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(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 3666/93

of 15 December 1993

amending Regulation No 27 and Regulations (EEC) No 1629/69, (EEC) No 4260/88, (EEC) No 4261/88 and (EEC) No 2367/90 with a view to implementing the competition provisions laid down in the Agreement on the European Economic Area

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway ⁽²⁾, as last amended by the Act of Accession of Greece, and in particular Article 29 thereof,

Having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of the Treaty to maritime transport ⁽³⁾, and in particular Article 26 thereof,

Having regard to Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector ⁽⁴⁾, as last amended by Regulation (EEC) No 2410/92 ⁽⁵⁾, and in particular Article 19 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽⁶⁾, and in particular Article 23 thereof,

Having consulted the Advisory Committee on Restrictive Practices and Monopolies in the Transport Industry, the Advisory Committee on Agreements and Dominant Positions in the field of Maritime Transport, the Advisory Committee on Agreements and Dominant Positions in Air

Transport and the Advisory Committee on Concentrations,

Whereas Regulation No 17 and Regulations (EEC) Nos 1017/68, 4056/86, 3975/87 and 4064/89 empower the Commission to adopt implementing provisions concerning the form, content and other details of applications, notifications and complaints, of which power the Commission has made use in Regulation No 27 ⁽⁷⁾, as last amended by Regulation 2526/85 ⁽⁸⁾, and in Regulations (EEC) No 1629/69 ⁽⁹⁾, (EEC) No 4260/88 ⁽¹⁰⁾, (EEC) No 4261/88 ⁽¹¹⁾ and (EEC) No 2367/90 ⁽¹²⁾;

Whereas with the entry into force of the Agreement on the European Economic Area, and as laid down in the Protocol adjusting the Agreement on the European Economic Area, the Commission will be responsible for the implementation of the competition provisions laid down in that Agreement;

Whereas Protocol 21 to the Agreement on the European Economic Area provides that the Community shall, where necessary, adopt the provisions giving effect to the principles laid down in Article 1 (2) (e) and Articles 53 to 60 of that Agreement;

Whereas to enable the Commission to properly fulfil its obligations under the Agreement on the European Economic Area, it is necessary to modify the provisions relating to the form, content and other details of applications, notifications and complaints in order to simplify and accelerate consideration by the competent departments, in the interests of all concerned,

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No L 175, 23. 7. 1968, p. 1.

⁽³⁾ OJ No L 378, 31. 12. 1986, p. 4.

⁽⁴⁾ OJ No L 374, 31. 12. 1987, p. 1.

⁽⁵⁾ OJ No L 240, 24. 8. 1992, p. 18.

⁽⁶⁾ OJ No L 395, 30. 12. 1989, p. 1.

⁽⁷⁾ OJ No 35, 10. 5. 1962, p. 1118/62.

⁽⁸⁾ OJ No L 240, 7. 9. 1985, p. 1.

⁽⁹⁾ OJ No L 209, 21. 8. 1969, p. 1.

⁽¹⁰⁾ OJ No L 376, 31. 12. 1988, p. 1.

⁽¹¹⁾ OJ No L 376, 31. 12. 1988, p. 10.

⁽¹²⁾ OJ No L 219, 14. 8. 1990, p. 5.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation No 27 is amended as follows:

1. Article 2 (1) is replaced by the following:
 - '1. Fifteen copies of each application and notification shall be submitted to the Commission'.
2. The following paragraph 4 is added to Article 2:
 - '4. Where applications and notifications are made pursuant to Articles 53 and 54 of the Agreement on the European Economic Area, they may also be in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority'.
3. The Annex referred to in Article 4 (1) is replaced by Appendix 1 to this Regulation.
4. Form C is replaced by Appendix 1 a to this Regulation.

Article 2

Regulation (EEC) No 1629/69 is amended as follows:

1. Article 3 (5) is replaced by the following:
 - '5. Fifteen copies of each application or notification and of the supporting documents shall be submitted to the Commission'.
2. The following Article 3a is inserted:

Article 3a

Where complaints, applications and notifications as provided for in Article 1 (1), Article 3 (1) and Article 3 (2) are made pursuant to Articles 53 and 54 of the Agreement on the European Economic Area, they may also be in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority'.

3. The Annex referred to in Article 1 (1), Article 3 (1) and Article 3 (2) is replaced by Appendix 2 to this Regulation.

Article 3

Regulation (EEC) No 4260/88 is amended as follows:

1. Article 4 (4) is replaced by the following:
 - '4. Fifteen copies of each application and of the supporting documents shall be submitted to the Commission'.

2. The following Article 4a is inserted:

Article 4a

Where notifications, complaints and applications as provided for in Article 1 (3), Article 2 (1) and Article 4 (6) are made pursuant to Articles 53 and 54 of the Agreement on the European Economic Area, they may also be in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority'.

3. The Annex referred to in Article 4 (1) is replaced by Appendix 3 to this Regulation.

Article 4

Regulation (EEC) No 4261/88 is amended as follows:

1. Article 3 (4) is replaced by the following:
 - '4. Fifteen copies of each application and of the supporting documents shall be submitted to the Commission'.
2. The following Article 3a is inserted:

Article 3a

Where complaints and applications as provided for in Article 1 (1) and Article 3 (6) are made pursuant to Articles 53 and 54 of the Agreement on the European Economic Area, they may also be in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority'.

3. The Annex referred to in Article 3 (1) is replaced by Appendix 4 to this Regulation.

Article 5

Regulation (EEC) No 2367/90 is amended as follows:

1. Article 2 (2) is replaced by the following:
 - '2. Twenty-one copies of each notification and sixteen copies of the supporting documents shall be submitted to the Commission at the address indicated in form CO'.
2. The following paragraph 5 is added to Article 2:
 - '5. Where notifications are made pursuant to Article 57 of the Agreement on the European Economic Area, they may also be in one of the official languages of the EFTA States or the working language of the EFTA Surveillance Authority. If the language chosen for the notifications is not an official language of the Community, the notifying parties shall simultaneously supplement all documentation with a translation into an official language of the Community. The language which is chosen for the translation shall determine the language used by the

Commission as the language of the proceedings for the notifying parties.'

Article 6

3. The Annex referred to in Article 2 (1) is replaced by Appendix 5 to this Regulation.

This Regulation shall enter into force on the date of entry into force of the Agreement on the European Economic Area.

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

Done at Brussels, 15 December 1993

For the Commission
Karel VAN MIERT
Member of the Commission

Appendix 1

FORM A/B

Regulation No 17

FORM A/B

This form must be accompanied by an Annex containing the information specified in the attached Complementary note.

The form and the Annex must be supplied in 15 copies (two for the Commission, one for each Member State and one for the EFTA Surveillance Authority). Supply three copies of any relevant agreement and one copy of other supporting documents.

Please do not forget to complete the 'Acknowledgement of receipt' annexed.

If space is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

- A.1. Application for negative clearance pursuant to Article 2 of Council Regulation No 17, as well as Article 53 (1) or of Article 54 of the Agreement on the European Economic Area ⁽¹⁾.
- B.1. Notification of an agreement, decision or concerted practice pursuant to Article 4 (or 5) of Council Regulation No 17 with a view to obtaining exemption pursuant to Article 85 (3) of the Treaty establishing the European Community, including notifications claiming benefit of an opposition procedure; as well as Article 53 (3) of the EEA Agreement.

Identity of the parties

1. Identity of applicant/notifier

Full name and address, telephone, telex and facsimile numbers, and brief description ⁽²⁾ of the undertaking(s) or association(s) of undertakings submitting the application or notification.

For partnerships, sole traders or any other unincorporated body trading under a business name, give, also, the name, forename(s) and address of the proprietor(s) or partner(s).

Where an application or notification is submitted on behalf of some other person (or is submitted by more than one person) the name, address and position of the representative (or joint representative) must be given, together with proof of his authority to act. Where an application or notification is submitted by or on behalf of more than one person they should appoint a joint representative (Article 1 (2) and (3) of Commission Regulation No 27).

2. Identity of any other parties

Full name and address and brief description of any other parties to the agreement, decision or concerted practice (hereinafter referred to as 'the arrangements').

State what steps have been taken to inform these other parties of this application or notification.

(This information is not necessary in respect of standard contracts which an undertaking submitting the application or notification has concluded or intends to conclude with a number of parties (e.g. a contract appointing dealers)).

⁽¹⁾ Hereinafter referred to as 'the EEA Agreement'.

⁽²⁾ For example: 'motor vehicle manufacturer', 'computer service bureau', 'conglomerate'.

Purpose of this application/notification

(see Complementary note)

(Please answer yes or no to the questions.)

Are you asking for negative clearance alone? (See Complementary note — Section V, end of first paragraph — for the consequence of such a request.)

Are you applying for negative clearance, and also notifying the arrangements to obtain an exemption in case the Commission does not grant negative clearance?

Are you only notifying the arrangements in order to obtain an exemption?

Do you claim that this application may benefit from an opposition procedure? (See Complementary note — Sections IV, V, VII and VIII and Annex II.) If you answer 'yes', please specify the Regulation and Article number on which you are relying.

Would you be satisfied with a comfort letter? (See the end of Section VIII of the Complementary note.)

The undersigned declare that the information given above and in the . . . pages annexed hereto is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

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

Place and date:

Signatures:

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels,

Directorate-General for Competition

To

ACKNOWLEDGEMENT OF RECEIPT

(This form will be returned to the address inserted above if the top half is completed in a single copy by the person lodging it.)

Your application for negative clearance dated:

Your notification dated:

Concerning:

Your reference:

Parties:

1.

2. and others

(There is no need to name the other undertakings party to the arrangement.)

(The be completed by the Commission.)

was received on:

and registered under No: IV/.....

Please quote the above number in all correspondence.

Provisional address:
200, rue de la Loi
B-1049 Brussels.

Telephone:
Direct line: 29.....
Telephone exchange: 299 11 11.

Fax No: 29.....

(FORM A/B)

(form inside)

COMPLEMENTARY NOTE

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Additions or alterations to the information given in the Annexes will be published by the Commission from time to time.

NB: Any undertaking uncertain about how to complete a notification or wishing further explanation may contact the Directorate-General for Competition (DG IV) or the Competition Directorate of the EFTA Surveillance Authority in Brussels. Alternatively, any Commission Information Office (those in the Community and in the EFTA States are listed in Annex III, will be able to obtain guidance or indicate an official in Brussels who speaks the preferred official Community language or official language of one of the EFTA States ⁽¹⁾).

I. PURPOSE OF THE EC AND EEA COMPETITION RULES

1. Purpose of the Community competition rules

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

⁽¹⁾ For the purposes of this note, any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the Agreement on the European Economic Area. See the relevant text of the Protocol adjusting the Agreement on the European Economic Area in Annex II to this note, as well as the list in Annex III.

Article 85 (1) of the Treaty establishing the European Community (the text of Articles 85 and 86 is reproduced in Annex I to this note) prohibits restrictive agreements, decisions or concerted practices which may affect trade between Member States, and Article 85 (2) declares agreements and decisions containing such restrictions void (although the European Court of Justice has held that if restrictive terms of agreements are severable, only those terms are void); Article 85 (3), however, provides for exemption of practices with beneficial effects if its conditions are met. Article 86 prohibits the abuse of a dominant position which may affect trade between Member States. The original procedures for implementing these Articles, which provide for 'negative clearance' and exemption pursuant to Article 85 (3), were laid down in Regulation No 17 (the references to this and all other acts mentioned in this note or relevant to notifications and applications made on Form A/B are listed in Annex II to this note).

2. Purpose of the EEA competition rules

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

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

II. COMPETENCE OF THE COMMISSION AND OF THE EFTA SURVEILLANCE AUTHORITY TO APPLY THE EEA COMPETITION RULES

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

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

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

⁽²⁾ OJ No C 231, 12. 9. 1986, p. 2.

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

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

III. NEGATIVE CLEARANCE

The purpose of the negative clearance procedure is to allow businesses ('undertakings') to ascertain whether or not the Commission considers that any of their arrangements or behaviour are prohibited pursuant to Article 85 (1) or 86 of the Treaty and/or Article 53 (1) or 54 of the EEA Agreement. (It is governed by Article 2 of Regulation No 17.) Clearance takes the form of a decision by the Community certifying that, on the basis of the facts in its possession, there are no grounds pursuant to Article 85 (1) or 86 of the Treaty and/or Article 53 (1) or 54 of the EEA Agreement for action on its part in respect of the arrangements or behaviour.

Any party may apply for negative clearance, even without the consent (but not without the knowledge) of other parties to arrangements. There would be little point in applying, however, where arrangements or behaviour clearly do not fall within the scope of Article 85 (1) or 86 of the Treaty, and/or Article 53 (1) or 54 of the EEA Agreement, where applicable. (In this connection, your attention is drawn to the last paragraph of V below and to Annex II.) Nor is the Commission obliged to give negative clearance — Article 2 of Regulation No 17 states that '... the Commission may certify ...'. The Commission does not usually issue negative clearance decision in cases which, in its opinion, so clearly do not fall within the scope of the prohibition of Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement that there is no reasonable doubt for it to resolve by such a decision.

