

English edition

Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	<i>I Information</i>	
	Commission	
97/C 330/01	Ecu	1
97/C 330/02	State aid — C 44/97 (ex NN 78/97) — Spain ⁽¹⁾	2
97/C 330/03	Notice pursuant to Article 19 (3) of Council Regulation No 17 concerning Case No IV/34.796 — Canon/Kodak ⁽¹⁾	10
97/C 330/04	Appointment of members of the special aquaculture section of the Advisory Committee on Fisheries	15
97/C 330/05	Prior notification of a concentration (Case No IV/M.1013 — Shell UK Ltd/Gulf Oil (Great Britain) Ltd) ⁽¹⁾	17
97/C 330/06	Communication from the Commission concerning the calculation of the average Community share of electricity market opening, as defined in Directive 96/92/EC, concerning common rules for the internal market in electricity	18
	<i>II Preparatory Acts</i>	
	Commission	
97/C 330/07	Proposal for a European Parliament and Council Directive amending Directive 97/33/EC with regard to operator number portability and carrier preselection ⁽¹⁾ . . .	19

I

(Information)

COMMISSION

Ecu ⁽¹⁾

(97/C 330/01)

Currency amount for one unit:

	31. 10. 1997	October ⁽²⁾		31. 10. 1997	October ⁽²⁾
Belgian and Luxembourg franc	40,6255	40,5894	Finnish markka	5,91487	5,89698
Danish krone	7,49544	7,49217	Swedish krona	8,56667	8,47984
German mark	1,96968	1,96767	Pound sterling	0,682455	0,686745
Greek drachma	310,023	309,904	United States dollar	1,14277	1,12032
Spanish peseta	166,376	166,076	Canadian dollar	1,60605	1,55282
French franc	6,59745	6,60102	Japanese yen	137,384	135,511
Irish pound	0,760985	0,762570	Swiss franc	1,59759	1,62592
Italian lira	1933,64	1927,77	Norwegian krone	7,97426	7,92649
Dutch guilder	2,22075	2,21689	Icelandic krona	81,2511	80,1144
Austrian schilling	13,8641	13,8489	Australian dollar	1,62904	1,55406
Portuguese escudo	201,139	200,441	New Zealand dollar	1,83489	1,76166
			South African rand	5,50473	5,28047

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 fax answering service (No 296 10 97/296 60 11) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

⁽¹⁾ Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ L 349, 23. 12. 1980, p. 34).

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

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ L 345, 20. 12. 1980, p. 23).

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

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ L 311, 30. 10. 1981, p. 1).

⁽²⁾ The monthly average of ecu exchange rates will be published at the end of each month.

STATE AID

C 44/97 (ex NN 78/97)

Spain

(97/C 330/02)

(Text with EEA relevance)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission notice pursuant to Article 93 (2) of the EC Treaty to other Member States and interested parties concerning aid for the companies of the group Magefesa and its successors**

By the letter reproduced below, the Commission informed the Spanish Government of its decision to initiate the Article 93 (2) procedure.

1

In 1989, the Commission took a negative Decision regarding aid to the group Magefesa, manufacturer of household articles.

From 1984 Magefesa had been organized in a complex network formed by two holdings and a group of enterprises:

- Magefesa the holding, which included the parent company Manufacturas Generales de Ferretería SA (Magefesa), the industrial companies Cubertera del Norte SA (Cunosa), Manufacturas Inoxidables Gibraltar SA (MIGSA), Industrias Domésticas SA (Indosa), Investigación y Desarrollo Udala SA and the company Las Mimosas SA (Inlamisa) through which Magefesa participated in Edificios y Naves Industriales (Enisa) and Tefal Española SA,
- the holding Licasa, which included La Industrial Cuchillería Alavesa SA (Licasa Patrimonial SA), Manufacturas Gur SA (Gursa), Alberdi Hermanos SA (Albersa) and Licasa Industrial SA,
- several companies of the group (Magefesa, Cunosa, Migsa, Indosa) also formed a commercial group, Agrupación de Empresas "Magefesa" through which they bought their raw materials and commercialized their production.

Magefesa had a large share of the Spanish market until 1983. After this date, it started to experience financial difficulties. According to the Spanish authorities, all the group's assets were mortgaged in 1983, including the company's trade mark. Turnover dropped from Pta 8 037 million in 1984 to Pta 1 979 million in 1986. At the end of that year, losses amounted to some Pta 15 000 million while the company's net worth amounted to Pta

11 000 million. Magefesa was on the verge of bankruptcy.

To prevent this, Gestiber, a private consultancy firm, was appointed to take over the management. An action programme was drafted, which among other measures foresaw a reduction in the 3 100 employees of the group. The implementation of the programme included the granting of aid, both from the Spanish Government and from several regional administrations (Basque Country, Cantabria and Andalucía) where different companies from Magefesa were located.

The Autonomous Communities involved created three intermediary companies, Ficodesa in the Basque Country, Gemacasa in Cantabria and Manufacturas Damma in Andalucía. These companies controlled the use of the aid and the implementation of the plan and ensured that the companies from Magefesa would continue operating by preventing creditors from executing their credits on the companies' financial resources and inventories. For this purpose, on the basis of joint agreements the intermediary companies marketed the entire production of Magefesa previously acquired from the individual companies and, at the same time, they administered the funds, raw materials and semi-finished goods needed by the industrial companies which were provided with them according to work progress or justified expenses.

In 1987, the Commission received a complaint stating that Magefesa had received State aid. The Commission opened a procedure pursuant to Article 93 (2) of the EC Treaty in 1988. The following aid was identified:

- loan guarantees for a total of Pta 1 580 million (Pta 972 million from the Basque regional authorities, Pta 512 million from the Cantabrian regional authorities and Pta 96 million from the Andalusian regional authorities),
- Pta 2 085 million soft loan from the Fondo de Garantía Salarial (Fogasa) for the payment of indemnities to the workers made redundant in the framework of the action plan. The agreement made

between Magefesa and the Fogasa for the reimbursement of the loan included an eight year period for the repayment in increasing annual instalments with a 10,5 % interest rate. Of the principal 51 % would be paid in the last two years and all interest accrued would be due with the last payment,

- non-refundable subsidies for a total of Pta 1 104 million (Pta 803 million from the Basque regional authorities, Pta 262 million from the Cantabrian regional authorities and Pta 39 million from the Andalusian regional authorities).

The Commission took a final negative Decision on 20 December 1989, considering that the aid was incompatible with the common market as it did not fulfil the conditions for any of the exceptions contained in Article 92 (3) to be applicable. The Commission concluded that the company did not have a restructuring plan which ensured its future viability.

