COMMISSION REGULATION (EC) No 2843/98

of 22 December 1998

on the form, content and other details of applications and notifications provided for in Council Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 applying the rules on competition to the transport sector

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway ([1]), as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 29 thereof,

Having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport ([2]), as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 26 thereof,

Having regard to Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector ([3]), as last amended by Regulation (EEC) No 2410/92 ([4]), and in particular Article 19 thereof,

Having consulted the Advisory Committee on restrictive practices and monopolies in the transport industry, the Advisory Committee on agreements and dominant positions in maritime transport, and the Advisory Committee on agreements and dominant positions in air transport,

(1) Whereas experience in the application of Commission Regulation (EEC) No 1629/69 of 8 August 1969 on the form, content and other detail of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14(1) of Council Regulation (EEC) No 1017/68 of 19 July 1968 ([5]), as last amended by the Act of Accession of Austria, Finland and Sweden, and of Section I of Commission Regulation (EEC) No 4260/88 of 16 December 1988 on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport ([6]), as last amended by the Act of Accession of Austria, Finland and Sweden and also of Section I of 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 ([7]), as last amended by the Act of Accession of Austria, Finland and Sweden, has shown the need to improve certain procedural aspects of those Regulations;

(2) Whereas it is appropriate, for the sake of clarity, to adopt a single Regulation on the procedures for applications and notifications in the transport sector; whereas, accordingly, Regulation (EEC) No 1629/69 and Regulations (EEC) No 4260/88 and (EEC) No 4261/88 should be replaced;

(3) Whereas the submission of applications under Article 12 of Regulation (EEC) No 1017/68 and notifications under Article 14(1) of that Regulation, and applications under Article 12 of Regulation (EEC) No 4056/86 and 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, a decision or a practice; whereas each party should therefore have the right to submit such applications or notifications to the Commission; whereas, furthermore, a party exercising the right should inform the other parties in order to enable them to protect their interests;

(4) Whereas it is for the applicants and the notifying parties to make full and honest disclosure to the

([1]) OJ L 175, 23. 7. 1968, p. 1.
([2]) OJ L 378, 31. 12. 1986, p. 4.
([3]) OJ L 374, 31. 12. 1987, p. 1.
([4]) OJ L 240, 24. 8. 1992, p. 18.
([5]) OJ L 209, 21. 8. 1969, p. 1.
([6]) OJ L 376, 31. 12. 1988, p. 1.
([7]) OJ L 376, 31. 12. 1988, p. 10.

Commission of the facts and circumstances which are relevant to reaching a decision on the agreements, decisions or practices concerned;

(5) Whereas, in order to simplify and expedite their examination, it is desirable to prescribe that a form be used for applications for negative clearance relating to Article 85(1) and for applications relating to Article 5 of Regulation (EEC) No 1017/68 and to Article 85(3); whereas the use of this form should also be possible in the case of applications for negative clearance relating to Article 86;

(6) Whereas, in order to simplify their handling, it is appropriate to introduce a single form for applications under Article 12 of Regulation (EEC) No 1017/68, under Article 12 of Regulation (EEC) No 4056/86 and under Articles 3(2) and 5 of Regulation (EEC) No 3975/87; whereas, in the case of notifications under Article 14(1) of Regulation (EEC) No 1017/68, it is appropriate to provide a separate form;

(7) Whereas the Commission, in appropriate cases, should continue to give the parties, if they so request, an opportunity before the application or the notification to discuss the intended agreement, decision or practice informally and in strict confidence; whereas, in addition, it should, after the application or notification, continue to maintain close contact with the parties to the extent necessary to discuss with them any practical or legal problems which it discovers on a first examination of the case and if possible to remove such problems by mutual agreement;

(8) Whereas the obligation of communication to the Commission, pursuant to point 5 of Article 5 of Regulation (EEC) No 4056/86, of awards at arbitration and recommendations by conciliators concerns the settlement of disputes relating to the practices of conferences referred to in Article 4 and in points 2 and 3 of Article 5 of that Regulation; whereas it seems appropriate to make the procedure for this notification as simple as possible; whereas it is appropriate, therefore, to provide for notifications to be made in writing, attaching the documents containing the text of the awards and recommendations concerned;

(9) Whereas the provisions of this Regulation should also cover cases in which complaints, applications and notifications are made under Articles 53 and 54 of the Agreement on the European Economic Area,

HAS ADOPTED THIS REGULATION:

Article 1

Entitled persons

1. Any undertaking and any association of undertakings being a party to agreements or to concerted practices, or any association of undertakings adopting decisions, shall be permitted to submit applications or notifications to the Commission under any of the following provisions:

(a) Article 2 or Article 14(1) of Regulation (EEC) No 1017/68;

(b) Article 12 of Regulation (EEC) No 4056/86;

(c) Articles 3(2) and 5 of Regulation (EEC) No 3975/87.

2. Where the application or notification is submitted by some, but not all, of the parties referred to in paragraph 1, they shall give notice to the other parties.

3. Where the application or notification is signed by representatives of persons, undertakings or associations of undertakings, such representatives shall produce written proof that they are authorised to act.

4. Where a joint application or notification is made, a joint representative shall be appointed who is authorised to transmit and receive documents on behalf of all the applicants or notifying parties.

Article 2

Submission of applications and notifications

1. Applications under Article 3(2) of Regulation (EEC) No 3975/87 relating to Article 85(1) of the Treaty and applications under Article 12 of Regulation (EEC) No 1017/68, Article 12 of Regulation (EEC) No 4056/86 and Article 5 of Regulation (EEC) No 3975/87 shall be submitted in the manner prescribed by Form TR as shown in Annex I to this Regulation.

Form TR may also be used for applications under Article 3(2) of Regulation (EEC) No 3975/87 relating to Article 86 of the Treaty.

Notifications under Article 14(1) of Regulation (EEC) No 1017/68 shall be submitted on Form TR(B) shown in Annex II to this Regulation.

2. Joint applications and joint notifications shall be submitted on a single form.

3. One original and 17 copies of each application and notification, and three copies of the supporting documents, shall be submitted to the Commission at the address indicated on the forms.

4. The supporting documents shall be either originals or copies of the originals; in the latter case the applicant or notifying party shall certify that they are true and complete copies of the originals.

5. Applications and notifications shall be in one of the official languages of the Union. This language shall also be the language of the proceeding for the applicant or notifying party. Documents shall be submitted in their original language. Where the original language is not one of the official Union languages, a translation into the language of the proceeding shall be attached.

6. Where an application which purports to be submitted under Article 12 of Regulation (EEC) No 1017/68, Article 12 of Regulation (EEC) No 4056/86 or Articles 3(2) and 5 of Regulation (EEC) No 3975/87 is found to fall outside the scope of the Regulation or Regulations under which it has been submitted, the Commission shall without delay inform the applicant that it intends to examine the application under the provisions of such other Regulation or Regulations as is or are applicable to the case; however, the date of submission of the application shall be the date resulting from Article 4. The Commission shall inform the applicant of its reasons and fix a period for the applicant to submit any comments in writing before it conducts its appraisal pursuant to that other Regulation or those other Regulations. The period fixed by the Commission shall be not less than two weeks; it may be extended.

Article 3

Content of applications and notifications

1. Applications and notifications shall contain the information, including the documents, required by the forms. The information shall be correct and complete.

2. The Commission may dispense with the obligation to provide any particular information, including documents, required by the forms where the Commission considers that such information is not necessary for the examination of the case.

3. The Commission shall, without delay, acknowledge in writing to the applicant or notifying party receipt of the application or notification, and of any reply to a letter sent by the Commission pursuant to Article 4(2).

Article 4

Effective date of submission of applications and notifications

1. Without prejudice to paragraphs 2 to 5, applications and notifications shall become effective on the date on which they are received by the Commission. Where, however, the application or notification is sent by registered post, it shall become effective on the date shown on the postmark of the place of posting.