IV. EXEMPTION

The purpose of the procedure for exemption pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement is to allow undertakings to enter into arrangements which, in fact, offer economic advantages but which, without an exemption, would be prohibited pursuant to Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement. (It is governed by Articles 4, 6 and 8 of Regulation No 17 and, for new Member States, by Articles 5, 7 and 25; with respect to existing agreements falling under Article 53 (1) of the EEA Agreement by virtue of its entry into force, it is governed by Articles 5 to 13 of Protocol 21 to the EEA Agreement.) It takes the form of a decision by the Commission declaring Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement to be inapplicable to the arrangements described in the decision. Article 8 of Regulation No 17 requires the Commission to specify the period of validity of any such decision, allows the Commission to attach conditions and obligations and provides for decisions to be amended or revoked or specified acts by the parties to be prohibited in certain circumstances, notably if the decisions were based on incorrect information or if there is any material change in the facts.

Any party may notify arrangements, even without the consent (but not without the knowledge) of other parties.

The Commission has adopted a number of regulations granting exemption to categories of agreements. These group exemptions also apply with respect to the EEA in the form as contained in Annex XIV to the EEA Agreement. Some of these regulations (see Annex II for the latest list) provide that some agreements may benefit by such an exemption only if they are notified to the Commission pursuant to Article 4 (or 5) of Regulation No 17 with a view to obtaining exemption pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement and if the benefit of an opposition procedure is claimed in the notification.

A decision granting exemption pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement may have retroactive effect but, with certain exceptions, cannot be made effective earlier than the date of notification (Article 6 of Regulation No 17; see also Article 6 of Protocol 21 to the EEA Agreement). Should the Commission find that notified arrangements are indeed prohibited by Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement, and cannot be exempted pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement and, therefore, take a decision condemning them, the parties are nevertheless protected, from the date of notification, against fines for any infringement described in the notification (Article 3 and Article 15 (5) and (6) of Regulation No 17).

V. PURPOSE OF THE FORM

The purpose of Form A/B is to allow undertakings, or associations of undertakings, wherever situated, to apply to the Commission for negative clearance for arrangements or behaviour, or to notify such arrangements and apply to have them exempted from the prohibition of Article 85 (1) of the Treaty by virtue of Article 85 (3) and/or of Article 53 (1) of the EEA Agreement by virtue of its Article 53 (3). The form allows undertakings applying for negative clearance to notify, at the same time, in order to obtain an exemption. It should be noted that only a notification in order to obtain exemption affords immunity from fines (Article 15 (5)).

To be valid, applications for negative clearance in respect of Article 85 of the Treaty and/or Article 53 (1) of the EEA Agreement, notifications to obtain an exemption and notifications claiming the benefit of an opposition procedure must be made on Form A/B (by virtue of Article 4 of Regulation No 27). (Undertakings applying for negative clearance for their behaviour in relation to a possible dominant position — Article 86 of the Treaty and/or Article 54 of the EEA Agreement — need not use Form A/B (see Article 4 (4) of Regulation No 27), but they are strongly recommended to give all the information requested at X below in order to ensure that their application gives a full statement of the facts.) The applications or notifications made on the Form A/B issued by the EFTA side are equally valid. However, if the arrangements or behaviour concerned solely fall under Articles 85 or 86 of the Treaty, i.e. have no EEA relevance whatsoever, it is advisable to use the present form established by the Commission.

Before completing a form, your attention is particularly drawn to the regulations granting block exemption and the notices listed in Annex II — these were published to allow undertakings to judge for themselves, in many cases, whether there was any doubt about their arrangements. This would allow them to avoid the considerable bother and expense, both for themselves and for the Commission, of submitting and examining an application or notification where there is clearly no doubt.

VI. NATURE OF THE FORM

The form consists of a single sheet calling for the identity of the applicant(s) or notifier(s) and of any other parties. This must be supplemented by further information given under the headings and references detailed below (see X). For preference the paper used should be A4 (21 × 29,7 cm — the same size as the form) but must not be bigger. Leave a margin of at least 25 mm or one inch on the left-hand side of the page and, if you use both sides, on the right-hand side of the reverse.

VII. THE NEED FOR COMPLETE AND ACCURATE INFORMATION

It is important that applicants give all the relevant facts. Although the Commission has the right to seek further information from applicants or third parties, and is obliged to publish a summary of the application before granting negative clearance or exemption pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement, it will usually base its decision on the information provided by the applicant. Any decision taken on the basis of incomplete information could be without effect in the case of a negative clearance, or voidable in that of an exemption. For the same reason, it is also important to inform the Commission of any material changes to your arrangements made after your application or notification.

Complete information is of particular importance if you are claiming the benefit of a block exemption through an opposition procedure. Such exemption is dependent on the information supplied being complete and in accordance with the facts. If the Commission does not oppose a claim to benefit under this procedure on the basis of the facts in a notification and, subsequently, additional or different facts come to light that could and should have been in the notification, then the benefit of the exemption will be lost, and with retroactive effect. Similarly, there would be little point in claiming the benefit of an opposition procedure with clearly incomplete information; the Commission would be bound either to reject such a notification or oppose exemption in order to allow time for further information to be provided.

Moreover, you should be aware of the provisions of Article 15 (1) (a) of Regulation No 17 which reads as follows:

'The Commission may by decision impose on undertakings or associations of undertakings fines from 100 to 5 000 units of account ⁽¹⁾ where, intentionally or negligently, they supply incorrect or misleading information in an application pursuant to Article 2 or in a notification pursuant to Article 4 or 5.'

⁽¹⁾ The value of the European currency unit (ecu) which has replaced the unit of account, is published daily in the 'C' series of the *Official Journal of the European Communities*.

The key words here are 'incorrect or misleading information'. However, it often remains a matter of judgement how much detail is relevant; the Commission accepts estimates where accurate information is not readily available in order to facilitate notifications; and the Commission calls for opinions as well as facts.

You should therefore note that the Commission will use these powers only where applicants or notifiers have, intentionally or negligently, provided false information or grossly inaccurate estimates or suppressed readily available information or estimates, or have deliberately expressed false opinions in order to obtain negative clearance or exemption.

VIII. SUBSEQUENT PROCEDURE

The application or notification is registered in the Registry of the Directorate-General for Competition (DG IV). The date of receipt by the Commission (or the date of posting if sent by registered post) is the effective date of the submission. The application or notification might be considered invalid if obviously incomplete or not on the obligatory form.

Further information might be sought from the applicants or from third parties (Article 11 or 14 of Regulation No 17) and suggestions might be made as to amendments to the arrangements that might make them acceptable.

A notification claiming the benefit of an opposition procedure may be opposed by the Commission either because the Commission does not agree that the arrangements should benefit from a block exemption or to allow for more information to be sought. If the Commission opposes a claim, and unless the Commission subsequently withdraws its opposition, that notification will then be treated as an application for an individual exemption decision.

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

Sometimes files are closed without any formal decision being taken, for example, because it is found that the arrangements are already covered by a block exemption, or because the applicants are satisfied by a less formal letter from the Commission's departments (sometimes called a 'comfort letter') indicating that the arrangements do not call for any action by the Commission, at least in present circumstances. Although not a Commission decision, a comfort letter indicates how the Commission's departments view the case on the facts currently in their possession which means that the Commission could if necessary — if, for example, it were to be asserted that a contract was void pursuant to Article 85 (2) of the Treaty and/or Article 53 (2) of the EEA Agreement — take an appropriate decision.

IX. SECURITY

Article 214 of the Treaty, Articles 20 and 21 of Regulation No 17, Article 9 of Protocol 23 to the EEA Agreement, Article 122 of the EEA Agreement as well as Articles 20 and 21 of Chapter II of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and of a Court of Justice, require the Commission, Member States, the EFTA Surveillance Authority, and EFTA States not to disclose information of the kind covered by the obligation of professional secrecy. On the other hand, Article 19 (3) of Regulation No 17 requires the Commission to publish a summary of your application, should it intend to grant it, before taking the relevant decision. In this publication, the Commission shall have regard to the legitimate interest of undertakings in the protection of their business secrets. In this connection, if you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, please put all such information in a second Annex with each page clearly marked 'Business Secrets'; in the principal Annex, under any affected heading state 'see second Annex' or 'see also second Annex'; in the second Annex repeat the affected

heading(s) and reference(s) and give the information you do not wish to have published, together with your reasons for this. Do not overlook the fact that the Commission may have to publish a summary of your application.

Before publishing an Article 19 (3) notice, the Commission will show the undertakings concerned a copy of the proposed text.

X. FURTHER INFORMATION AND HEADINGS TO BE USED IN THE ANNEX TO FORM A/B

The further information is to be given under the following headings and reference numbers. Wherever possible, give exact information. If this is not readily available, give your best estimate, and identify what you give as an estimate. If you believe any detail asked for to be unavailable or irrelevant, please explain why. This may, in particular, be the case if one party is notifying arrangements alone without the cooperation of other parties. Do not overlook the fact that Commission officials are ready to discuss what detail is relevant (see the *nota bene* at the beginning of this Complementary note). An example that might help you is available on request.

1. Brief description

Give a brief description of the arrangements or behaviour (nature, purpose, date(s) and duration) — (full details are requested below).

2. Market

The nature of the goods or services affected by the arrangements or behaviour (include the heading number according to the Harmonized Commodity Description and Coding System). A brief description of the structure of the market (or markets) for these goods or services — e.g. who sells in it, who buys in it, its geographical extent, the turnover in it, how competitive it is, whether it is easy for new suppliers to enter the market, whether there are substitute products. If you are notifying a standard contract (e.g. a contract appointing dealers), say how many you expect to conclude. If you know of any studies of the market, it would be helpful to refer to them.

3. Fuller details of the party or parties.

3.1. Do any of the parties form part of a group of companies? A group relationship is deemed to exist where a firm:

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

If the answer is yes, give:

- the name and address of the ultimate parent company,
- a brief description of the business of the group⁽¹⁾ (and, if possible, one copy of the last set of group accounts),
- the name and address of any other company in the group competing in a market affected by the arrangements or in any related market, that is to say any other company competing directly or indirectly with the parties ('relevant associated company').

3.2. The most recently available total, and total EEA-wide turnover of each of the parties and, as the case may be, of the group of which it forms part (it could be helpful also if you could provide one copy of the last set of accounts). The figures and percentage of the EEA-wide total turnover achieved within the Community and within the territory of the EFTA States.

⁽¹⁾ For example: 'motor vehicle manufacturer', 'computer service bureau', 'conglomerate'.

- 3.3. The sales or turnover of each party in the goods or services affected by the arrangements in the Community, in the territory of the EFTA States, in the EEA territory and worldwide. If the turnover in the Community or in the territory of the EFTA States or in the EEA territory is material (say more than a 5% market share), please also give figures for each Member State and for each EFTA State ⁽¹⁾, and for previous years (in order to show any significant trends), and give each party's sales targets for the future. Provide the same figures for any relevant associated company. (Under this heading, in particular, your best estimate might be all that you can readily supply.)

For the calculation of turnover in the banking and insurance sector see Article 3 of Protocol 22 to the EEA Agreement.

- 3.4. In relation to the market (or markets) for the goods or services described at 2, give, for each of the sales or turnover figures in 3.3, your estimate of the market share it represents, within the Community, within the territory of the EFTA States, and within the EEA territory as a whole.
- 3.5. If you have a substantial interest falling short of control (more than 25% but less than 50%) in some other company competing in a market affected by the arrangements, or if some other such company has a substantial interest in yours, give its name and address and brief details.

4. Full details of the arrangements

- 4.1. If the contents are reduced to writing give a brief description of the purpose of the arrangements and attach three copies of the text (except that the technical descriptions often contained in know-how agreements may be omitted; in such cases, however, indicate parts omitted).

If the contents are not, or are only partially, reduced to writing, give a full description.

- 4.2. Detail any provisions contained in the arrangements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding:

- buying or selling prices, discounts or other trading conditions,
- the quantities of goods to be manufactured or distributed or services to be offered,
- technical development or investment,
- the choice of markets or sources of supply,
- purchases from or sales to third parties,
- whether to apply similar terms for the supply of equivalent goods or services,
- whether to offer different goods or services separately or together.

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

- 4.3. State between which Member States and/or EFTA States ⁽¹⁾ trade may be affected by the arrangements, and whether trade between the Community or the EEA territory, and any third countries is affected.

5. Reasons for negative clearance

If you are applying for negative clearance state, under the reference:

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

⁽¹⁾ See list in Annex III.

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

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

6. Reasons for exemption

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

- 6.1. the arrangements contribute to improving production or distribution, and/or promoting technical or economic progress;
- 6.2. a proper share of the benefits arising from such improvement or progress accrues to consumers;
- 6.3. all restrictive provisions of the arrangements are indispensable to the attainment of the aims set out under 6.1 (if you are claiming the benefit of an opposition procedure, it is particularly important that you should identify and justify restrictions that exceed those automatically exempted by the relevant regulation); and
- 6.4. the arrangements do not eliminate competition in respect of a substantial part of the goods or services concerned.

