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FOREWORD BY MARIO MONTI

Member of the Commission in charge of competition policy

The year 2001 saw intense activity in all three areas of competition policy: antitrust, merger control and State aid. Several cases decided by the Commission aroused considerable public interest, either because of particularly high fines or aid amounts or because of the size of mergers that eventually were not authorised, or because of important settlements in antitrust cases linked to sports (footballer transfers, Formula One). In the merger field, activity continued to be very substantial, although the rate of notified concentrations resulting in a prohibition decision remained very modest. The Commission adopted a Green Paper on the review of the merger regulation with the aim of launching a debate on how to improve the current EU merger control system.

Substantial progress was also made in the area of State aid policy. The Stockholm European Council called on all Member States to demonstrate a downward trend in State aid and to redirect aid toward horizontal objectives of common interest. The increased transparency resulting from the new State aid register and State aid scoreboard will make it possible to monitor the progress achieved by Member States. Major areas where we broke new ground include our proposals to end State guarantees for public banks in Germany, the launching of a wide-ranging investigation into the effects of aid in the form of fiscal measures, and our decisions on stranded costs in the electricity sector.

In the light of these developments, it is particularly important for me as Member of the European Commission with special responsibility for competition to explain the benefits of competition policy and the relevant work of the Commission. This annual report is a good opportunity to look back critically at what we have achieved, to draw conclusions for future action and to verify whether our action is in line with our objective.

Our objective is to ensure that competition is undistorted, so as to permit wider consumer choice, technological innovation and price competition. This is achieved if companies compete rather than collude and if market power is not abused. When competitive conditions prevail, producers try to attract customers by offering them lower prices, higher quality or better service than their competitors. In other words: we undertake to work for the benefit of the European citizen. It can be seen from the examples given in this report whether this objective is being attained.

The report will give a broad overview of how the Commission has performed its task of monitoring the proper functioning of competition in the single market. Here, I should like to focus on two topics where crucial progress was made in 2001: the fight against cartels, and international and multilateral cooperation (including enlargement).

Cartels

Record amount of fines

One of the things for which 2001 will doubtless be remembered is the unprecedented activity that took place in the sphere of cartels. With 10 negative decisions against 65 enterprises, fines totalling over

EUR 1 800 million, nearly half of which in the *Vitamins* case alone, and the largest individual fine ever imposed (in the *Carbonless paper* case), the year will go down as a milestone in the Commission's struggle against cartels.

Since I took up my present duties in September 1999, I have stated on a number of occasions, clearly and publicly, that I consider cartels to be a veritable cancer in an open, modern market economy. Unlike other forms of anticompetitive behaviour, they serve one purpose and one purpose alone: that of reducing or eliminating competition. They bring no benefit to the economy and can therefore never be viewed favourably from an economic standpoint. Their impact is entirely negative in that they lead to less choice for consumers, higher costs and reduced competitiveness for industry, delays in firms making essential adjustments and less innovation.

Such is the price to pay for a cartellised economy. And it is a high price as far as the European economy is concerned. As the decisions taken this year show, cartels are numerous, affecting as they do many sectors ranging from banking services to industrial products, and from air transport to consumer goods. They involve both small firms and world leaders, and concern local markets and world markets alike.

Increased enforcement efforts

When I assumed office as competition commissioner, I was determined to step up the Commission's efforts in the area of enforcement. I am convinced that the effectiveness of an anti-cartel policy depends first and foremost on its capacity to dissuade managers from engaging in collusive behaviour. Such dissuasion is effective only if there is a real chance of being punished and if the amount of the penalties is sufficiently high compared with the profits to be earned from a cartel.

This priority has been translated over the past two years into radical action in the case-handling sphere. We have considerably strengthened the human and material resources of our unit specialising in the handling of cartel cases and we shall continue to do so in 2002. We have shifted the focus of the other antitrust operational units of the Directorate-General for Competition towards the fight against cartels, both as regards the detection and as regards the prosecution and punishment of cartels. We have intensified our contacts with our opposite numbers in the Member States' competition authorities, and with those further afield, especially in the United States and Canada, in order better to combat practices that are becoming worldwide. And we have put in place management tools enabling more efficient and more speedy management of cartel cases.

The resounding successes in 2001 are the first fruits of this action. I am very pleased with them. But they are just a beginning.

The credibility of an anti-cartel policy, its power to dissuade and hence its effectiveness are built up over time. The managers and directors of companies engaging in such practices must be in no doubt that we shall leave them no respite, that they will be detected and that the penalties will be heavy. In a word, that it is more dangerous than profitable to participate in a cartel and that their only chance of lessening the financial consequences of their actions is to put a stop to them and come forward and talk to us under the leniency programme.

Enlargement and competition

The year 2001 was also an important year for the accession negotiations on competition. These were provisionally closed in early December with Estonia, Latvia, Lithuania and Slovenia. Negotiations are

being pursued with Bulgaria, Cyprus, the Czech Republic, Hungary, Malta, Slovakia, Poland and Romania. Even with the four candidate countries for which the competition chapter was provisionally closed, continuous monitoring will apply. The provisional closure of the negotiations with four candidate countries in 2001 reflects the important progress they have made in the adoption and implementation of the Community's competition *acquis*.

In the coming months, the Commission will continue to assist the candidate countries in their transformation process in the competition field. In this context, I would like to emphasise the problem of incompatible State aid measures in the candidate countries, in particular those aimed at attracting foreign direct investment. Indeed, a lack of proper State aid discipline seems to be the major stumbling block for those candidate countries for which the competition chapter has not yet been provisionally closed. As we need to preserve the integrity of the single market, the EU cannot accept any continuance of incompatible State aid measures in the candidate countries after accession. This is of crucial importance, not least for investors who seek legal security. In fact, the Commission is actively helping the candidate countries in converting incompatible State aid into permissible aid arrangements before accession.

For their successful integration into the Union, the candidate countries also need a competition culture where businesses have learnt to obey the rules and where consumers become increasingly aware of its benefits. This is particularly important inasmuch as awareness of the important role played by competition policy also leads to enhanced enforcement of the rules. Companies and private individuals can do much to help to enforce the rules by bringing competition cases before the courts and complaints before the competition authorities. I hope this will also increasingly happen in the candidate countries, thus helping to ensure healthy competition on the markets and hence to complete those countries' transition to well-functioning market economies.

The Commission's modernisation proposals in the antitrust area are precisely tailored to promoting the growth of such a competition culture. Our reform is aimed at making antitrust enforcement even more effective through the direct applicability of all elements of our antitrust rules by national courts and authorities. Furthermore, particular emphasis is being put on the further deepening of the network connecting the Commission and national competition authorities in the enforcement exercise. This is, of course, also of great relevance from the point of view of the candidate countries. The potential target dates of accession of the new Member States and the application of the antitrust reform essentially coincide. As soon as the current candidate countries become Member States, their antitrust authorities will become an integral part of the more decentralised, more active antitrust enforcement network. From this perspective, the current pre-accession phase is particularly important. But in view of the progress already made, and the regular contacts that have been established between the Commission and the competition offices of the candidate countries, we should be confident about the future.

International and multilateral cooperation

In times of globalisation, international cooperation must not be limited to candidate countries. We have to find means of linking together on a global level competition authorities, but also competition policy concepts. In 2001, progress was made on two forms of multilateral cooperation where the Commission had been at the forefront of the initiative.

WTO: trade and competition policy

One relevant forum is the World Trade Organisation (WTO). Since 1996, we have pioneered the idea of putting in place a multilateral agreement on trade and competition. The fourth WTO ministerial meeting,

which took place in Doha (Qatar) from 9 to 14 November, adopted a declaration addressing the 'interaction between trade and competition policy'. The declaration is a significant development in our efforts towards multilateral competition rules in the WTO since it recognises for the first time that there is a valid case for the WTO to negotiate and conclude a multilateral agreement on trade and competition. Until recently, the very principle of having such an agreement at the WTO was somewhat controversial. The recognition of the importance of developing such a framework and its relevance to international trade and development will contribute towards the introduction and more effective application of domestic competition regimes and will be of considerable benefit to consumers worldwide. Moreover, even if proponents of multilateral competition rules need to wait until the fifth WTO ministerial meeting in order to enter the formal phase of negotiations on the multilateral agreement, there is now a clear commitment to launching such negotiations on a certain date and the issue will fall within the single undertaking. For all practical purposes, we have now entered a 'preparatory phase' during which we can do much useful work to clarify with our partners from developing and developed countries the elements needed in such an agreement. Furthermore, the EU proposals on the basic elements for such an agreement were widely accepted in Doha. The declaration focuses indeed on the elements that the EU has highlighted as items that need to be taken up first for clarification (core principles of competition policy, such as transparency, non-discrimination and procedural fairness, commitment to outlawing hardcore cartels, modalities for voluntary cooperation between antitrust authorities). Finally, the declaration paves the way for more focused technical assistance and capacity building that will help emerging and developing economies to better understand and appreciate the significance of these issues.

International competition network

On a more informal level, the international competition network (ICN) was launched in October, following intensive discussions initiated in the autumn of 2000. This is the first time competition authorities worldwide have taken an autonomous initiative designed to enable them to share experience and exchange views on competition issues deriving from an ever-increasing globalisation of the world economy. The ICN will be a project-oriented, consensus-based, informal network of antitrust agencies from developed and developing countries. It will address antitrust enforcement and policy issues of common interest and formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure. It will also encourage the dissemination of antitrust experience and best practice, promote the advocacy role of antitrust agencies and seek to facilitate international cooperation. The ICN will concentrate on international antitrust issues that are difficult yet capable of resolution. Initially, the ICN will work on two important issues in antitrust: the merger control process in the multi-jurisdictional context and the competition advocacy role of antitrust agencies. This agenda will later be opened up to include issues of particular relevance to transition and developing economies.

At this point, I wish to express my gratitude towards the European Parliament and the Economic and Social Committee. Both consistently support the Commission's competition policy. In 2001, they backed our proposals for the modernisation of antitrust procedures, which I hope will finally be approved by the Council in 2002. The feedback from the representatives of European citizens and of economic and social interests is an extremely important check on our policy. Their support and constructive criticism help guide our work.

The annual report usually affords a good opportunity for me to take part in both institutions in a broad debate on a whole range of current competition policy issues. These debates are useful because they are not confined to an assessment of past Commission activity but also touch upon the further development of our policy. I look forward to continuing this exchange of views on the basis of this report.

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INTRODUCTION

1. Enforcement of the competition rules is one of the Commission's key tasks; it plays a central role in the economic functioning of the single market. With the final phase of the introduction of the euro starting on 1 January 2002 and enlargement of the European Union on an unprecedented scale, the prospect of a modernisation of the rules on antitrust, mergers and State aid is essential if the Commission is to be able to respond to the fast-changing economic environment. This will make it possible to focus on such behaviour by market participants as most endangers an 'open market economy with free competition', as stipulated in the Treaty.

2. In 2001, a series of cartel decisions highlighted the sustained effort by the Commission to tackle flagrantly anticompetitive behaviour by undertakings in a wide range of sectors. These decisions provide evidence of the direct impact of competition policy on consumer welfare, as do this year's decisions concerning the car industry. In addition, opening up markets where a competitive environment is not yet fully established, while at the same time guaranteeing a level playing field and safeguarding the provision of services of general interest, remained high on the Commission's agenda.

3. The Commission's action in the merger field is being carried on against a background of globalisation and an increasing complexity of cases. Multi-jurisdictional aspects raised by global mergers increasingly require intensive international cooperation in different forums, such as the International Competition Network (ICN), and under bilateral agreements. In order to ensure that the European merger control system is properly equipped to deal with the challenges raised by these global mergers, as well as the challenges that the enlargement of the European Union will bring, the Commission is undertaking a thorough review of the EC merger regulation. A consultation document (Green Paper) covering jurisdictional, procedural and substantive issues was published in December.

4. In the State aid field, major improvements in transparency were brought about in 2001, with the adoption of the State aid scoreboard and the opening to the public of an online State aid register. The Commission's policy of updating and modernising its State aid rules continued with the adoption of new rules on State aid for risk capital and the start of three major new policy reviews concerning aid for employment, for research and development and for large regional investment projects. As concerns monitoring and enforcement, particular attention was given to the definitive entry into force of the two block exemption regulations governing aid for small and medium-sized enterprises and training aid, and the regulation on *de minimis* aid.

5. With the adoption of common positions on the competition chapter on 12 December, the initial phase of the enlargement activities in the State aid field came to an end. The association council decided to provisionally close the competition chapter for four candidate countries.

6. The Commission has to pay close attention to the competition aspects of the forthcoming enlargement and work with the applicant countries in order to make sure that the same rules will apply with equal effectiveness throughout an enlarged Union.

7. In 2001, the total number of new cases was 1 036, comprising 284 antitrust cases (under Articles 81, 82 and 86), 335 merger cases, and 417 State aid cases (excluding complaints). Comparable figures for 2000 were a total of 1 211 new cases, comprising 297 antitrust cases, 345 merger cases, and 569 State aid cases [1]. The decrease in the overall number of new cases therefore represents an overall trend due to a

[1] The figure for State aid in 2000 was revised after the 2000 Competition Report was published.

slight decrease in the field of antitrust, the first decrease in merger cases in several years and a significant drop in the number of State aid cases.

8. The slight reduction in the number of new antitrust cases is confirmation that the effects on notifications in the past two years (sharp downward trend since 1999) of the issuing of guidelines on horizontal and vertical agreements are being maintained. The number of complaints, which has fluctuated widely over previous years, remained fairly stable this year (116 in 2001 against 112 in 2000).

9. The total number of cases closed was 1 204, comprising 378 antitrust cases, 346 merger cases, and 480 State aid cases (excluding complaints). Comparable figures for 2000 were 1 230 cases closed, comprising 400 antitrust cases, 355 merger cases and 475 State aid cases [2]. While the slight decline in closed antitrust cases relates to the increased focus on (resource-intensive) cartel cases, the number of cases closed (378) largely exceeds the number of new cases (284) and further reduces the backlog.

10. The slight slowdown in mergers and alliances coming under Commission scrutiny in 2001 appears to reflect the general worsening of economic conditions in the industrialised world and the business community's changed perception of the success of recent M&A activity. For the first time since 1993, the number of mergers notified to the Commission fell, from 345 in 2000 to 335 in 2001, but the level is still much higher than in 1999. In all, 340 formal decisions were taken during the year (against 345 in 2000). Whilst there was a pause in 2001 in the upward trend in the overall number of merger notifications, merger cases are becoming increasingly complex and markets more concentrated. In particular, the number of opened cases requiring in-depth investigation has increased more rapidly than the overall number of cases (phase II decisions: 2001 up 17 % on 2000 and 100 % on 1999).

11. In the field of State aid, the number of notifications was down by approximately 30 % and new cases of non-notified aid decreased by about 45 % compared with 2000, while requests for the review of aid schemes increased nearly fivefold. The number of proceedings initiated, however, remained stable (66 in 2001 against 67 in 2000). Negative final decisions increased slightly (31 in 2001 against 26 in 2000). Overall, the number of cases pending has also increased (from 584 in 2000 to 621 in 2001) due to the number of complaints [3].

Box 1: Competition and the consumer — the main Commission decisions in 2001

Commissioner Monti has repeatedly underlined the great importance the Commission attaches to consumer aspects of competition law and policy. State aid policy, merger control and antitrust enforcement all have their part to play in securing for consumers the benefits deriving from the application of EU competition rules.

Looking back on 2001, several of the antitrust decisions taken in particular illustrate clearly how the preservation of full competition works to the benefit of consumer interests. Any extra profits generated by market operators by their limiting the forces of competition, e.g. through cartels, will ultimately have to be paid for by the consumer, who would enjoy lower prices, better service and a wider choice if competition worked properly.

[2] The figure for antitrust in 2000 was revised after the 2000 Competition Report was published.

[3] The figure for 2000 was revised after the 2000 Competition Report was published.

British Midland/Lufthansa/SAS

On 1 March 2000, British Midland International, Lufthansa and SAS notified a joint venture agreement under which they agreed to coordinate their services to and from London Heathrow and Manchester International airports.

The Commission acknowledged that, in terms of efficiency gains and competition, the agreement's overall effect was positive in that it led to a reorganisation and expansion of the parties' existing networks. However, the agreement provided that Lufthansa was to be granted the exclusive right to operate flights on almost all routes between London and Frankfurt. The London-Frankfurt market is one of the busiest in Europe. The Commission concluded that British Midland's withdrawal from the London-Frankfurt route represented an appreciable restriction of competition on this market. It was concerned that the agreement might even have the effect of eliminating competition altogether. Only Lufthansa and British Airways would have remained, and Lufthansa/British Midland would have been in a much better position with regard to access to slots at both ends of the market. In contrast, British Airways was hampered in its efforts to increase its frequencies by a shortage of slots at Frankfurt.

With a view to addressing the Commission's competition concerns, the parties gave a commitment to make slots available at Frankfurt airport so as to allow a new entrant or an existing competitor, in particular British Airways, to increase its frequencies on this route and compete on an equal footing with Lufthansa. British Airways has since requested and obtained some of these slots.

As a result, customers will benefit from a wider choice of air transport services to more destinations, better connections, convenient scheduling and seamless travel.

SAS/Maersk

On 18 July, the Commission decided to fine Scandinavian airlines SAS and Maersk Air EUR 39.375 million and EUR 13.125 million respectively for operating a secret market-sharing agreement.

The Commission had observed that Maersk Air had withdrawn from the Copenhagen-Stockholm route. This led to the monopolisation by SAS of the Copenhagen-Stockholm route to the detriment of over one million passengers who use that route every year. It also appeared that SAS had stopped flying on the Copenhagen-Venice route and Maersk Air had started operations on this route and, finally, that SAS had withdrawn from the Billund-Frankfurt route, leaving Maersk Air as the only carrier. In addition, the parties also negotiated an overall non-compete clause covering their future operations on international routes to and from Denmark and on Danish domestic routes.

As a result of the decision, competition between SAS and Maersk Air, the two largest airlines operating to and from Denmark, was restored. Actual new entry on routes previously covered by the market sharing was announced, for example, by SAS concerning five round trips per day between Billund and Copenhagen. Pressure on airline tariffs was restored given that the parties' pricing behaviour was again constrained by the actual possibility of new entry by the other party.

Car sector

In the car sector the Commission denounced practices by manufacturers which prevent consumers from purchasing cars in the country of their choice.

On 29 June, the Commission adopted a decision fining Volkswagen EUR 30.96 million for resale price maintenance in Germany in respect of the new VW Passat. Volkswagen had sent circular letters in 1996 and 1997 to its German dealers asking them not to sell this model for less than the recommended list price. This is the first ever decision on resale price maintenance in the car sector. Resale price maintenance is a very severe restriction of price competition and has a direct impact on consumer prices.

On 10 October, the Commission adopted a decision fining DaimlerChrysler EUR 71.825 million for several infringements of Article 81 of the EC Treaty. One of these infringements consisted of obstacles to parallel trade in Germany, preventing buyers from other Member States from buying cars from German dealers. Another involved a price-fixing agreement in Belgium aimed at reducing discounts to customers.

Important developments concerning the review of the car distribution block exemption — which will be finalised in 2002 — took place during 2001. For details please refer to Section I.C. 6.1 of this report.

Bank charges for euro zone currency exchange

Shortly after the creation of the euro, the Commission received complaints from consumers alleging that certain banks had collectively fixed their charges for exchanging euro zone banknotes. The Commission carried out several surprise inspections at various banks and sent requests for information to most euro zone banks. Subsequently it started proceedings against a large number of banks in seven Member States.

Several banks reacted by presenting unilateral proposals to the Commission to the effect that they would significantly reduce the charges applicable and eliminate them entirely by October 2001 at the latest, at least for buying transactions carried out by account holders — something which would be of clear benefit to consumers before the changeover to the euro.

Taking into account the exceptional circumstance of the disappearance of the market concerned and the immediate benefit to consumers stemming from these proposals, the Commission decided to end the cartel proceedings against most of the banks. On 12 December, it fined five German banks a total of EUR 100.8 million for concluding an agreement on a commission of about 3 % for the buying and selling of euro zone banknotes.

Mergers

Merger control decisions also have an impact on the daily life of consumers.

In the *Nordea/Postgirot* case, the Commission approved the acquisition by the Scandinavian banking group Nordea of sole control of Sweden's Postgirot Bank AB, subject to conditions. Postgirot is a wholly-owned subsidiary of state-owned Posten AB, the Swedish Post Office. It owns and operates an in-house giro payment system, which it uses to supply distance payment services to retail and corporate customers. Postgirot also provides banking services to household and corporate customers, including deposits, lending, international payments, trade finance and card services. The deal initially raised competition concerns as Nordea would have controlled both Postgirot and Bankgirot, the two main bank payments systems used by Swedish households to

pay electricity, telephone and other bills. Such a significant level of influence could have led to price increases directly affecting consumers' daily banking needs. Nordea undertook, however, to reduce its stake in Bankgirot to 10 %, a level which will no longer give it decisive influence over the company, and to withdraw from Privatgirot, a company which competes with Postgirot in giro-related technical services. By accepting these undertakings and making approval of the merger conditional on them, the Commission made sure that the newly-created entity will continue to face competition to the advantage of the final consumer.

The *Unilever* case, which concerns the divestment of well-known household food brands (see Section II.5.3, point 309), and two cases concerning the petrol/oil distribution sector (*BP/E.ON* and *Shell/DEA*, see Section II.6, points 317–8) may also be of particular interest to consumers.

State aid

Finally, State aid control plays an important role in ensuring that the taxpayer's money is allocated efficiently and contributes to a sound economic environment in which viable economic entities can create sustainable employment opportunities for European citizens. In its State aid decisions the Commission takes into account aspects related to the proper functioning of services of general interest.

I — ANTITRUST — ARTICLES 81 AND 82; STATE MONOPOLIES AND MONOPOLY RIGHTS — ARTICLES 81 AND 86

A — Modernisation of the legislative and interpretative rules

1. Modernisation of the rules implementing Articles 81 and 82 of the EC Treaty

12. On 27 September 2000, the Commission adopted its proposal for a regulation introducing a new system for implementing Articles 81 and 82 of the EC Treaty ([4]). Once in force, the new regulation will, among other things, replace Regulation No 17 of 1962. The key element of the reform is the proposed transition from a system whereby the Commission enjoys a monopoly to apply Article 81(3) (the exemption monopoly) to a directly applicable system of legal exception, whereby agreements which do not contravene Article 81(1), or which fulfil the conditions of Article 81(3), are automatically deemed lawful and agreements in breach of Article 81(1), but not fulfilling the conditions of Article 81(3), are automatically deemed unlawful. This reform implies the abolition of the notification and authorisation system as it is provided for in Regulation No 17, an enhanced responsibility for national competition authorities and national courts to apply Articles 81 and 82, and clear arrangements to safeguard the coherent application of Articles 81 and 82 throughout the European Union, including a network between all European competition authorities. The proposed regulation also aims at strengthening the Commission's powers of investigation (e.g. the right of inspection at non-business premises). Via its proposal, the Commission's goal is to increase efficiency in tackling breaches of Articles 81 and 82, thereby ensuring effective competition in Europe ([5]).

13. On 29 March 2001, the Economic and Social Committee adopted its opinion on the proposed regulation ([6]). In its opinion, the Committee 'wholeheartedly supports the reform of the system for applying competition rules' and it 'appreciates the clear and bold wording used' in the Commission's proposal, which it qualifies as essential to the reform. However, given the complexity of the topic and in order to preserve the unity and coherence of the system and the precedence of Community law and to guarantee effective decentralisation while maintaining maximum legal certainty, the Committee also urged the Commission to issue, before or after the entry into force of the new regulation, 'accompanying measures' which would further clarify some of the central concepts of EC competition law, such as the effect on trade between Member States.

14. On 20 June, the European Parliament's Committee on Economic and Monetary Affairs adopted its final report on the Commission's proposals ([7]). In its report, the Committee 'accepted that the current system of regulating European competition policy is too bureaucratic, cumbersome and ineffective' and acknowledged that the enlargement of the European Union could only aggravate that situation. The Committee therefore welcomed the well-timed proposal from the Commission 'to radically overhaul the competition rules now, in advance of an enlarged Community'. However, in order to pragmatically

([4]) COM(2000) 582 (OJ C 365 E, 19.12.2000).

([5]) For a detailed description of the Commission's proposal, see Section I.A.3. of the 2000 Competition Report, SEC(2001) 694. For more details of the 1999 White Paper on Modernisation, see Section I.A.2. of the 1999 Competition Report, SEC(2000) 720.

([6]) OJ C 155, 29.5.2001.

([7]) The report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market (A5-0229/2001) have not yet been published in the Official Journal, but can be found on http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//TEXT+REPORT+A5-2001-0229+0+NOT+SGML+V0//EN.

achieve the intended objectives of the reform, the Committee encouraged the Commission to modify its proposal on some points and it suggested some clarifications on essential elements of the proposed reform. Most of these suggestions were taken over by Parliament when it adopted, by 409 votes to 54, its opinion on the proposed regulation on 6 September ([8]). The amendments proposed by Parliament aim among other things at deleting the clause concerning a registration system for certain types of agreement (Article 4(2)), harmonising the regime of fines (Article 5), ensuring the proportionality of the remedies of a behavioural or structural nature (Article 7(1)) and clearly defining public interest in the context of Commission decisions based on Article 10.

15. On 14 and 15 May and 5 December, under the Swedish and Belgian Presidencies respectively, the Council (Industry) held a substantive debate on the Commission's proposal. Although provisional agreement was reached on some of the aspects of the proposed regulation, it was concluded that discussions on the principles and modalities of the envisaged reform needed to be continued in the Council working group. As guidance for further progress in the working group, the Council debated in particular the general principles underlying the functioning of the network of competition authorities, inviting the Commission to lay these principles down in a common declaration. The Council also subscribed to the objective of Article 3 of the Commission's proposal so as to ensure a level playing field for agreements affecting trade between Member States, but it urged the working group to discuss further the effect of such a provision on specific national rules.

2. Revision of the leniency notice

16. In line with the general thinking behind the modernisation exercise, namely the need to refocus its activities on the most serious infringements of Community law, the Commission adopted in 2001 new draft rules aimed at better detection and eradication of price-fixing and other cartels. The leniency notice was revised, after five years of implementation, with a view to further increasing its effectiveness and maximising the Commission's ability to detect and successfully prosecute cartels. The draft new notice published on 21 July ([9]) addressed these issues in more precise terms and prepared the ground for the adoption of a new notice on immunity from fines and reduction of fines in 2002.

3. Review of the block exemption regulation for technology transfer agreements

17. On 20 December, the Commission adopted a report ([10]) evaluating the functioning of Regulation (EC) No 240/96 ([11]), the technology transfer block exemption (hereinafter called the 'TTBE'). The report provides a critical analysis of the application of and policy approach underpinning the TTBE. It stresses in particular the need to adapt the TTBE to ensure consistency with the new Commission block

([8]) The European Parliament legislative resolution (R5-0444/2001) has not yet been published in the Official Journal, but can be found on http://www3.europarl.eu.int/omk/omnsapir.so/pv2?APP=PV2&PRG=CALEND&FILE=010906&TPV=DEF&LANGUE=EN.

([9]) Draft Commission notice on immunity from fines and reduction of fines in cartel cases (OJ C 205, 21.7.2001).

([10]) Commission evaluation report on the transfer of technology block exemption Regulation (EC) No 240/96, COM(2001) 786 final, 20.12.2001. The report is also available on the Internet at the following address: http://europa.eu.int/comm/competition/antitrust/technology_transfer/.

([11]) Commission Regulation (EC) No 240/96 on the application of Article 81(3) of the Treaty to certain categories of technology transfer agreements (OJ L 31, 9.12.1996).

exemptions for distribution agreements ([12]), specialisation agreements and R&D agreements ([13]), which follow a more economics-based approach.

18. The report finds that the TTBE uses criteria relating more to the form of the agreement than to the actual effects on the market. The TTBE has in fact four main shortcomings:

— first, it is too prescriptive and seems to work as a straitjacket, which may discourage efficient transactions and hamper the dissemination of new technologies;

— second, it covers only certain patent and know-how licensing agreements. This narrow scope of the TTBE seems increasingly inadequate to deal with the complexity of modern licensing arrangements (e.g. pooling arrangements, software licences involving copyright, etc.);

— third, a number of restraints are currently presumed illegal or excluded from the block exemption without proper economic justification where the parties lack market power and are in a vertical relationship. This concerns in particular restrictions extending beyond the scope of the licensed intellectual property right (IPR) (e.g. non-compete obligations, tying, etc.);

— fourth, by concentrating on the form of the agreement, the TTBE extends the benefit of the block exemption to situations which cannot always be presumed to fulfil the conditions of Article 81(3), either because the contracting parties are competitors or because they hold a strong position on the market.

19. The report invites comments on a number of issues:

— should the scope of the TTBE, which applies only to patents and know-how, be widened to cover also copyright, design rights and trademarks? This issue is of particular importance to a number of sectors including the software industry, which depends on a chain of copyright licences for manufacture and distribution;

— should the TTBE also cover licensing agreements between more than two companies, such as licensing pools? Such arrangements have become increasingly important to industry, given the growing complexity of new technologies. In this respect, it may be observed that multiparty licences can be efficiency enhancing and procompetitive, in particular where the pool covers only essential IPRs. However, multiparty licences may also have serious anticompetitive effects, especially where the agreement covers substitute technologies or where it requires members to grant licences to each other for current and future technology at minimal cost or on an exclusive basis;

— a more lenient approach to licensing agreements between non-competitors. It is generally acknowledged that, if the parties to an agreement are in a vertical relationship, i.e. are not competitors, exclusive licences are mostly efficiency enhancing and procompetitive. For instance, if the IPR holder does not have the assets for the production or distribution of the licensed products, it is more efficient to license to someone who does;

— a more prudent approach to licensing agreements between competitors. If the parties are in a horizontal relationship, i.e. if the licence prevents competition that could have taken place between the licensor and the licensee were it not for the licence, licence agreements may give rise to a

([12]) Commission Regulation (EC) No 2790/1999 (OJ L 336, 29.12.1999).

([13]) Commission Regulations (EC) Nos 2658/2000 and 2659/2000 (OJ L 304, 5.12.2000).

number of competition concerns. On the one hand, exclusive licences will often lead to market sharing through the allocation of territories or customers, especially where the licence is reciprocal or the exclusivity also extends into non-licensed competing products. Production quotas agreed in licensing agreements between competitors may easily lead to a straightforward output restriction. On the other hand, under certain conditions — in particular in the case of licensing to a joint venture — and in the case of non-reciprocal licensing, the exclusivity may lead not only to a loss of inter-brand competition but also to efficiencies. To assess whether the negative effects on competition may be outweighed by the efficiencies, the market power of the parties and the structure of the markets affected by the agreement need to be taken into account.

Box 2: New *de minimis* notice

On 20 December, the Commission adopted a new notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the EC Treaty ('*de minimis* notice') [1]. The new notice replaces the previous notice of 1997 [2]. By defining more clearly and comprehensively when agreements between companies are not prohibited by the Treaty, the notice will reduce the compliance burden for companies, especially smaller companies. At the same time, the Commission will be better able to avoid examining cases which have no interest from a competition policy point of view and will thus be able to concentrate on more important cases.

The new notice reflects an economics-based approach and has the following key features:

(1) The *de minimis* thresholds are raised to 10 % market share for agreements between competitors and to 15 % for agreements between non-competitors.

The previous notice had fixed the *de minimis* thresholds at 5 and 10 % market share respectively. Competition concerns are in general not to be expected where companies do not have a minimum degree of market power. The new thresholds take account of this while at the same time staying low enough to be applicable whatever the overall market structure looks like [3]. The difference between the two thresholds takes into account, as before, the fact that agreements between competitors in general lead more easily to anticompetitive effects than agreements between non-competitors.

(2) It specifies for the first time a market share threshold for networks of agreements producing a cumulative anticompetitive effect.

The previous *de minimis* notice excluded from its benefit agreements operated on a market where 'competition is restricted by the cumulative effects of parallel networks of similar agreements established by several manufacturers or dealers'. This meant in practice that firms

[1] OJ C 368, 22.12.2001. The new notice is also available on the Internet at the following address: http://europa.eu.int/comm/competition/antitrust/deminimis/.

[2] OJ C 372, 9.12.1997.

[3] This does not imply that agreements between companies that exceed the thresholds set out in the notice do appreciably restrict competition. Such agreements may still have only a negligible effect on competition in the common market, but this can be assessed only on a case-by-case basis. Such assessment is relevant in particular for agreements that are not covered by any of the Commission block exemption regulations.

operating in areas such as the beer and petrol sectors could usually not benefit from the *de minimis* notice. The new notice introduces a special *de minimis* market share threshold of 5 % for markets where such parallel networks of similar agreements exist.

(3) It contains the same list of hardcore restrictions as the horizontal and vertical block exemption regulations.

The new notice defines more clearly and consistently the hardcore restrictions (such as price fixing and market sharing) which are normally always prohibited and cannot benefit from the *de minimis* notice. For agreements between non-competitors, the new notice has taken over the hardcore restrictions set out in block exemption Regulation (EC) No 2790/1999 for vertical agreements ([1]). For agreements between competitors, the new notice has taken over the hardcore restrictions set out in block exemption Regulation (EC) No 2658/2000 for specialisation agreements ([2]).

(4) Agreements between small and medium-sized enterprises are in general *de minimis*.

The new notice states that agreements between small and medium-sized enterprises (SMEs) are rarely capable of appreciably affecting trade between Member States. Agreements between SMEs therefore generally fall outside the scope of Article 81(1).

([1]) OJ L 336, 29.12.1999.
([2]) OJ L 304, 5.12.2000.

4. Review of procedural rules: new mandate of the hearing officers

20. On 23 May, the Commission adopted a decision on the terms of reference of hearing officers in certain competition proceedings ([14]). This new 'mandate of the hearing officers', which replaces the previous terms of reference dating from 1994 ([15]), follows the Commission's decision last year to enhance this function. It aims to reinforce the independence and authority of the hearing officer, to strengthen his role in EC merger and antitrust proceedings and to enhance the objectivity and quality of the Commission's competition proceedings and the resulting decisions.

21. The right of the parties concerned and of third parties to be heard is an established principle of Community law. The principle has been restated in the EU Charter of Fundamental Rights, as part of the right of every person 'to have his or her affairs handled impartially, fairly and within a reasonable time'. Safeguarding that right during the Commission's competition proceedings is the special responsibility of the hearing officer.

22. The position of hearing officer was created in 1982. His initial responsibility was limited primarily to the organisation, chairing and conduct of the oral hearing in antitrust proceedings — i.e.

([14]) Decision of 23.5.2001 on the terms of reference of hearing officers in certain competition proceedings (OJ L 162, 19.6.2001).
([15]) Decision of 12.12.1994 on the terms of reference of hearing officers in competition procedures before the Commission (OJ L 330, 21.12.1994).

cartels and abuses of dominant positions — and later on also in merger proceedings. The hearing officer also ensured that in the preparation of draft Commission decisions in competition cases due account was taken of all the relevant facts whether favourable or unfavourable to the parties concerned. In carrying out this task, the hearing officer contributed to the objectivity of the hearing itself and of any subsequent decision. This remit was updated and widened in 1994 to ensure adequate protection for the rights of parties, in particular with regard to confidentiality of documents and business secrets and adequate access to the case files of the Commission.

23. The new mandate, adopted by the Commission on 23 May, maintains these core aspects of the hearing officer's functions. In addition, however, the role has been strengthened and the terms of reference adapted and consolidated in the light of developments in competition law.

24. In particular, the transparency of the appointment of hearing officers has been increased by publishing these appointments in the Official Journal, while any interruption or termination of appointment or transfer requires a reasoned decision by the Commission, also published in the Official Journal. Significantly, the independence of the hearing officer from the Directorate-General for Competition has been reinforced in that the hearing officer is now attached for administrative purposes to the Member of the Commission with special responsibility for competition (the Competition Commissioner) and reports directly to him rather than to the Director-General for Competition, as was previously the case.

25. In addition, the hearing officer's function is also reinforced in the decision-making process itself. Members of senior management within the Directorate-General for Competition are required to keep the hearing officer informed about how a proceeding is developing up to the stage of the draft decision to be submitted to the Competition Commissioner. The hearing officer may present observations to the Commissioner on any matter arising out of any Commission competition proceeding. More specifically, the hearing officer's final report, produced on the basis of the draft decision submitted to the Advisory Committee, must now systematically be attached to the draft decision submitted to the Commission so that the latter is fully aware of all relevant information on the course of the competition proceeding and on enforcement of the right to be heard. The report may be modified in the light of any amendments made to the draft decision prior to its adoption. In order to enhance the transparency of proceedings, the final report must also be communicated to the addressees of the decision together with the decision itself as well as to Member States and be published in the Official Journal with the decision.

26. The new mandate also extends the role of the hearing officer as regards commitments for remedies proposed by the parties in relation to any proceeding initiated by the Commission under merger or antitrust control. The hearing officer can report on the objectivity of any enquiry which may have been conducted in order to assess the competition impact of the proposed commitments.

27. The new mandate also addresses the hearing officer's powers with regard to granting or denying confidentiality when information is disclosed by publication in the Official Journal. This applies in particular to the published versions of Commission decisions on merger and antitrust cases.

28. The importance parties attach to procedural matters was underlined most recently by actions brought before the Court of First Instance which resulted in the President issuing orders on 20 December ([16]).

29. On 30 and 16 October respectively, the Commission appointed Mr S. Durande and Mrs K. Williams to the post of hearing officer.

([16]) Cases T-219/01 R *Commerzbank AG*, T-216/01 R *Reisebank AG* and T-213/01 R *Österreichische Postsparkasse AG*.

B — Application of Articles 81, 82 and 86

1. Article 81

1.1. Cartels

1.1.1. A record year for cartel decisions

30. In 2001, the priority given to tackling cartel cases resulted in a large increase in the number of cases handled. The Commission adopted 10 negative formal decisions in the *Graphite electrodes*, *Sodium gluconate*, *SAS/Maersk*, *Vitamins*, *German banks*, *Citric acid*, *Belgian breweries*, *Luxembourg breweries*, *Zinc phosphate* and *Carbonless paper* cases and closed by way of settlement five cases of cartels in the banking sector connected with the introduction of the euro ([17]). It adopted statements of objections in several other cases, including *Plasterboard* and *GFU* ([18]).

31. Secret cartels are among the most serious restrictions of competition. They lead to higher prices and less choice for consumers. And they have a negative impact on the whole of European industry by increasing the cost of services, goods and raw materials for European enterprises obtaining their supplies from cartel members. In the longer term, they reduce European industry's overall competitiveness.

32. For all these reasons, the detection, prosecution and punishment of secret cartels has been one of the central features of the competition policy pursued by the European Commission ever since it was set up. The formation in 1998 of a specialised unit (the cartels unit) gave tangible expression to the priority which the Commission intended to give to the fight against cartels, although other units may also take part. Moreover, the entry into force of the future Council regulation replacing Regulation No 17 on antitrust procedures places the surveillance of markets and the campaign against the hidden anticompetitive practices which develop therein at the heart of the tasks performed by Community competition policy. It is with this in view that, for a number of years now, the emphasis has been on substantially strengthening the resources available to, and thoroughly reorganising the working methods of, the Directorate-General for Competition in relation to cartels.

33. Detecting, prosecuting and punishing secret cartels poses a constant challenge to competition authorities. The increasing globalisation of trade means having to deal with secret agreements extending beyond the frontiers of Europe and sometimes concluded outside the territory of the EEA. Generalisation of the new information and communication technologies is making it more difficult to gain access to evidence of such agreements. And the intensification of the struggle against cartels, both inside and outside Europe, is being matched by greater sophistication in the practices employed.

34. Reform of Regulation No 17, which is currently being discussed in the Council, is vital as it will enable the Commission to meet this challenge by becoming increasingly efficient at fighting hidden practices. In particular, the investigatory powers reform, involving as it does the possibility of carrying out inspections at private dwellings, is a key factor in adapting the struggle against cartels to practices that are becoming ever more sophisticated.

35. In the same way and for the same reasons, the Commission is undertaking a review of its guidelines on immunity from and reduction of fines.

([17]) See 1.1.2 below.

([18]) Press releases MEMO/01/149, 24.4.2001 and IP/01/830, 13.6.2001.

36. The Commission first adopted a leniency programme in 1996 ([19]) in order to increase effectiveness both in the detection and in the handling of cartel cases. The leniency programme was conceived as a potent investigative weapon rewarding undertakings cooperating with the Commission. It recognises the difficulty of obtaining hard evidence of secret cartels in an increasingly sophisticated environment.

37. Five years after it was adopted, the leniency programme plays an important role in the enforcement of competition rules against cartels and it has been invoked by companies in many of the cases opened since July 1996. Up to now, the leniency notice has been applied in 16 final Commission decisions: *Extra-alloy surcharge* ([20]), *British Sugar* ([21]), *Pre-insulated pipes* ([22]), *Greek ferries* ([23]), *Seamless steel tubes* ([24]), *Lysine* ([25]), *SAS Maersk Air* ([26]), *Graphite electrodes* ([27]), *Sodium gluconate* ([28]), *Vitamins* ([29]), *Belgian breweries* ([30]), *Luxembourg breweries* ([31]), *Citric acid* ([32]), *German banks* ([33]), *Zinc phosphate* ([34]) and *Carbonless paper* ([35]).

38. However, experience gathered to date shows that the effectiveness of the notice would be improved by an increase in the transparency and certainty of the conditions on which any reduction of fines is to be granted. It would also benefit from a closer alignment between the level of reduction of fines and the value of a company's contribution to establishing the infringement.

39. For these reasons, after five years of implementation, the Commission decided to revise its leniency notice with a view to further increasing its effectiveness and maximising the Commission's ability to detect and successfully prosecute cartels. A draft new notice published on 21 July ([36]) addressed these issues in a number of ways and prepared the ground for the adoption of a new leniency notice in 2002.

1.1.2. Cartel decisions in 2001

Graphite electrodes ([37])

40. On 18 July, the Commission fined Germany's SGL Carbon AG, UCAR International of the United States and six other companies a total of EUR 218.8 million for fixing the prices and sharing the market for graphite electrodes. Following an extensive investigation which started in 1997, the

([19]) OJ C 207, 18.7.1996.
([20]) OJ L 100, 1.4.1998.
([21]) OJ L 76, 22.3.1999.
([22]) OJ L 24, 30.1.1999.
([23]) OJ L 109, 27.4.1999.
([24]) Not published.
([25]) OJ L 152, 7.6.2001.
([26]) Cases COMP/D2/37.444 and COMP/D2/37.386 (OJ L 265, 5.10.2001).
([27]) Case COMP/36.490; press release IP/01/1010, 18.7.2001.
([28]) Case COMP/36.756; press release IP/01/1355, 20.10.2001.
([29]) Case COMP/37.512; press release IP/01/1625, 21.11.2001.
([30]) Case COMP/37.614; press release IP/01/1739, 5.12.2001.
([31]) Case COMP/37.800; press release IP/01/1740, 5.12.2001.
([32]) Case COMP/36.604; press release IP/01/1743, 5.12.2001.
([33]) Case COMP/37.919; press release IP/01/1796, 11.12.2001.
([34]) Case COMP/37.027; press release IP/01/1797, 11.12.2001.
([35]) Case COMP/36.212; press release IP/01/1892, 20.12.2001.
([36]) OJ C 205, 21.7.2001.
([37]) Case COMP/36.490; press release IP/01/1010, 18.7.2001.

Commission found that the companies had participated in a worldwide cartel during most of the 1990s. It characterised the companies' behaviour as a 'very serious' infringement of the EC competition rules.

41. Graphite electrodes are ceramic-moulded columns of graphite used primarily in the production of steel in electric arc furnaces, also referred to as 'mini-mills'.

42. With regard to the leniency notice, it is important to note that this is the first time the Commission has granted a substantial reduction in a fine (70 %). Showa Denko benefited from this reduction, having been the first company to cooperate and provide conclusive evidence of the cartel to the Commission.

SAS/Maersk ([38])

43. Again on 18 July, the Commission decided to fine Scandinavian airlines SAS and Maersk Air EUR 39.375 million and EUR 13.125 million respectively for operating a secret market-sharing agreement ([39]). The agreement had led to the monopolisation by SAS of the Copenhagen–Stockholm route to the detriment of over one million passengers who use that route every year, and to the sharing of other routes to and from Denmark.

44. SAS and Maersk Air had notified a cooperation agreement, which related mainly to code sharing and frequent-flyer programmes. In the course of the preliminary enquiry it transpired that, coinciding with the entry into force of the cooperation agreement, Maersk Air had withdrawn from the Copenhagen–Stockholm route, where it had until then been competing with SAS. It also transpired that, at the same time, SAS had stopped flying on the Copenhagen–Venice route and Maersk Air had started operations on that route and, finally, that SAS had withdrawn from the Billund–Frankfurt route, leaving Maersk Air — its previous competitor on the route — as the only carrier.

45. These entries and withdrawals, which were not notified, formed part of a wider market-sharing agreement which included an overall non-compete clause covering the parties' future operations on international routes to and from Denmark and on Danish domestic routes.

46. The market sharing was discovered as a result of on-site inspections. The inspections were carried out in June 2000, in close cooperation with the national competition authorities in Denmark and Sweden.

47. As a result of the decision, competition between SAS and Maersk Air, the two largest airlines operating to and from Denmark, was restored to the benefit of consumers.

Sodium gluconate ([40])

48. On 2 October, the Commission fined Archer Daniels Midland Company Inc., Akzo Nobel NV, Avebe BA, Fujisawa Pharmaceutical Company Ltd, Jungbunzlauer AG and Roquette Frères SA a total of EUR 57.53 million for fixing the price and sharing the market for sodium gluconate. It characterised the companies' behaviour as a 'very serious' infringement of the Community and EEA competition rules.

([38]) Cases COMP/D2/37.444 and COMP/D2/37.386 (OJ L 265, 5.10.2001).

([39]) SAS lodged an appeal against the decision before the Court of First Instance on 3 October (Case T-241/01), contesting the amount of the fine.

([40]) Case COMP/36.756; press release IP/01/1355, 20.10.2001.

49. Following an investigation which started in 1997, the Commission established that the companies had participated in a worldwide cartel between 1987 and 1995. The cartel agreements were implemented through detailed sales monitoring, the holding of regular multi- and bilateral meetings, and the enforcement of a compensation scheme. Throughout the period, the Commission gathered evidence of over 25 cartel meetings.

50. Sodium gluconate is a chemical used to clean metal and glass, with applications such as bottle washing, utensil cleaning and paint removal, and as a food additive, together with various other chemical applications.

51. The Commission granted for the first time a very substantial reduction in the fine pursuant to Section B of the leniency notice. Fujisawa benefited from a reduction of 80 % on the ground that it was the first to adduce conclusive evidence of the cartel's existence, before the Commission had undertaken any investigation ordered by decision. The Commission did not grant Fujisawa a 100 % reduction in its fine, as it could have done under Section B of the notice, as the company did not approach the Commission until after it had received a request for information. This reluctance to come forward spontaneously and before any investigatory measure was taken into account.

Vitamins ([41])

52. On 21 November, the Commission adopted a decision under Article 81 of the EC Treaty and Article 53 of the EEA Agreement finding that 13 manufacturers of vitamins A, E, B1, B2, B5, B6, C, D3, H, folic acid, beta carotene and carotinoids had participated in cartels for each of these products resulting in a total of 12 separate infringements.

53. The Commission fined eight companies a total of EUR 855.23 million for fixing the prices of eight different products and allocating sales quotas in respect thereof. The limitation period for fines in competition cases ([42]) was applicable to the infringements affecting vitamins B1, B6, H and folic acid; the Commission therefore did not fine companies for their involvement in these cartels. Each agreement was a very serious infringement of the Community competition rules and as such justified the overall high level of fines imposed.

54. A striking feature of this complex of infringements was the central role played by Hoffmann-La Roche and BASF, the two main vitamin producers, in virtually each and every cartel, whilst other players were involved in only a limited number of vitamin products.

55. The participants in each of the cartels fixed prices for the different vitamin products, allocated sales quotas, agreed on and implemented price increases and issued price announcements in accordance with their agreements. They also set up machinery to monitor and enforce their agreements and participated in regular meetings to implement their plans. The *modus operandi* of the different cartels was essentially the same. Given the continuity and similarity of method, the Commission considered it appropriate to treat in one and the same proceeding and decision the complex of agreements covering the different vitamins.

([41]) Case COMP/37.512; press release IP/01/1625, 21.11.2001.

([42]) Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition.

Citric acid ([43])

56. On 5 December, the Commission decided to fine five citric acid producers a total of EUR 135.22 million.

57. The Commission's investigation revealed that the five producers had participated, between 1991 and 1995, in a secret cartel of worldwide scope which had enabled them to fix the price and share the market for citric acid. The cartel was a very serious infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement, which justified the size of the fines.

Belgian breweries ([44])

58. On 5 December, the Commission fined five companies a total of EUR 91.655 million for participating in two separate secret cartels on the Belgian beer market.

59. The first cartel involved Interbrew on the one hand and Alken-Maes and Danone (Alken-Maes's parent company at the time) on the other. Interbrew and Alken-Maes/Danone, Nos 1 and 2 on the market, had agreed on a general non-aggression pact, the allocation of customers in the 'horeca' (hotels, cafés and restaurants) or 'on-trade' sector, price fixing in the retail or 'off-trade' sector, the limitation of investments and advertising in the horeca sector, a new tariff structure (horeca and retail) and a detailed monthly information exchange system concerning sales volumes (horeca and retail). The cartel lasted from 1993 until 1998. The CEOs and other senior management of the companies involved met regularly to initiate and monitor these agreements. The Commission considered the infringement to be 'very serious'. In setting the amount of the fine, it also took into account the fact that Danone had committed similar infringements of Article 81 in the past ([45]).

60. The second cartel concerned private-label beer in Belgium. This is beer which supermarkets order from brewers but sell under their own label. Between October 1997 and July 1998, Interbrew, Alken-Maes, Haacht and Martens met four times to discuss the private-label beer market in Belgium in general and their prices and customers in particular. During these meetings, the four brewers also exchanged business information. This cartel was considered to be a 'serious' infringement.

Luxembourg breweries ([46])

61. On 5 December, the Commission fined three Luxembourg brewers — Brasserie Bofferding, Brasserie Battin and Brasserie de Wiltz — a total of EUR 448 000 for their participation in a market-sharing agreement in the Luxembourg 'horeca' (hotels, restaurants and cafés) or 'on-trade' sector. A fourth brewer, Brasserie de Luxembourg, an Interbrew subsidiary, was not fined because it had revealed the cartel to the Commission and fulfilled all the other conditions of Section B of the leniency notice.

62. The brewers had agreed in writing to respect each other's exclusive purchasing arrangements ('beer ties') with horeca customers, as well as measures to restrict the entry of foreign brewers into the Luxembourg horeca sector. The agreement remained in force from 1985 until 2000. It was held to be a 'serious' infringement.

([43]) Case COMP/36.604; press release IP/01/1743, 5.12.2001.
([44]) Case COMP/37.614; press release IP/01/1739, 5.12.2001.
([45]) Commission decision of 23.7.1984 (*Flat glass*) and Commission decision of 15.5.1974 (*Flat glass*).
([46]) Case COMP/37.800; press release IP/01/1740, 5.12.2001.

Zinc phosphate ([47])

63. On 11 December, the Commission fined six producers or former producers of zinc phosphate a total of EUR 11.95 million. The Commission's investigation had revealed that the six producers had participated, between 1994 and 1998, in a cartel covering the whole of the European Economic Area which had enabled them to fix prices and divide up their 90 % share of the market in zinc phosphate, an anticorrosion mineral pigment used in the manufacture of industrial paints. The cartel was by its very nature a very serious infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement.

Settlements concerning bank charges for the exchange of euro zone currencies and German banks ([48])

64. Shortly after the creation of the euro on 1 January 1999, the Commission (Directorate-General for the Internal Market) received complaints that exchange commissions for euro zone currency notes and coins remained high. The Commission carried out several surprise inspections at various banks and sent requests for information to most euro zone banks. It gathered evidence which suggested that certain national groups of banks may have colluded to maintain exchange charges at certain levels in order to minimise losses caused by the introduction of the euro. On this basis, the Commission started proceedings in 2000 against a large number of banks and *bureaux de change* in seven Member States (Austria, Belgium, Finland, Germany, Ireland, the Netherlands and Portugal).

65. However, several banks took the initiative in presenting unilateral proposals to the Commission to the effect that they would (i) significantly reduce their charges for exchanging in-currency banknotes, and (ii) abolish all such charges by October 2001 at the latest, at least for buying transactions by account holders.

66. Taking into account the exceptional circumstance of the disappearance of the market concerned, and the immediate benefit to consumers as a result of these proposals which implied a deviation from the alleged collusive behaviour, the Commission decided to end the cartel proceedings against more than 50 banks in Belgium, Finland, Ireland, the Netherlands and Portugal and against some of the banks in Germany ([49]).

67. On 12 December, the Commission fined five German banks a total of EUR 100.8 million for concluding an agreement on a commission of about 3 % for the buying and selling of euro zone banknotes during the three-year transitional period beginning on 1 January 1999.

68. The Austrian case will be further examined in the context of a wider-ranging cartel in the Austrian banking sector currently under investigation.

Carbonless paper ([50])

69. On 20 December, the Commission decided to fine 10 carbonless paper producers a total of EUR 313.69 million.

70. In the course of its investigations, the Commission discovered that the producers had participated, between 1992 and 1995, in a secret, Europe-wide cartel aimed at improving the participants'

([47]) Case COMP/37.027; press release IP/01/1797, 11.12.2001.
([48]) Case COMP/37.919; press release IP/01/1796, 11.12.2001.
([49]) Press release IP/01/1159, 31.7.2001.
([50]) Case COMP/36.212; press release IP/01/1892, 20.12.2001.

profitability through collective price increases. This conduct was by its very nature a very serious infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement, which justified the size of the fines, notably that of EUR 184.27 million imposed on Arjo Wiggins Appleton, the market leader and instigator of the cartel. Sappi was granted total immunity in respect of its participation in the cartel because, as the first company to cooperate with the Commission, it supplied conclusive evidence of wrongdoing.

Court judgment in British Sugar

71. By decision of 14 October 1998, the Commission fined the sugar producers British Sugar and Tate&Lyle and the sugar merchants Napier Brown and James Budgett for an infringement of Article 81(1) of the EC Treaty consisting in coordination of the parties' pricing policy on the white granulated sugar market in the United Kingdom ([51]).

72. Following an appeal by three of the parties, the Court of First Instance in its judgment of 12 July 2001 ([52]) upheld the Commission's decision in its entirety, except for a reduction in the fine imposed on Tate&Lyle. The Court did not accept any of the various arguments by which the parties sought to show that there had been no infringement and that their behaviour had not been capable of affecting trade between Member States.

73. With regard to the fines imposed, the Court supported the Commission's findings about the classification of the infringement as serious, its duration, its intentional nature and the assessment of aggravating and attenuating circumstances. On the issue of leniency, it did not question the principles of the Commission's current leniency notice ([53]). It did, however, consider that the Commission had erroneously characterised Tate&Lyle's cooperation as not being continuous and complete within the meaning of point B(d) of the notice. It therefore exercised its power of unlimited jurisdiction ([54]) and reassessed the merits of Tate&Lyle's cooperation and increased the reduction in the fine from 50 to 60 %.

74. Meanwhile, British Sugar has appealed to the Court of Justice against the Court of First Instance's judgment ([55]).

2. Articles 82 and 86

2.1. Article 82 — undertakings in a dominant position

75. Article 82 prohibits undertakings in a dominant position on a given market from abusing this situation to the prejudice of third parties. Such abuse may consist, for instance, in limiting production, charging excessive prices, discriminatory or predatory pricing, tying sales, or other commercial practices not based on the principle of economic efficiency. Such practices have a negative impact on competition; they are engaged in by undertakings whose market power enables them to isolate themselves from competitive pressure and eliminate their competitors without significant damage to themselves or to block market access by new entrants to a significant degree.

([51]) For a comprehensive description of the decision, see 1998 Competition Report, pp. 138–140.

([52]) Joined Cases T-202/98, T-204/98 and T-207/98 *Tate&Lyle, British Sugar and Napier Brown* v *Commission.*

([53]) OJ C 207, 18.7.1996.

([54]) See Article 229 of the EC Treaty and Article 17 of Regulation No 17/62.

([55]) Case C-359/01 P.

76. In 2001, the Commission imposed fines in four Article 82 cases. In the remaining cases which it examined, it was able to accept commitments from the undertakings concerned, or changes to the agreements, which put an end to the abusive practices. The cases examined were not confined to specific sectors and relate *inter alia* to the postal sector and the car industry.

Deutsche Post AG I [56]

77. On 20 March, the Commission issued its first Article 82 decision in the postal sector, finding that the German postal operator, Deutsche Post AG, had abused its dominant position in the market for business parcel services by granting fidelity rebates and engaging in predatory pricing. Deutsche Post was fined EUR 24 million. See Section I.C.2.2.

Deutsche Post AG II [57]

78. Another decision in the postal sector, again relating to Deutsche Post AG, was issued on 25 July. See Section I.C.2.2.

Duales System Deutschland (DSD) [58]

79. On 20 April, the Commission decided that DSD, the company which created the 'Green Dot' trademark, had abused its dominant position in the market for organising the collection and recycling of sales packaging in Germany. DSD is the only undertaking to operate a comprehensive packaging take-back and recycling service in Germany. The Commission objected to a provision in the trademark agreement between DSD and its customers obliging the latter to pay fees corresponding to the volume of packaging bearing the Green Dot trademark, rather than to the volume of packaging for which DSD was actually providing its take-back and recycling services. The provision infringed Article 82 as it forced consumers to pay for services not actually rendered and prevented market entry by competitors.

Box 3: Competition policy in the packaging waste sector

In implementing the European Community environmental legislation, Member States set targets for the recovery and recycling of packaging waste in accordance with the 'polluter pays' principle. The national laws and regulations of each country set out the framework for the industry, which then establishes various systems for the collection and recycling of sales packaging. In so-called comprehensive systems, such as those which the Commission has recently analysed, there are contractual relations between the system operator and producers/distributors of packaged goods, the collectors and the guarantee/recycling companies.

Overall, the Commission seeks to act in the consumer's interest. Its aim is to ensure that the new markets created in this sector are open to competition, while maintaining high levels of environmental protection. At the same time, services must be delivered which offer the best possible value. In 2001, the Commission adopted several formal decisions and issued comfort

[56] Case COMP/C1/35.141.
[57] Case COMP/C1/36.915.
[58] Case COMP/34.493; press release IP/01/584, 20.4.2001.

letters (two decisions in the *Duales System Deutschland* case [1], one decision in the *Eco Emballages* case [2], and comfort letters in the *Pro Europe* [3], *Returpack-PET* [4], *Returpack Aluminium* [5] and *Returglas* [6] cases) laying down the basic competition principles such systems must comply with. These may be summarised as follows:

(a) *A choice for companies*: The Commission believes that companies required to recover and recycle waste should have a choice between several systems or other compliance solutions. The idea here is that companies must be free not to contract with the dominant system or to do so only with a partial amount of their packaging. In view of the very strong market position of the systems already in existence, it is of the utmost importance for the emergence of competition that there be unrestricted market access for alternative service providers. A further aim is to ensure that the development of new types of activity in packaging recovery is possible, and thus to remove obstacles to self-management and other individual compliance solutions. The Commission therefore does not accept abusive market behaviour which would consolidate the dominant position of the incumbent operator.

(b) *No unjustified exclusivity arrangements:* When the Commission assesses restrictions of competition in the packaging waste recovery sector, it considers among other things the scope and duration of contracts. It is critical in general towards all kinds of exclusive arrangement lacking solid and convincing economic justification.

(c) *Unrestricted access to the collections infrastructure:* One of the characteristics of the market for the collection and sorting of packaging waste at households is that duplication of the existing collection infrastructure is in practice often very difficult. It would be inconvenient for households to use different bins for different collection systems for the same material and this would not be an economically viable solution. The Commission therefore considers the sharing of collection facilities by collectors to be a precondition for the occurrence of competition in practice.

(d) *Free marketing of secondary material:* Collected and sorted packaging material can be reused as a secondary raw material for various new products. The marketing of secondary material by collectors should also be as free as possible while making sure that materials will find an appropriate reprocessing channel.

The Commission will apply the principles outlined above also to currently pending and future cases. The consumer will benefit directly from the application of these policy principles, since competition in the relevant packaging waste recovery markets is expected to reduce the price that the consumer ultimately pays for the products disposed of in the recovery systems.

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[1] Case COMP/D3/34.493, decision of 20.4.2001 (OJ L 166, 26.6.2001); decision of 17.9.2001 (OJ L 319, 4.12.2001).
[2] Case COMP/D3/34.950, decision of 15.6.2001 (OJ L 233, 31.8.2001).
[3] Case COMP/D3/38.051.
[4] Cases COMP/D3/35.656 and COMP/D3/37.224.
[5] Case COMP/D3/35.658.
[6] Case COMP/D3/35.669.

Michelin ([59])

80. On 20 June, the Commission decided to fine French tyre maker Michelin EUR 19.76 million for abusing its dominant position in the French market for retread and replacement tyres for heavy vehicles. The Commission's investigation established that, between 1990 and 1998, Michelin operated a complex system of rebates, bonuses and commercial agreements which had the effect of tying dealers to Michelin as their supplier and thus of artificially barring Michelin's competitors from the market. The heavy penalty reflected the seriousness and duration of the infringement and a previous, similar infringement by Michelin.

IMS Health ([60])

81. On 3 July, the Commission imposed interim measures on IMS Health (United States), the world leader in the collection of data on pharmaceutical sales and prescriptions, ordering it to license its '1860 brick structure', which segments Germany into 1 860 sales zones or 'bricks'. The Commission considered that IMS's refusal to grant a licence for the use of the structure, which, in the Commission's view, has become a de facto standard in the German pharmaceutical industry, constituted a prima facie abuse of a dominant position. The refusal prevented potential new entry to the pharmaceutical sales data market and was likely to cause serious and irreparable damage to IMS's current competitors NDC Health (United States) and AzyX Geopharma Services (Belgium). The President of the Court of First Instance, seized by IMS with an application for interim relief, suspended the operation of the Commission decision on 26 October pending a final judgment in proceedings for annulment ([61]). NDC Health lodged an appeal against the order of the President of the Court of First Instance on 12 December.

De Post/La Poste (Belgium) ([62])

82. On 5 December, the Commission decided that the Belgian postal operator De Post/La Poste had abused its dominant position by making a preferential tariff in the general letter mail service subject to the acceptance of a supplementary contract covering a new business-to-business ('B2B') mail service and imposed a fine of EUR 2.5 million. See Section I.C.2.2.

2.2. Article 86(1) in combination with Article 82 — public undertakings/undertakings with special or exclusive rights and dominance

83. Pursuant to Article 86, the competition rules are also applicable to public undertakings and undertakings which have been granted special or exclusive rights by Member States; Member States are not allowed to enact or maintain in force any measure contrary to the competition rules in respect of any such undertaking.

([59]) Case COMP/36.041; press release IP/01/873, 20.6.2001.

([60]) Case COMP/38.044 *IMS Health/NDC*, decision of 3.7.2001 (OJ L 59, 28.2.2002).

([61]) Case T-184/01 R. The President found that the abusive nature ofIMS's conduct could not be considered unambiguous under current competition rules, that there was a risk that IMS would suffer serious and irreparable harm if it were forced to grant a licence to its competitors, and that the balance of interests in this case favoured suspension of the decision.

([62]) Case COMP/C1/37.859 (OJ L 61, 2.3.2002).

La Poste (France) ([63])

84. On 23 October, the Commission adopted a decision on the monitoring of relations between the French company La Poste and firms specialising in the making-up and preparation of mail. The Commission saw a conflict of interests in the relations between La Poste and private mail-preparation firms in that La Poste was both a competitor of those firms and, in view of its postal monopoly, their unavoidable partner. In the Commission's view, this conflict of interests encouraged La Poste to abuse its dominant position. Since French legislation did not provide for sufficiently effective or independent monitoring to neutralise this conflict of interests, the Commission took the view that the French state had contravened Article 86(1), read in conjunction with Article 82, of the Treaty.

C — Sector-based competition developments

1. Energy: liberalisation in the electricity and gas sector

85. The year 2001 brought about important developments for the European energy sector (electricity and gas), which is currently undergoing a liberalisation process. The restructuring of the European energy industry continued. Energy consumers started to benefit from liberalisation on a larger scale and many made use of the new possibilities to switch suppliers. New legislation was proposed to accelerate the liberalisation process. And last but not least, a number of ancillary measures were taken to ensure that liberalisation becomes an economic reality.

86. The liberalisation process requires market participants to adapt to the new economic reality. In the Commission's view, liberalisation obliges energy companies to become more efficient (rationalisation) and to improve services to consumers. At the same time, it creates new market opportunities for energy companies. These can extend the geographic scope of their activities and become multinationals. And they can enter new product markets and become multi-utilities. The year 2001 provided evidence that the restructuring process in the European energy sector is under way and is leading to increased merger activity, with economies of scale and scope being the main drivers. The most prominent examples in 2001 were EdF's acquisition policy in Spain, Italy and the UK, and the acquisition of a majority stake in the German gas company Ruhrgas by the German electricity company EON. To the extent that the Commission is competent to deal with these mergers under its merger regulation ([64]), it ensures that they do not lead to the creation or strengthening of a dominant position in the energy markets.

87. The ultimate objective of the liberalisation policy — from a competition perspective — is to provide consumers with a wider choice between suppliers, which in turn compete against each other on the basis of price and services. Consumers — particularly in those countries which have opted for a market opening going beyond the minimum requirements of the European electricity and gas directives — are already benefiting from the liberalisation process today. Thus, on a Community-wide level, electricity prices (excluding VAT and energy taxes) to large industrial users have fallen since the initiation of the liberalisation policy, naturally with certain differences between Member States. There also seem to be some signs of convergence of prices between Member States ([65]). As regards the gas sector, the situation

([63]) Case COMP/C1/37.133.

([64]) The acquisition of a majority shareholding in Ruhrgas by EON is being dealt with by the German Federal Cartel Office.

([65]) Commission staff working paper: First report on the implementation of the internal electricity and gas market (SEC(2001) 1957, 3.12.2001).

is somewhat different given that gas is to a large extent imported under long-term contracts and that continental European prices in these contracts are generally linked to oil prices. The rise in oil prices has therefore also led to a price increase for gas in the past year. In the medium and long run it is expected, however, that gas trading hubs will develop also in continental Europe, resulting in more liquidity and short-term trading. This will provide market participants with a new reference price, which could replace the oil price link and thus facilitate price negotiations.

1.1. Commission proposal on the completion of the European electricity and gas markets

88. From a legislative point of view, the most important development in 2001 was the Commission's proposal for a new directive calling for the completion of the European electricity and gas markets ([66]). The proposal, which was submitted to the Council and the European Parliament in March 2001 following a public hearing of market participants in autumn 2000, consists of quantitative and qualitative elements.

89. As regards the 'quantitative elements', the proposal envisages a market opening for all commercial electricity consumers by 2003, for all commercial gas consumers by 2004 and for all other users — including private households — by 2005. When making its proposal the Commission took into account the fact that the implementation of the existing directives by Member States has led to different levels of market opening. In addition, the Commission initiated infringement proceedings in 2001 against France and Germany for failure to transpose or to transpose completely the gas directive, and against Belgium for failure to fully transpose the electricity directive.

90. Unfortunately, consumers in countries that opted for a slow market opening suffer from a competitive disadvantage vis-à-vis consumers in countries that opted for a faster market opening. Similarly, energy companies in the latter countries are subject to competition across their entire customer base, whilst energy companies in the former countries still benefit from a protected customer base leading to unwarranted competitive advantages. These distortions of competition can be reduced or abolished only if all Member States agree on the same level of market opening.

91. As regards the 'qualitative elements', the proposal envisages, in the first place, a reinforcement of the unbundling rules. Given that a large number of companies in the electricity and gas sectors are vertically integrated, i.e. active in transmission and supply (in addition to electricity generation or gas storage), there is a risk that the transmission branch of a company might grant favourable treatment to its related supply branch to the detriment of third parties requesting third party access. In order to address this issue, the Commission proposed in its directive that vertically integrated companies be required to carry out a legal unbundling of the respective business units. The proposal also provides for certain accompanying measures in order to ensure that there is no undue flow of information between the unbundled business units. Finally, it was proposed that the reinforced unbundling rules should also be extended to large distribution companies.

92. Second, the Commission proposes to make it obligatory for Member States to create independent regulators at national level and to adopt a regulated third-party access regime (as opposed to a negotiated third party access regime, which is another option under the existing directives). Regulated access means that access is granted on the basis of tariffs approved by a public authority. The advantage of a regulated access regime is that it generally results in lower transaction costs for third parties and that the tariffs are monitored — on an ex ante basis — by the national regulator.

([66]) COM(2001) 125 final, 13.3.2001.

93. The Commission's proposal for the completion of the energy markets was warmly welcomed by the majority of Member States at the Stockholm European Council in March. However, some Member States, such as France, expressed concern about the final deadline for full market opening. Others, such as Germany, which had opted for a negotiated third party access regime and against a national regulator, expressed concern about the 'qualitative elements'. Nonetheless, negotiations on the draft directive were initiated in the Council working groups and significant progress was made this year. It is therefore hoped that the negotiations can be concluded in 2002.

94. In June, the Commission reminded Member States of their responsibility to ensure that the uneven level of market opening is remedied as quickly as possible ([67]) and drew their attention to the fact that companies must not unduly benefit from the different levels of market opening. Finally, it announced that, if Member States are unable or unwilling to adopt its proposal for the completion of the energy markets, it may make use of the instruments provided for in Article 86(3) of the EC Treaty. This article makes it possible to adopt — under certain conditions — Commission decisions and directives addressed to Member States, which do not require Member States' approval.

95. In parallel with the legislative proposals, work has been carried out by and discussions have taken place with international groups of interested parties (national administrations, regulators, consumers, producers). These groups (Florence Forum for electricity and Madrid Forum for gas) met at the initiative and with the active participation of the Commission. Discussions took place on certain technical and regulatory questions in an attempt to achieve harmonisation which will favour cross-border trade and the creation of a level playing field in Europe with undistorted competitive conditions for both gas and electricity markets.

1.2. Interaction of competition policy with single market rules

96. Competition policy enforcement ensures in particular that state barriers removed by the electricity and gas directive are not replaced by anticompetitive behaviour by market operators having the same effect. Three basic conditions must be met if effective competition is to be brought about and maintained in both the gas and the electricity market: free supply side, free demand side and free network access. 'Free' does not, of course, mean 'free of charge' but 'free from artificial restrictions'.

97. The following, in particular, create an unfavourable environment for the development of competition in the European gas and electricity markets. First of all, the networks are and will remain natural monopolies. The Commission tries to favour effective network access for third parties under non-discriminatory and non-abusive conditions. In the electricity sector, particular attention is being paid to access to congested interconnectors, essential infrastructures in cross-border trade, between different Member States. Access to these interconnectors is at the same time vital in a number of countries with a monopolistic supply structure, where effective competition can thus be introduced only by means of import competition. The Commission intervened in the design of a transmission capacity allocation system for the UK/France electricity interconnector, and is currently investigating and monitoring the situation on other borders, e.g. as regards the electricity interconnectors between Spain and France and the interconnectors into the Netherlands. It also dealt with the construction and use of a new interconnector linking Norway and Germany ([68]). Access to the network is also an important issue for the gas sector. In the year under review the Commission dealt with a case involving the joint refusal of continental European gas companies to grant a Norwegian gas producer access to their pipelines. It

([67]) Press release IP/01/872, 20.6.2001.

([68]) Cf. notice pursuant to Article 19(3) of Council Regulation No 17 in Case COMP/E3/37.921 *Viking Cable* (OJ C 247, 5.9.2001); the notifying parties have since decided to discontinue the Viking Cable project.

settled the case with one of the European companies concerned after the latter had offered commitments rendering the third-party access regime more effective ([69]).

98. Second, vertical demarcation is and will remain a general feature of the energy industry, particularly in the gas market, due to the existence of a well-established vertical supply chain where all companies have their well-defined position and function.

99. Third, producers have traditionally cooperated in commercialisation in these markets, and still do today, leading to less vigorous competition on the supply side. An example of such a practice was found in the Irish (*Corrib*) ([70]) and Norwegian gas sector (*GFU*) ([71]), or in the French electricity sector (*EdF/CNR*), but it would appear that similar arrangements also exist in other countries.

100. Some other features (horizontal demarcation, use restrictions) limiting competition characterise mainly the gas markets.

1.3. Commission's State aid policy in the energy sector

101. In 2001, particular attention was paid to the following aspects:

— Analysis of stranded cost cases (methodology and decisions). See Section III.A.4.

— Assessment of an increasing number of renewable energy promotion schemes. See Section III.C.1.3.

— Among other things, the Commission analysed schemes based on operating aid grants, such as the *prime d'encouragement écologique* in Luxembourg, schemes based on green certificate markets, such as the new regional electricity laws in Belgium's regions, and more complex schemes including a combination of various incentive methods, such as the British renewable obligations system.

— Assessment of State aid aimed at securing a level of security of electricity supply. Directive 96/92/EC ([72]) authorises Member States to give priority to indigenous fossil fuel energy sources, to an extent not exceeding a fixed threshold based on their annual energy consumption, in order that they might meet a certain level of security of supply.

1.4. Other developments in the energy sector: motor fuels

102. When the Commission and the national competition authorities met on 29 September 2000 to discuss competition policy in the motor fuel sector ([73]), one of the conclusions was that new entrants and independents are essential to maintain and/or improve the competitive pressure on the European motor fuel markets. During 2001, the Directorate-General for Competition carried out a detailed investigation into the competitive conditions of independent, non-integrated operators in the motor fuel sector.

([69]) Press release IP/01/1641 — Commission settles Marathon case with Thyssengas.

([70]) Press release IP/01/578 — Enterprise Oil, Statoil and Marathon to market Irish Corrib gas separately.

([71]) Press release IP/01/830 — Commission objects to GFU joint gas sales in Norway.

([72]) European Parliament and Council Directive 96/92/EC of 19December 1996 concerning common rules for the internal market in electricity (OJ L 27, 30.1.1997).

([73]) See 2000 Competition Report, points 119-221. See also press releases MEMO/00/55, 20.9.2000, IP/00/1090, 29.9.2000 and IP/00/1391, 30.11.2000.

103. The independent operators identified a number of factors that render their situation sometimes difficult. These factors are linked to the behaviour of vertically-integrated firms as well as certain administrative barriers. The independents claimed that certain of their difficulties are due to the behaviour of some vertically-integrated companies, such as discriminatory pricing, predatory pricing, refusals to supply, unwillingness to give access to logistic facilities and the long-term exclusive supply contracts between integrated motor fuel companies and service stations. Although this kind of behaviour would be liable to fall under the scope of Articles 81 and 82 of the EC Treaty if the criteria for applying these provisions were met, the investigation did not provide any conclusive evidence of an infringement of EC competition rules. Finally, the independents mentioned a number of administrative barriers that cause them considerable difficulties. The state barriers most commonly complained of include the national laws implementing Directive 98/93/EC on security stocks, certain tax legislation, environmental requirements, measures increasing price transparency and the methods for allocating retail outlets. The investigation showed that the situation of the independent operators varies considerably between the Member States involved in the investigation. The findings of the investigation were presented and discussed at a second meeting between the Commission and national competition authorities on 16 November.

2. Postal services

104. The postal sector is expanding, owing in particular to further market opening and the changes brought about by the e-economy. The Commission took several important decisions concerning this sector to avoid re-monopolisation of liberalised markets by incumbent operators.

2.1. Commission proposal for further market opening

105. On 15 October, the Council approved a common position of the Member States on a text aimed at amending the existing postal directive.

106. The main changes introduced by the text approved by the Council are:

— a further opening of the market, with a staged reduction in the reserved area as of 1 January 2003 and as of 1 January 2006 ([74]);

— the possibility, by means of a Commission proposal to be approved by the European Parliament and the Council, of the completion of the internal postal market in 2009 ([75]);

— the liberalisation of outgoing cross-border mail except for those Member States where it needs to be part of the reserved services in order to ensure the provision of the universal service;

([74]) In particular, as of 2003 the non-reserved area will include letters weighing more than 100 g; this weight limit will not apply if the price is equal to or more than three times the public tariff for an item of correspondence in the first weight step of the fastest category. As of 2006 the non-reserved area will include letters weighing more than 50 g; this weight limit will not apply if the price is equal to or more than three times the public tariff for an item of correspondence in the first weight step of the fastest category.

([75]) In 2006, the Commission will carry out a study evaluating, for each Member State, the impact on universal service of the completion of the internal postal market in 2009. On the basis of this study the Commission will submit a report to Parliament and the Council accompanied by a proposal confirming, if appropriate, the date of 2009 for the full completion of the internal postal market or determining any other step in the light of the study's conclusions.

— the prohibition of cross-subsidisation of universal services outside the reserved area out of revenues from services in the reserved area unless it is strictly necessary in order to fulfil specific universal service obligations imposed in the competitive area;

— the application of the principles of transparency and non-discrimination whenever universal service providers apply special tariffs.

107. The text approved by the Council does not contain any definition of 'special services' ([76]). The revised text, although resulting in an opening of the postal market to a lesser extent than originally envisaged by the Commission, can be considered to be an important step towards a single postal market. The text still needs to be approved by Parliament.

2.2. Cases

Deutsche Post AG I ([77])

108. On 20 March, the Commission concluded its investigation into Deutsche Post AG (DPAG) and adopted a decision finding that DPAG had abused its dominant position by granting fidelity rebates and engaging in predatory pricing in the market for business parcel services. DPAG was fined EUR 24 million in respect of the foreclosure resulting from its long-standing scheme of fidelity rebates. No fine was imposed in relation to predatory pricing given that the economic cost concepts used to identify predation were not sufficiently developed at the time. This is the first formal Commission abuse decision in the postal sector.

109. Following a complaint by United Parcel Service in 1994 claiming that DPAG was using revenues from the letter mail monopoly to finance below-cost selling in the open market for business parcel services, the Commission decided that any service provided by the beneficiary of a monopoly in open competition has to cover at least the additional or incremental cost incurred in branching out into the competitive sector. Any cost coverage below this level is to be considered predatory pricing. The investigation revealed that DPAG, for a period of five years, did not cover the costs incremental to providing the mail-order delivery service.

110. DPAG has undertaken to create a separate company ('Newco') to supply business parcel services which will be free to procure the 'inputs' necessary for its services either from DPAG (at market prices) or from third parties or to produce these inputs itself. In addition, DPAG has undertaken that all inputs it supplies to Newco will be supplied to Newco's competitors at the same price and under the same conditions.

Deutsche Post AG II ([78])

111. On 25 July, the Commission, following up a complaint filed by the UK Post Office, decided that Deutsche Post AG ([79]) ('DPAG') had abused its dominant position in the German letter market by intercepting, surcharging and delaying incoming international mail which it erroneously classified as

([76]) A definition of special services was included in the Commission's original proposal. Although most of the national delegations agreed on the need to define special services in the new directive, a compromise could not be reached in the Council on a specific definition.

([77]) Case COMP/35.141 (OJ L 125, 5.5.2001).

([78]) Case COMP/36.915 (OJ L 331, 15.12.2001).

([79]) Press release IP/01/1068, 25.7.2001.

circumvented domestic mail (so-called A-B-A remail). The Commission also decided that DPAG's abusive behaviour justified the imposition of a fine, which, owing to the legal uncertainty that prevailed at the time of the infringement, was set at the 'symbolic' amount of EUR 1 000.

112. The Commission found that DPAG had abused its dominant position in the German market for the delivery of international mail — thereby infringing Article 82 of the EC Treaty — in four ways: (i) discriminating between different customers, (ii) refusing to provide its delivery service, (iii) charging an excessive price for the service offered and (iv) limiting the development of the German market for the delivery of international mail and of the UK market for international mail bound for Germany. During the course of the proceedings, DPAG had given an undertaking to the effect that it would no longer intercept, surcharge or delay international mail of the type to which the case related.

De Post/La Poste (Belgium) [80]

113. On 5 December, the Commission decided that the Belgian postal operator De Post/La Poste had abused its dominant position by making a preferential tariff in the general letter mail service subject to acceptance of a supplementary contract covering a new business-to-business ('B2B') mail service. This new service competes with the 'document exchange' B2B service provided in Belgium by Hays plc, a private operator in postal services based in the United Kingdom. As La Poste exploited the financial resources of the monopoly it enjoys in general letter mail in order to leverage its dominant position there into the separate and distinct market for B2B services, the Commission imposed a fine of EUR 2.5 million.

114. In April 2000, Hays had lodged a complaint with the Commission alleging that La Poste was trying to eliminate the Hays document exchange network, which it had been operating in Belgium since 1982. Hays could not compete with the tariff reduction offered by La Poste in the monopoly area and as a result was losing most of its traditional clients in Belgium, namely the insurance companies.

3. Telecommunications

3.1. Guidelines on market analysis and the calculation of significant market power

115. Following a joint initiative by Commissioners Mario Monti and Erkki Liikanen, on 25 March the Commission adopted 'draft guidelines on market analysis and the calculation of significant market power' [81] with a view to formal adoption of the proposed directive on a new regulatory framework for electronic communications services and networks. The draft guidelines should help the Council and the European Parliament to approve the new definition of market power proposed in the framework directive (Article 13).

116. The draft guidelines are based on the case law of the Court of First Instance and the Court of Justice in the competition sphere and on the Commission's own decision-making practice in defining the relevant market and in applying the concept of single and collective dominant position, in particular with regard to electronic communications markets.

117. The draft was first of all discussed with national regulatory and competition authorities on 29 March in Brussels. As part of a public consultation exercise launched by the Commission, the

[80] Case COMP/37.859 (OJ L 61, 2.3.2002); press release IP/01/1738, 5.12.2001.
[81] COM(2001) 175 final, 28.3.2001.

operators concerned were also given the opportunity to express their views and define their position at a public meeting in Brussels on 18 June. These two events showed that the authorities and the operators concerned share, in substance, the Commission's approach.

118. The definitive version of the guidelines will be adopted by the Commission once the new framework directive has been adopted by Parliament and the Council.

3.2. Adoption of the seventh implementation report

119. On 28 November, the Commission adopted the seventh report examining the state of implementation by EU Member States of the current regulatory framework for telecommunications. The key conclusion of the report is that the telecom services sector is buoyant and that the national regulatory authorities are continuing to make progress with liberalisation. Competition between operators is bringing prices down overall. Incumbents' long-distance calls are down 11 % in price since last year and down 45 % since 1998 for a three-minute call in Europe, and by 14 % since last year and 47 % since 1998 for a ten-minute call. The average level of Internet penetration in EU households was around 36 % in June 2001. On the other hand, a number of regulatory bottlenecks remain and these will have to be removed rapidly if there is to be continued growth in the telecommunications markets. The key issues are local loop unbundling, lengthy delivery times and absence of cost orientation for leased lines, particularly at the speeds required for broadband and e-commerce rollout, persisting tariff distortions and price squeezes in certain instances and, finally, the full functioning of carrier selection and pre-selection.

3.3. Monitoring the implementation of directives

120. The Commission continued to monitor the effective implementation of the liberalisation directives in Member States and the introduction of the regulatory framework in Greece following the complete liberalisation of the markets, which became effective on 1 January.

121. Despite the substantial progress made by Member States, 21 infringement proceedings were still under way against Member States which had not correctly transposed the liberalisation directives based on Article 86(3) of the Treaty or which had omitted to notify transposal measures. The Commission continued, for example, proceedings against Luxembourg in connection with the granting of rights of way, culminating in a reference to the Court of Justice in February. It is argued that Luxembourg is at fault for not drawing up clear rules guaranteeing non-discriminatory treatment of operators in relation to rights of way.

122. On 16 October, the Court of Justice found for the Commission in connection with proceedings brought by the latter against Greece and Portugal. In its judgment concerning Portugal, the Court confirmed that call-back services were not voice telephony within the meaning of Directive 90/388/EEC and that the Portuguese Government had therefore wrongly reserved these services for the incumbent operator pending the liberalisation of telecommunications ([82]). In its judgment concerning Greece ([83]), the Court confirmed that, by the terms of the directive, access to the mobile telecommunications market may be limited only in the absence of frequencies. Where access is made conditional upon obtaining authorisation, the Member State must ensure that procedures for the grant of authorisation are transparent and public, are conducted in accordance with objective criteria and are non-discriminatory.

([82]) Case C-429/99.

([83]) Joined Cases C-396/99 and C-397/99.

123. On 6 December, the Court of Justice handed down a judgment ([84]) in a dispute between the Commission and France over the mechanism for financing the universal service which had been in place in that Member State since 1997. The matter had been brought before the Court by the Commission in April 2000. The Court found entirely in the Commission's favour, holding that the French mechanism did not respect the principles of proportionality, objectivity and transparency required by the directives, and that France had also failed to fulfil its obligations in respect of the rebalancing of tariffs.

124. On the question of the rebalancing of telephone subscription charges, as prescribed by Directive 96/19/EC, the Commission continued its infringement proceedings against Spain by sending in July a supplementary reasoned opinion. This reasoned opinion stresses in particular the inconsistency between the full unbundled access tariffs set in December 2000 and the price cap mechanism as amended in May 2001, which creates a price squeeze risk up until 2003 likely to compromise the results of the unbundling. On 21 December, the Commission referred the matter to the Court of Justice ([85]).

3.4. Sector inquiry on local loop unbundling

125. In July 2000, the Commission proposed a new regulation requiring local loop unbundling, which was speedily approved ([86]) by the European Parliament and the Council and which entered into force on 2 January ([87]). At the same time, the Directorate-General for Competition launched the first phase of a sector enquiry on the local loop and sent out letters to incumbent operators in order to investigate local loop access and the development of broadband services over the incumbents' local loops. Broadband telecommunications use the same end-user's lines to channel higher amounts of information with new techniques and allow for the provision of high-speed Internet access services.

126. This inquiry was pursued in 2001 with questionnaires being sent to new entrants in July. The purpose of this second phase of the inquiry is to assess the competitive situation on the local loop six months after the entry into force of the new regulation, as well as potential abuses of a dominant position by incumbent operators in breach of Article 82 of the EC Treaty. This second phase should enable the Commission to have, by early 2002, a comprehensive assessment of the situation of local loop unbundling in the 15 Member States and of problems encountered by new entrants in obtaining access under fair and competitive conditions.

3.5. Leased lines sector inquiry

127. The first phase of the leased line inquiry consisted in collecting and analysing comparative market data for all the Member States. In September 2000, the Commission presented the inquiry's initial findings at a public hearing in Brussels. A number of competition concerns had been identified and the Commission decided to tackle those with an apparent Community dimension or of a cross-border nature and to leave the remaining ones to national authorities.

([84]) Case C-146/00.

([85]) Case C-500/01.

([86]) Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 (OJ L 336, 30.12.2000).

([87]) 'Unbundling' the local loop (or the 'last mile', i.e. the physical circuit between the customer's premises and the telecommunications operator's local switch) amounts to mandatory access on the incumbent's local network to alternative carriers in order to introduce competition in this segment of the telecom networks, which are mainly in the hands of former monopolies. Nationwide duplication of these networks is normally impossible.

128. In November 2000, the Commission opened five ex officio cases ([88]) with a view to further examining the competitive provision of international leased lines in five Member States: Belgium, Greece, Italy, Portugal and Spain. The investigation is being conducted in close cooperation with the national competition authorities and telecom regulators in those countries.

129. Given that the initial sector inquiry results were of a comparative nature and not up to date, in 2001 the Commission sent formal information requests to the national authorities in the five Member States and discussed the relevant country-specific factors at bilateral meetings with those authorities. The ongoing cooperation with the national authorities boils down to close examination of the national incumbents' competitive behaviour regarding leased line provision. At present, the Commission is verifying claims that the leased line prices of the five incumbents involved have been reduced, and it is considering other relevant factors, namely the level, fairness and transparency of discounts, service level agreements and quality of service parameters.

3.6. Sector inquiry on roaming

130. The sector inquiry was launched in January 2000 to investigate the problem of roaming prices, which are intransparent to consumers, rigid and at levels unrelated to the cost of carriage, by collecting comparative information on prices and cost levels for all EU mobile operators ([89]). Both wholesale and retail markets were found to be still predominantly national. The inquiry established concentration ratios of over 90 % for the two incumbent operators in most national wholesale roaming markets, and a pervasive lack of competitive pressure throughout the EU, particularly at wholesale level.

131. On 11 July, as part of the follow-up to the sector inquiry, Commission inspectors and officials from national competition authorities commenced simultaneous unannounced inspections at the premises of nine European mobile telephony operators located in the UK and Germany ([90]). The data collected are now being analysed to determine whether there is sufficient evidence to support a formal finding of antitrust infringements. In addition, coordination is taking place with national competition and telecommunications authorities to promote procompetitive action at national level.

3.7. Individual cases dealt with under Articles 81 and 82

3.7.1. Identrus

132. On 31 July, the Commission cleared agreements between a number of major European and non-European banks creating a global network ('Identrus') for the authentication of electronic signatures and other aspects of e-commerce transactions ([91]). The Commission has concluded that the Identrus system will not lead to any appreciable restriction of competition. In particular, it entails no foreclosure risk, it will face competitive checks from competing systems, and participants are free to join other such systems. The Commission's clearance decision illustrates the importance it attaches to the development of competitive e-commerce-related markets.

([88]) Cases COMP/38.001 *Leased lines Spain*, COMP/38.002 *Leased lines Portugal*, COMP/38.003 *Leased lines Italy*, COMP/38.004 *Leased lines Greece* and COMP/38.005 *Leased lines Belgium*.

([89]) Roaming occurs when a mobile phone user makes or receives calls when visiting a network other than his home network.

([90]) Press release MEMO/01/262, 11.7.2001.

([91]) Case COMP/37.462 (OJ L 249, 19.9.2001).

3.7.2. Intelsat

133. On 1 June, the Commission issued a negative clearance comfort letter to Intelsat for its restructuring from an intergovernmental organisation into a commercial company. Intelsat was formed as a government cooperative to provide satellite communications around the world in a time before telecommunications liberalisation. As telecommunications markets developed and other satellite operators entered the market, Intelsat's structure became less appropriate in both commercial and competition terms. The Commission's investigation and analysis revealed that the restructuring did not give rise to an appreciable restriction of competition, noting that Intelsat would carry out an IPO within two years of privatisation. This finding was in line with the conclusions of previous cases involving other intergovernmental satellite organisations, namely the maritime satellite organisation Inmarsat ([92]) and the European satellite organisation Eutelsat ([93]).

3.7.3. Wanadoo

134. On 19 December, the Commission sent a statement of objections to Wanadoo Interactive, a subsidiary of France Télécom in charge of Internet access provision ([94]). At this stage, the Commission believes that the company has priced its high-speed Internet access services via the ADSL technology below their incremental costs (and below their variable costs as well), which may constitute an abuse of a dominant position. This possible abuse has taken place throughout 2001, at a critical time in the take-off of broadband access services for the residential market in France, to the detriment of Wanadoo's competitors.

4. Transport

4.1. Air transport

135. The Commission examined a number of airline alliances during 2001. In general, it believes that airline alliances can bring benefits for passengers by extending networks and improving efficiency. However, alliances can also restrict competition on individual routes and remedies are often needed to counter this.

4.1.1. British Midland/Lufthansa/SAS ([95])

136. On 1 March 2000, bmi British Midland International, Lufthansa and SAS notified a joint venture agreement under which they agreed to coordinate their services within the EEA to and from London Heathrow and Manchester International airports. The Commission investigated this agreement in close cooperation with the UK competition authorities. On 12 June 2001, after the parties had given a number of undertakings, the Commission informed them that they were being granted a six-year exemption for their joint venture agreement pursuant to Article 5(3) of Regulation (EEC) No 3975/87.

137. The JVA provides that Lufthansa is granted the exclusive right to operate flights on almost all routes between London and Manchester on the one hand and German airports on the other. Similarly, SAS is granted the exclusive right for the traffic between London/Manchester and Scandinavian countries. This restriction was found to be problematic for the London–Frankfurt market, which, with

([92]) Press release IP/98/923, 22.10.1998.
([93]) Press release IP/00/1360, 27.11.2000.
([94]) Press release IP/01/1899, 21.12.2001.
([95]) Case COMP/37.812, public notice of 14.3.2001 (OJ C 83, 14.3.2001).

2.1 million O&D (point of origin/point of destination) passengers in 1999, is one of the busiest in Europe. The Commission concluded that British Midland's withdrawal from the London–Frankfurt route represented an appreciable restriction of competition on both the market for non-time-sensitive (leisure) passengers and the market for time-sensitive (business) customers.

138. In its analysis under Article 81(3), the Commission came to the conclusion that, in terms of efficiency gains and competition, the overall effect of the agreement is positive. It leads to a reorganisation and expansion of the parties' existing networks, and allows Lufthansa and SAS to compete for domestic UK traffic as well as for traffic between the UK and Ireland and to carry passengers from any point in the STAR network to regional destinations in the UK. It leads furthermore to an increase in network competition. As a result of the agreement, British Midland was able to start providing new services between London and Barcelona, Lisbon, Madrid, Milan and Rome.

139. With a view to addressing the Commission's competition concerns, the parties submitted a number of commitments, in particular to make slots available at Frankfurt airport, thereby allowing the entrant to operate four daily frequencies. The Commission carried out a market test to ascertain that the slots would actually be taken up by competitors.

140. The Commission also investigated the cooperation between Austrian Airlines and Lufthansa. On 14 December, it published a notice under Article 16 of Regulation (EEC) No 3975/87 ([96]), stating its intention of exempting the cooperation on the basis of remedies offered by the parties.

141. Furthermore, the Commission continued its investigations into the Lufthansa/United and KLM/Northwest transatlantic alliances. It also opened a new investigation into the proposed BA/AA transatlantic alliance, working in close cooperation with the UK Office of Fair Trading. Decisions on all these alliances are expected in 2002.

4.1.2. SAS/Maersk Air ([97])

142. See Section I.B.1.1.

4.1.3. IATA cargo tariff consultations

143. The IATA cargo tariff conferences are a forum where air carriers meet to agree tariffs for the transport of freight.

144. Until June 1997, this system benefited from a block exemption under Commission Regulation (EEC) No 1617/93 ([98]), which effectively enabled European airlines to agree on tariffs for the carriage of freight within the EEA. This block exemption was withdrawn by Commission Regulation (EC) No 1523/96 of 24 July 1996. The Commission's main reasons for withdrawing the block exemption were that the tariffs fixed by cargo tariff conferences appeared to be much higher than the market rates and that the system no longer seemed essential for doing interlining ([99]) work within the EEA.

([96]) OJ C 356, 14.12.2001.

([97]) Commission decision of 18.7.2001 in Case COMP/37.444 *SAS/Maersk Air* (OJ L 265, 5.10.2001).

([98]) OJ L 155, 26.6.1993.

([99]) Interlining occurs when cargo is carried for part or all of the journey by an airline other than the airline with which the customer has contracted.

145. Following the withdrawal of the block exemption, IATA notified the system and applied for an individual exemption ([100]). IATA's main argument in favour of tariff conferences was that they facilitate cargo interlining. The cargo tariffs fixed by tariff conferences are used at the wholesale level to calculate each carrier's remuneration for its participation in an interline move.

146. In a statement of objections sent to IATA in May, the Commission took the preliminary view that IATA cargo tariff conferences fell under Article 81(1) of the EC Treaty. In its analysis under Article 81(3), the Commission accepted that cargo tariff conferences facilitated the provision of a comprehensive system of interlining within the EEA. It considered, however, that IATA had not succeeded in demonstrating that this restrictive system was still indispensable to providing customers with efficient interlining services within the EEA.

147. Following the statement of objections, IATA agreed to end the joint setting of cargo rates within the EEA. Concretely, by the beginning of 2002, cargo rates fixed individually by each carrier should replace those jointly set by the tariff conferences.

148. As a result, the Commission decided to close the case. It also provided IATA with a comfort letter covering a number of other administrative and technical resolutions in the cargo sector, which facilitate interlining and are distinct from the setting of cargo rates.

4.1.4. IATA passenger tariff conferences

149. Airlines within the Community benefit from a block exemption allowing them to consult on scheduled passenger tariffs so long as these tariffs are for interlining (Commission Regulation (EEC) No 1617/93). Interlining occurs when a passenger is carried for part or all of his journey by an airline other than the one he booked with.

150. In practice, the exemption for passenger tariff consultations applies to the activities of just one organisation — the International Air Transport Association (IATA). IATA organises passenger tariff conferences which meet several times a year to set interlining tariffs for all regions of the world. All EEA flag carriers and a number of regional airlines participate in the tariff conference that covers Europe. Any airline which is a member of the passenger tariff conferences can interline with any other at the rates set in these conferences. Both business and full economy fares are agreed for all EEA city pairs for one year at a time. For some city pairs APEX and other discounted fares are also agreed. These fares are applied together with a weighting system known as the Multilateral Prorate Agreement to determine how much an airline will receive for carrying an interlining passenger on any given journey segment.

151. In February, the Directorate-General for Competition published a consultation paper seeking views on whether IATA passenger tariff conferences should continue to be exempted. In June, the Commission renewed the current block exemption for passenger tariff conferences for one year while considering what approach to take in future. Tariff conferences are a clear restriction of competition in that they involve price fixing, but they also secure a benefit for consumers by providing them with the possibility of buying a single through ticket for journeys involving different airlines. The consultation paper started from the premiss that interlining brings both economic and consumer benefits and asked whether the restrictions on competition inherent in passenger tariff conferences are necessary in order to secure these benefits.

([100]) Case COMP/36.563.

4.2. Maritime transport

152. The year 2001 saw significant developments in liner shipping competition policy, both within the EU and internationally.

4.2.1. Revised TACA

153. On 29 November, the Commission published a notice stating its intention to exempt the maritime aspects of the revised Trans-Atlantic Conference Agreement ('the revised TACA') and giving third parties 30 days in which to comment. This followed the Commission's decision in August 1999 not to oppose the inland aspects of the agreement, while raising serious doubts about the maritime aspects.

154. In the period since August 1999, the Commission's investigation has focused mainly on verifying that the provisions for exchange of information between members of the conference are not such as to jeopardise the confidentiality of individual service contracts concluded between individual carriers and shippers. The free and widespread availability of such contracts is, in the Commission's view, crucial to ensuring that the members of the revised TACA remain subject to effective competition. In considering whether this is indeed the case, the Commission has taken due account of the finding of the United States Federal Maritime Commission, in its report on the impact of the US Ocean Shipping Reform Act, that no more than approximately 10 % of all cargo carried by members of the revised TACA is currently carried under the conference tariff. The remaining 90 % is carried under service contracts.

155. In response to the Commission's concerns, the TACA parties have made significant amendments to the conference arrangements concerning information exchange and given certain undertakings. The Commission has taken the preliminary view, pending comments from third parties, that these amendments and undertakings, in combination with the clear evidence of substantial internal and external competition, are sufficient to address the serious doubts raised in August 1999.

156. The revised TACA case has also served to highlight the issue of capacity management. The conference agreement contains a general provision modelled on Article 3(d) of Council Regulation (EEC) No 4056/86, which allows a conference to regulate the capacity offered by each of its members. The revised TACA availed itself of this option over the Christmas and New Year low season of 2000/2001. The capacity programme, which covered a period of five weeks and was notified to the Commission, gave the latter the opportunity to clarify its view of the scope of Article 3(d). The Commission thus considered *inter alia* that a conference capacity management programme could not be used as an instrument to create an artificial peak season and that capacity withdrawal could not be combined with an increase in the conference tariff. The revised TACA parties undertook to comply with these guidelines.

157. The scope of Article 3(d) was also at issue in a case involving the Far Eastern Freight Conference (the FEFC). In October, the FEFC parties decided to implement a six-month coordinated vessel withdrawal scheme. The scheme was intended to deal with the combined effects of a drastic fall in demand on the Europe–Far East trades and the introduction of significant amounts of new capacity. In a warning letter to the parties, the Commission indicated that it considered that the FEFC programme was not covered by Article 3(d), as interpreted by the Commission in its TAA ([101]) and EATA ([102]) decisions. In particular, the programme did not, in the Commission's view, have the permissible objective of addressing a short-term fluctuation in demand. Nor would the programme qualify for individual

([101]) Commission decision of 19.10.1994 in Case No IV/34.446 *Trans-Atlantic Agreement* (OJ L 376, 31.12.1994).

([102]) Commission decision of 30.4.1999 in Case No IV/34.250 *Europe-Asia Trades Agreement* (OJ L 193, 26.7.1999).

exemption, as any possible benefit to transport users would be more than outweighed by the negative impact of the programme on the users' costs. In response to the warning letter, the members of the FEFC immediately terminated their coordinated withdrawal scheme.

4.2.2. Consortia

158. Two consortia agreements were cleared by the Commission in 2001 ([103]), confirming that operational agreements of this nature generally contribute to a more rational organisation of maritime transport services while bringing substantial benefits to transport users.

4.2.3. OECD report on liner shipping

159. Internationally, the most significant event of the year was undoubtedly the publication of a draft OECD report on liner shipping competition policy. The report, which was discussed at an OECD workshop in December, questions the justification for maintaining antitrust immunity or exemption for the collective price-fixing activities of shipping lines and recommends that member countries should undertake a review of their current legislation in this respect. The Commission welcomes the report as a substantial contribution to the debate and will reflect further on the implications for EU liner shipping legislation.

4.2.4. P&O/Stena

160. In the short-sea sector, the highlight of 2001 was the Commission's decision to renew the exemption for the P&O and Stena Line cross-Channel ferry joint venture. The original three-year exemption was granted on 26 January 1999 and the parties applied for renewal on 22 December 2000. The Commission's investigation found *inter alia* that the characteristics of the market were such that the main operators on the market could be expected to compete with each other and that the price increases that had taken place could be explained by circumstances other than the existence of the joint venture. The Commission therefore concluded that there were no grounds for opposing a further automatic exemption for six years, which is the standard period under the relevant maritime transport regulation. The joint venture is therefore deemed exempt until 7 March 2007.

4.3. Railways

161. In February, the Council and the European Parliament finally adopted the three directives comprising the railway package ([104]). The package extends rights of access to all types of international rail freight operating over a specified trans-European rail freight network until 2008, and over the whole EU network thereafter. The package also includes Community licensing for train operators; detailed rules on infrastructure charging, train path allocation and safety certification; and the requirement to establish an independent regulatory body at national level to oversee the charging/allocation process and to hear complaints.

([103]) Case COMP/37.982 *Grand Alliance/Americana Consortium* and Case COMP/38.021 *Europe to Caribbean Consortium.*

([104]) Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.
Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings.
Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 75, 15.3.2001).

162. In June, the Commission opened formal proceedings against Ferrovie dello Stato (FS) in a case concerning market access ([105]). In its statement of objections, the Commission considered that FS's repeated and long-standing refusal to grant access to GVG, a small German railway operator, amounted to an abuse of a dominant position.

163. In October, the Commission warned Deutsche Bahn (DB) about discriminating against a private operator ([106]). In this other case involving GVG, the Commission found in its statement of objections that DB had abused its dominant position in three ways. First, it discriminated in its charges for traction. Second, it subsequently declined to provide traction altogether. And third, it imposed a requirement that GVG must hire DB staff.

164. The Commission has meanwhile announced in the White Paper *European Transport Policy for 2010: Time to decide* ([107]) its intention to put forward further legislative proposals to liberalise market access by opening up domestic and cabotage freight services, thereby completing the internal market in the rail freight sector.

5. Media

5.1. Sports broadcasting

5.1.1. UEFA broadcasting regulations

165. Access to broadcasting markets, particularly pay-television and pay-per-view markets, is heavily dependent on access to premium rights and technology. Over the past year, the potential for sports rights to foreclose broadcasting markets was examined in several cases. In the UEFA broadcasting regulations decision ([108]), for example, the changes limiting the hours when broadcasters would be prevented from broadcasting football of a particular origin prevented the regulations from having any appreciable effect on broadcasting markets. The UEFA regulations on the broadcasting of sporting fixtures originally submitted to the Commission were highly complex and very broad in scope. The broadcasting of matches was prohibited throughout the weekend. Following the Commission's intervention, UEFA has simplified its rules and strictly limited the blocked number of hours. As from the 2000/2001 season, the new UEFA regulations will authorise national associations to prevent the broadcasting of fixtures within their territories for only two and a half hours either on Saturdays or on Sundays at a time when major national matches are taking place. Similarly, the separation of the FIA's regulatory and commercial functions, and more particularly the reduced duration of the contracts for the broadcasting of Formula One, would prevent those broadcasting contracts from distorting the national free-to-air and pay-television broadcasting markets ([109]). The sector will be kept under scrutiny, in particular with regard to developments in downstream broadcasting markets.

5.1.2. UEFA Champions League

166. The Commission also began to examine how rights are sold, rather than the terms on which they are sold. It issued a statement of objections against UEFA in respect of the collective selling of the broadcasting rights to the later stages of the UEFA Champions League. The collective selling of these

([105]) Case COMP/37.685.
([106]) Press release IP/01/1415, 5.10.2001.
([107]) COM(2001) 370 final, 12.9.2001.
([108]) OJ L 171, 26.6.2001.
([109]) Press release IP/01/1523, 30.10.2001.

rights on an exclusive basis risks limiting the supply of such rights, thereby limiting the broadcasting of football on downstream broadcasting markets; the exclusive sale of those rights risks distorting competition on those markets.

5.2. Other issues

5.2.1. Collecting societies

167. The management of rights by collecting societies has traditionally been done by national collecting societies which have had monopoly positions on national markets. The development of the Internet challenges this situation, as a service made available over the Internet is theoretically available anywhere in the world. The collecting societies have therefore begun to examine how rights should be managed in this borderless environment. The Commission published an Article 19(3) notice in August in respect of an agreement between collecting societies for the management of rights to broadcast simultaneously via traditional broadcast media and over the Internet. This agreement would not alter the monopoly position of each collecting society in respect of its national repertoire, but would introduce competition between collecting societies for the downstream provision of a global licence to users.

5.2.2. CDs/DVDs

168. Vertical problems were examined in relation to the distribution and pricing of CDs, where the Commission found evidence of limited retail price maintenance — which was rapidly discontinued following the Commission's investigation.

169. The Commission also began to look at a potentially important case for consumers which may combine both horizontal and vertical restraints: the regional coding system for DVDs. In this case, the Commission is examining the horizontal agreement on the DVD standard, which includes the region-coding system, together with vertical agreements for the licensing of the technology and know-how to use that standard.

6. Motor vehicle distribution

170. In the motor vehicle distribution sector, the Commission's activities in 2001 centred on:

— continuing the process of evaluating Regulation (EC) No 1475/95 ([110]) following the evaluation report adopted by the Commission on 15 November 2000 ([111]);

— starting a reflection process on the possible adoption of a specific legislative framework for motor vehicle distribution after the expiry of Regulation (EC) No 1475/95 in September 2002;

— monitoring the application of Regulation (EC) No 1475/95, with the adoption of, among other things, two infringement decisions with fines.

([110]) Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) (now Article 81(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ L 145, 29.6.1995).

([111]) Report on the evaluation of Regulation (EC) No 1475/95 on the application of Article 85(3) (now Article 81(3)) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (COM(2000) 743 final, 15.11.2000); see also 2000 Competition Report, points 112-115.

6.1. Preparing the ground for a new legislative framework specific to motor vehicle distribution

171. Until 30 September 2002, the date of its expiry, Regulation (EC) No 1475/95 exempts from the prohibition in Article 81(1) selective and exclusive distribution agreements for motor vehicles having three or more wheels whereby manufacturers set up dealers in exclusive territories; these dealers may sell vehicles either to final consumers or their agents, or to other dealers approved by the manufacturer.

172. The evaluation report concluded that the aims of Regulation (EC) No 1475/95 had been only partially achieved and that the assumptions underlying the regulation were no longer entirely valid.

173. Before deciding on the legislative framework that would best resolve the motor vehicle distribution problems identified in the block exemption regulation evaluation report, the Commission launched a study to identify and measure the economic impact on all parties concerned of five possible legislative scenarios ([112]). The study is purely consultative in nature and contains no recommendations as to the future legislative framework.

174. The economic impact study analyses the effects on inter-brand and intra-brand competition, on the creation of obstacles to internal market integration, and on competition in the after-sales service market. These effects were analysed in order to identify the impact on manufacturers, their official distribution networks, approved after-sales service providers, independent repairers, consumers, and manufacturers of spare parts and diagnostic systems.

175. In addition to the five legislative scenarios, a number of specific issues, considered to be variables capable of being applied to each scenario, were analysed separately and in the context of each appropriate scenario (for example, multi-branding and the link between sales and after-sales servicing).

176. At the same time, a study of consumer expectations was commissioned with a view to determining consumers' positions with regard to the current system of car distribution and possible alternatives for the future ([113]). These two studies complete the process of evaluation by the Commission of the block exemption regulation. They come on top of two other studies carried out in 2000 into the link between new vehicle sales and after-sales servicing and price differentials in the Community ([114]). All these studies are useful sources of information when it comes to determining the future framework for motor vehicle distribution.

177. After analysing the findings of the studies it has had carried out, in early 2002 the Commission will present a proposal for the future framework applicable to motor vehicle distribution as from September of that year. It goes without saying that it will examine every other available source of information ([115]).

([112]) The study's terms of reference may be consulted on the Competition Directorate-General's Internet site: http://europa.eu.int/comm/competition/car_sector/distribution. The study was entrusted to the firm of consultants Andersen following a call for tenders. It may be consulted at the abovementioned Internet address.

([113]) 'Customer preferences for existing and potential sales and servicing alternatives in automotive distribution', Dr Lademann & Partner, available at http://europa.eu.int/comm/competition/car_ sector/distribution.

([114]) These two studies may be consulted on the Competition Directorate-General's Internet site: http://europa.eu.int/comm/competition/car_sector/. 'The natural link between sales and service' (Autopolis), 'Car price differentials in the European Union: An economic analysis' (Hans Degryse and Frank Verboven — KU Leuven and CEPR). See also 2000 Competition Report, point 113.

([115]) Of these sources, mention may be made of a study commissioned by the European Automobile Manufacturers' Association (EAMA), also dealing with the economic effects of alternative distribution systems.

6.2. General assessment of the application of the block exemption regulation as regards new car prices

178. Every year the Commission compares the pre-tax prices of new cars in the Community ([116]). The comparison is carried out twice a year (in May and November) on the basis of the selling prices recommended by manufacturers for each Community Member State.

179. The situation on 1 May 2001 shows that, as in November 2000 and despite the continued depreciation of the pound sterling against the euro, prices in the United Kingdom — although they had decreased or remained stable — were still higher than in the euro zone. In the euro zone, Austria and Germany were still the most expensive countries. The Commission noted once more that the average price differential within the euro zone was well above 20 % in the cheapest segments (A to D), despite the fact that the large number of models in segments B to D should normally be a sign of strong competition. In general, Denmark, Finland, Greece, the Netherlands and Spain are the markets where the pre-tax prices of new cars are the lowest ([117]).

180. These price differentials are much higher than the limit laid down in the notice concerning Regulation (EEC) No 123/85 ([118]), i.e. 12 % ([119]). The notice is still in force, and deals with certain questions relating to Regulation (EC) No 1475/95, including price differentials. Above this limit, the Commission may withdraw the benefit of the exemption if the price differentials are due to obligations exempted by Regulation (EC) No 1475/95 ([120]).

181. These wide price differentials explain why many consumers continue to buy their cars in other Community countries, not without difficulty though, as can be seen from the steady stream of complaints reaching the Commission, most of the time for excessively long delivery periods.

6.3. Application of the block exemption regulation in 2001

182. The Commission adopted two infringement decisions with fines in 2001 against the two car manufacturers Volkswagen and DaimlerChrysler. It also approved Porsche's new distribution system.

6.3.1. Volkswagen ([121])

183. The Commission adopted a decision fining Volkswagen EUR 30.96 million for resale price maintenance in Germany for the new VW Passat. Volkswagen had sent circular letters in 1996 and 1997 to its German dealers telling them not to sell this model at prices below the recommended list price. Unlike the previous decision against Volkswagen, this second decision does not concern measures aimed at hindering cross-border sales. Resale price maintenance is, however, a hardcore restriction. This is the first decision on resale price maintenance in the car sector.

([116]) The comparison is required by Article 11 of the exemption regulation.

([117]) See Commission press releases IP/01/227, 19.2.2001 and IP/01/1051, 23.7.2001.

([118]) Commission notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) (now Article 81(3)) of the Treaty to certain categories of motor vehicle distribution and servicing agreements, Chapter II.1 (OJ C 17, 18.1.1985).

([119]) The differential may, however, exceed 12 % by six percentage points for a period of less than one year or in respect of an insignificant portion of the vehicles.

([120]) See Article 8 and the 31st recital of the regulation.

([121]) Case COMP/36.693 *Volkswagen*, Commission decision of 29.6.2001 (OJ L 262, 2.10.2001).

6.3.2. DaimlerChrysler ([122])

184. Following the receipt of complaints from consumers, the Commission opened an own-initiative proceeding against DaimlerChrysler. On 10 October, it adopted a decision fining DaimlerChrysler EUR 71.825 million for several infringements of Article 81 of the EC Treaty. The first infringement consisted of obstacles to parallel trade in Germany agreed between DaimlerChrysler and the members of its German distribution network. The application of Article 81 to these restrictions between DaimlerChrysler and its German agents resulted from the fact that these agents bear a considerable commercial risk linked to their activity ([123]). The second infringement consisted of the restriction of sales to independent leasing companies in Germany and Spain. Lastly, DaimlerChrysler participated in a price-fixing agreement in Belgium aimed at reducing rebates granted to consumers.

6.3.3. Porsche's distribution system

185. Following notification of Porsche's new distribution agreements ([124]), the Commission came to the conclusion that the agreements could be exempted under Regulation (EC) No 1475/95 after certain modifications had been made by Porsche. In particular, in establishing sales targets all sales are to be taken into account regardless of the buyer's place of residence and Porsche dealers are to be allowed to carry out online sales if consumers wish to buy over the Internet. The file was accordingly closed by comfort letter.

Box 4: Green light for Covisint, the automotive B2B marketplace ([1])

Introduction

In August, the Commission granted regulatory approval ([2]) for the creation of Covisint, a business-to-business (B2B) marketplace joint venture which had been notified earlier in the year. Covisint was formed by the major motor manufacturers Ford, DaimlerChrysler, General Motors, Renault and Nissan. A sixth carmaker, PSA Peugeot Citroën, later joined the project.

([1]) Case COMP/38.064 (OJ C 49, 15.2.2001); press release IP/01/1155, 31.7.2001.

([2]) All the competition authorities that have scrutinised Covisint have also given the project the green light. After negotiations with representatives of Covisint, the US Federal Trade Commission cleared the operation on the basis of the information available, although it reserved the right to re-open the proceeding should problems arise. The German Federal Cartel Office and the Austrian authorities have likewise cleared the project, and the Japanese authorities have not raised any objections to it.

([122]) Case COMP/36.264 *DaimlerChrysler*; press release IP/01/1394, 10.10.2001.

([123]) According to the guidelines on vertical restraints (OJ C 291, 13.10.2000), the only relevant criterion for determining whether Article 81(1) applies to the activity of commercial agents is whether or not the agent has to bear a risk linked to the sale of goods or services he is involved in. In this case, rebates granted by agents were taken off their commission and agents bore responsibilities with regard to transport; they also bought demonstration vehicles — a significant proportion of the total number of cars sold — and financed spare part stocks. The contract obliged them to supply warranty services (without being fully reimbursed) and after-sales services at their own risk.

([124]) Case COMP/37.886 *Porsche*.

Covisint is an electronic marketplace intended to provide the automotive industry with procurement, collaborative product development and supply chain management tools, and thereby reduce costs and improve efficiency in the supply chain. It is a purchaser-managed 'buy-side' exchange, unlike other exchanges such as SupplyOn, which are set up by the sellers of components. The carmakers that intend to purchase through the exchange (including Covisint's shareholders) account for about 63 % of worldwide car production. Most major suppliers of automotive components have also indicated their willingness to use the marketplace.

Potential concerns

B2B marketplaces such as Covisint are becoming very common. They potentially have a major impact on the way companies in certain industries do business, and are in general expected to have procompetitive effects. They should create more transparency, thereby helping to link more operators and to integrate markets, and they may also create market efficiencies by reducing search and information costs and improving inventory management, leading ultimately to lower prices for the end consumer.

In certain circumstances, however, negative effects on competition may outweigh market efficiencies.

Exchange of information

This relates to the ability of users to exchange or discover market-sensitive information on, for example, prices and quantities. Their ability to do so will usually depend on how the system is designed, in particular as regards users' ability to access each other's data.

Joint purchasing/selling

As in the 'bricks and mortar' world, this concern arises if users get together in order to restrict competition vis-à-vis their counterparts. This phenomenon is discussed extensively in the guidelines on horizontal restraints.

Investigation and analysis

The Covisint project does not constitute a merger, since the companies that created the exchange will not exercise joint or sole control over the new company. Covisint therefore fell to be examined under Article 81 of the EC Treaty rather than under the merger regulation, and was the first major B2B exchange to be looked at in this way. Covisint's novelty meant that it could potentially serve as a guide for the treatment of other similar projects.

After examining the notified agreements and the replies received to information requests, the Commission concluded that the notified project does not currently restrict competition within the meaning of Article 81(1) and sent the parties a comfort letter to that effect. In particular, the agreements contain adequate provisions to allay potential competition concerns of the types discussed above (1). This relates to joint purchasing (between car manufacturers or for automotive-specific products), but also to the exchange of confidential information, as the

(1) Carlsberg notice (OJ C 49, 15.2.2001).

agreements provide for adequate data protection through the use of firewalls and security rules. The Commission also notes that Covisint is open to all firms in the industry on a non-discriminatory basis, is based on open standards and allows both shareholders and other users to participate in other B2B exchanges.

6.4. Order of the Court of Justice in the Asia Motor France SA case ([125])

186. Asia Motor France, and other companies related to it, carried on the business of importing Japanese vehicles into France. In 1985 and 1988 they complained to the Commission about an alleged restrictive practice between five importers of Japanese cars (Toyota, Mazda, Honda, Mitsubishi and Nissan) which were said to have entered into an agreement with the French Government aimed at limiting Japanese car sales to 3 % of total annual motor vehicle sales and to have agreed among themselves to divide up this 3 % quota in such a way as to exclude any Japanese makes other than their own ([126]). The complaints were rejected by the Commission.

187. The Court's order of 20 September, which was favourable to the Commission, brought the case to an end. The Commission had good cause to reject the complaints inasmuch as the problems complained of resulted directly from the policy of the public authorities and not from an agreement between undertakings.

7. Financial services

188. In applying competition policy to the financial services sector, the overall objective is to achieve more competitive and efficient European financial markets. Such achievements contribute to the welfare of consumers and the delivery of a dynamic, knowledge-based European economy with higher economic growth.

189. The EU financial system is integrating progressively under the influence of globalisation, technological advances, the introduction of the euro and ongoing market liberalisation. The introduction of euro notes and coins on 1 January 2002 will further increase transparency and strengthen the forces of integration within the Union. Integration is resulting in increased levels of competition on certain markets. It also increases the need for greater vigilance in the application and enforcement of competition policy so as to ensure that financial markets remain open and competitive. There is a risk that companies might seek to protect themselves from increased levels of competition by entering into anticompetitive agreements or, where they are in a dominant position, by exercising their market power in a way which hinders the development of new and innovative business formats.

190. In 2001, major advances were made in the application and clarification of competition policy towards payment systems. This is of significant importance in view of the forthcoming introduction of a single payments area within the EU. In the area of financial infrastructure the policy objective is to facilitate competition, thereby unleashing market forces favourable to the establishment of a more efficient infrastructure. The Commission has started work on ensuring that competition policy is being fully respected in the so-called back office operations of securities transactions. The efficiency of these operations, referred to in the industry as clearing and settlement, have important implications for the overall efficiency of European capital markets.

([125]) Case C-1/01 P — order of the Court (second chamber) of 20.9.2001.

([126]) Case COMP/33.014 *Asia Motor.*

7.1. Competition in the clearing and settlement sector

191. On 15 February, the Committee of Wise Men on the Regulation of European Securities Markets, chaired by Mr Lamfalussy, published its final report. Its terms of reference were defined by the European Union's economics and finance ministers on 17 July 2000 with the aim of achieving a truly integrated European financial market.

192. In its report the Committee specifically refers to the clearing and settlement sector. It is convinced that further restructuring of this sector is necessary in the European Union. The process of consolidation should largely be in the hands of the private sector. The Committee states, however, that this does not mean that there are no public policy issues at stake. In particular, public policy should focus on competition issues and removing the kinds of obstacles and impediments that make consolidation difficult. The Committee clearly considers competition issues such as open and non-discriminatory access and exclusive agreements to be among the most important public policy issues.

