution competition). This applies to different sources of energy (electricity, gas, oil, coal, other solid fuels, heat). It also applies to different types of transport (road, rail, air, sea, inland waterway). However, procurement will not become market-led, even when the services of one category of entity can be replaced by another, if both categories are equally insulated from the market, as is frequently the case. Moreover, while procurement according to purely commercial criteria is more likely when entities are operating in competition with others which are not protected or exposed to government influence, much will depend on whether other factors in any event permit the entities concerned to pursue uneconomic procurement practices. The availability of public financing, through one route or another, is just such a factor. Accordingly, it is hardly surprising that this kind of competition has not proved sufficient to guarantee open Community-wide procurement. All study findings suggest that in the categories of activity so far discussed procurement has a strongly national bias.

401. Competition may also exist within a given sector or subsector, however, since the barriers to entry may be more or less absolute. As a general rule, though not invariably, as the level of competition increases so

¹ Articles 2(1) and 2(3)(c) of the proposal on water, energy and transport for deregulated bus services, see Part III C(4).

² Articles 2 (1) and 2 (3) (b) of the proposal on water, energy and transport.

the potential for State influence declines. The general rule will not apply, however, when the State retains very direct means of influence such as the power to grant valuable concessions for which the entities concerned are also in competition. Procurement practices can then easily become part, though not necessarily an explicit part, of the bargaining process by which the allocation of concessions and their terms are settled.

402. Nevertheless, in certain particular contexts, the level of competition may be such that it is safe to conclude that, taking account of all the factors likely to affect procurement, the entities concerned will be led by the market to pursue fair and open procurement policies. If that is so, it would seem sensible to exclude such cases from the scope of the new regime. Regulation would have no useful purpose and the proposals would be open to the criticism that they seek regulation for regulation's sake.

403. For this reason, the proposals contain a number of provisions designed to take account of situations in which the market is, in form and in reality, open and in which there are no other factors likely to lead to nationalist procurement.

404. In the telecommunications field, as already indicated, the new rules will apply only to procurement for reserved services and not to procurement exclusively for use in connection with competitive services. In addition, given the current liberalization of the market for telecommunications terminals, pursuant to Commission Directive 88/301/EEC,¹ it seems unnecessary to include purchases of terminal equipment by covered telecommunications entities for resale or hire in the liberalized market.² Indeed, it would seem unfair to do so given that the covered telecommunications entities will be in direct competition in relation to identical transactions with organizations that will not be covered by the new Community rules.

405. Similarly, in the transport field, recent developments have shown that a high level of deregulation can be realized for bus services to the public. An authorization from a public authority may be still required but

only to guarantee basic requirements of public safety and order. Within those limits, a large number of operators can and do operate on the same routes serving the same destinations under the same legal conditions. It seems no more sensible to include such bus operators in the new procurement regime than taxi firms. Their purchases are visibly not influenced by considerations of national origin. Accordingly, the draft proposal excludes from its field of application public bus services where precisely formulated conditions are met which ensure that the operators will be motivated by market considerations to the exclusion of other factors.³

406. Finally, the same considerations that led to exclusion of telecommunications terminals suggest that provision should be made more generally for purchases for resale or hire in a competitive market. Such situations can arise in other sectors — for example, in the gas and electricity sectors where the entities in question sell or hire equipment to users for use on their premises (for example, kitchen and other domestic appliances). The draft proposal accordingly excludes purchases of equipment for such purposes from its scope.⁴

407. Not least because of developments in the Member States and at Community level relating to the opening to competition of activities in the excluded sectors, further scope may exist for limiting the scope of the new Community regime. Deregulated port enterprises and independent energy producers may well seek exemptions of this kind. However, it is important that such limitations are well defined. If they are not, they could empty the regime of much of its real content and also produce unjustified imbalances in the impact of the regime in different Member States. Each demand will need to be considered on its merits as the proposal makes its way through the legislative procedure.

¹ Article 4 of the proposal on water, energy and transport.

² Article 5(b) of the proposal on water, energy and transport.

³ The internal energy market: COM(88) 238 final 19.4.1988.

⁴ OJ L 131, 27.5.1988.

(5) Exclusion of purchases of energy and fuel in the energy sector

408. The draft proposal excludes from its scope purchases of energy and fuel by entities engaged in producing, transporting or distributing electricity, gas or heat.¹ These purchases frequently constitute a major proportion of the costs incurred by such entities and are central to their operations. Their inclusion in this proposal would raise issues going far beyond the normal objectives of an instrument on the procurement of supplies and works. A Community policy on these matters should be developed within the context of the internal market on energy, as suggested in the recently adopted working document on this subject.² The inclusion of such purchases in the present measure would risk complicating and delaying its adoption through the introduction of issues which can be more effectively handled in the context of the measures to be taken to realize an internal market in energy. Within the energy sector, however, the purchase of electricity poses specific problems in that there exist identifiable obstacles to cross-frontier purchases. These obstacles will have to be removed by the end of 1992. The Commission will therefore propose, in the course of 1989, action to achieve this objective.