2. Where the Commission finds that the information, including documents, contained in the application or notification is incomplete in any material respect, it shall, without delay, inform the applicant or notifying party in writing of this fact and shall fix an appropriate time limit for the supply of full information. In such cases, the application or notification shall become effective on the date on which the complete information is received by the Commission.

3. Material changes in the facts contained in the application or notification which the applicant or notifying party knows or ought to know shall be communicated to the Commission voluntarily and without delay.

4. Incorrect or misleading information shall be considered to be incomplete information.

5. Where, at the expiry of a period of one month following the date on which the application or notification has been received, the Commission has not provided the applicant or notifying party with the information referred to in paragraph 2, the application or notification shall be deemed to have become effective on the date of its receipt by the Commission.

Article 5

Notifications of awards given at arbitration and recommendations

1. Awards at arbitration and recommendations by conciliators accepted by the parties shall be notified to the Commission when they concern the settlement of disputes relating to the practices of conferences referred to in Article 4 and points 2 and 3 of Article 5 of Regulation (EEC) No 4056/86.

2. The obligation of notification applies to any party to the dispute resolved by the award or recommendation.

3. Notifications shall be submitted forthwith by registered letter with an acknowledgement of receipt or shall be delivered by hand against receipt. They shall be written in one of the official languages of the Union.

4. Supporting documents shall be either originals or copies. Copies shall be certified as true copies of the original. They shall be submitted in their original language. Where the original language is not one of the official languages of the Union, a translation in one of the official Union languages shall be attached.

5. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such notifications, they shall produce written proof that they are authorised to act.

Article 6

Applications and notifications under Articles 53 and 54 of the EEA Agreement

Where applications and notifications as provided for in Articles 2(1) and 5(1) are made under Articles 53 or 54 of the Agreement on the European Economic Area, they may be made in one of the official Union languages or in one of the official languages of the EFTA States.

Article 7

Repeal

Regulations (EEC) No 1629/69, (EEC) No 4260/88 and (EEC) No 4261/88 are repealed.

Article 8

Entry into force

This Regulation shall enter into force on 1 February 1999.

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

Done at Brussels, 22 December 1998.

For the Commission
Karel VAN MIERT
Member of the Commission

ANNEX I

FORM TR

INTRODUCTION

Form TR, as its Annex, is an integral part of Commission Regulation (EC) No 2843/98 of 22 December 1998 on the form, content and other details of applications and notifications provided for in Council Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 applying the rules on competition to the transport sector (hereinafter referred to as 'the Regulation'). It allows undertakings and associations of undertakings to make applications under Article 12 of Regulation (EEC) No 4056/86 and under Articles 3(2) and 5 of Regulation (EEC) No 3975/87.

Form TR is not a form to be filled in.

To facilitate the use of the Form TR the following pages set out:

— in which situations it is necessary to make an application (point A);

— to which authority (the Commission or the EFTA Surveillance Authority) the application should be made (point B);

— for which purposes the application can be used (point C);

— what information must be given in the application (points D, E, and F);

— who can make an application (point G);

— how to make an application (point H);

— how the business secrets of the undertakings can be protected (point I);

— the subsequent procedure after the application has been made (point J); and

— how certain technical terms used in the operational part of the Form TR should be interpreted (point K).

A. **In which situations is it necessary to make an application?**

I. *Purpose of the competition of the EC Treaty and the EEA Agreement*

1. Purpose of the EC competition rules

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

Article 85(1) of the EC Treaty (the text of Articles 85 and 86 is reproduced in Appendix I to this form) prohibits restrictive agreements, decisions or concerted practices (arrangements) which may affect trade between Member States, and Article 85(2) declares agreements and decisions containing such restrictions void (although the Court of Justice has held that if restrictive terms of agreements are severable, only those terms are void); Article 85(3), however, provides for exemption of arrangements with beneficial effects, if its conditions are met. Article 86 prohibits the abuse of a dominant position which may affect trade between Member States.

The original procedures for implementation Articles 85 and 86, which provide for 'negative clearance' and exemption pursuant to Article 85(3), were laid down in Regulation No 17. However, Council Regulation No 14 [1] rendered Regulation No 17 inapplicable in the transport sector. The procedures for implementing the EC competition rules in the transport sector have subsequently been laid down for transport by rail, road and inland waterway in Regulation (EEC) No 1017/68, for maritime transport by Regulation (EEC) No 4056/86 and for the air transport sector by Regulation (EEC) No 3975/87 (the references to these and other acts mentioned in this form or relevant to applications made on this form are listed in Appendix II to this form).

[1] Council Regulation No 141/62 of 26 November 1962 exempting transport from the application of Council Regulation No 17, (OJ 124, 28. 11. 1962, p. 2753); Regulation as last amended by Regulation No 1002/67/EEC, (OJ 306, 16. 12. 1967, p. 1).

Regulations (EEC) No 4056/86 and (EEC) No 3975/87, like Regulation No 17, make reference to Articles 85 and 86 of the EC Treaty. By contrast, Regulation (EEC) No 1017/68 enacts substantive competition rules for the inland transport sector. Articles 2, 5, 7 and 8 of Regulation (EEC) No 1017/68 contain provisions which, with minor variations, mirror those respectively of Articles 85(1), (2) and (3) and 86 of the EC Treaty. Those provisions of Regulation (EEC) No 1017/68 are to be interpreted in the same way as Articles 85 and 86 of the Treaty [1].

2. Purpose of the EEA competition rules

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

Article 53(1) of the EEA Agreement (the text of Articles 53, 54 and 56 of the EEA Agreement is reproduced in Appendix I) prohibits restrictive agreements, decisions or concerted practices (arrangements) which may affect trade between the Community and one or more EFTA States (or between EFTA States), and Article 53(2) declares agreements or decisions containing such restrictions void; Article 53(3), however, provides for exemption of arrangements with beneficial effects, if its conditions are met. Article 54 prohibits the abuse of a dominant position which may affect trade between the Community and one or more EFTA States (or between EFTA States). The procedures for implementing the EEA competition rules in the transport sector are laid down for transport by rail, road and inland waterway in Regulation (EEC) No 1017/68, for maritime transport by Regulation (EEC) No 4056/86 and for the air transport sector by Regulation (EEC) No 3975/87, supplemented for EEA purposes, by Protocols 21, 22 and 23 to the EEA Agreement.

II. *The scope of the competition rules of the EC Treaty and the EEA Agreement*

The applicability of Articles 2, 5 and 8 of Regulation (EEC) No 1017/68, Articles 85 and 86 of the EC Treaty and Articles 53 and 54 of the EEA Agreement depends on the circumstances of each individual case. It presupposes that the arrangement or behaviour satisfies all the conditions set out in the relevant provisions. This question must consequently be examined before any application is made.

1. Negative clearance

In the transport sector, the negative clearance procedure has been provided for only in the air transport sector. Its purpose is to allow undertakings to ascertain whether the Commission considers that their arrangement or their behaviour is or is not prohibited by Article 85(1), or Article 86 of the EC Treaty or by Article 53(1) or Article 54 of the EEA Agreement. This procedure is governed by Article 3(2) of Regulation (EEC) No 3975/87. The negative clearance takes the form of a decision by which the Commission certifies that, on the basis of the facts in its possession, there are no grounds pursuant to Article 85(1) or Article 86 of the EC Treaty or under Article 53(1) or Article 54 of the EEA Agreement for action on its part in respect of the arrangement or behaviour.

There is, however, no point in making an application when the arrangements or the behaviour are manifestly not prohibited by the abovementioned provisions. 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 issues negative clearance decisions only where an important problem of interpretation has to be solved. In the other cases it reacts to the application by sending a comfort letter.