193. The Committee suggests that the Commission should examine the situation in the field of clearing and settlement in order to ensure that the Community's competition policy is being properly respected in this crucial sector. Against that background and given that the Commission was already examining this sector, it has extended its examination by launching a formal in-depth ex officio inquiry. It is the first time that such a large-scale antitrust examination of the clearing and settlement sector has been undertaken.

194. The Commission had already identified a number of possible competition concerns in the field of clearing and settlement:

— first, market participants indicated that some settlement systems may be engaging in discriminatory pricing and applying dissimilar conditions to equivalent transactions;

— second, there may be exclusive arrangements between exchanges and clearing and settlement systems which restrict competition in clearing and settlement services; and

— third, market participants have pointed out the possible risk of excessive prices being charged for clearing and settlement services where the clearing and/or settlement system is held by the trading platform and trades on such platform have to be cleared and/or settled in that system (so-called 'vertical silos').

195. The purpose of the ex officio inquiry is to determine whether the above-mentioned possible competition concerns are real competition concerns, and if so, whether they can be addressed by applying EU competition law. The addressees of this inquiry are market participants including banks, trading platforms, and clearing and settlement systems.

7.1.1. Eurex ([127])

196. In December, the Commission closed by way of comfort letter the notification by Deutsche Börse AG and SWX Swiss Exchange ('the parents') of their joint venture Eurex, a cross-border exchange for electronic trading in financial derivatives, such as options and futures ([128]).

([127]) Case COMP/D1/37.557.

([128]) Press release IP/02/4, 3.1.2002.

197. The Commission considered that Eurex is a jointly controlled full-function joint venture and hence a concentration, but that it does not have a Community dimension. Pursuant to Article 22(1) of Regulation (EEC) No 4064/89, Regulation No 17/62 does not apply to concentrations except in relation to joint ventures that do not have a Community dimension and which have as their object or effect the coordination of the competitive behaviour of undertakings that remain independent. Usually the national competition authorities examine whether any such risk of coordination is present in the context of their merger analysis. No such analysis was carried out in this case because the transaction did not need to be and was not notified to the relevant national competition authorities.

198. The Commission therefore examined under Article 81(1) whether there is any risk of coordination of the parents' behaviour resulting from the concentration of part of their activities. The parents are active in a number of markets that are adjacent to the derivatives trading and clearing markets in which Eurex is present, such as those for the listing and trading services of securities (shares and bonds) and warrants, the provision of electronic exchange systems and the sale of market information.

199. The Commission published in August 2000 a notice seeking comments on its intention to adopt a favourable position in this case ([129]). The outcome of the Commission's examination is that there is no appreciable risk of coordination of the behaviour of the parents in these neighbouring markets.

7.2. Payment systems

200. On 9 August, the Commission adopted its first formal decision under Article 81 of the EC Treaty with regard to international payment cards in the *Visa International* case ([130]). The decision clarifies the Commission's policy with regard to a number of issues in this sector. It finds that certain provisions in the Visa International payment card scheme, which had been notified to the Commission for clearance, fall outside the scope of the prohibition of Article 81 and covers all types of international Visa cards (credit cards with revolving credit facility, deferred debit cards and direct debit cards). It relates exclusively to the five provisions in the Visa International rules described below:

(a) the no-discrimination rule (NDR), which prohibits merchants from charging cardholders extra for using their Visa card.

While considering that the NDR limits the freedom of merchants to set their own prices, the Commission came to the conclusion that this restriction cannot be said to have an appreciable negative effect on competition. Market studies in Sweden and the Netherlands — where the NDR has been abolished by national competition authorities — had shown that abolition did not have a significant effect on merchant fees;

(b) the modified rules on cross-border card issuing and merchant acquiring, which now allow Visa members to issue cards to consumers and contract with (all types of) merchants in other Member States, without prior establishment of a branch/subsidiary in the country concerned;

(c) the principle of territorial licensing, according to which banks normally need a licence to issue and acquire for each Member State.

([129]) OJ C 231, 11.8.2000, p. 2.

([130]) Case COMP/29.373 (OJ L 293, 10.11.2001).

Given that banks can obtain additional trademark licences for all Member States in which they are authorised to carry on banking activities, this principle is considered not to constitute an appreciable restriction of competition;

(d) the 'no acquiring without issuing' rule, which requires banks to issue a reasonable number of cards to cardholders first before starting merchant acquiring activities.

However, this rule is held to promote the development of the system by ensuring a large card base, thereby making the system more attractive for merchants;

(e) the honour all cards rule, according to which merchants must accept all valid cards with either the Visa (usually a credit or deferred debit card) or Electron (usually a direct debit card) brand, irrespective of the identity of the issuer, the nature of the transaction and the type of card being issued.

Given that the development of a payment system depends on issuers being able to rely on acceptance of their cards by merchants contracted to other acquirers, this rule is held to promote the development of the Visa payment scheme since it ensures the universal acceptance of Visa cards.

201. Visa cards are by their nature cross-border means of payment. The decision concludes that the provisions in the Visa International rules, which are applicable at least in the whole common market, have at least potentially an effect on trade between Member States.

202. Separately from the decision mentioned above, the Commission published in August a notice seeking comments on its intention to adopt a favourable position on Visa's so-called interregional multilateral interchange fee (or MIF) ([131]). The Commission had originally sent Visa a statement of objections on this, but Visa has now proposed changes which involve a reduction of the level of the fees, the introduction of objective criteria to set the level of the fees, and transparency vis-à-vis merchants on the level and the relative percentage of the cost categories included in the MIF.

7.3. Nuclear insurance pools

203. In January, the Commission closed by negative clearance comfort letter three notifications of nuclear insurance and reinsurance pools, namely the Swedish, Italian and Spanish pools ([132]). The Commission considered that three different relevant markets were involved, for nuclear property insurance, nuclear reinsurance and nuclear liability insurance. The first two of these markets are worldwide in extent, as is evidenced by examples of cross-border provision of services, and on those markets the share of each of the pools in question was well below 5 %, which led the Commission to conclude that the effect of the pooling agreements on competition on those markets was not appreciable. Markets for nuclear liability insurance, however, are still national, because of greatly differing national legislative requirements in this field, and the need for locally based claims-settlement facilities. Each of the pools in question had a monopoly on its national market for nuclear liability insurance. Nevertheless, the Commission concluded that without the pooling agreements there would be no supply of nuclear liability insurance with adequate coverage for the risks involved, and therefore the pooling agreements do not restrict competition in that respect.

([131]) Case COMP/29.373 (OJ C 226, 11.8.2001).

([132]) Cases COMP/37.363 *Svenska Atomförsäkringspoolen*, COMP/34.985 *Pool Italiano Rischi Atomici* and COMP/34.558 *Aseguradores Riesgos Nucleares.*

7.4. Convergence between banking and insurance

204. The term *bancassurance* (or *Allfinanz* in German) refers to the increasing convergence between banks and insurers. In retail finance, convergence is based on supposed distribution synergies: the ability to cross-sell insurance to bank customers and banking services to insurance policyholders. This is true in particular in Germany where recently enacted rules specifically favour private pension products, thus opening up a vast — and potentially very profitable — new area of business for banks and insurers. This has led to an increased number of *bancassurance* arrangements, be it in the form of cooperation agreements or of mergers.

205. From a competition analysis perspective, cooperation agreements or mergers between banks and insurers tend to pose little competitive concern because the companies involved will typically not have been present in each other's markets before. As to *bancassurance* mergers, see Case M.2431 *Allianz/ Dresdner*, discussed in Part II, under II, Merger Control.

206. As to *bancassurance* cooperation agreements, in November, the Commission, after publishing a Carlsberg notice, cleared by comfort letter the setting-up by Generali-controlled AMB, Germany's number four insurer, and Commerzbank, Germany's fourth biggest bank, of a joint venture with regard to the distribution of their respective retail banking and insurance products. The primary reasons for this clearance were that (a) the market overlaps were minimal, (b) the relevant interlocking directorships did not raise competition concerns, and (c) the parties will face strong competition from, among others, the Allianz/Dresdner and Münchener Rück/Ergo groups.

8. Information society

8.1. Statement of objections sent to Microsoft

207. On 30 August, the Commission sent a statement of objections to the US software company Microsoft Corp. ('Microsoft') ([133]) concerning several infringements of Article 82. This statement of objections extended and supplemented a previous statement issued in August 2000 following a complaint from the US company Sun Microsystems Inc. ([134]).

208. According to the statement of objections of 2001, Microsoft violates EC competition rules by leveraging its dominant position in the markets for personal computer operating systems and low-end server operating systems. The Commission considers that Microsoft has been withholding 'interface information' from competing software vendors, i.e. information needed to allow the vendors' server software to interoperate with Microsoft's 'Windows' PC and server software. Microsoft has also applied a policy of discriminatory and selective disclosure of interface information.

209. In the Commission's view, Microsoft thus engages in a leveraging strategy which is based on denying competitors' server software the opportunity to compete on the merits with its Windows software. Indeed, on account of the widespread usage of Windows in information technology networks, interoperability with Windows has an important influence on customers' purchasing decisions.

210. Furthermore, the Commission believes that Microsoft abuses its dominant position by means of its licensing policy for Windows 2000. As a result of Microsoft's all-inclusive licence, customers have to pay

([133]) Case COMP/37.792; press release IP/01/1232, 30.8.2001.

([134]) Case COMP/37.245, which is now dealt with jointly with Case COMP/37.792 under case number COMP/37.792.

for a full package of services even if they would prefer to obtain some services from competing server providers. Thus customers who are already using Windows and who want to buy competing services would have to pay double licensing fees. This policy will consequently drive consumers towards Microsoft server products, thereby reducing their choice for competing software and foreclosing competition.

211. Finally, with respect to Microsoft's Media Player (a 'streaming media' software program allowing for fast transmission via the Internet and for playback on PCs of audio and video files), the Commission takes the view that the tying of the Media Player with the Windows PC operating system distorts competition on the merits. Given consumers' tendency to use the pre-installed configuration on their desktop, this tying forecloses other vendors of 'streaming media' software.

212. The Commission takes note of the fact that the United States Court of Appeals ruled on 28 June that Microsoft violated section 2 of the Sherman Act by employing anticompetitive means to maintain a monopoly in the operating systems market. The Commission is closely following the outcome of this case and notes that the US Department of Justice and several states agreed on a proposed final judgment settling the case whereas other states continue the litigation. Though any outcome of the US case might affect some of the practices investigated by the Commission, the US and EC cases do not address the same facts and are thus complementary.

8.2. Information society and the Internet

213. The creation of conditions of an open and competitive environment for the development of the Internet and e-commerce remains the primary goal of the Commission. Clearly, the existing competition rules are able to deal with the peculiarities of the Internet due to their appropriate level of abstraction. The competition rules are remarkably adaptable to changing economic circumstances, including those resulting from the fundamental change in the way of doing business in the Internet economy.

214. Competition policy concerns arose in respect of telecommunications infrastructure used for Internet traffic. Such concerns related to a variety of markets, notably broadband (high capacity) and narrowband (low capacity) Internet access markets as well as markets relating to Internet connectivity.

215. The lack of competition in the local access markets in all Member States, in particular for broadband access, was again identified as a major impediment to the deployment of the Internet and Internet services in Europe. Earlier, the Commission had initiated important policy steps in this respect such as the regulation on 'unbundled access to the local loop' and the sector inquiry on the local loop ([135]), and is now ready to look for even further initiatives. The Commission continued to consider any competitive pressure that might come from alternative broadband access platforms, including mobile wireless access. However, while mobile wireless access may put a competitive check on the currently dominating local loop technology, it is equally important to supervise market-dominating players in the mobile telephony sector.

216. Concerns have also become apparent in the area of Internet governance, in particular relating to Internet domain names. The cases the Commission is dealing with involve complaints against registries of top-level domain names under Article 82. European competition rules doubtless do apply to the domain name system. In general, the Commission believes that speculative, discriminatory and abusive registration of Internet domain names must be avoided, as this is crucial to securing an open and competitive environment for the Internet.

([135]) See Section I.C.3.4.

9. Sport

217. In its report to the Helsinki European Council on sport ([136]), the Commission stated its position on the manner of reconciling the different functions of sport. The Council of the European Union in its declaration annexed to the conclusions of the Nice European Council ([137]) stressed the need to take account, in all action by the Community, of 'the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured'.

218. The declaration underlines the Council's support for the independence of sports organisations and their right to organise themselves through appropriate associative structures. It is thus the task of sports organisations to organise and promote their particular sports, particularly as regards the specifically sporting rules applicable and the make-up of national teams. In performing this task, due regard must, of course, be had to national and Community legislation.

219. The Council noted especially that sports federations play a central role in ensuring the essential solidarity between recreational sport and top-level sport and stressed the principles which must guide them: access to sports for the public at large, support for amateur sports, non-discrimination, equality of opportunities, training, health protection and measures to combat doping.

220. In 2001, the Commission had the opportunity, in four competition cases, to put into practice the principles enunciated by the Council in its declaration.

Box 5: Footballer transfers

On 5 March, Commissioners Monti, Reding and Diamantopoulou and the Presidents of FIFA and UEFA finalised the discussions on international footballer transfers. FIFA and UEFA undertook to adopt new transfer rules on the basis of a number of principles ([1]), including three main ones which seek to promote the training of young players and to ensure the stability of teams as well as the integrity, regularity and proper functioning of competitions, in the context of the specific features of football, so as to safeguard the interests of fans and spectators of the sport.

(a) The first topic of discussion was training compensation. The Commission has always supported the idea of training compensation linked to the cost of training, including at the end of a player's contract. A young footballer, that is to say one below the age of 23, is considered to undergo training up to the age of 21. If he is transferred to another club, it is only right that the club which trained him should be compensated for the cost incurred in doing so. The difficulty lies, of course, in calculating the level of that cost. The Commission has agreed that this may be higher than the actual cost of training the footballer in question, taking into account the performance of the training centre. Where a young footballer plays for several clubs in succession, the club which originally trained him will receive part of the training compensation he receives.

([1]) Press release IP/01/314, 6.3.2001.

([136]) Report from the Commission to the European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework (COM(1999) 644 final, 10.12.1999).

([137]) Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies.

(b) The second point of concern was contracts, and in particular the question of the limitation of their duration, one of the aims being to prevent the *Bosman* (Case C-415/93 *Bosman* [1995] ECR I-4921) judgment from being circumvented. Contracts are thus to have a minimum duration of one year and a maximum duration of five years to prevent competition-distorting transfers in mid-season. Where they do take place, such transfers must be limited to exceptional cases such as injury or a complete breakdown in relations between a player and his trainer. As to the termination of contracts, the Commission favours a balanced system of unilateral termination. FIFA used to require the agreement of both clubs before a footballer could be transferred while still under contract. Nowadays, a player may be transferred without this dual agreement, but compensation may either be provided for directly in the player's contract or be justified by the club. Exorbitant amounts may be appealed for in front of the courts. Club and federation managers have stressed, moreover, that a team is built up over a number of years and that the departure of a player after only one or two years undermines this work. To limit such damaging terminations, a system of penalties, which may consist of up to four months' suspension at the end of the first or second year, has therefore been introduced. On the other hand, such penalties may no longer be imposed at the end of the third year. This system therefore limits the termination of contracts during the first two years but allows it after the third year. A balance has thus been struck between the interests of the various parties. A degree of flexibility has also been introduced to take account of the 'valid sporting reasons' rule.

(c) Thirdly, joint arbitration bodies, composed of representatives of players and clubs, are being set up. A Football Arbitration Tribunal, an appeal body, one chamber of which will also have a joint composition, will determine disputes concerning international transfers. These new arbitration bodies will deal rapidly with the cases that come before them, although this will not prevent players from bringing actions before the courts if they so wish — something that was not allowed under the old FIFA rules.

9.1. Formula One

221. The Formula One case is extremely important both in economic and financial terms and because it involves the organisation of a sport within an international association. In 1999, the Commission found that the Fédération Internationale de l'Automobile (FIA) was facing a conflict of interest between its role as the body regulating the sport and its activity as organiser of motor racing championships. This situation favoured the series organised by the FIA, and in particular the Formula One championship. The Commission also queried the terms of the contracts between the FOA, the company which administers the television rights to Formula One races, and broadcasters because they made it possible to block the organisation of motor sports events that would have competed with Formula One races.

222. The Commission finally reached an agreement with the FIA and FOA. Under the solution agreed on, which was published in the Official Journal in June, the FIA is to withdraw from business activities in order to safeguard its independence and impartiality as a regulatory body. It has therefore either waived its TV rights or transferred them to the promoters concerned. The FIA has also made substantial amendments to the rules by establishing clearly defined criteria for granting FIA licences to sports events and the respective participants. As far as commercial activities are concerned, the FOA has removed the anticompetitive clauses from its agreements with race circuits and television channels and ceased promoting rallies.

223. This new situation will have beneficial effects for motor sport in Europe. The improvement of the FIA's regulatory arrangements will contribute to enforcement of the necessary safety measures without harming the business interests of organisers that are independent of the FIA. The FIA's vested interest in favouring series carrying the FIA label has been neutralised, since the federation will in future receive the same income from all series. The freedom to operate, improved transparency and the assurance of high safety standards go to make up an environment that will be favourable to the continued development of motor sport and a unique type of sports organisation.

9.2. UEFA

224. The UEFA regulations on the broadcasting of sporting fixtures originally submitted to the Commission were highly complex and very broad in scope. The broadcasting of football matches was prohibited throughout the weekend. The Commission has tried to strike a balance between the interest of the sport and compliance with the competition rules. As from the 2000/01 season, the new UEFA regulations will authorise national associations to prevent the broadcasting of fixtures within their territories for only two and a half hours either on Saturdays or on Sundays at a time when the major national matches are taking place.

9.3. Grants to French professional football clubs

225. This case is covered by Articles 87 et seq. of the EC Treaty, that is to say the provisions on State aid. The French authorities wanted the Commission to adopt a position on what was for it a new topic, namely State aid to sport for the financing of training centres for young players. The Commission authorised the award of the grants concerned in view of their educational and integrative objective and the little impact they had on competition between the leading clubs.

226. In 2002, the Commission will continue to apply the principles set forth in the Nice declaration in its scrutiny of two cases the investigation of which is coming to a close, namely the FIFA regulations governing the activities of players' agents and the UEFA rule on the ownership or economic control by one financial operator of several sporting clubs taking part in the same competition. The Commission is also investigating a number of cases involving the joint sale of exclusive rights to sports broadcast events to only one broadcaster per country for a period of several years.

10. Pharmaceuticals

227. From a policy point of view, the Commission's antitrust activity in the pharmaceutical sector saw two developments, in the course of 2001, which are worth mentioning. In both instances, the Commission was invited to take into account the key importance of research and development in this sector.

228. First, the Commission took further steps to preserve parallel trade in this sector. It did so, on the one hand, by appealing against the judgment handed down by the Court of First Instance (CFI) on 26 October 2000 in a case concerning Bayer's cardiovascular product Adalat ([138]) and, on the other hand, by adopting a prohibition decision against GlaxoWellcome's dual pricing system for around 80 drugs sold in Spain.

([138]) Case T-41/96 *Bayer* v *Commission*, [2000] ECR II-3383.

229. Second, the Commission's departments assessed and cleared two joint ventures set up by pharmaceutical companies for the purpose of developing, manufacturing and selling certain novel drugs in the light of the Commission's recent guidelines on horizontal restrictions of competition ([139]).

10.1. Parallel trade: Adalat, GlaxoWellcome

10.1.1. Adalat

230. Early in January, the Commission lodged an appeal ([140]) against the judgment by which the CFI had annulled its decision prohibiting an agreement between Bayer and wholesalers located in Spain and France containing an export ban for the drug Adalat ([141]). The issues which are now before the European Court of Justice (ECJ) are (i) under what conditions dealers can be said to agree with their supplier on a particular restriction of competition and (ii) in what circumstances this restriction can be said to amount to an export ban.

231. These may appear to be narrow legal issues but they are vital for the safeguarding of the Commission's policy concerning vertical territorial restraints in this sector as well as in other sectors. In the Commission's view, the CFI has departed from earlier case law set by the ECJ by giving too strict a reading of the concepts of 'agreement' and 'export ban' ([142]). This reading — if not overruled by the ECJ — would enable companies to design policies directed against parallel trade in such a way that their actions fall outside the scope of Article 81 of the EC Treaty. This could in turn mean the end of the Commission's policy to preserve parallel trade in the pharmaceutical and other sectors while making a qualitative assessment of the alleged merits behind the industry's actions.

10.1.2. GlaxoWellcome ([143])

232. It is that sort of qualitative assessment that the Commission has undertaken in the decision addressed to GlaxoSmithKline (GSK) prohibiting a dual pricing system under which GlaxoWellcome (GW) intends to charge Spanish wholesalers a higher price for drugs which they export than for drugs which they resell for consumption in Spain.

233. In its decision, the Commission does not dwell on the issue of whether or not there is an 'agreement' within the meaning of Article 81(1), simply because there is evidence that most dealers have subscribed to GW's pricing system which was contained in its new sales conditions. In the context of Article 81(1), the Commission does concede GW's point that the pharmaceutical sector is heavily regulated in that national authorities often have their say in the setting of sales prices and that they all have reimbursement schemes which turn patients into customers who are not particularly price-sensitive. It is also evident that the lack of harmonisation between national laws leads to a certain discrepancy of price levels between Member States. Yet the Commission holds the view — in line with standard case law — that this lack of harmonisation does not give the pharmaceutical companies the right to consolidate this price discrepancy by charging higher prices in lower-price countries where drugs are exported to higher-price countries. In the Commission's opinion, such dual pricing systems unduly perpetuate the segmentation of national markets.

([139]) Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (OJ C 3, 6.1.2001).

([140]) Cases C-2/01 and 3/01P. The Bundesverband Arzneimittel-Importeure has lodged a separate appeal against the CFI's judgment. The Court of Justice has joined the two appeal cases.

([141]) Case COMP/34.279; Commission decision of 10.1.1996 (OJ L 201, 9.8.1996); press release IP/96/19, 10.1.1996.

([142]) For an executive summary of the Commission's main grounds for appeal, see OJ C 79, 10.3.2001.

([143]) Case COMP/36.957; Commission decision of 8.5.2001 (OJ L 302, 17.11.2001); press release IP/01/661, 8.5.2001.

234. The Commission nevertheless goes on to examine at length GW's contention that this segmentation of national markets brings benefits to consumers and hence that its dual pricing system qualifies for exemption under Article 81(3). It is actually the first case in which a pharmaceutical company has invited the Commission to make such an assessment. GW advances, by and large, two arguments, both of which are rebutted by the Commission.

235. GW argues first that parallel trade causes losses of revenue, that this reduces its R&D budget (roughly 15 % of its costs) and hence that this weakens its capacity to develop new, innovative drugs. In this regard, the Commission observes that any losses of revenue could just as well be accounted for in GW's marketing budget (the remaining 85 % of its costs). This does appear to be the more plausible alternative since the pharmaceutical sector is one in which R&D investments are among the highest in the economy and in which innovation — more than price — is the prime parameter of competition. GW also argues that parallel trade causes delays in the market entry of drugs in low-price countries. The Commission finds the evidence unconvincing.

236. GW has meanwhile sought to have the Commission's decision annulled ([144]).

237. All the issues raised by *Adalat* and *Glaxo* are also present in many other pending notification cases. Several pharmaceutical companies, including Merck, have asked the Commission to grant them negative clearance, or at least exemption, for their supply quota systems. These systems, which are said to be unilaterally imposed on wholesalers, limit the quantities of drugs supplied to wholesalers by reference to their past domestic sales. The pharmaceutical companies invoke production and distribution planning as their main justification. Many wholesalers have long-standing complaints against these systems. Now that the Commission has adopted its *Glaxo* decision, its departments have started examining these supply quota systems in more detail.

10.2. Joint ventures

238. The Commission recognises how important research and development activities are in the pharmaceutical sector. In the course of 2001, its departments issued comfort letters in two cases in which pharmaceutical companies had notified a cooperative joint venture encompassing development, production and sales of new drugs. The two cases raised issues under the Commission's guidelines concerning horizontal restrictions of competition.

10.2.1. Pfizer/EISAI ([145])

239. In the first case, Pfizer (USA) had decided to cooperate with EISAI (Japan) to bring an anti-Alzheimer product to market. Pfizer would drop its own pipeline product in favour of that of EISAI, which would take care of the bulk of the R&D and production activity. Pfizer would use its worldwide distribution network to handle most of the marketing. By the time both parties notified their cooperation, their product (commonly known under the brand name Aricept) had already reached the market whereas virtually none of the competing R&D joint ventures had succeeded in bringing a rival product to market. Aricept's high market share indicated that it held a dominant position in many Member States.

240. The Commission considered the fact that Pfizer had given up its R&D activity to be a loss of competition within the meaning of Article 81(1). Had EISAI chosen to team up with a strong marketing partner which did not have a pipeline product of its own, there would have been more competition in this

([144]) Case C-168/01 P.

([145]) Case COMP/36.932.

market. However, in view of the obvious consumer benefits, the Commission departments saw sufficient grounds to issue an exemption. The high market shares were not held against the parties because they resulted from the so-called 'first mover' advantage. The duration of the exemption was, however, limited to seven years starting from market introduction of the drug because the parties had not demonstrated that they needed a longer period to recoup their relatively small investments ([146]).

10.2.2. Pfizer/Aventis ([147])

241. In the second case, Pfizer (USA) was involved in cooperation with one other major player (Aventis) and a smaller USA-based research company called Inhale. The aim was to develop, manufacture and sell an inhalable insulin product in a market which so far comprises only injectable insulin. Pfizer was not present at all in the (injectable) insulin market and Aventis was only the number three player, lagging behind the two leading manufacturers (Novo Nordisk and Eli Lilly) in most Member States.

242. For this reason, the joint venture (in reality a series of separate joint ventures) was not considered to raise a competition issue under Article 81(1). However, a non-compete obligation (30 years plus 5 years post-termination to organise the practicalities of winding up the cooperation) was considered too long to qualify as an ancillary restraint. The parties gave a commitment to reduce this period to 20 years (plus 3 years post-termination). The Commission departments accepted the non-compete clause in view of the relatively weak market position of the parties involved and the lack of any appreciable foreclosure effect stemming from the exclusive dealing arrangements between these parties. Under the circumstances, the Commission departments saw no need to determine with absolute precision the exact length of the period which the parties would need to recoup their large investments.

243. It should be noted that the two cases involved cooperation at the marketing level in the form of co-promotion or co-marketing. In the case of co-promotion, two or more companies use their sales force to market the product under a single trademark, whereas co-marketing means that each company sells the product under its own trademark. Some countries prohibit co-promotion on the ground that the co-promotor does not hold a marketing authorisation for the relevant drug. In these countries, companies will choose the co-marketing technique.

([146]) See guidelines on horizontal agreements, point 73 (OJ C 3, 6.1.2001).

([147]) Case COMP/37.590.

D — Statistics

Figure 1
New cases

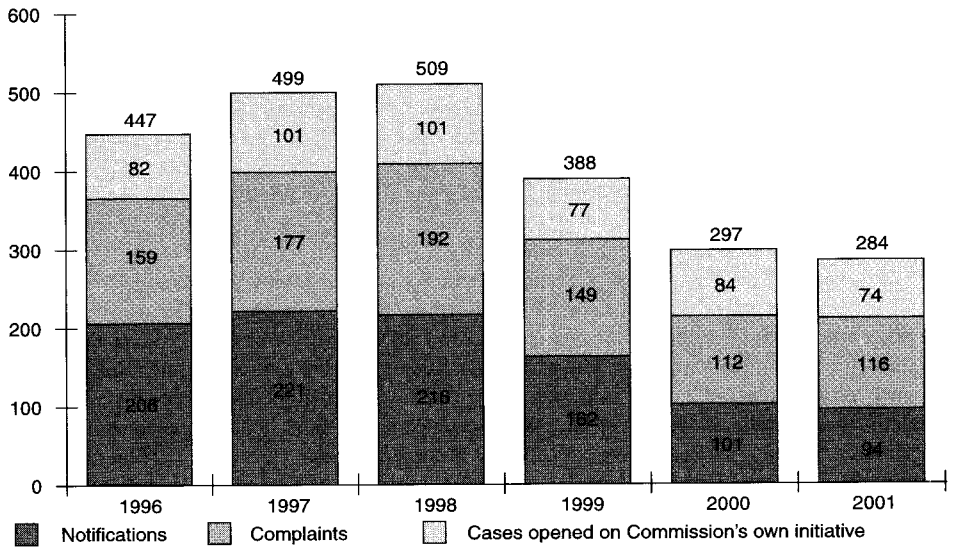


Figure 2
Cases closed

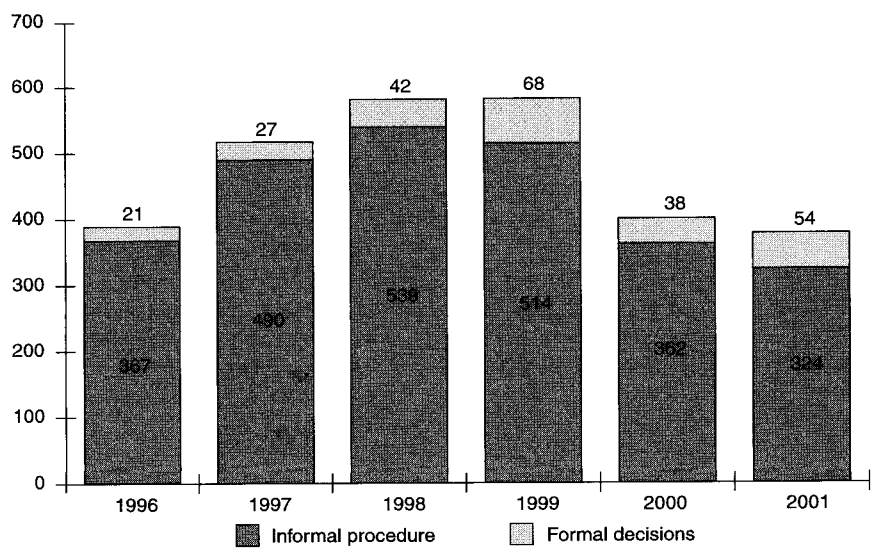
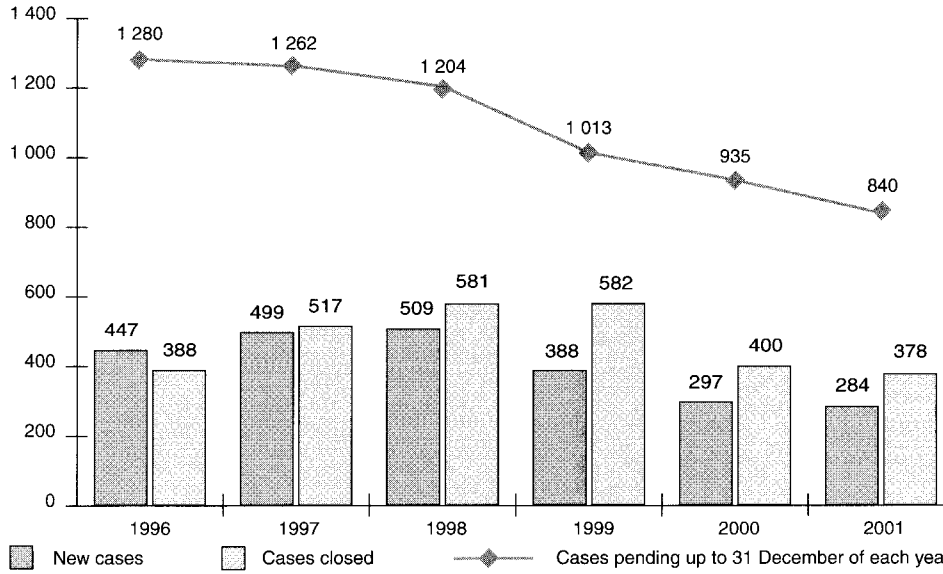


Figure 3
Changes in the number of cases pending at the year end



II — MERGER CONTROL

A — General policy and new developments

1. Introduction — general developments

244. After seven years of rapid growth in merger activity, the number of merger notifications declined slightly in 2001, to 335 from 345 the previous year.

245. The Commission took 339 final decisions, 20 of which followed in-depth investigations (five prohibitions, five clearances without conditions and 10 conditional clearance decisions) and 13 of which were conditional clearances at the end of an initial investigation ('phase I'). The Commission cleared 312 cases in phase I. In all, 140 decisions (45 %) of the first-phase clearance decisions were taken in accordance with the simplified procedures introduced in September 2000. In addition, the Commission took seven referral decisions pursuant to Article 9 of the merger regulation and opened in-depth investigations in 22 cases, three of which were outstanding at year's end ([148]).

246. Merger activity in the telecoms and media sectors, which were particularly affected by the decline in stock prices, almost came to a standstill in 2001. While there were 65 notifications in these sectors in 2000, the number fell to four in 2001, with a marked drop from 13 cases to one between the fourth quarter of 2000 and the first quarter of 2001.

247. The most frequent type of merger and acquisition assessed by the Commission involved two (or more) EU companies. The number of transactions between EU and non-EU undertakings decreased from 2000 to 2001, while the number of domestic transactions between companies based in the same country increased.

	2000	2001
Domestic	74	85
Intra-EU	144	138
EU–non-EU	102	82
Non-EU–non-EU	31	36

248. Despite the slightly lower total number of notifications, there were five prohibition decisions ([149]), the highest number of prohibitions in a single year so far. In addition, five notifications were withdrawn by the notifying parties in phase II (partly as a result of the Commission's competition concerns and partly for unrelated reasons). All five prohibition decisions were taken on the basis of the creation (four cases) or strengthening (one case) of a single-dominance position. Potential collective dominance was at the centre of five of this year's phase II cases. In *MAN/Auwärter* ([150]) and in two cases analysed jointly, *UPM Kymmene/Haindl* ([151]) and *Norske Skog/Parenco/Walsum* ([152]), the in-depth investigations led to

([148]) COMP/M.2495 — *Haniel/Fels*; COMP/M.2547 — *Bayer/Aventis Crop Science*; and COMP/M.2568 — *Haniel/Ytong*.
([149]) In accordance with Article 8(3) of the merger regulation.
([150]) COMP/M.2201, 26.6.2001.
([151]) COMP/M.2498, 21.11.2001.
([152]) COMP/M.2499, 21.11.2001.

unconditional clearance of the transactions. In two other cases examined in parallel, *BP/E.ON* ([153]) and *Shell/DEA* ([154]), the Commission cleared the transactions subject to commitments that were offered by the parties to address the concerns of collective dominance on the market for ethylene on the pipeline network ARG+, which links Belgium, Germany and the Netherlands.

249. Despite the increase in prohibitions, the percentage of notified concentrations resulting in a prohibition decision remains modest at 1 %, or 2 % if phase II withdrawals are included. There is no systematic upward or downward trend in the risk incurred by a notifying party of a notified merger resulting in withdrawal in phase II or a prohibition decision, as the chart below indicates.

Prohibitions and phase II withdrawals, 1991–2001

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	**Total**
Notifications	63	60	58	95	110	131	172	235	292	345	296	**1 857**
Prohibitions	1			1	2	3	1	2	1	2	5	**18**
Phase II withdrawals			1			1		4	5	6	3	**20**
Regulatory risk (%)	1.6	0.0	1.7	1.1	1.8	3.1	0.6	2.6	2.1	2.3	2.7	**2.0**

2. National markets and potential competition

250. About half of this year's prohibitions and phase II withdrawals involved mergers of companies based in the same country. In most of these cases, competition concerns arose in several countries, and not only in the countries where the merging parties' headquarters were located. Nevertheless, prohibitions of 'domestic' mergers tend to provoke the most vocal criticism and lobbying of national politicians by the companies involved, as seen after this year's prohibition decisions in *General Electric/Honeywell* ([155]) and *Schneider/Legrand* ([156]) as well as the phase II withdrawal of *SEB/ Föreningssparbanken* ([157]). Since 1990, 12 out of 18 prohibitions have related to such domestic mergers. Companies based in the following countries were affected by the 12 'domestic' prohibitions: Germany (three), the Netherlands (two cases, both as a result of an Article 22 referral by the Netherlands), the United States (two) and Finland (Article 22 referral), France, South Africa ([158]), Sweden and the United Kingdom (one case each). The geographic spread of prohibited domestic mergers appears to reflect the respective countries' relative size, with no discernible difference between any countries or groups of countries. In particular, the data do not support any 'small-country bias' in the Commission's merger regime. Arguably, seven prohibitions of domestic mergers affected companies headquartered in large economies (D, F, UK and the United States), two concerned small countries (FIN, S), while the status of the Netherlands and South Africa would depend on the size measure applied (population, GDP, surface area, etc.). In addition to the companies' respective home markets, most of the prohibited domestic mergers also created competition problems in other EEA countries.

([153]) COMP/M.2533, 6.9.2001.
([154]) COMP/M.2389, 23.8.2001.
([155]) COMP/M.2220, 3.7.2001.
([156]) COMP/M.2282, 10.10.2001.
([157]) COMP/M.2380, case withdrawn.
([158]) Case COMP/M.619 *Gencor/Lonrho*: although Lonrho is a UK-registered company, its main activities are located in southern Africa.

251. Given the small number of prohibitions overall, there is limited scope for statistically significant conclusions to be drawn from the distribution of prohibitions across different countries and over time. With this note of caution in mind, the table below indicates the number of undertakings affected by a prohibition decision along with the number of parties involved (i.e., two or more per transaction) from each country where companies have been affected by a prohibition decision. Among the EEA countries, companies from Denmark, Finland, France, Germany, Norway and Sweden have faced an above-average proportion of prohibitions, whereas British and Italian firms had somewhat fewer prohibitions. US undertakings have also faced a below-average prohibition risk. However, overall, the cross-country distribution of the relative number of prohibitions is not statistically different from a normal (random) distribution.

	A	D	DK	F	I	NL	S	FIN	UK	NO	CA	Ch.Is	ZA	US
Affected by prohibition (excl. Art. 22)	1	11	1	7	1	2	4	1	3	1	1	1	1	4
No of parties	119	1 007	79	599	310	334	260	85	724	70	49	24	21	609
Undertakings affected (%)	0.8	1.1	1.3	1.2	0.3	0.6	1.5	1.2	0.4	1.4	2.0	4.2	4.8	0.7

252. Horizontal mergers of companies in the same geographic and product markets may cause competition problems because they increase market shares and lead to the removal of a direct competitor. This analysis is independent of market size because merger control's fundamental objective of protecting consumers against the effects of monopoly power (higher prices, lower quality, lower production, less innovation) applies universally, regardless of whether these consumers are based in a small or a large country. In 2001, the blocked transactions *Schneider/Legrand* ([159]), *SCA/Metsä Tissue* ([160]) and *CVC/Lenzing* ([161]) as well as the abandoned Swedish bank merger *SEB/Föreningssparbanken* ([162]) fell in this category. All three combinations would have given the merging parties exceptionally high market shares in the relevant geographic and product markets. While in *Schneider/Legrand*, *SCA/Metsä Tissue* and *SEB/Föreningssparbanken* the relevant geographic markets were national, the *CVC/Lenzing* transaction would have led to dominant positions at a European level.

2.1. Definition of the relevant geographic market and potential competition

253. A central element in competition analysis is the definition of the relevant geographic market. The purpose of defining a relevant geographic (as well as product) market is to identify the competitors of the undertakings concerned by a particular case that are capable of constraining their behaviour. The approach is laid down in the merger regulation and represents established practice in most of the world's competition authorities. Demand-side analysis and supply-side analysis are both used in defining geographic markets. In 2001, the Commission analysed market definitions adopted in its merger decisions over the past five years. Out of 1 295 decisions, in 184 (14.2 %) markets were defined as national. In 187 (14.4 %), markets were wider than national. In the remaining 924 cases (71.4 %), the scope of the geographic markets was left open because competition concerns would not have arisen under any alternative definition, whether EEA-wide, regional or national. Thus, only in a minority of cases was the geographic market defined as national.

([159]) COMP/M.2283, 10.10.2001.
([160]) COMP/M.2097, 31.1.2001.
([161]) COMP/M.2187, 17.10.2001.
([162]) COMP/M.2380, case withdrawn.

254. However, market definition is only the beginning of merger analysis, not the end. Even in cases where, for industry-specific reasons, geographic markets are defined narrowly, e.g., as national, the existence of potential competitors has in the past led the Commission to accept relatively high national market shares.

255. A case in point is this year's decision in *SCA/Metsä Tissue* ([163]). The case concerned the proposed takeover by SCA Mölnlycke Holding BV, controlled by Sweden's Svenska Cellulosa AB, of its Finnish competitor Metsä Tissue Corp. Both companies are active in the production of tissue paper products, such as toilet paper, kitchen towels, handkerchiefs and napkins, in a number of EEA countries. The Commission defined the relevant geographic markets as national because the market investigation found that suppliers could charge customers (supermarkets) different prices in different countries (price discrimination) and because of the presence of significant transport costs. However, in doing so, the Commission did not consider each national market in isolation, but took account of all actual and potential imports into each country in question. For example, the competition analysis for the Swedish market involved identification of all plants, in whatever country, that can supply Swedish supermarkets with tissue products at competitive cost, the number of such credible competitors left after the merger, their production capacity and brand ownership. By taking into account all existing and potential competitors for tissue products, the Commission concluded that market shares in certain national markets that would, in isolation, appear high created no competition problems in this specific case. Conversely, the investigation found that no potential competitors with sufficient production capacity existed to challenge the parties' very high market shares (up to 90 %) in Denmark, Finland, Norway and Sweden, which eventually led the Commission to prohibit the transaction. In Finland, the competition concerns were due primarily to the removal of a potential competitor.

256. A market's openness to entry by new competitors is of key importance in this analysis. High barriers to entry continue to be an important factor in determining whether an operation poses competition problems. In *CVC/Lenzing* ([164]), for instance, the Commission found such high entry barriers in EEA markets in spite of low trade barriers, due to the high capital investment necessary, barriers of perceived quality, cultural barriers and barriers concerning supply logistics. On the other hand, the absence of regulatory barriers or local distribution requirements and the existence of credible competitors in sufficient proximity all raise the market shares that may be acceptable at the national level. Small countries tend to be at a distinct 'advantage' in this respect and the Commission has regularly accepted higher market shares in small economies than in the larger markets. Further cases that were cleared by the Commission because of potential competition or because the removal of regulatory barriers had led to a widening of geographic markets include *Philips/Agilent Health Care Solutions* ([165]), *Pirelli/BICC* ([166]) and *Gerling/NCM* ([167]). These transactions led to national market shares of between 40 % and over 60 % in certain countries.

257. Conversely, the removal through merger or acquisition of a potential competitor that has prevented a company from becoming dominant can lead to competition problems, even if there is no direct overlap in the undertakings' current activities. Several phase II investigations in 2001 focused on the removal of potential competitors.

([163]) COMP/M.2097, 31.1.2001 (OJ L 57, 27.2.2002).
([164]) COMP/M.2187, 17.10.2001.
([165]) COMP/M.2256, 2.3.2001.
([166]) COMP/M.1882, 19.7.2000.
([167]) COMP/M.2602, 11.12.2001.

258. In the *EdF/EnBW* case ([168]), the Commission authorised, subject to conditions, the acquisition of joint control of German electricity company Energie Baden-Württemberg AG (EnBW) by Electricité de France (EdF) and Zweckverband Oberschwäbische Elektrizitätswerke (OEW), an association of nine south-west German districts.

259. The investigation concluded that EdF enjoyed a dominant position on the French market for the supply of eligible customers, with a market share of approximately 90 %. Besides EdF, there are three other electricity producers active in France, CNR, Société Nationale d'Electricité Thermique (SNET) and Harpen AG, which belongs to the RWE group. The three, however, account for only a small share of electricity generation and supply their production mainly to EdF. EnBW was considered one of the most likely potential competitors in the French market and would be one of the strategically best-placed companies to enter the market for the supply of eligible customers. EnBW's supply area is in the south-west of Germany and has a long common border with France. Two of the four Franco-German interconnectors are in the EnBW supply area. By acquiring EnBW, EdF would also increase its potential for retaliation in Germany and would thus become less exposed to competition in France. The remedies accepted in this case are discussed at point 300 below.

260. The competition concerns raised by the *Grupo Villar Mir/EnBW/Hidroeléctrica del Cantábrico* transaction ([169]), which was also authorised subject to conditions, were of a very similar nature. The transaction involved the acquisition of joint control over the Spanish electricity company Hidroeléctrica del Cantábrico (Hidrocantábrico) by Spanish Grupo Villar Mir and Energie Baden-Württemberg (EnBW), a German company jointly controlled by Electricité de France (EdF).

261. The Commission was concerned that the deal would strengthen the existing collective dominant position on the Spanish wholesale market for electricity held by Endesa and Iberdrola. EdF would after the transaction have had little incentive to increase commercial capacity on the French-Spanish interconnector, which was already scarce, creating a barrier for electricity imports into Spain and resulting in the market's isolation from other continental electricity markets to the detriment of customers. To eliminate these concerns, EdF and the operator of the French electricity grid, RTE, undertook to substantially increase the commercial capacity from 1 100 MW to about 4 000 MW on the interconnector between France and Spain, thereby creating the conditions for greater electricity trade volumes to and from Spain to the benefit of Spanish customers.

262. The elimination of potential competition also led to competition concerns in *Südzucker/Saint Louis* ([170]), a transaction cleared subject to conditions following a phase II investigation. The Commission's investigation revealed that the operation would have strengthened Südzucker's already dominant position in the markets for industrial sugar and retail sugar in southern Germany and Belgium because Saint Louis would cease to exist as an independent and credible potential competitor to Südzucker in these geographical areas. The importance of preserving potential competition is all the greater in highly regulated markets such as sugar where there is little competition and customers are heavily dependent on a limited number of suppliers.

2.2. Definition of the relevant product market

263. The dynamic analysis of potential competition applies not only to geographic market definition but also to product markets as highlighted by this year's decision in the *Tetra Laval/Sidel* case ([171]).

([168]) COMP/M.1853, 7.2.2001.
([169]) COMP/M.2434, 26.9.2001.
([170]) COMP/M.2530, 20.12.2001.
([171]) COMP/M.2416, 30.10.2001.

264. The Commission undertook a detailed investigation of this proposed concentration in the packaging sector between Tetra Laval (Tetra), the world leader in carton packaging and carton packaging equipment, and Sidel, the world leader in PET (plastic) packaging equipment. The concentration, which was a public bid in the Paris Bourse, was notified to the Commission on 18 May. In the light of the results of its investigation the Commission decided, on 30 October, to prohibit the proposed merger. The grounds for the Commission's decision were, briefly, that the merger would create a market structure which would (a) enable Tetra to strengthen its dominant position in carton packaging by eliminating the biggest competitor in a neighbouring market, PET packaging equipment, and (b) enable Tetra to leverage its dominant position in carton packaging in order to acquire a dominant position in PET packaging equipment. As a result, the merger would have increased concentration in the packaging sector, raised barriers to entry and reduced competition to the detriment of consumers.

265. Tetra is the world's uncontested leader in carton packaging. As found in earlier Commission decisions and as confirmed by the Court of Justice (Case C-333/94 *TetraPak* v *Commission*), Tetra holds dominant positions in the markets for aseptic carton packaging machines and aseptic cartons packaging with a market share in the EEA of 80 %. Sidel is the leading manufacturer of plastic PET packaging equipment and in particular stretch blow-moulding (SBM) machines, which are used to produce empty PET bottles, with a market share in the region of 60 %. Both sectors are highly concentrated with competitors having market shares of not more than 15 %.

266. Given the strong positions of the parties in their respective fields, the Commission's investigation focused on the interplay between carton packaging and PET packaging. Carton packaging, in particular aseptic carton, has been traditionally used to package products which are sensitive to light or oxygen such as liquid dairy products, fruit juices, fruit-flavoured drinks, and ready-to-serve tea and coffee drinks (the 'sensitive products'). Aseptic packaging is used for long-life products, which do not require chilled distribution. PET bottles are transparent plastic bottles made from resin. PET bottles have traditionally been used for the packaging of mineral water and carbonated soft drinks. In 2000, not more than 1 % of milk and juices were packaged in PET in the EEA.

267. In the light of the traditionally different focus of the two packaging materials, the parties claimed that the two markets should be viewed as distinct and unrelated markets for competition law purposes. The Commission's detailed investigation showed that, following a market definition analysis using the SSNIP ([172]) test, the two markets constitute, today, distinct relevant product markets.

268. However, the Commission found that a static and narrow market definition did not reflect appropriately the dynamic market conditions and, in particular, the interplay between the two packaging materials. Following a detailed investigation, the Commission found that the two markets, which belong to the same industry sector, liquid food packaging, are closely related neighbouring markets and that interaction between them will grow rapidly in the coming years.

269. The Commission established that, in the coming years, PET packaging equipment companies, principally Sidel, in conjunction with independent packagers (converters), would compete in the marketplace in order to induce a shift from carton to PET packaging. Sidel's strategy, in particular, was to contribute significantly to the rapid growth of PET in aseptic packaging for fruit juices and liquid dairy products. In the view of Sidel and other market participants, this was eroding the lead of the still-predominant carton packaging in this market segment.

([172]) Small significant non-transitory increase in prices.

270. The merger would have eliminated Sidel as a competitor in a closely neighbouring market exerting competitive pressure on Tetra's dominant position in carton packaging. The Commission found that, by enabling Tetra to be active in both packaging markets, the merger would strengthen Tetra's dominance, would increase prices in carton packaging and would reduce innovation. The forthcoming rapid future growth of PET meant that increasing potential competition would be lost.

271. In conclusion, both geographic and product market definitions by no means result in a static analysis of simple market share addition but form the starting point for a thorough analysis of the specific market dynamics prevailing in a specific industry. Regarding the so-called 'small-country' discussion, this means that, while it is true that mergers more easily lead to high market shares in small national markets, this does not necessarily equate to competition concerns. There is no discernible difference in the impact of the Commission's merger regime on companies based in one geographic location or another. This is also corroborated by the statistics on prohibited mergers presented above.

Box 6: The paper cases and collective dominance

UPM-Kymmene/Haindl [1] **and Norske Skog/Parenco/Walsum** [2]

On 20 June 2000, the Commission received a notification of the Finnish pulp and paper company UPM-Kymmene's proposed takeover of its German rival Haindl and of a second concentration which concerned the resale of two of the six Haindl paper mills to the Norwegian paper manufacturer Norske Skog. The markets analysed in this investigation were the markets for newsprint and wood-containing magazine paper (the 'paper market'). The focus of the Commission's investigation was the question whether these two transactions would result in the creation of a collective dominant position in the markets for newsprint and paper. These were among the first cases where the Commission investigated the potential creation of collective dominance by four firms.

The publication paper industry in general is characterised by long-run competition in (new) capacity and short-run competition on prices under capacity constraints. Both the markets investigated show similar market characteristics which can be summarised as follows: (i) relatively homogeneous products, although some variations within the different paper grades exist; (ii) fluctuations in the market shares of the top suppliers in both markets which have been more pronounced for newsprint; (iii) a high degree of transparency on capacities, deliveries and on average prices, but a lack of transparency in relation to investment decisions before they become irreversible; (iv) inelastic and cyclical demand; (v) some uncertainty about the degree of cost symmetry, especially in the newsprint market; (vi) a high level of multi-market contacts and links across the pulp and paper industry; (vii) limited buyer power; (viii) the ready availability of up-to-date technology; and (ix) the characteristics of a sunk cost industry (i.e., high entry barriers).

In the newsprint market, the Commission focused on the top four companies (UPM-Kymmene/ Haindl, Stora Enso, Norske Skog/Haindl-2 and Holmen), which together would have held around 70 % in terms of sales and 80 % in terms of capacities. In the paper market, post-mergers, the top

[1] COMP/M. 2498, 21.11.2001.
[2] COMP/M. 2499, 21.11.2001.

three suppliers (UPM-Kymmene/Haindl, Stora Enso, and M-Real/Myllykoski) would have accounted for around 70 % of the market in terms of both capacity and sales. The transactions eliminate from the market a significant competitor, Haindl, whose cost structure is somewhat different from the other top suppliers, especially in the newsprint market, since it uses recycled paper as raw material to a significantly larger extent. In the wood-containing magazine paper market, Haindl has been particularly active in the last five years as it accounts for a large part of the total increase in capacity.

The merger would have resulted in a relatively more transparent and less uncertain market, which is reflected in the reduction from five to four for the newsprint market, and from four to three for the wood-containing magazine paper market. However, a number of characteristics would not be conducive to the creation of a collective dominant position. These were the limited stability of market shares, the lack of transparency on capacity expansion projects prior to a committed announcement and the lack of symmetry in cost structures.

Initially, the Commission considered whether coordination could occur through the following two mechanisms: first, through the coordination of investment in new capacities in order to limit capacity in the marketplace, thus raising the level of average prices in the long run; second, through coordination of output downtimes to support short-run prices during a slowdown in demand (there is no need to coordinate in the short run during a period of high level of demand).

The Commission concluded that the mechanism identified above for the coordination of investments would not sustain the creation of tacit coordination in the markets for newsprint and wood-containing magazine paper (1). However, it maintained that tacit coordination of downtime is a possible coordination mechanism, which could support the creation of a collective dominant position of the four top suppliers in newsprint, or the three top suppliers in wood-containing magazine paper. That such action has an impact on prices is evident from the many statements by the CEOs of several major paper producers telling the public in various forms that they are prepared to take downtime if needed to maintain the balance between supply and demand.

However, such coordination, in this specific case, would likely be undermined by action by fringe players. Indeed, the Commission believes that the remaining fringe players such as SCA, Abitibi, Palm and Burgo can play an active role in their respective markets and make tacit coordination unsustainable. These players could break coordination by investing were the oligopolists to try to refrain from investment in order to reach higher prices and by increasing production were the oligopolists to try to shut down their machines temporarily — the definition of downtime. These

(1) Similar reasoning was applied in another case which was cleared after an in-depth investigation, COMP/M.2201 — *MAN/Auwärter*, 26.6.2001, and which raised questions of collective dominance. The main impact of this case will be on the city-bus market in Germany. MAN/Auwärter and the other main player in the market for city buses in Germany, DaimlerChrysler's EvoBus, will each supply just under half of that market. Following a close examination of the case, however, the Commission concluded that there was no risk that the two companies would be able to tacitly coordinate their activities. Firstly, the Commission found that any tacit division of the market between EvoBus and MAN/Auwärter was not likely as there would be no viable coordination mechanism. Secondly, significant disparities between EvoBus and MAN/Auwärter, such as different cost structures, made it likely that the companies would compete rather than collude. The Commission therefore concluded that the German bus market sector would remain competitive even after the acquisition.

firms, some of which are part of major groups with significant resources and expertise in other pulp and paper markets, would have the means to take advantage of the tacit coordination among top players to increase their market shares.

Conclusion

Despite finding a number of characteristics that increased the likelihood that the deals would create collective dominant positions by four and three firms respectively, a number of factors were found which the Commission concluded would, on balance, outweigh these risks. The two transactions were therefore both cleared.

3. Merger control in the 21st century — Green Paper on the review of the merger regulation

272. The European Union is facing new challenges posed by global mergers, further market integration, the introduction of the euro and maybe most importantly the enlargement of the European Union to 25 or more Member States. In order to ensure that the European merger control system is appropriately tuned to meet these new developments, the Commission adopted on 11 December a Green Paper on the review of the merger regulation. This Green Paper initiated a consultation period that gives anyone interested the opportunity to submit comments before the end of March 2002. The Commission aims to propose an amended merger regulation in the second half of 2002, once these comments have been received and analysed.

273. The Green Paper touches upon both jurisdictional, substantive and procedural issues. The main amendments suggested are the following.

3.1. Jurisdictional issues

274. Provisions in the merger regulation give the Commission sole competence to handle concentrations with a Community dimension. The Commission has investigated the functioning of these provisions, i.e., the turnover thresholds in Article 1, and has concluded that Article 1(3) has not accomplished its objective. When Article 1(3) was introduced in 1997, the turnover thresholds in this provision were intended to confer Commission competence over cases that affect three or more Member States, so-called 'multiple filings'. However, since the last review of the merger regulation, no more than approximately 20 % of those cases subject to filing in three or more Member States were actually caught by these thresholds. The Commission therefore proposes to amend Article 1(3) and to introduce automatic Community competence over cases subject to multiple filing requirements in three or more Member States. The turnover thresholds currently in Article 1(3) would be removed. This solution is suggested in order to allow the Commission, as the generally best-placed authority, to deal with transactions with effects in three or more Member States, and to strengthen the level playing field in European merger control. This amendment should be operational before the enlargement of the Community in 2004.

275. Articles 9 and 22 are the referral mechanisms set out in the merger regulation in order to adjust a generally turnover-based merger control system by enabling the best-placed authority to deal with the case. The Commission proposes to simplify the requirements for referrals, thereby adding transparency

and facilitating a proper work-sharing between the Commission and the Member States. The main amendment related to the referral instruments concerns Article 9(2). The proposal in the Green Paper is to remove the obligation to show that a transaction will lead to a threat that a dominant position in a distinct market in the Member State will be created or strengthened. Instead it will be sufficient for the Member State to show that the transaction would affect competition in such a distinct market. Moreover, it is envisaged that the Member State would no longer be required to establish whether such a distinct market constitutes a substantial part of the common market.

3.2. Substantive issues

276. As business practices have changed since the merger regulation entered into force, it has become appropriate to consider whether the concept of a concentration requires updating in order to take proper account of this development.

277. The concept of a concentration covers the acquisition by one or more companies of legal or de facto control over one or more companies, including the creation of joint ventures. Transactions that involve the acquisition of non-controlling minority shareholdings are therefore not covered by the regulation. Nor does it cover strategic alliances. These alliances are usually cooperative contractual arrangements but they often imply a significant structural element whereby the parties' business conduct is linked together. There are several examples of these types of arrangement in the airline and telecom sectors. Strategic alliances are currently scrutinised under Articles 81 and 82 of the Treaty. The Green Paper describes the difficulties involved in drawing the borderlines with sufficient legal certainty and concludes that Articles 81 and 82 appear to remain the most suitable tool for assessing these transactions. It therefore does not propose any change in this regard.

278. The Green Paper proposes certain amendments to the current provisions on multiple transactions. Multiple transactions are separate legal transactions that for different reasons are linked but, when taken separately, may not meet the turnover thresholds in the merger regulation. The question arises whether such transactions should be regarded as constituting a single concentration which as a result would meet the turnover thresholds in the regulation and thereby come under the Commission's jurisdiction. The Green Paper proposes to amend the current provisions targeting multiple transactions in order to ensure more consistent and effective application of the merger control system.

279. The main substantive test for assessing mergers under the merger regulation is the dominance test. The Green Paper opens a debate on the virtues of the dominance test as the substantive test set out in the merger regulation compared with the test of 'substantial lessening of competition' which is used in other jurisdictions, such as the USA, Canada and Australia. The Green Paper calls for a discussion of the advantages and drawbacks of both tests, as well as of the proper role of efficiencies in merger assessment. It should be pointed out, however, that definite conclusions on this issue are not to be expected within the time available for the current merger regulation review.

3.3. Procedural issues

280. One of the purposes of the Green Paper is to launch a debate on possible means of further procedural simplification for cases that do not raise competitive concerns. In addition to discussing such measures generally, a specific discussion is also developed on the scope for modifications in relation to certain venture capital transactions.

281. Finally, the most important procedural suggestion in the Green Paper concerns the realignment of the timetable for the submission and discussion of commitments in the first and second phases of the Commission's investigation. It is proposed that provision be made for a 'stop-the-clock' provision, applicable at the parties' request, in order to provide more time for all involved to consider remedies to the transaction suggested by the parties.

3.4. Joint working group with national competition authorities

282. In formulating the merger review Green Paper, which was adopted on 11 December, the Commission canvassed opinions from a wide range of parties affected by merger control (the business world, Member States, etc.).

283. In addition to a number of informal meetings with various business representatives, the Commission chaired five working group sessions with representatives of all 15 respective ministries and/or competition authorities. Discussions took place on Competition DG premises and covered, among other things, jurisdictional issues, remedies procedures and issues of substance (the competition test) and procedure. Member States also had the opportunity to comment on a draft of the Green Paper as a whole.

284. The Commission intends to pursue the discussions on the possible reform of the merger regulation in the same inclusive and open manner and invites all interested parties to make substantiated contributions in reply to the Green Paper.

Box 7: Ancillary restraints — adaptation of the Commission's policy

The Commission adopted a notice on restrictions directly related and necessary to concentrations (so-called 'ancillary restraints') [1], which replaces a previous notice dating from 1990. Ancillary restraints are contractual agreements directly related to and necessary for the transaction which companies frequently enter into in the context of mergers. Common examples of such ancillary restraints are non-compete clauses, licence agreements, or purchase and supply agreements.

The new policy announces an important change of policy in the field of merger control. The Commission will no longer assess ancillary restraints entered into by parties in its merger decisions, thereby ending an 11-year-old practice. Under the previous policy such clauses would automatically benefit from the effect of the clearance decision if the Commission found them directly related to and necessary for the transaction. Instead, now companies and their lawyers will have to assess whether any such restraints can be covered by the merger decision or by a relevant block exemption, or whether they might fall under Article 81. The notice provides guidance to the legal and business communities, based on past Commission practice and experience in this field. It is in line, moreover, with the ongoing modernisation of the European Union's competition policy.

[1] OJ C 188, 4.7.2001.

The new policy is also in line with the simplified procedure that has been applied by the Commission to certain categories of merger since September 2000. Indeed, in simplified procedure cases, the Commission has already stopped assessing ancillary restraints.

It should be noted that the Commission has never been under a legal obligation to assess and formally address ancillary restraints in its decisions under the merger regulation. Any such statements in past merger decisions have been of a purely declaratory nature, without any legally binding effect on the parties or on national courts.

Clauses that cannot be considered 'ancillary' are not per se illegal. They are just not automatically covered by a Commission merger decision. Nevertheless, they can be justified under Article 81 of the Treaty or fall within the scope of a block exemption regulation.

4. Developments in the application of the failing firm defence

285. The Commission applied a failing firm defence in reaching its decision to clear BASF's proposed acquisition of the two Belgian subsidiaries of Sisas SPA, (Pantochim and Eurodiol) ([173]), which under Belgian law were subject to bankruptcy proceedings.

286. Before 2000, the Commission had only once based a clearance decision on the concept of the failing firm defence (sometimes referred to as a rescue merger). That was in the *Kali+Salz* case ([174]), which established three criteria for the concept's application. These criteria were that (a) the acquired undertaking would soon have been forced out of the market if it had not been taken over by another undertaking; (b) there was no other less anticompetitive alternative purchaser; and (c) the acquiring undertaking would have taken over the market share of the acquired undertaking if it had been forced out of the market. This approach was broadly confirmed by the Court of Justice in its subsequent judgment ([175]).

287. Only the third criterion would not have been met in the BASF case because, unlike in Kali+Salz, which was a duopoly merging to become a monopoly, there were other players in the markets affected by the transaction, for example Lyondell Chemical and ISP. Given the presence of these other suppliers, it would have been unreasonable to conclude that the demise of Eurodiol would have led to the transfer of all of Eurodiol's market share to BASF.

288. The Commission, however, compared the market situation of BASF owning the assets with the inevitable alternative of the assets being withdrawn from the market, and concluded that the withdrawal of the assets from the market would have led directly to capacity shortages in a market already under very tight capacity constraints which would not be counteracted in the short term by competitors. Without the merger, market conditions would have been significantly worse for consumers. In any event, the economics of the case did not suggest that BASF would be likely to enforce major price increases after the merger. Given the particular and exceptional circumstances of the case, the Commission therefore took some cautious steps forward in developing the highly restrictive failing firm defence criteria established during the Kali+Salz proceedings.

([173]) See COMP/M.2314 — *BASF/Eurodiol/Pantochim*, 11.7.2001.

([174]) Commission Decision 94/449/EEC in Case IV/M.308 — *Kali+Salz/MDK/Treuhand* (OJ L 186, 21.7.1994).

([175]) Joined Cases C-68/94 and C-30/95 *French Republic* v *Commission* and *SCPA* v *Commission* [1998] ECR I-1375; see, in particular, paragraphs 112-116.

Box 8: Schneider/Legrand (1)

Following a detailed investigation, the Commission in October prohibited the merger of Schneider Electric and Legrand, the two main French manufacturers of electrical equipment. The merger would have considerably weakened the operation of the market in a number of countries, particularly in France, where the rivalry between the two companies was the mainstay of competition.

The effects of the merger on competition related primarily to low-voltage electrical equipment, i.e., all the systems used for electricity distribution and the control of electrical circuits in homes, offices or factories. Such equipment covers many different types of product, ranging from electrical distribution boards and sockets and switches to cable trays.

There were substantial overlaps between the activities of Schneider and Legrand in the markets for electrical switchboards (distribution boards and final panelboards, together with their components, where the combined market share would have been between 40 and 70 % depending on the country), wiring accessories (in particular, sockets and switches and fixing and connecting equipment, where combined market shares ranged from 40 to 90 %), and certain products for industrial use (industrial pushbuttons and low-voltage transformers) or for more specific applications (for example, emergency lighting).

In France, the merger gave rise to particularly serious problems over virtually the whole range of products concerned and would, in most cases, have resulted in the strengthening of a dominant position. Schneider and Legrand are by far the largest players on the French market, and the Commission's investigation demonstrated clearly that there was little prospect of any significant development in the activity of foreign competitors in the short and medium term. Furthermore, dominant market positions would have been created in Denmark, Greece, Italy, Portugal, Spain and the United Kingdom.

In an attempt to remedy these competition problems, Schneider submitted an initial series of undertakings to the Commission on 14 September, the deadline for presenting undertakings. However, it became evident, following the market investigation carried out by the Commission, that these initial undertakings were not such as to restore the conditions of effective competition.

After the deadline has passed, the Commission can only accept 'last minute' undertakings if it can be established immediately and without any possible doubt that they would restore the conditions of competition. Schneider submitted new undertakings on 24 September, but they left serious doubts as to the competitive capacity of the entities to be sold off, notably as regards access to distribution in France and the economic risks associated with the actual separation of these entities from the rest of the group to which they belonged. Furthermore, Schneider's proposals did not provide any effective solution as regards a number of geographic markets and/or product markets on which competition problems had been identified. This left the Commission no other option but to prohibit the transaction.

On 13 December, Schneider lodged an appeal against the Commission's decision with the Court of First Instance.

(1) COMP/M.2283, 10.10.2001.

5. Remedies

289. This year has been a year of consolidation and development in regard to the Commission's remedies policy and practice in merger cases. The Commission's notice on remedies ([176]) ('remedies notice') was adopted in December 2000. The remedies notice provides guidance on commitments and on the types and form of remedial actions acceptable to resolve competition problems.

290. The Commission's aim of developing consistency of treatment and best practices in the handling of remedies was significantly furthered by its decision to establish, in April, an enforcement unit within the Merger Task Force dedicated to advising on the acceptability and implementation of remedies in merger cases. This enforcement unit has several functions. On a day-to-day basis, its most important role is to provide an internal centre of expertise on the specific issues raised in merger cases requiring remedies. Members of the enforcement unit also join the case teams working on merger cases where remedies may be required or even just discussed, and do so at the earliest possible moment. In such cases, their role is to ensure that the general principles set out in the remedies notice are applied as consistently as possible while taking account of the specific requirements of each case.

291. The enforcement unit is also seeking to develop best practice guidelines, building on the experience obtained from previous merger cases so as to identify aspects that have worked well and those that have not.

292. One example of the improved clarity which the adoption of the remedies notice has introduced is that decisions now include clear statements as to which aspects of the commitments are conditions and which are obligations ([177]). Articles 2 and 3 of the operative part of the decision in the *The Post Office/ TPG/SPPL* ([178]) case are good examples of such statements. There are different legal consequences attaching to breaches of conditions as opposed to breaches of obligations. In drawing a clear distinction between such conditions and obligations in the Commission's clearance decisions subject to commitments, the intention is to ensure that there can be no doubt about the implications of failure to comply with the different parts of the commitments.

293. A further example of the impact of the remedies notice is that trustees were employed in all but one ([179]) of the cases which involved conditional clearances in 2001. Furthermore, the mandates establishing the role and powers of the trustees were significantly developed during the course of the year. In the first half of 2002, the Commission intends to launch a consultation exercise with a view to producing a standard text for divestment commitments and a pro forma trustee mandate. The introduction of such precedents is intended to assist the parties to a notified operation and the Commission when drafting and negotiating remedies. The aim is to do so in a manner that ensures consistency of approach across different cases while retaining the flexibility to customise commitments to take account of the particular circumstances of individual cases.

([176]) Commission notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (OJ C 68, 2.3.2001).

([177]) See Section II, paragraph 12 of the notice.

([178]) COMP/M.1915, 13.3.2001.

([179]) COMP/M.2431 — *Allianz/Dresdner*, 19.7.2001.

5.1. Remedies — statistical developments

294. There were 13 decisions taken during this year subject to undertakings after a phase I investigation ([180]). In addition, 10 cases were cleared subject to commitments following phase II investigations ([181]). In two of these (*Metso/Svedala* ([182]) and *Bombadier/Adtranz* ([183])), commitments had also been offered in phase I but these had been deemed not to remove the Commission's serious doubts, therefore phase II investigations had been initiated. Five further cases were cleared unconditionally following phase II investigations ([184]). It should be noted that the parties in the *MAN/Auwärter* case had submitted commitments in phase I, but these became redundant after the Commission decided at the end of its in-depth investigation that there were no grounds for reaching an adverse finding about the effects of the deal.

295. Of the five deals that were prohibited in 2001, in two cases (*SCA/Metsä Tissue* ([185]) and *CVC/Lenzing* ([186])) the same set of undertakings was submitted in phase II as had been rejected as insufficient in phase I; in two others (*Schneider/Legrand* ([187]) and *Tetra Laval/Sidel* ([188])) different remedies were submitted in the two phases, and in one (*GE/Honeywell* ([189])) there were no remedies submitted in phase I. These latter three cases are discussed elsewhere in this chapter.

5.2. Nature of remedies accepted in 2001

296. A fundamental principle set out in the remedies notice is that, where competition concerns arise, 'the most effective way to restore effective competition, apart from prohibition, is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestiture' ([190]). In accordance with this principle, the vast majority of the competition concerns that arose in merger cases in 2001 were addressed by means of divestments. For example, of the 13 cases that were cleared conditionally in phase I, seven involved a divestment of a business or

([180]) COMP/M.2602 — *Gerling/NCM*, 11.12.2001; COMP/JV.56 — *Hutchison/ECT*, 29.11.2001; COMP/M.2567 — *Nordbanken/Postgirot*, 8.11.2001; COMP/M.2574 — *Pirelli/Edizione/Olivetti/Telecom Italia*, 20.9.2001; COMP/M.2337 — *Nestlé/Ralston Purina*, 27.7.2001; COMP/M.2431 — *Allianz/Dresdner*, 19.7.2001; COMP/M.2300 — *YLE/TDF/Digita/JV*, 26.6.2001; COMP/M.2396 — *Industri Kapital/Perstorp (II)*, 11.5.2001; COMP/M.2268 — *Pernod Ricard/Diageo/Seagram Spirits*, 8.5.2001; COMP/M.2286 — *Buhrmann/Samas Office Supplies*, 11.4.2001; COMP/M.2277 — *Degussa/Laporte*, 12.3.2001; COMP/JV.54 — *Smith & Nephew/Beiersdorf/JV*, 30.1.2001; COMP/M.2041 — *United Airlines/US Airways*, 12.1.2001.

([181]) COMP/M.2389 — *Shell/DEA*, 20.12.2001; COMP/M.2530 — *Südzucker/Saint Louis*, 20.12.2001; COMP/M.2533 — *BP/E.ON*, 20.12.2001; COMP/M.2420 — *Mitsui/CVRD/Caemi*, 30.10.2001; COMP/M.2434 — *Grupo Villar Mir/ENBW/Hidroelectrica Del Cantabrico*, 26.9.2001; COMP/JV.55 — *Hutchison/RCPM/ECT*, 3.7.2001; COMP/M.2139 — *Bombadier/Adtranz*, 3.4.2001; COMP/M.1915 — *The Post Office/TPG/SPPL*, 13.3.2001; COMP/M.1853 — *EDF/ENBW*, 7.2.2001; COMP/M.2033 — *Metso/Svedala*, 24.1.2001.

([182]) COMP/M.2033, 24.1.2001.

([183]) COMP/2139, 3.4.2001.

([184]) COMP/M.2201 — *MAN/Auwärter*, 20.6.2001; COMP/M.2314 — *BASF/Pantochim/Eurodiol*, 11.7.2001; COMP/M.2333 — *De Beers/LVMH*, 25.7.2001; COMP/M.2498 — *UPM-Kymmene/Haindl*, 21.11.2001; and COMP/M.2499 — *Norske Skog/Parenco/Walsum*, 21.11.2001.

([185]) COMP/2097, 31.1.2001.

([186]) COMP/M.2187, 17.10.2001.

([187]) COMP/M.2283, 10.10.2001.

([188]) COMP/M.2416, 30.10.2001.

([189]) COMP/M.2220, 3.7.2001.

([190]) Section III.1, paragraph 13.

businesses ([191]), and another one involved the divestment of landing slots (*United Airlines/US Airways* ([192])). In phase II, the divestment of a business or businesses was also the most frequently accepted type of remedy. Indeed, in *Metso/Svedala* ([193]) and *The Post Office/TPG/SPPL* ([194]), the competition concerns were fully addressed by the divestments to which the parties committed themselves. And in *Bombadier/Adtranz* ([195]), the parties committed themselves to divesting their Regioshuttle and Variotram businesses by means of exclusive, non-transferable licences.

297. In four cases in phase I and a further four cases in phase II, the parties gave a commitment to sell shareholdings that they held in other companies in order to remove control or influence over companies which would have led to competition concerns ([196]). For example, in *Allianz/Dresdner*, the Commission's concerns about probable de facto control of Münchener Rück, a major competitor, were removed by the parties' commitment to reduce their shareholding in that company to 20.5 % by the end of 2003 and not to exercise more than that proportion of their voting rights at Münchener Rück's annual general meetings. Likewise in *Nordbanken/Postgirot*, the Swedish banking group Nordea would have had full control over one of the two main payment systems, and undertook to reduce its stake in the other, Bankgirot, to 10 % and to waive its shareholder rights accordingly.

298. Most of the divestment remedies that were adopted in 2001 involved a commitment to complete the divestment within a certain period from the date of the decision. Two cases involved an up-front solution ([197]). In the *The Post Office/TPG/SPPL* ([198]) case, the parties gave a commitment not to implement their operation until a buyer was found for the divested business and approved by the Commission because the Commission considered that the success of the remedy depended to a very large extent on the characteristics of the purchaser ([199]).

299. The *Nestlé/Ralston Purina* case ([200]) was the other example in 2001 of the Commission accepting an up-front buyer. For the first time, this provision was coupled with an alternative remedy which is informally referred to as a 'crown jewels' remedy ([201]). The possibility of accepting such crown jewels remedies was provided for in the remedies notice ([202]) and it is a form of commitment which the Commission expects to see more of in the future. In this case, the first alternative solution was the licensing of Nestlé's Friskies brand in Spain. If this licensing alternative were not implemented by either

([191]) COMP/M.2602 — *Gerling/NCM*, 11.12.2001; COMP/M.2574 — *Pirelli/Edizione/Olivetti/Telecom Italia*, 20.9.2001; COMP/M.2300 — *YLE/TDF/Digita/JV*, 26.6.2001; COMP/M.2396 — *Industri Kapital/Perstorp (II)*, 11.5.2001; COMP/M.2286 — *Buhrmann/Samas Office Supplies*, 11.4.2001; COMP/M.2277 — *Degussa/Laporte*, 12.3.2001; COMP/JV.54 — *Smith & Nephew/Beiersdorf/JV*, 30.1.2001.

([192]) The merger agreement between these two companies was subsequently withdrawn as a result of antitrust objections to the deal in the United States.

([193]) COMP/M.2033, 24.1.2001.

([194]) COMP/M.1915, 13.3.2001.

([195]) COMP/M.2139, 3.4.2001.

([196]) Phase I — COMP/JV.56 — *Hutchison/ECT*, 29.11.2001; COMP/M.2567 — *Nordbanken/Postgirot*, 8.11.2001; COMP/M.2574 — *Pirelli/Edizione/Olivetti/Telecom Italia*, 20.9.2001; and COMP/M.2431 — *Allianz/Dresdner*, 19.7.2001. Phase II — *COMP/M.2530 — Südzucker/Saint Louis*, 20.12.2001; *COMP/M.2533 — BP/E.ON*, 20.12.2001; COMP/M.2420 — *Mitsui/CVRD/Caemi*, 30.10.2001; and COMP/M.1853 — *EDF/ENBW*, 7.2.2001.

([197]) See Section III.1, paragraph 20 of the notice.

([198]) COMP/M.1915, 13.3.2001.

([199]) See also below (Section 5.3) for a discussion of the implementation of remedies.

([200]) COMP/M.2337, 27.7.2001.

([201]) This type of provision has been seen before in previous cases, for example IV/M.1453 – *AXA/GRE*, 8.4.1999 and COMP/M.1813 – *Industri Kapital (Nordkem)/Dyno*, 12.7.2000.

([202]) Paragraphs 22 and 23.

a fixed date ([203]) or the date on which the notified operation was closed, then the option to license Nestlé's brands would no longer be available to the parties and the crown jewel alternative would have to be implemented. This alternative involves the divestiture of the 50 % shareholding in the Spanish joint venture with Agrolimen (Gallina Blanca Purina JV), which represents a crown jewel because it consists of a larger and more easily saleable package compared with the licensing of Nestlé's Friskies brand.

300. Although the majority of remedies accepted by the Commission are in accordance with the principle that simple, structural remedies are the ideal solution, the Commission has accepted remedies which were somewhat more complicated than a straightforward divestment. For example, in the *EdF/EnBW* ([204]) case, cleared after an in-depth investigation, there were three elements to the package of remedies accepted. There were two relatively standard elements to the remedies package ([205]) and an innovative third element. This third element of the EdF remedy sought to address the competition concerns that had arisen in relation to so-called 'eligible' customers in France, i.e., those whose electricity supply is open to competition. To resolve these concerns, EdF undertook to provide competitors with access to generation capacity located in France in the form of virtual power plants (5 000 MW) and back-to-back agreements to existing co-generation power purchase agreements with a maximum of 1 000 MW. In this respect, it has to be borne in mind that a divestiture of power plants could not be envisaged as an appropriate solution, for economic reasons in general (it was very unlikely that newcomers would have taken the risk of acquiring such a plant) and for legal reasons in the particular case of nuclear plants. According to the terms of the commitments, the contracts for the virtual power plants will be awarded through an open, non-discriminatory public auction open to utilities and energy traders alike. It is envisaged that these arrangements for access to generation capacity will remain in place for a period of five years and that they may be terminated only on the basis of a reasoned request by EdF. It is anticipated that in that period the electricity market in France will have developed so as to allow sufficient alternative supply sources to be made available.

301. The lessons that can be drawn from this example are perhaps limited due to the highly specific circumstances of the EdF/EnBW case. Nevertheless this case does show that the Commission is prepared to accept non-standard remedies when circumstances demand them and when there is sufficient time for the efficacy of such proposals to be examined. This is usually within the context of phase II proceedings.

302. There is one notable difference in the types of remedy that the Commission accepted in phase I cases in 2001 compared with 2000. This difference is that in 2001 the Commission did not accept any remedies in phase I which involved commitments to provide competitors or customers access to delivery networks or potentially blocking patents. These types of commitment had been accepted in 2000 in six cases ([206]). In *Vivendi/Canal+/Seagram* the Commission accepted a package of commitments which included access for competitors to Universal's films and online music — without discrimination in favour of Universal's affiliated companies, namely Canal+ and Vizzavi. Other examples were *BASF/Shell/Project Nicole* (patent licensing), *Vodafone Airtouch/Mannesmann* (access to roaming tariffs and

([203]) The precise date is considered to be commercially confidential information.

([204]) COMP/M.1853, 7.2.2001.

([205]) Firstly, EdF undertook to renounce the exercise of its voting rights in CNR, an electricity producer active in France, and to withdraw its representative from the CNR board of directors; EdF will also no longer be involved in CNR's commercial policy and market conduct. This commitment will ensure that CNR is in a position to become an active competitive force in the electricity sector in France. Secondly, EnBW will divest its 24% co-controlling shareholding in WATT, which will restore the status quo ante in Switzerland.

([206]) COMP/M.2050 — *Vivendi/Canal+/Seagram*, 13.10.2000; COMP/JV.48 — *Vodafone/Vivendi/Canal+*, 20.7.2000; COMP/M.1795 — *Vodafone Airtouch/Mannesmann*, 12.4.2000; COMP/M.1751 — *Shell/BASF/JV – Project Nicole*, 29.3.2000; COMP/M.1838 — *BT/ESAT*, 27.3.2000; COMP/JV.37 — *BSkyB/Kirch Pay TV*, 21.3.2000.

wholesale services) and *BSkyB/Kirch Pay TV* (access to Kirch's conditional access system and pay-TV services).

303. Although the Commission did not accept remedies aimed at providing access to delivery networks or potentially blocking patents in phase I, in 2001 these types of remedy were accepted in five phase II cases ([207]). The fact that such remedies have continued to be accepted in phase II while not being accepted during phase I investigations may reflect a greater degree of caution from the Commission following the adoption of the remedies notice. This is also reflected in the fact that the number of cases involving remedies in the first phase of investigation has fallen this year compared with 2000 (13 as against 27 such decisions in 2000), while at the same time the Commission opened more phase II investigations in 2001 than in any previous year (22 in 2001 compared with 12 in 1998, 19 in 1999 and 20 in 2000).

5.3. Remedy implementation

304. The above discussion has focused on the new remedies that have been accepted by the Commission over the year. However, this is only part of the story. It is also important to examine the implementation of remedies previously accepted by the Commission, as a remedy will only fully address the competition concerns raised if it is fully and properly implemented.

305. Several of the companies involved in cases which were conditionally cleared during 2001 have already made considerable progress towards full implementation of their commitments. Such progress is particularly notable in relation to those cases where the remedies involved divestments.

306. One example where a buyer was found for a divestment extremely quickly was in *The Post Office/TPG/SPPL* ([208]), where the parties committed themselves to an up-front solution. The decision was taken on 13 March, and less than three months later a signed sale and purchase agreement with Swiss Post International was submitted to the Commission for its approval, which was granted on 14 June. The divestment was subsequently completed ([209]) and, in accordance with the commitments in that case, The Post Office, TPG and SPPL were then able to implement their notified operation.

307. In *Metso/Svedala* ([210]), the Commission issued a conditional clearance decision on 24 January and in September was able to approve the Swedish corporation Sandvik AB as a buyer for the divested assets. Although the solution was not proposed within a particularly short time, this was an interesting case in that it involved cooperation with the United States competition authority not just during the Commission's investigative period, but also during the remedy procedure, after the Commission's decision had been issued. The reason for the ongoing cooperation was that, owing to the differing timetable in the United States, the Federal Trade Commission's (FTC's) investigation continued until October when it was in a position to finalise its consent order. In the United States, the divestment of the various rock-crushing businesses to Sandvik AB was an up-front solution to most of the competition concerns identified.

308. Significant progress was also made during 2001 on many of the remedies that had been put in place in 2000. For example, the divestments of polypropylene plants and businesses to which the parties

([207]) COMP/M.2389 — *Shell/DEA*, 20.12.2001; COMP/M.2530 — *Südzucker/Saint Louis*, 20.12.2001; COMP/M.2434 — *Grupo Villar Mir/ENBW/Hidroelectrica Del Cantabrico*, 26.9.2001; COMP/JV.55 — *Hutchison/RCPM/ECT*, 3.7.2001; and COMP/M.1853 — *EdF/ENBW*, 7.2.2001.

([208]) COMP/M.1915, 13.3.2001.

([209]) As with almost every case involving a divestment, the completion of the divestment did not mark the completion of the commitments as certain parts of the commitments related to the seller's behaviour after the divestment.

([210]) COMP/M.2033, 24.1.2001.

had committed themselves in *Shell/BASF/JV – Project Nicole* ([211]) were completed in the first half of 2001, as were those in the polyethylene markets where competition concerns had arisen in *Dow Chemical/Union Carbide* ([212]).

309. Another example was the successful sale of the portfolio of brands and businesses which Unilever had committed itself to selling in order to obtain clearance for its acquisition of Bestfoods in September 2000. The brands to be divested were Bachelors, McDonnell's, Oxo and Vesta (soups) in the UK and Ireland, Royco, Heisse Tasse, Super Noodles, Aiki Noodles, Liebig/Liebox, Oxo, Aardapel Anders, Rijke Sauzen, Raguletto and Lesieur (mainly soups, wet sauces and dry side dishes) in continental Europe, Casa de Mateus (jams) in Portugal and BlåBand, Touch of Taste and Isomitta (bouillon) in the Nordic countries. This sale was made in one tranche to Campbell Soup Company in a deal which itself reached the Community dimension thresholds so that it had to be notified for clearance to the Commission ([213]). The notified divestment was subsequently cleared in April.

310. However, progress has not been smooth in relation to all the commitments that have been offered to the Commission underpinning clearance decisions.

311. For example, in relation to the remedies that had been submitted by the parties in *TotalFina/Elf Aquitaine* ([214]), in September 2000 the Commission had rejected TotalFina's first proposed buyers because the package included buyers that did not have the incentives to bring competition effectively to the market for French motorway petrol sales. One of these proposed buyers, Le Mirabellier, subsequently lodged an appeal before the Court of First Instance (CFI) against this decision. The CFI has not yet reached a final decision on the appeal, but it did reject Le Mirabellier's request for interim relief ([215]). After the rejection of this first proposal for purchasers for the petrol stations, TotalFina proposed a second group of buyers, which was accepted by the Commission in May.

312. A separate aspect of the remedies package accepted in *TotalFina/Elf Aquitaine* ([216]) was the sale of the liquid petroleum gas (LPG) business Elf Antargaz. This sale was finalised in 2001 ([217]) when the Commission authorised PAI, a subsidiary of BNP Paribas, and the US firm UGI to purchase the business. PAI and UGI had already been approved by the Commission as part of that commitment. However, the buyers had first had to convince the Commission that this solution, combining as it did a financial purchaser with a US company specialising in the distribution and sale of electricity, natural gas and LPG, represented a permanent, structural solution to the problems identified on the market for the sale of LPG in France. The conditions under which the Commission approved the *TotalFina/Elf Aquitaine* merger have now all been fulfilled.

313. The Commission has also seen examples of how the timetable to which parties commit themselves can be frustrated by the actions of third parties. For example, in *Carrefour/Promodès* ([218]) Carrefour had committed itself to selling its shareholding in Cora within a fixed period. Despite Carrefour's genuine efforts, the shareholding could not be sold within the time specified. However, rather than rescind the decision, the Commission was able to extend the deadline and the sale was subsequently

([211]) COMP/M.1751, 29.3.2000.
([212]) COMP/M.1671, 3.5.2000.
([213]) See COMP/M.2350 — *Campbell/ECBB* (Unilever), 2.4.2001.
([214]) COMP/M.1628, 9.2.2000.
([215]) Case T-342/00 *Petrolessence and Société de gestion de restauration routière* v *Commission*.
([216]) COMP/M.1628, 9.2.2000.
([217]) See COMP/M.2375 — *PAI + UGI/Elf Antargaz*, 21.3.2001.
([218]) COMP/M.1684, 25.1.2000.

completed with a financial investor. As the sale of the shareholding was not achieved in time, this emphasised the important role that the trustees can play in such situations in ensuring that no competitive harm comes to the company affected during the period between implementation of the original operation and sale of the shareholding. This experience has contributed significantly to the Commission's work on preparing a standard mandate for the trustee.

314. Also, as the *Carrefour/Promodès* case eventually involved a sale to a financial investor, this obliged the Commission to consider carefully the conditions under which a financial investor could be considered acceptable as a purchaser. While the circumstances of each individual case have to be taken into account in deciding whether a financial investor would be a satisfactory buyer, certain factors could raise difficulties. For example, it is important that the buyer and seller are independent from each other, hence the seller should not have significant loans provided by the buyer, nor indeed should the buyer be in receipt of significant loans from or under obligations towards the selling party. Furthermore, the Commission has to assess whether the financial investor has the necessary business expertise to be able to develop or maintain the business as an active competitive force. This is especially important where the buyer is taking a majority stake in a divested business.

5.4. International cooperation on remedies

315. The significance of the Commission's coordination with the relevant authorities in the United States and in other countries is discussed elsewhere in this report. However, it is important to stress that the discussions that take place between the Commission and other authorities relate not solely to the substantive issues at stake, but also to the remedial action required. There are several cases from 2001 where such coordination took place.

316. In *Metso/Svedala* ([219]), the United States' 'FTC' was undertaking a parallel investigation which, owing to different time constraints in the two jurisdictions, continued after the Commission's investigation had been concluded. In this case the commitments that had been given by the parties to the Commission also largely resolved the concerns that had been identified in the United States.

6. Article 9 referrals to Member States — new developments

317. In the context of the merger review, it has been suggested that the referral mechanism set out in Article 9 should be amended. However, the Commission's policy with regard to the application of Article 9 also evolved this year as the Commission referred a part of two transactions, *BP/E.ON* ([220]) and *Shell/DEA* ([221]), concerning oil products to the German Federal Cartel Office. At the same time, the Commission opened an in-depth investigation into the petrochemical parts of both transactions based on concerns in the market for ethylene. The analysis of the petrochemical sector was thereby split from the analysis of the downstream oil products in Germany and the total analysis of the latter area was referred to the Federal Cartel Office.

318. For the first time, the analysis of a complete sector within a Member State was referred to a national authority even though that authority had not established that the transaction would lead to the threat of the creation or strengthening of a dominant position in all markets in this sector (for downstream oil products) in Germany. This decision was taken on the basis that the transaction would affect several other oil product

([219]) COMP/M.2033, 24.1.2001.
([220]) COMP/M.2533, 6.9.2001.
([221]) COMP/M.2389, 23.8.2001.

markets which were not addressed by the request (e.g., base oils, additives, petroleum jelly and slack waxes), or in which the Federal Cartel Office did not see any prima facie competition problems arising from the transaction. These markets are intrinsically linked to the assessment of the oil products and lubricants markets specifically mentioned in the request, as they are all part of the chain of products resulting from the refining process, and therefore the issues of access to refineries and infrastructure are similarly relevant in these markets. A separation of these markets would have inappropriately fragmented the assessment of the case as regards oil products. To avoid such fragmentation, the Commission decided to refer the part of the transaction dealing with oil products as a whole.

319. In *Govia/Connex South Central* ([222]), the Commission considered that the conditions laid down in Article 9(2)(b) of the merger regulation were fulfilled. For these conditions to be satisfied, the Commission had to decide that the affected market did not constitute a substantial part of the common market. The UK authorities made their request on the ground that the operation affected competition on specific railway routes, particularly in the London-Gatwick-Brighton area where it would create overlap between South Central and the parties' existing train operating company Thameslink. This was the first ever instance of a case being referred to a Member State under Article 9(2)(b) of the merger regulation.

320. In two Article 9 cases, the Commission referred the cases to national authorities whose final decisions were subsequently appealed against before the national courts. According to the merger regulation, national authorities are required to take only the measures strictly necessary to restore competition in the markets concerned. However, Member States can be challenged under national and European law in relation to the action they have taken on referred cases. That is what happened this year in the abovementioned two cases.

321. The first of the cases was *Interbrew/Bass* ([223]), which had been referred to the United Kingdom authorities in 2000. After an in-depth investigation by the Competition Commission, the Secretary of State for Trade and Industry decided on 3 January to impose a remedy which involved the complete divestment of the Bass Brewers business, in effect prohibiting the transaction. On 2 February, Interbrew sought a judicial review of the remedy on the ground that it was unreasonable, disproportionate and based on unfair procedures. On 23 May, the High Court in London rejected Interbrew's main challenge but held that the Competition Commission's procedures had been unfair in that Interbrew had not been given a fair opportunity to deal with critical issues that were relevant to the assessment of an alternative, lesser remedy. After further consideration and consultation, the UK authorities decided that Interbrew should be required to dispose of either Bass Brewers or Carling Brewers to a buyer approved by the Director General of Fair Trading to remedy the adverse effects of the Interbrew/Bass Brewers merger.

322. The second case concerned the electricity supply aspects of *Enel/FT/Wind/Infostrada* ([224]), which were referred to the Italian competition authority. Following an in-depth investigation, the competition authority approved the proposed merger subject to a number of conditions imposed on Enel. This decision was subsequently appealed against by Enel ([225]) and by Codacons, the Italian consumer protection association. In a joint judgment on both appeals published on 14 November, the court which heard the appeal (the TAR) held that Enel was not dominant in the market for the supply of electricity and annulled the competition authority's decision in relation to the remedies.

([222]) COMP/M.2446, 20.7.2001.

([223]) COMP/M.2044, 22.8.2000.

([224]) COMP/M.2216, 19.1.2001.

([225]) The appeal was made to the Tribunale Amministrativo Regionale del Lazio (TAR)

7. International cooperation

323. The Commission is developing its bilateral cooperation with non-EU countries in competition matters, in particular in relation to merger cases. It is also active in the multilateral arena and this year focused its efforts on the creation of an International Competition Network.

324. Practical and legal problems associated with the control of concentrations having a global scale have demanded effective cooperation between competition authorities in the enforcement of our respective rules.

7.1. Cooperation with the United States authorities

325. EU/United States cooperation is conducted on the basis of the two competition cooperation agreements that have been concluded over the past decade with the United States. Indeed, this cooperation in the area of competition law enforcement has become something of a model for transatlantic cooperation generally.

326. Experience of day-to-day cooperation has been that it works very effectively, particularly in merger cases, substantially reducing the risk of divergent or inconsistent rulings. However, the Commission and the United States authorities occasionally disagree about the merits of a particular deal, even one involving global markets. This year witnessed a high-profile difference of view with the US authorities over the Commission's decision to prohibit the *GE/Honeywell* merger ([226]). Both GE and Honeywell appealed against the prohibition decision before the Court of Justice in September.

327. While such differences of approach have been very rare indeed, there is much to be gained from ensuring a maximum of EU/US convergence in merger control. That is why the work of an existing transatlantic mergers working group has been refocused in order to identify areas where more convergence might be possible. Dialogue and cooperation between the Commission and the US antitrust authorities has already made a substantial contribution to the trend toward convergence, and by looking at cases where we may have adopted somewhat different approaches the Commission aims to reduce the risk of unnecessary disagreements in the future.

Box 9: GE/Honeywell

On 3 July, the Commission declared the proposed merger between the US companies General Electric (GE) and Honeywell incompatible with the common market.

The merger affected two categories of industrial sector, namely aerospace products (jet engines, avionics, non-avionics and engine starters) and industrial systems (small marine gas turbines).

The Commission considered the horizontal and exclusionary effects of the merger stemming from the complementary products and services that the merged entity would be able to offer to a common customer base. In particular, the Commission considered that the merger would enable the leveraging of market power with a view to foreclosing competition in those markets.

([226]) See the box in this chapter for a discussion of this case, COMP/M.2220 — *General Electric/Honeywell*, 3.7.2001.

GE's dominant position

An important factor in the Commission's assessment was the transfer of GE's dominance in jet engines for large commercial and large regional aircraft, its financial strength and its vertical integration into aircraft purchasing, financing and leasing to Honeywell's leading market positions in corporate jet engines, avionics and non-avionics products.

GE can be characterised as a rather unique company. It is not only a leading industrial conglomerate, but also a major financial organisation through its subsidiary GE Capital, which provides GE's industrial units with enormous financial means. Indeed, the Commission's analysis of the transaction confirmed that an important financial surface and the ability to absorb product failures in an industry characterised by long term investments and imperfect financial markets is critical.

GE is further vertically integrated into aircraft purchasing, financing and leasing activities through GE Capital Aviation Services (GECAS), the largest purchaser of new aircraft and the owner of the largest fleet of aircraft in service and the largest share of aircraft on order and options. Unlike any other independent leasing company, GECAS's policy is to select only GE engines when purchasing new aircraft. GE, through GECAS, has the incentive and the ability to enhance the market position of GE's engines through various means. As a customer, whether it is a launch customer or not, GECAS can influence the selection of aircraft equipment by the airframe manufacturers and tilt the balance in favour of it being retained as the exclusive supplier. GECAS also contributed to strengthening GE's position *vis-à-vis* airlines by persuading airlines that would not otherwise have chosen a GE-powered aircraft to select such an aircraft.

Thanks to the combination of its financial strength through GE Capital and its vertical integration into GECAS, GE has managed to achieve the highest and most sustainable positioning in the large commercial and regional aircraft engine markets, to increase the gap with its competitors and to secure exclusive positions as the engine supplier in a series of airframe platforms, to the detriment of its rivals.

Given the nature of the jet engines market, characterised by high barriers to entry and to expansion, GE's incumbent position with many airlines, its incentive to use GE Capital's financial power with customers, its ability to leverage its vertical integration through GECAS, the limited countervailing power of customers and the comparatively weak position of its rivals, GE was considered to be in a position to behave independently of its competitors, customers and ultimately consumers and thus to be a dominant firm on the markets for large commercial jet aircraft engines and for large regional jet aircraft engines.

The effects of the merger

The proposed merger would have led to the creation of dominant positions on several markets as a result of the combination of Honeywell's leading positions on these markets with GE's financial strength and vertical integration into aircraft purchasing, financing, leasing and aftermarket services as described above.

In addition, given the parties' dominant and/or leading positions in their respective markets, and the wide combination of complementary products that it could have offered, these effects would

have further been compounded by the merged entity's financial and technical ability as well as economic incentive to carry out exclusionary practices such as packaged offers at strategically determined prices, including predatory pricing, in order to progressively foreclose their competitors on specific markets or market segments. This would have occurred as a result of, *inter alia*, the ability of the merged entity to cross-subsidise discounts across the products composing the package deal.

Rival avionics and non-avionics manufacturers would consequently have been deprived of future revenue streams generated by the sales of the original equipment and spare parts. Future internally generated financial means are key to this industry, as they are needed to fund development expenditures for future products, foster innovation and enable possible leapfrogging. By being progressively marginalised, as a result of the integration of Honeywell into GE, Honeywell's competitors would have been deprived of a vital source of revenue and seen their ability to invest for the future and develop the next generation of aircraft systems substantially reduced/eliminated, to the detriment of innovation, competition and thus consumer welfare.

B — Statistics

Figure 4
Number of final decisions adopted each year since 1995 and number of notifications

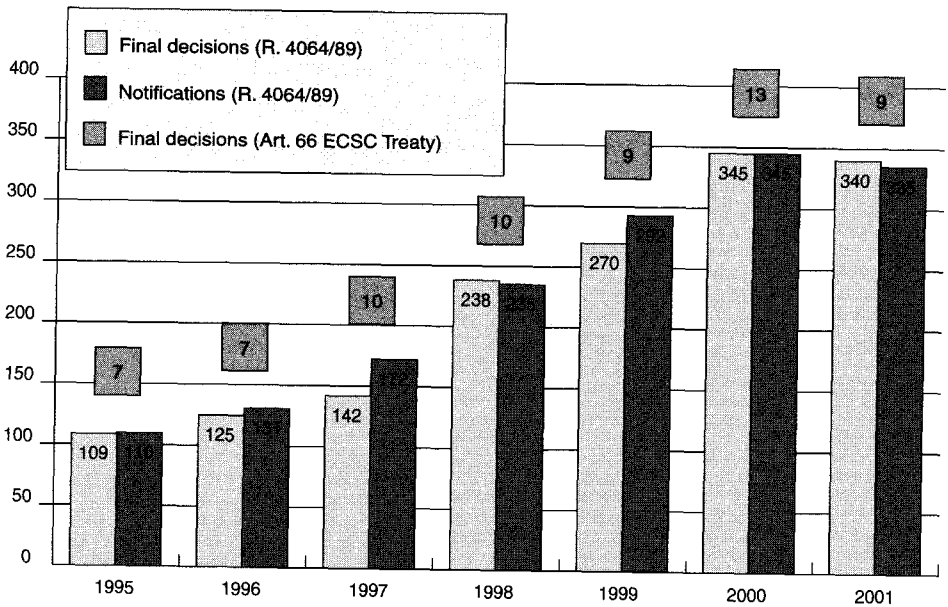
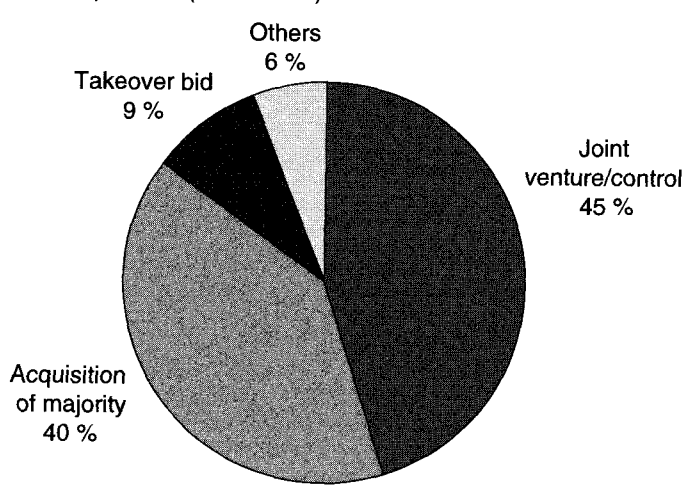


Figure 5
Breakdown by type of operation (1993–2001)



III — STATE AID

A — General policy

328. The ninth survey on State aid in the European Union, published by the Commission in July ([227]), covers the period 1997–99. During that period, grants of aid amounting to an annual average of EUR 90 billion were paid by the 15 Member States to the manufacturing, agricultural, fisheries, coal mining, transport and financial services sectors. While this is a considerable amount, it nevertheless represents a reduction of nearly 12 % in comparison with the previous period, 1995–97. Over the period 1997–99, State aid for regional objectives was 17 % of the total and 10 % was for horizontal objectives.

329. Particularly noteworthy has been the decline in aid to the manufacturing sector, which has now fallen below the level of aid granted to the transport sector. The ninth survey indicates that the average total amount of aid granted annually to manufacturing in the 15 Member States was EUR 27.6 billion, compared with EUR 35.8 billion over the period 1995–97.

	1995–97	1997–99
Overall State aid (billion EUR)	102	90
State aid to the manufacturing sector (billion EUR)	35.8	27.6
State aid as a percentage of value added in the manufacturing sector	2.6	1.9

330. The need to achieve further reductions in overall aid levels and to redirect aid towards horizontal objectives of Community interest was underlined by the Stockholm European Council in March, which committed the Member States to demonstrating a downward trend in State aid expressed as a percentage of GDP by 2003, taking into account the need to redirect aid towards horizontal objectives of common interest, including cohesion objectives. This was confirmed by a Council resolution of 6 December which invited the Member States to continue their efforts to reduce aid levels as a percentage of GDP; to focus efforts on reducing and eliminating aid which has the greatest distortive effects; to redirect aid towards horizontal objectives, including cohesion, and, where appropriate, towards small and medium-sized enterprises (SMEs); to further develop the use of *ex ante* and *ex post* evaluations of aid schemes; and to improve the transparency and the quality of reporting to the Commission, particularly by means of national control and follow-up procedures and, where possible, the provision of relevant statistics.

331. The resolution invited the Commission for its part to develop, together with the Member States, statistical tools and indicators of the effectiveness and efficiency of aid; to give greater emphasis to assessing the impact of aid on competition; to encourage exchanges of experience and concerted evaluation exercises; and to continue its efforts to simplify, modernise and clarify European rules on State aid. The Commission was also asked to submit an initial assessment of progress in 2002.

1. Transparency

332. On 22 March, the Commission unveiled the new public State aid register. The register provides details on State aid cases dealt with by the Commission. It will be updated at frequent intervals and will thus ensure that the public has timely access to the most recent State aid decisions. The register, which is

([227]) COM(2001) 403.

available on the home page of the Competition DG's Internet site http://europa.eu.int/comm/competition/index_en.html, is in two parts. The first part presents aggregated information on all cases under preliminary examination that were registered after 1 January 2000. The second part allows users to carry out simple searches for information on all Commission State aid decisions pertaining to cases registered after 1 January 2000, allowing users to access information by: case number, aid instrument (e.g. interest subsidy, soft loan, guarantee, tax deferment), case type (individual application or aid scheme), decision type (e.g. opening of formal proceedings, final decisions), legal basis, Member State (and region/province), the objective of the aid and the sector concerned.

333. By providing links to press releases and Commission decisions that are either published in the Official Journal or sent directly to Member States, the register brings together under one roof the impressive amount of information on the Commission's State aid decisions that is already available on the Internet.

334. In July this was followed up by the second major transparency initiative, with the publication of the first edition of the State aid scoreboard. The scoreboard is presented in five parts. The first part of the present scoreboard shows State aid expenditure in the European Union and in each Member State expressed as a percentage of GDP. The shares of aid are then given according to the main purposes pursued: fostering horizontal objectives like research and development, small and medium-sized enterprises or training; helping agriculture and fisheries; assisting the transport sector; aiding other specific sectors like coal mining, shipbuilding or steel production; supporting regions that lag behind. The second part provides seminal ideas for a Member State forum that will offer information on their national State aid policies and levels of transparency. The idea is that it should act as a catalyst for discussion between Member States. The third part looks at Member States' success in complying with State aid rules and identifies problems and areas where improvements might be necessary. It also includes information on the recovery of illegally granted State aid. With a view to identifying possible areas where future action by the Commission under State aid rules might be desirable, the fourth part of the scoreboard highlights the amounts of aid granted by the Member States for different objectives and specific sectors. The Member States are encouraged to discuss certain spending trends and patterns and ascertain their impact on the functioning of the internal market. The final part of the scoreboard attempts to generate a discussion on the relationship between State aid levels in the Member States as identified by the Commission, the functioning of the internal market and the success of the economic reform process. In so doing, the scoreboard goes beyond mere competition issues.

335. The scoreboard will in future be published twice a year and will develop gradually in response to the needs of its various future user groups. It will be based on a core set of indicators that will, over time, demonstrate long-term policy shifts and State aid spending patterns. These core indicators will be accompanied in each scoreboard by other indicators that will focus on certain topics for deeper analysis. The scoreboard will also add value to other Commission documents, in particular the proposals for broad economic policy guidelines, structural indicators and benchmarking enterprise policy.

2. Modernising State aid control

336. As already announced in last year's report, the Commission has embarked on a long-term reform exercise aiming at simplifying State aid procedures for clear-cut cases and concentrating Commission resources on the most serious distortions of competition, with the objective of ensuring that the necessary changes are in place before enlargement.

337. The first three regulations adopted in principle in December 2000 on the basis of the enabling Regulation (EC) No 994/98 entered into force, representing an important step in the modernisation process. They consist of two regulations introducing block exemptions for aid to small and medium-sized enterprises and training aid and a regulation codifying the *de minimis* rule ([228]).

338. The regulation on *de minimis* aid codifies the application of that rule, which was previously set out in the form of a Commission notice published on 6 March 1996, and thereby increases legal certainty. Under the *de minimis* rule, aid to an enterprise that does not exceed the threshold of EUR 100 000 over any period of three years is not considered State aid within the meaning of Article 87(1) of the Treaty and is therefore not subject to the notification obligation.

339. The block exemptions allow Member States to grant aid immediately, without need for prior notification to and authorisation by the Commission, provided the conditions laid down in the block exemption regulation are met. The block exemption regulations benefit not only the Commission, but also the national, regional and local administrations in the Member States, since the procedure for granting aid can be much quicker and the administrative burden is reduced. However, this procedural simplification does not entail a lesser degree of control in or a relaxation of the rules on State aid. Several provisions in the regulations require Member States to provide the Commission with summary information sheets and annual reports, thereby allowing it to monitor the application of the block exemptions. Moreover, since the regulations are directly applicable in the Member States, complainants can also go to national courts if their competitors have received aid which does not comply with the conditions laid down in the relevant block exemption regulation.

340. On the basis of the summary information forms sent in by Member States, it is possible to make an initial assessment of the use of the block exemption regulations by them. By the end of December, the Commission had received 106 forms on the basis of the regulation on aid to SMEs and 47 forms on the basis of the regulation on training aid. The great majority of these forms concerned aid schemes rather than individual aid. The substantial use made of the block exemption regulations has resulted in a decrease in the number of notified cases, with 286 notifications received between February and November, compared with 400 notifications received during the same period in 2000. Recourse to the block exemption regulations varies considerably from one Member State to another. By the beginning of December, Italy had sent in 56 forms, Germany 54 and Spain 20. These countries are by far the largest users of the block exemption regulations. At the other end of the spectrum, France, Portugal, Finland and Luxembourg had not yet sent any forms in.

341. The Commission is currently preparing a third block exemption regulation on employment aid. On 2 October, it adopted a draft proposal, on which it consulted the Member States in the Advisory Committee on State Aid on 7 December. The draft regulation proposes exempting from notification, subject to certain conditions, aid for the creation of employment, aid for the recruitment of disadvantaged categories of workers, and aid to meet the additional costs of employing disabled workers. The rules on aid for the creation of employment are aligned on those in the block exemption regulation on aid for SMEs concerning the creation of employment linked to investment.

342. On 13 November, the Commission decided to extend the validity of the multisectoral framework on regional aid for large investment projects, the code on aid to the synthetic fibres industry and the Community framework for State aid to the motor vehicle industry to 31 December 2002 ([229]). If the new multisectoral framework enters into force before 31 December 2002, it will replace the above three frameworks as of the date of its entry into force.

([228]) OJ L 10, 13.1.2001; 2000 Competition Report, points 293–5.

([229]) OJ C 368, 22.12.2001.

Box 10: Risk capital

An important development in State aid in 2001, showing how State aid rules may need to be adapted to new market situations, was the adoption by the Commission of a new communication on State aid and risk capital (1), together with the assessment by the Commission of several measures designed to promote the provision of risk capital in different Member States.

The communication was prepared as a response to a number of factors, in particular the concern to stimulate risk capital markets in the Community and the difficulty of assessing certain measures with this objective, proposed by Member States, under existing State aid rules, particularly when there is no direct link between the grant of aid and a specific set of eligible costs for investment or research and development. Depending on the design of risk capital measures, they may grant aid to economic operators at one or more different 'levels', by providing a benefit to investors (by enabling them to make risk capital investments on more favourable terms) and/or to the enterprises invested in. The communication sets out certain criteria against which the Commission will assess these measures, as well as giving a non-exhaustive list of forms of aid measures which could meet these criteria.

Applying the Commission communication on State aid and risk capital for the first time, the Commission approved the Regional Venture Capital Funds (2) in the United Kingdom even though there was no link to specific eligible costs and accepted State aid for a measure where the participation in a company may be in the nature of capital needed for daily business expenses (working capital). The aim of the UK scheme is to address a lack of funding at regional level available to SMEs for equity investments. The Commission acknowledged market failure for this segment because the thresholds as laid down in the risk capital communication were not exceeded. The same line of reasoning was adopted in the French '*Régime Cadre — Fonds de capital investissement*' case (3). When assessing these notifications, the Commission applied point VIII of the communication and was able to conclude that the aid granted to the private investors and to the SMEs was compatible with State aid rules. As for the funds created under the measures, the Commission concluded that they are not enterprises receiving aid within the meaning of Article 87(1) of the EC Treaty. Other cases where the communication was applied in 2001 included 'Linea de apoyo a la capitalización de empresa de base tecnológica' (Spain) (4), and a further UK scheme intended to fill the gap in the provision of risk capital in small amounts to SMEs in the coalfield areas of England (5).

As well as adopting and applying the new communication, the Commission continued its practice of approving measures to assist participation in companies in the form of risk capital if other State aid rules were complied with (6). Such approval generally requires the existence of a link to a concrete investment project, or to the eligible costs in the case of R&D projects, if this type of aid

(1) OJ C 235, 21.8.2001.
(2) Case C 56/2000, Commission decision of 6.6.2001 (OJ L 263, 3.10.2001).
(3) Case N 448/2000, Commission decision of 25.7.2001 (OJ C 318, 13.11.2001).
(4) Case N 630/01, Commission decision of 11.12.2001 (OJ C 32, 5.2.2002).
(5) Case N 722/2000, Commission decision of 20.12.2001, not yet published.
(6) Cf. paragraph II.3 of the communication: 'Nothing in this document should be taken to call into question the compatibility of State aid measures which meet the criteria of any other guidelines, frameworks or regulations adopted by the Commission'.

is to qualify as aid for initial investment (1). Cases in point were a loan for investment in equity capital of start-ups, which was assessed as being compatible with the SME exemption regulation (2), or a silent partnership, i.e. a participation in equity capital without management function, for pre-competitive R&D activities, which was assessed as being compatible with the Community framework for State aid for research and development (3). A further example was the Commission's decision on a German aid scheme (4) which aims to increase equity capital for pre-competitive R&D activities and innovative investments. The Commission distinguished between the level of public banks, private investors and the small enterprises invested in and decided that either no aid within the meaning of Article 87 of the EC Treaty was involved or that the aid was compatible with the common market, either under the SME exemption regulation or under the R&D framework. It is interesting to note that the Commission's decision takes into account the relatively underdeveloped state of the risk capital market ('infant market') in Germany if compared to the US early phase venture capital market.

(1) For the definition of initial investment, see, for example, point 4.4. of the guidelines on national regional aid (OJ C 74, 10.3.1998).
(2) Case N 465/2000, Commission decision of 3.7.2001 (OJ C 328, 23.11.2001).
(3) Case NN 94/2000, Commission decision of 23.5.2001 (OJ C 219, 4.8.2001).
(4) Case N 551/2000, Commission decision of 28.2.2001 (OJ C 117, 21.4.2001).

3. State aid and tax policy

343. The monitoring of State aid in the form of taxation remains one of the Commission's priorities. In line with its notice on the application of the State aid rules to measures relating to direct business taxation ([230]), the Commission invited four Member States, pursuant to Article 88(1) of the EC Treaty, to amend or abolish existing aid schemes and initiated formal investigation proceedings in respect of eleven other measures in force in eight Member States.

344. Most of the relevant measures are tax schemes conferring advantages on certain types of activity (financial services, offshore activities) or certain types of undertakings that meet certain turnover, internationalisation or indeed nationality criteria. The proceedings initiated by the Commission will enable it to determine whether the selectivity of the measures is justified and whether the schemes confer an advantage within the meaning of Article 87(1) of the EC Treaty, in particular as a result of discretionary practices by the tax authorities.

345. As far as indirect taxation is concerned, the Commission decided to initiate proceedings under Article 88(3) of the Treaty in respect of excise duty reductions granted by three Member States on heavy fuel oil used as fuel for the production of alumina. These reductions in excise duties were authorised by the Council (Decision 2001/224/EC of 12 March 2001) ([231]), pursuant to the provisions of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils. However, as the fifth recital of Council Decision 2001/224/EC stipulates, 'this Decision shall be without prejudice to the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty'. The

([230]) OJ C 384, 10.12.1998.
([231]) OJ L 84, 23.3.2001.

Commission would point out that, as a general rule, decisions authorising reductions in excise duty that are taken on the basis of the Treaty provisions relating to taxes are without prejudice to the application of the competition rules laid down in the Treaty.

4. Stranded costs

346. Before the liberalisation of the European electricity market, recovery of investments by electricity undertakings was achieved through adequate tariff fixation by the State. In these circumstances, many of these undertakings invested in relatively costly electricity production plants or long-term take or pay contracts. The decrease in electricity prices following the liberalisation of the sector may compromise the recovery of many of these investments or long-term contract costs, and thus generate non-recoverable costs. Such costs are generally known as 'stranded costs'.

347. Unlike other previous liberalisation processes, the liberalisation of the electricity sector does not take place coincidentally with a technological leap or a large increase in demand. On the contrary, the electricity market is more and more subject to various external constraints that have a tendency to increase production costs, such as environmental protection or security of supply.

348. In such circumstances, certain undertakings may be tempted to pass the whole burden of their stranded costs on to their captive customers, thus threatening the viability of other undertakings. It may therefore be necessary to devise some compensation mechanism for stranded costs.

349. This compensation mechanism must strike a delicate balance between, on the one hand, the need not to weaken electricity undertakings to a point where they would no longer be in a position to ensure proper delivery of electricity, which is vital to the economy of the European Union, and, on the other hand, the need to ensure that new entrants are not prevented from entering the market, which would hamper the liberalisation process and the benefit it brings to consumers.

350. It is the Commission's view that where such balanced compensation mechanisms constitute State aid, they can be viewed as compatible with the EC Treaty under Article 87(3)(c), as they facilitate the transition of the electricity sector to a liberalised market and hence the economic development of the sector, while ensuring that the compensations are limited and proportionate, and therefore do not adversely affect trading conditions to an extent contrary to the common interest.

351. On 26 July, the Commission adopted a communication on the methodology for analysing State aid linked to stranded costs, which sets out the criteria it will use in examining whether a stranded costs compensation mechanism that constitutes State aid can be authorised under the EC Treaty ([232]).

352. The basic principle of the methodology is that compensations should be limited in time and in extent. They should not exceed the costs actually borne by undertakings, directly caused by the liberalisation and resulting in losses. For example, no compensation should be paid for a plant that became less profitable following the opening-up of the market, but nonetheless remained profitable. Compensations must be bounded *ex ante* and should also provide for an *ex post* adaptation mechanism that takes into account the real evolution of the market as a result of liberalisation, and in particular the actual change in electricity market prices.

([232]) Available in all languages on the Competition DG pages of the Europa web site.

353. On 26 July, applying this methodology for the first time, the Commission authorised three individual stranded costs cases, in Austria, Spain and the Netherlands ([233]).

5. Public broadcasting

5.1. Communication from the Commission on the application of State aid rules to public service broadcasting ([234])

354. On 17 October, the Commission adopted a communication which explains how it applies State aid rules to the funding of public service broadcasters. The communication acknowledges that Member States are in principle free to define the content and scope of the public service and the way it is financed and organised. However, the Commission calls for transparency on these aspects so that it can assess the proportionality of state funding and control possible abusive practices. Member States should establish a precise definition of the public service remit, formally entrust it to one or more operators through an official act and have an appropriate authority in place that monitors its fulfilment. The Commission will intervene in cases where the aid causes a distortion of competition that cannot be justified by the need to perform the public service obligation.

6. Cinema and audiovisual production support

6.1. Review of the national cinema and audiovisual production support schemes

355. Following its 1998 decision on the French scheme of automatic aid for film production, the Commission is reviewing the schemes in place in other Member States under the same assessment criteria. The Commission has already reviewed and approved the schemes operating in a number of Member States. The Commission is at present completing discussions with the remaining Member States to bring their schemes into line with EC law. The completion of the review will provide the sector with legal certainty.

6.2. Communication from the Commission on certain legal aspects relating to cinematographic and other audiovisual works

356. On 26 September, the Commission adopted a communication which explains and clarifies the criteria governing the application of the State aid rules to aid given by the Member States to support their national film production. The communication recognises that Member States are in principle free to support their national film production and that they can do so by whatever method they deem most appropriate. However, the Commission requires Member States to comply with certain specific conditions so as to ensure that the aid does not conflict with the functioning of the common market. The Commission does not intend to alter the existing compatibility criteria unless they prove incapable of preventing undue distortions of competition within the European Union. In the communication, the Commission notes that possible distortions of competition created by aid in this sector stem more from territorialisation requirements (e.g. conditions requiring producers to spend a certain proportion of the film budget in the national territory) than from the level of aid itself. In its 1998 decision on the French aid scheme, the Commission took the view that Member States should be encouraged to reduce national preferences as to the place of expenditure in respect of a substantial proportion of the costs. In this regard,

([233]) See Part Two of the XXXI Report on Competition Policy 2001.
([234]) OJ C 320, 15.11.2001.

the communication announces that the Commission intends to examine the maximum level of admissible territorialisation further, in the light of the results of the review of aid schemes it is currently undertaking.

7. Enlargement

357. The year 2001 was important in the preparatory work on enlargement as regards State aid. In February, the Directorate-General for Competition decided to set up an enlargement and State aid task force to assess the State aid control situation in the 12 applicant countries. For each applicant country, an assessment was made of the legal framework for State aid control, the administrative capacity established for this purpose and the actual enforcement record achieved. The result of the assessment exercise provided a basis for preparing the State aid part of the draft common position for each applicant country, including a position on the provisional closure of the competition chapter.

358. With the adoption by the Council of the EU common positions on the competition chapter, which were tabled in the accession conferences on 11 and 12 December, an initial phase of the task force's activities came to an end. The respective conferences agreed to provisionally close the competition chapter for four applicant countries (Estonia, Latvia, Lithuania and Slovenia). With respect to the eight other applicant countries, the common positions conclude that, in spite of the progress made on State aid, it is not yet possible to provisionally close the chapter.

