COMMISSION REGULATION (EEC) No 4261/88

of 16 December 1988

on the complaints, applications and hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector [1], and in particular Article 19 thereof,

Having regard to the opinion of the Advisory Committee on Agreements and Dominant Positions in Air Transport,

Whereas, pursuant to Article 19 of Regulation (EEC) No 3975/87, the Commission is empowered to adopt implementing provisions concerning the form, content and other details of complaints pursuant to Article 3 (1) and of applications pursuant to Articles 3 (2) and 5 and the hearings provided for in Article 16 (1) and (2) of that Regulation;

Whereas complaints pursuant to Article 3 (1) of Regulation (EEC) No 3975/87 may make it easier for the Commission to take action for infringement of Articles 85 and 86 of the EEC Treaty in the field of air transport; whereas it would consequently seem appropriate to make the procedure for submitting complaints as simple as possible; whereas it is appropriate, therefore, to provide for complaints to be submitted in one written copy, the form, content and details being left to the discretion of the complainants;

Whereas the submission of the applications pursuant to Articles 3 (2) and 5 of Regulation (EEC) No 3975/87 may have important legal consequences for each undertaking which is a party to an agreement, decision or concerted practice; whereas each undertaking should, therefore, have the right to submit such applications to the Commission; whereas, on the other hand, if an undertaking makes use of that right, it must so inform the other undertakings which are parties to the agreement, decision or concerted practice, in order that they may protect their interests;

Whereas it is for the undertakings and associations of undertakings to inform the Commission of the facts and circumstances in support of the applications submitted in accordance with Articles 3 (2) and 5 of Regulation (EEC) No 3975/87;

Whereas it is desirable to prescribe that forms be used for applications in order, in the interest of all concerned, to simplify and expedite examination thereof by the competent departments;

Whereas in most cases the Commission will in the course of the procedure for the hearings provided for in Article 16 (1) and (2) of Council Regulation (EEC) No 3975/87 already be in close touch with the participating undertakings or associations of undertakings and they will accordingly have the opportunity of making known their views regarding the objections raised against them;

Whereas in accordance with Article 16 (1) and (2) of Regulation (EEC) No 3975/87 and with the rights of the defence, the undertakings and associations of undertakings concerned must have the right on conclusion of the procedure to submit their comments on the whole of the objections raised against them which the Commission proposes to deal with in its decisions;

Whereas persons other than the undertakings or associations of undertakings which are involved in the procedure may have an interest in being heard; whereas, by the second sentence of Article 16 (2) of Regulation (EEC) No 3975/87, such persons must have the opportunity of being heard if they apply and show that they have a sufficient interest;

Whereas it is desirable to enable persons who pursuant to Article 3 (1) of Regulation (EEC) No 3975/87 have lodged a complaint to submit their comments where the Commission considers that on the basis of the information in its possession there are insufficient grounds for action;

Whereas the various persons entitled to submit comments must do so in writing, both in their own interest and in the interests of good administration, without prejudice to an oral procedure where appropriate to supplement the written procedure;

Whereas it is necessary to define the rights of persons who are to be heard, and in particular the conditions upon which they may be represented or assisted and the setting and calculation of time limits;

Whereas the Advisory Committee on Restrictive Practices and Dominant Positions in Air Transport delivers its opinion

[1] OJ No L 374, 31. 12. 1987, p. 1.

on the basis of a preliminary draft decision; whereas it must therefore be consulted concerning a case after the inquiry in that case has been completed; whereas such consultation does not prevent the Commission from re-opening an inquiry if need be,

HAS ADOPTED THIS REGULATION:

SECTION I

COMPLAINTS AND APPLICATIONS

Article 1

Complaints

1. Complaints pursuant to Article 3 (1) of Regulation (EEC) No 3975/87 shall be submitted in writing in one of the official languages of the Community, their form, content and other details being left to the discretion of complainants.

2. Complaints may be submitted by:

(a) Member States

(b) natural or legal persons who claim a legitimate interest.

3. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such complaints, they shall produce written proof that they are authorized to act.

Article 2

Persons entitled to submit applications

1. Any undertaking which is party to agreements, decisions or practices of the kind described in Articles 85 (1) and 86 of the Treaty may submit an application under Articles 3 (2) and 5 of Regulation (EEC) No 3975/87. Where the application is submitted by some but not all of the undertakings concerned, they shall give notice to the others.

2. Where applications under Articles 3 (2) and 5 of Regulation (EEC) No 3975/87 are signed by representatives of undertakings, of associations of undertakings, or of natural or legal persons, such representatives shall produce written proof that they are authorized to act.

3. Where a joint application is submitted, a joint representative shall be appointed.

Article 3

Submission of applications

1. Applications pursuant to Articles 3 (2) and 5 of Regulation (EEC) No 3975/87 shall be submitted on Form AER shown in Annex I.

2. Several participating undertakings may submit an application on a single form.

3. Applications shall contain the information requested in the form.

4. Fourteen copies of each application and of the supporting documents shall be submitted to the Commission.

5. The supporting documents shall be either originals or copies. Copies must be certified as true copies of the original.

6. Applications shall be in one of the official languages of the Community. Supporting documents shall be submitted in their original language. Where the original language is not one of the official languages, a translation in one of the official languages shall be attached.

7. The date of submission of an application shall be the date on which it is received by the Commission. Where, however, the application is sent by registered post, it shall be deemed to have been received on the date shown on the postmark of the place of posting.

8. Where an application submitted pursuant to Articles 3 (2) and 5 of Regulation (EEC) No 3975/87 falls outside the scope of that Regulation, the Commission shall without delay inform the applicant that it intends to examine the application under the provisions of such other Regulation as is applicable to the case; however, the date of submission of the application shall be the date resulting from paragraph 7. The Commission shall inform the applicant of its reasons and fix a period for him to submit any comments in writing before it conducts its appraisal pursuant to the provisions of that other Regulation.

SECTION II

HEARINGS

Article 4

Before consulting the Advisory Committee on Agreements and Dominant Positions in Air Transport, the Commission shall hold a hearing pursuant to Article 16 (1) of Regulation (EEC) No 3975/87.

Article 5

1. The Commission shall inform undertakings and associations of undertakings in writing of the objections raised against them. The communication shall be addressed to each of them or to a joint agent appointed by them.

2. The Commission may inform the parties by giving notice in the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is tto be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interest of the undertakings in the protection of their business secrets.

3. A fine or a periodic penalty payment may be imposed on an undertaking or association of undertakings only if the objections were notified in the manner provided for in paragraph 1.

4. The Commission shall, when giving notice of objections, fix a period within which the undertakings and associations of undertakings may inform the Commission of their views.

Article 6

1. Undertakings and associations of undertakings shall, within the appointed period, make known in writing their views concerning the objections raised against them.

2. They may in their written comments set out all matters relevant to their defence.

3. They may attach any relevant documents in proof of the facts set out. They may also propose that the Commission hear persons who may corroborate those facts.

Article 7

The Commission shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views.

Article 8

If natural or legal persons showing a sufficient interest apply to be heard pursuant to Article 16 (2) of Regulation (EEC) No 3975/87 the Commission shall afford them the opportunity of making known their views in writing within such period as it shall fix.

Article 9

Where the Commission, having received a complaint pursuant to Article 3 (1) of Regulation (EEC) No 3975/87 considers that on the basis of the information in its possession there are insufficient grounds for acting on the complaint, it shall inform the persons who submitted the complaint of its reasons and fix a period for them to submit any further comments in writing.

Article 10

1. The Commission shall afford to persons who have so requested in their written comments the opportunity to put forward their arguments orally, if those persons show a sufficient interest or if the Commission proposes to impose on them a fine or periodic penalty payment.

2. The Commission may likewise afford to any other person the opportunity of orally expressing his views.

Article 11

1. The Commission shall summon the persons to be heard to attend on such date as it shall appoint.

2. It shall forthwith transmit a copy of the summons to the competent authorities of the Member States, who may appoint an official to take part in the hearing.

Article 12

1. Hearings shall be conducted by the persons appointed by the Commission for that purpose.

2. Persons summoned to attend shall either appear in person or be represented by legal representatives or by representatives authorized by their constitution. Undertakings and associations of undertakings may moreover be represented by a duly authorized agent appointed from among their permanent staff.

Persons heard by the Commission may be assisted by lawyers or university teachers who are entitled to plead before the Court of Justice of the European Communities in accordance with Article 17 of the Protocol on the Statute of the Court, or by other qualified persons.

3. Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets.

4. The essential content of the statements made by each person heard shall be recorded in minutes which shall be read and approved by him.

Article 13

Without prejudice to Article 5 (2), information and summonses from the Commission shall be sent to the addressees by registered letter with acknowledgement of receipt, or shall be delivered by hand against receipt.

Article 14

1. In fixing the periods provided for in Articles 3 (8), 5, 8 and 9, the Commission shall have regard both to the time required for preparation of comments and to the urgency of the case. A period shall be not less than two weeks; it may be extended.

2. Periods shall run from the day following receipt of a communication or delivery thereof by hand.

3. Written comments must reach the Commission or be dispatched by registered letter before expiry of the period. Where the period would expire on a Sunday or a public holiday, it shall be extended up to the end of the next following working day. For the purpose of calculating the extension, public holidays shall, in cases where the relevant date is the date of receipt of written comments, be those set out in Annex II to this Regulation, and in cases where the relevant date is the date of dispatch, those appointed by law in the country of dispatch.

Article 15

This Regulation shall enter into force on the 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, 16 December 1988.

For the Commission
Peter SUTHERLAND
Member of the Commission

ANNEX I

This form must be accompanied by an annex containing the information specified in the attached Complementary Note.

The form and annex must be supplied in fourteen copies (two for the Commission and one for each Member State). Supply three copies of any relevant agreement and one copy of other supporting documents.

Please do not forget to complete the Acknowledgement of Receipt annexed.

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

FORM AER

TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

Directorate-General for Competition
200, rue de la Loi
B-1049 Brussels

A. Application for negative clearance pursuant to Article 3 (2) of Council Regulation No 3975/87 of 14 December 1987 relating to implementation of Article 85 (1) or of Article 86 of the Treaty establishing the European Economic Community.

B. Application under Article 5 of Council Regulation No 3975/87 of 14 December 1987 with a view to obtaining a decision under Article 85 (3) of the Treaty establishing the European Economic Community.

Identity of the parties

1. *Identity of applicant*

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

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

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

2. *Identity of any other parties*

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

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

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

Purpose of this application
(see Complementary Note)

(Please answer yes or no to the questions)

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

Are you applying for negative clearance, and also applying for a decision under Article 85 (3) in case the Commission does not grant negative clearance?

Are you only applying for a decision under Article 85 (3)

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

Write nothing in this margin

The undersigned declare that the information given above and in the . . . pages annexed hereto is correct to the best of their knowledge and belief, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere. They are aware of the provisions of Article 12 (1) (a) of Regulation (EEC) No 3975/87 (see attached Complementary Note).

Place and date .....

Signatures: ....

....

....

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Directorate-General for Competition

Brussels .....

To

ACKNOWLEDGEMENT OF RECEIPT

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

Your application dated: .....

.....

concerning: .....

Your reference: .....

Parties:

1. .....

2. ..... and others

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

(To be completed by the Commission.)

was received on: .....

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

Please quote the above number in all correspondence

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

Telephone:
Direct line: 235....
Telephone exchange: 235 11 11

Telex:
COMEU B 21877

Telegraphic address:
COMEUR Brussels

COMPLEMENTARY NOTE

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Annex 1: Text of Articles 85 and 86 of the EEC Treaty
Annex 2: List of relevant Acts
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Additions or alterations to the information given in these Annexes will be published by the Commission from time to time.

NB: Any undertaking uncertain about how to complete an application or wishing further explanation may contact the Directorate-General for Competition (DG IV) in Brussels. Alternatively, any Commission Information Office (those in the Community are listed in Annex 3) will be able to obtain guidance or indicate an official in Brussels who speaks the preferred official Community language.

I. Purpose of Community rules on competition

The purpose of these rules is to prevent the distortion of competition in the common market by monopolies or restrictive practices; they apply to any enterprise trading directly or indirectly in the common market wherever established. Article 85 (1) of the Treaty establishing the European Economic Community (the text of Articles 85 and 86 is reproduced in Annex 1 to this note) prohibits restrictive agreements or concerted practices which may affect trade between Member States, and Article 85 (2) declares contracts or other otherwise legally binding arrangements containing such restrictions void (although the European Court of Justice has held that if restrictive terms of contracts are severable, only those terms are void); Article 85 (3), however, gives the Commission power to exempt practices with beneficial effects. Article 86 prohibits the abuse of a dominant position. The original procedures for implementing these Articles, which provide for 'negative clearance' and a declaration applying Article 85 (3), were laid down for the maritime transport sector in Regulation (EEC) No 4056/86 and for the air transport sector in Regulation (EEC) No 3975/87 (the references to these and all other acts mentioned in this note or relevant to applications made on the Forms are listed in Annex 2 to this note).

II. Negative Clearance

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

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

III. Decision applying Article 85 (3)

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

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

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

In the air transport sector, the Commission intends to adopt a number of Regulations declaring that Article 85 (1) does not apply to categories of agreements.

A decision applying Article 85 (3) may have retroactive effect. Should the Commission find that arrangements in respect of which the application was submitted are indeed prohibited by Article 85 (1) and cannot benefit from the application of Article 85 (3) and, therefore, take a decision condemning them, the parties are nevertheless protected, from the date of application, against fines for any infringement described in the application (Articles 19 (4) of Regulation (EEC) No 4056/86 and 12 (5) of Regulation (EEC) No 3975/87).

IV. Purpose of the forms

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

To be valid, applications in respect of maritime transport must be made on Form MAR (by virtue of Article 4 of Regulation No 4260/88 and in respect of air transport on Form AER (by virtue of Article 3 of Regulation No 4261/88).

V. Nature of the Forms

The forms consist of a single sheet calling for the identity of the applicant(s) and of any other parties. This must be supplemented by further information given under the headings and references detailed below (see IX). For preference the paper used should be A4 (21 × 29.7 cm — the same size as the form) but must not be bigger. Leave a margin of at least 25 mm or one inch on the left hand side of the page and, if you use both sides, on the right hand side of the reverse.

VI. The need for complete and accurate information

It is important that applicants give all the relevant facts. Although the Commission has the right to seek further information from applicants or third parties, and is obliged to publish a summary of the application before

granting negative clearance or a decision applying Article 85 (3), it will usually base its decision on the information provided by the applicant. Any Decision taken on the basis of incomplete information could be without effect in the case of a negative clearance, or voidable in that of a declaration applying Article 85 (3). For the same reason it is also important to inform the Commission of any material changes to your arrangements made after your application.

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

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

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

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

VII. Subsequent procedure

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

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

An application for a decision under Article 85 (3) may be opposed by the Commission either because the Commission does not agree that the arrangements should benefit from Article 85 (3) or to allow for more information to be sought.

If, after examination, the Commission intends to issue a decision applying Article 85 (3), it is obliged to publish a summary of the application in the *Official Journal of the European Communities* and invite comments from third parties. Subsequently, a preliminary draft Decision has to be submitted to and discussed with the Advisory Committee on Restrictive Practices and Dominant Positions in Air Transport or in Maritime Transport — they will already have received a copy of the application. Only then, and providing nothing has happened to change the Commission's intention, can it adopt a decision.

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

VIII. Secrecy

The Commission and Member States are under a duty not to disclose information of the kind covered by the obligation of professional secrecy. On the other hand the Commission has to publish a summary of your application, should it intend to grant it, before taking the relevant decision. In this publication, the Commission '. . . shall have regard to the legitimate interest of undertakings in the protection of their business secrets'. In this connection, if you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, please put all such information in a second annex, with

[1] The value of the European Currency Unit (Ecu) is published daily in the C series of the *Official Journal of the European Communities*.

each page clearly marked 'Business Secrets'; in the principal annex, under any affected heading state 'see second annex' or 'also see second annex'; in the second annex repeat the affected heading(s) and reference(s) and give the information you do not wish to have published, together with your reasons for this. Do not overlook the fact that the Commission may have to publish a summary of your application.

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

IX. Further information and headings to be used in the Annex to the forms

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

1. *Brief description*

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

2. *Market*

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

3. *Fuller details of the party or parties*

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

— owns more than half the capital or business assets, or

— has the power to exercise more than half the voting rights, or

— has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or

— has the right to manage the affairs of another.

If the answer is yes, give:

— the name and address of the ultimate parent company;

— a brief description of the business of the group (and, if possible, one copy of the last set of group accounts);

— the name and address of any other company in the group competing in a market affected by the arrangements or in any related market, that is to say any other company competing directly or indirectly with the parties ('relevant associated company').

3.2. The most recently available total turnover of each of the parties, and, as the case may be, of the group of which it forms part (it could be helpful also if you could provide one copy of the last set of accounts).

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

[1] See list in Annex 3.

3.4. In relation to the market (or markets) for the services described at 2 above, give, for each of the sales or turnover figures in 3.3, your estimate of the market share it represents.

3.5. If you have a substantial interest falling short of control (more than 25 % but less than 50 %) in some other company competing in a market affected by the arrangements, or if some other such company has a substantial interest in yours, give its name and address and brief details.

4. *Full details of the arrangements*

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

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

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

— buying or selling prices, discounts or other trading conditions

— the nature, frequency of capacity of services to be offered

— technical development or investment

— the choice of markets or sources of supply

— purchases from or sales to third parties

— whether to apply similar terms for the supply of equivalent services

— whether to offer different services separately or together.

4.3. State between which Member States [1] trade may be affected by the arrangements, and whether trade between the Community and any third countries is affected.

5. *Reasons for negative clearance*

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

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

Then, under the following two references, give a statement of the relevant facts and reasons as to why you consider Articles 85 (1) or 86 to be inapplicable, i.e.

5.2. why the arrangements do not have the object or effect of preventing, restricting or distorting competition within the common market to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position;

and/or

5.3. why the arrangements or behaviour are not such as may affect trade between Member States to any appreciable extent.

6. *Reasons for a decision applying Article 85 (3)*

If you are requesting a decision applying Article 85 (3), even if only as a precaution, explain how:

6.1. the arrangements contribute to improving production or distribution, and/or promoting technical or economic progress;

6.2. a proper share of the benefits arising from such improvement or progress accrues to consumers;

[1] See list in Annex 3.

6.3. all restrictive provisions of the arrangements are indispensable to the attainment of the aims set out under 6.1 above;

6.4. the arrangements do not eliminate competition in respect of a substantial part of the services concerned.

7. *Other information*

7.1. Mention any earlier proceedings or informal contacts, of which you are aware, with the Commission and any earlier proceedings with any national authorities or courts even indirectly concerning these arrangements or this behaviour.

7.2. Give any other information presently available that you think might be helpful in allowing the Commission to appreciate whether there are any restrictions contained in the agreement, or any benefits that might justify them.

7.3. State whether you intend to produce further supporting facts or arguments not yet available and, if so, on which points.

7.4. State, with reasons, the urgency of your application.

Annex 1

TEXT OF ARTICLES 85 AND 86 OF THE EEC TREATY

ARTICLE 85

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

a) directly or indirectly fix purchase or selling prices or any other trading conditions;

b) limit or control production, markets, technical development, or investment;

c) share markets or sources of supply;

d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

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

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

— any agreement or category of agreements between undertakings,

— any decision or category of decisions by associations of undertakings,

— any concerted practice or category of concerted practices,

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

a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

ARTICLE 86

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

Such abuse may, in particular, consist in:

a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b) limiting production, markets or technical development to the prejudice of consumers;

c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Annex 2

LIST OF RELEVANT ACTS

(as of 1 September 1988)

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

IMPLEMENTING REGULATIONS

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

Commission Regulation (EEC) No 4260/88 of 26 July 1988 on the scope of the obligation of communication; the form, content and other details of complaints and of applications, and the hearings provided for in Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ No L 376, 31. 12. 1988, p. 1).

Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ No 374, 31. 12. 1987, p. 1).

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

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

Commission Regulation (EEC) No 2671/88 of 26 July 1988 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices concerning joint planning and coordination of capacity, sharing of revenue and consultations on tariffs on scheduled air services and slot allocation at airports (OJ No L 239, 30. 8. 1988, p. 9).

Commission Regulation (EEC) No 2672/88 of 26 July 1988 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems for air transport services (OJ No L 239, 30. 8. 1988, p. 13).

Commission Regulation (EEC) No 2673/88 of 26 July 1988 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices concerning ground handling services (OJ No L 239, 30. 8. 1988, p. 17).

COMMISSION NOTICES OF A GENERAL NATURE

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

Annex 3

LIST OF MEMBER STATES AND COMMISSION PRESS AND INFORMATION OFFICES WITHIN THE COMMUNITY

(as of 1 January 1986)

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

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

BELGIUM

Rue Archimède 73,
B-1040 Bruxelles

Tel. 235 11 11

DENMARK

Højbrohus
Østergade 61
Postbox 144
DK-1004 København K

Tel.14 41 40

FRANCE

61, rue des Belles-Feuilles
F-75782 Paris, Cedex 16

Tel. (1) 45 01 58 85

CMCI/Bureau 320
2, rue Henri Barbusse
F-13241 Marseille, Cedex 01

Tel. 91 08 62 02

FEDERAL REPUBLIC OF GERMANY

Zitelmannstraße 22
D-5300 Bonn

Tel. 23 80 41

Kurfürstendamm 102
D-1000 Berlin 31

Tel. 8 92 40 28

Erhardtstraße 27
D-8000 München

Tel. 23 99 29 00

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TK 1602
GR-Athina 134

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I-00187 Roma

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I-20123 Milano

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LUXEMBOURG

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Rue Alcide de Gasperi
L-2920 Luxembourg

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Windsor House
9/15 Bedfort Street
UK-Belfast BT2 7EG

Tel. 407 08

4 Cathedral Road
UK-Cardiff CF1 9SG

Tel. 37 16 31

7 Alva Street
UK-Edinburgh EH2 4PH

Tel. 225 20 58

ANNEX II

(List of public holidays)

New Year	1 Jan
Good Friday	
Easter Saturday	
Easter Monday	
Labour Day	1 May
Schuman Plan Day	9 May
Ascension Day	
Whit Monday	
Belgian National Day	21 July
Assumption	15 Aug
All Saints	1 Nov
All Souls	2 Nov
Christmas Eve	24 Dec
Christmas Day	25 Dec
The day following Christmas Day	26 Dec
New Year's Eve	31 Dec