(6) The proper limits of the regime: excluded and doubtful cases

409. The categories of activity considered under Part III C(3) above are those that clearly should be covered by the new Community regime. Other kinds of activity can be identified the inclusion of which would be inappropriate. For example, road transport, other than the provision of bus services to the public, falls into this category. Road haulage and private coach services in the Member States are essentially open to all comers, as generally are transport services by sea and inland waterway. The remaining restrictions and means of influence available to Member States do not appear to play a significant role in influencing the procurement practices of these operators as a whole. For these reasons, these categories of activity have not been included. Their exclusion does not imply, however, that no action

could or should be taken when, in a particular case, it becomes apparent that a State has intervened to influence procurement decisions. The action to be taken will depend on the means of leverage used by the State and instruments available to the Commission under the Treaty, for example, pursuant to Article 30 or Community rules on State aids.

410. Three categories of activity are more difficult to classify, however. These are the provision of transport services to the public by aircraft; the transformation, transport or distribution of petroleum products; and sea ferry services.

411. As to airlines, on the one hand, a number of factors are present which argue in favour of their inclusion. Whether public or private, they operate in a highly regulated environment in which their access to routes is still limited and depends on State authorization.

412. On the other hand, on cross-frontier routes, they are often in direct, if qualified, competition with one another and with lines from third countries. The extent of this competition is increasing in accordance with Community policy.³ In addition, on the supply side, for both airframes and engines, the industry is highly concentrated. The main European suppliers are already organized in various kinds of cross-frontier cooperative ventures. Avionics are increasingly supplied as an integrated part of the aircraft as a system, reducing the scope for airlines to choose national suppliers for these components even should they wish to do so. Finally, the need to achieve operating efficiency, whatever the qualifications to competition on particular routes, is a powerful incentive to purchase the right aircraft for the job.

¹ Article 3 (1) of the telecommunications proposal; Article 4 of the proposal on water, energy and transport.

² Article 2 (4) of the proposal on water, energy and transport.

³ Council Regulations Nos 3975/87/EEC and 3976/87/EEC, as well as Council Directive 87/601/EEC and Council Decision 87/602/EEC (OJ L 374, 31.12.1987); Council Directive 83/416/EEC, (OJ L 237, 26.8.1983) and the proposal to amend it: COM(86)424 final/2 8.9.1986.

413. It can accordingly be questioned whether the kinds of obligation and procedure proposed in the Directive are really needed or would have much practical effect.

414. Accordingly, airlines have been omitted for the time being but studies will continue so that the situation will be kept under review. Further proposals, perhaps by way of amendment to those now under discussion, may be made should it subsequently appear necessary.

415. As for the transformation, transport and distribution of petroleum products, the structure of the industry is much more varied and decentralized than is the case in the energy and transport subsectors suggested for inclusion in the proposal. The single technical network does not exist as it does for gas, electricity and heat.

Pipelines certainly exist, but they form only a relatively small part of the total distribution system, which includes transport and distribution by sea, rail, inland waterway and road. Barriers to entry are much less significant, and a relatively large number of entities, public and private, compete directly with each other in all Member States except Spain. These competing enterprises do not operate on the basis of concessions or similar exclusive rights as is the case in the exploration and exploitation field.

416. Given these characteristics, the need for including these entities is far from being clearly established. In addition, given the fact that there is likely to be little installation of new refining or pipeline capacity in the near future, their inclusion would in any event probably have very limited economic significance.

417. Accordingly, it would seem sensible, as for the airlines, not to include the sector for the time being but to keep the matter under review.

418. The provision of sea ferry services gives rise to a particular problem. In general, sea transport is an area in which most but not all companies are private. Exceptions exist in several Member States in the form of autonomous bodies under government super-

vision, or departments of the State railways, or State ownership.

419. As regards shipbuilding and repairs, bunkering and other supplies, the great majority of shipping lines appear to place their contracts on a commercial basis. This is influenced by the pressure of competition under which European Community shipping companies find themselves operating on international routes and the intensity of price competition in the shipbuilding sector. The extensive State aids which are available for shipbuilding are regulated at Community level by the sixth Directive.¹

420. Furthermore, recent developments regarding the regulation of international sea trade² create a greater openness in that market. Barriers to entry do not in general appear to create conditions favourable to State influence to favour national suppliers.