359. In a second phase, the enlargement and State aid task force will carry out a second round of assessment of the enforcement record of the eight applicant countries for which the competition chapter could not yet be closed. In this regard it will in particular follow up specific State aid problems identified in the common positions (major issues such as the conversion of incompatible tax aid, the establishment of regional aid maps and steel restructuring programmes). The task force will also continue to monitor closely the State aid situation in the four countries for which the competition chapter has been closed. Finally, the follow-up of the State aid inventories and annual surveys of State aid prepared by the applicant countries will continue to be an important task.

Box 11: German public banks (*Anstaltslast* and *Gewährträgerhaftung*)

As announced in last year's report, the Commission continued its examination of the compatibility with the State aid rules of the German system of state guarantees for public-law credit institutions (*Anstaltslast* and *Gewährträgerhaftung*).

Legal and economic context

Anstaltslast could be translated as 'maintenance obligation'. It means that the public owners (e.g. federal government, *Länder*, municipalities, etc.) of the institution are responsible for securing its economic basis and its function for the entire duration of its existence. It was first recognised in 1897 as a general principle of law by a German high court. *Gewährträgerhaftung* could be translated as 'guarantee obligation'. It stipulates that the guarantor will meet all liabilities of the bank which cannot be satisfied from its assets. It was explicitly introduced in several *Länder* laws in 1931/32 when the previous direct liability of the municipalities was replaced.

The guarantees allow the public banks, which are strong competitors on the European financial markets, significantly cheaper funding. The German public-law credit institutions which benefit from these guarantees comprise the 12 *Landesbanken*, around 550 savings banks of widely varying size and 11 special-purpose credit institutions engaging in public-policy-based financing, which taken together account for about one third of the German banking market and have some 320 000 employees.

Both guarantees are limited neither in time nor in amount. Also, the credit institutions do not have to pay any remuneration for them.

Assessment under the State aid rules and recommendation

On 8 May, following intensive contacts between the Commission and the German authorities, the Commission adopted a formal recommendation proposing to the German Government appropriate measures in order to abolish these state guarantees or render them compatible with the State aid rules laid down in the EC Treaty.

The recommendation explains that the guarantee system has to be considered to be State aid within the meaning of the Treaty: the measures are based on State resources and favour certain groups of undertakings, they distort competition and affect trade within the Community. However, since the system already existed when the EC Treaty entered into force in 1958, the aid qualifies as 'existing' aid, on which the Commission can only demand changes for the future, but cannot act retroactively.

According to the Commission recommendation, compatibility with the EC rules should be achieved by 31 March 2002. However, it is explicitly provided for in the recommendation that the Commission can decide to agree to a later date if it considers this objectively necessary and justified in order to allow appropriate transition for certain public banks to the new situation. The Commission is aware of the need to protect existing creditors who provided funds to the public-law credit institutions on the basis of the guarantee system.

Solution

On 18 July, the German government accepted the formal recommendation adopted by the Commission on 8 May. This acceptance was based on an understanding reached on 17 July between Commissioner for Competition Mario Monti and German State-Secretary for Finance Caio Koch-Weser, leading a delegation of three *Länder* finance ministers and the president of the German savings banks' and giro association.

The German government confirms by its acceptance that the existing aid system of guarantees, which constitutes incompatible State aid within the meaning of the Treaty, needs to be changed. Its acceptance creates an obligation for the German government to bring the system of guarantees into line with the State aid rules laid down in the Treaty.

The understanding of 17 July provides for a four-year transitional period, which lasts from 19 July 2001 to 18 July 2005. During this period, the two existing guarantees may remain in place. After that, on the basis of the so-called 'platform-model', one guarantee (*Anstaltslast*) will be

replaced by a normal commercial owner relationship governed by market economy principles, implying no obligation on the State to support the bank any more. The other guarantee (*Gewährträgerhaftung*) will be abolished.

However, *Gewährträgerhaftung* can be maintained (grandfathered) even after 18 July 2005 to protect creditors in the following cases:

— For liabilities existing at 18 July 2001, *Gewährträgerhaftung* can be maintained without any limits until they mature.

— For liabilities created between 19 July 2001 and 18 July 2005, *Gewährträgerhaftung* will be maintained only for those maturing before the end of 2015. Otherwise, for those maturing after 2015, *Gewährträgerhaftung* will not be maintained.

According to the Commission decision of 8 May, the German authorities had to submit to the Commission by 30 September the specific measures they intend to take in order to make the guarantee system compatible with the Treaty. The German authorities undertook to submit the necessary legal measures to the relevant federal or *Länder* legislative bodies by the end of 2001 and to adopt them by the end of 2002. In case of non-compliance with the deadline for adoption by the federal government or a *Land*, the State aid elements contained in the guarantees will be treated as new aid from the beginning of 2003 for banks falling under the legislation of the respective *Land* or the federal government. Consequently, the State aid element could be recovered from these banks with effect from 2003.

While the understanding of 17 July refers only to *Landesbanken* and savings banks, the acceptance of appropriate measures also covers the 11 independent special credit institutions engaging in public policy motivated financing. A separate understanding for special credit institutions was concluded at the beginning of 2002. This understanding stipulates the conditions for neutrality of competition under which special credit institutions can operate in the future while maintaining the state guarantees. In particular, they will have to use as a rule commercial banks for channelling through their special financing, from which only a few exceptions are allowed.

The contents of both understandings are to be integrated in a legally binding way into a new Commission decision amending the recommendation of 8 May 2001. That decision is to be taken before the end of March 2002.

Both understandings contribute to the creation of a future level playing field between private sector and public sector banks. The transitional arrangements taken together will allow the financial institutions concerned to restructure adequately their activities and organisation in view of the changed legal and economic environment.

B — Concept of aid

360. According to the definition set out in Article 87(1) of the EC Treaty, State aid is incompatible with the common market if it is granted by a Member State or through State resources, if it distorts or threatens to distort competition by conferring an advantage on certain undertakings or the production of certain goods and if it is liable to affect trade between Member States. The form in which the aid is

granted (interest rebates, tax reductions, loan guarantees, supply of goods or services on preferential terms or capital injections on terms not acceptable to a private investor) is irrelevant.

1. Origin of resources

361. The first of the conditions to be fulfilled is that aid must be granted by a Member State or through State resources. The previous case law of the Court has established that both the terms 'state' and the notion of 'resources' in this context are to be interpreted widely. However, the judgment of the Court of 13 March in the PreussenElektra case defined the limits of the concept of State resources. The case concerned an obligation imposed on electricity distributors in Germany to pay a higher feed-in price for electricity generated from renewable sources. Following litigation in Germany, the Court of Justice was asked to give a preliminary ruling on whether such a system would amount to State aid within the meaning of Article 87(1) of the Treaty.

362. In its judgment the Court ruled that the measure incontestably constituted an advantage for the producers of electricity from renewable sources as they received guaranteed higher prices than would otherwise be the case. However, for a measure to rank as State aid, it was not enough that the advantage was conferred by the State. The advantage had to be provided directly or indirectly through State resources. Having regard to the facts of the case, the Court found that the system of electricity pricing in Germany which required one private company to pay another a higher price than would otherwise have been the case did not involve the use of State resources and therefore could not be deemed to be aid.

363. Based on the reasoning of the Court of Justice in PreussenElektra, the Commission declared a Belgian measure, applicable in the Flemish region, not to be caught by Article 87(1) of the EC Treaty ([235]). The Commission found that a measure whereby the distributors have to buy annually a certain quantity of green certificates did not involve State resources ([236]). Equally, the Commission decided that the issuing of certificates by state authorities in order to prove that the green electricity corresponds to the definition given in the law did not involve State resources ([237]). Notwithstanding this assessment, the Commission also examined the measure as State aid and considered it to fulfil the criteria of the guidelines on State aid for environmental protection (see below).

2. Advantage to a firm

364. In order to constitute State aid, a measure must also confer a direct or indirect advantage on the beneficiary. The question of whether compensation for the costs of meeting public service obligations may be considered to be an advantage is addressed in the specific chapter of this report dealing with services of general economic interest. The Commission has also addressed the question of advantage in the field of waste management. On 31 January, in Case N 484/00, the Commission decided not to raise any objections to the Dutch waste disposal system for PVC facade elements, because the arrangements did not confer an advantage on the participating companies (producers and importers on the one hand, recycling companies on the other). They did not therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty. The system ensures that the companies selling PVC facade

([235]) Case N 550/2000, Commission decision of 25.7.2001 (OJ C 330, 24.11.2001).

([236]) For the same line of reasoning, see Cases N 678/2001, Commission decision of 28.11.2001, OJ C 30, 2.2.2002, and Case N 504/2000, Commission decision of 28.11.2001, OJ C 30, 2.2.2002.

([237]) See also Case NN 30/B/2000, Commission decision of 28.11.2001, not yet published.

elements assume responsibility for recycling these elements, in line with the 'polluter pays' principle. The system is based on a voluntary agreement between several organisations in the PVC production, consumption and recycling chain. The agreement stipulates a fixed payment for PVC frames and facade elements marketed in the Netherlands to be paid by the PVC facade element producers and importers. These resources are used for the cost of the collection and recycling of the facade elements, including the transport. The Commission took similar decisions with respect to Dutch systems for waste paper and cardboard and car wrecks (Cases NN 87/00 and C 11/01). The latter system was approved only after obtaining substantial evidence on the absence of overcompensation to car dismantling companies.

365. Sometimes the question of whether a particular state measure constitutes an advantage must be decided by considering whether a private investor acting in a free market would participate in the transaction ([238]). On 6 June, in Case C 36/2001, the Commission decided to initiate the formal procedure for the investigation of State aid measures in the case of a measure taken by the authorities in the Walloon region of Belgium involving the Beaulieu group, one of the leading manufacturers of carpets in Europe, which is based in the Flemish region of the country. In the course of its enquiries in the Verlipack case, the Commission became aware of possible State aid to the Beaulieu group. This was a fresh measure taken by the Walloon region, and the Commission accordingly asked the Belgian central government for information to enable it to assess the measure in the light of the rules in force. From the information supplied, the Commission learnt that in December 1998 the Beaulieu group had settled a debt of BEF 113 712 000 owed to the Walloon region by transferring 9 704 shares in Holding Verlipack II, the nominal value of which was BEF 100 million but the real value of which must have been significantly lower, given the assets position of the company at the time. The Commission therefore doubted that a private investor would have accepted this transaction.

3. Selectivity

366. To be caught by Article 87(1) of the EC Treaty, a measure must not only be a State measure, but it must also be selective, affecting the balance between the recipient firm and its competitors. This selective character distinguishes State aid measures from general economic support measures which apply across the board to all firms in all sectors of activity in a Member State. As long as they do not favour a particular area of economic activity, such general measures fall within the scope of Member States' power to determine their economic policy. Consequently, measures that have a cross-sectoral impact, being applicable throughout the territory of a Member State and to the whole economy, do not constitute State aid for the purposes of Article 87(1).

367. In the Adria-Wien pipeline case, the Austrian Constitutional Court (*Verfassungsgerichtshof*) asked the Court of Justice for a preliminary ruling concerning the interpretation of Article 87, the question being whether legislative measures adopted by a Member State which provide for a rebate of energy taxes on natural gas and electricity, but grant that rebate only to undertakings whose activity is shown to consist primarily in the manufacture of goods, are to be regarded as State aid within the meaning of Article 87(1). The Court of Justice concluded that, although objective, the criterion applied by the national legislation was not justified by the nature or general scheme of that legislation and could not therefore save the measure from being State aid.

([238]) See the Commission paper on the application of Articles 92 and 93 to public authorities' holdings, Bulletin EC 9-1984, also available on the Competition DG pages of the Europa web site.

368. By contrast, the Commission decided that the Italian legislative measure designed to promote the regularisation of firms and workers in the underground economy was a general measure for the purposes of Article 87(1) of the Treaty ([239]). The measure, which provides for tax concessions and reductions in social security contributions, applies throughout Italy to all firms in all sectors that have not properly declared their employees and do not fully comply with statutory requirements regarding taxes and social security contributions. The Commission found that the measure did not introduce any systematic discrimination in terms of either the rules themselves (by identifying specific beneficiaries) or the way they are applied (by conferring discretionary powers on the public authorities).

369. The Belgian measures providing for reductions in employers' social security contributions for firms which introduce shorter working hours were also deemed to be a general measure ([240]). The rules apply automatically to all firms in Belgium and to all private-sector workers and autonomous public enterprises, and the public authorities do not have any discretionary power in applying the rules, which do not contain any type of sectoral, regional or other specificity.

370. In the decision on the UK climate change levy ([241]) (see 'Environment' below), the Commission decided that a tax exemption for combined heat and power plants was not selective and therefore did not constitute State aid for the purposes of Article 87(1) of the EC Treaty.

371. The German system under which companies are obliged to accumulate financial reserves for the financing of future statutory obligations gave rise to a complaint on the application of this system to nuclear power stations and their reserves for waste management and decommissioning ([242]). The Commission found that the German commercial code requires all undertakings to constitute reserves for contingent liabilities. These rules are applied to all companies in the same way and cannot be restricted by the discretionary power of the State. They therefore fall into the category of general measures and are not caught by the State aid rules of the EC Treaty. The Commission accordingly declared the provisions justified by the nature or general scheme of the German corporate tax system.

372. In its decision initiating formal investigation proceedings on Åland Island captive insurance companies (C 55/2001), the Commission took the view that the selectivity criteria were met because the beneficiaries of a corporate tax reduction were limited to companies active in captive insurance operations, which represent only a segment of the insurance business.

373. In its preliminary assessment of the Dutch international financing activities scheme (C 51/2001), which provides for tax benefits linked to an international activity, the Commission also found that the measure was selective because the benefit was limited to groups of companies operating in at least four foreign countries or on two continents. Groups of companies which were internationally active but did not fulfil the aforementioned criteria were not eligible for the measure.

374. Selectivity can also derive from the nationality of the company, as in 'Co-ordination centres of foreign companies in Germany' (C 47/2001) and 'Gibraltar exempt and qualifying companies' (C 52/2001 and C 53/2001).

([239]) Case N 674/2001, Commission decision of 13.11.2001, not yet published.
([240]) Case N 232/2001, Commission decision of 3.7.2001 (OJ C 268, 22.9.2001).
([241]) Case C 18/2001 (ex N 123/2000), Commission decision of 28.3.2001 (OJ C 185, 30.6.2001).
([242]) Case NN 137/2001, Commission decision of 11.12.2001, not yet published.

4. Effect on trade between Member States

375. In a case concerning aid to road haulage companies in the Friuli-Venezia Giulia region ([243]), the Court of First Instance confirmed its case law with regard to two conditions for the application of Article 87(1), namely that trade between Member States must be affected and competition distorted. The Court pointed out that these two conditions are as a general rule inextricably linked. In particular, where aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid.

376. In the case concerned, the Court recalled first that it is settled case law that even aid of a relatively small amount is liable to affect trade between Member States in sectors with strong competition such as the transport sector. Secondly, for the application of Article 87(1) it is sufficient that the aid threatens to distort competition and is capable of affecting trade between Member States. The onus was therefore not on the Commission to establish that the aid had affected the competitive position of certain haulage undertakings in this case. The Court also pointed out that the essentially local activity of most recipients of the aid was not such as to prevent the aid from having an effect on trade between Member States and on competition, as from the partial opening-up of the cabotage market to competition. The aid strengthened the financial position of the road haulage sector and hence the scope of commercial road haulage companies in the Friuli-Venezia Giulia region vis-à-vis their competitors.

C — Assessing the compatibility of aid with the common market

1. Horizontal aid

1.1. Research and development

377. The Commission declared an Italian aid project providing support for research and development carried out in the field of non-volatile flash memories compatible with the common market, applying the Community framework for State aid for research and development ([244]). On the basis of an expert scientific report, the Commission found that the aid beneficiary, ST Microelectronics, undertook industrial research. As for the design of the new production processes, the Commission deemed this part of the project to be precompetitive development.

378. The Commission has consistently held that an advance from the State, even if reimbursable in the event of the project proving successful, is State aid. The UK notification of an advance for an R&D project being carried out by Rolls-Royce was accordingly examined in the light of the R&D framework. The Commission held that the R&D project could partly be considered as not closer to the market than precompetitive development. Based on an expert report, the Commission decided that the level of technological risk required State support and therefore accepted that the aid had an incentive effect. As all other criteria of the R&D framework were met, the Commission considered the aid to be compatible with the EC Treaty.

([243]) Judgment of 4.4.2001 in Case T-288/97, [2001] ECR II-1169.

([244]) Case N 32/2000, Commission decision of 11.4.2001 (OJ C 199, 14.7.2001).

379. In the area of lithography, which plays a key role in defining the precise structure of integrated circuits, the Commission approved several R&D projects ([245]).

1.2. Employment, training and working conditions

380. Denmark notified, as a measure introduced as part of its active labour market policy, a job rotation scheme ([246]) under which an employer or an employee may receive a grant covering part of the salary costs if the employee participates in education or training as part of the scheme. Job rotation means that an unemployed person receiving unemployment benefits takes over the job of the employee who is temporarily absent on training. When the training is over, the trained person comes back to another job with the same employer and the newly hired person may stay on. The Commission took the view that the scheme did not favour certain undertakings or the production of certain goods. Thus, Article 87(1) of the EC Treaty did not apply. The scheme needs to be seen in conjunction with a previous Commission decision concerning an employment grant covering part of the salary for the newly hired person ([247]). Both schemes together are an example of how to combine training and employment as a national policy measure for the labour market.

381. In order to encourage employers to improve working conditions and the working environment beyond the requirements of the legislation, Denmark notified a scheme under which a company active on land, including road transport firms (as opposed to offshore operations and shipping and air transport companies), may receive a grant to compensate for the working environmental tax and to cover the costs linked to the certification procedure ([248]). The Commission accepted the argument that the differentiation between land-based firms and others can be justified by the nature or general scheme of the system. Furthermore, the certification body has no scope for favouring certain undertakings or the production of certain goods. The measure was therefore deemed not to be covered by Article 87(1) of the EC Treaty. With regard to the exemption from the chargeable inspections in companies with particular environmental problems, the Commission decided that it did not lead to a loss of revenue or higher costs for the State. Accordingly, this measure was deemed not to fall under Article 87(1) of the EC Treaty either.

1.3. Environment

382. The Commission had various opportunities to apply the new guidelines on State aid for environmental protection, which were adopted in principle in December 2000 and published in the Official Journal on 3 February 2001 ([249]). Pursuant to the Kyoto Protocol to the UN Framework Convention on Climate Change adopted in December 1997, several Member States seek to reduce green house gases by taxing environmentally unfriendly energy. The United Kingdom, for example, introduced a climate change levy on the non-domestic use of energy. Various beneficiaries are charged reduced rates or granted total exemption from the levy for a period of 10 years.

([245]) Case N 430/2001, Commission decision of 30.10.2001, not yet published, Case N 433/2001, Commission decision of 30.10.2001, not yet published, Case N 801/2000, Commission decision of 18.7.2001 (OJ C 333, 28.11.2001). In the first two decisions, the Commission expressly stated that the aided projects could also have been allowed on the basis of Article 87(3)(b) of the EC Treaty, since they could be considered important projects of common European interest within the meaning of that provision.

([246]) Case N 236/2001, Commission decision of 25.7.2001 (OJ C 268, 22.9.2001).

([247]) Case N 357/1996 (OJ C 67, 4.3.1997), as amended in Case N 142/1999 (OJ C 151, 29.5.1999).

([248]) Case N 246/2001, Commission decision of 19.9.2001, not yet published.

([249]) OJ C 37, 3.2.2001.

383. The UK notification on tax exemption/reduction from the climate change levy ([250]) raised an array of different State aid questions, one of which (exemption for dual-use fuels) led to the initiation of formal investigation proceedings.

384. In the Dutch 'green electricity' case ([251]), concerning electricity suppliers who contracted with a generator of energy sources such as wind energy, hydro power up to 10 MW, tidal power or wave energy, the Commission accepted the argument that the exemption was justified by the nature or general scheme of the tax system. As the production of green electricity does not contribute to long-cycle CO_2 emissions, it is logical that the CO_2 tax does not apply. Therefore, this tax exemption falls outside the scope of application of Article 87(1) of the EC Treaty. Nevertheless, the Commission continued to examine the UK and the Dutch measures applying the guidelines on environmental aid.

385. For the UK levy, compatibility was assessed, for the first time, on the basis of 'operating aid in the form of tax reductions or exemptions and based on the conclusion of agreements between the Member State and the aid recipients' ([252]). In the Dutch green electricity case, compatibility was assessed on the basis of the rules applicable to existing taxes. As all conditions set out in the environmental guidelines were fully met, the Commission did not raise any objections to these types of exemptions.

386. The second UK notification of particular interest in this area was a total tax exemption from the climate change levy for five years for natural gas in Northern Ireland ([253]). The Commission recognised the specific situation of the natural gas market in Northern Ireland, i.e. infant industry (since 1996), 40–70 % higher gas prices than in the rest of the United Kingdom, lack of a gas infrastructure, marginal share of gas in energy consumption (2.4 %), and acknowledged that a climate change levy for gas would add further obstacles to this already precarious but environmentally preferable market and that, if businesses were indeed encouraged to substitute gas for coal, oil or electricity, this had the potential to lead to a significant reduction in CO_2 emissions due to the relatively small share of gas in total energy consumption. The Commission also accepted the United Kingdom's argument that infrastructure development for gas may proceed only if there is a business market for gas. In approving favourable conditions in order to develop such demand, the Commission's decision indirectly also supports the development of a gas infrastructure in Northern Ireland.

387. A Belgian measure, restricted to the Flemish region, introduces green certificates for green energy producers. Although the Commission found that the issuing of green certificates by the Flemish authorities did not involve State resources (see 'Origin of resources' above), it continued assessing the notified measure on the basis of the environmental guidelines and declared it compatible with the common market ([254]). The same approach was taken for measures adopted by the United Kingdom requiring electricity suppliers in Scotland, England and Wales to ensure that a proportion of electricity supplied to customers in Great Britain is from renewable sources of energy ([255]). The measures also require suppliers who do not have a sufficient amount of green electricity certificates to make payments to a fund set up and run by the State. The revenues of this fund will be distributed to the suppliers. The Commission considered that the redistribution mechanism was State aid. As the rules governing the redistribution

([250]) Case C 18/2001 (ex N 123/2000), Commission decision of 28.3.2001 (OJ C 185, 30.6.2001).

([251]) Case NN 30/B/2000, Commission decision of 28.11.2001, not yet published.

([252]) On this point, see also Case N 840/A/2000, Commission decision of 6.6.2001 and its corrigendum, Commission decision of 17.10.2001 (OJ C 358, 15.12.2001).

([253]) Case N 660/A/2000, Commission decision of 18.7.2001 (OJ C 263, 19.9.2001).

([254]) Case N 550/2000, Commission decision of 25.7.2001 (OJ C 330, 24.11.2001).

([255]) Case N 504/2000, Commission decision of 28.11.2001, not yet published.

mechanism were in line with the environmental guidelines, the Commission declared them compatible with the Treaty.

388. The UK notification on an emission trading scheme to reduce green house gas emissions was considered to be compatible with the guidelines on State aid for environmental protection ([256]). The trading system allows target holders from different mechanisms to trade emission allowances among themselves and with other participants. Emission allowances are allocated to participants free of charge. The notification was also interesting as, besides the trading scheme, the United Kingdom provides grants to companies in return for absolute emission reductions for which they bid in an auction. The United Kingdom argued that such grants were necessary as an incentive, and the Commission declared them compatible with the environmental guidelines because and so long as no EU-wide compulsory scheme existed on this subject.

1.4. Rescue and restructuring

389. In 1999, the Commission proposed appropriate measures to all Member States in connection with the Community guidelines on State aid for rescuing and restructuring firms in difficulty. All Member States accepted them. One of the measures proposed was to bring existing rescue and restructuring aid schemes in operation in some Member States into conformity with the new guidelines. In 2000, the Commission had to enter into a bilateral dialogue with several Member States on changes to their existing aid schemes. In relation to Germany ([257]), the Member State with the most such schemes, the Commission took note in 2001 that the aid schemes in question had been brought into conformity with the new guidelines.

390. On 28 March, in Case C 41/99, the Commission closed investigations into one of the biggest and most difficult cases of State aid in eastern Germany. In March 1996, the Commission allowed aid to be given to the Lintra holding company and its eight subsidiaries. A plan to privatise the group subsequently collapsed. The Commission concluded that DEM 623 million in aid was nevertheless granted in accordance with the restructuring plan for the group and complied with the Commission decision authorising assistance. However, a sum of DEM 35 million was misused and must be recovered from the recipients, the Lintra holding companies and its subsidiaries. State aid to several of the Lintra subsidiaries is being looked at in separate proceedings.

391. On 8 May, in Case C 1/2000, the Commission authorised a subordinated loan from the state-run *Kreditanstalt für Wiederaufbau* ('KfW') of EUR 76.7 million (DEM 150 million) and an 80 % federal guarantee for a loan of EUR 63.9 million (DEM 125 million) for the German construction company Philipp Holzmann AG. The Commission came to the conclusion that the restructuring measures were appropriate to restore the company's long-term viability and to deal with past mistakes. In that context, the Commission took into account modifications to the original plan and authorised a one-year credit line of DEM 125 million (EUR 63.9 million) provided by the *Kreditanstalt für Wiederaufbau* at the end of 2000.

([256]) Case N 416/2001, Commission decision of 28.11.2001, not yet published.

([257]) Cases E 4/2001 (ex N 297/01, ex N 81/93), E 5/2001 (ex N 591/90), E 6/2001 (ex N 77/90), E 7/2001 (ex N 18/93), E 8/2001, E 9/2001 (ex N 512/91), E 10/2001 (ex N 594/91), E 11/2001 (ex N 627/91), E 12/2001 (ex N 255/90), E 13/2001 (ex N 155/88), E 14/2001 (ex N 442/91), E 15/2001 (ex N 24/95), E 16/2001 (ex N 73/93), E 17/2001 (ex N 413/91), E 18/2001 (ex NN 81/90), E 20/2001 (ex N 18/83), E 21/2001 (ex N 81/95, ex N 851/96), E 22/2001 (ex N 901/96), E 23/2001 (ex N 181/95, ex N 79/98), E 24/2001 (ex N 400/94, ex N 997/95), E 25/2001 (ex N 219/96), E 26/2001 (ex N 75/95, ex N 420/97, ex NN 106/97), E 27/2001 (ex N 599/96), E 28/2001 (ex N 181/97, ex N 117/95, ex N 767/95), E 29/2001 (ex N 711/95, ex N 618/96), E 30/2001 (ex N 629/96), E 31/2001 (ex N 337/96), E 32/2001 (ex N 452/97), E 33/2001 (ex NN 74/95, ex N 370/97), E 34/2001 (ex N 183/94).

392. On 3 July, in Case C 33/98, the Commission took a partly negative decision regarding aid granted to Babcock Wilcox España ('BWE'). In April 1998 the Commission had initiated a formal investigation under the State aid rules of the EC Treaty into two capital increases, both of EUR 60.1 million (ESP 10 000 million), that the Sociedad Estatal de Participaciones Industriales (SEPI) had contributed in 1994 and 1997 to its wholly owned subsidiary BWE. In July 1999, the Commission decided to extend the procedure to include under the investigation a new capital increase of EUR 246.4 million (ESP 41 000 million) notified by the Spanish authorities. Finally, in July 2000 the Commission extended the procedure again to cover aid of EUR 463.5 million in total (ESP 77 110 million) proposed under the privatisation arrangements between SEPI and Babcock Borsig AG. The Commission decided to prohibit the aid of EUR 21.44 million that the Spanish authorities intended to grant to the ongoing business for future investments in the equity of joint ventures through which it will contract future orders. The Commission judged that, unlike other assisted investments included in the industrial plan, this disbursement was very close to the market, formed part of the commercial policy of the company and, consequently, its assistance by the State could seriously distort competition to an extent contrary to the common interest.

393. On 30 October, in Case C 36/2000, after a thorough investigation which started in June 2000, the Commission took a negative final decision on aid to the German porcelain manufacturer Graf von Henneberg GmbH located in Thuringia. The Commission ordered recovery of some EUR 71.3 million (DEM 139.4 million), which was found to constitute incompatible and illegal aid. In line with its practice, the Commission decided that the Graf von Henneberg company in its present form was jointly liable with its predecessor for the recovery of all the incompatible aid.

2. Regional aid

394. The Commission closed the formal investigation proceedings on the investment allowance law (*Investitionszulagengesetz*) 1999 for the new German *Länder*, including Berlin ([258]). This law is the most important regional aid scheme for east German companies. A positive decision was made possible due to several amendments of the German law, introduced in the course of the investigation proceedings. In particular, Germany accepted the distinction between initial investment, for which investment aid can be given, and replacement investment, which ranks as operating aid. Specific conditions for operating aid were added (aid intensity of a maximum of 5 %, no more operating aid after 31 December 2004). The German law was also amended to bring it into line with the geographical coverage of aid and the maximum amount of aid intensities set out in the Commission decisions on the German regional aid map (maximum aid intensities varying between 10 and 27.5 %, depending on whether the aid beneficiary is an SME and/or is located in an Interreg III region bordering the Czech Republic or Poland). In this respect, the labour market region of Berlin needs to be looked at separately. The labour market region consists of Berlin city and its periphery (which is part of the *Land* of Brandenburg) and is a region covered by Article 87(3)(c) of the EC Treaty, unlike the east German *Länder*, which are Article 87(3)(a) regions. Aid intensity for the labour market region of Berlin is therefore only up to 20 % net for investment aid, and there is no possibility of granting operating aid.

395. The main regional aid scheme for Flanders ([259]) was approved by the Commission without the need to initiate formal investigation proceedings. The primary aim of the 'Aid scheme for large and medium-sized firms in regional aid areas covered by Article 87(3)(c) of the EC Treaty (Economic Expansion Law of 30.12.1970)' is to encourage business investment. Under the scheme, the Commission approved the

([258]) Case C 72/98 (ex N702/97), N 671/99, E5/98, Commission decision of 28.2.2001, not yet published.

([259]) Case N 715/2000, Commission decision of 21.12.2000, letter to the Member State dated 7.2.2001 (OJ C 244, 1.9.2001).

leasing of a building as an eligible investment cost, i.e. as a fixed capital cost rather than current expenditure of a company, but only if each of the following conditions are satisfied: the leasing contracts must be included as fixed assets in the balance sheet of the aid beneficiary; the lessee must apply depreciation on the leased assets; the length of the leasing contract must be at least five years; the leasing contract must not cover current expenditure (e.g. maintenance costs or insurance costs).

396. Under the UK regional selective assistance scheme ([260]), the Commission again accepted leasing of a building as a fixed capital cost. The conditions to be met are: the lease must be for a minimum period of eight years and relate to the building only, excluding all ancillary operating costs such as rates, common services, insurance, repairs and utilities. In order to calculate the value of the lease, the rental payments over at least eight years will be discounted to give a figure of the net present value of the rental commitment.

397. An Italian notification ([261]) gave rise to an interesting debate on the definition of initial investment. The relevant fiscal scheme does not make explicit reference to initial investment as defined in points 4.4 and 4.6 of the guidelines on national regional aid. It does, however, put forward a technical definition of eligible investment as being the net investment calculated as the difference between: a firm's gross investment in new assets during a given reference period (representing the increase in the firm's production capacity) and the total amounts of sales, write-offs and depreciation of all the firm's assets during the same reference period (representing the decrease in the firm's production capacity). In order to determine investment, the scheme thus deducts from total gross investment the replacement investment carried out to restore the firm's production capacity, minus the sales, write-offs and depreciation of all the assets during a given period. On the basis of this definition, the Commission accepted that the investment eligible for the aid was equivalent to initial investment within the meaning of the guidelines on national regional aid.

398. By contrast, the Commission decided that the definition (investment in new material fixed assets) applied in a number of Spanish laws ([262]) could not be deemed equivalent to initial investment within the meaning of the guidelines, because the expenditure could cover replacement investment, which ranks as operating aid.

399. In seven cases, the Commission had to initiate formal investigation proceedings against unnotified Spanish tax aid schemes ([263]). The argument that the exemptions could be justified by the nature and general scheme of the tax system was rejected by the Commission. In three cases ([264]), the Commission refuted the argument that the tax scheme under examination should be considered to be existing aid. The Commission found that there was new aid because the schemes under scrutiny either contained substantial modifications or were not connected at all to tax schemes existing before the accession of Spain to the EU. In three cases (concerning reductions of the amount of tax payable of up to 45 % of an investment made ([264])), the Commission took the view that the aid was partly investment aid and partly operating aid, and in four cases (concerning 'fiscal holidays', i.e. sliding-scale reductions of

([260]) Case N 731/2000, Commission decision of 25.4.2001 (OJ C 211, 28.7.2001).

([261]) Case N 646/A/2000, Commission decision of 13.3.2001 (OJ C 149, 19.5.2001).

([262]) Cases C 48/1999, C 53/1999 and C 54/1999, see below.

([263]) Case C 48/1999, Commission decision of 11.7.2001, not yet published, Case C 49/1999, Commission decision of 11.7.2001, not yet published, Case C 50/1999, Commission decision of 11.7.2001, not yet published, Case C 51/1999, Commission decision of 11.7.2001, not yet published, Case C 52/1999, Commission decision of 11.7.2001, not yet published, Case C 53/1999, Commission decision of 11.7.2001, not yet published, Case C 54/1999, Commission decision of 11.7.2001, not yet published.

([264]) Cases C 48/1999, C 53/1999, C 54/1999, see above.

the basic taxable amount over four consecutive tax periods ([265])), it found that the aid was operating aid. In none of the cases did it consider the aid compatible under any derogation provided for in the Treaty, and it asked Spain to recover the illegal aid.

400. In 1998, the Commission proposed appropriate measures to all Member States in connection with the guidelines on national regional aid. In 1999 and 2000, the Commission had to enter into a bilateral dialogue with several Member States in order to bring their existing regional aid schemes into line with the exact wording and meaning of the provisions in the regional aid guidelines. In relation to Italy ([266]) and Germany ([267]), a fair number of such administrative co-operative measures ended this year with a letter from the Commission taking note of the fact that the regional aid scheme in question had been brought into line with the regional aid guidelines.

401. In addition, the Commission took a number of decisions under the multisectoral framework on regional aid for large investment projects ([268]). On 8 May, in Case N 783/2000, the Commission decided not to raise any objections to proposed aid amounting to EUR 119 080 000 for Wacker Chemie GmbH Nünchritz, for the extension and modernisation of the former Hüls AG silicone plant. The Commission concluded that the proposed 26.77 % GGE intensity was below the maximum aid intensity allowable under the multisectoral framework for this particular project. In assessing the compatibility of the aid, the Commission took into account the market situation, the number of jobs directly created by the project and the beneficial effects of the investment on the economies of the assisted regions ([269]). On 18 July, in Case N 184/2000, the Commission approved EUR 27.6 million in investment aid for Kartogroup in Leuna, Saxony-Anhalt. The investment concerned the setting-up of a tissue plant to produce toilet paper and kitchen towels. The total investment costs amounted to EUR 85 million (DEM 166 million) and the aid approved represented 35 % of the eligible investment costs. The investment project creates 154 permanent jobs in an area suffering from high unemployment. The Commission approved the aid, since it found it to be compatible with the multisectoral framework on regional aid for large investment projects.

3. Sectoral aid

3.1. Sectors subject to specific rules

3.1.1. Shipbuilding

402. In accordance with Article 3(1) of Council Regulation (EC) No 1540/98 establishing new rules on aid to shipbuilding ([270]), no new operating aid to shipbuilding has been authorised since the start of 2001.

403. In line with its position of 29 November, the Commission implemented its two-pronged strategy to defend the Community shipbuilding industry from alleged subsidies granted by Korea to its shipbuilding industry. On the one hand, it carried out investigations under the trade barriers

([265]) Cases C 49/1999, C 50/1999, C 51/1999, C 52/1999, see above.

([266]) Cases N 272/98, NN 132/93, N 307/96, NN 61/93, NN 88/93, N 26/98, N 487/95, N 747/97, N 659/a/97, N 288/96 and C 27/89.

([267]) Cases N 711/95 and N 618/96.

([268]) OJ C 107, 7.4.1997.

([269]) The ceiling for regional aid in the assisted area concerned is 35% gross for large companies.

([270]) OJ L 202, 18.7.1998.

regulation ([271]) (TBR) and prepared its action against Korea in the WTO. On the other hand, it proposed a regulation for a temporary defensive mechanism ([272]).

404. The proposed temporary defensive mechanism (TDM) is an exceptional measure, designed to support the Commission's action against Korea under the WTO agreement on subsidies and countervailing measures. It will not become effective until the Commission starts the WTO action against Korea and would cease to be effective if the Community and Korea reach an agreement on this matter. It would, in any case, expire on 31 December 2002.

405. The Industry Council of 5 December was unable to adopt the TDM. Accordingly, the Commission has not yet started the WTO action against Korea. However, it will update its TBR investigations during the first half of 2002.

406. On 25 July, the Commission decided to declare unnotified State aid for the investors in the ship 'Le Levant' incompatible with the common market ([273]). The ship had been financed by private investors whose property it still was. The ship was operated by the firm CIL, which was also to become the eventual owner. The investors had been entitled to deduct their investment costs from their taxable income in accordance with a tax scheme ('Loi Pons'). For this kind of project, the Commission must verify the development content of the project. In this case, the Commission took the view that the vessel would not contribute in any significant way to the development of Saint-Pierre-et-Miquelon. As the unlawful aid had already been granted, it had to be recovered. The Commission considered that the investors, as the direct beneficiaries and current owners of the ship, should repay the aid.

407. The Commission decided to extend a formal investigation on the restructuring of Spanish shipbuilding to include all transactions that led to the creation of the shipbuilding group IZAR ([274]). The Commission doubts whether the prices paid by the State-owned military shipbuilding group Bazan (which then changed its name to IZAR) for a number of shipyards bought from the State-owned civil shipbuilding group Astilleros Espanoles (AESA) and from the State holding company Sociedad Estatal de Participationes Industriales (SEPI) were genuine market transactions and therefore might constitute aid to the new IZAR group. The Commission doubts whether such aid would be compatible with the shipbuilding aid rules. It therefore decided to extend the investigation procedure already initiated concerning a transaction whereby AESA sold two shipyards and a motor factory to SEPI.

3.1.2. Steel

408. The sixth steel aid code, which remains in force until the ECSC Treaty expires in July 2002, allows aid to be granted in only a limited number of cases, namely for research and development, for environmental protection and to finance social measures in connection with plant closures.

409. The Commission approved aid for environmental protection for the following ECSC steel companies: Voest Alpine Linz (EUR 1.6 million), Voest Alpine Donawitz (EUR 2.6 million), Böhler Edelstahl (EUR 348 830) and several Spanish companies. It adopted a negative decision against aid for BRE.M.A Warmwalzwerk (EUR 622 564), since no deduction had been made as to the savings generated by the investment, as required by the annex to the steel aid code.

([271]) Council Regulation (EC) No 3286/94 (OJ L 349, 31.12.1994).
([272]) COM (2001) 401 final; OJ C 304 E, 30.10.2001.
([273]) Case C 74/99.
([274]) Case C 40/00, decision of 28.11.2001.

410. The Commission approved R&D aid for Corus Technology BV (EUR 166 661), Sidmar NV (EUR 505 620), Stahlwerke Bremen (EUR 290 828) and Cogne Acciai Speciale (EUR 2.58 million). It adopted a negative decision against aid for Eko Stahl (EUR 399 004), since it considered that this company would merely function as a 'testing ground' for the other participants in an R&D project.

411. The Commission also took two final decisions concerning Georgsmarienhütte Holding GmbH and Gröditzer Stahlwerke GmbH and found that no aid was involved in the management contract and the sale of assets.

3.1.3. Coal

412. Four Member States currently produce coal in the EU. Because of unfavourable geological conditions, most EU mines are not competitive against imported coal. Nevertheless, the Member States concerned choose to support their coal mining industry mainly on social and regional policy grounds. State aid to the coal industry is governed by Decision 3632/93/ECSC ([275]), which sets forth the terms and conditions under which such aid may be granted. Member States notify State aid on an annual basis. The Commission carefully screens the applications before authorising them. This arrangement will apply until the expiration of the ECSC treaty.

413. On 25 July, the Commission adopted a proposal for a Council regulation on State aid to the coal industry ([276]) to deal with State aid to be granted beyond 23 July 2002.

414. The Commission authorised State aid schemes allowing Germany ([277]), France ([278]), Spain ([279]) and the United Kingdom ([280]) to grant the necessary public funding of the coal industry for the year 2001. The aid covers the difference between production costs and the price of internationally traded coal and also compensation for the payment of social security costs.

3.1.4. Motor vehicle industry

415. On 13 November, the Commission decided to extend the period of validity of the Community framework for State aid to the motor vehicle industry (OJ C 279, 15.9.1997). All Member States agreed to the extension. The extension is valid for one year, i.e. until 31 December 2002, unless the new multisectoral framework on regional aid for large investment projects, replacing the specific sectoral framework for the motor vehicle industry, enters into force before that date.

416. On 17 January, the Commission authorised regional investment aid of GBP 40 million for *Nissan Motor Manufacturing Ltd* ([281]). The aid is regional investment aid for the conversion of the car plant in Sunderland (United Kingdom) for production of the new 'Micra' model. The Commission's initial doubts, which had led to the initiation of formal investigation proceedings in September 2000, had not been borne out.

([275]) OJ L 329, 30.12.1993.

([276]) COM (2001) 423 final; OJ C 304 E, 30.10.2001.

([277]) Case N1/2001, Commission decision of 21.12.2000 (OJ L 127, 9.5.2001).

([278]) Case N3/2001, Commission decision of 23.5.2001 (OJ L 239, 7.9.2001).

([279]) Case N2/2001, Commission decision of 11.12.2001, not yet published.

([280]) Case N4/2001, Commission decision of 8.5.2001 (OJ L 241, 11.9.2001), Case N6/2001, Commission decision of 25.7.2001 (OJ L 305, 22.11.2001), and Cases N7/2001 and N8/2001, Commission decision of 17.10.2001, not yet published.

([281]) Case C 51/2000.

417. On 6 June, the Commission took a negative final decision regarding research and development aid that the Italian authorities were proposing to grant to IVECO SpA, a subsidiary of the Fiat group. The planned aid amounted to EUR 16 million in nominal terms towards an EUR 111 million investment project for the renewal and expansion of IVECO's range of light vehicles.

418. The Commission concluded that the planned aid was not necessary for IVECO to develop the new light van range. While the project led to an improved product compared with the previous model, the innovative character of the investment was limited to what is common in the motor vehicle industry in the context of the development and launch of new models.

419. Under the rules governing R&D aid, aid can be granted if it serves as an incentive for firms to undertake R&D activities in addition to their normal day-to-day operations. If the development of a new model or range of models were to be considered research activities deserving aid, every car manufacturer could claim R&D aid for every new model it brings to the market. The public subsidy would then simply amount to operating aid and would not achieve its goal of inducing firms to pursue research which they would not otherwise have pursued.

420. On 23 October, the Commission authorised a capital injection for the Spanish motor vehicle manufacturer Santana Motor carried out in 1999, since the measure did not constitute State aid. The Commission also partially approved investment aid for Santana in relation to its 1998–2006 strategic plan.

421. Where capital injections for companies involve public resources, the Commission has to ensure that the measure does not contain any State aid element. To do so, the Commission carries out an in-depth investigation to establish whether the profitability and growth prospects of the company justify the capital injection from the point of view of a market economy investor. In this instance, the Commission concluded that Santana's profitability prospects were good enough to justify the capital injection. The Commission therefore decided that the capital injection did not constitute aid.

422. Regarding regional investment aid granted to Santana Motor, the Commission concluded that the aid was compatible with the common market insofar as it complied with the limits above which a more detailed assessment under the specific rules governing aid to the motor vehicle industry becomes necessary. The maximum amount of aid that could be granted was fixed at EUR 8.68 million.

423. On 28 February, after conducting the formal investigation procedure, the Commission authorised regional investment aid of ITL 78 billion (EUR 40 million) for the production of the new 'Punto' model at the Fiat plant in Melfi (southern Italy). The Commission studied the geographical mobility of the project and concluded that the Fiat group's plant at Tychy in Poland would have been a viable alternative. To assess the proportionality of the aid, a 'cost-benefit analysis' was carried out. The cost-benefit analysis compared the costs of the project at Melfi with those of the alternative location. As the proposed aid intensity was both below the regional aid ceiling and the regional handicap intensity, i.e. the extra cost for locating the production in Melfi rather than in Poland, the Commission concluded that the rules laid down in the Community framework for State aid to the motor vehicle industry had been complied with and that the aid was compatible with the Treaty.

424. On 20 December, following formal investigation proceedings, the Commission decided that Germany must reduce regional investment aid to be granted to DaimlerChrysler for the construction of a new engine plant in Kölleda (Thuringia), an assisted area pursuant to Article 87(3)(a).

425. As regards the necessity of the aid, Germany stated that the investment could be carried out at an alternative site in Hungary (in Nyergesújfalu). On the basis of the documents received, the Commission concluded that the site in Hungary was a credible commercial alternative. As regards the proportionality of the aid, the assessment of the cost-benefit analysis showed that Kölleda had a regional handicap ratio of 31.93 %, which was lower than initially indicated by Germany. Due to the significant increase in production capacity, the allowable aid ratio was further reduced by one percentage point to 30.93 %. Consequently, the Commission could only authorise an aid amount of 30.93 % of the eligible investment of EUR 185 million (net present value), which corresponded to EUR 57.22 million (net present value). The remaining EUR 6.58 million in notified aid was considered incompatible with the common market.

426. On 18 July, following formal investigation proceedings, the Commission decided to reduce planned regional investment aid to be granted to Volkswagen for a new car plant in Dresden. The assembly of the new model and the intermediate storage centre were planned to be located in Dresden and the new bodyshop and paintshop in nearby Mosel, both assisted areas pursuant to Article 87(3)(a).

427. As regards the necessity of the aid, the Commission concluded, on the basis of the documents received during the proceedings, that production in the Czech Republic (in Prague and Kvasiny) had been considered by the company as a credible commercial alternative. The Commission based its assessment of the proportionality of the aid on two separate cost-benefit analyses: for the Dresden and Prague sites on the one hand, and for Mosel and Kvasiny on the other. As regards the investment in Mosel, the planned aid intensity was lower than both the regional handicap and the regional aid ceiling. The Commission therefore authorised an aid amount of DEM 65 million for Mosel. As regards the investment in Dresden, the aid intensity proposed by Germany exceeded the regional handicap. Consequently, the Commission authorised an aid amount of DEM 80 million, whereas an excess amount of DEM 25.7 million was considered incompatible with the common market.

3.1.5. Transport

Rail

428. The Commission has for some years pursued a policy of shifting the balance between modes of transport and promoting modes that are less damaging to the environment in order to achieve a sustainable transport system. In its recent White Paper on a common transport policy, the Commission recalled that rail transport was the strategic sector on which the success of the efforts to shift the balance will depend. The Commission will therefore continue to take a favourable approach to aid in the rail sector, both with regard to rail services and, in particular, to investments in rail infrastructure which, due to heavy investments costs, are not viable without public co-financing.

429. In line with its common transport policy, the Commission decided, on 13 February, to raise no objections to the United Kingdom's decision to award public grants to a number of projects. The purpose of the projects is to demonstrate to a wider public that rail can be an efficient and viable mode of transport and an alternative to, in particular, road (N 687/2000, *Innovative solutions in rail logistics)* ([282]). Furthermore, on 19 September, it authorised a substantial amount of aid to the infrastructure manager in the United Kingdom to help it finance a renewals investment programme on the principal railway network infrastructure (N 500/2001 *UK Network Grants)* ([283]).

([282]) Commission decision of 13.2.2001.

([283]) Commission decision of 19.9.2001 (OJ C 333, 28.11.2001).

Maritime transport

430. The Commission authorised a number of aid schemes for the employment of Community seamen during the year. The purpose of the measures, which help to reduce wage costs, is to enable shipping companies to stand up to international competition without having to resort in large numbers to flying the flags of countries where taxation and social security contributions impose less of a burden on shipowners. The measures also help to safeguard the employment of Community seamen so as to maintain seagoing know-how and a high level of safety in the sector.

431. On 8 February, the Commission authorised France to extend beyond 2001 the scheme for the reimbursement of employers' social security contributions paid by shipping companies, authorised by the Commission in 1999 for a period of three years. Under the scheme, companies which employ ship crews and whose ships face international competition are reimbursed the social security contributions for old age, sickness and accident risks paid, the previous year, to the bodies responsible for collecting such contributions.

432. On 30 April, the Commission authorised France to introduce a further aid measure in support of the employment of Community seafarers by allowing family allowance contributions and unemployment insurance contributions to be refunded to shipping companies.

433. On 6 March, the Commission authorised Finland to repay to shipowners the employers' contributions paid toward the seafarers' pension fund, unemployment insurance, accident insurance, life assurance and leisure time insurance. The aid measures apply to all ships registered as being used in international trade, including, subject to certain conditions, tugs and pusher craft. In both cases, the measures apply only to ocean-going ships.

434. On 28 February, the Commission decided to initiate Article 88(2) proceedings in order to assess aid measures to compensate for the public service obligations performed by SNCM ([284]). The decision was taken in the light of new information provided to the Commission under the investigation proceedings initiated in 1998 in respect of aid which *Corsica Marittima*, a subsidiary of SNCM, was believed to be receiving from the French State for the transport of passengers between France and Italy on the Genoa–Bastia and Livorno–Bastia routes ([285]).

435. On 30 October, the Commission decided to terminate the two proceedings jointly. It concluded that, since the subsidies granted to SNCM had not exceeded the costs borne by it in providing public maritime services to Corsica, as laid down by the public authorities, it could be concluded that there were no cross-subsidies to SNCM's subsidiary *Corsica Marittima*. The Commission's investigation also showed that the rents paid by *Corsica Marittima* were determined on market terms. The Commission also asked France to inform it, before the entry into force of the new contract on public maritime services to Corsica, of the measures taken for the structural adaptation of SNCM to the new market conditions resulting from the application of Article 4 of Regulation (EEC) No 3577/92.

436. On 20 June, the Commission terminated the proceedings initiated in August 1999 in respect of aid granted by Italy to *Tirrenia di Navigazione* from 1990 to the end of 2000, having concluded that the aid was eligible for the derogation provided for in Article 86(2) of the Treaty for undertakings entrusted with the operation of services of general economic interest. The Commission noted that the aid granted by Italy was compensation which was necessary and proportionate to the task entrusted to *Tirrenia di*

([284]) Case C 14/2001, OJ C 117 (21.4.2001).
([285]) Case C 78/98, OJ C 62, 4.3.1999.

Navigazione of guaranteeing a sufficient level of regular services to and from certain ports in Sicily and Sardinia throughout the year.

437. In order to take account of the changes in the market due to the liberalisation of coastal shipping since 1 January 1999 and the recent arrival of new operators, the Commission decided that the compensation paid to *Tirrenia di Navigazione* as from 1 January 2001 would be limited to cover of the deficit incurred during the provision of the services which represent commitments entered into by Italy for the period 2000–04. These provide for a reduction in the number of services operated by *Tirrenia di Navigazione* in order to allow more room for other operators on commercially viable routes.

438. On 25 July, the Commission authorised the aid granted by Spain to the *Trasmediterranea* shipping company under the public service contract agreed with the State in 1978. The Commission also authorised aid compensating the company for public service obligations between the Canary Islands which it took on in 1998.

439. The Commission took the view that the aid resulting from the liquidation of the public service contract concluded in 1978 between *Trasmediterranea* and the Spanish State was existing aid. The aid was linked to the rights and obligations arising during the period covered by the contract and represented the balance of compensation due to *Trasmediterranea* for providing maritime cabotage services from 1978 until the end of 1997 under the contract.

440. On 18 July, the Commission decided to terminate the proceedings pursuant to Article 88(2) of the Treaty which it had initiated and extended, respectively, on 3 September 1993, 23 June 1996 and 21 January 1999 in respect of aid granted to the port sector in Italy between 1992 and 1998 ([286]). In 1991, the Italian government began a far-reaching structural reform of the sector. As part of the reform, substantial aid was granted for the purpose of dismantling the existing system and allowing the sector to be opened up to competition. In its final decision, the Commission concluded that aid amounting to EUR 120 million paid by Italy to port undertakings, companies and groups, in the form of subsidies intended to wipe out the debts and cover the deficits of such undertakings, companies and groups, was incompatible with the common market and must be recovered by Italy. However, the Commission concluded that the aid granted by Italy for the payment of severance pay and early retirement contributions for the departure of dock workers belonging to dock-work companies did not constitute aid within the meaning of Article 87 of the Treaty. Similarly, the measures adopted by Italy in respect of the *Cassa integrazione guadagni straordinaria* (special earnings supplement fund), invalidity severance pay and the *Cassa di soggiorno di Dovadola* (holiday fund) to preserve dock workers' social security rights did not constitute aid within the meaning of Article 87 of the Treaty.

441. On 20 December, the Commission approved the extension of the UK scheme *Freight Facilities Grants* to coastal and short-sea-shipping, as well as the Port of Rosyth project ([287]), which became the first application of the State aid rules to port infrastructure. The Commission normally considers that state financing of infrastructure open to all potential users in a non-discriminatory way and managed by the state does normally not fall under Article 87(1) of the EC Treaty. From the Court of First Instance's judgment in *Aéroports de Paris* v *Commission of the European Communities* ([288]), one may draw the conclusion that the management and provision of infrastructure facilities may constitute an economic activity for the purposes of Article 87(1) of the Treaty. However, state support for an infrastructure manager chosen by an open and non-discriminatory procedure for construction and maintenance of

([286]) Cases C 27/93 and C 81/98 (OJ L 312, 29.11.2001).

([287]) Case N 649/2001.

([288]) Case T-128/98 ECR II-3929.

transport infrastructure represents a market price and does not normally trigger the application of Article 87(1) of the EC Treaty. The FFG scheme and the Port of Rosyth project were authorised under Article 87(3)(c) of the EC Treaty.

Inland waterway transport

442. The White Paper on European transport policy for 2010 ([289]) sets out the broad lines and priorities of Community transport policy. It calls for priority to be given to shifting the balance between modes of transport. This is to be done by promoting modes of transport that are less harmful to the environment and have unused capacity available, such as inland waterway transport. Inland waterway transport is safe, clean and efficient in terms of energy consumption and has large unused capacity available. Switching the transport of goods from road to inland waterways is therefore in the common interest within the meaning of Article 87(3)(c) of the EC Treaty. Council Regulation (EC) No 718/1999 also seeks to encourage Member States to take a number of measures to promote inland waterway transport ([290]).

443. Aid granted to the inland waterway sector during the year came from aid schemes intended to encourage the adaptation of the inland waterway fleet to market requirements, as in France ([291]), or to promote the establishment, extension and bringing into operation of links between industrial plants and inland waterways so as to bring about a modal shift to inland waterway transport, as in the Netherlands ([292]). In the latter case, the Commission took the view that what was involved was public co-financing of infrastructures for which there was no competitive market. State intervention was thus justified, since it met the needs of coordination of transport, in line with Article 73 of the EC Treaty.

444. In addition, the Commission authorised State aid for the building of loading and unloading facilities (transhipment terminals) along the Flemish inland waterways, the purpose of which was to make inland waterways more accessible and to increase the use of this mode of transport ([293]). In its decision, the Commission noted, in particular, that inland waterway transport required heavy investment in infrastructure in order to perform efficiently and that such investments would not be economically viable without public co-financing.

Air transport

445. The year was divided into two parts, 'before 11 September' and 'after 11 September', with the terrorist attacks in the United States having a major impact on air transport. As far as aid for civil aviation and airports is concerned, the Commission pursued a policy based on the December 1994 guidelines ([294]).

446. The Commission quickly clarified its policy in response to the terrorist attacks ([295]). The Commission acknowledged that some aid could be justified as a reaction to the extraordinary events. It made mention of aid for cases where there was no appropriate offer of insurance cover, and aid to offset the losses suffered by airlines following the closure of air space for four days and the high costs involved

([289]) COM(2001) 370.

([290]) Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ L 90, 2.4.1999).

([291]) Case N 299/01, decision of 2.10.2001 (OJ C 342, 5.12.2001).

([292]) Case N 597/2000, decision of 31.1.2001(OJ C 102, 31.3.2001).

([293]) Case N 550/2001, Commission decision of 11.12.2001, not yet published.

([294]) Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector (OJ C 350, 10.12.1994).

([295]) Commission communication of 10 October 2001 on the repercussions of the terrorist attacks in the United States on the air transport industry — COM(2001) 574 final.

in increased security measures. All these aid measures taken by Member States had to be notified by them for examination under Article 87(2)(b) of the Treaty. A number of State aid measures relating to insurance were authorised by the Commission before the end of the year.

447. So as to allow planes to take off and airports to function, Member States notified the Commission of aid to be granted under public guarantee schemes to private companies providing insurance against terrorist risks. The Commission gave the go-ahead, provided a number of criteria were complied with ([296]), to aid for airlines and for private providers of insurance against terrorist risks in the case of the following Member States:

— United Kingdom: decision of 23 October 2001 ([297])

— Portugal and Luxembourg: decisions of 28 November ([298])

— Belgium and Sweden: decisions of 11 December ([299])

— Austria, Denmark, France, Germany and Spain: decisions of 20 December ([300]).

448. For the rest, the Commission pursued its established policy on aid to the air transport industry. It also began looking into airport financing.

449. On 18 July, the Commission decided that training aid granted by the Belgian authorities to *Sabena* ([301]) was compatible with the EC Treaty in line with the framework on training aid ([302]).

450. On 18 July, following the judgment of the Court of First Instance of 12 December 2000 annulling Decision 97/789/EC on aid granted to *Alitalia*, the Commission adopted a new decision correcting the errors of assessment and the failure to state reasons identified by the Court and declared the aid granted to *Alitalia* ([303]) in the form of a capital injection of ITL 2 750 billion, payable in three instalments, compatible with the common market.

451. The Commission also authorised two grants of rescue aid to airlines, both belonging in part to the bankrupt group Swissair. On 17 October, the Commission decided to raise no objections to rescue aid of EUR 125 million granted to *Sabena* ([304]). On 20 December, the Commission raised no objections to rescue aid of EUR 120 million granted in the form of a loan guarantee by the *Land* of North-Rhine Westphalia to the German airline *LTU*.

([296]) Commission communication of 10 October 2001 on the repercussions of the terrorist attacks in the United States on the air transport industry, as adapted by the Council's ad hoc group.
([297]) Case NN 90/2001.
([298]) Cases NN 140/2001 and NN 144/2001.
([299]) Cases NN 139/2001 and NN 141/2001 (OJ C 24, 26.1.2002).
([300]) Cases NN 153/2001 (Austria), NN 157/2001 (France), NN 146 and 161/2001 (Denmark), NN 143/2001 (Spain) and NN 162/2001 (Germany).
([301]) OJ L 249, 19.9.2001.
([302]) OJ C 343, 11.11.1998.
([303]) OJ L 271, 12.10.2001.
([304]) C (2001) 3137 final, not yet published.

452. With regard to airports, one decision related to an exemption from the obligation to pay corporation tax, which was deemed to be State aid; in two other cases, the measures in question were deemed not to be State aid.

453. On 3 July, the Commission decided that the exemption from Dutch corporation tax granted to the Dutch *Schiphol Group*, i.e. the company which owns and operates Amsterdam Schiphol airport as well as other airports in the Netherlands, constituted State aid and that it should therefore be discontinued by 1 January 2002 ([305]).

454. On 13 March, the Commission decided that the public financing by the region of Piedmont (Italy) of improvements to and further development of the infrastructure of the airports of Turin, Cuneo and Biella could not be considered to be State aid. It was considered that the location of the airports in question and their predominantly local importance as far as their economic and competition impact was concerned amply justified this conclusion ([306]).

455. On 5 October, the Commission adopted a decision concerning a complaint against *Aer Rianta*, the Irish state-owned company which owns and runs the airports of Dublin, Cork and Shannon. It was decided that as the special tax status of *Aer Rianta* had changed as from 1 January 1999, the previously existing tax exemption was no longer an issue. Furthermore, the transfer of airport infrastructure from the State to *Aer Rianta* at a value deemed below the market price was not considered to be State aid, nor was the fact that *Aer Rianta* is the concessionaire for duty-free shops and multi-storey car parks ([307]).

3.1.6. Agriculture

456. On 6 June, the Commission adopted new guidelines on the use of State aid to advertise agricultural products ([308]). The new text clarifies the Commission's policy in relation to the advertising of quality products, products of regional origin and traceability systems.

457. As far as the regional origin of products is concerned, such origin can now be promoted on condition that the rules on the free movement of goods are complied with. The new guidelines will allow subsidies for advertising where the origin of a product is the primary message, if it takes place outside the Member State or the region of production. The objective should be to introduce consumers to products with which they are not familiar. Where advertising is aimed at consumers in the Member State or region of production, information about the origin of the product can also be given. However, in such cases the reference to origin has to remain secondary to information about the quality of the product.

458. Aid for advertising quality products may also be granted where these products clearly meet higher standards, or have a protected designation of origin. Claims that products are of high quality when in fact they simply meet the legislative requirements applicable to all similar products may mislead the consumer. State support for advertising will only be possible where no internal market rules are infringed.

([305]) This decision has not yet been published in the Official Journal, but can be found on the Competition DG's website under the number E 45/2000. See also IP/01/934.

([306]) This decision has not yet been published in the Official Journal, but can be found on the Competition DG's website under the number N 58/2000.

([307]) This decision is not yet on the Competition DG's web site.

([308]) OJ C 252, 12.9.2001.

459. In the case of products bearing a protected designation of origin (Protected Designation of Origin — PDO, Protected Geographical Indication — PGI, Traditional Speciality Guaranteed — TSG) registered by the EU, the Commission in general does not oppose aid for advertising which includes a reference to the origin of the product concerned, provided that it corresponds exactly to the designations which have been registered.

460. Following the introduction of compulsory beef labelling, the new rules also set out how the advertising of traceability systems may be subsidised. State aid for advertising of individual firms remains prohibited, and the maximum aid intensity allowed is 50 %, or 75 % for certain products from SMEs from disadvantaged regions.

461. The new guidelines supersede the two existing texts dating from 1986 and 1987. This consolidation and clarification should help to further simplify the Community State aid rules and make them more transparent. The new guidelines will apply to new State aid, including pending notifications, from 1 January 2002.

462. The main issue of the year, as far as State aid in the agricultural sector was concerned, was without any doubt linked to the consequences of the 'BSE crisis'. State aid rules normally prevent Member States from paying income aid to farmers because this could distort competition and interfere with the functioning of the Community market organisations. Only in exceptional circumstances may such aid be granted to offset the damage caused by such situations.

463. The ongoing crisis in the beef market, which had been caused by a BSE scare at the end of the previous year, was recognised by the Commission as an exceptional occurrence within the meaning of Article 87(2)(b) of the EC Treaty. It was not the drop in sales or turnover that was considered exceptional. The drop in sales was seen by the Commission as a consequence of an exceptional and rare combination of circumstances which caused farmers' income losses: the closure of export markets to Community beef and the extent of the negative reaction of European consumers, both preceded and accompanied by a series of incidents including the first cases of BSE detected in countries such as Germany, Italy and Spain, the ban at Community level of the marketing of any type of meat and bonemeal as animal feed, and the sometimes controversial management of the crisis at national level.

464. The Commission accordingly authorised Member States to pay income aid totalling EUR 460 million to beef farmers who had suffered losses between November 2000 and June 2001 because of the BSE crisis and other BSE-related State aid (i.e. towards the costs of BSE tests, compensating slaughterhouses, the value of slaughtered animals, the restocking of herds on farms where BSE had been found, storage transport and the disposal of processed animal proteins and animal feed).

465. Overall the Commission received 379 notifications of State aid draft measures to be granted in the agricultural and agro-industrial sector. The Commission also started the examination of 39 aid measures which had not been notified before under Article 88(3) of the EC Treaty. The Commission raised no objections to 212 measures. Several of these measures were approved after the Member States concerned either amended them or undertook to amend them in order to bring them in line with Community State aid rules. The procedure provided for in Article 88(2) of the EC Treaty was launched in respect of 15 cases in which there were serious doubts as to the compatibility of the measures with the common market. The Commission terminated the Article 88(2) proceedings in five cases, taking a negative final decision in two of them. In all the cases where a negative decision was taken and State aid had already been granted by the Member State concerned, the Commission requested recovery of the aid disbursed.

3.1.7. Fisheries

466. On account of its social and economic features, the fisheries sector is still receiving large amounts of public assistance, both from the Community and from national sources.

467. The Commission examined the compatibility of national aid schemes in the light of the guidelines for the examination of State aid to fisheries and aquaculture ([309]).

468. The new guidelines, applicable from 1 January, spell out the rules more clearly in certain areas. They thus provide that the guidelines on national regional aid do not apply in the fisheries sector and that aspects of regional aid schemes which concern fisheries will be examined in the light of the fisheries guidelines. They also provide further details for assessing training aid, aid for consultancy services and aid to experimental fishing and set out more precisely the conditions for granting aid for rescuing and restructuring firms in difficulty (reference to the Commission's submission of a plan aimed at reducing fleet capacity). More detailed rules and conditions are likewise set out for aid intended to improve the management and control of fishing activities and aid in connection with the purchase of used vessels. As far as special cases are concerned, more detailed rules are set out for income aid (measures linked to exceptional circumstances are to be examined on a case-by-case basis, and for temporary cessations of activity reference is made to the relevant point of the guidelines), the point dealing with operating loans has been deleted and specific points have been added to cover aid to compensate for damage caused by natural disasters or other exceptional occurrences, insurance premiums, the outermost regions and employment aid. The new guidelines contain two annexes which will make for closer monitoring of approved schemes: one setting out the information to be supplied when aid schemes are notified, the other specifying the information which must appear in the annual report to be submitted to the Commission on all existing aid schemes or all individual aid measures granted outside an approved scheme that are not made subject to a specific reporting obligation by a conditional decision.

469. A large number of schemes were notified to the Commission, especially during the second half of the year, owing to notification of all national joint financing measures adopted under the Financial Instrument for Fisheries Guidance and as part of the preparatory work on measures implementing the new Community support framework.

3.2. Specific sectors not subject to special rules

3.2.1. Financial sector

470. On 25 July, in Case NN 53/2001 (Bankgesellschaft Berlin (BGB)), the Commission approved rescue aid of some EUR 2 billion to bring the bank's own funds ratio back to its pre-crisis level of 9.7 %. The bank had incurred substantial losses in 2000 mainly through bad operations in the real-estate sector. The approval of rescue aid was based on the undertaking given by the German authorities that they would present a restructuring plan within six months and limited to this period or the time-span the Commission needed to take a decision on the restructuring plan. Under this second examination, the Commission was to have a close look at the necessary volume of the aid and ask for compensatory measures to offset the competition-distorting effect of the aid, if this was found appropriate.

471. On 11 December, the Commission decided that the tax measures for banks introduced by Italian Law No 461/98 of 23 December 1998 and the related Legislative Decree No 153/99 of 17 May 1999 were incompatible with the State aid rules laid down in the EC Treaty. The measures in

([309]) OJ C 19, 20.1.2001.

question provide a discriminatory competitive advantage to the banks that participate in the operations being assisted. Italy must now recover the amounts that the banks benefiting from tax exemptions avoided having to pay. The Commission's investigation into State aid to banking foundations (as distinct from banks themselves) continues. The status of these measures still needs to be defined. The Commission also examined whether the special tax treatment could be considered to be restructuring aid. However, the conditions for applying the Community guidelines on State aid for rescuing and restructuring firms in difficulty were not met. The aid was not notified individually to the Commission. The banks that benefited from the aid were not in difficulties nor was the aid intended to restore the firms' long-term viability. Finally, the guidelines require that measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors (usually this takes the form of a reduced market presence of the company after its restructuring). No such situation is envisaged in the present case.

3.2.2. Services

472. On 13 November, in accordance with the procedure provided for in Article 88(1) of the EC Treaty and Article 18 of Regulation (EC) No 659/1999, the Commission proposed appropriate measures to France in Case E 46/2001, namely the ending of the exemption from the tax on health insurance contracts enjoyed by mutual and provident societies. Alternatively, the French authorities may also grant the exemption in return for the performance of a service of general economic interest, ensuring that the aid resulting from the exemption does not exceed the costs imposed by the constraints assumed for this purpose.

473. On 13 November, the Commission initiated formal investigation proceedings on a number of ad hoc measures granted to the Portuguese public broadcaster RTP, since it had doubts whether or not the Portuguese State had overcompensated the reimbursable public service costs of RTP in 1992–98 to the tune of EUR 83.6 million. The initiation of proceedings followed three complaints that the Commission received in 1993, 1996 and 1997 from the private Portuguese broadcaster SIC. On 7 November 1996, the Commission already took a decision on the first and part of the second complaint, which was annulled by the Court of First Instance ([310]).

3.2.3. Exceptional occurrences

474. The Commission authorised proposed aid in the region of Valle d'Aosta to offset the damage caused by the floods and landslides resulting from the torrential rain that hit the region in October 2000 ([311]). The scheme aims to provide compensation for the fixed costs borne by firms which had to stop business because of the rain, provided that the firm has since resumed business. The aid consists of a subsidy covering up to 95 % of the fixed costs borne by firms during the period between the disruption of business and its resumption, which must not exceed six months. Any amounts received by way of insurance indemnities must be deducted from the aid. The project has a duration of one year, and the budget set aside by the Italian authorities is EUR 516 456. The scheme was deemed compatible with the EC Treaty pursuant to Article 87(2)(b), since it was intended to make good the damage caused by natural disasters. The Commission took the view that the events covered by the scheme were natural disasters within the meaning of that provision. The Commission also noted that the aid would not give

([310]) Case T-46/97 [2000] ECR II-2125.

([311]) Case N 429/2001, Commission decision of 17.10.2001, OJ C 5, 8.1.2002. The Commission had already approved an aid scheme for emergency planning to deal with natural catastrophes in Valle d'Aoste on 29.11.2000 (N 433/2000). This latter scheme provides the reference framework for the scheme dealing with the effects of the torrential rain.

rise to any overcompensation and that, in view of the budget set aside and the number of recipients envisaged, the sums to be paid to each firm would probably be modest.

D — Procedures

475. Following the adoption and entry into force of Council Regulation (EC) No 659/1999, many of the detailed procedural rules governing the examination of State aid have been codified and consolidated into a single legislative text. Although some of the cases decided by the Court continue to concern decisions adopted by the Commission before the entry into force of the regulation, others may provide useful guidance on the interpretation and application of the provisions of the regulation.

1. Initiation of formal investigation proceedings

476. In two judgments, the Court emphasised that the Commission does not have any discretion in deciding whether or not to initiate the formal investigation procedure provided for in Article 88(2). In particular, the Court emphasised that reasons of administrative convenience, either for the Commission or for the Member State, could not justify the failure to initiate proceedings in cases where the Commission had, or should have had, serious doubts about the compatibility of a measure with the common market.

477. In its *Prayon–Rupel* judgment of 15 March ([312]), the Court provided further clarification on the circumstances in which the Commission is required to initiate the formal investigation procedure. The procedure serves a dual purpose: it is intended both to protect the rights of potentially interested third parties and to enable the Commission to be fully informed of all of the facts of the case before adopting its decision. Thus, the formal investigation procedure is obligatory if the Commission encounters serious difficulties in establishing whether or not aid is compatible with the common market. The notion of serious difficulties is an objective one. It follows that judicial review by the Court of First Instance of the existence of serious difficulties goes beyond simple consideration of whether or not there has been a manifest error of assessment. The Court examines whether the information in the Commission's possession or available to it at the time when it adopted the contested decision should have led to serious doubts. In this regard, the Court points out that the evidence of serious difficulty may also be inferred from the length of time taken by, and the particular circumstances of, the preliminary procedure. In the particular case, the Court concluded that the eight-month period which elapsed between the time of notification and the decision, as a result of the repeated requests for information and the reluctance of the Member State to provide information, constituted an indication of serious difficulties. Taking account of all these elements, the Court found that the Commission had insufficient knowledge of the facts when it adopted its decision to raise no objection to the aid and should thus have initiated the formal investigation procedure in order to gather more ample information and overcome the serious difficulties of assessment.

478. The Court followed the same line of reasoning in annulling the Commission's decision not to raise any objections to aid granted by the French Republic to producers of liqueur wines and *eaux de vie* ([313]). Since the complaints received by the Commission contained strong evidence of a link between the draft aid plan and a system of taxation that might infringe other Treaty provisions, there was a serious difficulty for the Commission to determine whether the aid plan was compatible with the common market. In those circumstances, the Article 88(2) procedure should have been initiated.

([312]) Case T-73/98, *Société chimique Prayon-Rupel* v *Commission* [2001] ECR II-867.

([313]) Judgment of the Court of 3 May 2001 in Case C-204/97 *Portugal* v *Commission* [2001] ECR I-3175.

479. In an action for annulment brought by Austria against a Commission decision to initiate formal investigation proceedings regarding aid granted to Siemens Bauelemente OHG, Austria argued that in the case concerned the period of two months laid down in the *Lorenz* judgment in which the Commission must conclude its preliminary examination had already expired and that the aid had become existing aid when the Commission initiated the proceedings. The Commission was therefore no longer entitled to initiate the formal investigation proceedings. The Court confirmed the *Lorenz* case law, pointing out that notified aid becomes existing aid if two necessary but sufficient conditions are met: the two-month period following complete notification must have expired and the Member State must give the Commission prior notice of the implementation of the planned aid. The Court rejected the Commission's argument that, having received such prior notice, it would still have a right of objection. The Court made it clear, however, that, at the relevant time, no rules of procedure had yet been adopted on the basis of Article 89 of the EC Treaty. Meanwhile, the provisions of Article 4(5) and (6) of Regulation (EC) No 659/1999 make the ruling of the judgment no longer applicable, since they give the Commission an explicit right of objection within a period of 15 working days following the receipt of the prior notice of the Member State. Although the judgment does not, therefore, directly affect the current procedural rules, it confirms the strict attitude of the Court with regard to compliance with imposed time limits by the Commission. It also fits into the general line taken by the Court that, whenever the Commission has doubts about the compatibility of aid, the procedure should be initiated quickly.

2. Existing aid

480. The Court addressed the issue of distinguishing new aid from existing aid ([314]). The case concerned a Commission decision which had already been partially annulled by the earlier judgment of 15 June 2000 in *Alzetta Mauro* ([315]). The Court confirmed that a system of aid established in a market that was initially closed to competition must, when that market is liberalised, be regarded as an existing aid system, in so far as at the time of its establishment it did not come within the scope of Article 87(1) of the Treaty, which applies only to sectors open to competition. The Court of First Instance rejected the argument that only aid granted after full liberalisation can be classified as new aid. It confirmed that in State aid matters it is sufficient that the market concerned be open, even partly, to competition, for aid to be capable of affecting trade between Member States. It is important to point out that whilst the Court of First Instance confirmed that aid granted before liberalisation constituted existing aid, it stressed that it had reached this conclusion in the absence of detailed provisions implementing Article 88 of the Treaty ruling out the classification of such aid after the date fixed for liberalisation. In the meantime, however, Council Regulation (EC) No 659/1999 contained an explicit provision in Article 1(b)(v) according to which 'where certain measures become aid following the liberalisation of an activity by Community law, such measures shall not be considered as existing aid after the date fixed for liberalisation'. A situation such as that in Case T-288/97, but arising after the entry into force of the regulation, cannot therefore be treated as existing aid any more.

481. Under Article 88(2) of the Treaty, the Commission is entitled to initiate the procedure only in respect of new aid. Where aid is classified as existing aid, the Commission is obliged to first make a proposal for appropriate measures to the Member State concerned. This classification is of more than procedural importance. In cases where new aid has been put into effect unlawfully and is subsequently found to be incompatible with the common market, the Commission is normally required to order

([314]) Judgment of the Court of First Instance of 4 April 2001 in Case T-288/97 *Regione autonoma Friuli Venezia Giulia* v *Commission*, [2001] ECR II-1169.

([315]) Judgment of the Court of First Instance of 15 June 2000 in Joined Cases T-298/97 to T-23/98 *Alzetta and others* v *Commission*, [2000] ECR II-2319.

recovery pursuant to Article 14 of Council Regulation (EC) No 659/1999. However, recovery cannot be ordered in the case of existing aid.

482. The Court examined the procedural situation where the Commission had classified an aid measure as new aid and initiated the procedure under Article 88(2), whereas the Member State concerned had maintained that the measure was existing aid ([316]). The Court considered that the choice of procedure made by the Commission, in connection with its invitation to the Italian authorities to suspend payment, implied a classification of the aid, even if provisional, as new and itself entailed legal effects. The initiation of the formal examination procedure implied that the Commission did not intend to examine the aid in the context of the procedure for existing aid pursuant to Article 88(1) of the EC Treaty and that from its point of view the aid had been unlawfully implemented. Such a decision altered the legal position of the measure concerned and of the beneficiaries, since it created at the very least a significant element of doubt as to the legality of the measure, which must lead the Member State to suspend payment. It might also be invoked before a national court called upon to draw all the consequences arising from the infringement of the last sentence of Article 88(3) of the EC Treaty. For these reasons, the Court declared the action by the Italian government against the initiation of the procedure admissible.

3. Recovery of aid

483. Following the principle laid down in Article 14 of the procedural regulation, the Commission orders recovery of all aid that has been granted in violation of the notification obligation and is incompatible with the common market. Article 14 further requires that Member States carry out recovery without delay and in accordance with the procedure under their national laws provided that they allow the immediate and effective execution of the Commission's decision.

484. During the year, the Commission ordered recovery in 20 cases. At the end of the year, there were 67 recovery cases still pending. These cases are closely monitored by the Commission, which ensures that the principles laid down in Article 14 are fully complied with by the Member States. During the year, failure by the German authorities to do so in the *Lautex GmbH* case ([317]) led the Commission to bring a complaint to the Court of Justice on 25 July for non-compliance with the recovery order, on the basis of Article 88(2) of the EC Treaty.

4. Non-execution of decisions

485. When Member States refuse to comply with a recovery decision, it has become standard Commission practice to bring an action before the Court of Justice. In 2001, the Court of Justice decided on two actions for non-implementation of a Commission decision. The first case concerned the recovery of the aid granted to the 'Nouvelle Filiature Lainière de Roubaix'. In November 1998 ([318]), the Commission had adopted a decision according to which the aid granted to this company was incompatible with the common market and had to be recovered by the French authorities. This decision gave rise to two appeals to the Court of Justice. In January 1999, the French government lodged an action for annulment ([319]) of the decision. Since actions for annulment do not have suspensive effect, they do not

([316]) Judgment of the Court of 9 October 2001 in Case C-400/99 *Italy* v *Commission*, [2001] ECR I-7303.

([317]) Commission decision of 20.7.1999 (OJ L 42, 15.2.2000).

([318]) Commission Decision 1999/378/EC of 4 November 1998 (OJ L 145, 10.6.1999).

([319]) C-17/99.

affect the Member State's obligation to comply with the recovery decision. In July 1999, since no recovery was taking place, the Commission brought an action for the non-implementation of the recovery order in the period imposed ([320]). On 22 March, the Court rejected the action for annulment ([321]) and decided on the same day on the action for non-implementation of the recovery order ([322]). The Court stressed that according to established case law, only the absolute impossibility of implementing the decision could be a valid defence for the Member State's non-compliance. If a Member State encountered unforeseen and unforeseeable difficulties in the implementation of a decision, it had to submit such problems to the Commission together with proposals for suitable amendments to the decision in question. In such circumstances, the Commission and the Member State concerned were both bound by the principle of Article 10 of the EC Treaty, which imposes a duty of genuine cooperation in order to overcome the difficulties, whilst fully observing the State aid rules. Since the French government failed to inform the Commission of any such difficulties, the Court concluded that France had failed to fulfil its obligations under the Treaty. On 3 July, the Court reiterated these principles in a judgment declaring that the Belgian authorities had failed to adopt the measures necessary to recover the aid provided for under the *Maribel* bis/ter schemes ([323]).

486. If a Member State fails to comply with the Court's judgment, the Commission may, in accordance with Article 228, institute further proceedings against the Member State concerned which may ultimately lead to the imposition of a penalty payment. On 18 July, for the first time in a State aid recovery case, the Commission decided to send a reasoned opinion to Italy specifying the points on which Italy had not complied with the Court's judgment in *Commission* v *Italy* ([324]).

([320]) C-261/99.

([321]) Judgment of the Court of 22 March 2001 in Case C-17/99 *France* v *Commission*, [2001] ECR I-2481.

([322]) Judgment of the Court of 22 March 2001 in Case C-261/99 *Commission* v *France*, [2001] ECR I-2537.

([323]) Judgment of the Court of 3 July 2001 in Case C-378/98 *Commission* v *Belgium*, [2001] ECR I-5107.

([324]) Case C-280/95, *Commission* v *Italy* [1998] ECR I-259. In that judgment, Italy had already been condemned for failure to comply with the recovery order in the Commission decision of 9June 1993 (tax credit for professional road hauliers) (OJ L 233, 16.9.1993).

E — Statistics

Figure 6
Trend in the number of aid cases registered (other than in agriculture, fisheries, transport and coal) between 1996 and 2001

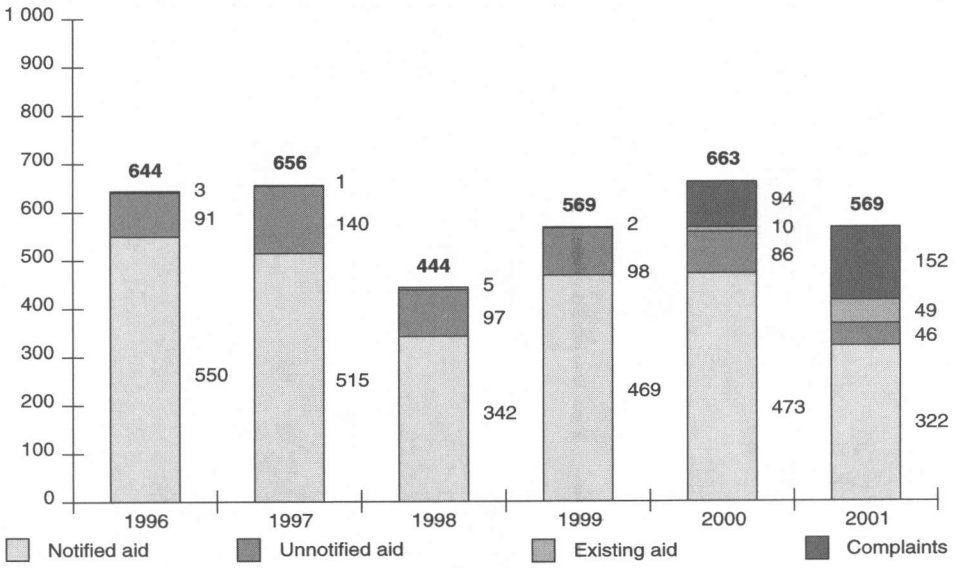


Figure 7
Trend in the number of decisions taken by the Commission
(other than in agriculture, fisheries, transport and coal) between 1996 and 2001

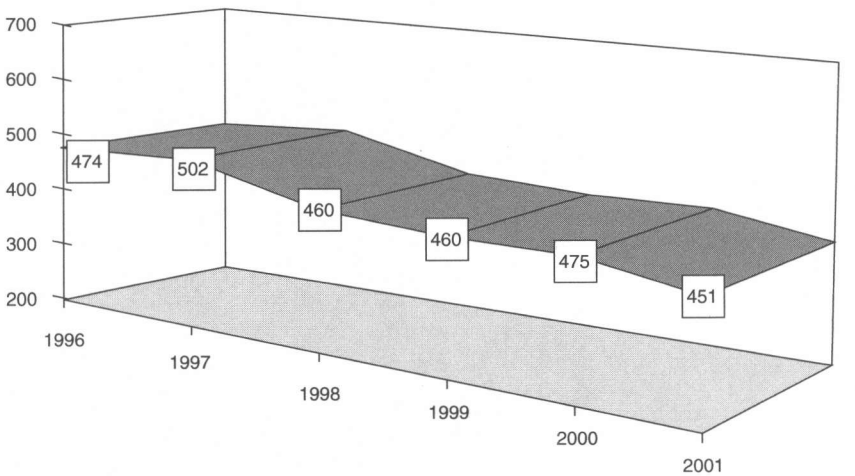
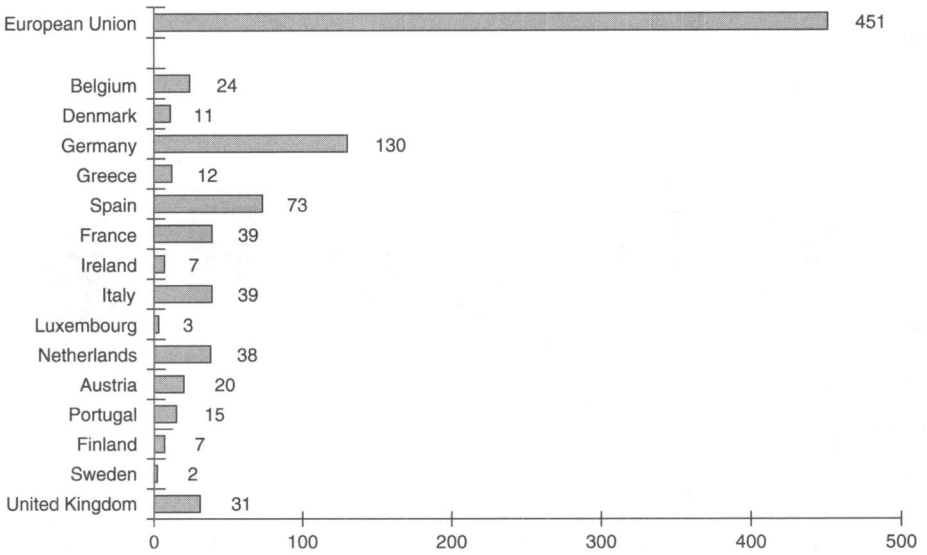


Figure 8
Number of decisions by Member State
(other than in agriculture, fisheries, transport, and coal)



IV — SERVICES OF GENERAL INTEREST

1. General principles

487. EC competition rules are in principle fully applicable to undertakings which the State has entrusted with the performance of services of general economic interest (SGEIs). However, according to Article 86(2) of the EC Treaty, the application of the EC Treaty rules, and in particular the competition rules, may not obstruct the performance, in law or in fact, of the particular tasks assigned to these undertakings. On the other hand, the development of trade must not be affected to an extent that is contrary to the interests of the Community. Therefore, under the principle of proportionality enshrined in Article 86(2), the application of the EC Treaty rules has to be limited to the extent necessary to allow the undertaking concerned to fulfil the specific mission with which the State has entrusted it.

488. The importance of services of general economic interest was highlighted in particular by the Treaty of Amsterdam's introducing Article 16 into the EC Treaty. This article provides that: 'Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions'.

489. The Commission has set out its position on the subject in detail in its two communications on services of general interest in Europe of 1996 ([325]) and 2000 ([326]). In them, the Commission explains the criteria for applying the Treaty rules on competition and the single market, and demonstrates with the help of specific examples that the correct application of these criteria does not endanger the proper operation of SGEIs.

2. Recent developments

2.1. Request by the Nice European Council

490. The Nice European Council, meeting on 7, 8 and 9 December 2000, took note of the Commission communication of 2000, but requested the Commission to report on the implementation of services of general interest for the Laeken European Council on 14 and 15 December 2001. In particular, the European Council requested the Commission to consider ways of ensuring greater predictability and increased legal certainty in the application of competition rules to services of general interest. The European Council also approved a statement made by the Council of the European Union (meeting on internal market issues) on 28 September 2000, expressing two specific concerns:

— first, there is a need for clarification of the relationship between methods of funding services of general economic interest and application of the rules on State aid;

— second, services of general economic interest should be assessed regularly, particularly in terms of quality of service, accessibility, safety and pricing.

([325]) OJ C 281, 26.9.1996.

([326]) COM(2000) 580 final, 20.9.2000, also published in OJ C 17, 19.1.2001. See also 2000 Competition Report, Box 3, after point I.C.2.7.

2.2. Commission report to the Laeken European Council

491. The Commission adopted its report on 17 October ([327]). In it, the Commission stresses the importance it attaches to services of general interest as essential building blocks of the European model of society, and points out that Community law in no way hinders the introduction and operation of efficient services of general interest.

492. The Community rules on State aid thus allow Member States to grant firms entrusted with operating services of general economic interest the financial assistance necessary to offset the additional costs generated by the specific tasks entrusted to them, and to enable the firms concerned to perform those tasks in conditions of economic equilibrium. On the other hand, Community law does not allow the amount of aid granted by the State to exceed what is necessary for the performance of the public service obligation or to be used by a firm entrusted with operating a service of general interest for the purposes of cross-subsidising activities that are subject to competition.

493. In order to increase predictability and legal certainty in the State aid field, the Commission adopted a two-phased approach:

— as a first step, it intends during 2002, in close consultation with the Member States, to lay down Community guidelines for State aid granted to undertakings entrusted with the provision of services of general economic interest. Such guidelines will provide Member States and firms with information on the terms on which the Commission may authorise State aid for undertakings entrusted with services of general economic interest;

— as a second step, it will evaluate the experience gained from the application of these guidelines and, if and to the extent that experience justifies it, will adopt a regulation exempting certain aid for services of general economic interest from the prior notification requirement.

494. The Commission also took two steps to increase transparency as regards services of general economic interest:

— first, it will in future devote a specific section of its annual competition report to services of general interest, setting out how it has applied the competition rules to such services;

— second, it will in future identify cases relating to services of general interest in its State aid register so as to facilitate access to the available information.

495. Lastly, it is worth noting that on 22 November the Court of Justice delivered its ruling in *Ferring* ([328]). In this specific case, the Court found that compensation granted to certain firms entrusted with the operation of a service of general economic interest was not State aid within the meaning of Article 87(1) of the Treaty. If this case law is confirmed by the Court, the Commission will naturally draw the necessary conclusions.

496. In its report to the Laeken European Council, the Commission also set out its position on how firms entrusted with services of general economic interest should be selected. Where Member States decide to entrust the provision of such services to a third party, they must follow the applicable Community rules. A contract by which a public authority entrusts the management of a service of general

([327]) COM(2001) 598, 17.10.2001.

([328]) Case C-53/00.

interest to a third party, and which meets the conditions set out in the Community directives on public procurement ([329]), constitutes a public contract within the meaning of those directives and must be awarded in accordance with them.

497. Moreover, according to the case law of the Court of Justice ([330]), contracts not covered by the directives on public procurement must none the less be awarded in accordance with the rules and principles of the Treaty, namely the rules on the freedom to provide services and the freedom of establishment, and with the principles of transparency, equal treatment, proportionality and mutual recognition.

498. The Commission takes the view that the application of these principles cannot but be of benefit to users and firms. It will consider whether other measures are needed to clarify these rules.

499. The Commission report was welcomed by the Council meeting on internal market, consumer affairs and tourism on 26 November. The Council particularly encouraged the Commission to establish in the near future guidelines clarifying in particular the conditions under which compensation for public services are not covered by the rules on State aid. It also invited the Commission, in the light and on the basis of experience gained in applying these guidelines, to draw up as soon as possible, in close cooperation with the Member States, a proposal for a regulation exempting certain aid for services of general interest from the prior notification requirement, taking account of sectoral specificities. Lastly, the Council asked the Commission to report to it on the drawing up of such a regulation in preparation for the Copenhagen European Council.

500. The European Council meeting on 14 and 15 December concluded that it 'welcomes the Council's conclusions and the joint Council and Commission report concerning services of general interest, which will be the subject of an assessment, at Community level, as to their performance and their effects on competition. The European Council encourages the Commission to set up a policy framework for State aid to undertakings entrusted with the provision of services of general interest.'

501. During 2002, the Commission will endeavour to achieve the objectives set out in its report to the European Council, in the light of developments in the case law of the Court of Justice.

3. Antitrust (including liberalisation)

502. In the antitrust field, the Commission dealt in the course of 2001 with various cases and legislative issues involving services of general interest, following the principles of law and policy as set out in the Commission communication on services of general interest in Europe of 20 September 2000. The growing body of case law and legislation thus contributed to increasing predictability and legal certainty in this area.

503. EC competition rules do not apply where the activity in question is of a non-economic nature and/or where any effect on trade between Member States can be ruled out. On these grounds, the Commission closed various cases in 2001 ([331]).

([329]) Directives 92/50, 93/77, 93/36 and 93/38.

([330]) Judgment of 7.12.2000 in Case C-324/98 *Telaustria,* [2000] ECR I-10745.

([331]) Such as Case COMP/D-3/38213 *Ryanair/ENAV and Italy,* on the basis that ENAV (the entity in charge of air traffic control in Italy) did not exercise an economic activity.

504. In other cases, the EC competition rules could be fully applied because terminating the anticompetitive conduct of the undertaking entrusted with a service of general economic interest would obviously not obstruct the performance of the particular tasks assigned to that undertaking within the meaning of Article 86(2) ([332]). In the postal sector, several Commission decisions ([333]) showed that abuses of a dominant position held by an undertaking entrusted by the State with a service of general economic interest can normally not be justified under Article 86(2). Of particular importance was the decision in *Deutsche Post AG I* (DPAG), where the Commission considered that a derogation under Article 86(2) was not applicable because termination of the fidelity rebates agreed by DPAG with its cooperation partners and an increase in DPAG's price to cover at least the incremental cost of providing mail-order parcel services would not prevent DPAG from complying with its statutory obligation to perform a service of general economic interest ('carrier of last resort').

3.1. Court developments

505. In its judgment of 17 May ([334]), the Court of Justice had to assess whether an Italian law which granted an undertaking the exclusive right to operate a universal postal service was compatible with Article 86(1) in conjunction with Article 82 inasmuch as it made the right of any other economic operator to provide an express mail service not forming part of the universal service subject to payment of postal dues equivalent to the postage charge normally payable to the undertaking responsible for the universal service. The Court stated that, in so far as trade between Member States may be affected, such legislation was contrary to Article 86(1) in conjunction with Article 82 since it created a situation in which the incumbent undertaking enjoying the exclusive right could not avoid abusing its dominant position by receiving payment for services which it had not supplied. However, the Court also held that this restriction of competition, which consisted in the fact that undertakings operating outside the universal service were obliged to contribute to the viability of the universal service provider, could be justified under Article 86(2) ([335]) if the financial contribution was limited to the amount strictly necessary to offset any losses which may be incurred by the incumbent undertaking in the operation of the universal postal service ([336]).

506. In the field of health care, the Court of Justice issued a preliminary ruling on 25 October ([337]) assessing the compatibility with Article 86 in conjunction with Article 82 of a German legislative provision under which undertakings are to be refused authorisation to provide patient transport services where the grant of such an authorisation is likely to have adverse effects on the operation and profitability of the emergency transport service, which is entrusted for given geographical areas to medical aid organisations (MADs) that offer patient transport services at the same time. The Court first held that MADs are undertakings within the meaning of EC competition law, because emergency transport and

([332]) Similarly, in the Commission decision of 23.10.2001 in *La Poste (France)/SNELPD (COMP/C1/37133)*, Articles 86(1), 3(1)(g), 10(2), 81 and 82 could be fully applied against a Member State because terminating the anticompetitive situation created by that Member State in the context of an undertaking entrusted with services of general economic interest would not obstruct the performance of the particular tasks assigned to that undertaking.

([333]) For cases *Deutsche Post AG I, Deutsche Post AG II* and *De Post/La Poste (Belgium)*, see Section I.C.2.2.

([334]) Case C-340/99 *TNT Traco*, paras 51-63.

([335]) The facts to which the judgment relates occurred prior to the deadline for implementation of Directive 97/67/EC (i.e. February 1999). Article 9(4) of that directive makes it clear that only undertakings operating inside the universal service may be obliged to contribute to the universal service fund.

([336]) In addition, the Court held that in these circumstances the incumbent, when supplying a service not forming part of the universal service, had also to be required to make a financial contribution to the universal service. Lastly, it ruled that the incumbent also had to ensure that its express mail activity outside the universal service was not subsidised by the universal service, thereby improperly increasing the potential losses of that service.

([337]) Case C-475/99 *Ambulanz Glöckner*.

patient transport services constitute activities of an economic nature. It then stated that it was for the national court to establish, first, whether the MADs held a dominant position on the market in emergency transport and whether this market represented a substantial part of the common market; and second, whether the German legislation had an effect on trade between Member States, i.e., whether there was a sufficient degree of probability that it would actually prevent operators established in Member States other than Germany either from providing ambulance transport services in Germany or from establishing themselves there. Assuming these conditions were met, the Court held that the German legislation would result in extending the MADs' dominant position to the neighbouring but separate market of patient transport, thus constituting an infringement of Article 86(1) in conjunction with Article 82 if there was no objective justification for the legislation. However, it finally concluded that the German legislation concerned a service of general economic interest and could be justified under Article 86(2) provided that all requirements under this provision were met and that the possibility were not ruled out of independent undertakings' obtaining authorisation for providing patient transport services if the entrusted undertakings were manifestly unable to satisfy demand for these services.

3.2. Liberalisation through legislative measures

507. The conclusions of the Lisbon European Council in March 2000 called upon the Commission, the Council of the European Union and the Member States, each in accordance with their respective powers, to set out by the end of 2000 a strategy for the removal of barriers to services and to speed up liberalisation in areas such as gas, electricity, postal services and transport. Accordingly, throughout 2001, the Commission continued to promote market opening and competition by making legislative proposals and by monitoring the implementation of existing EU legislation. This activity included areas in which services of general economic interest are performed, taking account of the proportionality principle and the particularities of each sector dealt with.

508. In the energy sector, the Commission proposed a new directive ([338]) stipulating full market opening in electricity and gas supplies in three steps between 2003 and 2005. The proposed directive also aims to safeguard a high level of services of general economic interest by obliging Member States to ensure the right for household consumers to be supplied with electricity on reasonable terms as well as the attainment of various essential objectives, such as the protection of vulnerable customers, basic guarantees for final customers (a minimum set of conditions for contracts, transparency of information, and the availability of low-cost and transparent dispute settlement mechanisms) and security of supply.

509. In the postal sector, the Commission continued its efforts to pave the way for further market opening. The Commission proposal of 21 March stresses *inter alia* that each Member State sets its own detailed universal service standards. In the common position adopted by the Council on 15 October, several amendments were made to the text. Of relevance for services of general economic interest are, first, the objective of liberalising outgoing cross-border mail except for those Member States where its inclusion in the reserved services is necessary to ensure the provision of the universal service, and second, the prohibition of cross-subsidisation of universal services outside the reserved area out of revenues from services in the reserved area unless this is strictly necessary to fulfil specific universal service obligations imposed in the competitive area.

510. In the telecommunications sector, the Council reached political agreement on 6 December on a set of directives ('the telecom package'), which will replace the current Community regulatory framework for telecommunications. The main improvement on the current framework is that it is technology-neutral

([338]) COM(2001) 125 final, 13.3.2001. For details see point 88.

and dissociates the carrier services from the content provision. It ends the distinction between the regulation of telecommunications networks and broadcasting networks. In addition, it introduces competition-law definitions of the markets and dominant operators with the aim of applying sector-specific legislation. In order to ensure coherent application of these principles, the Commission was granted the right to vet national interpretation not compatible with Community law.

511. The Commission's activity concentrated on reviewing implementation of the existing liberalisation directives and on pursuing inquiries into local loop unbundling, into the leased lines sector and into roaming. By its judgment of 6 December in Case C-146/00 *Commission* v *France*, the Court of Justice clarified certain issues concerning the financing of the universal service and the calculation of the net cost of this service under the telecom directives. The Court ruled entirely in the Commission's favour, finding that the French legislation on the financing of the universal service did not comply with the principles of proportionality, objectivity and transparency required by the directives, and that France had failed to meet its obligations as regards re-balancing tariffs.

V — INTERNATIONAL ACTIVITIES

A — Enlargement

1. Accession preparations and negotiations

512. In 2001, the European Union proceeded with the accession negotiations in the competition field. In March, competition negotiations were formally opened with Bulgaria. Accession negotiations with Turkey have not started yet, but preparations for the analytical examination of the compatibility of Turkish competition rules with Community law are well under way.

513. In assessing whether the candidate countries had prepared the ground sufficiently for it to propose to the Member States that the competition negotiations be provisionally closed, the Commission examined in particular whether the candidate countries had achieved a satisfactory level in relation to (i) their legislative framework for antitrust and State aid; (ii) their administrative capacity in the competition field; and (iii) their competition enforcement record. The methodology for assessing these criteria was explained in detail in the Commission's progress report on the accession negotiations on the competition chapter, presented to the Council's enlargement group in January. The progress report also covered the state of play in the negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia. In July, the Commission presented an updated version of the progress report to the Council's enlargement group. It was expanded to incorporate the state of play for Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia. The enlargement group welcomed both reports.

514. As regards the timing of the enlargement negotiations, the Göteborg European Council meeting on 15 and 16 June reaffirmed the 'road map' presented in the Commission's enlargement strategy paper of 8 November 2000. According to that paper, the EU was to prioritise in the second half of 2001 the definition of common positions, including positions on requests for transitional measures for a number of chapters, including the one on competition policy. In line with the road map, the Commission presented revised draft common positions on the competition chapter to the Council at the end of October. The draft common positions concerned all 12 candidate countries with which the competition chapter was being negotiated. The aim was to enable the Council to assess whether conditions were right for the provisional closure of the competition chapter.

515. In November, on the Commission's recommendation, the Council decided to provisionally close the competition negotiations with Estonia, Latvia, Lithuania and Slovenia. For all other candidate countries, the Council approved the Commission's proposal that the competition negotiations be continued. In December, the Laeken European Council reaffirmed the European Union's determination to bring the accession negotiations with those candidate countries that are ready to a successful conclusion by the end of 2002, so that the countries concerned can take part in the European Parliament elections in 2004 as members. In addition, the Laeken European Council agreed 'with the report of the Commission, which considered that, if the present rate of progress of the negotiations and reforms in the candidate States is maintained, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, the Czech Republic and Slovenia could be ready'.

2. Progress in the alignment of competition rules

516. The Commission reports regularly on the progress made by each of the candidate countries towards accession. The fourth set of regular reports for the 10 central and east European countries

(CEECs), Cyprus, Malta and Turkey adopted by the Commission in November assessed progress since the previous reports were delivered by the Commission in 2000.

517. The achievements in the antitrust and merger areas were generally considered satisfactory, both on the legislative side and with regard to the creation of the necessary administrative capacity. The main challenge facing antitrust authorities in the candidate countries remained the need to give priority to antitrust enforcement regarding the anticompetitive conduct that most seriously obstructs the proper working of markets, such as cartels, monopolistic acquisitions, and exclusionary practices by dominant firms. The further strengthening of the antitrust enforcement record of the candidate countries should, in general, also include a more effective policy regarding penalties.

518. In comparison with the antitrust field, the introduction of State aid monitoring in the candidate countries has generally proved much more controversial, slower and politically sensitive. However, the accession negotiations have helped to speed up the creation of legal and procedural frameworks for State aid discipline.

519. By 2001, all candidate countries with which negotiations were ongoing had created national State aid monitoring authorities. Turkey agreed to do so by 1 January 2003. The Commission has emphasised that these authorities should effectively monitor new and existing State aid granted by all aid-granting authorities. Monitoring authorities should receive prior notification of all new aid measures. They should have the power to collect all the information they need in order to examine State aid from all aid-granting authorities. They should also have the power to give an independent opinion on the compatibility of all new aid measures with the Europe Agreements prior to the granting of any such aid. However, not all monitoring authorities seemed to receive, systematically, information on all new aid granted such as would enable them to perform their duties comprehensively.

520. To ensure the necessary transparency, most candidate countries have created comprehensive inventories of existing aid that are kept permanently up to date. In addition, the Commission has continued to work with the monitoring authorities of the candidate countries to ensure that their annual State aid reports conform to the methodology of the Commission's State aid survey.

521. The Commission has continued to draw the attention of several candidate countries to the need to bring their tax aid regimes, often used in attracting foreign investment, and their State aid measures in special economic zones into line with Community law well before accession. It has also underlined the need for transparency and rigorous application of Community rules in restructuring cases.

3. Implementing rules under the Europe Agreements and the customs union decision

522. With a view to further completing the legal framework of the Europe Agreements for competition relations between the Community and the 10 associated CEECs, two sets of implementing rules have been prepared. The first concerns the implementation of the competition provisions of the Europe Agreements applicable to undertakings (antitrust). The second relates to the rules on State aid.

523. Implementing rules for the competition provisions applicable to undertakings had already been adopted in previous years for the Czech Republic ([339]), Poland ([340]), the Slovak Republic ([341]),

([339]) Decision 1/96 of the EU-Czech Association Council of 30 January 1996 (OJ L 31, 9.2.1996).

([340]) Decision 1/96 of the EU-Poland Association Council of 16 July 1996 (OJ L 208, 17.8.1996).

([341]) Decision 1/96 of the EU-Slovak Association Council of 15 August 1996 (OJ L 295, 20.11.1996).

Hungary ([342]), Bulgaria ([343]), Romania ([344]), Estonia ([345]), Lithuania ([346]) and Slovenia ([347]). In 2001, the Association Council also adopted the implementing rules for the competition provisions applicable to undertakings with respect to Latvia ([348]). The wording of the implementing rules is basically the same for all the associated countries. They contain mainly procedural-type rules, i.e. rules regarding competence to deal with cases, procedures for notification of cases to the other party, consultation, comity and the exchange of information. With respect to certain constitutional problems regarding the application of the implementing rules in Hungary, progress has been made towards trying to resolve the remaining difficulties. The Commission has submitted a proposal to the Council for amended implementing rules for Hungary. After agreeing on a text, the EC-Turkey Association Council can likewise adopt the implementing rules as requested under the customs union decision of 1995, covering both rules for undertakings and State aid monitoring.

524. Major progress was achieved in 2001 with respect to the adoption of implementing rules for State aid. The implementing rules have been in force for the Czech Republic since 1998 ([349]). In 2001, the Association Council also adopted implementing rules with regard to Lithuania ([350]), Latvia ([351]), Romania ([352]), Slovenia ([353]), Poland ([354]), Bulgaria ([355]) and Slovakia ([356]). Implementing rules constitute a two-pillar system of State aid monitoring. On the Community side, the Commission assesses the compatibility of State aid granted by EU Member States on the basis of the Community State aid rules. On the side of the associated country, a national authority is to monitor and control existing and new public aid, on the basis of the criteria arising from the application of the Community State aid rules. The implementing rules include procedures for consultation and problem solving, rules on transparency (i.e. the associated countries are to draw up and thereafter update an inventory of their aid programmes and individual aid awards), and rules on the mutual exchange of information. After preparatory work in the Council, draft State aid implementing rules were ready for approval by the Association Council with Estonia in early 2002.

4. Extension of Article 87(3)(a) status under the Europe Agreements and the adoption of regional aid maps

525. The Europe Agreements lay down that public aid granted by the associated countries is to be assessed taking into account that for a five-year period they are to be regarded as areas identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community. In 2000, the Association Councils had decided to extend this status for another five years

([342]) Decision 2/96 of the EU-Hungary Association Council of 6 November 1996 (OJ L 295, 20.11.1996).
([343]) Decision 2/97 of the EU-Bulgaria Association Council of 7 October 1997 (OJ L 15, 21.1.1998).
([344]) Decision 1/99 of the EU-Romania Association Council of 16 March 1999 (OJ L 96, 10.4.1999).
([345]) Decision 1/99 of the EU-Estonia Association Council of 28 April 1999 (OJ L 144, 9.6.1999).
([346]) Decision 4/99 of the EU-Lithuania Association Council of 26 May 1999 (OJ L 156, 23.6.1999).
([347]) Decision 4/2000 of the EU-Slovenia Association Council of 21 December 2000 (OJ L 130, 12.5.2001).
([348]) Decision 5/2001 of the EU-Latvia Association Council of 25 April 2001 (OJ L 183, 6.7.2001).
([349]) Decision 1/98 of the EU-Czech Association Council of 24 June 1998 (OJ L 195, 11.7.1998).
([350]) Decision 2/2001 of the EU-Lithuania Association Council of 22 February 2001 (OJ 98, 7.4.2001).
([351]) Decision 4/2001 of the EU-Latvia Association Council of 20 March 2001 (OJ L 163, 20.6.2001).
([352]) Decision 4/2001 of the EU-Romania Association Council of 10 April 2001 (OJ 138, 22.5.2001).
([353]) Decision 2/2001 of the EU-Slovenia Association Council of 3 May 2001 (OJ 163, 20.6.2001).
([354]) Decision 3/2001 of the EU-Poland Association Council of 23 May 2001 (OJ L 215, 9.8.2001).
([355]) Decision 2/2001 of the EU-Bulgaria Association Council of 23 May 2001 (OJ L 216, 10.8.2001).
([356]) Decision 6/2001 of the EU-Slovakia Association Council of 22 November 2001 (not yet published).

with respect to Bulgaria ([357]), Romania ([358]), Lithuania ([359]), and Estonia ([360]). In 2001, similar decisions were adopted by the respective Association Councils with the Czech Republic ([361]), Latvia ([362]), Poland ([363]), Slovakia ([364]) and Slovenia ([365]).

526. The Association Council decision extending Article 87(3)(a) status generally adds that the associated country has to submit GDP per capita figures at the appropriate statistical level. These figures are to be used by the State aid monitoring authority of the associated country and the Commission to jointly draw up the regional aid map for the associated country, on the basis of the Community guidelines on national regional aid. The regional aid map identifies the eligibility of regions for regional aid as well as the maximum aid intensities allowed in each of these regions. On a proposal from the associated countries, the Commission has prepared the submission of draft regional aid maps to the Council with a view to their adoption by the respective Association Committees for the Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia and Slovenia.

5. Technical assistance to the candidate countries

527. In view of the remaining shortcomings, technical assistance in the field of competition continues to be an essential tool to prepare the candidate countries for accession. Specific actions are being taken under the PHARE programmes. Under the institution-building ('twinning') arrangement, EU Member State experts are now also providing advice on a long-term basis to the competition and State aid authorities in the CEECs. In addition, joint training sessions were organised in March for officials from the competition offices of the candidate countries. These joint training sessions focus on explaining new competition legislation to the candidate countries and on implementation and enforcement of the competition rules.

528. The Commission has pursued a proactive policy of further intensifying its contacts with the competition authorities of the candidate countries. On 17 to 19 June, the seventh annual competition conference between the competition offices of the candidate countries and the Commission took place in Ljubljana, Slovenia. The delegations included high-level officials from the respective competition and State aid authorities, including Commissioner Monti. The annual conference serves as a forum for the exchange of views and experience. It also serves to establish and strengthen professional contacts between officials responsible for competition. This year's conference concentrated on the assessment of enforcement practice in the candidate countries and on the need for effective implementation of the rules in the fields of both antitrust and State aid.

6. Western Balkans

529. At Santa Maria da Feira, in June 2000, the European Council recognised that the countries of the Western Balkans were potential candidates for EU membership. The Union committed itself to

([357]) Decision 1/2000 of the EU-Bulgaria Association Council of 28 February 2000 (OJ L 144, 17.6.2000).
([358]) Decision 2/2000 of the EU-Romania Association Council of 17 July 2000 (OJ L 230, 12.9.2000).
([359]) Decision 2/2000 of the EU-Lithuania Association Council of 24 July 2000 (OJ L 199, 5.10.2000).
([360]) Decision 3/2000 of the EU-Estonia Association Council of 1 December 2000 (OJ L 21, 23.1.2001).
([361]) Decision 3/2001 of the EU-Czech Association Council of 8 March 2001 (OJ L 100, 11.4.2001).
([362]) Decision 3/2001 of the EU-Latvia Association Council of 20 March 2001 (OJ L 156, 13.6.2001).
([363]) Decision 2/2001 of the EU-Poland Association Council of 7 May 2001 (OJ L 215, 9.8.2001).
([364]) Decision 3/2001 of the EU-Slovakia Association Council of 18 May 2001 (OJ L 217, 11.8.2001).
([365]) Decision 4/2001 of the EU-Slovenia Association Council of 25 July 2001 (not yet published).

supporting the stabilisation and association process for this region, notably through technical assistance. In 2001, the Commission began a process of discussion with the recently established competition authorities in the Western Balkan countries. This is with a view to the work that will be required under the competition provisions of the Stabilisation and Association Agreements that are currently being concluded with these countries ([366]). The Commission has also been an active participant in the OECD's Regional Flagship Initiative on competition policy for the countries of the Western Balkans that was launched at Ljubljana in July.

B — Bilateral cooperation

1. United States

530. Every year, the Commission reports in detail to the Council and the European Parliament on its cooperation activities with the US under the 1991 Cooperation Agreement ([367]) and the 1998 Positive Comity Agreement ([368]). The latest report covered the period from 1 January 2000 to 31 December 2000 ([369]). The report for 2001 will be published during the course of 2002.

531. During 2001, the Commission continued its close cooperation with the Antitrust Division of the US Department of Justice (DoJ) and the US Federal Trade Commission (FTC) in an ever greater number of cases. The trend towards the globalisation of markets continued apace during the year, as most vividly illustrated by the record number and scale of transnational mergers: the year 2001 saw a notable increase in the number of transactions notified to both the Commission and the US antitrust agencies. A large number of operations in all areas of antitrust were scrutinised simultaneously by the Commission and the US agencies. Inter-agency discussions tend to focus on issues such as the definition of markets, the likely competitive impact of a transaction on those markets, and the viability of any remedies suggested.

532. Merger investigations involving close transatlantic cooperation included GE/Honeywell, Metso/Svedala and CVC/Lenzing ([370]). The Commission also cooperated closely with its US counterparts in a number of non-merger investigations, for example in the Commission's and FTC's respective enquiries into the creation of the Covisint business-to-business joint venture between the manufacturers of automobile spare parts. Case-related EU/US cooperation is discussed in further detail in this report's chapter on merger control, and in the seventh report to the Council and the European Parliament for the year 2001, which will be published during the course of 2002.

533. There were numerous bilateral contacts between the Commission and the relevant US authorities during the course of 2001. Commissioner Monti paid a visit to Washington in March, and used the occasion to meet, among other persons, key members of the administration. On 24 September, he met in

([366]) In 2001, two Stabilisation and Association Agreements were signed. The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, was signed on 9 April in Luxembourg. The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, was signed on 29 October in Luxembourg.

([367]) Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws (OJ L 95, 27.4.1995, as corrected by OJL 131, 15.6.1995).

([368]) Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws (OJ L 173, 18.6.1998).

([369]) COM(2002) 45, 29.1.2002.

([370]) For GE/Honeywell, see point 326 and Box 9; for Metso/Svedala, see points 307 and 316; for CVC/Lenzing, see point 256.

Washington the newly appointed heads of the US antitrust agencies, Assistant Attorney General Charles James of the [DoJ] and Chairman Timothy Muris of the FTC, for the annual bilateral EU/US meeting. The meeting coincided with the 10th anniversary of the EU/US bilateral agreement on competition policy. Meetings also took place during the course of the year between the Commission and other US agencies, such as the US Department of Transportation (which have some responsibility for the management of competition policy issues in their respective sectors).

534. The mandate of the joint EU/US merger working group was refocused at the 24 September meeting. The work will continue and be intensified. The topics need to be further defined and will reflect a number of issues resulting from ongoing questions in merger assessment that have been raised in recent cases.

2. Canada

535. Bilateral cooperation with Canada is based on the Competition Cooperation Agreement which entered into force in June 1999 ([371]). Every year, the Commission reports in detail to the Council and the European Parliament on its cooperation activities with Canada. The latest report covered the period from 1 January 2000 to 31 December 2000 ([372]). The report for 2001 will be published during the course of 2002.

536. An increasing number of cases are being examined by the competition authorities on both sides. Contacts between the Commission and its Canadian counterpart, the Canadian Competition Bureau, have been frequent and fruitful. Discussions have concerned both case-related issues and more general policy issues. Two bilateral meetings, as foreseen in the Cooperation Agreement, took place, one in February in Brussels and one in September in Ottawa, in which the heads of the respective competition authorities participated.

3. Other OECD countries

537. During 2001 the Commission engaged in cooperation with the competition authorities of a number of other OECD countries, most notably Australia, New Zealand and Korea. These contacts concerned both case-related and more general competition policy issues. The Commission also continued its efforts to conclude a bilateral cooperation agreement with Japan.

538. During the course of the year the Commission continued its close cooperation with the ESA (EFTA Surveillance Authority) in enforcing the Agreement on the European Economic Area.

4. Mediterranean countries

539. The Euro-Mediterranean Agreements establishing an association between the EU and Morocco ([373]), Tunisia ([374]), and Israel ([375]) are in force. Morocco, Tunisia and Israel have competition

([371]) Agreement between the European Communities and the Government of Canada regarding the application of their competition laws (OJ L 175, 10.7.1999).

([372]) COM(2002) 45, 29.1.2002.

([373]) OJ L 70, 18.3.2000, Articles 36–41.

([374]) OJ L 97, 30.3.1997, Articles 36–41.

([375]) OJ L 147, 21.6.2000, Articles 36–38.

legislation, which facilitates negotiations on a mechanism for cooperating with the Commission in connection with the commitments laid down in Article 36 of each of the three agreements. As regards the other Euro-Mediterranean Agreements, the one with Jordan ([376]) is not yet in force, the Jordanian Parliament having rejected the draft law on competition presented by the Government. The agreement with Egypt ([377]) was signed in 2000 and the Egyptian authorities are currently considering a draft law on competition. The interim agreement with the Palestinian Authority ([378]) has not yet undergone final renegotiation. The Commission has been monitoring the situation with a view to bringing the EU's Mediterranean partners closer to cooperation on competition policy.

540. With a view to giving a boost to Mediterranean policy, negotiation meetings were held with Algeria, Lebanon and Syria. The competition chapter of the future agreements will make it possible to align the existing or future competition policies of these countries with Community policy. The Commission offers new partners the possibility of stepping up technical and institutional cooperation. Algeria already has a law on competition and an authority responsible for enforcing it. Lebanon and Syria, on the other hand, have not yet reached this point.

5. Latin America

541. The mechanism for cooperation ([379]) between their competition authorities laid down in the agreement between the EU and Mexico ([380]), which is in force, gave rise to exchanges of information, consultations on certain activities and a provision on technical cooperation.

542. Four negotiation meetings on trade liberalisation were held between the EU, Mercosur and Chile. The goal is to establish mechanisms for cooperation between the competition authorities of the parties, with the application of competition rules ensuring legal certainty and transparency of treatment for firms on the respective markets. The regulatory framework for competition in the Mercosur countries has progressed; Argentina has enhanced its institutional and regulatory system by creating a Secretariat and must now set up a competition court. Uruguay set up a competition department responsible for drawing up regulations implementing the competition provisions of the law. Paraguay now has a very comprehensive draft law on competition. Brazil is considering a new proposal for a law integrating its competition departments. With these developments, the Commission received regular updates on Mercosur's competition policy.

543. As regards the Andean Community, the financial protocol to the proposal on technical cooperation in competition was signed between the Commission and the General Secretariat of the Andean Community. EuropeAid is to be responsible for the procedure to select the consultant that will manage the programme.

544. During the year, direct information campaigns on Community rules and practice continued, as did the provision of information via the *Boletín Latinoamericano de Competencia*.

([376]) Articles 53–58, COM(1997) 554 final.
([377]) Articles 35–39, COM(2001) 184 final.
([378]) OJ L 187, 16.7.1997, Articles 33–34.
([379]) OJ L 245, 29.9.2000 and OJ L 157, 30.6.2000.
([380]) OJ L 276, 28.10.2000.

6. Russian Federation and Ukraine

545. Cooperation with the Russian Federation in the field of competition made important progress over the year through a series of high-level meetings. During these meetings the whole range of competition matters of common interest was covered, from case-related cooperation in specific antitrust investigations, through an exchange of experience in the field of liberalisation policy, to discussing the prospects for State aid monitoring policy within the Russian Federation.

546. Moreover, a considerable number of working meetings were held to advance the work required by the Partnership and Cooperation Agreement. A workshop for increasing understanding of European State aid policy in the steel sector was organised.

547. With Ukraine, the Commission organised a short study tour to enhance understanding of EC competition law and practice for members of the Ukrainian Competition Committee.

C — Multilateral cooperation

548. The year 2001 saw two major developments in relation to Commission initiatives within the framework of the World Trade Organization (WTO) and as regards the new International Competition Network (ICN).