The Spanish Government was asked to recover the aid, according to Article 2 of the Decision:

- the loan guarantees for Pta 1 580 million had to be withdrawn,
- the soft loan given by Fogasa had to either be converted into a credit at market conditions for both its interest and its repayment, or any other appropriate measure had to be taken to ensure that the aid elements were wholly abolished,
- the Pta 1 104 million in subsidies had to be recovered.

The Decision became firm after two months. The Spanish Government did not challenge it.

II

The Commission asked the Spanish Government about the recovery of the incompatible aid by letters dated 19 June 1990, 3 August 1990, 13 September 1991, 27 July 1992, 21 April 1993, 14 December 1993 and 25 January 1994. The Spanish Government replied by letters dated 31 July 1990, 3 August 1990, 9 November 1990, 21 December 1990, 23 October 1991, 22 November 1991, 5 October 1992, 7 July 1993, 10 January 1994 and 8 April 1994. No further information on the recovery was received by the Commission after this date.

At the time of the Spanish Government's last letter (1994), the situation regarding the recovery of the aid was the following:

- Pta 2 085 million soft loan by Fogasa: according to the Spanish Government, Fogasa had only paid Pta 1 747 million from the Pta 2 085 million initially discussed. It had been decided to convert the loan to one at market-oriented conditions.

- At the time of the last information received by the Commission in 1994, Fogasa had recovered Pta 41 million. According to the Spanish Government, it still had to recover some Pta 2 145 million (Pta 1 706 million of principal, plus Pta 383 million in interest due, plus Pta 56 million in interest on Pta 284 million due and not yet paid).

It had obtained the preventive sequestration of Magefesa's trade marks for a total of Pta 502 million but there had been a court decision in favour of another creditor (the Social Security) which had been appealed against. It had also initiated third-party proceedings to acquire Magefesa's assets for a total of Pta 104 million,

- aid from the Basque regional authorities (loan guarantees for Pta 972 million and subsidies for Pta 803 million): according to the Spanish Government, the Basque authorities, together with the other two regional administrations involved, consulted the State Council on how to recover the aid given in the form of guarantees, without prejudicing the rights of the creditors which had received them. The State Council recommended mobilizing the guarantees, paying the creditors and then proceeding against the debtor. Accordingly, the Basque regional authorities, after mobilizing the guarantees, initiated proceedings to recover the amounts. Already in July 1993 proceedings had been initiated for the total amounts due.

Regarding the subsidies, by April 1994 the Basque authorities had initiated proceedings to declare their granting null and void.

No effective recovery has taken place until now,

- aid from the Cantabrian regional authorities (loan guarantees for Pta 512 million and subsidies for 262 million): according to the Spanish Government, by 1994 negotiations had been started with the relevant financial institutions in order to determine how to proceed with the recovery,
- aid from the Andalusian regional authorities (loan guarantees for Pta 96 million and subsidies for Pta 39 million): the Spanish Government stated that the beneficiaries had ceased their activity and had neither

personnel nor assets left. It had been considered that the cost of initiating judicial proceedings would exceed any recovery.

III

In February 1997 the Commission received seven complaints concerning Magefesa which claimed that:

- Magefesa had not reimbursed the aid declared incompatible by the Commission in 1989,
- Indosa, the industrial company of Magefesa located in the Basque Country, had been declared bankrupt with continuity of activity in 1994. Since then it had paid neither taxes nor social security contributions for a total amount of Pta 2 000 million. A new company, Indosa Derio SL had been created in the framework of Indosa's bankruptcy. Its administrator was one of the three receivers appointed to the bankruptcy of Indosa. Indosa Derio SL, which had changed its denomination in May 1996 to Compañía de Menaje Doméstico SL, commercialized the bankrupt Indosa's production,
- Indosa, whose sales had amounted to Pta 2 500 million in 1996, had asked for new aid from Fogasa, the Spanish Ministry of Labour and Social Affairs and the Basque Autonomous Government to finance a workforce reduction. The Basque Government intended to grant Indosa a Pta 1 000 million loan guarantee, to cover a bridge credit equivalent to the amount which the company would receive from the Ministry of Labour and Social Affairs and the Fogasa, until their payment.

The complainants claimed that prices offered by the companies of Magefesa still active in the market were between 10 % and 70 % below competitors' prices, and that this was possible because of the advantage given by both the non-recovery of the aid declared incompatible in 1989, and the fact that they did not face up to financial and tax obligations. The complainants pointed out the distortion on competition caused by this and the fact that some competitors were being driven out of the market, as they found it impossible to compete in such conditions.

By letter dated 27 February 1997, the Commission asked the Spanish Government to give a detailed description of the amounts of aid recovered, any action which the authorities might have undertaken to complete it (if the recovery was not yet total), information concerning the current situation of all the companies which formed the Magefesa group, as well as confirmation of the claims made by the complainants regarding the new aid received by them and their price policy. After a reminder

sent on 10 April 1997, the Spanish Government replied by letter dated 23 April 1997. A meeting took place on 6 June 1997 with the Basque Regional Government to discuss the situation of Indosa.

According to the Spanish Government, concerning the soft loan given by the Fogasa, there is no change in relation to the sequestration of the trade marks. As for the judicial proceedings, a positive decision was reached in 1995, but its execution is blocked because the companies are subject to bankruptcy proceedings.

Nor is there any change concerning the aid given by the Basque regional authorities. The regional authorities claim that everything possible has been done on their part to recover the aid. The fact is that the debtors have been declared bankrupt and there are no assets free of charge which has prevented an effective recovery of the amounts due.

Regarding the aid from the Cantabrian Regional Government, Gemacasa, the intermediary company created in Cantabria to receive and administer the aid to Gursa and Cunosa, was entrusted with the recovery. But Gemacasa has concluded that the bankruptcy and inactivity of the companies and the absence of any assets free of charges means that any action aimed to recover the aid would be in vain.

The Spanish Government stated in this letter that the information regarding the recovery of aid by the Andalusian authorities would be sent shortly. But no information has yet been received by the Commission.

Although the Commission asked for a quantification of the amounts effectively recovered and outstanding, no such breakdown was provided.

IV

The Commission has been unable to obtain clear and complete information from the Spanish Government regarding the situation of the different companies of the Magefesa group and any possible successors, despite having asked for this information in detail.

From the information available to date, as well as that which has been provided by the complainants, the situation seems to be the following:

- (a) Gestiber continued to manage the Magefesa group until 1994. In this year, the workers of the companies which formed the Magefesa holding (one of the two included in the group) asked for the

declaration of necessary bankruptcy in several cases, alleging maladministration of Gestiber. The following companies were declared bankrupt:

- Cunosa, declared bankrupt on 13 April 1994,
- Indosa, declared bankrupt on 19 April 1994,
- Magefesa, declared bankrupt on 28 October 1994,
- Ficodesa (the intermediary company created in the Basque Country), declared bankrupt on 19 January 1995.

All bankruptcies were given retroactive effect from 28 October 1986, date on which Gestiber presented its action programme (except Ficodesa, whose bankruptcy was given retroactive effect from 29 April 1994).

- (b) the Commission has been unable to clearly establish the present situation of the other companies of the group due to the lack of information from the Spanish authorities. According to the complainants, Migsa and Gursa are inactive at present, since none of the main creditors (which according to the complainants are public entities) have initiated proceedings for their bankruptcy declaration and liquidation. It seems that the assets of both companies are being used at present by other companies created by their former workforce, Vitrinor SAL in the case of Gursa, and Isidur SAL in the case of Migsa. There is no information regarding the way the assets have been transferred from one company to the other,
- (c) according to the complainants, Indosa was declared bankrupt with continuity of activity. A new company, Indosa Derio SL was formed by Indosa itself (after its bankruptcy declaration) and two of the receivers appointed in its bankruptcy procedure. At present, this company is called Compañía de Menaje Doméstico SL and is administered by one of the receivers of Indosa's bankruptcy,
- (d) Compañía de Menaje Doméstico SL supplies raw materials to the bankrupt Indosa, which manufactures the products. Compañía de Menaje Doméstico SL then commercializes this production, at lower prices than those of the market, mainly through large supermarkets. According to the complainants, Indosa has not paid any taxes (including VAT) or social security contributions since its bankruptcy declaration. The complainants have stressed the particularly distortive effect which this situation produces on the market,
- (e) the Commission has been unable to obtain information from the Spanish Government on the relation between Indosa and Indosa Derio SL (at present Compañía de Menaje Doméstico SL). Neither has the Commission any information regarding the relation between Cunosa and Compañía de Cubiertos SL which at present continues with the activity of the former, now bankrupt. It is also unclear whether this bankruptcy is also a bankruptcy with continuity of activity, as that of Indosa,
- (f) the Commission has not obtained any clear information as to the current status or property of the assets of the Magefesa group, in particular that of the Magefesa trade mark,
- (g) neither has the Commission obtained clear information from the Spanish Government regarding the claim made by the complainants that, since their bankruptcy, the companies from Magefesa still active have not paid any taxes and that they undercut their competitors' prices. The information submitted only refers to the department of social security contributions, on which the Spanish Government has stated that:
- Indosa was declared bankrupt in 1994. The department of social security has included its credit in the creditors' mass. There is no mention of the situation of Compañía de Menaje Doméstico SL with regard to social security,
 - Cunosa was also declared bankrupt in 1994 and, as in the previous case, the department of social security included its credit in the creditors' mass. La Compañía de Cubiertos SL, created by Cunosa's employees, continues the activity of the former. According to the Spanish Government, this company pays its social security contributions,
 - Gursa ceased its activity in 1994. The department of social security was unsuccessful in recovering its debt because of the absence of assets free of charges. On 27 March 1995 a company, Vitrinor SAL, was created by the former employees of Gursa. The company has the same activity, seat and machinery as Gursa. The social security department tried to have Vitrinor recognized as a successor of Gursa, but the Labour Inspectorate decided that the requirements for a subrogation of Vitrinor in the debts of Gursa did not concur. On 27 December 1996 the credit against Gursa was declared irrecoverable,
 - a similar situation occurred in the case of Manufacturas Inoxidable Gibraltar SA, Migsa. This company ceased activity in 1993. As in the case of Gursa, the social security department could not recover its debt, due to the absence of assets

free of charges. In February 1994, a company was created by Migsa's former employees, Industrias Domésticas Inoxidables SAL (Isidur). Isidur also has the same activity, plant and machinery as Migsa, and also in this case the social security department tried to have Isidur recognized as its successor. This was also rejected by the Labour Inspectorate, for the same reasons as in the previous case.

The Spanish Government has not provided any quantification of the total debts of the companies still active, or the amounts which, according to information, the social security department has tried to recover.

Concerning the claim by the complainants that Indosa had asked for new aid from the Fogasa and from the Ministry of Labour and Social Affairs and that the Basque Government was to grant a Pta 1 000 million guarantee for a bridge credit, while the money was received, the Spanish Government has confirmed that in September 1996 Indosa asked the Basque authorities for a means of financing the departure of 120 workers through early retirement.

The cost would be covered by Indosa's workforce itself via their outstanding wages and severance pay to be received from the Fogasa, and from the Ministry of Labour and Social Affairs through exceptional aid and a system called "Contador a cero" (counter to zero). The idea was to receive a Pta 804 million guarantee from the Basque Government to cover a bridge credit for the same amount which the workers were to get from the Fogasa and the Ministry of Labour, for the period until the money was effectively paid. Indosa expects to obtain the following amounts:

	<i>(Pta million)</i>
Ministry of Labour	385
Fogasa (retirement benefit)	186,7
Fogasa (wages due to retirees)	61,5
Fogasa (rest of wages due)	172,8
Total	806

The aim, according to the information submitted by the Spanish Government, is to try and find a solution for the current bankruptcy situation, and thus allow third party offers for the acquisition of the company. The Spanish

Government states that the situation of the company, while still delicate, has improved with a substantial recovery of both its turnover and positive cash-flow.

V

The Commission notes, regarding the companies of the Magefesa group of which it has some information at present, that they are currently either bankrupt (in the case of Indosa and Cunosa) or inactive (in the case of Gursa or Migsa).

According to the complainants, Indosa has not paid either taxes or social security contributions since its bankruptcy declaration and this, despite the fact that it is still active on the market. The Commission has been unable to obtain information from the Spanish Government regarding the veracity of this information. Concerning the social security contributions, the Spanish Government informed the Commission that the corresponding credits were declared in the bankruptcy of Indosa and Cunosa and were declared irrecoverable in the cases of Gursa and Migsa. There is no mention in this information regarding the payments corresponding to the period following the bankruptcy declaration in 1994 for those companies still active.

The Commission considers that the non-recovery of taxes and social security contributions effectively results in the transfer of State resources to the beneficiary and gives it a competitive advantage since, unlike its competitors, it does not have to cover this expenditure as it would under normal circumstances.

For the Commission, the non-recovery of the taxes and social security contributions due, as in the case of Indosa, constitute State aid in the sense of Article 92 (1) of the EC Treaty as it distorts competition by favouring the beneficiary companies. Aid for Indosa in the form of non-recovery of the due taxes and contributions must furthermore be considered illegal, in so far as it has not been notified to the Commission in accordance with Article 93 (3).

The complainants have underlined the particular effect of distortion of these aids in a very competitive market and where the companies of Magefesa still active compete with products that they sell at prices considerably lower than market ones.

With reference to the Pta 804 million guarantee that the Basque regional authorities intend to grant to Indosa to cover a bridging loan for the period until Indosa has received the payments that it expects from both the Fogasa and the Ministry of Labour, the Commission has to consider that, if granted, such a guarantee would also constitute State aid in the sense of Article 92 (1) of the

EC Treaty, since no bank, given the situation of bankruptcy of Indosa, would grant such a loan without it.

On the basis of the information currently available, the Commission cannot establish if these aids could be considered compatible with the common market on the basis of one of the exceptions referred to in Article 92 (2) and (3) of the EC Treaty. It also has insufficient information to establish the exact amount of aid given to the different companies of the Magefesa group, their current and future situation or the existence of any successors, despite having requested this information from the Spanish authorities.

With reference to the payments to be made in the case of Indosa by the Fogasa and the Ministry of Labour, the Commission does not have the information necessary to determine their legal basis and if there are any State aid elements contained in them.

In its judgments in cases 301/87, *France v. Commission*, and 342/90, *Germany and Pleuger Worthington GmbH v. Commission*, the Court of Justice stated that the Commission can issue an interim decision asking the Member State concerned to provide the Commission, within such period as it may specify, with all such documentation, information and data as are necessary in order that it may examine the compatibility of the aid with the common market. The Commission considers it necessary to formally ask the Spanish Government to provide all necessary information to allow the Commission to clarify those aspects of the case which until now it has been unable to do, as the Spanish Government has not provided the information.

In the same case-law, the Court of Justice also established that, once that it has established that aid has been granted or altered without notification, the Commission has the power to issue an interim decision requiring the Member State in question to suspend immediately the payment of such aid pending the outcome of the examination of the aid. It cannot at present be excluded that, once it has clearly identified the aid given to the different companies of Magefesa or its successors, the Commission should find it necessary to ask the Spanish Government to immediately suspend their payment until it has reached a conclusion in the case, should the Spanish Government not respect the suspensory effect of the opening of the procedure pursuant to Article 93 (2) of the EC Treaty. The Court of Justice has recognized this effect in its judgments in cases 312/90, *Spain v. Commission*, and 47/91, *Italy v. Commission*.

The Court of Justice, in its judgment of 15 May 1997 in case 355/95, *Germany and Textilwerke Deggendorf GmbH v. Commission*, stated that the Commission can, when assessing the compatibility of a new aid, take into

account the non-recovery of an incompatible aid given to the same beneficiary, and the cumulative distortive effect that such a situation would create on the market. Therefore, in the framework of the procedure opened pursuant to Article 93 (2) of the EC Treaty, the Commission will have to consider the compatibility of any aid given to the companies of the Magefesa group and its successors in the light of what has happened with the recovery of the aid declared incompatible in its Decision of 20 December 1989.

The Commission has been unable to obtain sufficient information from the Spanish Government to determine the amount of the aid effectively recovered. From the information available to the Commission at present, it seems that the amount effectively recovered to date is extremely limited. The Commission notes that it is mainly the bankruptcy situation of the companies which received the aid (in the case of Indosa and Cunosa) or their inactivity together with the absence of any assets free of charges (in the case of Gursa or Migsa) this prevented both the Fogasa and the regional authorities of the Basque Country and Cantabria, from effectively recovering the aid. The Commission also notes that the information regarding the aid to be recovered by the Andalusian regional authorities, promised in the letter of 23 April 1996, has not been sent to the Commission.

According to the Spanish Government, the situation of bankruptcy with continuity of activity is recognized in the Spanish legal system, where bankruptcy does not necessarily entail the liquidation of the company.

The Spanish Government maintains that the situation of bankruptcy with continuity of activity of Indosa is due to a judicial decision over which they do not have any control. According to the Spanish Government, Spanish law on bankruptcy, in line with comparative law, establishes that a bankruptcy declaration does not necessarily entail the cessation of trading and the subsequent liquidation of the company. The Spanish Government considers that it is possible to keep the activity of the bankrupt company attending to other public interests, such as the existence and the conservation of jobs.

The Commission cannot at present accept these arguments. According to the information available to it at the moment, there is no precept in Spanish legislation that refers to bankruptcy with continuity of activity. In this case such a situation has been made possible thanks to the agreement of all the company's creditors at the time of the declaration of bankruptcy, that is, the creditors were ready to allow the continuation of the company's activity. It is necessary to remember that in the case of Indosa (and probably also in all other cases, although the Commission has not been able to obtain any information on this) the majority of the creditors are public. The Commission considers therefore that it is the will of the creditors, and not only judicial decision,

which allows the companies in question to continue to be active on the market.

Furthermore, according to the applicable Spanish legislation, the receivers are entrusted with the administration of the assets in bankruptcy and they undertake the necessary action to allow the payment of the creditors, by selling assets if necessary. The receivers are appointed by the creditors of the bankruptcy, and act in their name. Although on the basis of the information that the Commission currently has, it is true that they are not obliged to proceed directly to such a sale but can delay until necessary. It is obvious that there exists a discretionary element in the action of the receivers, which reaffirms the abovementioned conclusion of the Commission.

The Commission notes that, in those cases where it has information, the losses of the companies have entailed their inactivity and the use of their assets by a company formed by their former workforce (as is the case of Gursa or Migsa), or bankruptcy with continuity of activity which means that, although technically bankrupt, the company continues to act on the market (as is the case of Indosa).

In the first case, the creditors have not even initiated proceedings to obtain the bankruptcy declaration. The information sent to the Commission recognizes that the said companies do not have any assets free of charges with which to face their debts, and so the Spanish Government considers it useless to begin any recovery procedure. The Commission does not have any information regarding the way in which their assets were transferred to the companies created by the workers.

It should be mentioned that the complainants dissent from the consideration made by the Labour Inspectorate, that in these two last cases the requirements for the subrogation of the companies created by the workers in the credits of Gursa and Migsa do not concur even though, according to the information provided by the Spanish authorities, they use the same facilities, machinery and tools. The attitude of the Labour Inspectorate seems again to highlight the fact that the recovery of the incompatible aid has not been the main priority for the Spanish Government in this case. Moreover, it is difficult to understand how it is possible to consider that there is no subrogation in these cases, when facilities, machinery, tools and employees are the same.

In the second case (Indosa), even though the bankruptcy proceedings have been undertaken, the creditors have allowed the continuation of activity of the undertaking. According to the complainants, the company still manufactures and its production is sold through a company owned in part by the bankrupt Indosa itself, and where

the current sole administrator is one of the receivers appointed in the bankruptcy of Indosa.

On the basis of the information available to it at present, the Commission considers that there is an absence of effective recovery of the aid declared incompatible in its Decision of 1989, and that it is due more to a lack of will to recover by the relevant authorities than to a legal impossibility because of the bankruptcy of the beneficiaries. It is furthermore necessary to recall that, even though the recovery of aid declared incompatible by the Commission will be made in accordance with the relevant national legislation in each case, the Court of Justice, in its case-law, has established that such a recovery means that the relevant provisions are to be applied in such a way not to render the recovery required by Community law practically impossible. Any difficulties, procedural or other, in regard to the implementation of the measure, cannot have any influence on its legality⁽¹⁾.

The Commission will therefore study the compatibility of new aid given to the companies of Magefesa or its successors in the light of the possible non-recovery of the aid declared incompatible in 1989.

VI

Accordingly, the Commission hereby informs the Spanish Government that it has decided to:

- initiate the Article 93 (2) procedure in relation to aid received by the Magefesa group and its successors since 1989,
- request the Spanish Government within 30 working days of the notification of this Decision to provide all appropriate information allowing the Commission to examine the existence of new aid to the companies of the Magefesa group or its successors and their possible compatibility with the common market on the basis of more of the exceptions referred to in Article 92 (2) and (3) of the EC Treaty. The Spanish Government shall, in particular, submit the following information:
 - a precise quantification of the amounts of the aid declared incompatible by the Commission in its Decision of 20 December 1989, which have been effectively recovered at present. If such recovery were not complete, a quantification of the amounts outstanding and information regarding the actions that the Spanish Government might have undertaken to recover them. Also precise

⁽¹⁾ Case 142/87, Belgium v. Commission, [1990] ECR p. I-959.

quantification of the amounts which, according to the Spanish Government, the social security department has tried to recover in the cases of Indosa, Cunosa, Gursa and Migma. And also, information regarding the steps taken by the Andalusian autonomous Government to proceed to the recovery, as promised in the letter of the Spanish authorities of 23 April 1997,

- information regarding the present situation of the assets of Magefesa, and in particular the Magefesa trade mark,
- information regarding the present situation of all companies of the Magefesa group, of any successors that might exist to those companies and, where applicable, the legal relation between former and latter company, and circumstances in which any assets might have transferred from one to the other. Where the companies are bankrupt or inactive, a list of their creditors and the amount and legal rank of their credits,
- number of employees of the different companies of the Magefesa group still active or their successors,
- information concerning the relation between Indosa (bankrupt) and Indosa Derio SL, at present Compañía de Menaje Doméstico SL, and the conditions under which the latter is commercializing the former's production, as claimed by the complaints received by the Commission. Also, information on the relation between Cunosa (bankrupt) and La Compañía de Cubiertos SL, and whether the bankruptcy of Cunosa is also a bankruptcy with continuity of activity,
- a precise quantification of the debts which Indosa (bankrupt) or any other company of the Magefesa group or, where applicable their successors, have in unpaid taxes (including VAT and income tax) and social security contributions, or any other debts that they might have with public entities since 1989,
- information regarding the aid to be given to Indosa by the Fogasa and the Ministry of Labour to finance its workforce reduction,

- information on any other aid which the Spanish authorities might have given or intend to give to any company of the Magefesa group or its successors.

In accordance with the abovementioned judgments of the Court of Justice in cases 301/87 and 342/90, if the Spanish Government fails to comply with this Decision by not supplying all the relevant information for an assessment of the compatibility of the aids in question within 30 working days of its notification, the Commission could take a final decision on the basis of the information available to it.

As part of the procedure the authorities are hereby invited to present their comments as well as any other information they might consider relevant for the assessment of the case within one month of being notified of this letter.

The Commission draws attention to the suspensory effect of Article 93 (3) of the EC Treaty and the communication published in the *Official Journal of the European Communities* C 318 of 24 November 1983, page 3, and to the letters sent to all Member States on 4 March 1991 and 22 February 1995, in which it was stipulated that any aid granted unlawfully may have to be recovered from the recipient firm in accordance with the procedures laid down by national law, including interest calculated at the reference rate used for regional aid and with effect from the date on which aid was granted.

The Commission hereby requests that the Spanish Government informs the affected companies without delay of the initiation of the procedure and of the fact that they might have to repay any aid improperly received.'

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

European Commission
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

The comments will be communicated to the Spanish Government.

**Notice pursuant to Article 19 (3) of Council Regulation No 17 concerning
Case No IV/34.796 — Canon/Kodak**

(97/C 330/03)

(Text with EEA relevance)

THE FACTS

I. THE NOTIFICATION

1. On 13 July 1993 the Commission received notification, pursuant to Article 4 of Council Regulation No 17, of two agreements for the development and licensing of a new advanced photographic system (APS) entered into on 18 November 1991 by Kodak, Fuji, Canon, Minolta and Nikon, 'the system developing companies' (SDCs). This system, in the meantime on the market, is an alternative to existing photographic systems and electronic photography. It consists of a new type of silver halide film and, to go with it, the development of a new type of camera and of new photo-finishing equipment. APS equipment is intended to enhance the appeal of photography to the consumer by increasing transmissibility and reproducibility, while establishing interfaces with other electronic equipment. The SDCs hope that the APS will become a world standard in the long run. Reduced size and easier handling are also hoped to appeal to consumers.

The need for cooperation was justified by the difficulties in developing the system. This was one of the reasons why it was felt necessary to extend an earlier cooperation between Kodak, Canon, Minolta and Nikon, to include Fuji. The SDCs claimed that general acceptance of the APS by the public depended on its successful introduction by the highest possible number of producers. In the original notification the parties expressed their intention to grant licences no later than the date on which licensed products were publicly announced for commercial availability. However, manufacturers of the products concerned who had expressed their interest at the first information of February 1994 were sent a draft of the licence agreements by letter on 28 April 1994 (two years before the introduction of the new film and cameras) and invited to take

out licences⁽¹⁾. Throughout the proceedings before the Commission the SDCs have expressed the wish that competent and diligent licensees should be able to launch products at approximately the same time as the SDCs. To this end, symposiums were held and a help desk was organized to deal with licensees' technical difficulties.

However, it should be noted that the cooperation bears only on the development of fundamental elements of the APS as opposed to the know-how necessary for the actual manufacturing of the products. In their interventions before the Commission, third parties have questioned the way the borderline between these two categories was drawn by the SDCs.

The development of the main features of the APS system has now been completed. From 22 April 1996, APS products were introduced on the European market by all SDCs and a number of licensees.

The notifying parties asked the Commission for a finding that the agreements were not caught by Article 85 (1) of the EC Treaty or in the alternative that they qualified for exemption pursuant to Article 85 (3).

2. The Commission has already published a first summary of the notification in the *Official Journal of the European Communities*⁽²⁾ inviting interested

⁽¹⁾ For the camera sector 85 undertakings were contacted by Canon in February 1994. A draft of the camera licence Agreement was sent to 40 of them. The Agreement was signed by 16 undertakings. For the film/cartridge sector 66 undertakings were contacted by Kodak in February 1994. A draft of the film/cartridge licence Agreement was sent to 31 of them. The Agreement was signed by 3 undertakings. For the photofinishing sector a draft of the photo-finishing equipment licence Agreement was sent to 32 of the 66 undertakings contacted and signed by 17 of them.

⁽²⁾ OJ C 68, 5. 3. 1994, p. 3.

third parties to submit their observations on the proposed cooperation to the Commission. Since licences were granted two years before the date of the introduction of the APS and well before the end of its development, the notification of 13 July 1993 described the state of the cooperation at that date. Subsequently, a great number of technical changes and legal amendments have taken place.

This notice resumes the notified operations in their current form, i.e. including the amendments by the notifying parties. Certain of these amendments are the fruit of discussions with the Commission, in some cases as a result of observations received from other interested third parties.

II. THE UNDERTAKINGS (SDCs)

- 3.1. The Eastman Kodak Company, Rochester, New York (Kodak), is the ultimate parent company of the Kodak group. Its imaging and information sector represents Kodak's interests in photographic, photocopying, printing, office and imaging products (consumer and professional).
- 3.2. The Fuji Photo Film Co. Ltd, Tokyo, (Fuji) is the ultimate parent company of the Fuji group of companies. Fuji divides its activities into the three sectors: imaging systems, photo-finishing systems and information systems.
- 3.3. Canon Inc., Tokyo, (Canon) is the ultimate parent company of the Canon group. Its camera sector represents Canon's interests in cameras.
- 3.4. The Minolta Camera Co., Ltd, Osaka, (Minolta) is the ultimate parent company of the Minolta group. Its interests in cameras are represented by its optical precision instruments division.
- 3.5. The Nikon Corporation, Tokyo, (Nikon) is the ultimate parent company of the Nikon group. Its interests in cameras are represented by its consumer products sector.
- 3.6. The parties collaborate within the APS in the development of essential specifications for interface and inter-operability of cameras, films, film cartridges and other APS elements (see also no 5 of this notice).

III. THE PRODUCT AND THE MARKET

4. The relevant products in this case constitute a complete range of photographic material and equipment pertaining to three basic categories: films, cameras, and photo-finishing equipment. Whereas APS cameras of a substantial number of producers are currently sold in Europe, experience has shown that only four major film manufacturers Agfa, Fuji, Kodak and Konica have up to now technically succeeded in entering the market with APS films.

This reflects the highly competitive structure of the camera sector compared to the oligopolistic structure of the film sector which is dominated by Kodak and Fuji. It is therefore not surprising that comments received from third parties following the first publication only concerned film and photo-finishing. In view of this and of the market position of its developers, Fuji and Kodak, this sector has received particular attention from the Commission.

From a supply-side perspective, the geographic dimension of the above products is worldwide, since APS will set a worldwide standard. APS will be used in very similar products traded and used throughout the world for reasons of compatibility. Such worldwide dimension could be put into question for the demand-side, since prices, packaging, consumer preferences, distribution networks may vary throughout world regions. Whether the geographic dimension is worldwide or has a more limited scope is a question which can, however, be left open in the present case since the agreements do not raise competition concerns.

Within the EEA and worldwide, the parties to the APS agreements have a strong position in several segments, with combined market shares (1995) as follows:

- cameras (LS and SLR): Fuji, Canon, Kodak, Nikon, Minolta (more than 45 % worldwide and about 40 % EEA),
- films: Fuji, Kodak (about 71 % worldwide and 62 % EEA),
- photo-finishing equipment: Fuji, Kodak (about 30 % EEA).

Despite such strong positions, the parties face competition from manufacturers like Olympus, Pentax and Yashica for cameras (combined share of 31 % of the EEA market); Agfa and Konica are also significantly present for films (23 % of the EEA market).

Although silver halide film is still predominant, markets in industrialized countries show signs of maturity and saturation. This is shown by low, even zero, growth and high equipment to population ratios. These signs of saturation are exacerbated by competition from other audiovisual and electronic equipment which is, in terms of consumer expenditure, partly substitutable for photographic equipment.

Unless technological innovation or other commercial breakthrough stimulates the replacement of current equipment stocks, the industry is likely to decline in industrialized countries. APS seems, from this standpoint to be, a coherent industry response to expected market trends. Maturity and saturation seem also to be one of the cause of the concentration in supply structures, their patterns not being significantly different between the EU-EEA and the world market. For each product category, the three major suppliers account for more than 60 % of total sales.

Major suppliers are multinationals with production and marketing facilities integrated worldwide. Barriers to entry based on economies of scale in production are high, since considerable financial strength is necessary to sustain market presence and technological leadership in photographic equipment.

Since April 1996 a great number of manufacturers include APS formats within their product range. Nevertheless, the competitive position of APS equipment *vis-à-vis* partial (video cameras, digital cameras, camcorders) and full substitutes (other existing photographic equipment) is not easy to predict.

IV. THE NOTIFIED AGREEMENTS

5. The cooperation between the notifying parties is based on three agreements:

- a basic agreement dated 18 November 1991 concluded between all partners of the cooperation Kodak, Fuji, Canon, Minolta and Nikon ('the five party Agreement'),
- a second agreement dated 18 November 1991 concluded between Kodak and Fuji ('the two party Agreement'),
- a third agreement dated 13 May 1994 and submitted to the Commission on 26 June 1994 governing the cooperation between Canon, Minolta and Nikon ('the three party Agreement').

The five party Agreement establishes the framework for the joint participation, of all five companies in the research and development project, including a steering committee which allocates research and development tasks among the parties. Within this framework the research and development work has been conducted in two groups by way of specialization. These groups were Kodak and Fuji (basically films, cartridges, photo-finishing equipment and products connected to these, the two party Agreement) and Canon, Minolta and Nikon (basically cameras, the three party Agreement). All these agreements terminate on the acceptance by the parties concerned that the joint research and development programme has been successfully completed. The parties may maintain consultative contacts and they may reinstate the joint research and development programme to address unexpected issues.

Following the notification of 13 July 1993, a number of master agreements for licences with third parties were notified.

These agreements are:

- film/cartridge licence Agreement
- camera licence Agreement
- photo-finishing equipment licence Agreement
- advanced photo system image making device licence Agreement
- advanced photo system trade mark licence Agreement.

The following gives an overview of the arrangements concerning the granting of licences between partners of the cooperation themselves and to third parties contained in the above agreements⁽¹⁾.

⁽¹⁾ With the exception of the advanced photo system trade mark licence Agreement. This latter agreement grants all licensees manufacturing the products a non-exclusive, non-transferable royalty-free worldwide licence, to use the APS trade marks.

6. The five party/two party and three party Agreements

6.1. Licences between the parties

The SDCs share all relevant patents and know-how between them. Consistent with the distribution of research and development between the two groups, the members of the two party Agreement or three party Agreement, as the case may be, grant worldwide non-exclusive and royalty-free licences to the other members of the five party Agreement and vice versa. The technology thus exchanged comprises:

- patents and know-how which result from the joint research and development programme, including also the technology resulting from earlier research and development carried out by the parties in smaller groups prior to the five party Agreement,
- patents and know-how applicable to the APS which result from research and development carried out by any of the parties independently.

On termination of the agreements these licences will generally remain in force.

6.2. Licences to third manufacturers

Third manufacturers are granted worldwide non-exclusive licences on patents and know-how by Canon for cameras and Kodak for films/film cartridges, photo-finishing equipment, and image-making devices on payment of royalties. These licences mainly cover the technology relating to the system specifications and supplemental technical information that the SDCs elected to provide.

In addition to the above know-how, licences on supplementary technology are available on option. All agreements contain a list of project patent applications. The film/cartridge licence Agreement also contains an option on other patent claims.

The project patent applications include some 4 800 patent applications of the different SDCs⁽¹⁾. According to the definition of the SDCs, project

patents which are not otherwise licensed under the licence Agreements do not cover the system specifications or the design aid. Licences under these patents are not necessary in order to develop licensed products. They may nevertheless be useful to particular licensees in the development or improvement of their particular product. Such licences may be obtained by the SDC which owns the relevant project patent.

Other patent claims (much less numerous) may also be directly obtained from the owner of the patent. These patents are defined as covering certain technologies that the SDCs believe may be of interest to licensees, but for which licensees can find substitutes within a relatively short time.

6.3. Grant-back

To the extent of licences obtained, licensees have to grant back to each of the SDCs on their written request non-exclusive, royalty-free, worldwide, irrevocable licences for patents or patent claims that are based on application filed on or before December 1997. This obligation exists only if the patent necessarily covers a licensed product because it was designed in conformity with the system specifications or because it was designed or manufactured using information that falls within the APS.

Licensees further have to grant licences with a similar scope to any other licensee. These licences are to be non-exclusive and worldwide but not royalty-free.

6.4. Royalties

The royalties licensees have to pay for camera and photo-finishing licences have been significantly lowered since the notification. In particular, as regards royalties for the photo-finishing equipment licence, a suitable system for the calculation of royalties has been agreed. Licensees were informed of the amendments.

6.5. Cooperation between licensees

Following intervention by the Commission departments, Kodak and Fuji have agreed to amend the notified film/cartridge Agreement (subject to the authorization of the cooperation by the Commission) in order to extend the possibilities of cooperation between licensees. This would help licensees to make good the technical advance of SDCs in order to become true competitors.

⁽¹⁾ Listed by application number, date filed and assignee, normally contained in Annex D to the Agreement in question. At the Commission's request, each of the SDCs has furnished the titles and a brief description of their patents contained in Annex D.

The current text of the Agreement was agreed, following negotiations with Commission staff, in spring 1997. Whereas the notified Agreements initially provided that licensees could not subcontract the most technically-intricate procedures in the film/cartridge production process, i.e. film sensitizing and final cartridge assembly and loading, the situation is now as follows.

Licensees are grouped into two categories; those who master the entire technical process ('full service licensees' or FSLs) and those who do not ('non-FSLs').

Cooperation between FSLs is unrestricted and cooperation of an FSL with non-FSLs is restricted only in that final cartridge assembly and loading has always to be done by an FSL.

Non-FSLs may cooperate fully with an FSL since the latter may effect all stages of film/cartridge production for any licensee.

Five years after the market introduction of the APS, from 22 April 2001 onwards, non-FSLs would be given the right to load into cartridges assembled by it film sensitized for it by a FSL and then sell the loaded cartridges to the trade.

Eight years after the market introduction of the APS, from 22 April 2004 onwards, cooperation between all licensees will be subject to no limitations.

V. SUMMARY

The APS system is a completely new product, the primary aim of which is to stimulate a flagging market and to enable silver halide photography to compete with other means of image production. The investments are such that no single company, even if it had all the necessary expertise, would be able to develop such a system, nor would it be in a position to launch an industry standard. Cooperation only covers the development of the system and does not allow the SDCs to eliminate competition from other undertakings in the sector which have access to the technology involved thanks to the licensing arrangements.

VI. CONCLUSION

In view of the above, the Commission proposes to adopt a favourable position with regard to the notified Agreements. Before doing so, it invites interested parties to send their comments within one month of the date of publication of this notice in the *Official Journal of the European Communities* quoting reference IV/34.796 — Canon/Kodak, to:

European Commission,
Directorate-General IV — Competition,
Directorate F — Capital and consumer goods industries,
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Appointment of members of the special aquaculture section of the Advisory Committee on Fisheries

(97/C 330/04)

A special aquaculture section of the Advisory Committee in the fisheries sector was set up by Commission Decision 97/247/EC of 4 April 1997⁽¹⁾.

By Decision of 28 October 1997, the Commission appointed the 20 members of the said section whose term of office expires at the end of the term of office of the members of the Advisory Committee on Fisheries.

⁽¹⁾ OJ L 97, 12. 4. 1997, p. 28.

Catégorie économique Wirtschaftsgruppe Economic interest Categoria economica Economische groepering Økonomiske grupper Οικονομική κατηγορία Categoría económica Categoria económica Etujärjestö Ekonomisk kategori	Sièges Sitze Seats Seggi Zetels Pladser Έδρες Sedes Lugares Paikat Platser	Membres Mitglieder Members Membri Leden Medlemmer Μέλος Miembros Membros Jäsenet Medlemmar
Producteurs et coopératives de l'aquaculture Erzeuger und Genossenschaften der Aquakultur Producers and aquaculture cooperatives Produttori e Cooperative di acquacoltura Producenten en Coöperaties in de aquacultuursector Producenterne og Akvakulturandelsselskaber Παραγωγοί και Κοινοπραξίες υδατοκαλλιέργειας Productores y cooperativas acuícolas Produtores e Cooperativas da aquicultura Tuottajat ja Vesiviljelyosuuskunnat Producenter och Vattenbrukskooperativ	13	M. KRISTENSEN (DK) M. BARTMANN (DE) M. STEPHANIS (GR) M ^{me} MICHAUD (FR) M. BREST (FR) M. ROUCO CAMINA (ES) M. RODRÍGUEZ (ES) M. CROWE (UK) M. YONGE (UK) M. KARLSSON (SF) M. TRINCANATO (IT) M. UGOLINI (IT) M. FLYNN (IRL)
Banques commerciales pour les activités maritimes Instituts spécialisés du crédit à caractère coopératif Seehandelsbanken Spezialisierte Genossenschaftskreditinstitute Banks financing maritime activities Specialised cooperative credit institutions Banche commerciali per le attività marittime Istituti specializzati di credito a carattere cooperativo Banken werkzaam in de visserijsector Gespecialiseerde coöperatieve kredietinstellingen Forretningsbanker Specialinstitutter for andelskredit Εμπορικές τράπεζες για τις ναυτιλιακές δραστηριότητες Ειδικευμένα πιστωτικά ιδρύματα συνεταιριστικού χαρακτήρα Bancos comerciales para actividades marítimas Institutos especializados en créditos de carácter cooperativo Bancos comerciais para actividades marítimas Instituições especializadas em crédito de carácter cooperativo Merellä tapahtuvaa toimintaa rahoittavat liikepankit Osuuskunnalliset erikoistuneet luottolaitokset Affärsbanker som finansierar marina aktiviteter Särskilda kooperativa kreditinstitut	1	M. LABELLE (FR)

Catégorie économique Wirtschaftsgruppe Economic interest Categoria economica Economische groepering Økonomiske grupper Οικονομική κατηγορία Categoria económica Categoria económica Etujärjestö Ekonomisk kategori	Sièges Sitze Seats Seggi Zetels Pladser Έδρες Sedes Lugares Paikat Platser	Membres Mitglieder Members Membri Leden Medlemmer Μέλος Miembros Membros Jäsenet Medlemmar
Commerce et transformation des produits de l'aquaculture Handel und Verarbeitungsunternehmen der Aquakultur Trade and processing of aquaculture products Commercianti e trasformazione dei prodotti dell'acquacoltura Handel en Verwerking van aquacultuurproducten Handelen og forarbejdningen af akvakulturprodukter Εμπορία Μεταποίηση προϊόντων υδατοκαλλιέργειας Comercio y transformación de productos acuícolas Comercio e Transformação dos produtos da aquicultura Vesiviljelytuotteiden jalostus ja kauppa Handel och Bearbetning av vattenbruksprodukter	3	M. MINEHANE (IRL) M. BERGMAN (SF) M. GARCÍA GARCÍA (ES)
Travailleurs du secteur de l'aquaculture Arbeitnehmer des Aquakultursektors Workers in the aquaculture sector Lavoratori del settore dell'acquacoltura Werknemers in de aquacultuursector Arbejdstagere inden for akvakultur Εργαζόμενοι του τομέα της υδατοκαλλιέργειας Trabajadores del sector acuícola Trabalhadores do sector da aquicultura Vesiviljelyalan työntekijät Arbetstagare inom vattenbrukssektorn	2	M. MORTENSEN (DK) M. COURTEL (FR)
Consommateurs Verbraucher Consumers Consumatori Consumenten Forbrugere Καταναλωτές Consumidores Consumidores Kuluttajat Konsumenter	1	M. FERRAZ DA SILVA (PT)

Prior notification of a concentration**(Case No IV/M.1013 — Shell UK Ltd/Gulf Oil (Great Britain) Ltd)**

(97/C 330/05)

(Text with EEA relevance)

1. On 27 Octobre 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89⁽¹⁾ by which the undertaking Shell UK Limited, part of the Royal Dutch/Shell Group of Companies, acquire(s) within the meaning of Article 3 (1) (b) of the Regulation control of the whole of Gulf Oil Great Britain Ltd (GOGB), by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Shell UK Limited as part of the Royal Dutch/Shell Group of Companies, the exploration production and sale of oil and natural gas, and the production and sale of chemicals and coal,

— GOGB, oil refining and marketing.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32 2) 296 43 01/296 72 44) or by post, under reference IV/M.1013 — Shell UK Ltd/Gulf Oil (Great Britain) Ltd, to:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

Communication from the Commission concerning the calculation of the average Community share of electricity market opening, as defined in Directive 96/92/EC, concerning common rules for the internal market in electricity

(97/C 330/06)

According to the calculations made by the Commission pursuant to Article 19 (1) (2) and (3) of Directive 96/92/EC⁽¹⁾, the average Community share of electricity market opening, as effective in 1998, is 25,37 %.

This figure has been calculated by adding, on the one hand, electricity consumed by final consumers consuming more than 40 GWh in all the Member States and, on the other hand, total net consumption in all the Member States, and then dividing the first figure by the second.

⁽¹⁾ OJ L 27, 30. 1. 1997, pp. 20 to 29.

II

(Preparatory Acts)

COMMISSION

Proposal for a European Parliament and Council Directive amending Directive 97/33/EC with regard to operator number portability and carrier preselection

(97/C 330/07)

(Text with EEA relevance)

COM(97) 480 final — 97/0250(COD)

(Submitted by the Commission on 3 October 1997)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and
Social Committee,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty,

Whereas the Commission has organized a broad public
consultation on the basis of a Green Paper on a
numbering policy for telecommunications services in
Europe ⁽¹⁾;

Whereas this consultation has underlined the importance
of equal quantitative and qualitative access to numbering
resources for all market players, and the crucial
significance of adequate numbering mechanisms, in
particular for number portability and carrier selection, as
key facilitators of consumer choice and effective
competition in a liberalized telecommunications
environment;

Whereas the Council adopted a resolution on 22
September 1997 inviting the Commission to submit
proposals to the European Parliament and to the Council
regarding the accelerated introduction of number port-
ability and regarding the introduction of carrier pre-
selection;

Whereas the European Parliament adopted a resolution
on 17 July 1997 calling on the Commission to submit a
proposal for an amendment to an already existing
Directive for introducing carrier preselection and
number portability no later than 1 January 2000
throughout the Union,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 97/33/EC ⁽²⁾ is hereby amended as follows:

1. Article 12 (5) shall be replaced by the following:

'5. National regulatory authorities shall encourage
the earliest possible introduction of number portability
whereby end-users who so request can retain their
number(s) on the fixed public telephone network at a
specific location independent of the organization
providing service, and shall ensure that this facility is
available by 1 January 2000 at the latest.'

2. A new paragraph shall be inserted after paragraph 6
of Article 12:

'7. National regulatory authorities shall require
organizations operating public telecommunications
networks as set out in part 1 of Annex I and notified
by national regulatory authorities as organizations

⁽¹⁾ COM(96) 590 final, of 20 November 1996.

⁽²⁾ Directive 97/33/EC of the European Parliament and of the
Council of 30 June 1997 on interconnection in telecom-
munications with regard to ensuring universal service and
interoperability through application of the principles of open
network provision (ONP) (OJ L 199, 26. 7. 1997, p. 32).

having significant market power, to enable their subscribers to access the switched services of any interconnected provider of publicly available telecommunications services. For this purpose facilities shall be in place by 1 January 2000 at the latest, which allow the subscriber to choose these services by means of permanent preselection with a facility to override the preselected choice on a call-by-call basis by dialling a short prefix.'

Article 2

1. Member States shall take the measures necessary to comply with this Directive before 31 December 1998. They shall forthwith inform the Commission thereof. When Member States adopt these measures they shall contain a reference to this Directive or shall be accom-

panied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Community*.

Article 4

This Directive is addressed to the Member States.