421. At the same time, the provision of State aids to cover losses of some particular ferry lines, as granted in certain Member States, has apparently led to discrimination when contracts are awarded in a number of cases. However, this problem is limited in its economic importance. It hardly seems significant enough to justify bringing the whole sea transport sector within the Directive's scope. To try to include only ferry lines associated with the difficulty would in turn create a number of complex problems including the need to ensure fairness between competing entities many of which are not in receipt of the aids which lie at the root of the problem.

422. Accordingly, it would seem preferable to deal with this particular problem through Community control of aids to the entities concerned rather than the inclusion of all or part of the sea transport sector in the new procurement regime.

D. *The obligations*

(1) *Procedures and transparency*

423. In industrial contexts like those in which many of the entities in the excluded

¹ Directive 87/167/EEC: OJ L 69, 12.3.1987.

² Council Regulations Nos 4055/86, 4056/86, 4057/86, 4058/86, 4059/86: OJ L 378, 31.12.1986.

sectors operate, procurement is frequently not a matter of discrete arms-length transactions in a traditional market. As is increasingly the case for all industrial enterprises, the procuring entity is in a more permanent, organic relationship with a group of suppliers and contractors with which it cooperates to achieve important goals like improved product quality, reliability in the short and long term, timeliness of supply ('just in time') and new product development. This close relationship with suppliers and contractors is particularly necessary when procurement relates to technically sophisticated, complex equipment and installations which are central to the performance of the procuring entity's public service mission, be it the provision of a continuous energy or water supply, reliable transportation according to a fixed schedule or some other service upon which the community at large depends to complete its daily business.

424. The regime proposed accordingly provides for the maximum possible degree of flexibility as to the choice of award procedure, provided that the procuring entity makes a call for competition which itself may take different forms to suit the particular circumstances of the case.

425. Thus the regime does not seek to prescribe the circumstances in which a particular procedure may be used. Open, restricted or negotiated procedures may be used at the choice of the procuring entity provided there is a prior call for competition in one form or another. Only the choice of a negotiated procedure without prior call for competition needs to be based on a justification specified by the Directives themselves.¹ Such grounds include the absence of valid tenders in response to an open or restricted procedure or contractor is able to provide the goods or services in question. A provision of this kind is essential since it defines the limits on a procuring entity's discretion to avoid any call for competition whatsoever.

426. Where a call for competition is required, the procedure need not take the form of an open tender. Restricted and negotiated procedures may freely be used.² The call for competition itself may take the form of a tender notice,³ a periodic notice⁴ or an invi-

tation to participate sent to candidates who have qualified in accordance with a system guaranteeing objective and non-discriminatory qualification and selection.⁵

427. The criteria for qualification and selection are not established exhaustively by the regime itself. Each entity is free to establish its own within a basic framework established by the regime — in particular, the requirements that all criteria used are objective, non-discriminatory and do not require the unnecessary repetition of tests or other proofs that are already available.⁶

428. The approach is designed to allow procuring entities the maximum liberty to adopt procedures adapted to their particular circumstances while, at the same time, ensuring that, whatever approach is taken, potential suppliers and contractors from other Member States will have the opportunity to know about and compete for contracts in which they are interested.

429. The counterpart to this necessary flexibility is the transparency of the particular system that each entity applies. Not only must there be a prior call for competition unless one of the specific exceptions applies, but at the same time the criteria for qualification, selection and award used by the entity must be known in advance.⁷ The result of an award procedure must also be made available to interested parties, unless specified reasons justify the withholding of infor-

¹ Article 12 (2) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

² Article 12 (1) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

³ Articles 13 (1) and 2 (a) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

⁴ Article 13 (3) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

⁵ Article 13 (2) (b) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

⁶ Article 19 (1) (b) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

⁷ Article 19 (3) of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

mation.¹ In any event, such information has to be made available to the Commission.²

430. The provisions concerning transparency have been kept to the minimum.³ They are not unnecessary red tape but the guarantee that the procedural flexibility for which the regime provides will not be abused and that, in every Member State, the markets in question will become equally accessible to suppliers and contractors from elsewhere in the Community.

(2) Standards and technical specifications

431. The draft proposals follow the recently modified supplies Directive in requiring European standards and common technical specifications to be used in the contract documents unless there are specific reasons for not so doing.⁴ There is likewise an explicit prohibition on using technical specifications which have the effect of favouring or eliminating certain undertakings except in certain strictly defined circumstances.⁵

432. As already indicated, this approach depends in large part on the existence of relevant European standards and common technical specifications. Unfortunately, in the excluded sectors, relevant European standards and common specifications are often absent. Accordingly, complementary measures are needed.

433. First, as already explained, action is being taken to stimulate the setting of new European standards and common technical specifications which will be particularly helpful in opening markets in the excluded sectors.

434. In the mean time, given that new standards and specifications will take time to prepare and adopt, other measures are needed to fill the gap.

435. One of these is the requirement that, unless there are sound reasons for not doing so, performance specifications and standards that indicate functional requirements rather than particular techniques should be used.⁶

436. The second measure is the obligation for contracting entities in any event to make available to interested suppliers those technical specifications that are used regularly or will be used for planned procurement — that is, their specifications profiles.⁷ Such a provision at least ensures that, prior to the launching of a given contract, interested suppliers and contractors can assess their possibility of making competitive offers on the basis of the particular specifications that will be used.

E. Sectoral differences

437. The consultations leading to the preparation of the draft proposal on water, energy and transport have not brought to light sectoral differences which are so numerous or important that they cannot be accommodated in a single instrument. In particular, the provisions concerning technical standards and specifications, contract award procedures and transparency appear to correspond to the needs of all the sectors in question. The provisions on the field of application naturally have a more sectoral character but they do not put in issue the case for a single instrument. The provisions of the Directive are also capable of further adaptation, should it appear necessary, to take into account additional sectoral specificities — for example, differences in thresholds. Such modifications would not require the proposal to be split up or its structure radically changed.

¹ Article 15 of the proposal on water, energy and transport, referred to in Article 6 (1) of the telecommunications proposal.

² Article 27 (1) (c) and (2) of the proposal on water, energy and transport, referred to in Article 8 of the telecommunications proposal.

³ Articles 27 and 28 of the proposal on water, energy and transport: Articles 8 and 11 of the telecommunications proposal.

⁴ Article 9 of the proposal on water, energy and transport, referred to in Article 5 (1) of the telecommunications proposal.

⁵ Article 10 (3) of the proposal on water, energy and transport, referred to in Article 5 (1) of the telecommunications proposal.

⁶ Article 10 (2) of the proposal on water, energy and transport, referred to in Article 5 (1) of the telecommunications proposal.

⁷ Article 11 of the proposal on water, energy and transport, referred to in Article 5 (1) of the telecommunications proposal.

438. The advantages of dealing with the water, energy and transport sectors together include the maintenance of a coherent approach to the sectors concerned and the economy of piloting one proposal through the Community's legislative procedure rather than several.

439. The telecommunications proposal has a particular Community history and forms part of the package of measures that are being developed on the basis of the telecommunications Green Paper. Both at Community level and in the Member States, the departments primarily responsible for the issue are not those with the main responsibility for public procurement policy in general. Furthermore, if there are only two proposals, the risks of a loss of coherence appear manageable and the additional administrative burden limited. Accordingly, it seems sensible on balance to continue to deal with the matter separately, while ensuring that the content of the measure is as close as possible to that of the measure applying to the other sectors. Differences should be confined to those matters as to which the specific character of the telecommunications sector calls for a difference in treatment because of a genuine difference in the problems posed or the solutions that can in practice be applied. The proposal on the telecommunications sector has been drafted on this basis.

F. The external dimension

440. Third-country firms are watching with growing interest the Community's new impetus to establish a common procurement framework as a key element in the realization of its internal market by 1992. They are focusing especially on the Community's moves towards opening procurement in the excluded sectors because of their obvious economic and technological importance and also because fierce international competition in these sectors is forcing all participants to seek new markets. Opening procurement in the excluded sectors could under certain conditions result in access to large contracts becoming available to firms of third-country origin, either directly or through their subsidiaries established in the Member States. In

other words, the Community is running a serious risk of unilaterally making its domestic market more accessible to third-country firms if the Directives on the excluded sectors fail to take proper account of the external dimension.

441. Furthermore, in parallel to the Community's efforts to create the conditions whereby domestic industry can exploit the single European market, discussions have been under way to strengthen and extend the scope of the GATT procurement Code, with the USA in particular pushing for the inclusion of entities engaged in telecommunications and power generation. It should be recalled that at present the procurement practices of entities in the excluded sectors fall largely outside the scope of GATT disciplines. The Community clearly has an important interest in ensuring that its enterprises have access to third-country markets in the sectors concerned. The Community has accordingly supported the GATT broadening exercise, though the outcome, including the timing of any future agreement, is at present hard to predict.

442. Discussions are also under way between the Community and EFTA countries concerning possibilities for further mutual opening of public procurement. The implications of these discussions for procurement in the excluded sectors are also uncertain at the present time.

443. In these circumstances, the adoption of Community legislation opening procurement in the excluded sectors need to be accompanied by measures designed to achieve the following general objectives. First, provisions are needed to defend the Community's commercial interests and preserve its negotiating position by making no unilateral concession but on the contrary creating a positive incentive for third countries to give guarantees of equal access to similar markets. Second, Community producers should, where necessary, be given the necessary time for the industrial adaptation required to meet the objectives of 1992 and the day when reciprocal access is finally agreed.

444. As to the content of Community legislation in this field, it should explicitly address

the problem of offers made by firms established within the Community. Situations in which offers are made by firms established entirely outside the Community are in practice relatively rare and, in any case, the Directives will simply not apply to them. On the other hand, where an offer is made by a firm established in a Member State, the Directives will apply to it even if the firm is a subsidiary or agent of a third-country firm and the goods or services to be rendered under the offer have their origin entirely in that third country.

445. After having examined various possible approaches, the Commission considers that the best means for the Community to realize these important objectives is to provide for a regime whereby, in the absence of relevant international obligations, contracting entities are placed under no obligation to apply the provisions of the Directives to offers having their origin outside the Community. For this purpose, an offer is considered having its origin outside the Community when more than half its value represents goods or services produced or performed outside the Community. However, in the case of offers from subsidiaries or agents, a substantial part of the value of the offer may represent economic activity within Member States, and can thus be considered to be of Community origin. In addition, where a Community offer is equivalent to one from a third-country firm or to one of third-country origin, the Community offer should be preferred.

446. The equally important counterpart to these provisions, which preserve the position of the Community in relation to third countries, is a mechanism which will permit the Council, on a Commission proposal, to extend the benefit of the provisions of the Directives to third-country undertakings or undertakings offering goods or services of third-country origin. This mechanism makes it clear that the Community is not simply seeking to protect its own market, but is in a position to implement agreements with third countries on equal market access, whether reached through multilateral or bilateral negotiations. Indeed, the fundamental purpose of the provisions is to provide a firm basis for negotiations with third countries.

G. Application of Community law and remedies

447. The proposed Directives contain provisions designed to ensure that the procedures used by contracting entities are as transparent as possible, as explained above. These provisions will play a vital part in enabling interested parties and the Commission to check that the rules are being respected. In addition, the Member States will have statistical reporting obligations which will ensure the transparency of the system as a whole.¹

448. No specific proposals have been made at this stage concerning the remedies, legal or administrative, that should be available to interested parties or concerning Commission powers additional to those already available to it under the Treaty. This is for two reasons.

449. First, insufficient time has been available to consider whether the particular circumstances of the excluded sectors require a specific approach to the question. Given the industrial nature of the activities of many entities in the excluded sectors, it is possible that procedures appropriate to the public administration would need modification.

450. Second, the remedies Directive² already proposed on the basis of the existing public procurement Directives has only just completed its first reading in Parliament and has not been discussed in the Council framework at all. In addition, an important study carried out in connection with this proposal concerning the existing systems of remedies in the Member States is just being completed. Accordingly, it seems sensible to await the result of the first discussion in the Council framework and to evaluate the results of the study now reaching its conclusion.

¹ Article 28 of the proposal on water, energy and transport; Articles 8 and 11 of the telecommunications proposal.

² Proposal for a Council Directive coordinating the laws, regulations and administrative provisions relating to the application of Community rules on procedures for the award of public supply and public works contracts, 1.7.1987: COM(87) 134 final; OJ C 230, 28.8.1987.

Report on the implementation of Council Recommendation of 12 November 1984 concerning the first phase of opening up the access to public telecommunications supply contracts (84/550/EEC) for the year 1987

Abstract

This document evaluates the impact of Recommendation 84/550 on the opening up of access to telecommunications supply contracts for the period 1.1.1987 to 31.12.1987.

It analyses a number of tables compiled on the basis of both the information provided by the Member States in conformity with the Recommendation as well as the notices published by the telecommunications entities concerned in the *Official Journal of the European Communities*.

The analysis shows that four years after its adoption implementation of the Recommendation in the Member States is not yet satisfactory and that its impact on the opening up of access to telecommunications supply contracts of telecommunications entities is negligible.

NB — At the time of issuing this document, two further reports were submitted by Member States:

- (i) United Kingdom for the second semester 1987;
- (ii) Belgium for all 1987.

The late submission did not allow inclusion of the data in the present document; however, they will be integrated in a revised version as soon as possible.

1. Introduction

1.1. Recommendation 84/550/EEC provides the elements for an evaluation of its impact on the opening up of access to telecommunications supply contracts. They are:

(a) The provision of opportunities to tender for telecommunications equipment provided by the telecommunications administrations

for undertakings established in the Community, at least within the limits set by the Recommendation.

(b) The breakdown of candidates selected and contracts awarded among national suppliers, other EC suppliers and third countries suppliers.

(c) The periodic reports by Member States to the Commission (every six months). This includes also the conformity of the reports to the model agreed by the SOGT.

1.2. The relevant figures from both the periodic reports and the procurement notices on the Official Journal concerning 1987 have been organized in a set of tables attached to this document. They are listed below and analysed in the following pages:

Table 1: Procurement notices published in OJ and/or reported by Member State.

Table 2: Number of requests for participation received by the entities.

Table 3: Breakdown of number and percentage of candidates selected by the entities.

Table 4: Breakdown of contracts awarded to — suppliers established in the country of the entity concerned (N)

— suppliers established in other Community countries (EC)

— suppliers established in third countries (TC)

Table 5: Evaluation of conformity to Recommendation 84/550/EEC.

2. Analysis

2.1. Provision of opportunities to tender

The SOGT agreed in 1986 that provision of opportunities to tender for supply contracts

could best be established through publication of calls for tenders under a special heading in the supplement of the Official Journal.

In 1987, only eight telecommunications entities (out of at least 22 concerned by the Recommendation in the 12 Member States) in six Member States have published tender notices in the Official Journal. Member States have also reported four additional entities which have provided opportunities to tender using other procedures (details are given in Table 1).

DBP (D) alone accounts for 61% of all notices published (118) in the Official Journal.

OTE (G) alone accounts for 67% of all invitations to tender (129) published through other procedures.

These figures compare poorly with the total number of procurements of the telecommunications entities, ranging in the tens of thousands. Furthermore, as far as the value of procurements is concerned, it is far below the target set by Recommendation 84/550. In fact, according to Recommendation 84/550 the opportunities to tender should total 100% for all new telematic terminals (category I) and at least 10% in value for switching and transmission apparatus and conventional terminal apparatus (category II).

Two reports only provide the information required to assess the conformity to this aspect of the Recommendation: D for DBP for all 1987 and UK for BT for the first semester (see Tables 4 and particularly 5). Such information shows conformity by these two entities.

It is also noticed that the reports received by the Commission show that — with the exception of OTE — no other telecommunications entity has purchased any significant amount of equipment of category I in 1987.

2.2. Breakdown of candidates, selected candidates and contracts awarded

Table 2 provides figures showing that:

(i) 870 suppliers have applied to the 65 notices published on the Official Journal during the first semester of 1987, i.e. an average of 13 to 14 candidates per notice;

(ii) the number of national suppliers was on average 80% and reached 94% in the bids to DBP (D), 100% in the bids to TLP (P) and 90% to BT (UK);

(iii) the average number of candidates from other EC countries is only 13%.

Information concerning candidates selected (see Table 3) was obtained by analysing the 55 notices about which Member States have reported the required information. Here as well the first semester only has any significance for global assessment.

It is observed that:

(i) 36 out of the 55 notices examined here were published in the Official Journal;

(ii) 240 suppliers were selected from the 500 candidates which applied to the 36 notices published in the Official Journal;

(iii) the mean of candidates selected is 6 to 7 per tender notice (considering only notices published in the Official Journal);

(iv) 91% of these selected candidates were 'national' suppliers and peak values of selected national suppliers are reached in D (97%) and UK (BT 95%).

Information concerning contracts awarded (see Table 4) was obtained by analysing 181 contracts reported by Member States. It is noted in particular that:

(i) 51 notices (out of 181 notices examined here) were published in the EC Official Journal;

(ii) the total value of the 181 contracts is ECU 840 million;

(iii) the total value of the 51 contracts which were tendered in the Official Journal cannot be assessed for lack of precise information from several Member States (see also Table 5);

(iv) 100% of all contracts awarded in F, UK (BT), NL, P (TLP only) went to national suppliers;

(v) 91% of contracts awarded by DBP (D), corresponding to 99.5% in value, went to 'national' suppliers;

(vi) 90% (in value) of the 181 contracts awarded went to national suppliers, 9% to other EC and 1% to third countries.

2.3. Reporting to the Commission

Eight Member States have reported on first semester 1987. Three Member States have reported on second semester 1987. Such reports account for 10 telecommunications entities, thus leaving more than 50% of the entities concerned not accounted for. Details are given in Table 1.

It is noted that:

(a) Information on the number of candidates is given for seven entities only (first semester 1987).

(b) Information on the number of candidates selected is given for six entities only.

(c) Information on contracts awarded is given for nine entities.

(d) Very often the number of notices reported by the Member States do not match those actually published in the Official Journal. Figures are correct for UK (BT), D (DBP) and NL (PTT) only.

(e) Eight notices published in the Official Journal by BT (UK) with specific reference to Recommendation 84/550 concern procurements of products not specific to Telecommunications, thus not covered by Recommendation 84/550. Such reference is therefore not appropriate.

(f) Only two reports by Member States (UK and D) provide the information required to assess the conformity to the target values set by Recommendation 84/550 (see also p. 3, paragraph 2.1 and Table 5 for further details).

Conclusion

Council Recommendation 84/550 provided for an experimental phase of opening up telecommunications procurements to suppliers in other countries.

The results of this experiment so far are disappointing as to the amount of tenders published, as to the level of response from suppliers in other Member States, as to the number of contracts awarded to suppliers in other Member States and even as to the information made available by Member States on their implementation of the Recommendation.

Table 1
Procurements notices published in OJ of the EC and/or reported by Member States

| | First semester 1987 | | Second semester 1987 | | 1987 |
|---------------|--|-----------------|---------------------------|--------------------|---------------------|
| | Reported by Member States ¹ | Published in OJ | Reported by Member States | Published in OJ | Total notices in OJ |
| B | No report | None | No report | None | No report |
| D | 40 | 40 | 32 | 32 | 72 |
| DK | No report | None | No report | None | None |
| E | No report | None | No report | None | None |
| F | 5 | 10 | No report | 4 | 14 |
| G | 86 ² | None | No report | 3 | 3 |
| IRL | 8 ² | None | 18 | 2 | 2 |
| I (SIP) | 11 ² | None | No report | 6 | 6 |
| I (Italcable) | 8 ² | 6 | No report | 1 | 7 |
| L | No report | None | No report | None | None |
| NL | 2 | 2 | 3 | 3 | 5 |
| P (CTT) | 16 ³ | 3 | No report | None | 3 |
| P (TLP) | 6 ³ | None | No report | None | None |
| UK (BT) | 4 | 4 | No report | 2(+8) ⁴ | 6 |
| UK (Mercury) | No report | None | No report | None | None |
| Total | 186 | 65 | 53 | 53 | 118 |

¹ This list includes both notices published in the OJ of the EC and all other procedures used by entities (see also footnote 2).

² Member States have reported these procurements. They were never published in the OJ of the EC. However, in certain cases (OETY, IRL) invitations to tender were issued and gave rise to a degree of competition reflected in further tables. As far as SIP is concerned, all contracts were awarded following direct negotiations.

³ Some of the procurements procedures reported by these Member States were also notified on the OJ of the EC (see column 'Notices published in OJ'). It should be noted that only reports from D, NL (and UK for the first semester) show corresponding figures.

⁴ Eight notices published on the OJ by BT (UK) with specific references to Recommendation 84/550 concern procurements of general products not specific to telecommunications, thus not covered by Recommendation 84/550. Such reference is therefore not correct and should not be used again. This point should be closely monitored and appropriate action taken since this attitude has not changed in 1988 when — so far — all BT publications less one concern non-telecommunications material.

Table 2
Number of requests for participation received by the entities

Candidates

| Contry | Notices evaluated | First semester 1987 | | | | Second semester 1987 | | | | Total 1987 | | | |
|-------------------|-------------------|---|------------|----------|-------|---|-----------|----|-------|------------|----|----|-------|
| | | N | EC | TC | Total | N | EC | TC | Total | N | EC | TC | Total |
| D (BDP) | 72 | 626 (94%) | 23 | 20 | 669 | 463 (93%) | 26 | 8 | 497 | 1080 (93%) | 49 | 28 | 1 166 |
| F (PTT) | 5 | 43 | 30 | 3 | 76 | | No report | | | | | | |
| G (OTE) | 86 | 204 | 38 | 42 | 285 | | No report | | | | | | |
| IRL | 26 | Information not reported or not appropriate | | | | Information not reported or not appropriate | | | | | | | |
| I (SIP and ITALC) | | Information not reported or not appropriate | | | | No report | | | | | | | |
| NL | 5 | 13 (48%) | 11 | 3 | 27 | 20 | 9 | 3 | 32 | 33 (56%) | 20 | 6 | 59 |
| P (CTT) | 16 | 33 (35%) | 51 | 9 | 93 | | No report | | | | | | |
| P (TLP) | 6 | 14 (100%) | — | — | 14 | | No report | | | | | | |
| UK (BT) | 4 | 19 | 2 | — | 21 | | No report | | | | | | |
| Total | 118 | 952 80% | 155 13% | 77 7% | 1185 | | | | | | | | |

N = number of candidates from same nation of purchasing authority
 CEE = candidates from other EC countries
 PT = candidates from non-EC countries

Table 3
Breakdown of number and percentage of candidates selected by the entities

Selected candidates
First semester 1987 only

| | Selections | N | EC | TC | Total |
|---------|------------|-----------------|-------------|-----------|-------|
| D | 21 | 155 | 4 | 1 | 160 |
| F | 5 | 24 | 11 | — | 35 |
| NL | 4 | 22 | 1 | 3 | 26 |
| P (CTT) | 16 | 45 ¹ | 36 | 4 | 85 |
| P (TLP) | 6 | 14 ¹ | — | — | 14 |
| UK (BT) | 3 | 18 | 1 | — | 19 |
| | 55 | 278 (82%) | 53 (16%) | 8 (2%) | 339 |

Selection = number of notices for which Member States have reported data on candidates selected.

N = number of candidates from same nation of purchasing authority.

HEC = candidates from other EC countries.

TC = candidates from non-EC countries.

¹ In two cases the number of national suppliers selected was higher than the national candidates.

Table 4
Breakdown of contracts awarded to — suppliers established in the country of the entity concerned (N)
— suppliers established in other Community countries (EC)
— suppliers established in third countries (TC)

| | Total contract awarded | Contracts awarded | | | | | | |
|--------------------|------------------------|--------------------------------|----|----|---|------|------|-------|
| | | Number of contracts awarded to | | | Value (million ECU) of contracts awarded to | | | |
| | | N | EC | TC | N | EC | TC | Total |
| D First semester | 16 | 14 | 2 | — | 81 | 2 | — | 83 |
| Second semester | 6 | 6 | — | — | 296 | — | — | 296 |
| F | 5 | 5 ¹ | — | — | 26 ¹ | — | — | 26 |
| G | 86 | 46 | 21 | 19 | 4.7 | 3.4 | 1.6 | 9.7 |
| IRL First semester | 8 | 7 | 1 | 0 | 0.5 | 0.03 | — | 0.53 |
| Second semester | 18 | 12 | 5 | 1 | 3.0 | 0.6 | 0.15 | 3.75 |
| I (SIP) | 11 | ? | ? | ? | 305 | 75 | ? | 380 |
| I (Italcable) | 6 | ? | ? | ? | 12.7 | 0.3 | ? | 13 |
| NL | 2 | 2 | — | — | 4.6 | — | — | 4.6 |
| P (CTT) | 16 | ? | — | — | — | — | — | 12 |
| P (TLP) | 6 | 6 | — | — | 6.5 | — | — | 6.5 |
| UK (BT) | 1 | 1 | — | — | 4.9 | — | — | 4.9 |
| Total | 181 | | | | 745 | 81 | 1.75 | 840 |

¹ It is not clear, from Report, if one contract was awarded to a French/German Consortium.

² Report shows all contracts were awarded to national suppliers. However, there are reasons to believe in an error of compilation.

Table 5
Evaluation of conformity to Recommendation 84/550/EEC
 [Category II, A:B = 10% of total contracts awarded (in value)]

| | | |
|---------------|------------|--|
| D | 72 notices | A = ECU 1 228 million (12 months) B = ECU 5 760 million A:B = 21% |
| F | 5 notices | A = ECU 26 million (six months) B = value not given A:B = evaluation of conformity not possible |
| G | No notice | A = 0 B = ECU 9.7 million A:B = evaluation of conformity not possible |
| IRL | 2 notices | No reference to report to notices in OJ. Evaluation of A impossible B = ECU 4.3 million. It is not clear whether this figure corresponds to all purchases carried out by Ireland over 1987 A:B = evaluation not possible |
| I (SIP) | No notices | A = 0. Evaluation of A and thus A/B not possible B = ECU 380 million |
| I (Italcable) | 7 notices | No reference to their value. Thus A = unknown B = ECU 13 million A:B = evaluation not possible |
| NL | 2 notices | A = ECU 4.6 million B = no information provided A:B = evaluation not possible |
| P (CTT) | 3 notices | No reference. Value of A cannot be assessed B = — A:B = evaluation not possible |
| P (TLP) | No notices | A = 0 B = ECU 6.5 million A:B = evaluation not possible |
| UK (BT) | 4 notices | A = ECU 42 million B = ECU 403 million A:B = 10.4% |

A = Estimated value of notices published in OJ
 B = Estimated value of all procurements in 1987

European Communities — Commission

Public procurement in the excluded sectors

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The communication and the two proposals for Directives on public procurement in the excluded sectors are part of the programme, envisaged in the White Paper on completing the internal market, to open up public procurement in these sectors. Their purpose is to remove barriers to Community-wide competition in the awarding of supply and works contracts by entities enjoying a monopoly or oligopoly situation by virtue of their public status or the fact that they have been granted special or exclusive rights by the government.