1. WTO: trade and competition policy

1.1. Competition in the Doha Development Agenda

549. Following a long preparatory process, the fourth WTO Ministerial Conference took place in Doha (Qatar) from 9 to 14 November. The declaration adopted by WTO members in Doha ([381]) addresses among other issues the 'interaction between trade and competition policy'. The relevant passages of the declaration ([382]) (paras 23–25) bear testimony to the recognition — for the first time — by all WTO members, with no exceptions, that a multilateral framework is needed today to enhance the contribution of competition policy to international trade and development. There was agreement in Doha that the WTO members will negotiate and conclude a multilateral agreement on trade and competition. It was also agreed that the formal phase of negotiations will open immediately after the fifth WTO Ministerial Conference, due to take place in Mexico in 2003, and that the negotiated result on competition will form an integral part of the overall result of the negotiations (para. 47). The negotiating arrangements will be decided at the fifth Ministerial Conference.

550. In keeping with its 'developmental' aspirations, the declaration also highlights the need to step up efforts to provide technical assistance to build and enhance the capacity of developing and least developed countries in this area. It is obvious that these countries urgently need all the assistance that developed countries can provide in order to develop their capacity to evaluate the implications of closer

([381]) Also known as the 'Doha Development Agenda', because of the central position that the development dimension will occupy in future WTO work.

([382]) Available online at the WTO web site: www.wto.org.

multilateral cooperation in this area for their development policies and objectives, as well as for their human and institutional development. The Commission will work together with all relevant intergovernmental organisations, including Unctad, and through the appropriate regional and bilateral channels, to provide coordinated, strengthened and adequately resourced assistance to respond to these needs.

551. Finally, the declaration mentions that the pre-negotiation period leading up to the fifth Ministerial Conference should be used to clarify with partners in the Geneva process the various elements constituting this future multilateral framework and most likely to figure in a negotiating mandate. The declaration contains an indicative list of such key issues with the elements that the EU has repeatedly earmarked as the pillars of the planned multilateral framework on competition, namely certain core trade and competition principles, including transparency, non-discrimination and procedural fairness; a commitment to combat hardcore cartels; the arrangements for voluntary cooperation between antitrust agencies; and support for progressive reinforcement of competition institutions in developing countries through capacity building.

1.2. An initial assessment of the declaration adopted in Doha

552. The result of discussions on trade and competition in Doha and the formulation of the relevant passages in the ministerial declaration are most satisfactory for the Commission for the following reasons:

— first, the WTO members which have signed up to the package agreed in Doha (including some of those which were sceptical about the role of the WTO in the area of competition, such as certain developing countries, most notably India, as well as Hong Kong) recognise for the first time that it may be to their benefit and to the benefit of the multilateral trading system to negotiate and conclude a multilateral agreement on trade and competition in the WTO. Up until quite recently, even the principle of having such an agreement was controversial. The recognition of the importance of establishing such a framework and its relevance for international trade and development will contribute to the introduction and more effective application of domestic competition regimes and will be of considerable benefit to consumers worldwide;

— second, even if another decision will have to be taken at the fifth WTO Ministerial Conference in 2003 on the arrangements for the formal and final phase of negotiations on this multilateral agreement, there now exists a unanimous and clear commitment to launching such negotiations on a fixed date so that the new trade and competition rules will be an integral part of the so-called 'single undertaking' resulting from the negotiation process set in motion at Doha, which is to be concluded no later than 1 January 2005. As far as the EU and the other proponents for negotiating such rules in the WTO are concerned, we have now entered a crucial phase within which we have the firm intention to clarify with our partners from developing and developed countries the elements that WTO members need to include in this multilateral agreement and to draft with them a precise and inclusive negotiation agenda to be adopted by the fifth WTO Ministerial Conference in 2003;

— third, our proposals regarding the key components of the future multilateral agreement on trade and competition have been widely accepted. The EU was the first to put concrete substantive proposals on the table, so it takes particular note of the fact that that the Doha declaration focuses on precisely those elements that we have highlighted in our proposals and identifies them as the items that the WTO members will have to take up first for clarification;

— lastly, as the working group in Geneva will now shift its attention to concrete pre-negotiation work on these elements, the declaration opens up the scope for more focused technical assistance and capacity building that will help emerging and developing economies to better understand and appreciate the significance of these issues, including for the development of their own economies. In this process Unctad and other international institutions, as well as regional and bilateral arrangements, will certainly contribute and have an important role to play in order that everybody may be ready to open formal negotiations following the next Ministerial Conference.

Box 12: Trade and competition: from the Van Miert report to Doha

Efforts to include competition in the WTO work programme started in 1996 when, on the basis of the Van Miert report (1), the Commission proposed to the Council (2) that the World Trade Organization should set up a working group responsible for initial work on the development of an international framework of competition rules. This initiative was approved by the Council and supported by several other WTO members and a decision was adopted by the Singapore WTO Ministerial Conference on 11 December 1996 '[to] establish a working group to study issues ... relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit consideration in the WTO framework'.

At that time, the Commission argued that the discussions should focus on an undertaking by all WTO members to develop active domestic competition structures, the identification and adoption of common competition principles at international level (most harmful practices), the creation of the means of cooperation between competition authorities and the adapting of the WTO rules for the settlement of disputes to the competition area (3).

Ever since the second WTO Ministerial Conference in Singapore and the subsequent establishment of the WTO working group on trade and competition in Geneva, the Commission has been at the forefront of efforts to persuade its WTO trading partners of the merits of a multilateral agreement on competition. Discussions in Geneva were particularly useful in clarifying the Commission's position and promoting the interest of developing countries in such an agreement.

(1) Report by a group of independent experts chaired by Karel Van Miert and entitled 'Competition policy in the new trade order: Strengthening international cooperation and rules'.
(2) Commission communication of 18.6.1996, COM(96) 284 final.
(3) 1996 Competition Report, points 235–6.

2. OECD

553. The main events of the May session were the round tables on the training programmes of competition authorities for their officials and on price transparency. On price transparency, the EC addressed the advantages of governmentally mandated price transparency measures (e.g. in certain utility markets, in the motor vehicle market) in order to achieve market integration and enhance competition and entry, as well as the anticompetitive effects of private voluntary price transparency agreements or similar practices between suppliers. Other delegations addressed different issues focusing on the pros and cons of price transparency for the consumer. Discussions boiled down to the conclusion that price

transparency may in certain cases benefit the consumer but it can also have serious anticompetitive effects, depending on the structure of the market and the type of price transparency arrangements (level of aggregation of the information exchanged, time frame of the data exchanged, frequency of the exchanges, etc.).

554. In June the Commission took part in and contributed to the first OECD conference on competition policy in the countries of south-eastern Europe, which was held in Ljubljana, the day after the seventh annual conference with the applicant countries.

555. During the Competition Law and Policy Committee (CLP) meeting in October, the OECD organised the first Global Forum on Competition, which brought together representatives of more than 50 countries. Commissioner Monti took part in the event. In his opening speech he called on competition authorities throughout the world to step up their cooperation and to establish mechanisms for governance in the field of international competition policy. Topics covered during the Forum included the role of competition policy in economic reform, cooperation instruments, unjustifiable agreements and cooperation on cross-border mergers. The Commission also participated during the CLP session in the round tables on regulating prices for access to network infrastructures, especially in the telecommunications field, but also as regards gas and electricity, and on means of investigation other than leniency programmes (in particular surprise inspections).

3. Unctad

556. The Commission took part in the Unctad meeting from 2 to 4 July on international cooperation between competition authorities, at which Commissioner Monti announced specific plans for technical assistance to developing countries: a technical assistance project in the competition field for Comesa (Common Market for Eastern and Southern Africa), a planned seminar for competition officials from developing countries and a joint study with Unctad on the importance of a competition policy for poor countries. Commissioner Monti advocated competition for developing countries and called for efforts to develop international cooperation.

4. International Competition Network

557. From 2 to 4 February, the International Bar Association organised a meeting in Ditchley Park in the United Kingdom, bringing together a large number of competition authorities and practitioners for an informal discussion of the recommendation by the US Committee ICPAC ([383]) to establish an international competition network (ICN). Following the Ditchley meeting, a steering group was set up to supervise the launch of the project. The group, in which the Commission took an active part, met for the first time in Berlin in May and then on the fringes of the OECD CLP meeting in Paris in October.

558. As a result of the above discussions and practical efforts, the creation of an international competition network (ICN) was announced publicly on Thursday 25 October in New York. This is the first time so many competition authorities have taken an autonomous initiative designed to enable them to share experience and exchange views on competition issues deriving from the ever-increasing globalisation of the world economy. The ICN will be a project-oriented, consensus-based, informal network of antitrust agencies from developed and developing countries that will address antitrust enforcement and policy issues of common interest and formulate proposals for procedural and

([383]) International Competition Policy Advisory Committee.

substantive convergence through a results-oriented agenda and structure. It will encourage the dissemination of antitrust experience and best practices, promote the advocacy role of antitrust agencies and seek to facilitate international cooperation. The ICN will concentrate its efforts on international antitrust issues that are difficult but capable of being resolved. Initially, the ICN will work on two important antitrust issues: the merger control process in the multi-jurisdictional context and the competition advocacy role of antitrust agencies. This agenda will be later opened up to include issues of particular relevance to transition and developing economies.

559. Any national or regional competition agency responsible for the enforcement of antitrust laws may become a member of the ICN. The network will also actively seek advice and contributions from the private sector and various non-governmental organisations, and will cooperate closely with the following types of entity: international organisations, such as the OECD, WTO and Unctad, industry and consumer associations, practitioners of antitrust law and/or economics and members of the academic community. In particular, the ICN will seek input from these non-governmental advisers, who are not members of the network but who will provide support in terms of identifying projects. The ICN may also request that certain non-governmental advisers participate in working groups for designated projects and contribute papers or participate in hearings related to ICN projects.

560. As regards its organisation, the ICN is intended as a virtual structure without any permanent secretariat, flexibly organised around its projects, and guided by a steering group which will identify projects and devise work plans for approval by the ICN as a whole. The authority hosting the annual conference will cover for a year logistic and secretarial costs related to its organisation. There will be one ICN conference per year. The conference will bring together heads of antitrust agencies to commission new projects and review the progress and recommendations of current projects. The conferences will provide a structured dialogue by focusing on a limited number of projects selected sufficiently in advance by the ICN to permit meaningful participation by all members. The first official ICN conference will be hosted by the Italian antitrust authority and is scheduled for October 2002. Thereafter, annual conferences will be held in the following countries: Mexico (2003); Korea (2004); Germany (2005); and South Africa (2006).

VI — OUTLOOK FOR 2002

1. Antitrust

1.1. Legislative and regulatory activities

Proposal for a new regulation implementing Articles 81 and 82 EC

561. Following the discussion held by the Council on 5 December, the Belgian presidency concluded that the new regulation implementing Articles 81 and 82 EC had to be adopted in 2002 in order to ensure that it was fully applicable before the forthcoming enlargement of the European Union. Work on the Commission's proposal for a new regulation will therefore continue in the Council under the Spanish and, if necessary, the Danish presidency. In parallel to discussions on the proposed regulation in the Council working group and in response to requests by the European Parliament, the Council and the Economic and Social Committee, the Commission will in 2002 present drafts of several notices clarifying some of the main concepts in the new regulation.

Review of the block exemption regulation for technology transfer agreements

562. After discussing the report (see points 17ff.) with industry, consumer associations and other interested parties in the first half of 2002 the Commission will propose new competition rules for the application of Article 81 to licensing agreements.

Commission guidelines on market analysis and recommendation on relevant markets for electronic communications services and networks; adoption of a consolidated Commission directive for competition in electronic communications markets

563. Following adoption of the proposed directives making up the new regulatory framework for electronic communications services and networks in early 2002, the Commission will, in accordance with Article 15 of the framework directive, publish guidelines on market analysis and the calculation of significant market power as well as a recommendation on relevant markets. Both texts should provide national regulatory authorities with necessary guidance for applying the new competition law-based concepts of the new regulatory framework.

564. The Commission will also adopt a consolidated directive on competition in the electronic communications markets to replace Directive 90/388 and all subsequent amending directives.

Proposal for the motor vehicle distribution regime

565. The block exemption regulation for car distribution (Regulation (EC) No 1475/95) expires on 30 September 2002. The Commission will in early 2002 adopt its proposal for the motor vehicle distribution regime, based on the November 2000 evaluation report and the hearing held on 14 and 15 February 2001 with all interested parties, the four studies carried out for the Commission ([384]) and all other relevant information and studies at its disposal.

([384]) Two in 2000 (Price differentials between Member States, and Link between sales and after-sales service) and two in 2001 (Impact of possible future legislative scenarios for motor vehicle distribution on all parties concerned, and Customer preferences for existing and potential sales and servicing alternatives in automotive distribution).

566. The adopted proposal will be published in the Official Journal in order to give all interested parties an opportunity to comment. After receiving written and oral comments from interested parties and from the Advisory Committee and after informing the other institutions, the proposal will then be finalised and submitted to the Commission for adoption. The Commission should adopt the future regime during the summer of 2002, i.e. before expiry of the current block exemption at the end of September 2002.

1.2. Enforcement activities

567. Following the publication for consultation in July of a draft leniency notice with a view to replacing the existing notice on the non-imposition or reduction of fines in cartel cases, adopted in 1996, the Commission carefully reviewed the comments received and intends to adopt an updated and revised notice in the course of 2002.

568. Access to the file is one of the main procedural guarantees intended to protect the rights of the defence. In order to take account of experience gained so far under the Commission's notice on the internal rules of procedure for processing requests for access to the file, as well as to bring the notice into line with the recent case-law of the Court of First Instance, a revision exercise was initiated in 2001. The revised notice is expected to be adopted by the Commission during the second half of 2002.

2. Mergers

569. In order to ensure that the European merger control system is ready to meet the challenges it will face in the future, most notably the forthcoming enlargement of the European Union, on 11 December the Commission adopted a Green Paper on the review of the merger regulation. This initiated a period of consultation that gives anyone interested the opportunity to submit comments on the jurisdictional, substantive and procedural issues raised. The consultation period will close at the end of March 2002, after which the Commission plans to propose an amended merger regulation. The proposal is expected to be adopted in the second half of 2002.

570. The Commission's jurisdictional scope will also be affected by expiry of the European Coal and Steel (ECSC) Treaty on 23 July 2002. Once the ECSC Treaty has expired, mergers will be considered either under the EC Treaty, and in particular the merger regulation, or, if they do not meet the latter's thresholds, under the appropriate national legislation. This will mark the end of the Commission's exclusive jurisdiction over mergers in the coal and steel industries. After the expiry of the ECSC Treaty, it will no longer be possible for a merger to be covered by two different Treaties as happened in four ([385]) of the eleven cases that were handled under the ECSC Treaty in 2001. Together with the changes being considered under the merger review, this should help to ensure that the European merger control system operates as effectively and efficiently as possible and that coal and steel mergers are dealt with at the appropriate level.

571. Last but not least, cooperation with US merger control agencies will be stepped up with a view to achieving closer convergence in procedures and substantive analysis when applying merger control law to the growing number of cases which affect both EU and US jurisdiction. For this purpose, the EU/US working group on mergers and its five specialised subgroups recently set up by the agencies involved (the

([385]) *Balli/Klockner* — COMP/ECSC.1359, 1.10.2001 and COMP/M.2481, 31.9.2001; *BHP/Billiton* — COMP/ECSC.1356, 14.6.2001 and COMP/M.2413, 14.6.2001; *Endesa/CDF/SNET* — COMP/ECSC.1352, 18.4.2001 and COMP/M.2281, 17.4.2001; *Usinor/Arbed/Aceralia* — COMP/ECSC.1351, 23.11.2001 and COMP/M.2382, 19.7.2001.

European Commission, the US Federal Trade Commission and the US Department of Justice) will continue to figure among the priorities for 2002.

3. State aid

572. In the field of State aid, the Commission will continue and intensify its efforts to review State aid rules and procedures in order to ensure that simple cases are dealt with quickly and simply so that resources can be concentrated on those cases which present the greatest potential risks from the standpoint of competition policy. Nevertheless, even for these cases, the aim will be to ensure that they are handled in accordance with transparent and predictable procedures and rules. These efforts do not, however, imply any relaxation of the Commission's traditional position, which is also recognised by all Member States, that overall aid levels in terms of GNP remain too high and that the most distortive forms of individual aid must be eliminated and aid measures reoriented towards horizontal measures in support of the Community's broader economic aims, including cohesion objectives. Continuing efforts will thus be made to ensure prompt and effective repayment of incompatible aid and effectively monitor the implementation of decisions by Member States. Further improvements in transparency will also be sought through the progressive development of the register and scoreboard.

573. As regards horizontal and cohesion policy development, the Commission should normally complete the review of the guidelines for aid for research and development, a new legal framework for employment aid and the review of the multisectoral framework for large regional investment projects. In line with the commitments given in its report to the Laeken European Council, the Commission will also give high priority to clarifying, in the light of developments in the case-law of the Court of Justice, application of the State aid rules to services of general economic interest ([386]).

4. International field

574. In the international sphere, the Commission will continue to pursue its dual policy of enhancing bilateral cooperation with its foreign counterparts while at the same time exploring possibilities for expanding multilateral cooperation. Regarding the former, the Commission will continue to cooperate with the United States and Canada within the framework of the existing bilateral agreements. A similar agreement is expected to be concluded with Japan. Cooperation in the competition field will also be developed with all the Mediterranean countries, the Commission having assigned priority to that region. The growing importance of Asian countries for global competition policy will necessitate an increased level of cooperation and technical assistance in that region too (with special reference to China, Korea, and India). Moreover, the Commission will have to develop appropriate cooperation with major countries with which association agreements are already in force or are in the process of being finalised, such as Russia, Ukraine, Mexico, Mercosur and Chile.

575. As regards multilateral initiatives, the Commission will continue to participate actively in all international forums where competition policy is on the agenda, in particular under the OECD, WTO and UNCTAD. Furthermore, the Commission is currently contributing to a new concept of governance by participating in the International Competition Network, which is striving to improve cooperation among competition authorities around the world in order to enhance the convergence of competition policies.

([386]) COM(2001) 598, 17.10.2001.

576. Under the timetable towards accession agreed by the Göteborg European Council in June, accession negotiations will be in the process of finalisation with some candidate countries but will continue with others. A reinforced monitoring process will apply to those candidate countries with which accession negotiations have been completed in the area of competition. Building on progress already achieved, relations will continue to be developed in the competition field with Turkey.

577. Particular attention will be devoted to the development of technical assistance to the candidate countries, as well as to developing countries.

ANNEX — CASES DISCUSSED IN THE REPORT

1. Articles 81, 82 and 86

Case	Publication	Point
Belgian breweries	IP/01/1739, 5.12.2001	58ff
British Midland/Lufthansa/SAS	OJ C 83, 14.3.2001	Box 1, 136ff
Carbonless paper	IP/01/1892, 20.12.2001	69ff
Citric acid	IP/01/1743, 5.12.2001	56ff
Covisint	IP/01/1155, 31.7.2001, OJ C 49, 15.2.2001	Box 4
DaimlerChrysler	IP/01/1394, 10.10.2001	184
De Post/La Poste (Belgium)	OJ L 61, 2.3.2002	82, 113ff
Deutsche Post AG I	OJ L 125, 5.5.2001	77, 108ff
Deutsche Post AG II	OJ L 331, 15.12.2001	78, 111ff
Duales System Deutschland (DSD)	OJ L 166, 21.6.2001	79, Box 3
Eurex	IP/02/4, 3.1.2002	196ff
Formula One (FIA & FOA)	OJ C 169, 13.06.2001 IP/01/1523, 30.10.01	221ff
German banks	IP/01/1796, 11.12.2001	64ff
GlaxoWellcome	OJ L 302, 17.11.2001	232ff
Graphite electrodes	IP/01/1010, 18.7.2001	40ff
IATA Cargo Tariff Consultations	IP/01/694, 15.5.2001 IP/01/1433, 19.10.2001	143ff
IATA Passenger Tariff Conferences	OJ L 177, 30.6.2001	149ff
Identrus	OJ L 249, 19.9.2001	132
IMS Health	OJ L 59, 28.2.2002	81
Intelsat	OJ C 9, 12/01/2001	133
La Poste (France)	IP/01/1476, 23.10.2001	84
Luxembourg breweries	IP/01/1740, 5.12.2001	61ff
Michelin	IP/01/873, 20.6.2001	80
Microsoft	IP/01/1232, 30.8.2001	207ff
P&O/Stena	IP/01/806, 7.6.2001	160
Pfizer/Aventis		241
Pfizer/EISAI		239, 240
Porsche's distribution system		185
SAS/Maersk	OJ L 265, 5.10.2001	Box 1, 43ff
Sodium gluconate	IP/01/1355, 20.10.2001	48ff
TACA — Trans-Atlantic Conference Agreement	IP/01/1713, 3.12.2001	153ff
UEFA broadcasting regulations	OJ L 171, 26.6.2001	165, 224
UEFA Champions League	IP/01/1043, 20.7.2001	166
Visa International	OJ L 293, 10.11.2001	200ff
Vitamins	IP/01/1625, 21.11.2001	52ff
Volkswagen	OJ L 262, 2.10.2001	183
Wanadoo	IP/01/1899, 21.12.2001	134
Zinc phosphate	IP/01/1797, 11.12.2001	63

2. Merger control

Case	Publication	Point
BASF/Eurodiol/Pantochim	IP/01/01/984, 11.7.2001	285
BP/E.ON	IP/01/1247, 6.9.2001 IP/01/1893, 21.12.2001	317
Carrefour/Promodès	OJ C 164, 14.6.2000	313
CVC/Lenzing	IP/01/1436, 17.10.2001	256
EdF/EnBW	OJ L 59, 28.2.2002	258, 300
Enel/FT/Wind/Infostrada	IP/01/79, 19.1.2001	322
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Part Two

Report on the application of competition rules in the European Union

(Report prepared under the sole responsibility of the Directorate-General for Competition in conjunction with the *XXXIst Report on Competition Policy — 2001* SEC(2002) 462 final)

Notice to the reader

The following 'Report on the application of the competition rules' (Part Two) does not summarise cases that are already described in the *XXXIst Report on Competition Policy 2001* (Part One) — cross-references are provided where appropriate. More information on individual cases can be found on the Competition DG's web site (http://europa.eu.int/comm/competition/index_en.html).

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1. Prohibitions

1.1. Horizontal agreements

SAS/Maersk Air (Case COMP/D-2/37.444) and Sun-Air/SAS and Maersk Air (Case COMP/D-2/37.386) [1]

On 18 July, the Commission decided [2] to fine Scandinavian airlines SAS and Maersk Air EUR 39.375 million and EUR 13.125 million respectively for sharing markets on routes to and from Denmark.

SAS and Maersk Air had notified to the Commission a cooperation agreement, which entered into force on 28 March 1999. The two main areas of cooperation that the parties notified related to code-sharing and frequent-flyer programmes.

In the course of the preliminary enquiry, it emerged that, coinciding with the entry into force of the cooperation agreement, Maersk Air had withdrawn from the Copenhagen–Stockholm route where it had until then been competing with SAS. It also emerged that, at the same time, SAS had stopped flying on the Copenhagen–Venice route and Maersk Air had started operations on this route. Finally, it emerged from the preliminary enquiry that SAS had withdrawn from the Billund–Frankfurt route, leaving Maersk Air — its previous competitor on the route — as the only carrier.

These entries and withdrawals, which were not notified, formed part of a wider agreement between the parties that the Commission discovered as a result of on-site inspections. The inspections were carried out in June 2000, in close cooperation with the national competition authorities in Sweden and Denmark.

In addition to the agreed entries and withdrawals, the parties also negotiated an overall non-compete clause covering their future operations on international routes to and from Denmark and on Danish domestic routes. The parties agreed that Maersk Air would not operate new international routes from Copenhagen 'without specific request or approval by SAS'. SAS and Maersk Air also agreed that SAS would not operate on Maersk Air's routes out of Jutland, and that 'the share-out of the domestic routes' would be respected.

The Commission considered that the market-sharing agreement between SAS and Maersk Air qualified as a very serious infringement of Community competition law. In reaching this conclusion, the Commission took account of the nature of the infringement, its actual impact and the size of the relevant geographic market.

[1] See also Part One, points 43–47 and Box 1.

[2] Commission decision of 18 July 2001 relating to proceedings pursuant to Article 81 of the EC Treaty and Article 53 of the Agreement on the European Economic Area (OJ L 265, 5.10.2001, p. 15).

The infringement was of medium duration. It started on 5 September 1998 (the date on which the parties' agreement was recorded) and ended on 15 February 2001, when — according to an exchange of letters between the parties — the two companies regained their freedom to compete.

In the present case, there were no aggravating or extenuating circumstances. The parties benefited, however, from section D.2 of the 1996 notice on the non-imposition or reduction of fines in cartel cases ('leniency notice') ([3]). Maersk Air was able to benefit from the application of the first indent of Section D.2 of the leniency notice ('active' cooperation) and from the application of the second indent ('passive' cooperation of companies not contesting the statement of objections), while SAS was able to benefit only from the application of the second indent of Section D.2.

As a result of the decision, competition between SAS and Maersk Air, the two largest airlines operating to and from Denmark, was restored to the benefit of consumers.

Graphite electrodes (Case COMP/E-1/36.490) ([4])

On 18 July, the Commission fined eight producers of graphite electrodes a total of EUR 218.8 million for their participation in a worldwide price-fixing and market-sharing cartel. Graphite electrodes are ceramic-moulded columns of graphite used primarily in the production of steel in electric arc furnaces, also referred to as 'mini-mills'.

The cartel started in 1992 at the instigation of SGL Carbon AG (Germany) and UCAR International Inc. (USA) and continued until 1998, despite the fact that investigations had already been carried out in the EU and in the United States before that date.

The Commission characterised the companies' behaviour as a 'very serious' infringement of EC competition rules.

In setting the fines, the Commission took account of the gravity and duration of the infringement and the existence of aggravating and mitigating circumstances. The role of each undertaking was assessed individually. Where appropriate, the leniency notice was applied.

As to the basic amount of the fine within the category of very serious infringements, the undertakings were divided into three groups according to their relative importance in the relevant market. Further upward adjustments were made in the case of two companies in the light of their size and overall resources.

Most of the cartel members committed an infringement of long duration (more than five years). Aggravating circumstances were taken into account for several of them (role of ringleader, continuation of the infringement after the Commission started its investigation and attempts to obstruct the Commission's investigation). Mitigating circumstances (passive role, partial non-implementation of the agreements) were applied to only one company.

With regard to the leniency notice, this is the first time the Commission has granted a substantial reduction in a fine (70 %). The Japanese producer Showa Denko benefited from this reduction, having been the first company to cooperate and provide conclusive evidence of the cartel to the Commission.

([3]) OJ C 207, 18.7.1996.

([4]) See also Part One, points 40–42.

UCAR International also cooperated with the Commission at an earlier stage of the investigation. The Commission therefore granted a reduction of 40 %. A significant reduction in the fine was also granted to SGL Carbon (30 %), VAW Aluminium (20 %) and The Carbide Graphite Group (20 %). The Japanese producers Tokai Carbon, SEC Corporation and Nippon Carbon were granted a 10 % reduction as they had not substantially contested the facts.

This decision was a further milestone in the Commission's fight against hardcore cartels, which, by destroying competition, cause serious harm to consumers and economies.

Several companies have lodged an appeal against the decision before the Court of First Instance in Luxembourg ([5]).

Sodium gluconate (Case COMP/E-1/36.756) ([6])

On 2 October, the Commission fined six producers or former producers of sodium gluconate a total of EUR 57.53 million for their participation in a worldwide price-fixing and market-sharing cartel. Sodium gluconate is a chemical used to clean metal and glass, with applications such as bottle washing, utensil cleaning and paint removal. The product is also used as a retarder and water reducer in concrete admixtures, as a paper and textile bleaching admixture and as a food additive, as well as in various chemical applications.

Following an investigation which started in 1997, the Commission established that Archer Daniels Midland Company Inc. ('ADM'), Avebe BA ('Avebe', as parent of Glucona BV), Akzo Nobel NV ('Akzo', as former parent of Glucona BV), Fujisawa Pharmaceutical Company Ltd ('Fujisawa'), Jungbunzlauer AG ('Jungbunzlauer') and Roquette Frères SA ('Roquette') participated in the cartel between 1987 and 1995.

At the material time, world production of sodium gluconate was almost entirely in the hands of Fujisawa, Glucona BV (a 50/50 joint venture between Akzo and Avebe), Jungbunzlauer and Roquette. After it entered the market in 1990, ADM also became a significant player until it withdrew in 1995. The EEA market for sodium gluconate was worth about EUR 20 million in 1995.

In setting the fines, the Commission took account of the gravity and duration of the infringement and of the existence of aggravating and/or mitigating circumstances. The role of each undertaking was assessed individually. The leniency notice was applied.

All the undertakings concerned were found to have committed a very serious infringement. Within this category, for the purpose of fixing the appropriate starting amounts, the undertakings were divided into two groups according to their relative importance in the relevant market. Akzo and Avebe were held jointly responsible for the anti-competitive conduct of their subsidiary Glucona. In this regard, the Commission split into two equal parts the starting amount that would have been applicable to Glucona had it been the addressee of the decision. The amount obtained constituted the starting amount applicable to each parent company.

([5]) Cases T-236/01 *Tokai Carbon Co.*; T-239/01 *SGL Carbon AG*; T-244/01 *Nippon Carbon Co. Ltd*; T-245/01 *Showa Denko K.K.*; T-246/01 *UCAR International Inc.*; T-251/01 *SEC Corporation*; T-252/01 *The Carbide Graphite Group Inc.*

([6]) See also Part One, points 48 et seq.

In order to ensure that the fines had a sufficient deterrent effect, further upward adjustments of the starting amount were made in the case of two companies given their very large size and hence their overall resources.

With the exception of ADM, which committed an infringement of medium duration, all the other cartel participants committed an infringement of long duration (more than five years). Leadership of the infringement was taken into account as an aggravating circumstance in respect of Jungbunzlauer. As to mitigating circumstances, none was found to be applicable in the present case.

The Commission granted for the first time a reduction in the fine pursuant to Section B of the leniency notice. Fujisawa benefited from a reduction of 80 % of the fine it would otherwise have had to pay on the ground that it was the first to adduce conclusive evidence of the cartel's existence, before the Commission had undertaken any investigation ordered by decision. The Commission did not grant Fujisawa a 100 % reduction in its fine, as it could have done under Section B of the notice, as the company did not approach the Commission until after it had received a request for information. This reluctance to come forward spontaneously and before any investigatory measure was taken into account.

All the other parties were granted reductions in the fine they would otherwise have had to pay pursuant to Section D of the leniency notice. Before the Commission adopted its statement of objections, ADM, Glucona, Jungbunzlauer and Roquette provided it with information and documents which materially contributed to establishing the existence of the infringement. Moreover, none of them substantially contested the facts on which the Commission based its statement of objections. Roquette and ADM were both granted a 40 % reduction in their fine. As for Glucona (i.e. Akzo and Avebe) and Jungbunzlauer, the Commission considered that only a reduction of 20 % was appropriate in the light of their cooperation.

This decision is further proof of the Commission's determination to uncover and punish hardcore cartels, which are the worst kind of violation of competition rules.

Several companies have lodged an appeal against the decision before the Court of First Instance in Luxembourg.

Vitamins (Case COMP/E-1/37.512) ([7])

On 21 November, the Commission fined F. Hoffmann-La Roche AG, BASF AG, Aventis SA, Solvay Pharmaceuticals BV, Merck KGaA, Daiichi Pharmaceutical Co. Ltd, Eisai Co. Ltd and Takeda Chemical Industries Ltd a total of EUR 855.23 million for participating in eight distinct secret market-sharing and price-fixing cartels affecting vitamin products (vitamins A, E, B2, B5, C and D3, beta carotene and carotinoids). Each cartel had a specific number of participants and duration, although all operated between September 1989 and February 1999. Five other companies — Lonza AG, Kongo Chemical Co. Ltd, Sumitomo Chemical Co. Ltd, Sumika Fine Chemicals Ltd and Tanabe Saiyaku Co. Ltd — were not fined because the cartels in which they were involved — vitamin H or folic acid — ended five years or more before the Commission opened its investigation. Under EU law, prescription applies under these circumstances. Prescription also applied to cartels in vitamins B1 and B6.

Following the opening of an investigation in May 1999, the Commission found that 13 European and non-European companies had participated in cartels aimed at eliminating competition in the vitamin A, E, B1, B2, B5, B6, C and D3, biotin (H), folic acid, beta carotene and carotinoids markets. A striking

([7]) See also Part One, points 52 et seq.

feature of this complex of infringements was the central role played by Hoffmann-La Roche and BASF, the two main vitamin producers, in virtually each and every cartel, while other players were involved in only a limited number of vitamin products.

Vitamins are vital elements for human and animal nutrition and are essential to normal growth, development and maintenance of life. They are added to both compound animal feeds and human food products. Vitamins for pharmaceutical purposes are marketed to the public as diet supplements in tablet or capsule form. In the cosmetics industry, vitamins are added to skin care and healthcare products. The Commission estimates that the European Economic Area (EEA) market for the products covered by the decision was worth around EUR 800 million in 1998. This includes vitamin E, which in 1998 was worth approximately EUR 250 million in the EEA, and vitamin A, which represented some EUR 150 million.

The participants in each of the cartels fixed prices for the various vitamin products, allocated sales quotas, agreed on and implemented price increases and issued price announcements in accordance with their agreements. They also set up machinery to monitor and enforce their agreements and participated in regular meetings to implement their plans.

Given the continuity and similarity of method, the Commission considered it appropriate to deal in one and the same proceeding with the complex of agreements covering the different vitamins. The Commission therefore covered several infringements in a single decision.

When setting fines, the Commission takes into account the gravity of the infringement, its duration, any aggravating or mitigating circumstances and the cooperation of a company. It also takes account of a company's market share in the relevant product market and its overall size. The upper limit to any fine is fixed at 10 % of a company's total annual turnover.

The Commission considered that each cartel in this case represented a very serious infringement of EU competition law. Furthermore, most of the cartel participants committed infringements of long duration, i.e. more than five years.

The addressees of the decision cooperated with the Commission within the terms set by the leniency notice at different stages of the investigation and in relation to different vitamin products covered by the investigation. The decision applies the leniency notice as follows.

Aventis was the first undertaking to adduce conclusive evidence of the existence of an international cartel affecting the EEA in the vitamin A and vitamin E markets before the Commission had any knowledge of its existence. It was granted a 100 % reduction in the fine that would have been imposed in respect of its activities in the vitamin A and vitamin E markets.

Roche and BASF acted as instigators or played a determining role in the illegal activities affecting the vitamin A, E, B2, B5, C and D3, beta carotene and carotinoids product markets. Therefore neither of them met condition (e) of Section B of the leniency notice and they could not benefit from any reduction under Sections B or C of the notice. Both Hoffmann-La Roche and BASF were granted under Section D of the leniency notice a 50 % reduction in the fine that would have been imposed had they not cooperated for each of the cartels in which they were involved.

Prior to the Commission's statement of objections (SO), Daiichi, Solvay, Takeda and Eisai provided the Commission with information and documents, in particular detailed corporate statements, which helped establish important aspects of the infringement committed in the vitamin B5 (Daiichi), D3 (Solvay), B2 and C (Takeda) and C (Eisai) markets.

The documents provided by the companies gave details of the organisation and structure of the cartels. However, in the case of Eisai, these were forthcoming only after three other participants in the vitamin C cartel (Roche, BASF and Takeda) had submitted detailed evidence of that cartel. Daiichi, Solvay and Takeda were granted a 35 % reduction in the fine that would otherwise have been imposed and Eisai a 30 % reduction.

As to Merck and Aventis, with regard to the vitamin C and vitamin D3 cartels respectively, they only cooperated actively with the Commission once they had received the SO. Merck was granted a reduction of 15 % of the fine that would otherwise have been imposed and Aventis a reduction of 10 %.

Fines imposed on participants by product (million EUR)

	Vit. A	Vit. E	Vit. B1	Vit. B2	Vit. B5	Vit. B6	Folic acid	Vit. C	Vit. D3	Vit. H	Beta caro-tene	Carot-inoids	Total
Roche	85.5	99.75	n/a	42	54	n/a	n/a	65.25	21	n/a	48	46.5	462
BASF	46.17	89.78	n/a	18.9	34.02			14.68	7.56	n/a	43.2	41.85	296.16
Aventis	0	0							5.04				5.04
Lonza										n/a			
Solvay Pharm.									9.1				9.1
Merck								9.24		n/a			9.24
Daiichi					23.4	n/a							23.4
Eisai		13.23											13.23
Kongo							n/a						
Sumika							n/a						
Sumitomo										n/a			
Takeda			n/a	8.78		n/a	n/a	28.28					37.06
Tanabe										n/a			
TOTAL	**131.67**	**202.76**		**69.68**	**111.42**			**117.45**	**42.7**		**91.2**	**88.35**	**855.23**

n/a = not applicable.

Since the decision was adopted, BASF AG, Daiichi Pharmaceutical Co. Ltd, Sumitomo Chemical Co. Ltd and Sumika Fine Chemicals Company have brought actions for annulment before the Court of First Instance ([8]).

Citric acid (Case COMP/E-1/36.604) ([9])

On 5 December, the Commission fined Archer Daniels Midland Company (ADM), Cerestar Bioproducts BV (Cerestar), Haarmann & Reimer Corp. (H&R), F. Hoffmann-La Roche AG (Hoffmann-La Roche) and Jungbunzlauer AG (Jungbunzlauer) a total of EUR 135.22 million for fixing the price and sharing the market for citric acid, the world's most widespread acidulent and preservative.

([8]) Cases T-15/02 *BASF AG*; T-25/02 *Daiichi Pharmaceutical Co. Ltd*; T-23/02 *Sumitomo Chemical Co. Ltd* and T-24/02 *Sumika Fine Chemicals Co.*

([9]) See also Part One, points 56 et seq.

Citric acid is used primarily in the food and beverage industry, but it is also used in detergents and in pharmaceutical and cosmetic products. The annual market value was approximately EUR 320 million (EEA) in 1995 (the last year of the infringement).

After a careful investigation which started in 1997, the Commission found that the US companies ADM and H&R (the latter ultimately owned by Bayer AG), the Dutch company Cerestar and the Swiss companies Hoffmann-La Roche and Jungbunzlauer had participated in a worldwide cartel between 1991 and 1995. The cartel participants fixed market shares for citric acid, agreed on price targets and price lists for the product, agreed to eliminate discounts for all but the five largest customers and set up machinery to monitor and enforce their agreements.

The Commission characterised the companies' behaviour as a 'very serious' infringement of EC and EEA competition rules, and adopted a decision under Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement, imposing fines. The two cartel leaders, Hoffmann-La Roche and ADM, were fined EUR 63.5 million and EUR 39.69 million respectively. The other cartel participants — Jungbunzlauer, H&R and Cerestar — were fined EUR 17.64 million, EUR 14.22 million and EUR 170 000 respectively.

In setting the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence of any aggravating and/or mitigating circumstances. The role of each undertaking was assessed individually. The leniency notice was applied.

The undertakings were divided into three groups according to their relative importance in the relevant market. Further upward adjustments were made in the case of three companies given their very large size (or the very large size of the group by which they were wholly owned) and hence their overall resources.

The cartel started in March 1991 and ended in May 1995. Under the guidelines on fines, the duration of the infringement has to be considered medium-term for ADM, H&R, Hoffmann-La Roche and Jungbunzlauer (four years) as well as for Cerestar (three years). The respective basic amounts of the fines were increased accordingly.

Part of the evidence of the cartel was provided to the Commission by the companies involved, under EU rules providing for full or partial immunity from fines for companies that cooperate with the Commission in cartel cases.

Cerestar Bioproducts, the first undertaking to provide the Commission with conclusive information, was granted a 90 % reduction in its fine. All the other participants cooperated with the Commission and were granted appropriate reductions.

Since the decision was adopted, Jungbunzlauer and ADM have brought actions for annulment before the Court of First Instance ([10]).

Belgian breweries (Case COMP/F-3/37.614) ([11])

On 5 December, the Commission fined Interbrew, Danone, Alken-Maes, Haacht and Martens a total of over EUR 91 million for participating in cartels on the Belgian beer market between 1993 and 1998. The infringements included market sharing, price fixing and information exchange ([12]). In the course of 1999,

([10]) Cases T-43/02 *Jungbunzlauer AG* and T-59/02 *Archer Daniels Midland Company*.

([11]) See also Part One, points 58–60.

([12]) See also press release IP/01/1739, 5.12.2001.

the Commission undertook surprise inspections at the premises of Interbrew, Alken-Maes and the Belgian brewers confederation (CBB). These inspections led to an investigation which enabled the Commission to find evidence of two distinct cartels in the Belgian market.

The first cartel involved Interbrew (by far the largest brewer in Belgium, with a market share of around 55 %, and the second largest brewer in the world) and Alken-Maes (the number two player in Belgium, with a market share of around 15 %) and its then parent company Danone. This cartel covered a wide range of anti-competitive arrangements in the 'horeca' sector (i.e. sales for away-from-home consumption in hotels, restaurants and cafés) and in the retail sector (for example sales in supermarkets or smaller food shops for consumption at home).

The second cartel concerned specifically the segment of so-called private label beers, i.e. beers which supermarkets order from brewers but sell under their own brand name. Interbrew, Alken-Maes, Haacht and Martens (a brewer whose production consists almost entirely of private label beer) participated in this second cartel.

Fines were imposed on the companies as follows:

— Interbrew: EUR 46 487 000 ([13]);

— Danone/Alken-Maes: EUR 44 628 000 ([14]);

— Haacht: EUR 270 000;

— Martens: EUR 270 000.

1. The cartel between Interbrew and Danone/Alken-Maes

From early 1993 until the beginning of 1998, the two parties were involved in wide-ranging cartel activities on the Belgian beer market. Interbrew used the code name 'Université de Lille' or 'Project Green' for these activities. The cartel activities encompassed a general non-aggression pact and more specifically the limitation of investments and advertising in the horeca sector, the allocation of horeca customers, price fixing in the retail sector, a new tariff structure to be applied in the horeca sector and in the retail sector and, finally, a detailed monthly information exchange system concerning sales volumes in both sectors.

A striking feature of this cartel is that the CEOs themselves and other top management of the companies regularly met to initiate and monitor the above-mentioned arrangements. Another feature worth mentioning is that Danone, which was Alken-Maes's parent company during the relevant period, was itself very actively involved in these arrangements.

The cartel took off with a price-fixing agreement for the retail sector and an agreed limitation of commercial investments in the horeca sector. An internal Interbrew note from the spring of 1993 showed that Interbrew's and Danone's top management were already considering closer cooperation. However, Interbrew thought that Danone had more to gain from such cooperation and, moreover, had antitrust concerns.

([13]) EUR 45 675 000 for the cartel with Danone/Alken-Maes and EUR 812 000 for the private label cartel.

([14]) EUR 44 043 000 for Danone's and Alken-Maes's participation in the cartel with Interbrew and EUR 585 000 for Alken-Maes's participation in the private label cartel.

In May 1994, contacts between the two companies intensified owing to a threat from Danone: if Interbrew did not transfer 500 000 hl (roughly 5 % of the Belgian market) to Alken-Maes in the Belgian retail sector, it would make life difficult for Interbrew-France. Evidence of this threat was furnished by statements by former Interbrew representatives and by an internal Heineken document, found during an inspection of Heineken's premises in another cartel investigation.

The threat eventually led to a 'gentlemen's agreement' between the parties at the end of 1994, under which they committed themselves to generally respecting each other's market positions. They further agreed on a number of specific points, including price fixing in the retail sector, market sharing in the horeca sector (traditional outlets to begin with, followed later by national accounts ([15])), commercial investments and a new tariff structure in both sectors. In addition, throughout this period the parties exchanged monthly information about their sales volumes in both sectors.

At the beginning of 1998, the parties noted that they had achieved a good many of their objectives.

The Commission considered that the price-fixing and market-sharing cartel between Interbrew and Danone/Alken-Maes represented a very serious breach of EU competition law. For such a breach, the likely amount of the fines was at least EUR 20 million. Despite Interbrew and Danone both being big international companies, Interbrew's starting amount for gravity was higher than Danone's because its market share on the Belgian beer market was substantially larger than Danone's. The basic amounts were increased for both companies by almost 50 % in view of the medium-term nature of the infringement (five years).

For Danone, there were two aggravating factors which led to the fine being increased by a further 50 %.

First, Danone (formerly called Boussois-Souchon-Neuvesel — BSN) had participated in similar antitrust infringements already twice before (in 1974 and 1984) ([16]). The circumstance that these infringements occurred in a different sector (flat glass) was irrelevant, since it is the nature of the infringement and the identity of the company that matter in this respect. Moreover, the Commission noted that, for the entire period during which BSN, later Danone, had committed these infringements, the same person acted as CEO of the company, and some flat glass managers at the time were active in Danone's retail business during the period of the beer cartel.

The second aggravating circumstance concerns Danone's threat which led to an increase in cartel activity.

As a mitigating circumstance, the Commission recognised that Alken-Maes had ended the information exchange with Interbrew. For this, a reduction of 10 % was granted.

Both parties cooperated to some extent during the investigation by supplying information to the Commission. However, Interbrew's cooperation was more material than that of Danone/Alken-Maes. On this basis, Interbrew was granted a reduction of 30 % and Danone/Alken-Maes a reduction of 10 %.

2. The private label cartel

In the course of the investigation of the cartel between Interbrew and Danone/Alken-Maes, Interbrew informed the Commission of a series of meetings devoted to the private label beer market in Belgium during the period from October 1997 to July 1998 between itself, Alken-Maes, Haacht and Martens.

([15]) Typical examples of national accounts are caterers, airports and large cinema complexes.

([16]) See Commission decisions of 15.5.1974 (OJ L 160, 17.6.1974) and 23.7.1984 (OJ L 212, 8.8.1984).

The discussions during these meetings were aimed at avoiding a price war and at consolidating the existing allocation of customers. This amounted to a concerted practice within the meaning of Article 81 of the EC Treaty. The parties also agreed to exchange information about their customers in the private label segment.

Interbrew and Alken-Maes took the initiative in organising the four meetings. However, Haacht and Martens did not merely play a passive role in the concerted practice. Both participated in all meetings and actually exchanged information about sales volumes. Martens suggested, moreover, at one point, that the Dutch private label beer producers should be invited to the meetings.

Since the cartel was limited to the small private label beer segment in Belgium (roughly 5 % of beer consumption in Belgium), the Commission considered the parties' behaviour to be only a serious infringement, for which the basic amount of the fine ranged in principle from EUR 1 million to EUR 20 million. The cartel was of short duration (nine months).

The fact that Interbrew and Alken-Maes took the initiative in calling these meetings was considered an aggravating circumstance and their fines were increased by 30 %.

All parties cooperated with the Commission during the proceeding. Interbrew even disclosed the existence of the cartel. Although it blew the whistle, it could not benefit from full immunity under the Commission's leniency notice because it was one of the instigators of the cartel. For its cooperation, it was granted a reduction of 50 %. The other brewers were granted a reduction of 10 % for their cooperation.

Since the decision was adopted, Danone and Haacht have brought actions for annulment before the Court of First Instance ([17]).

Luxembourg breweries (Case COMP/F-3/37.800) ([18])

On 5 December, the Commission fined three Luxembourg brewers — Brasserie Nationale-Bofferding, Brasserie de Wiltz and Brasserie Battin — a total of EUR 448 000 for their participation in a market-sharing cartel affecting the Luxembourg 'horeca', or 'on-trade', sector ([19]). The brewers had agreed to respect each other's exclusive purchasing arrangements with horeca customers and to restrict penetration of the sector by foreign brewers. A fourth cartel member, Brasserie de Luxembourg Mousel-Diekirch (a subsidiary of Interbrew), was spared the imposition of a fine in recognition for its having disclosed the cartel to the Commission.

Following an investigation which began in February 2000, the Commission found that all four brewers active in Luxembourg had participated in a market-sharing cartel in the Luxembourg horeca sector between 1985 and 2000.

The cartel consisted of a written agreement signed in 1985 by which the parties agreed not to supply beer to any horeca outlet (hotels, restaurants, cafés and beer wholesalers) which was tied to another party by an exclusive purchasing contract ('beer tie'). The beer tie guarantee extended to beer ties which were invalid or unenforceable in law, as well as to supply arrangements where a brewer simply invested in a drinks outlet but did not impose an exclusive purchasing contract. To this extent, the beer tie guarantee

([17]) Cases T-38/02 *Groupe Danone* and T-48/02 *Brouwerij Haacht*.

([18]) See also Part One, points 61–62.

([19]) Press release IP/01/1740, 5.12.2001.

was more restrictive than the beer ties themselves. It therefore served to protect each party's clientele. The beer tie guarantee was reinforced by a mechanism of prior consultation, which obliged the parties to check with each other whether there was a beer tie before supplying new customers. Financial penalties were provided for for non-compliance with the guarantee or the consultation mechanism.

The cartel agreement also contained provisions designed to keep foreign brewers out of the Luxembourg horeca sector. First, there was a joint defensive mechanism whereby the parties agreed to consult each other in the event of a foreign brewer attempting to negotiate a supply contract with one of their tied outlets. Priority would then be allocated to one of the parties to attempt to keep the outlet as a customer. If that party succeeded in negotiating a new contract with the outlet, it was obliged to compensate the party which had lost the outlet by transferring an equivalent outlet to it. Other provisions allowed for the exclusion from the cartel of any party which cooperated with a foreign brewer or distributed its beer.

The cartel agreement was signed for an unlimited period and required the parties to give 12 months' notice to terminate. No party gave notice before Interbrew, the parent company of Brasserie de Luxembourg Mousel-Diekirch, disclosed the cartel to the Commission in February 2000. Furthermore, parts of the agreement had been implemented until 1998.

The Commission imposed a fine of EUR 400 000 on Brasserie Nationale-Bofferding and fines of EUR 24 000 each on Brasserie de Wiltz and Brasserie Battin.

The Commission considered the infringement to be 'serious'. Although market sharing and attempts to impede trade between Member States are by their very nature very serious infringements, the cartel was limited to the relatively small Luxembourg horeca sector and was not implemented in full. Within this category, the undertakings were divided into three groups according to the volume of their sales in the relevant sector.

The infringement was of long duration (more than 14 years). This led the Commission to double the amount imposed for gravity.

As an extenuating circumstance, the Commission recognised that there was legal uncertainty surrounding the enforceability of beer ties in Luxembourg at the time the cartel agreement was signed and that this may have led the parties to doubt whether certain aspects of the beer tie guarantee constituted an infringement. This merited a 20 % reduction in the fines.

Brasserie de Luxembourg Mousel-Diekirch was granted total exemption from the substantial fine that would otherwise have been imposed because it provided the Commission with conclusive evidence of the cartel before the Commission had any knowledge of it and satisfied all the other conditions of Section B of the leniency notice.

Since the decision was adopted, Brasserie Nationale, Brasserie de Wiltz and Brasserie Battin have brought actions for annulment before the Court of First Instance ([20]).

([20]) Cases T-49/02 *Brasserie Nationale*; T-50/02 *Brasserie de Wiltz (Brasserie Jules Simon & Cie)*; T-51/01 *Brasserie Battin.*

Zinc phosphate (Case COMP/E-1/37.027) ([21])

On 11 December, the Commission fined six producers of zinc phosphate a total of EUR 11.95 million for fixing the price and sharing the market for zinc phosphate. Zinc phosphate is widely used as an anticorrosion mineral pigment in protective coating systems. Paint manufacturers use it for the production of anticorrosive industrial paints for the automotive, aeronautical and marine sectors.

Following the opening of an investigation in May 1998, the Commission found that the British companies Britannia Alloys & Chemicals Ltd, James M. Brown Ltd and Trident Alloys Ltd, the German company Dr Hans Heubach GmbH & Co. KG, the French company Société Nouvelle des Couleurs Zinciques SA (SNCZ) and the Norwegian company Waardals Kjemiske Fabrikker A/S had participated in a Europe-wide cartel between 1994 and 1998, through which they fixed the price and shared out the market for zinc phosphate.

During the infringement period, the annual market was worth around EUR 16 million in the European Economic Area — the 15 EU Member States plus Norway, Iceland and Liechtenstein. While the companies concerned are of a modest size, they noticeably accounted for over 90 % of the EEA-wide market for zinc phosphate.

In setting the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence of any aggravating and/or mitigating circumstances. The role of each undertaking was assessed individually. The leniency notice was applied.

All the undertakings concerned were found to have committed a very serious infringement. Within this category, the undertakings were divided into two groups according to their relative importance in the relevant market. Without prejudice to the very serious nature of the infringement, the Commission had regard to the limited size of the zinc phosphate market when setting the appropriate starting amounts.

The cartel was of medium duration (between one and five years). The Commission did not identify any ringleader, since the creation of the cartel, which followed various preliminary informal contacts, was a joint initiative.

Waardals approached the Commission shortly after surprise inspections were carried out and cooperated fully with it, giving an account of the cartel which included, among other things, a list of the cartel meetings held between 1994 and 1998. This allowed the Commission to establish a clearer picture of the history and mechanisms of the cartel, and to more accurately interpret the documents in its possession. The explanations provided by Waardals enabled the Commission to address very detailed requests for information to the other cartel participants. On this basis, the Commission granted Waardals a 50 % reduction in its fine.

Trident began to cooperate only after it received a request for information from the Commission. It subsequently provided the Commission with a written statement giving a detailed account of the cartel, as well as a number of documents relevant to the case. On these grounds, the company was granted a 40 % reduction in its fine.

([21]) See also Part One, point 63.

Britannia, Heubach and SNCZ did not substantially contest the facts as set out in the statement of objections they received in August 2000. For this reason, they were each granted a 10 % reduction in their fine. James M. Brown was also granted a 10 % reduction in its fine.

This decision is yet further proof of the Commission's determination to clamp down on hardcore cartels.

Several companies have lodged an appeal against the decision before the Court of First Instance in Luxembourg ([22]).

Bank charges for the exchange of euro zone currencies — Germany (Case COMP/E-1/37.919) ([23])

On 12 December, the Commission fined five German banks a total of EUR 100.8 million for concluding an agreement on a commission of about 3 % for the buying and selling of euro-zone banknotes during the three-year transitional period beginning on 1 January 1999. The purpose was to recover about 90 % of the 'exchange margin' income after the abolition of the 'spread' (i.e. buying and selling rates) on 1 January 1999.

Following an investigation which started in 1999, the Commission established that various German banks and one Dutch bank had taken part in a meeting at which the abovementioned agreement was concluded in October 1997.

With a view to ending the Commission's cartel proceedings, several banks which had attended the October 1997 meeting unilaterally proposed to the Commission to substantially reduce their charges for the exchange of euro-zone banknotes. The banks thereby abandoned their collusive behaviour and recovered their freedom to set prices individually.

Considering the exceptional circumstances of this case (market disappearance as of 1 January 2002) and the immediate and direct benefits to consumers, the Commission ended proceedings against those banks which had proposed an acceptable reduction in their charges.

Commerzbank AG, Dresdner Bank AG, Bayerische Hypo- und Vereinsbank AG, Deutsche Verkehrsbank AG and Vereins- und Westbank AG did not submit acceptable proposals, and the Commission therefore addressed a decision to them imposing fines.

In setting the fines, the Commission took into account the gravity and duration of the infringement as provided for in the guidelines on fines ([24]).

The banks concerned were found to have committed a serious infringement owing to the limitation of its effects to Germany and the Dutch regions bordering on Germany. Within this category, for the purpose of fixing the appropriate starting amounts, the undertakings were divided into two groups according to their relative importance in the relevant market.

([22]) Cases T-33/02 *Britannia Alloys & Chemicals Limited*; T-52/02 *Société Nouvelle des Couleurs Zinciques*; T-62/02 *Waardals*; T-64/02 *Dr Hans Heubach*.

([23]) See also Part One, points 64 et seq.

([24]) OJ C 9, 14.1.1998.

In order to ensure that the fines had a sufficient deterrent effect, further upward adjustments of the starting amount were made in the case of Commerzbank, Dresdner Bank and Bayersiche Hypo- und Vereinsbank given their very large size and hence their overall resources.

There were no extenuating or aggravating factors applicable in this case. As none of the banks cooperated with the Commission during the proceedings, the leniency notice was also not applicable.

Since the decision was adopted, Commerzbank, Dresdner Bank, Bayersiche Hypo- und Vereinsbank, Deutsche Verkehrsbank and Vereins- und Westbank have brought actions for annulment before the Court of First Instance.

Carbonless paper (Case COMP/E-1/36.212) ([25])

On 20 December, the Commission fined 10 producers of carbonless paper a total of EUR 313.69 million for their participation in a Europe-wide price-fixing cartel. Carbonless paper, also known as self-copying paper, is intended for the multiple duplication of documents and is made from a base paper to which layers of chemicals are applied. Business forms (for example delivery slips, bank transfer forms, etc.) have always been the single largest application for carbonless papers, accounting for over 90 % of total consumption. Carbonless paper is sold in reels (80 %) and sheets (20 %). The size of the EU carbonless paper market was some ECU 850 million in 1995 (the last year of the infringement). That same year, estimated carbonless paper production capacity in the EEA was 1 010 000 tonnes.

After a detailed investigation, the Commission established that, between 1992 and 1995, the following companies had taken part in a Europe-wide cartel designed essentially to implement concerted price increases: Arjo Wiggins Appleton Ltd (AWA), Carrs Paper Ltd (both United Kingdom), Mitsubishi HiTech Paper Bielefeld GmbH (MHTP), Papierfabrik August Koehler AG, Zanders Feinpapiere AG (all three Germany), Bolloré SA, Papeteries Mougeot SA (both France), Distribuidora Vizcaina de Papeles SL (Divipa), Papelera Guipuzcoana de Zicuñaga SA, Torraspapel SA (all three Spain) and Sappi Limited (South Africa). All the companies except Carrs, Divipa and Zicuñaga were members of the AEMCP.

In setting the fines, the Commission took account of the gravity and duration of the infringement. For the purpose of fixing the basic amount of the fine within the category of very serious infringements, the undertakings were divided into five groups according to their relative importance in the relevant market. Further upward adjustments were made in the case of three companies taking into account their size and overall resources. The cartel members committed an infringement of medium duration (one to five years).

Leadership in the infringement was found to be an aggravating circumstance in the case of AWA. The basic amount of its fine was therefore increased by 50 %, in line with the Commission's normal practice. No mitigating circumstances were found to apply in this case.

Sappi was granted total immunity pursuant to Section B of the leniency notice. This is the third time the Commission has granted a 100 % reduction in a fine (after Aventis SA in the Vitamins (A and E) case, and Brasserie de Luxembourg Mousel-Diekirch in the Luxembourg breweries case). Some of the other parties were granted reductions pursuant to Section D of the leniency notice in the fine that would otherwise have been imposed. On that account, the Commission reduced the fine for Mougeot by 50 %, for AWA by 35 % and for Bolloré by 20 % because these companies supplied information that helped to shed further light on the unlawful practice in question before the statement of objections was sent out.

([25]) See also Part One, points 69–70.

The Commission also reduced the fines for Carrs, MHTP and Zanders by 10 % as these companies did not dispute the facts set out in the statement of objections.

AWA was fined EUR 184.27 million, the highest fine ever imposed on a single company in connection with a single infringement.

This decision came at the end of a year in which the Commission has taken a long line of decisions against cartels in various sectors. This unprecedented level of activity shows on the one hand that such secret practices are (still) widespread, but on the other hand that the Commission has successfully employed the means at its disposal to implement its fines criteria to detect and prosecute such offences as well as to impose effective penalties.

1.2. Vertical agreements

GlaxoWellcome (Case COMP/F-3/36.957) ([26])

On 8 May, the Commission decided to prohibit the dual pricing system which GlaxoWellcome (GW) had introduced for all its pharmaceutical products in Spain ([27]). According to clause 4 of GW's new sales conditions, Spanish wholesalers were required to pay higher prices for Glaxo products when they exported them to other Member States than when reselling the same products for consumption on the domestic market. The system was clearly aimed at reducing parallel trade within the single market. The Commission found that the system partitioned the common market along national lines, thereby interfering with the principal Community objective of integrating markets. It also reduced price competition for GW products by making exports of cheaper Spanish products to other Member States impossible or at least more difficult. The Commission found that the system did not fulfil the conditions for exemption under Article 81(3) of the EC Treaty.

This case is an important one because it underlines the Commission's determination to object to distribution systems which perpetuate the partitioning of the single market into national markets even in heavily regulated sectors. It is also novel, this being the first time a pharmaceutical company has sought to justify restrictions to parallel trade using economic and consumer welfare arguments. The Commission looked carefully into these justifications but did not find any of them convincing upon closer scrutiny.

The case began in March 1998 when GW Spain notified its new sales conditions to the Commission. The Commission received complaints from a Spanish wholesaler and European and Spanish associations of wholesalers involved in parallel trade in pharmaceutical products.

The Commission qualified GW's system as a restriction of competition 'by object' because it sought to impede parallel trade and was tantamount to an export ban in a considerable number of cases. But, the Commission also looked carefully into the effects of the GW system in order to identify those cases in which the system made exports impossible or at least more difficult. It took the view — based on the case-law of the European Court of Justice — that there was no *a priori* exception to the application of the competition provisions to agreements impeding parallel trade in this sector. In any event, the high volume of exports of GW products from Spain to the United Kingdom, which is what prompted GW to introduce the dual pricing system, appeared to have been caused mainly by the appreciation of the British pound,

([26]) See also Part One, points 232 et seq.

([27]) Press release IP/01/661, 8.5.2001.

not by the divergence between Member State (for example Spanish and UK) price regulations. Currency fluctuations have never been accepted as a justification for restrictions of parallel trade.

Despite the finding of a restriction 'by object', the Commission accepts the principle that there is no restriction of competition which can at least in theory not be exempted ([28]). It therefore went at length into the merits of a series of economic arguments which GW advanced in an attempt to justify the new sales conditions. In the Commission's view, GW had not established a causal link between the existence of parallel trade and possible losses (lost profits) for its R&D budget. Nor could the Commission find any evidence to support GW's assertion that parallel trade had caused introduction delays for its products in 'low-price' markets. As to benefits to the consumer, the Commission noted that it was for the notifying party to justify the restriction of competition resulting from the agreement by showing that this restriction fulfilled the conditions of Article 81(3). It was not for the Commission to prove that its intervention against a restriction increased consumer welfare. The Commission nevertheless added that consumers might benefit directly from parallel trade in cases where they co-financed the products they purchased and that parallel trade gave national health systems opportunities for achieving cost savings to the benefit of their members.

Volkswagen (Case COMP/F-2/36.693) ([29])

The Commission adopted a decision ([30]) imposing a fine of EUR 30.96 million on Volkswagen AG, the biggest German and European car manufacturer, for having instructed its German Volkswagen dealer network in 1996 and 1997 to observe 'price discipline' in respect of the new VW Passat and not to sell this model at prices considerably below the recommended list price. This case is the third in a series of proceedings concerning motor vehicle distribution. Unlike the two previous cases ([31]) and the DaimlerChrysler decision ([32]), this second decision finding against Volkswagen does not concern measures that directly hinder the re-export of new cars. However, the case also has to be seen in the context of the monitoring of the relevant block exemption regulation, Regulation (EC) No 1475/95 on motor vehicle distribution and servicing ([33]).

The Commission established that in 1996 and 1997 Volkswagen had sent three circular letters to its German dealers urging them either not to grant or to limit discounts to customers when selling the (then) new VW Passat model. Prior to taking these measures, Volkswagen had learnt that a number of dealers had offered this new model for sale with heavy discounts. The company also addressed individual letters to certain dealers, warning them not to grant heavy discounts and threatening them with retaliatory measures (for example termination of the dealer contract in the event of non-compliance with this instruction).

([28]) Case T-17/93 *Matra Hachette* v *Commission* [1994] ECR II-595.

([29]) See also Part One, point 183.

([30]) Commission decision of 29.6.2001 (OJ L 262, 2.10.2001); press release IP/01/760, 30.5.2001.

([31]) Commission decision of 28.1.1998 (OJ L 145, 25.4.1998) finding against Volkswagen AG, largely upheld by the Court of First Instance in its judgment of 6.7.2000. Volkswagen challenged this judgment before the European Court of Justice in September 2000; this proceeding is pending. Commission decision of 20.9.2000 (OJ L 59, 28.2.2001) finding against Opel Nederland/General Motors Nederland. The companies appealed against this decision to the Court of First Instance in December 2000.

([32]) Commission decision of 10.10.2001 (not yet published) finding against DaimlerChrysler AG. See below.

([33]) On 15.11.2000, the Commission adopted a report on the application of this regulation. The report, which forms an essential basis for the preparation of the future legal framework for motor-vehicle distribution and servicing agreements, is available on the Competition DG's web site: http://europa.eu.int/comm/competition/car.

Measures to limit discounts are aimed at fixing retail prices and represent a hardcore restriction of competition. Such measures violate Article 81(1) of the EC Treaty, which prohibits price-fixing measures, and are incompatible with the block exemption regulation applicable to motor vehicle distribution. This is the first Commission decision on resale price maintenance in this sector, and it confirms the Commission's strict policy on price-fixing practices in the area of vertical restraints.

Dealer contracts in car distribution usually provide for recommended list prices for new cars. By sending the circulars, and the individual letters, Volkswagen was instructing its dealers to consider the recommended prices as essentially binding, and to grant no or only limited discounts to customers when selling the VW Passat, which is a very popular model in Germany and within its segment. The measures had as their object the restriction of price competition among Volkswagen dealers, since they targeted an essential factor in competition, namely the ability to grant discounts. As dealers usually grant discounts, Volkswagen's instructions can be seen as an attempt to compel them to deviate from their normal commercial behaviour.

For the purposes of the fine, the Commission considered that the measures of retail price maintenance represented a drastic interference with competition and were therefore to be considered by their very nature a very serious violation of competition rules. The infringement began on 26 September 1996, the date of the first circular letter to dealers, and lasted until 6 September 1999, the date of a circular letter from Volkswagen informing all German VW dealers that the instructions and warnings contained in the three preceding circular letters had been lifted and that they should not fear any retaliatory measures. The infringement therefore lasted for almost three years.

The measures were aimed at maintaining or reinforcing an artificially high price zone for the new VW Passat model on the German market, which accounts for a large share of all car sales in the EU. Although the infringement concerned only one model (in two versions) from Volkswagen's product range, this popular model accounts for a large share of vehicle sales within a segment for which demand in Germany is strong. The circular letters were addressed to the whole German VW dealer network and thus concerned all sales of the VW Passat in Germany. The measures were also likely to have an effect on consumers from other Member States.

In the light of these considerations, the infringement was considered overall to be serious. The fine also takes into account, as one of two aggravating factors, that two of the three circular letters and a number of the individual letters to dealers contained not only instructions to observe price discipline, but also admonishments, warnings and threats of legal action in case of non-compliance. It further took account of the fact that, on the date of the first circular, the Volkswagen sales manager for Germany had requested dealers to give him details of all dealers lacking in price discipline, thereby introducing an indirect monitoring system which increased the pressure which the circular letter already exerted on dealers directly. Volkswagen appealed against this decision before the Court of First Instance in September.

DaimlerChrysler (Case COMP/F-2/36.264) ([34])

On 10 October, the Commission decided to fine DaimlerChrysler AG EUR 71.825 million for infringing EC competition rules in the area of car distribution ([35]). The decision concerns measures by DaimlerChrysler to impede parallel trade in cars and limit competition in the leasing and sale of motor

([34]) See also Part One, point 184.

([35]) Press release IP/01/1394, 10.10.2001 (decision not yet published).

vehicles. This is the fourth Commission decision fining a car manufacturer for failing to comply with EC competition rules ([36]).

The Commission identified three types of infringement of Article 81 of the EC Treaty. The first consisted of measures by DaimlerChrysler that constituted obstacles to parallel trade. The undertaking had instructed members of its German distribution network for Mercedes passenger cars, roughly half of which were agents, not to sell cars outside their respective territories. This was done in particular by means of circular letters. In addition, DaimlerChrysler instructed its distributors to require foreign consumers to pay a deposit of 15 % to DaimlerChrysler when ordering a car in Germany. This was not the case for German consumers, even though they might present the same 'risk' of, for instance, being unknown to the seller, ordering a car with particular specifications, or living far away.

The applicability of Article 81 to the restrictions agreed between DaimlerChrysler and its German agents stems from the fact that these agents have to bear a considerable commercial risk linked to their activity. From the point of view of EC competition law, they must therefore be treated as dealers ([37]).

In a second infringement, DaimlerChrysler limited in Germany and Spain the sale of cars by Mercedes agents or dealers to independent leasing companies as long as these companies had not yet found customers ('lessees') for the cars concerned. It thereby restricted competition between its own leasing companies and independent leasing companies in that the latter could not build up stocks of cars or benefit from the discounts that are granted to fleet owners. The independent leasing companies were therefore unable to pass on such favourable terms, in particular as regards prices and the availability of cars, to their customers. It is important to note that sales of Mercedes cars to leasing companies represent a substantial part of all sales of Mercedes cars. Commission Regulation (EC) No 1475/95 on motor vehicle distribution and servicing agreements ([38]) states that leasing companies have to be treated in the same way as final customers, to which distributors are completely free to sell new cars, as long as the leasing contract does not provide for a transfer of ownership of the motor vehicle or an option to purchase prior to the expiry of the contract.

Finally, DaimlerChrysler was party to a price-fixing agreement in Belgium aimed at limiting the discounts granted to consumers by its subsidiary Mercedes Belgium and other Belgian Mercedes dealers. A 'ghost shopper' investigated the dealers' sales policies, and DaimlerChrysler agreed to enforce the agreement by reducing the supply of cars to dealers that granted higher discounts than the 3 % that had been agreed upon. This amounted to resale price maintenance, a practice already proscribed by the Commission in its decision of 29 June in the *Volkswagen* case.

The measures adopted by DaimlerChrysler infringed Article 81(1), which prohibits all agreements between undertakings which may affect trade between Member States and which have as their object or

([36]) Commission decision of 28.1.1998 *Volkswagen AG* (OJ L 124, 25.4.1998); Commission decision of 20.9.2000 *Opel Nederland BV/General Motors Nederland BV* (OJ L 59, 28.2.2001); Commission decision of 29.6.2001 *Volkswagen AG* (OJ L 262, 2.10.2001).

([37]) This conclusion is based on the case-law of the Court of Justice. It is also compatible with the Commission guidelines on vertical restraints (OJ C 291, 13.10.2000). According to these guidelines, the only criterion that is relevant when it comes to determining whether Article 81(1) applies to the activity of commercial agents is whether or not the agent has to bear a risk linked to the sale of the goods or services he is involved in. In this case, rebates granted by agents were taken off their commission, and agents were liable for the risks linked to product transport and bore the transport costs; they also bought demonstration vehicles — a significant proportion of all cars sold — and financed spare part stocks.

([38]) OJ L 145, 29.6.1995. The regulation expires on 30 September 2002. The Commission adopted an evaluation report on the application of the regulation on 15 November 2000. The report is available on the web site of the Commission's Directorate-General for Competition (http://europa.eu.int/comm/competition/car_sector/distribution/eval_reg_1475_95/report/).

effect the prevention, restriction or distortion of competition within the single market. Moreover, Regulation (EC) No 1475/95 prohibits car manufacturers and their importers from restricting, either directly or indirectly, the freedom of final consumers to buy new motor vehicles in the Member State of their choice, the aim being to ensure that European consumers can buy cars wherever it is most advantageous to them. The regulation states, furthermore, that the freedom of dealers to determine prices and discounts when reselling to final consumers must not be restricted. This means that sales prices and conditions must not be fixed by the manufacturer. They have to be determined by each individual dealer.

The amount of the fine takes into account the gravity of the infringements (for which purpose the position of the company on the market is also looked at) and their duration. In keeping with the Commission guidelines on the method of setting fines ([39]), the fine must also have a sufficient deterrent effect.

The first infringement was considered a very serious infringement of long duration because it directly jeopardised the proper functioning of the single market by partitioning national markets. The restrictions imposed on the sale of cars to leasing companies were qualified as a serious infringement of medium duration. Finally, the resale price maintenance, which is by its very nature a very serious infringement, was also qualified as serious because of circumstances peculiar to this case. This qualification is in line with the Commission's 29 June decision in *Volkswagen*. In the present case, this infringement was of medium duration.

1.3. Abuses of dominant positions

Deutsche Post AG I (Case COMP/35.141) ([40])

On 20 March, the Commission concluded its investigation into Deutsche Post AG and adopted a decision finding that the company had abused its dominant position by granting fidelity rebates and engaging in predatory pricing in the market for business parcel services (for further details see Part One, points 77 and 108 et seq).

Duales System Deutschland (Case COMP/34.493 — Abuse decision) ([41])

The Commission took two decisions laying down the necessary conditions for the occurrence of competition in the area of the collection and recovery of sales packaging waste in Germany. One — an abuse decision adopted on 20 April ([42]) — concerns a payment provision in a trademark agreement.

Duales System Deutschland (DSD) is currently the only undertaking that operates a comprehensive packaging take-back system in Germany. DSD does not perform the task of collection itself but uses local collecting companies. DSD has concluded service agreements with those undertakings. Once the material has been collected and sorted, it is either conveyed to a recycling plant directly by the collector or handed over to so-called guarantee companies. These guarantee companies have given DSD an assurance that they will recycle the used packaging. DSD is financed by fees paid by manufacturers and retailers, who are under a legal obligation to take back sales packaging. They conclude a trademark agreement with DSD, which entitles them to use the Green Dot logo on their packaging and provides

([39]) OJ C 9, 14.1.1998.
([40]) Also referred to as *UPS/Deutsche Post* (OJ L 125, 5.5.2001).
([41]) See also Part One, point 79.
([42]) OJ L 166, 21.6.2001.

them with a guarantee that a collection and recycling service will be established in such a way that they are exempted from their legal obligations.

The Commission has identified three relevant markets. The first market in which DSD operates is in its widest conceivable definition the market for organising the take-back and recovery of used sales packaging collected from private final consumers. Even on the basis of this market definition, DSD has a market share well in excess of 80 %. The second relevant market is that for the collection and sorting of household packaging waste. The market is separate from traditional household and residual waste disposal and from collection from industry and large commercial enterprises. The third relevant market is that for recovery services and secondary raw materials.

In its decision, the Commission objected to a payment provision in the trademark agreement according to which a licensee must pay for all sales packaging bearing the Green Dot logo put on the German market whether or not DSD actually provides its exemption service. In certain circumstances, this contractual arrangement infringes the basic principle of 'no service, no fee'. Abuse always occurs where an obligated undertaking avails itself of DSD's exemption service in respect of only some of its sales packaging or dispenses entirely with DSD's exemption service in Germany while participating in a system which uses the Green Dot logo in other Member States.

In all these examples, the licensee would be obliged under the payment provision to pay a licence fee for using the Green Dot logo on all marked sales packaging despite the fact that DSD was providing only a partial service or no service at all. This would result in a double payment situation (the licensee has to pay the competitor and DSD) or in an obligation to operate at least two different packaging and distribution lines (packaging with and without the Green Dot). DSD thereby imposes unfair prices and commercial terms on undertakings which use the exemption service for only some of their sales packaging or which do not use it at all in Germany but participate in a Green Dot system in another Member State.

In July, DSD lodged an appeal against the Commission's decision before the Court of First Instance. By decision of 15 November, the President of the Court of First Instance decided not to suspend the Commission's decision ([43]).

Michelin (COMP/E-2/36.041) ([44])

On 20 June, the Commission adopted a decision finding against Manufacture Française de Pneumatiques Michelin for having abused its dominant position on the French market for new replacement tyres for heavy vehicles and on the French market for retread tyres for heavy vehicles ([45]). Michelin enjoys a very clear dominant position on both relevant markets (holding over 50 % of the market for new replacement tyres for heavy vehicles in France; on the French market for retread tyres, its share is even higher). In addition, the two relevant geographic markets are strictly limited to the French market: inasmuch as the retread market is a service market, and services cannot be stocked, it is by definition a local — and hence, at most, national — market. In the case of the geographic market for new replacement tyres, what needed to be done here was to gauge the actual capacity of retailers to obtain supplies from outside their national territory. The Commission noted that the large manufacturers organise the distribution and marketing of their products along national lines, a feature which led the Court of Justice in its 1983 *NBIM* judgment ([46]) to conclude that the market is a national one.

([43]) Case T-151/01 R.

([44]) See also Part One, point 80.

([45]) OJ L 143, 31.5.2002.

([46]) Case 322/81 *NV Nederlandsche Banden Industrie Michelin* [1983] ECR 3461.

The decision states that Michelin had introduced a complex system of quantity rebates, bonuses and commercial agreements which constituted an unfair loyalty-inducing system *vis-à-vis* retailers, the effect of which was to tie the latter and which helped foreclose the French market. Michelin's commercial policy towards specialised dealers (retailers) consisted during the relevant period of three elements, namely the 'general price conditions for France for professional dealers', the 'agreement for optimum use of Michelin truck tyres' ('PRO agreement') and the 'business cooperation and service assistance agreement' (known as the 'Michelin Friends Club'), and objectively was likely to keep retailers in a state of strong dependence, preventing them from choosing their suppliers freely. Such practices are prohibited by Article 82 of the EC Treaty. The infringement was committed by Michelin between 1990 and 1998. It was, moreover, a repeat infringement. The objections raised by the Commission against Michelin were essentially the same as those already condemned by the Court of Justice, under the same conditions, in 1983 (including the 'progress bonus', the abuse directly condemned by the Court). The EUR 19.76 million fine imposed on Michelin takes account of the peculiarities of the infringement committed by the firm, the infringement's very long (nine-year) duration, the repeat nature of the infringement, and certain mitigating circumstances: Michelin had effectively brought the infringement to an end at a time when it was not yet absolutely certain that the Commission would adopt a decision fining it (there remained pending the question of the dominant position) and what is more the Commission had to show that it duly rewards cooperation by offending firms (an aspect to which Michelin's attention had been drawn during the investigation).

Michelin has appealed against the decision.

IMS Health (Case COMP/38.044) ([47])

On 3 July, the Commission adopted an interim measures decision ([48]) under Article 82 ordering IMS, a US company dominant on the market for regional pharmaceutical sales data reports in Germany, to grant the other firms on the market, NDC Health ([49]) and AzyX ([50]), licences to a copyrighted 'brick structure' used to present these data. The Commission considered that only this measure could remedy IMS's illegal conduct and prevent serious and irreparable harm to the other two companies.

Reports on pharmaceutical sales by region are used by drug companies to develop and implement incentive schemes for their sales representatives, and to monitor, for example, evolving market shares of their products. 'Brick structures' are segmentations of a country into useful regions for sales reporting purposes, data-protection rules preventing transfer of information on individual pharmacies. Brick structures have been in use in Germany since the early 1970s, with the whole pharmaceutical industry moving to each newly created structure. The 1860 brick structure is the current standard.

In May 2000, IMS asked the German courts to find an infringement of its copyright in the 1860 structure by PI, later bought by NDC. In response, the German courts prohibited NDC from using this structure or 'derivatives' thereof. After IMS refused NDC's request for a licence to this structure, NDC complained to the Commission. It argued that the refusal breached Article 82, and requested that an obligation to license the 1860 structure be imposed on IMS by way of interim measures.

([47]) IMS Health stands for Intercontinental Marketing Services Health Inc. The case is also referred to as *NDC Health/IMS Health*. See Part One, point 81.

([48]) OJ L 59, 28.2.2002.

([49]) National Data Corporation Health Information Services.

([50]) AzyX Deutschland GmbH Geopharma Information Services.

Working on the basis that IMS enjoyed a copyright in the structure, the Commission found that IMS's refusal to license this copyright was an abuse under Article 82. The case-law of the European Courts ([51]) makes clear that the exercise (as opposed to the existence) of intellectual property rights is subject to EC competition law.

First, the Commission found that IMS's refusal to license the 1860 structure was likely to eliminate all competition from the relevant market. There was no realistic possibility for companies wishing to offer regional sales data services in Germany to employ, instead of the 1860 brick structure, another structure which would not infringe IMS's copyright. This conclusion followed from an extensive survey of the German pharmaceutical industry, which almost unanimously considered the 1860 brick structure an unavoidable industry standard. These companies contributed significantly, through the specialist knowledge of their sales representatives, to creating the 1860 structure, and consider that it meets their needs perfectly. Moreover, they have integrated the 1860 structure into many of their internal systems (for example databases, employment contracts), buy other data in the structure, and use other software which is designed to be compatible with it. The result is an extremely strong economic dependence by the industry on the 1860 structure.

Moreover, IMS's reasons for not licensing NDC, namely that NDC breached and continued to contest IMS's copyright, that the licence fee offered was too low and that criminal allegations against former NDC employees existed, did not constitute an objective justification for the refusal.

Furthermore, there was no likelihood of competitors creating an alternative structure. The Commission found that any potentially useful structure would be broadly similar to the 1860 structure and would be subject to significant legal uncertainty, since it might therefore infringe IMS's copyright. Data-protection laws also appeared to impose constraints on the creation of a second structure in Germany.

In addition to a finding of abuse, however, granting interim measures requires a finding that such measures are urgently needed to prevent serious and irreparable damage to the undertaking applying for them, or intolerable damage to the public interest. The Commission found both conditions to be met. Without a licence to the 1860 brick structure, NDC could not continue supplying its customers with regional sales data reports or attract new customers, and so was likely to cease trading in Germany. Prospective intolerable damage to the public interest also arose, since IMS's refusals to license risked eliminating the other competitor, AzyX, from the market and removed the prospect of any new entry on the market for the foreseeable future.

The Commission therefore required IMS to grant a licence to the 1860 brick structure to NDC and AzyX. The licence fee was to be set either by agreement between the parties or by the Commission, following the advice of independent experts. A periodic penalty payment was imposed in case IMS did not comply with the terms of the decision.

On 6 August, IMS lodged an appeal against the decision before the Court of First Instance (CFI) and asked for its suspension ([52]). The President of the CFI ordered the decision to be provisionally suspended on 10 August, under Article 105 of the CFI's rules of procedure. On 26 October, the President issued an order suspending the decision pending the CFI's judgment in the main action.

([51]) See, in particular, *Magill* (*RTE and Others* v *Commission* (Joined Cases 76/89, 77/89 and 91/89 R [1989] ECR I-114)), *Ladbroke* (Case T-504/93 [1997] ECR II-923) and *Bronner* (Case C-7/97 [1998] ECR I-7791).

([52]) Cases T-184/01 and T-184/01R respectively.

Deutsche Post AG II (Case COMP/36.915) ([53])

On 25 July, the Commission, in response to a complaint by the British Post Office, decided that Deutsche Post ([54]) had abused its dominant position on the German letter post market by intercepting, surcharging and delaying incoming international mail (for further details see Part One, points 78 and 111–112).

De Post/La Poste (Belgium) (Case COMP/37.859) ([55])

On 5 December, the Commission decided that the Belgian postal operator De Post/La Poste had abused its dominant position by making a preferential tariff in the general letter post service subject to acceptance of a supplementary contract covering a new business-to-business ('B2B') mail service ([56]) (for further details see Part One, points 82 and 113–114).

1.4. Article 86(1) of the EC Treaty

La Poste (France) (Case COMP/37.133) ([57])

Pursuant to Article 86(1), in conjunction with Article 82, of the EC Treaty, the Commission adopted on 23 October a decision on the monitoring of relations between the French company La Poste and firms specialising in the making-up and preparation of mail ([58]).

In this decision, the Commission found that the French regulatory framework pertaining to the supervision of La Poste's contractual arrangements with mail-preparation firms was insufficient to ensure that La Poste did not abuse its monopoly position in the downstream market for mail delivery. The activities of mail-preparation firms range from a variety of services for the benefit of mail originators (making up items, bundling and collecting them) and preparatory work on behalf of La Poste (pre-sorting). La Poste is both active on the mail-preparation market through a number of subsidiaries and at the same time the unavoidable partner for competing independent mail-preparation firms. Indeed, for the performance of their activities, mail-preparation firms have no other choice than to resort to La Poste's network, as soon as the mail items fall within the scope of the postal monopoly, which is the case for the bulk of their activity. La Poste's activities and some of its tariffs may well be subject to supervision by the Ministry of Finance, but the scope of the competences of the latter is not complete and there is a risk that the controls exercised by its lack of neutrality owing to the fact that the responsibility for managing the State's shareholding in La Poste falls within the powers of the same ministry. In these circumstances, La Poste had the power to impose on its mail-preparation partners unfair or discriminatory technical and financial conditions. Both La Poste and the French ministry were deemed by the Commission to be affected by a conflict of interest.

Beyond the assessment of the shortcomings of the existing regulatory framework, the Commission's decision included comments on a draft decree instituting a postal ombudsman, which the French authorities had submitted in the proceeding. The decision insists, in particular, on the right for the ombudsman to publish his statements.

([53]) Also referred to as *British Post Office/Deutsche Post*.
([54]) OJ L 331, 15.12.2001.
([55]) Also referred to as *Hays/La Poste*.
([56]) Press release IP/01/1738, 5.12.2001; OJ L 61, 2.3.2002.
([57]) Also referred to as *SNELPD/La Poste*. See also Part One, point 84.
([58]) OJ L 120, 7.5.2002.

2. Authorisations

2.1. Horizontal agreements

P&O Stena Line 2 (Case COMP/D-2/37.939) ([59])

On 26 January 1999, the Commission granted the joint venture between P&O and Stena Line, operating cross-Channel ferry services, a three-year exemption under Article 81(3) of the EC Treaty ([60]). The exemption came to an end on 9 March 2001 and the parties applied for a renewal of the exemption on 22 December 2000.

The Commission published a summary of the notification in the Official Journal on 8 March 2001 ([61]). Under the procedure applicable to the maritime transport sector ([62]), the Commission has 90 days from the date of such publication to raise serious doubts and to continue its investigation into the case. If the Commission takes no action within this period, the agreement is automatically exempted for six years.

The investigation concluded that since the time of the previous exemption, there had not been changes in the market such that the conditions required for the grant of an exemption were no longer fulfilled. In particular, the characteristics of the market were still such that the joint venture and Eurotunnel, the main operators on the market, could be expected to continue to compete with each other, rather than to act in parallel to raise prices. The Commission found that the joint venture had achieved the efficiencies and benefits expected in the previous exemption and that consumers would continue to benefit from such efficiencies if there was sufficient competition on the market.

The investigation also found that the price increases on the market were explicable for reasons other than the operation of the joint venture and did not in themselves constitute such a change in market conditions as to warrant a refusal to renew the exemption.

Consequently, there was no factor that would have justified the Commission's raising serious doubts about the continuing operation of the joint venture. In accordance with the mechanism in the maritime transport regulation, the joint venture agreement is deemed exempted until 7 March 2007 ([63]).

bmi British Midland, Lufthansa and SAS (Case COMP/D-2/37.812) ([64])

On 1 March 2000, the airlines bmi British Midland International (bmi), Lufthansa and SAS ('the parties') notified to the Commission a cooperation agreement in accordance with Regulation (EEC) No 3975/87 for a decision applying Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement. In close cooperation with the UK competition authorities, the Commission's departments carried out an investigation during which a large number of European airlines were consulted. On 12 June 2001, after the parties had given a number of undertakings, the Commission informed them that they were being granted a six-year exemption for their tripartite joint venture agreement (TPJVA).

([59]) See also Part One, point 160.

([60]) OJ L 163, 29.6.1999; press release IP/99/56, 28.1.1999; 1999 Competition Report, p. 152.

([61]) OJ C 76, 8.3.2001; press release IP/01/333, 8.3.2001.

([62]) Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 (now Articles 81 and 82) of the EC Treaty to maritime transport (OJ L 378, 31.12.1986).

([63]) IP/01/806, 7.6.2001

([64]) See also Part One, points 136 et seq. and Box 1.

Under the TPJVA, the parties agree to coordinate their respective current and future scheduled passenger air transport services within the EEA to and from London Heathrow and Manchester International airports. Services that do not depart from or arrive at these airports fall outside the scope of the TPJVA. Under the agreement, the parties decide jointly on capacity, the fare structure and flight schedules on these routes. They share profits and losses for services covered by the TPJVA ([65]).

To define the relevant market in air transport, in a number of decisions and supported by case-law, the Commission has developed the so-called point-of-origin/point-of-destination (O&D) pair approach ([66]). According to this approach, every combination of a point-of-origin and point-of-destination should be considered to be a separate market from the customer's point of view. The O&D approach allows the Commission to take into account that a transport service can be carried out by different transport modes (air, rail, road or sea) or that it can be offered by direct flights or indirect ones, i.e. flights which include a stop-over. The Commission further distinguishes between 'time-sensitive' (business) and 'non-time-sensitive' (leisure) customers.

The TPJVA provides that Lufthansa is granted the exclusive right to operate flights on almost all routes between London and Manchester on the one hand and German airports on the other. Similarly, SAS is granted the exclusive right for the traffic between London/Manchester and Scandinavian countries. This restriction was found to be problematic for the London–Frankfurt market, which, with 2.1 million O&D passengers in 1999, is one of the busiest in Europe. The Commission concluded that bmi's withdrawal from the London–Frankfurt route represented an appreciable restriction of competition on both the market for non-time-sensitive passengers and the market for time-sensitive customers.

In its analysis under Article 81(3), the Commission came to the conclusion that, in terms of efficiency gains and competition, the overall effect of the agreement is positive. It leads to a reorganisation and expansion of the parties' existing networks, and allows Lufthansa and SAS to compete for domestic UK traffic as well as for traffic between the UK and Ireland and to carry passengers from any point in the STAR network to regional destinations in the UK. It leads furthermore to an increase in network competition. As a result of the agreement, bmi was able to start providing new services between London and Barcelona, Lisbon, Madrid, Milan and Rome. On some of these routes, for example on the London–Barcelona/Madrid route, there was only one alliance operating before bmi's entry. The agreement therefore fosters competition between these incumbents and the STAR alliance on such routes ([67]).

These pro-competitive effects will generate benefits for the consumer in that customers will enjoy a wider choice of air transport services to more destinations, better connections and convenient scheduling and seamless travel. However, in spite of these positive elements, the Commission was concerned that the agreement would lead to the elimination of competition on the market for point-to-point time-sensitive customers on the London–Frankfurt route ([68]).

Following the withdrawal of bmi, only Lufthansa and British Airways (BA) remained on that market, while as a result of the agreement with bmi, Lufthansa had become dominant on this market. In terms of

([65]) For services not covered by the TPJVA, the parties coordinate their activities pursuant to separate bilateral alliance agreements concluded between bmi and SAS, and bmi and Lufthansa respectively.

([66]) See Commission decision of 11.8.1999 (*KLM-Alitalia*, OJ C 96, 5.4.2000).

([67]) Furthermore, given that bmi has a significant number of slots at Heathrow, the agreement also allows the STAR alliance to develop Heathrow as a second hub. bmi's joining the STAR alliance will therefore foster competition between the STAR alliance and the Oneworld alliance of British Airways.

([68]) The two low-cost carriers Ryanair and Buzz as well as British Airways ensure that the parties do not eliminate competition in respect of a substantial part of the market for scheduled air services for non-time-sensitive customers.

frequencies, Lufthansa had a market share of about 63 % on this market. More importantly, BA was not able to increase its frequencies due to a shortage of slots at Frankfurt airport. Lufthansa alone has 64 % of all slots at its Frankfurt hub. Despite several requests, BA was unable to obtain further slots at Frankfurt in order to increase its frequencies on the London–Frankfurt route. By contrast, Lufthansa's position at Heathrow is considerably stronger due to its cooperation with bmi. As a result, Lufthansa's only remaining competitor was severely handicapped, and there was a risk that Lufthansa could eliminate competition on this market.

With a view to addressing the Commission's competition concerns, the parties submitted a number of commitments. In particular, they offered to make slots available at Frankfurt airport, which would allow the entrant to operate four daily frequencies. In the event of the entrant requesting some, but not all, of the four pairs of slots, the parties undertook to make the remaining number of slots available to any airline currently operating services on the Frankfurt–London route. This would allow British Airways to increase its frequencies on this route and compete on an equal footing with Lufthansa. In the light of Lufthansa's position at Frankfurt airport, the parties offered to give those of bmi's Frankfurt slots which were not taken up by competitors back to the slot pool. This would keep Lufthansa from further strengthening its position at Frankfurt airport as a result of the cooperation agreement ([69]).

By accepting these commitments, the Commission was able to secure the overall pro-competitive effect of the cooperation agreement while at the same time preventing an elimination of competition on an important market. The Commission carried out a market test to confirm that the slots made available by the parties would actually be taken up by competitors. In the meantime, these slots have been taken up by BA, which, as a result, has increased its daily frequencies on the London–Frankfurt market. On the basis of these commitments, the Commission decided not to raise serious doubts with regard to the TPJVA so that an exemption pursuant to Article 5(3) of Regulation (EEC) No 3975/87 applies for a period of six years (non-opposition procedure).

Grand Alliance/Americana Consortium (Case COMP/D-2/37.982)

In March, the Commission decided not to raise any objections to a consortium which operates weekly liner shipping services between ports in northern Europe to and from ports in North America and Mexico ([70]). The consortium agreement had been notified on 10 October 2000. Pursuant to the regulation on the application of Article 81(3) of the EC Treaty to liner shipping consortia ([71]), the Commission has six months from the date of notification to oppose an agreement. If the Commission does not take action within this period, the notified agreement is automatically deemed exempted for the time the regulation is in force (i.e. until 25 April 2005).

The Commission's investigation concluded that the consortium met the criteria for exemption set out in the regulation. In particular, it was found that the consortium would remain subject to effective competition from other shipping lines. The agreement is therefore deemed exempted until 25 April 2005.

([69]) Full details of the remedies package have been published in OJ C 83, 14.3.2001.

([70]) The parties to the agreement were, on the one hand, Hapag-Lloyd Aktiengesellschaft, Nippon Yusen Kaisha, Orient Overseas Container Line and P&O Nedlloyd (companies forming the 'Grand Alliance') and, on the other, Lykes Lines Limited and Mexican Line Limited (two subsidiaries of Americana Lines Ltd).

([71]) Commission Regulation (EC) No 823/2000 of 19 April 2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (OJ L 100, 20.4.2000).

UEFA broadcasting regulations (Case COMP/C-2/37.576) ([72])

On 20 April, the Commission adopted a negative clearance decision concerning UEFA's broadcasting regulations on the TV broadcasting of football, as amended in July 2000 ([73]).

Starting with the 2000/2001 season, the new broadcasting regulations allow national football associations to block the TV broadcasting of football matches within their territory during two and a half hours either on Saturday or Sunday at hours that correspond to their main domestic fixture schedule. This represents a significant improvement in terms of both scope and procedure compared with the regulations as originally notified to the Commission.

The UEFA broadcasting regulations originally presented to the Commission in 1988 were highly complex and very broad in scope. They operated with a time window system covering the whole week and provided for different authorisation requirements. The authorisation system is abandoned under the new broadcasting regulations. Football associations can therefore no longer veto transmissions into their territory arbitrarily. UEFA also gave up an exemption for its own UEFA tournaments. Thus, there is no longer a situation with market sharing between UEFA and the national associations.

The two-and-a-half-hour ban is considered to be adequate to protect stadium attendance from being disturbed by the simultaneous broadcasting of football on TV while at the same time allowing football fans, eager to watch the match also on TV, time to get back from the stadium.

While football clubs very much welcome TV revenues, they also want to protect stadium attendance to maintain the atmosphere there. The Commission's decision in the broadcasting regulations cases takes these two conflicting interests into account, reconciling competition rules with the special characteristics of sport.

The Commission took into consideration the fact that national fixtures are increasingly spread over several days of the week and at varying hours. The combination of the actually blocked hours and the various fixtures will therefore rarely result in situations where broadcasters would be prevented from broadcasting football of a particular origin and viewers from seeing it. The Commission therefore concluded that this effect cannot be qualified as constituting an appreciable restriction of competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

The Commission also examined the emerging market for Internet streaming of football (Internet-TV) but took the view that the broadcasting regulations would not at present appreciably restrict technological and economic developments in the sector. However, the Commission reserves the right to intervene in the future if developments are brought to its attention which indicate that the broadcasting regulations will become a barrier to the development of new Internet services.

The Commission's decision on the UEFA broadcasting rules does not prejudice the assessment of the joint selling of broadcasting rights by national football associations, which is still being examined under Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

([72]) See also Part One, points 165 and 224.

([73]) OJ L 171, 26.6.2001.

Europe to Caribbean liner shipping consortium (Case COMP/D-2/38.021)

Similarly, in June, the Commission decided not to oppose another consortium which operates weekly services between ports in northern Europe and the Mediterranean to and from ports in the Caribbean (and which was notified on 13 December 2000) ([74]). It was concluded that the requirements for exemption as set forth in the regulation on liner shipping consortia were met and that the consortium would face effective competition from other liner shipping companies. The agreement is therefore deemed exempted until 25 April 2005.

Intelsat (Case COMP/37.995)

On 1 June, the Commission issued a negative clearance comfort letter to Intelsat for its restructuring from an intergovernmental organisation into a commercial company (for further details see Part One, point 133).

Identrus (Case COMP/37.462) ([75])

On 31 July, the Commission cleared agreements between a number of major European and non-European banks creating a global network ('Identrus') for the authentication of electronic signatures and other aspects of e-commerce transactions ([76]).

Pro Europe (Case COMP/38.051) ([77])

Pro Europe was established by several national packaging recovery systems to control the use of the Green Dot trademark outside Germany, where this trademark is controlled by Duales System Deutschland (DSD). It has entered into principal licensing agreements with the following packaging recovery systems from the EEA: ARA (Austria), Eco-Emballages (France), EcoEmbalajes España (Spain), Valorlux (Luxembourg), Sociedade Ponto Verde (Portugal), Repak (Republic of Ireland), FOST Plus (Belgium) and Materialretur (Norway). It notified the relevant agreements to the Commission.

Pro Europe describes itself as 'a vehicle which allows its participants to operate on their respective markets under the same trademark'. The relevant market, separate from packaging recovery markets, is that of administering the use of a symbol to identify packaging taking part in a recovery system or solution.

The Commission's analysis concentrated in particular on whether the effect of the agreements is to (i) foreclose the market in providing producers with exemption services (market in systems for recovering household packaging waste) to schemes which are not eligible to use the trademark and/or (ii) prevent undertakings with recovery obligations from following so called self-management or individual solutions in certain territories and/or (iii) unduly partition the markets along national frontiers.

Pro Europe made some changes to its agreements at the Commission's request. Sublicences, which must in certain conditions be granted to competitors by the principal licensees, shall if need be have the same material and territorial scope as the principal licence. Pro Europe also asserted that nothing in its

([74]) The parties to the agreement were CMA-CGM SA, A.P. Møller Maersk Sealand, Marfret and Nordana Line.
([75]) See also Part One, point 132.
([76]) OJ L 249, 19.9.2001.
([77]) See also Part One, Box 3.

agreements prevents its members from allowing packaging taking part in a self-management solution to bear the Green Dot. It undertook, moreover, to intervene on behalf of a potential sublicensee where a principal licensee unjustifiably denies a sublicence. Finally, it appears that current partitioning of the markets along national frontiers results not from Pro Europe rules but rather from national regulatory requirements.

Following the changes, a negative-clearance-type comfort letter was issued on 28 September.

IATA cargo tariff consultations (Case COMP/D-2/36.563) ([78])

The IATA cargo tariff conferences are a forum where air carriers met principally to agree tariffs for the transport of freight. Until June 1997, this system benefited from a block exemption under Commission Regulation No 1617/93 ([79]), which effectively enabled European airlines to agree on tariffs for the carriage of freight within the EEA. This block exemption was as of 30 June 1997 withdrawn by Commission Regulation No 1523/96 of 24 July 1996 ([80]).

The Commission's main reasons for withdrawing the block exemption were that the tariffs fixed by the cargo tariff conferences appeared to be much higher than the market rates and that the system no longer seemed essential for making interlining ([81]) work within the EEA.

Following the withdrawal of the block exemption, IATA notified the system under Council Regulation (EEC) No 3975/87 of 14 December 1987 ([82]) and applied for an individual exemption. IATA's main argument in favour of the tariff conferences was that they facilitated cargo interlining. The cargo tariffs fixed by the tariff conferences were indeed used at the wholesale level to calculate each carrier's remuneration for its participation in an interline move.

In a statement of objections sent to IATA in May, the Commission took the preliminary view that IATA cargo tariff conferences fall under Article 81(1) of the EC Treaty. In its analysis under Article 81(3), the Commission accepted that cargo tariff conferences facilitate the provision of a comprehensive system of interlining within the EEA. It considered, however, that IATA had not succeeded in demonstrating that this restrictive system was still indispensable as a means of providing customers with efficient interlining services within the EEA.

The tariff conference system is 55 years old and dates from the time air transport markets were strictly regulated. The current regulatory context within the EEA differs radically from that which presided over the setting up of the IATA tariff conferences. In addition, Community airlines are currently in the process of building global networks. They often interline with their alliance partners or with other airlines on the basis of bilateral agreements.

Following the statement of objections, IATA agreed to end the joint setting of cargo rates within the EEA. Concretely, by the beginning of 2002, cargo rates fixed individually by each carrier should replace those jointly set by the tariff conferences.

([78]) See also Part One, points 143 et seq.

([79]) OJ L 155, 26.6.1993.

([80]) OJ L 190, 31.7.1996.

([81]) *Interlining* occurs when cargo is carried for part or all of the journey by an airline other than the airline the customer has contracted with.

([82]) OJ L 374, 31.12.1987.

As a result, the Commission decided to close the case. It also provided IATA with a comfort letter covering a number of other administrative and technical resolutions in the cargo sector which facilitate interlining and are distinct from the setting of cargo rates.

2.2. Vertical agreements

Returpack-PET (Cases COMP/35.656 and COMP/37.224) Returpack Aluminium (Case COMP/35.658) Returglas (Case COMP/35.669)

On 24 April, the Commission approved by way of comfort letters the membership and operational agreements of three beverages-packaging waste-compliance schemes founded by Swedish breweries, packagers and retailers (Svenska Returpack group and others). These three systems were set up in Sweden to discharge the recovery and recycling obligations of their members and to ensure the recovery and recycling of PET-plastic, aluminium and glass beverages packaging respectively, as required by national law.

The Commission noted that the Swedish Competition Authority (the Konkurrensverket) had granted these systems exemption under national competition law until the end of 2004. The Konkurrensverket had in fact considered that the requirement of using only the compacting method (and therefore compacting machines) could restrict competition, as it excludes other methods and other machines, such as shredding. Likewise, it considered that the restriction of not allowing members leaving the system to use packaging that belonged or could be mistaken for belonging to the system could be anti-competitive. It nevertheless found these restrictions justifiable and therefore granted exemptions.

The Commission accepted this analysis of the national authority and concluded that exemption-type comfort letters could be issued. Review is possible if the market changes and in particular after the expiry of the national exemptions.

Yves Saint Laurent (Case COMP/F-1/36.533)

On 16 May, the Commission exempted individually by comfort letter the selective distribution system used by Yves Saint Laurent Parfums (YSLP) for its luxury products in the perfume, cosmetics and skin care sector ([83]). The YSLP selective distribution agreement also meets the conditions for exemption under Regulation (EC) No 2790/99 ([84]) on the block exemption from which selective distribution agreements have been able to benefit since 1 June 2000.

In particular, YSLP authorises approved retailers already operating a physical sales outlet to sell via the Internet as well. On the other hand, it imposes quality standards for use of an Internet site for the purpose of selling its luxury products, just as it would in the case of a shop within the framework of its selective distribution system.

In the guidelines on vertical restraints ([85]), the Commission stresses the importance of the Internet to the competitiveness of the European economy and encourages widespread use of this modern means of communication and marketing. In particular, it considers that a ban on Internet sales by distributors —

([83]) Press release IP/01/713, 17.5.2001.

([84]) Regulation (EC) No 2790/99 of 22 December 1999 (OJ L 336, 29.12.1999).

([85]) Commission notice 2000/C 291/01, paragraph 51 (OJ C 291, 13.10.2000).

even in a selective distribution system — is a restraint on sales to consumers and hence is not covered by the regulation.

In 1992, the Commission had granted the YSLP perfume distribution system individual exemption under Article 81(3) of the EC Treaty for the period from 1 June 1991 to 31 May 1997 ([86]). By a judgment of 12 December 1996 ([87]), the Court of First Instance had largely upheld this exemption decision. In the light of the Commission's decision-making practice and the judgments of the Court of First Instance relating thereto, the Commission's authorisation also covers the period between the expiry of the 1992 decision and the entry into force of the new regulation, Regulation 2790/99.

Eco-Emballages (Case COMP/34.950) ([88])

By decision of 15 June ([89]), the Commission approved the contracts concluded by the French company Eco-Emballages SA concerning its system of selective collection and recovery of household packaging waste. This decision is one of a series defining the Commission's policy in the packaging waste recovery sector.

Producers (including distributors and importers) of packaged goods pay Eco-Emballages a financial contribution in return for having their legal obligations in the area of the recycling of packaging discharged. Eco-Emballages redistributes the revenues it collects from them to local authorities, which are responsible among other things for collecting household waste in their local area. Its contributions are intended to compensate the local authorities for the extra cost of selectively collecting and sorting this type of waste. The local authorities then sell the sorted materials to industrial firms which recover them. These different activities in fact constitute the relevant and affected service markets on French territory.

Following a warning from the Commission, Eco-Emballages amended some of the clauses of its contracts. This made it possible for the Commission to consider that there were no longer any competition restrictions in place and to grant negative clearance to all the notified agreements.

The most important changes and undertakings concerned the duration and scope of the contracts and the granting of sublicences for use of the Green Dot logo on packaging. Producers may now leave the system after a year and at the end of every subsequent year. Local authorities may also immediately terminate their contract with the system, whereas Eco-Emballages must honour the contract length of six years except in case of default by the municipality. Producers may now conclude a contract for all or only some of their packaging and local authorities may conclude a contract for all or only some of the packaging waste materials they collect, i.e. for some or all of the categories of glass, paper/cartonboard, metals and plastic.

Eco-Emballages has also agreed to offer the possibility of using the Green Dot logo to anybody who legitimately needs to use this symbol to carry on business. A small competitor, Adelphe, has in fact obtained from Eco-Emballages a sublicence to use the Green Dot in its system, and other potentially competing systems would also be entitled to a sublicence. Furthermore, Eco-Emballages has agreed to grant such sublicences even to undertakings which wish to make individual arrangements for some or all of their packaging while calling on the services of a collective system for the rest either in France or in another country. This permits such a sublicensee to use the same packaging bearing the Green Dot while

([86]) Commission decision of 16.12.1991 in Case IV/33.242 *Yves Saint Laurent Parfums* (OJ L 12, 18.1.1992).

([87]) Case T-19/92 *Groupement d'achat Edouard Leclerc* v *Commission* [1996] ECR II-1851.

([88]) See also Part One, Box 3.

([89]) OJ L 233, 31.8.2001.

paying for it only to the extent that the services of the exemption system are also used. The recovery results of the other system or the self-management arrangement must nevertheless be comparable to those imposed on collective systems.

Visa International payment cards (Case COMP/29.373)

On 9 August, the Commission adopted a decision under Article 81 of the EC Treaty in the *Visa International* case ([90]). (For further details see Part One, points 200 et seq.)

Duales System Deutschland (DSD) (Case COMP/34.493 — positive decision) ([91])

By decision of 17 September ([92]), the Commission granted negative clearance for the notified statutes of DSD and the guarantee agreements, and exempted the service agreements.

The two main competition concerns raised by the Commission in the past concerning systems for the collection and recycling of packaging waste were the issue of free marketing of secondary material by collectors and the duration of service agreements. Another major concern in this case was the unrestricted access of DSD's competitors to the collection infrastructure of the DSD collectors.

DSD entered into service and guarantee agreements which originally provided that a collector was not entitled to market the collected materials himself. The Commission objected to this restraint because it allowed DSD and the guarantee companies to establish themselves as a strong or even dominant supplier of secondary raw material and prevented collectors from marketing materials in competition with each other. In the meantime, DSD abolished this constraint, except for plastics, where because of negative market prices the collector has to transfer the collected plastic waste to a guarantee company appointed by DSD.

The fact that under the service agreements, which were concluded for a period of up to 15 years, only one collector was appointed exclusive partner of DSD per administrative district amounted to a restriction of competition under Article 81(1) of the EC Treaty, since access to the relevant market by domestic and foreign collectors was obstructed. The Commission examined whether such long-term exclusive agreements were indeed necessary. The results of the economic analysis undertaken by the Commission suggested that collectors would have sufficient time to achieve an economically satisfactory return on their investment if the service agreements were to run until the end of 2003. The Commission informed the notifying parties of this finding, who notified the service agreements accordingly. The Commission therefore granted an exemption until the end of 2003.

The duration of the service agreements is closely related to access to the collection infrastructure. The relevant market for the collection and sorting of packaging waste at households is characterised by specific supply-side conditions (network economies, disposal traditions of consumers, container instalment constraints), which makes duplication of the existing collection infrastructure at households in many cases impossible or economically unviable. Therefore, unrestricted access to collection facilities is a precondition for the occurrence of competition on the downstream market for organising the take-back and recovery of used sales packaging. The collectors own these facilities and there is no provision in the notified service agreements preventing the collectors from offering these facilities to competitors of

([90]) OJ L 293, 10.11.2001.
([91]) See also Part One, Box 3.
([92]) OJ L 319, 4.12.2001.

DSD. Given the vital competitive importance of unimpeded access to the collection infrastructure, the Commission considered it necessary to attach obligations to the decision in order to ensure that competition on the relevant markets is not restricted. In November, DSD lodged an appeal against the obligations before the Court of First Instance.

Porsche (Case COMP/F-2/37.886) ([93])

The German sports car manufacturer Porsche AG notified to the Commission its new distribution agreements for the wholesaling and retailing of Porsche cars. These standard agreements provided for selective and exclusive distribution of new Porsche cars and spare parts and contained an obligation on all Porsche dealers to offer after-sales servicing to Porsche standards.

The Commission came to the conclusion that the new agreements restricted competition in the area of sports cars to an appreciable extent, owing in particular to the combination of exclusive and selective distribution with exclusive supply and purchasing obligations and to non-compete obligations which forced Porsche dealers wishing to sell other makes to do so in a separate legal entity, under separate management and in separate showrooms in a way which avoided confusion between the makes, and owing to other restrictions. After certain modifications were made to the agreements, the Commission concluded that, in their modified form, they could benefit from the block exemption provided for in Regulation (EC) No 1475/95 on motor vehicle distribution and servicing agreements ([94]). One of the modifications concerned sales targets agreed upon with Porsche dealers: targets will include all sales regardless of the buyer's place of residence — an important amendment as it favours cross-border trade in the single market. Another modification concerned online sales, which Porsche dealers are now allowed to make if consumers wish to buy over the Internet. Porsche made clear, moreover, that it would give independent repairers non-discriminatory access to all technical information. The file was accordingly closed by comfort letter.

Fédération Internationale de l'Automobile — FIA (Case COMP/35.613) and FIA Formula One World Championship (Case COMP/36.638) ([95])

This investigation concerned a number of cases relating to the organisation of motor sport events and their commercial exploitation.

On 22 July 1994, the Fédération Internationale de l'Automobile (FIA) notified its regulations to the Commission. Subsequently, the agreement between the FIA and International Sportsworld Communicators Ltd (ISC) relating to the marketing of broadcasting and media rights to certain FIA championships (except Formula One) was also notified ([96]). The commercial arrangements relating to the FIA Formula One World Championship were notified separately ([97]) by the FIA and Formula One Administration Limited ('FOA', which is the commercial rights holder for this championship) on 5 September 1997.

In 1997 and 1998, the Commission received three complaints concerning these notifications. The complaints were lodged by (i) AE TV Cooperation GmbH ([98]), a television company whose complaint

([93]) See also Part One, point 185.
([94]) OJ L 145, 29.6.1995.
([95]) See also Part One, points 221 et seq.
([96]) Case COMP/35.613.
([97]) Case COMP/36.638 — *FIA/FOA*.
([98]) Cases COMP/36.520 and COMP/37.319.

focused mainly on the European Truck Racing Cup, and (ii) the GTR Organisation ([99]), which organised and promoted an international series for 'grand touring' (GT) cars. All three complaints were subsequently withdrawn, and the cases closed.

The cases concerned the following services and products: (a) the organisation of cross-border motor sport series; (b) the promotion of such series; (c) the certification/licensing of motor sport events' organisers and participants; and (d) the broadcasting rights of the FIA Formula One Championship.

On 29 June 1999, the Commission issued a statement of objections according to which the FIA had a 'conflict of interest' in that it was using its regulatory powers to block the organisation of races which competed with the events promoted or organised by the FIA (i.e. those events from which the FIA derived a commercial benefit). The Commission objected to the FIA's claiming TV rights to motor sport series it authorised and to certain clauses in the Concorde Agreement that sets out terms for the organisation and running of the FIA Formula One World Championship and the voting structure for its control, by reference to other agreements, contracts and FIA rules. Finally, certain notified contracts appeared to contravene Article 81 and/or Article 82 of the EC Treaty in that they raised further the barriers to entry for a potential entrant: the promoters' contracts prevented circuits used for Formula One from being used for races which could compete with Formula One for a period of 10 years; the Concorde Agreement prevented teams from racing in any other series comparable to Formula One; and the agreements with broadcasters for broadcasting grand prix imposed a financial penalty on them if they showed motor sports that competed with Formula One series. Certain agreements between FOA and broadcasters appeared to restrict competition within the meaning of Article 81 by granting the latter exclusivity in their territories for excessive periods of time.

On 26 April 2000, the FIA and FOA submitted several proposals to modify substantially the notified arrangements in order to meet the concerns expressed by the Commission in the statement of objections.

The modifications had the following objectives:

— to establish a complete separation of the commercial and regulatory functions in relation to the FIA Formula One World Championship and the FIA World Rally Championship, where new agreements are proposed which place the commercial exploitation of these championships at arm's length;

— to improve transparency of decision making and appeals procedures, and to create greater accountability;

— to guarantee access to motor sport to any person meeting the relevant safety and fairness criteria;

— to guarantee the FIA's approval to all events meeting certain safety and sporting criteria and ensure that no restriction is placed on access to external independent appeals;

— to modify the duration of free-to-air broadcasting contracts in relation to the FIA Formula One World Championship.

The proposed changes to the regulatory framework and to the commercial arrangements appeared to the Commission to introduce sufficient structural remedies minimising the risk of possible future abuse and to set the basis for a healthy competitive environment in economic activities related to motor sport. These

([99]) Case COMP/36.776.

modifications led the Commission to publish a notice pursuant to Article 19(3) of Regulation No 17 on 13 June ([100]).

On 29 October, the Commission concluded its investigation by issuing administrative comfort letters and subsequently published an explanatory press release ([101]). The Commission will examine carefully any changes in the commercial interests of the owners of the Formula One World Championship to determine whether such changes negatively affect downstream television markets.

The Commission considers that this solution guarantees sports fans free-to-air coverage of popular races and high safety standards across the EU. The sport will develop within a common regulatory framework favouring the establishment of cross-border series in Europe. Finally, consumers will also benefit from an increased variety of motor sport events as organisers and circuit owners will be free to invite non-EU-established series to their venues.

3. Settlements

Bank charges for the exchange of euro-zone currencies — Belgium, Finland, Portugal, Ireland, the Netherlands and Germany (Cases COMP/E-1/37.787, COMP/E-1/37.788, COMP/E-1/37.789, COMP/E-1/37.790, COMP/E-1/37.791 and COMP/E-1/37.919)

The creation of the euro on 1 January 1999 irrevocably fixed the exchange rates of the 11 (since 1 January 2001, 12) EU currencies that are part of economic and monetary union, thereby eliminating the buying and selling foreign exchange spread and with it a source of revenue for banks.

Shortly after this date, the Commission received complaints from consumers alleging that certain banks had collectively fixed their charges for exchanging euro-zone currencies (in-currency banknotes).

Price-fixing cartels are hardcore violations of competition law, irrespective of whether they are aimed at keeping prices artificially high or at minimising a drop in prices. Each bank should individually fix the level of its exchange rates. Banks must not collectively agree on these rates. Such a practice would constitute by its very nature a very serious infringement of competition rules and is liable to be severely punished by the Commission.

In order to be able to ascertain all the relevant facts concerning possible anti-competitive agreements or concerted practices, the Commission carried out surprise inspections at a number of banks and sent requests for information to most euro-zone banks.

As a result of these investigations, the Commission gathered evidence which indicated that certain national groups of banks may have colluded to maintain exchange charges at certain levels in order to minimise losses caused by the introduction of the euro. On the basis of this evidence, in 2000, the Commission started proceedings against a large number of banks and exchange bureaux in seven Member States (Austria, Belgium, Finland, Germany, Ireland, the Netherlands and Portugal).

([100]) OJ C 169, 13.6.2001.

([101]) Press release IP/01/1523, 30.10.2001.

However, during the proceedings, between April and July 2001, with a view to settling the antitrust proceedings with the Commission, some banks took the initiative in submitting to it unilateral proposals consisting of (i) a significant reduction in the charges applicable to the exchange of in-currency banknotes and (ii) the elimination of all these fees by October 2001 at the latest, at least for buying transactions by account holders.

Taking into account both the exceptional circumstance of the disappearance of the market concerned, i.e. the exchange of in-currency banknotes, as a consequence of the introduction of the euro in January 2002 and the fact that the proposals submitted were acceptable, the Commission decided to end the cartel proceedings against more than 50 banks in Belgium, Finland, Ireland, the Netherlands and Portugal and against some banks in Germany.

The Commission considered that the proposed change in the banks' commercial behaviour brought the suspected infringement to an end. Its decision to close the proceedings in the public interest was taken with a view to ensuring that consumers derived a direct, immediate benefit.

Consumers have indeed benefited significantly since May 2001 from a substantial reduction in the charges applicable to the exchange of in-currency banknotes and during the last quarter of the year from their complete removal. Moreover, the introduction of euro banknotes and coins on 1 January 2002 was facilitated by this measure.

These cases clearly demonstrate the important role played by consumers both as defenders and as the main beneficiaries of the effective enforcement of competition policy. Consumers and consumer organisations can enhance their important role in competition matters by remaining alert and playing an active part in the detection of illegal collusive behaviour.

Corrib (Case COMP/E-3/37.708)

The Commission closed its examination relating to the Irish Corrib gas field following the decision of Corrib's owners to withdraw their application for an exemption to jointly market the gas produced at Corrib ([102]). This will give gas consumers in Ireland a wider choice between gas suppliers.

The Corrib gas field is a new discovery off the west coast of Ireland. The field was declared commercial by its owners and will be the only indigenous gas field in Ireland in the years to come following the depletion of the existing gas field at Kinsale unless new discoveries are made.

In 1999, Corrib's owners, Enterprise Energy Ireland Limited, Statoil (Norway) and Marathon (United States) applied for an exemption to market gas produced at Corrib jointly for the first five years of production. The companies argued that joint marketing would be necessary to balance the countervailing purchasing power of the incumbent Irish energy companies. These are Bord Gais Eirean (BGE), the State-owned gas company, and Electricity Supply Board (ESB), the State-owned electricity company using large quantities of gas for electricity production.

The Commission — while recognising the strong market position of BGE and ESB — raised competition concerns. It questioned in particular whether joint marketing brought economic benefits as required under European competition law. In this regard, the Commission also took into account that the ongoing liberalisation process in the gas sector will make an increasing number of gas consumers 'eligible', i.e.

([102]) IP/01/578, 20.4.2001.

free to choose between suppliers. In Ireland, which is characterised by a rapid growth of its energy markets, these eligible customers already include power generators and energy-intensive industrial consumers.

The Corrib partners, which had refrained from implementing the joint marketing arrangements, withdrew their application for an exemption following the concerns raised by the Commission. As a consequence of the withdrawal, the Commission decided to close its examination. The case confirms the Commission's general policy not to tolerate joint selling in the gas sector any longer, unless compelling reasons are provided as justification.

Marathon (Case COMP/E-3/36.246)

The Commission settled the *Marathon* case with the German gas company Thyssengas after it received commitments from that company rendering access to its pipeline network more effective ([103]). The case concerned the alleged joint refusal to grant access to continental European gas pipelines by some European gas companies, among them Thyssengas. The case was initiated following a complaint by the Norwegian gas producer Marathon. The complaint was later withdrawn following a commercial settlement between the parties. The Commission decided, however, that it was in the Community interest to continue the investigation.

Of the companies concerned by the investigation, Thyssengas — the smallest of the European operators — put forward substantial proposals aimed at rendering access to its network more effective. Thyssengas's commitments relate to five areas.

- As regards balancing, Thyssengas undertook to assist shippers in avoiding high imbalancing charges by introducing a free-of-charge online balancing system avoiding imbalances between nominated and actual deliveries. Thyssengas also offered an 'extended balancing regime' which increases shippers' flexibility margin from 15 to 25 %. Additionally, shippers may compensate imbalances within the following month either in kind (for example extra deliveries of gas) or by swapping imbalances with other customers or by paying for the imbalance.