7. Other information

- 7.1. Mention any earlier proceedings or informal contacts, of which you are aware, with the Commission and/or the EFTA Surveillance Authority and any earlier proceedings with any national EC or EFTA authorities or courts concerning these or any related arrangements.
- 7.2. Give any other information presently available that you think might be helpful in allowing the Commission to appreciate whether there are any restrictions contained in the agreement, or any benefits that might justify them.
- 7.3. State whether you intend to produce further supporting facts or arguments not yet available and, if so, on which points.
- 7.4. State, with reasons, the urgency of your application or notification.

XI. LANGUAGES

You are entitled to notify your agreements in any of the official languages of the European Community or of an EFTA State. In order to ensure rapid proceedings, you are, however, invited to use, if possible, in case of notification to the EFTA Surveillance Authority one of the official languages of an EFTA State or the working language of the EFTA Surveillance Authority, which is English, or, in case of notification to the Commission, one of the official languages of the European Community or the working language of the EFTA Surveillance Authority.

ANNEX I

TEXT OF ARTICLES 85 AND 86 OF THE EC TREATY, ARTICLES 53, 54 AND 56 OF THE EEA AGREEMENT, ARTICLES 2, 3 AND 4 OF PROTOCOL 22 TO THAT AGREEMENT AND OF ARTICLES 1 AND 2 OF THE PROTOCOL ADJUSTING THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

ARTICLE 85 OF THE EC TREATY

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

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

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

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

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

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

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

ARTICLE 86 OF THE EC TREATY

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

Such abuse may, in particular, consist in:

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

ARTICLE 53 OF THE EEA AGREEMENT

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which

may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

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

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

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

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

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

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

ARTICLE 54 OF THE EEA AGREEMENT

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

Such abuse may, in particular, consist in:

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

ARTICLE 56 OF THE EEA AGREEMENT

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

- (a) individual cases where only trade between EFTA States is affected shall be decided upon by the EFTA Surveillance Authority;
- (b) without prejudice to subparagraph (c), the EFTA Surveillance Authority decides, as provided for in the provisions set out in Article 58, Protocol 21 and the rules adopted for its implementation, Protocol 23 and Annex XIV, on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33% or more of their turnover in the territory covered by this Agreement;

- (c) the EC Commission decides on the other cases as well as on cases under (b) where trade between EC Member States is affected, taking into account the provisions set out in Article 58, Protocol 21, Protocol 23 and Annex XIV.
2. Individual cases falling under Article 54 shall be decided upon by the surveillance authority in the territory of which a dominant position is found to exist. The rules set out in paragraph 1 (b) and (c) shall apply only if dominance exists within the territories of both surveillance authorities.
3. Individual cases falling under paragraph 1 (c), whose effects on trade between EC Member States or on competition within the Community are not appreciable, shall be decided upon by the EFTA Surveillance Authority.
4. The terms 'undertaking' and 'turnover' are, for the purpose of this Article, defined in Protocol 22.

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

Article 2

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

Article 3

In place of turnover the following shall be used:

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

Article 4

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

ARTICLES 1 AND 2 OF THE PROTOCOL ADJUSTING THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

Article 1

1. The EEA Agreement, as adjusted by this Protocol, shall enter into force, on the date of entry into force of this Protocol, between the European Economic Community, the European Coal and Steel

Community, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway and the Kingdom of Sweden.

2. As regards the Principality of Liechtenstein, the EEA Agreement, as adjusted by this Protocol, shall enter into force on a date to be determined by the EEA Council and provided that the EEA Council:
 - has decided that the condition of Article 121 (b) of the EEA Agreement, namely that the good functioning of the EEA Agreement is not impaired, is fulfilled, and
 - has taken the appropriate decisions, in particular as to the application to Liechtenstein of the measures already adopted by the EEA Council and the EEA Joint Committee.
3. Liechtenstein shall be allowed to participate in those decisions of the EEA Council referred to in paragraph 2.

Article 2

1. Since the Swiss Confederation, following its non-ratification of the EEA Agreement, is not a Contracting Party thereto, the reference in the preamble to the EEA Agreement to 'THE SWISS CONFEDERATION' as one of the Contracting Parties shall be deleted.
2. Article 2 (b) of the EEA Agreement shall be replaced by the following:

'the term "EFTA States" means the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and, pursuant to the conditions laid down by Article 1 (2) of the Protocol adjusting the Agreement on the European Economic Area, the Principality of Liechtenstein.'
3. The EEA Agreement shall be adjusted further in accordance with Articles 3 to 20 of this Protocol.

ANNEX II

LIST OF RELEVANT ACTS

(as of 1 January 1993)

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

IMPLEMENTING REGULATIONS ⁽¹⁾

Council Regulation No 17 of 6 February 1992: First Regulation implementing Articles 85 and 86 of the Treaty (OJ No 13, 21. 2. 1962, p. 204/62, English Special Edition 1959—1962, November 1972, p. 87) as amended (OJ No 58, 10. 7. 1962, p. 1655/62; OJ No 162, 7. 11. 1963, p. 2696/63; OJ No L 285, 29. 12. 1971, p. 49; OJ No L 73, 27. 3. 1972, p. 92; OJ No L 291, 19. 11. 1979, p. 94 and OJ No L 302, 15. 11. 1985, p. 165).

Commission Regulation No 27 of 3 May 1962 implementing Council Regulation No 17 (OJ No 35, 10. 5. 1962, p. 1118/62, English Special Edition 1959—1962, November 1972, p. 87) as amended (OJ No L 189, 1. 8. 1968, p. 1; OJ No L 172, 3. 7. 1975, p. 11; OJ No L 291, 19. 11. 1979, p. 94; OJ No L 240, 7. 9. 1985, p. 11 and OJ No L 302, 15. 11. 1985, p. 166).

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

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

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

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

Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements (OJ No L 219, 16. 8. 1984, p. 15, as corrected in OJ No L 113, 26. 4. 1985, p. 34), as amended (OJ No L 21, 29. 1. 1993, p. 8), as well as this Regulation as adapted for EEA purposes (see point 5 of Annex XIV to the EEA Agreement). Article 4 of this Regulation provides for an opposition procedure.

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

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

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

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

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

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

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

NOTICES OF A GENERAL NATURE ⁽¹⁾

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

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

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

Commission notice on agreements, decisions and concerted practices of minor importance which do not fall under Article 85 (1) of the Treaty (OJ No C 231, 12. 9. 1986, p. 2) — in the main, those where the parties have less than 5% of the market between them, and a combined annual turnover of less than ECU 200 million.

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

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

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

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

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

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

ANNEX III

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

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

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

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

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

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

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

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

BELGIUM

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

DENMARK

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

FRANCE

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

CMCI

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

FEDERAL REPUBLIC OF GERMANY

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

ITALY

Via Poli 29
I-00187 Roma
Tel. (396) 699 11 60

Corso Magenta 61
I-20123 Milano
Tel. (392) 480 15 05

LUXEMBOURG

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

NETHERLANDS

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

PORTUGAL

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

SPAIN

Calle de Serrano 41
5a Planta
E-28001 Madrid
Tel. (341) 435 17 00
Av. Diagonal, 407 bis
18 Planta
E-08008 Barcelona
Tel. (343) 415 81 77

GREECE

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

IRELAND

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

UNITED KINGDOM

8 Storey's Gate
UK-London SW1P 3AT
Tel. (4471) 973 19 92

Windsor House
9/15 Bedford Street
UK-Belfast BT2 7EG
Tel. (44232) 24 07 08

4 Cathedral Road
UK-Cardiff CF1 9SG
Tel. (44222) 37 16 31

9 Alva Street
UK-Edinburgh EH2 4PH
Tel. (4431) 225 20 58

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

AUSTRIA

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

NORWAY

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

FINLAND

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

SWEDEN

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

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

AUSTRIA

Federal Ministry for Economic Affairs
Tel. (431) 711 00

FINLAND

Office of Free Competition
Tel. (3580) 731 41

ICELAND

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

LIECHTENSTEIN

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

NORWAY

Price Directorate
Tel. (4722) 40 09 00

SWEDEN

Competition Authority
Tel. (468) 700 16 00

Appendix 1a

FORM C

Regulation No 17

Complaint

FORM C

This form ⁽¹⁾ and the supporting documents should be forwarded in 15 copies together with proof in duplicate of the representative's authority to act.

If the space opposite each question is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

Application for initiation of procedure to establish the existence of an infringement of Article 85 or 86 of the Treaty, and/or Article 53 or 54 of the Agreement on the European Economic Area ⁽²⁾, submitted by natural or legal persons pursuant to Article 3 of Council Regulation No 17.

I. Information regarding parties concerned

1. Name, forenames and address of person submitting the application. If such person is acting as a representative, state also the name and address of his principal; for an undertaking, or association of undertakings or persons, state the name, forenames and address of the proprietors or members; for legal persons, state the name, forenames and address of their legal representatives.

Proof of representative's authority to act must be supplied;

If the application is submitted by a number of persons or on behalf of a number of persons, the information must be given in respect of each applicant or principal.

2. Name and address of persons to whom the application relates.

II. Details of the alleged infringement

Set out in detail, in an Annex, the facts from which, in your opinion, it appears that there is infringement of Article 85 or 86 of the Treaty and/or Article 53 or 54 of the EEA Agreement.

Indicate in particular:

1. the practices of the undertakings or associations of undertakings to which this application relates which have as their object or effect the prevention, restriction or distortion of competition or constitute an abuse of a dominant position within the common market, within the territory of the EFTA States or within the EEA territory;
2. to what extent trade between Member States, between the Community and one or more EFTA States, or between EFTA States may be affected;
3. the nature of the goods affected by the alleged infringements (include the heading number according to the Harmonized Commodity Description and Coding System).

III. Existence of legitimate interest

Set out — if necessary in an Annex — the grounds on which you claim a legitimate interest in the initiation by the Commission of the procedure provided for in Article 3 of Regulation No 17.

IV. Evidence

1. State the names and addresses of persons able to testify to the facts set out, and in particular of persons affected by the alleged infringement.
2. Submit all documentation relating to or directly connected with the facts set out (for example, texts of agreements, minutes of negotiations or meetings, terms of transactions, business documents, circulars).

⁽¹⁾ Applications made by using Form C issued by the Commission and Form C issued by the EFTA side are equally valid.

⁽²⁾ Hereinafter referred to as 'the EEA Agreement'. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the EEA Agreement.

3. Submit statistics or other data relating to the facts set out (and relating, for example, to price trends, formation of prices, terms of transactions, terms of supply or sale, boycotting, discrimination).
 4. Where appropriate, give any necessary technical details relating to production, sales, etc., or name experts able to do so.
 5. Indicate any other evidence of the existence of the alleged infringement.
- V. Indicate all approaches made, and all steps taken, prior to this application, by you or any other person affected by the practice described above, with a view to terminating the alleged infringement (proceedings commenced before national judicial or administrative bodies, stating in particular the reference numbers of the cases and the results thereof).

We, the undersigned, declare that the information given in this form and in the Annexes thereto is given entirely in good faith.

At

Signed:

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels,

Directorate-General for Competition

To

Acknowledgement of receipt

(This form will be returned to the address inserted above if the top half is completed in a single copy by the applicant.)

Your application for a finding of infringement of Article 85 or 86 of the Treaty and/or Article 53 or 54 of the EEA Agreement, dated

(a) Applicant:

(b) Infringing parties:

was received on:

and registered under No: IV/.....

Please quote the above number in all correspondence.

Appendix 2

Forms for land transport

Regulation (EEC) No 1017/68

FORM I⁽¹⁾

This form and the supporting documents should be forwarded in 15 copies together with proof in a single copy of the representative's authority to act.

If the space opposite each question is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

Complaint submitted by natural or legal persons pursuant to Article 10 of Council Regulation (EEC) No 1017/68 and having as its object the opening of proceedings for the verification of infringements of Article 2 or 8, or the application of Article 4 (2), of that Regulation⁽²⁾.

I. Information regarding parties

1. Name, forenames and address of person submitting the complaint. If such person is acting as representative, state also the name and address of his principal; for undertakings, and associations of undertakings or persons, state the name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives.

Proof of representative's authority to act must be supplied.

If the complaint is submitted by a number of persons or on behalf of a number of persons, the information must be given in respect of each complainant and each principal.

2. Name and address of persons about whom the complaint is made.

II. Object of the complaint

- A. Description of the alleged infringement of Article 2 or 8. Attach a detailed statement of the facts which, in your opinion, constitute an infringement of Article 2 or 8.

State in particular:

1. which practices by undertakings or associations of undertakings, referred to in the complaint, have the object or effect of preventing, restricting or distorting competition or constitute an improper exploitation of a dominant position in the common market, in the territory of the EFTA States and/or in the EEA territory; and
 2. to what extent trade between Member States or between the Community and one or more EFTA States or between EFTA States may be affected thereby.
- B. Description of the alleged abuse of exemption for groups of small or medium-sized undertakings (Article 4 (2)).

Attach a detailed statement of the facts which, in your opinion, justify the application of Article 4 (2).

State in particular:

1. against which of the agreements, decisions or concerted practices referred to in Article 4 (1) the complaint is made;
2. to what extent implementation of the agreement, decision or concerted practice leads to results incompatible with the conditions laid down in Article 5;
3. to what extent this fact constitutes an abuse of exemption from the prohibition pursuant to Article 2.

