

Official Journal

of the European Communities

ISSN 0378-6986

C 294

Volume 33

24 November 1990

English edition

Information and Notices

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I

(Information)

COMMISSION

Ecu ⁽¹⁾

23 November 1990

(90/C 294/01)

Currency amount for one ecu:

Belgian and Luxembourg franc	42,3857	Portuguese escudo	180,259
German mark	2,05219	United States dollar	1,38278
Dutch guilder	2,31491	Swiss franc	1,73262
Pound sterling	0,702561	Swedish krona	7,68135
Danish krone	7,87355	Norwegian krone	8,00838
French franc	6,91805	Canadian dollar	1,60389
Italian lira	1540,07	Austrian schilling	14,4362
Irish pound	0,768895	Finnish markka	4,92685
Greek drachma	210,584	Japanese yen	175,917
Spanish peseta	129,857	Australian dollar	1,80638
		New Zealand dollar	2,25392

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

(¹) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).
Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Communication of Decisions under sundry tendering procedures in agriculture (cereals)

(90/C 294/02)

(See notice in Official Journal of the European Communities No L 360 of 21 December 1982, page 43)

Standing invitation to tender	Weekly invitation to tender	
	Date of Commission Decision	Maximum refund
Commission Regulation (EEC) No 1424/90 of 28 May 1990 on a special intervention measure for barley in Spain (OJ No L 137, 30. 5. 1990, p. 8)	22. 11. 1990	Tenders rejected
Commission Regulation (EEC) No 1425/90 of 28 May 1990 opening an invitation to tender for the refund for the export of barley to countries of zones I, II, III, IV, V, VI, VII, VIII and the Canary Islands (OJ No L 137, 30. 5. 1990, p. 11)	22. 11. 1990	ECU 102,48/tonne
Commission Regulation (EEC) No 1426/90 of 28 May 1990 opening an invitation to tender for the refund for the export of rye to countries of zones I, II, III, IV, V, VI, VII, VIII and the Canary Islands (OJ No L 137, 30. 5. 1990, p. 14)	—	No tenders received
Commission Regulation (EEC) No 1427/90 of 28 May 1990 opening an invitation to tender for the refund for the export of common wheat to countries of zones I, II, III, IV, V, VI, VII, VIII and the Canary Islands (OJ No L 137, 30. 5. 1990, p. 17)	22. 11. 1990	ECU 113,49/tonne
Commission Regulation (EEC) No 1646/90 of 18 June 1990 opening an invitation to tender for the refund for the export of durum wheat to countries of zones I, II, III, IV, V, VI, VII, VIII and the Canary Islands (OJ No L 154, 20. 6. 1990, p. 17)	22. 11. 1990	ECU 159,80/tonne
Commission Regulation (EEC) No 2620/90 of 10 September 1990 on an invitation to tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries (OJ No L 249, 12. 9. 1990, p. 9)	22. 11. 1990	ECU 283,00/tonne
Commission Regulation (EEC) No 2849/90 of 2 October 1990 on an invitation to tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries (OJ No L 271, 3. 10. 1990, p. 5)	22. 11. 1990	ECU 293,00/tonne
Commission Regulation (EEC) No 3180/90 of 30 October 1990 opening an invitation to tender for the reduction in the levy on maize imported from third countries (OJ No L 304, 1. 11. 1990, p. 65)	22. 11. 1990	Reduction in the levy
		ECU 44,67/tonne

Notice pursuant to Article 19 (3) of Council Regulation No 17 (1) concerning Case No IV/32 737 — Eirpage

(90/C 294/03)

1. On 17 May 1988, Bord Telecom Eireann ('Telecom') and Motorola Ireland Ltd ('Motorola') submitted for negative clearance or alternatively exemption, joint venture and accompanying agreements relating to the setting-up, promotion and operation of a nationwide paging system interconnected to the public telecommunications network. In the company set up for this purpose in April of 1988, 'Eirpage Ltd', the parties pool their complementary skills, namely Telecom's technological expertise in the provision of telecom infrastructure and services and Motorola's marketing and product expertise in radio-paging services.

A. The parties and the service concerned

2. Telecom was corporatized in 1984. Pursuant to Section 87 of the Postal and Telecommunications Services Act 1983 (the Act), in conjunction with the Telegraph Act of 1869, it continues to enjoy a statutory exclusive privilege with respect to certain telecommunications infrastructure and the provision of certain telecommunications services.

Since becoming corporatized, Telecom has introduced a number of new telecommunications services such as Eirpac (data network) and Eircell (cellular radio/mobile telephones). The joint venture with Motorola to provide paging services is the first time that Telecom has cooperated with another company to enter a new field.

3. Motorola is a wholly owned subsidiary of Motorola Inc. of Illinois, USA, which, with a worldwide turnover of \$ 9 billion in 1989, is one of the world leaders in mobile communications equipment and services. Before embarking on the Eirpage joint venture, Motorola (Ireland), which had a turnover of £ Irl 10,7 million and ± 120 employees in 1989, only offered telecommunications equipment, including paging receiver units, and not services.

4. The paging service offered by Eirpage falls within the broader category of mobile communication services in general, which includes mobile telephones and mobile radios. Paging is a one-way means of communicating with someone on the move who carries a pocket-sized receiving unit, which emits varying signals, such as

tone (beep), voice, numerical or computerized messages, depending on the sophistication of the receiver. The person carrying the pager can only receive messages, not reply to calls.

Interconnected paging is a particular kind of paging whereby a telephone, telex or data message can be transmitted via the public network to the receiving unit. In other words, one can dial the number of a paging receiver on a normal telephone to have access to the wearer. Where paging is not interconnected, it is operator-assisted, which means that an operator will intervene to receive the message to be paged from the caller and transmit it to the paging unit of the customer.

5. In Ireland, the mobile communications sector is at present composed of traffic via mobile radios (35 %), mobile telephones (40 %) and pagers (25 %). Eirpage at present covers 12 % of mobile communications, and with 5 600 subscribers, approximately 50 % of the overall paging sector.

Aside from Eirpage, there are eight companies providing operator-assisted paging services mainly in the Dublin area or other population centres such as Cork and Limerick. The number of subscribers of these companies ranges from under 100 to approximately 2 000. Eirpage plans to cover virtually all regions of the country and aims at achieving 10 000 customers, nationwide, by 1992. By March of 1990, 70 % of the geographical surface of Ireland, representing 80 % of the population, was covered with 24 transmitters in operation; 33 are scheduled by May 1991.

B. The agreements as originally notified

6. The notification involves six documents:

- (1) the *joint venture agreement*: in order to establish and promote a nationwide paging service, Telecom and Motorola agree to set up a joint venture company, Eirpage Ltd, to be owned 51 % by Telecom and 49 % by Motorola. In view of these shareholdings, Eirpage is a subsidiary of Telecom and thus enjoys the exclusive privilege of engaging in telecommunications services bestowed on Telecom by Section 87 of the Act without the need for a licence.

(1) OJ No 13, 21. 2. 1962, p. 204/62.

As far as the management of the company is concerned, Telecom and Motorola have equal powers: three directors are appointed by Telecom, three by Motorola, and all decisions by the Board require a majority vote, while most of the business decisions of any consequence require unanimity.

The joint venture agreement provides that neither party will engage in a competing paging service, either independently or in association with others, during the term of the joint venture agreement and three years following termination thereof;

- (2) the *business plan* annexed to the joint venture agreement sets out Eirpage's basic objectives and the forecast agreed by the parties as to the projected financial outcome of Eirpage's first five years of operation;
- (3) the *marketing service and business development agreement* between Telecom, Motorola and Eirpage relates to the provision of expertise by Motorola to Eirpage and by the latter to Telecom personnel;
- (4) the *operating agreement* between Telecom and Eirpage fixes the terms under which Telecom will provide access to the public network to Eirpage. Telecom agrees to install and maintain the physical attributes necessary to operate the paging system, namely antennas, transmitters and the paging exchange needed to interconnect to the public network, cumulatively referred to as the 'facilities'. These facilities belong to Telecom and form part of the public telecommunications network. Although the cost was initially estimated at less than £ Irl 1 million, the actual expenditure has risen to twice that amount due *inter alia* to a wider geographical coverage than originally planned. Telecom received approximately £ Irl 500 000 for the project under the Community's 'STAR' programme which aims at developing less forward regions by improving access to advanced telecommunications services.

In order to cover this capital expenditure, and in return for the use of these facilities, Eirpage agrees to pay Telecom an annual operating fee which is calculated to fully amortize this paging network investment by Telecom over a 10-year period, together with a return of 5 % over investment. The annual fee furthermore covers other services provided by Telecom, namely: 1. rental of a space for the antennas on a Telecom tower, 2. use of leased lines, 3. rental of space on Telecom's premises for the paging exchange, 4. maintenance of the paging network and 5. the interconnect charge; these

services are charged at the normal, publicly known commercial rates.

The operating agreement provides a proportionate reduction in the charges payable by Eirpage for the use of the facilities in the event other paging operators share the use of the same facilities;

- (5) the *standard agency agreement*: Eirpage does not itself sell the paging service directly to customers, but does so via a network of independent, non-exclusive agents. Once an agent has found a new customer, the actual subscriber agreement is signed between the customer and Eirpage. Agents are true agents in that they are obliged to apply the subscription rates and other conditions imposed by Eirpage. They receive an on-going monthly commission ranging from 10 % to 30 %, depending on the number of subscribers they have found for Eirpage, and provided those subscribers remain 'live'. Agency agreements can be terminated by either party on an annual basis.

At the time Eirpage was launched, the existing paging service providers were invited to become Eirpage agents. Likewise, paging equipment manufacturers and other interested parties were given the opportunity of becoming agents. At present, there are 15 agents including three service providers which continue to offer their own operator-assisted, local rather than nationwide, paging services alongside finding subscribers for Eirpage.

Eirpage is obliged by the agency agreement not to discriminate amongst the agents. Sales leads which come to Eirpage are passed on to agents in a rotating alphabetical order without any preferential treatment for TEIS, a Telecom subsidiary, and Motorola, which also act as agents.

Competition exists between the agents on various levels. As far as the Eirpage service is concerned, the fact that the subscription rates are necessarily fixed does not exclude price competition amongst the agents, who in practice are willing to discount on their commission in order to secure business, thereby offering advantageous subscription rates. Secondly, there is competition amongst agents with regard to the marketing and presentation of the Eirpage service. Finally, agents who are paging service providers in their own right continue to offer their own services alongside those of Eirpage.

Eirpage agents are free to sell whatever equipment they want, and with or without the Eirpage name or logo attached. In view of the fact that many agents are also paging equipment manufacturers, finding customers for Eirpage can have a direct beneficial effect on the sale of their own equipment.

- (6) the *standard subscriber agreement*: the subscriber agreements are concluded directly between Eirpage and the customer found by an Eirpage agent. In order to cover the administrative costs of putting a new subscriber on the system, a minimum period of normally 12 months applies, after which notice can be given on a monthly basis. Subscribers pay a monthly charge to Eirpage which varies according to the sophistication of the pager being used and the geographical extent of the coverage desired by each individual subscriber, ranging from the home zone only up to full national coverage. Subscribers are free to use whatever type and brand of paging receiver equipment they want, and may choose to rent or buy the pager, depending on the terms offered by the equipment provider, normally the agent through whom they were brought into contact with Eirpage.

C. The agreements as amended or clarified following the Commission's intervention

7. The arrangements as notified presented a number of problems from the point of view of competition policy which stood in the way of a favourable attitude on the part of the Commission. During the course of the notification procedure, the following issues were resolved in a satisfactory manner.

(1) *Market entry by third parties*

The Commission has sought assurances from Telecom and the relevant licensing authorities that companies interested in competing directly with Eirpage in the wide-area interconnected paging sector will be treated on exactly the same footing as Eirpage. Successful market entry depends on (a) the availability of facilities such as those used by Eirpage to operate the service and (b) the procurement of licences, including the necessary frequency allocation.

- (a) Telecom has given a written undertaking to make available to persons satisfying the relevant licensing and financial requirements the facilities necessary for operating a wide-area interconnected paging service, under the same conditions as those which apply to Eirpage. These include the obligation on the paging operator to use such equipment for not less than a specified period mutually agreed upon by the parties on the basis of the total investment made by Telecom and the payment to Telecom of an annual charge calculated to remunerate the cumulative capital cost fully amortized over that period together with a reasonable return over the capital cost; in respect of the provision by Telecom of interconnection, space and other services, such as maintenance, the standard commercial charges shall apply, as they do to Eirpage.

Telecom has agreed to make the full text of the undertaking available to interested parties and to inform the Commission of any requests made pursuant thereto and the outcome of such applications.

The facilities referred to in Telecom's undertaking form part of Telecom's telecommunications network and are owned exclusively by Telecom. The undertaking does not of course in any way prejudice other options which market entrants may prefer, such as the choice to buy the necessary equipment themselves, whereby the services required of Telecom such as the use of leased lines would be made available at the normal rates. Interconnection to the public switched telephone network (PSTN), telex and public switched data network (PSDN-Eirpac) is universally available on a non-discriminatory basis to those operators meeting the relevant licensing requirements.

Finally, the Commission has noted that pursuant to an order from the Minister for Communications under Section 110 of the Act, Eirpage could be obliged to share the facilities established for its use with other service providers. To reflect more accurately the Minister's power in this respect, the parties have agreed to redraft the provision in the operating agreement between Telecom and Eirpage which limited Telecom's right to expand the facilities.

- (b) The administrative procedure which an applicant paging service provider must successfully complete consists of one or alternatively two elements, depending on the type of service envisaged:

- (1) All paging service operators, regardless of whether the service offered is interconnected, operator-assisted, regional or national, must receive a frequency allocation in the form of a licence under the Wireless Telegraphy Act 1926. Frequency/spectrum management is carried out under the sole competence of the Minister for Communications. Thus, Eirpage itself is dependent on the Minister for frequency allocation on the same footing as other paging service providers, and has received licences to that effect.
- (2) Companies interested in providing a paging service interconnected to the public telecommunications network require in addition to the frequency allocation licence, a licence under the Act. This licence can be granted at the applicant's choice either by the Minister of Communications, after consultation of Irish Telecom, whose opinion is however not binding,

or by Telecom itself; refusals by the latter are subject to appeal. Contrary to the licence under the 1926 Act, Eirpage did not require a licence under the 1983 Act because it is a subsidiary of Telecom and thus enjoys the exclusive privilege bestowed on the latter under Section 87.

At present, the frequency allocation and licensing requirements do not appear to constitute a barrier to entry to the paging sector for interested companies. On the spectrum management side, the Department of Communications has reserved the 153 to 154 MHz band solely for paging services. According to the Department, the approximately 40 channels consequently available for paging service providers should be adequate to meet any foreseeable needs in this sector. If necessary, a new band could be opened to meet channel requirements.

As far as the licence under the 1983 Act is concerned, the relevant authorities have confirmed that licences would be available for national interconnected paging services on the basis of objective criteria, such as the technical capacity and financial resources of the applicant and the likelihood of a continuous service. Normal judicial review would apply in case of a refusal. To date, Eirpage, which as noted above did not require a licence under the 1983 Act, is the only company providing interconnected paging services, so that an actual application of the licensing procedure has not yet taken place.

(2) *Cross-subsidization and preferential tariffs*

Written assurances have been provided by a chartered accountant that Eirpage pays full cost and expenses to Telecom and to Motorola for staff, facilities and services; Eirpage operates at arm's length from both parent companies with its own separate offices and all expenditure is funded through a bank overdraft facility which is entirely separate from either parent company. Eirpage establishes its own financial statements, independent of Telecom's annual accounts.

(3) *The paging equipment market*

Eirpage only provides a paging service and does not sell paging equipment. The parties have stated that the Eirpage system has been configured specifically to offer maximum compatibility with the products of all manufacturers. As stated above, Eirpage agents are free to sell whatever equipment they want, with or without the

Eirpage name or logo attached. In case of enquiries to Eirpage concerning manufacturers' equipment, information is provided regarding all manufacturers or their representatives in Ireland. Only average prices are quoted to customers, not the prices of a particular brand of equipment.

In order to further reassure paging equipment manufacturers that the joint venture will not give an unfair advantage to Motorola for the sale of its equipment, the parties have confirmed that:

- (a) Eirpage will cooperate with all paging equipment manufacturers or dealers to the extent technically possible that their products can be used on the Eirpage system;
- (b) Motorola pagers will be sold with the same discounts to all Eirpage agents subject to the normal commercial criteria based on volume and credit.

Furthermore, clarifications regarding the type-approval procedure for paging equipment have provided the necessary reassurances that manufacturers competing with Motorola cannot be discriminated against in any way. Contrary to a mistaken belief, it is not Telecom, but the Minister of Communications which establishes the criteria for type-approval. Although Telecom does provide some type-approval services, this is done on agency basis only, which means that the testing carried out by Telecom is an application of the standards established by the Minister. Furthermore, a second testing agency, Eolas, exists, so that equipment manufacturers and importers have a choice. Finally, the Minister of Communications has confirmed that although type-approval is, strictly speaking, still required for paging equipment, in practice such receive-only equipment which is not liable to harm the network in any way is not subjected to testing by either test house.

4. *The standard agency agreement*

Certain amendments were required to ensure that the agency agreements do not have restrictive effects, notably *vis-à-vis* paging service providers who continue to provide their own complementary services next to those of Eirpage. To this end, the parties have agreed to the following changes in the standard agency agreement (references are to the November 1988 version):

- (a) clause 4 (a) has been redrafted in order to clarify that only sales leads which have been passed on to a given agent by Eirpage must first be used by that agent to promote the Eirpage service; if the latter is not suitable for the customer, the agent is subsequently free to promote his own service. In all other contacts with potential customers, the agent is free to promote his own service first or in any case on the same basis as the Eirpage service;

- (b) clause 4 (c) which imposed an absolute obligation on agents of loyalty to Eirpage 'in all matters', was too broad and has been redrafted to reflect the agent's freedom to continue pursuing his own interests; Eirpage's instructions need only be followed in respect of specific Eirpage matters;
- (c) clause 4 (f) obliged an agent to bring to the attention of Eirpage any information it received which was likely to be of benefit to Eirpage in marketing the services. This obligation could not be reconciled with an agent's legitimate wish to continue or start competing with Eirpage and has been deleted;
- (d) in clause 4 (l), it has been clarified that the designation 'Eirpage Authorized Agent' is subsidiary to the agent's own denomination;
- (e) the post-term non-compete obligation of clause 9 (7) (i), whereby agents were prevented for a period of three years following the termination of the agency agreement from soliciting persons who at the time of termination were Eirpage subscribers, has been deleted;
- (f) direct competitors of Eirpage, i.e. paging companies providing nationwide interconnected paging services, should not be permitted as agents. This also means that existing agents who do not yet provide such services but decide to enter that specific sub-market at a later date, must at that point relinquish their

position as an Eirpage agent. Provisions reflecting the above have been added to the agency agreement.

5. *The parties' position after termination of the joint venture*

In the event that the joint venture agreement is terminated, Telecom and Motorola must be free to compete with each other immediately. To that end, the post-term non-compete obligation provided for in Article 18 (2) of the joint venture agreement has been deleted at the request of the Commission.

The Commission's intentions

On the basis of the foregoing facts, the Commission intends to take a decision granting an exemption pursuant to Article 85 (3) of the EEC Treaty, subject to certain reporting requirements. Before doing so, the Commission invites interested third parties to send their observations within one month from the publication of this notice to the following address, quoting the reference IV/32.737 — Eirpage:

Commission of the European Communities,
Directorate-General for Competition,
Directorate for Restrictive Practices, Abuse of Dominant Positions and Other Distortions of Competition, I,
rue de la Loi 200,
B-1049 Brussels.

COURT OF JUSTICE

Action brought on 24 September 1990 by British Aerospace Public Limited Company and Rover Group Holdings plc against the Commission of the European Communities

(Case C-294/90)

(90/C 294/04)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 September 1990 by British Aerospace Public Limited Company and Rover Group Holdings plc, both represented by Jeremy Lever, QC, and K. P. E. Lasok, Barrister, instructed by D. F. Hall and J. E. Flynn, Solicitors, of Linklaters & Paines, London, with an address for service at the chambers of Freddy Brausch of Loesch & Wolter, 8 rue Zithe, Luxembourg.

The applicant claims that the Court should:

- (a) annul the Commission Decision made on 27 June 1990 in so far as it requires the United Kingdom to 'recover' from British Aerospace and or Rover the 'additional £ 44,4 million aid granted in the context of the sale of the Rover Group plc to British Aerospace';
- (b) order the Commission to pay the costs of this action.

Contentions and main arguments:

Infringement of essential procedural requirements: the Commission did not initiate proceedings under Article 93 (2) EEC. Nor did it invite British Aerospace or Rover to submit their comments (even though the Commission was well aware that they were the recipients of the alleged State aid).

(As to 'recovery' from British Aerospace of £ 33,4 million, representing the value of the benefit of deferring by 20 months the payment to the British Government of the purchase price for Rover.)

Non-fulfilment of the necessary conditions for the recovery of State aid: if the sole basis for the alleged illegality of the benefits to British Aerospace is that, as the Commission alleges, they did not form part of the terms of sale notified to the Commission by the British

Government and constituted an alteration to those terms of sale, contrary to Article 1 of the 1988 Decision, that constitutes no legal basis whatsoever for an order for the 'recovery' of the benefits from British Aerospace. The contested decision does not suggest that, even with the benefit of the alleged State aids to British Aerospace, British Aerospace acquired Rover from the British Government for less than the 'real value' of Rover.

Erroneous characterization of the benefit as a State aid incompatible with the common market: as the deferred payment was part of a commercial contract of sale there was no gratuitous advantage. Since the benefit accrued to British Aerospace, it cannot be said to have benefited or assisted Rover any more than it might be said to have benefited or assisted any other part of the British Aerospace group of companies.

Error in the calculation of the amount recoverable and/or failure to respect the principle of proportionality.

Inadequate or defective reasoning.

(As to 'recovery' from British Aerospace of the £ 9,5 million paid to British Aerospace by the British Government as a contribution towards the cost incurred by British Aerospace in purchasing the shares in Rover that were not held by the British Government.)

Non-fulfilment of the necessary conditions for the recovery of State aid.

Erroneous characterization of the benefit as a State aid incompatible with the common market: British Aerospace acquired the minority shareholdings at a valuation of £ 10,7 million in cash and £ 2,1 million in British Aerospace shares; and the British Government contributed £ 9,5 million towards the cost. Both the British Government, for reasons of social justice, and British Aerospace, for reasons partly of social justice and partly of public relations, did not feel that it would have been right that British Aerospace exercise its legal rights under English law compulsorily to acquire the

outstanding minority shareholdings at the same price per share as it had agreed to pay to the British Government. As on any commercial calculation the minority shareholdings were worth much less than the £ 3,3 million borne by British Aerospace, the only persons who can be said to have received a gratuitous advantage are the former minority shareholders in Rover.

Error in the calculation of the amount recoverable and/or failure to respect the principle of proportionality

Inadequate or defective reasoning.

(As to recovery from Rover of the reimbursement to it of £ 1,5 million paid by the British Government as a contribution towards costs incurred by Rover in connection with its privatization.)

Erroneous characterization of the benefit as a State aid incompatible with the common market: the reimbursement covered costs relating to the general purpose of returning Rover to the private sector. But for the action taken by Rover, the British Government itself would have needed to incur costs for the furtherance of its objective.

Action brought on 15 October 1990 by Groupement des Industries de Matériels d'Équipement Électrique et de l'Électronique Industrielle Associée (Gimelec), Asociación nacional de fabricantes de bienes de equipo (Sercobe), Sole SpA and Nouva IB-MEI SpA against the Commission of the European Communities

(Case C-315/90)

(90/C 294/05)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 15 October 1990 by Groupement des Industries de Matériels d'Équipement Électrique et de l'Électronique Industrielle Associée (Gimelec), Asociación nacional de fabricantes de bienes de equipo (Sercobe), Sole SpA and Nouva IB-MEI SpA, represented by Jean-François Bellis, of the Brussels Bar, with an address for service in Luxemburg at the Chambers of Freddy Brausch, 8 rue Zithe.

The applicant claims that the Court should:

— Declare void Commission Decision 90/399/EEC of 26 July 1990 terminating an anti-dumping proceeding concerning imports of certain single phase, two-speed

electric motors originating in Bulgaria, Romania and Czechoslovakia ⁽¹⁾,

— Order the Commission to pay the costs.

Contentions and main arguments adduced in support:

(As regards imports from Romania and Czechoslovakia)

Misinterpretation of Article 4 (2) of Regulation (EEC) No 2423/88 ⁽²⁾; manifest discrimination. Contrary to what the Commission would appear to believe, Article 4 (2) of Regulation (EEC) No 2423/88 in no way makes a finding of injury conditional on an increase in the share of the market held by imports. In any event, the Commission would not have found a reduction in the share of the market held by imports if it had applied here the usual practice followed by it in all previous cases involving a product sold, as in this case, both within an integrated group and on the 'free market'. In such cases, the Commission's usual practice is to examine changes in market shares solely on the 'free market' for the product concerned. The Commission's refusal to establish the existence of injury as a result of the — marginal — decrease in the large share of the market held by the imports in question is therefore manifestly unreasonable.

The Commission came to the conclusion, without justification, that the imports had no effect on the prices charged by Community producers.

(As regards imports from Bulgaria)

In view of the Bulgarian exporter's failure to cooperate, the Commission should have applied Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission's finding that no exports from Bulgaria were established in 1988 or during the period covered by the investigation seems baseless.

⁽¹⁾ OJ No L 202, 31. 7. 1990, p. 47.

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1.

Action brought on 22 October 1990 by the Commission of the European Communities against the Portuguese Republic

(Case C-323/90)

(90/C 294/06)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 22 October 1990 by the Commission of the European Communities, represented by Jörn Sack and Helena Varandas, acting as Agents, with an address for service in Luxembourg at the office of Guido Gerardis, Centre Wagner, Kirchberg.

The applicant claims that the Court should:

- Declare that the Portuguese Republic has failed to fulfil its obligations under Regulation (EEC) No 3632/85⁽¹⁾ by maintaining in force national legislation, in spite of the fact that the Regulation is directly applicable, and by prohibiting, through that national legislation, the professional category of forwarding agents from making a customs declaration other person;
- Order the Portuguese Republic to pay the costs.

Contentions and main arguments adduced in support:

The Portuguese legislation does not comply with the alternative laid down in Article 3 (3) of Regulation (EEC) No 3632/85 when it reserves to customs officials the combined use of the two types of agency provided for therein for making a customs declaration and at the same time absolutely prohibits other categories of persons, in this case forwarding agents, from making such a declaration.

⁽¹⁾ OJ No L 350, 27. 12. 1985, p. 1.

Action brought on 23 October 1990 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-325/90)

(90/C 294/07)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 23 October 1990 by the Commission of the European Communities, represented by René Barents, a member of its Legal Department, with an address for service in Luxembourg at the office of E. Berardis, a member of the Commission's Legal Department.

The applicant claims that the Court should:

- Declare that the Belgian Government has infringed Article 30 of the EEC Treaty by applying specification RTT RN/SP 208 to telephone sets intended to be connected to the public network;
- Order the Belgian Government to pay the costs.

Contentions and main arguments adduced in support:

The RTT specifications contain a large number of provisions in particular, Articles 4.1, 4.2, 4.5 and 4.6 of the 'General' provisions; Articles 1, 3.4 and 6 D of Part II; Article 2 of Part III; Articles 1 A, 1 B, 3 D, 4, 5, 6 and 9 E of Part IV, which prevent sets that are approved in other Member States from being sold in Belgium. They are thus contrary to Article 30 of the EEC Treaty.

II

(Preparatory Acts)

COMMISSION

Amendment to the proposal for a Council Regulation (EEC) on the introduction of the final regime for the organization of the market for the carriage of goods by road

COM(90) 532 final

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 30 October 1990)

(90/C 294/08)

The Commission's proposal of 16 March 1990, which is set out in COM(90) 64 final ⁽¹⁾, is hereby amended as follows:

1. The title of the proposal is replaced by:

'Proposal for a Council Regulation (EEC) on measures to be adopted in the event of a crisis in the market for the carriage of goods by road'

2. The first indent of Article 2 (1) is replaced by:

'— a clear excess of supply of transport capacity over demand, causing a significant rise in unemployment; and'

3. Article 3:

(a) the third indent is replaced by:

'— volume transported in tonnes and tonnes/km;'

(b) the fourth indent is replaced by:

'— employment trends in the sector (number of unemployed and of breaches of social provisions);'

4. The first indent of Article 5 is replaced by:

'— freeze or temporarily limit the supply of transport capacity to the market in question;'

5. Article 10 is replaced by:

Article 10

By 31 March 1995 at the latest, and subsequently every two years, the Commission shall report to the Council and to Parliament on the application of this Regulation and, where necessary, propose amendments. The Council shall act on the Commission's proposal not later than nine months after its presentation.'

⁽¹⁾ OJ No C 87, 5. 4. 1990, p. 4.

Amendment to the proposal for a Council Directive concerning minimum requirements for vessels entering or leaving Community ports carrying packages of dangerous or polluting goods ⁽¹⁾

COM(90) 452 final

(Submitted by the Commission pursuant to the third paragraph of Article 149 of the EEC Treaty on 31 October 1990)

(90/C 294/09)

⁽¹⁾ OJ No C 147, 14. 6. 1989 [COM(89) 07 final].

The proposal for a Council Directive of 19 May 1989, document COM(89) 07 final shall be modified as follows:

ORIGINAL PROPOSAL

MODIFIED PROPOSAL

First recital

Whereas the volume of dangerous goods carried by sea has been growing unabated, increasing the risk of accidents that could be on a catastrophic scale;

Whereas the volume of dangerous or polluting goods carried by sea has been growing unabated, increasing the risk of accidents that could be on a catastrophic scale;

Second and third recitals unchanged

Recital 4a

(new)

Whereas recent cases of accidents have shown the difficulty of providing speedy and proper compensation for victims (including fishermen, tourists, coastal communities), and whereas it is therefore the political responsibility of governments and carriers to reduce the risks before having to provide compensation;

Recital 5a

(new)

Whereas 14 European countries, including the Member States of the EC, have signed the Memorandum of Understanding on Port State Control, which includes Marpol 73/78 among the relevant instruments compliance with which is required by inspections;

ORIGINAL PROPOSAL

MODIFIED PROPOSAL

Article 1

The purpose of this Directive is to require vessels entering or leaving Community ports carrying packages of dangerous goods to observe a number of minimum standards designed to improve shipping safety, safeguard human life and protect the marine environment.

The purpose of this Directive is to require vessels entering or leaving Community ports carrying dangerous or polluting goods in packages to observe a number of minimum standards designed to improve shipping safety, safeguard human life and protect the marine environment.

Article 2

For the purposes of this Directive:

- '*vessels concerned*' means vessels carrying dangerous goods in packages, containers, mobile tankers, tanker lorries and tanker wagons;
- '*dangerous goods*' means the substances, products, solutions, mixtures, etc.

For the purposes of this Directive:

- '*vessels concerned*' means vessels entering or leaving Community ports and carrying dangerous or polluting goods in packages, containers, mobile tankers, tanker lorries and tanker wagons;
- '*dangerous or polluting goods*':
 - (a) substances, products, solutions, mixtures, etc. prescribed by the IMDG code (International maritime code on the transport of dangerous goods) on the entry into force of the Directive,
 - (b) waste materials laid down in Council Directive 75/442/EEC — as amended — to the extent that they fulfil the specifications and the criteria as defined in the IMDG code.

Articles 3 and 4 unchanged

Article 5 (i)

(i) communicate to the competent authority of the Member State in which the port of berthing or departure is located, either directly or via agents representing their line, the information listed in Annex I to this Directive. This information must be submitted not later than 24 hours before the vessel berths or sets sail (or in good time for short-sea sailings);

(i) communicate to the competent authority of the Member State in which the port of berthing or departure is located, either directly or via agents representing their line, the information listed in Annex I to this Directive. This information must be submitted not later than 24 hours before the vessel berths or sets sail (or in good time for short-sea sailings). This information shall be communicated on demand by the competent authority to port workers' representatives;

ORIGINAL PROPOSAL

MODIFIED PROPOSAL

Article 5 (ii)

(ii) establish as soon as possible radiotelephone communication with the coastal radio stations in the Member State concerned — in particular with the nearest radar station, if there is one — and maintain such communication;

(ii) establish as soon as possible radiotelephone communication with the coastal radio stations in the Member State concerned — in particular with the nearest radar station, or maritime emergency services, where they exist — and maintain such communication in conformity with the international rules normally applied;

Article 5 (iv)

(iv) avail themselves of the pilot services available on the spot and provide the pilot — and on request the competent authority in the Member State in which the port is located — with a check list based on the model in Annex II to this Directive plus a copy of the list or manifest mentioned in point 1.8 of Annex I.

(iv) avail themselves of the pilot services available on the spot and provide the pilot — and on request the competent authority in the Member State in which the port is located — with a check list complying with the international regulations plus a copy of the list or manifest mentioned in point 1.8 of Annex I.

An example of this last document shall be presented, before the ship sets sail, to the person or organization designated by the port authority of the Member State concerned.

Article 5a

(new)

The shipping authorities of the Member States may prohibit movement by the vessels concerned where they consider that shipping safety, the safety of workers or the protection of the marine environment so requires.

Article 5b

(new)

The shipping authorities of the Member States may order the vessels concerned to follow certain courses or to take on board a pilot within their territorial waters.

Article 6

first indent

— any deficiencies or incidents which may decrease the normal safe manoeuvrability of the vessel, affect the safety and flow of traffic or constitute a real or potential hazard to the marine environment or coastal areas;

— any deficiencies or incidents which may decrease the normal safe manoeuvrability of the vessel, pose a risk to the health or safety of crews or land-based workers, affect the safety and flow of traffic or constitute a real or potential hazard to the marine environment or coastal areas;

ORIGINAL PROPOSAL

MODIFIED PROPOSAL

Article 6

second indent

— any leak of dangerous goods within the vessel and any discharges at sea of such goods, particularly of goods listed in Annex 4.II. This notification must be based on the model set out in Annex 3.

— any leak of goods covered by this Directive within the vessel and any discharges at sea of such goods. This notification must be based on the IMO's standard procedures.

Article 6a

(new)

Navigation in the territorial waters of the ships concerned may be forbidden or the presence of a pilot on board may be required when visibility is impaired and/or the sea is rough.

Article 7

Pilots engaged in the berthing or departure of the vessels concerned shall immediately inform the competent authority in the Member State in which the port is located whenever they learn of any deficiencies which may prejudice the safe navigation of the vessel or cause pollution of the marine environment.

Pilots engaged in the berthing or departure of the vessels concerned shall immediately inform the competent authority in the Member State in which the port is located whenever they learn of any deficiencies which may prejudice the safe navigation of the vessel, pose a risk to the health or safety of crews and land-based workers or cause pollution of the marine environment.

Articles 7, 8 and 9 unchanged

Article 10a

(new)

1. The Commission shall take the necessary measures to:

- adapt this Directive in the light of scientific-technical progress, in the fields concerned by its scope,
- take into account the future amendments of the IMDG mentioned in Article 2.

For this purpose the Commission shall be assisted by an Advisory Committee composed of representatives from Member States and chaired by the Commission.

ORIGINAL PROPOSAL

MODIFIED PROPOSAL

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall give its opinion on the draft within a deadline to be fixed by the Chairman in the light of the urgency of the point at issue, and if necessary proceed to a vote.

3. The opinion shall be written into the minutes: further, each Member State shall have the right to request that its proposal is recorded in the minutes.

4. The Commission shall be guided as far as possible by the Committee's opinion and shall inform the Committee how its advice has been followed.

ANNEX I: Title

Information on vessels carrying packages of dangerous goods

Information on vessels carrying dangerous goods or harmful substances in packaged forms

Points 1.1. to 1.6 unchanged

1.7. Precise nature of the dangerous goods carried, based on the lists set out in Annexes 4, 4a and 4b, numbers and quantities involved and location on the vessel

1.7. Precise nature of the substances carried, in accordance with the provisions of the nomenclature of the IMDG code, numbers and quantities involved and location on the vessel

Point 1.8 unchanged

ANNEX II

Check list for vessels carrying packages of dangerous goods

Check list for vessels carrying dangerous goods or harmful substances in packaged forms

A. Vessel identification

A. Vessel identification

Name of vessel:

Name of vessel:

Flag:

Flag:

Port of registry:

Port of registry:

Vessel's international call sign, if available:

Remainder unchanged

Annexes III and IV deleted

III

(Notices)

COMMISSION

Results of invitation to tender (Tobacco)

(90/C 294/10)

Notice of a Commission invitation to tender for the sale for export of 12 598 742 kilograms of baled tobacco from the 1987 and 1988 harvests held by the Italian intervention agency (AIMA)

(Official Journal of the European Communities No C 228 of 13 September 1990, page 6)

Numéro des lots Lot No Numero della partita Nr. der Partie Nr. van de partijen Parti nr. Nº de los lotes Nº dos lotes Αριθ. παρτίδων	Variétés Variety Varietà Sorte Soorten Sort Variedad Variedade Ποικιλίες	Adjudicataire Successful tenderer Aggiudicatario Zuschlagsempfänger Koper Kontraktmodtager Adjudicatario Adjudicatário Υπερθεματιστής
1	Tsebelia 1987 Bright 1987 1 958 270 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
2	Tsebelia 1987 Burley 1987 1 983 207 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
3	Tsebelia 1987 Burley 1987 2 261 774 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
4	Mavra 1987 Burley 1987 1 821 322 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα

Numéro des lots Lot No Numero della partita Nr. der Partie Nr. van de partijen Parti nr. N° de los lotes N° dos lotes Αριθ. παρτίδων	Variétés Variety Varietà Sorte Soorten Sort Variedad Variedade Ποικιλίες	Adjudicataire Successful tenderer Aggiudicatario Zuschlagsempfänger Koper Kontraktmodtager Adjudicatario Adjudicatário Υπερθεματιστής
5	Tsebelia 1988 Kentucky 1987 1 354 590 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
6	Tsebelia 1988 F. Havanna 1987 Kentucky 1987 1 710 872 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
7	Mavra 1988 F. Havanna 1987 Kentucky 1987 1 508 707 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα

Results of invitation to tender (Tobacco)

(90/C 294/11)

Notice of a Commission invitation to tender for the sale for export of 1 188 308 kilograms of baled tobacco from the 1987 and 1988 harvests held by the German (BALM) and the Greek intervention agencies (YDAGEP)

(Official Journal of the European Communities No C 228 of 13 September 1990, page 17)

Numéro des lots Lot No Numero della partita Nr. der Partie Nr. van de partijen Parti nr. N° de los lotes N° dos lotes Αριθ. παρτίδιων	Variétés Variety Varietà Sorte Soorten Sort Variedad Variedade Ποικιλίες	Adjudicataire Successful tenderer Aggiudicatario Zuschlagsempfänger Koper Kontraktmodtager Adjudicatario Adjudicatário Υπερθεματιστής
1	Tsebelia 1987 Basmas 1988	717 568 kg Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
2	Tsebelia 1987 Basmas 1988	470 740 kg Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα

Results of invitation to tender (Tobacco)

(90/C 294/12)

Notice of a Commission invitation to tender for the sale for export of 3 751 592 kilograms of baled tobacco from the 1986 and 1987 harvests held by the Greek intervention agency (YDAGEP)

(Official Journal of the European Communities No C 228 of 13 September 1990, page 12)

Numéro des lots Lot No Numero della partita Nr. der Partie Nr. van de partijen Parti nr. Nº de los lotes Nº dos lotes Αριθ. παρτίδων	Variétés Variety Varietà Sorte Soorten Sort Variedad Variedade Ποικιλίες	Adjudicataire Successful tenderer Aggiudicatario Zuschlagsempfänger Koper Kontraktmodtager Adjudicatario Adjudicatário Υπερθεματιστής
1	Mavra Kaba koulak (classique) et Ellassona Kaba koulak (non classique) Katerini Burley EL Basma 1986 1 805 903 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
2	Mavra Kaba koulak (classique) et Ellassona Kaba koulak (non classique) Katerini Burley EL 1986 1 519 991 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα
3	Mavra 1987 Basma 1987 425 698 kg	Offre rejetée Tender not accepted Offerta respinta Angebot abgelehnt Offerte afgewezen Afvist bud Oferta rechazada Proposta recusada Προσφορά απορριφθείσα