The Commission has published several notices relating the interpretation of Article 85(1) of the EC Treaty. They define certain categories of agreements which, by their nature or because of their minor importance, are not caught by the prohibition [3].

2. Exemption

The procedure for exemption pursuant to Article 5 of Regulation (EEC) No 1017/68, Article 85(3) of the EC Treaty and Article 53(3) of the EEA Agreement allows companies to enter into arrangements which, in fact, offer economic advantages but which, without exemption, would be prohibited by Article 2 of Regulation (EEC) No 1017/68, Article 85(1) of the EC Treaty or by Article 53(1) of the EEA Agreement. This procedure is governed by Articles 12 and 13 of

[1] See Case T-224/94 Deutsche Bahn v. Commission [1997] ECR II-1689, at paragraph 77. The Court of First Instance held that Article 8 of the Regulation does not have a purpose which is substantially different from that of Article 86 of the Treaty.
[2] See list of Member States and EFTA States in Appendix III.
[3] See Appendix II.

Regulation (EEC) No 1017/68, Articles 12 and 13 of Regulation (EEC) No 4056/86 and Articles 5 and 6 of Regulation (EEC) No 3975/87. The exemption takes the form of a decision by the Commission declaring Article 2 of Regulation (EEC) No 1017/68, Article 85(1) of the EC Treaty or Article 53(1) of the EEA Agreement to be inapplicable to the arrangements described in the decision. The Commission is required to specify the period of validity of any such decision, it can attach conditions and obligations and it can amend or revoke decisions or prohibit specified acts by the parties in certain circumstances, notably if the decisions were based on incorrect information or if there is any material change in the facts.

Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 provide for an objections procedure under which applications can be handled expeditiously. If an application is admissible pursuant to the relevant Regulation, if it is complete and if the arrangement which is the subject of the application has not given rise to a procedure as a result of a complaint or on the Commission's own initiative, the Commission publishes a summary of the request in the *Official Journal of the European Communities* and invites comments from interested third parties, from Member States and from EFTA States where requests relate to the EEA Agreement. Unless the Commission notifies the applicants within 90 days of the date of such publication that there are serious doubts as to the applicability of Article 5 of Regulation (EEC) No 1017/68, Article 85(3) of the EC Treaty or Article 53(3) of the EEA Agreement, the arrangement will be deemed exempt for the time already elapsed and for a maximum of three years from the date of publication, in the case of applications under Regulation (EEC) No 1017/68, and for a maximum of six years from the date of publication in the case of applications under Regulations (EEC) No 4056/86 and (EEC) No 3975/87.

The Commission has adopted a number of regulations granting exemptions to categories of agreements in the air transport sector and in the maritime sector [1].

A decision granting exemption under Regulations (EEC) No 1017/68, (EEC) No 4056/86 or (EEC) No 3975/87 may have retroactive effect. Should the Commission find that notified arrrangements are indeed prohibited and cannot be exempted and, therefore, take a decision condemning them, the participants are nevertheless protected, between the date of the application of the date of the decision, against fines for any infringement described in the application (Article 19(4) of Regulation (EEC) No 4056/86 and Article 12(5) of Regulation (EEC) No 3975/87). Regulation (EEC) No 1017/68 does not provide for such immunity from fines.

B. **To which authority should an application be made?**

The applications must be made to the authority which has competence for the matter. The Commission is responsible for the application of the competition rules of the EC Treaty. However there is shared competence in relation to the application of the competition rules of the EEA Agreement.

The competence of the Commission and of the EFTA Surveillance Authority to apply the EEA competition rules follows from Article 56 of the EEA Agreement. Applications relating to agreements, decisions or concerted practices liable to affect trade between Member States should be addressed to the Commission unless their effects on trade between Member States or on competition within the Community are not appreciable within the meaning of the Commission notice of 1997 on agreements of minor importance [2]. Furthermore, all restrictive agreements, decisions or concerted practices affecting trade between one Member State and one or more EFTA States fall within the competence of the Commission, provided that the undertakings concerned achieve more than 67 % of their combined EEA-wide turnover within the Community [3]. However, if the effects of such agreements, decisions or concerted practices on trade between Member States or on competition within the Community are not appreciable, the application should, where necessary, be addressed to the EFTA Surveillance Authority. All other agreements, decisions and concerted practices falling under Article 53 of the EEA Agreement should be notified to the EFTA Surveillance Authority (the address of which is given in Appendix III).

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

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[1] See Appendix II.
[2] OJ C 372, 9. 12. 1997, p. 13.
[3] For a definition of 'turnover' in this context, see Articles 2, 3 and 4 of Protocol 22 to the EEA Agreement reproduced in Appendix I.

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

C. **The purpose of this form**

Form TR lists the questions that must be answered and the information and documents that must be provided when applying for the following:

— a negative clearance with regard to Article 85(1) of the EC Treaty and/or Article 53(1) of the EEA Agreement, pursuant to Article 3(2) of Regulation (EEC) No 3975/87, with respect to agreements between undertakings, decisions by associations of undertakings and concerted practices,

— an exemption pursuant to Article 5 of Regulation (EEC) No 1017/68, or Article 85(3) of the EC Treaty and/or Article 53(3) of the EEA Agreement with respect to agreements between undertakings, decisions by associations of undertakings and concerted practices.

Applications for exemption pursuant to Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 shall be submitted in the manner prescribed by form TR (see Article 2(1) of the Regulation).

This form can also be used by undertakings that wish to apply for a negative clearance from Article 86 of the EC Treaty or Article 53 of the EEA Agreement, pursuant to Article 3(2) of Regulation (EEC) No 3975/87. Applicants requesting negative clearance from Article 86 are not required to use form TR. They are none the less strongly recommended to give all the information requested below to ensure that their application gives a full statement of the facts (see Article 2(1)(a), second sentence of the Regulation).

The applications or notifications made on the form TR issued by the EFTA side are equally valid. However, if the agreements, decisions or practices concerned fall solely within Article 85 or 86 of the EC Treaty, i.e. have no EEA relevance whatsoever, it is advisable to use the present form established by the Commission.

D. **Which chapters of the form should be completed?**

Undertakings wishing to make an application must complete all three chapters of the operational part of this form. Notifications under Regulation No 17 of agreements concerning the creation of a cooperative joint venture of a structural character can benefit from an accelerated procedure. The accelerated procedure is not applied to applications under Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 because those Regulations provide for an objections procedure containing a specific timetable.

E. **The need for complete information**

The receipt by the Commission of a valid application has two main consequences. First, under Regulations (EEC) No 4056/86 and (EEC) No 3975/87, it affords immunity from fines from the date that the valid application is received by the Commission with regard to applications made in order to obtain exemption (see Article 19(4) of Regulation (EEC) No 4056/86 and Article 12(5) of Regulation (EEC) No 3975/87).

Second, until a valid application is received, the Commission is not 'in possession of all the available evidence' which is necessary before it can publish a summary of the application under the opposition procedure in Article 12 of Regulation (EEC) No 1017/68, Article 12 of Regulation (EEC) No 4056/86 and Article 5 of Regulation (EEC) No 3975/87.

A valid application for this purpose means one that is not incomplete (see Article 3(1) of this Regulation). This is subject to two qualifications. First, if the information or documents required by this form are not reasonably available to you in part or in whole, the Commission will accept that an application is complete and thus valid notwithstanding the failure to provide such information, providing that you give reasons for the unavailability of the information, and provide your best estimates for missing data together with the sources for the estimates. Indications as to where any of the requested information or documents that are unavailable to you could be obtained by the Commission must also be provided. Secondly, the Commission only requires the submission of information relevant and necessary to its inquiry into the notified operation. In some cases not all the information reqired by this form will be necessary for this purpose.

The Commission may therefore dispense with the obligation to provide certain information required by this form (see Article 3(2) of the Regulation). This provision enables, where appropriate, each application to be tailored to each case so that only the information strictly necessary for the Commission's examination is provided. This avoids unnecessary administrative burdens being imposed on undertakings, in particular on small and medium-sized ones. Where the information or documents required by this form are not provided for this reason, the application should indicate the reasons why the information is considered to be unnecessary to the Commission's investigation.

Where the Commission finds that the information contained in the application is incomplete in a material respect, it will, within one month from receipt, inform the applicant or the notifying party in writing of this fact and the nature of the missing information. In such cases, the application shall become effective on the date on which the complete information is received by the Commission. If the Commission has not informed the applicant or the notifying party within the one month period that the application is incomplete in a material respect, the application will be deemed to be complete and valid (see Article 4 of the Regulation).

It is also important that undertakings inform the Commission of important changes in the factual situation including those of which they become aware after the application has been submitted. The Commission must, therefore, be informed immediately of any changes to an agreement, decision or practice which is the subject of an application (see Article 4(3) of the Regulation). Failure to inform the Commission of such relevant changes could result in any negative clearance decision being without effect or in the withdrawal of any exemption decision [1] adopted by the Commission on the basis of the application.

F. **The need for accurate information**

In addition to the requirement that the application be completed, it is important that you ensure that the information provided is accurate (see Article 3(1) of the Regulation). The Commission is empowered to impose, by decision, on undertakings or associations of undertakings, fines of up to EUR 5 000 where, intentionally or negligently, they supply incorrect or misleading information in an application (Article 22(1)(a) of Regulation (EEC) No 1017/68, Article 19(1)(a) of Regulation (EEC) No 4056/86 and Article 12 (1)(a) of Regulation (EEC) No 3975/87). Such information is, moreover, considered to be incomplete (see Article 4(4) of the Regulation).

G. **Who can lodge an application?**

Any of the undertakings party to an agreement, decision or practice of the kind described in Articles 85 or 86 of the EC Treaty and Articles 53 or 54 of the EEA Agreement may submit an application for negative clearance pursuant to Article 3(2) of Regulation (EEC) No 3975/87. Any of the undertakings party to an agreement, decision or practice of the kind described in Articles 2 and 5 of Regulation (EEC) No 1017/68, or Article 85 of the EC Treaty and Article 53 of the EEA Agreement, may submit an application requesting an exemption. An association of undertakings may submit an application in relation to decisions taken or practices pursued in the operation of the association.

In relation to agreements and concerted practices between undertakings it is common practice for all the parties involved to submit a joint application. Although the Commission strongly recommends this approach, because it is helpful to have the views of all the parties directly concerned at the same time, it is not obligatory. Any of the parties to an agreement may submit an application in their individual capacities, but in such circumstances the notifying party should inform all the other parties to the agreement, decision or practice of that fact (see Article 1(2) of the Regulation). They may also provide them with a copy of the completed form, where relevant, once confidential information and business secrets have been deleted (see below, operational part, question 1.2).

Where a joint application is submitted, it has also become common practice to appoint a joint representative to act on behalf of all the undertakings involved, both in making the application or notification, and in dealing with any subsequent contacts with the Commission (see Article 1(4) of the Reglation). Again, while this is helpful, it is not obligatory, and all the undertakings jointly submitting an application may sign it in their individual capacities.

[1] See points (a) Article 13(3) of Regulation (EEC) No 1017/68, Article 13(3) of Reglation (EEC) No 4056/86 and Article 6(3) of Regulation (EEC) No 3975/87.

H. **How to submit an application**

Applications may be submitted in any of the official languages of the European Union or of an EFTA State (see Articles 2(5) and 6 of the Regulation). In order to ensure rapid proceedings, it is, however, recommended to use, in case of an application to the EFTA Surveillance Authority one of the official languages of an EFTA State or the working language of the EFTA Surveillance Authority, which is English, or, in case of an application to the Commission, one of the official languages of the Union or of the EFTA States or the working language of the EFTA Surveillance Authority. This language will thereafter be the language of the proceeding for the applicant.

Undertakings should provide the information requested by form TR, using its sections and paragraph numbers, signing a declaration as stated in Section 13, and annexing the required supporting documentation.

Supporting documents shall be submitted in their original language; where this is not an official language of the Union they must be translated into the language of the proceeding. The supporting documents may be originals or copies of the originals (see Article 2(4) of the Regulation).

All information requested in this form shall, unless otherwise stated, relate to the calendar year preceding that of the application. Where information is not reasonably available on this basis (for example if accounting periods are used that are not based on the calendar year, or the previous year's figures are not yet available), the most recently available information should be provided and reasons given why figures on the basis of the calendar year preceding that of the application cannot be provided.

Financial data may be provided in the currency in which the official audited accounts of the undertaking(s) concerned are prepared or in euros. In the latter case the exchange rate used for the conversion must be the average conversion rates prevailing for the years or other periods in question.

One original and 17 copies of each application, but only three copies of all supporting documents must be provided (see Article 2(3) of the Regulation).

The application is to be sent to:

European Commission
Directorate-General for Competition (DG IV),
The Registrar
Rue de la Loi/Wetstraat 200,
B-1049 Brussels,

or be delivered by hand during Commission working days and official working hours to the following address:

European Commission,
Directorate-General for Competition (DG IV),
The Registrar
Avenue de Cortenberg/Kortenberglaan 158,
B-1040 Brussels.

I. **Confidentiality**

Article 214 of the EC Treaty, Article 27 of Regulation (EEC) No 1017/68, Article 24 of Regulation (EEC) No 4056/86 and Article 17 of Regulation (EEC) No 3975/87, Article 9 of Protocol 23 to the EEA Agreement, Article 122 of the EEA Agreement and Article 27 of Chapter VI, Article 24 of Chapter IX and Article 17 of Chapter XI of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and of a Court of Justice require the Commission, the Member States, the EEA Surveillance Authority and EFTA States not to disclose information of the kind covered by the obligation of professional secrecy.

On the other hand, Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 require the Commission to publish a summary of an application for exemption. In this publication, the Commission '... shall have regard to the legitimate interest of undertakings in the protection of their business secrets' (Article 12(2) of Regulation (EEC) No 1017/68, Article 12(2) of Regulation (EEC) No 4056/86 and Article 5(2) of Regulation (EEC) No 3975/87).

Before publishing a summary of an application, the Commission will show the applicant(s) a copy of the proposed text.

In this connection, if an undertaking believes that its interests would be harmed if any of the information it is asked to supply were to be published or otherwise divulged to other undertakings, it should put all such information in one or more separate annexes with each page clearly marked 'Business secrets'. It should also give reasons why any information identified as confidential or secret should not be divulged or published.

J. **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 (see Article 4(1) of the Regulation). However, special rules apply to incomplete applications (see under point E).

The Commission will acknowledge receipt of all applications in writing, indicating the case number attributed to the file. This number must be used in all future correspondence regarding the application. The receipt of acknowledgement does not prejudge the question whether the application is valid.

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

An application for an exemption decision may be opposed by the Commission if it has serious doubts as to whether the arrangements should benefit from an exemption decision.

If, after having raised serious doubts under the opposition procedure, the Commission intends to issue an exemption decision, it is obliged to publish a summary and invite comments from third parties (Article 26(3) of Regulation (EEC) No 1017/68, Article 23(3) of Regulation (EEC) No 4056/86 and Article 16(3) of Regulation (EEC) No 3975/87). Subsequently, a preliminary draft decision has to be submitted to and discussed with the appropriate Advisory Committee composed of officials of the competent authorities of the Member States. Where the case falls under the EEA Agreement, representatives of the EFTA Surveillance Authority and the EFTA States will be invited to attend. 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 they do not call for any action by the Commission, at least in circumstances at that time. In such cases comfort letters are sent. Although not a Commission decision, a comfort letter indicates how the Commission's Directorate-General for Competition (DG IV) views the case on the facts currently in their possession which means that the Commission could where necessary, for example, if it were to be asserted that a contract was void under Article 85(2) of the EC Treaty and/or Article 53(2) of the EEA Agreement, take an appropriate decision to clarify the legal situation.

K. **Definitions used in the operational part of this form**

Agreement: the word 'agreement' is used to refer to all categories of arrangements, i.e. agreements between undertakings, decisions by associations of undertakings and concerted practices.

Year: all references to the word 'year' in this form shall be read as meaning calendar year, unless otherwise stated.

Group: a group relationship exists for the purpose of this form where one undertaking:

— owns more than half the capital or business assets of another undertaking, or

— has the power to exercise more than half the voting rights in another undertaking, 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 undertaking.

An undertaking which is jointly controlled by several other undertakings (joint venture) forms part of the group of each of these undertakings.

Notified agreement: a notified agreement is one that is the subject of an application using this form.

Relevant product market: question 5.1 of this form requires the undertaking or individual submitting the application to define the relevant product and/or service market(s) that are likely to be affected by the agreement in question. That definition(s) is then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the applicants are referred to in this form as the relevant product market(s).

Relevant geographic market: question 5.2 of this form requires the undertaking or individual submitting the application to define the relevant geographic market(s) that are likely to be affected by the agreement in question. That definition(s) is then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the applicants are referred to in this form as the relevant geographic market(s).

Relevant product and geographic market: by virtue of the combination of their replies to question 5 the parties provide their definition of the relevant market(s) affected by the notified agreement(s). That (those) definition(s) is (are) then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the notifying parties is referred to in this form as the relevant geographic and product market(s).

Parties and applicant: the word 'party' is used to refer to all the undertakings which are party to the agreement being notified. As an application may be submitted by only one of the undertakings which are party to an agreement, 'applicant' is used to refer only to the undertaking or undertakings actually submitting the application.

FORM TR — OPERATIONAL PART

The first page of your application must contain the words 'Application in accordance with form TR', and also one or more of the following indications as the case may be:

— 'Application for exemption under Article 12 of Regulation (EEC) No 1017/68',

— 'Application for exemption under Article 12 of Regulation (EEC) No 4056/86',

— 'Application for negative clearance under Article 3(2) and/or exemption under Article 5 of Regulation (EEC) No 3975/87'.

CHAPTER I

Sections concerning the parties, their groups and the agreement

Section 1

Identity of the undertakings or persons submitting the application

1.1. Please list the undertakings on behalf of which the application is being submitted and indicate their legal denomination or commercial name, shortened or commonly used as appropriate (if it differs from the legal denomination).

1.2. If the application is being submitted on behalf of only one or some of the undertakings party to the agreement being notified, please confirm that the remaining undertakings have been informed of that fact and indicate whether they have received a copy of the application, with relevant confidential information and business secrets deleted [1]. (In such circumstances a copy of the edited copy of the application which has been provided to such other undertakings should be annexed to this application).

1.3. If a joint application is being submitted, has a joint representative [2] been appointed [3]?

If yes, please give the details requested in 1.3.1 to 1.3.3.

If no, please give details of any representatives who have been authorised to act for each or either of the parties to the agreement indicating who they represent.

1.3.1. Name of representative.

1.3.2. Address of representative.

1.3.3. Telephone and fax number of representative.

1.4. In cases where one or more representatives have been appointed, an authority to act on behalf of the undertaking(s) submitting the application must accompany the application.

Section 2

Information on the parties to the agreement and the groups to which they belong

2.1. State the name and address of the parties to the agreement being notified, and the country of their incorporation.

2.2. State the nature of the business of each of the parties to the agreement being notified.

2.3. For each of the parties to the agreement, give the name of a person that can be contacted, together with his or her name, address, telephone number, fax number and position held in the undertaking.

2.4. Identify the corporate groups to which the parties to the agreement being notified belong. State the sectors in which these groups are active, and the worldwide turnover of each group [4].

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[1] The Commission is aware that in exceptional cases it may not be practicable to inform non-notifying parties to the notified agreement of the fact that it has been notified, or to provide them with a copy of the application. This may be the case, for example, where a standard agreement is being notified that is concluded with a large number of undertakings. Where this is the case you should state the reasons why it has not been practicable to follow the standard procedure set out in this question.

[2] For the purposes of this question a representative means an individual or undertaking formally appointed to make the application on behalf of the party or parties submitting the application. This should be distinguished from the situation where the application is signed by an officer of the company or companies in question. In the latter situation no representative is appointed.

[3] It is not mandatory to appoint representatives for the purpose of completing and/or submitting this application. This question only requires the identification of representatives where the applicants have chosen to appoint them.

[4] For the calculation of turnover in the banking and insurance sectors see Article 3 of Protocol 22 to the EEA Agreement.

Section 3

Procedural matters

3.1. Please state whether you have made any formal submission to any other competition authorities in relation to the agreement in question. If yes, state which authorities, the individual or department in question, and the nature of the contact. In addition to this, mention any earlier proceedings or informal contacts, of which you are aware, with the Commission and/or the EFTA Surveillance Authority and any earlier proceedings with any national authorities or courts in the Community or in the territory of the EFTA States concerning these or any related agreements.

3.2. Please summarise any reasons for any claim that the case involves an issue of exceptional urgency.

3.3. State whether you intend to produce further supporting facts or arguments not yet available and, if so, on which points [1].

Section 4

Full details of the arrangements

4.1. Please summarise the nature, content and objectives pursued by the agreement being notified.

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

— buying or selling prices, discounts or other trading conditions,

— the quantities of 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.

If you are claiming the benefit of an opposition procedure under a block exemption regulation, identify in this list the restrictions that exceed those automatically exempted by the relevant regulation.

4.3. State between which Member States of the Community and/or EFTA States [2] trade may be affected by the arrangements. Please give reasons for your reply to this question, giving data on trade flows where relevant. Furthermore please state whether trade between the Community or the EEA and any third countries is affected, again giving reasons for your reply.

CHAPTER II

Section concerning the relevant market

Section 5

The relevant market

A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use [3].

The following factors are normally considered to be relevant to the determination of the relevant product market and should be taken into account in this analysis [4]:

— the degree of similarity between the services in question,

— differences in price between two services,

— the cost of switching between two potentially competing services,

— established or entrenched consumer preferences for one type or category of service over another,

— industry-wide service classifications (e.g. classifications maintained by trade associations).

[1] In so far as the notifying parties provide the information required by this form that was reasonably available to them at the time of notification, the fact that the parties intend to provide further supporting facts or documentation in due course does not prevent the notification being valid at the time of notification.
[2] See list in Appendix II.
[3] See Commission notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9. 12. 1997, p. 5.
[4] This is not however, exhaustive, and applicants may refer to other factors.

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

Factors relevant to the assessment of the relevant geographic market include ([1]) the nature and characteristics of the services concerned, the existence of entry barriers or consumer preferences, and appreciable differences for the undertakings' market share or substantial price differences between neighbouring areas.

5.1. In the light of the above please explain the definition of the relevant product market or markets that in your opinion should form the basis of the Commission's analysis of the application.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account. In particular, please state the specific products or services directly or indirectly affected by the agreement being notified and identify the categories of services viewed as substitutable in your market definition.

In the questions figuring below, this (or these) definition(s) will be referred to as 'the relevant product market(s)'.

5.2. Please explain the definition of the relevant geographic market or markets that in your opinion should form the basis of the Commission's analysis of the application.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account. In particular, please identify the countries in which the parties are active in the relevant product market(s), and in the event that you consider the relevant geographic market to be wider than the individual Member States of the Community or the territory of the EFTA States on which the parties to the agreement are active, give the reasons for this.

In the questions below, this (or these) definitions will be referred to as 'the relevant geographic market(s)'.

Section 6

Group members operating on the same markets as the parties

6.1. For each of the parties to the agreement being notified, provide a list of all undertakings belonging to the same group which are:

6.1.1. active in the relevant product market(s);

6.1.2. active in markets neighbouring the relevant product market(s) (i.e. active in products and/or services that represent imperfect and partial substitutes for those included in your definition of the relevant product market(s)).

Such undertakings must be identified even if they sell the product or service in question in other geographic areas than those in which the parties to the notified agreement operate. Please list the name, country of incorporation, exact products or services provided and the geographic scope of operation of each group member.

Section 7

The position of the parties on the relevant product market(s)

Information requested in this section must be provided for the groups of the parties as a whole. It is not sufficient to provide such information only in relation to the individual undertakings directly concerned by the agreement.

7.1. In relation to each relevant product market(s) identified in your reply to question 5.1 please provide the following information:

7.1.1. the market shares of the parties on the relevant geographic market during the previous three years;

7.1.2. where different, the market shares of the parties in (a) the EEA as a whole, (b) the Community, (c) the territory of the EFTA States and (d) each EC Member State and EFTA State during the previous three years ([2]). For this section, where market shares are less than 20 %, please state simply which of the following bands are relevant: 0 to 5 %, 5 to 10 %, 10 to 15 %, 15 to 20 %.

([1]) This list is not, however, exhaustive, and applicants may refer to other factors.
([2]) That is where the relevant geographic market has been defined as worldwide, these figures must be given regarding the EEA, the Community, the territory of the EFTA States, and each EC Member State. Where the relevant geographic market has been defined as the Community, these figures must be given for the EEA, the territory of the EFTA States, and each EC Member State. Where the market has been defined as national, these figures must be given for the EEA, the Community and the territory of the EFTA States.

For the purpose of answering these questions, market share may be calculated either on the basis of value or volume. Justification for the figures provided must be given. Thus, for each answer, total market value/volume must be stated, together with the sales/turnover of each of the parties in question. The source or sources of the information should also be given (e.g. official statistics, estimates, etc.), and where possible, copies should be provided of documents from which information has been taken.

Section 8

The position of competitors and customers on the relevant product market(s)

Information requested in this section must be provided for the group of the parties as a whole and not in relation to the individual companies directly concerned by the agreement notified.

For the (all) relevant product and geographic market(s) in which the parties have a combined market share exceeding 15 %, the following questions must be answered.

8.1. Please identify the five main competitors of the parties. Please identify the company and give your best estimate as to their market share in the relevant geographic market(s). Please also provide address, telephone and fax number, and, where possible, the name of a contact person at each company identified.

8.2. Please identify the five main customers of each of the parties. State company name, address, telephone and fax numbers, together with the name of a contact person.

Section 9

Market entry and potential competition in product and geographic terms

For the (all) relevant product and geographic market(s) in which the parties have a combined market share exceeding 15 %, the following questions must be answered.

9.1. Describe the various factors influencing entry in product terms into the relevant product market(s) that exist in the present case (i.e. what barriers exist to prevent undertakings that do not presently provide services within the relevant product market(s) entering this market(s)). In so doing take account of the following where appropriate:

- to what extent is entry to the markets influenced by the requirement of government authorisation or standard setting in any form? Are there any legal or regulatory controls on entry to these markets?
- to what extent is entry to the markets influenced by the need to have access to transport infrastructure?
- to what extent is entry to the markets influenced by the availability of rolling-stock vessels, aircraft, or other vehicles required for providing the services?
- to what extent is entry to the market influenced by the length of contracts between an undertaking and its suppliers and/or customers?
- describe the importance of research and development and in particular the importance of licensing patents, know-how and other rights in these markets.

9.2. Describe the various factors influencing entry in geographic terms into the relevant geographic market(s) that exist in the present case (i.e. what barriers exist to prevent undertakings already providing services within the relevant product market(s) but in areas outside the relevant geographic market(s) extending the scope of their activities into the relevant geographic market(s)?) Please give reasons for your answer, explaining, were relevant, the importance of the following factors:

- trade barriers imposed by law, such as tariffs, quotas etc.,
- local specification or technical requirements,
- procurement policies,
- the existence of adequate and available local distribution and retailing facilities,
- the need to have access to transport infrastructure,
- entrenched consumer preferences for local brands or products,
- language.

9.3. Have any new undertakings entered the relevant product market(s) in geographic areas where the parties are active during the last three years? Please provide this information with respect to both new entrants in product terms and new entrants in geographic terms. If such entry has occurred, please identify the undertaking(s) concerned (name, address, telephone and fax numbers, and, where possible, contact person), and provide your best estimate of their market share in the relevant product and geographic market(s).

CHAPTER III

Final sections

Section 10

Reasons for the application for negative clearance

If you are applying for negative clearance state:

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

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

10.2. why the agreements or behaviour do not have the object or effect of preventing, restricting or distorting competition within the common market or within the territory of the EFTA States to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position, and/or

10.3. why the agreements or behaviour do not have the objet or effect of preventing, restricting or distorting competition within the EEA to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position, and/or

10.4. why the agreements or behaviour are not such as may affect trade between Member States or between the Community and one or more EFTA States, or between EFTA States to any appreciable extent.

Section 11

Reasons for the application for exemption

If you are applying for an exemption under Article 5 of Regulation (EEC) No 1017/68, Article 85(3) of the EC Treaty and/or Article 53(3) of the EEA Agreement, explain how:

11.1. the agreement contributes to improving production or distribution, and/or promoting technical or economic progress. Explain in particular how the agreement contributes towards improving the quality of transport services, or promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand are subject to considerable temporal fluctuation, or increasing the productivity of undertakings.

In particular, please explain the reasons why these benefits are expected to result form the collaboration; for example, do the parties to the agreement possess complementary technologies or distribution systems that will produce important synergies? (if so, please state which). Also please state whether any documents or studies were drawn up by the applicants when assessing the feasibility of the operations and the benefits likely to result therefrom, and whether any such documents or studies provided estimates of the savings or efficiencies likely to result. Please provide copies of any such documents or studies;

11.2. a proper share of the benefits arising from such improvement or progress accrues to consumers. Explain in particular how the agreement takes fair account of the interest of transport users;

11.3. all restrictive provisions of the agreement are indispensable to the attainment of the aims set out under 11.1 (if you are claiming the benefit of the opposition procedure, it is particularly important that you should identify and justify restrictions that exceed those automatically exempted by the relevant Regulations). In this respect please explain how the benefits resulting from the agreement identified in your reply to question 11.1 could not be achieved, or could not be achieved so quickly or efficiently or only at higher cost or with less certainty of success (i) without the conclusion of the agreement as a whole and (ii) without those particular clauses and provisions of the agreement identified in your reply to question 4.2;

11.4. the agreement does not eliminate competition in respect of a substantial part of the goods or services concerned.

Section 12

Supporting documentation

The completed application must be drawn up and submitted in one original. It shall contain the last versions of all agreements which are the subject of the application and be accompanied by the following:

(a) 17 copies of the application itself;

(b) three copies of the annual reports and accounts of all the parties to the notified agreement, decision or practice for the last three years;

(c) three copies of the most recent in-house or external long-term market studies or planning documents for the purpose of assessing or analysing the affected market(s) with respect to competitive conditions, competitors (actual and potential), and market conditions. Each document should indicate the name and position of the author;

(d) three copies of reports and analyses which have been prepared by or for any officer(s) or director(s) for the purposes of evaluating or analysing the notified agreement.

Section 13

Declaration

The application must conclude with the following declaration which is to be signed by or on behalf of all the applicants.

'The undersigned declare that the information given in this application is correct to the best of their knowledge and belief, that complete copies of all documents requested by form TR have been supplied to the extent that they are in the possession of the group pf undertakings to which the applicant(s) belong(s) and are accessible to the latter, 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 22(1)(a) of Regulation (EEC) No 1017/68, Article 19(1)(a) of Regulation (EEC) No 4056/86 and Article 12(1)(a) of Regulation (EEC) No 3975/87.

Place and date:

Signatures:'

Please add the name(s) of the person(s) signing the application and their function(s).

Applications which have not been signed are invalid.

Appendix I

TEXT OF ARTICLES 85 AND 86 OF THE EC TREATY, ARTICLES 53, 54 AND 56 OF THE EEA AGREEMENT, AND OF ARTICLES 2, 3 AND 4 OF PROTOCOL 22 TO THAT AGREEMENT

Article 85 of the EC Treaty

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

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

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

(c) share markets or sources of supply;

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

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

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

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

— any agreement or category of agreements between undertakings,

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

— any concerted practice or category of concerted practices,

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

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

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

Article 86 of the EC Treaty

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

Such abuse may, in particular, consist in:

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

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

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

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

Article 53 of the EEA Agreement

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

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

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

(c) share markets or sources of supply;

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

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

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

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

— any agreement or category of agreements between undertakings,

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

— any concerted practice or category of concerted practices,

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

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

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

Article 54 of the EEA Agreement

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

Such abuse may, in particular, consist in:

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

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

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

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

Article 56 of the EEA Agreement

1. Individual cases falling under Article 53 shall be decided on by the Surveillance Authorities in accordance with the following provisions:

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

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

(c) the EC Commission decides on the other cases as well as on cases under (b) where trade between EC Member States is affected, taking into account the provisions set out in Article 58, Protocol 21, Protocol 23 and Annex XIV.

2. Individual cases falling under Article 54 shall be decided on by the Surveillance Authority in the territory of which a dominant position is found to exist. The rules set out in paragraph 1(b) and (c) shall apply only if dominance exists within the territories of both Surveillance Authorities.

3. Individual cases falling under subparagraph (c) of paragraph 1, whose effects on trade between EC Member States or on competition within the Community are not appreciable, shall be decided on by the EFTA Surveillance Authority.

4. The terms 'undertaking' and 'turnover' are, for the purpose of this Article, defined in Protocol 22.

Articles 2, 3 and 4 of Protocol 22 to the EEA Agreement

Article 2

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

Article 3

In place of turnover the following shall be used:

(a) for credit institutions and other financial institutions, their total assets multiplied by the ratio between loans and advances to credit institutions and customers in transactions with residents in the territory covered by this Agreement and the total sum of those loans and advances;

(b) for insurance undertakings, the value of gross premiums received from residents in the territory covered by this Agreement, which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total value of premiums.

Article 4

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

(a) as regards agreements, decisions of associations of undertakings and concerted practices related to distribution and supply arrangements between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which are the subject matter of the agreements, decisions or concerted practices, and from the other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use;

(b) as regards agreements, decisions of associations of undertakings and concerted practices related to arrangements on transfer of technology between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which result from the technology which is the subject matter of the agreements, decisions or concerted practices, and of the amounts derived from the sale of those goods or the provision of those services which that technology is designed to improve or replace.

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

Appendix II

LIST OF RELEVANT ACTS

(as of 1 February 1999)

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

Implementing regulations [1]

— Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1), as last amended by the Act of Accession of Austria, Finland and Sweden,

— 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 L 378, 31.12.1986, p. 4), as last amended by the Act of Accession of Austria, Finland and Sweden,

— 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 L 374, 31.12.1987, p. 1), as last amended by Regulation (EEC) No 2410/92 (OJ L 240, 24.8.1992, p. 18),

— Commission Regulation (EC) No 2843/98 of 22 December 1998 on the form, content and other details of applications and notifications provided for in Council Regulation (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 applying the rules on competition to the transport sector.

Regulations granting block exemption

— Article 4 of Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway, as last amended by the Act of Accession of Austria, Finland and Sweden (exemption for groups of small and medium-sized undertakings),

— Articles 3 and 6 of 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, as last amended by the Act of Accession of Austria, Finland and Sweden (exemption for agreements between carriers concerning the operation of scheduled maritime transport services, and exemption for agreements between transport users and conferences concerning the use of scheduled maritime transport services),

— Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92 (OJ L 89, 21.4.1992, p. 7). Article 7 of this Regulation provides for an opposition procedure,

— Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports (OJ L 155, 26.6.1993, p. 18), as last amended by Regulation (EC) No 1523/96 (OJ L 190, 31.7.1996, p. 11). See also the notice concerning procedures for communications to the Commission pursuant to Articles 4 and 5 of Commission Regulation (EEC) No 1617/93 (OJ C 177, 29.6.1993, p. 6).

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

Notices of a general nature [1]

— Commission notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ C 75, 29.7.1968, p. 3, as corrected in OJ C 84, 28.8.1968, p. 17). This defines the sorts of cooperation on market studies, accounting, R&D, joint use of production, storage or transport, *ad hoc* consortia, selling or after-sales service, advertising or quality labelling that the Commission considers not to fall under the prohibition of Article 85(1),

— Commission notice concerning its assessment of certain subcontracting agreements in relation to Article 85(1) of the Treaty (OJ C 1, 3.1.1979, p. 2),

— Commission notice concerning the assessment of cooperative joint ventures pursuant to Article 85 of the EC Treaty (OJ C 43, 16.12.1993, p. 2). This notice sets out the principles on the assessment of joint ventures,

— Commission communication on clarification of the Commission recommendations on the application of the competition rules to new transport infrastructure projects (OJ C 298, 30.9.1997, p. 5),

— Commission notice on the non-imposition or reduction of fines in cartel cases (OJ C 207, 18.7.1996, p. 4),

— Commission notice on the internal rules of procedure for processing requests for access to the file in cases under Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ C 23, 23.1.1997, p. 3),

— notice on agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Community (OJ C 372, 9.12.1997, p. 13),

— Commission notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

A collection of these texts (as at 30 June 1994) was published by the Office for Official Publications of the European Communities (references Vol. I: ISBN 92-826-6759-6, catalogue No CM-29-93-A01-EN-C). These texts can also be found at DGIV homepage 'DGIV — Competition on Europa':

http://europa.eu.int/comm/dg4home.htm

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

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[1] See also the corresponding notices published by the EFTA Surveillance Authority.

Appendix III

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

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

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

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

European Commission,
Directorate-General for Competition,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.
Tel. (32-2) 299 11 11
http://europa.eu.int/comm/dg04

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

EFTA Surveillance Authority — ESA,
Competition and State Aid Directorate,
Rue de Trèves, 74,
B-1040 Brussels.
Tel. (32-2) 286 18 11
Fax (32-2) 286 18 00
http://www.efta.int

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

BELGIUM

Commission Européenne
Bureau en Belgique
Europese Commissie
Bureau in België
Rue Archiméde/Archimedesstraat 73
B-1040 Bruxelles/Brussel
Tel. (32-2) 295 38 44
Fax (32-2) 295 01 66
http://europa.eu.int/comm/represent/be

DENMARK

Europa-Kommissionen
Repræsentation i Danmark
Østergade 61 (Højbrohus)
Postboks 144
DK-1004 København K
Tel. (45) 33 14 41 40
Fax (45-33) 11 12 03
http://europa.eu.int/dk

FEDERAL REPUBLIC OF GERMANY

Europäische Kommission
Vertretung in der Bundesrepublik Deutschland
Zitelmannstraße 22
D-53113 Bonn
Tel. (49-228) 530 09-0
Fax (49-228) 530 09-50, 530 09-12