⁽¹⁾ Applications made by using Form I issued by the Commission and Form I issued by the EFTA side are equally valid. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the Agreement on the European Economic Area.

⁽²⁾ See also this Regulation as adapted for EEA purposes (point 10 of Annex XIV to the Agreement on the European Economic Area, hereinafter referred to as 'the EEA Agreement').

III. Existence of legitimate interest

Describe — if necessary in an Annex — the reasons for which you consider that you have a legitimate interest in the Commission's initiating the procedure laid down in Article 10.

IV. Evidence

1. State the name, forenames and address of persons in a position to give evidence as to the facts disclosed, in particular of the persons affected by the alleged infringement or abuse.
 2. Submit all documents concerning the facts disclosed or directly connected with them (for example, the texts of agreements, minutes of negotiations or meetings, conditions of transport or dealing, documents relating to costs of transport, business letters, circulars).
 3. Submit statistics or other data relating to the facts disclosed (concerning, for example, price trends, price determination, alterations in supply or demand with regard to transport services, conditions of transport or dealing, boycotting or discrimination).
 4. Specify, where appropriate, any special technical features or name experts who can do so.
 5. Indicate any other evidence available to establish that there has been an infringement or abuse as alleged.
- V. State all the steps and measures adopted, before the complaint, by you or by any other person to whom the disclosed practice is prejudicial, with the object of putting a stop to the alleged infringement or abuse (proceedings before national courts or public authorities specifying in particular the reference number of the case and the results of such proceedings).

The undersigned declare that the information in this form and in its Annexes has been given in all good faith.

Date:

Signatures:

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels,

Directorate-General for Competition

To

Acknowledgement of receipt

(This form will be returned to the address inserted above if completed in a single copy by the complainant.)

Your complaint dated:

with regard to the opening of proceedings for:

- verification of an infringement of Article 2 or 8,
- application of Article 4 (2),

of Regulation (EEC) No 1017/68.

(a) Complainant:

(b) Author of the infringement or abuse:

was received on:

and registered under No: IV/TR.....

Please quote the above number in all correspondence.

FORM II ⁽¹⁾

This form and the supporting documents should be forwarded in 15 copies together with proof in a single copy of the representative's authority to act.

If the space opposite each question is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

Application pursuant to Article 12 of Council Regulation (EEC) No 1017/68 with a view to obtaining a declaration of non-applicability of the prohibition in Article 2 to agreements, decisions and concerted practices, in accordance with Article 5 of that Regulation ⁽²⁾.

I. Information regarding parties

1. Name, forenames and address of person submitting the application. If such person is acting as representative, state also the name and address of the undertaking or association of undertakings represented and the name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives.

Proof of representative's authority to act must be supplied.

If the application is submitted by a number of persons or on behalf of a number of undertakings, the information must be given in respect of each person or undertaking.

2. Name and address of the undertakings which are parties to the agreement, decision or concerted practice and name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives (unless this information has been given under I (1)).

If the undertakings which are parties are not all associated in submitting the application, state what steps have been taken to inform the other undertakings.

This information is not necessary in respect of standard contracts (see II (2) (b)).

3. If a firm or joint agency has been formed in pursuance of the agreement, decision or concerted practice, state the name and address of such firm or agency and the names, forenames and addresses of its representatives.
4. If a firm or joint agency is responsible for operating the agreement, decision or concerted practice, state the name and address of such firm or agency and the names, forenames and addresses of its representatives.

Attach a copy of the statutes.

5. In the case of a decision of an association of undertakings, state the name and address of the association and the names, forenames and addresses of its representatives.

Attach a copy of the statutes.

6. If the undertakings are established or have their seat outside the EEA territory, state the name and address of a representative or branch established in the EEA territory.

II. Information regarding contents of agreement, decision or concerted practice

1. Does the agreement, decision or concerted practice concern transport:

- by rail,
- by road,
- by inland waterway,

or operations of providers of services ancillary to transport?

⁽¹⁾ Applications made by using Form II issued by the Commission and Form II issued by the EFTA side are equally valid. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the Agreement on the European Economic Area.

⁽²⁾ See also this Regulation as adapted for EEA purposes (point 10 of Annex XIV to the Agreement of the European Economic Area, hereinafter referred to as 'the EEA Agreement').

2. If the contents were reduced to writing, attach a copy of the full text unless (a) or (b) provides otherwise.
 - (a) Is there only an outline agreement or outline decision?
If so, attach also copy of the full text of the individual agreements and implementing provisions.
 - (b) Is there a standard contract, i.e. a contract which the undertaking submitting the application regularly concludes with particular persons or groups of persons?
If so, only the text of the standard contract need be attached.
 3. If the contents were not, or were only partially, reduced to writing, state the contents in the space opposite.
 4. In all cases give the following additional information:
 - (a) date of agreement, decision or concerted practice;
 - (b) date when it came into force and, where applicable, proposed period of validity;
 - (c) subject: exact description of the transport service or services involved, or of any other subject to which the agreement, decision or concerted practice relates;
 - (d) aims of the agreement, decision or concerted practice;
 - (e) terms of adherence, termination or withdrawal;
 - (f) sanctions which may be taken against participating undertakings (penalty clause, exclusion, etc.).
- III. Means of achieving the aims of the agreement, decision or concerted practice
1. State whether and how far the agreement, decision or concerted practice relates to:
 - adherence to certain rates and conditions of transport or other operating conditions,
 - restriction or control of the supply of transport, technical development or investment,
 - sharing of transport markets,
 - restrictions on freedom to conclude transport contracts with third parties (exclusive contracts),
 - application of different terms for supply of equivalent services.
 2. Is the agreement, decision or concerted practice concerned with transport services:
 - (a) within one Member State or EFTA State only?
 - (b) between Member States?
 - (c) between EFTA States?
 - (d) between the Community and one or more EFTA States?
 - (e) between a Member State or an EFTA State and third countries?
 - (f) between third countries in transit through one or more Member States and/or EFTA States?
- IV. Description of the conditions to be fulfilled by the agreement, decision or concerted practice so as to be exempt from the prohibition in Article 2.
- Describe to what extent:
1. the agreement, decision or concerted practice contributes towards:
 - improving the quality of transport services, or
 - promoting, in markets subject to considerable temporal fluctuations of supply and demand, greater continuity and stability in the satisfaction of transport needs, or
 - increasing the productivity of undertakings, or
 - promoting technical or economic progress;
 2. takes fair account of the interests of transport users;

3. the agreement, decision or concerted practice is essential for realizing the aims set out under 1; and
 4. the agreement, decision or concerted practice does not eliminate competition in respect of a substantial part of the transport market concerned.
- V. State whether you intend to produce further supporting arguments and, if so, on which points.

The undersigned declare that the information given above and in the Annexes attached hereto is correct. They are aware of the provisions of Article 22 (1) (a) of Regulation (EEC) No 1017/68.

Date:

Signatures:

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels,

Directorate-General for Competition

To

Acknowledgement of receipt

(This form will be returned to the address inserted above if completed in a single copy by the person lodging it.)

Your application dated

(a) Parties:

1.

2. and others

(There is no need to name the other undertakings party to the arrangement.)

(b) Subject:

.....

.....

(brief description of the restriction on competition)

was received on:

and registered under No: IV/TR.....

Please quote the above number in all correspondence.

FORM III ⁽¹⁾

This form and the supporting documents should be forwarded in 15 copies together with proof in a single copy of the representative's authority to act.

If the space opposite each question is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

Notification of an agreement, decision or concerted practice pursuant to Article 14 (1) of Council Regulation (EEC) No 1017/68 with a view to obtaining a declaration of non-applicability of the prohibition in Article 2, available in states of crisis, pursuant to Article 6 of that Regulation ⁽²⁾.

I. Information regarding parties

1. Name, forenames and address of person submitting the notification. If such person is acting as representative, state also the name and address of the undertaking or association of undertakings represented and the name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives.

Proof of representative's authority to act must be supplied.

If the notification is submitted by a number of persons or on behalf of a number of undertakings, the information must be given in respect of each person or undertaking.

2. Name and address of the undertakings which are parties to the agreement, decision or concerted practice and name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives (unless this information has been given under I (1)).

If the undertakings which are parties are not all associated in submitting the notification, state what steps have been taken to inform the other undertakings.

This information is not necessary in respect of standard contracts (see II (2) (b)).

3. If a firm or joint agency has been formed in pursuance of the agreement, decision or concerted practice, state the name and address of such firm or agency and the names, forenames and addresses of its representatives.
4. If a firm or joint agency is responsible for operating the agreement, decision or concerted practice, state the name and address of such firm or agency and the names, forenames and addresses of its representatives.

Attach a copy of the statutes.

5. In the case of a decision of an association of undertakings, state the name and address of the association and the names, forenames and addresses of its representatives.

Attach a copy of the statutes.

6. If the undertakings are established or have their seat outside the EEA territory, state the name and address of a representative or branch established in the EEA territory.

II. Information regarding contents of agreement, decision or concerted practice

1. Does the agreement, decision or concerted practice concern transport:

- by rail,
- by road,

⁽¹⁾ Notifications made by using Form III issued by the Commission and Form III issued by the EFTA side are equally valid. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the Agreement on the European Economic Area.

⁽²⁾ See also this Regulation as adapted for EEA purposes (point 10 of Annex XIV to the Agreement on the European Economic Area, hereinafter referred to as 'the EEA Agreement').

— by inland waterway,
or operations of providers of services ancillary to transport?

2. If the contents were reduced to writing, attach a copy of the full text unless (a) or (b) below provides otherwise.
 - (a) Is there only an outline agreement or outline decision?
If so, attach also copy of the full text of the individual agreements and implementing provisions.
 - (b) Is there a standard contract, i.e. a contract which the undertaking submitting the notification regularly concludes with particular persons or groups of persons?
If so, only the text of the standard contract need be attached.
3. If the contents were not, or were only partially, reduced to writing, state the contents in the space opposite.
4. In all cases give the following additional information:
 - (a) date of agreement, decision or concerted practice;
 - (b) date when it came into force and, where applicable, proposed period of validity;
 - (c) subject: exact description of the transport service or services involved, or of any other subject to which the agreement, decision or concerted practice relates;
 - (d) aims of the agreement, decision or concerted practice;
 - (e) terms of adherence, termination or withdrawal;
 - (f) sanctions which may be taken against participating undertakings (penalty clause, exclusion, etc.).

III. Means of achieving the aims of the agreement, decision or concerted practice

1. State whether and how far the agreement, decision or concerted practice relates to:
 - adherence to certain rates and conditions of transport or other operating conditions,
 - restriction or control of the supply of transport, technical development or investment,
 - sharing of transport markets,
 - restrictions on freedom to conclude transport contracts with third parties (exclusive contracts),
 - application of different terms for supply of equivalent services.
2. Is the agreement, decision or concerted practice concerned with transport services:
 - (a) within one Member State or EFTA State only?
 - (b) between Member States?
 - (c) between EFTA States?
 - (d) between the Community and one or more EFTA States?
 - (e) between a Member State or an EFTA State and third countries?
 - (f) between third countries in transit through one or more EC Member States and/or one or more EFTA States?

IV. Description of the conditions to be fulfilled by the agreement, decision or concerted practice so as to be exempt from the prohibition in Article 2

Describe to what extent:

1. the transport market is disturbed;
2. the agreement, decision or concerted practice is essential for reducing that disturbance;

3. the agreement, decision or concerted practice does not eliminate competition in respect of substantial parts of the transport market concerned.

V. State whether you intend to produce further supporting arguments and, if so, on which points.

The undersigned declare that the information given above and in the Annexes attached hereto is correct. They are aware of the provisions of Article 22 (1) (a) of Regulation (EEC) No 1017/68.

Date:

Signatures:

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels,

Directorate-General for Competition

To

Acknowledgement of receipt

(This form will be returned to the address inserted above if completed in a single copy by the person lodging it.)

Your notification dated:

(a) Parties:

1.

2. and others

(There is no need to name the other undertakings party to the arrangement.)

(b) Subject:

.....

.....

(brief description of the restriction on competition)

was received on:

and registered under No: IV/TR.....

Please quote the above number in all correspondence.

Appendix 3

FORM MAR

Regulation (EEC) No 4260/88

FORM MAR

This form must be accompanied by an Annex containing the information specified in the attached Complementary note.

The form and the Annex must be supplied in 15 copies (two for the Commission, one for each Member State and one for the EFTA Surveillance Authority). Supply three copies of any relevant agreement and one copy of other supporting documents.

Please do not forget to complete the 'Acknowledgement of receipt' annexed.

If space is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

Application pursuant to Article 12 of Council Regulation (EEC) No 4056/86 with a view to obtaining a decision pursuant to Article 85 (3) of the Treaty establishing the European Community, and/or Article 53 (3) of the Agreement on the European Economic Area ⁽¹⁾.

Identity of the parties*1. Identity of applicant*

Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

For partnerships, sole traders or any other unincorporated body trading under a business name, give, also, the name, forename(s) and address of the proprietor(s) or partner(s).

Where an application is submitted on behalf of some other person (or is submitted by more than one person) the name, address and position of the representative (or joint representative) must be given, together with proof of his authority to act. Where an application is submitted by or on behalf of more than one person they should appoint a joint representative (Article 3 (2) and (3) of Commission Regulation (EEC) No 4260/88).

2. Identity of any other parties

Full name and address and brief description of any other parties to the agreement, decision or concerted practice (hereinafter referred to as 'the arrangements').

State what steps have been taken to inform these other parties of this application.

(This information is not necessary in respect of standard contracts which an undertaking submitting the application has concluded or intends to conclude with a number of parties.)

Purpose of this application

(see Complementary note)

(Please answer yes or no to the questions.)

Would you be satisfied with a comfort letter? (See the end of Section VIII of the Complementary note.)

⁽¹⁾ Hereinafter referred to as 'the EEA Agreement'.

The undersigned declare that the information given above and in the pages annexed hereto is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

They are aware of the provisions of Article 19 (1) (a) of Regulation (EEC) No 4056/86 (see attached Complementary note).

Place and date:

Signatures:

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels,

Directorate-General for Competition

To

ACKNOWLEDGEMENT OF RECEIPT

(This form will be returned to the address inserted above if the top half is completed in a single copy by the person lodging it.)

Your application dated:

Concerning:

Your reference:

Parties:

1.

2. and others

(There is no need to name the other undertakings party to the arrangement.)

(To be completed by the Commission.)

was received on:

and registered under No: IV/MAR/.....

Please quote the above number in all correspondence.

Provisional address:
200 rue de la Loi,
B-1049 Brussels.

Telephone:
Direct line: 29.....
Telephone exchange: 299 11 11.

Fax No: 29.....



Appendix 4

FORM AER

Regulation No 4261/88

FORM AER

This form must be accompanied by an Annex containing the information specified in the attached Complementary note.

The form and the Annex must be supplied in 15 copies (two for the Commission, one for each Member State and one for the EFTA Surveillance Authority). Supply three copies of any relevant agreement and one copy of other supporting documents.

Please do not forget to complete the 'Acknowledgement of receipt' annexed.

If space is insufficient, please use extra pages, specifying to which item on the form they relate.

To the Commission of the European Communities
Directorate-General for Competition,
200 rue de la Loi,
B-1049 Brussels.

- A. Application for negative clearance pursuant to Article 3 (2) of Council Regulation (EEC) No 3975/87 relating to implementation of Article 85 (1) or of Article 86 of the Treaty establishing the European Community, and/or Article 53 (1) and/or Article 54 of the Agreement on the European Economic Area ⁽¹⁾.
- B. Application pursuant to Article 5 of Council Regulation (EEC) No 3975/87 with a view to obtaining a decision pursuant to Article 85 (3) of the Treaty establishing the European Community, and/or Article 53 (3) of the Agreement on the European Economic Area ⁽¹⁾.

Identity of the parties*1. Identity of applicant/notifier*

Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

For partnerships, sole traders or any other unincorporated body trading under a business name, give, also, the name, forename(s) and address of the proprietor(s) or partner(s).

Where an application is submitted on behalf of some other person (or is submitted by more than one person) the name, address and position of the representative (or joint representative) must be given, together with proof of his authority to act. Where an application or notification is submitted by or on behalf of more than one person they should appoint a joint representative (Article 2 (2) and (3) of Commission Regulation (EEC) No 4261/88).

2. Identity of any other parties

Full name and address and brief description of any other parties to the agreement, decision or concerted practice (hereinafter referred to as 'the arrangements').

State what steps have been taken to inform these other parties of this application.

(This information is not necessary in respect of standard contracts which an undertaking submitting the application has concluded or intends to conclude with a number of parties (e.g. a contract appointing dealers.)

⁽¹⁾ Hereinafter referred to as 'the EEA Agreement'.

Purpose of this application

(see Complementary note)

(Please answer yes or no to the questions.)

Are you asking for negative clearance alone? (See Complementary note — Section V, end of first paragraph — for the consequence of such a request.)

Are you applying for negative clearance, and also applying for a decision pursuant to Article 85 (3) of the EC Treaty and/or Article 53 (3) of the EEA Agreement in case the Commission does not grant negative clearance?

Are you only applying for a decision pursuant to Article 85 (3) of the EC Treaty and/or Article 53 (3) of the EEA Agreement?

Would you be satisfied with a comfort letter? (See the end of Section VIII of the Complementary note.)

The undersigned declare that the information given above and in the pages annexed hereto is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

They are aware of the provisions of Article 12 (1) (a) of Regulation (EEC) No 3975/87 (see attached Complementary note).

Place and date:

Signatures:

COMMISSION
OF THE
EUROPEAN COMMUNITIES
Directorate-General for Competition

Brussels,

To

ACKNOWLEDGEMENT OF RECEIPT

(This form will be returned to the address inserted above if the top half is completed in a single copy by the person lodging it.)

Your application dated:

Concerning:

Your reference:

Parties:

1.

2. and others

(There is no need to name the other undertakings party to the arrangement.)

(To be completed by the Commission.)

was received on:

and registered under No: IV/AER/.....

Please quote the above number in all correspondence.

Provisional address:
200 rue de la Loi,
B-1049 Brussels.

Telephone:
Direct line: 29.....
Telephone exchange: 299 11 11.

Fax No: 29.....

COMPLEMENTARY NOTE**Contents**

- I. Purpose of the EC and EEA competition rules
 - II. Competence of the Commission and the EFTA Surveillance Authority to apply the EEA competition rules
 - III. Negative clearance
 - IV. Decisions applying Article 85 (3) of the EC Treaty and/or Article 53 (3) of the EEA Agreement
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 - VI. Nature of the forms
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- Annex I: Text of Articles 85 and 86 of the EC Treaty and of Articles 53, 54 and 56 of the EEA Agreement, of Articles 2, 3 and 4 of Protocol 22 to that Agreement and of Articles 1 and 2 of the adjusting Protocol to the EEA Agreement
- Annex II: List of relevant Acts
- Annex III: List of Member States and of EFTA States, address of the Commission and of the EFTA Surveillance Authority, list of Commission Information Offices within the Community and in EFTA States and addresses of competent authorities in EFTA States.

Additions or alterations to the information given in these Annexes will be published by the Commission from time to time.

NB: Any undertaking uncertain about how to complete an application or wishing further explanation may contact the Directorate-General for Competition (DG IV) or the Competition Directorate of the EFTA Surveillance Authority in Brussels. Alternatively, any Commission Information Office (those in the Community and in the EFTA States are listed in Annex III) will be able to obtain guidance or indicate an official in Brussels who speaks the preferred official Community language or official language of one of the EFTA States. ⁽¹⁾

I. PURPOSE OF THE EC AND EEA COMPETITION RULES**1. Purpose of the Community competition rules**

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

⁽¹⁾ For the purposes of this note, any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the EEA Agreement. See the relevant text of the Protocol adjusting the Agreement on the European Economic Area in Annex II to this note, as well as the list in Annex III.

Article 85 (1) of the Treaty establishing the European Community (the text of Articles 85 and 86 is reproduced in Annex I to this note) prohibits restrictive agreements, decisions or concerted practices which may affect trade between Member States, and Article 85 (2) declares agreements and decisions containing such restrictions void (although the European Court of Justice has held that if restrictive terms of agreements are severable, only those terms are void); Article 85 (3), however, provides for exemption of practices with beneficial effects if its conditions are met. Article 86 prohibits the abuse of a dominant position which may affect trade between Member States. The original procedures for implementing these Articles, which provide for 'negative clearance' and a declaration applying Article 85 (3), were laid down for the maritime transport sector in Regulation (EEC) No 4056/86 and for the air transport sector in Regulation (EEC) No 3975/87 (the references to these and all other acts mentioned in this note or relevant to applications made on the forms are listed in Annex II to this note).

2. Purpose of the EEA competition rules

The competition rules of the Agreement on the European Economic Area ⁽¹⁾ (concluded between the Community, the Member States and the EFTA States) ⁽²⁾ are based on the same principles as those contained in the Community competition rules and have the same purpose, i.e. to prevent the distortion of competition in the EEA territory by restrictive practices or the abuse of dominant position. They apply to any enterprise trading directly or indirectly in the EEA territory, wherever established.

Article 53 (1) of the EEA Agreement (the text of Articles 53, 54 and 56 of the EEA Agreement is reproduced in Annex I to this note) prohibits restrictive agreements, decisions or concerted practices which may affect trade between the Community and one or more EFTA States (or between EFTA States), and Article 53 (2) declares agreements and decisions containing such restrictions void (although the European Court of Justice has held that if restrictive terms of agreements are severable, only those terms are void); Article 53 (3), however, provides for exemption of practices with beneficial effects, if its conditions are met. Article 54 prohibits the abuse of a dominant position which may affect trade between the Community and one or more EFTA States (or between EFTA States). The procedure for implementing these Articles, which provide for negative clearance and a declaration applying Article 53 (3) are laid down for the maritime transport sector in Regulation (EEC) No 4056/86 and for the air transport sector in Regulation (EEC) No 3975/87, supplemented for EEA purposes, by Protocols 21, 22 and 23 to the EEA Agreement.

II. COMPETENCE OF THE COMMISSION AND OF THE EFTA SURVEILLANCE AUTHORITY TO APPLY THE EEA COMPETITION RULES

The competence of the Commission and of the EFTA Surveillance Authority to apply the EEA competition rules follows from Article 56 of the EEA Agreement. Notifications and applications relating to restrictive agreements, decisions or concerted practices liable to affect trade between Member States, should be addressed to the Commission unless their effects on trade between Member States or on competition within the Community are not appreciable within the meaning of the Commission notice of 1986 on agreements of minor importance (OJ No C 231, 12. 9. 1986, p. 2). Furthermore, all restrictive agreements, decisions or concerted practices affecting trade between one Member State and one or more EFTA States should be notified to the Commission, provided the undertakings concerned achieve more than 67% of their combined EEA-wide turnover within the Community ⁽³⁾. However, if the effects of such agreements, decisions or concerted practices on trade between Member States or on competition within the Community are not appreciable, the notification should be addressed to the EFTA Surveillance Authority. All other agreements, decisions and concerted practices falling under Article 53 of the EEA Agreement should be notified to the EFTA Surveillance Authority (the address of which is listed in Annex III).

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

⁽¹⁾ Hereinafter referred to as 'the EEA Agreement'.

⁽²⁾ See list in Annex III.

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

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

III. NEGATIVE CLEARANCE

The negative clearance procedure has been provided only for the air transport sector. Its purpose is to allow businesses ('undertakings') to ascertain whether or not the Commission considers that any of their arrangements or behaviour are prohibited pursuant to Article 85 (1) or 86 of the Treaty and/or Article 53 (1) or 54 of the EEA Agreement. (It is governed by Article 3 of Regulation (EEC) No 3975/87.) Clearance takes the form of a decision by the Commission certifying that, on the basis of the facts in its possession, there are no grounds pursuant to Article 85 (1) or 86 of the Treaty and/or Article 53 (1) or 54 of the EEA Agreement, for action on its part in respect of the arrangements or behaviour.

Any party may apply for negative clearance, even without the consent (but not without the knowledge) of other parties to arrangements. There would be little point in applying, however, where arrangements or behaviour clearly do not fall within the scope of Article 85 (1) or 86 of the Treaty, and/or Article 53 (1) or 54 of the EEA Agreement, as the case may be. Nor is the Commission obliged to give negative clearance — Article 3 (2) of Regulation (EEC) No 3975/87 states that '... the Commission may certify...'. The Commission does not usually issue negative clearance decisions in cases which, in its opinion, so clearly do not fall within the scope of the prohibition of Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement that there is no reasonable doubt for it to resolve by such a decision.

IV. DECISION APPLYING ARTICLE 85 (3) OF THE TREATY AND/OR ARTICLE 53 (3) OF THE EEA AGREEMENT

The application for a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement allows undertakings to enter into arrangements which, in fact, offer economic advantages even though they restrict competition. (It is governed by Articles 12 and 13 of Regulation (EEC) No 4056/86 and Articles 4, 5 and 6 of Regulation (EEC) No 3975/87; with respect to existing agreements falling under Article 53 (1) of the EEA Agreement by virtue of its entry into force, it is governed by Articles 5 to 13 of Protocol 21 to the EEA Agreement.) Upon such application the Commission may take a decision declaring Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement to be inapplicable to the arrangements described in the decision. The Commission is required to specify the period of validity of any such decision, it can attach conditions and obligations and it can amend or revoke decisions or prohibit specified acts by the parties in certain circumstances notably if the decisions were based on incorrect information or if there is any material change in the facts.

Any party may submit an application even without the consent (but not without the knowledge) of other parties.

Regulation (EEC) No 4056/86 and (EEC) No 3975/87 provide for an 'opposition procedure' under which applications can be handled expeditiously. If an application is admissible pursuant to the relevant Regulation, if it is complete and if the arrangement which is the subject of the application has not given rise to a complaint or to an own-initiation proceeding, the Commission publishes a summary of the request in the *Official Journal of the European Communities* and invites comments from interested third parties, from Member States and from EFTA States where requests relate to Article 53 (3) of the EEA Agreement. Unless the Commission notifies applicants within 90 days of the date of such publication that there are serious doubts as to the applicability of Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement, the arrangement will be deemed exempt for the time already elapsed and for a maximum of six years from the date of publication. Where the Commission does notify applicants that there are serious doubts, the applicable procedure is outlined in point VIII of this Complementary note.

The Commission has adopted a number of regulations granting exemption to categories of agreements in the air transport sector (see Annex II for the latest list). These group exemptions also apply with respect to the EEA.

A decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement may have retroactive effect. Should the Commission find that arrangements in respect of which the application was submitted are indeed prohibited by Article 85 (1) of the Treaty and/or Article 53 (1) of the EEA Agreement

and cannot benefit from the application of Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement and, therefore, take a decision condemning them, the parties are nevertheless protected, from the date of application, against fines for any infringement described in the application (Article 19 (4) of Regulation (EEC) No 4056/86 and Article 12 (5) of Regulation (EEC) No 3975/87).

V. PURPOSE OF THE FORM

The purpose of Form AER is to allow undertakings, or associations of undertakings, wherever situated, to apply to the Commission for negative clearance for arrangements or behaviour, or to apply to have them exempted from the prohibition of Article 85 (1) of the Treaty by virtue of its Article 85 (3) and/or of Article 53 (1) of the EEA Agreement by virtue of its Article 53 (3). The form allows undertakings applying for negative clearance to apply, at the same time, in order to obtain a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement. It should be noted that only an application in order to obtain a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement affords immunity from fines. Form MAR only provides for an application for a decision pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement.

To be valid, applications in respect of maritime transport must be made on Form MAR (by virtue of Article 4 of Regulation (EEC) No 4260/88) and in respect of air transport of Form AER (by virtue of Article 3 of Regulation (EEC) No 4621/88).

The applications made on Forms MAR and AER issued by the EFTA side are equally valid. However, if the arrangement or behaviour concerned falls solely under Articles 85 or 86 of the Treaty, i.e. has no EEA relevance whatsoever, it is advisable to use the present form established by the Commission.

VI. NATURE OF THE FORM

The forms consist of a single sheet calling for the identity of the applicant(s) and of any other parties. This must be supplemented by further information given under the headings and references detailed below (see X). For preference the paper used should be A4 (21 × 29,7 cm — the same size as the form) but must not be bigger. Leave a margin of at least 25 mm or one inch on the left-hand side of the page and, if you use both sides, on the right-hand side of the reverse.

VII. THE NEED FOR COMPLETE AND ACCURATE INFORMATION

It is important that applicants give all the relevant facts. Although the Commission has the right to seek further information from applicants or third parties, and is obliged to publish a summary of the application before granting negative clearance or a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement, it will usually base its decision on the information provided by the applicant. Any decision taken on the basis of incomplete information could be without effect in the case of a negative clearance, or voidable in that of a declaration applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement. For the same reason, it is also important to inform the Commission of any material changes to your arrangements made after your application.

Complete information is of particular importance in order to benefit from the application of Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement, by means of the opposition procedure. This procedure can only apply where the Commission 'is in possession of all the available evidence'.

Moreover, you should be aware that Article 19 (1) of Regulation (EEC) No 4056/86 and Article 12 (1) of Regulation (EEC) No 3975/87 enable the Commission to impose fines of from ECU 100 to ECU 5 000 ⁽¹⁾ on undertakings or associations of undertakings where, intentionally or negligently, they supply incorrect or misleading information in connection with an application.

The key words here are 'incorrect or misleading information'. However it often remains a matter of judgement how much detail is relevant; the Commission accepts estimates where accurate information is not

⁽¹⁾ The value of the European currency unit (ecu) is published daily in the 'C' series of the *Official Journal of the European Communities*.

readily available in order to facilitate applications, and the Commission calls for opinions as well as facts.

You should therefore note that the Commission will use these powers only where applicants have, intentionally or negligently, provided false information or grossly inaccurate estimates or suppressed readily available information or estimates, or have deliberately expressed false opinions in order to obtain negative clearance or a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement.

VIII. SUBSEQUENT PROCEDURE

The application is registered in the Registry of the Directorate-General for Competition (DG IV). The date of receipt by the Commission (or the date of posting if sent by registered post) is the effective date of the submission. The application might be considered invalid if obviously incomplete or not on the obligatory form.

Further information might be sought from the applicants or from third parties and suggestions might be made as to amendments to the arrangements that might make them acceptable.

An application for a decision pursuant to Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement may be opposed by the Commission either because the Commission does not agree that the arrangements should benefit from Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement or to allow for more information to be sought.

If, after examination, the Commission intends to issue a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement, it is obliged to publish a summary of the application and invite comments from third parties. Subsequently, a preliminary draft decision has to be submitted to and discussed with the Advisory Committee on Restrictive Practices and Dominant Positions in Air Transport or in Maritime Transport. Where the case falls under the EEA Agreement, representatives of the EFTA Surveillance Authority and EFTA States will be invited to attend. Members of the Advisory Committee and representatives of the EFTA Surveillance Authority and EFTA States will already have received a copy of the application. Only then, and providing nothing has happened to change the Commission's intention, can it adopt a decision.

Sometimes files are closed without any formal decision being taken, for example, because it is found that the arrangements are already covered by a block exemption, or because the applicants are satisfied by a less formal letter from the Commission's departments (sometimes called a 'comfort letter') indicating that the arrangements do not call for any action by the Commission, at least in present circumstances. Although not a Commission decision, a comfort letter indicates how the Commission's departments view the case on the facts currently in their possession which means that the Commission could if necessary — if, for example, it were to be asserted that a contract was void pursuant to Article 85 (2) of the Treaty and/or Article 53 (2) of the EEA Agreement — take an appropriate decision.

IX. SECRECY

The Commission, Member States, the EFTA Surveillance Authority and EFTA States are under a duty not to disclose information of the kind covered by the obligation of professional secrecy. On the other hand, the Commission has to publish a summary of your application, should it intend to grant it, before taking the relevant decision. In this publication, the Commission shall have regard to the legitimate interest of undertakings in the protection of their business secrets. In this connection, if you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, please put all such information in a second Annex with each page clearly marked 'Business secrets'; in the principal Annex, under any affected heading state 'see second Annex' or 'see also second Annex'; in the second Annex repeat the affected heading(s) and reference(s) and give the information you do not wish to have published, together with your reasons for this. Do not overlook the fact that the Commission may have to publish a summary of your application.

Before publishing a summary of your application, the Commission will show the undertakings concerned a copy of the proposed text.

X. FURTHER INFORMATION AND HEADINGS TO BE USED IN THE ANNEX TO THE FORMS

The further information is to be given under the following headings and reference numbers. Wherever possible, give exact information. If this is not readily available, give your best estimate, and identify what you give as an estimate. If you believe any detail asked for to be unavailable or irrelevant, please explain why. This may, in particular, be the case if one party is notifying arrangements alone without the cooperation of other parties. Do not overlook the fact that Commission officials are ready to discuss what detail is relevant (see the *nota bene* at the beginning of this Complementary note).

1. Brief description

Give a brief description of the arrangements or behaviour (nature, purpose, date(s) and duration) — (full details are requested below).

2. Market

The nature of the transport services affected by the arrangements or behaviour. A brief description of the structure of the market (or markets) for these services — e.g. who sells in it, who buys in it, its geographical extent, the turnover in it, how competitive it is, whether it is easy for new suppliers to enter the market, whether there are substitute services. If you are submitting a standard contract, say how many you expect to conclude. If you know of any studies of the market, it would be helpful to refer to them.

3. Fuller details of the party or parties**3.1. Do any of the parties form part of a group of companies? A group relationship is deemed to exist where a firm:**

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

If the answer is yes, give:

- the name and address of the ultimate parent company,
- a brief description of the business of the group (and, if possible, one copy of the last set of group accounts),
- the name and address of any other company in the group competing in a market affected by the arrangements or in any related market, that is to say any other company competing directly or indirectly with the parties ('relevant associated company').

3.2. The most recently available total, and total EEA-wide turnover of each of the parties and, as the case may be, of the group of which it forms part (it could be helpful also if you could provide one copy of the last set of accounts). The figures and percentage of the EEA-wide total turnover achieved within the Community and within the territory of the EFTA States.**3.3. The sales or turnover of each party in the services affected by the arrangements in the Community, in the territory of the EFTA States, in the EEA territory and worldwide. If the turnover in the Community or in the territory of the EFTA States or in the EEA territory is material (say more than a 5% market share), please also give figures for each Member State and for each EFTA State⁽¹⁾, and for previous years (in order to show any significant trends), and give each party's sales targets for the future. Provide the same figures for any relevant associated company. (Under this heading, in particular, your best estimate might be all that you can readily supply.)**

⁽¹⁾ See list in Annex III.

- 3.4. In relation to the market (or markets) for the services described at 2, give, for each of the sales or turnover figures in 3.3, your estimate of the market share it represents, within the Community, within the territory of the EFTA States and within the EEA territory as a whole.
- 3.5. If you have a substantial interest falling short of control (more than 25 % but less than 50 %) in some other company competing in a market affected by the arrangements, or if some other such company has a substantial interest in yours, give its name and address and brief details.

4. Full details of the arrangements

- 4.1. If the contents are reduced to writing give a brief description of the purpose of the arrangements and attach three copies of the text (except that purely technical descriptions may be omitted; in such cases, however, indicate parts omitted).

If the contents are not, or are only partially, reduced to writing, give a full description.

- 4.2. Detail any provisions contained in the arrangements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding:

- buying or selling prices, discounts or other trading conditions,
- the nature, frequency or capacity of services to be offered;
- technical development or investment,
- the choice of markets or sources of supply,
- purchases from or sales to third parties,
- whether to apply similar terms for the supply of equivalent services,
- whether to offer different services separately or together.

- 4.3. State between which Member States and/or EFTA States ⁽¹⁾ trade may be affected by the arrangements, and whether trade between the Community or the EEA territory, and any third countries is affected.

5. Reasons for negative clearance

If you are applying for negative clearance state, under the reference:

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

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

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

⁽¹⁾ See list in Annex III.

6. **Reasons for a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement**

If you are requesting a decision applying Article 85 (3) of the Treaty and/or Article 53 (3) of the EEA Agreement, even if only as a precaution, explain how:

- 6.1. the arrangements contribute to improving production or distribution, and/or promoting technical or economic progress;
- 6.2. a proper share of the benefits arising from such improvement or progress accrues to consumers;
- 6.3. all restrictive provisions of the arrangements are indispensable to the attainment of the aims set out under 6.1.;
- 6.4. the arrangements do not eliminate competition in respect of a substantial part of the services concerned.

7. **Other information**

- 7.1. Mention any earlier proceedings or informal contracts, of which you are aware, with the Commission and/or the EFTA Surveillance Authority and any earlier proceedings with any national EC or EFTA authorities or courts even indirectly concerning these arrangements or this behaviour.
- 7.2. Give any other information presently available that you think might be helpful in allowing the Commission to appreciate whether there are any restrictions contained in the agreement, or any benefits that might justify them.
- 7.3. State whether you intend to produce further supporting facts or arguments not yet available and, if so, on which points.
- 7.4. State, with reasons, the urgency of your application.

XI. LANGUAGES

You are entitled to notify your agreements in any of the official languages of the European Community or of an EFTA State. In order to ensure rapid proceedings, you are, however, invited to use, if possible, in case of notification to the EFTA Surveillance Authority one of the official languages of an EFTA State or the working language of the EFTA Surveillance Authority, which is English; or, in case of notification to the Commission, one of the official languages of the European Community or the working language of the EFTA Surveillance Authority.

ANNEX I

TEXT OF ARTICLES 85 AND 86 OF THE EC TREATY, ARTICLES 53, 54 AND 56 OF THE EEA AGREEMENT, ARTICLES 2, 3 AND 4 OF PROTOCOL 22 TO THAT AGREEMENT AND OF ARTICLES 1 AND 2 OF THE PROTOCOL ADJUSTING THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA**ARTICLE 85 OF THE EC TREATY**

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

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

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

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

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations or undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

ARTICLE 86 OF THE EC TREATY

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

Such abuse may, in particular, consist in:

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

ARTICLE 53 OF THE EEA AGREEMENT

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

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

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

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

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

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

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

ARTICLE 54 OF THE EEA AGREEMENT

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

Such abuse may, in particular, consist in:

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

ARTICLE 56 OF THE EEA AGREEMENT

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

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

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

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

Article 2

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

Article 3

In place of turnover the following shall be used:

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

Article 4

1. In derogation of the definition of the turnover relevant for the application of Article 56 of the Agreement, as contained in Article 2 of this Protocol, the relevant turnover shall be constituted:

- (a) as regards agreements, decisions of associations of undertakings and concerted practices related to distribution and supply arrangements between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which are the subject matter of the agreements, decisions or concerted practices, and from the other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use;
- (b) as regards agreements, decisions of associations of undertakings and concerted practices related to arrangements on transfer of technology between non-competing undertakings, of the amounts derived from the sale of goods or the provisions of services which result from the technology which is the subject matter of the agreements, decisions or concerted practices, and of the amounts derived from the sale of those goods or the provisions of those services which that technology is designed to improve or replace.

2. However, where at the time of the coming into existence of arrangements as described in paragraph 1 (a) and (b) turnover as regards the sale of products or the provision of services is not in evidence, the general provision as contained in Article 2 shall apply.

ARTICLES 1 AND 2 OF THE PROTOCOL ADJUSTING THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

Article 1

1. The EEA Agreement, as adjusted by this Protocol, shall enter into force, on the date of entry into force of this Protocol, between the European Economic Community, the European Coal and Steel Community, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway and the Kingdom of Sweden.
2. As regards the Principality of Liechtenstein, the EEA Agreement, as adjusted by this Protocol, shall enter into force on a date to be determined by the EEA Council and provided that the EEA Council:
 - has decided that the condition of Article 121 (b) of the EEA Agreement, namely that the good functioning of the EEA Agreement is not impaired, is fulfilled, and
 - has taken the appropriate decisions, in particular as to the application to Liechtenstein of the measures already adopted by the EEA Council and the EEA Joint Committee.
3. Liechtenstein shall be allowed to participate in those decisions of the EEA Council referred to in paragraph 2.

Article 2

1. Since the Swiss Confederation, following its non-ratification of the EEA Agreement, is not a Contracting Party thereto, the reference in the preamble to the EEA Agreement to 'THE SWISS CONFEDERATION' as one of the Contracting Parties shall be deleted.
2. Article 2 (b) of the EEA Agreement shall be replaced by the following:

'the term "EFTA States" means the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and, under the conditions laid down by Article 1 (2) of the Protocol adjusting the Agreement of the European Economic Area, the Principality of Liechtenstein.'
3. The EEA Agreement shall be adjusted further in accordance with Articles 3 to 20 of this Protocol.

ANNEX II

LIST OF RELEVANT ACTS

(as of 1 January 1993)

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

IMPLEMENTING REGULATIONS ⁽¹⁾

Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ No L 378, 31. 12. 1986, p. 4).

Commission Regulation (EEC) No 4260/88 of 16 December 1988 on the communication complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ No L 376, 31. 12. 1988, p. 1).

Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ No L 374, 31. 12. 1987, p. 1), as amended by Regulation (EEC) No 2410/92 (OJ No L 240, 24. 8. 1992, p. 18).

Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints, applications and hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules of competition to undertakings in the air transport sector (OJ No L 376, 31. 12. 1988, p. 10).

REGULATIONS GRANTING BLOCK EXEMPTIONS

Commission Regulation (EEC) No 83/91 of 5 December 1990 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems for air transport services (OJ No L 10, 15. 1. 1991, p. 9), as amended by Regulation (EEC) No 3618/92 (OJ No L 367, 16. 12. 1992, p. 16).

Commission Regulation (EEC) No 84/91 of 5 December 1990 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning joint planning and coordination of schedules, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports (OJ No L 10, 15. 1. 1991, p. 14), as amended by Regulation (EEC) No 3618/92 (OJ No L 367, 16. 12. 1992, p. 16).

NOTICES OF A GENERAL NATURE ⁽²⁾

Commission notice on agreements, decisions and concerted practices of minor importance which do not fall under Article 85 (1) of the Treaty (OJ No C 231, 12. 9. 1986, p. 2) — in the main, those where the parties have less than 5% of the market between them, and a combined annual turnover of less than ECU 200 million.

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

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

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

⁽²⁾ See also the corresponding notices published by the EFTA Surveillance Authority.

ANNEX III

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

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

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

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

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

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

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

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

BELGIUM

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

DENMARK

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

FRANCE

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

CMCI

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

FEDERAL REPUBLIC OF GERMANY

Zitelmannstraße 22
D-53113 Bonn
Tel. (49228) 53 00 90

Kurfürstendamm 102
D-10711 Berlin 31
Tel. (4930) 896 09 30

Erhardtstraße 27
D-80331 München
Tel. (4989) 202 10 11

ITALY

Via Poli 29
I-00187 Roma
Tel. (396) 699 11 60

Corso Magenta 61
I-20123 Milano
Tel. (392) 480 15 05

LUXEMBOURG

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

NETHERLANDS

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

PORTUGAL

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

SPAIN

Calle de Serrano 41
5a Planta
E-28001 Madrid
Tel. (341) 435 17 00
Av. Diagonal, 407 bis
18 Planta
E-08008 Barcelona
Tel. (343) 415 81 77

GREECE

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

IRELAND

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

UNITED KINGDOM

8 Storey's Gate
UK-London SW1P 3AT
Tel. (4471) 973 19 92

Windsor House
9/15 Bedford Street
UK-Belfast BT2 7EG
Tel. (44232) 24 07 08

4 Cathedral Road
UK-Cardiff CF1 9SG
Tel. (44222) 37 16 31

9 Alva Street
UK-Edinburgh EH2 4PH
Tel. (4431) 225 20 58

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

AUSTRIA

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

NORWAY

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

FINLAND

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

SWEDEN

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

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

AUSTRIA

Federal Ministry for Economic Affairs
Tel. (431) 711 00

FINLAND

Office of Free Competition
Tel. (3580) 731 41

ICELAND

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

LIECHTENSTEIN

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

NORWAY

Price Directorate
Tel. (4722) 40 09 00

SWEDEN

Competition Authority
Tel. (468) 700 16 00

Appendix 5

**FORM CORRELATING TO THE NOTIFICATION OF A CONCENTRATION PURSUANT TO
COUNCIL REGULATION (EEC) No 4064/89**

ANNEX

FORM CORRELATING TO THE NOTIFICATION OF A CONCENTRATION PURSUANT TO
COUNCIL REGULATION (EEC) No 4064/89

A. Introduction

This form specifies the information to be provided by an undertaking or undertakings when notifying the Commission of a concentration with a Community dimension. A 'concentration' is defined in Article 3 and 'Community dimension' by Article 1 of Regulation (EEC) No 4064/89.

Your attention is particularly drawn to Regulation (EEC) No 4064/89, to Article 57 of the Agreement of the European Economic Area ⁽¹⁾ (point 1 of Annex XIV to the EEA Agreement and Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice), to Commission Regulation (EEC) No 2367/90 as well as to Protocols 21, 22 and 24 to the EEA Agreement and to Article 1, as well as the Agreed Minutes of the Protocol adjusting the Agreement on the European Economic Area. In particular you should note that:

- (a) all information requested by this form must be provided. However if, in good faith, you are unable to provide a response to a question or can only respond to a limited extent on the basis of available information, indicate this and give reasons. If you consider that any particular information requested by this form may not be necessary for the Commission's examination of the case, you may ask the Commission to dispense with the obligation to provide that information, pursuant to Article 4 (3) of Regulation (EEC) No 2367/90;
- (b) unless all sections are completed in full or good reasons are given explaining why it has not been possible to complete unanswered questions (for example, because of the unavailability of information on a target company during a contested bid) the notification will be incomplete and will only become effective on the date on which all the information is received. The notification will be deemed to be incomplete if information is incorrect or misleading;
- (c) incorrect or misleading information where supplied intentionally or negligently could make you liable to a fine;
- (d) the notifications made by using Form CO issued by the Commission and Form CO issued by the EFTA side are equally valid.

B. Who must notify

In the case of a merger (within the meaning of Article 3 (1) (a) of Regulation (EEC) No 4064/89 or the acquisition of joint control in an undertaking within the meaning of Article 3 (1) (b) of Regulation (EEC) No 4064/89, the notification shall be completed jointly by the parties to the merger or by those acquiring joint control as the case may be.

In the case of the acquisition of a controlling interest in an undertaking by another, the acquirer must complete the notification.

In the case of a public bid to acquire an undertaking, the bidder must complete the notification.

Each party completing the notification is responsible for the accuracy of the information which it provides.

For the purposes of this form 'the parties to the concentration' ('the parties') includes the undertaking in which a controlling interest is being acquired or which is the subject of a public bid.

⁽¹⁾ Hereinafter referred to as 'the EEA Agreement'. In particular, any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the EEA Agreement.

C. Supporting documentation

The completed notification must be accompanied by the following:

- (a) copies of the final or most recent versions of all documents bringing about the concentration, whether by agreement between the parties concerned, acquisition of a controlling interest or a public bid;
- (b) in a public bid, a copy of the offer document. If unavailable on notification it should be submitted as soon as possible and not later than when it is posted to shareholders;
- (c) copies of the most recent annual reports and accounts of all the parties to the concentration;
- (d) copies of reports or analyses which have been prepared for the purpose of the concentration and from which information has been taken in order to provide the information requested in Section 5 and 6;
- (e) a list and short description of the contents of all other analyses, reports, studies and surveys prepared by or for any of the notifying parties for the purpose of assessing or analysing the proposed concentration with respect to competitive conditions, competitors (actual and potential), and market conditions. Each item in the list must include the name and position held of the author.

D. How to notify

The notification must be completed in one of the official languages of the European Community. This language shall thereafter be the language of the proceeding for all notifying parties. Where notifications are made in accordance with Article 12 of Protocol 24 to the EEA Agreement in an official language of an EFTA State which is not an official language of the Community, the notification and all supporting documents shall simultaneously be supplemented with a translation into an official language of the Community.

The information requested by this form is to be set out using the sections and paragraph numbers of the form.

Supporting documents shall be submitted in their original language; where this is not an official language of the Community they shall be translated into the language of the proceeding (Article 2 (4) of Regulation (EEC) No 2367/90).

The supporting documents may be originals or copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.

The financial data requested in Section 2.4 must be provided in ecus at the average conversion rates prevailing for the years or other period in question.

Twenty-one copies of each notification and 16 copies of all supporting documents must be provided.

The notification should be sent to:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force (Cort. 150),
200 rue de la Loi,
B-1049 Brussels,

or be delivered by hand during normal Commission working hours at the following address:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
150 avenue de Cortenberg,
B-1040 Brussels.

E. Secrecy

Article 214 of the Treaty and Article 17 (2) of Regulation (EEC) No 4064/89 as well as Article 122 of the EEA Agreement, Article 9 of Protocol 24 to the EEA Agreement and Article 17 (2) of Chapter XIII of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and

a Court of Justice (ESA Agreement) require the Commission, the Member States, the EFTA Surveillance Authority and the EFTA States, their officials and other servants not to disclose information they have acquired through the application of the regulation of the kind covered by the obligation of professional secrecy. The same principle must also apply to protect confidentiality as between notifying parties.

If you believe that your interest would be harmed if any of the information you are asked to supply was to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked 'Business secrets'. You should also give reasons why this information should not be divulged or published.

In the case of merger or joint acquisitions, or in other cases where the notification is completed by more than one of the parties, business secrets may be submitted under separate cover, and referred to in the notification as an Annex. In such cases the notification will be considered complete on receipt of all the Annexes.

F. References

All references contained in this form are to the relevant articles and paragraphs of Regulation (EEC) No 4064/89.

Section 1

1.1. Information on notifying party (or parties)

Give details of:

1.1.1. name and address of undertaking;

1.1.2. nature of the undertaking's business;

1.1.3. name, address, telephone, fax and/or telex of, and position held by, the person to be contacted.

1.2. Information on other parties to the concentration ⁽¹⁾

For each party to the concentration (except the notifying party) give details of:

1.2.1. names and address of undertaking;

1.2.2. nature of the undertaking's business;

1.2.3. name, address, telephone, fax and/or telex of, and position held by, the person to be contacted.

1.3. Address for service

Give an address in Brussels, if available, to which all communications may be made and documents delivered in accordance with Article 1 (4) of Regulation (EEC) No 2367/90.

1.4. Appointment of representatives

Article 1 (2) of Regulation (EEC) No 2367/90 states that where notifications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act. Such written authorization must accompany the notification and the following details of the representatives of the notifying party or parties and other parties to the concentration are to be given below:

1.4.1. is this a joint notification?

1.4.2. if 'yes', has a joint representative been appointed?

if 'yes', please give the details requested in 1.4.3 to 1.4.6;

if 'no', please give details of the representatives who have been authorized to act for each of the parties to the concentration indicating whom they represent;

1.4.3. name of representative;

1.4.4. address of representative;

1.4.5. name of person to be contacted (and address if different from 1.4.4);

1.4.6. telephone, telefax and/or telex.

⁽¹⁾ This includes the target company in the case of a contested bid, in which case the details should be completed as far as is possible.

Section 2

Details of the concentration

- 2.1. Briefly describe the nature of the concentration being notified. In doing so state:
- whether the proposed concentration is a full legal merger, an acquisition, a concentrative joint venture or a contract or other means conferring direct or indirect control within the meaning of Article 3 (3) of Regulation (EEC) No 4064/89,
 - whether the whole or parts of parties are subject to the concentration,
 - whether any public offer for the securities of one party by another has the support of the former's supervisory boards, boards of directors or other bodies legally representing the party concerned.
- 2.2. List the economic sectors involved in the concentration.
- 2.3. Give a brief explanation of the economic and financial details of the concentration. In doing so provide, where relevant, information about the following:
- any financial or other support received from whatever source (including public authorities) by any of the parties and the nature and amount of this support,
 - the proposed or expected date of any major events designed to bring about the completion of the concentration,
 - the proposed structure of ownership and control after the completion of the concentration.
- 2.4. For each of the parties, the notifying party shall provide the following data for the last three financial years:
- 2.4.1. world-wide turnover ⁽¹⁾;
 - 2.4.2. Community-wide turnover ⁽¹⁾ ⁽²⁾;
 - 2.4.3. EFTA-wide turnover ⁽¹⁾ ⁽²⁾;
 - 2.4.4. turnover in each Member State ⁽¹⁾ ⁽²⁾;
 - 2.4.5. turnover in each EFTA State ⁽¹⁾ ⁽²⁾;
 - 2.4.6. the Member State, if any, in which more than two-thirds of Community-wide turnover is achieved ⁽¹⁾ ⁽²⁾;
 - 2.4.7. the EFTA State, if any, in which more than two-thirds of EFTA-wide turnover is achieved ⁽¹⁾ ⁽²⁾;
 - 2.4.8. profits before tax world-wide ⁽³⁾;
 - 2.4.9. number of employees world-wide ⁽⁴⁾.
- 2.5. Provide the following information with respect to the last financial year;
- 2.5.1. does the combined turnover of the undertakings concerned in the territory of the EFTA States equal 25% or more of their total turnover in the EEA territory?
 - 2.5.2. does each of at least two undertakings concerned have a turnover exceeding ECU 250 million in the territory of the EFTA States?

⁽¹⁾ See Article 5 for the definition of turnover and note the special provisions for credit, insurance, other financial institutions and joint undertakings. For insurance undertakings, credit and other financial institutions, Community residents and residents of a Member State are defined as natural or legal persons having their residence in a Member State, thereby following the respective national legislation. The corporate customer is to be treated as resident in the country in which it is legally incorporated. The same rules apply as regards the notion of residents in the territory of the EFTA States. For the calculation of turnover, the notifying party should also refer to the examples: guidance note I for credit and other financial institutions; guidance note II for insurance undertakings; guidance note III for joint undertakings.

⁽²⁾ See guidance note IV for the calculation of turnover in one Member State with respect to Community-wide turnover.

⁽³⁾ 'Profit before tax' shall comprise profit on ordinary activities before tax on profit.

⁽⁴⁾ Employees shall comprise all persons employed in the enterprise who have a contract of employment and receive remuneration.

Section 3

Ownership and control ⁽¹⁾

For each of the parties provide a list of all undertakings belonging to the same group. This list must include:

- 3.1. all undertakings controlled by the parties, directly or indirectly, within the meaning of Article 3 (3);
- 3.2. all undertakings or persons controlling the parties directly or indirectly within the meaning of Article 3 (3);
- 3.3. for each undertaking or person identified in 3.2, a complete list of all undertakings controlled by them directly or indirectly, within the meaning of Article 3 (3).

For each entry to the list the nature and means of control shall be specified:

- 3.4. provide details of acquisitions made during the last three years, by the groups identified above, of undertakings active in affected markets as defined in Section 5.

The information sought in this Section may be illustrated by the use of charts or diagrams where this helps to give a better understanding of the pre-concentration structure of ownership and control of the undertakings.

Section 4

Personal and financial links

With respect to each undertaking or person disclosed in response to Section 3 provide:

- 4.1. a list of all other undertakings which are active on affected markets (affected markets are defined in Section 5) in which the undertakings of the group hold individually or collectively 10 % or more of the voting rights or issued share capital. In each case state the percentage held;
- 4.2. a list of all other undertakings which are active on affected markets in which the persons disclosed in response to Section 3 hold 10 % or more of the voting rights or issued share capital. In each case state the percentage held;
- 4.3. a list for each undertaking of the members of their boards of management who are also members of the boards of management or of the supervisory boards of any other undertaking, which is active on affected markets; and (where applicable) for each undertaking a list of the members of their supervisory boards who are also members of the board of management of any other undertaking which is active on affected markets;

in each case stating the name of the other undertaking and the position held.

Information provided here may be illustrated by the use of charts or diagrams where this helps to give a better understanding.

Section 5

Information on affected markets

The notifying party shall provide the data requested having regard to the following definitions:

Product markets

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

A relevant product market may in some cases be composed of a number of individual product groups. An individual product group is a product or small group of products which present largely identical physical or technical characteristics and are fully interchangeable. The difference between products within the group will be small and usually only a matter of brand and/or image. The product market will usually be the classification by the undertaking in its marketing operations.

⁽¹⁾ See Article 3 (3), (4) and (5).

Relevant geographic market

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

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

Affected markets

Affected markets consist of relevant product markets or individual product groups in the EEA territory, in the common market, in the territory of the EFTA States, in a Member State or in an EFTA State or, where different, in any relevant geographic market where:

- (a) two or more of the parties (including undertakings belonging to the same group as defined in Section 3) are engaged in business activities in the same product market or individual product group and where the concentration will lead to a combined market share of 10% or more. These are horizontal relationships; or
- (b) any of the parties (including undertakings belonging to the same group as defined in Section 3) is engaged in business activities in a product market which is upstream or downstream of a product market or individual product group in which any other party is engaged and any of their market shares is 10% or more, regardless of whether there is not any existing supplier/customer relationship between the parties concerned. These are vertical relationships.

I. Explanation of the affected relevant product markets

- 5.1. Describe each affected relevant product market and explain why the products and/or services in these markets are included (and why others are excluded) by reason of their characteristics, their prices and their intended use.
- 5.2. List the individual product groups defined internally by your undertaking for marketing purposes which are covered by each relevant product market described under 5.1.

II. Market data on affected markets

For each affected relevant product market and, where different, individual product group, for each of the last three financial years:

- (a) for the EEA territory;
- (b) for the Community as a whole;
- (c) for the territory of the EFTA States as a whole;
- (d) individually for each Member State where the parties (including undertakings belonging to the same group as defined in Section 3) do business;
- (e) individually for each EFTA State where the parties (including undertakings belonging to the same group as defined in Section 3) do business;
- (f) and where different, for any relevant geographic market;

provide the following:

- 5.3. an estimate of the value of the market and, where appropriate, of the volume (for example in units shipped or delivered) of the market⁽¹⁾. If available, include statistics prepared by other sources to illustrate your answer. Also provide a forecast of the evolution of demand on the affected markets;
- 5.4. the turnover of each of the groups to which the parties belong (as defined in Section 3);
- 5.5. an estimate of the market share of each of the groups to which the parties belong;
- 5.6. an estimate of the market share (in value and where appropriate volume) of all competitors having at least 10% of the geographic market under consideration. Provide the name, address and telephone number of these undertakings;

⁽¹⁾ The value and volume of a market should reflect output less exports plus imports for the geographic market under consideration.

- 5.7. a comparison of prices charged by the groups to which the parties belong in each of the Member States and each of the EFTA States and a similar comparison of such price levels between the Community, the EFTA States and their major trading partners (e.g. the United States and Japan);
- 5.8. an estimate of the value (and where appropriate volume) and source of imports to the relevant geographic market;
- 5.9. the proportion of such imports that are derived from the groups to which the parties belong;
- 5.10. an estimate of the extent to which any of these imports are affected by any tariff or non-tariff barriers to trade.

III. Market data on conglomerate aspects

In the absence of horizontal or vertical relationship, where any of the parties (including undertakings belonging to the same group as defined in Section 3) holds a market share of 25 % or more for any product market or individual product group, provide the following information:

- 5.11. a description of each relevant product market and explain why the products and/or services in these markets are included (and why others are excluded) by reason of their characteristics, their prices and their intended use;
- 5.12. a list of the individual product groups defined internally by your undertaking for marketing purposes which are covered by each relevant product market described;
- 5.13. an estimate of the value of the market and the market shares of each of the groups to which the parties belong for each affected relevant product market and, where different, individual product group, for the last financial year:
 - (a) for the EEA territory as a whole;
 - (b) for the Community as a whole;
 - (c) for the territory of the EFTA States as a whole;
 - (d) individually for each Member State where the groups to which the parties belong do business;
 - (e) individually for each EFTA State where the groups to which the parties belong do business;
 - (f) and where different, for any relevant geographical market.

In each response in Section 5 the notifying party shall explain the basis of the estimates used or assumptions made.

Section 6

General conditions in affected markets

The following information shall be provided in relation to the affected relevant product markets and, where different, affected individual product groups.

Record of market entry

- 6.1. Over the last five years (or a longer period if this is more appropriate) has there been any significant entry to these markets in the Community or in the territory of the EFTA States? If the answer is 'yes', provide information on these entrants, estimating their current market shares.
- 6.2. In the opinion of the notifying party are there undertakings (including those at present operating only in extra-Community or extra EEA-markets) that could enter the Community's or EFTA's markets? If the answer is 'yes', provide information on these potential entrants.
- 6.3. In the opinion of the notifying party what is the likelihood of significant market entry over the next five years?

Factors influencing market entry

- 6.4. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product viewpoint. In so doing take account of the following where appropriate:

- the total costs of entry (capital, promotion, advertising, necessary distribution systems, servicing, etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor,
- to what extent is entry to the markets influenced by the requirement of government authorization or standard setting in any form? Are there any legal or regulatory controls on entry to these markets?
- to what extent is entry to the markets influenced by the availability of raw materials?
- to what extent is entry to the markets influenced by the length of contracts between an undertaking and its suppliers and/or customers?
- describe the importance of licensing patents, know-how and other rights in these markets.

Vertical integration

6.5. Describe the nature and extent of vertical integration of each of the parties.

Research and development

6.6. Give an account of the importance of research and development in the ability of a firm operating on the relevant market to compete in the long term. Explain the nature of the research and development in affected markets carried out by the undertakings to the concentration.

In so doing take account of the following where appropriate:

- the research and development intensities⁽¹⁾ for these markets and the relevant research and development intensities for the parties concerned,
- the course of technological development for these markets over an appropriate time period (including developments in products and/or services, production processes, distribution systems etc.),
- the major innovations that have been made in these markets over this time period and the undertakings responsible for these innovations,
- the cycle of innovation in these markets and where the parties are in this cycle of innovation,
- describe the extent to which the parties concerned are licensees or licensors of patents, know-how and other rights in affected markets.

Distribution and service systems

6.7. Explain the distribution channels and service networks that exist on the affected markets. In so doing take account of the following where appropriate:

- the distribution systems prevailing on the market and their importance. To what extent is distribution performed by third parties and/or undertakings belonging to the same group as the parties as disclosed in Section 3?
- the service networks (for example maintenance and repair) prevailing and their importance in these markets. To what extent are such services performed by third parties and/or undertakings belonging to the same group as the parties as disclosed in Section 3?

Competitive environment

- 6.8. Give details (names, addresses and contacts) of the five largest suppliers to the notifying parties and their individual share of the purchases of the notifying parties.
- 6.9. Give details (names, addresses and contacts) of the five largest customers of the notifying parties and their individual share of the sales of the notifying parties.
- 6.10. Explain the structure of supply and demand in affected markets. This explanation should allow the Commission further to appreciate the competitive environment in which the parties carry out their business. In so doing take account of the following where appropriate:
- the phases of the markets in terms of, for example, take-off, expansion, maturity and decline. In the opinion of the notifying party, where are the affected products in these phases?

⁽¹⁾ Research and development intensity is defined as research and development expenditure as a proportion of turnover.

- the structure of supply. Give details of the various identifiable categories that comprise the supply side and describe the 'typical supplier' of each category,
- the structure of demand. Give details of the various identifiable groups that comprise the demand side and describe the 'typical customer' of each group,
- whether public authorities, government agencies or State enterprises or similar bodies are important participants as sources of supply or demand. In any instance where this is so give details of this participation,
- the total Community-wide and EFTA-wide capacity for the last three years. Over the period what proportion of each of these capacities is accounted for by the parties and what have been their respective rates of capacity utilization?

Cooperative agreements

- 6.11. To what extent do cooperative agreements (horizontal and/or vertical) exist in the affected markets?
- 6.12. Give details of the most important cooperative agreements, research and development, specialization, distribution, long-term supply and exchange of information agreements.

Trade associations

- 6.13. List the names and addresses of the principal trade associations in the affected markets.

World-wide context

- 6.14. Describe the world-wide context of the proposed concentration indicating the position of the parties in this market.

Section 7

General matters

- 7.1. Describe how the proposed concentration is likely to affect the interests of intermediate and ultimate consumers, and the development of technical progress.
- 7.2. In the event that the Commission finds that the operation notified does not constitute a concentration within the meaning of Article 3 of Regulation (EEC) No 4064/89, do you request that the notification be treated as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Regulation No 17, as an application within the meaning of Article 12 or a notification within the meaning of Article 14 of Regulation (EEC) No 1017/68, as an application within the meaning of Article 12 of Regulation (EEC) No 4056/86 or as an application within the meaning of Article 3 (2) or 5 of Regulation (EEC) No 3975/87?

Section 8

Declaration

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

The undersigned declare that the information given in this notification is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

They are aware of the provisions of Article 14 (1) (b) of Regulation (EEC) No 4064/89.

Place and date:

Signatures:
