

English edition

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1248/98
of 17 June 1998
establishing the standard import values for determining the entry price of certain
fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 2375/96⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EC) No 150/95⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 June 1998.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 17 June 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	052	86,9
	999	86,9
0709 90 70	052	51,0
	999	51,0
0805 30 10	378	60,7
	382	60,9
	388	60,9
	528	57,3
	999	60,0
0808 10 20, 0808 10 50, 0808 10 90	388	71,6
	400	91,3
	404	91,1
	508	79,1
	512	75,3
	524	95,1
	528	68,0
	800	188,8
	804	117,5
	999	97,5
	0809 10 00	052
999		169,7
0809 20 95	052	285,0
	064	173,0
	068	210,8
	400	267,5
	616	204,4
0809 40 05	999	228,1
	624	221,1
	999	221,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1249/98

of 17 June 1998

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market;

whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 June 1998.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 17 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	7,02	0,03	—
1703 90 00 ⁽¹⁾	8,35	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 1250/98
of 17 June 1998
altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1201/98 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 1201/98 to the information known to the Commission that the export refunds at

present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1201/98 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 June 1998.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 166, 11. 6. 1998, p. 8.

ANNEX

to the Commission Regulation of 17 June 1998 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	40,92 ⁽¹⁾
1701 11 90 9910	40,70 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	40,92 ⁽¹⁾
1701 12 90 9910	40,70 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4448
	— ECU/100 kg —
1701 99 10 9100	44,48
1701 99 10 9910	44,24
1701 99 10 9950	44,24
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4448

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21. 11. 1985, p. 14).

COMMISSION REGULATION (EC) No 1251/98
of 17 June 1998

fixing the maximum export refund for white sugar for the 43rd partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 17 (5)(b) thereof,

Whereas Commission Regulation (EC) No 1408/97 of 22 July 1997 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1408/97 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 43rd partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 43rd partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 42,272 per 100 kilograms.

Article 2

This Regulation shall enter into force on 18 June 1998.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 194, 23. 7. 1997, p. 16.

COMMISSION REGULATION (EC) No 1252/98**of 17 June 1998****establishing a forecast balance for the supply to the Canary Islands of cereal products covered by the specific measures provided for in Articles 2, 3, 4 and 5 of Council Regulation (EEC) No 1601/92**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EC) No 2348/96 ⁽²⁾, and in particular Article 2 and Article 3(4) thereof,

Whereas the measures, introduced by Regulation (EEC) No 1601/92, intended to offset as regards the supply of certain cereal products, the geographical situation of the Canary Islands, consist of exemption from import duties (customs duties and agricultural levies), and the grant of aid to encourage the delivery of cereal products from the Community;

Whereas in accordance with Article 2 of Regulation (EEC) No 1601/92 these arrangements include requirements for direct human consumption, and for processing and packaging in the Islands of products listed in the Annex to the aforementioned Regulation; whereas an assessment of these requirements is made annually in the context of a forecast supply balance which can be revised in the course of the year in the light of developments in the requirements of the Islands; whereas the assessment of the requirements of the processing and packaging industries, as regards products intended for the local market or traditionally dispatched to the rest of the Community,

may result in the establishment of a separate forecast supply balance;

Whereas, in order to facilitate administration of the supply balance, a certain margin of flexibility in the allocation of the quantities fixed in the supply balance should be permitted;

Whereas a forecast supply balance for the products concerned should be established covering the entire 12-month period 1 July 1998 to 30 June 1999;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of Articles 2 and 3 of Regulation (EEC) No 1601/92 the quantities in the forecast supply balance which shall benefit, as appropriate, from exemption from import charges in the case of products coming from third countries, or from payment of Community aid in the case of products coming from the Community market, are as indicated in the Annex.

Article 2

This Regulation shall enter into force on 1 July 1998.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ L 320, 11. 12. 1996, p. 1.

ANNEX

**FORECAST SUPPLY BALANCE FOR THE CANARY ISLANDS FOR THE PERIOD 1 JULY
1998 TO 30 JUNE 1999**

(tonnes)

CN code	Product	Quantity
1001 90 ⁽¹⁾	Soft wheat	155 000
1001 10 ⁽¹⁾	Durum wheat	0
1003 ⁽¹⁾	Barley	30 000
1004 ⁽¹⁾	Oats	3 000
1005 ⁽¹⁾	Maize	180 000
1103 11 50	Durum wheat-groats and meal	4 900
1103 13	Maize flour-groats and meal	3 000
1103 19	Other groats and meal	0
1103 21 to 1103 29	Pellets	0
1107	Malt	15 000
ex 1702 ⁽²⁾	Glucose	1 800

⁽¹⁾ The quantities fixed may be exceeded, up to a maximum of 25 %, provided that the combined quantity for the products concerned is not exceeded.

⁽²⁾ Other than products from CN codes 1702 30 10, 1702 40 10, 1702 60 10 and 1702 90 30.

COMMISSION REGULATION (EC) No 1253/98
of 17 June 1998

establishing a forecast balance for the supply to the Azores and Madeira of cereal products covered by the specific measures provided for in Articles 2 to 10 of Council Regulation (EEC) No 1600/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira, with regard to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EC) No 562/98 ⁽²⁾, and in particular Article 10 thereof,

Whereas the quantities of products eligible for the specific supply arrangements are determined by means of periodic forecast balances which may be revised according to the essential requirements of the market taking into account local production and traditional trade flows;

Whereas in accordance with Article 2 of Regulation (EEC) No 1600/92 these arrangements include requirements for direct human consumption, and for processing and packaging in the Islands of products listed in the Annex to the aforementioned Regulation; whereas an assessment of these requirements is made annually in the context of a forecast supply balance which can be revised in the course of the year in the light of developments in the requirements of the Islands; whereas the assessment of the requirements of the processing and packaging industries, as regards products intended for the local market or traditionally dispatched to the rest of the Community,

may result in the establishment of a separate forecast supply balance;

Whereas a forecast supply balance for the products concerned should be established covering the entire 12-month period 1 July 1998 to 30 June 1999;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of Article 2 of Regulation (EEC) No 1600/92 the quantities in the forecast supply balance which shall benefit, as appropriate, from exemption from import charges in the case of products coming from third countries, or from payment of Community aid in the case of products coming from the Community market, are as indicated in the Annex.

Article 2

This Regulation shall enter into force on 1 July 1998.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ L 76, 13. 3. 1998, p. 6.

ANNEX

Forecast supply balance for the Azores and Madeira for the 1998/99 marketing year

Region	Breadmaking common wheat	Feed wheat	Durum wheat	Barley	Maize	Malt	Total
Azores	34 000	—	500	20 500	90 000	1 000	146 000
Madeira	25 000	—	5 000	2 500	35 000	2 200	69 700
Total	59 000	—	5 500	23 000	125 000	3 200	215 700

COMMISSION REGULATION (EC) No 1254/98
of 17 June 1998

fixing representative prices and additional import duties in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 1516/96 ⁽²⁾, and in particular Article 5 (4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat ⁽³⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽⁴⁾, and in particular Article 5 (4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽⁵⁾, as last amended by Commission Regulation (EC) No 2916/95, and in particular Article 3 (4) thereof,

Whereas Commission Regulation (EC) No 1484/95 ⁽⁶⁾, as last amended by Regulation (EC) No 1014/98 ⁽⁷⁾, fixes detailed rules for implementing the system of additional import duties and fixes additional import duties in the poultrymeat and egg sectors and for egg albumin;

Whereas it results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices and additional duties for imports of certain products should be amended taking into account variations of prices according to origin; whereas, therefore, representative prices and corresponding additional duties should be published;

Whereas it is necessary to apply this amendment as soon as possible, given the situation on the market;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 18 June 1998.

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

Done at Brussels, 17 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 282, 1. 11. 1975, p. 49.

⁽²⁾ OJ L 189, 30. 7. 1996, p. 99.

⁽³⁾ OJ L 282, 1. 11. 1975, p. 77.

⁽⁴⁾ OJ L 305, 19. 12. 1995, p. 49.

⁽⁵⁾ OJ L 282, 1. 11. 1975, p. 104.

⁽⁶⁾ OJ L 145, 29. 6. 1995, p. 47.

⁽⁷⁾ OJ L 145, 15. 5. 1998, p. 20.

ANNEX

ANNEX I

CN code	Description	Representative price ECU/100 kg	Additional duty ECU/100 kg	Origin (¹)
0207 14 10	Boneless cuts of fowls of the species <i>gallus domesticus</i> , frozen	216,6	25	01
		249,9	15	02
		247,3	16	03
		265,7	10	04
		265,7	10	05
1602 32 11	Preparations uncooked of the species <i>gallus domesticus</i>	221,6	20	01
		250,2	11	02
		237,2	16	03
1602 39 21	Preparations uncooked other than turkeys and of the species <i>gallus domesticus</i>	221,6	20	01

(¹) Origin of imports:

- 01 China
- 02 Brazil
- 03 Thailand
- 04 Chile
- 05 Argentina.

COMMISSION REGULATION (EC) No 1255/98
of 17 June 1998
correcting Regulation (EEC) No 536/93 laying down detailed rules on the applica-
tion of the additional levy on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector ⁽¹⁾, as last amended by Commission Regulation (EC) No 903/98 ⁽²⁾, and in particular Article 11 thereof,

Whereas the first subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 ⁽³⁾, as last amended by Regulation (EC) No 1001/98 ⁽⁴⁾, stipulates that the purchasers must notify the competent authorities of the Member State of the collection data before 15 May and stipulates in the first paragraph of Article 4(2) that the producer engaged in direct sales must also send his declaration before 15 May; whereas an error has been noted in the Italian version of the Regulation which stipulates that the notifications must be made on or

before 15 May; whereas it is therefore necessary to correct the Italian text;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The first subparagraph of Article 3(2) and Article 4(2) of Regulation (EEC) No 536/93 are amended as follows: (concerns the Italian text only).

Article 2

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 17 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 405, 31. 12. 1992, p. 1.

⁽²⁾ OJ L 127, 29. 4. 1998, p. 8.

⁽³⁾ OJ L 57, 10. 3. 1993, p. 12.

⁽⁴⁾ OJ L 142, 14. 5. 1998, p. 22.

COMMISSION REGULATION (EC) No 1256/98

of 17 June 1998

fixing, in respect of the 1997/98 marketing year, the actual production of unginning cotton and the amount by which the guide price is to be reduced

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95⁽¹⁾,

Having regard to Council Regulation (EEC) No 1964/87 of 2 July 1987 adjusting the system of aid for cotton introduced by Protocol 4 annexed to the Act of Accession of Greece⁽²⁾, as last amended by Regulation (EC) No 1553/95, and in particular Article 2(3) and (4) thereof,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81⁽³⁾, as amended by Regulation (EC) No 1584/96⁽⁴⁾, and in particular Article 9 thereof,

Whereas Article 9 of Regulation (EC) No 1554/95 provides that actual production in each marketing year is to be determined each year, account being taken in particular of the quantities for which aid has been requested; whereas application of this criterion results in actual production, in respect of the 1997/98 marketing year, being established at the level set out hereafter;

Whereas Article 2(3) of Regulation (EEC) No 1964/87 provides that if actual production determined for Greece and Spain exceeds the guaranteed maximum quantity, the guide price is to be reduced in each Member State where production exceeds its guaranteed national quantity; whereas the calculation of the said reduction varies depending on whether the guaranteed national quantity is exceeded both in Spain and Greece or only in one of those Member States; whereas, in the case under consideration, the overrun occurs both in Greece and in Spain; whereas, therefore, under the rules laid down in Article 6(a) of Regulation (EC) No 1554/95, actual production in excess of the guaranteed national quantity is to be calculated in each Member State as a percentage of the guaranteed national quantity of that Member State, and the guide price is to be reduced by a percentage equal to half the percentage excess;

Whereas Article 2(4) of Regulation (EEC) No 1964/87 provides for an increase in aid, if certain conditions are fulfilled, in each Member State where actual production

exceeds its guaranteed national quantity; whereas Article 6 of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton⁽⁵⁾, as last amended by Regulation (EC) No 1740/97⁽⁶⁾, sets out the rules for calculating this increase;

Whereas the above conditions are satisfied for the 1997/98 marketing year; whereas the size of the aid increase for each Member State should therefore be calculated; whereas the application of Article 6 of Regulation (EEC) No 1201/89 results in those amounts being set for the 1997/98 marketing year as indicated hereafter;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Flax and Hemp,

HAS ADOPTED THIS REGULATION:

Article 1

1. (a) For the 1997/98 marketing year, actual production of unginning cotton is fixed at 1 464 840 tonnes, of which 1 085 482 tonnes for Greece and 379 358 tonnes for Spain.
- (b) For the 1997/98 marketing year, actual production of unginning cotton is fixed at 102 tonnes for Portugal.
2. The amount by which the guide price is to be reduced for the 1997/98 marketing year is fixed at:
 - ECU 20,622/100 kg for Greece,
 - ECU 27,851/100 kg for Spain.
3. The increase in the amount of aid for the 1997/98 marketing year is fixed at:
 - ECU 4,663/100 kg for Greece,
 - ECU 4,663/100 kg for Spain.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 184, 3. 7. 1987, p. 14.

⁽³⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽⁴⁾ OJ L 206, 16. 8. 1996, p. 16.

⁽⁵⁾ OJ L 123, 4. 5. 1989, p. 23.

⁽⁶⁾ OJ L 244, 6. 9. 1997, p. 1.

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

Done at Brussels, 17 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1257/98
of 17 June 1998
closing an invitation to tender for the supply of rice as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24(1)(b) thereof,

For lots B, C and D of the Annex to Regulation (EC) No 1085/98 the invitation to tender is closed.

Whereas, by Regulation (EC) No 1085/98⁽²⁾, the Commission issued an invitation to tender for the supply of rice as food aid; whereas the conditions of the supply, as regards lots B, C and D should be reviewed and the invitation to tender for these lots should consequently be closed,

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 155, 29. 5. 1998, p. 14.

COMMISSION REGULATION (EC) No 1258/98
of 17 June 1998
fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 (3) thereof,

Whereas Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72⁽³⁾, as last amended by Regulation (EEC) No 2962/77⁽⁴⁾;

Whereas Article 3 (3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 3 (4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market; whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period; whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 3 (3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender; whereas the tendering procedure should cover the amount of the

refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 3 (3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 961/98⁽⁸⁾;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 June 1998.

⁽¹⁾ OJ L 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ L 348, 30. 12. 1977, p. 53.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 17 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 17 June 1998 fixing the export refunds on olive oil
(ECU/100 kg)

Product code	Amount of refund (1)
1509 10 90 9100	0,00
1509 10 90 9900	0,00
1509 90 00 9100	0,00
1509 90 00 9900	0,00
1510 00 90 9100	0,00
1510 00 90 9900	0,00

(1) For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ L 351, 14. 12. 1987, p 1), as well as for exports to third countries.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 1259/98
of 17 June 1998

fixing the maximum export refunds for olive oil for the 14th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 1978/97⁽³⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Article 6 of Regulation (EC) No 1978/97 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the abovementioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the 14th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97 are hereby fixed in the Annex, on the basis of the tenders submitted by 9 June 1998.

Article 2

This Regulation shall enter into force on 18 June 1998.

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

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 278, 11. 10. 1997, p. 7.

ANNEX

to the Commission Regulation of 17 June 1998 fixing the maximum export refunds for olive oil for the 14th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97

(ECU/100 kg)

Product code	Amount of refund
1509 10 90 9100	—
1509 10 90 9900	—
1509 90 00 9100	—
1509 90 00 9900	—
1510 00 90 9100	—
1510 00 90 9900	—

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 1260/98
of 17 June 1998

**fixing the minimum selling prices for beef put up for sale under the invitation to
tender referred to in Regulation (EC) No 1161/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Community,

Having regard to Council Regulation (EEC) No 805/68 of
27 June 1968 on the common organisation of the market
in beef and veal ⁽¹⁾, as last amended by Regulation (EC)
No 2634/97 ⁽²⁾, and in particular Article 7(3) thereof,

Whereas tenders have been invited for certain quantities
of beef fixed by Commission Regulation (EC) No
1161/98 ⁽³⁾;

Whereas, pursuant to Article 9 of Commission Regulation
(EEC) No 2173/79 ⁽⁴⁾, as last amended by Regulation (EC)
No 2417/95 ⁽⁵⁾, the minimum selling prices for meat put
up for sale by tender should be fixed, taking into account
tenders submitted;

Whereas the measures provided for in this Regulation are
in accordance with the opinion of the Management
Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the invitation to
tender held in accordance with Regulation (EC) No 1161/
98 for which the time limit for the submission of tenders
was 8 June 1998 are as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on the day of its
publication in the *Official Journal of the European
Communities*.

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

Done at Brussels, 17 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽³⁾ OJ L 160, 4. 6. 1998, p. 23.

⁽⁴⁾ OJ L 251, 5. 10. 1979, p. 12.

⁽⁵⁾ OJ L 248, 14. 10. 1995, p. 39.

ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO —
BIJLAGE — ANEXO — LIITE — BILAGA

Estado miembro	Productos	Precio mínimo expresado en ecus por tonelada
Medlemsstat	Produkter	Mindstepriser i ECU/ton
Mitgliedstaat	Erzeugnisse	Mindestpreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα	Ελάχιστες πωλήσεις εκφραζόμενες σε Ecu ανά τόνο
Member State	Products	Minimum prices expressed in ECU per tonne
État membre	Produits	Prix minimaux exprimés en écus par tonne
Stato membro	Prodotti	Prezzi minimi espressi in ecu per tonnellata
Lidstaat	Producten	Minimumprijzen uitgedrukt in ECU per ton
Estado-membro	Produtos	Preço mínimo expreso em ecus por tonelada
Jäsenvaltio	Tuotteet	Vähimmäishinnat ecuna tonnia kohden ilmaistuna
Medlemsstat	Produkter	Minimipriser i ecu per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

DEUTSCHLAND	— Vorderviertel	500
	— Hinterviertel	600
DANMARK	— Forfjerdinger	500
	— Bagfjerdinger	1 280
ÖSTERREICH	— Vorderviertel	—
	— Hinterviertel	—
ESPAÑA	— Cuartos delanteros	505
	— Cuartos traseros	630

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

UNITED KINGDOM	— Intervention shank (INT 11)	—
	— Intervention thick flank (INT 12)	—
	— Intervention topside (INT 13)	—
	— Intervention silverside (INT 14)	—
	— Intervention rump (INT 16)	—
	— Intervention flank (INT 18)	—
	— Intervention forerib (INT 19)	—
	— Intervention shin (INT 21)	—
	— Intervention shoulder (INT 22)	—
	— Intervention brisket (INT 23)	—
— Intervention forequarter (INT 24)	—	

COMMISSION REGULATION (EC) No 1261/98
of 17 June 1998
altering the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 13 (8) thereof,

Whereas the corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EC) No 1115/98⁽³⁾, as amended by Regulation (EC) No 1164/98⁽⁴⁾;

Whereas, on the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the market into account, the corrective amount at present applicable to the refund on cereals should be altered;

Whereas the corrective amount must be fixed according to the same procedure as the refund; whereas it may be altered in the period between fixings;

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

Done at Brussels, 17 June 1998.

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 961/98⁽⁸⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 which is applicable to the export refunds fixed in advance in respect of the products referred to, except for malt, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 157, 30. 5. 1998, p. 43.

⁽⁴⁾ OJ L 160, 4. 6. 1998, p. 34.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 135, 8. 5. 1998, p. 5.

ANNEX

to the Commission Regulation of 17 June 1998 altering the corrective amount applicable to the refund on cereals

(ECU / tonne)

Product code	Destination (1)	Current 6	1st period 7	2nd period 8	3rd period 9	4th period 10	5th period 11	6th period 12
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	—	—	—	—	—	—	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	01	0	+11,00	+9,00	+7,00	+8,00	—	—
1002 00 00 9000	01	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	01	0	+11,00	+11,00	+11,00	+11,00	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	01	0	0	0	-20,00	-20,00	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	01	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	01	0	-7,00	-7,00	-7,00	-7,00	—	—
1101 00 15 9130	01	0	-7,00	-7,00	-7,00	-7,00	—	—
1101 00 15 9150	01	0	-7,00	-7,00	-7,00	-7,00	—	—
1101 00 15 9170	01	0	-7,00	-7,00	-7,00	-7,00	—	—
1101 00 15 9180	01	0	-7,00	-7,00	-7,00	-7,00	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	01	0	-7,00	-7,00	-7,00	-7,00	—	—
1102 10 00 9700	—	—	—	—	—	—	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	—	—	—	—	—	—	—	—
1103 11 10 9400	—	—	—	—	—	—	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	01	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

(1) The destinations are identified as follows:
01 all third countries.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

II

(Acts whose publication is not obligatory)

COUNCIL AND COMMISSION

DECISION OF THE COUNCIL AND OF THE COMMISSION

of 29 May 1998

concerning the conclusion of the Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws

(98/386/EC, ECSC)

THE COUNCIL OF THE EUROPEAN UNION,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 87 in conjunction with the first subparagraph of Article 228(3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 65 and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas the Agreement of 23 September 1991 between the European Communities and the Government of the United States of America regarding the application of their competition laws, and the exchange of interpretative letters dated 31 May and 31 July 1995 in relation to that Agreement (together hereinafter referred to as 'the 1991 Agreement'), attached to Decision 95/145/EC, ECSC of the Council and the Commission⁽²⁾ has contributed to coordination, cooperation and avoidance of conflicts in competition law enforcement;

Whereas Article V of the 1991 Agreement, commonly referred to as the 'positive comity' Article, calls for cooperation regarding anti-competitive activities

occurring in the territory of one Party that adversely affect the interests of the other Party;

Whereas further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1991 Agreement's effectiveness in relation to such conduct;

Whereas, to this end, the Commission has negotiated an Agreement with the Government of the United States of America on the application of positive comity principles in the enforcement of the competition rules of the European Communities and of the United States of America;

Whereas the Agreement should be approved,

HAVE DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws is hereby approved on behalf of the European Community and the European Coal and Steel Community.

The text of the Agreement, drawn up in the English language, is attached to this Decision.

⁽¹⁾ OJ C 138, 4. 5. 1998.

⁽²⁾ OJ L 95, 27. 4. 1995, p. 45; corrigendum OJ L 131, 15. 6. 1995, p. 38.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community.

The President of the Commission is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Coal and Steel Community.

Done at Brussels, 29 May 1998.

For the Council

The President

J. STRAW

For the Commission

The President

J. SANTER

AGREEMENT

between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws

THE EUROPEAN COMMUNITY AND THE EUROPEAN COAL AND STEEL COMMUNITY

of the one part (hereinafter 'the European Communities'), and

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

of the other part,

Having regard to the 23 September 1991 Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, and the exchange of interpretative letters dated 31 May and 31 July 1995 in relation to that Agreement (together hereinafter 'the 1991 Agreement'),

Recognising that the 1991 Agreement has contributed to coordination, cooperation, and avoidance of conflicts in competition law enforcement,

Noting in particular Article V of the 1991 Agreement, commonly referred to as the 'positive comity' Article, which calls for cooperation regarding anti-competitive activities occurring in the territory of one Party that adversely affect the interests of the other Party,

Believing that further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1991 Agreement's effectiveness in relation to such conduct,

and

Noting that nothing in this Agreement or its implementation shall be construed as prejudicing either Party's position on issues of competition law jurisdiction in the international context,

HAVE AGREED AS FOLLOWS:

Article I

2. The purposes of this Agreement are to:

Scope and purpose of this Agreement

1. This Agreement applies where a Party satisfies the other that there is reason to believe that the following circumstances are present:

(a) anti-competitive activities are occurring in whole or in substantial part in the territory of one of the Parties and are adversely affecting the interests of the other Party; and

(b) the activities in question are impermissible under the competition laws of the Party in the territory of which the activities are occurring.

(a) help ensure that trade and investment flows between the Parties and competition and consumer welfare within the territories of the parties are not impeded by anti-competitive activities for which the competition laws of one or both Parties can provide a remedy, and

(b) establish cooperative procedures to achieve the most effective and efficient enforcement of competition law, whereby the competition authorities of each Party will normally avoid allocating enforcement resources to deal with anti-competitive activities that occur principally in and are directed principally towards the other Party's territory, where the competition authorities of the other Party are able and prepared to examine and take effective sanctions under their law to deal with those activities.

*Article II***Definitions**

As used in this Agreement:

1. 'Adverse effects' and 'adversely affected' mean harm caused by anti-competitive activities to:

- (a) the ability of firms in the territory of a Party to export to, invest in, or otherwise compete in the territory of the other Party; or
- (b) competition in a Party's domestic or import markets.

2. 'Requesting Party' means a Party that is adversely affected by anti-competitive activities occurring in whole or in substantial part in the territory of the other Party.

3. 'Requested Party' means a Party in the territory of which such anti-competitive activities appear to be occurring.

4. 'Competition law(s)' means

- (a) for the European Communities, Articles 85, 86, and 89 of the Treaty establishing the European Community (EC), Articles 65 and 66(7) of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing instruments, to the exclusion of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings; and
- (b) for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27, except as it relates to investigations pursuant to Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a), the Wilson Tariff Act (15 U.S.C. §§ 8-11), and the Federal Trade Commission Act (15 U.S.C. §§ 41-58, except as these sections relate to consumer protection functions);

as well as such other laws or regulations as the Parties shall jointly agree in writing to be a 'competition law' for the purposes of this Agreement.

5. 'Competition authorities' means:

- (a) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and
- (b) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission.

6. 'Enforcement activities' means any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party.

7. 'Anti-competitive activities' means any conduct or transaction that is impermissible under the competition laws of a Party.

*Article III***Positive comity**

The competition authorities of a Requesting Party may request the competition authorities of a Requested Party to investigate and, if warranted, to remedy anti-competitive activities in accordance with the Requested Party's competition laws. Such a request may be made regardless of whether the activities also violate the Requesting Party's competition laws, and regardless of whether the competition authorities of the Requesting Party have commenced or contemplate taking enforcement activities under their own competition laws.

*Article IV***Deferral or suspension of investigations in reliance on enforcement activity by the Requested Party**

1. The competition authorities of the Parties may agree that the competition authorities of the Requesting Party will defer or suspend pending or contemplated enforcement activities during the pendency of enforcement activities of the Requested Party.

2. The competition authorities of a Requesting Party will normally defer or suspend their own enforcement activities in favour of enforcement activities by the competition authorities of the Requested Party when the following conditions are satisfied:

- (a) the anti-competitive activities at issue:
 - (i) do not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory; or
 - (ii) where the anti-competitive activities do have such an impact on the Requesting Party's consumers, they occur principally in and are directed principally towards the other Party's territory;
- (b) the adverse effects on the interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or adequately remedied pursuant to the laws, procedures, and available remedies of the Requested Party. The Parties recognise that it may be appropriate to pursue separate enforcement activities where anti-competitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and

- (c) the competition authorities of the Requested Party agree that in conducting their own enforcement activities, they will:
- (i) devote adequate resources to investigate the anti-competitive activities and, where appropriate, promptly pursue adequate enforcement activities;
 - (ii) use their best efforts to pursue all reasonably available sources of information, including such sources of information as may be suggested by the competition authorities of the Requesting Party;
 - (iii) inform the competition authorities of the Requesting Party, on request or at reasonable intervals, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information if consent has been obtained from the source concerned. The use and disclosure of such information shall be governed by Article V;
 - (iv) promptly notify the competition authorities of the Requesting Party of any change in their intentions with respect to investigation or enforcement;
 - (v) use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within six months, or such other time as agreed to by the competition authorities of the Parties, of the deferral or suspension of enforcement activities by the competition authorities of the Requesting Party;
 - (vi) fully inform the competition authorities of the Requesting Party of the results of their investigation, and take into account the views of the competition authorities of the Requesting Party, prior to any settlement, initiation of proceedings, adoption of remedies, or termination of the investigation; and
 - (vii) comply with any reasonable request that may be made by the competition authorities of the Requesting Party.

When the above conditions are satisfied, a Requesting Party which chooses not to defer or suspend its enforcement activities shall inform the competition authorities of the Requested Party of its reasons.

3. The competition authorities of the Requesting Party may defer or suspend their own enforcement activities if fewer than all of the conditions set out in paragraph 2 are satisfied.

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer

or suspend independent enforcement activities from later initiating or reinstating such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall, where appropriate, coordinate their respective investigations under the criteria and procedures of Article IV of the 1991 Agreement.

Article V

Confidentiality and use of information

Where pursuant to this Agreement the competition authorities of one Party provide information to the competition authorities of the other Party for the purpose of implementing this Agreement, that information shall be used by the latter competition authorities only for that purpose. However, the competition authorities that provided the information may consent to another use, on condition that where confidential information has been provided pursuant to Article IV(2)(c)(iii) on the basis of the consent of the source concerned, that source also agrees to the other use. Disclosure of such information shall be governed by the provisions of Article VIII of the 1991 Agreement and the exchange of interpretative letters dated 31 May and 31 July 1995.

Article VI

Relationship to the 1991 Agreement

This Agreement shall supplement and be interpreted consistently with the 1991 Agreement, which remains fully in force.

Article VII

Existing law

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the European Communities or the United States of America or of their respective Member States or states.

Article VIII

Entry into force and termination

1. This Agreement shall enter into force upon signature.
2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

DONE at Brussels and Washington, in duplicate, in the English language.

For the European Community and for the European Coal and Steel Community

Date: 3. 6. 98 *Harqwer Beckett*

Date: 4-6-98 *Howe Van Amer*

For the Government of the United States of America

Date: June 4, 1998 *James K. ...*

Date: June 4, 1998 *Robert ...*

COMMISSION

COMMISSION DECISION

of 14 January 1998

on the application of Article 9 of Council Directive 96/67/EC to Frankfurt Airport (Flughafen Frankfurt/Main AG)

(notified under document number C(1998) 67)

(Only the German text is authentic)

(Text with EEA relevance)

(98/387/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports⁽¹⁾, and in particular Article 9(5) thereof,

After consulting the Advisory Committee established thereunder,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY GERMANY

1. *The notification presented by the German authorities*

By letter of 8 April 1997, received by the Commission on 10 April 1997, the German authorities notified a communication from the Government of the Federal Republic of Germany dated 27 March 1997 granting Frankfurt airport (Flughafen Frankfurt/Main AG) the following exemption:

- (a) to allow the airport to ban self-handling for the categories of services referred to in points 3, 5.4, 5.5 and 5.6 in the Annex to Directive 96/67/EC (the Directive) and self-handling as regards the physical handling of freight and mail, whether incoming, outgoing or in transit, between the air terminal and the aircraft. This exemption, granted on the basis of

Article 9(1)(d) of the Directive, ran from 1 January 1998;

- (b) to reserve to Frankfurt airport the monopoly on the provision to third parties of the categories of services referred to in points 3, 5.4, 5.5 and 5.6 in the Annex to the Directive, and also for the handling of freight and mail, whether incoming, outgoing or in transit, between the air terminal and the aircraft. This exemption, granted on the basis of Article 9(1)(b) of the Directive, runs from 1 January 1999.

By letter dated 13 June 1997, the Commission informed the German authorities that this notification could not be accepted, in particular on the grounds that:

- (a) the scope of the exemption granted had not been precisely defined, which allowed the airport alone to decide whether or not to ban self-handling;
- (b) no plan aimed to overcome the problems cited had been submitted.

By letter dated 15 October 1997, received by the Commission on 20 October 1997, and supplemented by a letter dated 9 December 1997, Germany notified a further communication dated 29 September 1997 supplementing that of 27 March 1997 and granting the following exemption:

- (a) to ban self-handling, save in the cases already authorised prior to the exemption decision, for the categories of services referred to in points 3, 5.4, 5.5 and 5.6 in the Annex to the Directive, and to ban self-handling as regards the handling of freight and mail,

⁽¹⁾ OJ L 272, 25. 10. 1996, p. 36.

whether incoming, outgoing or in transit, between the air terminal and the aircraft. This exemption, granted on the basis of Article 9(1)(d) of the Directive, ran for three years starting on 1 January 1998;

- (b) to reserve to Frankfurt airport the monopoly on the provision to third parties of the categories of services referred to in points 3, 5.4, 5.5 and 5.6 in the Annex to the Directive, and also for the handling of freight and mail, whether incoming, outgoing or in transit, between the air terminal and the aircraft. This exemption, granted on the basis of Article 9(1)(b) of the Directive, runs for two years starting on 1 January 1999.

Pursuant to Article 9(3) of the Directive, the Commission published a summary of the said notification in the *Official Journal of the European Communities*⁽¹⁾ and invited interested parties to submit comments.

Pursuant to Article 9(5) of the Directive, Germany was consulted by the Commission on its draft evaluation on 17 December 1997. On 18 and 19 December 1997 the German authorities replied to this consultation by written observations.

Basis of the exemption

The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. However, because of the specific situation and role of an airport, and in particular constraints of safety and security, but also considerations of space and capacity which can arise in some parts of most airports, the Directive does not demand total freedom but requires a minimum degree of opening-up to third parties of both self-handling and services for four categories of services located airside — that is to say, in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

The Directive also takes account of the fact that, in certain very special cases, severe space and capacity problems may prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. Such exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.

An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which Germany has granted the abovementioned exemp-

tion in accordance with paragraph 3 of the German *Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften* transposing the Directive into national law.

2. Current situation at Frankfurt airport

2.1. Presentation of the airport

Frankfurt airport is bounded on the north and east by motorways, on the south by railways and on the west by a forest which is protected for environmental reasons. No extension of the airport site is therefore conceivable.

The airport's runway system consists of two parallel (north/south) runways and a third runway reserved exclusively for take-off (west) lying almost at right angles to them. Most of the airport buildings are situated to the north of the two main runways, the southern part having hitherto been largely reserved for the US Air Force. The airport recently recovered control of part of this area, which it has converted into freight areas.

The airport buildings extend along the north runway for a distance of nearly six kilometres, and include the freight buildings, the Lufthansa operations and freight buildings, the fuel storage bunkers, Terminals 1 and 2 and the German post office buildings. The north-eastern corner accommodates the 'little league' area and the area for short-haul companies, which the airport recently regained and which it has assigned to the USAF's mail service.

The configuration of the two passenger terminals is radically different. Terminal 2 (divided into parts D and E) is one long building, whereas the larger Terminal 1 is W-shaped with three Piers A, B and C with *culs-de-sac* between them.

The airport currently has 49 gate parking positions (36 in Terminal 1 and 13 in Terminal 2) and 57 remote positions; groundhandling services for the remote positions are generally combined with the same services for the gate parking positions of the nearest terminal. It also has eleven positions for short-haul flights and 15 for freight. Thanks to the extension of Pier A of Terminal 1 and the allocation of new positions in the corridor between Terminals 1 and 2, the airport should have a total of 156 positions by the year 2000. This parking capacity is sufficient to cope with the increase in capacity planned by FAG for the coming years, which provides for an increase in movements from 74 per hour in 1997 to 80 per hour in 2000.

2.2. Groundhandling services at the airport

Before the new rules laid down by the Directive were introduced into German law, the situation regarding groundhandling services at Frankfurt airport was as follows:

⁽¹⁾ OJ C 335, 6. 11. 1997, p. 7.

- (a) for most of the services listed in the Annex to the Directive and referred to in Articles 6(1) and 7(1) thereof, the market for which should be opened up to the maximum possible extent:
- (i) self-handling was authorised; as regards the provision of services for third parties, airlines could use either the services of other carriers or the airport services.
 - (ii) groundhandling services provided by independent service suppliers were also authorised, with the exception of registration services.
- (b) for the services listed in Articles 6(2) and 7(2), in respect of which the Directive provides that the market must normally be opened up to at least two service suppliers and two self-handling users:
- (i) self-handling was prohibited, except in the case of an express mail integrator who, for historic reasons, had been authorised to perform certain loading and unloading operations;
 - (ii) the airport had a monopoly on the provision to third parties of these services, with the exception of certain services (fuel and oil handling, catering services, de-icing, snow removal) which the airport does not perform itself but contracts out to service suppliers.

The exemption granted by Germany concerns services referred to in Articles 6(2) and 7(2) of the Directive, in respect of which the Member States are already permitted to limit the number of service suppliers or self-handling users to no fewer than two.

The German decision allows the situation which existed prior to the entry into force of the Directive to continue. It restricts the number of parties involved even more than is intended by the Directive, as it prohibits self-handling and reserves to the airport alone the right to provide groundhandling services to third parties. It covers self-handling and handling for third parties of the following services set out in the Annex to the Directive: baggage handling (point 3), certain ramp-handling services — loading and unloading of aircraft (point 5.4) and the operation of appropriate units for engine-starting (point 5.5), the moving of aircraft (point 5.6), and freight and mail handling as described in Articles 6(2) and 7(2) (point 4). The German authorities' decision would therefore open the market up to the extent provided for in the Directive, namely to at least a second service-supplier and to two self-handling airport users, only in respect of a limited range of ramp-handling services — services relating to aircraft marshalling, parking, communication between the aircraft and the supplier of services, and the transport and loading of food and beverages and — for freight and post services — customs and administrative formalities. There is to be a completely free market for cleaning services.

2.3. Article 86 of the Treaty

On 20 July 1993 the companies KLM Royal Dutch Airlines NV, Air France Compagnie Nationale SA, and British Airways plc lodged a complaint with the Commission about the performance of groundhandling services at Frankfurt airport, suggesting that the company Flughafen Frankfurt/Main AG (FAG) had infringed Article 86 of the Treaty.

The various studies and comments on this matter have been communicated by the German authorities in support of the exemption decision, including the comments of FAG on the study carried out by Cranfield University for the Commission.

II. CONSTRAINTS PLEADED BY GERMANY

The exemption granted by the German Government is based principally on the problems of the space available at the airport:

- (a) the impossibility for the airport of finding the space needed to store additional groundhandling equipment;
- (b) the exacerbation of these space problems as a result of the works currently being carried out at the airport.

Furthermore, the following implications of opening up the market as envisaged in the Directive were cited:

- (a) the resulting reduction in capacity, particularly airside;
- (b) the physical impossibility of admitting a second service supplier for baggage handling;
- (c) the negative consequences on the quality of services provided.

The exemption decision is based on the arguments and studies presented by FAG, which are annexed to the Decision, namely:

- Netherlands Airport Consultants BV (NACO) study (I) *Vorfeldverkehr* of 10 December 1993,
- NACO study (II) *Vorfeldverkehr und Flughafenkapazität* of 18 June 1994,
- NACO study (III) *Eine Zusätzliche Abfertigungsgesellschaft* of 17 February 1995,
- NACO study (IV) *Eine Zusätzliche Abfertigungsgesellschaft*, updated for the period 1997-2000, from 27 October 1995,
- NACO study (IV), re-updated from 14 May 1997,
- comments by NACO on the conclusions presented at the hearing of 9 July 1997 as part of the procedure referred to in paragraph 2.3 above, and sent by Germany to the Commission on 30 October 1997,
- several letters from FAG to the Commission dated 25 July,

- *Fraunhofer-Institut für Materialfluß und Logistik* (study I): *Kapazitäts- und Qualitätsauswirkungen einer Zulassung zusätzlicher Abfertiger auf dem Vorfeld für den Flughafen Frankfurt/Main* of 1 August 1994,
- *Fraunhofer-Institut für Materialfluß und Logistik* (study II): *Kapazitäts- und Qualitätsauswirkungen für den Flughafen Frankfurt/Main durch die Zulassung eines weiteren Abfertigers auf dem Vorfeld für die Jahre 1995/2000* of 16 February 1995.

1. *The problems of space needed to store equipment*

The exemption decision is based on the lack of space for parking the extra equipment of one or more users carrying out self-handling, or additional service suppliers, and the consequences of the work's being carried out at the airport.

1.1. *The NACO and Fraunhofer studies*

The NACO studies quantify the total space available at 148 000 m², this figure being obtained by adding 102 000 m² of parking areas, 22 000 m² of preparation areas, 22 000 m² of vehicle and equipment storage areas and 2 000 m² of 'buffer zone'.

Of the 148 000 m² available, FAG, which, since Delta abandoned self-handling at the beginning of 1997, is currently the only service supplier, currently occupies 146 000 m² for its own groundhandling requirements⁽¹⁾: this estimate takes account of the fact that the airport currently provides all ramp handling services, thus including services provided for Delta and services provided for the companies which replaced Delta in Terminal 2 when Delta substantially reduced its flights in 1997.

According to NACO, opening up the market to a second service supplier would increase total space requirements to 178 000 m², that is, 32 000 m² more than the space currently occupied (146 000 m²), thus resulting in a shortfall of 30 000 m² in terms of the current data on space available (148 000 m²).

Whereas the NACO figures relate to the entry of a second service supplier, the Fraunhofer figures are based on opening up the market to two additional service suppliers in Terminal 2. According to the Fraunhofer Institut, the total space required would increase from 150 000 to 167 000 m²: at Terminal 2, the requirement for parking areas would increase by 14 000 to 29 000 m², whereas only 18 000 m² is available. Opening up these services

⁽¹⁾ These figures are arrived at by combining the equipment deemed necessary in each case (monopoly or open market) and the space occupied by each piece of equipment, increased by a coefficient to allow for the space needed around each piece of equipment and for manoeuvring it (1,30 and 1,34 respectively, making a total of 1,75).

would have repercussions on Terminal 1: on account of the structural space problems at Terminal 1, the space hitherto borrowed from Terminal 2 would no longer be available as it would be allocated to new service suppliers.

1.2. *Works at the airport*

The German decision is also based on the fact that the works in progress at the airport will exacerbate the existing space problems.

The airport's internal development plan provides for a large number of works at the airport, including:

- (a) in Terminal 1, alterations to meet the Schengen standards;
- (b) on the tarmac, the extension of Pier A (alpha) and the fitting-out of the western part of the pier.

FAG maintains that this restructuring is justified by the need to react to the increase in traffic.

According to FAG, these works will have repercussions at two levels:

- (a) first, the new buildings will result in a loss of nearly 20 000 m² of parking space,
- (b) second, while the works are in progress, the space needed to store the construction equipment and the changes resulting from the works, particularly in traffic around the works, will have temporary negative repercussions in terms not only of the space available but also of the traffic near a terminal which already has serious difficulties.

2. *The implications of opening up the market*

According to Germany, the space available cannot be extended either inside or outside the airport site. Thus the current lack of space obliges FAG to manage all available areas in an optimal manner. Opening up the market would have repercussions on capacity management, the organization of baggage handling and the quality of services provided at Frankfurt airport.

2.1. *Impossibility of extending the airport*

FAG cannot use the wooded parts of the airport site (229 ha) for environmental reasons, nor the areas to the south still occupied by the USAF base, a total of nearly 170 ha with runway access.

Moreover, according to the German authorities, the absence of spare space cannot be overcome by extending the airport site, which is limited to the north and the east by the road network (A3 and A5 motorways) and to the west and south by the forest, which acts as a protective area against noise nuisance. The available area at the

airport has increased by a factor of just 2,4 over 35 years, while the number of passengers has increased by a factor of 130, and there are no plans for development beyond the current airport perimeter in either the short or long term. The regional development plan clearly states that airport capacity can be increased only within the current geographical limits of the airport.

2.2. Optimal management of area available

According to FAG, the lack of space combined with the configuration of the airport installations means that two-thirds of the aircraft positions are not gate parking positions, thus increasing the necessary traffic between the positions and the terminals, which in itself increases the need for space for traffic and for the parking of mobile equipment.

Moreover, the remote positions cannot be managed entirely independently of each other. The lack of space makes it impossible to handle two large-capacity aircraft side by side; this in turn increases the amount of equipment needed in the area and the amount of traffic on the tarmac.

Finally, the German authorities claim that the number of positions on the tarmac is not sufficient to accommodate the traffic in a satisfactory manner. The limited number of positions obliges the airport not only to use all positions without interruption, but also to treat every available space as a position. Thus the airport works at full capacity from 6 a.m. to 10 p.m., with no capacity in reserve.

2.3. Capacity management

According to the German authorities, FAG cannot satisfy the current demand for capacity and intends to increase capacity from 74 movements per hour in 1997 to 80 movements per hour in 2000, which will require additional positions.

Because of the large number of remote positions, FAG expects the volume of service vehicle traffic to increase in line with the number of movements. Vehicle traffic on the tarmac is expected to increase by between 11 and 24 %, with a density of 250 movements per hour. Moreover, opening up the market in groundhandling services would force the airport to close three areas on the north side (seven positions). The consequences of opening up the market would thus run counter to the airport's efforts to increase its capacity. FAG considers that allowing other service suppliers would have a negative impact on the proper operation of its electronic logistics system and on capacity.

FAG points out that increasing its capacity is a commercial choice of the highest importance, which should enable the airport to maintain a high position among the

major European airports, and to which it attaches the highest priority. According to NACO, the arrival of a single additional operator would result in additional space requirements of almost 32 000 m², which would have to be found by closing positions, causing the loss of 18 000 movements a year.

2.4. Baggage handling

The documentation presented in support of the German decision highlights the quality and efficiency of the airport's baggage-handling system, particularly for luggage in transit; Germany considers it impossible to maintain this level if a second operator is admitted.

It points out that in addition to safety checks for passengers and random baggage inspection, the American companies require 100 % control of the baggage intended for their flights. This requirement entails operations which, if carried out by the carrier, take up time and space. It is argued that the congestion of the baggage retrieval halls does not permit admission of a second operator.

2.5. Service quality

Because of the configuration of the airport installations, which in particular only permit a third of flights to use gate parking positions, large distances have to be covered on the tarmac. According to the studies presented in support of the exemption, the shortage of space for storing groundhandling equipment obliges the airport to park it on certain aircraft positions. According to these studies, these problems can be overcome only by means of the total interdependence of the various parties involved, and opening up the market to other service suppliers would have harmful effects on the quality of services provided, particularly the minimum connecting time of 45 minutes, which is a major element of Frankfurt airport's commercial policy.

3. Views of the interested parties

In accordance with Article 9(3) of the Directive, interested parties were invited to express their opinions. A number of airlines recognised the quality of the services provided at Frankfurt, but emphasised the high prices demanded by the airport in its monopoly position. They consider the space requirement figures put forward by Frankfurt to be greatly exaggerated, and quote examples of companies providing services to third parties for numerous flights with half the space which Frankfurt claims will be needed if a second service supplier is accepted. They also point

out that when Delta carried out self-handling, it had only 8 000 m² available and possessed enough equipment to handle up to 10 % of the airport's traffic. The airlines therefore consider that the space needed for opening up the market is less than the airport claims, and that it can easily be found. They point out that some of the equipment can be stored overnight on unoccupied positions, which is common practice in numerous airports and causes no particular problems. They object to the practice whereby for many years all available space has been systematically allocated to purposes other than ground-handling.

III. EVALUATION OF THE EXEMPTION IN THE LIGHT OF DIRECTIVE 96/67/EC

1. *The rules in force concerning groundhandling*

1.1. *The scope for restricting access to the market*

The Directive provides for the market to be opened up to different extents as a function of the way in which groundhandling services are provided (self-handling or service suppliers) and the level of traffic at the airport. In view of the volume of traffic at Frankfurt airport, the latter must, pursuant to Article 1 of the Directive, permit self-handling from 1 January 1998 and open up the market to service suppliers on 1 January 1999.

The general rules on market access for the categories of groundhandling services covered by the exemption are laid down in Articles 6(2) and 7(2) of the Directive. These rules have been taken over by paragraph 3(2) of the German implementing rules. Under those Articles, Member States are permitted to restrict market access to not less than two service suppliers and two self-handling users, who must be chosen on the basis of objective, transparent and non-discriminatory criteria.

Moreover, Article 6(4) of the Directive provides that airport users must have an effective choice between at least two service suppliers, whatever part of the airport is allocated to them.

However, where specific constraints of available space or capacity, particularly as regards congestion or the rate of space usage, make it impossible to open up the market or permit self-handling to the extent provided for in the Directive, the Member State concerned may, on the basis of Article 9(1)(b), reserve the right to provide such ground-

handling services to a single supplier and/or, on the basis of Article 9(1)(d), ban self-handling or restrict it to a single user. However, Article 9(2) specifies that such an exemption must:

- (a) specify the category or categories of services for which the exemption is granted and the specific constraints of available space or capacity which justify it;
- (b) incorporate a plan of appropriate measures to overcome the difficulties.

Moreover, the exemption must not:

- (a) unduly prejudice the aims of the Directive;
- (b) give rise to distortions of competition;
- (c) extend further than necessary.

The main purpose of the Directive is to liberalise ground-handling services. Limitations imposed on third parties amount to restrictions of those parties' freedom to provide services. By way of analogy with State measures restricting the freedom to provide services, and as the Court of Justice has held in its judgments of 25 July 1991 in Case C-288/89, *Mediawet*⁽¹⁾ and Case C-76/90, *Säger v. Denemeyer*⁽²⁾, measures which are liable to exclude or prohibit the activities of a provider of services even if they apply without distinction to national providers of services and to those of other Member States, must be justified by overriding reasons relating to a non-economic public interest and must in addition be proportionate to the objective they pursue.

1.2. **Procedure**

Under Article 9(6), the exemptions relating to self-handling granted under Article 9(1)(d) may not exceed a duration of three years and may be renewed, while those relating to service suppliers granted under Article 9(1)(b) may not exceed a duration of two years, which may be extended only for a single period of two years.

In accordance with Article 9(3) of the Directive, the German authorities undertook to make the entry into force of the exemption decision subject to a Commission decision approving it.

In accordance with the procedure provided for in Article 9(3), (4) and (5), the Commission must examine the exemption granted by the Member State and approve that decision or oppose it. It may also require the Member State to amend the extent of the exemption or restrict it to those parts of the airport where the alleged constraints have been proved to exist.

The Commission therefore considers that in its examination it must concentrate on the following three points:

- (a) the existence and extent of the space and capacity constraints used to justify the exemption and the impossibility of opening up the market to the degree provided for in the Directive;

⁽¹⁾ [1991] ECR I-4007.

⁽²⁾ [1991] ECR I-4221.

- (b) the plan of appropriate measures, which has to be credible, whose implementation must be unconditional, and which must include both measures to which the airport has to commit itself and the timetable for the implementation of those measures. In the case of an exemption permitting the continuation of a complete monopoly for certain categories of services and allowing the various airport users neither a choice, nor the possibility of self-handling with the exception of the user carrying out self-handling for historic reasons, the Commission must examine very closely the plan of appropriate measures submitted;
- (c) conformity with the principles referred to in Article 9(2) of the Directive concerning respect for the objectives of the Directive, absence of distortions of competition, and extent of the measure.

Thus an exemption may not be used to allow the airport a further general adaptation period in addition to that already granted by Article 1 of the Directive. It must permit the airport to overcome the specific constraints which it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints pleaded as evidence of the impossibility of opening up the market within the time allowed. Moreover, according to the case-law of the Court of Justice of the European Communities in its judgments of 20 April 1978 in Joined Cases 80 and 81/77, *Commissionaires réunis v. Receveur des Douanes*⁽¹⁾ and of 25 June 1992 in Case C-116/91 *British Gas*⁽²⁾, any exemption must be interpreted strictly and the scope of an exemption must be determined in the light of the aims of the measure in question.

It is in the light of these considerations that this exemption has to be examined.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, has considered whether the decision taken is appropriate to those constraints, and has appraised the measures put forward to overcome them. It has relied in particular on the studies presented by Germany, the visits it has made to Frankfurt airport, and the study it commissioned following the lodging of the complaint under Article 86 of the Treaty, with a view to assessing the space and capacity problems which would result at the airport from the opening-up of the market for groundhandling services. The conclusions of this study, carried out by Cranfield University College of Aeronautics — Air Transport Group, and entitled *Ground handling at Frankfurt Airport*, were presented to the Commission in June 1997. The Commission also took account of the comments made by Frankfurt airport on the Cranfield study, which were communicated to it by Germany on 30 October 1997, and heard that Member

State on 4 December 1997 and FAG on 29 December 1997 with regard to this evaluation.

2. *Space and capacity constraints*

The principal point made in the notification from Germany is that there is not enough space at the airport to accommodate the extra equipment which admission of a second handling service or of a self-handling user would entail.

Introduction

Before evaluating the space and capacity constraints at the airport, certain general principles need to be recalled.

First, the various studies submitted to substantiate the decision (NACO, Fraunhofer) or requested by the Commission (Cranfield) show that current equipment levels at the airport are not excessive and that FAG endeavours to optimize equipment utilisation by planning the demand.

Second, it can be accepted that the requirements of a self-handling user are generally comparable to those of a supplier of handling services to third parties, although they sometimes differ depending on the situation at each airport, and particularly on the fleet of the largest carrier at the airport. For present purposes, it is therefore possible to refer to operators in general, without drawing any distinction between handlers providing services to third parties and self-handling users (who may, in some cases, be one and the same company).

It is recognised that admission of one or more operators requires extra space: equipment requirements are geared to the volume of traffic at the airport's peak time. In a monopoly situation, the peak time at the airport is, therefore, the reference point. In the event of competition, however, the peak time of each operator is the point which must be taken into account; this does not always coincide with the peak for the airport in general. As a result, total equipment requirements at the airport depend on the sum total of the peak requirements of each supplier. Competition therefore increases total requirements in terms of equipment, and hence of parking space for it.

However, another factor which must be taken into account is that any opening-up to competition will reduce the market share of the previous monopoly-holder, thus reducing that operator's equipment and, hence, space requirements. Allowance must be made for such repercussions, even though requirements will not necessarily fall in proportion to market share, so that it is difficult to assess the impact of opening up to competition on each supplier's market share, which will depend not only on each supplier's market share but also on the relevant customer distribution.

⁽¹⁾ [1978] ECR 927.

⁽²⁾ [1992] ECR I-4071, at point 12.

2.1. Space available at Frankfurt

The studies commissioned by FAG put the total space available at 148 000 m², of which FAG itself currently occupies 146 000 m². These figures are for the current situation at Frankfurt, whereby FAG services all flights, including the few flights still operated by Delta at the airport in 1997. The current situation is, therefore, that there are no major space problems at Frankfurt airport. According to FAG, the arrival of a new supplier would create a space shortage of 32 000 m².

The NACO studies indicate that on the assumption that Delta performed its own handling services and operated more flights, the forecast for 1997 would have resulted in a space shortage of 13 725 m². Allowing for the traffic growth forecast and planned at the airport, this shortfall would have risen to 16 300 m² by 2000. FAG estimates that in the same scenario admission of a second supplier would have pushed the space shortage up to 32 200 m² in 1997 and to over 35 000 m² in 2000.

The Commission has a number of comments to make on these studies:

(a) *Estimates*

Based on evaluation of plans, NACO estimated the space available at 148 000 m², but the figures supplied to the Commission by FAG on 16 May 1997 showed only 138 235 m² available on site in 1997. According to FAG, the parking space for groundhandling equipment has been reduced since 1994, partly to create new positions to meet the demand for capacity and partly to build the new fire station.

(b) *Withdrawal of Delta*

The NACO figures indicate a space shortage of 32 000 m² if the market is opened up to competition. The notification sent to the Commission even mentions a shortfall of 35 000 m². However, these figures are based on the assumption of admission of a new supplier in addition to Delta's self-handling service. Consequently, instead of merely the admission of a second supplier (making two operators in all), it assumes the presence of two suppliers — or one supplier and one self-handling user — plus FAG itself (three operators). This no longer reflects the true situation, since Delta has abandoned its self-handling activities.

By contrast, Delta's withdrawal this year on two fronts — abandoning its self-handling services and cutting its number of flights — has vacated space. When Delta provided its own handling services, it was operating just 17 flights a day, which were handled to a

large extent with own equipment capable of handling up to 13 flights within a limited time-frame. Consequently, a considerable amount of space was vacated, estimated at 8 000 m².

The file accompanying the decision by the German authorities indicates that at least part of this space has been used by FAG itself to service Delta's remaining flights and other airlines. Consequently, Delta's withdrawal has enabled FAG to improve conditions for its own handling operations, since the airport now has more space for itself. Nevertheless, Delta's self-handling operations until the start of 1997 show that it is not impossible to accommodate a second supplier or a self-handling user.

(c) *Admission of an extra supplier*

The NACO studies attempt to demonstrate that it is impossible to admit a further supplier or a self-handling user. They also conclude that the airport needs to ensure total coordination of all ground-handling activities. However, it must be noted that, for historic reasons, Federal Express has been self-handling certain categories of service and, under the exemption decision, will be able to continue to do so. SAS, in turn, handled its own flights until 1995. It is true that these airlines' operations were or still are on an extremely small scale and, in the case of Federal Express, limited to certain parts of the airport reserved specially for freight and mail and separate from the passenger terminals. These activities may be regarded as marginal for the purposes of application of the Directive. However, this was not the case with Delta's operations in Terminal 2, which show that even with at least one operator other than FAG the airport structures still worked.

(d) *Calculations*

The Cranfield report estimates the space available at 164 000 m². This was calculated by starting with the 138 000 m² declared available today by FAG, then adding the space which should become available from certain freight areas (51 000 m²) and deducting the area actually to be occupied by new buildings (25 000 m²).

2.2. Space requirements

A number of comments must be made on the space requirements as set out in the NACO studies to substantiate the exemption decision, both with regard to the data submitted and on use of the space available.

(a) *The figures*

The NACO study dated 27 October 1995 indicates that if a second supplier were admitted an extra 20 000 m² would be needed, assuming a total of three operators, since these figures are based on the assumption that, in addition to FAG, Delta was still running its own self-handling operations. In the current situation, now that Delta has abandoned self-handling and FAG acknowledges that it occupies 146 000 m² itself, NACO estimates that a further 32 000 m² would be needed (giving a total of 178 000 m²) instead of the 20 000 m² when Delta was operating. The NACO studies also calculated that the total space which would have been required if Delta had continued self-handling operations — that is, if a second operator (self-handling user) were active at the airport, would be just 155 000 m².

However, the net additional space requirements attributable by NACO to Delta (13 778 m²) should not be counted together with the net additional space requirements attributable to the additional handler, because they are not due to the presence of the independent handler but to that of Delta and because in any case Delta has ceased self-handling and the requirements attributable to the handling of Delta flights are already included in the 146 000 m² required by FAG. The net additional space requirements of an independent handler as compared with the monopoly conditions should accordingly be some 18 500 m² (32 000 minus 13 725). In the present situation where FAG is the only operator since Delta has ceased its activities, one would accordingly expect the total space requirements attributable to be less than 165 000 m² (146 000 plus 18 500) and not the NACO figure of 178 000 m².

Moreover, in the scenario adopted by NACO, Delta was not only operating more flights than in 1997, but was also using equipment with capacity to handle more flights than it was operating at the time. In fact, Delta managed to park on an area of 8 000 m² equipment capable of ensuring the major part of the handling of 8 to 10 % of flights at the airport.

This fact shows clearly that far less space is needed to service this segment of the market than is estimated in the NACO studies. This is even more true in view of the fact that Delta used a share of the market comparable to the figure used in the NACO study and that Delta, which does not operate in the afternoon, needed the space to park all of its equipment, which would not be the case for a supplier operating for several clients and would therefore be able to spread its services in a more regular way across the whole day.

In addition, NACO's estimate is based on each supplier's peak requirements (see above) but simply adds together all the space required by each supplier in order to park all its equipment, disregarding the fact that a large proportion of the equipment is in use virtually non-stop and is not parked for most of the day, least of all in such a busy

airport as Frankfurt. The equipment is parked at night, when there are no flights to service, and it can therefore be parked in the positions available, as it is today.

In fact, the need for space in connection with access to the market depends to a large extent on the distribution of clients between the suppliers and the spreading of operations over the whole day.

On the basis of the various evaluations presented by NACO and Cranfield and taking into account the different hypotheses as to the distribution of clients and the periods of the day over which handling services can be spread out, it appears nevertheless that the following can be estimated:

- (i) that the need for space lies between 104 000 m² and 165 000 m²;
- (ii) that the available space can be estimated at between 148 000 m² and 164 000 m².

Even on the most pessimistic assumption used by NACO (need for 165 000 m² for an available space of 148 000 m²), the available space would allow for parking of 90 % of all required equipment. However, in an airport where peak hours are very limited, as FAG itself agrees, at least 10 % of the equipment is not parked but remains in constant circulation. Outside the peak hours this equipment can then be parked on spaces which have remained vacant.

(b) *Use of the space available*

As was indicated above, Article 9 must be interpreted in a restrictive manner, taking into account the aim of the measure. As is shown by its title, the aim of the Directive is to provide access to the groundhandling market and the principle of free access is clearly defined in Articles 6 and 7 even though it is true that specific possibilities are granted to the Member States to limit access to a minimum of two operators for certain categories of service.

The Commission is of the opinion that adherence to the aim of the Directive means that only the constraints mentioned in Article 9, which by themselves present obstacles to the implementation of the Directive, can afford a basis for exemption. This cannot include constraints created by the airport itself, as was the case for the allocation of space left vacant by Delta even after the adoption of the Directive. The impossibility of opening up the market must be ascribable to a factor which is independent of the will of the party relying on it.

For a number of years, new space has been vacant at the airport. However, the development plans for the airport show that the space freed has always been, and still is, allocated to uses other than groundhandling, including commercial activities not essential to air traffic management.

It is not lack of space as such which makes it impossible to admit any new operator at Frankfurt but principally the use which FAG has decided to make of the space available or which will become available which could create problems if another operator were admitted.

Until 1997 Delta operated self-handling services without disrupting groundhandling operations at Frankfurt airport. The space shortage claimed by FAG with one self-handling carrier in addition to FAG did not disrupt the smooth operation of the airport, the quality of service provided or the general reputation of Frankfurt airport.

The German authorities have failed to demonstrate that it is impossible to admit any new operator to the airport as a whole.

2.3. Airport layout problems

Although the space requirements are no reason for maintaining the monopoly over the airport as a whole, consideration must also be given to whether the infrastructure configuration permits the opening-up of every part of the airport and, if so, to what degree. Therefore, at this stage, a more detailed analysis must be made of the airport installations, drawing a distinction between the two terminals.

At Terminal 2, it is possible to service 13 gate parking positions, plus 18 remote positions opposite the terminal and 11 positions for short-haul services. Terminal 2 is occupied by a large number of different carriers which do not generally park at Terminal 1. Its straight axis avoids equipment traffic problems. According to the Cranfield study, the baggage sorting halls could accommodate new operators. A considerable amount of space was vacated when Delta ceased self-handling, although part of it has been allocated to FAG's equipment since then. Terminal 2 has no space or traffic problems precluding any other operator, as has been demonstrated for many years by Delta's self-handling activities at this Terminal. It is by no means proven that it is impossible to open up these services and there is no reason to maintain a monopoly in this part of the airport. According to the Cranfield study, however, the space available at this Terminal allows no more than three handlers at the same time, whether suppliers of services to third parties or self-handlers.

At Terminal 1, by contrast, an increase in the number of operators would make groundhandling equipment traffic extremely difficult. The configuration of Terminal 1 already poses problems with aircraft shunting in the *culs-de-sac* between Piers A and B, and between Piers B and C. The presence of several handlers and/or self-handling users would cause problems. A number of handlers is likely to occur in the eastern part of the Terminal where several airlines operate. The western part,

by contrast, has been allocated to Lufthansa and Condor on an almost exclusive basis. According to the flight plan simulation submitted by FAG (Fraunhofer 27 June 1997, last Annex), 94 % of the movements in that area are attributable to Lufthansa and Condor, while other airlines account for 124 weekly movements only (approximately one movement every three days on each stand of this area). Conversely, Lufthansa or Condor flights outside this area are very limited, with the exception of position B2 which is almost fully allocated to Lufthansa. This implies that in this area predominantly one handler would operate in any case (be it FAG, an independent handler or Lufthansa as a self-handler). Accordingly there are no technical obstacles to Lufthansa's being handled by a different handler than the one operating in the eastern part of Terminal 1.

On 7 January 1998, FAG indicated a change in those figures, stating that in August 1997 an average of 12,2 % of the traffic in the western part of Terminal 1 accounted for 18 airlines other than Lufthansa. The Commission is not convinced that, even on the assumption of those figures being true and representative, such an increase would necessarily result in severe congestion problems. Moreover, it should be noted that FAG is responsible for the allocation of airlines to their different stands and, where the congestion problems increase, can take measures to reduce the problem. In this context, it should be recalled that only the constraints recited in Article 9 of the Directive can serve as a basis for an exemption. The impossibility of opening up the market must be due to a factor which is independent from the will of the party bringing it up.

However, the configuration of a terminal cannot in itself be an adequate reason for maintaining a monopoly. By limiting exemptions granted by Member States under Article 9(1)(b) to a maximum of two years, which may be extended once only, and by stipulating that users must have an effective choice whatever part of the airport is allocated to them, the Directive does not allow Member States to deprive users of this right by way of constraints if there are no plans to change them throughout the period covered by the exemption. All exemptions must be accompanied by measures to overcome the constraints invoked as reasons for granting them.

The exemption submitted made no provision for any reconfiguration of Terminal 1 to overcome the constraints invoked. Consequently, the configuration by itself cannot justify extension of the monopoly beyond the date set in Article 1 of the Directive for opening up the market at airports in the same category as Frankfurt, namely beyond 1 January 1999.

2.4. Ongoing work

The exemption is based on the fact that construction work is in progress on Pier A in Terminal 1 to create new aircraft gates and to reduce the airport's dependence on remote positions on the western part of the tarmac. In addition, the whole of Terminal 1 is being converted to comply with the Schengen standards, particularly by doubling the floors in Terminal 1. Terminal 2 already complies with these standards. This work should be completed by the end of 2000. This extension should increase the number of gate parking positions and reduce the distance to certain remote positions, thereby reducing boarding and disembarkation times and traffic in the area.

While this work is in progress the exacerbation of problems caused by an already difficult ground-traffic situation in the northern part of Pier A and in both *culs-de-sac* will preclude the parallel presence of any additional operator at Terminal 1, up to Gate C 15 of Pier C, according to the 1994 plan dated 16 May 1994 submitted by the German authorities. This limitation to a single operator must therefore, for the same reason, cover not only operations on the apron between piers but also operations involving the transport of passengers, baggage and crew as well as freight and mail between aircraft on remote positions and Terminal 1. This work, making it impossible to open up the market, combined with the exceptional but temporary nature of its consequences could be reasons for granting an exemption.

2.5. Effects on capacity

Germany claims that opening up the groundhandling market would make it necessary to convert the remote positions into parking spaces for groundhandling equipment and thereby reduce the total capacity of the airport.

This argument is directly linked to the space-shortage argument outlined above, since it is based on the assumption that conversion of aircraft positions is the only way of vacating enough space for a second operator. As is shown above, no evidence has yet been produced of any such constraints.

The decision states that the space occupied by the airport has increased by a factor of 2,4 over the last 40 years, compared with a 130-fold increase in the number of passengers over the same period, and is based on the fact that the demand for capacity far exceeds the current supply.

The reason for the capacity constraints lies in the layout of the installations, and in particular their lengthwise arrangement, as a result of which almost two-thirds of the positions are remote from the terminal. Moreover, the two

runways are too close together to allow independent control of each runway, forcing the airport to use only one runway at a time, which takes up time and capacity. These constraints also entail greater use of servicing vehicles.

According to the file submitted by the German authorities to substantiate their decision, there is already a shortfall of 11 aircraft parking positions and this undercapacity leaves no alternative to making full use of every position and using all areas vacated to create new positions, at the same time precluding allocation of any further parking areas to groundhandling vehicles.

According to the file, the development plan to increase the number of movements at the airport will not be feasible without a proper increase in the number of aircraft parking positions. Accordingly, admission of any additional supplier would have adverse consequences on the capacity expected, because of the space which it would take up.

The capacity shortages invoked by Germany and the consequences of opening up the market cannot justify maintaining a full monopoly.

First, no airport can expand its surface area in proportion to traffic growth. Its capacity therefore varies, depending on the decisions taken on extensions. At the same time, most major European airports have to cope with demand exceeding the capacity available, and Frankfurt is no exception. The fact that the airport is currently operating a perfectly acceptable quality of service with 38,8 million passengers in 1996 (compared with 300 000 in 1950) shows that until now it has been possible to overcome the capacity problems. The figures submitted do not, in themselves, directly indicate any insurmountable capacity problems. The planned closure of seven positions will not affect the current overall capacity of the airport. In any case, these closures were designed to allow the construction of new infrastructure to proceed. The nine gates created by the work exceed, the seven positions lost, and the total number of positions — 156, including those added by the extension of Pier A and the link between the two terminals (Pier C) — suggests that, compared with other airports, it will be possible to achieve the demand envisaged by the airport, totalling some 80 movements per hour in 2000. Consequently, the number of positions is not the decisive factor as regards capacity at Frankfurt.

The German authorities' argument is based on the repercussions which admission of a second supplier will have on the planned capacity growth. The German authorities clearly state that the airport's priority for the next few

years is to increase its capacity substantially. It should be pointed out that equipment and staff levels at any given time depend, above all, on the number of aircraft requiring handling services. This has nothing to do with the number of suppliers. Secondly, the plan to increase its capacity is a decision on the part of the airport to meet some of the demand from carriers.

Although the decision to increase capacity is one which may not be limited exclusively to the commercial interest of the airport alone, but is of wider economic importance, nonetheless the Directive is meant to be applied by airports, exemptions being granted only where it is impossible to open up the market. The temporary nature of the exemption would, on its own, be sufficient reason to open up the market, if any were needed. Were it otherwise, then airports would acquire the right to decide for themselves, as long as they see fit, which objectives that they consider to take priority over application of the legislation. Moreover, the German authorities' argument could be supported by all airports, though possibly to differing degrees, since any extra space made available to groundhandling operations must be taken away from the space which could be allocated for other purposes. The problem addressed by the Directive is different: it is to determine whether space or capacity problems 'exist' for the purposes of Article 9(4) of the Directive which make it impossible to open up the market, and not whether hopes or decisions to develop capacity for economic reasons may be fulfilled. The German authorities have provided no proof that it is impossible.

As was mentioned earlier, the total number of positions planned (156) should meet the demand generated by the increase in runway capacity.

Finally, Germany bases the exemption decision on the effects of opening up the market on management of the system and baggage sorting operations and on the quality of service at Frankfurt, notably the minimum connecting time. Article 9 of the Directive allows exemptions to be granted on the basis of space and capacity constraints only. The Commission cannot, therefore, accept this argument.

3. *Measures planned*

Under Article 9(2) of the Directive, any decision to grant an exemption must be accompanied by a plan of appropriate measures to overcome the alleged constraints.

Germany explains its exemption decision by reference to a space and congestion problem at the airport. The space problem has not been demonstrated and the congestion is, in the view of the Commission, confined to Terminal 1. However, no plan to totally overcome this congestion problem accompanied the German authorities' decision.

The final reason given for the exemption is exacerbation of the congestion at Terminal 1.

In particular, construction work is in progress to convert Terminal 1 to Schengen standards and to extend Pier A in Terminal 1. This extension will add 12 new gate parking positions and, consequently, reduce the distance to some of the remote positions. On completion of the work on Pier A, at the end of 2000, the vacated remote positions could be allocated as parking spaces for groundhandling equipment.

While the work is in progress, the traffic problems created by the conversion to Schengen standards and extension of Pier A will be too great to allow more than one operator in Terminal 1, particularly in the two *culs-de-sac* between the piers. When this work is completed, certain difficulties will persist but the plan submitted by the German authorities includes a commitment on the part of the airport to open up the market at this point and to release parking spaces equivalent to seven aircraft parking positions between the runway and Terminal 1 for groundhandling equipment. The commitment relates to organizing the competitive procedure for selecting the suppliers of the services by the beginning of 2000.

FAG's commitment to allocate the positions vacated as parking spaces for groundhandling equipment, and to do so no later than that moment and in all circumstances, in order to open up the market, can be considered a measure to overcome the constraints, in accordance with Article 9(2) of the Directive.

4. *Compliance with the criteria laid down in Article 9(2) of the Directive*

The German decision fails to state explicitly whether it complies with the principles laid down in Article 9(2) of the Directive as to compliance with the aims of the Directive, non-distortion of competition and proportionality of the measures taken relative to the existing constraints, nor is any evidence thereof adduced.

Contrary to the conclusions reached in the study by Cranfield University — as notified to Frankfurt airport and drawn to the attention of the German authorities — stating that different approaches were needed, tailored to the configuration at each terminal, the exemption decision draws no distinction between the terminals and gives no explanation as to why it is impossible to open up the market at either of them. In the light of the foregoing considerations concerning the space available at Terminal 2 and the situation regarding Piers A and B in Terminal 1 which are used largely by companies in one and the same group, the Commission considers that the exemption extends further than necessary and fails to comply with

principle (iii) set out in the second subparagraph of Article 9(2) of the Directive.

IV. CONCLUSIONS

For the reasons stated above, the Commission is of the opinion that the arguments, studies and plans submitted by the German authorities do not adequately show that constraints are so great as to justify the derogation requested.

After hearing the German authorities and consulting them on the draft decision, the Commission considers that in order to be approved the decision taken by the German authorities and notified on 15 October 1997 must be amended, in accordance with Article 9(5) of the Directive, as follows:

In relation to Terminal 1:

The exemption granted from the provisions of the Directive for third-party and self-handling shall apply in relation to the eastern part of the terminal (eastern part of Pier B from Gate B 2 to B 42 and Pier C up to Gate C 15 in the 1994 plan submitted by Germany) as well as for operations involving the transport of passengers, baggage and crew as and also of freight and mail between aircraft on remote positions and Terminal 1, in view of the exacerbation of congestion in Terminal 1 during the construction work. For the other parts of the terminal, on the other hand, on the grounds set out above, the exemption from the provisions of the Directive for third-party handling shall not apply and the exemption from the self-handling provisions shall be restricted to a single airport user;

In relation to Terminal 2:

The exemption granted in respect of third-party handling shall be withdrawn. In order to guarantee to all airlines a choice between at least two suppliers of groundhandling services, as provided for by the Directive, the market needs to be opened up to a second supplier, in addition to FAG. However, since in practice the space available at this Terminal allows no more than three operators at the same time (whether they be suppliers of services for third parties or self-handling users), it follows that, in derogation from the provisions of the Directive, the right to self-handle shall be restricted to a single user,

HAS ADOPTED THIS DECISION:

Article 1

The exemption decisions granted to Flughafen Frankfurt/Main AG, as notified to the Commission on 10 April and 20 October 1997, are hereby approved, provided that Germany makes the following amendments thereto:

- (a) in relation to Terminal 1, the exemptions under Article 9(1)(b) and (d) of Directive 96/67/EC shall be granted only in respect of the eastern part of Pier B running from Gate B 2 to Gate B 42, and Pier C up to Gate C 15, as well as to the transport of passengers, baggage, crew, cargo and mail between the aircraft and the Terminal; as regards Pier A and the western part of Pier B from Gate B 10 to Gate B 23, no exemption under Article 9(1)(b) of the Directive shall be granted, and the exemption under Article 9(1)(d) of the Directive shall be granted in such a way as to allow one airport user the right to self-handle;
- (b) in relation to Terminal 2, no exemption under Article 9(1)(b) of the Directive shall be granted and the exemption under Article 9(1)(d) of the Directive shall be granted in such a way as to allow one airport user the right to self-handle.

Article 2

Germany shall notify the exemption decisions, as amended pursuant to Article 1, to the Commission before they enter into force.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 January 1998.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION

of 14 January 1998

on the application of Article 9 of Council Directive 96/67/EC to Düsseldorf Airport (Flughafen Düsseldorf GmbH)

(notified under document number C(1998) 71)

(Only the German text is authentic)

(Text with EEA relevance)

(98/388/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports⁽¹⁾, and in particular Article 9(5) thereof,

After consulting the Advisory Committee established thereunder,

Whereas:

I. SCOPE OF THE EXEMPTION NOTIFIED BY GERMANY

A. The notification presented by the German authorities

(1) By letter received by the Commission on 17 October 1997, a summary of which was published in the *Official Journal of the European Communities*⁽²⁾, the Government of the Federal Republic of Germany informed the Commission, in accordance with Article 9 of Directive 96/67/EC ('the Directive'), of its intention to grant Düsseldorf airport (Flughafen Düsseldorf GmbH) an exemption:

- to ban self-handling for the categories of services referred to in points 5.1, 5.2, 5.4 (except for transport of crew), 5.5 and 5.6 in the Annex to the Directive and self-handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft. This exemption, based on Article 9(1)(d) of the Directive, is granted for three years, starting on 1 January 1998 and ending on 31 December 2000,
- to limit to two the users self-handling for the categories of services referred to in points 6.1, 6.2 and 6.3 in the Annex to the Directive. This exemption, based on Article 9(1)(c) of the

Directive, is granted for three years, starting on 1 January 1998 and ending on 31 December 2000,

- to reserve to Düsseldorf airport (Flughafen Düsseldorf GmbH) the monopoly for the provision to third parties of the categories of services referred to in points 5.1, 5.2, 5.4 (except for transport of crew), 5.5 and 5.6 in the Annex to the Directive and for freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or in transit, between the air terminal and the aircraft. This exemption, based on Article 9(1)(b) of the Directive, is granted for two years, starting on 1 January 1999 and ending on 31 December 2000,

- to limit to two suppliers the provision of handling services for third parties, for the categories set out in points 6.1, 6.2 and 6.3 of the Annex to the Directive. The exemption, on the basis of Article 9(1)(a) of the Directive, is granted for three years, starting on 1 January 1998 and ending on 31 December 2000.

B. Basis of the exemption

- (2) The general rules for access to the ground handling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of ground handling services should be opened up to the maximum possible extent. However, because of the specific situation and role of an airport, particularly constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total freedom but requires a minimum degree of opening-up of both self-handling and services to third parties for four categories of services located 'air-side', that is to say, in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

⁽¹⁾ OJ L 272, 25. 10. 1996, p. 36.

⁽²⁾ OJ C 335, 6. 11. 1997, p. 6.

- (3) The Directive has also taken account of the fact that, in certain very special cases, severe space and capacity problems may prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. Such exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an additional transitional period to that already provided for in Article 1 of the Directive.
- (4) An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which Germany has granted the exemption described in paragraph 1, in accordance with Paragraph 3 of the German *Verordnung über Bodenabfertigungsdienste auf Flugplätzen und zur Änderung weiterer luftrechtlicher Vorschriften* transposing Directive 96/67/EC into national law.

C. Current situation at Düsseldorf airport

- (5) At the time of the exemption decision, the market had been opened up to competition in passenger handling activities (point 2 of the Annex), flight operations and crew administration (point 9), ground transport (point 10), catering services (point 11), aircraft maintenance (point 8), fuel and oil handling (point 7) and certain ancillary operations relating to freight handling (point 4.1).
- (6) Under the German regulation transposing the Directive (see paragraph 4), access has been opened up from 1 January 1998 for self-handling and will be opened up on 1 January 1999 for the provision for third parties on ground administration (point 2), mail services (point 4.2) and communication between the aircraft and the supplier (point 5.3).
- (7) The exemption granted by the German authorities allows for some opening-up of access to cleaning and aircraft services; however, this is limited to two suppliers and two self-handling users.

However, the airport (Flughafen Düsseldorf GmbH) banned self-handling at the time of the decision and, with the exception of the loading and unloading of food and beverages (points 5.1, 5.2, 5.4, 5.5, 5.6), access to which has been opened up, will continue to provide 'airside' services under the exemption, and reserves the option of providing them alone.

II. CONSTRAINTS REFERRED TO BY GERMANY

A. Introduction

- (8) The reasons given by Germany for the exemption decision relate principally to:
- the full use already being made of the space available at the airport,
 - the numerous space and capacity problems which the airport has been suffering since the fire at the terminal on 11 April 1996,
 - the increase in demand for space that would result from the opening-up of the market to the degree envisaged by the Directive.
- (9) The exemption decision is based on the arguments and studies presented by Flughafen Düsseldorf:
- grounds for an exemption under Article 9 of Council Directive 96/67/EC on access to the ground handling market at Community airports — Flughafen Düsseldorf — September 1997;
 - study by the Netherlands Airport Consultants BV (NACO): *Consequences of liberalising ground handling to permit several service providers* — 3 July 1997,
 - Development Plan accompanying the application for exemption — Düsseldorf, September 1997.
- ### B. The structural space problems at the airport
- (10) According to the German authorities, the volume of traffic per hectare of available space at Düsseldorf airport is far in excess of other German airports. In 1994, the number of commercial aircraft movements has been limited to 91 000 during the six busiest months of the year. Since December 1997, 105 000 movements have been allowed under the rules of a noise quota system. During the second and third phase the number of movements will increase to 110 000 and 120 000 respectively. With an area of 613 hectares, the airport therefore records almost 300 movements or 24 700 passengers per hectare whereas for airports of similar size, such as Hamburg or Berlin-Tegel, the figures are only 14 500 and 17 500 passengers respectively.

- (11) The German authorities also refer to capacity constraints. A limit has been imposed on the number of movements at Düsseldorf airport and the former maximum of 91 000 commercial movements in the six busiest months of the year was to be reached in 1995. Since then the airport has been

at saturation point. The maintenance of such a level in spite of the 1996 fire only aggravates the difficulties. After the disaster, the airport very quickly returned to its 1995 traffic levels. The system of noise quotas which will allow the number of annual movements to be increased from 105 000 over six months to 120 000 has started to operate in December 1997. This increase, which can easily be absorbed in terms of runway capacity, will allow more of the heavy demand from airlines to be met.

C. The consequences of the fire

- (12) According to Germany, the situation deteriorated significantly as a result of the fire on 11 April 1996. The fire destroyed the central building and made all three Piers A, B and C inoperative. Pier C, including a part at the central building, was reopened in November 1996. The reconstruction works in the other areas are underway in line with established plans.

During the renovation and reconstruction work:

- several contact points can now be used only as remote positions. Moreover, the arrival of all passengers is concentrated on Pier C, which alone has a baggage reclaim system. This situation means that many more vehicles and gangways are needed for passengers, as well as parking areas for those vehicles and appliances,
- temporary buildings have had to be assembled. Temporary offices as well as two modules, east and west (modules D and F), have had to be constructed to handle the embarkation of passengers on a temporary basis. These modules are, however, completely congested at certain peak periods. They also reduce the space available for other purposes,
- three positions (50, 51 and 60) have had to be closed for the reconstruction of Pier B and storage of material,
- the storing of building materials makes the situation even worse,
- the increase in traffic on the paved aprons makes circulation very difficult along the whole length of the terminal, particularly because of the enclosure around Pier B which, while work is carried out on that Pier, will oblige the airport to divert traffic and will deprive it of a major junction at that point. According to the airport, the loss of space can be estimated at around 7 500 m².

- (13) According to the airport authorities, the scale of the work will mean that the installations will resume operations only very gradually.

Pier C has been in operation again since November 1996. This Pier is of major importance since it is here that the baggage conveyors for passenger arrivals are located. In order to increase capacity, an extension to the south of the Pier will make it possible to install three more conveyors. This extension has been constructed at the cost of tarmac space, including certain equipment storage areas.

Pier A should be open in mid-1998. Slightly extended, it will then be able to hold four more gates. Until then, passengers arriving at gates at this Pier will have to be transported to Pier C in order to retrieve their baggage.

Pier B is likely to remain completely closed until 2001. Major modifications are needed, including an enlargement over its entire length, with new arrangements for separating Schengen and non-Schengen passengers and additional offices and rooms.

Two modules, D and E, to the east and west cope with the demand provisionally. According to the airport, however, these have little in the way of aprons and this makes ground transport times fairly long.

Under the overall reconstruction plan, the infrastructures will not be completely operative again until 2002. However, the space needed for opening up the ground handling market should, under the plan put forward, be available from the beginning of 2001.

D. The consequences of opening up the market

- (14) The NACO study shows that there is currently a shortage of space of more than 10 000 m² because of the effects of the fire. In its analysis, NACO highlights a direct link between the arrival of new operators — service suppliers or users engaged in self handling — and the need for space. NACO's conclusions are based on the fact that the number of vehicles and volume of equipment depends on the requirements of each operator, and the need for space to store such equipment increases proportionately to the number of operators.
- (15) The current shortage is now offset by renting hangers and using certain processing areas for parking equipment. With the arrival of a second operator, such a compensatory measure would no longer be possible, since the very short-term varia-

tion in the allocation of positions and consequently of the suppliers of services to the airlines will mean there can be no parking on these areas.

- (16) According to the airport, the opening-up of the market would lead to the closure of extra positions, thus reducing the capacity of the airport when it is already experiencing difficulties in this area.
- (17) In conclusion, according to the NACO study, the current 25,4 % shortage of space would rise to 30 % if a service supplier had 15 % of market share, 38 % if it had 40 % of the market and 37 % in the event of self-handling by the main carrier.

E. Observations of the interested parties

- (18) Following the publication by the Commission of a summary of the notification from the German authorities and pursuant to Article 9(3) of the Directive, a number of airlines and associations of airlines have expressed doubts as to whether such an exemption is justified. However, their reasoning is based on a mere claim that there is sufficient space at the airport to receive new operators and that the management is unwilling to open up the market as quickly as possible. Although most of these airlines recognise the exceptional situation at this airport because of the fire, some of them refer to the fact that faced with the consequences of the fire the airport has shown a great capacity for adapting and could with an additional effort adapt very quickly to the conditions for opening up the market.

III. EVALUATION OF THE EXEMPTION IN THE LIGHT OF DIRECTIVE 96/67/EC

A. Background

- (19) An exemption can be granted only on the basis of specific space or capacity constraints. These constraints must be sufficiently important to make it impossible to open up the market to the degree provided for in the Directive. Moreover, Article 9(2) of the Directive expressly lays down that the exemption granted must not unduly prejudice the aims of the Directive, give rise to distortions of competition or extend further than necessary. Finally, as the Court has already indicated in a

number of cases, and in particular in its judgments of 20 April 1978 in *Joined Cases 80-81/77, Commissionnaires réunis v. Receveur des Douanes* ⁽¹⁾ and of 25 June 1992 in *Case C 116/91, British Gas* ⁽²⁾, an exemption should not be interpreted in such a way as to extend its effects beyond what is necessary to achieve the intended protection of interests. The Commission must therefore make a strict examination of the exemption. On the basis of Article 9(1)(a) and (c), the Member State in question may therefore limit to a minimum of two the number of suppliers or self handling users for those categories of services to which access is completely free. It is on this basis that the exemption limits to two the number of suppliers and users authorised to carry out aircraft cleaning and service operations.

- (20) However, by virtue of Article 9(1)(b) the Member State may also reserve the right to provide the services listed in Article 6(2) to a single supplier and/or, by virtue of Article 9(1)(d), ban self-handling or restrict it to a single user for the services referred to in Article 7(2). It is on the basis of these provisions that the exemption seeks to ban self-handling and to reserve to the airport the provision of some of the ramp handling services.
- (21) However, Article 9(2) lays down that an exemption must:
- specify the category or categories of ground-handling services for which the exemption is granted and the specific constraints of available space or capacity which justify it,
 - be accompanied by a plan of appropriate measures to overcome the constraints,
 - not extend further than necessary, nor give rise to distortions of competition or unduly prejudice the aims of the Directive.
- (22) Under Article 9(6), the exemptions granted under Article 9(1)(a), (c) and (d) may not exceed a duration of three years, subject to a possible extension, while those granted under Article 9(1)(b) may not exceed two years.
- (23) In accordance with the procedure provided for in Article 9(3), (4) and (5), the Commission must examine the exemption granted by the Member State and approve that decision, oppose it or require the Member State to amend the extent of the exemption or restrict it to those parts of the airport where the alleged constraints have been proved to exist.
- (24) The Commission must therefore verify whether it is impossible to open up the market to the degree provided for in the Directive, and must cover the following three points:

⁽¹⁾ [1978] ECR 927, 945.

⁽²⁾ [1992] ECR I-4071, at point 12.

- the existence and extent of the space and capacity constraints alleged by the German authorities,
- the plan of appropriate solutions, which has to be acceptable from the point of view both of the measures to be taken by the airport and the timetable for their implementation. On this point, the Commission considers that the airport or Member State must commit itself even more rigorously to appropriate measures if the exemption limits access to the market. In the case of the exemption for Düsseldorf airport, this applies to the part which permits the maintenance of a complete monopoly for certain ramp-handling operations for which airport users have neither a choice between several suppliers nor the option of self-handling,
- conformity with the criteria referred to in Article 9(2) of the Directive.

In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, considering whether the decision taken is appropriate to those constraints and examined the measures to overcome them. In carrying out this task, it has received technical assistance from Alan Stratford and Associates.

B. Space and capacity constraints

(a) *Structural space problems at the airport*

- (25) It is generally recognised that the presence of several operators requires more equipment than in the case of a monopoly and hence more space to park that equipment.

Whereas in a monopoly situation the need for equipment is geared to the volume of traffic at the airport's peak time, it is necessary in the case of several operators to take account of the peak time of each of the parties involved, which do not always coincide with that of the airport. Competition therefore entails greater requirements in terms of equipment and hence in terms of space to park such equipment. It could also, in certain circumstances, lead to problems of vehicle traffic on these parking areas.

However, to assert, as do Düsseldorf airport and the NACO study, that this space requirement is proportional to the equipment requirement is to overlook the fact that there is always a period during the day where the peak time of the various service suppliers coincides with the peak time of the airport — particularly at a congested airport, and that during that period there is less need for parking space because the equipment is in service.

During quieter periods, particularly at night when equipment is used less, the free positions at the airport may in principle be used as temporary parking areas for equipment. However, it is true that in the specific case of Düsseldorf, many aircraft are parked overnight, thereby occupying all the positions. On the other hand, it should be remembered that the opening-up of the market will reduce the market share of the operator that has hitherto enjoyed a monopoly, thus reducing its equipment requirements and hence its need for space to park that equipment.

- (26) Düsseldorf airport compares its situation with that of the main German airports. It is true that for an airport of this size it has a relatively high number of movements and passengers. However, a comparison made by taking account of the total area belonging to the airport and not the usable area, which excludes among other things protected woodland, is not conclusive. Similarly, a statutory restriction on the number of movements has no direct effect on the area available for ground-handling operations.
- (27) Moreover, all the data indicating space problems relate to the period after the fire. They do not therefore point to any structural shortage of space beyond that attributable to the effects of the fire.

It is therefore necessary to limit the examination strictly to the current situation, in other words, to the temporary difficulties arising from the fire.

(b) *Consequences of the fire*

- (28) The fire forced the airport to construct new modules for passenger departure but also to make major changes to the operation of the structures and passenger routing. Most of the positions, hitherto of easy access, can now be used only as remote points and passengers have to be taken to and from them by bus. Sixteen buses have had to be added to the existing fleet of 35, and 12 new stairways for aircraft were needed for passenger handling on the apron as well as additional equipment for the transportation of baggage. This significant increase in the number of vehicles, coupled with a lack of sufficient parking space for them, makes traffic difficult on the tarmac. Moreover, Pier C in which the baggage arrival system is located at present has to meet all the requirements of incoming passengers. Passenger departure is handled by means of two temporary modules at the east and west. During peak periods, these modules are congested and the configuration of the premises, including the embarkation gates, makes bus movements difficult. Traffic on the tarmac, which is already dense because of the large number of

remote points, and the fact that Pier C acts as the arrival hall for all passengers at the airport, will be even more difficult during the reconstruction of Pier B. During the reconstruction, between 1998 and 2001, the necessary isolation of this Pier will entail closure of the passage beneath the infrastructure and force all vehicles to go completely around the Pier. Finally, it should be remembered that this Pier alone possesses almost a third of the walkways connecting to the aircraft and that before the fire it handled almost half of all passengers.

During that period, part of the parking areas around Pier B will be occupied by building materials, thus reducing the space available at this location where a number of containers are currently sited.

The overnight parking of numerous aircraft at remote points opposite the freight terminal and the need to use the de-icing area during the winter period make it difficult to park equipment in those areas.

- (29) However, the Commission noted that certain temporary constructions around Piers C and A, intended among other things for employees, could have been installed in less congested areas of the airport, thus freeing up some of the area around the terminal.

Moreover, traffic could be improved by reducing the number of vehicles on the tarmac. In addition, some of the parking areas for the cars used by airport staff around module D to the west could be switched to parking areas for equipment with airside access. It should, however, be conceded that these changes would only partly solve the problem of parking certain vehicles leaving untouched the crucial problem of congestion around aircraft and gates in terminals D and E for departures, and C where arrivals are concentrated.

- (30) The Commission admits, then, that airside parking and traffic were made difficult by the effects of the fire in April 1996. The isolation of Pier B from the beginning of 1998 for reconstruction and extension work will only aggravate the problems at the central point of the airport for the duration of the major structural work. However, it should be pointed out that as work progresses and when the major structural work has been finished and only the interior work remains, towards the end of 1999, a sizeable area could be freed around Pier B and thus serve for parking groundhandling equipment.

The question, then, is whether these conditions make it impossible to open up the market to the degree required by the Directive.

(c) *Opening-up of the market*

- (31) The airport refers to the prospect of an increase in air traffic at Düsseldorf. While it is true that such an increase in traffic may be expected, it will result from the airport's inclination and ability to meet demand. However, it should be pointed out first that flight quotas have been statutorily imposed on Düsseldorf — although the rules are due to be relaxed soon — and particularly that a policy decision by the authorities, such as a decision to increase capacity, cannot be presented as taking precedence over the application of national or Community regulations. This intention on the part of those drawing up the Directive is reflected in the temporary nature of the exemption and in the fact that no monopoly can be extended beyond two periods of a maximum of two years. It is for the Commission to determine whether space or capacity problems, and not hopes or decisions to develop capacity, make it impossible to open up the market to the degree provided for in the Directive.
- (32) The current shortage of space to park equipment, estimated by NACO at more than 10 000 m², is compensated for at present by renting space in the hangars of certain airlines on the one hand, and by the space freed up by the closure of three positions on the other. It should be conceded that not only will the space needed to park equipment increase with the arrival of one or more new operators, but also that some of the possibilities of offsetting this will disappear from the beginning of 1998 and throughout the period of reconstruction of Pier B. This Pier will be totally isolated and part of the space now used as compensation will also have to be allocated to the extension of the Pier and the materials needed for that extension. The airport will then have to face up to both reduced space and increased demand.
- (33) The opening-up of the market will result in an increased need for equipment which may be evaluated having regard to both the peak periods of the airport — since at that period all users are relatively busy — and the peak time of each user where this does not coincide with that of the airport. The Commission takes the view that there is no direct

relationship between an increase in the number of users and that in equipment requirements. Moreover, the equipment requirement at any given moment depends above all on the number of aircraft to be handled at that moment. However, it may be stated that the opening-up of the market will lead in any event to an increase in the volume of ramp-handling equipment.

- (34) The exemption granted by the German authorities seeks to limit the number of ramp operators.

It concerns, first, aircraft cleaning and servicing, for which the number of suppliers and self-handling users would be limited to two. Access for two self-handling users and two suppliers is, however, guaranteed by the decision by Germany and a minimum choice is thus given to users, even though it cannot be enlarged during the conversion work. With the congestion at the airport it is not possible to open up fully the cleaning and aircraft services without increasing the difficulties inherent in the extra traffic and parking on the tarmac.

Moreover, the decision seeks to ban the entry of a user or supplier on the ramp handling market. The aircraft marshalling, moving, loading and unloading operations and the transport of passengers and baggage airside require a great deal of heavy equipment for which suitable manoeuvring and parking areas are needed.

- (35) The scenarios put forward in connection with the arrival of a new operator must always be treated with caution. The NACO study takes a number of hypotheses for the development of the market. It appears from studies carried out both in preparation for the Directive and in the case of other exemptions that the contention that the new arrival could achieve a 40 % market share in the first few years is exaggerated. A market share of 15 % is much more realistic. In this case, and assuming for the time being that the number of movements is limited to 90 000 per year, a 15 % market share would make it possible to handle on average 37 movements per day, which corresponds to 18 flights per day. However, the viability of such a situation is completely dependent on the type of aircraft to be handled and the relevant timetables for such handling. The supply of services for small aircraft on that scale is not likely to be profitable. It would readily be profitable on large aircraft, but in this case much more equipment would also be needed. Similarly, handling two aircraft of the same type at the same time would compel the supplier to duplicate its equipment. For these reasons, the hypotheses have to be taken as mere examples; but

it is difficult to use them for a basis for evaluating the exact requirements of each of these suppliers.

On the assumption of self-handling by LTU — a company based in Düsseldorf — and given that the company owns large jets and that the flight schedules show several flights of this type at short intervals, LTU would have to increase its equipment to meet its needs.

- (36) In general terms, it may be supposed that the introduction of a new operator would entail increased space requirements, even in the best-case scenario, of around 3 500 m². This would not be practicable, given the existing shortage of more than 10 000 m² at the airport and the additional complications resulting from the closure of Pier B and the need to transport all passengers, whether arriving or departing, by bus.

C. The restructuring plan

- (37) Under Article 9(2) of the Directive, any decision to grant an exemption must be accompanied by a plan of appropriate measures to overcome the alleged constraints.

The 'DUS 2000 Plus' project envisages the reconstruction and development of Düsseldorf airport for the years to come. This project, which is already under way, should allow the airport to meet both the needs of the airlines in terms of capacity — in so far as the new regulations allow any increase in that capacity — and the requirements of the Directive as to the opening-up of the market. The plan provided for in Article 9(2) of the Directive and aimed at overcoming the constraints is incorporated in the DUS 2000 Plus project.

The first phase of the work on the project is directly concerned with the possibilities of increasing the space available for groundhandling services.

- (38) On completion of the reconstruction of Pier B, an increase of 2 000 m² of parking areas for ground handling equipment is planned around this Pier, thus increasing the area available there from 5 700 to 7 700 m². The plan sees the end of 2000 as the date for the completion of work on this Pier.

The space made available by the complete renovation of the terminal will free up the area occupied at present by temporary administrative offices opposite the old freight terminal, thus providing an area of 1 100 m² which will be used for parking groundhandling vehicles and equipment.

(39) The development plan also provides for an extension of the tarmac. This will take place first of all at the eastern extremity, at the beginning of 1999, with the primary aim of creating a de-icing area. Part of the area freed up, amounting to several hundred square metres, will be available for parking groundhandling equipment. However, outside the winter period, an area of more than 4 100 m² could then be available for storing equipment. A major extension is also planned in the second phase to the west. Half of the area freed will be used for new aircraft positions; the other half, estimated at 14 to 16 000 m², is to be used for storing groundhandling equipment. Work on this area should be completed by the end of 2000. The plan provides for additional available space laid aside for parking equipment of 21 to 23 000 m² by the beginning of 2001 (Table 2 of the development plan).

D. Compliance with the criteria laid down in Article 9(2)

(40) The German authorities do not refer explicitly to the question of whether their decision conforms to the criteria laid down in Article 9(2) of the Directive, including whether the measures taken are appropriate to the existing constraints. These measures concern, first, certain ramp handling operations such as the moving, loading and unloading of the aircraft as well as the airside transport of passengers and freight which require heavy and bulky equipment, and secondly the external and internal cleaning of the aircraft and aircraft services including the removal of snow and ice and de-icing, for which specialist equipment is required. As regards the external and internal cleaning of the aircraft, the airport has created no monopoly for itself but is taking account of the principles of the Directive by opening up the market to a minimum of two suppliers and two self-handling users. Given the present situation airside, the Commission considers that the space available would not at present allow the opening-up of the market to the degree provided for by the Directive, so that the decision of the German authorities is commensurate to the constraints. Similarly, the decision does not appear disproportionate as regards the services affected.

(41) As regards the duration of the exemption, however, the Commission believes an earlier opening-up of the market to be possible, on the following grounds.

The overall restructuring plan 'DUS 2000 Plus' attaches great importance to the modernisation of the airport and the development of its capacity.

However, the plan of measures presented, which is incorporated in this development plan, calls for a number of comments:

- no mention is made at this level of the completion of work in Pier A. This pier should be renovated by mid-1998 as was indicated in the documentation on the alleged constraints. It will then be possible for the embarkation rooms, gates and passenger walkways to the aircraft (for seven or eight aircraft positions) to be used once again, mainly by Deutsche Luft-hansa and associated companies. This should lead to a significant reduction in the number of both staircases and buses for transporting passengers. At the same time, the temporary modules for embarkation would be relieved of these passengers. As a result, there will be less need for parking space and this area will be less congested. Finally, the work on this pier, which can in its present form accommodate one-third of the gate parking positions, should allow for additional positions with the space around those positions for handling services,
- as regards the duration of the exemption, the plan does not take account of the fact that once the structural work on Pier B has been completed, some of the space occupied by the construction materials can be freed up as work progresses, thus making it possible to reclaim at least part of the 7 500 m² taken out of service and to use it for parking handling equipment. Also, the road junction under Pier B is due to be reopened to traffic at that time. This would make it possible to bring forward the date of opening up the market to the time of completion of the external structural work, namely the beginning of the year 2000,
- although adaptation to the new rules established by the Directive is not forgotten, as a result of which sizeable areas for new suppliers should be created, the Commission nonetheless considers that the creation of such areas could easily be given higher priority in the schedule of work, in order to free more rapidly the space required for parking new groundhandling equipment.

The combination of these two facts (re-opening of Pier A and completion of the structural work on Pier B) and the possibilities of more efficient use of the tarmac lead the Commission to conclude that the measure proposed by Germany is scheduled for a longer term than is necessary and therefore contravenes the principle under point (iii) of the second subparagraph of Article 9(2) of the Directive.

IV. CONCLUSION

- (42) Düsseldorf Airport does not have structural space and capacity problems such as to prevent the opening-up of the groundhandling market.

However, the fire in April 1996 severely disrupted the operation of the airport, and, the consequences in terms not only of requirements, equipment and organisation but also of available space do not at present admit of any other supplier for the categories of services referred to in the German decision granting exemption. In accordance with the terms of Article 9(2) of the Directive, Düsseldorf airport has undertaken in its plan to overcome the current constraints so as to release an additional area of more than 21 000 m² by the beginning of 2001 to allow the opening-up of the market to the degree provided for by the Directive. However, the timetable drawn up by the German authorities does not take account of the fact that some of the temporary equipment needed as a result of the fire, such as vehicles for transporting passengers airside and walkways, could be progressively withdrawn as the reconstruction work progresses, especially with the re-opening of the enlarged Pier A from mid-1998 and its positive implications for the airport in terms of space and traffic-flow.

Similarly, Germany has not shown that it is impossible to liberate part of the space around Pier B on completion of the structural work, nor that the scheduling of all the work at the airport would not allow the areas on the tarmac designated for parking aircraft and groundhandling equipment to be made available more quickly.

- (43) The currency of the exemption should therefore be limited to the end of the structural work on Pier B, namely 1 January 2000,

HAS ADOPTED THIS DECISION:

Article 1

The exemptions granted to Düsseldorf airport (Flughafen Düsseldorf GmbH) under Article 9(1)(b) and (d) of Directive 96/67/EC, and notified to the Commission on 17 October 1997, are hereby approved on condition that Germany amends them so that they expire on 31 December 1999.

Article 2

Germany shall notify to the Commission the exemption decisions as amended pursuant to Article 1 before they enter into force.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 January 1998.

For the Commission

Neil KINNOCK

Member of the Commission

CORRIGENDA

Corrigendum to the Internal Agreement between the representatives of the Governments of the Member States, meeting within the Council, on the financing and administration of the Community aid under the Second Financial Protocol to the fourth ACP-EC Convention

(Official Journal of the European Communities L 156 of 29 May 1998)

On page 1 of the cover, the indication '98/363/EC:' shall be inserted before the title of the Internal Agreement.

On page 108, the indication '(98/363/EC)' shall be inserted after the title of the Internal Agreement.