- Thyssengas's commitments as regards trade in capacity rights marked a first step towards the development of a secondary market in which capacity holders can trade capacity rights acquired from the pipeline owners. In this respect, it is also important to note that Thyssengas offers transport contracts with a short duration — down to one day — and allows several shippers to bundle transport contracts, thereby reducing costs.

- With respect to congestion management, Thyssengas committed itself to introducing a 'use it or lose it' principle for capacity reservations of its own gas-trading branch. This commitment means that third parties are entitled to use, upon request, unused transport capacity originally booked by Thyssengas's trading branch in a valid manner. Thyssengas also committed itself to offering interruptible contracts, which generally lead to continuous transport unless an interrupting event occurs, for example a drop in temperature.

- In order to improve the transparency of its access regime, Thyssengas promised to publish on its Internet site a detailed map showing the available capacity at the main entry points to its pipeline

([103]) Press release IP/01/1641, 23.11.2001.

system. Similarly, it undertook to create a computer system giving shippers simplified access to information on its transmission tariffs.

- Lastly, Thyssengas gave a commitment to improve its handling of access requests. The company thus promised to develop standard forms and contracts and to limit the number of reasons for refusing to grant access to its pipelines. This increases planning security, reduces transaction costs and prevents cases of refusal to grant access to the network from arising.

Thyssengas's commitments — with some exceptions — entered into force on 1 December 2001. They will remain in force until July 2005. During this period, the commitments will be monitored by a trustee, who will report regularly to the Commission. A non-confidential version of the commitments is published on Thyssengas's Internet site (www.thyssengas.de).

As it is expected that the commitments will lead to an improvement in the gas transmission market in Germany, the Commission decided to discontinue the *Marathon* case for Thyssengas as long as the commitments are respected. In this regard, the Commission also took into account Thyssengas's market position and contribution to the alleged infringement.

UK/France interconnector (Case COMP/E-3/38.015)

Following concerns expressed by the Commission, the operators of the electricity submarine cable linking the United Kingdom and France agreed to open up access to the infrastructure used for electricity export and import between the two countries.

There is only one submarine interconnector between the UK and France. It has a total capacity of 2 000 MW in either direction and is owned jointly by the transmission system operators (TSOs) of England and Wales, National Grid, and France, EdF/RTE. The UK/France interconnector had been operating on a fully commercial basis since 1986. Its operational costs are not recovered by transmission charges but only through the fee paid for its use.

In practice, use of the interconnector had been reserved exclusively to EdF for exports into the UK, under an existing agreement governing the management of the interconnector which expired in March 2001.

The two TSOs sought the Commission's views before agreeing on new rules for managing and allocating capacity on the submarine cable after the expiry of the existing rules. Following remarks by the Commission, they decided to open up access to the interconnector, without any reserve being made in favour of any particular company. As a result, capacity has been subject to open tender. This new regime was implemented in early 2001. The results of the tenders have been published.

The French TSO also reviewed the system for the transit of electricity in France in order to render the procedures and duration of those transit rights compatible with the transmission rights in the interconnector. As a result, operators established in other continental Member States wishing to transmit electricity to the UK through the UK/France interconnector will no longer see their intentions hampered by restrictive transit rights allocation in France. The French TSO offered, furthermore, to ensure that transit rights from Spain match capacity allocated at auctions of the Spain/France interconnector's capacity. Finally, congestion costs and losses in France will be borne by EdF/RTE.

In the Commission's view, any restrictions on the allocation of transmission rights or discriminatory treatment would have been contrary to EU competition law, as this would have amounted to a potential

abuse of a dominant position (Article 82 of the EC Treaty). Granting a transmission priority right in favour of a particular company would have allowed it to circumvent the rules on capacity allocation applicable to other market operators. This could have been regarded as discriminatory treatment by the TSOs, which are in a dominant position in the market for the transmission of electricity between the continent and the UK, a substantial part of the common market. Such discrimination would have placed those other operators at a competitive disadvantage *vis-à-vis* EdF.

4. Summary of decisions taken by the Community courts

NALOO (Case COMP/E-3/35.821)

The Commission has lodged an appeal before the Court of Justice against the judgment of the Court of First Instance (CFI) in Case T-89/98 *NALOO* v *Commission*. This judgment, which was delivered in February, annulled a Commission decision of May 1998 rejecting a complaint by the National Association of Licensed Opencast Operators (NALOO).

Back in 1990, NALOO lodged a first complaint with the Commission relating to the UK coal market on the basis of Articles 63 and 66(7) of the ECSC Treaty. It alleged in substance that the Central Electricity Generating Board and British Coal Corporation (BCC) had applied, on the one hand, discriminatory pricing and, on the other, abusive royalties to coal extracted under licence by its members. This complaint was rejected by Commission decision in 1991. The decision was appealed against by the complainant and upheld by the CFI.

In 1994, NALOO lodged a second complaint basically on the same issue as in the first complaint. It sought a Commission decision on the facts relating to the period 1973–90 that would allow it subsequently to recover damages in court. The Commission rejected this latter complaint in 1998, as mentioned above.

On 25 April 2001, the Commission lodged an appeal against the CFI's judgment annulling its 1998 decision. Each of the three other parties, BCC, International Power and PowerGen, appealed as well. The appeal was still pending in June 2002.

British Sugar (Case IV/33.708), Tate & Lyle (Case IV/33.709), Napier Brown (Case IV/33.710) and James Budgett & Son (Case IV/33.711)

On appeal by three of the parties, the Court of First Instance in its judgment of 12 July ([104]) upheld the Commission's decision, except for a reduction in the fine imposed on Tate & Lyle (for details see Part One, points 71–74).

Asia Motor France SA (Case COMP/F-2/33.014)

The order ([105]) of the Court of Justice upholds the Court of First Instance's judgment in Asia Motor France IV ([106]), by which the CFI had confirmed the Commission's rejection of complaint decision in the

([104]) Joined Cases T-202/98, T-204/98, T-207/98 *Tate & Lyle, British Sugar and Napier Brown* v *Commission*.
([105]) Case C-1/01 P — Order of the Court (Second Chamber) of 20.9.2001.
([106]) Case T-154/98.

light of new evidence, after two previous decisions in that regard had been annulled ([107]) (for further details see Part One, points 186–187).

B — New legislative provisions and notices adopted or proposed by the Commission

Title	Date	Publication
Draft guidelines on market definition and the assessment of SMP	25.3.2001	COM(2001) 175, 28.3.2001
Commission decision of 23 May 2001 on the terms of reference of hearing officers in certain competition proceedings	23.5.2001	OJ L 162, 19.6.2001, p. 21
Commission Regulation (EC) No 1324/2001 of 29 June 2001 amending Regulation (EEC) No 1617/93 as regards consultations on passenger tariffs and slot allocation at airports	29.6.2001	OJ L 177, 30.6.2001, p. 56
Commission notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*)	22.12.2001	OJ C 368, 22.12.2001, p. 13

C — Formal decisions pursuant to Articles 81, 82 and 86 of the EC Treaty

1. Published decisions

Case No COMP/	Published decisions	Date of decision	Publication
35.141	UPS/Deutsche Post *(Deutsche Post I)*	20.3.2001	OJ L 125, 5.5.2001, p. 27
37.576	UEFA Broadcasting Regulations	19.4.2001	OJ L 171, 26.6.2001, p. 12
34.493	Duales System Deutschland (DSD) (Article 82)	20.4.2001	OJ L 166, 21.06.2001, p. 1
36.957	GlaxoWellcome	8.5.2001	OJ L 302, 17.11.2001, p. 1
34.950	Ecoemballage	15.6.2001	OJ L 233, 31.8.2001 p. 37
36.041	Michelin	20.6.2001	OJ L 143, 31.5.2002, p. 2
36.693	Volkswagen	29.6.2001	OJ L 262, 8.9.2001, p. 4
38.044	NDC Health/IMS Health: interim measures	3.7.2001	OJ L 59, 28.2.2002, p. 18
36.490	Graphite electrodes cartel	18.7.2001	OJ L 100, 16.4.2002, p. 1
37.444 and 37.386	SAS/Maersk Air Sun Air/SAS and Maersk Air	18.7.2001 *Article 81 decision with fines*	OJ L 265, 5.10.2001, p. 15
36.915	DP/BPO *(Deutsche Post II)*	25.7.2001	OJ L 331, 15.12.2001, p. 40
37.462	Identrus	31.7.2001	OJ L 249, 19.9.2001, p. 12
29.373	Visa International (NDR aspects)	9.8.2001	OJ L 293, 10.11.2001, p. 24

([107]) Case T-7/92 *Asia Motor France II*; Case T-387/94 *Asia Motor France III*.

34.493	Duales System Deutschland (DSD) (Article 81)	18.9.2001	IP/01/1279
36.756	Sodium gluconate cartel	2.10.2001	IP/01/1355
36.264	DaimlerChrysler	10.10.2001	
37.133	SNELPD/France *(La Poste — France)*	23.10.2001	OJ L 120, 7.5.2002, p. 19
37.512	Vitamin cartels	21.11.2001	IP/01/1625
37.800	Luxembourg brewing industries	5.12.2001	
37.614	Interbrew + Alken Maes *(Belgian breweries)*	5.12.2001	
36.604	Citric acid cartel	5.12.2001	IP/01/1743
37.859	La Poste Hays *(De Poste/La Poste — Belgium)*	5.12.2001	OJ L 61, 2.3.2002, p. 32
37.027	Zinc phosphate cartel	11.12.2001	IP/01/1797
37.919	German banks cartel	11.12.2001	IP/01/1796
36.212	Carbonless paper cartel	20.12.2001	IP/01/1892

2. Other formal decisions ([108])

2.1. Rejections of complaints by decision

Case No COMP/	Name	Date of decision
35.580	Golstein/General Council of the Bar	12.1.2001
37.665	Star/Irish Sun: rejection of complaint concerning alleged predatory pricing and abuse of dominant position	16.1.2001
37.651	ESCO/Finnlines and others	23.1.2001
36.095	VES-British Government	8.2.2001
36.703	ZTG/Shell	8.2.2001
34.790	UEFA/Canal+	6.6.2001
30.846	Ivoclar	14.6.2001
37.827	Suomen Perimistoimistojen Liito/Suomi	23.10.2001
37.916	CAMIF/UGAP+France	20.12.2001
37.858	Beaud	21.12.2001

2.2. Other non-published decisions

Case No COMP/	Name	Date of decision
37.689	North Sea Liner Conference *(Non-opposition decision)*	21.2.2001
37.982	Grand Alliance/Americana *(Non-opposition decision)*	2.4.2001
37.939	P&O/Stena Line 2 *(Exemption, renewal)*	31.5.2001 IP/01/806, 7.6.2001
38.021	Europe to Caribbean Consortium *(Non-opposition decision)*	8.6.2001
37.812	British Midland/Lufthansa/SAS *(Exemption with conditions)*	12.6.2001 IP/01/831, 13.6.2001

([108]) Not published in the Official Journal.

D — Cases closed by comfort letter in 2001

Case No COMP/	Name	Date	Type of comfort letter [109]
37.697	British Gas	4.1.2001	1
37.929	PPL + NIE	10.1.2001	1
36.572	Shiseido	11.1.2001	1
36.779	RAG	12.1.2001	2
33.338	Christian Dior	12.1.2001	2
34.985	Pool Italiano Assicurazione Rischi Atomici	17.1.2001	1
37.428	Ladbroke + PMU+2	26.1.2001	1
36.557	Biffpack	2.2.2001	2
36.562	Difpak	2.2.2001	2
35.871	Beauté Prestige International	6.2.2001	3
35.985	Kalmar + TIEF	6.2.2001	2
36.935	Volvo Penta + ZF	9.2.2001	1
37.994	Valeo + Ichikoh Industries	9.2.2001	1
37.694	NMG + 1	13.2.2001	1
33.737	Guerlain SA	15.2.2001	3
34.558	Aseguradores Riesgos Nucleares	21.2.2001	1
37.363	Svenska Atomförsäkringspoolen	21.2.2001	1
37.940	CIR+Österreichische Electrizität+1	22.2.2001	1
37.562	Eutelsat	23.2.2001	1
37.435	CCA/Banque Italiennes	27.2.2001	1
37.298	Renault + GM Europe + 3	28.2.2001	1
37.056	UNESPA	5.3.2001	1
37.873	Maxxium+3	5.3.2001	2
37.548	CCG Centrale für Coorganisation	6.3.2001	1
36.104	Philips+CCETT+6	7.3.2001	1
37.642	Digital Audio Broadcasting (DAB)	7.3.2001	1
36.712	Wastepack	19.3.2001	2
33.803	Eau de Cologne 4711	10.4.2001	3
38.010	Primar	10.4.2001	2
36.460	FIFA Broadcasting Regulations	20.4.2001	1
35.669	Svenska Returglas + 16	24.4.2001	2
35.658	Retursystem	24.4.2001	2
35.656	PET Recycling II	24.4.2001	2
37.368	Toyota + TRW	25.4.2001	1
36.943	Mobil + Akzo + 4	26.4.2001	1
37.224	Svenska Returpack-PET	26.4.2001	2
37.693	Man B&W + JSC	27.4.2001	1
36.533	Yves Saint Laurent	16.5.2001	3
37.810	TKS + Usinor + Voest (Eurostrip)	31.5.2001	3

[109] 1 = negative clearance 81(1) or 82;
2 = individual exemption 81(3);
3 = conformity with notice/block exemption.

37.948	Prototum	15.6.2001	1
36.283	Lancaster	15.6.2001	2
34.889	Parfums Azzaro	22.6.2001	3
36.672	Clarins	25.6.2001	3
37.145	MTU + Volvo	26.6.2001	1
35.427	Alcatel Austria + AEG Austria	28.6.2001	1
37.272	Coredeal	4.7.2001	1
37.886	Porsche	11.7.2001	2
37.747	Stockhausen — Rohm + Haas	18.7.2001	1
38.034	Goodyear/Michelin	20.7.2001	1
32.810	Groupement Carte Bleue	20.7.2001	1
37.914	Volvo + Deutz + 2	25.7.2001	1
38.064	Covisint+5	26.7.2001	1
36.951	Stokke+10	31.7.2001	3
38.095	ABI + PPIAB	6.8.2001	1
36.932	Eisai+Pfizer	20.8.2001	2
34.992	Danske Slagterier	20.8.2001	1
38.176	DuBay	22.8.2001	1
37.405	Grundig + 1	23.8.2001	2
34.408	Rochas	26.9.2001	3
38.051	ProEurope	28.9.2001	1
38.143	MPEG LA	2.10.2001	1
34.182	ROC	2.10.2001	3
36.020	Expanscience+5	2.10.2001	3
37.888	Cembureau	3.10.2001	1
35.288	Paco Rabanne	4.10.2001	3
37.991	Wirtschaftskammer Österreich	17.10.2001	1
38.175	ARGE Euro Logistik	17.10.2001	1
33.789	Nina Ricci	24.10.2001	3
35.163, 36.638	FIA/FOA	29.10.2001	1, 2
37.995	Intelsat	9.11.2001	1
37.840	Levantè Global	14.11.2001	1
33.669	Chanel + Diprolux + G. Müller + Luso Helvetica + 4	14.11.2001	3
34.361	Chanel + Harwood Brothers	14.11.2001	3
36.589	Givenchy	14.11.2001	3
37.893 and 37.894	Ceced	14.11.2001	2
38.229	AMB Generali Holding AG + Commerzbank AG Frankfurt	27.11.2001	1
38.192	Cable & Wireless + Acma Parties	29.11.2001	1
37.216	Lancaster Group Coty France	29.11.2001	2
38.091	Eutilia + 11	5.12.2001	1
38.092	Eudorsia + 5	5.12.2001	1
38.016	Nordiska Satellitaktiebolaget and Modern Times Group	12.12.2001	2
33.366	Lancome	18.12.2001	3
33.424	Parfums Paloma Picasso	18.12.2001	3
33.425	Parfums Cacharel	18.12.2001	3

34.912	Giorgio Armani	18.12.2001	3
34.913	Biotherm	18.12.2001	3
34.914	Guy Laroche	18.12.2001	3
34.915	Ralph Lauren	18.12.2001	3
34.916	Helena Rubenstein	18.12.2001	3
31.624A	VICHY + 9	19.12.2001	2
37.557	Eurex + 2	21.12.2001	1

E — Notices pursuant to Articles 81 and 82 of the EC Treaty

1. Publication pursuant to Article 19(3) of Council Regulation No 17

Case No COMP/	Name	Publication
37.747	Stockhausen — Rohm + Haas	OJ C 117, 21.4.2001, p. 3
29.373	Visa International (MIF aspects)	OJ C 226, 11.8.2001, p. 21
38.014	IFPI Simulcasting	OJ C 231, 17.8.2001, p. 18
37.921	Viking Cable	OJ C 247, 5.9.2001, p. 11
37.893	CECED water heaters	OJ C 250, 8.9.2001, p. 4
37.894	CECED dishwashers	OJ C 250, 8.9.2001, p. 2
38.006	Online Travel Portal Ltd	OJ C 323, 20.11.2001, p. 6
37.396	Revised TACA	OJ C 335, 29.11.2001, p. 12

2. Notices inviting interested third parties to submit observations on proposed transactions

Case No COMP/	Name	Publication
37.995	Intelsat	OJ C 9, 12.1.2001, p. 4
38.074	Vodafone	OJ C 42, 1.2.2001, p. 11
38.126	BUMA, GEMA, PRS, SACEM	OJ C 145, 17.5.2001, p. 2
38.143	MPEG LA+5	OJ C 174, 19.6.2001, p. 6
38.170	REIMS	OJ C 195, 11.7.2001, p. 8
38.287	Telenor Broadband Services AS/Groupe Canal+ SA/Canal+ Télévision AB/Canal Digital AS	OJ C 340, 4.12.2001, p. 6

3. 'Carlsberg' notices concerning structural cooperative joint ventures

Case No COMP/	Name	Publication
38.064	DaimlerChrysler AG/Ford Motor Company/General Motors Corporation/Nissan Motors Co. Ltd/Renault — Covisint	OJ C 49, 15.2.2001, p. 4
38.091	Electrabel/EDF/Endesa/Enel/Iberdrola/National Grid/Nuon/RWE/Scottish Power/United Utilities/Vattenfall — Eutilia	OJ C 100, 30.3.2001, p. 14

38.089	TF6, Série Club	OJ C 103, 3.4.2001, p. 7
38.016	Modern Times Group AB and Nordiska Satellitaktiebolaget	OJ C 110, 11.4.2001, p. 9
38.092	SKF, Rockwell International, Timken, INA, Sandvik, Endorsia	OJ C 122, 24.4.2001, p. 7
38.095	ABI + PPIAB	OJ C 132, 4.5.2001, p. 3
38.051	Pro Europe	OJ C 153, 24.5.2001, p. 4
38.135	Scottish Power + Northern Electric	OJ C 177, 22.6.2001, p. 2
38.176	DuBay + DuPont + Bayer	OJ C 185, 30.6.2001, p. 60
38.229	AMB Generali Holding AG + Commerzbank AG Frankfurt	OJ C 274, 29.9.2001, p. 12
38.264	European Hydro Power (EHP)	OJ C 316, 10.11.2001, p. 15
38.207	CNH Global NV and Kobelco Construction Machinery Co. Ltd	OJ C 319, 14.11.2001, p. 17
38.153	Hoffmann-La Roche/Chiron	OJ C 321, 16.11.2001, p. 11

F — Press releases

Reference	Date	Subject
IP/01/1	3.1.2001	Commission releases Unisource from its reporting obligations under the competition rules
IP/01/4	5.1.2001	Commission publishes voice on Internet communication
MEMO/01/4	10.1.2001	Spokesperson's statement on Adalat Court appeal
IP/01/30	11.1.2001	Increased scope for electricity imports competition in northern Europe — a step forward towards an internal market for electricity
MEMO/01/11	19.1.2001	Investigation into suspected beer cartel in Portugal
IP/01/82	22.1.2001	Commission endorses settlement agreement between Ladbroke and France's PMU over the broadcasting of French horse races in Belgium
IP/01/84	23.1.2001	Dutch fishermen allowed to land and auction catches in foreign ports following Commission action
MEMO/01/19	24.1.2001	Spokesperson's statement on football transfers discussions
IP/01/120	26.1.2001	Commission welcomes progress towards resolving the long-running FIA/Formula One case
IP/01/156	5.2.2001	Commission takes preliminary view that the agreements between SAS and Maersk Air infringe competition rules
IP/01/181	8.2.2001	Commission publishes consultation paper on IATA passenger tariff conferences
IP/01/204	14.2.2001	Commission hearing discusses the future of car distribution in the EU
IP/01/209	14.2.2001	Joint statement by Commissioners Monti, Reding and Diamantopoulou and Presidents of FIFA Blatter and of UEFA Johansson
IP/01/225	17.2.2001	Outcome of technical discussion with FIFA/UEFA on transfer systems
IP/01/227	19.2.2001	Car prices in the European Union: still no clear trend towards a substantial reduction of price differentials
IP/01/249	23.2.2001	Commission terminates infringement procedure against production and sales license agreements between Philip Morris and Altadis
IP/01/270	28.2.2001	Discussion with FIFA/UEFA on transfer systems
IP/01/314	6.3.2001	Outcome of discussions between the Commission and FIFA/UEFA on FIFA Regulations on International Football Transfers
IP/01/320	6.3.2001	Commission President Prodi welcomes outcome of football transfers talks

IP/01/333	8.3.2001	Commission seeks comments on P&O Stena Line's cross-Channel ferry services
IP/01/341	12.3.2001	UK–French electricity interconnector opens up, increasing scope for competition
IP/01/342	12.3.2001	Commission takes Luxembourg to the EU Court for failure to comply with rules on rights of way in telecoms
MEMO/01/76	12.3.2001	Role of interconnectors in the electricity market. A competition perspective
IP/01/365	14.3.2001	Commission starts procedure against IMS Health in Germany, seeks interim measures
IP/01/366	14.3.2001	Commission seeks comments on partnership between British Midland, Lufthansa and SAS
IP/01/419	20.3.2001	Antitrust proceedings in postal sector result in Deutsche Post separating competitive parcel services from letter monopoly
MEMO/01/104	23.3.2001	Statement on inspections relating to the copper tube market
IP/01/456	28.3.2001	Commission clarifies the application of competition law principles to telecommunications
MEMO/01/129	6.4.2001	Intel: reaction to a press report on an antitrust investigation
IP/01/554	11.4.2001	Commission ends cartel proceedings against Dutch bank SNS after it changed its tariffs for exchanging euro-zone currencies
IP/01/569	18.4.2001	Microsoft agrees not to influence technology decisions of European digital cable operators
IP/01/578	20.4.2001	Enterprise Oil, Statoil and Marathon to market Irish Corrib gas separately
IP/01/583	20.4.2001	Commission clears UEFA's new Broadcasting Regulations
IP/01/584	20.4.2001	Commission acts against Duales System Deutschland AG (Green Dot) for the abuse of a dominant position
MEMO/01/149	24.4.2001	Statement on plasterboard cartel investigation
IP/01/634	3.5.2001	Commission ends cartel proceedings against Bayerische Landesbank Girozentrale after it changed its tariffs for exchanging euro-zone currencies
IP/01/635	3.5.2001	Commission ends proceedings against Ulster Bank after it changed its tariffs for exchanging euro-zone currencies
IP/01/650	7.5.2001	Dutch and Belgian banks change cash conversion charges, Commission drops cartel proceedings
IP/01/661	8.5.2001	Commission prohibits GlaxoWellcome's dual pricing system in Spain
IP/01/673	10.5.2001	Commission completes investigation into discriminatory landing fees at European airports
IP/01/690	14.5.2001	Commission ends cartel proceedings against WestLB and Bank J. Van Breda & Co. after they changed their tariffs for exchanging euro-zone currencies
IP/01/694	15.5.2001	Commission takes preliminary view that IATA cargo tariff consultations infringe competition rules
IP/01/696	15.5.2001	Commission formally objects to partnership between Austrian Airlines and Lufthansa
IP/01/709	16.5.2001	Competition policy: revision of the 1997 notice on agreements of minor importance (*de minimis* notice)
IP/01/713	17.5.2001	Commission approves selective distribution system for Yves Saint Laurent perfume
MEMO/01/187	17.5.2001	Statement by Commissioner Mario Monti on EDF's stake in Montedison
IP/01/760	30.5.2001	Commission imposes a EUR 30.96 million fine on Volkswagen AG for retail price maintenance measures on the German market ([110])
IP/01/791	6.6.2001	Commission opens antitrust proceedings against La Poste (Belgium)

([110]) For procedural reasons, the decision was readopted on 29.6.2001.

IP/01/806	7.6.2001	Commission does not oppose the continuation of the P&O Stena Line cross-Channel ferry service
IP/01/830	13.6.2001	Commission objects to GFU joint gas sales in Norway
IP/01/831	13.6.2001	Commission approves partnership between bmi British Midland, Lufthansa and SAS
MEMO/01/223	13.6.2001	Commission spokesperson's statement on FöreningsSparbanken and SEB
IP/01/850	15.6.2001	The Commission defines the principles of competition for the packaging waste-disposal market
IP/01/872	20.6.2001	Commission confirms need to tackle cross-border investment restrictions and energy market distortions
IP/01/873	20.6.2001	Commission fines Michelin for abusive commercial behaviour
IP/01/941	3.7.2001	Commission imposes interim measures on IMS Health in Germany
IP/01/962	5.7.2001	Commission warns Ferrovie dello Stato it must grant access to Italy's railway market
MEMO/01/262	11.7.2001	Statement on inquiry regarding mobile roaming
IP/01/1007	17.7.2001	Press statement after the meeting of Commissioner Monti and State Secretary Koch-Weser on 17.7.2001
IP/01/1009	18.7.2001	Commission fines SAS and Maersk Air for market-sharing agreement
IP/01/1010	18.7.2001	Commission fines eight companies in graphite electrode cartel
IP/01/1011	18.7.2001	Commission launches debate on draft new leniency rules in cartel probes
IP/01/1035	19.7.2001	Commission re-opens proceedings concerning the German system of fixed book prices because of its effects on cross-border Internet bookselling
IP/01/1043	20.7.2001	Commission opens proceedings against UEFA's selling of TV rights to UEFA Champions League
MEMO/01/271	20.7.2001	The UEFA Champions League background note
IP/01/1051	23.7.2001	Car price differentials in the European Union remain high, in particular in the high-volume segments
IP/01/1057	24.7.2001	Italy implements Commission decision on the provision of new postal services in Italy
IP/01/1068	25.7.2001	Commission condemns Deutsche Post AG for intercepting, surcharging and delaying incoming international mail
IP/01/1155	31.7.2001	Commission clears the creation of the Covisint Automotive Internet Marketplace
IP/01/1159	31.7.2001	Commission action results in reduced conversion charges for euro-zone currencies
IP/01/1165	1.8.2001	Commission clears global network for the authentication of electronic signatures and other e-commerce transactions
IP/01/1170	2.8.2001	Commission insists on effective access to European pipelines for Norwegian gas
IP/01/1198	10.8.2001	Commission clears certain provisions of the Visa international payment card system
IP/01/1212	20.8.2001	Commission closes inquiry into CD prices after changes to business practices
IP/01/1222	24.8.2001	Commission refers oil products part of Shell/DEA deal to Germany, deepens probe into petrochemicals markets
IP/01/1226	24.8.2001	Tariff rebalancing: Commission sends new warning to Spain
IP/01/1232	30.8.2001	Commission initiates additional proceedings against Microsoft
MEMO/01/287	5.9.2001	Spokesperson's statement on plastic film inspections
IP/01/1247	7.9.2001	Commission refers oil products part of BP/E.ON deal to Germany, deepens probe into petrochemicals markets

IP/01/1279	18.9.2001	The Commission defines the conditions for packaging waste disposal systems to be compatible with the European competition law in the DSD case
IP/01/1355	2.10.2001	Commission fines six companies in sodium gluconate cartel
IP/01/1394	10.10.2001	Commission imposes fine of nearly EUR 72 million on DaimlerChrysler for infringing the EC competition rules in the area of car distribution
IP/01/1415	15.10.2001	Commission warns Deutsche Bahn about discriminating against a private competitor
IP/01/1438	18.10.2001	Commission refers to Bundeskartellamt review of Haniel/Fels deal in German building materials sector, deepens probe into Dutch market
IP/01/1433	19.10.2001	IATA agrees to end the joint setting of cargo rates within the EEA
IP/01/1476	23.10.2001	The Commission adopts a decision on the monitoring of relations between La Poste and mail-preparation firms in France
IP/01/1523	30.10.2001	Commission closes its investigation into Formula One and other four-wheel motor sports
IP/01/1575	13.11.2001	Commission calls for the tax discrimination in favour of French mutual and provident societies to be brought to an end
IP/01/1592	15.11.2001	Commission clears 'bancassurance' cooperation JV between Generali and Commerzbank in Germany
IP/01/1625	21.11.2001	Commission imposes fines on vitamin cartels
IP/01/1641	23.11.2001	Commission settles Marathon case with Thyssengas
IP/01/1659	26.11.2001	Commission approves agreements to reduce energy consumption of dishwashers and water heaters
IP/01/1672	28.11.2001	Commission extends State aid investigation into further restructuring of public shipyards in Spain
IP/01/1713	3.12.2001	Commission proposes to approve the revised TACA liner conference
IP/01/1738	5.12.2001	Antitrust decision against De Post/La Poste aims to protect competitive postal service from the monopoly
IP/01/1739	5.12.2001	The Commission fines brewers in market sharing and price-fixing cartels on the Belgian market
IP/01/1740	5.12.2001	Commission fines Luxembourg brewers in market-sharing cartel
IP/01/1743	5.12.2001	Commission fines five companies in citric acid cartel
IP/01/1775	10.12.2001	Commission clears the creation of Eutilia and Endorsia electronic marketplaces
IP/01/1781	10.12.2001	Commission publishes a study on the future of car distribution
IP/01/1796	11.12.2001	Commission fines five German banks for fixing the price for the exchange of euro-zone currencies
IP/01/1797	11.12.2001	Commission fines six companies in zinc phosphate cartel
IP/01/1832	14.12.2001	Commission announces intention to clear partnership between Austrian Airlines and Lufthansa
IP/01/1845	20.12.2001	Commission clears Scandinavian digital satellite TV broadcasting agreement between Nordic Satellite AB and Modern Times Group
IP/01/1892	20.12.2001	Commission fines 10 companies for carbonless paper cartel
IP/01/1898	21.12.2001	Rebalancing tariffs in Spain: Commission refers case to Court of Justice
IP/01/1899	21.12.2001	High-speed Internet access: Commission suspects Wanadoo (France) of abusing its dominant position
IP/02/4	3.1.2002	Commission approves the Eurex financial derivatives exchange

G — Judgments and orders of the Community courts

1. Court of First Instance

EC Treaty

Case	Parties	Date	Publication
T-153/00	Spain Pharma	10.1.2001	
T-197/97	Weyl Beef Products *v* Commission	31.1.2001	OJ C 134, 5.5.2001, p. 16
T-198/97	Exportslagerij Chris Hogeslag and Groninger Vleeshandel *v* Commission	31.1.2001	OJ C 134, 5.5.2001, p. 16
T-115/99	SEP *v* Commission	14.2.2001	OJ C 150, 19.5.2001, p. 24
T-26/99	Garage Trabisco *v* Commission	14.2.2001	OJ C 150, 19.5.2001, p. 22
T-62/99	Sodima *v* Commission	14.2.2001	OJ C 150, 19.5.2001, p. 24
T-112/98	Mannesmannröhren-Werke *v* Commission	20.2.2001	OJ C 150, 19.5.2001 p. 21
T-59/00	Compagnia Portuale Pietro Chiesa *v* Commission	20.3.2001	OJ C 227, 11.8.2001, p. 18
T-206/99	Métropole télévision *v* Commission	21.3.2001	OJ C 161, 2.6.2001, p. 17
T-144/99	Institut des mandataires agréés *v* Commission	28.3.2001	OJ C 227, 11.8.2001, p. 16
T-53/01 R	Poste Italiane *v* Commission	28.5.2001	OJ C 303, 27.10.2001, p. 17
T-25/99	Roberts & Roberts *v* Commission	5.7.2001	OJ C 317, 10.11.2001, p. 24
T-202/98	Tate & Lyle *v* Commission	12.7.2001	OJ C 3, 5.1.2002, p. 21
T-204/98	British Sugar *v* Commission	12.7.2001	OJ C 3, 5.1.2002, p. 21
T-207/98	Napier Brown & Co. *v* Commission	12.7.2001	OJ C 3, 5.1.2002, p. 21
T-184/01 R 1	IMS Health *v* Commission	10.8.2001	
T-112/99	Métropole Télévision — M6 and Others *v* Commission	18.9.2001	OJ C 44, 16.2.2002, p. 11
T-354/00	Métropole Télévision — M6 *v* Commission	25.10.2001	OJ C 44, 16.2.2002, p. 15
T-184/01 R 2	IMS Health *v* Commission	26.10.2001	OJ C 144, 15.6.2002, p. 45
T-151/01 R 1	Der Grüne Punkt — Duales System Deutschland *v* Commission	15.11.2001	OJ C 68, 16.3.2002, p. 11
T-139/98	Amministrazione Autonoma dei Monopoli di Stato/Commission (AAMS) *v* Commission	22.11.2001	OJ C 44, 16.2.2002, p. 11
T-216/01 R 1	Reisebank *v* Commission	5.12.2001	OJ C 84, 6.4.2002, p. 58
T-219/01 R 1	Commerzbank *v* Commission	5.12.2001	OJ C 84, 6.4.2002, p. 58
T-213/01 R 1	Österreichische Postsparkasse *v* Commission	20.12.2001	OJ C 156, 29.6.2002, p. 25
T-214/01 R 1	Bank für Arbeit und Wirtschaft *v* Commission	20.12.2001	OJ C 156, 29.6.2002, p. 25

ECSC

Case	Parties	Date	Publication
T-89/98	NALOO *v* Commission	7.2.2001	OJ C 161, 2.6.2001, p. 14
T-16/98	Wirtschaftsvereinigung Stahl and Others *v* Commission	5.4.2001	OJ C 212, 28.7.2001, p. 22
T-171/99	Corus UK (formerly British Steel Ltd) *v* Commission	10.10.2001	OJ C 3, 5.1.2002, p. 23

T-45/98	Krupp Thyssen Stainless *v* Commission	13.12.2001	OJ C 84, 6.4.2002, p. 55
T-47/98	Acciai Speciali Terni *v* Commission	13.12.2001	OJ C 84, 6.4.2002, p. 55
T-48/98	Acerinox *v* Commission	13.12.2001	OJ C 84, 6.4.2002, p. 55

2. Court of Justice

EC Treaty

Case	Parties	Date	Publication
C-7/01 P (R)	Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied *v* Commission and Others	23.3.2001	
C-163/99	Portugal *v* Commission	29.3.2001	OJ C 200, 14.7.2001, p. 4
C-449/98 P	IECC *v* Commission	17.5.2001	OJ C 200, 14.7.2001, p. 18
C-450/98 P	IECC *v* Commission	17.5.2001	OJ C 200, 14.7.2001, p. 18
C-340/99	TNT Traco	17.5.2001	OJ C 200, 14.7.2001, p. 21
C-341/00 P I	Conseil national des professions de l'automobile and Others *v* Commission	5.7.2001	OJ C 317, 10.11.2001, p. 9
C-497/99 P	Irish Sugar *v* Commission	10.7.2001	OJ C 331, 24.11.2001, p. 6
C-302/99 P	Commission *v* TF1	12.7.2001	OJ C 289, 13.10.2001, p. 3
C-308/99 P	France *v* TF1	12.7.2001	OJ C 289, 13.10.2001, p. 3
C-1/01 P1	Asia Motor France and Others *v* Commission	20.9.2001	OJ C 331, 24.11.2001, p. 6
C-453/99	Courage	20.9.2001	OJ C 317, 10.11.2001, p. 4
C-396/99 and C-397/99	Commission *v* Greece	16.10.2001	OJ C 348, 8.12.2001, p. 3
C-429/99	Commission *v* Portugal	16.10.2001	OJ C 369, 22.12.2001, p. 3
C-241/00 P 1	Kish Glass *v* Commission	18.10.2001	OJ C 3, 5.1.2002, p. 12
C-475/99	Ambulanz Glöckner	25.10.2001	OJ C 369, 22.12.2001, p. 3
C-221/99	Conte	29.11.2001	OJ C 84, 6.4.2002, p. 4
C-146/00	Commission *v* France	6.12.2001	OJ C 84, 6.4.2002, p. 23

ECSC

Case	Parties	Date	Publication
C-180/01 P R1	Commission *v* NALOO and Others	17.7.2001	

II — MERGER CONTROL: COUNCIL REGULATION (EEC) NO 4064/89 AND ARTICLE 66 OF THE ECSC TREATY

A — Summaries of decisions taken under Article 6(1)(b) and 6(2) where undertakings have been given by the firms involved

United Airlines/US Airways ([111])

The proposed acquisition by United Airlines Inc. (United) of US Airways Group Inc. (US Air) involved two companies whose main area of operation is in the United States but which also have activities in Europe. United is a member of the Star Alliance, which in Europe includes, among others, Lufthansa and the Scandinavian carrier SAS. As well as belonging to the same alliance, United and Lufthansa also have an extensive transatlantic cooperation agreement. These two factors meant that it was necessary to examine not only the competitive impact of combining the services provided by United and US Air, but also the competitive impact of combining US Air's services with those provided by Lufthansa and the other members of the Star Alliance.

As a result of the reduced competition between US Air and Lufthansa that would have been brought about by this operation had it eventually proceeded ([112]), competition concerns would have arisen on the four transatlantic routes that link the hubs of US Air and Lufthansa (namely Frankfurt–Philadelphia, Frankfurt–Charlotte, Frankfurt–Pittsburgh and Munich–Philadelphia).

To resolve these concerns, United submitted undertakings in the form of slot divestitures at Frankfurt and Munich which would have facilitated the entry of new competitors on those routes. Access to these slots would have enabled entrants to overcome the substantial barriers to entry or expansion on these routes that are caused by the congestion at Frankfurt and Munich airports.

The proposed acquisition was also reviewed by the United States Department of Justice.

Degussa/Laporte ([113])

In March, the Commission gave the go-ahead for Degussa AG, a Germany-based company belonging to E.ON AG, to acquire sole control of the British company Laporte plc. The parties' activities overlap in several markets but the Commission only had serious concerns in the product markets concerning persulfates, cationic reagents and hydroxy monomers.

Persulfates are primarily used as polymerisation indicators in the plastics industry. In this market the parties would have a combined EEA-wide market share in excess of 70 %. Cationic reagents are mainly used for the production of starches for the paper industry and exist in two chemical forms that were identified as separate markets, namely cationic reagents 151 and 188. The relevant geographic market for those products was found to be at least EEA-wide, although that for cationic reagent 151 may even be worldwide. For both products, the parties would have combined market shares in excess of 50 %. Hydroxy monomers are mainly used to achieve properties such as hardness, flexibility and durability for

([111]) COMP/M.2041 — *United Airlines/US Airways*, 12.1.2001.

([112]) The merger agreement was in the end terminated on 27 July 2001.

([113]) COMP/M.2277 — *Degussa/Laporte*, 12.3.2001.

automotive paints, lacquers and industrial finishes. In a Europe-wide market, the parties would have achieved a combined market share of over 60 %.

To resolve the concerns raised in these markets, Degussa committed itself to divesting its persulfates plant in Rheinfelden, Germany, Laporte's cationic reagents plant in Zaltbommel, the Netherlands, and Laporte's Hythe plant in the UK, which includes all of Laporte's hydroxy monomers business. In order to ensure that the assets to be divested constituted a viable business, it was necessary to include activities which were related to markets where the Commission did not raise competition concerns.

Buhrmann/Samas Office Supplies ([114])

Buhrmann is a Dutch company active in the distribution of office supplies in the EU and the United States, doing business under the name Corporate Express. This operation involved Buhrmann's proposed acquisition of the office supplies division of Samas Groep NV, which is active in the Netherlands, the United Kingdom and Germany.

The Commission's investigation focused on the likely impact of the proposed transaction on the Dutch market for the distribution of office supplies. In the Netherlands, Samas and Buhrmann are respectively the largest and third-largest 'contract stationers', the term used to describe distributors who sell a full range of office products on a 'one-stop shop' basis. The investigation revealed that the two companies were competing in a market for the provision of office supplies to customers employing a large number of office workers. The Commission concluded that, as a result of the proposed transaction, Buhrmann would have become the dominant distributor of office supplies to larger customers in the Netherlands.

The Commission accepted that these concerns would be fully resolved by Buhrmann's undertaking to divest the Dutch office supplies activities of its Corporate Express subsidiary.

Pernod Ricard/Diageo/Seagram ([115])

This operation arose from a joint bid by Pernod Ricard SA and Diageo plc for the worldwide wine and spirits business of Seagram Company Ltd. According to the framework agreement between them, each of Pernod Ricard and Diageo would retain certain parts of Seagram while the remaining parts would be sold to third parties.

The Commission's investigation confirmed that the spirits market could be segmented into individual spirit categories. In the case of whiskey and brandy these categories could be further subdivided into Scotch whisky and Cognac/Armagnac. The relevant geographic markets were found to be essentially national.

The transaction raised competition concerns in two areas. First, in Iceland, the addition of Seagram's locally dominant 'Captain Morgan' rum brand to the already strong position held by Diageo might have given rise to competition problems. Secondly, the acquisition by either Diageo or Pernod Ricard of 'Four Roses' bourbon whiskey could have given rise to competition concerns in a number of national markets. To address these concerns, the parties gave an undertaking that the distribution of the Captain Morgan rum brand in Iceland would be separated from the distribution of other Diageo brands and that the Four

([114]) COMP/M.2286 — *Buhrmann/Samas Office Supplies*, 11.4.2001.
([115]) COMP/M.2268 — *Pernod Ricard/Diageo/Seagram*, 8.5.2001.

Roses bourbon whiskey brand would be divested. The parties also pledged to fulfil the framework agreement.

The Commission examined the impact of the joint acquisition in close cooperation with the EFTA Surveillance Authority. The case was also examined by the US Federal Trade Commission.

Industri Kapital/Perstorp (II) ([116])

This case involved the proposed acquisition by the Industri Kapital group of the chemical operations of the Swedish company Perstorp AB. Perstorp is active in the chemical and the flooring sectors, and the Industri Kapital group manages and controls a number of private equity funds, which in turn control numerous undertakings, including Dynea Oy, a company active in specialty chemicals.

Dynea Oy and Perstorp both produce specialty chemicals, in particular resins and formaldehyde. The Commission's investigation focused on the markets for formaldehyde-based resins (in particular V-100 particle board resins and insulation bonding resins), formaldehyde, formaldehyde technology and catalysts. The operation as notified would have led to the creation of a dominant position in the market for V-100 particle board resins in Germany, as well as in the markets for insulation bonding resins in Denmark, Norway and Sweden. The operation would also have created a dominant position in the formaldehyde market in Denmark.

Industri Kapital offered commitments which fully addressed the concerns that the operation raised. These were to divest Perstorp's resins business together with its merchant formaldehyde business in Perstorp, Sweden. In addition, Industri Kapital undertook to divest its phenolic resins operation in Meerbeck, which removed the competition concerns in the market for V-100 particle board resins in Germany.

YLE/TDF/Digita JV ([117])

This operation involved the acquisition by Télédiffusion de France (TDF) of a controlling interest in Digita, a company previously controlled solely by Finland's national public broadcaster YLE. TDF is a subsidiary of France Télécom providing wireless solutions for broadcasters and telecom operators. Digita is the national supplier of distribution and transmission services to radio and TV broadcasters in Finland.

TDF, through its subsidiary Telemast, was in competition with Digita in Finland as a result of its activities in the distribution and terrestrial transmission of radio programmes using low-power frequencies. The operation would therefore have resulted in the elimination of TDF/Telemast as an actual competitor to Digita in the markets concerned where TDF/Telemast was found to be the only really serious alternative to Digita. Furthermore, barriers to entry to this market were found to be high.

The Commission also found that, by creating a vertical link between TDF (as supplier) and Digita (as an important purchaser) for the supply of radio transmission and distribution equipment in Finland, the operation raised serious competition concerns. Although the geographic market for the supply of such equipment may be worldwide for larger radio stations, the Commission's market investigation found that a local presence was required by local radio stations for effective after-sales repair and maintenance services and for linguistic reasons.

([116]) COMP/M.2396 — *Industri Kapital/Perstorp* (II), 11.5.2001.
([117]) COMP/M.2300 — *YLE/TDF/Digita/JV*, 26.6.2001.

To resolve the serious doubts identified in the horizontally and vertically affected markets, TDF offered to divest Telemast, a remedy which neatly removed the Commission's concerns.

Allianz/Dresdner ([118])

This case involved the proposed acquisition by the Allianz insurance group of Dresdner Bank. Allianz AG is the largest life and non-life insurance company in Germany. Dresdner Bank AG is Germany's third-largest universal commercial bank. The merger will create Germany's largest 'bancassurance' group. While Allianz would improve its competitive position as a result of the 'bancassurance' alliance with Dresdner, there was no risk of a dominant position being created or strengthened.

However, in the course of its review the Commission noted a large number of structural and economic links between the new Allianz/Dresdner group and the Münchener Rück/Ergo group, a leading competitor, which would be considerably strengthened by the merger. In view of the strong market position of the Münchener Rück/Ergo group, which, together with Bayerische Hypo- und Vereinsbank AG, has also developed into a major 'bancassurance' group, the Commission had serious misgivings on this score.

Allianz and Münchener Rück had declared their intention to reduce their mutual holdings to around 20 % as part of the planned merger. The Commission's concerns were removed by a legally binding assurance given by Allianz and Dresdner to the effect that they would reduce their joint holdings in Münchener Rück to 20.5 % by the end of 2003 and would not in the meantime exercise more than 20.5 % of their voting rights at Münchener Rück's annual general meetings.

Nestlé/Ralston Purina ([119])

This case involved the proposed acquisition by Nestlé (active in the production and sale of a large variety of food products, including pet food) of sole control of Ralston Purina (principally active in the manufacture and sale of pet foods).

The pet-food markets were found to be segmented into cat and dog pet food (dry and wet separately), and to be national. Competition concerns arose in three national markets. First, Nestlé would have obtained a dominant position in Spain and would have eliminated its most prominent competitor in the markets for dry dog food, dry cat food and snacks and treats for cats. The acquisition would have also created competition concerns with regard to the markets for dry cat food in Italy and in Greece.

To address these concerns, the parties undertook to remove the overlap in Spain by either selling Ralston Purina's 50 % shareholding in Gallina Blanca Purina, the joint venture through which it is active in Spain, or by divesting Nestlé's Spanish production plant and granting exclusive licences for the 'Friskies' family brand for three years. A similar approach was adopted in Italy and in Greece. In each of the three countries, the parties also undertook not to reintroduce or promote the licensed brands for nearly five years after the expiry of the licensing period. Given the particular features of the markets involved in this case, the Commission concluded that the remedy, including re-branding, offered a viable solution.

([118]) COMP/M.2431 — *Allianz/Dresdner*, 19.7.2001.

([119]) COMP/M.2337 — *Nestlé/Ralston Purina*, 27.7.2001.

The Commission examined the impact of the acquisition only in the European Union as pet-food products are excluded from the application of the EEA Agreement. The case was also examined by the US Federal Trade Commission.

Pirelli/Edizione/Olivetti/Telecom Italia ([120])

The Commission approved the joint acquisition by Pirelli SpA and Edizione Holding SpA of Olivetti SpA and indirectly of an undertaking controlled by the latter, namely Telecom Italia, which in turn owns Italy's largest mobile phone operator Telecom Italia Mobile (TIM).

The Commission's investigation, which was carried out in close cooperation with the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato), revealed serious concerns in the markets for transmission capacity and for mobile telephony, both in Italy.

In the transmission-capacity market, the operation will eliminate Autostrade Telecomunicazioni as an important competitor, thereby strengthening Telecom Italia's dominant position. The Commission was particularly concerned about the possibility that Autostrade and Telecom Italia might adopt a joint commercial strategy towards their respective customers in the transmission-capacity market, reducing the degree of competition in that market.

In the Italian market for mobile voice telephony, the investigation showed that the merger might strengthen a possible dominant position enjoyed by TIM. Besides TIM and Blu, there are only two second-generation mobile operators in Italy, Omnitel and Wind, and barriers to entry are high given the need to obtain a licence.

To address these competition concerns, the parties undertook to remove the overlap in the transmission-capacity market by transferring exclusive control of Autostrade Telecomunicazioni to one or more independent third parties, maintaining at most a minority participation, which will be subject to Commission approval. As regards the market for mobile voice telephony, Edizione undertook to sell its direct and indirect shareholdings in Blu. The implementation of the latter commitment will ensure that Edizione will be prevented from having a controlling interest in two of the four Italian second-generation mobile operators.

Nordbanken/Postgirot ([121])

The Commission approved, subject to conditions, the acquisition by the Scandinavian banking group Nordea of sole control of Sweden's Postgirot Bank AB, a financial services provider currently owned by Posten AB, the Swedish Post Office. Postgirot is a wholly owned subsidiary of State-owned Posten. It owns and operates an in-house giro payment system, which it uses to supply distance payment services to retail and corporate customers. Postgirot also provides giro-related technical services to other banks. Having been awarded a banking licence in 1994, Postgirot provides banking services, including deposits, lending, international payments, trade finance and card services, to private and corporate customers.

In its original form, the transaction would have given Nordea full control of the Postgirot payment system in addition to its existing significant shareholding in Bankgirot, the other main giro payment system in

([120]) COMP/M.2574 — *Pirelli/Edizione/Olivetti/Telecom Italia*, 20.9.2001.
([121]) COMP/M.2567 — *Nordbanken/Postgirot*, 8.11.2001.

Sweden. Nordea would thus have had significant influence over both of the main Swedish payment systems.

However, Nordea undertook to reduce its stake in Bankgirot to 10 %, a level which will no longer give it decisive influence over the company, and to withdraw from Privatgirot, a company which competes with Postgirot in giro-related technical services. These undertakings enabled the Commission to clear the deal.

Gerling/NCM ([122])

The Commission approved the takeover of the Dutch credit insurance company NCM Holding NV (NCM) by the German insurance company Gerling-Konzern Versicherungs-Beteiligungs AG (Gerling). The Commission's review found competition concerns in the Dutch and Danish credit insurance markets but the divestments proposed by Gerling removed these concerns. Gerling is an insurance group specialising in services to companies. NCM, the Dutch export credit agency, is active in the receivables management business, mainly through credit insurance. The companies' credit insurance activities are almost equal in size and currently constitute the third- and fourth-largest European credit insurers after the German Allianz group and the French Coface group. The merger of Gerling and NCM will create Europe's second-largest credit insurance company ahead of Coface.

While the geographic scope of Gerling's and NCM's activities is complementary in most areas of Europe, the Commission identified serious competition concerns in the Dutch credit insurance market. There, the new entity would probably have become the dominant supplier given among other things the marginal position of the remaining players compared with Gerling/NCM in the Netherlands.

Strong concerns were also raised with regard to the Danish market, where the NCM credit insurance arm is vertically integrated with two NCM subsidiaries, Forenede Factors and BG Factoring. The activities of these two factoring banks together represent by far the leading Danish factoring companies. Factoring companies use credit insurance to cover their customers' receivables risks and are consequently largely dependent on the conditions offered by the credit insurance companies. In Denmark, Hermes-Euler is, apart from Gerling and NCM, the only established credit insurer. The Commission was therefore concerned about the likelihood that competitors of the NCM factoring companies would have had to face in the near future a situation where they would have only a single alternative source of credit insurance to Gerling/NCM, the parent company of the main players in the Danish factoring market.

In order to remove the competition concerns raised by the merger in the Netherlands and Denmark, Gerling undertook to divest its Dutch and Danish credit insurance branch offices.

([122]) COMP/M.2602 — *Gerling/NCM*, 11.12.2001.

B — Summaries of decisions taken under Article 8 of Council Regulation (EEC) No 4064/89

1. Summaries of cases declared compatible with the common market under Article 8(2) of the ECMR

Metso/Svedala ([123])

This merger between Metso Corporation and Svedala AB, two Nordic companies with worldwide activities in the production and distribution of machinery for the rock- and mineral-processing industry, was authorised in January.

Metso is a Finnish company, established in 1999 through the merger of Valmet Corporation and Rauma Corporation. It is active in three main business areas: machinery including rock and mineral-processing, automation and control technology, and fibre and paper technology. Svedala is a Swedish construction and mineral-processing equipment company active in equipment for mineral recovery, processing and handling equipment, rock-crushing equipment, transport systems, and compaction equipment.

The competitive impact of the operation would have been in the field of rock-crushing equipment, which is primarily used for the production of aggregates and cement, and in the mining industry. In particular, the operation would have led to very substantial market shares at national and EEA-wide level in the cone-crusher markets (above 60 % at EEA-wide level and above 50 % in most Member States), in the primary gyratory market (above 60 % EEA-wide), and, to a lesser extent, in the jaw-crusher markets (above 50 % in most Nordic countries for aggregate and construction jaw crushers and above 35 % at EEA-wide level for mining jaw crushers).

Furthermore, there are significant barriers to entry into the rock-crushing equipment markets because customers tend to be highly risk-averse and because local presence and quality of after-sales service are essential factors in these markets. Potential competition would therefore not have been a credible deterrent to prevent the parties from exerting their significant market power. The operation would thus have resulted in dominant positions in all the abovementioned markets.

However, the overlaps between the parties' activities in the markets where the Commission identified competition concerns will be entirely removed by the parties' undertaking to divest Svedala's cone and jaw crushers businesses, as well as Metso's primary gyratory business.

On the basis of the bilateral agreement on antitrust cooperation between the European Commission and the United States of America, the Commission collaborated with the Federal Trade Commission in the analysis of this transaction. It also held discussions with the competition authorities of Australia, Canada and South Africa.

EdF/EnBW ([124])

In February, the Commission authorised, subject to conditions, the acquisition of joint control of the German electricity company Energie Baden-Württemberg AG (EnBW) by Electricité de France (EdF)

([123]) COMP/M.2033 — *Metso/Svedala*, 24.1.2001.
([124]) COMP/M.1853 — *EdF/EnBW*, 7.2.2001.

and Zweckverband Oberschwäbische Elektrizitätswerke (OEW). EdF is a wholly State-owned French company active in all fields of supply and transport of electricity in France. It also has shareholdings in electricity companies in many European countries. OEW is an association of nine public districts in the south-west of Germany. Its main purpose is to hold shares in companies active in the energy sectors. EnBW is a vertically integrated electricity utility active in all fields of supply and transport of electricity mainly in the south-west of Germany.

The Commission assessed the deal's impact on the French market for the supply of electricity to eligible customers, namely those industry clients which consume more than 16 gigawatt-hours a year and under French and Community law are free to chose their electricity supplier.

The investigation concluded that EdF enjoyed a dominant position in the French market for the supply of eligible customers, with a market share of approximately 90 %. EnBW is one of the most likely potential competitors in the French market and would be one of the strategically best-placed companies to enter the market for the supply of eligible customers. EnBW's supply area is in the south-west of Germany and has a long common border with France. Two of the four Franco-German interconnectors are in the EnBW supply area. Furthermore, EnBW has access to generation capacity situated in France under a number of contractual long-term agreements with EdF.

The Commission's investigation also showed that EnBW has a controlling stake in Watt AG, a leading Swiss electricity producer, while EdF has traditionally enjoyed a close commercial relationship with ATEL, another important player in the Swiss electricity market. This means that, through its shareholding in EnBW, EdF would also have considerably strengthened its foothold in Switzerland and have eliminated Watt as a potential competitor in the French market.

The Commission therefore concluded that the operation, as initially notified, would have led to a strengthening of EdF's dominant position in the market for eligible customers in France. In order to eliminate these competition concerns, EdF will make available to competitors 6 000 megawatts of generation capacity located in France, equal to 30 % of the eligible market. Furthermore, EdF has undertaken not to exercise its voting rights in the French electricity generator Compagnie Nationale du Rhône (CNR) and to withdraw its representative from the CNR board of directors. Finally, the parties have committed themselves to divesting EnBW's shareholding in Watt.

The Post Office/TPG/SPPL ([125])

In March, the Commission authorised the creation of two joint ventures with worldwide activities for outbound cross-border mail by The Post Office (TPO) of the United Kingdom, TNT Post Group NV (TPG) of the Netherlands and Singapore Post Private Limited (SPPL). TPO, TPG and SPPL are the national public postal operators (PPOs) of the UK, the Netherlands and Singapore respectively. The companies planned to set up two joint ventures, named Delta and NewCo, which would be active in the provision of outbound cross-border mail services and, to a limited extent, outbound cross-border parcel services. Delta would be active worldwide with the exception of the Asia–Pacific region, which would be covered by NewCo. The Commission's examination focused on Delta.

While the two joint ventures generally appeared to be pro-competitive, the Commission identified competition concerns in relation to the market for outbound cross-border business mail in the Netherlands. There were relatively few operators in the Dutch market, and they were all relatively small.

([125]) COMP/M.1915 — *The Post Office/TPG/SPPL*, 13.3.2001.

With the exception of TPO, which had been able to obtain a significant part of outbound traffic destined for the UK, none of the foreign PPOs active in the Netherlands, including Deutsche Post, had achieved sizeable market shares. The operation would therefore have eliminated competition between the dominant player, TPG, and the most successful entrant into the Dutch market, TPO.

To remedy these concerns, the parties committed themselves to divesting the business that is currently undertaken by TNT International Mail in the Netherlands (TNT IM Netherlands). This is the part of TPG in the Netherlands that was originally intended to be contributed to the Delta joint venture.

Furthermore, as the Commission considered that the success of the remedy depended to a large extent on the characteristics of the purchaser, the parties proposed an up-front buyer solution. In other words, they undertook not to complete the notified operation until a binding sale and purchase agreement has been reached with a buyer approved by the Commission.

Bombardier/ADtranz ([126])

On 3 April, the Commission authorised the takeover of DaimlerChrysler's rail business division ADtranz by Bombardier of Canada, subject to commitments. As initially notified, the operation would have led to the creation of a dominant position in the markets for regional trains and trams in Germany. But the companies offered a number of divestments and other undertakings which will ensure the emergence of a strong competitor in Germany to compensate for the elimination of competition from ADtranz.

ADtranz (Germany) was created in 1995 through the pooling of the rail business activities of ABB and Daimler-Benz (now called DaimlerChrysler). ADtranz makes rail rolling stock and signalling equipment. Canada's Bombardier is active in the aircraft, rail transportation equipment and recreational product industries.

The acquisition will make Bombardier the world's largest integrated producer of railway equipment, ahead of Alsthom of France and Germany's Siemens, these being the three heavyweights in the rail equipment industry both in Europe and in the rest of the world.

The Commission identified problems resulting from the reduction of competition in the markets for regional trains and trams/light rail vehicles in Germany that would have resulted from the operation.

However, the parties submitted commitments which will result in the development of Stadler Rail, a Swiss company active in Germany, as a strong independent supplier of regional trains and trams/light rail vehicles. Stadler Rail will take over to a large extent the current market position of ADtranz. The commitments will also ensure that two independent suppliers of electrical propulsion (Kiepe and ELIN) remain active in both markets, which will allow for future consortia with Stadler and other non-integrated mechanical suppliers.

MAN/Auwärter ([127])

Following a thorough investigation, the Commission on 20 June granted regulatory approval to the proposed takeover of Auwärter, the German company which makes the Neoplan buses and coaches, by the MAN group. The Commission concluded that, despite the acquisition, effective competition between

([126]) COMP/M.2139 — *Bombardier/ADtranz*, 3.4.2001.
([127]) COMP/M.2201 — *MAN/Auwärter*, 26.6.2001.

MAN/Auwärter and DaimlerChrysler's EvoBus, the two main players in the German city-bus market, will prevail.

The Commission examined carefully the acquisition by MAN Nutzfahrzeuge AG, a truck and bus producer located in Munich, Germany, of Gottlob Auwärter GmbH, another German firm based in Stuttgart which sells buses and coaches under the Neoplan brand name.

The Commission concluded that the German bus market sector will remain competitive even after the acquisition, as the DaimlerChrysler group will continue to be the leading bus manufacturer. DaimlerChrysler group owns EvoBus, which produces buses and coaches under the Mercedes-Benz and Setra brand names.

Auwärter is a non-integrated bus manufacturer which sources engines and chassis from other companies. The company is a relatively small player in the bus market, which is, in Germany, already largely dominated by MAN and EvoBus.

The main impact of the merger will be on the city-bus market in Germany. MAN/Auwärter and EvoBus will each supply just under half of that market, leading the Commission to investigate in detail whether the merger would pose the danger of joint market dominance in Germany by means of tacit coordination between the two groups. Such coordination is in theory possible, despite the fact that Europe-wide invitations to tender are required for city buses.

Following a close examination of the case, however, the Commission concluded that there was no such risk. First of all, the Commission found that any tacit division of the market between EvoBus and MAN/Auwärter was unlikely as there would be no viable coordination mechanism. Secondly, significant disparities between EvoBus and MAN/Auwärter, such as different cost structures, will make it likely that the companies will compete rather than collude.

In conclusion, the Commission believed that there was effective competition in the German market and that the disappearance of Auwärter as an independent supplier as a result of the merger would not alter this.

BASF/Pantochim/Eurodiol ([128])

Following a thorough investigation, the Commission granted regulatory approval to the proposed takeover of Eurodiol and Pantochim, two Belgian companies active in the chemical sector, by the German company BASF. BASF will achieve high market shares in certain base chemical products. However, the Commission concluded that the operation would have a less harmful impact on the market than if the Belgian companies were closed down.

On 12 February, the Commission received notification of BASF's intention to acquire Pantochim and Eurodiol, then in receivership.

The Commission's investigation focused on the merger's impact on the markets for the BDO-related products THF, NMP and GBL in the European Economic Area, where BASF will have market shares in excess of 45 %. These products are mainly used as solvents. The operation led to the combination of the

([128]) COMP/M.2314 — *BASF/Pantochim/Eurodiol*, 11.7.2001.

market leader (BASF) with the third player Eurodiol, which by itself raised dominance concerns given the small size of remaining competitors.

Given the financial difficulties of Eurodiol and Pantochim, the Commission analysed this case in accordance with the rescue merger concept ('failing firm defence') originally developed in the *Kali+Salz/MdK* decision (M.308).

The Commission found that Eurodiol and Pantochim had been placed under a pre-bankruptcy regime ('concordat judiciaire') by the Commercial Court in Charleroi, Belgium, on 18 September 2000. It was established beyond doubt that, in the absence of a buyer, the bankruptcy of Eurodiol and Pantochim would be an unavoidable and immediate consequence. Despite efforts by the court-appointed receivers to find a buyer and the Commission's own search for an alternative solution, BASF was the only company to have made a firm offer for the Belgian companies. Furthermore, the Commission ascertained that without the merger the production capacity of Eurodiol and Pantochim would have definitely exited the market.

In view of the above and given the exceptional conditions in these markets, which are characterised by growing demand and tight capacity constraints, a bankruptcy would probably have caused supply shortages and price increases which would have hurt customers more than if the merger was allowed. The Commission thus concluded that the concept of a rescue merger was applicable and approved the operation.

De Beers/LVMH ([129])

In July, the Commission authorised the creation of a joint venture between De Beers and LVMH. This joint venture company, Rapids World, will be active in the retail of diamond jewellery to be sold under the De Beers brand. However, while clearing the joint venture itself, the Commission at the same time sent a statement of objections to De Beers on its 'supplier of choice' agreements, which had also been notified for regulatory approval, warning that the agreements violated EU competition rules.

Both the retail joint venture and the supplier of choice notification are part of De Beers's new strategy by which it is seeking to replace its traditional monopolistic approach based on the control of supply with a strategy based on demand-driven actions.

The Commission's investigation into the competitive effects of this deal highlighted the extent of De Beers's dominance in the global market for the supply of rough diamonds. But it did not reveal any causal link between the combination of LVMH and De Beers at the retail level and a possible strengthening of De Beers's position in the upstream markets.

De Beers is the self-confessed 'custodian' of the diamond industry, controlling around two thirds of the world's supply of rough diamonds. De Beers's control over the world's production of rough diamonds, together with the strategic use of its stockpile of rough diamonds, enables De Beers to determine the quantity, the quality, and to a large extent the price of the rough diamonds that it releases on to the market every year. The remainder of the market is highly fragmented and the incentives of some of the other rough diamond producers to compete with De Beers are limited by the fact that they sell significant proportions of their output under contract to De Beers.

([129]) COMP/M.2333 — *De Beers/LVMH*, 25.7.2001.

Despite this dominance upstream, the Commission's investigation did not establish that the creation of the joint venture would lead to a significant structural change in the upstream rough diamond market. As a result, the Commission decided to clear the operation without conditions.

Grupo Villar Mir/EnBW/Hidroeléctrica del Cantábrico ([130])

The Commission authorised, subject to conditions, the acquisition of joint control over the Spanish electricity company Hidroeléctrica del Cantábrico (Hidrocantábrico) by Spanish Grupo Villar Mir and Energie Baden-Württemberg (EnBW), a German company jointly controlled by Electricité de France (EdF). As initially notified to the Commission, the operation would have led to the strengthening of the existing collective dominant position in the Spanish wholesale market for electricity. To eliminate these concerns, EdF and the operator of the French electricity grid, RTE, undertook to increase substantially to about 4 000 MW the commercial capacity on the interconnector between France and Spain, thereby creating the conditions for greater electricity trade volumes to and from Spain to the benefit of Spanish customers.

The transaction notified to the Commission on 10 April consisted of the acquisition by Ferroatlántica of a majority of the shares in Hidrocantábrico, Spain's fourth-largest electricity company. Ferroatlántica is currently owned by Spain's Grupo Villar Mir, but will be jointly controlled by Grupo Villar Mir and EnBW after the completion of the transaction.

The Commission started an in-depth investigation in June over concerns that the deal would strengthen the existing collective dominant position in the Spanish wholesale market for electricity held by Endesa and Iberdrola. The Commission's investigation confirmed these initial concerns. Having gained a foothold in Spain and with access to Hidrocantabrico's significant electricity-generation capacity, EdF would probably resist any increase in the commercial capacity of the interconnector which transmits electricity across the Pyrenees. Commercial capacity on the French–Spanish interconnector is already scarce, creating a barrier to Spanish electricity imports and resulting in the market's isolation from other continental electricity markets to the detriment of customers.

In order to solve the competition concerns identified by the Commission, EdF and EdF/RTE committed themselves to taking all the necessary steps in order to increase the commercial capacity on the interconnector at the French/Spanish border to about 4 000 MW from an existing 1 100 MW. The capacity increase will take place gradually over the short to medium term. EdF/RTE, the French electricity transport system operator, is a division within EdF which operates the national electricity grid and interconnectors with France's neighbouring countries.

Mitsui/CVRD/Caemi ([131])

The Commission cleared, subject to conditions, the proposed acquisition of joint control of the Brazilian iron ore mining company Caemi Mineração e Metalurgia SA (Caemi) by Companhia Vale do Rio Doce (CVRD) — another Brazilian iron ore producer — and the Japanese trading company Mitsui & Co. Ltd (Mitsui). Caemi's assets mainly consist of the Brazilian iron ore mining company Mineração Brasilieras Reunidas (MBR) and a 50 % stake in the Canadian iron ore producer Quebec Cartier Mining Company (QCM).

([130]) COMP/M.2434 — *Grupo Villar Mir/EnBW/Hidroeléctrica del Cantábrico*, 26.9.2001.
([131]) COMP/M.2420 — *Mitsui/CVRD/Caemi*, 30.10.2001.

The competitive impact of the operation was assessed in relation to the supply of 'seaborne' iron ore, as west European steel producers — owing to a shortage of local supplies — depend almost entirely on iron ore imported from mines located far from Europe. Iron ore transported by ship represents about 45 % of all traded iron ore, and the main sources of seaborne supply are to be found in Brazil and Australia. Participation in the seaborne trade requires access to specific infrastructure such as dedicated railways suitable for the transport of very large tonnages and deep-water harbours. CVRD is the world's largest producer of seaborne sinter fines and pellet iron ore, followed by the Australia-based mining companies Rio Tinto and BHP.

The proposed transaction would have led to the creation, if not the strengthening, of a dominant position in the market for the seaborne supply of iron ore pellets and the seaborne market for direct reduction iron ore due to the high market shares that would have been held after the operation and the likelihood that the remaining competitors would have been unable to constrain Mitsui/CVRD/Caemi's behaviour.

On 5 October, the parties offered a commitment designed to remove the competition concerns identified by the Commission. This consisted of an offer to divest Caemi's 50 % interest in QCM, thereby eliminating the overlap between CVRD's and Caemi's production of iron ore pellets. As a result, the commitment removes the Commission's competition concerns in relation to the supply of these products and in relation to the supply of direct reduction ore.

UPM-Kymmene/Haindl and Norske Skog/Parenco/Walsum ([132])

Following a thorough investigation, the Commission cleared the proposed takeover of Haindl, a German family-owned paper company, by Finland's UPM-Kymmene and the subsequent sale of two of the Haindl mills to the Norwegian paper manufacturer Norske Skog, Parenco in the Netherlands and the Walsum mill in Germany.

The main impact of the merger will be felt in the markets for newsprint and wood-containing magazine paper, which the Commission considered to be of European dimension. Because UPM-Kymmene and Haindl, together with Stora Enso and Holmen, would control more than two thirds of all newsprint sales in western Europe, the Commission investigated in detail whether the merger would create a position of collective market dominance in Europe between the top four firms. A similar concern arose in the market for wood-containing magazine paper, where the leading three suppliers, UPM-Kymmene, Stora Enso and M-Real/Myllykoski, would control more than two thirds of all sales in western Europe.

The Commission's initial concern was that the companies would tacitly collude in order to drive or keep prices up. This would be achieved either by limiting investment in new capacity or by restricting production levels through temporary closure of paper machines. However, a number of characteristics in the newsprint and wood-containing magazine paper markets led the Commission to dismiss its concerns about collective dominance in these markets.

The main factors that led to this conclusion were the limited stability of market shares, the lack of transparency on capacity-expansion projects and the lack of symmetry in cost structures. Furthermore, because of insufficient transparency on investments before they become irreversible, there would be no viable coordination mechanism to curtail new investments.

([132]) COMP/M.2498 — *UPM-Kymmene/Haindl*, 21.11.2001 and COMP/M.2499 — *Norske Skog/Parenco/Walsum*, 21.11.2001.

The Commission also took the view that the smaller firms in both markets would have the means to defeat any price increase by the leading suppliers, particularly at those times when demand for paper was low.

The Commission therefore concluded that the acquisition would not impede effective competition in the Europe-wide markets for newsprint and wood-containing magazine paper.

Shell/DEA ([133]) *and BP/E.ON* ([134])

The Commission approved the acquisition of the German oil and petrochemicals company DEA, which belonged to the RWE group, by Royal Dutch/Shell (UK/NL), and the combination of the petrochemicals businesses of Britain's BP plc and the German company Veba, a subsidiary of the E.ON group. The two operations would have led to the creation of a joint dominant position of Shell/DEA and BP/Veba in the market for ethylene on the pipeline network known as the ARG+, which links Belgium, Germany and the Netherlands. The commitments offered by all the parties were, however, sufficient to rule out these concerns. Shell has undertaken to grant access to its import terminal for 250 000 tonnes of ethylene imports by third parties. BP has undertaken to divest two shareholdings in ARG, the company which operates the pipeline network.

The two transactions together lead to an important restructuring of the market for ethylene, a core basic petrochemical used for a variety of applications such as polyethylene and PVC. This market is already highly concentrated, making it all the more essential to protect the remaining competition for the benefit of ethylene users.

After carrying out an in-depth market investigation, the Commission found that the combination of the respective petrochemical activities of Shell and DEA, on the one hand, and of BP and E.ON, on the other, would result in the creation of a joint dominant position in the market for the supply of ethylene on the ARG pipeline network. This pipeline network and its extensions link various production sites, sea terminals and ethylene consumers in Belgium, western Germany and the Netherlands.

Both transactions' major impact would be the elimination from the market of the only downstream non-integrated ethylene producers, who are also the most important suppliers to the merchant market. This would leave independent ethylene buyers only with suppliers who compete with their customers in the downstream markets.

Both merged entities would control the largest part of the ethylene market, would not be exposed to comparably strong competitors and would be in a unique position with regard to the ARG pipeline. In particular, BP/Veba would exercise a decisive influence in the company operating the ARG, whereas Shell owns one of the five import terminals on the North Sea coast, which is the only channel for imports into the ARG pipeline network.

The Commission concluded that there was a high risk that competition between the two new entities would lapse, and that ethylene buyers would not have access to competitive sources of supply after the two mergers.

([133]) COMP/M.2389 — *Shell/DEA*, 23.8.2001.
([134]) COMP/M.2533 — *BP/E.ON*, 6.9.2001.

In order to address these competition concerns, Shell committed itself to granting third-party access to its import terminal facilities at Moerdijk, Netherlands, for a total aggregate ethylene volume of up to 250 000 tonnes a year for a period of 10 years. This will strongly enhance the availability of ethylene in the ARG market from competitive and independent sources and will enable third parties for the first time to import ethylene on a long-term, structural basis at competitive prices. The volumes covered by the commitment are sufficient to prevent the two merged entities from stifling competition. The amount of 250 000 tonnes corresponds to the annual capacity of a smaller-sized ethylene plant, and will enable an increase in current third-party imports of nearly 400 %. The terms of access proposed by Shell will allow for non-discriminatory, long-term access to the terminal at competitive prices.

BP and E.ON committed themselves to divesting two of their three BP/Veba shareholdings in ARG. For an interim period, until the shareholdings are divested, they undertook not to exercise their blocking rights, in particular with regard to decisions on third-party access. BP/E.ON further committed themselves to guaranteeing access to a connecting pipeline between the ARG network and ethylene consumers located at Herne, western Germany, which is currently controlled by Veba. The divestiture of the two ARG shareholdings will entirely eliminate BP/Veba's decisive influence in the ARG company. The entry of new shareholders into the ARG company will also broaden the different shareholders' interests and guarantee the common-carrier character of the ARG, without favouring any particular supplier's or customer's interests.

The open access to the pipeline at a competitive cost will allow existing suppliers to compete actively for customers over the whole of the ARG area and will make Shell's commitment to open the import infrastructure fully effective as it ensures that the additional volumes can be transported economically to locations all over the ARG.

BP/Veba's commitment to provide access to ARG supplies to ethylene customers at Herne will eliminate the only bottleneck in the infrastructure that is under the control of BP/Veba. It removes any possibility that BP/Veba might remain shielded from competitive constraints stemming from alternative ARG suppliers with regard to these customers. There are no other ARG connecting pipelines under the control of the two new entities which could be used to cut off ethylene consumers from competitive supplies over the ARG.

The assessment of both deals' impact on the downstream oil-products markets in Germany was referred to the Federal Cartel Office. These decisions are described below.

Südzucker/Saint Louis ([135])

The Commission approved the acquisition of Saint Louis Sucre SA, France's second-largest sugar manufacturer, by the German sugar market leader Südzucker AG. Südzucker's acquisition of Saint Louis was the first major cross-border merger in the European sugar market, which is highly regulated at EU level under the common agricultural policy with production quotas and intervention, i.e. minimum, prices.

The Commission's investigation revealed that the operation as notified would have strengthened Südzucker's already dominant position in the markets for industrial sugar and retail sugar in southern Germany and Belgium. Saint Louis would cease to exist as an independent and credible potential

([135]) COMP/M.2530 — *Südzucker/Saint Louis*, 21.12.2001.

competitor to Südzucker in these geographical areas, which are close to France, Saint Louis's home market.

The Commission was also concerned that by gaining a considerable foothold on the French market, with direct access to the second-largest production capacity, Südzucker would be able to deter other French producers from competing in southern Germany and Belgium by threatening to retaliate in France. The effect of this would have been to perpetuate a partitioning of the European sugar market along national lines.

Furthermore, it would have given Südzucker, already dominant in southern Germany and Belgium and with a monopoly position in Austria, the ability to gain also a strong position in France by being able, in a quite unique manner, to offer 'pan-European deals' to large industrial customers, supplying them across national borders.

In order to address these competition concerns, Südzucker offered to divest its majority (68 %) shareholding in Belgium's Suikerfabriek van Veurne SA and to place 90 000 tonnes of sugar a year at the disposal of an independent trader in southern Germany. The divestiture of Südzucker's 68 % stake in Veurne will reduce the Südzucker group's Belgian sugar production quota by roughly 10 % and will thus have a significant pro-competitive effect on the Belgian sugar market.

Similarly, the commitment to make up to 90 000 tonnes a year of quota sugar available on the basis of EU intervention prices will place an independent trader in a position to compete effectively in the southern German sugar market. The amount of 90 000 tonnes corresponds to approximately 10 % of annual sugar consumption in southern Germany. The fact that the independent trader will be charged the intervention price will enable him to offer sugar at an attractive price, thus strengthening competition on that market and sufficiently compensating for the disappearance of Saint Louis as a potential competitor.

2. Summaries of cases declared incompatible with the common market under Article 8(3) of the ECMR

SCA/Metsä Tissue ([136])

On 31 January, the Commission blocked the proposed takeover of the Finnish tissue paper manufacturer Metsä Tissue by its Swedish competitor SCA Mölnlycke on competition grounds.

Hygienic tissue products can be divided into different categories, such as toilet paper, kitchen towels, handkerchiefs and napkins. These products are either sold through retailers ('consumer products') or to corporate customers, such as hotels, schools, hospitals, etc. ('away-from-home products' — AFH). The parties and most other tissue manufacturers have developed their own branded products but also supply supermarkets and other large consumers with private-label products.

The operation would have combined SCA's Edet toilet paper and kitchen towels with Metsä Tissue's own well-known brands Lambi, Leni and Serla. The Commission found that Nordic supermarkets' countervailing buyer power would be insufficient to restrain the merged entity's market power and that no competitors would be ready to penetrate the market owing to very high investment costs, including the costs of introducing a new brand.

([136]) COMP/M.2097 — *SCA/Metsä Tissue*, 31.1.2001.

The operation would have led to the creation of single dominant market positions in 21 tissue paper markets in Denmark, Norway and Sweden, to the creation of duopolistic dominant positions in two tissue product markets in Finland between the merged entity and Fort James of the United States, and to the strengthening of dominant positions in three product markets in Finland.

During the in-depth investigation, the parties re-submitted undertakings already offered during the first phase. These undertakings, which included the divestiture of certain assets, had already been rejected in the first phase as they did not address any of the competition issues identified for consumer and AFH tissue products in Finland or for private-label consumer tissue products in Denmark. Furthermore, the proposed divestment package contained insufficient capacity in a number of product markets for the buyer to compete effectively with the merged entity and to effectively restrain SCA's market power in Denmark, Finland, Norway and Sweden. In these circumstances, the Commission had no choice but to prohibit the deal.

General Electric/Honeywell ([137])

The proposed acquisition by General Electric Co. of Honeywell Inc. was prohibited in July. The Commission's investigation demonstrated that GE alone already had a dominant position in the markets for jet engines for large commercial and large regional aircraft. Its strong market position combined with its financial strength and vertical integration into aircraft leasing were among the factors that led to the finding of GE's dominance in these markets. The investigation also showed that Honeywell is the leading supplier of avionics and non-avionics products, as well as of engines for corporate jets and of engine starters, a key input in the manufacture of engines.

The combination of the two companies' activities would have resulted in the creation of dominant positions in the markets for the supply of avionics, non-avionics and corporate jet engines, as well as to the strengthening of GE's existing dominant positions in jet engines for large commercial and large regional jets. The dominance would have been created or strengthened as a result of horizontal overlaps in some markets as well as through the extension of GE's financial power and vertical integration to Honeywell activities and of the combination of their respective complementary products. Such integration would have enabled the merged entity to leverage the respective market power of the two companies into one another's products. This would have had the effect of foreclosing competitors, thereby eliminating competition in these markets, ultimately adversely affecting product quality, service and consumer prices.

On 14 June, GE proposed a number of undertakings to address these concerns but they were considered insufficient to remove the competition problems identified by the Commission. On 28 June, well beyond the deadline for the submission of undertakings, GE proposed a new set of remedies. This new package could not be accepted either, because it did not resolve the problems identified in a sufficiently clear way at such a very late stage in the procedure.

Schneider/Legrand ([138])

The proposed merger between Schneider Electric and Legrand, the two main French manufacturers of electrical equipment, was prohibited on 10 October. The Commission's investigation showed that there were substantial overlaps between the activities of Schneider and Legrand in the markets for electrical

([137]) COMP/M.2220 — *General Electric/Honeywell*, 3.7.2001.
([138]) COMP/M.2283 — *Schneider/Legrand*, 10.10.2001.

switchboards (distribution boards and final panelboards, together with their components, where the combined market share would have been between 40 and 70 % depending on the country), wiring accessories (in particular, sockets and switches and fixing and connecting equipment, where combined market shares ranged from 40 to 90 %) and certain products for industrial use (industrial pushbuttons and low-voltage transformers) or for more specific applications (for example emergency lighting).

In France, the merger gave rise to particularly serious problems over virtually the whole range of products concerned and would, in most cases, have resulted in the strengthening of a dominant position. Schneider and Legrand are by far the largest players in the French market, and the Commission's investigation demonstrated clearly that there was little prospect of any significant development in the activity of foreign competitors in the short to medium term. Furthermore, competition problems were also identified in Denmark, Greece, Italy, Portugal, Spain and the United Kingdom.

In an attempt to remedy these competition problems, Schneider submitted an initial series of undertakings to the Commission on 14 September, the deadline for presenting undertakings. However, the market investigation carried out by the Commission showed that these initial undertakings were not such as to restore conditions of effective competition.

Schneider submitted new undertakings on 24 September, 10 days after the deadline for submitting undertakings. These undertakings left serious doubts as to the competitive capacity of the entities to be sold off, notably as regards access to distribution in France and the economic risks associated with the actual separation of these entities from the rest of the group to which they belonged. In addition, Schneider's proposals did not provide any effective solution as regards a number of geographic and/or product markets on which competition problems had been identified.

Schneider has lodged an appeal against the Commission's decision with the Court of First Instance ([139]).

CVC/Lenzing ([140])

The Commission prohibited the planned acquisition by CVC Capital Partners Group Ltd (CVC) of Lenzing AG, an Austrian man-made fibres manufacturer. CVC already controlled Acordis, Lenzing's principal rival in Europe and only rival in the United States.

The deal related to the fibres sector. Five relevant product markets were taken into account for the competitive assessment, namely, commodity viscose, spundyed viscose, viscose for tampons, lyocell, and lyocell production and processing technology. The Commission considered that all three viscose markets were Europe-wide, since imports were very low (well below 10 %), and that the market for lyocell technology was worldwide. As regards lyocell production, it was not necessary to define the geographic market.

The combined entity would have achieved very high combined shares in all three viscose markets (more than 55 % in commodity viscose and more than 85 % in spundyed viscose and viscose for tampons), and it would have led to a worldwide monopoly in the lyocell production and technology markets. The operation would have eliminated Acordis's strongest competitor in the viscose market in the EEA and would have left only three smaller competitors: Sniace of Spain, Svenska Rayon of Sweden and Säteri of

([139]) T-310/01 and T-77/02.

([140]) COMP/M.2187 — *CVC/Lenzing*, 17.10.2001.

Finland. The Commission therefore concluded that the operation would have created a dominant position in the commodity viscose and in the spundyed viscose markets.

As regards the viscose market for tampons, the Commission found that Acordis already held a dominant position. The merger would have strengthened that position as the number of manufacturers in Europe would have been reduced from three to two.

As regards lyocell, Lenzing and Acordis were at that time the only producers of lyocell worldwide and the only two players in the market for lyocell production and processing technology currently able to offer 'ready-to-operate' technology. Together, the parties held the vast majority of all existing patents for lyocell production and treatment, and entry into this market was difficult. The Commission therefore concluded that the operation would have created a dominant position in both the lyocell production and the lyocell technology markets.

During the second phase of the review, the parties submitted the following commitments: (i) a non-exclusive licence with regard to lyocell; (ii) a toll-manufacturing arrangement whereby the parties would produce lyocell for the licensee; and (iii) a non-exclusive licence with regard to Galaxy tampon fibre. The Commission took the view that these commitments were insufficient to eliminate the concerns raised by the merger.

This case was examined in close cooperation with the US Federal Trade Commission.

Tetra Laval/Sidel ([141])

On 30 October, the Commission prohibited the acquisition by Tetra Laval BV, which belongs to the Switzerland-based Tetra Laval group, the owner of the Tetra Pak packaging businesses, of the French company Sidel SA. Tetra holds a dominant position in carton packaging with an overall market share in Europe of over 80 %. Sidel is the leading manufacturer of plastic PET packaging equipment and in particular stretch blow-moulding (SBM) machines.

The Commission's investigation showed that the combination of the dominant company in carton packaging with the leading company in PET packaging equipment would lead to the creation of a dominant position in the European Economic Area (EEA) in the market for PET packaging equipment, in particular SBM machines used for sensitive products, and to the strengthening of a dominant position in aseptic carton packaging equipment and aseptic cartons in the EEA.

The Commission found that, even though today carton and PET packaging equipment are distinct relevant product markets, the two are closely related neighbouring markets and belong in the same industry sector: liquid food packaging. PET and carton are technical substitutes as PET can be an alternative packaging material for all products that are currently packaged in carton. Already PET and carton are used as packaging materials for common product segments (liquid dairy products, juices, fruit flavoured drinks and tea/coffee drinks).

The combination of Tetra's dominant position in carton packaging and Sidel's leading position in PET packaging equipment would provide the merged entity with the ability and incentives to leverage its dominant position in carton to gain a dominant position in PET packaging equipment. In addition, by eliminating Sidel as a competitor in a closely neighbouring market, Tetra's existing dominant position in

([141]) COMP/M.2416 — *Tetra Laval/Sidel*, 30.10.2001.

cartons would be strengthened. The merged entity's dominant positions in two closely neighbouring markets were found to be likely to further reinforce one another, raise barriers to entry and reduce competition.

On 9 October, Tetra proposed a number of undertakings to address these concerns, but they were considered insufficient. Given the serious competition concerns and the fact that Tetra was unable to resolve them, the Commission had no other choice but to prohibit the merger.

In view of the particular circumstances created by the fact that Tetra Laval has already acquired virtually all of Sidel's shares, the Commission is prepared to examine the practical arrangements for restoring effective competition.

C — Decisions pursuant to Article 2(4) of the ECMR (joint venture cases) ([142])

Smith & Nephew/Beiersdorf JV ([143])

Both Smith & Nephew and Beiersdorf develop, manufacture and distribute medical products including wound-management, casting and bandaging products. Smith & Nephew is based in London, while Beiersdorf is based in Hamburg. This case involved the proposal to combine their activities in traditional wound-care products, immobilisation products, bandaging products and phlebology products ([144]) into a 50–50 joint venture.

The markets for these products were found to be national, rather than EEA-wide. On that basis, the combination of the parents' activities would have led to competition concerns in markets for professional first aid dressings (plasters), fixation bandages, support bandages and plaster of Paris casts in several Member States including Belgium, Denmark, Germany, Italy, the Netherlands, Spain and the United Kingdom. The concerns were removed by the two companies undertaking to divest certain trademarks and businesses either in specific countries, groups of countries or throughout the EEA, thereby removing the problematic overlaps that would otherwise have arisen.

When evaluating the joint venture, the Commission also examined whether its creation might encourage the parent companies to coordinate their competitive behaviour in their retained businesses. This was particularly important due to Smith & Nephew's strong market position in the advanced wound-care market and Beiersdorf's equally strong position in the consumer markets for first-aid dressings, bandages and orthopaedic soft goods. Despite these strong positions, the Commission concluded that there was no such risk as the markets in which the parent companies would be active were clearly distinct.

Hutchison/RCPM/ECT ([145])

On 3 July, the Commission approved the acquisition by Hutchison Netherlands BV (Hutchison) and Rotterdam Municipal Port Management (RMPM) of the Rotterdam container terminal operator Europe

([142]) Joint venture cases covered by Article 2(4) of the ECMR must also involve the application of Article 81 and are therefore generally dealt with by the operational units of the Competition DG rather than by the Merger Task Force.
([143]) COMP/JV.54 — *Smith & Nephew/Beiersdorf/JV*, 30.1.2001.
([144]) Phlebology products include compression, support and anti-embolism hosiery.
([145]) COMP/JV.55 — *Hutchison/RCPM/ECT*, 3.7.2001.

Combined Terminals BV (ECT), subject to commitments. Hutchison belongs to the Hutchison Whampoa Group (Hong Kong), which supplies stevedoring services worldwide. In Europe, Hutchinson controls the container terminals at the deep-sea ports of Felixstowe and Thamesport. RMPM is responsible for the development and management of the Port of Rotterdam in the Netherlands. ECT is the leading container terminal operator in the port of Rotterdam, itself the largest port in continental Europe.

The acquisition combined the number one operator on the continent (ECT) and the number one operator in the UK (Hutchison). Following the operation, Hutchison/ECT would have a market share of approximately 50 %, over twice as large as that of each of its nearest two competitors (HHLA and Eurogate). The parties' strong market position was also reflected in their high share of port calls by the main shipping lines on the important northern Europe–Far East and transatlantic trades. Furthermore, the parties' Felixstowe and Rotterdam terminals have several natural advantages which make them particularly suited to serving larger vessels. The increasing use of ever-larger vessels on the major trades to and from Europe, accounting for a very high proportion of overall transhipment traffic, would therefore further strengthen Hutchison/ECT's market position.

The Commission's investigation therefore concluded that the operation would lead to the creation of a dominant position in the market for the provision of stevedoring services in respect of the north European transhipment market. However, in the course of the investigation, the parties submitted commitments which would result in the emergence of independent competition in the port of Rotterdam, one of the main transhipment ports in northern Europe for deep-sea container vessels. Subject to the parties' full compliance with these undertakings, the Commission was able to declare the operation compatible with the common market.

Hutchison/ECT ([146])

On 15 October, Hutchison notified the Commission of its intention to acquire sole control of the whole of ECT. Given that the deadline for the undertakings imposed in the July decision in the *Hutchison/RCPM/ECT* case was still running and that most of the undertakings had not yet been implemented, the Commission had to assess the new operation on the basis of a basically unchanged market situation. The Commission's investigation confirmed that the operation would lead to the creation of a dominant position in the market for the provision of stevedoring services for transhipment traffic in northern Europe.

Hutchison would be bigger than its three closest competitors combined (Hamburger Hafen- und Lagergesellschaft, Eurogate and Hessenatie). Hutchison/ECT's strong market position is also reflected in their high share of port calls and the natural advantages of their terminals, which are particularly suited to serving the largest container vessels. These vessels generate an increasingly high proportion of transhipment traffic.

In the course of the investigation, the parties submitted commitments that would favour the emergence of independent competition in the port of Rotterdam. These commitments included the divestiture of ECT's 33.3 % share in the Maersk Delta BV (MDBV) container terminal, a joint venture with the A.P. Møller group (Denmark), to an independent buyer. The parties also guaranteed that sufficient capacity would be available to enable an independent terminal operator to emerge as a serious competitor to ECT in the port of Rotterdam.

([146]) COMP/JV.56 — *Hutchison/ECT*, 29.11.2001.

Subject to the parties' full compliance with the submitted undertakings, the Commission concluded that the acquisition would not lead to a dominant position in the relevant market.

D — Summaries of referral decisions taken under Article 9 of the ECMR

Enel/Wind/Infostrada ([147])

The Commission decided to refer to the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato) the examination of the impact on the Italian electricity sector of the proposed acquisition of Infostrada by Enel and France Télécom. The electricity market is currently being liberalised throughout the European Union, but Enel still has a dominant position in Italy, leading the Italian authority to fear that it might be able to protect its position in the electricity market by offering joint utility services.

The authority had asked the Commission to refer the examination of certain aspects of the operation to Italy. Article 9 allows for such referrals if a national Competition Authority is concerned that a merger may present a threat to effective competition in its own market.

The authority argued that the acquisition of Infostrada would give Enel the possibility of defending or strengthening its dominant position in the market for the supply of electricity. Enel, by jointly offering utilities and telecommunications services, and in particular by using strategies such as joint billing and joint promotion of the bundled services, would be able to 'lock in' its current electricity customers, substantially reducing the impact of the liberalisation on the Italian electricity markets.

In referring the case, the Commission took the view that the Italian Competition Authority was best placed to carry out the investigation and has, therefore, not taken a final position on this issue.

The Commission's review of the case showed that other aspects of the operation — involving the telecommunications and Internet markets — would pose no competition problems. The Commission therefore cleared those aspects.

Metsäliitto Osuuskunta/Vapo Oy ([148])

On 8 February, the Commission referred to the Finnish Competition Authority (Kilpailuvirasto) part of the examination of the impact of the proposed acquisition by Finland's Metsäliitto Osuuskunta of a stake in Vapo Oy, which before the operation was wholly owned by the Finnish State.

The transaction created overlaps in the market for wood-based fuels, sawn timber and wood procurement. The Commission cleared those aspects of the transaction which related to the markets for sawn timber and wood procurement as no competition concerns were raised.

The Finnish Competition Authority had asked the Commission to refer to it the examination of a part of the transaction, namely the deal's impact on the market for wood-based fuels, the market for peat or the combined market for wood-based fuels and peat in Finland. The Commission's findings in its first-phase investigation supported the preliminary analysis made by the Finnish authority in its referral request.

([147]) COMP/M.2216 — *Enel/Wind/Infostrada*, 19.1.2001.
([148]) COMP/M.2234 — *Metsäliitto Osuuskunta/Vapo Oy*, 8.2.2001.

Govia/Connex South Central ([149])

On 20 July, the Commission agreed to a request from the UK authorities to refer to them the examination of the acquisition by the Newcastle-based Go-Ahead group and Paris-based Keolis SA of joint control of London-based Connex South Central Ltd (South Central).

The UK authorities made their request on the ground that the operation affected competition on specific railway routes, particularly in the London–Gatwick–Brighton area where it would create overlap between South Central and the parties' existing train-operating company Thameslink. They also argued that the routes in question were local in scope in relation to the overall UK rail network, and that the operation would have no impact in Member States other than the UK.

The Commission considered that, given the particular circumstances of the case, the conditions laid down in the merger regulation were fulfilled, in particular that the affected market did not constitute a substantial part of the common market and that it was therefore required to refer the case to the UK authorities. This was the first time that a case had been referred under Article 9(2)(b) of the merger regulation.

Shell/DEA ([150])

On 23 August, the Commission referred to the German Competition Authority, the Federal Cartel Office, the examination of the impact on the downstream market for oil products of a proposed joint venture between Shell and RWE-DEA. Under an agreement notified to the Commission on 10 July, Shell and DEA planned to combine their downstream oil and petrochemicals businesses in a joint venture.

On 3 August, the Federal Cartel Office had asked the Commission to refer part of the examination to it under Article 9 of the merger regulation. It argued that the proposed operation threatened to create or strengthen a dominant position in the market for motor fuel retailing and several other oil product markets. In its analysis, it took into account the proposed combination of the downstream oil and petrochemicals businesses of BP and E.ON (Veba and Aral brands), a separate deal (see discussion of case COMP/M.2533 below). As a preliminary conclusion, it found that the transaction risked creating a situation where the new entity, together with a combined BP/Veba/Aral and the other oil majors, would hold a collective dominant position in particular in the market for motor fuel retailing in Germany.

The Commission's findings in its first-phase investigation supported the preliminary analysis made by the Federal Cartel Office. The Commission also considered that the latter was best placed to assess the competitive impact of the case as it required investigation of local sub-markets and supply relations. In addition, the German Competition Authority had only recently concluded an investigation into alleged abusive pricing practices of the major oil companies in Germany, which gave it considerable expertise in the sector.

BP/E.ON ([151])

The Commission referred to the Federal Cartel Office the examination of the impact on the downstream markets for refined oil products of a proposed joint venture between Deutsche BP and E.ON. The

([149]) COMP/M.2446 — *Govia/Connex South Central*, 20.7.2001.
([150]) COMP/M.2389 — *Shell/DEA*, 23.8.2001.
([151]) COMP/M.2533 — *BP/E.ON*, 6.9.2001.

proposal was for BP to acquire a 51 % shareholding in Veba Oel AG, currently a wholly-owned subsidiary of E.ON active in the oil and petrochemicals business, both upstream and downstream (Veba and Aral brands). E.ON had the option to sell the remaining shares to BP, transferring sole control over Veba Oel, at a later stage.

On 20 August, the Federal Cartel Office had asked the Commission to refer part of the examination under Article 9 of the merger regulation. It argued that the proposed operation threatened to create or strengthen a dominant position in the market for motor fuel retailing and several other oil-product markets. In its analysis, it took into account the proposed combination of the downstream oil businesses of Shell and DEA (see discussion of case COMP/M.2389 above).

As a preliminary conclusion, the Federal Cartel Office found that the present transaction risked creating a collectively dominant situation between the new entity, a combined Shell/DEA and the other oil majors in the market for motor fuel retailing in Germany. The Commission's findings in its first-phase investigation supported the preliminary analysis made by the German Competition Authority.

Haniel/Fels ([152])

On 17 October, the Commission referred to the Federal Cartel Office the examination of the impact of part of the proposed acquisition by Haniel Baustoff-Industrie Zuschlagstoffe GmbH of Fels-Werke GmbH, namely that in the German wall-building-materials markets. At the same time, the Commission decided that the deal's effect on the Dutch wall-building materials sector required further study and started an in-depth investigation.

In its request for referral, the Federal Cartel Office had argued that the proposed acquisition threatened to create or strengthen a dominant position in the German market for wall-building materials and asked the Commission to refer to it the examination of that aspect of the deal. According to the Federal Cartel Office's preliminary assessment, the transaction risked creating a situation where the new entity would hold a dominant position in particular in brick building materials in several regional markets in Germany. The Commission's findings in its first-phase investigation were consistent with the preliminary analysis made by the German Competition Authority.

The Commission believed that the Federal Cartel Office was best placed to assess the competitive impact of the case on the brick wall-building materials markets in Germany.

Haniel/Ytong ([153])

Shortly after the decisions were taken to open a phase 2 investigation and to refer part of the Haniel/Fels case to the Federal Cartel Office, Haniel was party to a case with Ytong which involved the same combination of decisions. In this second case, the Commission referred that part of the proposed acquisition of the German cellular concrete producer Ytong which related to Germany to the German Competition Authority on 30 November. On the same date, the Commission decided that the deal's effect on the Dutch wall-building-materials sector required further study and opened an in-depth investigation.

On 13 November, the Federal Cartel Office had argued that the proposed acquisition threatened to create or strengthen a dominant position in the German market for wall-building materials and asked the

([152]) COMP/M.2495 — *Haniel/Fels*, 17.10.2001.
([153]) COMP/M.2568 — *Haniel/Ytong*, 30.11.2001.

Commission to refer the examination of that aspect of the deal to Germany under Article 9 of the merger regulation. According to the Federal Cartel Office's preliminary assessment, the transaction risked creating a situation where the new entity would hold a dominant position in particular in brickwork building materials in several regional markets in Germany. The Commission's findings in its first-phase investigation were in line with the preliminary analysis made by the German Competition Authority.

The Commission believed that the Federal Cartel Office was best placed to assess the competitive impact of the case on the brickwork wall-building-materials markets in Germany, as this would require the investigation of local (sub-)markets and supply relations. In addition, the Federal Cartel Office had recently investigated this sector in Germany and was already investigating the proposed acquisition of the German Fels-Werke GmbH by Haniel in the same sector.

E — Summary of decisions taken by the Court of First Instance

RAG/Saarbergwerke/Preussag Anthrazit

On 31 January, the Court of First Instance (CFI) annulled the Commission's decision of 29 July 1998 (COMP/ECSC.1252) by which the Commission authorised the merger aspects of the restructuring of the German coal industry. The CFI found that the Commission had not taken into account in its merger analysis the commercial and financial effects of the possible State aid inherent in the price paid by RAG for Saarbergwerke, which was then owned by the German State and the Saarland. The Commission will have to issue a new decision on this case in which it will have to address the competitive effects of any State aid received. Furthermore, the judgment appears to impose a general duty on the Commission to examine the effects on competition of State aid issues when adopting a merger decision.

F — Commission decisions

1. Decisions under Articles 6 and 8 of Council Regulation (EEC) No 4064/89

1.1. Decisions under Article 6(1)(a) and (b) as well as under Article 6(2) of Council Regulation (EEC) No 4064/89

Case	Title	Date of decision	OJ		Date of publication
M.2248	CVC/Advent/Carlyle/Lafarge matériaux de spécialités	5.1.2001	C	49	15.2.2001
M.2255	Telefónica Intercontinental/Sonera 3G Holding/Consortium IPSE 2000	9.1.2001	C	49	15.2.2001
M.2192	SmithKline Beecham/Block Drug	11.1.2001	C	43	9.2.2001
M.2246	Sofinim/KBC Invest/Mercator&Noordstar/VIV/ Tournesoleon/De Clerck/FOC	11.1.2001	C	49	15.2.2001
M.2254	Aviapartner/Maersk/Novia	11.1.2001	C	27	27.1.2001
M.2041	United Airlines/US Airways	12.1.2001			
M.2244	Royal Vopak/Ellis & Everard	16.1.2001	C	85	15.3.2001
M.2252	Kuoni/TRX/E-TRX/TRX Central Europe JV	17.1.2001	C	46	13.2.2001

M.2259	Terra/Amadeus/1travel.com	17.1.2001	C	49	15.2.2001
M.2264	Industri Kapital/Fives-Lille	17.1.2001	C	48	14.2.2001
M.2216	Enel/Wind/Infostrada	19.1.2001	C	39	7.2.2001
M.2270	Babcock Borsig/MG Technologies/SAP Markets/Deutsche Bank/VA TECH/ec4ec	22.1.2001	C	207	25.7.2001
M.2247	CU Italia/Banca Popolare di Lodi JV	24.1.2001	C	46	13.2.2001
M.2265	Ricoh/Lanier Worldwide	24.1.2001	C	159	1.6.2001
M.2166	CSC Ploenzke/Dachser/E-Chain Logistics	26.1.2001	C	273	28.9.2001
M.2278	Lafarge/Blue Circle JV	29.1.2001	C	76	8.3.2001
M.2269	SASOL/Condea	30.1.2001	C	107	7.4.2001
M.2296	ENI/Lasmo	1.2.2001	C		
M.2262	Flughafen Berlin (II)	5.2.2001	C	68	2.3.2001
M.2285	Schroder Ventures Limited/Homebase	5.2.2001	C	49	15.2.2001
M.2234	Metsäliitto Osuuskunta/VAPO OY JV	8.2.2001			
M.2272	Rewe/BML/Standa Commerciale	8.2.2001	C	91	22.3.2001
M.2284	ABN Amro/Perkins Food	8.2.2001	C	68	2.3.2001
M.2228	C & N/Thomas Cook	9.2.2001			
M.2185	Océ-Technologies/Real Software/Océ-Real Business Solutions	12.2.2001	C	68	2.3.2001
M.2219	E.ON Energie/Energie Oberösterreich/JCE+JME	12.2.2001	C	330	24.11.2001
M.2291	VNU/AC Nielsen	12.2.2001	C	74	7.3.2001
M.2197	Hilton/Accor/Forte/Travel Services JV	16.2.2001	C	127	27.4.2001
M.2143	BT/VIAG Intercom	19.2.2001	C	207	25.7.2001
M.2271	Cargill/Agribrands	19.2.2001	C	74	7.3.2001
M.2310	Hutchison/Investor/HI3G	19.2.2001			
M.2290	SFK99-Rahasto/Fortum/Naps Systems	22.2.2001	C	180	26.6.2001
M.2292	AEA Investors/DLJMB Funding III/BF Goodrich Performance Materials	22.2.2001	C	74	7.3.2001
M.2306	Berkshire Hathaway/Johns Manville	22.2.2001	C	181	27.6.2001
M.2280	BASF/Bertschi/Hoyer/Vlag JV	23.2.2001	C	243	31.8.2001
M.2302	Heinz/CSM	23.2.2001	C	83	14.3.2001
M.2324	Sanmina Corporation/AB Segerström & Svensson	23.2.2001	C	74	7.3.2001
M.2208	Chevron/Texaco	28.2.2001	C	128	28.4.2001
M.2294	Etexgroup/Glynwed Pipe Systems	28.2.2001	C	94	24.3.2001
M.2312	Abbott/BASF	28.2.2001	C	149	19.5.2001
M.2335	Michel Mineralölhandel/Thyssen-Elf Oil	28.2.2001	C	140	12.5.2001
M.2336	Thomson Multimedia/Technicolor	28.2.2001	C	206	24.7.2001
M.2317	Lafarge/Blue Circle (II)	1.3.2001	C	180	26.6.2001
M.2256	Philips/Agilent Health Care Solutions	2.3.2001	C	292	18.10.2001
M.2305	Vodafone Group plc/Eircell	2.3.2001	C	128	28.4.2001
M.2340	EDP/Cajastur/Caser/Hidroeléctrica del Cantábrico	5.3.2001	C	128	28.4.2001
M.2309	Ericsson/Skandia/Alleato JV	8.3.2001	C	89	20.3.2001
M.2330	Cargill/Banks	9.3.2001	C	107	7.4.2001
M.2277	Degussa/Laporte	12.3.2001	C	130	1.5.2001
M.2341	Banco Popular Español/Fortior Holding	12.3.2001	C	127	27.4.2001
M.2356	Hermes/Codan JV	12.3.2001	C	99	29.3.2001
M.2346	Telefónica/Portugal Telecom/Brazilian JV	13.3.2001	C	111	12.4.2001

M.2357	Vattenfall/Hamburger Elektrizitätswerke/Nordic Powerhouse	13.3.2001	C	90	21.3.2001
M.1976	Shell/Halliburton/Well Dynamics JV	15.3.2001	C	127	27.4.2001
M.2343	Toro Assicurazioni/Lloyd Italico	15.3.2001	C	127	27.4.2001
M.2282	BT/Esat Digifone	16.3.2001			
M.2368	Gilde/Capvis/Soudronic	16.3.2001	C	105	5.4.2001
M.2267	Siemens/Janet/JV	19.3.2001	C	128	28.4.2001
M.2353	RWE/Hidroeléctrica del Cantábrico	19.3.2001	C	143	16.5.2001
M.2364	Deutsche Bank/Banque Worms	19.3.2001	C	321	16.11.2001
M.2227	Goldman Sachs/Messer Griesheim	20.3.2001	C	127	27.4.2001
M.2240	CVC/Mascotech	20.3.2001	C	274	29.9.2001
M.2257	France Télécom/Equant	21.3.2001	C	187	3.7.2001
M.2375	PAI + UGI/Elf Antargaz	21.3.2001	C	347	8.12.2001
M.2377	Sydkraft/ABB/German Power Trading JV	21.3.2001	C	181	27.6.2001
M.2249	Marconi/RTS JV	23.3.2001	C	107	7.4.2001
M.2308	Northrop Grumman/Litton Industries	23.3.2001	C	197	11.7.2001
M.2344	Xchange/BAE Systems JV	23.3.2001	C	127	27.4.2001
M.2275	Pepsico/Quaker	27.3.2001			
M.2323	HSBC-CCF/Banque Hervet	27.3.2001	C	107	7.4.2001
M.2339	Conforama/Salzam Mercatone	27.3.2001	C	107	7.4.2001
M.2348	Outokumpu/Norzink	27.3.2001	C	175	20.6.2001
M.2366	Denso/MMC	27.3.2001	C	242	30.8.2001
M.2367	Siemens/E.ON/Shell/SSG	27.3.2001	C	172	16.6.2001
M.2079	Raytheon/Thales/JV	30.3.2001	C	127	27.4.2001
M.2231	Huntsman Internatonal/Albright & Wilson Surfactants Europe	30.3.2001	C	165	8.6.2001
M.2334	DMDATA/Kommunedata/e-Boks JV	30.3.2001	C	127	27.4.2001
M.2223	Getronics/Hagemeyer JV	2.4.2001			
M.2350	Campbell/ECBB (Unilever)	2.4.2001	C	140	12.5.2001
M.2384	Ratos/3i Group/Atle	2.4.2001	C	145	17.5.2001
M.2365	Schlumberger/Sema	5.4.2001	C	137	9.5.2001
M.2313	Teka/Finatlantis/Holdivat	6.4.2001			
M.2354	Enichem/Polimeri	6.4.2001			
M.2355	DOW/Enichem Polyuréthanes	6.4.2001	C	138	11.5.2001
M.2358	Flextronics/Ericsson	6.4.2001	C	159	1.6.2001
M.2360	SGS/R & S/Freeglass JV	6.4.2001	C	140	12.5.2001
M.2383	VNU/RCS Editori	6.4.2001	C	127	27.4.2001
M.2263	Philips/LG Electronics JV	9.4.2001	C	180	26.6.2001
M.2349	E.ON/Sydkraft	9.4.2001			
M.2286	Buhrmann/Samas Office Supplies	11.4.2001			
M.2281	Endesa/CDF/Snet (see ECSC 1352)	17.4.2001	C	179	23.6.2001
M.2347	Mannesmann Arcor/Netcom Kassel	17.4.2001	C	165	8.6.2001
M.2328	Shell/Beacon/3i/Twister	19.4.2001	C	138	11.5.2001
M.2222	UGC/Liberty Media	24.4.2001	C	172	16.6.2001
M.2279	Nortel/Mundinteractivos/Broad Media JV	25.4.2001	C	190	6.7.2001
M.2394	SCI Systems/Nokia Networks	25.4.2001	C	172	16.6.2001
M.2398	Linde/Jungheinrich JV	25.4.2001	C	160	2.6.2001

M.2345	Deutsche BP/Erdölchemie	26.4.2001	C	174	19.6.2001
M.2218	Thomas Cook Holdings/British Airways JV	30.4.2001			
M.2414	Vattenfall/HEW	2.3.2001	C	140	12.5.2001
M.2374	Telenor/ErgoGroup/DNB/Accenture JV	2.5.2001	C	160	2.6.2001
M.2268	Pernod Ricard/Diageo/Seagram Spirits	8.5.2001			
M.2373	Compass/Selecta	8.5.2001	C	160	2.6.2001
M.2395	Morgan Grenfell/Whitbread	8.5.2001	C	172	16.6.2001
M.2391	CVC/Cinven/Assidomän	10.5.2001	C	189	5.7.2001
M.2396	Industri Kapital/Perstorp (II)	11.5.2001	C	274	29.9.2001
M.2405	Dow Chemical/Ascot	11.5.2001			
M.2407	Bertelsmann/RTL Group	11.5.2001	C	291	17.10.2001
M.2435	EDS/Systematics	11.5.2001			
M.2315	The Airline Group/Nats	14.5.2001	C	160	2.6.2001
M.2419	Apax/Schering/Metagen	14.5.2001	C	196	12.7.2001
M.2329	Société Générale/Deufin	17.5.2001	C	308	1.11.2001
M.2342	Techint/VAI/JV	17.5.2001			
M.2406	Cepsa Gas Comercializadora/Total Fina Elf Gas & Power España	17.5.2001	C	180	26.6.2001
M.2409	Rail Gourmet Holding/Narvesen	17.5.2001	C	171	15.6.2001
M.2426	INEOS/Phenolchemie	17.5.2001			
M.2370	Thales/Airsys-ATM	21.5.2001	C	237	23.8.2001
M.2418	ORF/Netway/Adworx	21.5.2001	C	201	17.7.2001
M.2433	Barclays Bank/Minimax	21.5.2001	C	180	26.6.2001
M.2445	NIB Capital/Internatio-Muller Chemical Distribution	21.5.2001	C	171	15.6.2001
M.2359	International Fuel Cells (UTC)/SOPC (Shell) JV	29.5.2001			
M.2386	MEI/Philips	29.5.2001	C	332	27.11.2001
M.2401	Industri Kapital/Telia Enterprise	29.5.2001	C	272	27.9.2001
M.2424	Tyco/CIT	29.5.2001			
M.2442	NOBIA/Magnet	29.5.2001			
M.2408	REWE COM/Henkel/TEN UK/TEN DE	31.5.2001	C	308	1.11.2001
M.2451	Hilton/Scandic	31.5.2001	C	238	24.8.2001
M.2190	LSG/OFSI	1.6.2001	C	238	24.8.2001
M.2437	NEC/Toshiba	5.6.2001	C	189	5.7.2001
M.2397	BC Funds/Sanitec	6.6.2001	C	207	25.7.2001
M.2458	Bertelsmann/VVC JV	6.6.2001	C	190	6.7.2001
M.2466	Sodexho/Abela (II)	8.6.2001	C	206	24.7.2001
M.2421	Continental/Temic	11.6.2001	C	250	8.9.2001
M.2441	Amcor/Danisco/Ahlstrom	11.6.2001	C	273	28.9.2001
M.2393	Skanska Sverige/Posten/HOOC	13.6.2001	C	181	27.6.2001
M.2403	Schneider/Thomson Multimedia JV	13.6.2001	C	251	11.9.2001
M.2430	Schroder Ventures/Grammer	13.6.2001	C	325	21.11.2001
M.2303	Ciaoweb/WE Cube	14.6.2001	C	179	23.6.2001
M.2400	Dexia/Artesia	14.6.2001	C	325	21.11.2001
M.2413	BHP/Billiton (see ECSC. 1356)	14.6.2001	C	238	24.8.2001
M.2463	Speedy Tomato	14.6.2001	C	279	3.10.2001
M.2448	Dexia/Banco Sabadell/Dexia Banco Local	19.6.2001			
M.2449	Goldman Sachs/SJPC/SCP De Milo/Nascent	19.6.2001	C	319	14.11.2001

M.2459	CDC/Charterhouse/Alstom Contracting	19.6.2001	C	188	4.7.2001
M.2460	IBM/Informix	19.6.2001	C	198	13.7.2001
M.2415	Interpublic/True North	21.6.2001	C	251	11.9.2001
M.2300	YLE/TDF/Digita JV	26.6.2001	C	272	27.9.2001
M.2369	CNH/FHE	26.6.2001			
M.2404	Elkem/SAPA	26.6.2001	C	251	11.9.2001
M.2469	Vodafone/Airtel	26.6.2001	C	207	25.7.2001
M.2490	Knorr-Bremse SFS/Webasto Thermosysteme JV	26.6.2001	C	243	31.8.2001
M.2411	Autologic/TNT/Wallenius/Cat JV	27.6.2001			
M.2427	Infineon/Cryptomathic JV	27.6.2001	C	199	14.7.2001
M.2468	SEAT Pagine Gialle/Eniro	27.6.2001	C	198	13.7.2001
M.2478	IBM Italia/Business Solutions JV	29.6.2001	C	278	2.10.2001
M.2479	Flextronics/Alcatel	29.6.2001	C	278	2.10.2001
M.2494	Debitel/Debitel Nederland	29.6.2001			
M.2402	Creditanstalt/RZB JV	7.7.2001	C	238	24.8.2001
M.2439	Hitachi/STMIcroelectronics/SuperH JV	3.7.2001	C	252	12.9.2001
M.2464	Nomura International/Le Méridien Hôtels	3.7.2001	C	198	13.7.2001
M.2493	Norske Skog/Abitibi/Papco	3.7.2001			
M.2452	Belgacom/BAS Holding/Securitas	5.7.2001	C	238	24.8.2001
M.2461	OM Group/DMC2	5.7.2001	C	250	8.9.2001
M.2476	Blue Circle/Michelin JV	5.7.2001	C	284	10.10.2001
M.2432	Angelini/Phoenix JV	6.7.2001	C	281	5.10.2001
M.2488	Alcatel/Alcatel Space	6.7.2001	C	321	16.11.2001
M.2387	Heineken/Bayerische Brauholding JV	12.7.2001	C	327	22.11.2001
M.2453	GKN/Brambles	12.7.2001	C	238	24.8.2001
M.2465	CVC/Amstelland	16.7.2001			
M.2501	Eureko/Interamerican	16.7.2001	C	243	31.8.2001
M.2489	Borg Warner/Hitachi	17.7.2001	C	242	30.8.2001
M.2473	Finnforest/Moelven Industrier	18.7.2001	C	239	25.8.2001
M.2382	Usinor/Arbed/Aceralia (see ECSC 1351)	19.7.2001			
M.2431	Allianz/Dresdner	19.7.2001	C	316	10.11.2001
M.2512	EQT Northern Europe/Electrolux	20.7.2001	C	251	11.9.2001
M.2438	SES/Stork/Fokker Space	24.7.2001	C	239	25.8.2001
M.2425	Coop Norden	26.7.2001	C	242	30.8.2001
M.2471	Accenture/Lagardère JV	26.7.2001	C	327	22.11.2001
M.2480	Thomson/Carlton JV	26.7.2001	C	238	24.8.2001
M.2337	Nestlé/Ralston Purina	27.7.2001	C	239	25.8.2001
M.2352	SWB/Stadtwerke Bielefeld JV	27.7.2001	C	321	16.11.2001
M.2491	Sampo/Storebrand	27.7.2001	C	290	16.10.2001
M.2514	Mazda Motor Corporation/MCL	27.7.2001	C	251	11.9.2001
M.2456	Preussag/TUI Belgium	2.8.2001	C	238	24.8.2001
M.2513	RWE/Kärntner Energie Holding	2.8.2001	C	286	12.10.2001
M.2518	GFE/Shell Hydrogen/HQC	2.8.2001	C	242	30.8.2001
M.2503	HBG/Ballast Nedam/Baggeren JV	3.8.2001	C	284	10.10.2001
M.2440	Siemens/Yazaki JV	6.8.2001	C	264	29.9.2001
M.2516	RPBE/Britax	6.8.2001			

M.2531	Sara Lee/Earthgrains	6.8.2001	C	250	8.9.2001
M.2534	SCI Systems/Nokia Networks	6.8.2001	C	281	5.10.2001
M.2399	Friesland Coberco/Nutricia	8.8.2001	C		
M.2447	Fabricom/GTI	9.8.2001			
M.2517	Bristol Myers Squibb/Du Pont	9.8.2001			
M.2536	Fabricom/Sulzer	9.8.2001	C	330	24.11.2001
M.2506	Autostrade/Saba	10.8.2001	C	274	29.9.2001
M.2508	Fortum/OM JV	10.8.2001	C	327	22.11.2001
M.2474	RZB/Centrobank	21.8.2001	C	321	16.11.2001
M.2422	Hapag-Lloyd/Hamburger Hafen- und Lagerhaus/HHLA-CT	22.8.2001	C	272	27.9.2001
M.2362	Dalkia Holding/Clemessy	23.8.2001	C	315	9.11.2001
M.2487	Bertelsmann/Arnoldo Mondadori JV	23.8.2001	C	279	3.10.2001
M.2548	Cinven/Castrol	23.8.2001	C	350	11.12.2001
M.2539	EQT Northern Europe/Duni	27.8.2001	C	272	27.9.2001
M.2509	DOW/Reichhold JV	28.8.2001	C	251	11.9.2001
M.2532	Fiat/Italenergia/Montedison	28.8.2001	C	284	10.10.2001
M.2538	3i/WM-Data/Atea	30.8.2001	C	315	9.11.2001
M.2563	Edf/Fenice	30.8.2001	C	251	11.9.2001
M.2573	A & C/Grossfarma	30.8.2001	C	271	26.9.2001
M.2575	Liberty Mutual/Grupo RSA España	31.8.2001	C	282	6.10.2001
M.2540	Fidis/SEI JV	4.9.2001	C	274	29.9.2001
M.2553	Endesa/Enel-Elettrogen	4.9.2001	C	281	5.10.2001
M.2556	HUK Coburg/Wiener Städtische/HMA	4.9.2001	C	273	28.9.2001
M.2558	Havas/Tempus	4.9.2001	C	319	14.11.2001
M.2583	Insys/Hunting Engineering	7.9.2001	C	296	23.10.2001
M.2566	Shell-Cinergy/EDA/EPA JV	13.9.2001	C	321	16.11.2001
M.2260	Hitachi/LG Electronics JV	14.9.2001	C	296	23.10.2001
M.2486	Itochu/Marubeni JV	14.9.2001	C	270	25.9.2001
M.2529	JCD/RCS/Publitransport/IPG	14.9.2001	C	300	26.10.2001
M.2560	APAX/MPM	14.9.2001	C	272	27.9.2001
M.2580	Collins & Aikman Product/Textron Automotive Trim	14.9.2001	C	274	29.9.2001
M.2541	RWA/Verbund JV	17.9.2001			
M.2586	CE/Yorkshire Electric	17.9.2001			
M.2588	Rheinbraun Brennstoff/SSM Coal	17.9.2001	C	327	22.11.2001
M.2587	Rabobank/Autoplastics	19.9.2001	C	308	1.11.2001
M.2549	Sanmina/SCI Systems	20.9.2001	C	296	23.10.2001
M.2554	IF Holding/FCI JV	20.9.2001	C	298	24.10.2001
M.2571	Johnson Controls/Sagem	20.9.2001	C	281	5.10.2001
M.2574	Pirelli/Edizione/Olivetti/Telecom Italia	20.9.2001	C	325	21.11.2001
M.2527	Telenor East/ECO Telecom/Vimpel-Communications	21.9.2001	C	298	24.10.2001
M.2510	Cendant/Galileo	24.9.2001	C	321	16.11.2001
M.2276	The Coca-Cola Company/Nestlé JV	27.9.2001	C	308	1.11.2001
M.2462	Ericsson/Sony JV	27.9.2001	C	281	5.10.2001
M.2481	Balli/Klöckner (see ECSC. 1359)	27.9.2001	C	288	13.10.2001
M.2526	GE Insurance Holding/National Mutual Life	27.9.2001	C	323	20.11.2001
M.2559	USG/Deutsche Perlite	27.9.2001	C	296	23.10.2001

M.2542	Schmalbach-Lubeca/Rexam	28.9.2001			
M.2576	Telefonica/Ericsson JV	28.9.2001	C	328	23.11.2001
M.2546	EADS/Nortel	1.10.2001	C	296	23.10.2001
M.2552	Norske Skog/Peterson	1.10.2001	C	316	10.11.2001
M.2584	Tyco/Sensormatic	1.10.2001	C	308	1.11.2001
M.2505	Tyco/CR BARD	4.10.2001	C	298	24.10.2001
M.2595	Stora Enso/Stora Enso Timber	4.10.2001	C	296	23.10.2001
M.2598	TDC/CMG/Migway JV	4.10.2001			
M.2545	Degussa/Ausimont	8.10.2001	C	298	24.10.2001
M.2592	3i/Eqvitec/Pohjola/Suomi/ION Blast	11.10.2001	C	358	15.12.2001
M.2593	3i/Oko Bank/Uniglass Engineering	11.10.2001			
M.2572	Time/IPC	12.10.2001	C	321	16.11.2001
M.2507	Xchange/BAE Systems/Procur	15.10.2001			
M.2528	Maersk IT/LM Ericsson/WAC	15.10.2001	C	319	14.11.2001
M.2537	Philips/Marconi Medical Systems	17.10.2001	C	321	16.11.2001
M.2562	Bertelsmann/France Loisirs	17.10.2001	C	309	6.11.2001
M.2608	INA/FAG	18.10.2001			
M.2601	WPP/Tempus	22.10.2001	C	316	10.11.2001
M.2611	Schroder Ventures/Goldman Sachs/Cognis	22.10.2001	C	342	5.12.2001
M.2477	Atle/Pricerunner JV	23.10.2001	C	322	17.11.2001
M.2577	GE Capital/Heller Financial	23.10.2001			
M.2590	Solectron/C-MAC	23.10.2001	C	308	1.11.2001
M.2613	Alcoa/BHP Billiton JV	23.10.2001	C	322	17.11.2001
M.2626	Merloni/Foster Wheeler Italiana JV	24.10.2001	C	323	20.11.2001
M.2569	Interbrew/Beck's	26.10.2001	C	320	15.11.2001
M.2297	BP Chemicals/Solvay (PP)	29.10.2001	C	327	22.11.2001
M.2299	BP Chemicals/Solvay/HDPE JV	29.10.2001	C	327	22.11.2001
M.2504	Cadbury Schweppes/Pernod Ricard	29.10.2001	C	321	16.11.2001
M.2535	Sogefi/Filtrauto	29.10.2001			
M.2561	Prudential/BPB	6.11.2001	C	323	20.11.2001
M.2623	ABN AMRO/Finaref-PPR JV	6.11.2001	C	339	1.12.2001
M.2614	ThyssenKrupp/Camom/Eurig	7.11.2001	C	327	22.11.2001
M.2567	Nordbanken/Postgirot	8.11.2001	C	347	8.12.2001
M.2578	Banco Santander Central Hispánico/AKB	12.11.2001	C	339	1.12.2001
M.2605	Mead/Westvaco	12.11.2001	C	328	23.11.2001
M.2628	Koch/Kosa	12.11.2001	C	339	1.12.2001
M.2629	Flextronics/Xerox	12.11.2001	C	339	1.12.2001
M.2483	Groupe Canal+/RTL/GJCD JV	13.11.2001			
M.2604	ICA Ahold/Dansk Supermarked	13.11.2001	C	342	5.12.2001
M.2603	ZF Friedrichshafen/Mannesmann Sachs	19.11.2001			
M.2620	Enel/Viesgo	20.11.2001			
M.2570	BRFKredit/Codan/Boligtorvet JV	21.11.2001	C	339	1.12.2001
M.2417	Skanska/SITA	23.11.2001	C	344	6.12.2001
M.2443	E.ON/Powergen	23.11.2001			
M.2523	Siemens/AEM/E-Utile	23.11.2001	C	344	6.12.2001
M.2643	Blackstone/CDPQ/Deteks BW	23.11.2001	C	358	15.12.2001

M.2652	Blackstone/CDPQ/Deteks NRW	23.11.2001	C	358	15.12.2001
M.2641	Posten/DSV	26.11.2001			
M.2616	Deutsche Bank/TDC JV	27.11.2001			
M.2565	PPC/WIND/JV	28.11.2001			
M.2630	Siemens/Wiener Stadtwerke/Master Talk	28.11.2001	C	358	15.12.2001
M.2635	DMV II	28.11.2001			
M.2524	Hydro/SQM/Rotem JV	5.12.2001			
M.2550	Mezzo/Muzzik	6.12.2001			
M.2637	Nutricia/Baxter/2.HSC	6.12.2001	C	358	15.12.2001
M.2645	Saab/WM-Data AB/Saab Caran JV	6.12.2001			
M.2646	Rhenus/VIA Verkehr holding (SNCF)/Rhenus-Keolis	7.12.2001			
M.2656	Cinven/Klöckner Pentaplast	7.12.2001			
M.2638	3i/Consors/100 World	10.12.2001			
M.2660	NPM/ABN AMRO/Norit Personal Care Holding	10.12.2001			
M.2602	Gerling/NCM	11.12.2001			
M.2647	IVECO/Irisbus	11.12.2001			
M.2661	Winterthur/Prudential Assurance	12.12.2001			
M.2485	Verbund/ESTAG	14.12.2001			
M.2642	BT/Concert	17.12.2001			
M.2651	AT&T/Concert	17.12.2001			
M.2654	Flextronics Network Services/Telaris Södra	17.12.2001			
M.2676	Sampo/Varma Sampo/IF Holding JV	18.12.2001			
M.2627	Otto Versand/Sabre/Travelocity JV	19.12.2001			
M.2653	Voestalpine/Polynorm	19.12.2001			
M.2677	Anglogold/Normandy	19.12.2001			
M.2663	CU Vita/Risparmio Vita Assicurazioni	20.12.2001			
M.2674	Sonae/CNP-Assurances/LL Porto Retail JV	20.12.2001			
M.2675	EDF/TXU Europe/West Burton Power Station	20.12.2001			
M.2678	Sonae/CNP-Assurances/Inparsa JV	20.12.2001			
M.2679	EDF/TXU Europe/24 Seven	20.12.2001			

JV.54	Smith & Nephew/Beiersdorf JV	30.1.2001	C	89	20.3.2001
JV.56	Hutchison/ECT	29.11.2001			

1.2. Decisions under Article 8 of Council Regulation (EEC) No 4064/89

Case	Title	Date of dec.	Publication
M.2033	Metso/Svedala	24.1.2001	[154]
M.2097	SCA/Metsä Tissue	31.1.2001	OJ L 57, 27.2.2002
M.1853	EDF/ENBW	7.2.2001	OJ L 29, 28.2.2002
M.1915	The Post Office/TPG/SPPL	13.3.2001	[154]

[154] Not yet published, but available on the Competition DG's web site (http://europa.eu.int/comm/competition/mergers/cases/).

M.2139	Bombardier/Adtranz	3.4.2001	OJ L 69, 12.3.2002
M.2201	MAN/Auwärter	20.6.2001	OJ L 116, 3.5.2002
M.2220	General Electric/Honeywell	3.7.2001	[155]
M.2314	BASF/Pantochim/Eurodiol	11.7.2001	OJ L 132, 17.5.2002
M.2333	De Beers/LVMH	25.7.2001	[155]
M.2434	Grupo Villar Mir/ENBW/Hidroeléctrica del Cantábrico	26.9.2001	[155]
M.2283	Schneider/Legrand	10.10.2001	[155]
M.2187	CVC/Lenzing	17.10.2001	[155]
M.2416	Tetra Laval/Sidel	30.10.2001	[155]
M.2420	Mitsui/CVRD/Caemi	30.10.2001	[155]
M.2498	UPM-Kymmene/Haindl	21.11.2001	[155]
M.2499	Norske Skog/Parenco/Walsum	21.11.2001	[155]
M.2389	Shell/DEA	20.12.2001	[155]
M.2530	Südzucker/Saint-Louis	20.12.2001	[155]
M.2533	BP/E.ON	20.12.2001	[155]

JV.55	Hutchison/RCPM/ECT	3.7.2001	OJ C 76, 8.3.2001

2. Decisions pursuant to Article 66 of the ECSC Treaty

Case	Title	Date of decision	Publication
ECSC.1345	Salzgitter/Robert	30.1.2001	[155]
ECSC.1352	Endesa/CDF/SNET (see M.2281)	17.4.2001	[155]
ECSC.1354	Usinor/Tubisud Italia	2.5.2001	[155]
ECSC.1355	Interseroh/Hansa	27.7.2001	[155]
ECSC.1357	VA Stahl/TSTG	11.9.2001	[155]
ECSC.1358	Scholz/Alba/Elsa JV	5.10.2001	[155]
ECSC.1351	Usinor/Arbed/Aceralia (see M.2382)	23.11.2001	[155]
ECSC.1360	Duferco/Sogepa/Carsid	28.11.2001	[155]
ECSC.1362	Thyssenkrupp/Bitros JV	7.12.2001	[155]

[155] Not yet published, but available on the Competition DG's web site (http://europa.eu.int/comm/competition/mergers/cases/).

G — Press releases

1. Decisions under Articles 6 and 8 of Council Regulation (EEC) No 4064/89

1.1. Decisions under Article 6(1) and (2) of Council Regulation (EEC) No 4064/89

Reference	Date	Subject
IP/01/34	12.1.2001	Commission clears SmithKline Beecham acquisition of Block Drug
IP/01/35	12.1.2001	Commission clears AviaPartner stake in Scandinavian airport groundhandler Novia
IP/01/48	15.1.2001	Commission clears merger between United Airlines and US Airways subject to conditions
IP/01/57	16.1.2001	Commission authorises Vopak purchase of Ellis & Everard
IP/01/79	19.1.2001	Commission allows Italian Competition Authority to examine the impact of Enel's acquisition of Infostrada on Italy's electricity market
IP/01/109	25.1.2001	Commission clears Ricoh acquisition of Lanier Worldwide
IP/01/126	31.1.2001	Commission clears joint venture between Smith & Nephew and Beiersdorf subject to a package of divestments
IP/01/138	31.1.2001	Commission clears the acquisition of Condea by Sasol
IP/01/164	6.2.2001	Commission approves take-over of Berlin Brandenburg Flughafen Holding by Hochtief and IVG consortium
IP/01/183	9.2.2001	Commission refers part of transaction between Metsäliitto and Vapo to the Finnish Competition Authority
IP/01/188	12.2.2001	Commission clears acquisition of Thomas Cook Holdings by C&N Touristic
IP/01/192	12.2.2001	Commission clears merger between VNU and ACNielsen
IP/01/217	15.2.2001	Commission initiates detailed investigation into merger between MAN and Auwärter
IP/01/223	16.2.2001	Commission authorises acquisition of E.ON's stake in VIAG Interkom by British Telecom
IP/01/230	19.2.2001	Commission clears two joint ventures specialised in travel services combining Accor Forte and Hilton
IP/01/232	20.2.2001	Commission authorises Cargill to acquire Agribrands International
IP/01/250	26.2.2001	Commission approves acquisition of the food division of CSM by Heinz
IP/01/287	1.3.2001	Commission clears acquisition of Glynwed's Pipe Systems Division by Etex
IP/01/288	1.3.2001	Commission clears merger between Chevron and Texaco
IP/01/289	1.3.2001	Commission approves acquisition of the pharmaceutical business of BASF by Abbott
IP/01/290	1.3.2001	Commission authorises Michel Mineralölhandel to purchase two Thyssen Elf Oil sales agencies
IP/01/295	1.3.2001	Commission opens in-depth inquiry into the acquisition of ECT by Hutchison and the Rotterdam port authority
IP/01/298	2.3.2001	Commission opens full investigation into the General Electric/Honeywell merger
IP/01/300	2.3.2001	Commission clears acquisition of Blue Circle Industries by Lafarge
IP/01/306	5.3.2001	Commission clears Philips acquisition of Agilent Healthcare Division
IP/01/307	5.3.2001	Commission clears acquisition of Eircell by Vodafone Group
IP/01/312	6.3.2001	Commission authorises EDP-Cajastur-Caser joint bid for Hidrocantábrico
IP/01/340	12.3.2001	Commission clears Cargill/Banks joint venture in agricultural merchanting

IP/01/352	12.3.2001	Commission clears Degussa purchase of Laporte subject to a divestment package
IP/01/381	16.3.2001	Commission clears the joint venture between Shell and Halliburton
IP/01/376	15.3.2001	Commission clears purchase of Italian insurer Lloyd Italico by Toro Assicurazioni
IP/01/408	19.3.2001	Commission authorises acquisition of Telenor's stake in Esat Digifone by British Telecom
IP/01/417	20.3.2001	Commission authorises RWE acquisition of control over Hidrocantábrico
IP/01/424	21.3.2001	Commission clears acquisition of Messer Griesheim by Goldman Sachs
IP/01/423	21.3.2001	Commission clears purchase of MSX International and Delco Remy International by Citicorp venture capital
IP/01/426	22.3.2001	Commission clears France Telecom purchase of Equant
IP/01/429	22.3.2001	Commission gives go-ahead to purchase of Elf Antargaz by Paribas Affaires Industrielles (PAI) and UGI
IP/01/438	26.3.2001	Commission authorises Northrop Grumman to acquire Litton Industries
IP/01/450	28.3.2001	Commission authorises acquisition of Quaker by Pepsico
IP/01/452	28.3.2001	Commission launches in-depth investigation into acquisition of Pantochim and Eurodiol by BASF
IP/01/451	28.3.2001	Commission clears Outokumpu purchase of Norzinc
IP/01/449	28.3.2001	Commission clears the acquisition of Magneti Marelli Climatizzazione by Japan's Denso Corporation
IP/01/453	28.3.2001	Commission authorises participation of Shell in Siemens Solar
IP/01/478	30.3.2001	Commission authorises joint venture between Thales and Raytheon
IP/01/486	2.4.2001	Commission clears Huntsman International's buy of Albright & Wilson's European surfactants
IP/01/481	2.4.2001	Commission opens detailed investigation into the acquisition of Legrand by Schneider Electric
IP/01/485	2.4.2001	Commission clears electronic mailbox joint venture in Denmark
IP/01/492	3.4.2001	Commission clears joint venture between Getronics and Hagemeyer in the field of ICT wholesaling
IP/01/493	3.4.2001	Commission clears takeover of Atle by Ratos and 3i Group Plc
IP/01/494	3.4.2001	Commission clears Campbell Soup purchase of Unilever's European Culinary Brands Businesses
IP/01/518	6.4.2001	Commission clears Flextronics takeover of Ericsson's mobile operations
IP/01/520	6.4.2001	Commission clears acquisition of Sema by Schlumberger
IP/01/525	6.4.2001	Commission clears Dow Chemical purchase of Enichem's polyurethanes business
IP/01/529	10.4.2001	Commission clears acquisition of joint control over Belgium's Holdivat by Spanish company Teka
IP/01/531	10.4.2001	Commission authorises acquisition of sole control over Sydkraft by E.ON
IP/01/532	10.4.2001	Commission clears joint venture between Philips and LG Electronics
IP/01/555	11.4.2001	Commission authorises Buhrmann's acquisition of Samas's office supplies business, subject to a divestiture
IP/01/573	19.4.2001	Commission opens in-depth probe into De Beers joint venture with LVMH
IP/01/574	19.4.2001	Commission launches in-depth investigation into acquisition of Addtek by CRH in the construction sector
IP/01/601	25.4.2001	Commission clears Liberty Media's purchase of a controlling stake in UnitedGlobalCommunications
IP/01/611	26.4.2001	Commission approves Linde and Jungheinrich's joint Internet market place
IP/01/618	26.4.2001	Commission authorises BP's acquisition of sole control over Erdölchemie

IP/01/629	2.5.2001	Commission clears joint venture between Thomas Cook Holdings and British Airways
IP/01/638	3.5.2001	Commission clears Norwegian office supplies Date B2B joint venture
IP/01/668	8.5.2001	Commission clears the acquisition of Selecta Group Compass Group Plc
IP/01/669	8.5.2001	Commission clears the acquisition by Pernod Ricard and Diageo of the spirits and wine business of Seagram
IP/01/670	8.5.2001	Commission opens in-depth probe into travel joint venture between T-Online, TUI and Neckermann
IP/01/676	10.5.2001	Commission clears purchase by CVC Capital Partners and Cinven of two AssiDomän units
IP/01/683	14.5.2001	Commission clears joint control of UK air traffic control provider NATS
IP/01/686	14.5.2001	Commission clears acquisition by Industri Kapital of the chemical business of Perstorp Ab, subject to commitments
IP/01/687	14.5.2001	Commission clears acquisition of Systematics by Electronic Data Systems
IP/01/726	22.5.2001	Commission clears de-merger of Thales and Siemens ATM joint venture
IP/01/727	22.5.2001	Commission clears Austrian Internet joint venture Adworx
IP/01/764	30.5.2001	Commission clears Industri Kapital's acquisition of a controlling stake in Telia's business armThor
IP/01/765	30.5.2001	Commission clears acquisition by Matsushita of sole control over two battery-manufacturing factories in Belgium and Poland
IP/01/772	1.6.2001	Commission clears acquisition of Scandic Hotels by Hilton
IP/01/773	5.6.2001	Commission opens in-depth probe into the acquisition of joint control of Hidrocantábrico by Grupo Villar Mir and EnBW
IP/01/774	5.6.2001	Commission clears acquisition by Lufthansa Service Holding of sole control of Onex Food Services
IP/01/798	6.6.2001	Commission gives green light to NEC's space joint venture with Toshiba
IP/01/804	7.6.2001	Commission clears acquisition of Sanitec by BC Funds in the bathroom products sector
IP/01/810	8.6.2001	Commission clears acquisition by Sodexho of a number of Albert Abela companies
IP/01/822	12.6.2001	Commission clears merger of European flexible packaging activities of Amcor, Danisco and Ahlstrom
IP/01/823	12.6.2001	Commission approves Continental's takeover of DaimlerChrysler subsidiary Temic
IP/01/838	14.6.2001	Commission authorises joint venture between Schneider and Thomson Multimedia
IP/01/839	14.6.2001	Commission clears joint venture by Skanska and Posten
IP/01/847	15.6.2001	Commission clears takeover of Artesia by Dexia
IP/01/841	14.6.2001	Commission authorises merger between BHP and Billiton
IP/01/848	15.6.2001	Commission clears Speedy Tomato Italian Internet portal joint venture with Olivetti
IP/01/870	20.6.2001	Commission clears acquisition of Informix Software by IBM, both American
IP/01/886	22.6.2001	Commission clears acquisition of True North by Interpublic in the marketing communications sector
IP/01/890	22.6.2001	Commission initiates detailed probe into CVC's acquisition of Austrian fibre company Lenzing
IP/01/904	27.6.2001	Commission clears acquisition of control of Fiat Hitachi Excavators by CNH Global
IP/01/905	27.6.2001	Commission clears acquisition of sole control over Airtel by Vodafone

IP/01/906	27.6.2001	Commission clears with undertaking Télédiffusion de France's acquisition of a controlling stake in Finland's Digita
IP/01/907	27.6.2001	Commission clears acquisition of Sapa by Elkem
IP/01/911	28.6.2001	Commission clears joint acquisition of Renault's CAT
IP/01/912	28.6.2001	Commission clears acquisition of Swedish phone directories firm ENIRO by SEAT
IP/01/926	2.7.2001	Commission clears Flextronics buy of Alcatel's mobile phones plant at Laval, France
IP/01/928	2.7.2001	Commission clears IBM Italia joint venture with Fiat
IP/01/936	3.7.2001	Commission approves joint venture between Creditanstalt and RaiffeisenZentralbank
IP/01/938	3.7.2001	Commission initiates detailed investigation into merger between Brazilian iron ore producers
IP/01/952	4.7.2001	Commission clears joint venture between Hitachi and STMicroelectronics to license and develop RISC microprocessor cores
IP/01/953	4.7.2001	Commission clears purchase of Hansol's stake in Singapore's Pan Asia Paper by Norske Skog and Abitibi
IP/01/965	6.7.2001	Commission opens in-depth probe into Tetra Laval's proposed acquisition of French company Sidel
IP/01/966	6.7.2001	Commission clears acquisition by OM Group (US) of Degussa's chemicals and catalysts unit
IP/01/973	9.7.2001	Commission clears Italian pharmaceuticals wholesale venture between Angelini and Phoenix
IP/01/974	9.7.2001	Commission clears acquisition by Alcatel of full control of Alcatel Space
IP/01/993	12.7.2001	Commission opens in-depth probe into Swedish bank merger between SE Banken and FöreningsSparbanken
IP/01/994	13.7.2001	Commission clears joint acquisition by Heineken of Bayerische Brauholding's beer activities
IP/01/1002	17.7.2001	Commission clears acquisition by CVC of a division of Amstelland
IP/01/1034	19.7.2001	Commission clears acquisition of Norwegian company Moelven by Finnforest
IP/01/1040	19.7.2001	Commission clears acquisition of Dresdner Bank by Allianz AG
IP/01/1041	19.7.2001	Commission initiates detailed probe into merger between steel producers Usinor and Arbed/Aceralia
IP/01/1053	23.7.2001	Commission opens detailed inquiry into takeover of German paper manufacturer Haindl by UPM-Kymmene and Norske Skog
IP/01/1067	25.7.2001	Commission clears acquisition of joint control by Saab Ericsson Space (Sweden) and Stork (the Netherlands) of Fokker Space (the Netherlands)
IP/01/1122	27.7.2001	Commission authorises joint venture between Accenture and Lagardere
IP/01/1123	27.7.2001	Commission clears the retail joint venture Coop Norden
IP/01/1136	27.7.2001	Commission gives conditional clearance to the acquisition of the pet-food company Ralston Purina by Nestlé
IP/01/1137	27.7.2001	Commission clears Finnish Sampo Oyj's take-over of Norwegian Storebrand ASA
IP/01/1138	27.7.2001	Ford authorised to take over wholesale distribution of Mazda in the UK
IP/01/1179	3.8.2001	Commission gives go-ahead for Preussag to acquire entire capital of TUI Belgium
IP/01/1181	3.8.2001	Commission clears joint control of RWE and Bundesland Kärnten in Kärntner Energieholding Beteiligungs GmbH
IP/01/1187	6.8.2001	Commission clears joint venture between Hollandse Beton Groep N.V. and Ballast Nedam N.V. in the dredging sector

IP/01/1194	7.8.2001	Commission approves automotive components joint venture of Siemens and Yazaki
IP/01/1197	9.8.2001	Commission clears acquisition of Nutricia by Friesland Coberco in the dairy sector
IP/01/1199	10.8.2001	Commission clears acquisition of sole control by Fabricom over Sulzer
IP/01/1200	10.8.2001	Commission clears acquisition of sole control by Fabricom over GTI
IP/01/1201	10.8.2001	Commission clears acquisition of Du Pont Pharmaceuticals by Bristol-Myers Squibb
IP/01/1221	23.8.2001	Commission authorises the creation of a joint venture by HHLA and Hapag-Lloyd to run the new Altenwerder container terminal Altenwerder at the Port of Hamburg
IP/01/1223	24.8.2001	Commission launches detailed investigation into the takeover of St Louis Sucre by Südzucker
IP/01/1224	24.8.2001	Commission clears Bertelsmann joint venture with Arnoldo Mondadori
IP/01/1225	24.8.2001	Commission clears Dalkia acquisition of sole control of Clemessy
IP/01/1229	28.8.2001	Commission authorises Fiat's acquisition of Montedison through Italenergia
IP/01/1235	3.9.2001	Commission clears Angelini and Phoenix acquisition of Italian pharmaceuticals wholesaler Grossfarma
IP/01/1239	5.9.2001	Commission clears acquisition of Tempus by Havas Advertising
IP/01/1241	5.9.2001	Commission clears Italian car-rental joint venture between Fidis (Fiat) and Sei (Enel)
IP/01/1247	7.9.2001	Commission refers oil products part of BP/E.ON deal to Germany, deepens probe into petrochemicals markets
IP/01/1273	17.9.2001	Commission clears joint venture between Hitachi and LG Electronics
IP/01/1274	17.9.2001	Commission clears Italian venture between JCDecaux, Rizzoli Corriere della Sera and Publitransport in the field of outdoor advertising
IP/01/1277	18.9.2001	Commission clears purchase of Yorkshire Power Group by CE Electric
IP/01/1278	18.9.2001	Commission clears acquisition of SSM Coal by Rheinbraun
IP/01/1299	20.9.2001	Commission gives conditional approval to the acquisition of joint control of Olivetti and Telecom Italia by Pirelli and Edizione
IP/01/1307	24.9.2001	Commission clears acquisition of sole control over Galileo by Cendant (both US based)
IP/01/1333	27.9.2001	Commission clears modified iced tea, coffee joint venture between Coca-Cola and Nestlé
IP/01/1335	28.9.2001	Commission clears acquisition of Klöckner by Balli
IP/01/1344	1.10.2001	Commission clears acquisition of Sensormatic Electronics by Tyco International
IP/01/1345	2.10.2001	Commission approves Telefonica/Ericsson joint venture
IP/01/1346	2.10.2001	Commission clears joint venture between Norwegian companies Norske Skog and Peterson in greaseproof paper
IP/01/1347	2.10.2001	Commission clears purchase by Schmalbach-Lubeca of two beverage can plants of Rexam
IP/01/1369	5.10.2001	Commission clears venture between Tele Danmark Mobile International and CMG Wireless Data Solutions
IP/01/1370	5.10.2001	Commission clears purchase of US medical device maker C.R. Bard by Tyco International
IP/01/1414	12.10.2001	Commission clears acquisition of UK magazine publisher IPC by Time (AOL Time Warner)
IP/01/1438	18.10.2001	Commission refers to Bundeskartellamt review of Haniel/Fels deal in German building-materials sector, deepens probe into Dutch market
IP/01/1439	17.10.2001	Commission clears Philips acquisition of Marconi Medical Systems

IP/01/1455	19.10.2001	Commission clears takeover of German industrial bearings maker FAG Kugelfischer by rival INA
IP/01/1462	22.10.2001	Commission clears acquisition of Tempus by WPP
IP/01/1466	24.10.2001	Commission clears acquisition of Heller Financial by GE Capital
IP/01/1467	23.10.2001	Commission clears sale of Henkel's Cognis to Schroder Ventures and Goldman Sachs
IP/01/1499	26.10.2001	Commission clears acquisition of Beck's by Interbrew
IP/01/1509	29.10.2001	Commission clears HDPE joint venture between BP and Solvay and BP's acquisition of Solvay's polypropylene business
IP/01/1510	29.10.2001	The Commission authorises the takeover of Filtrauto, a French manufacturer of automotive filters, by its Italian rival Sogefi
IP/01/1511	30.10.2001	Commission authorises Cadbury Schweppes acquisition of Pernod Ricard's soft drinks business
IP/01/1552	8.11.2001	Commission clears Nordea acquisition of Postgirot
IP/01/1565	13.11.2001	Commission approves SCH's acquisition of AKB
IP/01/1559	13.11.2001	Commission authorises Koch Industries to acquire sole control of KoSa
IP/01/1564	13.11.2001	Commission clears Flextronics buy of Xerox's office-equipment business
IP/01/1578	13.11.2001	Commission clears a joint venture between ICA Ahold and Dansk Supermarked
IP/01/1579	14.11.2001	Commission clears sports rights venture between Canal+, RTL and Groupe Jean-Claude Darmon
IP/01/1609	19.11.2001	Commission approves takeover of Mannesmann Sachs by ZF Friedrichshafen
IP/01/1615	20.11.2001	Commission authorises acquisition by Enel of Endesa's subsidiary Viesgo
IP/01/1660	26.11.2001	Commission authorises the acquisition of Powergen by German energy company E.ON
IP/01/1661	26.11.2001	Commission clears purchase of two Deutsche Telekom cable units by Blackstone and CDPQ
IP/01/1691	29.11.2001	Commission clears Greek telecoms joint venture between electricity utility PPC (Greece) and Italian operator Wind
IP/01/1692	29.11.2001	Commission authorises takeover of DMV by Mannesmannröhren-Werke
IP/01/1697	29.11.2001	Commission clears change from joint to sole control of ECT, subject to conditions
IP/01/1709	30.11.2001	Commission refers review of Haniel/Ytong deal in German building-materials sector to Bundeskartellamt, deepens probe into Dutch market
IP/01/1736	5.12.2001	Commission deepens probe into Bayer's acquisition of Aventis Crop Science
IP/01/1753	6.12.2001	Commission clears joint venture between Norsk Hydro, and NutriSI in the field of specialty fertilisers
IP/01/1766	7.12.2001	Commission approves merger of French music channels Muzzik and Mezzo
IP/01/1767	7.12.2001	Commission clears Swedish joint venture between Saab and WM-Data for the provision of aerospace and automotive consulting services
IP/01/1805	12.12.2001	Commission clears acquisition of credit insurer NCM by Gerling
IP/01/1838	17.12.2001	Commission clears the acquisition of joint control of Austrian utility Steweag by Verbund and ESTAG
IP/01/1844	17.12.2001	Commission approves split-up of Concert telecoms JV between British Telecommunications and AT&T
IP/01/1846	18.12.2001	Commission clears takeover by Flextronics of Telaris Södra
IP/01/1881	20.12.2001	Commission clears Internet travel agency joint venture between Otto Versand and Sabre
IP/01/1900	21.12.2001	Commission authorises EdF's acquisition of parts of TXU Europe
IP/01/1901	21.12.2001	Commission clears non-life insurance venture between Sampo, Varma-Sampo, Skandia and Storebrand

1.2. Decisions under Article 8 of Council Regulation (EEC) No 4064/89

Reference	Date	Subject
IP/01/103	24.1.2001	Commission clears the merger between Metso and Svedala subject to conditions
IP/01/147	31.1.2001	Commission blocks acquisition of Metsä Tissue by SCA Mölnlycke
IP/01/175	7.2.2001	Commission clears purchase by EdF of a stake in German electricity firm EnBW subject to conditions
IP/01/364	14.3.2001	Commission clears joint ventures between British, Dutch and Singapore postal operators with conditions
IP/01/501	3.4.2001	Commission clears takeover of ADtranz by Bombardier, subject to commitments
IP/01/874	20.6.2001	Commission clears MAN's takeover of Auwärter (Neoplan)
IP/01/939	3.7.2001	The Commission prohibits GE's acquisition of Honeywell
IP/01/940	3.7.2001	Commission clears acquisition of ECT by Hutchison and the Rotterdam port authority, subject to commitments
IP/01/984	11.7.2001	Commission clears BASF's takeover of Eurodiol and Pantochim
IP/01/1069	25.7.2001	Commission clears venture between De Beers and LVMH but warns De Beers on supplier of choice agreements
IP/01/1320	26.9.2001	Commission clears acquisition of joint control over Hidroeléctrica del Cantábrico by Grupo Villar Mir and EnBW subject to conditions
IP/01/1393	10.10.2001	Commission prohibits acquisition of control of Legrand by Schneider Electric
IP/01/1436	17.10.2001	Commission prohibits CVC's acquisition of Austrian fibre company Lenzing
IP/01/1515	30.10.2001	Commission clears merger between Brazilian iron ore producers subject to undertakings
IP/01/1516	30.10.2001	Commission prohibits acquisition of Sidel by Tetra Laval Group
IP/01/1629	21.11.2001	Commission clears take-over of Haindl by UPM-Kymmene and Norske Skog

H — Judgments of the Community courts

Court of First Instance

Case	Date	Parties	Field
T-342/00 R 1	Order of 17.1.2001	Petrolessence and SG2R *v* Commission	Competition
T-156/98	Judgment of 31.1.2001	RJB Mining *v* Commission	ECSC

III — STATE AID

A — Overview of cases

1. Regional aid

Denmark

Regional growth environments ([156])

On 3 July, the Commission decided not to raise any objections to a scheme forming part of the Danish authorities'.dk21 strategy, which sets out a vision for business development in Denmark over the next 5–10 years. A regional growth environment is a regionally-based cooperation project. The environments are intended to meet the need to intensify and develop cooperation between non-profit private and public training institutions and research and technological institutions, on the one hand, and companies, on the other, with a view to improving the quality of the training and advisory services provided in the region. The State pays a grant to participating non-profit organisations covering 50 % of their costs, while participating companies have to cover their own costs in full.

Although the scheme is intended to benefit the regions as such, the Commission found that it could confer particular advantages on all participants in the projects, mainly because they had access to new information ahead of their potential competitors. The aid was found compatible under Article 87(3)(c) of the EC Treaty since it did not affect trading conditions to an extent contrary to the common interest.

Greece

Natural gas ([157])

On 6 June, the Commission decided to approve State aid in the form of grants and accelerated depreciation to three newly formed natural gas distribution companies in Attica, Thessaloniki and Thessaly. The aid is intended to promote the introduction of gas as a mainstream energy source. The Commission did not concur with Greece's arguments that the government's intervention was a general measure as it was part of an infrastructure project or that the measures did not affect trade between Member States. The Commission examined the grants and tax arrangements under the State aid rules of the EC Treaty and exempted them as regional aid on an ad hoc basis. Despite their limitation to one economic sector, the Commission found that the State aid measures had clear and obvious benefits for the whole region. The aid intensity (Attica 17 %, Thessaloniki 11.3 % and Thessaly 25.9 %) remains well below the maximum aid intensities allowed under the Greek regional aid map. The Commission in its decision stressed that the introduction of natural gas in Greece will provide an additional energy source which will enhance competition and result in lower prices for consumers. It is also expected that new direct and indirect job opportunities will be created and that there will be a positive impact on the environment.

([156]) Case N 126/2001 (OJ C 328, 23.11.2001).
([157]) Case NN 90/2000 (OJ C 333, 28.11.2001).

Spain

(a) Construction of a combined-cycle electricity production plant (Bahía de Bizkaia Electricidad) and a regasification plant (Bahía de Bizkaia Gas) in Bilbao ([158])

The Commission decided on 6 June to initiate a formal investigation under Article 88(2) of the EC Treaty into a Basque Government aid project notified by the Spanish authorities on 26 January. The investment project concerns the construction of a combined-cycle electricity production plant (Bahía de Bizkaia Electricidad — BBE) and a regasification plant (Bahía de Bizkaia Gas — BBG) in the Bilbao port area. The aid consists of grants of EUR 30 million to BBE and EUR 23.2 million to BBG, to be paid between 2000 and 2003, representing a gross intensity of 10 % of the investment cost. The aid recipients are the companies BBE and BBG, in which BP-Amoco, Repsol, Iberdrola and EVE each hold a 25 % stake.

The Commission noted that the project did not form part of any existing Commission-authorised aid scheme, but was a one-off. This being the case, under the regional aid guidelines, the Commission is required to check that any distortions of competition which the aid may entail are offset by beneficial effects of the project on the region concerned. In the Commission's view, the Spanish authorities have yet to demonstrate adequately that the project is warranted from the regional development point of view.

Moreover, the Commission considers that the project falls within the scope of the multisectoral framework on regional aid for large investment projects. Under this framework, the maximum aid intensity permitted for a given project depends on a series of factors, such as market trends for the product in the relevant geographic market, the capital/jobs ratio and the regional impact, i.e. the ratio of direct jobs to indirect jobs. In this respect, the Commission sees a need for a more thorough examination of the market situation in electricity in Spain to see whether it is in decline. The Commission also considers that the Spanish authorities will have to provide better supporting evidence regarding the number of indirect jobs projected and the eligibility of some of the costs.

(b) Research and development aid for the Zamudio plant (Basque Country) ([159])

On 20 June, the Commission decided to initiate proceedings under Article 88(2) of the EC Treaty in respect of a Basque Government aid project notified by the Spanish authorities on 15 December 2000. The aid is for research and development at Zamudio (Basque Country) aimed at developing two new types of low-pressure turbines and for tangible investment at the same site. The recipient is the firm Industria de Turbo Propulsores SA (ITP).

In the case of the research project, the Spanish authorities claim that the activities to be supported constitute 'precompetitive development activities' within the meaning of Annex I to the Community framework for State aid for research and development. The project is to run for four years (1999 to 2002). The aid is in the form of an interest-free loan of ESP 4 000 million (EUR 24.04 million) towards total eligible costs amounting to ESP 10 422 million (EUR 62.64 million), representing an intensity of 19.34 % gge.

The Commission expressed doubts as to whether some of the activities planned as part of the project could be classed as 'precompetitive development activities' within the meaning of Annex I to the framework, whether some of the eligible costs could be allowed under Annex II to the framework and finally whether the aid would have the incentive effect required by point 6 of the framework.

([158]) Case N 84/2001 (OJ C 231, 2.6.2001).
([159]) Case N 850/2000 (OJ C 274, 29.9.2001).

The investment project has a present worth of ESP 8 358 million (EUR 50.23 million) and is to cover a three-year period (2000–02). The aid is in the form of a grant worth ESP 1 102 million (EUR 6.62 million) at current prices, representing an intensity of 13.18 % gge and 9.80 % nge.

The Commission noted that the investment project did not form part of any existing Commission-authorised aid scheme, but was a one-off. In such circumstances, under the regional aid guidelines the Commission is required to check that any distortions of competition which the aid may entail are offset by beneficial effects of the project on the region concerned. The Commission took the view that it was unable, at that stage in the examination, to verify the arguments put forward by the Spanish authorities concerning the justification for the project on regional development grounds, such as its knock-on effect and contribution to economic development in the Basque Country. It also expressed doubts as to whether certain eligible costs were allowable under point 4.5 of the regional aid guidelines.

2. Sectoral aid

2.1. Shipbuilding

Spain

On 28 November, in Case C 40/00, the Commission decided to extend a formal investigation into the restructuring of Spanish shipbuilding to include all transactions that led to the creation of the IZAR shipbuilding group. The Commission doubted whether the prices paid by the State-owned military shipbuilding group Bazan (which then changed its name to IZAR) for a number of shipyards bought from the State-owned civil shipbuilding group Astilleros Españoles (AESA) and from the State holding company Sociedad Estatal de Participaciones Industriales (SEPI) were genuine market transactions and considered that they might therefore constitute aid to the new IZAR group. The Commission also doubted whether such aid would be compatible with the shipbuilding aid rules. It therefore decided to extend the investigation already initiated in respect of a transaction whereby AESA sold two shipyards and an engine factory to SEPI.

France

On 25 July, in Case C 74/99, the Commission decided to declare unnotified State aid to investors in a ship named *Le Levant* incompatible with the common market. The ship had been financed by private investors whose property it still was. It was operated by the firm CIL, which was also to become the eventual owner. The investors had been entitled to deduct their investment costs from their taxable income in accordance with a tax scheme (*Loi Pons*). For this kind of operation, the Commission must verify the development content of the project. In this case, it took the view that the vessel would not contribute in any significant way to the development of Saint-Pierre-et-Miquelon. As the unlawful aid had already been granted, it had to be recovered. The Commission considered that the investors, as the direct beneficiaries and current owners of the ship, should repay the aid.

2.2. Steel

A summary of the decisions adopted by the Commission in 2001 is given in the Commission report of 18 March 2002 (COM(2002) 145).

2.3. Motor vehicles

On 13 November, the Commission decided to extend the period of validity of the Community framework for State aid to the motor vehicle industry ([160]). All Member States agreed to the extension. The extension is valid for one year, i.e. until 31 December 2002, unless the new multisectoral framework on regional aid for large investment projects, replacing the specific sectoral framework for the motor vehicle sector, enters into force before that date.

Germany

On 18 July, after conducting a formal investigation, the Commission decided to reduce planned regional investment aid in favour of Volkswagen for a new car plant in Dresden ([161]). The assembly of the new model and the intermediate storage centre were planned to be located in Dresden and the new bodyshop and paintshop in nearby Mosel, both assisted areas within the meaning of Article 87(3)(a).

As for the necessity of the aid, the Commission concluded, on the basis of the documents received during the procedure, that production in the Czech Republic (in Prague and Kvasiny) had been considered by the company as a credible commercial alternative. The Commission based its assessment of the proportionality of the aid on two separate cost–benefit analyses: for the Dresden and Prague sites on the one hand and for Mosel and Kvasiny on the other. As regards the investment in Mosel, the planned aid intensity was lower than both the regional handicap and the regional aid ceiling. The Commission therefore authorised the planned aid for Mosel, amounting to DEM 65 million. As regards the investment in Dresden, the aid intensity planned by Germany exceeded the regional handicap. Consequently, the Commission authorised aid of DEM 80 million but found an excess amount of DEM 25.7 million to be incompatible with the common market.

On 20 December, after conducting a formal investigation, the Commission decided that Germany had to reduce planned regional investment aid in favour of DaimlerChrysler for the construction of a new engine plant in Kölleda (Thuringia), an assisted area within the meaning of Article 87(3)(a) ([162]).

As for necessity, Germany stated that the investment could be carried out at an alternative site in Hungary (at Nyergesujfalu). On the basis of the documents received, the Commission concluded that the site in Hungary was a credible commercial alternative. As regards the proportionality of the aid, the assessment of the cost–benefit analysis resulted in a regional handicap ratio for Kölleda of 31.93 %, which is lower than initially indicated by Germany. Owing to the significant increase in production capacity, the allowable aid ratio was further reduced by one percentage point to 30.93 %. Consequently, the Commission could only authorise aid amounting to 30.93 % of the eligible investment of EUR 185 million (net present value), namely EUR 57.22 million (net present value). The remaining EUR 6.58 million in notified aid was considered incompatible with the common market.

Italy

On 28 February, after conducting a formal investigation, the Commission cleared regional investment aid of ITL 78 billion (EUR 40 million) for the production of the new Punto model at the Fiat plant in Melfi (southern Italy) ([163]). The Commission studied the geographic mobility of the project and concluded that

([160]) OJ C 279, 15.9.1997.
([161]) Case 77/99 (OJ L 48, 20.2.2002).
([162]) Case C 61/01 (OJ C 263, 19.9.2001).
([163]) Case C 75/99 (OJ L 177, 30.6.2001).

the Fiat group's plant at Tychy in Poland would have been a viable alternative. To assess the proportionality of the aid, a cost–benefit analysis was carried out. The cost–benefit analysis compared the costs of the project at Melfi with those of the alternative location. As the planned aid intensity was below both the regional aid ceiling and the regional handicap intensity, i.e. the extra cost for locating the production in Melfi rather than in Tichy/Poland, the Commission concluded that the rules of the Community framework for State aid to the motor vehicle industry had been respected and that the proposed aid was compatible with the Treaty.

On 6 June, the Commission took a negative final decision on research and development aid that the Italian authorities were proposing to grant to Iveco SpA, a subsidiary of the Fiat group engaged in the design and production of commercial vehicles ([164]). The planned aid amounted to EUR 16 million in nominal terms towards a EUR 111 million investment project for the renewal and expansion of Iveco's range of light vehicles.

The Commission concluded that the planned aid was not necessary for Iveco to develop the new light van range. While the project would lead to an improved product compared with the previous model, the innovative character of the investment was limited to what was common in the motor vehicle industry in the context of the development and launch of new models. According to the rules governing State aid for R&D, aid can be granted only if it serves as an incentive for firms to undertake R&D activities in addition to their normal day-to-day operations.

Spain

On 23 October, the Commission authorised a capital injection carried out in 1999 in favour of the Spanish motor vehicle manufacturer Santana Motor, having found that the measure did not constitute State aid ([165]). It also partially approved investment aid to Santana in relation to its 1998–2006 strategic plan.

Applying the rules on capital injections into companies that involve public resources, the Commission concluded that Santana's profitability prospects were good enough to justify the capital injection from the point of view of a market economy investor. It therefore decided that the capital injection did not constitute aid. It also concluded that the regional investment aid was compatible with the common market up to a maximum of EUR 8.68 million.

United Kingdom

On 17 January, in Case C 51/2000, the Commission cleared regional investment aid of GBP 40 million for Nissan Motor Manufacturing Ltd. The aid is for conversion of the car plant in Sunderland to produce the new Micra model. The Commission's initial doubts, which had prompted it to initiate formal investigation proceedings in September 2000, had not been borne out.

2.4. Multisectoral framework

Belgium

On 6 June, in Case C 36/2001, the Commission decided to initiate a formal investigation into a measure taken by the authorities in the Walloon Region of Belgium involving the Beaulieu group, one of the

([164]) Case C 41/00 (ex N 670/99) (OJ L 292, 9.11.2001).
([165]) Case C 49/00 (ex NN 24/99) (OJ L 92, 9.4.2002).

leading manufacturers of carpets in Europe, which is based in the Flemish Region of the country. In the course of its enquiries in the Verlipack case, the Commission became aware of possible State aid to the Beaulieu group. This was a fresh measure taken by the Walloon region, and the Commission accordingly asked the Belgian central government for information to enable it to assess the measure in the light of the rules in force. From the information supplied, the Commission learnt that in December 1998 the Beaulieu group had settled a debt of BEF 113 712 000 owed to the Walloon Region by transferring 9 704 shares in Holding Verlipack II, the nominal value of which was BEF 100 million but the real value of which must have been significantly lower, given the assets position of the company at the time.

Germany

On 8 May, in Case C 1/2000, the Commission authorised a subordinated loan from the State-run Kreditanstalt für Wiederaufbau (KfW) of EUR 76.7 million (DEM 150 million) and an 80 % federal guarantee for a loan of EUR 63.9 million (DEM 125 million) to the German construction company Philipp Holzmann AG. The Commission came to the conclusion that the restructuring measures were appropriate to restore the company's long-term viability and to deal with past mistakes. In that context, the Commission took into account modifications to the original plan and authorised a one-year credit line of DEM 125 million (EUR 63.9 million) provided by KfW at the end of 2000.

On 8 May, in Case N 783/2000, the Commission decided not to raise any objections to proposed aid amounting to EUR 119 080 000 for Wacker Chemie GmbH Nünchritz, for the extension and modernisation of the former Hüls AG silicone plant. The Commission concluded that the proposed 26.77 % gge intensity was below the maximum aid intensity allowable under the multisectoral framework for this particular project. In assessing the compatibility of the aid, the Commission took into account the market situation, the number of jobs directly created by the project and the beneficial effects of the investment on the economies of the assisted regions ([166]).

On 18 July, in Case N 184/2000, the Commission approved EUR 27.6 million in investment aid for Kartogroup in Leuna, Saxony-Anhalt. The investment concerned the setting-up of a tissue plant to produce toilet paper and kitchen towels. The total investment costs amounted to EUR 85 million (DEM 166 million) and the aid approved represented 35 % of the eligible investment costs. The investment project creates 154 permanent jobs in an area suffering from high unemployment. The Commission found the aid compatible with the multisectoral framework on regional aid for large investment projects ([167]).

Spain

On 19 September, in Case C 69/2001 (ex NN 41/2001), the Commission opened a formal investigation on account of its doubts as to whether State aid for Porcelanas Principado SL was compatible with the common market. Following a complaint from a competitor, Spain informed the Commission on 8 May that Sociedad Regional de Promoción del Principado de Asturias (SRPPA), a State-controlled company, had on 18 January granted a subordinated loan with participation in profits to Porcelanas Principado SL, a limited liability SME active in the porcelain and china sector and established in Gijón (Asturias), an Article 87(3)(c) area.

([166]) The ceiling for regional aid in the assisted area concerned is 35 % gross for large companies.
([167]) OJ C 107, 7.4.1997.

On the same date, in Case N 295/2001, the Commission decided to raise no objection to the Spanish authorities' intention to grant investment aid to GE Plastics SL. The new polycarbonate factory, to be built in Cartagena (Murcia), will be assisted to the tune of EUR 152 million.

Again on 19 September, in Case C 71/2001 (ex NN 80/2001), the Commission decided to open a formal investigation into aid allegedly granted to porcelain manufacturer Grupo de Empresas Álvarez (GEA), which is established in Vigo (Galicia). The Commission recalls that it decided back in 1997 to authorise certain aid measures for the group on condition that no further support be provided to GEA during the implementation of its restructuring plan. The Commission has serious doubts as to whether this condition has been met.

Netherlands

On 13 February, in Case C 11/99, the Commission adopted a decision on several aid measures for SCI Systems in connection with its investment in a factory for the assembly of Hewlett Packard desktop PCs in Heerenveen. The Commission approved investment aid and aid for job creation linked to investment as the combined aid did not exceed the applicable regional aid ceiling. The expected eligible cost amounted to EUR 31.1 million and the aid would amount to about EUR 6.2 million. Approval is conditional on the jobs created being maintained for five years. The Commission also found against several ad hoc measures. SCI had been able to buy land cheaply; the aid element in the transaction was calculated by the Commission at EUR 753 000. Other aid elements were linked to the rent for and the renovation and security of temporary production facilities provided by a public regional development organisation. This involved total State aid of EUR 756 000. The Commission considered that the free transport provided for SCI's employees to and from the temporary facilities benefited the individual employees and did not constitute State aid. SCI had neither under the relevant collective employment agreement nor under the individual contracts with its employees any obligation to provide such public transport. Finally, EUR 100 000 granted for the temporary housing of staff was below the *de minimis* threshold.

2.5. Financial services

Germany

On 8 May, in Case E 10/2000, the Commission adopted a formal recommendation proposing that the German Government adopt appropriate measures in order to bring the system of State guarantees for public-law credit institutions (*Anstaltslast* and *Gewährträgerhaftung*) into line with the State aid rules of the EC Treaty.

Anstaltslast may be translated as 'maintenance obligation'. It means that the public owners (for example federal government, *Länder*, municipalities) of the institution are responsible for securing its financial base and continued operation throughout its existence. *Gewährträgerhaftung* may be translated as 'guarantee obligation'. It implies that the guarantor will meet all liabilities of the bank which cannot be met from its assets. Both guarantees are unlimited in both time and amount. Nor do credit institutions have to pay anything for them. The German public-law credit institutions which benefit from these guarantees are the *Landesbanken*, a number of special-purpose banks and around 580 savings banks of widely varying size.

The adoption of the recommendation followed intensive contacts between the Commission and the German authorities on the future of the system of State guarantees for public-law credit institutions.

The recommendation adopted on 8 May 2001 stipulates that the guarantee system is to be considered State aid within the meaning of the Treaty: the measures are based on State resources and favour certain groups of undertakings and they distort competition and affect trade within the Community. However, since the system already existed when the EC Treaty entered into force in 1958, the aid qualifies as 'existing' aid regarding which the Commission can only demand changes for the future but cannot act retrospectively.

According to the Commission recommendation, compatibility with the EC rules should be achieved by 31 March 2002. However, the recommendation expressly provides that the Commission may decide to agree to a later date if it considers this objectively necessary and justified in order to allow an appropriate transition for certain public banks to the new situation. The Commission is aware of the need to protect existing creditors who have provided funds to the public-law credit institutions on the strength of the guarantee system.

On 25 July, in Case NN 53/2001 (Bankgesellschaft Berlin (BGB)), the Commission approved rescue aid of some EUR 2 billion to bring the bank's own funds ratio back to its pre-crisis level of 9.7 %. The bank had incurred substantial losses in 2000 mainly through real-estate operations which went wrong. The approval of rescue aid was based on the undertaking given by the German authorities that they would present a restructuring plan within six months and was limited to this period or to the time the Commission needed to take a decision on the restructuring plan. Under this second examination, the Commission will have a close look at the necessary volume of the aid and will ask for compensatory measures to offset the competition-distorting effect of the aid if this is found to be appropriate.

2.6. Services

Spain

On 3 July, in Case C 33/98, the Commission took a partly negative decision regarding aid granted to Babcock Wilcox España (BWE). In April 1998, the Commission had initiated a formal investigation under the State aid rules of the EC Treaty into two capital injections, both of EUR 60.1 million (ESP 10 000 million), that Sociedad Estatal de Participaciones Industriales (SEPI) had made in 1994 and 1997 into its wholly owned subsidiary BWE. In July 1999, the Commission decided to extend the procedure to include in the investigation a further capital increase of EUR 246.4 million (ESP 41 000 million) notified by the Spanish authorities. Finally, in July 2000, the Commission extended the procedure again to cover aid totalling EUR 463.5 million (ESP 77 110 million) proposed under the privatisation arrangements between SEPI and Babcock Borsig AG. The Commission decided to prohibit EUR 21.44 million in aid which the Spanish authorities intended to grant to the ongoing business for future investments in the equity of joint ventures through which it will contract future orders. The Commission judged that, unlike other assisted investments included in the industrial plan, this disbursement was very close to the market, formed part of the commercial policy of the company and, consequently, its assistance by the State could seriously distort competition to an extent contrary to the common interest.

France

On 13 November, in accordance with the procedure provided for in Article 88(1) of the EC Treaty and Article 18 of Regulation (EC) No 659/1999, the Commission proposed that France adopt appropriate measures in Case E 46/2001, namely that it put an end to the exemption from the tax on health insurance contracts enjoyed by mutual and provident societies. Alternatively, the French authorities may also grant the exemption in return for the performance of a service of general economic interest, ensuring that the

aid resulting from the exemption does not exceed the costs imposed by the constraints assumed for this purpose.

Italy

On 19 September, the Commission concluded that any State aid involved in ENI's 1994 capital injection of EUR 1.5 billion (ITL 3 000 billion) into Enichem complied with the guidelines on restructuring aid and was therefore compatible with the common market.

On 11 December, the Commission decided that the tax measures for banks introduced by Italian Act No 461/98 of 23 December 1998 and the related Legislative Decree No 153/99 of 17 May 1999 were incompatible with the State aid rules laid down in the EC Treaty. The measures in question conferred a discriminatory competitive advantage on the banks that participated in the operations being assisted. Italy must now recover the amounts that the banks benefiting from tax exemptions avoided having to pay. The Commission's investigation into State aid to banking foundations (as distinct from banks themselves) continues. The status of these measures still needs to be defined. The Commission also examined whether the special tax treatment could be considered to be restructuring aid. However, the conditions for applying the Community guidelines on State aid for rescuing and restructuring firms in difficulty were not met. The aid was not notified individually to the Commission; the banks that benefited from the aid were not in difficulties, nor was the aid intended to restore the firms' long-term viability; finally, the guidelines require measures to be taken to mitigate as far as possible any adverse effects of the aid on competitors (usually this takes the form of a reduced market presence of the company after its restructuring). No such situation was envisaged in the present case.

Portugal

On 13 November, the Commission initiated formal investigation proceedings in respect of a number of ad hoc measures granted to the Portuguese public broadcaster RTP, since it had doubts as to whether or not the Portuguese State had overcompensated RTP's reimbursable public-service costs during the period 1992–98 to the tune of EUR 83.6 million. The initiation of proceedings followed three complaints that the Commission received in 1993, 1996 and 1997 from the Portuguese private broadcaster SIC. On 7 November 1996, the Commission already took a decision on the first and part of the second complaint, which was annulled by the Court of First Instance ([168]).

2.7. Agriculture

Overview of cases

Overall, the Commission received 379 notifications of planned State aid measures in the agricultural and agri-industrial sector in 2001. It also started the examination of 39 aid measures which had not been notified before under Article 88(3) of the EC Treaty. The Commission raised no objections to 212 measures. The procedure provided for in Article 88(2) was launched in respect of 15 cases in which there were serious doubts as to the compatibility of the measures with the common market. The Commission terminated the Article 88(2) proceedings in five cases, taking a negative final decision in two of them.

([168]) Judgment in Case T-46/97.

The overview of cases which follows includes a selection of those which raised the most interesting issues of State aid policy in the agricultural and agri-industrial sector in 2001.

Exceptional occurrences: BSE crisis — income aid

In accordance with Article 87(2)(b) of the EC Treaty, aid to make good the damage caused by exceptional occurrences is compatible with the common market. The concept of exceptional occurrence is not defined in the Treaty and the Commission applies this provision on a case-by-case basis, after appraisal of the specific event concerned.

The ongoing crisis in the beef market, which had been caused by a BSE scare at the end of the previous year, was recognised by the Commission as such an exceptional occurrence.

The Commission accordingly authorised Austria, Belgium, France, Germany, Italy and Spain to pay income aid to beef farmers who had suffered losses between November 2000 and June 2001 because of the consequences of the BSE crisis. No requests to pay such aid were received from other Member States. In all the cases, the Commission established that there was no overcompensation at sectoral level or at individual farm level. These aid measures can be summarised as follows:

Austria

On 25 July, the Commission authorised income aid amounting to approximately EUR 2.9 million (some ATS 40 million) granted in the province of Carinthia ([169]).

Belgium

On 7 November, the Commission authorised Belgium to pay out the second instalment of direct aid to beef farmers, totalling approximately EUR 29.7 million (BEF 1 200 million) ([170]). An equivalent amount was already authorised by the Commission on 25 July under Case N 437/2001. The aid is targeted at beef farmers who have been particularly affected by the consequences of BSE because of the dependence of their income on beef production.

France

The combined value of the income aid ([171]) cleared by the Commission on 25 July is approximately EUR 259 million (FRF 1 700 million), comprising direct aid of approximately EUR 152.4 million (FRF 1 000 million), reimbursement of interest payments involving aid estimated at EUR 60.9 million (FRF 400 million), and consolidation loans involving aid estimated at approximately EUR 45.7 million (FRF 300 million).

Germany

On 25 July, the Commission authorised Germany to grant income aid in the *Länder* of Bavaria ([172]): approximately EUR 28 million (DEM 55 million); Thuringia ([173]): approximately EUR 4 million

([169]) Case NN 58/2001.
([170]) Cases N 437/2001 and N 657/2001.
([171]) Case NN 46/2001.
([172]) Case N 193/2001.
([173]) Case N 170/2001.

(DEM 8 million); Lower Saxony ([174]): approximately EUR 5 million (DEM 10 million); and Saxony ([175]): approximately EUR 2.05 million (DEM 4 million) per year for 2001 and 2002.

On 2 October, the Commission authorised Germany (*Land* of Baden-Württemberg) ([176]) to pay income aid worth some EUR 5.1 million (DEM 10 million) to beef farmers who suffered losses between November 2000 and June 2001 because of the consequences of the BSE crisis.

On 30 October, the Commission authorised Germany (*Land* of Hessen) ([177]) to pay aid to beef farmers who suffered losses between November 2000 and December 2001 because of the consequences of the BSE crisis. In particular, the Hessen emergency programme for BSE grants income aid totalling DEM 15 million (EUR 766 937.82) in the form of subsidised loans to farmers affected by the BSE crisis.

Italy

On 25 July, the Commission authorised income aid to beef farmers of up to approximately EUR 77 million (some ITL 154 000 million) ([178]).

On 30 October, the Commission authorised Italy (Lombardy) ([179]) to grant aid of approximately EUR 2.32 million to beef farmers suffering from liquidity problems due to the reduction of their income during the BSE crisis period. The aid, in form of subsidised short-term loans, consists in a contribution by the region of 3.5 percentage points towards the loan interest, the rest (at least 1.5 percentage points) being charged to farmers.

Spain

The income aid authorised by the Commission on 25 July relates to two regions: Asturias ([180]): approximately EUR 6 million (ESP 1 000 million); and Cantabria ([181]): approximately EUR 5.98 million (ESP 994 million).

Other BSE-related aid measures

Pursuant to Article 87(3)(c) of the EC Treaty, the Commission authorised a series of other BSE-related aid measures, notably in Austria, Italy and Germany. These measures relate to issues such as the costs of BSE tests, compensation for slaughterhouses, compensation for the value of destroyed animals, the restocking of herds on farms where BSE has been found, and the costs of storage, transport and disposal of processed animal proteins and animal feed. In most of these cases, the Commission considered that the measure complied with the rules on State aid granted under programmes for fighting animal diseases, as laid down in point 11.4 of the Community guidelines for State aid in the agriculture sector ([182]). For example:

([174]) Case N 164/2001.
([175]) Case N 248/2001.
([176]) Case N 150/B/2001.
([177]) Case N 249/2001.
([178]) Case N 113/A/2001.
([179]) Case N 411/2001.
([180]) Case N 269/2001.
([181]) Case N 377/2001.
([182]) OJ C 28, 1.2.2000; corrigendum OJ C 232, 12.8.2000.

Austria

On 2 October, the Commission authorised Austria to grant various BSE-related aid measures with a budget of more than EUR 29 million ([183]). Various types of aid are involved: aid is given to compensate for the fall in the value of processed animal proteins and animal feed additives in feedingstuffs and premixed feed which contain such processed animal proteins. Aid can also be given for the costs of storage, transport and disposal of processed animal proteins and animal feed, additives in feedingstuffs and premixed feed which contain such processed animal proteins, risk material and milk which could not be used or products produced on the basis thereof. Finally, aid can also be given to compensate for the loss of income on farms blocked because of BSE, and lastly for test costs.

Germany

On 7 September, the Commission authorised Germany (*Land* of Baden-Württemberg) ([184]) to pay aid for BSE tests, for compensating slaughterhouses for the value of destroyed animals, and for farms where BSE had been found. The three aid measures are all limited in time: until the end of 2002 for the BSE tests and the compensation for BSE-affected farms and until the end of 2001 for the measure pertaining to slaughterhouses. At the end of 2002, the aid for BSE tests and the compensation for BSE-affected farms will be reviewed in the light of the strategy applied at that time for combating BSE.

By decision of 25 October, the Commission authorised the payment of State aid under two measures, one in the *Land* of Bavaria ([185]) amounting to approximately EUR 10 million (DEM 20 million) to compensate for the value of animal feed which had to be destroyed, as well as approximately EUR 6 million (DEM 12 million) in compensation for farmers on whose farms BSE had been found. The second relates to the *Land* of Saxony ([186]) and represented approximately EUR 2 million (DEM 4 million) to pay for the costs of restocking herds on farms where livestock had been culled on the instructions of public authorities.

On 30 October, the Commission authorised an emergency programme for BSE in the *Land* of Hessen ([187]). Among the measures listed in the programme, Hessen will compensate up to 100 % of the costs of transport and disposal of animal feed containing MBM produced before 2 December 2000; the costs of BSE tests for cattle of more than 24 months and for sheep; and destruction of the animals and the economic value of the carcasses and the milk in suspected or confirmed BSE cases. The total aid granted within the approved scheme amounts to EUR 1 955 689.

Italy

The scheme authorised on 25 July ([188]) comprises State aid other than income aid — for example compensation to farmers where BSE has been found, restocking aid, and national part-financing for the 'purchase for destruction scheme' — bringing the total volume of aid, including the EUR 77 million income aid, up to EUR 150 million (some ITL 300 000 million).

([183]) Case N 114/2001.
([184]) Case N 150/B/2001.
([185]) Case N 174/2001.
([186]) Case N 248/2001.
([187]) Case N 249/2001.
([188]) Case N 113/A/2001.

Animal diseases: foot-and-mouth disease in the United Kingdom

Most of the aid notified by the United Kingdom to the Commission during the year provided for measures designed to help farmers overcome the financial and economic difficulties caused by the outbreak of foot-and-mouth disease which affected most of the country with strong repercussions on the agricultural sector.

In this respect, two major aid schemes were approved by the Commission: on 3 April, it approved the outgoers mark 2 scheme ([189]), which was designed to help pig producers hit by FMD who wished to leave pig farming permanently to do so. The aid scheme had a planned budget of GBP 5 million. Shortly afterwards, on 6 June, the Commission also authorised the livestock welfare disposal scheme ([190]), which was designed to address the animal welfare problems arising from the movement restrictions put in place to control FMD. The aid scheme, which had a planned budget of GBP 6 million a week, included payment towards the costs of the transport, slaughter, rendering, incineration and disposal of carcasses, veterinary costs, and compensation to livestock producers subject to movement restrictions, who were offered the possibility of disposing of their animals where State-contracted veterinarians confirmed that the welfare of the animals was compromised by the movement restrictions.

Opening of formal investigations: compensating energy prices

Spain: aid to compensate farmers for high fuel prices

On 11 April, the Commission decided to initiate a formal State aid investigation into a series of tax measures in favour of agriculture introduced by Spain in the wake of the rise in energy prices in 2000 ([191]). The Commission questions the compatibility with the common market of the measures introduced by the Spanish Government. At this stage, the Commission cannot rule out the possibility that the measures under investigation may constitute pure operating aid granted to compensate the agricultural sector for the higher price of fuel. As a general rule, such operating aid cannot be authorised by the Commission. In so far as aid of this type has already been granted, and if the investigation confirms the Commission's doubts, the Commission would have to ask the Spanish authorities to recover the aid from the recipients.

Italy (Sardinia): aid to compensate farmers for the high price of gas oil

On 25 July, the Commission initiated the formal investigation procedure with respect to aid to compensate farmers in Sardinia for the higher price of gas oil compared with that of natural gas ([192]). The measure is contained in a comprehensive law for Sardinia, called *Testo Unico*, which regulates the granting of a large number of different aid measures to the agricultural sector. The Commission does not have objections to the rest of the *Testo Unico*.

According to the Sardinian authorities, the island lacks a natural gas pipeline network. This obliges farmers to use much more expensive gas oil. The aid aims to overcome this structural handicap and thus restore what the Sardinian authorities regard as normal conditions of competitiveness. However, the Commission considers at this stage that State aid which exclusively and artificially reduces farmers'

([189]) Case NN 24/2001.
([190]) Case NN 25/2001.
([191]) Case C 22/2001 (ex NN 19/2001) (OJ C 172, 16.6.2001).
([192]) Case C 60/2001 (ex N 47/2001).

production costs is operating aid. Such aid does not normally bring about any lasting improvement for the sector. As soon as the aid is stopped, the old problem reappears. Problems of this type should be solved by other means. For example, Commission rules for State aid for environmental protection provide for possibilities to grant aid to locally available renewable energies. The proposed aid, however, would not create any incentive to shift from fossil fuels to renewable energy sources. It would rather appear to inhibit such structural changes.

Italian finance act for 2001

On 3 October, the Commission opened a formal investigation ([193]) into additional financing of EUR 119 million (ITL 230 000 million) for an exceptional aid package of EUR 100 million (ITL 200 000 million) which was approved by the Council in 1997 on the basis of the third subparagraph of Article 88(2) of the EC Treaty. In that instance, Italy applied to the Council for exceptional approval of the aid measure by unanimous vote after the Commission had initiated the formal investigation procedure with respect to the aid. The measure in question provided for the assumption of responsibility on the part of the State for payment of sums due by members of agricultural cooperatives who had personally stood surety in favour of the cooperatives in the event of established insolvency of the latter.

In initiating the procedure, the Commission considered that the purpose of the measure was to ensure retrospective payment of aid for the operation of cooperatives and that the operation itself would entail the retrospective expunging of cooperatives' liabilities. Because of its exceptional nature, the Council's approval of this aid measure could not be regarded as a *de facto* authorisation for further refinancing of the same aid measure, especially on account of the serious doubts expressed in the first instance by the Commission. The Commission therefore believes that the new financial appropriation needs to be assessed on its merits on the basis of the applicable Community provisions.

The Commission also opened, as part of the same proceedings, a formal investigation into aid for rescuing and restructuring companies in difficulty and aid for promotion and research and development. The last measure is to be partly financed through a parafiscal charge levied on both domestic and imported products. The Commission followed its established practice in the field as well as the Court's case-law, according to which aid financed from parafiscal charges which also applies to imported products is in principle incompatible with the common market in that imported products cannot benefit from the aid scheme in the same way as domestic ones. Unless the Member State is able to prove that this is not the case, aid financed in this way is likely to result in a clear distortion of competition.

This will be examined in the course of the investigation. The Commission took the view, however, that some of the R&D measures envisaged do not constitute State aid in that they will be conducted by public institutions in the public interest.

AIMA programme: aid for the poultry industry in Italy

On 25 July, the Commission decided to open a formal investigation into the AIMA programme ([194]). The Italian intervention agency AIMA intends to grant compensation to Italian poultry producers for loss of income due to the dioxin crisis in Belgium in 1999, which is claimed to have caused a substantial fall in production and trade and a sharp drop in the consumption of poultry products in Italy. The amount of the aid, ITL 20 000 million (EUR 10 323 138), is the difference between average prices in countries not

([193]) Case C 73/2001 (ex N 824/A/2000).
([194]) Case C 59/2001 (ex 797/1999).

affected by the crisis and prices in Italy in June and July 1999 (the period to which the compensation relates). The Commission takes the view that market disruption as a result of consumer concerns about dioxin does not in itself constitute an exceptional event. Consequently, if Italy cannot demonstrate that the disruption was exceptional, the aid cannot be authorised.

Support for improving the processing and marketing conditions for agricultural products in Italy (Veneto)

On 2 April, the Commission decided to open a formal investigation into investment aid notified by the Italian authorities ([195]). Under Article 35 of Regional Act 5/2000 ([196]), the Italian authorities wish to introduce aid with an intensity of up to 40 % for investment in the processing and marketing of agricultural products by 36 agro-industrial firms which submitted a financing request pursuant to Regulation (EC) No 951/97 ([197]) during the 1994–99 programming period ([198]), began the work but did not receive any co-financed public aid owing to the lack of funds.

On the basis of the information available, the Commission cannot rule out the possibility that the scheme may consist of aid granted retrospectively for activities already begun by the recipient, which would therefore not display the requisite incentive effect and would have to be regarded as operating aid since its sole purpose would be to relieve the recipient of a financial burden.

Framework aid schemes in Italy

During the year, the Commission approved a number of large-budget framework schemes covering the entire range of activities involved in the processing/marketing of agricultural products.

One of them, relating to both the processing and the marketing of agricultural products ([199]), has a budget of EUR 500 million. The Commission also approved the 'Sviluppo Italia' scheme ([200]), a publicly owned company replacing the former RIBS and Itainvest and also financing projects in the field of the processing/marketing of agricultural products. The budget earmarked for this scheme amounts to around EUR 1 billion.

The Commission also approved the agricultural section of a major investment aid scheme ([201]) open to any firm located in the Italian regions eligible for the derogations in Article 87(3)(a) and (c) of the EC Treaty. The scheme applies to firms in the agricultural sector (the aid to sectors other than agriculture was dealt with in separate decisions). The measures pursue regional development objectives. The scheme, which is to operate until 31 December 2006, has an annual budget of around EUR 4.6 billion (ITL 9 000 billion), which also covers sectors other than agriculture. The aid is granted in the form of tax credits.

([195]) Case C 17/2001 (ex N 98/2000) (OJ C 140, 12.5.2001).

([196]) The act is entitled 'General measure refinancing and amending regional acts relating to the establishment of the region's annual and multiannual budgets'.

([197]) Regulation on improving the processing and marketing conditions for agricultural products (OJ L 142, 2.6.1997).

([198]) The operational programme for Veneto was approved by Commission Decision 96/2598/EC of 2 October 1996.

([199]) Case N 558/2000, Commission decision of 27.3.2001 (OJ C 107, 7.4.2001).

([200]) Case N 559/2000, Commission decision of 27.3.2001 (OJ C 107, 7.4.2001).

([201]) Case C 46/2000, Commission decision of 13.2.2001 (OJ L 144, 30.5.2001).

Aid to wine producers in Italy (Sicily)

On 17 October, the Commission adopted a negative final decision in Case C 61/96 ([202]), concerning aid which the Region of Sicily intended to grant to wine producers (up to EUR 1 million), to compensate them for plantation rights they could not use because of a drought, and to handicraft companies (up to EUR 5 million) in the form of short-term loans. Since aid to wine producers was meant to compensate for non-valid rights, in contrast with the wine CMO rules, and subsidised short-term loans could have been granted also to handicraft companies engaged in the production, marketing and processing of agricultural products, the Commission concluded that the measures had to be regarded as operating aid which is prohibited in the agricultural sector.

Aid to fruit and vegetable producers in Greece

On 31 January, the Commission adopted a positive final decision under Article 87(3)(c) of the Treaty on Greek aid to fruit and vegetable producers ([203]). The aid, totalling EUR 265 000, consisted of financial compensation for producers in Thessaloniki whose watermelon and melon crops had been seriously damaged by field mice in the summer of 1997. The Commission found that the criteria for plant diseases were applicable in this case because, although attack by field mice did not constitute a plant disease, the effects were identical, i.e. destruction of the crop by live external agents. The criteria were therefore applied by analogy.

Programme to control agricultural pollution in France

On 30 October, the Commission authorised a French measure renewing aid for investment in agricultural holdings under the programme to control agricultural pollution ([204]). The programme is a response to the need to improve water quality by incorporating environmental concerns in farming practices. The aid scheme, which has a budget of EUR 886 million for the period 2001–06, is aimed at promoting investments to reduce pollution caused by livestock manure.

One of the programme's aims is to speed up compliance with Council Directive 91/676/EEC of 12 December 1991 ([205]), attaching priority to vulnerable areas where livestock farming has been responsible for pollution by nitrates. In authorising the aid, the Commission took into consideration the fact that some of the provisions of the directive require investments on the holding, such as the construction of additional storage capacities, and the obligations imposed on livestock farmers can be regarded as new rules for the purposes of the guidelines for State aid in the agricultural sector. While concluding that the directive could not be regarded as a new rule *per se*, the Commission took account of the fact that France's initial action programme for implementing the directive had not been adopted until 1997 and that the first actual obligations as to results imposed on livestock farmers under that programme were even more recent. The directive furthermore does not contain specific obligations with which operators must comply without prior action by the Member State.

The Commission accordingly concluded that the aid served to finance investments aimed at improving the environment and enabling agricultural holdings to adjust to new rules within the meaning of point 4.1.1.3 of the agricultural guidelines. In the Commission's view, any other interpretation would be

([202]) Case C 61/96, Commission decision of 17.10.2001, OJ L 64, 7.3.2002.
([203]) OJ L 93, 3.4.2001.
([204]) Case N 355/2000, OJ C 350, 11.12.2001.
([205]) OJ L 375, 31.12.1991.

tantamount to penalising livestock farmers for a Member State's failure to take action on the legal front. The Commission also considered that the human and financial scale of the programme (around 100 000 beneficiaries) and the challenge for the environment in France and Europe were factors not to be overlooked in its assessment.

Agrimonetary aid

The United Kingdom notified several requests to grant agrimonetary compensation in the beef, sheep and dairy sectors ([206]). Some of the requests concerned the payment of the second tranche of aid for which the United Kingdom had decided not to pay the national contribution to the first tranche.

For the requests concerning the payment of first tranches notified during the year, the United Kingdom decided, given the serious problems created by animal diseases in the country, also to grant the national contribution to the financing of the aid.

2.8. Fisheries

Italy, Netherlands

Rise in fuel costs ([207])

The Commission initiated formal proceedings to investigate Italian and Dutch aid schemes to compensate fishermen for increases in fuel costs in 2000. In the case of Italy, three types of measure are involved: payment of flat-rate compensation calculated according to the power of the vessel, reductions in social security contributions and tax credits. In the case of the Netherlands, the measure takes the form of a grant to share-fishermen to reimburse the social security contributions they paid in 2000. The Commission takes the view that the Italian and Dutch measures constitute operating aid and are therefore incompatible with the common market. During the preliminary examination, neither Italy nor the Netherlands provided the Commission with any information justifying an exception to that principle.

Italy

(a) Aid for fishermen and producers of shellfish ([208])

The Commission authorised an aid scheme for fishermen in the Adriatic who had to suspend fishing in 2000 as a result of the spread of mucilage, a naturally-occurring gelatinous substance which appeared during spring 2000 and developed until June before starting to disappear in July. The phenomenon had an adverse impact on both fishermen and shellfish producers. As it sticks to fishing nets, mucilage hinders normal fishing activities, rendering them impossible when the phenomenon is most acute. It also has an effect on sedentary species, such as shellfish, as it reduces the amount of oxygen in the water, leading to the death of both wild and farmed shellfish. The authorisation covers a period of only one month. The Commission initiated the formal investigation procedure as regards the aid granted for the period after 1 July since the suspension of fishing activities after that date could not be linked to the presence of mucilage. Italy justified that stoppage on the grounds of the need to allow fish stocks to develop. However, it did not present a recovery plan as required by the Community rules allowing such aid

([206]) Cases N 155/2001, N 156/2001, N 157/A/2001, N 157/B/2001, N 158/A/2001, N 158/B/2001 and N 565/2001.
([207]) OJ C 179, 23.6.2001.
([208]) OJ C 25, 29.1.2002.

schemes. The aid granted by Italy over the period concerned consequently displays the characteristics of operating aid which, according to the guidelines for the examination of State aid to fisheries and aquaculture, is incompatible with the common market.

The compensation for shellfish producers was fixed at a maximum of 30 % of the loss recorded in relation to the income of previous years. However, the Commission did not have the evidence required to show that the amount concerned did not represent more than the actual losses incurred by shellfish producers, and it therefore opened a formal investigation into that aspect of the measure.

(b) Temporary cessation of fishing activities in the Tyrrhenian and Ionian Seas ([209])

The Commission also initiated formal investigation proceedings in respect of a scheme providing compensation for temporary cessation of activities in the Tyrrhenian and Ionian Seas. These stoppages were intended to encourage the development of fish resources and concerned vessels using pelagic trawls. On the basis of the information provided by the Italian authorities, this cessation did not meet the necessary conditions for the allocation of aid as it did not appear to be related to any specific recovery plans. The Commission therefore took the view that the compensation constituted operating aid.

United Kingdom

Purchase and leasing of fish quotas ([210])

The Commission opened a formal investigation into two State aid schemes in the United Kingdom relating to the financing by the Shetland and Orkney Islands Councils of the purchase and leasing to local fishermen of fish quotas. The objective of these schemes was to reserve track records giving entitlements to annual quotas for local fishing fleets. According to the UK authorities, this was done because local vessel owners have difficulties in obtaining the necessary funding to acquire such track records, which are seen as intangible assets that cannot be used as security for loans from financial institutions. Under certain conditions, these track records can be sold independently from the vessel to which they have been allocated. A *de facto* market in these track records has developed and it is in this context that the Shetland and Orkney Islands Councils acquired track records with a view to leasing them to their vessels. In the light of the information transmitted by the UK authorities, the Commission believes that the purchase and leasing of track records by these authorities represent preferential conditions for local fishermen and, as such, constitute operating aid.

France

Oil spill following the sinking of the* Erika *and damage caused by a storm in the Bay of Biscay ([211])

The Commission authorised parts of a French aid scheme involving compensation for shellfish farmers and fishermen affected by an oil spill following the sinking of the *Erika* and damage due to a particularly violent storm in the Bay of Biscay.

Additional aid was subsequently allocated to fishermen and shellfish growers in the whole of France and in the overseas departments. This aid, according to the French authorities, was designed to compensate

([209]) OJ C 25, 29.1.2002.
([210]) OJ C 38, 12.2.2002.
([211]) OJ C 39, 13.2.2002.

businesses for the losses incurred due to the deterioration of the market in fisheries products as a reaction to their bad image in consumers' minds following the pollution caused by the *Erika* incident.

Three types of aid allocated to shellfish farmers were deemed compatible with the rules of the internal market. They comprised aid from a special fund designed to compensate losses occasioned by natural disasters in the agricultural sector, aid to restore equipment and stocks and an advance on the compensation to be paid by the International Oil Pollution Compensation Fund (IOPCF).

Three types of aid allocated to fishermen were also cleared by the Commission. These measures comprised aid to restore vessels and fishing gear lost or damaged during the storm, an advance on compensation from the IOPCF and a one-off payment to compensate for the loss of income caused by the storm.

The Commission analysed these aid measures pursuant to Article 87 of the Treaty, which provides that aid designed to make good the damage caused by natural disasters or other exceptional occurrences is compatible with the internal market. Both the oil spill and the storm represented such events. The Commission therefore checked that there had not been any overcompensation of the losses incurred following these events and found that aid recipients had not been overcompensated.

On the other hand, the Commission decided to open a formal investigation into the aid introduced for shellfish farmers in the form of an exemption from social security contributions for the first three months of 2000, a rebate on their financial charges and an exemption from charges for the lease of the seabed.

Also subject to the investigation are the rebates on social security contributions, adopted in April 2000 and applicable from 15 April to 15 July for shellfish farmers. These rebates, which were also allocated to fishermen, applied to the whole of France and to the French overseas territories because, according to the French authorities, the operators concerned had suffered losses of earnings following a fall in the sale of fisheries products as a result of the oil spill.

These aid measures constitute operating aid which is, in principle, incompatible with the internal market rules.

The rebate on social charges for fishermen applied over the period from 15 April to 15 October 2000. According to the French authorities, fishermen had also suffered from losses of earnings due to a reduction in sales and an increase in withdrawals from the market of unsold fisheries products. Pointing out that these rebates were applied to all fishermen including those from overseas, the Commission considered that the measures could not be linked to the oil spill from the *Erika*. It also noted that these rebates may in fact have been designed to compensate fishermen for the increase in the price of fuel which had begun a few months previously.

Denmark

Scrapping of mussel trawlers ([212])

The Commission authorised a scheme providing grants for the scrapping of commercial fishing vessels in Denmark. The notified scheme is open to Danish vessel owners wishing to abandon commercial fishing: grants may be awarded to owners who scrap their fishing vessel or assign it to uses other than commercial

([212]) OJ C 172, 16.6.2001.

fishing or the processing, transshipment or transport of fisheries products in Denmark. The scheme can be applied to not more than 10 vessels. Its aim is to bring about a permanent reduction in the number of mussel trawlers in Limfjorden and thus to limit the environmental pressure on the fjord bottom while exploiting the resources in a sustainable manner. The specific scheme for the scrapping of mussel trawlers forms part of a management plan aimed at ensuring the future of fishing in Limfjorden, drawn up jointly by the Ministry of Food, the Ministry of the Environment and Energy and the three districts adjoining the fjord.

Greece

Damage in the shellfish and mussel-farming sector ([213])

The Commission authorised a scheme for partly compensating mussel-farmers for the damage and losses incurred as a result of the contamination of their production by a toxic phytoplankton whose development was facilitated, between September 1999 and January 2000, by the lack of wind (non-renewal of the water), as well as shellfish fishermen who were required by the authorities to suspend fishing as a result of the contamination, which occurred in the prefectures of Thessaloniki, Hematheia and Pieria.

Mussel farmers and shellfish fishermen who incurred a loss of at least 30 % are eligible for aid under the scheme. The level of loss was calculated by comparing the reduced production recorded during the year in which the event took place with average production over the preceding three years (normal production). Compensation may cover up to 30 % of the value of lost production.

Mussel farmers suffered the following losses:

— loss/mortality of mussels from cultures ready for sale (nearly 40 % of production) following the ban on the movement and marketing of mussels;

— impossibility of removing and introducing young mussels for the following production period as a result of the long stay of stocks in the units and the constant decontamination efforts made with a view to preserving them (depuration of surviving individuals, spacing out, etc.);

— increased expenditure on additional management measures (spacing out, etc.) over a five-month period during the application of the ban;

— loss of income as a result of the fall in prices after the ban was lifted.

This contamination, which was recognised as exceptional and wide-ranging by the National Centre for Marine Research (large area affected — three prefectures — and more than a 1 000 producers affected), occurred because of the abnormal presence of toxic phytoplankton caused by the toxin of the alga *Dinophysis acuminata* and the accumulation of very high levels of biotoxins in the flesh of the shellfish. The phytoplankton cell count performed by the National Centre for Marine Research in the Gulf of Salonika revealed the presence of biotoxins in the area. The analysis of mussel tissue to detect biotoxins having proved positive, the veterinary authorities in Thessaloniki, Hematheia and Pieria placed a ban on the fishing, harvesting, movement and marketing of shellfish for human consumption. The prohibition period was staggered according to the marine area and type of shellfish concerned.

([213]) OJ C 330, 24.11.2001.

The ban fell in the middle of the shellfish development phase and the marketing period. The losses, estimated at 40 % of production, include the production that was ready for sale. The fact that it had to be kept at sea owing to the presence of biotoxins meant that it was gradually lost, chiefly through natural mortality and predators (other marine species).

Producers were furthermore unable to restock with embryos for the next production year: the fact that production had to be kept at sea following the marketing ban meant that all the available space was taken up, in both the mussel-growing areas and the areas where natural shellfish stocks are located. This prevented any restocking with embryos for the next production year.

2.9. Transport

On 8 May, the Commission adopted a conditional, partly positive and partly negative decision on restructuring aid to the company Brittany Ferries, which operates essentially in the western/central Channel. This decision was taken on the basis of the Commission's rules on restructuring aid. These focus on the submission of a restructuring plan and require account to be taken of, among other things, market structure and regional development aspects.

On 11 July, the Commission opened a formal investigation into maritime transport subsidies granted by the Netherlands to Dutch tugboats operating in EU ports and inland waterways. In order to reduce the potential damage to competitors, the Commission requested the Dutch authorities to suspend the relevant aid payments until it reached a final decision on the matter.

On 2 October, the Commission approved the Support for Maritime Training — SMarT scheme notified by the United Kingdom.

2.10. Other industries

Tourism

Spain

Terra Mítica theme park (Benidorm) ([214])

The Commission decided on 20 June partly to initiate the formal investigation procedure laid down in Article 88(2) of the EC Treaty in respect of presumed aid to the Terra Mítica amusement park in Benidorm. The decision came in response to a complaint addressed to the Commission in 1997, followed by many letters up to May 2000 adding new facts to the file as the work on the park, which finally opened in July 2000, advanced. The Spanish authorities provided explanations on these allegations on a number of occasions.

The Commission found that some of the complainant's allegations were unfounded; on these objections it therefore concluded that the park had not received State aid. These allegations concerned the acquisition at a low price of the land on which the park is built, expenditure on the park borne by Parque Temático de Alicante SA (a public company involved in the project), failure to comply with the private investor principle, syndicated loans and capital contributions to Terra Mítica SA (the private company which is the owner of the park), staff training aid and direct regional aid.

([214]) Case NN 14/2001 (OJ C 300, 26.10.2001).

On various other points raised by the complainant, however, the Commission was not able to rule out the possibility that the park received benefits from the public authorities. It therefore decided to initiate the formal investigation procedure to check whether or not the measures constituted State aid and, if they did, to see whether they were compatible with the common market. The Commission voiced doubts on the following points: the financing of the infrastructure necessary for the operation of the park. On this point, the Commission must investigate whether the infrastructure built exclusively or principally for the park was actually financed by the park itself; the value of the assets transferred to Terra Mítica SA by the public company Parque Temático de Alicante SA. The Commission will check whether these assets, and in particular the land and the trade mark 'Terra Mítica', were valued at their true price and not at a lower price, which would have been an advantage for the private company; the terms of a shareholder's loan granted by the public company to the private company. The Commission will investigate whether this ESP 8 000 million (EUR 48.8 million) loan was provided on market terms; and, lastly, a contribution of ESP 6 000 million (EUR 36 million) to Terra Mítica SA which, according to some information, may have been made by the Valencia tourist agency.

Finally, the complainant contested a 95 % reduction in the municipal tax on buildings granted to the park by the Benidorm municipality. The Commission found that the park was indeed granted this reduction, worth around ESP 88 399 400 (EUR 531 291), and it will therefore consider whether it is compatible with the EC Treaty.

Italy

Aid to Pompei Tech World SpA for a leisure park project ([215])

On 7 August, the Commission approved an investment project for a theme park near Pompei. The project was notified under the multisectoral framework and involves a non-reimbursable grant of EUR 33.4 million. The aid intensity is 34.44 % nge, compared with a regional ceiling for Campania which, for large enterprises, is 35 % nge. The beneficiary — Pompei Tech World SpA — is a large enterprise whose capital is controlled by two large companies.

The investment project consists in a theme park — i.e. a leisure park with a cultural and scientific focus endowed with high-tech facilities such as simulation experiences and virtual reality attractions — which will be built in the area of Torre Annunziata (Naples), near the archaeological site of Pompei-Herculaneum. The specificity of the proposed project lies in the following elements: its direct link with the archaeological site of Pompei-Herculaneum and that particular branch of tourism which can be labelled 'cultural'; its high-tech multi-media facilities linked to the history of Roman Pompei, which include: (1) three giant screen IMAX theatres; (2) Shuttle Park, a showcase for the European space industry; (3) a multiplex cinema, intended for the local public, with a capacity of around 2 000 seats and endowed with restaurants and a shopping centre; (4) a virtual game centre, for a 'virtual' journey into Pompei's past; and (5) a 'virtual' museum of the archaeological findings; and its intertwined educational and entertainment objectives.

The park is expected to receive an annual influx of 2 160 000 visitors — which positions it in the league of major theme parks in Europe — and creates around 305 new jobs, both directly (126) and indirectly (179). According to the plan, it should be completed by the end of 2005 and become fully operational in 2008–09.

([215]) Case N 229/2001 (OJ C 330, 24.11.2001).

Based on the evidence supplied by the Italian authorities, the Commission considered that the market affected by the new project is a regional one (Lazio/Campania/Basilicata/Apulia), even taking into account the existing international flow of tourists attracted to the area by the Pompeian wonders. In fact, the park is not likely to affect intra-EU trade to an extent which is incompatible with the conditions of competition in the internal market, as its impact is likely to be limited to the local tourist basin, which has at its core the archaeological site of Pompei-Herculaneum, the Vesuvian area and the Sorrento Peninsula.

Fur sector

Denmark

The Fur Sector Fund ([216])

On 28 March, the Commission decided not to raise any objections to a scheme whereby the Fur Sector Fund contributes to the financing of international workshops on uses of pelt aimed at designers from all over the world and organised by SAGA Furs of Scandinavia. The facts about the international workshops, such as participation being free of charge, actual participation from a majority of Member States, the dissemination of results, and the types of furs used being produced in most Member States, were sufficient to rule out any distortion of competition between Member States, and Article 87(1) was therefore not applicable.

The scheme also covers the Fur Sector Fund's contribution to the financing of research carried out by the Danish Fur Breeders' Association, partly in cooperation with public non-profit-making higher education and research establishments. Any potential aid in the research field would in any case be compatible with the Community framework for State aid for research and development, which allows an aid intensity of 100 % of eligible costs for agricultural products. Fur is not a product listed in Annex I to the EC Treaty, but the Commission found it reasonable to apply the R&D framework as it applies to the agricultural sector by analogy in this case.

3. Horizontal aid

3.1. Environmental protection and energy saving

Denmark

(a) Electricity reform — new power plants ([217])

On 20 June, the Commission decided to raise no objection to a scheme in favour of power plants using renewable energy sources and installed in the period 2000–03. Such power plants will no longer receive direct government grants. A comparable income level is ensured through fixed consumer prices over a period of 10 or 12 years. Once the RE certificate system is implemented, part of the guaranteed income will emanate from the sale of such certificates on the market.

The Commission assessed the presence of State aid in the light of the judgment of the Court of Justice in *PreussenElektra*. It found that State aid could be involved but that, if so, it was compatible with the

([216]) Case N 121/2000 (OJ C 185, 30.6.2001).
([217]) Case N 278/2001 (OJ C 263, 19.9.2001).

common market in the light of the new Community guidelines on State aid for environmental protection. The aid element is determined as the difference between the guaranteed income and the market price of electricity at each point in time. The present value of the aid will not exceed the present value of the investment costs for each type of RE-based power plant.

(b) Grants to large energy consumers ([218])

On 6 June, the Commission decided not to raise any objections to notified modifications to the Danish green tax scheme. The modifications were the result of a review of the effects of the scheme undertaken by the Danish authorities. The most important modification was the introduction of a possibility for companies with high energy consumption for space heating and hot water to conclude voluntary agreements and receive a refund of the CO_2 and energy taxes. This new aid could be granted an exemption based on point 51 of the Community guidelines on State aid for environmental protection regarding operating aid in the form of tax reductions or exemptions.

Further modifications concerned various aspects of the voluntary agreements concluded with regard to energy consumed in production processes. They were not such as to alter the Commission's previous favourable assessment of the scheme.

Germany

Regeneration of waste oils ([219])

In a number of cases the Commission, following the case-law of the Court of Justice, had decided that compensation for the costs of dealing with waste oils as part of a public service did not confer an advantage on the undertaking ([220]) and Article 87(1) of the EC Treaty therefore did not apply. On the basis of the judgments in *FFSA* ([221]), *Portuguese Television* ([222]) and *CELF* ([223]), the Commission followed the Court and decided on 19 September that such measures did constitute aid. The German system provides for grants to operators of facilities for waste-oil regeneration in order to compensate them for losses they incur when regenerating waste oil into base oils. The losses are calculated by comparing the production costs with the revenues for base oils. In the case in hand, the Commission exempted the measures under the guidelines on State aid for environmental protection, in particular the section on operating aid for waste management.

Netherlands

Dutch waste-disposal system for PVC façade elements

On 31 January, in Case N 484/00, the Commission decided not to raise any objections to the Dutch waste-disposal system for PVC facade elements. The Commission considered that the arrangements did not distort competition or threaten to distort competition by favouring certain undertakings or the production of certain goods: they did not therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty. The system ensures that the companies selling PVC façade elements take

([218]) Case N 840/A/2000 (OJ C 358, 15.12.2001).
([219]) Case N 387/2001 (OJ C 108, 4.5.2002).
([220]) Cases NN 124/90, N 520/93 (OJ C 287, 23.10.1993) and N 304/1997 (OJ C 228, 21.7.1998).
([221]) Judgment of 27 February 1997 in Case T-106/95, confirmed by the Court in Case C-174/97.
([222]) Judgment of 10 May 2000 in Case T-46/97.
([223]) Judgment of 22 June 2000 in Case C-332/98.

responsibility for the recycling of these elements, in accordance with the 'polluter pays' principle. The system is based on a voluntary agreement between several organisations in the PVC production, consumption and recycling chain. The agreement stipulates a fixed payment for PVC frames and facade elements marketed in the Netherlands, to be paid by the PVC façade element producers and importers. These resources are used for the cost of collecting and recycling the facade elements, including transport.

United Kingdom

Enhanced capital allowances for energy-efficient investments ([224])

On 13 March, the Commission decided that a UK tax scheme intended to encourage investments by businesses in energy-saving technologies was a general measure and therefore not caught by the State aid rules of the EC Treaty. The scheme offers enhanced capital allowances for purchasing certain energy-efficient technologies in the areas of lighting, pipe insulation, boilers, motors, variable speed drives, refrigeration and combined heat and power. The equipment must meet certain energy-saving criteria which are laid down in an energy technology criteria list. The use of such technologies will help businesses to reduce their energy use, leading to lower carbon emissions. This is part of a larger raft of measures introduced to ensure that the United Kingdom will meet its target for reducing carbon emissions under the Kyoto Protocol as well as assisting the EU to achieve its target and to work towards the domestically set target of 20 % reduction in CO_2 emissions.

3.2. Research and development

Denmark

Mikroelectronik Center ([225])

On 8 May, the Commission decided not to raise any objections to a scheme allowing for private and public financing of an advanced prototyping facility in the field of microtechnology, to be built at a public research institution. Companies of all nationalities and sizes will be able to rent space in the facility and thereby have access to equipment, and this will help them to undertake precompetitive development activities. The aid will be granted in the form of a building site provided free of charge, an interest-free loan and a rent guarantee for the benefit of the private co-investors in the facility. This aid will be passed on to the tenants in the form of lower rent, which will allow them to finance their research.

The Commission found that the tenants were clearly in receipt of aid, and that part of the aid resulting from the various benefits offered by the State, in particular the rent guarantee, might possibly remain with the investors. The aid to the tenants was granted an exemption in the light of the Community framework for State aid for research and development. As the project is in line with Community policy for R&D and the promotion of SMEs, the Commission granted an exemption under Article 87(3)(c) for the aid to the investors.

([224]) Case N 797/2000 (OJ C 160, 2.6.2001).
([225]) Case N 802/2000 (OJ C 199, 14.7.2001).

Germany

(a) EUV lithography ([226])

Lithography is one of the most important steps in the fabrication of integrated circuits. It uses a high frequency light flash to print on silicon wafers a multiplied and downscaled image of the integrated circuit pattern models designed by the engineers. The resolution of the circuits so printed is driven by the wavelength of the light used in the printing process. The present generation of lithography uses ultraviolet light, the wavelength of which is about a few hundred nanometres.

On 18 July, the Commission approved a German aid measure intended to promote German participation in a joint Eureka project aimed at the development of EUV lithography technologies in Europe which could act as a counterweight to activities in the United States and the Far East and strengthen the position of European semiconductor industry suppliers through the development of know-how and intellectual property.

The aid project covers industrial research and precompetitive development. Taking into account a scientific evaluation of the measure, the Commission assessed each of the project's work packages. None of the products or processes that will be developed during the project will be in a position to be usable or convertible for a commercial or industrial application. As all the conditions set out in the R&D framework were fulfilled, the Commission was able to declare the notified project compatible with the common market.

(b) 'Health research — research for people' programme ([227])

The 'Health research — research for people' programme supports research and development activities aimed at promoting health and treating illness more effectively. It seeks to make greater use of the possibilities opened up by recent research in biomedicine, in particular molecular medicine. Special emphasis will be placed on using knowledge on the structure and function of the human genome. Research and development is also to be used as a way of stimulating more effective coordination between the different bodies working in German health research. Structures and mechanisms are to be set up to encourage the various players to cooperate. The programme also seeks to develop ways of bringing about lasting improvements in cooperation between research establishments and industry. In addition, it will support research which helps to tackle the public-health challenges facing us today.

On 25 April, the Commission approved the programme, which is designed to help develop and boost national research capacity in strategically important areas of health research, thereby allowing Germany to make a significant contribution to the objectives of the fifth EU framework programme in the health field (quality of life and management of living resources) and at the same time improving the potential effectiveness of Community support.

Depending on the aid recipient, the Commission distinguished between the situation where no aid within the meaning of Article 87(1) of the EC Treaty is involved and where aid needs to be examined in order to assess its compatibility with the common market. Approximately 80 % of the aid is earmarked for research projects carried out by public non-profit-making higher education or research establishments. The project results will be published and hence made available to Community industry on a non-discriminatory basis. Such activities therefore do not constitute State aid. Approximately 10 % of the

([226]) Case N 801/2000 (OJ C 333, 28.11.2001).
([227]) Case N 694/2000 (OJ C 185, 30.6.2001).

aid will go to projects carried out by public non-profit-making higher education or research establishments on behalf of or in collaboration with industry. Where work is commissioned, the public non-profit-making establishments will be paid for their services by the industrial firms at the market rate. Where collaboration takes other forms, the firm will either bear the full cost of the project or will pay its partner at the market rate for any intellectual property rights which it holds as a result of the research project. Results which do not give rise to intellectual property rights will be widely disseminated to interested third parties. These conditions satisfy the tests of the third paragraph of point 2.4 of the R&D framework. The Commission therefore accepts that there is no State aid. Less than 1 % of the aid will be used by the Federal Ministry of Education and Research to commission R&D from firms or to buy the results of R&D from them. Contracts will generally be awarded by open tendering procedure or, in the circumstances set out in Article 11 of Council Directive 92/50/EEC, by restricted tendering procedure. Compliance with the rules on tendering will ensure that contracts are awarded in line with market conditions. The Commission therefore takes the view that no State aid within the meaning of Article 87(1) is involved in line with point 2.5 of the R&D framework.

Around 10 % of the aid will be granted to commercially-oriented bodies, with no involvement of non-profit-making establishments. The Commission examined this situation in the light of the Community State aid rules and declared the project to be in line with the R&D framework and therefore compatible with the common market.

For R&D projects in fundamental research, the rate of assistance may be up to 100 % of the eligible costs; for R&D projects in industrial research, up to 50 %; and for precompetitive development, up to 25 %. For technical feasibility studies preparatory to industrial research or precompetitive development, the assistance may be up to 75 or 50 % respectively of the eligible project-related costs.

On top of these aid intensities, the following bonuses may be allowed: 10 % if the aid recipient is an SME; 10 % if the research project is carried out in an area falling under Article 87(3)(a); 5 % if it is a regionally assisted area under Article 87(3)(c); 10 % if the research project involves effective cross-border cooperation between at least two independent partners in two Member States; 10 % if the research project involves effective cooperation between firms and public higher education or research establishment; and 10 % if the results of the research are to be widely disseminated and published, patent licences are granted, or other appropriate steps are taken under conditions similar to those for the dissemination of the Community research and technical development results.

The incentive effect is presumed for SMEs. For large companies, the German authorities will assess the incentive effect in each case and explain their assessment in the annual report to be submitted to the Commission.

Netherlands

(a) Extatic lithography ([228])

On 30 October, the Commission decided not to raise any objections to a grant from the Dutch central government to the company ASML for a joint research and development project in the field of lithography technology. The objective of the aid is to stimulate research on system aspects and fundamental optic systems for the use of extreme ultraviolet light for lithography applications. The Commission assessed the project as falling under the categories of industrial research or precompetitive

([228]) Case N 430/2001 (not yet published).

development. The gross aid intensity of 16.7 % is far below the allowable aid intensities set out in the R&D framework. The Commission considered it unlikely that without the financial support of the State the proposed research programme would take place with the same speed and the same scope, and therefore took the view that the aid had an incentive effect.

(b) Fluor lithography ([229])

On 30 October, the Commission decided not to raise any objections to a grant from the Dutch central government to the company ASML for a research and development project in the field of lithography technology. The project is called Fluor and its objective is to find a total solution for the application of 157 nm lithography. This means the development of a photolithographic tool, reticles, a resist and a process. 157 nm lithography is regarded as an important intermediate technology between the current 193 nm technology, which will be abandoned in four to six years time, and future EUV technologies, starting after 2010. ASML will cooperate with various partners and subcontractors in this project such as Air Liquide (France), IMEC (Belgium) and Infineon Technologies (Germany).

The project is funded via the Dutch Medea+ programme. Medea+ is an industry-initiated pan-European programme for advanced cooperative R&D in microelectronics. It has been set up and labelled within the framework of Eureka. The Dutch Medea+ programme was approved by the Commission by letter dated 13 February (SG (2001) D/286189). As the total costs for the Fluor project are more than EUR 40 million and the aid equivalent is more than EUR 10 million, the project was notified separately ([230]). The Fluor project received its Medea+ label on 1 January.

The Commission found that the project fell within the category of precompetitive development and that the aid intensity of 39.5 % was in compliance with the R&D framework. It considered it unlikely that without support the proposed research programme would take place with the same speed and the same scope, and therefore took the view that the aid had an incentive effect.

3.3. Rescue and restructuring

Portugal

Aid to firms in difficulty ([231])

Although the Portuguese authorities accepted the appropriate measures proposed under the new Community guidelines on State aid for rescuing and restructuring firms in difficulty, they did not make the necessary amendments to their one existing scheme before the required deadline (30 June 2000). However, they notified a new scheme on 30 July 2001 based on the previous one. On 20 December, the Commission decided not to raise any objections on the ground that the new scheme was compatible with the above-mentioned guidelines. It involves the award of restructuring aid to firms in difficulty through participation by public funds in the capital of the firms acquiring the enterprises in difficulty and has a global budget of EUR 117 million.

([229]) Case N 433/2001 (not yet published).

([230]) According to the Commission decision on Medea+, communicated by letter dated 13 February 2001 (SG (2001) D/286189, Case N 827/2000), the Dutch authorities must notify separately all projects of more than EUR 40 million with an aid equivalent of more than EUR 10 million. See also Commission letter to the Member States SG (97) D/3466 of 2 May 1997.

([231]) Case N 537/2001 (OJ C 127, 29.5.2002).

3.4. Employment and training

Belgium

Aid for employment and SMEs through start-up cheques [232]

The Commission decided on 6 June not to raise any objections to an aid scheme to promote self-employment and the setting-up of commercial micro-firms in French-speaking Wallonia. The aid is granted in the form of start-up cheques financing individual or collective training activities aimed at enabling recipients to draw up and initiate their business start-up plan and/or monitor it during the first six months after start-up. The scheme involves only small amounts of aid (the average available is EUR 5 000 per recipient and the total available is not more than EUR 18 000 over a two-year period), most if not all of which is granted before the commencement of any professional activity and/or the creation of any commercial structure. The aid involved in the scheme is therefore extremely limited and complies with the guidelines for Member States' employment policies in 2001. The Commission therefore deemed the measure compatible with the requirements of the accelerated clearance procedure for aid to SMEs and with the rules on such firms.

Spain

Aid for vocational training in Catalonia [233]

The Commission decided on 31 January not to raise any objections to a vocational training aid scheme in Catalonia. The scheme provided grants for vocational training activities between 1997 and 1999. Although it was initially notified to the Commission in December 1997, it turned out that the regional authorities had already started granting the aid from the beginning of 1997 and continued to do so until the end of 1999.

The total amount of aid ran to some ESP 9 326 million (around EUR 56 million). Most of the aid went to public and private bodies such as municipal authorities, trade unions and professional organisations, non-profit entities and the like, and only around 5 % was granted to companies for employee training. The intensity of the aid granted to companies varied between 25 and 75 %, depending on whether the training was general or specific, or the company was large or small or was located inside or outside an assisted area.

The Commission took the view that the grants for the public and private non-profit entities did not constitute State aid within the meaning of Article 87 of the EC Treaty, which thus caught only that part of the scheme involving grants made to companies. Regarding that part, the Commission considered that the Community framework on training aid, in force from November 1998, did not apply and that, since no framework existed prior to that date, the scheme had to be assessed in the light of Community practice in the field at the time. This led to the conclusion that all the aid granted was compatible.

[232] Case N 87/2001 (OJ C 268, 22.9.2001).
[233] Case NN 66/1999 (OJ C 117, 21.4.2001).

4. Recovered aid

Germany

On 28 March, in Case C 41/99, the Commission closed investigations into one of the biggest and most difficult cases of State aid in eastern Germany. In March 1996, the Commission allowed aid to be given to the Lintra holding company and its eight subsidiaries. A plan to privatise the group subsequently collapsed. The Commission now concluded that DEM 623 million in aid had nevertheless been granted in accordance with the restructuring plan for the group and complied with the Commission decision authorising assistance. However, a sum of DEM 35 million had been misused and had to be recovered from the recipients, the Lintra holding company and its subsidiaries. State aid to several of the Lintra subsidiaries is being examined in separate proceedings.

On 30 October, in Case C 62/2000, after a thorough investigation which started in June 2000, the Commission took a negative final decision on aid to the German porcelain manufacturer Graf von Henneberg GmbH, located in Thuringia. The Commission ordered recovery of some EUR 71.3 million (DEM 139.4 million), which was found to constitute incompatible and illegal aid. In line with its practice, the Commission decided that the currently existing Graf von Henneberg is jointly liable with its predecessor for the recovery of all the incompatible aid.

B — New legislative provisions and notices adopted or proposed by the Commission

1.	Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (Text with EEA relevance)	OJ C 217, 2.8.2001, p. 2
2.	Community guidelines on State aid for environmental protection	OJ C 37, 3.2.2001, p. 3
3.	EFTA Surveillance Authority Decision No 152/01/COL of 23 May 2001 revising the guidelines on the application of the EEA State aid provisions to aid for environmental protection and amending for the 28th time the Procedural and Substantive Rules in the Field of State Aid	OJ L 237, 6.9.2001, p. 16
4.	*Communication of the Commission to Member States:* Multisectoral framework on regional aid for large investment projects	OJ C 368, 22.12.2001, p. 10
5.	Commission communication on State aid and risk capital	OJ C 235, 21.8.2001, p. 3
6.	Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products	OJ C 252, 12.9.2001, p. 5
7.	Communication from the Commission on the application of State aid rules to public-service broadcasting. This communication sets out the principles to be followed by the Commission in the application of Articles 87 and 86(2) of the EC Treaty to State funding of public-service broadcasting and will make the Commission's policy in this area as transparent as possible	OJ C 320, 15.11.2001, p. 5
8.	Commission communication relating to the methodology for analysing State aid linked to stranded costs	Adopted by the Commission on 26.7.2001
9.	Guidelines for the examination of State aid to fisheries and aquaculture	OJ C 19, 20.1.2001, p. 7

C — List of State aid cases in sectors other than agriculture, fisheries and the coal industry

1. Measures which the Commission considered compatible with the common market without opening a formal investigation under Article 88(2) of the EC Treaty or Article 6(5) of Decision 2496/96/ECSC

Austria

N 235/1999	31.1.2001	Tax-rate increases in relation to the rinse water exemption, the exemption for de-inking residue, the green electricity zero tariff and the exemption for waste-incineration plants	OJ C 318, 13.11.2001
N 589/2000	13.2.2001	Environmental aid for repair of past damage in favour of Vereinigte Chemische Fabriken (VCF)	OJ C 330, 24.11.2001
N 811/2000	27.4.2001	R&D scheme (Carinthia)	OJ C 199, 14.7.2001
N 43/2001	11.6.2001	Tourism 2001 scheme	OJ C 234, 18.8.2001
N 645/2000	20.6.2001	Grants for biomass (Vorarlberg)	OJ C 234, 18.8.2001
N 257/2001	20.6.2001	Environmental aid to Böhler Edelstahl GmbH & Co KG (ECSC steel)	OJ C 226, 11.8.2001
N 77/2000	3.7.2001	Environmental aid to Voest Alpine Stahl Donawitz GmbH	OJ C 318, 13.11.2001
N 811/1999	9.7.2001	Guarantee schemes — Carinthia	OJ C 268, 22.9.2001
N 221/2000	18.7.2001	Environmental aid in favour of Glanzstoff — Deponie Nord	
N 212/2001	13.9.2001	Top tourism programme	
N 258/2001	2.10.2001	Environmental aid to Voest-Alpine Stahl Linz GmbH	OJ C 333, 28.11.2001
N 530/2001	6.11.2001	Austrian guidelines for environmental aid 2001	OJ C 358, 15.12.2001
N 688b/2000	7.11.2001	Amendment of the WiBAG rules on the award of non-repayable grants — research and development	OJ C 38, 12.2.2002
N 688e/2000	7.11.2001	Amendment of the WiBAG rules on the award of non-repayable grants — improvement of the economic structure of SMEs in Burgenland	OJ C 38, 12.2.2002
N 688c/2000	7.11.2001	Amendment of the WiBAG rules on the award of non-repayable grants — environmental protection	OJ C 38, 12.2.2002
N 688f/2000	7.11.2001	Amendment of the WiBAG rules on the award of non-repayable grants — infrastructure	OJ C 38, 12.2.2002
N 688a/2000	7.11.2001	Amendment of the WiBAG rules on the award of non-repayable grants — strengthening of economic development	OJ C 38, 12.2.2002
N 688d/2000	7.11.2001	Amendment of the WiBAG rules on the award of non-repayable grants — internationalisation	OJ C 38, 12.2.2002

Belgium

N 298/2000	28.3.2001	R&D financing decree	OJ C 199, 14.7.2001
N 87/2001	6.6.2001	Decree to promote self-employment through start-up cheques	OJ C 268, 22.9.2001
NN 92/2000	6.6.2001	Aid scheme for group training	OJ C 226, 11.8.2001
N 779/2000	20.6.2001	Environmental aid to Sidmar (ECSC steel)	OJ C 234, 18.8.2001
N 37/2001	17.7.2001	Order on promoting and financing scientific research and technological innovation	OJ C 318, 13.11.2001
N 360/2001	18.7.2001	R&D aid to Sidmar NV (ECSC steel)	
N 550/2000	25.7.2001	Green electricity certificates	OJ C 330, 24.11.2001
N 531/2001	28.9.2001	Retech — Extension of the aid scheme for the Meuse-Vesdre Objective 2 area	
N 469/2001	6.11.2001	Draft decree on aid to promote the hiring of unemployed job-seekers by local, regional and community authorities and by certain employers	
N 544/2001	20.12.2001	Ford Genk — training aid	
N 521/2001	21.12.2001	Modification of an investment aid scheme	OJ C 32, 5.2.2002

Denmark

N 736/2000	29.1.2001	The Growth Fund	OJ C 117, 21.4.2001
N 121/2000	28.3.2001	The Fur Sector Fund	OJ C 185, 30.6.2001
N 149/2001	18.4.2001	Differentiated excise duties on petrol	OJ C 263, 19.9.2001
N 822/2000	2.5.2001	Centre contracts for tourism	OJ C 199, 14.7.2001
N 802/2000	8.5.2001	Mikroelektronik Center	OJ C 199, 14.7.2001
N 840a/2000	6.6.2001	Measures in favour of large energy consumers	OJ C 358, 15.12.2001
N 278/2001	20.6.2001	Electricity reform — new RE-based power plants	OJ C 263, 19.9.2001
N 486/2001	13.11.2001	Film venture funds (risk capital fund for film production)	

Finland

N 104/2001	1.6.2001	Amendment of the Regional Transport Subsidy Act	OJ C 199, 14.7.2001
N 643/2000	11.6.2001	Increased tax deductions for certain regions 2001–03	OJ C 263, 19.9.2001
N 465/2000	3.7.2001	Entrepreneur loans	OJ C 328, 23.11.2001
NN 134/2001	13.11.2001	Training aid in Åland Islands	
N 777/2001	20.12.2001	State aid scheme for cinema in Finland	

France

N 324/2000	3.1.2001	Réunion 2000–06 — energy conservation and development of renewable forms of energy	OJ C 160, 2.6.2001
N 311/2000	3.1.2001	Réunion 2000–06 — industrial investment projects	OJ C 160, 2.6.2001
N 325/2000	10.1.2001	Réunion 2000–06 — environmentally friendly waste management	OJ C 160, 2.6.2001
N 147a/2000	31.1.2001	Framework act for the overseas departments and territories	OJ C 244, 1.9.2001
N 320/2000	5.2.2001	Réunion 2000–06 — enhancing business skills	OJ C 263, 19.9.2001
N 326/2000	5.2.2001	Réunion 2000–06 — opening up of the economy	OJ C 263, 19.9.2001
N 837/2000	13.2.2001	Medea +	OJ C 117, 21.4.2001
N 697/2000	27.2.2001	Aid for constructing private landing stages in Martinique	OJ C 160, 2.6.2001
N 464/2000	12.3.2001	Guyana 2000–06 — freight support	OJ C 160, 2.6.2001
N 377/2000	15.3.2001	Martinique 2000–06 — local initiative platforms	OJ C 160, 2.6.2001
N 316a/2000	25.4.2001	Notification of aid schemes covered by the single programming document for Réunion	OJ C 185, 30.6.2001
N 449/2000	8.5.2001	Framework scheme: guarantee fund	OJ C 199, 14.7.2001
N 447/2000	23.5.2001	Framework scheme: fund to provide business start-ups with loans on trust	OJ C 234, 18.8.2001
N 66/2001	1.6.2001	Réunion 2000–06 — FISAC/FLACR	OJ C 199, 14.7.2001
N 376/2000	14.6.2001	Martinique 2000–06 — regional Guarantee Fund	OJ C 330, 24.11.2001
N 378/2000	28.6.2001	Martinique 2000–06 — interest-rate subsidy	OJ C 244, 1.9.2001
N 298/2001	3.7.2001	Tax exemptions for orphan drugs	
N 322/2000	17.7.2001	Réunion 2000–06 — aid for investment in information and communications technologies	OJ C 263, 19.9.2001
N 321/2000	19.7.2001	Réunion 2000–06 — laboratories and technology transfer centres	OJ C 333, 28.11.2001
N 115/2001	24.7.2001	Air — fixed sources aid scheme	OJ C 318, 13.11.2001
N 434/2001	25.7.2001	Aid to Atmel Rousset SA	
N 448/2000	25.7.2001	Framework scheme — investment capital fund	OJ C 318, 13.11.2001
N 323/2000	31.7.2001	Support for the production of new goods and services in the information and communication technologies sector	OJ C 244, 1.9.2001
N 319/2001	11.10.2001	Guadeloupe 2000–06 — support for freight	OJ C 358, 15.12.2001
N 393a/2001	11.10.2001	Extension of the temporary aid scheme for firms affected by severe weather and oil slicks — Brittany and Picardy	OJ C 342, 5.12.2001
N 77b/2001	6.11.2001	Guadeloupe 2000–06 — premium for business start-ups	OJ C 24, 26.1.2002

N 77a/2001	27.11.2001	Guadeloupe 2000–06 — employment grant	OJ C 30, 2.2.2002
N 672/2000	28.11.2001	Tax aid scheme for overseas investment	OJ C 30, 2.2.2002
N 354/2001	20.12.2001	Fideme	
Germany			
N 133/2000	10.1.2001	Promotion of training measures (Bremen)	OJ C 117, 21.4.2001
N 707/2000	17.1.2001	Innovation Fund of Innovations- und Beteiligungsgesellschaft mbH Saxony-Anhalt	OJ C 149, 19.5.2001
N 420/2000	17.1.2001	*Land* of Berlin — ESF 2000–06 — aid to employment in favour of workers without qualification covered by the wage subsidy scheme pursuant to Section 18(4) BSHG	OJ C 149, 19.5.2001
N 405b/2000	17.1.2001	Measures to encourage the hiring of unemployed people	OJ C 149, 19.5.2001
N 405a/2000	17.1.2001	Promotion of business startups by formerly unemployed people	OJ C 149, 19.5.2001
N 405c/2000	17.1.2001	Regional programmes to encourage the hiring of unemployed people	OJ C 149, 19.5.2001
N 642/2000	22.1.2001	SME interest subsidy programme (Saarland)	OJ C 117, 21.4.2001
N 370/2000	22.1.2001	Regional aid for SMEs in Saarland	OJ C 160, 2.6.2001
N 796/2000	25.1.2001	Guarantee guidelines for equity participation (Saxony-Anhalt)	OJ C 179, 25.6.2001
N 427/2000	29.1.2001	*Land* of Berlin — ESF 2000–06 — 'Integration through employment' programme and qualification measures (Section 19(1) BSHG)	OJ C 94, 24.3.2001
N 421/2000	29.1.2001	*Land* of Berlin — ESF 2000–06 — employment and qualification aid programme for unemployed people (wage-subsidy scheme — Section 18(4) BSHG)	OJ C 94, 24.3.2001
N 718/2000	29.1.2001	Measures in favour of the Bonn region, interest rebates for job-creating investment in SMEs	OJ C 117, 21.4.2001
N 634/2000	5.2.2001	Regional programme to promote job placements	OJ C 149, 19.5.2001
N 523/2000	5.2.2001	Scheme of the *Land* of Brandenburg for long-term employment of single parents	OJ C 149, 19.5.2001
N 680/2000	27.2.2001	Grants for biomass projects in rural areas (Schleswig-Holstein)	OJ C 117, 21.4.2001
N 551/2000	28.2.2001	Venture capital for small technology enterprises	OJ C 117, 21.4.2001
N 671/1999	28.2.2001	Change to the tax allowance for investment	OJ C 166, 9.6.2001
N 744/2000	7.3.2001	Aid to SMEs in Saarland	OJ C 160, 2.6.2001
N 476/2000	7.3.2001	Efficient energy use and renewable energy sources	OJ C 149, 19.5.2001
N 653/2000	13.3.2001	Real estate sale by city of Rostock to Sixt	
N 521/2000	15.3.2001	Wind energy (Bremen)	OJ C 160, 2.6.2001
N 212/2000	15.3.2001	Scheme of the *Land* of Brandenburg to promote safety and health at work	OJ C 149, 19.5.2001
N 604/2000	20.3.2001	Grants for R&D and technology transfer (Schleswig Holstein)	OJ C 160, 2.6.2001
N 635/2000	21.3.2001	Aid for tourism in assisted regions in Saarland	OJ C 149, 19.5.2001
N 784/2000	28.3.2001	Microelectronics R&D scheme	OJ C 185, 30.6.2001
N 701/2000	28.3.2001	Financial assistance for Fa. Wernal Aluminium Technik GmbH, Neumünster	OJ C 330, 24.11.2001
N 124/2001	11.4.2001	High technologies (Bavaria)	OJ C 185, 30.6.2001
N 694/2000	25.4.2001	Health research	OJ C 185, 30.6.2001
N 783/2000	8.5.2001	Aid to Wacker Chemie GmbH, Nünchritz (Saxony)	OJ C 211, 28.7.2001
N 793/2000	16.5.2001	Grants for R&D (Lower Saxony)	OJ C 226, 11.8.2001
NN 94/2000	23.5.2001	Futour 2000 programme	OJ C 219, 4.8.2001
N 767/1999	30.5.2001	29th framework programme for the joint action programme	OJ C 38, 12.2.2002
N 438a/2000	1.6.2001	Regional programme of the *Land* of North Rhine-Westphalia	OJ C 318, 13.11.2001
N 340b/2000	1.6.2001	Grant for business startups	OJ C 263, 19.9.2001
N 819/2000	6.6.2001	Biology R&D scheme	OJ C 263, 19.9.2001
N 289/2001	14.6.2001	Biotechnology and gene technology	OJ C 268, 22.9.2001
N 118/2001	20.6.2001	R&D aid to Stahlwerke Bremen GmbH (ECSC steel)	OJ C 244, 1.9.2001
N 808/2000	20.6.2001	State aid in favour of Drewsen Spezialpapiere GmbH & Co KG	OJ C 263, 19.9.2001

N 303/2001	3.7.2001	New micro-components for new systems	OJ C 268, 22.9.2001
N 302/2001	3.7.2001	Integrated chips systems	OJ C 268, 22.9.2001
N 813/2000	3.7.2001	Aid under the multisectoral framework in favour of Kronoply	OJ C 226, 11.8.2001
N 271/2000	3.7.2001	Low-energy house	OJ C 24, 26.1.2002
N 427/1999	3.7.2001	Guarantee programme — Hessen	OJ C 268, 22.9.2001
NN 100/1999	3.7.2001	*Land* programme of climate-change protection (Mecklenburg-Western Pomerania)	OJ C 263, 19.9.2001
N 422/2000	5.7.2001	Aid to employment for participants in the programme '501/301'	OJ C 234, 18.8.2001
N 800/2000	17.7.2001	*Land* programme to promote renewable energy sources (Mecklenburg-Western Pomerania)	OJ C 330, 24.11.2001
N 801/2000	18.7.2001	EUV lithography	OJ C 333, 28.11.2001
N 184/2000	18.7.2001	State aid in favour of Kartogroup Deutschland GmbH	
NN 92/1999	18.7.2001	Aid for Zentrum Mikroelektronik GmbH	OJ C 328, 23.11.2001
N 440/2001	25.7.2001	Support for film and audiovisual production in the German *Länder* — Mitteldeutsche Medienförderung GmbH	
N 135/2001	25.7.2001	Guarantees in reform countries	OJ C 318, 13.11.2001
NN 53/2001	25.7.2001	Bankgesellschaft Berlin AG — rescue aid	
N 517/2000	25.7.2001	Aid in favour of Glunz AG	OJ C 333, 28.11.2001
N 138/2001	31.7.2001	Berlin guarantee programme for firms in difficulty	OJ C 263, 19.9.2001
N 439/2001	19.9.2001	Support for film and audiovisual production in the German *Länder* (Bavaria)	
N 387/2001	19.9.2001	Subsidies for the regeneration of waste oils	
N 176/2001	19.9.2001	R&D project 'Integrating bus technologies into shipbuilding', by Flensburger Schiffbau-Gesellschaft & Co. KG	OJ C 24, 26.1.2002
NN 89/2000	19.9.2001	Scheme of the *Land* of Thuringia for the promotion of employment and qualification projects in favour of unemployed persons, in particular long-term unemployed, older and handicapped workers	OJ C 342, 5.12.2001
N 364/2001	2.10.2001	Research for construction and sustainable urban development R&D programme	
N 612/2001	17.10.2001	Shipbuilding development Indonesia	
N 251/2001	25.10.2001	Programme to support research, development and innovation for SMEs in the new *Länder*	OJ C 342, 5.12.2001
N 228/2001	25.10.2001	Future Fund Berlin	OJ C 358, 15.12.2001
N 814/2000	6.11.2001	Programme of the *Land* of Mecklenburg-Western Pomerania for promoting technology and innovation	
N 605/2001	7.11.2001	Programme to promote continuous labour contracts for unemployed persons (Saxony)	OJ C 347, 8.12.2001
N 727/2001	28.11.2001	Support for film production in the German *Länder* — KFF eV	
N 701/2001	28.11.2001	Support for film and TV production in the German *Länder* — Berlin and Brandenburg	
N 693/2001	28.11.2001	Support for film and TV production — Hamburg	
NN 124/2000	28.11.2001	Aid in favour of Telux Spezialglas GmbH, Weisswasser (Telux)	
N 618/2001	3.12.2001	Employment of innovation assistants in SMEs (Berlin)	OJ C 30, 2.2.2002
N 767/2001	11.12.2001	Nordmedia Fonds GmbH — support for film and audiovisual production (Lower Saxony and Bremen)	
N 256/2001	11.12.2001	Technology and innovation programme (TIP)	OJ C 32, 5.2.2002
N 782/2001	20.12.2001	Support for film and television production in the German *Länder* — Baden-Württemberg	
N 763/2001	20.12.2001	Rescue aid for Hermann Heye KG, Obernkirchen (Lower Saxony)	
N 288/2001	20.12.2001	Development of a polymer on the basis of vegetable raw materials	OJ C 32, 5.2.2002
N 435/2001	27.12.2001	Programme in favour of technology-oriented firms in Saxony-Anhalt	OJ C 32, 5.2.2002

Greece

N 788/2000	28.3.2001	Shipbuilding aid scheme 1999–2000	OJ C 172, 16.6.2001
NN 90/2000	6.6.2001	Natural gas (EPA)	OJ C 333, 28.11.2001
N 7/2001	18.7.2001	State aid in favour of Ellinika Petrelea Ae	OJ C 333, 28.11.2001
NN 6/2001	25.7.2001	Investment aid to Ae Ellinika Solinourgeia	OJ C 268, 22.9.2001
N 372/2001	25.10.2001	Scheme employment 2000–06	OJ C 30, 2.2.2002
N 323/2001	11.12.2001	Aid for investment in sustainable energy	
N 545/2001	21.12.2001	R&D demonstration projects programme (PEPER)	OJ C 38, 12.2.2002
N 760/2000	21.12.2001	Programme for the promotion of R&D in recently created enterprises (PAVE-NE)	
N 776/2001	28.12.2001	International cooperation in industrial research and precompetitive development activity	OJ C 32, 5.2.2002

Ireland

N 770/2000	17.4.2001	Marine tourism grant scheme	OJ C 172, 16.6.2001
N 209/2001	3.7.2001	Housing finance agency borrowings guarantee	
N 551/2001	12.10.2001	Marine tourism grant scheme	OJ C 358, 15.12.2001
N 6a/2001	30.10.2001	Public-service obligations imposed on the Electricity Supply Board concerning electricity generated out of peat	
N 710/2000	7.11.2001	Regional aid schemes in the tourism sector	OJ C 32, 5.2.2002

Italy

N 284a/2000	17.1.2001	Refinancing, through Finance Act No 8/2000, of the employment aid scheme under Article 9 of Regional Act No 27/91	OJ C 149, 19.5.2001
N 816/1999	17.1.2001	Regional scheme for improving service networks in industrial districts in Sardinia	OJ C 149, 19.5.2001
N 710/1999	17.1.2001	Aid for women entrepreneurs	OJ C 117, 21.4.2001
N 284b/2000	5.2.2001	Refinancing, through Finance Act No 8/2000, of the tourism aid scheme under Article 16 of Regional Act No 27/96	OJ C 149, 19.5.2001
N 646a/2000	13.3.2001	Tax credits for investment in assisted areas	OJ C 149, 19.5.2001
NN 13/2000	28.3.2001	Tax aid for all businesses in less favoured regions and for SMEs outside less favoured regions — Article 8 of Act No 266/97	OJ C 149, 19.5.2001
N 799/2000	11.4.2001	Piedmont — training in favour of unemployed people	OJ C 199, 14.7.2001
N 32/2000	11.4.2001	Development of non-volatile flash memories	OJ C 199, 14.7.2001
N 250/2001	11.6.2001	Aid for the hotel industry (Sardinia)	OJ C 263, 19.9.2001
N 668/2000	17.7.2001	Bolzano — amendments to Act No 15/72 on the reform of housing policy (incentives for the purchase of land)	OJ C 330, 24.11.2001
N 522/2000	31.7.2001	Aid for research and technological development	OJ C 263, 19.9.2001
N 229/2001	7.8.2001	Aid to Pompei Tech World SpA for a leisure park	OJ C 330, 24.11.2001
N 429/2001	17.10.2001	Aid to businesses hit by the heavy rain in October 2000 (Valle d'Aosta)	
N 308/2001	30.10.2001	Aid for employing disabled people (Friuli-Venezia Giulia)	
N 746a/2000	6.11.2001	Aid to SMEs granted through Friula Lis SpA (Friuli-Venezia Giula)	
N 720/2000	7.11.2001	Liguria — amendments to Regional Act No 18/99 — Aid in favour of alternative energy sources and energy saving	OJ C 30, 2.2.2002
N 569/2001	13.11.2001	Sardinia — measures to assist young entrepreneurs — Draft Act No 201/2001 (operating aid)	OJ C 30, 2.2.2002
NN 77a/2001	13.11.2001	Sardinia — urgent measures to promote employment (Regional Act No 28/1984)	OJ C 30, 2.2.2002
N 400/2000	28.11.2001	State aid in favour of Biomasse Italia SpA	OJ C 38, 12.2.2002
N 510/2001	20.12.2001	Investment aid to Tecnologie Diesel Italia SpA	

Luxembourg

N 842/2000	17.10.2001	Premium to encourage the use of electricity produced from wind or hydro power, solar energy and biomass	

Netherlands

N 244/2000	31.1.2001	Development aid to Sri Lanka — one dredger	OJ C 149, 19.5.2001
N 232/2000	31.1.2001	Development aid to Bangladesh — one tug	OJ C 149, 19.5.2001
N 230/2000	31.1.2001	Development aid to Syria — two tugs	OJ C 149, 19.5.2001
N 827/2000	13.2.2001	Eureka project Medea +	OJ C 117, 21.4.2001
N 833/2000	27.2.2001	Technical development projects scheme	OJ C 160, 2.6.2001
N 101/2000	28.2.2001	Berendsen Textiel Service BV/Cofiton BV	OJ C 342, 5.12.2001
N 91/2001	13.3.2001	Modifications to the collaborative research and development scheme	OJ C 160, 2.6.2001
N 483/2000	28.3.2001	State aid for South Holland Engineering Office (IBZH)	
N 627/2000	11.4.2001	Free depreciation 2000–06	OJ C 185, 30.6.2001
N 131/2001	3.5.2001	Stimulus	
N 651/2000	3.7.2001	High speed experimental and simulation technology	OJ C 328, 23.11.2001
N 271/2001	10.7.2001	Investment Premium Scheme Flevoland 2000	OJ C 263, 19.9.2001
N 315/2001	18.7.2001	Development aid for Yemen	OJ C 333, 28.11.2001
N 314/2001	18.7.2001	Development aid for Vietnam	OJ C 333, 28.11.2001
N 220/2001	25.7.2001	R&D aid to Corus Technology BV (ECSC steel)	OJ C 318, 13.11.2001
N 597/1998	25.7.2001	Measures in favour of the electricity market for stranded costs	OJ C 268, 22.9.2001
N 533/2001	17.10.2001	R&D aid to Corus Technology BV (ECSC steel)	OJ C 347, 8.12.2001
N 433/2001	30.10.2001	Fluor lithography	
N 430/2001	30.10.2001	Extatic lithography	
N 168a/2001	28.11.2001	Modifications energy tax 2001	OJ C 30, 2.2.2002
N 651/2001	11.12.2001	Promotion sustainable heat	

Portugal

N 719/2000	15.1.2001	Small business initiatives (SIPIE)	OJ C 149, 19.5.2001
N 806/2000	29.1.2001	Measure 1.3 of the operational programme for the information society	OJ C 149, 19.5.2001
N 740/2000	29.1.2001	Extension of the monitoring period for Siderurgia Nacional	
N 136/2001	11.4.2001	Aid scheme for commercial town-planning projects	OJ C 149, 19.5.2001
N 563/2000	25.4.2001	Aid scheme to promote regional development in the Azores	OJ C 199, 14.7.2001
N 223/2001	19.9.2001	Tax aid scheme for inland regions	OJ C 342, 5.12.2001
N 613/2001	30.10.2001	Aid in the motor vehicle sector for Ford Electronica Visteon (Palmela, Setúbal)	
N 197/2001	28.11.2001	Change to aid scheme for promoting regional products	OJ C 30, 2.2.2002
N 537/2001	20.12.2001	Modification of the aid scheme for the modernisation of enterprises (SIRME)	OJ C 127, 29.5.2002

Spain

N 666/2000	17.1.2001	Shipbuilding — development aid for four tugs for Algeria	OJ C 149, 19.5.2001
N 664/2000	17.1.2001	Shipbuilding — development aid for seven tugs for Algeria	OJ C 149, 19.5.2001
N 791/2000	29.1.2001	Investment aid (Extremadura)	OJ C 149, 19.5.2001
N 706/2000	29.1.2001	Valencia electrification plan	OJ C 117, 21.4.2001
N 507/2000	31.1.2001	Investment and employment aid linked to investment and SMEs (Andalusia)	OJ C 263, 19.9.2001
NN 66/1999	31.1.2001	Training aid (Catalonia)	OJ C 117, 21.4.2001
N 684/2000	5.2.2001	Aid to promote corporate management innovation (Rioja)	OJ C 117, 21.4.2001
N 624/2000	5.2.2001	Aid to promote stable employment (Rioja)	OJ C 117, 21.4.2001

N 544/2000	6.2.2001	Planned guarantee scheme for SMEs (Aragon)	OJ C 117, 21.4.2001
N 412b/2000	27.2.2001	Aid to agricultural cooperatives (Valencia)	OJ C 38, 12.2.2002
N 75/2001	15.3.2001	Aid for investment in activities not covered by Annex I to the EC Treaty (Basque Country)	OJ C 160, 2.6.2001
N 757/2000	28.3.2001	Shipbuilding — modification of aid regime	OJ C 172, 16.6.2001
N 625/2000	28.3.2001	Aid for the non-profit sector (Rioja)	OJ C 185, 30.6.2001
N 750/2000	11.4.2001	SME consolidation and competitiveness plan	OJ C 185, 30.6.2001
N 127/2001	11.4.2001	Regional aid scheme to promote restructuring of SMEs (Basque Country)	OJ C 318, 13.11.2001
N 101/2001	2.5.2001	Employment aid scheme (Valencia)	OJ C 211, 28.7.2001
N 847/2000	2.5.2001	Aid to promote training and employment (Rioja)	OJ C 199, 14.7.2001
N 683/2000	14.5.2001	Aid for investments in SMEs in the industrial and services sectors (Rioja)	OJ C 318, 13.11.2001
N 182/2001	18.5.2001	Aid to promote conversion of assisted regions	OJ C 199, 14.7.2001
N 685/2000	18.5.2001	Aid for financial support to investment in the reform of commercial structures and services by SMEs (Rioja)	OJ C 234, 18.8.2001
N 187/2001	6.6.2001	Regional aid programme to promote R&D (Andalusia)	OJ C 318, 13.11.2001
NN 78/2000	6.6.2001	Environmental protection aid for several ECSC firms (Basque Country)	OJ C 211, 28.7.2001
N 626/2000	14.6.2001	Employment aid for the disabled (Rioja)	OJ C 263, 19.9.2001
NN 14/2001	20.6.2001	Terra Mítica Park	OJ C 300, 26.10.2001
N 498/2000	20.6.2001	Framework regional aid scheme (IGAPE) (Galicia)	OJ C 30, 2.2.2002
N 588/2000	25.6.2001	Quality promotion programme (Rioja)	OJ C 263, 19.9.2001
N 792/2000	3.7.2001	Regional aid to finance investment (Extremadura)	OJ C 263, 19.9.2001
N 686/2000	17.7.2001	Plan to promote SMEs (Rioja)	OJ C 318, 13.11.2001
N 723/2000	19.7.2001	Regional aid schemes to promote quality, design, research and innovation and competitiveness	OJ C 318, 13.11.2001
N 448/2001	2.8.2001	Amendment to regional investment aid scheme N 75/2000 (Asturias)	OJ C 263, 19.9.2001
N 834/2000	6.9.2001	Employment aid scheme for enterprises in the non-profit sector (Extremadura)	OJ C 333, 28.11.2001
N 795/2000	6.9.2001	Employment aid scheme (Extremadura)	OJ C 328, 23.11.2001
N 32/2001	14.9.2001	Regional aid scheme to promote and develop rural areas (EREIN programme)	OJ C 333, 28.11.2001
N 295/2001	19.9.2001	Aid to Ge Plastics SL	
N 836/2000	2.10.2001	Regional employment aid scheme to promote the mutual/non-profit sector	OJ C 30, 2.2.2002
N 601/2001	17.10.2001	Modification to aid scheme N 676/2000 — gasification plan for small and medium-sized cities (Valencia)	
N 460/2001	20.11.2001	Photovoltaic solar energy	
N 459/2001	20.11.2001	Aid for thermal solar energy	
N 476/2001	27.11.2001	Aid scheme to promote redevelopment of mining regions	OJ C 30, 2.2.2002
N 585/2001	28.11.2001	Aid for rural electrification — Murcia	
N 347/2001	28.11.2001	Aid for open-ended contracts	
N 630/2001	11.12.2001	Capitalisation aid for technology based firms	OJ C 32, 5.2.2002
N 698/2001	20.12.2001	Aid for audiovisual production (Extremadura)	
Sweden			
N 749/2000	5.2.2001	Measures in favour of SMEs	OJ C 117, 21.4.2001
United Kingdom			
NN 130/2000	17.1.2001	Shipbuilding — social aid related to partial closure at Harland & Woolf	OJ C 117, 21.4.2001
N 747a/1999	28.2.2001	Partnership support for regeneration No 1 — support for speculative developments	OJ C 160, 2.6.2001

N 747b/1999	28.2.2001	Partnership support for regeneration No 2 — support for bespoke developments	OJ C 160, 2.6.2001
N 197/2000	28.3.2001	Climate-change levy (ECSC steel)	OJ C 191, 7.7.2001
N 123/2000	28.3.2001	Climate-change levy	
N 731/2000	25.4.2001	Regional selective assistance	OJ C 211, 28.7.2001
N 606/2000	14.6.2001	Highlands & Islands Enterprise scheme for initial investment and job creation	OJ C 226, 11.8.2001
N 152/2001	18.7.2001	MG Rover: training aid	OJ C 333, 28.11.2001
N 660a/2000	18.7.2001	Exemption from climate-change levy for natural gas in Northern Ireland (industry and services)	OJ C 263, 19.9.2001
N 210/2001	24.7.2001	Viridian Growth Fund investments in medium-sized companies	OJ C 263, 19.9.2001
N 82/2001	25.7.2001	English Cities Fund	OJ C 263, 19.9.2001
N 734/2000	31.7.2001	South Yorkshire productive investment scheme	OJ C 263, 19.9.2001
N 385/2001	6.9.2001	Highlands & Islands Enterprises R&D innovation scheme for SMEs	
N 527/2001	13.9.2001	Highlands & Islands Enterprise scheme for initial investment and job creation	
N 120/2001	30.10.2001	Trent 600 and Trent 900 projects	
N 497/2001	13.11.2001	Grants for owner-occupation scheme	OJ C 32, 5.2.2002
N 416/2001	28.11.2001	Emissions trading scheme	
N 504/2000	28.11.2001	Renewables obligation and capital grants for renewables technologies	OJ C 30, 2.2.2002
N 722/2000	20.12.2001	Coalfields enterprise fund	
N 718a/2001	28.12.2001	Buying-time Assistance (Northern Ireland)	
N 481/2001	28.12.2001	Northern Ireland R&D Challenge Fund	OJ C 38, 12.2.2002

2. Cases in which the Commission found, without opening a formal investigation, that there was no aid element within the meaning of Article 87(1) of the EC Treaty or Article 1(2) of Decision 2496/96/ECSC

Austria

N 645/2000	20.6.2001	Grants for Biomass (Vorarlberg)	
N 34/1999	25.7.2001	Compensation for stranded costs	

Belgium

N 232/2001	3.7.2001	Reduction in employer's social security contributions in the event of the introduction of a 38-hour working week and in the event of an overall reduction in working time	OJ C 268, 22.9.2001
N 415a/2001	28.11.2001	Draft decree promoting green electricity — green certificate scheme	OJ C 30, 2.2.2002

Denmark

N 126/2001	3.7.2001	Regional growth environments	OJ C 328, 23.11.2001
N 236/2001	25.7.2001	Job rotation	OJ C 268, 22.9.2001
N 246/2001	19.9.2001	Grants to companies with working environment certificates	

France

N 118/2000	25.4.2001	Grants to professional sports clubs	OJ C 333, 28.11.2001

Germany

N 707/2000	17.1.2001	Innovation Fund of the Innovations- und Beteiligungsgesellschaft mbH Sachsen-Anhalt	OJ C 149, 19.5.2001
N 694/2000	25.4.2001	Health research	OJ C 185, 30.6.2001
N 804/2000	20.6.2001	Sale of business shares of the GSG by the *Land* of Berlin	
NN 137/2001	11.12.2001	Provisions for the closure of nuclear power plants and the disposal of waste	

Italy

N 730/2000	31.1.2001	Valle d'Aosta: acquisition of NewCoGen SpA and NewCoDist SpA by Finaosta	OJ C 117, 21.4.2001
N 434/2000	31.1.2001	Cogne Acciai Speciali — R&D (ECSC steel)	OJ C 133, 5.5.2001
N 674/2001	13.11.2001	Scheme to promote the regularisation of businesses in the informal economy	OJ C 30, 2.2.2002

Netherlands

N 484/2000	31.01.2001	Waste-disposal scheme for PVC façade elements	OJ C 358, 15.12.2001
NN 87/2000	20.6.2001	Waste-disposal system for paper and cardboard	
N 698/2000	2.10.2001	Energy-saving scheme for low-income households	
N 358/2001	13.11.2001	Stichting Infrastructuur Kwaliteitsborging Bodembeheer	
NN 30b/2000	28.11.2001	Zero rate for green electricity	OJ C 30, 2.2.2002
N 678/2001	28.11.2001	Environmental protection	OJ C 30, 2.2.2002
N 239/2001	11.12.2001	Exemption from energy tax for waste-processing units	OJ C 32, 5.2.2002

Spain

NN 49/1999	25.7.2001	Scheme for competition transition costs	OJ C 268, 22.9.2001

United Kingdom

N 797/2000	13.3.2001	Enhanced capital allowances for energy-efficient investments	OJ C 160, 2.6.2001
N 546b/2000	13.3.2001	Partnership support for regeneration 5: Community/voluntary (neighbourhood) regeneration	OJ C 199, 14.7.2001
N 546a/2000	28.3.2001	Partnership support for regeneration (4): Support for environmental regeneration	OJ C 263, 19.9.2001
N 123/2000	28.3.2001	Climate-change levy	
N 140/2001	5.7.2001	R&D for renewables and sustainable energy	OJ C 328, 23.11.2001

3. Aid cases in which the Commission initiated proceedings under Article 88(2) of the EC Treaty in respect of all or part of the measure

Belgium

NN 73/2000 (C 36/2001)	6.6.2001	Aid to Verlipack	OJ C 313, 8.11.2001
N 816/2000	18.7.2001	Promoting innovation through collaboration	
NN 76/2001 (C 74/2001)	17.10.2001	Social fund for the diamond processing industry	OJ C 363, 19.12.2001

Finland

NN 98/2000 (C 55/2001)	11.7.2001	Åland Islands — captive insurance	OJ C 309, 6.11.2001

France

NN 41/2000 (C 46/2001)	11.7.2001	Central corporate treasuries	
NN 39/2000 (C 45/2001)	11.7.2001	Headquarters and logistic centres	
NN 23/2001 (C 79/2001)	30.10.2001	Exemption from excise duty for the production of alumina in Gardanne	OJ C 30, 2.2.2002

Germany

N 702/2000 (C 23/2001)	11.4.2001	Investment aid to Flender Werft, Lübeck	OJ C 191, 7.7.2001
NN 156/1999 (C 31/2001)	23.5.2001	Schmitz-Gotha Fahrzeugwerk GmbH	OJ C 211, 28.7.2001
N 595/2000 (C 33/2001)	6.6.2001	Sale of Gröditzer Stahlwerke	OJ C 199, 14.7.2001
NN 28/2001 (C 43/2001)	20.6.2001	BVS aid measures to Chemische Werke Piesteritz GmbH	OJ C 226, 11.8.2001
NN 23/2000 (C 41/2001)	20.6.2001	Aid to Klausner Nordic Timber GmbH & Co KG (KNT), Wismar	OJ C 219, 4.8.2001
NN 147/1998	3.7.2001	Technische Glaswerke Ilmenau GmbH	
NN 42/2000 (C 47/2001)	11.7.2001	Control and coordination centres of foreign companies	
N 226/2001 (C 61/2001)	25.7.2001	Daimler/Kölleda	OJ C 263, 19.9.2001
NN 45/2001	25.7.2001	Industriepark Wörth	OJ C 280, 4.10.2001
NN 8/2000 (C 62/2001)	25.7.2001	State aid to Neue Erba Lautex GmbH Weberei und Veredlung, Saxony	OJ C 310, 7.11.2001
NN 3/2000	19.9.2001	HIG Hoch- und Ingenieurbau GmbH, Gera	
NN 2/2000 (C 66/2001)	19.9.2001	IGB Ingenieur- und Gewerbebau GmbH, Grossenstein	OJ C 330, 24.11.2001
N 361/2001 (C 72/2001)	2.10.2001	Aid to Hamburger AG	OJ C 342, 5.12.2001
NN 6/2000	30.10.2001	Aid in favour of Eisenguss Torgelow GmbH — EGT, Mecklenburg-Western Pomerania	
N 334/2001 (C 86/2001)	28.11.2001	State aid to Infineon	OJ C 368, 22.12.2001
N 49/2001	11.12.2001	Small business programme of the *Land* of Saxony	
NN 55/2001	20.12.2001	Measures to promote trade and exports for goods produced in the *Land* of Mecklenburg-Western Pomerania — incorrect application of the *de minimis* rules	
NN 7/2000	20.12.2001	Aid in favour of Heckert Chemnitzer Werkzeugmaschinenbau GmbH, Saxony	

Greece

N 201/2001	18.7.2001	State aid in favour of G. Polychronos spinning mills SA	

Ireland

NN 55/2000 (C 54/2001)	11.7.2001	Foreign income	
NN 22/2001 (C 78/2001)	30.10.2001	Exemption from excise duty for the production of alumina in Shannon	OJ C 30, 2.2.2002

Italy

NN 110/2000 (C 8/2001)	31.1.2001	Aid to Pertusola Sud SpA	OJ C 149, 19.5.2001
N 613/2000 (C 10/2001)	13.2.2001	R&D aid to Lucchini SpA (ECSC steel)	OJ C 166, 9.6.2001
NN 26/2001 (C 80/2001)	30.10.2001	Exemption from excise duty for the production of alumina in Sardinia	OJ C 30, 2.2.2002
N 441/2001 (C 92/2001)	20.12.2001	Iveco Foggia	OJ C 53, 28.2.2002

Luxembourg

NN 47/2000 (C 50/2001)	11.7.2001	Finance companies	
NN 46/2000 (C 49/2001)	11.7.2001	Coordination centres	

Netherlands

N 194/2000 (C 6/2001)	31.1.2001	Development aid for Djibouti — one tug	OJ C 172, 16.6.2001
N 629/2000 (C 11/2001)	28.2.2001	Extension of waste disposal system for car wrecks	OJ C 111, 12.4.2001
NN 48/2000 (C 51/2001)	11.7.2001	International financing activities	
NN 57/2001 (C 64/2001)	25.7.2001	Privatisation and restructuring of Koninklijke Schelde Groep	OJ C 254, 13.9.2001

Portugal

NN 133b/2001	13.11.2001	Aid for the public-service television broadcaster RTP	
NN 85b/2001	13.11.2001	Aid for the public-service television broadcaster RTP	
NN 94b/1999	13.11.2001	Aid for the public-service television broadcaster RTP	

Spain

N 84/2001 (C 35/2001)	6.6.2001	Construction of a combined cycle power station and a regasification plant (Bilbao)	OJ C 231, 17.8.2001
N 838/2000 (C 34/2001)	6.6.2001	Ford Almusafes	OJ C 219, 4.8.2001
NN 14/2001 (C 42/2001)	20.6.2001	Terra Mítica Park	OJ C 300, 26.10.2001
N 11/2001 (C 39/2001)	20.6.2001	Restructuring aid to Minas de Río Tinto SAL	OJ C 367, 21.12.2001
N 850/2000	20.6.2001	R&D aid for the Zamudio site (Basque Country)	
NN 43/2000 (C 48/2001)	11.7.2001	Coordination centres (Basque Country)	
NN 80/2001 (C 71/2001)	19.9.2001	Aid in favour of Grupo de Empresas Álvarez (GEA), Vigo (Galicia)	OJ C 336, 30.11.2001
NN 65/2001 (C 70/2001)	19.9.2001	Alleged State aid in favour of Hilados y Tejidos Puigneró SA	OJ C 339, 1.12.2001
NN 41/2001 (C 69/2001)	19.9.2001	Aid to Porcelanas Principado	OJ C 336, 30.11.2001
N 839/2000 (C 82/2001)	13.11.2001	Renault Valladolid	OJ C 33, 6.2.2002

United Kingdom

N 123/2000 (C 18/2001)	28.3.2001	Climate-change levy	OJ C 185, 30.6.2001
NN 52/2000 (C 53/2001)	11.7.2001	Gibraltar exempt offshore companies	OJ C 26, 30.1.2002
NN 51/2000 (C 52/2001)	11.7.2001	Gibraltar qualifying offshore companies	OJ C 26, 30.01.2002

4. Aid cases in which the Commission initiated proceedings under Article 6(5) of Decision 2496/96/ECSC in respect of all or part of the measure

Belgium

N 779/2000 (C 37/2001)	20.6.2001	Environmental aid to Sidmar (ECSC steel)	OJ C 234, 18.8.2001

Germany

N 665/2000 (C 12/2001)	28.2.2001	R&D aid to EKO-Stahl GmbH	OJ C 166, 9.6.2001
N 595/2000	6.6.2001	Sale of Gröditzer Stahlwerke	
N 94/2001	20.6.2001	R&D aid to Stahlwerke Bremen GmbH (ECSC steel)	

Spain

NN 77/2000 (C 20/2001)	28.3.2001	R&D aid to several ECSC undertakings in the Basque Country	OJ C 185, 30.6.2001
NN 71/2001 (C 95/2001)	20.12.2001	Alleged aid in favour of Siderúrgica Añón	OJ C 33, 6.2.2002

United Kingdom

N 197/2000 (C 19/2001)	28.3.2001	Climate-change levy (ECSC steel)	OJ C 191, 7.7.2001

5. Aid cases in which the Commission extended proceedings under Article 88(2) in respect of all or part of the measure

Germany

C 28/2000	17.1.2001	Aid in favour of Hirschfelder Leinen und Textil GmbH (Hiltex)	OJ C 87, 17.3.2001
C 36/2000	25.4.2001	Aid to Graf von Henneberg Porzellan GmbH, Ilmenau (Thuringia)	OJ C 211, 28.7.2001
C 31/2000	17.10.2001	Aid to Neue Harzer Werke GmbH, Blankenburg (Saxony-Anhalt)	OJ C 32, 5.2.2002
C 62/2000	28.11.2001	Thüringen Porzellan GmbH (Kahla/Thüringen)	OJ C 26, 30.1.2002
C 15/2001	20.12.2001	Aid in favour of Ambau GmbH	

Spain

C 40/2000	28.11.2001	Aid to shipbuilding — further restructuring of public yards in Spain	OJ C 21, 24.1.2002

6. Interim decisions requiring the Member State to supply the information needed by the Commission

Germany

C 28/2000	17.1.2001	Aid in favour of Hirschfelder Leinen und Textil GmbH (Hiltex)	
NN 9/2000	28.2.2001	Aid to Jahnke Stahlbau	OJ C 160, 2.6.2001
NN 16/2000	13.3.2001	Aid to Pollmeier GmbH	OJ C 166, 9.6.2001
NN 11/2000	13.3.2001	Aid to Ambau GmbH	OJ C 179, 25.6.2001
C 36/2000	25.4.2001	Aid to Graf von Henneberg Porzellan GmbH, Ilmenau (Thuringia)	OJ C 211, 28.7.2001
NN 156/1999	23.5.2001	Schmitz-Gotha Fahrzeugwerk GmbH	OJ C 211, 28.7.2001
NN 64/1998	23.5.2001	Gothaer Fahrzeugtechnik GmbH	OJ C 211, 28.7.2001
NN 28/2001	20.6.2001	BVS aid measures to Chemische Werke Piesteritz GmbH	OJ C 226, 11.8.2001
NN 23/2000	20.6.2001	Aid to Klausner Nordic Timber GmbH & Co KG (KNT), Wismar	OJ C 219, 4.8.2001
C 44/2000	19.9.2001	Aid to SKL Motoren- und Systemtechnik GmbH	
NN 2/2000	19.9.2001	IGB Ingenieur- und Gewerbebau GmbH, Grossenstein	OJ C 330, 24.11.2001
C 31/2000	17.10.2001	Aid to Neue Harzer Werke GmbH, Blankenburg (Saxony-Anhalt)	OJ C 32, 5.2.2002
C 62/2000	28.11.2001	Thüringen Porzellan GmbH (Kahla/Thüringen)	

Portugal

NN 133a/2001	7.11.2001	Aid for the public-service television broadcaster RTP	
NN 85a/2001	7.11.2001	Aid for the public-service television broadcaster RTP	
NN 94a/1999	7.11.2001	Aid for the public-service television broadcaster RTP	

Spain

C 20/2000	2.10.2001	Aid to Sniace SA	
NN 71/2001	20.12.2001	Alleged aid in favour of Siderúrgica Añón	OJ C 33, 6.2.2002

7. Cases in which the Commission considered that the aid was compatible with the common market and terminated proceedings under Article 88(2) of the EC Treaty by way of a positive final decision

Finland

C 21/2000	25.4.2001	Investment aid to Ojala-Yhtymä Oy in Haapajärvi	OJ L 304, 21.11.2001

France

C 2/1999	25.4.2001	Aid to ACH Construction Navale (ACHCN)	OJ L 47, 19.2.2002

Germany

C 9/2000	13.2.2001	Second privatisation of KataLeuna GmbH Catalysts	OJ L 245, 14.9.2001
C 72/1998	28.2.2001	Act concerning the 1999 tax premium for the new German *Länder*, including Berlin	
C 1/2000	8.5.2001	Modification of aid to Philipp Holzmann AG	OJ L 248, 18.9.2001
C 52/2000	3.7.2001	KHK Verbindetechnik GmbH, Brotterode	OJ L 31, 1.2.2002
C 35/2000	18.7.2001	Aid to Saalfelder Hebezeugbau GmbH, Thuringia	
C 67/1999	25.7.2001	Aid in favour of Dampfkesselbau Hohenturm GmbH	OJ L 308, 27.11.2001

C 55/2000	17.10.2001	Mesacon Messelektronik GmbH, Dresden	
C 27/2000	17.10.2001	Aid in favour of Deckel Maho Seebach GmbH, Thuringia	
C 78/1998	30.10.2001	Aid to Neue Maxhütte: recovery of illegal aid (initiation of proceedings under Article 88 ECSC)	

Italy

C 75/1999	28.2.2001	Fiat Sata SpA, Melfi	OJ L 177, 30.6.2001
C 64/1998	25.4.2001	Aid granted to Istituto Poligrafico e Zecca dello Stato and its controlled companies	
C 47/2000	3.7.2001	Aid to Ilva Lamiere e Tubi Srl and Siderumbra	OJ L 43, 14.2.2002
C 43/1999	19.9.2001	Aid in the chemical sector to Enichem SpA	
C 54/2000	11.12.2001	Tax measures for banks and banking foundations	

Netherlands

C 12/2000	7.2.2001	Development aid for China	OJ L 189, 11.7.2001
C 6/2001	19.9.2001	Development aid for Djibouti — one tug	
C 11/2001	30.10.2001	Extension of waste disposal system for car wrecks	

Spain

C 33/2000	31.1.2001	Aid to Fesa-Enfersa group (Fertiberia SA)	
C 33/1998	3.7.2001	Aid for the restructuring of Babcock Wilcox SA (BWE)	

United Kingdom

C 51/2000	17.1.2001	Nissan MM (Micra) project	OJ L 140, 24.5.2001
C 46/2000	13.2.2001	Viridian Growth Fund (Northern Ireland)	OJ L 144, 30.5.2001
C 56/2000	6.6.2001	Regional venture capital funds	

8. Cases in which the Commission considered that the aid was compatible with the common market and terminated proceedings under Article 6(5) of Decision 2496/96/ECSC by way of a positive final decision

Austria

C 24/2000	25.4.2001	A-Voest Alpine Stahl Linz GmbH — investment aid for water purification facilities	OJ L 235, 4.9.2001

Belgium

C 37/2001	20.12.2001	Environmental aid to Sidmar (ECSC steel)	

9. Cases in which the Commission considered that the aid was incompatible with the common market and terminated proceedings under Article 88(2) of the EC Treaty by way of a negative or partly negative decision

Belgium

C 76/1999	23.5.2001	Employment aid to Cockerill Sambre SA (ECSC steel)
C 37/2001	20.12.2001	Environmental aid to Sidmar (ECSC steel)

France			
C 74/1999	25.7.2001	Development aid to Saint-Pierre et Miquelon	OJ L 327, 12.12.2001
Germany			
C 41/1999	28.3.2001	Aid to Efbe Verwaltungs GmbH & Co Management KG Lintra Beteiligungsholding GmbH	OJ L 236, 5.9.2001
C 19/2000	12.6.2001	Technische Glaswerke Ilmenau GmbH	
C 77/1999	18.7.2001	Aid to Volkswagen AG, Dresden	OJ L 48, 20.2.2002
C 28/2000	19.9.2001	Aid in favour of Hirschfelder Leinen und Textil GmbH (Hiltex)	
C 66/2000	10.10.2001	Aid to Zeitzer Maschinen-, Anlagen, Geräte Zemag GmbH (Saxony-Anhalt)	
C 31/2000	17.10.2001	Aid to Neue Harzer Werke GmbH, Blankenburg (Saxony-Anhalt)	
C 36/2000	30.10.2001	Graf von Henneberg Porzellan GmbH, Ilmenau (Thuringia)	
Italy			
C 45/2000	28.3.2001	Environmental aid to Ferriere Nord SpA (ECSC steel)	OJ L 310, 28.11.2001
C 41/2000	6.6.2001	Aid to Iveco 99	OJ L 292, 9.11.2001
C 54/2000	11.12.2001	Tax measures for banks and banking foundations	
Netherlands			
C 11/1999	13.2.2001	Investment aid in favour of Hewlett Packard — SCI Systems	OJ L 186, 7.7.2001
C 57/2000	18.7.2001	Aid in favour of Nolte BV (Valmont Nederland)	OJ L 48, 20.2.2002
Spain			
C 33/1998	3.7.2001	Aid for the restructuring of Babcock Wilcox S.A. (BWE)	
C 54/1999	11.7.2001	45 % tax credit in the Province of Vizcaya	
C 53/1999	11.7.2001	45 % tax credit	
C 52/1999	11.7.2001	Reduction in the tax base for certain newly created businesses	
C 51/1999	11.7.2001	50 % tax relief	
C 50/1999	11.7.2001	Reduction in the tax base for certain newly created businesses	
C 49/1999	11.7.2001	Reduction in the tax base for certain newly created businesses	
C 48/1999	11.7.2001	45 % tax credit	
C 49/2000	23.10.2001	Santana Motor	OJ L 92, 9.4.2002
C 60/2000	20.12.2001	Exemption from corporation tax for certain newly created businesses in the Province of Álava	
C 59/2000	20.12.2001	Exemption from corporation tax for certain newly created businesses in the Province of Álava	
C 58/2000	20.12.2001	Exemption from corporation tax for certain newly created businesses in the Province of Álava	

10. Cases in which the Commission considered that the aid was incompatible with the common market and terminated proceedings under Article 6(4) of Decision 3855/91/ECSC or Article 6(5) of Decision 2496/96/ECSC by way of a negative decision

France			
C 61/2000	21.11.2001	Provisions for locating ECSC firms abroad with tax exemption (Article 39 *octies* A to D of the General Tax Code)	

Germany

C 34/2000	28.3.2001	Environmental aid to Stahlwerke Bremen	OJ L 35, 6.2.2002
C 12/2001	28.11.2001	R&D aid to EKO-Stahl GmbH	

11. Aid cases in which the Commission terminated proceedings under Article 88(2) of the EC Treaty after the Member State withdrew the proposed measure

Belgium

C 57/2001	20.12.2001	Promoting innovation through collaboration	

Germany

C 63/1999	28.2.2001	Impact of new electricity tax on feed-in price under *Stromeinspeisungsgesetz*	OJ C 117, 21.4.2001
C 67/1999	25.7.2001	Aid in favour of Dampfkesselbau Hohenturm GmbH	
C 40/2001	2.10.2001	R&D aid to Stahlwerke Bremen GmbH (ECSC steel)	

Greece

C 58/2001	30.10.2001	State aid in favour of G. Polychronos spinning mills SA	

Italy

C 35/1999	28.3.2001	Environmental aid to Ferriere Nord SpA (ECSC steel)	OJ L 310, 28.11.2001
C 20/1999	8.5.2001	Bolzano — formation of a public undertaking for the distribution of electricity	OJ C 330, 24.11.2001
C 19/1999	3.7.2001	Aid to Ilva Lamiere e Tubi Srl and Siderumbra	OJ L 43, 14.2.2002

12. Cases in which the Commission noted the Member State's agreement to ensuring the compliance of existing aid awards following the proposal of appropriate measures under Article 88(1) of the EC Treaty

Germany

E 5/1998	28.2.2001	Act concerning the 1999 tax premium for the new German *Länder*, including Berlin	

13. Aid cases which the Commission decided to refer to the Court of Justice under the second subparagraph of Article 88(2) of the EC Treaty

Germany

C 23/1997	25.7.2001	Aid to Lautex GmbH Weberei und Veredelung (Saxony)	

14. Cases in which the Commission found, without opening a formal investigation, that there was no aid element within the meaning of Article 4 of the ECSC Treaty

Belgium

NN 121/2000	25.7.2001	Financial participation by the Walloon region in Duferco Belgium SA (ECSC steel)	OJ C 268, 22.9.2001

United Kingdom

N 197/2000	28.3.2001	Climate-change levy (ECSC steel)

15. Interim decisions requiring the Member State to order the recipient (s) to reimburse aid illegally granted

Germany

C 66/2000	10.10.2001	Aid to Zeitzer Maschinen-, Anlagen, Geräte Zemag GmbH (Saxony-Anhalt)
C 36/2000	30.10.2001	Graf von Henneberg Porzellan GmbH, Ilmenau (Thuringia)

Spain

C 54/1999	11.7.2001	45 % tax credit in the Province of Vizcaya
C 53/1999	11.7.2001	45 % tax credit
C 52/1999	11.7.2001	Reduction in the tax base for certain newly created businesses
C 51/1999	11.7.2001	50 % tax relief
C 50/1999	11.7.2001	Reduction in the tax base for certain newly created businesses
C 49/1999	11.7.2001	Reduction in the tax base for certain newly created businesses
C 48/1999	11.7.2001	45 % tax credit

16. Interim decisions requiring the Member State to suspend payment of aid

Spain

C 54/1999	11.7.2001	45 % tax credit in the Province of Vizcaya
C 53/1999	11.7.2001	45 % tax credit
C 52/1999	11.7.2001	Reduction in the tax base for certain newly created businesses
C 51/1999	11.7.2001	50 % tax relief
C 50/1999	11.7.2001	Reduction in the tax base for certain newly created businesses
C 49/1999	11.7.2001	Reduction in the tax base for certain newly created businesses
C 48/1999	11.7.2001	45 % tax credit

17. Cases in which the Commission terminated proceedings under Article 88(2) of the EC Treaty having found that there was no aid element within the meaning of Article 87(1) of the EC Treaty

Germany

C 33/2001	20.12.2001	Sale of Gröditzer Stahlwerke

Italy

C 11/2000	20.6.2001	Investment aid to Rivit SpA (non-ECSC steel)	OJ C 234, 18.8.2001

Netherlands

C 33/1999	25.7.2001	Reebok, Rotterdam	OJ L 25, 29.1.2002

18. Other Commission decisions

Austria

N 235/1999	6.9.2001	Tax-rate increases in relation to the rinsewater exemption, the exemption for de-inking residue, the green electricity zero tariff and the exemption for waste incineration plants	

Denmark

N 840a/2000	17.10.2001	Measures in favour of large energy consumers	

France

C 38/1998	28.2.2001	Aid to the Kimberly Clark/Scott group, France	OJ L 12, 15.1.2002
N 472/2000	3.5.2001	Renewal under identical conditions of the parafiscal charge on the leather goods industry	

Germany

N 653/2000	8.5.2001	Real estate sale by city of Rostock to Sixt	
N 440/2001	9.9.2001	Support for film and audiovisual production in the German *Länder* — Mitteldeutsche Medienförderung GmbH	

Italy

C 16/2000	20.6.2001	Regional aid map for the period 2000–06	

Netherlands

N 101/2000	11.4.2001	Berendsen Textiel Service BV/Cofiton BV	OJ C 342, 5.12.2001
N 131/2001	24.7.2001	Stimulus	

Spain

N 739/1999	17.1.2001	Aid to the retail sector (Valencia)	OJ C 149, 19.5.2001
N 738/1999	17.1.2001	Aid to the tourism sector (Valencia)	OJ C 149, 19.5.2001
N 717/1999	17.1.2001	Regional aid scheme to promote investment, diversification and innovation (Valencia)	OJ C 149, 19.5.2001
N 683/2000	17.7.2001	Aid for investments in SMEs in the industrial and services sectors (Rioja)	

United Kingdom

C 19/2001	3.4.2001	Climate-change levy (ECSC steel)	OJ C 191, 7.7.2001
N 197/2000	3.4.2001	Climate-change levy (ECSC steel)	

D — List of State aid cases in other sectors

1. In the agricultural sector

1.1. Cases in which the Commission found, without opening a formal investigation, that there was no aid element within the meaning of Article 87(1) of the EC Treaty

Italy

N 368/2000	17.1.2001	Rural development plan (Valle d'Aosta)	OJ C 71, 3.3.2001
N 369/2001	17.7.2001	Amendment of Regional Act No 37/2000 — agricultural and rural development (Tuscany)	OJ C 234, 18.8.2001
N 824a/2000	2.10.2001	Annual and multiannual balance sheets — Articles 121, 123 and 126 of Act No 388/2000	OJ C 21, 24.1.2002

1.2. Measures which the Commission considered compatible with the common market without opening a formal investigation under Article 88(2) of the EC Treaty

Austria

N 845/2000	26.2.2001	Insurance premiums (Vienna)	OJ C 102, 31.3.2001
N 652/2000	26.2.2001	Subsidised loans in the horticulture sector	OJ C 102, 31.3.2001
N 537/2000	22.3.2001	Aid in the livestock sector (Carinthia)	OJ C 128, 28.4.2001
N 631/2000	3.4.2001	Forestry programme	OJ C 133, 5.5.2001
N 778/2000	9.4.2001	Maintenance of rural heritage (Carinthia)	OJ C 160, 2.6.2001
N 147/2001	7.6.2001	Animal health (Vorarlberg)	OJ C 199, 14.7.2001
N 5/2001	3.7.2001	Nature protection programme 'Lebensraum Acker' (Vienna)	OJ C 219, 4.8.2001
NN 58/2001	25.7.2001	Measures related to the BSE crisis (Carinthia)	OJ C 247, 5.9.2001
N 114/2001	2.10.2001	Measures related to the BSE crisis	OJ C 323, 20.11.2001
N 583/2001	27.11.2001	Aid towards transition from cage-rearing to floor management or free-range production in poultry-keeping (Vorarlberg)	OJ C 374, 29.12.2001
N 165/2001	27.11.2001	Directive concerning the provision of services	OJ C 374, 29.12.2001
N 658/2001	5.12.2001	Aid towards compensation for the drought damage to harvest in 2001 (Carinthia)	OJ C 5, 8.1.2001
N 640/2001	20.12.2001	Compensation for losses due to the BSE crisis (Burgenland)	OJ C 26, 30.1.2002
N 682/2001	20.12.2001	Compensation for losses due to the BSE crisis (Vorarlberg)	OJ C 26, 30.1.2002
N 188/2001	21.12.2001	Quality and cleanliness of milk and milk products (Burgenland)	OJ C 20, 23.1.2002

Belgium

N 699/2000	26.2.2001	Draft decree on herd reduction	OJ C 102, 31.3.2001
N 143/2001	9.4.2001	Funding of anti-BSE measures	OJ C 140, 12.5.2001
N 437/2001	25.7.2001	BSE and foot-and-mouth crises	OJ C 247, 5.9.2001
N 480/2001	22.8.2001	Registration of laboratories for the detection of organisms harmful to plants and plant products	OJ C 268, 22.9.2001
N 501/2000	10.10.2001	Support for investments and setting-up in farming (Flanders)	OJ C 323, 20.11.2001
N 786/2000	17.10.2001	Aid to glass-house cultivation (Flanders)	OJ C 21, 24.1.2002
N 657/2001	7.11.2001	BSE crisis	OJ C 350, 11.12.2001

Denmark

N 459/2000	3.4.2001	Aid for innovation, research and development	OJ C 133, 5.5.2001
N 90/2001	15.5.2001	Ceiling on local land taxes	OJ C 172, 16.6.2001

N 331/2000	15.5.2001	Protection of farm animals	OJ C 172, 16.6.2001
N 307/2000	31.7.2001	Compensation for disease eradication	OJ C 247, 5.9.2001
N 224/2001	11.10.2001	Extension of the act on administration of the European Community regulations regarding market organisation and agricultural products, etc., to cover aid for ecological production	OJ C 323, 20.11.2001
N 356/2001	11.12.2001	Aid to organic production	OJ C 18, 22.1.2002

Finland

N 429/2000	22.3.2001	Organic products	OJ C 128, 28.4.2001
N 189/2000	15.5.2001	Agricultural holdings	OJ C 172, 16.6.2001
N 825/2000	18.6.2001	Financing of sustainable forestry	OJ C 211, 28.7.2001
N 649/2000	21.12.2001	Exemption of tax on land purchase	OJ C 20, 23.1.2002

France

N 686/1999	19.2.2001	Aid for the fruit and vegetable sector	OJ C 94, 24.3.2001
NN 2/2001	11.4.2001	Programme to control agricultural pollution	OJ C 179, 25.6.2001
N 829/2000	11.4.2001	Aid for olive growing	OJ C 160, 2.6.2001
N 375/2000	15.5.2001	Martinique 2000–06 — agricultural guarantee fund	OJ C 172, 16.6.2001
N 142/2001	7.6.2001	Measures to assist the meat industry, excluding wholesale/retail	OJ C 199, 14.7.2001
N 190/2001	25.6.2001	Aid in the oilseeds, protein crops and textile crops sectors	OJ C 211, 28.7.2001
N 296/2001	25.6.2001	Aid to improve quality in the cereals sector	OJ C 211, 28.7.2001
N 307/2001	3.7.2001	Aid for the advertising and promotion of fresh and processed fruit and vegetables	OJ C 219, 4.8.2001
N 191/2001	17.7.2001	Aid for the development of organic cereals, oilseed and protein plants farming	OJ C 234, 18.8.2001
N 312/2001	18.7.2001	Aid for the advertising and promotion of quality wines 'VQPRD' and 'vins de pays'	OJ C 234, 18.8.2001
N 311/2001	18.7.2001	Aid for the advertising and promotion of milk products	OJ C 234, 18.8.2001
NN 46/2001	25.7.2001	BSE crisis	OJ C 247, 5.9.2001
N 206/2001	31.7.2001	Parafiscal charge for the Fruit and Vegetable Trade Technical Centre (CTIFL)	OJ C 247, 5.9.2001
N 316b/2000	14.8.2001	Réunion 2000–06 — commercial parks and strategic development areas	OJ C 258, 15.9.2001
N 255/2001	20.8.2001	Parafiscal charge for the National Intertrade Organisation for Prunes (BNIP)	OJ C 268, 22.9.2001
N 479/2001	22.8.2001	Aid to technological development and innovation in the meat products and egg products sector	OJ C 268, 22.9.2001
N 478/2001	22.8.2001	Aid for testing in the tobacco sector	OJ C 268, 22.9.2001
N 293/2001	22.8.2001	Aid to farms supplying breeding animals to the French overseas departments	OJ C 268, 22.9.2001
N 388/2001	6.9.2001	Aid to ornamental horticulture	OJ C 321, 16.11.2001
N 386/2001	10.10.2001	Renewal of the parafiscal charge for the National Institute for the Improvement of Viticulture (ENTAV)	OJ C 323, 20.11.2001
N 381/2001	10.10.2001	Aid to improve the quality of pigmeat produced in mountain areas	OJ C 323, 20.11.2001
N 355/2000	30.10.2001	Programme to control agricultural pollution (PMPOA)	OJ C 350, 11.12.2001
N 484/2001	5.11.2001	Aid to the wine-growing sector	OJ C 18, 22.1.2002
N 665/2001	27.11.2001	Aid to grouping centres	OJ C 374, 29.12.2001
N 573/2001	5.12.2001	Processing of fresh fruit	OJ C 5, 8.1.2001
N 570/2001	18.12.2001	Fresh fruit and vegetables programme — Île-de-France	OJ C 18, 22.1.2002
N 664/2001	20.12.2001	Defrayal of the costs of BSE tests	OJ C 26, 30.1.2002
N 571/2001	20.12.2001	Parafiscal charge to assist and promote the cider fruit sector	OJ C 26, 30.1.2002
N 607/2001	21.12.2001	Aid to agricultural holdings in the Yvelines	OJ C 20, 23.1.2002

Germany

N 761/2000	31.1.2001	Improvements in farm structures and coastal protection	OJ C 71, 3.3.2001
N 111/2000	13.2.2001	Compensation in water-protection areas (Baden-Württemberg)	OJ C 87, 17.3.2001
N 581/2000	26.2.2001	Bio-diesel tanks on agriculture undertakings	OJ C 102, 31.3.2001
N 36/2001	22.3.2001	Improvements in farm structures and coastal protection	OJ C 128, 28.4.2001
N 162/2001	11.4.2001	Destruction of meat and bone meal and animal feed containing meat and bone meal	OJ C 160, 2.6.2001
N 566/2000	27.4.2001	Directive on the grant of subsidies for the construction and improvement of irrigation and drainage systems (Mecklenburg-Western Pomerania)	OJ C 185, 30.6.2001
N 561/2000	27.4.2001	Support for performance testing and other measures in animal breeding (Brandenburg)	OJ C 185, 30.6.2001
N 183/2001	7.6.2001	Animal diseases	OJ C 199, 14.7.2001
N 844/2000	7.6.2001	R&D in environmental protection	OJ C 199, 14.7.2001
N 205/2001	18.7.2001	Promotion of consultancy in favour of agricultural and horticultural holdings (Thuringia)	OJ C 234, 18.8.2001
N 248/2001	25.7.2001	Aid for combating BSE (Saxony)	OJ C 247, 5.9.2001
N 193/2001	25.7.2001	BSE preventive measures (Bavaria)	OJ C 247, 5.9.2001
N 174/2001	25.7.2001	Emergency aid for stock farmers (BSE) (Bavaria)	OJ C 247, 5.9.2001
N 170/2001	25.7.2001	Programme to assure survival of agricultural undertakings (Thuringia)	OJ C 247, 5.9.2001
N 164/2001	25.7.2001	Aid to stockfarmers (BSE) (Lower Saxony)	OJ C 247, 5.9.2001
N 218/2001	8.8.2001	Upgrading the skills of farmers and their families (Bavaria)	OJ C 258, 15.9.2001
N 560/2000	22.8.2001	Promotion of environmentally friendly agriculture (Saxony)	OJ C 268, 22.9.2001
N 202/2001	24.8.2001	Aid for BSE tests conducted in slaughterhouses (Bavaria)	OJ C 274, 29.9.2001
N 214/2001	27.8.2001	Aid scheme for restructuring measures (Saxony-Anhalt)	OJ C 274, 29.9.2001
N 150a/2001	7.9.2001	BSE tests — compensation for the loss of revenue on BSE-infected farms (Baden-Württemberg)	OJ C 313, 8.11.2001
N 150b/2001	2.10.2001	BSE-related measures (Baden-Württemberg)	OJ C 323, 20.11.2001
N 239/2000	2.10.2001	Compensatory payments in water protection areas (Saxony)	OJ C 323, 20.11.2001
N 243/2001	10.10.2001	Rescue aid for the firm Voigt-Jacob (Thuringia)	OJ C 323, 20.11.2001
N 596/2001	17.10.2001	Removal of risk material (Lower Saxony)	
N 150d/2001	23.10.2001	BSE-related measures (Baden-Württemberg)	OJ C 339, 1.12.2001
N 249/2001	30.10.2001	Emergency aid for combating BSE (Hessen)	OJ C 350, 11.12.2001
N 245/2001	30.10.2001	Rescue aid for the firm Die Thüringer (Thuringia)	OJ C 350, 11.12.2001
N 855/2000	7.11.2001	Agricultural fairs (Rhineland-Palatinate)	OJ C 350, 11.12.2001
N 254/2001	13.11.2001	Aid for destruction of animal carcasses (Mecklenburg-Western Pomerania)	OJ C 362, 18.12.2001
N 233/2001	27.11.2001	Setting up a computerised information system for horticulture	OJ C 374, 29.12.2001
N 646/2001	28.11.2001	Disposal of old industrial stocks of feedingstuffs	OJ C 1, 3.1.2002
N 444/2001	5.12.2001	Aid towards the payment of hail insurance premiums in fruit culture (Baden-Württemberg)	OJ C 5, 8.1.2001
N 111/2001	5.12.2001	Aid to umbrella organisations for sales promotion measures (Bavaria)	OJ C 5, 8.1.2001
N 421/2001	11.12.2001	Special programme for State aid when there is a BSE case in a slaughterhouse (Bavaria)	OJ C 18, 22.1.2002
N 724/2000	11.12.2001	Compensation in water-protection areas and flood plains (Schleswig-Holstein)	OJ C 18, 22.1.2002
N 645/2001	20.12.2001	Special programme to combat the effects of BSE (Saxony)	OJ C 26, 30.1.2002

Greece

N 158/2000	26.2.2001	Damage to raisin crops	OJ C 102, 31.3.2001
N 814/1999	31.7.2001	Aid for farmers whose crop and livestock holdings were damaged by exceptional occurrences during 1999	OJ C 247, 5.9.2001

N 364/2000	14.8.2001	Aid for farmers whose crop and livestock holdings were damaged by adverse weather conditions in April 2000	OJ C 258, 15.9.2001
N 577/2000	27.11.2001	Aid to support cooperation between farmers	OJ C 374, 29.12.2001
N 603/2000	27.12.2001	Aid for farmers whose crop and livestock holdings were damaged by adverse weather conditions during the period from July to December 1999	OJ C 26, 30.1.2002

Ireland

N 295/2000	10.1.2001	Installation aid for young farmers	OJ C 52, 17.2.2001
N 461a/2000	25.1.2001	Aid in addition to regional operational programmes (items 1–4 and 6–10)	OJ C 71, 3.3.2001
N 361/2000	31.1.2001	Investment aid for the marketing and processing of agricultural products	OJ C 78, 10.3.2001
N 599/2000	19.2.2001	Training	OJ C 94, 24.3.2001
N 462/2000	19.2.2001	Aid for employment and human resources development (items 11 and 12)	OJ C 94, 24.3.2001
N 828/2000	28.2.2001	Transitional agrimonetary aid	OJ C 107, 7.4.2001
N 461b/2000	15.5.2001	Aid in addition to regional operational programmes (item 5)	OJ C 172, 16.6.2001
N 443/2001	30.10.2001	Investment aid for the control of farm pollution	OJ C 339, 1.12.2001
N 483/2001	7.11.2001	Improvement of equine-breeding infrastructures	OJ C 350, 11.12.2001
N 420/2001	27.11.2001	Aid for planting trees	OJ C 374, 29.12.2001

Italy

N 705/2000	10.1.2001	Eradication of 'grapevine flavescence dorée' in vineyards (Friuli-Venezia Giulia)	OJ C 52, 17.2.2001
N 789/2000	23.1.2001	Interbranch agreement on potatoes	OJ C 60, 24.2.2001
NN 128/2000	13.2.2001	Promotion of quality products	OJ C 87, 17.3.2001
N 250/2000	19.2.2001	Regional Act No 15/2000 (Lazio)	OJ C 94, 24.3.2001
N 559/2000	28.2.2001	Promotion of the processing and marketing sector for agricultural and forestry products	OJ C 107, 7.4.2001
N 558/2000	28.2.2001	Aid to enterprises processing and marketing agricultural products	OJ C 107, 7.4.2001
N 729a/2000	13.3.2001	Extension of instruments provided for in agreed programming measures to agriculture, forestry and fisheries	OJ C 117, 21.4.2001
N 523/1998	20.3.2001	Aid for rural and agricultural development (Tuscany)	OJ C 128, 28.4.2001
N 63/2001	29.3.2001	Aid for monitoring and certification of products (Tuscany)	OJ C 133, 5.5.2001
N 129/2001	9.4.2001	Information and technical assistance measures relating to waste collection and elimination (Lombardy)	OJ C 140, 12.5.2001
N 742/2000	27.4.2001	Salvi Services Sarl project	OJ C 185, 30.6.2001
N 157/2000	15.5.2001	Aid in the agricultural, agri-food, agro-industrial and forestry sectors	OJ C 172, 16.6.2001
N 826/2000	23.5.2001	Economic promotion of agricultural activities for the year 2001 (Tuscany)	OJ C 185, 30.6.2001
N 225/2001	5.6.2001	Marketing of agricultural products (Lombardy)	OJ C 191, 7.7.2001
N 110/2001	5.6.2001	Operating arrangements of Ismea	OJ C 191, 7.7.2001
N 830/2000	5.6.2001	Draft regional act on a regional farm accountancy network (Valle d'Aosta)	OJ C 191, 7.7.2001
NN 29a/2000	20.6.2001	Draft regional act on a regional financial contribution to solidarity funds (Emilia-Romagna)	OJ C 211, 28.7.2001
N 144/2001	17.7.2001	Aid for investments in the purchase of agricultural machinery	OJ C 234, 18.8.2001
N 173/2001	18.7.2001	Aid to holdings to compensate for losses due to storms (Sardinia)	OJ C 234, 18.8.2001
NN 109/2000	18.7.2001	Aid for grubbing-up and replacing fruit trees hit by sharka virus (Veneto)	OJ C 247, 5.9.2001
N 113a/2001	25.7.2001	Aid for the BSE crisis: Act No 49/2001	OJ C 247, 5.9.2001
N 391/2001	31.7.2001	Leader II — increase in the rate of aid for a promotion measure (Tuscany)	OJ C 247, 5.9.2001

N 272/2001	31.7.2001	Preventive measures for BSE (Lombardy)	OJ C 247, 5.9.2001
N 62/2001	8.8.2001	Processing and marketing of agricultural products (Piedmont)	OJ C 258, 15.9.2001
N 711/1999	14.8.2001	Financial aid in the agri-food industry (Piedmont)	OJ C 258, 15.9.2001
N 274/2001	26.9.2001	Aid for producer associations	OJ C 313, 8.11.2001
N 261/2001	26.9.2001	Research, testing and demonstration (Lombardy)	OJ C 313, 8.11.2001
N 242/2001	11.10.2001	Production and marketing of agricultural products (Mantua)	OJ C 323, 20.11.2001
N 411/2001	30.10.2001	Income support to beef farms in crisis due to BSE (Lombardy)	OJ C 350, 11.12.2001
N 112/2001	5.11.2001	Aid to hill farming (Friuli-Venezia Giulia)	
N 454/2001	7.11.2001	Aid for the development of local wine productions and for the forestry sector (Friuli-Venezia Giulia)	OJ C 350, 11.12.2001
N 447/2001	7.11.2001	Aid for technical assistance services to stockfarmers (Calabria)	OJ C 350, 11.12.2001
N 181/2001	7.11.2001	Aid to dairy sector (Valle d'Aosta)	OJ C 350, 11.12.2001
N 408/2001	27.11.2001	Aid for voluntary reparcelling in mountain areas (Friuli-Venezia Giulia)	OJ C 374, 29.12.2001
N 337/2001	27.11.2001	Income aid to milk bovine stockfarms affected by BSE (Emilia-Romagna)	OJ C 374, 29.12.2001
N 99/2001	27.11.2001	Aid for the promotion of typical products and for setting up services to farms (Friuli-Venezia Giulia)	OJ C 374, 29.12.2001
N 759/2000	27.11.2001	Promotion of foodstuffs in non-member countries	OJ C 374, 29.12.2001
N 604/2001	20.12.2001	Processing and marketing of agricultural products (Lombardy)	OJ C 26, 30.1.2002

Netherlands

N 486/1998	17.1.2001	Guarantee Fund	OJ C 78, 10.3.2001
N 79/2001	19.3.2001	Tax measures for environmental protection	OJ C 117, 21.4.2001
N 81/2000	19.3.2001	Exports of fruit and vegetables to Japan and Taiwan	OJ C 117, 21.4.2001
N 279/2001	25.6.2001	Increasing knowledge concerning management of minerals	OJ C 211, 28.7.2001
N 146/2001	18.7.2001	Aid and parafiscal charges in the seed potato sector	OJ C 247, 5.9.2001
N 145/2001	18.7.2001	Aid and parafiscal charges in the seed potato sector	OJ C 247, 5.9.2001
N 266/2001	10.10.2001	Measures to combat foot-and-mouth disease	
N 566/2001	5.11.2001	Project NIMF (N-impulse: environmental and financial effects)	OJ C 350, 11.12.2001
N 656/2001	11.12.2001	Exemption of energy tax granted to the glasshouse horticulture sector	OJ C 18, 22.1.2002
N 634/2001	18.12.2001	Environmental investment deductions 2002	OJ C 18, 22.1.2002
N 750/2001	20.12.2001	Extension of finance for a mushroom advertising campaign	OJ C 26, 30.1.2002
N 683/2001	20.12.2001	Compensation for keeping sows for which a fertilisation and insemination prohibition applied	OJ C 26, 30.1.2002

Portugal

N 208/2001	5.11.2001	Aid towards the payment of insurance premiums in the livestock sector	OJ C 350, 11.12.2002

Spain

NN 14/1999	17.1.2001	Aid to the firm Clas (Asturias)	OJ C 71, 3.3.2001
N 777/2000	23.1.2001	Aid for the transport and destruction of risk material (Basque Country)	OJ C 60, 24.2.2001
N 346/2000	23.1.2001	Aid to agricultural cooperatives (Castile-La Mancha)	OJ C 60, 24.2.2001
N 435/2000	31.1.2001	Aid to groups of stock farmers	OJ C 71, 3.3.2001
N 31/2001	26.2.2001	Aid in the forestry sector (Asturias)	OJ C 102, 31.3.2001
N 347/2000	23.3.2001	Aid for the marketing of agricultural products (Castile-La Mancha)	OJ C 128, 28.4.2001
N 108/2001	29.3.2001	Aid for livestock culling (Galicia)	OJ C 133, 5.5.2001
N 3/2001	9.4.2001	Aid to young farmers	OJ C 140, 12.5.2001
N 609/2000	27.4.2001	Aid to businesses in the non-profit sector (Andalusia)	OJ C 185, 30.6.2001

N 608/2000	15.5.2001	Aid to repair damage caused by natural disasters (Castile-Leon)	OJ C 172, 16.6.2001
N 123/2001	7.6.2001	Promotion of agri-food products (Asturias)	OJ C 199, 14.7.2001
N 64/2001	25.6.2001	Marketing of agricultural, forestry, fisheries and aquaculture products (Basque Country)	OJ C 211, 28.7.2001
N 200/2001	3.7.2001	Aid to stockfarmers (BSE) (Asturias)	OJ C 219, 4.8.2001
N 235/2001	17.7.2001	Measures to assist producer groups using integrated pest control in agriculture (Aragon)	OJ C 234, 18.8.2001
N 107/2001	17.7.2001	Aid to the dairy sector (Asturias)	OJ C 234, 18.8.2001
N 198/2001	18.7.2001	ARTE/PYME II programme	OJ C 234, 18.8.2001
N 377/2001	25.7.2001	Aid to stock farmers (BSE) (Cantabria)	OJ C 247, 5.9.2001
N 269/2001	25.7.2001	Measures to prevent/combat BSE (Asturias)	OJ C 247, 5.9.2001
N 238/2001	31.7.2001	Aid to the food industry (Madrid)	OJ C 247, 5.9.2001
N 265/2001	8.8.2001	Aid to stockfarmers (BSE) (Galicia)	OJ C 258, 15.9.2001
N 122/2001	14.8.2001	Measures to assist farmers hit by drought 1999–2000 (Murcia)	OJ C 258, 15.9.2001
N 392/2001	10.10.2001	Aid for tomato growers	OJ C 323, 20.11.2001
N 252/2001	10.10.2001	Aid for tomato growers (Murcia)	OJ C 323, 20.11.2001
N 109/2001	10.10.2001	Aid for animal health-protection groups (Asturias)	OJ C 323, 20.11.2001
N 367/2001	11.10.2001	Aid for marketing livestock (Extremadura)	OJ C 323, 20.11.2001
N 438/2001	5.11.2001	Aid for the advertising and promotion of flowers and plants	OJ C 350, 11.12.2001
N 600c/2001	7.11.2001	Employment aid (Asturias)	OJ C 350, 11.12.2001
N 465/2001	7.11.2001	Aid to promote the agri-food industry	OJ C 350, 11.12.2001
N 496/2001	27.11.2001	Aid to horse-breeders' associations (Cantabria)	OJ C 374, 29.12.2001
NN 17/2000	28.11.2001	Measures to offset the effects of drought	OJ C 1, 3.1.2002
N 580/2001	18.12.2001	Livestock rehabilitation (Cantabria)	OJ C 18, 22.1.2002
N 390/2001	27.12.2001	Withdrawal of meat and bone meal from the market (Galicia)	OJ C 26, 30.1.2002
N 167/2001	28.12.2001	Aid to stock farmers (BSE) (Castile-Leon)	OJ C 26, 30.1.2002

Sweden

N 275/2001	25.7.2001	Monetary compensatory amounts	OJ C 247, 5.9.2001

United Kingdom

N 4/2001	19.2.2001	National scrapie plan — genotyping scheme	OJ C 94, 24.3.2001
N 158a/2001	3.4.2001	Agrimonetary aid — sheepmeat sector (direct aid 2001 — first tranche)	OJ C 140, 12.5.2001
N 157a/2001	3.4.2001	Amendment to agrimonetary compensation scheme — beef and dairy sectors (market support 2001)	OJ C 140, 12.5.2001
N 157b/2001	03.04.2001	Amendment to agrimonetary compensation scheme — beef and dairy sectors (market support 2001)	OJ C 140, 12.5.2001
N 156/2001	3.4.2001	Amendment to agrimonetary compensation scheme — dairy sector	OJ C 140, 12.5.2001
N 155/2001	3.4.2001	Amendment to agrimonetary compensation scheme — sheepmeat sector	OJ C 140, 12.5.2001
NN 24/2001	3.4.2001	Pig industry restructuring scheme	OJ C 140, 12.5.2001
N 812/1999	15.5.2001	Management agreement schemes	OJ C 172, 16.6.2001
N 158b/2001	6.6.2001	First tranche of agrimonetary aid — beef and veal sector	OJ C 199, 14.7.2001
NN 25/2001	6.6.2001	Livestock welfare disposal scheme	OJ C 199, 14.7.2001
N 494/2000	24.7.2001	Amendments to countryside stewardship scheme	OJ C 247, 5.9.2001
N 442/2001	14.8.2001	Payment of costs associated with the BSE testing of bovine animals	OJ C 258, 15.9.2001
NN 49/2001	20.8.2001	Scottish Red Meat Campaign	OJ C 268, 22.9.2001
N 472/2001	26.9.2001	Agriculture Development Scheme 2001 (England)	OJ C 313, 8.11.2001
N 565/2001	2.10.2001	Agrimonetary aid — beef and veal sector	OJ C 323, 20.11.2001

1.3. Interim decisions requiring the Member State to supply the information needed by the Commission

Italy

C 61/1996	17.10.2001	Regional Act No 81/95: application to the marketing of products in Annex II to the EC Treaty (Sicily)	OJ L 64, 7.3.2002

Netherlands

NN 22/2000	17.1.2001	Aid to compensate the agriculture sector for increased energy prices	

1.4. Aid cases in which the Commission initiated proceedings under Article 88(2) of the EC Treaty in respect of all or part of the measure

Germany

N 831/1997 (C 1/2001)	31.1.2001	Guarantee for a company processing vegetables (Thuringia)	OJ C 320, 15.11.2001

Italy

N 775/2000 (C 5/2001)	17.1.2001	Aid to compensate stock breeders for damage caused by blue tongue (Sardinia)	OJ C 327, 22.11.2001
N 745/2000 (C 4/2001)	17.1.2001	Compensation for damage caused by drought in 2000 (Sardinia)	OJ C 263, 19.9.2001
N 98/2000 (C 17/2001)	28.3.2001	Aid to improve processing and marketing conditions for agricultural products (Veneto)	OJ C 140, 12.5.2001
N 47/2001	25.7.2001	Aid to agriculture — rural infrastructures and forestry (Sardinia)	OJ C 23, 23.1.2002
N 797/1999 (C 59/2001)	25.7.2001	AIMA programme — poultry industry	OJ C 254, 13.9.2001
NN 29b/2000 (C 68/2001)	19.9.2001	Draft regional act on a regional financial contribution to solidarity funds (Emilia-Romagna)	OJ C 315, 9.11.2001
N 795/1999 (C 65/2001)	19.9.2001	Emergency measures in the agricultural sector (Sicily)	OJ C 315, 9.11.2001
N 824a/2000	2.10.2001	Annual and multiannual balance sheets — Articles 121, 123 and 126 of Act No 388/2000	OJ C 21, 24.1.2002
N 781/2000 (C 81/2001)	13.11.2001	Finance for agricultural businesses to improve product quality and living conditions for operators (Province of Campobasso, Molise)	OJ C 354, 13.12.2001
NN 163/2001	11.12.2001	Rescue and restructuring of agricultural businesses in difficulty (Marche)	OJ C 143, 15.6.2002

Netherlands

N 568/2001	20.12.2001	Pigs — improvement of abattoirs	OJ C 37, 9.2.2002

Spain

NN 13/1999 (C 2/2001)	17.1.2001	Aid for the purchase of milk quotas (Asturias)	OJ C 87, 17.3.2001
NN 19/2001	11.4.2001	Aid following the fuel price increase	
N 681a/2000 (C 22/2001)	11.4.2001	Aid following the fuel price increase	OJ C 172, 16.6.2001

1.5. Cases in which the Commission considered that the aid was compatible with the common market and terminated proceedings under Article 88(2) of the EC Treaty by way of a positive final decision

Greece

C 62/1998	31.1.2001	Aid in the fruit and vegetables sector (1997)	OJ L 93, 3.4.2001

1.6. Cases in which the Commission considered that the aid was incompatible with the common market and terminated proceedings under Article 88(2) of the EC Treaty by way of a negative or partly negative final decision

Italy

C 61/1996	17.10.2001	Regional Act No 81/95: application to the marketing of products in Annex II to the EC Treaty (Sicily)	OJ L 64, 7.3.2002
C 83/1998	13.11.2001	Regional plan for restructuring agricultural businesses (Sardinia)	

1.7. Aid cases in which the Commission terminated proceedings under Article 88(2) of the EC Treaty after the Member State withdrew the proposed measure

Germany

C 8/2000	18.7.2001	Aid for vocational training (Bavaria)	OJ C 236, 22.8.2001

Italy

C 9/1996	19.9.2001	Act No 23/95 on lending syndicates for pooling guarantees among SMEs, agricultural sector (Sicily)	OJ C 1, 4.1.2002

1.8. Other Commission decisions

Spain

NN 19/2001	25.4.2001	Aid following the fuel price increase	
N 681a/2000	25.4.2001	Aid following the fuel price increase	OJ C 172, 16.6.2001

2. In the fisheries sector

2.1. Measures which the Commission considered compatible with the common market without opening a formal investigation under Article 88(2) of the EC Treaty

Austria

N 743/2001	21.12.2001	Implementation of Community structural measures in the fisheries sector (Burgenland)	

Denmark

N 596/2000	9.1.2001	Draft act on the Danish Fisheries Bank	OJ C 133, 5.5.2001
N 419/2000	17.1.2001	Aid for scrapping mussel trawlers (Limfjorden)	OJ C 172, 16.6.2001
N 532/2000	2.4.2001	Structural measures in the fisheries sector	OJ C 133, 5.5.2001

France

NN 5/1998	28.2.2001	Aid to non-industrial fishing	OJ C 107, 7.4.2001
N 86/2001	11.6.2001	Ofimer operations	OJ C 263, 19.9.2001
N 147b/2000	3.7.2001	Framework act on the overseas departments — fisheries and aquaculture	OJ C 59, 6.3.2002
NN 11/1997	30.10.2001	Aid for building and purchasing fishing vessels	OJ C 25, 29.1.2002

Germany

N 854/2000	26.2.2001	Thuringia: subsidies towards investments in the inland fishing/aquaculture sector	OJ C 107, 7.4.2001
N 54/2001	24.4.2001	Subsidies towards investments in the cutter fleet and coastal fishing in Mecklenburg-Western Pomerania	OJ C 160, 2.6.2001
N 853/2000	5.6.2001	Aid for fishery investment in inland waters and for aquaculture in Schleswig-Holstein	OJ C 219, 4.8.2001
N 199/2001	28.6.2001	Measures to improve aquaculture (Saxony)	OJ C 219, 4.8.2001
N 342/2001	14.8.2001	Aid for fishery investment in inland waters in Mecklenburg-Western Pomerania	
N 281/2001	27.9.2001	Aid for fishery investment in inland waters in Lower Saxony	
N 55/2001	27.9.2001	Support for structural measures for fisheries in inland waters in Brandenburg	
N 320/2001	27.9.2001	Aquaculture in Mecklenburg-Western Pomerania	
N 518/2001	10.10.2001	Support for improving facilities in fishing ports in Lower Saxony	

Greece

N 621/2000	26.2.2001	Fisheries operational programme 2000–06	OJ C 102, 31.3.2001
N 332/2000	8.8.2001	Damage in the shellfish and mussel-farming sector	OJ C 330, 24.11.2001

Ireland

N 527/2000	19.2.2001	Seafood marketing programme	OJ C 94, 24.3.2001
N 529/2000	19.2.2001	Supporting measures in the fisheries sector	OJ C 94, 24.3.2001
N 528/2000	10.5.2001	Renewal and modernisation of the fishing fleet	OJ C 263, 19.9.2001
N 525/2000	8.6.2001	Adjustment of the fishing effort	OJ C 263, 19.9.2001
N 547/2000	28.8.2001	Aid for aquaculture	OJ C 59, 6.3.2002
N 526/2000	28.8.2001	Assistance to the seafood processing sector	OJ C 59, 6.3.2002

Italy

N 67/2001	7.3.2001	Temporary suspension of activity — fisheries sector — Sicily	OJ C 117, 21.4.2001
N 729b/2000	8.5.2001	Extension to the fisheries sector of the instruments provided for under negotiated programming	OJ C 263, 19.9.2001
N 746b/2000	17.7.2001	Aid to SMEs granted through Friula Lis SpA (Friuli-Venezia Giula)	OJ C 59, 6.3.2002
NN 92/2001	30.10.2001	Permanent withdrawal of fishing vessels	OJ C 77, 28.3.2002

Netherlands

N 80/2001	10.4.2001	Structural measures in the fisheries sector	OJ C 149, 19.5.2001
N 497/2000	10.10.2001	Modifications to various aid schemes relating to fish production	
N 539/2001	10.10.2001	Fund for research on mussels	
N 603/2001	21.12.2001	Order on funding the promotion of plaice 2002	

Portugal

N 89/2001	18.4.2001	Temporary suspension of sardine fishing — fisheries sector	OJ C 160, 2.6.2001
N 695/2000	31.5.2001	Wages compensation fund for the fisheries sector	OJ C 328, 23.11.2001
N 107/2000	8.8.2001	Sipesca — aid for local and coastal fishing	OJ C 328, 23.11.2001
NN 125/2000	30.10.2001	Fisheries operational programme 2000–06	OJ C 358, 15.12.2001

Spain

N 675/2000	3.1.2001	Socioeconomic measures (Galicia)	OJ C 44, 10.2.2001
N 87b/2000	5.2.2001	Valencia — food quality — fisheries sector	OJ C 102, 31.3.2001
N 657/2000	23.2.2001	Aid for the fitting-out of fishing ports	OJ C 117, 21.4.2001
N 614/2000	23.2.2001	Investment subsidy for aquaculture (Galicia)	OJ C 117, 21.4.2001
N 71/2001	16.3.2001	Processing and marketing of fisheries and aquaculture products (Basque Country)	OJ C 160, 2.6.2001
N 616/2000	21.3.2001	Aid for the fitting-out of fishing ports	OJ C 133, 5.5.2001
N 95/2001	2.4.2001	Structural assistance in the fisheries sector (Ceuta and Melilla)	OJ C 166, 9.6.2001
N 764/2000	18.4.2001	Aid for small-scale coastal fishing	OJ C 149, 19.5.2001
N 175/2001	17.5.2001	Structural aid in the fisheries sector (Navarre)	OJ C 328, 23.11.2001
N 171/2001	17.5.2001	Processing and marketing of fishery and aquaculture products (Madrid)	OJ C 328, 23.11.2001
N 72/2001	11.6.2001	Processing and marketing of forestry and fishery products (Valencia)	OJ C 328, 23.11.2001
N 260/2001	11.7.2001	Processing and marketing of fishery products (Aragon)	OJ C 328, 23.11.2001
N 259/2001	11.7.2001	Structural aid in the fisheries sector (Asturias)	OJ C 328, 23.11.2001
N 40/2001	11.7.2001	Structural aid in the fisheries sector (Basque Country)	OJ C 226, 11.8.2001
N 768/2000	11.7.2001	Aid for finding and promoting new commercial outlets (Balearic Islands)	OJ C 226, 11.8.2001
N 767/2000	11.7.2001	Marketing and processing of fishery and aquaculture products; port facilities (Balearic Islands)	OJ C 226, 11.8.2001
N 762/2000	11.7.2001	Aid for aquaculture (Balearic Islands)	OJ C 226, 11.8.2001
N 763/2000	17.7.2001	Aid for building and modernising fishing vessels (Balearic Islands)	OJ C 234, 18.8.2001
N 769/2000	18.7.2001	Socioeconomic measures (Balearic Islands)	OJ C 234, 18.8.2001
N 765/2000	18.7.2001	Aid for the permanent cessation of fishing	OJ C 234, 18.8.2001
N 618/2000	18.7.2001	Structural aid in the fisheries sector	OJ C 330, 24.11.2001
N 332/2001	24.7.2001	Investments in aquaculture (Galicia)	OJ C 328, 23.11.2001
N 331/2001	24.7.2001	Processing and marketing of fishery and aquaculture products (Extremadura)	OJ C 330, 24.11.2001
N 410/2001	7.8.2001	Aid for aquaculture (Aragon)	OJ C 328, 23.11.2001
N 39/2001	14.8.2001	Structural improvement and modernisation of the fisheries sector (Murcia)	OJ C 330, 24.11.2001
N 508/2001	11.10.2001	Processing and marketing of fishery and aquaculture products (Castile-La Mancha)	OJ C 342, 5.12.2001
N 753/2000	13.11.2001	Renewal of the fishing fleet (Cantabria)	OJ C 59, 6.3.2002
N 751/2000	13.11.2001	Aid for fishery and aquaculture products and for fitting-out of fishing ports (Cantabria)	OJ C 59, 6.3.2002
N 754/2000	27.11.2001	Modernisation and conversion of fishing vessels (Cantabria)	OJ C 59, 6.3.2002
N 752/2000	30.11.2001	Aid for small-scale coastal fishing (Cantabria)	OJ C 30, 2.2.2002
N 620/2001	20.12.2001	Stopping of hake fishing (Basque Country)	OJ C 59, 6.3.2002
N 611b/2001	20.12.2001	Processing and marketing of agricultural, fishery and food products	
N 506/2001	20.12.2001	Aid for aquaculture (Castile-La Mancha)	OJ C 59, 6.3.2002

United Kingdom

N 179/2001	31.5.2001	Projects in the fisheries and aquaculture sector part-financed by the FIFG in Scotland	OJ C 263, 19.9.2001
N 177/2001	31.5.2001	Projects in the fisheries and aquaculture sector part-financed by the FIFG in England	OJ C 263, 19.9.2001
N 490/2001	28.8.2001	*Fishing Vessels (Scotland) Scheme 2001*	OJ C 59, 6.3.2002
N 180/2001	11.10.2001	Projects in the fisheries and aquaculture sector part-financed by the FIFG in Northern Ireland	OJ C 77, 28.3.2002

2.2. Interim decisions requiring the Member State to supply the information needed by the Commission

France

NN 11/1997	30.10.2001	Aid for building and purchasing fishing vessels	OJ C 25, 29.1.2002

2.3. Aid cases in which the Commission initiated proceedings under Article 88(2) of the EC Treaty in respect of all or part of the measure

Belgium

N 632/2000 (C 3/2001)	17.1.2001	Aid for fishermen following the rise in fuel prices	OJ C 78, 10.3.2001

France

NN 111/2000 (C 9/2001)	31.1.2001	Measures for fishermen to compensate for the rise in fuel costs	OJ C 78, 10.3.2001
NN 11/1997 (C 76/2001)	30.10.2001	Aid for building and purchasing fishing vessels	OJ C 25, 29.1.2002
NN 80/2000 (C 91/2001)	11.12.2001	Compensation for aquaculture producers and fishermen harmed by the oil pollution and storm	OJ C 39, 13.2.2002

Italy

NN 21/2001 (C 29/2001)	8.5.2001	Measures for fishermen following the rise in fuel costs	OJ C 179, 25.6.2001
NN 15/2001 (C 84/2001)	13.11.2001	Technical measures suspending fisheries	OJ C 25, 29.1.2002
NN 12/2001 (C 83/2001)	13.11.2001	Pollution by mucilage in the Adriatic Sea	OJ C 25, 29.1.2002

Netherlands

N 159/2001	8.5.2001	SFM-Premielasten	

Spain

NN 108/2000 (C 7/2001)	31.1.2001	Exemption from social security contributions	OJ C 78, 10.3.2001

United Kingdom

NN 109/1999 (C 88/2001)	28.11.2001	Aid for purchase and leasing of fish quotas (Shetland Islands)	OJ C 38, 12.2.2002
NN 108/1999 (C 87/2001)	28.11.2001	Leasing of fish quotas to fishermen by the Orkney Islands Council	OJ C 38, 12.2.2002

2.4. Aid cases in which the Commission terminated proceedings under Article 88(2) of the EC Treaty after the Member State withdrew the proposed measure

Italy

C 54/1997	17.1.2001	Provisions concerning fisheries (Sicily)	OJ L 62, 2.3.2001

2.5. Other Commission decisions

Belgium

N 632/2000	31.1.2001	Aid for fishermen following the rise in fuel prices	OJ C 78, 10.3.2001

Spain

N 95/2001	25.4.2001	Structural assistance in the fisheries sector (Ceuta and Melilla)	OJ C 166, 9.6.2001

3. In the transport sector

3.1. Cases in which the Commission found, without opening a formal investigation, that there was no aid element within the meaning of Article 87(1) of the EC Treaty

Ireland

NN 86/2001	5.10.2001	Air Rianta — Irish airports

Italy

N 58/2000	13.3.2001	Promotion of Piedmont airport system
N 733/2000	25.4.2001	Regional Act No 7/2000 — upgrading of the public taxi service

3.2. Measures which the Commission considered compatible with the common market without opening a formal investigation under Article 88(2) of the EC Treaty or Article 6(5) of Decision 2496/96/ECSC

Austria

N 219/2001	20.6.2001	Pilot programme for the development of intermodal transport on the River Danube	OJ C 244, 1.9.2001
NN 153/2001	20.12.2001	State guarantee scheme for the aviation industry	OJ C 59, 6.3.2002

Belgium

N 636/2001	17.10.2001	Bridging loan for Sabena	
NN 141/2001	11.12.2001	Temporary aviation insurance scheme	OJ C 24, 26.1.2002
N 550/2001	11.12.2001	Loading and unloading facilities for inland waterways	OJ C 24, 26.1.2002

Denmark

NN 127/2000	28.3.2001	Restructuring aid to Combus A/S	OJ C 133, 5.5.2001
NN 161/2001	20.12.2001	Temporary third-party liability insurance cover for Danish aircraft and airports	OJ C 30, 2.2.2002
NN 146/2001	20.12.2001	Temporary third-party liability insurance cover for Danish aircraft and airports	OJ C 30, 2.2.2002

Finland

N 856/2000	23.3.2001	Reimbursement to shipowners of employers' social security contributions	

France

N 766/2000	31.1.2001	Reimbursement to shipping companies of employers' social security contributions	
N 639/2000	1.3.2001	Corsica — Lyon air service	
N 638/2000	1.3.2001	Corsica — Montpellier air service	
N 88/2001	30.4.2001	Reimbursement to shipping companies of contributions to the family allowances and unemployment insurance funds	
NN 122/2000	23.5.2001	Sernam	OJ C 199, 14.7.2001
N 321/2001	20.6.2001	Extension of the duration of the motorway concession granted to SFTRF	OJ C 211, 28.7.2001
N 299/2001	2.10.2001	Aid plan for French inland waterway carriers 2001–03	OJ C 342, 5.12.2001
NN 157/2001	20.12.2001	System of aviation insurance cover with State guarantee	

Germany

NN 97/2000	28.3.2001	Maritime training aid 2000	OJ C 166, 9.6.2001
N 723/2001	20.12.2001	Aid to LTU Lufttransport-Unternehmen GmbH	
NN 162/2001	20.12.2001	State guarantee for the aviation sector	OJ C 59, 6.3.2002

Italy

N 292/2000	25.4.2001	Road haulage in Trento	OJ C 160, 2.6.2001

Luxembourg

NN 140/2001	28.11.2001	State guarantee for airlines	

Netherlands

N 597/2000	31.1.2001	Aid for inland waterway transport	OJ C 102, 31.3.2001
N 583/2000	3.7.2001	Reduction of CO_2 emissions	OJ C 234, 18.8.2001

Portugal

NN 144/2001	28.11.2001	Temporary emergency measures to enable the aviation industry to cope with the exceptional consequences of decisions taken by the insurance companies	

Spain

NN 48/2001	25.7.2001	Trasmed — 1998 contract	OJ C 96, 20.4.2002
NN 143/2001	20.12.2001	State re-insurance for the risks linked to war and terrorism that may affect air transport	

Sweden

N 785/2000	28.2.2001	Training of seafarers	OJ C 107, 7.4.2001
N 542/2001	30.10.2001	Exemption/reduction of taxes and social security contributions	OJ C 347, 8.12.2001
NN 139/2001	11.12.2001	Aviation insurance cover	OJ C 24, 26.1.2002

United Kingdom

N 687/2000	13.2.2001	Competition for innovative solutions in rail-based logistics	
N 500/2001	19.9.2001	Network grants to licensed heavy rail infrastructure managers	OJ C 333, 28.11.2001
N 499/2001	2.10.2001	Support for Maritime Training (SMarT) scheme	OJ C 347, 8.12.2001
NN 90/2001	23.10.2001	Airline insurance	OJ C 108, 4.5.2002
N 649/2001	20.12.2001	Freight facilities grant	OJ C 45, 19.2.2002

3.3. Interim decisions requiring the Member State to supply the information needed by the Commission

France

NN 112/2000	17.4.2001	Measures in favour of road transport undertakings linked to the oil price increase	OJ C 160, 2.6.2001

3.4. Aid cases in which the Commission initiated proceedings under Article 88(2) of the EC Treaty in respect of all or part of the measure

France

NN 16/2001 (C 14/2001)	28.2.2001	Aid to Société Nationale Maritime Corse-Méditerranée	OJ C 117, 21.4.2001
NN 112/2000 (C 25/2001)	17.4.2001	Measures in favour of road transport undertakings linked to the oil price increase	OJ C 160, 2.6.2001

Italy

NN 56/2000 (C 24/2001)	11.4.2001	Measures in favour of road transport undertakings linked to the oil price increase	OJ C 160, 2.6.2001
N 93/2001 (C 97/2001)	20.12.2001	Safety of maritime transport	OJ C 50, 23.2.2002

Netherlands

NN 115/2000 (C 26/2001)	11.4.2001	Aid to road transport	OJ C 160, 2.6.2001
NN 43/2001	11.7.2001	Tug boat operations	

3.5. Cases in which the Commission terminated proceedings under Article 88(2) of the EC Treaty having found that there was no aid element within the meaning of Article 87(1) of the EC Treaty

Italy

C 81/1998	18.7.2001	Measures to assist the port sector, Articles 24 to 29 inclusive
C 27/1993	18.7.2001	Measures to promote employment in the port sector

3.6. Cases in which the Commission considered that the aid was compatible with the common market and terminated proceedings under Article 88(2) of the EC Treaty by way of a positive final decision

Belgium

C 69/1999	18.7.2001	Training aid to Sabena	OJ L 249, 19.9.2001

France

C 31/1998	8.5.2001	Brittany Ferries — further restructuring measures (FRF 80 million)	
C 14/2001	30.10.2001	Aid to Société Nationale Maritime Corse-Méditerranée	OJ L 50 2002, 21.2.2002

Italy

C 64/1999	20.6.2001	Tirrenia group	OJ L 305, 4.12.2001
C 54/1996	18.7.2001	Air transport	

3.7. Cases in which the Commission considered that the aid was incompatible with the common market and terminated proceedings under Article 88(2) of the EC Treaty by way of a negative or partly negative final decision

France

C 31/1998	8.5.2001	Brittany Ferries — further restructuring measures (FRF 80 million)

Italy

C 81/1998	18.7.2001	Measures to assist the port sector, Articles 24 to 29 inclusive
C 27/1993	18.7.2001	Measures to promote employment in the port sector

3.8. Aid cases in which the Commission took note of the Member State's agreement to bring existing measures into line with the Community rules after the Commission had proposed appropriate measures under Article 88(1) of the EC Treaty

Netherlands

E 45/2000	3.7.2001	Tax exemption for Schiphol Group (Amsterdam airport)

E — Judgments of the Community courts

1. Court of First Instance

Case	Parties	Date	Publication
T-9/98	Mitteldeutsche Erdöl-Raffinerie GmbH *v* Commission	22.11.2001	OJ C 31, 2.2.2002, p. 7
T-12/99, T-63/99	UK Coal plc *v* Commission	12.7.2001	OJ C 331, 24.11.2001, p. 18

T-6/99	ESF Elbe-Stahlwerke Feralpi GmbH *v* Commission	5.6.2001	OJ C 3, 5.1.2002, p. 22
T-187/99	Agrana Zucker und Stärke AG *v* Commission	7.6.2001	OJ C 259, 15.9.2001, p. 7
T-288/97	Regione Friuli Venezia Giulia *v* Commission	4.4.2001	
T-69/96	Hamburger Hafen- und Lagerhaus Aktiengesellschaft, Zentralverband der Deutschen Seehafenbetriebe eV and Unternehmensverband Hafen Hamburg eV *v* Commission	21.3.2001	OJ C 161, 2.6.2001, p. 13
T-73/98	Société chimique Prayon-Rupel SA *v* Commission	15.3.2001	OJ C 150, 19.5.2001, p. 20
T-156/98	RJB Mining plc *v* Commission	31.1.2001	OJ C 134, 5.5.2001, p. 17

2. Court of Justice

Case	**Parties**	**Date**	**Publication**
C-53/00	Ferring SA *v* Agence centrale des organismes de sécurité sociale (ACOSS)	22.11.2001	OJ C 17, 19.1.2002, p. 6
C-143/99	Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH *v* Finanzlandesdirektion für Kärnten	8.11.2001	OJ C 3, 5.1.2002, p. 6
C-276/99	Germany *v* Commission	25.10.2001	OJ C 369, 22.12.2002, p. 2
C-400/99	Italy *v* Commission	9.10.2001	OJ C 348, 8.12.2001, p. 4
C-390/98	H.J. Banks & Co. Ltd *v* The Coal Authority and Secretary of State for Trade and Industry	20.9.2001	OJ C 17, 19.1.2002, p. 2
C-378/98	Commission *v* Belgium	3.7.2001	OJ C 227, 11.8.2001, p. 5
C-280/99 P – C-282/99 P	Moccia Irme SpA, Ferriera Lamifer SpA and Ferriera Acciaieria Casilina SpA *v* Commission	21.6.2001	OJ C 227, 11.8.2001, p. 3
C-204/97	Portugal *v* Commission State aid — Aid for producers of liqueur wines and eaux-de-vie — aid granted by the France in the context of an increase in internal taxation	3.5.2001	OJ C 200, 14.7.2001, p. 8
C261/99	Commission *v* France. Failure of a State to fulfil obligations — State aid incompatible with the common market — recovery — no absolute impossibility of implementation	22.3.2001	OJ C 200, 14.7.2001, p. 3
C-17/99	France *v* Commission	22.3.2001	OJ C 200, 14.7.2001, p. 3
C-379/98	PreussenElektra AG *v* Schleswag AG, in the presence of Windpark Reußenköge III GmbH and *Land* Schleswig-Holstein	13.3.2001	OJ C 173, 16.6.2001, p. 18
C-99/98	Austria *v* Commission	15.2.2001	OJ C 173, 16.6.2001, p. 7

F — Enforcement of Commission decisions ordering the recovery of aid

1. Commission decisions (Competition DG) ordering the recovery of aid (1983–2001) not yet implemented

MS	Name	Decision No	Date of decision	Official Journal	Form taken by the aid	Amount to be repaid (EUR million)	Remarks
B	Beaulieu I (Fabelta)		30.11.1983	L 62 (1984)	Capital injection	13.27	Judgment of the Belgian Court of Appeal of 5.10.2000 confirming the obligation to reimburse the aid. This judgment was appealed against by the parties.
B	Beaulieu II (Idealspun)		27.6.1984	L 283 (1984)	Capital injection	5.41	Judgment of the Belgian Court of Appeal of 5.10.2000 confirming the obligation to reimburse the aid.
UK	Dean Dove		23.7.1984	L 238 (1984)	Grant	1.5	Company stopped trading in 1989 and was wound up in 1994. Actions before national courts against company directors.
D	Deufil		10.7.1985	L 278 (1985)	Grants	1.53	Court of Justice judgment upholding decision (24.2.1987, Case 310/85); national court upheld decision. Tax authorities recover investment grant. As regards aid from *Land*: action before national courts.
E	Magefesa I & II	C 44/97	(1) 20.12.89 (2) 14.10.98	(1) L 5 (1991) (2) L 198 (30.7.1999)	(1) Loan guarantees, soft loans, grants (2) Non-payment of taxes and social security contributions	(1) 7.2 (2) Not quantified	Negative decision finds that incompatible aid granted in 1989 has not been repaid. An action was brought before Court of Justice for non-repayment in December 1999. Court of Justice judgment of 12.12.2000 upholding Commission decision of 14.10.1998.
E	Hytasa (now Mediterráneo Técnica Textil SA)	C 22/90	25.3.1992 18.9.1996	L 171 (1992) L 96 (1997)	Capital injection	26	Ongoing proceedings brought by the Spanish Government before the Spanish courts against the refusal by the bankruptcy administrator to register the aid.
E	Piezas y Rodajes (PYRSA)	C 25/93	14.3.1995	L 257 (27.10.1995)	Grant; loan guarantee; interest subsidy; gift of land	Not quantified	Company suspended payments. Appeal by company against administrative decision ordering reimbursement. At the beginning of 2000 the company repaid the capital, but the interest is still outstanding.
D	Neue Maxhütte Stahlwerke GmbH (decisions II and III)	C 41/95	18.10.1995 13.3.1996	L 53 (2.3.1996) L 198 (8.8.1996)	Loans Loans	25.64 12.39	31.12.1998: NMH insolvent. Amount to be recovered has been notified as part of insolvency proceedings. Appeal by Germany against Article 88 ECSC decision (Case C-276/99, 16.7.1999).
D	Hamburger Stahlwerke GmbH	C 28/94	31.10.1995	L 78 (28.3.1996)	Soft loans	Approx. 82	Pending before CFI (Case T-234/95) and Court of Justice (Case C-404/95). Appeal by government against national courts' judgment that aid has been repaid.
D	Walzwerk Ilsenburg	C 11/95	29.5.1996	L 233 (14.9.1996)	Grant	3.5	Appeal to CFI dismissed (31.3.1998, Case T-129/96). Appeal by Preussag to Court of Justice (Case C-210/98P).

MS	Name	Decision No	Date of decision	Official Journal	Form taken by the aid	Amount to be repaid (EUR million)	Remarks
B	Maribel bis/ter	C 14/96	4.12.1996	L 95 (10.4.1997)	Reduction of social security contributions	Not quantified	Judgment of the ECJ of 3.7.2001 confirming the failure to implement the Commission decision (C-378/98). A proceeding under Article 228(2) for non-compliance with this judgment is being initiated.
F	Borotra plan	C 18/96	9.4.1997	L 334 (5.12.1997)	Reduction of social security contributions	Not quantified	Repayment began on 1.4.2000 and will be spread over several years in accordance with the agreement between the French authorities and the Commission.
D	Tax concessions former GDR (8 %)	C 28/96	1.10.1997	L 73 (12.3.1998)	Tax premiums	Not quantified	Tax premium granted to Elf Aquitaine (DEM 120 million) has been paid into a blocked account. Amount will be paid back to Elf Aquitaine as aid from *Land* of Saxony-Anhalt for Leuna project (see Decision N 94/98 — Leuna 2000 settlement agreement) as soon as a decision is taken on Case C-47/97 (Leuna 2000 Refinery cost). MIDER case (T-9/98) before CFI.
D	*Land* of Saxony-Anhalt	C 53/96	18.11.1997	L 126 (28.4.1998)	Guarantees	Not quantified	Discussions on arrangements for repayment of aid in form of a guarantee for firms in difficulty. Reimbursement plan submitted by the German authorities.
D	Bremer Vulkan, Krupp & Hibeg	C 14/92	(See above 1993) 25.2.1998	L 316 (25.11.1998)	Loan and grant	DEM 126 million (ECU 63 million)	Being insolvent, group ceased trading in 1997. State sought reimbursement. German authorities confirm that aid cannot be recovered.
D	Bremer Vulkan (MTW, Volkswerft)	C 7/96	See C 14/92	L 108 (27.4.1999)	See C 14/92	See C 14/92	See C 14/92.
I	Keller & Keller Meccanica	C 14/97	1.7.1998	L 63 (12.3.1999)	Loans at preferential rates	2.62	Publicly owned banks have given formal notice to recipients to reimburse aid. This recovery order is contested by the parties before national courts.
F	SDBO	C 44/96	22.7.1998	L 103 (20.4.1999)	Recapitalisation	36	Reimbursement notified by French authorities. Commission challenges reimbursement procedures applied.
F	Lainière de Roubaix	C 50/97	4.11.1998	L 145 (10.6.1999)	Grant and equity loan	2.17	Judgment of the Court of 22.3.2001 (C-261/99) finding that France had failed to implement the Commission decision. As a result, the aid was registered in the bankruptcy procedure.
D	ESF Elbestahlwerk Feralpi	C 75/97	11.11.1998	L 220 (20.8.1999)	Grants and guarantees	4.8/6.14	Decision partly annulled by the CFI.
D	Samag	C 7/95	9.12.1998	L 263 (9.10.1999)	Grants	1	German authorities have demanded repayment as part of insolvency proceedings.
D	Spindel-fabrik HARTA	C 58/97	24.2.1999	L 145 (10.6.1999)	Grant, loans, contribution from Consolidation Fund, saving in interests	3.5	German authorities have requested repayment as part of insolvency proceedings.

MS	Name	Decision No	Date of decision	Official Journal	Form taken by the aid	Amount to be repaid (EUR million)	Remarks
E	Daewoo (Demesa)	C 76/97	24.2.1999	L 292 (13.11.1999)	Grant, tax credit, sale of plot of land at less than market price	2.2	Aid withdrawn.
D	Dieselmotoren-werk Vulkan GmbH	C 6/97	21.4.1999	L 232 (2.9.1999)	Loan and guarantees	DEM 118.35 million	Germany has indicated that amounts to be recovered have been entered among insolvent company's liabilities.
EL	PKT and NFI	C 48/96	21.4.1999	Not yet published	State guarantees and capital injections	GRD 2.782 billion	Partly negative decision.
I	Aid to promote employment	C 49/98	11.5.1999	L 42 (15.2.2000)	Reductions in social security contributions	Not quantified	An action for annulment of Commission's decision was brought before Court of Justice on 13.8.1999. The Court upheld the Commission decision in its judgment of 7.3.2002. A proceeding against Italy for failure to implement the Commission decision has been initiated.
I	Seleco	C 46/94	2.6.1999	Not yet published	Loan, capital injection, conversion of loan into shares, write-off and repurchase of debt	ITL 62 billion	An action before Court of Justice and an action before Court of First Instance.
D	Gröditzer Stahlwerke	C 43/97	8.7.1999	L 292 (13.11.1999)	Guaranteed loans, grants	DEM 83.2 million + DEM 155.5 million	The German authorities have demanded the amount back as part of the insolvency proceedings and contested the decision before the Court of Justice (Case C-334/99).
D	Westdeutsche Landesbank Girozentrale	C 64/97	8.7.1999	Not yet published	Transfer of capital	807.7	Action brought by the Commission before the Court of Justice on 25.5.2000 for failure of the German authorities to implement the decision.
F	Kimberley Clark/Scott Paper	C 38/98	8.7.1999	L 12 (2002)	Advantages in land transaction	15.25	
NL	Dutch petrol stations	C 43/98	20.7.1999	L 280 (30.10.1999)	Subsidies	Not quantified	The decision has been challenged before the Court of Justice by the Dutch authorities and before the CFI by 74 aid recipients. One of the latter (BP) applied for a suspension of the decision's operation but the application was dismissed (Case T-237/99).
D	Lautex GmbH	C 23/97	20.7.1999	L 42 (15.2.2000)	Loans and grants	60.51	On 25.7.2001 the Commission decided to start proceedings under Article 88(2) EC for non-compliance with its decision.
D	Brockhausen Holze	C 5/98	28.7.1999	L 7 (12.1.2000)	Guarantee, loan, repayment deferral, equity holding from Consolidation Fund	3	German authorities have demanded repayment as part of insolvency proceedings.
D	Pittler/Tornos	C 80/98	28.7.1999	L 65 (14.3.2000)	Loans	15.747	Notified to MS.
E	Publicly-owned shipyards — excess aid	C 3/99	26.10.1999	L 37 (12.2.2000)	Tax credits	110	The Commission brought an action before the Court of Justice on 23.5.2000 for failure to implement the decision.

MS	Name	Decision No	Date of decision	Official Journal	Form taken by the aid	Amount to be repaid (EUR million)	Remarks
F	Gooding	C 14/98	16.11.1999	L 65 (2000)	Restructuring grant	5.49	Gooding is being wound up. The Commission has been informed by the French authorities that they have brought a civil action for damages in parallel with the judicial investigation into the management of Gooding *with a view to obtaining an amount equivalent to the* incompatible State aid.
I	Social security contributions Venice/Chioggia	C 81/97	25.11.1999	L 42 (2000)	Relief from social security contributions	Not quantified	Details on the recovery procedure are being discussed between the Commission and the Italian authorities.
E	Ramondín	C 22/99	22.12.1999	L 318 (2000)			The payment of further aid to Ramondín has been suspended.
D	Dessauer	C 26/99	15.2.2000	L 1 (2000)	Loan + grant + deferred debt	EUR 6.93 million	Aid registered in bankruptcy proceedings.
D	Korn Fahrzeuge	C 36/99	23.2.2000	L 295 (2000)	Grants + loans	EUR 7.08 million	
D	SMI	C 45/97	11.4.2000	L 238 (2000)	Grants	DEM 141.1 million	Decision challenged in Court by the German authorities.
D	Salzgitter	C 10/99	28.6.2000	L 323 (2000)	Tax aid linked to the *Zonenrand förderungs-gesetz*	Approx. DEM 20 million + DEM 20 million *interest*	
D	Zeuro Möbelwerk	C 56/1997	28.6.2000	Not yet published	Grants + loans	DEM 40.615 million	
I	Act 549/95	C27/97	13.7.2000	L 279 (2000)	Tax reductions	ITL 46 249 000 + ITL 53 708 000	
D	SICAN	C20/98	26.7.2000	L 181 (2001)	Grants	Eight repayments of DEM 77 415 to DEM 701 665	German authorities stated by letter of 28.11.2000 that they had initiated the recovery procedure and that they would keep the Commission informed.
D	CD Albrechts	C42/98	26.7.2000	L 318 (2000)	Restructuring aid	DEM 426.87 million	The decision is being challenged before the Court (Case T-31800).
B	Verlipack	C40/99	4.10.2000	L 320 (2001)	Non-reimbursable loans	BEF 850 million	Decision challenged by Belgium before the ECJ (Case C-457/00).
B	Cockerill Sambre	C 76/99	15.11.2000	L 71 (2000)	Social security and grants	Not quantified	Appealed against before the Court (Case C-5/01).

2. Commission decisions (Competition DG) ordering the recovery of aid taken in 2001

MS	Name	Decision No	Date of decision	Official Journal	Form taken by the aid	Amount to be repaid (EUR million)	Remarks
D	Lintra	C 41/99	28.3.2001	L 236 (2001)		17.88	
D	Technische Glaswerke Ilmenau GmbH	C 19/00	12.6.2001	L 62 (2002)	Waiver of purchase price in asset deal	2.5	Decision of CFI of 4.4.2002 (Case T-198/01) partially suspending the application of the Commission decision.

MS	Name	Decision No	Date of decision	Official Journal	Form taken by the aid	Amount to be repaid (EUR million)	Remarks
E	Tax aid Province of Álava	C 48/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
E	Tax aid Province of Álava	C 49/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
E	Tax aid Province of Guipúzcoa	C 50/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
E	Tax aid Province of Navarre	C 51/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
E	Tax aid Province of Vizcaya	C 52/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
E	Tax aid Province of Guipúzcoa	C 53/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
E	Tax aid Province of Vizcaya	C 54/99	11.7.2001	Not yet published	Tax reduction	Not quantified	Appealed against before the Court.
NL	Nolte BV	C 57/00	18.7.2001	L 48 (2002)	Car park paid by municipality	0.227	CFI (Case T-274/01).
F	Development aid to St Pierre et Miquelon	C 74/99	25.7.2001	L 237 (2001)	Tax reduction	11.9	
D	Hirschfelder Leinen und Textil GmbH	C 28/00	19.9.2001	Not yet published	Grant, tax refund, takeover of interests	5.1	
D	ZEMAG GmbH	C 66/00	10.10.2001	L 62 (2002)	Grant, loan guarantee	13.6	
D	Henneberg Porzellan GmbH	C 36/00	30.10.2001	Not yet published	Grant, credit guarantee, waiver of debt	70	
D	Neue Harzer Werke GmbH	C 31/00	17.10.2001	Not yet published	Grant	1	
I	Tax measures for banks and banking foundations	C 54/00	11.12.2001	Not yet published	Tax concessions	Approx. EUR 1 billion	
E	Exemption from corporation tax (Álava)	C 58/00	20.12.2001	Not yet published	Tax reduction	Not quantified	
E	Exemption from corporation tax (Guipúzcoa)	C 59/00	20.12.2001	Not yet published	Tax reduction	Not quantified	
E	Exemption from corporation tax (Vizcaya)	C 60/00	20.12.2001	Not yet published	Tax reduction	Not quantified	

IV — INTERNATIONAL

Report from the Commission to the Council and the European Parliament on the application of the agreements between the European Communities and the Government of the United States of America and the Government of Canada regarding the application of their competition laws — 1 January 2001 to 31 December 2001

1. United States

1.1. Introduction

On 23 September 1991, the Commission concluded an agreement with the Government of the United States of America regarding the application of their competition laws ([234]) (the '1991 Agreement'), the aim of which is to promote cooperation between the competition authorities. By a joint decision of the Council and the Commission on 10 April 1995 ([235]), the agreement was approved and declared applicable from the date it was signed by the Commission.

On 4 June 1998, another agreement, which strengthens the positive comity provisions of the 1991 Agreement, entered into force ([236]) (the '1998 Agreement'), after having been approved by a joint decision of the Council and the Commission of 29 May 1998.

On 8 October 1996, the Commission adopted the first report on the application of the 1991 Agreement for the period of 10 April 1995 to 30 June 1996 ([237]). The second report completes the 1996 calendar year, covering the period of 1 July 1996 to 31 December 1996 ([238]). The third report covers the whole calendar year 1997 ([239]), the fourth the year 1998 ([240]), the fifth the year 1999 ([241]) and the sixth the year 2000 ([242]). The current report concerns the calendar year from 1 January 2001 to 31 December 2001. This report should be read in conjunction with the first report which sets out in detail the benefits, but also the limitations of this kind of cooperation.

In summary, the 1991 Agreement provides for:

— notification of cases being handled by the competition authorities of one party, to the extent that these cases concern the important interests of the other party (Article II), and exchange of information on general matters relating to the implementation of the competition rules (Article III);

— cooperation and coordination of the actions of both parties' competition authorities (Article IV);

([234]) Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws (OJ L 95, 27.4.1995, pp. 47 and 50).

([235]) See OJ L 95, 27.4.1995, pp. 45 and 46.

([236]) Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws, OJ L 173, 18.6.1998, pp. 26–31.

([237]) COM(96) 479 final, see *XXVIth Report on Competition Policy*, pp. 299–311.

([238]) COM(97) 346 final, see *XXVIth Report on Competition Policy*, pp. 312–318.

([239]) COM(1998) 510 final, see *XXVIIth Report on Competition Policy*, pp. 317–327.

([240]) COM(1999) 439 final, see *XXVIIIth Report on Competition Policy*, pp. 313–328.

([241]) COM(2000) 618 final, see *XXIXth Report on Competition Policy*, pp. 319–332.

([242]) COM(2002) 45 final, see *XXXth Report on Competition Policy*, pp. 291–307.

— a 'traditional comity' procedure by virtue of which each party undertakes to take into account the important interests of the other party when it takes measures to enforce its competition rules (Article VI);

— a 'positive comity' procedure by virtue of which either party can invite the other party to take, on the basis of the latter's legislation, appropriate measures regarding anti-competitive behaviour implemented on its territory and which affects the important interests of the requesting party (Article V).

In addition, the 1991 Agreement makes it clear that none of its provisions may be interpreted in a manner which is inconsistent with legislation in force in the European Union and the United States of America (Article IX). In particular, the competition authorities remain bound by their internal rules regarding the protection of the confidentiality of information gathered by them during their respective investigations (Article VIII).

The 1998 Agreement clarifies both the mechanics of the positive comity cooperation instrument, and the circumstances in which it can be availed of. In particular, it describes the conditions under which the requesting party should normally suspend its own enforcement actions and make a referral.

1.2. EU–US cooperation during 2001

During 2001, the Commission continued its close cooperation with the Antitrust Division of the US Department of Justice (DoJ) and the US Federal Trade Commission (FTC) in an ever greater number of cases. Indeed, contact between Commission officials and their counterparts at the two US agencies is showing a marked increase in frequency. These contacts range from detailed case-related discussions to more general, sometimes theoretical, competition policy-related matters. Case-related contacts usually take the form of regular telephone calls, e-mails, exchanges of documents, and other contacts between the case teams. High-level meetings and contacts also occur with reasonable frequency. The cooperation continues to be of considerable mutual benefit to both sides, in terms of enhancing the respective enforcement activity, avoiding unnecessary conflicts or inconsistencies between those enforcement activities, and in terms of better understanding each other's competition policy regimes.

1.2.1. Merger cases

The trend towards the globalisation of markets continued apace during the year, as most vividly illustrated by the record number and scale of transnational mergers: the year 2001 saw a continued large number of transactions notified to both the Commission and the US antitrust agencies. With regard to the investigation of these proposed mergers, staff-level contacts between the Competition DG's Merger Task Force, on the one hand, and the US DoJ and FTC, on the other, take place virtually on a daily basis. Cooperation is most effective where the parties involved agree to permit the EU and US authorities to share the information they provide by means of a waiver. This now frequently occurs.

In the *Metso/Svedala* case, which concerned rock-crushing equipment, the Commission and the FTC fully and intensely cooperated not only with respect to the substantive assessment of the case but also to the suitability of the remedies. The operation was finally approved by both authorities subject to undertakings. Likewise, in the *Nestlé/Ralston Purina* case, which concerned pet food, the Commission and the FTC closely cooperated during the negotiations of remedies. In the *CVC/Lenzing* case, the Commission and the FTC remained in close and mutually beneficial contact all along the procedure by sharing information, and by discussing and developing consistent analysis of the main substantive issues. After the Commission had prohibited the operation, the FTC closed its file. In the *GE/Honeywell* case,

the operation was finally approved by the DoJ and prohibited by the Commission. Although the Commission reached a divergent outcome from that of the US DoJ, this did not result from a lack of transatlantic cooperation. Indeed, cooperation between the Commission and the DoJ was very intense and started early in the process, that is well ahead of the actual notification of the transaction to the Commission.

1.2.2. Non-merger cases

During the course of the year, there has been a notable increased level of contact between the Commission and the US antitrust agencies in non-merger cases, in particular in cartel cases. About 11 cartel investigations that both the Commission and the US DoJ had been investigating were discussed between the two agencies. Most contacts were established via telephone and e-mail. In certain cases, visits took place. In the *Fine Art Auction Houses* case, cooperation between the agencies was productive. It led, amongst others, to a coordinated timing of the investigatory steps of both agencies. This had to do, amongst others, with the criminal investigation and trial before the District Court of the Southern District of New York, against former Sotheby's chairman Taubman. Also, one company involved provided a waiver, which permitted the two agencies to exchange views regarding confidential evidence. The Commission's investigation had not yet been concluded at the end of 2001. Also in other cases the DoJ and the Commission were able to coordinate their investigations, for example the timing of surprise inspections at the companies concerned.

1.3. Administrative arrangements on attendance (AAA)

The Commission adopted on 31 March 1999 a text setting forth administrative arrangements between the competition authorities of the European Communities and of the United States concerning reciprocal attendance at certain stages of the procedures in individual cases involving the application of their respective competition rules ([243]). These arrangements were concluded in the framework of the agreements between the European Communities and the Government of the United States concerning enforcement of their competition rules, and in particular the provisions regarding coordination of enforcement activities. In May of 2001, representatives from the US DoJ attended the oral hearing in the *GE/Honeywell* case.

1.4. EU–US Mergers Working Group

The work of the joint EU/US Mergers Working Group has continued. During the course of 2001, there were extensive tri-partite (Commission/DoJ/FTC) discussions, including a number of tele/video-conferences. At the occasion of the bilateral meeting of 24 September 2001, it was decided to expand and to intensify the activities of the working group.

1.5. High-level contacts

There were numerous high-level bilateral contacts between the Commission and the relevant US authorities during the course of 2001: Commissioner Monti paid a visit to Washington in March, and used the occasion to meet *inter alia* with key members of the Administration. On 24 September, Commissioner Mario Monti met in Washington the newly appointed heads of the US antitrust agencies, Assistant Attorney-General Charles James of the Antitrust Division of the DoJ and Chairman Timothy Muris of the FTC for the annual bilateral EU–US meeting. The meeting coincided with the

([243]) Bulletin EU 3-1999, Competition (18/43); 1999 Report COM(2000) 618 final, p. 5.

10th anniversary of the EU–US bilateral agreement on competition policy. Meetings also took place during the course of the year between the Commission and other US agencies, for example, the US Department of Transportation (which has some responsibility for the management of competition policy issues).

1.6. Statistical information

(a) Number of cases notified by the Commission and by the US authorities

There was a total of 84 formal notifications made by the Commission during the period between 1 January 2001 and 31 December 2001. The cases are divided into merger and non-merger cases and are listed in **Annex 1**.

The Commission received a total of 37 formal notifications from the US authorities during the same period. A list of these cases is found in **Annex 2**, again broken down into merger and non-merger cases.

Merger cases made up the majority of all notifications in both directions. There were 71 merger notifications made by the Commission and 25 by the US authorities.

The figures given represent the number of cases in which one (or more) notifications took place and not the total number of individual notifications. Under Article II of the agreement, notifications may be made at various stages of the procedure and so more than one notification may be made concerning the same case.

(b) Notifications by the Commission to Member States

The text of the interpretative letter sent by the European Communities to the United States as well as the Statement on Transparency made by the Commission to the Council on 10 April 1995, provides that the Commission, after notice to the US competition authorities, will inform the Member State or Member States, whose interests are affected, of the notifications sent to it by the US antitrust authorities. Thus, when notifications are received from the US authorities, they are forwarded immediately to the relevant sections in the Competition DG and at the same time copies are sent to the Member States, if any, whose interests are affected. Equally, at the same time that the Competition DG makes notifications to the US authorities, copies are sent to the Member State(s) whose interests are affected.

1.7. Conclusions

The year 2001 witnessed a further intensification of EU–US cooperation in all areas of competition law enforcement. It also saw a record number of merger transactions notified both to the Commission and the US authorities.. The increase of cooperation in 2001 with respect to the combating of global cartels is noteworthy, also the authorities on the two sides of the Atlantic are taking increasingly convergent approaches to the identification and implementation of remedies, and to post-merger remedy compliance monitoring. The Commission, DoJ and FTC also continued to maintain an ongoing dialogue on general competition policy/enforcement issues of common concern.

2. Canada

2.1. Introduction

The EU–Canada Competition Cooperation Agreement ([244]) is designed to facilitate cooperation between the European Communities and Canada with respect to the enforcement of their respective competition rules. The agreement was signed at the EU–Canada Summit in Bonn on 17 June 1999 and entered into force at signature.

The agreement provides for, among other things: (i) reciprocal notification of enforcement activities by either Competition Authority, where such activities may affect the important interests of the other party; (ii) one Competition Authority rendering assistance to the Competition Authority of the other party in its enforcement activities; (iii) coordination by the two authorities of their enforcement activities; (iv) requests by a party that the Competition Authority of the other party take enforcement action (positive comity); (v) one party to take into account the important interests of the other party in the course of its enforcement activities (traditional comity); and (vi) the exchange of information between the parties, subject to applicable domestic laws to protect confidential information. The report on cooperation between 17 June 1999 and 31 December 2001 was published together with the sixth report on cooperation with the United States ([245]). The current report concerns the calendar year from 1 January 2001 to 31 December 2001.

2.2. Cooperation

An increasing number of cases is being examined by the competition authorities on both sides resulting in increased and enhanced cooperation. Contacts between the Commission and the Canadian Competition Bureau have been frequent and fruitful. Discussions have concerned both case-related issues, and more general policy issues. Case-related contacts usually take the form of telephone calls, e-mails, exchanges of documents, and other contacts between the case teams. Case-related contacts comprised all areas of competition law enforcement. Merger cases included *GE/Honeywell* and *Nestlé/Ralston Purina* and *Bayer Aventis*. There was a notable increase in cooperation in cartel cases, about eight cartel investigations that both the Commission and the Canadian Competition Bureau were dealing with were discussed between the two authorities.

Policy-related issues were discussed at the occasion of visits and through video conferences. Two bilateral meetings, as foreseen in the cooperation agreement, took place in February 2001 in Brussels and September 2001 in Ottawa at which the heads of the respective competition authorities participated. In addition, the merger and cartel units from the respective authorities met to discuss issues specific to their areas of enforcement.

2.3. Statistical information

(a) Number of cases notified by the Commission and by the Canadian Competition Bureau

There was a total of 8 formal notifications made by the Commission during the period between 1 January 2000 and 31 December 2001 (Annex 3). The Commission received 10 formal notifications from the Canadian Competition Bureau (CCB) in 2001 (Annex 4).

([244]) Agreement between the European Communities and the Government of Canada regarding the application of the competition laws OJ L 175, 10.7.1999, p. 50.

([245]) COM(2002) 45 final, see *XXXth Report on Competition Policy*, pp. 291–307.

(b) Notifications by the Commission to Member States

As foreseen in the agreement, the Commission has informed the Member State or Member States, whose interests are affected, of the notifications sent to it by the Canadian Competition Bureau. Thus, when notifications are received from the Competition Bureau, they are forwarded immediately to the relevant sections in the Competition DG and, at the same time, copies are sent to the Member States, if any, whose interests are affected. Equally, at the same time that the Competition DG makes notifications to the Competition Bureau, copies are sent to the Member State(s) whose interests are affected.

2.4. Conclusion

The agreement has lead to a closer relationship between the Commission and the Canadian Competition Bureau, as well as to a greater understanding of each other's competition policy. An increasing number of cases are being examined by both competition authorities, and there is consequently a growing recognition of the importance, on the one hand, of avoiding conflicting decisions and, on the other, of coordinating enforcement activities to the extent that this is considered mutually beneficial by both parties. The increase of cooperation in 2001 with respect to the combating of global cartels is also noteworthy. The Commission and the Canadian Competition Bureau also continued to maintain an ongoing dialogue on general competition policy/enforcement issues of common concern.

ANNEX 1 ([246])

NOTIFICATION BY THE EUROPEAN COMMISSION TO THE US AUTHORITIES 1 JANUARY TO 31 DECEMBER 2001

Merger cases

01	Case No COMP/M.2291	VNU/ACNielsen
02	Case No COMP/M.2256	Philips/Agilent
03	Case No COMP/M.2211	Universal Studio Networks/NTL/Studio Channel
04	Case No COMP/M.2271	Cargill/Agribrands
05	Case No COMP/M.2306	Berkshire Hathaway/Johns Manville
06	Case No COMP/M.2312	Abbott/BASF
07	Case No COMP/M.2324	Sanmina Corp.
08	Case No COMP/M.2208	Chevron/Texaco
09	Case No COMP/M.2302	Heinz/CSM
10	Case No COMP/M.2292	AEA Investors/DLJMB Funding III/BF Goodrich
11	Case No COMP/M.2220	General Electric/Honeywell
12	Case No COMP/M.2330	Cargill/Banks
13	Case No COMP/M.1976	Shell/Halliburton/Welldynamics
14	Case No COMP/M.2079	Raytheon/Thales
15	Case No COMP/M.2227	Goldman Sachs/Messer Griesheim
16	Case No COMP/M.2308	Northrop Grumman/Litton Industries
17	Case No COMP/M.2275	PepsiCo/Quaker
18	Case No COMP/M.2365	Schlumberger/Sema
19	Case No COMP/M.2355	Dow Chemicals/Enichem Polyurethanes
20	Case No COMP/M.2350	Campbell/ECBB (Unilever)
21	Case No COMP/M.2231	Huntsmann International/Albright & Wilson
22	Case No COMP/M.2375	PAI + UGI/Elf Antargaz
23	Case No COMP/M.2328	Shell/Beacon/3i/Twister
24	Case No COMP/M.2222	UGC/Liberty Media
25	Case No COMP/M.2394	SCI Systems/Nokia Networks
26	Case No COMP/M.2435	Electronic Data Systems Corp/Systematics AG

([246]) Due to confidentiality requirements or to protect the secrecy of ongoing investigations, this list names only those investigations or cases which have been made public.

27	Case No COMP/M.2424	TYCO/CIT
28	Case No COMP/M.2405	Dow Chemical Company/Ascot plc
29	Case No COMP/M.2359	International Fuel Cells/SOPC (Shell)
30	Case No COMP/M.2466	Sodexho/Abela (II)
31	Case No COMP/M.2190	LSG/OFSI
32	Case No COMP/M.2421	Continental/Temic
33	Case No COMP/M.2460	IBM/Informix
34	Case No COMP/M.2415	Interpublic/True North
35	Case No COMP/M.2449	Goldman Sachs/SJPC/SCP
36	Case No COMP/M.2461	OM Group/DMC
37	Case No COMP/M.2439	Hitachi/STMicroelectronics/SuperH/JV
38	Case No COMP/M.2489	Borg Warner/Hitachi
39	Case No COMP/M.2337	Nestlé/Ralston Purina
40	Case No COMP/M.2480	Thomson/Carlton/JV
41	Case No COMP/M.2531	Sara LEE/Earthgrains
42	Case No COMP/M.2534	SCI Systems/Nokia Networks
43	Case No COMP/M.2517	Bristol-Myers Squibb/Du Pont
44	Case No COMP/M.2509	Dow/Reichhold/JV
45	Case No COMP/M.2575	Liberty Mutual/Grupo RSA Espana
46	Case No COMP/M.2510	Cendant/Galileo
47	Case No COMP/M.2510	Re-Notification — Cendant/Galileo
48	Case No COMP/M.2571	Johnson Controls/Sagem
49	Case No COMP/M.2549	Sanmina/SIC Systems
50	Case No COMP/M.2560	APAX Europe V — A.L.P. Delaware (USA) Mannesmann Plastics Machinery AG, Krauss-Maffei Corp., Van Dorn Demag Corp., Krauss-Maffei France, Netstal Maschinen AG
51	Case No COMP/M.2526	GE Insurance Holdings/National Mutual Life
52	Case No COMP/M.2559	USG/Deutsche Perlite
53	Case No COMP/M.2505	Tyco/CR Bard
54	Case No COMP/M.2584	Tyco/Sensormatic
55	Case No COMP/M.2566	Shell-Cinergy/EDA/EPA/JV
56	Case No COMP/M.2507	Xchange/BAE Systems/Procur
57	Case No COMP/M.2572	Time UK Publishing Holdings Ltd/IPC Group Ltd
58	Case No COMP/M.2648	KPNQWEST/Global Telesystems

59	Case No COMP/M.2276	The Coca-Cola Company/Nestlé/JV
60	Case No COMP/M.2562	Bertelsmann/France Loisirs
61	Case No COMP/M.2651	AT&T/Concert
62	Case No COMP/M.2667	Utilicorp/DB Australia/Midlands Electricity/JV
63	Case No COMP/M.2643	Blackstone/CDPQ/DeTeKS BW
64	Case No COMP/M.2652	Blackstone/CDPQ/DeTeKS NRW
65	Case No COMP/M.2656	Cinven/Klöckner
66	Case No COMP/M.2613	ALCOA/BHP/Billiton/JV
67	Case No COMP/M.2502	Cargill/Cerestar
68	Case No COMP/M.2627	Otto Versand/Sabre/Travelocity JV
69	Case No COMP/M.2642	BT/Concert
70	Case No COMP/M.2637	Nutricia/Baxter/2.HSC
71	Case No COMP/M.2666	Berkshire Hathaway/Fruit of the Loom

Non-merger cases

01		Request for information
02		Request for information
03		Request for information
04		Request for information
05	Case No COMP/38.102	PO/NSI-VeriSign Registry
06	Case No COMP/38.064/F	Covisint
07		Request for information
08		Request for information
09	Case No COMP/37.926	Sun Microsystems/ETSI
10	Case No COMP/36.213/F2	GEAE+P&W
11		Request for information
12	* *	*
13	* *	*

ANNEX 2

NOTIFICATION BY THE US AUTHORITIES TO THE EUROPEAN COMMISSION 1 JANUARY TO 31 DECEMBER 2001

Merger cases

01 Philips/Agilent

02 Svedala/Metso

03 Quaker Oats/PepsiCo

04 Baker Holding/Lhoist

05 GlaxoSmithKline

06 Eastern Lime Holding/Blue Circle Ind

07 Ralston Purina/Nestlé

08 Svedala/Metso

09 France Telecom/Equant

10 Chevron/Texaco

11 General Electric/Honeywell

12 Phillips/Marconi

13 Cargill/Cerester

14 Seagram/Pernod/Diageo

15 Stoess/Leiner Davis Gelatin

16 Weston/Unilever

17 National Dairy Holdings/Marigold

18 3D Systems Corporation

19 National Dairy Holdings/Crowley Foods, Inc.

20 Blue Circle Industries/Lafarge

21 Reuters Group/Bridge

22 Acordis/Lenzing/CVC European Eq. Partners II

23 DGF STOESS

24 Dow Chemical Company/Rechhold

25 Acordis/Lenzing/CVC European Eq. Partners II

Non-merger cases ([247])

01 Delta Airlines/Air France

02 Anchor (carbon cathode block)

03 *

04 USAid waterworks projects (criminal fine)

05 *

06 (Monochloacetic) Akzo Nobel

07 Powder River Basin Coal

08 *

09 *

10 *

11 *

12 *

([247]) Due to confidentiality requirements or to protect the secrecy of ongoing investigations, this list names only those investigations or cases which have been made public.

ANNEX 3 ([248])

NOTIFICATION BY THE EUROPEAN COMMISSION TO THE CANADIAN AUTHORITIES 1 JANUARY TO 31 DECEMBER 2001

01	Case No COMP/ M.2268	Pernod Ricard/Diageo/Seagram Spirits
02	Case No COMP/ M.2279	Nortel/Mundinteractivos/Broad Media
03		request for information
04	Case No COMP/ M.2493	Norske Skog/Abitibi/Papco
05	Case No COMP/ M.2518	GfE/Shell Hydrogen/HQC
06	Case No COMP/ *	*
07		request for information
08	Case No COMP/ M.2643	Blackstone/CDPQ/DeTeKS BW
09	Case No COMP/ M.2652	Blackstone/CDPQ/DeTeKS NRW

([248]) Due to confidentiality requirements or to protect the secrecy of ongoing investigations, this list names only those investigations or cases which have been made public.

ANNEX 4

NOTIFICATION BY THE CANADIAN AUTHORITIES TO THE EUROPEAN COMMISSION 1 JANUARY TO 31 DECEMBER 2001

01 Graphite and carbon products

02 Supply and service of post-tensionning systems to the Hibernia Platform

03 Graphite and carbon products

04 General Electric/Honeywell

05 Bulk vitamins and related products

06 Carbon and graphite products

07 Carbon and graphite products

08 Bulk vitamins and related products

09 *

V — THE APPLICATION OF COMPETITION RULES IN THE MEMBER STATES

This chapter is based on contributions from Member States' competition authorities. Fuller details of those authorities' activities are to be found in the national reports which most of them draw up.

A — Legislative developments

Austria

Following the amendment of the 1998 Electricity Sector and Organisation Act in 2000, full liberalisation of the electricity market came into effect on 1 October. There are now three electricity authorities:

— The highest-ranking electricity authority is the Federal Minister for Economic Affairs and Labour. Apart from exercising supervisory rights and administering the Federal Government's shares in E-Control, his main task is to provide guidance to the latter authority.

— The newly established regulatory authority Elektrizitäts-Control GmbH, which was set up on 15 March, has had extensive tasks conferred on it as part of the full liberalisation of the Austrian electricity market. In addition to monitoring, supervisory and regulatory functions, it verifies compliance with environmental objectives, organises the settlement of compensatory payments between network operators, implements the provisions on stranded costs and compiles electricity statistics. In the course of the year, network tariffs were investigated and, where they were disproportionately high, reset; the import of electricity from third countries was regulated; and unbundling was monitored.

— The likewise newly established Electricity Control Commission is a collegiate body of a judicial nature which therefore does not take instructions from any other body. In addition to its function of hearing appeals against decisions of E-Control, it above all determines the tariffs for using the system, adjudicates on network access refusals, authorises the general terms and conditions of network operators and settles disputes between market players.

Belgium

On 10 August, a royal decree was adopted which amended Section 53 of the Act on Safeguarding Economic Competition, as coordinated on 1 July 1999 (*Moniteur belge* of 22 September 2001, p. 31914). As previously worded, Section 53 conferred on the Competition Council the necessary powers to apply Articles 81(1) and 82 of the EC Treaty. However, before the adoption of the above-mentioned decree, the application of Article 81(3) of the Treaty fell within the exclusive competence of the European Commission.

The decree is intended to adapt the provisions of Section 53 with a view to enabling the Competition Council to exercise the new powers which are conferred on it by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, Article 7 of which henceforth allows the competent authority of a Member State, in the same way as the European Commission, to withdraw the benefit of the application of the regulation in certain cases. In view of the fact that this competence stems, not from Articles 81(1) and 82, but from Article 81(3), an amendment of Section 53 of the act was necessary.

Moreover, the current wording of Section 53 will permit an immediate implementation of the reform of Regulation No 17, one of the purposes of which is to empower national competition authorities to apply Article 81(3) of the EC Treaty.

Denmark

Danish competition law, which was last changed in 2000, did not undergo any further alterations during the period under review.

Finland

Following the Act on the Market Court (28.12.2001/1527) and the act on procedure in the Market Court (28.12.2001/1528), the new Market Court is to begin operating in March 2002.

The court will take over responsibility for matters that used to fall within the remit of the Competition Council. Its task will be to rule on recommendations from the Competition Authority on eliminating restrictions of competition and prohibiting mergers.

The court will be headed by a Chief Justice and will have four judges. Four secretaries will be involved in the drafting work and a further one to three part-time members will take part in competition proceedings as experts. The court will operate in divisions.

Appeals against competition decisions by the court will continue to be lodged with the Supreme Administrative Court. The creation of the new Market Court will not affect the powers of the Competition Authority.

France

The Act on New Economic Regulations was adopted by Parliament and entered partially into force in the year under review. Its main provisions cover two broad areas:

1. Provisions aimed at strengthening the application of competition law

The maximum penalties are increased significantly from 5 % of turnover achieved in France to 10 % of the highest worldwide turnover, excluding taxes, achieved during one of the financial years for which the accounts have been closed since the financial year preceding that during which the practices were implemented, and this turnover may be that of the group to which the firm being fined belongs. This will make it possible to counter a practice consisting in substantially reducing, while the proceedings are under way, the turnover of the legal entity that is being proceeded against.

The act also helps strengthen the investigatory powers of staff of the Directorate-General for Competition, Consumption and the Repression of Fraud within the Ministry of Economic Affairs, Finance and Industry, with a view to facilitating the detection of infringements while they are being committed, and confers on them a national territorial competence. Moreover, the Competition Council may henceforth have investigators seconded to the general rapporteur to conduct specific enquiries, and call on experts, either of its own motion or at the parties' request.

Respect for the rights of the defence has been enhanced by a clear separation of the investigation and judgment phases in proceedings before the Competition Council. Incorporating the case-law of the Court of Cassation, the act henceforth provides that the rapporteur and the general rapporteurs may no longer

sit in on the judges' deliberations in disputed cases. Moreover, the various investigatory acts (appointment of the rapporteur, transmission of investigation requests to the Minister for Economic Affairs, notification of the statement of objections and of the report to the parties) will be entrusted to the general rapporteur and not as before to the President of the Competition Council. The conditions under which the Council may grant interim measures are made more flexible in that it may henceforth take those measures which it considers necessary and not, as before, only those requested.

Lastly, along the lines of what has already been introduced into Community law and in the United States, a clemency procedure is provided for for firms which help to establish the reality of prohibited practices and to identify the authors thereof and which undertake to rectify their behaviour. These arrangements are designed to grant total or partial exemption from penalties for firms which denounce a restrictive practice and cooperate with the competition authorities.

The act recognises the need for closer cooperation between competition authorities and provides that the obligation of professional secrecy must not prevent the communication by those authorities of the information or documents which they have in their possession or which they receive, at their request, from the Commission of the European Communities or the authorities in other States exercising similar powers and subject to the same obligations of professional secrecy. It is provided, moreover, that the competition authorities, within their respective remits, may use information or documents transmitted to them under the same conditions by the Commission of the European Communities or the authorities in other Member States exercising similar powers.

2. *More systematic and transparent monitoring of mergers*

The machinery has been overhauled to establish clear, homogeneous procedures and reflect developments in the markets and laws of the other countries of the European Union. Procedures have been amended: notification is now obligatory, having to be effected prior to the operation, and suspensive (with the possibility of derogation) beyond a threshold of a worldwide turnover of EUR 150 million for all the enterprises concerned and where at least two enterprises achieve in France a turnover in excess of EUR 15 million.

The investigation periods are reduced from two months to five weeks during phase one. The second phase, which involves consulting the Competition Council, must be completed within three months, after which the minister has four weeks in which to take a final decision.

Non-fulfilment of the notification obligation and inaccurate or incomplete declarations are punishable by a fine of up to 5 % of turnover in the case of corporations and EUR 1.5 million in the case of individuals. In the event of failure to fulfil commitments, the minister may, after consulting the Competition Council, revoke any authorisation granted or order fulfilment of the commitments, subject to payment of a daily penalty.

The reform will take effect once the implementing decree has been published, probably in early 2002. A set of guidelines will then be drawn up.

Germany

Competition law in Germany remained largely unchanged during the report period. Only a few minor amendments came into force. These mainly concerned improved access by the Monopolies Commission to statistical data and the possibility for the Federal Cartel Office to call on the services of experts in the course of its investigations.

The easing of access by the Monopolies Commission to statistical data was brought about by means of an amendment to Section 47 of the Act Prohibiting Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen* — GWB) which took effect on 1 January. Whereas official statistics used to be based on individual firms as the collection unit, henceforth corporate relationships in the form of groups of companies etc. will also be taken into account. The degree of concentration in an industry will thus be easier to gauge.

As part of the changeover to the euro, the cartel authorities will henceforth be able pursuant to Section 80(1) of the GWB to recover the full cost of expert reports from the party to whom the decision is addressed. A ceiling of DEM 100 000 used to be laid down. This should make it easier in future for the Federal Cartel Office to enforce claims for access to essential facilities in favour of competitors, it being often only by means of expensive expert reports that it can be established that a firm is unjustifiably denying its competitors access to its own network or other infrastructure within the meaning of Section 19(4) of the GWB.

Greece

During the period under review, no changes were made to the Greek legislation on competition (Monopolies and Oligopolies (Control) and Free Competition (Protection) Act No 703/77).

Ireland

There were no new legislative developments in Ireland during the period under review.

However, in July, the Irish Government approved the drafting of a new Competition Bill and the bill was subsequently published by the Minister for Enterprise, Trade and Employment on 21 December. The new Competition Act will be adopted in April 2002. The purpose of the new Competition Bill is to consolidate and modernise the existing enactments relating to competition and mergers. The bill replaces the Mergers, Takeovers and Monopolies (Control) Act 1978, the Competition Act 1991 and the Competition (Amendment) Act 1996. The bill also introduces significant changes to Ireland's competition and merger law arrangements. These changes follow mainly from the work of the Competition and Mergers Review Group, which carried out a major review of existing arrangements over the period September 1996 to March 2000. The bill also takes account of other developments, particularly the proposed changes in EU competition law which will have important implications for the implementation of Community competition law within Member States.

Copies of the Bill are available from the Government Publications Sales Office, Dublin 2.

Italy

Law No 57/2001 of 5 March 2001 on the opening and regulation of markets amends Article 8(2) of Law No 287/1990 (rules on the protection of competition and the market) by adding subparagraphs 2a to 2d. The purpose of the new provisions concerns the activities of firms which, in accordance with a legal provision, manage services of general economic interest or hold a market monopoly. Subparagraph 2a requires such firms to split up, at their own cost, if they intend to operate in separate markets. Subparagraph 2b requires the Competition Authority to be notified in advance if a controlling share is acquired in firms already operating in different markets or if a new company is set up. Subparagraph 2c requires such firms not to discriminate when supplying to companies that operate in different markets and in which they have a controlling or other interest goods or services, including information, to which they have sole access through their activities within the meaning of subparagraph 2. Such firms are required to

make accessible such goods or services on equivalent terms to immediate competitors. Lastly, subparagraph 2d states that, with regard to subparagraphs 2a, 2b and 2c, the authority has the investigative powers provided for in Article 14 of Law No 287/90 and that, in the event of infringement of Articles 2 and 3, firms are subject to the provisions and penalties in Article 15 of that law. Subparagraph 2e provides that the Authority may impose a fine not exceeding ITL 100 million only if the requirement to give prior notification is not complied with.

Law No 57/2001 also amended Article 15 of Law No 287/90, introducing a new rule for the calculation of the fine for infringing Articles 2 and 3 of the law. In particular, it abolished the minimum fine as well as the limits relating to turnover in the products forming the subject of the restrictive practice or abuse of a dominant position. Under the new rules, the authority is required, where appropriate, to impose a fine not exceeding 10 % of the turnover achieved by the firm in the last financial year ending before the notification.

Lastly, Law No 57/2001 amended Article 9(3) of Law No 192/1998 ('rules governing subcontracting in manufacturing industry'); the amended article, which prohibits abuse of financial dependency, allows the authority to investigate, assess and fine any abuse of financial dependency by a firm in its commercial relations with one or more firms, where such abuse affects competition and the market.

Luxembourg

The Ministry of Economic Affairs finalised a bill completely overhauling the act of 17 June 1970, as amended, on restrictive trade practices. The bill should be put before Parliament during the first half of 2002.

Netherlands

During the period under review, the Competition Act itself, which entered into force on 1 January 1998, was not further amended.

On the basis of secondary legislation (general administrative rules), on 28 September, the national turnover threshold for purposes of national supervision by the Dutch Competition Authority (Nederlandse Mededingingsautoriteit — NMa) of mergers in the Netherlands was increased from NLG 30 million to EUR 30 million.

The Passenger Transport Act was adopted by Parliament. The act confers on the NMa the task of supervising at local and regional level competition in the passenger transport field in the Netherlands.

The government laid a bill before Parliament providing for a greater separation of powers between the NMa and the Ministry of Economic Affairs. The political influence exercised by the Minister in individual NMa cases will thus be reduced. The bill also provides for the integration of the Energy Supervision and Administration Service (Dienst Toezicht en Uitvoering energie) as an organisational unit within the independent competition regulatory authority. Moreover, on the basis of the bill, the NMa will be transformed from an administrative service with a director-general within the Ministry of Economic Affairs into an independent administrative board with three members, including a chairman.

Lastly, the government decided that the posts and telecommunications regulator should be integrated into the NMa from 2005.

Portugal

Portuguese competition law has remained unchanged since the entry into force of Decree-Law No 371/93 of 29 October 1993.

Spain

Three major pieces of legislation were adopted in the competition policy field during the period under review:

1. Act 9/2001 of 4 June 2001 amending the sixth transitional provision of Act 54/1997 of 27 November 1997 on the electricity sector, certain sections of Act 16/1989 of 17 July 1989 on the protection of competition and certain sections of Act 46/1998 of 17 December 1998 on the introduction of the euro. (The act incorporates the operative provisions of Royal Decree-Law 2/2001 of 2 February 2001.)

The changes introduced by the act chiefly affect merger control. More specifically:

— sectoral legislation may be temporarily suspended where necessary for the purpose of compliance with the conditions imposed on parties to a merger transaction (for example the obligation to hive off certain businesses or assets or the imposition of limits on holdings) and only until such transactions have been completed;

— new sanctions are introduced, as a means of enforcement, for failure to comply with the conditions subject to which mergers are cleared. The government is thus entitled to impose periodic penalty payments of up to EUR 12 020 per day as well as fines representing up to 10 % of the relevant turnover in the event of non-compliance.

Other changes comprise the following:

— the categories of agreement which the government can authorise by means of exemption regulations are extended to include agreements between two or more firms which impose restrictions on the distribution and/or supply of certain services for sale or resale. The purpose of this change is to transpose into Spanish law the provisions of the new Community exemption regulation on vertical restraints;

— the terms of office of the President and Members of the Competition Tribunal are reduced to five years, renewable once only.

2. Act 24/2001 of 27 December 2001 on tax, administrative and social measures.

This act amends certain sections of Act 16/1989 of 17 July 1989 on the protection of competition in order to change the legal status of the Competition Tribunal. While remaining fully independent and subject to the law, the tribunal becomes an autonomous entity with separate legal personality and complete operational independence.

The tribunal's new legal status not only gives it greater flexibility and independence in terms of its handling of cases and internal management, something which is more in harmony with its role and tasks, but also increases the resources at its disposal by allocating to its new budget half of the revenue from the fees charged for vetting mergers.

3. Royal Decree 1443/2001 of 21 December 2001 implementing Act 16/1989 of 17 July 1989 on the protection of competition with regard to merger control.

The new instrument replaces Royal Decree 1080/1992 of 11 September 1992, which is repealed.

It reflects the need to modernise the regulatory framework in the merger control field and adapt it to the legislative changes that have been taking place in recent years (already commented on in Spain's contributions to previous Competition Reports).

To that end, the royal decree modifies material aspects of the procedure in the interests of greater flexibility, transparency and legal certainty, incorporates improvements prompted by experience and attempts to reflect changes in the economy that have in recent years brought about an increase in the number, size and complexity of mergers examined by the competition authorities.

The following changes are worth stressing:

— with a view to enhancing legal certainty, the definition of a merger now includes the acquisition of *de facto* control and the calculation of turnover is modelled on the clearer and simpler Community criterion. Issues to do with suspension of the merger, particularly in the case of takeover bids, have also been clarified and detailed provisions on prior consultation and termination of the procedure by agreement have been added;

— to make the system more transparent, it is explicitly stipulated that reports drawn up by the Competition Service are to be published;

— certain provisions of the royal decree laying down the rules governing takeover bids are amended to include the procedure before the Spanish competition authorities;

— a new form is adopted for notifying mergers.

Sweden

Since 1 January, the Swedish Competition Authority (Konkurrensverket) has been empowered to directly apply Articles 81(1) and 82 of the EC Treaty on the prohibition of restrictive practices and abuses of dominant positions. It has also been empowered to grant negative clearance under Articles 81 and 82 in cases of particular relevance to Sweden.

The government decided this year on two new block exemptions, one for specialisation agreements and the other for agreements between two or more firms concerning the conditions governing joint research and development. The block exemptions, which broadly correspond to those applicable under EC law, replace the earlier exemptions for specialisation and research and development agreements. They took effect on 1 July and will remain in force until the end of December 2010.

A government commission of inquiry was set up in 2000 to consider a tightening-up of competition law. It presented its report (SOU, 2001) in the autumn and proposed among other things rules on the reduction or remission of fines in cartel cases (leniency) and on confidentiality for notifying parties and informants in connection with the investigation of breaches of prohibitions. The commission of inquiry considers that the exchange of information between national competition authorities promotes the effective monitoring of competition. It proposes that the Konkurrensverket should be allowed to help its

counterparts in other countries to obtain information and conduct investigations. It does not, however, suggest that infringements of competition law should be criminalised.

United Kingdom

In July, the government published a White Paper entitled 'Productivity and enterprise: a world class competition regime' (CM 5233, ISBN 010 152332), which described wide-ranging proposals to reform the competition regime including mergers and monopoly investigations. The White Paper was followed by an 'Enterprise Bill' which will be introduced into Parliament in early 2002. One proposal it contains is for responsibility for most decisions on mergers and monopolies to be taken by the independent competition authorities (Office of Fair Trading and Competition Commission) rather than as now by the Secretary of State for Trade and Industry. A small minority of cases, which raise defined exceptional public interest issues, will still be decided by ministers. The Secretary of State for Trade and Industry announced that in advance of new legislation his policy would be — save in exceptional circumstances — to accept advice from the Director-General of Fair Trading on whether or not to refer merger cases to the Competition Commission.

The bill also contains proposals for the introduction of criminal sanctions against individuals engaged in hardcore cartel activity.

B — Application of the Community competition rules by national authorities ([249])

Finland

1. Metsäliitto/Vapo

In December 2000, Metsäliitto Osuuskunta notified the European Commission of a merger whereby Metsäliitto bought a third of the shares in Vapo Oy from the Finnish State. In January 2001, the Competition Authority made a request to the Commission in accordance with Article 9 of the merger regulation for the matter to be partially referred to the Competition Authority for examination. The Commission took its decision on the request in February and referred the matter to the Competition Authority for examination of the parts relating to the markets for wood-based fuels and peat (see Commission press release IP/01/183). In March, the Competition Authority approved the Metsäliitto/Vapo deal, subject to conditions.

2. Telia/Sonera/Radiolinja

In December, the Competition Council issued a decision in a case concerning charges for mobile roaming. Telia Finland Oy, a company operating in Finland, considered that its competitors Sonera Oy and Radiolinja Oy had offered it roaming services on worse terms than, for example, they had offered foreign telecommunications service companies or their own internal telecommunications service companies. It was Telia's view that Sonera, either alone or in collaboration with Radiolinja, had a dominant market position in the market for nationwide mobile network access.

([249]) See annex for the national competition authorities responsible for applying Articles 81 and 82 of the EC Treaty. This section also covers judgments of courts with jurisdiction to rule on the lawfulness of decisions of national competition authorities.

The Competition Council considered that, in applying the provisions of the Finnish Restrictive Practices Act regarding the abuse of a dominant market position, consideration should also be given to Article 82 case-law, and it sought an opinion on the matter from the Commission's Competition DG. In the end, the Competition Council found that Sonera did not have a dominant position in the market for nationwide mobile network access either alone or in collaboration with Radiolinja. It none the less referred the matter back to the Competition Authority to establish the extent to which Sonera's pricing for its roaming services might otherwise be preventing or holding back sector entry by competitors.

3. Ajasto

The Supreme Administrative Court considered an appeal lodged by Ajasto Oy, which operates in the market for calendars. The appeal concerned a fine of about EUR 337 000 imposed on the company by the Competition Council for abuse of a dominant market position.

Ajasto called for the Competition Council's decision to be annulled on the ground that it was based on the wrong legislation, since, according to the company, the case should have been dealt with under the EC competition rules, not a national act. It maintained that the company's business would have been judged more leniently than in the Competition Council decision if the EC competition rules alone had been applied to the case. It further asked for the Supreme Administrative Court to seek a preliminary ruling from the Court of Justice as provided for in Article 234 of the EC Treaty.

The Supreme Administrative Court gave judgment in August. It held that it had been permissible for national competition legislation to be applied to the case, since the application of the national act did not compromise the uniform application of EC competition law. It further held that the case did not involve any question of interpretation such as to warrant seeking a preliminary ruling from the Court of Justice. It therefore dismissed Ajasto's appeal and upheld the fine imposed on the company.

4. The forestry cartel

In December, the Supreme Administrative Court gave judgment in a case concerning a forestry cartel. In 2000, the Competition Authority had recommended fining the country's three largest forestry companies, Metsäliitto, Stora Enso and UPM-Kymmene. According to the Competition Authority, the companies had been engaging in price cooperation and sharing supply sources in the roundwood market in breach of the Finnish Restrictive Practices Act. One of the ways in which the companies had been operating restrictively was by sharing information with each other. The Competition Authority recommended that each company should be fined EUR 3.36 million.

The Competition Council ratified the Competition Authority's position as regards the prohibited price competition and carve-up of supply sources, although it reduced the fine per company to EUR 1.68 million.

The companies appealed to the Supreme Administrative Court, which further reduced the fine per company to EUR 504 000, which is about one seventh of what the Competition Authority had originally recommended. Under the Finnish Restrictive Practices Act, the maximum fine for a restrictive practice is EUR 673 000. A larger fine may be imposed, if justified by the nature of the restrictive practice or other circumstances. Even so, the fine may not exceed 10 % of the turnover of each party or cartel involved in the restrictive practice.

The Supreme Administrative Court found that in the case in question there were no grounds for exceeding the normal upper limit of EUR 673 000 and that the fine should be reduced. It justified

reducing the fine on the ground that the prohibited exchange of information between the forestry companies purchasing the roundwood had largely occurred at the instigation and in the presence of the opposite side, namely the sellers of the roundwood. The practice was also found to have been regionally restricted and to display traits that, in the view of the Supreme Administrative Court, had beneficial effects on the roundwood trade as well.

France

1. Restrictive practices and abuses of dominant positions

With regard to restrictive practices, the Competition Council applied Community law in only two cases. In a case concerning a referral and an application for interim measures submitted by the company Pharmadex TMC, this wholesaler which exports pharmaceutical products to the United Kingdom and Scandinavia had met with refusals to sell on the part of Lilly France and Pfizer. In its decision on the application for interim measures, the Competition Council found that Article 81 of the EC Treaty could not be applied inasmuch as no proof had been provided as to the existence of an agreement between Lilly France or Pfizer and their wholesalers aimed at refusing to supply the applicant with medicinal products. It could not be ruled out, however, that Pharmadex may have been the victim of an abuse of a dominant position. This point will be considered when the substantive issues are dealt with, the application for interim measures having been dismissed.

In a case concerning practices on the market for anaesthetics, the Competition Council found that the company Abbott had infringed Article L 420-2 of the Commercial Code and Article 82 of the EC Treaty by introducing, upon the arrival of a competitor on the market, fidelity rebates in order to dissuade buyers from turning to this new supplier.

A Spanish tour operator had challenged, before the Competition Council, the practices of FIFA (Fédération Internationale de Football) and the CFO (Comité d'Organisation de la Coupe du Monde de Football) in relation to the sale of tickets for the football World Cup. The Competition Council had found that it was not established that these organisations had infringed Article 82 of the EC Treaty and Article L 420-2 of the Commercial Code. By judgment of 30 October, the Paris Court of Appeal upheld this decision, finding that, although FIFA and the CFO held a dominant position on the market for the sale of tickets for the football World Cup within the framework of the putting together of package tours, it had not been proved that there had been an abuse.

2. Mergers

A request for the application of Article 9 of the Community regulation was made at the end of the year by the French authorities in respect of the SEB/Moulinex merger. The Commission referred back the French part of the case and in January 2002 authorised the operation subject to conditions.

Germany

1. During the report period, the Federal Cartel Office applied the EU competition provisions in three cases:

(a) At the end of 2000, the federations of statutory health insurance funds decided to adjust the fixed amounts for certain active substances. The Federal Cartel Office issued a prohibition on the basis of Article 81 of the EC Treaty in case the federations made the amounts binding. The proceeding was subsequently suspended because the federations dispensed with an adjustment after the federal

government announced that, for a transitional period, it would be setting the fixed amounts by regulation. (See also the reference decision of the Federal Court of Justice of 3 July 2001.)

(b) In response to a complaint from an authorised dealer, the Federal Cartel Office is currently considering whether the territorial protection clauses agreed between a manufacturer of cleaning apparatus and its dealers infringe Article 81 of the EC Treaty or are covered by block exemption Regulation No 2790/99.

(c) A further proceeding examining the compatibility of vertical supply agreements with Article 81 of the EC Treaty or block exemption Regulation No 2790/99 was initiated following a complaint about the duration of the supply provision agreed between certain breweries and landlords in beer supply agreements.

2. During the report period, the following decisions were handed down by the Federal Court of Justice or the Berlin Court of Appeal in connection with the EU competition rules:

(a) In proceedings brought against Scandlines Deutschland GmbH, on 8 May the Federal Court of Justice allowed the appeal lodged by the Federal Cartel Office against the refusal to grant it leave to appeal to a higher court. The Federal Cartel Office thereupon lodged a judicial review application. By decision of 21 December 1999, Scandlines had been prohibited under Section 19(4) (4) of the Act prohibiting Restraints of Competition and Article 82 of the EC Treaty from refusing to grant two competing ferry companies the right also to use Puttgarden port infrastructures for a reasonable consideration. The Düsseldorf Higher Regional Court had set aside the decision on 2 August 2000 on grounds of imprecision.

(b) The prohibition decision of the Federal Cartel Office concerning the cooperation between Nordzucker AG and Union Zucker Südhannover GmbH was set aside by the Berlin Court of Appeal by judgment of 10 October. The Federal Cartel Office will not lodge an appeal. The cooperation, over the joint marketing of beet sugar, had been prohibited on 18 March 1999 on grounds of the dominant market position of the joint venture Nordzucker GmbH & Co. KG on the basis of Article 85(1) of the EC Treaty and Section 1, in conjunction with Section 28(1), first sentence, and Section 28(4), in conjunction with Section 12(1), of the Act prohibiting Restraints of Competition.

Greece

In August, in accordance with Section 2 of Act 703/77 as it applies in conjunction with Article 82(c) of the EC Treaty, the Greek Competition Commission issued a decision on the complaints seeking an injunction lodged by 16 associations of pharmacists against GlaxoWellcome AEBE (decision 193/III/2001).

The facts of the case were that, between 6 November 2000 and 22 February 2001, GlaxoWellcome AEBE had unilaterally decided to stop supplying all associations of pharmacists and pharmaceutical wholesalers with the patent medicines Imigran (anti-migraine), Lamictal (anti-epileptic) and Serevent (anti-asthmatic) and at the same time started direct sales of the products to Greek pharmacies.

The company maintained that it had reached its decision because of a cutback in the quantities of the medicines in question available from its parent company GlaxoWellcome plc (now GlaxoSmithKline) and because of persistent and ever-greater shortages of the medicines on the domestic market, which had come to the company's notice (and about which it had received complaints). The problem was caused by

large-scale parallel exports by certain pharmaceutical wholesalers, which resulted in the domestic market requirements not being satisfied.

In the grounds for its decision, the Competition Commission found that the company did have a dominant position in the domestic market on account of (a) the large proportion of the medicines in question accounted for by the company, with some of the medicines not considered not to have any substitute, at least for certain categories of patient; (b) the fact that the company was the sole supplier of the medicines on the domestic market; (c) the company's financial robustness; and (d) the strong demand for the products on the European market.

The Competition Commission decision further considers the accused company and its parent company to be a single economic unit and finds that their joint conduct constitutes an abuse liable to affect intra-Community trade. Specifically, the refusal of the company and its parent company to execute the orders placed by the associations of pharmacists and pharmaceutical wholesalers constitutes an infringement of Article 82(b) of the EC Treaty and Section 2 of Act 703/77, since it limits availability to the detriment of consumers both in Greece, where, because of the refusal to sell to the above associations, it was assumed that the supply of the medicines was taking considerably longer than under the previous arrangements, and in the Member States to which the medicines were being exported from Greece, where consumers would be able to buy the parallel imports at a lower price than the normal price on the local market.

In any event, in addition to the fact that the company failed to produce any evidence of the parent company cutting back its research and development budget on account of parallel exports and that the alleged problems on the domestic market were not substantiated, the decision finds that the company's conduct described above clearly goes beyond what is necessary to protect its own legitimate interests and those of its parent company.

Under the operative part of the Competition Commission decision, the company is required — for the time being and pending the final decision — to execute all orders for the three medicines from the associations that lodged the complaint, without any limitation on quantities. The injunction extends automatically to all associations of pharmacists and pharmaceutical enterprises (wholesalers) of whatever type, also without any quantity restriction. It further stipulates that the company will face a fine of GRD 1 million for each day that it fails to comply with the decision.

Italy

1. During the period under review, the Competition Authority concluded its investigation under Article 82 of the EC Treaty in the *Assoviaggi/Alitalia* case. The authority concluded that Alitalia had infringed Article 82 by abusing, through the application of loyalty incentive schemes with regard to travel agencies, its dominant position on the market for air transport agency services. More specifically, the investigation concerned Alitalia's practice of granting incentives to travel agencies to distribute its own air tickets calculated on the basis of sales targets reached by the agencies and not on the basis of an agency's total sales. The authority concluded from its investigation that Alitalia's conduct constituted an infringement of Article 82(1)(b) and (c) of the EC Treaty. It considered that, as the infringement restricted the benefits of the liberalisation of the air transport sector taking place in the Community, the infringement was serious and it imposed a fine of ITL 51 998 000 000 (or 1.3 % of Alitalia's turnover in the transport by air of passengers to and from Italy). It also ordered Alitalia to put an end to the practices that were distorting competition and to submit a report on the measures taken to remove the infringements identified.

2. This year, the authority also initiated two proceedings under the Community competition rules which are still under way. The *Blugas Snam* case concerns possible infringements of Article 82 of the EC Treaty in the gas transport and sales sector by Snam SpA and Snam Rete Gas SpA. The possible abuses by Snam, which holds 87 % of the relevant market, and by Snam Rete Gas, which holds about 97 % of the national transport networks, relate to conduct concerning the allocation of transport capacity on the national gas network at the point of import, in particular, customer operators (Snam and firms purchasing gas from Snam) being given priority access to the network to the detriment of independent operators acquiring gas supplies from third parties.

The investigation in *International Mail Express Italy/Poste Italiane* concerns an alleged abuse of a dominant position under Article 82 of the EC Treaty by Poste Italiane. The case concerns the interception by Poste Italiane of mail from abroad and the suspension of its forwarding service, as well as its requirement that the Italian intermediaries or customers, who have already paid for the service to the Post Office in the country of posting, pay a particularly large fee for delivery to the addressee. Similar complaints are based on the fact that, under the international agreements in force, public postal operators in the different countries may, for large quantities of mail from abroad, charge a fee based on criteria established by international agreement, but may not under any circumstances hold up mail from abroad. In addition, under international agreements signed by Poste Italiane, the public postal operator of the country of destination of the mail must claim payment of the forwarding and delivery fee from the postal operator in the country of importation rather than direct from customers.

3. In its Judgment No 7433/2001, the Lazio Regional Administrative Court rejected the application by Telepiù SpA for annulment of decision No 8386/2000 of the Competition Authority which, in the *Stream/Telepiù* case, found that Telepiù had infringed Article 82 of the EC Treaty.

Luxembourg

During the period under review, the Restrictive Trade Practices Commission (CPCR) delivered an opinion in a case concerning practices, allegedly in breach of the act of 17 June 1970, as amended, on the market in expert inspections of motor vehicles. In its opinion, the CPCR recommended that the minister should close the file on the case given that no infringement had been established. Another case concerning an alleged abuse of a dominant position by a Luxembourg firm with regard to charges for bank cards is still pending before the CPCR.

Netherlands

1. The *Ruhrkohle-Hoogovens* case concerned an application for exemption for an agreement between Ruhrkohle and Hoogovens. It was decided that the agreement did not infringe Section 6 of the Competition Act or Article 81(1) of the EC Treaty. Ruhrkohle lodged an objection to the decision with the Director-General of the Dutch Competition Authority. The director-general ruled that the effects of the agreement in question did not so much 'principally arise on' as 'have a close connection with' Dutch territory. He therefore came to the conclusion that in the present case it was not obvious that he was the proper authority to apply Article 81(1) of the Treaty. He expressed the prima facie view, however, that there was no question of an infringement of that article.

2. Under the Dutch Competition Act, European block exemptions take effect directly. Consequently, agreements which do not (adversely) affect trade between Member States of the European Union benefit from a European block exemption. Where the director-general of the Dutch Competition Authority is however of the opinion that the applicability of such an exemption to national agreements has a negative impact on domestic competition, he may refrain from giving effect to the relevant regulation. In

December, the director-general announced his intention to withdraw the benefit of Regulation (EC) No 2790/1999 on vertical agreements from the 'aid systems' of the five leading chemical companies in the Netherlands.

3. Rotterdam District Court, 21 June 2001, *Essent NV* v *The Director-General of the Dutch Competition Authority*

This case concerned a competition-law assessment of a merger that had taken place in the Dutch market for the composting of vegetable waste and of the requirements relating to the authorisation. With regard to the view taken by Essent NV that the director-general of the Dutch Competition Authority had wrongly omitted to establish whether there might also be an appreciable restriction of competition, the court remarked that neither Community practice nor the literature provided an unequivocal answer to the question how far independent significance could be attributed to the requirement of an appreciable restriction of competition compared with that of economic dominance. It was clear from this that in principle an integrated approach must be taken when carrying out an assessment. A finding of a strengthening or creation of a dominant position should then as a rule be sufficient to justify a finding that Article 2 of Regulation (EEC) No 4064/89 was satisfied. Only in the case of special circumstances, such as a very minimal or very temporary negative impact on competition, could the position be any different. Such special circumstances had not arisen, however, in the present case.

4. President of the Rotterdam District Court, 12 October 2001, *Vereniging Belangen Behartiging Schildersbedrijven cs (VBBS)* v *The Director-General of the Dutch Competition Authority*

The President held that, having regard among other things to what the European Commission had found in its *SPO* decision (OJ L 92, 7.4.1992), the rules, in so far as they sought to prevent peddling, tended to restrict competition. In the light of the judgment of the Court of First Instance of 18 September 2001 (Case T-112/99 *Métropole*), the President held that the balancing of positive and negative effects on competition must take place within the framework of Article 81(3) of the EC Treaty or Section 17 of the Competition Act.

5. Rotterdam District Court, 23 October 2001, *Vereniging Centrale Organisatie voor de Vleesgroothandel (COV)* v *The Director-General of the Dutch Competition Authority*

The court held that the rules tended to restrict competition inasmuch as both the COV advisory discount rules on slaughtered pig weight discounts and the COV advisory discount rules on boar discounts involved a form of horizontal price maintenance. Collectively recommended prices, whether or not they are actually adhered to by all members of an association of undertakings, make it possible for undertakings to predict with a reasonable degree of certainty what competitors' price policy will be and thus to align their market behaviour thereon. Price competition is reduced as a result. In the light of the judgment of the Court of First Instance of 18 September 2001 (Case T-112/99 *Métropole*), the court held that the balancing of positive and negative effects on competition must take place within the framework of Article 81(3) of the EC Treaty or Section 17 of the Competition Act.

The competition authorities in Austria, Belgium, Denmark, Ireland, Portugal, Spain, Sweden and the United Kingdom did not report any enforcement of Articles 81(1) and 82 of the EC Treaty.

C — Application of the Community competition rules by courts in the EU Member States ([250])

Austria

A number of proceedings involved drinks supply agreements between beer or coffee producers, following the conclusion of which the restaurant company concerned could not meet sales forecasts and the drinks producer claimed back a proportion of its 'promotion payments'.

In proceeding 7Ob211/99, the Supreme Court was asked to rule on an exclusive coffee purchasing agreement and the related 'promotion payments'. A restaurant company had concluded with the market leader in the coffee trade in Austria an agreement concerning several thousand kilograms of coffee. After sales forecasts proved to be wildly optimistic and one of the defendants went bankrupt, the coffee producer sued for pro rata repayment of the 'promotion payment'. The defendant argued *inter alia* that the exclusive purchasing agreement infringed Article 81 of the EC Treaty. The court made several references for a preliminary ruling, asking whether the agreement in the present case was an agreement falling under Article 81(1), whether it was covered by the block exemption, whether the agreement's duration had to be clearly defined under Regulation (EEC) No 1984/83, and whether the possible nullity of the agreement would also affect a claim for repayment. The agreement was signed in 1993, i.e. before Austria acceded to the EEA and the EU, and was terminated in January 1995 (after Austria acceded to the EU).

Proceeding 3Ob296/99 concerned a beer supply agreement concluded for 10 years between a leading brewery and the operators of a discotheque, the substantial promotion payments offered in return, and the provision of stocks. After the sales premises were vacated in 1997, two years after the purchasing agreement was concluded, the brewery claimed both pro rata repayment of the promotion payments and the value of the stocks. The discotheque operators argued that the purchasing agreement was not covered by the relevant block exemption and was therefore void. On the question of the nullity of the agreement, the Supreme Court held that only those parts of the agreement which fell under the prohibition were void. If, however, the supply and services agreements were void under Article 81 of the EC Treaty, then the transfer of money or goods under circumstances not approved by Community law was unlawful. The brewery would then be unable to base its claim for repayment on such Treaty provisions. The case was referred back to the trial court to establish whether all the conditions of Article 81 were in fact fulfilled.

In the similar proceeding 6Ob290/99 (with the same brewery as plaintiff), the matter was also referred back to the trial court to establish whether the criteria of Article 81 of the EC Treaty were met.

France

1. The Council of State

The Council of State upheld its case-law on the inclusion of the competition rules in the body of law guaranteed by the administrative courts.

([250]) This section does not contain judgments delivered by courts with jurisdiction over decisions by national competition authorities. These judgments were mentioned in the previous section on the application of the Community competition rules by national authorities.

Following an application for the annulment of decree No 2000-893 of 13 September 2000 on the conditions under which public establishments of a scientific or technological nature and higher-education establishments may provide enterprises or individuals with operating resources, the Council of State (Judgment No 225473 of 5 September 2001) held that the legislator had wished to afford such establishments the opportunity to provide services without granting them an exclusive right — something that was not prohibited by Articles 81 and 82 of the EC Treaty. The different operating conditions as between public and private establishments had neither as their object nor as their effect the placing of public establishments in a privileged position or the distorting of competition. The Council of State considered that these legislative provisions were not incompatible with Articles 81 and 82 of the EC Treaty and dismissed the application.

The Council of State (Judgment No 221767 222315 of 16 May 2001) dismissed an application for the annulment of an order relating to the rules and regulations of branch offices of the Mutualité Sociale Agricole. It held that the tax advantages provided for in Articles 1027 and 1085 of the General Tax Code were linked to the nature of branch offices of the Mutualité Sociale Agricole as bodies administering basic social security schemes. Even if such branch offices could be regarded as being in a dominant position in respect of their activity of managing supplementary insurance schemes, the exemptions in question were not likely, in view of their very limited character, to enable them to abuse that position.

The Council of State (Judgment No 218078 of 30 March 2001) refused to annul the order implementing Article L861-3 of the Social Security Code, finding that it was not incompatible with Articles 81 and 82 of the EC Treaty. It had not been established that, by providing for the covering of various types of care or equipment, the article in question would have enabled compulsory health-insurance schemes to distort competition on the market for supplementary health insurance or to abuse a dominant position on that market.

The Council of State (Judgment No 218067 of 27 July 2001) annulled Article 25 of the decree of 30 July 1985, which exempts from the obligation to put out to tender contracts by which local authorities purchase supplies from the Union des Groupements d'Achats Publics (UGAP), finding that it did not comply with European Directive 93/36/EEC. The Council held, however, that it had not been proved that UGAP was abusing a dominant position on the market for the management of tendering procedures and that the presence, on UGAP's board, of representatives of authorities that were potential purchasers was not evidence of a restrictive practice.

In a case concerning champagne wine, the Council of State (Judgment No 193369 of 16 February 2001) held that the taxes introduced by the decree at issue, which did not have as their object the financing of a body whose activities were incompatible with Article 85 of the EC Treaty, were not incompatible with that article.

2. Ordinary courts

Following a judgment of the Pau Court of Appeal discharging defendants who had pursued the business of artificial insemination without having been allocated an area of activity and without being licensed inseminators, the Court of Cassation held that Article 82 of the EC Treaty did not prevent a Member State from conferring on approved bovine insemination centres certain exclusive rights in a given area.

Germany

1. Cologne Regional Court, 17.1.2001, 28 O (Kart.) 622/99, P-41/00

   Mannesmann o.tel.o GmbH, Cologne v *Deutsche Telekom AG, Bonn*

   No action for damages or restitution lies for the charging of excessive end-user tariffs for interconnection by the defendant as the consideration had been authorised (§ 823(2) of the Civil Code, in conjunction with Art. 82 of the EC Treaty; §§ 40, 39, 29(1) of the Telecommunications Act).

2. Cologne Regional Court, 17.1.2001, 28 O (Kart.) 537/99, P-69/00

   Mannesmann Arcor AG & Co., Eschborn v *Deutsche Telekom AG, Bonn*

   No action for damages or restitution lies for allegedly excessive interconnection charges as they were approved by the government (Art. 82 of the EC Treaty; § 823(2), in conjunction with §§ 40, 39 and 29(1), of the Telecommunications Act; § 812(1), first sentence, of the Civil Code).

3. Munich Higher Regional Court, 18.1.2001, U (K) 5630/99, P-235/99

   McDonald's Immobilien GmbH, Munich v *Riegele KG, Augsburg*

   No infringement of Art. 81(1) of the EC Treaty by the drinks supply agreement between the parties, which contains an exclusivity clause (COM notice C 121/2; block exemption Regulation (EEC) No 1984/83).

4. Leipzig Regional Court, 26.1.2001, 02HK O 10319/99, P-47/00

   ESAG Energieversorgung Sachsen Ost AG, Dresden v *Stadtwerke Görlitz AG, Görlitz*

   A long-term electricity supply agreement with a 70 % procurement obligation is not void (§§ 1, 20 of the Act Prohibiting Restraints of Competition, Art. 81 of the EC Treaty; § 9 of the Civil Code Implementation Act).

5. Cologne Regional Court, 21.2.2001, 28 O (Kart) 409/99, P-200/99

   Dr Clemens Künzer, Cologne, and Others v *AOK-Bundesverband, Bonn, and Others*

   The plaintiff is not entitled to a judgment ordering termination of the agreement, concluded on the basis of the Medicinal Products Prices Regulation, between the defendant and Deutscher-Apotheker-Verband eV concerning the price at which pharmacists purchase cytostatic drugs (§ 5(4) and (5) of the Medicinal Products Prices Regulation, Art. 81(1) of the EC Treaty; § 1 of the Act Prohibiting Unfair Competition).

6. Federal Court of Justice, 6.3.2001, KVZ 20/00, P-73/00

   CardioClinik Hamburg Krankenhausgesellschaft mbH, Hamburg v *Federal Cartel Office*

   No action lies for decentralised application of European competition law by the Federal Cartel Office (§§ 32, 50 of the Act Prohibiting Restraints of Competition; Art. 3(1) of Regulation 17/62; Art. 10 of the EC Treaty).

7. Düsseldorf Regional Court, 22.3.2001, 4 O 65/00, P-168/01

   New York Blood Center Inc., New York, USA v *Octopharma AG, Ziegelbrücke, Switzerland, and Others*

   No action lies under either Swiss law or the law of New York State for the renewed conclusion of a licensing agreement which is void under German law on account of a procedural defect, as its applicability follows from the competition-law effects principle and not from the principles of

private international law (§ 34(1), first sentence, et seq. of the Act Prohibiting Restraints of Competition).

8. Celle Higher Regional Court, 29.3.2001, 13 U 53/00 (Kart.), P-248/98

Auto Schneider GmbH, Ottweiler v *Volkswagen AG, Wolfsburg*

Notice of termination of a car dealership agreement due to a reorganisation of the defendant's distribution system in the relevant market area is effective; no action lies for a continuation of supplies, although the plaintiff is entitled to damages under § 89 of the Commercial Code (§ 20 of the Act Prohibiting Restraints of Competition; Community Regulation (EC) No 1475/95).

9. Düsseldorf Regional Court, 30.4.2001, 34 O (Kart.) 143/99, P-195/99

Byk Gulden Lomberg Chemische Fabrik GmbH, Konstanz v *AOK Bundesverband, Bonn, and Others*

As direct price fixing, the fixing of flat-rate equipment cost and price recommendations in relation to x-ray contrast media infringes Art. 81(1) of the EC Treaty (§§ 823, 1004 of the Civil Code (*mutatis mutandis*), in conjunction with Art. 81 EC; § 242 of the Civil Code).

10. Düsseldorf Regional Court, 9.5.2001, 34 O (Kart.) 192/99, P-54/00

1. Byk Gulden Lomberg, Konstanz 2. Schwarz Pharma, Monheim v *AOK Bundesverband, Bonn, and Others*

Pharmaceutical product manufacturers are entitled to an injunction to prevent the setting of fixed amounts as these infringe Art. 81 of the EC Treaty; in particular, health insurance funds and the Federal Committee of Medical Practitioners and Health Insurance Funds are to be deemed to be undertakings (§§ 1004, 823 of the Civil Code, Art. 81 of the EC Treaty).

11. Düsseldorf Higher Regional Court, 18.5.2001, U (Kart) 28/00, P-166/98

Ichthyol-Gesellschaft Cordes, Hermani & Co., Hamburg v *AOK Bundesverband, Bonn, and Others*

Reference to the ECJ for a preliminary ruling on the following questions:

(a) When setting fixed amounts, are statutory health insurance funds to be considered undertakings within the meaning of Art. 81(1) of the EC Treaty?

(b) Is the setting of fixed amounts to be considered a restriction of competition within the meaning of Art. 81(1) (in particular para. (a)) of the EC Treaty?

(c) Under what conditions might the application of Art. 81(1) of the EC Treaty to the setting of fixed amounts be excluded pursuant to Art. 86(2), first sentence, of the EC Treaty?

12. Nürnberg-Fürth Regional Court, 23.5.2001, 3 O 2257/01, P-55/01

natGAS AG, Berlin v *Ferngas Nordbayern GmbH, Nürnberg*

The joint use of a supply network is unreasonable on grounds of a lack of reciprocity of access opportunities in different Member States only if a national reciprocity clause exists; the EC single market gas directive does not itself govern this case (§ 19(4) No 4 of the Act Prohibiting Restraints of Competition, Art. 19 of Directive 98/30/EC).

13. Düsseldorf Regional Court, 30.5.2001, 34 O (Kart) 199/99, P-263/99

B. Braun Melsungen AG, Melsungen v *AOK Rheinland, Düsseldorf, and Others*

Application for an injunction and damages in respect of the maintenance in force and application of overall appropriations for the implementation of non-hospital LDL elimination treatments (§§ 823, 1004 of the Civil Code (*mutatis mutandis*), in conjunction with Art. 81(1) of the EC Treaty).

14. Düsseldorf Regional Court, 30.5.2001, 34 O (Kart) 195/99, P-260/99

Bayer Vital GmbH & Co. KG, Leverkusen v *AOK Bundesverband, Bonn, and Others*

Application for cessation of involvement in the setting of fixed amounts for quinones (§§ 823(2), 1004 (*mutatis mutandis*) of the Civil Code, in conjunction with Art. 81(1) of the EC Treaty).

15. Düsseldorf Regional Court, 20.6.2001, 34 O (Kart) 36/01, P-75/01

Flughafen Düsseldorf GmbH, Düsseldorf v *Hapag-Lloyd Fluggesellschaft mbH, Langenhagen*

Effectiveness of increase in airport charges by the plaintiff, as the charges are not substantially higher than in the case of comparable airports in Germany, which, like the plaintiff, are dominant on the market (§ 315 of the Civil Code; § 19(4) No 2 of the Act Prohibiting Restraints of Competition; Art. 82, second paragraph, subparagraph (a) of the EC Treaty).

16. Frankfurt am Main Regional Court, 27.6.2001, 3-08 O 102/00, P-162/00

e.dis Energie Nord AG, Fürstenwalde/Spree v *DBEnergie GmbH, Frankfurt am Main*

Electricity supply agreements with a 15-year duration and a total requirements coverage clause do not, despite § 103b of the Act Prohibiting Restraints of Competition, infringe § 1 of the act for lack of a competitive relationship; no appreciable restriction of competition or abuse of a dominant position as, instead of purchasing electricity, the defendant could have developed its own electricity-transmission grid (Art. 81 of the EC Treaty; §§ 1, 19, 20 of the Act Prohibiting Restraints of Competition (new version); §§ 103a, 103b of the Act Prohibiting Restraints of Competition (old version)).

17. Federal Court of Justice, 3.7.2001, KZR 31/99, P-97/97

Gödecke AG, Berlin v *AOK Bundesverband, Bonn, and other federations of statutory health insurance funds*

Reference to the ECJ for a preliminary ruling on the question whether Arts 81 and 82, in conjunction with Art. 86, of the EC Treaty preclude a national provision under which the federations of statutory health-insurance funds jointly set fixed amounts for certain categories of pharmaceutical product, and whether this might not constitute grounds for bringing an action for damages against the federations concerned.

18. Federal Court of Justice, 3.7.2001, KZR 32/99, P-108/97

Intersan, Institut f. pharm. u. klin. Forschung GmbH, Ettlingen v *AOK Bundesverband, Bonn, and other federations of statutory health insurance funds*

Reference to the ECJ for a preliminary ruling on the question whether Arts 81 and 82, in conjunction with Art. 86, of the EC Treaty preclude a national provision under which federations of statutory health insurance funds jointly set fixed amounts for certain categories of pharmaceutical product, and whether this might not constitute grounds for bringing an action for damages against the federations concerned.

19. Düsseldorf Higher Regional Court, 11.7.2001, U (Kart) 44/00, P-43/99

Mundipharma GmbH, Limburg an der Lahn v *AOK BV, Bonn, and other federations of statutory health insurance funds*

Reference to the ECJ for a preliminary ruling on the question whether the setting by federations of statutory health insurance funds of fixed amounts for pharmaceutical products is to be considered an agreement between undertakings which may restrict competition within the meaning of Art. 81 of

the EC Treaty, and whether such an agreement may be exempted under Art. 86(2), first sentence, of the Treaty from the application of Art. 81.

20. Schleswig Higher Regional Court, 17.7.2001, 6 U Kart 67/00, P-29/01

ESSO Deutschland GmbH, Hamburg v *Klaus Schomann, Lübeck*

Art. 81 of the EC Treaty is not applicable to a supply provision registered as an easement as it concerns, not trade in goods, but the exercise of ownership, and the abstraction principle would otherwise be infringed. Agency agreements fall neither under Art. 81(1) of the EC Treaty nor under §§ 15, 18 or 34 of the Act Prohibiting Restraints of Competition (old version) (Art. 81(1) of the EC Treaty, §§ 15, 18, 34 of the Act Prohibiting Restraints of Competition (old version)).

21. Cologne Regional Court, 2.8.2001, 83 O (Kart) 85/00, P-7/01

Der Grüne Punkt-Duales System AG, Cologne v *Interseroh AG, Cologne*

Action brought by the plaintiff against the defendant, which operates as a marketing guarantor, for payment of a flat fee for the disposal of sales packaging which is supplied to the defendant by waste disposal partners of the plaintiff (Art. 81 of the EC Treaty; § 19(1), (4) No 3 of the Act Prohibiting Restraints of Competition).

22. Cologne Regional Court, 5.9.2001, 28 O (Kart.) 166/00, P-97/00

RWE Energie AG, Essen v *STAWAG Stadtwerke Aachen AG, Aachen*

Electricity supply agreement with a 20-year duration and a total requirements coverage clause infringes § 1 of the Act Prohibiting Restraints of Competition following the repeal of § 103a of the act; the duration must be reduced to the period permitted under Regulation No 1984/83 of five years from the conclusion of the contract.

23. Kiel Regional Court, 12.9.2001, 14 O Kart. 176/98, P-197/98

Auto Discount Hürup GmbH, Hürup/Flensburg v *Volkswagen AG, Wolfsburg*

The ban on sales to resellers outside the distribution network, imposed by the defendant on its dealers, does not infringe Art. 81 of the EC Treaty as it is exempted under Art. 1(3) of block exemption Regulation (EC) No 1475/95; no removal of the exemption under the Commission's decision imposing a fine as the established violations by the defendant have since been terminated and further hindering of the plaintiff has not been substantiated.

24. Cologne Regional Court, 12.9.2001, 91 O 72/00, P-232/00

Telegate AG, München-Martinsried v *Deutsche Telekom AG, Bonn*

Effective set-off of the defendant with claims arising from the use of the NDIS data bank against claims by the plaintiff for payment of remuneration for future services received by the defendant for the plaintiff from its ultimate customers; remuneration demanded by the defendant of DEM 0.12 per transaction is not excessive as the plaintiff provides no voice communication services to the public and therefore the criterion of the costs of the efficient provision of services within the meaning of § 12(1) does not apply to the plaintiff (§ 12 of the Telecommunications Act; § 19(4) of the Act Prohibiting Restraints of Competition; Art. 82 of the EC Treaty).

25. Frankfurt am Main Regional Court, 19.9.2001, 3-08 O 81/01, P-114/01

Günter and Rosemarie Morlock, Pforzheim v *Totalfina Deutschland GmbH, Düsseldorf*

The service station agreement concluded between the parties is not void on grounds of infringement of the written form requirement (§ 34 of the Act Prohibiting Restraints of Competition (old version) and Art. 81(1) of the EC Treaty).

26. Düsseldorf Regional Court, 26.9.2001, 34 O (Kart) 54/01, P-133/01

Autohaus Haimerl GmbH, Dreieich v *Nissan Motor GmbH, Neuss*

The plaintiff is entitled to cessation of the defendant's sales promotion measures (discounts, etc.) by which the plaintiff as authorised agent of the defendant is without its consent financially affected to the tune of 50 % or more (right to cessation based on contractual duty of good faith, § 242 of the Civil Code); no right to cessation based on direct/indirect price fixing in view of the unilateral nature of the measures (§ 823(2) of the Civil Code, Art. 81(1) of the EC Treaty; §§ 14, 33 of the Act Prohibiting Restraints of Competition).

27. Düsseldorf Regional Court, 26.9.2001, 34 O (Kart) 200/99, P-262/99

Dr Schwalbe GmbH & Co. KG, Karlsruhe v *Kassenärztliche Bundesvereinigung, Cologne, and Others*

Injunction granted to prevent the inclusion of the applicant's pharmaceutical products in a list of 'controversial' products in the defendant's 'Recommendations for the economical use of pharmaceutical and medicinal products' (Art. 81(1) of the EC Treaty).

28. Frankfurt am Main Higher Regional Court, 2.10.2001, 11 U (Kart) 70/00, P-156/00

Gutenberg Buchhandlung; Inh.Jürgen Hollack, Brussels v *S. Fischer Verlag GmbH, Frankfurt am Main*

In the absence of any domestic effect (§ 130(2) of the Act Prohibiting Restraints of Competition) or appreciable effect on the market structure (Art. 82 of the EC Treaty), the plaintiff Belgian book dealer has no right to be supplied direct with the defendant's publications.

29. Düsseldorf Regional Court, 24.10.2001, 34 O (Kart) 55/01, P-94/01

Flughafen Düsseldorf GmbH, Düsseldorf v *Deutsche Lufthansa AG, Cologne*

The plaintiff is entitled to payment of the standard fees laid down in its fees schedule for use of its airport by the defendant; fees increase on 1 April 2000 does not constitute an abuse by the plaintiff of its dominant position (§ 315 of the Civil Code; § 19(4) No 2 of the Act Prohibiting Restraints of Competition; Art. 82 of the EC Treaty, in conjunction with § 134 of the Civil Code).

30. Dortmund Regional Court, 25.10.2001, 13 O 90/01, P-128/01

MEDIAN Telecom GmbH & Co.KG, Bochum v *OMAR Traders GmbH, Dreieich*

The exclusivity clause in the franchise agreement between the parties is valid (§§ 1, 19(1) of the Act Prohibiting Restraints of Competition, Arts 81, 82 of the EC Treaty).

31. Munich Higher Regional Court, 15.11.2001, U (K) 3825/01, P-55/01

natGAS AG, Berlin v *Ferngas Nordbayern GmbH, Nürnberg*

The joint use of a supply network is unreasonable for lack of reciprocity of access opportunities in different Member States only if a national reciprocity clause exists; the EC single market gas

directive does not itself govern this case (§ 19(4) No 4 of the Act Prohibiting Restraints of Competition, Art. 19 of Directive 98/30/EC).

32. Düsseldorf Regional Court, 7.12.2001, 4 O 506/99, P-137/01

Mauser Werke GmbH, Brühl v *Marmor Deutschland Kunststoffherstellung GmbH, Erkelenz*

The plaintiff is entitled to accounts, information and damages from the defendant for unlawful use of the idea behind a patent owned by the plaintiff; there has been no abuse of a dominant position of the plaintiff as a result of its refusal to grant the defendant a licence because the defendant has made no specific contractual offer (§§ 139(2), 140b of the Patents Act; § 242 of the Civil Code; § 20 of the Act Prohibiting Restraints of Competition; Arts 81, 82 of the EC Treaty).

Italy

1. Decisions by national courts

— Employment division of the Court of Cassation, Judgment No 6307 of 4 May 2001. The Court repeals, in accordance with the Court of Justice's ruling in Case 55/96, the provisions in Article 25 of Law No 223 of 1991 concerning employment services. Although the provision allows employers to recruit unemployed persons by name, it provides for public verification of the private and preventive identification of the workers to be employed, which is regarded as an abuse of a dominant position by the employment offices;

— Court of Cassation, Judgment No 8887 of 30 June 2001. The Court found that Article 81 of the EC Treaty has not been infringed by the uniform banking rules agreed by member establishments of Associazione Bancaria Italiana with regard to comprehensive guarantee agreements.

2. References for preliminary rulings

In examining the appeal by Consorzio Industrie Fiammiferi against the decision by the Competition Authority of 13 July 2000 (*Consorzio Industrie Fiammiferi)* that Article 81 of the Treaty had been infringed, the Regional Administrative Court of Lazio, by order of 4 April 2001, referred two cases under Article 234 of the EC Treaty for a preliminary ruling by the Court of Justice. The following questions were asked:

'1. Where an agreement between undertakings adversely affects Community trade, and where that agreement is required or facilitated by national legislation which legitimises or reinforces those effects, specifically with regard to the determination of prices or market-sharing arrangements, does Article 81 [EC] require or permit the official antitrust authority to disapply that measure and to penalise the anti-competitive conduct of the undertakings or, in any event, to prohibit it for the future, and if so, with what legal consequences?

2. For the purposes of applying Article 81(1) EC, is it possible to regard national legislation under which competence to fix the selling prices of a product is delegated to a ministry and power to allocate production between undertakings is entrusted to a consortium to which the relevant

producers are obliged to belong, as leaving room for competition which is open to hindrance, restriction or distortion by the autonomous conduct of those undertakings?'

Netherlands

The Dutch courts applied Community competition law in the following decisions. It should be noted that, even where they apply the Dutch Competition Act, the Dutch courts are in fact interpreting Articles 81 and 82, since the act is modelled on the Community competition rules.

1. Supreme Court of the Netherlands, 16 February 2001, *BV Maatschappij Drijvende Bokken* v *Stichting Pensioenfonds voor de Vervoer- en Havenbedrijven*

Judgment of the Supreme Court following the answering by the Court of Justice (judgment of 21 September 1999 in Case C-219/97 [1999] ECR I-6121) of the questions referred by the Supreme Court for a preliminary ruling: a pension fund may be considered an undertaking within the meaning of Article 81(1) of the EC Treaty, and Articles 82 and 86 of the EC Treaty do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme in a given sector.

2. Utrecht District Court, 14 March 2001, *V&S Groothandel BV* v *Jacobus Klop*

The court held that the exemption condition in Article 3(1) of Regulation (EEC) No 4087/88 on the application of Article 81(3) of the Treaty to categories of franchise agreements was not satisfied. Moreover, the situation appeared to be covered by Article 5 of the regulation, as a result of which the exemption provided for in Article 1(1) of the regulation did not apply.

3. 's-Gravenhage District Court, 22 March 2001, *Vereniging Centraal Bureau voor de Rijn- en binnenvaart en Internationale Tankscheepvaartvereniging* v *the Dutch State*

The pipeline network intended for the transport of fuel for military use was, on some routes, for example Pernis-Schiphol, the only pipeline for transporting fuels. The State was thus in an economic power position in that it alone could conclude shipment agreements for use of the pipeline. It did not follow from this, however, that the competition rules as laid down in Articles 81 et seq. of the EC Treaty and the Dutch Competition Act were infringed. There was no evidence of prohibited State aid to undertakings within the meaning of Article 87 of the EC Treaty. The answer to the question whether the State was infringing the competition rules owing to the competition-distorting effect of the conditions under which it concluded agreements for the civil use of the pipeline network depended on whether the costs connected with such use were fully passed on in the price.

4. 's-Gravenhage District Court, 31 May 2001, *Koninklijke Nederlandse Voetbalbond (KNVB)* v *Feyenoord*

In these proceedings concerning the ownership of various types of right relating to football competitions, the court confirmed the judgment of the Rotterdam District Court of 9 September 1999. It followed from the relevant provisions of the KNVB's articles of association that that body operated as a 'central agency' which, on behalf of its members and to the exclusion thereof, fixed the selling price for broadcasting rights in order that it might exploit them itself. What was involved was therefore a competition-restricting agreement between undertakings or a decision of an association of undertakings within the meaning of Section 6(1) of the Competition Act and Article 81(1) of the EC Treaty.

5. College van Beroep voor het Bedrijfsleven, 5 June 2001, *Apotheek Neptunus* v *College tarieven gezondheidszorg*

In these proceedings concerning the Healthcare Charges Act, the tribunal observed that, in accordance with the established case-law of the European Court of Justice, a Member State infringed Article 10, read in conjunction with Article 81, of the EC Treaty if it required or favoured the adoption of competition provisions contrary to Article 81 or reinforced their effects, or where it divested its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere. The tribunal held that it could not be deduced from the arguments put forward that this might have been the case.

6. Rotterdam District Court, 14 June 2001, *Galerie Y* v *Mondriaan Stichting*

The court held that no undertaking existed in a competition-law sense where what was involved was a government body acting in the capacity of an aid-awarding authority. The appeal based on Section 6 of the Competition Act and Article 81 of the EC Treaty was therefore dismissed. The court also held that there was no conflict with Article 86(1), read in conjunction with Article 82, of the EC Treaty because neither the regulations on art dealing nor the decisions on the authorisation of galeries taken on the basis thereof related to public undertakings or to undertakings to which special or exclusive rights had been or were granted by (an organ of) the Dutch State.

7. 's-Gravenhage District Court, 25 July 2001, *Dutchtone NV* v *the Dutch State*

The cancellation of a supplementary levy could not be considered a measure in respect of a public undertaking or an undertaking to which special or exclusive rights were granted. There was therefore no conflict with Article 86(1), read in conjunction with Article 82, of the EC Treaty. The court also held that no State aid within the meaning of Article 87 of the EC Treaty was involved in this case as there was no distortion or threat of distortion of competition.

Sweden

The Swedish Civil Aviation Administration was fined SKR 400 million by the Göta court of appeal for abuse of a dominant position *vis-à-vis* SAS, in infringement of EC and Swedish competition law. The judgment also implies for the Civil Aviation Administration the loss of revenues amounting to a further SKR 400 million. The abuse in question concerns price differentiation. For a number of years, SAS had paid special fees to the Civil Aviation Administration for the purpose of financing Terminal 2, in addition to the normal fees paid by other airlines for the use of Arlanda airport. The court held that both Section 19 of the Competition Act and Article 82 of the EC Treaty were applicable. An appeal against the judgment has been lodged with the Supreme Court.

United Kingdom

In *Hendry & others and World Professional Billiards and Snooker Association Ltd* (Case No HC0100813), the High Court found that a rule of a sports association which required association consent for members to be able to enter tournaments was void under Articles 81 and 82 of the EC Treaty.

The competition authorities in Belgium, Denmark, Finland, Greece, Ireland, Luxembourg, Portugal and Spain did not report any decisions by their courts applying the Community competition rules or referring a question to the Court of Justice for a preliminary ruling.

D — Application of the 1993 notice on cooperation between the Commission and national courts

In 2001, the Commission's Directorate-General for Competition replied to 10 requests from courts in the Member States pursuant to the 1993 notice. Eight of these requests came from Spanish courts and related to disputes between oil companies and service-station operators. The questions put were often similar. The ninth request came from a German court and related to the validity of a service agreement. The 10th came from an Austrian court and concerned the *VISA* case.

The Stuttgart Regional Court informed the Commission in December 2000 that the validity of the service agreement between DSD and recycling companies was of relevance to the outcome of a pending dispute. The court asked whether the validity of the service agreement depended on a Commission decision and whether the Commission had taken such a decision. In January, the Commission answered that it was examining the service agreements and that it intended to take an exemption decision. It also pointed to the notice on cooperation between national courts and the Commission, according to which the national court should suspend the proceedings while awaiting the Commission's decision if it took the view that an individual exemption was possible (paragraph 30).

On 26 January, the competent director replied to a request from Court of First Instance No 48 in Madrid dated 1 December 2000 and received by the directorate-general on 3 January. The court's questions centred on whether a service-station operator was to be classed as a commercial agent or as an independent reseller given the clauses in the contract relating to commercial risk, and on the applicability of Regulations (EEC) No 1984/83 and (EC) No 2790/1999 on vertical restraints to the basic relationship between the parties to the case. The Commission's answer concerning the distinction between an agent and a reseller under Community competition law was based extensively on the guidelines on vertical restraints which it adopted on 24 May 2000 ([251]). The Commission also explained to the court the demarcation *ratione temporis* between Regulations (EEC) No 1984/83 and (EC) No 2790/1999 and the latter's applicability *ratione materiae*.

On 9 February, the competent director replied to a request from Court of First Instance No 73 in Madrid dated 12 December 2000 and received by the directorate-general on 11 January. The court's questions were similar to those asked in the previous case, as was the Commission's answer.

On 3 April, the competent director replied to two requests from Court of First Instance No 1 in Lucena (Córdoba) dated 8 December 2000 and received by the directorate-general on 25 January and 22 February respectively. One of the court's questions concerned the concept of agency in Community competition law. The Commission's answer was similar to those in the previous cases. The court also wanted to know whether the oil company had notified the agreement at issue to the Commission in the context of Case IV/33.503 ([252]), from what point the 10-year contract term could begin to count for the purpose of block exemption under Regulation (EEC) No 1984/83, and whether the agreement's exclusivity clause could extend to other products such as lubricants with a view to qualifying for block exemption under the same regulation. In his answer, the director informed the court that the oil company had notified standard contracts similar to the one the court was examining in the context of Case IV/33.503. As to the duration of the agreement, the director replied that the 11th and 18th recitals of Regulation (EEC) No 1984/83 referred to the duration of the exclusive purchasing obligation and that the

([251]) OJ C 291, 13.10.2000.

([252]) See 1993 Competition Report, point 226, 1994 Competition Report, p. 361, and Commission press release IP/94/596, 30.6.1994.

point from which the 10 years should be calculated should therefore be that of the entry into force of that clause. Lastly, the director reminded the court of the conditions which must be met under Article 11 of the regulation if the block exemption is to cover the exclusive purchase of lubricants, namely the supplier must have made available, or financed, a lubrication bay or other lubrication equipment.

On 4 April, the Vienna Higher Regional Court, referring to the Commission's notice on cooperation between national courts and the Commission, queried the Directorate-General for Competition about the state of play in the *VISA* case. In the court's opinion, the issues arising in that case were similar to the issues arising in a domestic cartel case. On 6 April, the Commission answered that it was investigating VISA's 'multilateral interchange fees', which were part of an agreement notified to the Commission. A Commission press release concerning the case and the issues involved as well as the name of the responsible case handler for further questions were enclosed.

On 3 May, the competent director replied to a request from Court of First Instance No 1 in Torrox (Málaga) dated 9 January and received by the directorate-general on 26 March. The court's questions were similar to the first three questions put by Court of First Instance No 1 in Lucena (see above). They centred on the concept of agency in Community competition law, the question whether the oil company had notified the contract at issue to the Commission in the context of Case IV/33.503, and the point from which the 10-year contract term could begin to count for the purpose of block exemption under Regulation (EEC) No 1984/83. The Commission's reply was accordingly similar to that given on 3 April (see above).

On 26 June and 20 July, the competent director replied to two requests from Court of First Instance No 3 in La Bisbal d'Empordà (Girona) dated 14 May and 12 June and received by the Directorate-General on 21 May and 13 July respectively. First of all, the director made some general remarks about the applicability of Regulations (EEC) No 1984/83 and (EC) No 2790/1999 on vertical restraints to the basic relationship between the parties to the case. These remarks were similar to the answers given to Courts of First Instance Nos 48 and 73 in Madrid referred to above. The court wanted to know from what point the 10-year contract term could begin to count for the purpose of block exemption under Regulation (EEC) No 1984/83. This question was similar to those put by the Lucena and Torrox courts referred to above. The Commission's reply was also similar, except with regard to the point when the exclusive purchasing obligation started, as the supplier in this case was not one of the companies concerned by Case IV/33.503. Another question put by the court concerned the existence or otherwise of resale price maintenance where there were prices recommended by the supplier combined with a minimum margin for the retailer together with the possibility for the latter to modify the resale price. The director's reply outlined the various circumstances and situations in which such cases would fall under Article 81(1) of the EC Treaty, while inviting the court to take account of paragraph 47 of the Commission's guidelines on vertical restraints. The court also asked whether, if resale price maintenance were found to exist in this case, this would constitute a serious restriction of the type described in Article 4(a) of Regulation (EC) No 2790/1999. The Commission's reply was that, if the court were to find that the fixing of margins amounted to an imposing of the resale price, the exemption provided for in the regulation could not apply. The court was invited to read paragraphs 46 and 66 of the Commission's guidelines on vertical restraints. Lastly, the court asked whether the Commission disapproved of decisions taken by national competition authorities or whether, on the contrary, it agreed with them. The Commission replied that those authorities' decisions could be appealed against before the national courts in accordance with each national legal system, but that the Commission did not act as an appeal tribunal for that type of decision. In a proceeding of this nature, the Commission could be called upon to express its opinion on how Community law should be interpreted — something which it could do without for all that evaluating the decisions of national competition authorities as such. The Commission also reminded the national court

of its right to refer questions to the Court of Justice of the Communities for a preliminary ruling. Lastly, it replied that, at all events, it was not bound by earlier decisions of national competition authorities.

On 9 July, the competent director replied to a request from Court of First Instance No 40 in Madrid dated 23 February and received by the directorate-general on 19 April. The court's first two questions centred on whether a service-station operator was to be classed as a commercial agent or as an independent reseller given the clauses in the contract relating to commercial risk, and on the applicability of Regulations (EEC) No 1984/83 and (EC) No 2790/1999 on vertical restraints to the basic relationship between the parties to the case. These questions were similar to those put by Court of First Instance No 48 in Madrid referred to above, as was the Commission's answer. The third question concerned the maximum duration of exclusive purchasing agreements for fuel if they were to qualify for block exemption. The Commission reminded the court of its strict interpretation of the conditions laid down in Article 12(2) of Regulation (EEC) No 1983/84, which provides for a maximum 10-year exemption for this type of clause. It drew attention to the possibility of legal fictions being resorted to, with reciprocal contacts being entered into between suppliers and resellers involving the temporary transfer of ownership or the creation of property rights and the leasing back of business premises so as to circumvent the 10-year rule. It also drew attention to the conditions laid down in Article 5(a) of Regulation (EC) No 2790/1999 and in paragraph 59 of the guidelines on vertical restraints, limiting the duration of this type of clause to five years.

On 17 July, the competent director replied to a request from Court of First Instance No 8 in Madrid dated 11 June and received by the directorate-general on 29 June. The court wanted to know whether the oil company had notified the agreement at issue to the Commission in the context of Case IV/33.503. This question was similar to that put by the Lucena court referred to above. The Commission's reply was also similar.

On 19 July, the competent director replied to a request from Court of First Instance No 19 in Madrid dated 15 March and received by the Directorate-General on 10 May. The court's first two questions centred on whether a service-station operator was to be classed as a commercial agent or as an independent reseller given the clauses in the contract relating to commercial risk, and on the applicability of Regulations (EEC) No 1984/83 and (EC) No 2790/1999 on vertical restraints to the basic relationship between the parties to the case. These questions were similar to those put by Court of First Instance No 48 in Madrid referred to above, as was the Commission's answer. The third question concerned the maximum duration of exclusive purchasing agreements for fuel if they were to qualify for block exemption. It was similar to the question put by Court of First Instance No 40 in Madrid, referred to above. The Commission's reply was also similar.

ANNEX

POSSIBILITY FOR NATIONAL COMPETITION AUTHORITIES TO APPLY EC COMPETITION RULES

Introductory remarks

1. This summary relates only to the enforcement of Articles 81 and 82 of the EC Treaty by the administrative authorities of the Member States, not by the judiciary, as those articles are directly applicable and are therefore enforceable by the courts of each Member State without exception.

2. Their application by the administrative authorities is subject to the limitations provided for, in favour of the Commission, by Article 9(3) of Regulation No 17.

	Application	**Legal provision and/or comments**
Austria	No	Reform is being considered in the form of a government bill establishing a national Competition Authority and modifying the existing cartel law so as to empower the national enforcers to apply Articles 81 and 82 of the EC Treaty. This new law is expected to take effect from 1 July 2002.
Belgium	Yes	Act of 5 August 1991, Section 53: when the Belgian authorities have to decide, under Article 84 of the EC Treaty, on the admissibility of agreements and on the abuse of a dominant position in the common market, the decision is taken by the authorities stipulated in that act pursuant to Articles 81(1) and 82 of the Treaty, according to the procedure and the penalties provided for in that act.
Denmark	Yes	Act No 416 of 31 May 2000 amending Act No 384 of 10 June 1997 on competition gives the Danish Competition Authority (Konkurrencestyrelsen) the right to enforce directly the prohibitions laid down in Articles 81(1) and 82 of the EC Treaty.
Finland	No	
France	Yes	Order of 1 December 1986, Article 56 bis (inserted by the act of 2 December 1992). Under the order, the Minister for Economic Affairs and Ministry officials, on the one hand, and the Competition Council, on the other, have the powers to apply Articles 81 and 82 that they normally have to apply French competition law.
Germany	Yes	Section 50 of the Act Prohibiting Restraints of Competition: the powers conferred on the authorities of the Member States by Articles 84 and 85 of the EC Treaty, and by the regulations based on Article 83 of the Treaty, where appropriate in conjunction with other Treaty provisions, are exercised by the Federal Cartel Office.
Greece	Yes	Act 703/1977 on the Protection of Free Competition, as amended by Act 2296/1995, Section 13b (3): the Competition Commission and its secretariat perform the tasks which have been assigned to the national authorities of the Member States by Articles 84 and 85 of the Treaty establishing the European Economic Community, and by regulations adopted pursuant to Article 83 of the Treaty in conjunction with other enabling provisions thereof. To perform these tasks, the Competition Commission and its secretariat have the powers granted to them under the act.
Ireland	No	Section 13(2) of the new Competition Bill 2001 creates a 'right of action' for the Irish Competition Authority '[...] in respect of an agreement, decision or concerted practice or an abuse which is prohibited [...] by Article 81 or 82 of the Treaty'. The Competition Bill 2001 is to be adopted in April 2002.

Italy	Yes	Community Act 1994, Section 54(5): the Competition Authority (Autorità garante della concorrenza) applies Articles 81(1) and 82, using the powers conferred upon it by Italian competition law (Law No 287 of 10 October 1990).
Luxembourg	No	But, the new competition bill currently being finalised provides for the Competition Authority to apply Articles 81 and 82.
Netherlands	Yes	Competition Act of 22 May 1997, Section 88: the director-general of the Competition Authority (*Mededingingsautoriteit*) is empowered under the regulations based on Article 83 of the EC Treaty to apply Articles 81(1) and 82 of the Treaty.
Portugal	Yes	Decree-Law 371/93 of 29 October 1993, Article 12(2): the Directorate-General for Competition and Prices is empowered to carry out the tasks for which the authorities of the Member States are responsible under the regulations based on Article 83 of the EC Treaty.
Spain	Yes	Royal Decree 295/1998 of 27 February 1998 regarding the application in Spain of EU competition law: Article 1: the Competition Tribunal (Tribunal de Defensa de la Competencia) is the competent authority for the application in Spain of Articles 81(1) and 82 of the EC Treaty; Article 3: the Competition Service (Servicio de Defensa de la Competencia) is the body entrusted with carrying out the procedures for implementing Articles 81(1) and 82 of the EC Treaty.
Sweden	Yes	The Competition Authority (Konkurrensverket) is empowered as from 1 January 2001 to apply Articles 81 and 82 directly (Act 1994: 1845, as amended by Act 2000: 1023, Section 2).
United Kingdom	No	In the 'Enterprise Bill' which is to be introduced into Parliament in early 2002, provision is made for giving the UK's competition authorities the power to apply Articles 81 and 82 of the EC Treaty directly.

Conclusions

In 10 of the 15 Member States, the administrative authorities can apply Articles 81 and 82 directly. The Member States in which they cannot do so are Austria, Finland, Ireland, Luxembourg and the United Kingdom.

The Swedish Competition Authority was given the power to apply Articles 81 and 82 directly in 2001. The Austrian, Irish and United Kingdom competition authorities will be given such powers in 2002.

VI — STATISTICS

A — Articles 81, 82 and 86 of the EC Treaty + Article 65 of the ECSC Treaty

1. Activities in 2001

1.1. New cases opened in 2001

Type	Number	%
Notifications	94	33
Complaints	116	41
Ex officio [253]	74	26
Total	**284**	**100**

1.2. Cases closed in 2001

By formal decision		**By informal procedure**	
Infringement of Article 81	14	Comfort letter 81/1	44
Infringement of Article 82 with fine	3	Comfort letter 81/3	45
Negative clearance	4	Discomfort letter	1
Exemption	17 [254]	Rejection of complaint	43
Rejection of complaint	10	Administrative closure	191
Non-opposition	4		
Infringement of Article 65 ECSC	0		
Article 86 decision	2 [255]		
Total	**54**	**Total**	**324**

2. Four-year overview

2.1. Evolution of stock of cases

Cases open at the end of the calendar year				
	1998	**1999**	**2000**	**2001**
Notifications	538	425	374	313
Complaints	441	402	359	333
Ex officio	225	186	202	195
Total	**1 204**	**1 013**	**935**	**841**

[253] An *ex officio* case is one opened on the Commission's own initiative.

[254] Following one decision providing partly for negative clearance and partly for exemption (DSD), 16 cases were closed.

[255] One of these two closures in 2001 concerns a decision taken at the very end of 2000 (Consorzio Riposta).

2.2. Evolution of input

New cases registered during the year				
	1998	**1999**	**2000**	**2001**
Notifications	216	162	101	94
Complaints	192	149	112	116
Ex officio	101	77	84	74
Total	**509**	**388**	**297**	**284**

2.3. Evolution of output

Cases closed during the year				
	1998	**1999**	**2000**	**2001**
Formal decisions	42	68	36	54
Informal procedures	539	514	343	324
Total	**581**	**582**	**379**	**378**

B — Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ([256])

1. Notifications received 1996–2001

	1996	**1997**	**1998**	**1999**	**2000**	**2001**
Cases notified	131	172	235	272	345	335
Notifications withdrawn in phase I	5	9	5	7	8	8
Notifications withdrawn in phase II	1	0	4	5	6	4
Final decisions	125	142	238	270	345	340
Total cases closed by final decision	125	136	235	269	341	334

*Explanation: in a few cases, **two** final decisions are taken: one partial referral to a Member State and one decision concerning the unreferred rest of the case.*

([256]) As amended by Council Regulation (EC) No 1310/97 of 30 June 1997 (OJ L 180, 9.7.1997).

2. Article 6 decisions 1998–2001

	1998		1999		2000		2001	
Article 6(1)(a)	6	2.5 %	1	1 %	1	0.3 %	1	0.3 %
Article 6(1)(b) without undertakings	207	87.5 %	236	86 %	293	85.9 %	299	89.2 %
Article 6(1)(c)	12	5 %	20	7.2 %	19	5.6 %	22	6.6 %
Cases in which undertakings were accepted during phase 1	12	5 %	16	5.8 %	28	8.2 %	13	3.9 %
Total	**237**	**100 %**	**273**	**100 %**	**341**	**100 %**	**335**	**100 %**

3. Article 8 decisions 1998–2001

	1998		1999		2000		2001	
Article 8(2) decisions with conditions and obligations	5	55 %	8	89 %	12	70.6 %	10	50 %
Article 8(2) decisions without conditions and obligations	2	22.5 %	0	0 %	3	17.7 %	5	25 %
Article 8(3) prohibition	2	22.5 %	1	11 %	2	11.7 %	5	25 %
Article 8(4) divestiture orders	0	0 %	0	0 %	0	0 %	0	0 %
Total	**9**	**100 %**	**9**	**100 %**	**17**	**100 %**	**20**	**100 %**

4. Referral decisions 1998–2001

	1998	1999	2000	2001
Article 9 (request by a Member State)	4	10	6	10
Article 9 (total or partial referral to a Member State)	4	5	6	7
Article 22(3)	0	0	0	0

5. Article 7 decisions (suspension of concentrations) 1998–2001

	1998	1999	2000	2001
Article 7(2) (continuing suspensive effect)	10	n.a.	n.a	n.a.
Article 7(4) derogation from suspension	13	7	4	5
Total	**23**	**7**	**4**	**5**

Explanation: since March 1998, Article 7(2) is no longer applicable.

C — State aid

1. New cases registered in 2001

		Agri-culture	Trans-port	Fisheries	Coal	Other	Total	%
Notified aid	N	373	43	79	6	339	840	73.81
Non-notified aid	NN	37	28	24	0	63	152	13.36
Existing aid	E	0	0	0	0	52	52	4.57
Proceedings commenced	C	15	6	11	0	62	94	8.26
Total		**425**	**77**	**114**	**6**	**516**	**1 138**	
%		37.34	6.77	10.02	0.53	45.34		

2. Cases being examined as at 31 December 2001

		Agri-culture	Trans-port	Fisheries	Coal	Other	Total	%
Notified aid	N	243	23	59	0	199	524	52.14
Non-notified aid	NN	111	13	36	0	90	250	24.88
Existing aid	E	22	0	0	0	54	76	7.56
Proceedings commenced	C	48	0	11	3	93	155	15.42
Total		**424**	**36**	**106**	**3**	**436**	**1005**	
%		42.19	3.58	10.55	0.30	43.38		

3. Cases dealt with in 2001 according to the register in which they were recorded

3.1. Cases forming the subject-matter of a decision in 2001

		Agri-culture	Trans-port	Fisheries	Coal	Other	Total	%
Notified aid	N	229	12	72	7	303	623	75.98
Non-notified aid	NN	16	14	12	0	65	107	13.05
Existing aid	E	0	0	0	0	10	10	1.22
Proceedings commenced	C	5	1	1	0	73	80	9.75
Total		**250**	**27**	**85**	**7**	**451**	**820**	
%		30.49	3.29	10.37	0.85	55.00		

3.2. Cases closed in 2001

		Agri-culture	Trans-port	Fisheries	Coal	Other	Total	%
Notified aid	N	208	7	71	7	280	573	68.87
Non-notified aid	NN	11	6	4	0	21	42	5.05
Existing aid	E	1	0	0	0	15	16	1.92
Proceedings commenced	C	5	0	1	0	64	70	8.41
Withdrawal by MS		30	0	1	0	100	131	15.75
Total		**255**	**13**	**77**	**7**	**480**	**832**	
%		30.65	1.56	9.26	0.84	57.69		

4. Decisions taken by the Commission in 2001

		Agri-culture	Trans-port	Fisheries	Coal	Other	Total	%
No objection		214	23	68	7	301	613	76.06
Decisions as part of the formal scrutiny procedure	Initiation	15	3	10	0	66	94	11.66
	Positive	1	1	0	0	33	35	4.34
	Negative	2	0	2	0	31	35	4.34
	Conditional	0	0	0	0	0	0	0
Appropriate measures		0	0	0	0	10	10	1.24
Other decisions		2	0	2	0	15	19	2.36
Total		**234**	**27**	**82**	**7**	**456**	**806**	
%		29.03	3.35	10.17	0.87	56.58		

5. Evolution over the period 1991–2001

Decisions taken		1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
No objection		493	473	399	440	504	373	385	308	258	330	315
Decisions as part of the formal scrutiny procedure	Initiation	54	30	32	40	57	43	68	66	62	67	65
	Positive	28	25	19	15	22	14	18	16	28	15	11
	Negative	7	8	6	3	9	23	9	31	30	26	5
	Conditional	2	7	1	2	5	3	5	8	3	3	0
Appropriate measures/other decisions		13	9	10	27	22	18	17	31	63	34	8
Total		**597**	**552**	**467**	**527**	**619**	**474**	**502**	**460**	**444**	**475**	**404**

6. Decisions broken down by Member State

		D	A	B	DK	E	FIN	F	EL	IRL	I	L	NL	P	UK	S	EU
No objection		77	19	14	11	44	5	30	9	5	23	1	28	9	25	1	301
Decisions as part of the formal scrutiny procedure	Initiation	25	0	4	0	13	1	3	1	2	4	2	4	3	4	0	66
	Positive	13	1	1	0	3	1	1	0	0	6	0	4	0	3	0	33
	Negative	10	0	2	0	12	0	2	0	0	3	0	2	0	0	0	31
	Conditional	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Appropriate measures		2	0	4	0	0	0	1	1	0	1	0	0	0	0	1	10
Other decisions		2	1	0	1	4	0	2	0	0	1	0	2	0	2	0	15
Total		**129**	**21**	**25**	**12**	**76**	**7**	**39**	**11**	**7**	**38**	**3**	**40**	**12**	**34**	**2**	**456**

VII — STUDIES

The Directorate-General for Competition commissioned 21 studies in 2001, of which 15 have been completed. Of the completed studies, 13 are confidential and will not be covered in this report.

One study commissioned in 2000, was finalised in 2001; as this study was confidential, it will not be covered in this report.

The other two studies completed in 2001 are summarised below:

Lademann study — Customer preferences for existing and potential sales and servicing alternatives in automotive distribution ([257])

The aim of this study was to research consumer acceptance of alternative formats for sales and servicing, including those which already exist, and those which may exist under any future regulatory regime. Herr Lademann carried out consumer surveys in five European countries. In each country, approximately 100 consumers were selected at random and were interviewed about their preferences regarding car purchase and servicing. Those interviewed were asked about a series of factors which might have a bearing on their choice of retail outlet:

— format of the retailer selling the vehicle;

— type of servicing facility offered by the retailer (including subcontracted servicing);

— price levels (including discounts);

— availability of advice from salespeople;

— distance to the servicing outlet;

— whether the retailer could arrange a test-drive;

— range of optional equipment available;

— personal contact with the dealer;

— delivery time.

The type of after-sales servicing alternative offered by a car retailer proved to be the most important factor for consumers, followed by the availability of advice from sales personnel and the format of the sales point. Then came, in order of importance, the ability to test drive the vehicle, the distance to the workshop, the delivery time and the freedom to select equipment. The granting of discounts by dealers was considered to be self-evident, whereas personal contact with the dealer was found to be only of secondary importance.

([257]) Study by Dr Lademann & Partner, available on the Competition DG's web site (http://europa.eu.int/comm/competition/car_sector/distribution).

Andersen study on the impact of legislative scenarios for future car distribution ([258])

1. Andersen was asked to analyse five scenarios: (1) a 'free for all' system whereby independent retailers have a right to purchase new cars from the manufacturers and/or their official networks, (2) an exclusive distribution system in which new cars are sold only by one dealer in each territory, (3) a system of selective distribution based on qualitative criteria, (4) selective distribution based on qualitative and quantitative criteria, but without territory allocation and (5) selective distribution based on qualitative and quantitative criteria, coupled with limited territorial exclusivity.

2. Andersen also analysed certain specific issues including multi-branding, the effects of breaking the mandatory link between sales of new vehicles and repairs/servicing, mass-rebates and quota-allocation schemes, and third-party access to technical information. Andersen measured the impact on various players, on inter- and intra-brand competition, market integration in the EC, and overall consumer satisfaction.

Andersen concluded that there were three possible basic outcomes. All systems which combine territorial exclusivity with qualitative and quantitative selectivity lead to a '**Status quo**' type of market outcome, where the inter-relationship between manufacturers and official dealerships and the manufacturers' control over their official networks is not significantly reduced. Scenarios based on quantitative and qualitative selection criteria without territorial exclusivity may lead to a '**multi-channel**' type of market outcome, where different distribution formats and business models coexist within the same official network. Scenarios based solely on qualitative selection, which remove territorial protection and do not provide for differentiated criteria adapted to different distribution models within the official network lead to a '**Mass-selling**' type of market outcome. This implies that sales are dominated by mass-retailers which focus on selling high volumes of a few best-selling models and which have a high degree of bargaining power *vis-à-vis* manufacturers.

([258]) The study may be consulted on the Competition DG's web site (http://europa.eu.int/comm/competition/car_sector/distribution).

VIII — REACTIONS TO THE XXXTH REPORT

A — European Parliament

European Parliament resolution on the Commission's XXXth Report on Competition Policy 2000 (SEC(2001) 694 — C5-0312/2001 — 2001/2130(COS)) and reply by the Commission

1. **Rapporteur:** Alejandro Agag Longo

2. **EP No:** A5-0299/2001

3. **Date of adoption of the report:** 4 October 2001

4. **Subject:** European Parliament Resolution on the Commission's *XXXth Report on Competition Policy 2000*

5. **Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs

6. **Background of the resolution:** Own initiative report of the Committee on Economic and Monetary Affairs

7. **Analysis of the text and of Parliament's requests:** Parliament generally welcomes the annual report and supports the policy outlined therein. It suggests some Commission action in the field of antitrust, mergers and State aid.

8. **Reply to these requests and outlook regarding the action that the Commission has taken or intends to take:**
The requests and the Commission's relevant position are indicated in the table below:

Paragraphs of the EP resolution	Commission's position
2. Regrets that the Commission has not followed up, or will not be following up, its threat to initiate proceedings in respect of unfair competition in the form of tax concessions or exemptions, and calls for the investigation of distortions of competition caused by tax policy in the EU, which are not in accordance either with the principle of the internal market or with the spirit of the Community;	The Commission initiated in July 2001 11 formal State aid investigations concerning tax regimes in eight Member States and invited four further Member States to bring their legislation in conformity with Treaty rules.
4. Welcomes as a necessary step the proposed modernisation of Regulation No 17 of 1962 implementing Articles 81 and 82 of the Treaty, provided that this does not involve any renationalisation of competition policy, but draws attention to the technical difficulties involved, on the basis of which it expresses doubts regarding its practical implementation;	The Commission welcomes the Parliament's opinion as to the necessity of the proposed modernisation of Regulation 17 and shares its concerns to the effect that the reform must not lead to renationalisation of Community competition policy. The Commission is confident that any technical difficulties related to the reform can be overcome in a manner fully consistent with its effective implementation.

5. Welcomes the spirit of decentralisation that informs Article 3 of the abovementioned proposal for a Council regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and amending Regulations (EEC) No 1017/68, (EEC) No 2988/74, (EEC) No 4056/86, and (EEC) No 3975/87, but stresses that there is a need to further define and put in objective terms the criterion of 'affect (ing) trade between Member States' since, given its importance, the current lack of precision could give rise to uncertainty and undermine the objective of uniform implementation of Community rules;	The Commission welcomes the Parliament's support for the proposed Article 3. It agrees that the concept of effect on trade between Member States contained in Articles 81 and 82 of the Treaty will take on greater significance in a new enforcement system based on decentralised application. This concept has been substantially developed by the Court of Justice in its case-law, which is based on a qualitative assessment of the nature of the agreement or abusive practice at hand and a quantitative assessment of the position of the parties. The Commission accepts that there may be a need for it to provide guidance on the application of the principles developed by the Court of Justice in its interpretation of the Treaty.
6. Considers excessive the Commission's powers under the reform proposal as regulator, judge and executor of Community rules, and expresses doubts as to the gains for firms in terms of legal certainty under the proposal in its current form;	The Commission's modernisation proposal is based on decentralised application of Community competition law and thus on the involvement of many more decision-makers in the application of the law. The particular powers foreseen for the Commission in its proposal serve the aim of ensuring an efficient and consistent application of Articles 81 and 82. All powers possessed by the Commission continue to be subject to a number of checks and balances, including judicial control by the Court of Justice. These checks and balances are untouched by the proposal. The Commission is confident that its proposal will provide an adequate level of legal certainty to companies. Companies will be able to rely on the direct effect of Article 81(3) and on Commission block exemption regulations and guidelines. The Commission has also undertaken to introduce a new system of written opinions, based on a notice, allowing it to provide guidance to companies in real doubt as to the application of the Community competition rules.
7. Emphasises the importance of effective international cooperation between competition authorities owing to the inherently global nature of the new economy, and welcomes the proposed creation of an international competition forum, but points out that effective cooperation begins at home, and thus urges the Commission, in the context of the modernisation of competition rules, to ensure that cooperation between European competition authorities functions correctly and efficiently;	The Commission welcomes the Parliament's emphasis on effective cooperation between competition authorities in the Community and on a global level. Close and effective cooperation between all enforcers in the Community constitutes a central pillar of the Commission's proposal. This cooperation aims at promoting effective enforcement of the Community competition law and at ensuring its consistent application.
8. Calls once again for an international competition system in the framework of the WTO, since in view of the growing number of world-wide mergers, regional and price cartels and oligopolies, distortions of competition and abuse of the market can only be counteracted by worldwide minimum standards governing competition, particularly for mergers and cartels, and by minimum standards for supervisory authorities in all WTO Member States;	The Commission will continue its efforts towards multilateral competition rules in the WTO. A first encouraging step was taken at the fourth WTO Ministerial Conference in Doha/QATAR. The declaration adopted by WTO Ministers recognises the case for negotiating such an agreement. Negotiations should open at the fifth WTO Ministerial in 2003.

9. Believes that the Commission should pay particular attention to attempts to restrict access to the Internet, and welcomes its commitment to ensuring that the Internet remains an open medium, which is essential to the development of the economy;	The lack of competition in the local access markets in all Member States, in particular for broadband access, remains a major impediment to the deployment of the Internet and Internet services in Europe. The second phase of its sector inquiry on local loop unbundling should enable the Commission to have by 2002 a comprehensive assessment of the situation in all Member States and of problems encountered by new entrants in obtaining access to key inputs for Internet access provision at fair and competitive conditions. Notably, the Commission is already investigating complaints under Article 82 of the EC Treaty against incumbent operators and their subsidiaries allegedly impeding the possibility of competitors to provide broadband Internet access to their customers.
10. Regrets, however, the Commission's lack of foresight and its delay in drawing attention to the potential risks of the third generation of mobile telephones (UMTS technology), despite calls to do so by Parliament;	Council recommendation of 12 July 1999 on the limitation of exposure of the general public to electromagnetic files lists in its Annex II the basic restrictions to be implemented to avoid potential risks to human health. This recommendation covers the frequencies in which the third-generation mobile systems will operate.
13. Stresses the utmost importance of services of general interest; calls therefore for strong and legal certainty in the application of competition rules towards services of general interest to be maintained and developed in order to secure supply requirements and universal access to services of general interest;	In its recent report to the Laeken European Council on services of general interest, the Commission undertook to act quickly to prepare a Community framework for State aids in the form of compensation for fulfilling public-service tasks. This framework would meet the demand for greater legal certainty. The Commission also stated that in a second stage it could, if necessary, table an exemption regulation with the same aim of increasing legal certainty.
14. Urges the Commission to act on conclusion 17 of the Stockholm European Council, which states that the Commission shall 'ensure that those enterprises which still benefit from a monopoly situation on their national market will not unduly benefit from that situation';	The Commission is closely observing the behaviour of these enterprises for the purpose cited by the Parliament.
15. Urges the Commission to investigate the acquisition activities of firms in the electricity sector and the setting of electricity tariffs with respect to Community rules on illegal State aid;	In connection with the liberalisation of the electricity market, the Commission will make use of all Community competition policy instruments (State aid, mergers and antitrust) to ensure and promote genuine competition in this sector. It will pay particular attention to mergers and illegal aid.
19. Calls on the Commission to publish a table of objective indicators on privatisation in the Member States, and stresses that the purpose of such a table would not be to pass judgment on ownership patterns in the Member States but, rather, to act as a valuable source of information providing the requisite transparency;	Pursuant to Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ L 195, 29.7.1980, amended in 2000, OJ L 193, 29.7.2000) Member States are already obliged to supply relevant information. The issue of public or private ownership of enterprises as such is the responsibility of Member States and is not prejudiced by the competition rules (Article 295 EC). The Commission therefore does not see added value in the proposed table.

20. Regrets the report's lack of reference to the pharmaceutical industry, a key sector currently experiencing specific competition-related problems, but welcomes the fact that the European Competition Day held during the Belgian Presidency is to be devoted to this area;	The Commission recognises the importance of clarifying its competition policy in this sector. The annual report covering 2001 will contain a section concerning the Commission's actions in this sector. All these actions were under preparation in the course of 2000 but adopted during the present year. They could therefore not be reported yet.
21. Stresses that in order to maximise the benefits of the single market, consumers must be able to buy products where they are available at the lowest price within the single market, and urges the Commission to continue fighting attempts to restrict parallel imports in sectors where prices are not regulated by the State;	The Commission agrees with this objective and is taking the appropriate action.
22. Calls on the Commission to continue to work to ensure that the citizens of Europe become fully aware of the real advantages of an effective competition policy, which will lead to increased understanding and public support;	The Commission shares this view entirely. In its information of the public it is expressly pointing to the benefits of its action to citizens. Also, the bi-annual European Competition Day serves the purpose to create public awareness.
23. Calls on the Commission to review the content of its communication of 18 July 1996 on favourable treatment, which was applied for the first time in 2000, focusing in particular, *inter alia*, on its excessive inflexibility and its non-legislative status;	After five years of implementation of the 1996 notice on the non-imposition or reduction of fines in cartel cases, the Commission has the experience necessary to modify its policy in this matter. The first formal decision was adopted in 1998 and since then, more than a dozen formal decisions have applied it. This experience is being invested in a substantial revision of the current notice and a new reflection on the most suitable legal instrument for this purpose, in line with the remarks of the European Parliament. A draft Commission notice on immunity from fines and reduction of fines in cartel cases was published for consultation on 21 July 2001. It reflects a more flexible approach to leniency as a result of the introduction of new features. The Commission has made a conscious choice to review its previous notice by way of a new notice. Any other instrument would reduce the discretion granted to the Commission by Regulation No 17 and would not be proportionate to the aim and content of the envisaged measure, which are the factors to be retained according to the relevant case-law. A notice is an appropriate instrument to make publicly known how the Commission intends to use its discretion to impose fines under Article 15 of Council Regulation No 17 to companies disclosing the existence of a cartel and terminating their involvement in it.

24. Eagerly awaits the Commission's proposal on the future of vehicle distribution, which must take due account of the interests of consumers, and stresses that the question of whether a further exemption from implementing Community rules in this sector is really justified must be studied carefully;	The Commission has frequently expressed its concern that consumers are not deriving sufficient benefit from the exemption granted to the car industry in 1995. The recent decisions imposing fines on major car manufacturers for various breaches of the competition rules also illustrate that the industry is too often willing to abuse the current distribution system to the detriment of consumers. The Commission is determined that the future regime for car distribution must give more consideration to consumer benefits and therefore shares the views expressed by the Parliament. Before beginning its deliberations on the future regulatory regime, the Commission first carried out a thorough analysis of the way in which cars are currently distributed in Europe, and on the effects of the current block exemption. This process began with the elaboration and adoption of an evaluation report, and continued with a series of studies by external independent consultants ([259]). The Commission is carefully considering all material at its disposal. A draft for the future regime should be adopted by the beginning of 2002.
27. Welcomes the Commission's proposal to start during 2001 a formal consultation process on the abovementioned Regulation (EEC) No 4064/89 setting out recommendations and amendments for change; underlines the interest of the European Parliament to be consulted from the very beginning of this consultation process in the form of a code of good conduct between European institutions concerned before any concrete recommendations are proposed;	The Commission will adopt before the end of 2001 a Green Paper launching the debate on a number of amendments in the merger regulation. On some issues, notably jurisdictional ones, the Green Paper will outline first Commission proposals. The Green Paper does not include any concrete recommendations. Once adopted, it will be immediately transmitted to the Parliament and also made available for wide public consultation until the end of March 2002. On the basis of the outcome of this consultation, the Commission will proceed with the elaboration of concrete proposals. The Parliament will be duly associated to this process.
30. Believes that public spending and investments providing high-quality infrastructures might be important in order to create a competitive and dynamic knowledge-based economy; calls therefore for detailed information and monitoring on the use, quality and necessary redirection of public spending and the corresponding European and national budgets;	The Commission continues to monitor public spending and to control State aid in Member States. The redirection of public spending towards objectives that may create a competitive and dynamic knowledge-based economy will be scrutinised in the context of the State aid scoreboard.
31. Applauds the creation, in response to requests by Parliament, of a public register of State aid and scoreboard as important tools for promoting transparency and democratic control, but regrets the continuing willingness to accept situations of blatant inequality in this respect;	The Commission acknowledges the different level of State aid volume in the different Member States. This inequality is acceptable as long as the aid is granted in line with the State aid rules.

([259]) All of the publicly available information regarding these studies is available on the Commission's web site (http://europa.eu.int/comm/competition/car_sector/distribution/). Information on the decisions imposing fines on carmakers is also available at the same address.

32. Calls on the Commission to retain the annual reports on State aid in the European Union, even after the table of results has been introduced;	The Commission is examining the possibility to create a comprehensive State aid reference document on the situation, development and trends in the European Union.
33. Regrets that the Commission has been unable to provide reliable data and statistics on the number of cases where illegal State aid has been repaid, and calls on the Commission to investigate this matter and publish its findings as soon as possible, and calls upon the Commission to prepare common EU rules on the reimbursement of unduly paid State aid;	The Commission has always monitored the recovery of unlawful State aid. A detailed list of the pending recovery cases, with a short description of the Commission's actions in these cases is regularly published in Part II of the *Annual Report on Competition Policy*. The recovery of unlawful aid is carried out by the Member States, according to their own legislation. It should be recalled that in a significant number of cases, the companies from whom aid should be recovered are in insolvency or bankruptcy procedures. Given the variety and complexity of the national laws involved (company law, administrative law, insolvency law, etc.), devising common EU rules on the reimbursement of unlawful State aid is not contemplated by the Commission for the immediate future.
34. Seeks to bring about an improvement in the legal position of the undertakings affected; the Commission and the Member States should work toward greater involvement of third parties; it will be beneficial to introduce proper competition studies and public hearings in conjunction with the Commission's treatment of individual cases;	Third parties showing a sufficient interest already have the right to be heard in Commission proceedings. Moreover, the Commission is considering how to protect the interests of third parties when adopting in the proposed new enforcement system non-infringement decisions or decisions accepting commitments.
35. Welcomes the progress made by the candidate countries in matters of competition policy, and the fact that competition authorities have been established and begun their work; calls for greater discipline in connection with State aid, with only short transitional periods if any.	The Commission recognises the progress achieved by the candidate countries in establishing a proper competition discipline, and considers that it is now important for the competition authorities to concentrate, in their enforcement of the competition rules, on practices that are important for the market structure. In the State aid field, in particular, more work is still required in most countries, and the Commission considers that no transitional periods in this area should be necessary.

B — Economic and Social Committee

Opinion of the Economic and Social Committee on the *XXXth Report on Competition Policy 2000* (SEC(2001) 694 final) and reply by the Commission

On 10 May 2001, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *XXXth Report on Competition Policy 2000* (SEC(2001) 694 final).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 November 2001. The rapporteur was **Mr Sepi**.

At its 386th plenary session on 28 November 2001 the Economic and Social Committee adopted the its opinion by 108 votes to one, with one abstention. The following document contains the essential parts of this opinion and the Commissions position thereto.

XXXth Report on Competition Policy 2000 **SEC(2001) 694 final — November**	
Main points of the ESC opinion	**Commission position**
The Committee generally welcomes the report.	Favourable opinion taken into account.
3.4.1. In the project to modernise the antitrust procedure, uniform application of competition policy is demanded of bodies which differ in terms of powers, institutional position and membership criteria: this could lead to divergent decisions and conduct.	The Commission acknowledges this concern and will not only consider it within the ongoing debate with the Council, but will also issue relevant guidelines.
3.7.3. A problem raised by the Honeywell case is the need to internationalise competition principles. The Commission's proposal to work on this area within the WTO seems to be extremely well timed. The Committee has raised this issue time and again in its previous opinions over the last four or five years. The forum proposed by the Commission, however, can be considered only a first step in this direction. At the same time, bilateral cooperation with the leading industrial nations should continue.	The Commission is aware of the need to continue its efforts to enhance bilateral cooperation with its trading partners to solve international competition policy issues. Beyond bilateral cooperation, the Commission will intensify its action towards multilateral competition rules in the WTO. A first encouraging step was taken at the fourth WTO Ministerial in Doha/QATAR. The declaration adopted by WTO Ministers recognises the case for negotiating such an agreement. Negotiations should open at the fifth WTO Ministerial in 2003.
3.10. The Competition DG's communication policy must be improved. Although the official report could not be produced any faster, the Commissioner's introduction and a brief summary of the Competition DG's legislative and 'legal' activities could be issued on their own earlier.	The Commission is stepping up efforts to improve information to the public. The annual report as a Commission document requires endorsement by the full Commission. This would equally apply to any summary. In any case, it is adopted usually in April of each year. The Commission therefore does not see a need for an additional document to be published just a few weeks earlier.
3.11. The publication of online information on State aid should be extended to other subjects and accompanied at regular intervals by paper summaries.	The Commission is increasing the amount of information it provides on State aid. Two good examples are the recently launched online State aid register and the State aid scoreboard, published in paper form.
3.15.1. The Committee feels that if social aspects are sacrificed, the accession of these societies into the Community could generate major disappointment and a backlash. The process must therefore be accompanied by robust, targeted economic and social policy measures, including an improved climate for enterprise development potential, particularly for SMEs. To this end, the Committee believes the European Union must provide far greater resources than those presently available.	The Commission takes note of this view.
3.16. Certain full-blown international cartels that dominate the world economy, for instance in the oil and natural gas markets, must be confronted. The cartel policy conducted by OPEC, and also by the oil companies, clearly runs counter to competition policy, and should be confronted with the appropriate instruments and the necessary level of political determination. In a global economy, even economic actions directly conducted by national governments must obey the rules of economic propriety and competition policy.	The Commission shares the Committee's concerns and is in favour of developing international forums for discussing and coordinating the competition laws applicable in the main trading areas of the world. In the absence of any global coordination authority, the Commission can only apply the Treaty. Article 81 EC, prohibiting cartels, covers only the behaviour of undertakings. It does not apply to the actions of sovereign States, even if the Community market is thereby affected.

3.17. The continued existence in individual countries of professional sectors benefiting from contractual, administrative or legislative protection represents an unacceptable breach of the principles of European competition policy. At a time when public-service monopolies are being liberalised, multinational businesses are being punished, and all sectors are being urged to step up their competitiveness, these occupational cartels — which are a legacy of the past — must be brought into line with the new situation. The Commission must take on this task, and not only with words, but with practical steps designed in part to encourage national authorities to take the appropriate action.	In the context of liberalisation, the Commission will use all the tools of Community competition policy (State aid, merger control, antitrust and abuse of dominant position) to safeguard and develop effective competition in the markets concerned. It will focus particularly on illegal aid.

European Commission

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