Europäische Kommission
Vertretung in der Bundesrepublik Deutschland
— Vertretung in Berlin
Kurfürstendamm 102
D-10711 Berlin 31
Tel. (49-30) 896 09 30
Fax (49-30) 892 20 59

Europäische Kommission
Vertretung in der Bundesrepublik Deutschland
— Vertretung in München
Erhardtstraße 27
D-80331 München
Tel. (49-89) 202 10 11
Fax (49-89) 202 10 15
http://www.eu-kommission.de

GREECE

Evropaiki Epitropi
Antiprosopia stin Ellada
2 Vassilissis Sofias
GR-10674 Athina
Tel. (30-1) 725 10 00
Fax (30-1) 724 46 20
http://www.forthnet.gr/ee

SPAIN

Comisión Europea
Representación en España
Paseo de la Castellana, 46
E-28046 Madrid
Tel. (34-1) 431 57 11
Fax (34-1) 432 17 64

Comisión Europea
Representación en Barcelona
Av. Diagonal, 407 bis, Planta 18
E-08008 Barcelona
Tel. (34-3) 415 81 77
Fax (34-3) 415 63 11
http://www.euroinfo.cce.es

FRANCE

Commission Européenne
Représentation en France
288, boulevard Saint-Germain
F-75007 Paris
Tel. (33-1) 40 63 38 00
Fax (33-1) 45 56 94 17/18/19

Commission Européenne
Représentation à Marseille
2, rue Henri Barbusse (CMCI)
F-13241 Marseille, Cedex 01
Tel. (33-4) 91 91 46 00
Fax (33-4) 91 90 98 07
http://europa.eu.int/france

IRELAND

European Commission
Representation in Ireland
18 Dawson Street
Dublin 2
Irelandlanda
Tel. (353-1) 662 51 13
Fax (353-1) 662 51 18

ITALY

Commissione Europea
Rappresentanza in Italia
Via Poli 29
I-00187 Roma
Tel. (39-6) 69 99 91
Fax (39-6) 679 16 58, 679 36 52

Commissione Europea
Ufficio di Milano
Corso Magenta 59
I-20123 Milano
Tel. (39-2) 467 51 41
Fax (39-2) 480 12 535

LUXEMBOURG

Commission Européenne
Représentation au Luxembourg
Bâtiment Jean-Monnet
Rue Alcide de Gasperi
L-2920 Luxembourg
Tel. (352) 43 01-34935
Fax (352) 43 01-34433

NETHERLANDS

Europese Commissie
Bureau in Nederland
Korte Vijverberg 5
NL-2513 AB Den Haag
Nederland
Tel. (31-70) 346 93 26
Fax (31-70) 364 66 19
http://www.dds.nl/plein/europa

AUSTRIA

Europäische Kommission
Vertretung in Österreich
Kärtner Ring 5-7
A-1010 Wien
Tel: (43-1) 516 18
Fax (43-1) 513 42 25
http://www.europa.or.at

PORTUGAL

Commissão Europeia
Gabinete em Portugal
Centro Europeu Jean Monnet
Largo Jean Monnet, 1-10º
P-1250 Lisboa
Tel. (351-1) 350 98 00
Fax (351-1) 350 98 01/02/03
http://euroinfo.ce.pt

FINLAND

Euroopan komissio
Suomen edustusto
Europeiska kommissüonen
Representationen i Finland
31 Pohjoisesplanadi/Norra esplanaden 31
FIN-00100 Helsinki/Helsingfors
Tel. (358-9) 622 65 44
Fax (358-9) 65 67 28 (lehdistö ja tiedotus/press och information)

SWEDEN

Europeiska Kommissionen
Representation i Sverige
Nybrogatan 11, Box 7323
S-10390 Stockholm
Tel. (46-8) 562 444 11
Fax (46-8) 562 444 12
http://www.eukomm.se

UNITED KINGDOM

European Commission
Representation in the United Kingdom
Jean Monnet House
8 Storey's Gate
London SW1 P3 AT
United Kingdom
Tel. (44-171) 973 19 92
Fax (44-171) 973 19 00, 973 19 10

European Commission
Representation in Northern Ireland
9/15 Bedford Street (Windsor House)
Belfast BT2 7EG
United Kingdom
Tel. (44-1232) 24 07 08
Fax (44-1232) 24 82 41

European Commission
Representation in Wales
4 Cathedral Road
Cardiff CF1 9SG
United Kingdom
Tel. (44-1222) 37 16 31
Fax (44-1222) 39 54 89

European Commission
Representation in Scotland
9 Alva Street
Edinburgh EH2 4PH
United Kingdom
Tel. (44-131) 225 20 58
Fax (44-131) 226 41 05
http://www.cec.org.uk

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

NORWAY

European Commission Delegation in Norway
Haakon VII's Gate 10 (9th floor)
N-0161 Oslo
Tel. (47-22) 83 35 83
Fax (47-22) 83 40 55

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

ICELAND

Samkeppnisstofnun (Icelandic Competition Authority)
Laugavegi 118
Pósthólf 5120
IS-125 Reykjavík
Iceland
Tel. (354-5) 527 422
Fax (354-5) 627 442

LIECHTENSTEIN

Amt Für Volkswirtschaft (Office of National Economy)
Gerberweg 5
FL-9490 Vaduz
Tel. (41-75) 236 68 73
Fax (41-75) 236 68 89

NORWAY

Norwegian Competition Authority
PO Box 8132 Dep.
0033 Oslo
Norway
Tel. (47-22) 40 09 00
Fax (47-22) 40 09 99

ANNEX II

FORM TR(B) [1]

This form and the supporting documents should be forwarded in one original and 17 copies together with proof in a single copy of the representative's authority to act.

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

TO THE EUROPEAN COMMISSION

Directorate-General for Competition
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

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

I. Information regarding parties

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

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

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

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

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

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

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

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

   Attach a copy of the statutes.

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

   Attach a copy of the statutes.

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

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

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

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

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

   — by rail,

   — by road,

   — by inland waterway,

   or operations of providers of services ancillary to transport?

2. If the contents were reduced to writing, attach a copy of the full text unless (a) or (b) below provides otherwise.

   (a) Is there only an outline agreement or outline decision?

   If so, attach also copy of the full text of the individual agreements and implementing provisions.

   (b) Is there a standard contract, i.e. a contract which the undertaking submitting the notification regularly concludes with particular persons or groups of persons?

   If so, only the text of the standard contract need be attached.

3. If the contents were not, or were only partially, reduced to writing, state the contents in the space opposite.

4. In all cases give the following additional information:

   (a) date of agreement, decision or concerted practice;

   (b) date when it came into force and, where applicable, proposed period of validity;

   (c) subject: exact description of the transport service or services involved, or of any other subject to which the agreement, decision or concerted practice relates;

   (d) aims of the agreement, decision or concerted practice;

   (e) terms of adherence, termination or withdrawal;

   (f) sanctions which may be taken against participating undertakings (penalty clause, exclusion, etc.).

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

1. State whether and how far the agreement, decision or concerted practice relates to:

   — adherence to certain rates and conditions of transport or other operating conditions,

   — restriction or control of the supply of transport, technical development or investment,

   — sharing of transport markets,

   — restrictions on freedom to conclude transport contracts with third parties (exclusive contracts),

   — application of different terms for supply of equivalent services.

2. Is the agreement, decision or concerted practice with transport services:

   (a) within one Member State or EFTA State only?

   (b) between Member States?

   (c) between EFTA States?

   (d) between the Community and one or more EFTA States?

   (e) between a Member State or an EFTA State and third countries?

   (f) between third countries in transit through one or more EC Member States and/or one or more EFTA States?

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

Describe to what extent:

1. the transport market is disturbed;

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

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

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

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

Place and date:

Signatures: