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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 3226/91

of 6 November 1991

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2661/91⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in

the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 6 November 1991;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2661/91 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 7 November 1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 250, 7. 9. 1991, p. 1.

ANNEX

to the Commission Regulation of 6 November 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	Levy
0709 90 60	123,73 ⁽²⁾ ⁽³⁾
0712 90 19	123,73 ⁽²⁾ ⁽³⁾
1001 10 10	177,54 ⁽¹⁾ ⁽³⁾
1001 10 90	177,54 ⁽¹⁾ ⁽³⁾
1001 90 91	153,58
1001 90 99	153,58
1002 00 00	164,77 ⁽⁶⁾
1003 00 10	140,00
1003 00 90	140,00
1004 00 10	128,47
1004 00 90	128,47
1005 10 90	123,73 ⁽²⁾ ⁽³⁾
1005 90 00	123,73 ⁽²⁾ ⁽³⁾
1007 00 90	137,27 ⁽⁴⁾
1008 10 00	55,94
1008 20 00	126,29 ⁽⁴⁾
1008 30 00	77,31 ⁽²⁾
1008 90 10	⁽⁷⁾
1008 90 90	77,31
1101 00 00	228,01 ⁽⁸⁾
1102 10 00	243,68 ⁽⁸⁾
1103 11 10	288,44 ⁽⁸⁾
1103 11 90	245,58 ⁽⁸⁾

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by ECU 1,81/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

⁽⁸⁾ On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

COMMISSION REGULATION (EEC) No 3227/91

of 6 November 1991

fixing the premiums to be added to the import levies on cereals, flour and malt

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

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1845/91⁽⁵⁾ and subsequent amending Regulation;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

— for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 6 November 1991;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 7 November 1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 168, 29. 6. 1991, p. 4.

ANNEX

to the Commission Regulation of 6 November 1991 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	Current	1st period	2nd period	3rd period
	11	12	1	2
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	3,59
1004 00 90	0	0	0	3,59
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

CN code	Current	1st period	2nd period	3rd period	4th period
	11	12	1	2	3
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 3228/91**of 5 November 1991****establishing unit values for the determination of the customs value of certain perishable goods**

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

Having regard to Commission Regulation (EEC) No 1577/81 of 12 June 1981 establishing a system of simplified procedures for the determination of the customs value of certain perishable goods ⁽¹⁾, as last amended by Regulation (EEC) No 3334/90 ⁽²⁾, and in particular Article 1 thereof,

Whereas Article 1 of Regulation (EEC) No 1577/81 provides that the Commission shall periodically establish unit values for the products referred to in the classification in the Annex;

Whereas the result of applying the rules and criteria laid down in that same Regulation to the elements communicated to the Commission in accordance with Article 1 (2)

of that Regulation is that the unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 1 (1) of Regulation (EEC) No 1577/81 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 November 1991.

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

Done at Brussels, 5 November 1991.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ No L 154, 13. 6. 1981, p. 26.

⁽²⁾ OJ No L 321, 21. 11. 1990, p. 6.

ANNEX

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
1.10	0701 90 51 0701 90 59	New potatoes	56,54	2391	448,47	116,16	393,69	12706	43,41	86 438	130,84	39,51
1.20	0702 00 10 0702 00 90	Tomatoes	95,22	4012	755,32	194,83	665,81	21 807	72,88	145 939	219,49	67,05
1.30	0703 10 19	Onions (other than seed)	16,55	697	131,30	33,86	115,74	3791	12,66	25 370	38,15	11,65
1.40	0703 20 00	Garlic	210,96	8888	1 673,28	431,61	1 475,01	48 311	161,45	323 303	486,24	148,54
1.50	ex 0703 90 00	Leeks	31,69	1 342	249,61	65,25	221,05	7 103	24,39	48 368	73,54	22,07
1.60	ex 0704 10 10 ex 0704 10 90	Cauliflowers	111,88	4727	881,91	229,55	781,19	24 749	86,13	171 354	258,72	78,54
1.70	0704 20 00	Brussels sprouts	53,72	2267	423,88	110,06	374,08	11 735	41,29	82 719	124,09	37,72
1.80	0704 90 10	White cabbages and red cabbages	23,05	975	182,88	47,36	160,54	5 181	17,70	35 248	53,35	16,11
1.90	ex 0704 90 90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> var. <i>italica</i>)	79,05	3 330	627,00	161,73	552,70	18 103	60,49	121 146	182,20	55,66
1.100	ex 0704 90 90	Chinese cabbage	48,42	2 050	382,57	99,63	337,79	10 913	37,24	73 939	112,24	33,73
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	61,14	2 576	485,00	125,10	427,53	14 003	46,79	93 710	140,94	43,05
1.120	ex 0705 29 00	Endives	45,32	1 923	357,88	93,59	315,84	10 133	34,99	69 174	105,45	31,22
1.130	ex 0706 10 00	Carrots	32,74	1 384	259,75	67,27	228,02	7 359	25,14	50 064	75,78	22,88
1.140	ex 0706 90 90	Radishes	54,33	2 302	429,62	111,96	379,00	12 152	41,89	83 107	126,19	37,58
1.150	0707 00 11 0707 00 19	Cucumbers	72,64	3 060	576,20	148,62	507,92	16 636	55,59	111 330	167,44	51,15
1.160	0708 10 10 0708 10 90	Peas (<i>Pisum sativum</i>)	234,31	9 872	1 858,48	479,38	1 638,25	53 658	179,32	359 085	540,06	164,97
1.170		Beans :										
1.170.1	0708 20 10 0708 20 90	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.)	110,82	4 669	879,05	226,74	774,89	25 380	84,81	169 846	255,44	78,03
1.170.2	0708 20 10 0708 20 90	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>)	86,96	3 672	688,79	178,47	606,54	19 724	66,72	133 437	201,07	60,90
1.180	ex 0708 90 00	Broad beans	40,17	1 701	317,44	82,67	280,28	9 055	30,90	61 351	93,13	27,99
1.190	0709 10 00	Globe artichokes	76,11	3 221	598,42	156,61	531,31	17 132	58,50	116 646	176,44	52,84
1.200		Asparagus :										
1.200.1	ex 0709 20 00	— green	393,49	16 578	3 121,05	805,05	2 751,21	90 111	301,14	603 032	906,95	277,05
1.200.2	ex 0709 20 00	— other	355,88	14 993	2 822,71	728,10	2 488,23	81 498	272,36	545 389	820,26	250,57
1.210	0709 30 00	Aubergines (egg-plants)	86,56	3 647	686,63	117,11	605,26	19 824	66,25	132 667	199,53	60,95
1.220	ex 0709 40 00	Ribbed celery (<i>Apium graveolens</i> var. <i>dulce</i>)	63,90	2 705	504,88	131,48	445,78	14 403	49,15	97 577	148,13	44,52
1.230	0709 51 30	Chantarelles	713,23	30 060	5 626,73	1 460,68	4 977,83	162 425	546,18	1 092 598	1 645,94	501,92
1.240	0709 60 10	Sweet peppers	80,33	3 384	637,16	164,35	561,65	18 396	61,47	123 108	185,15	56,56
1.250	0709 90 50	Fennel	151,15	6 399	1 194,24	311,01	1 054,46	34 069	116,26	230 809	350,38	105,31
1.260	0709 90 70	Courgettes	91,60	3 859	726,59	187,42	640,49	20 978	70,10	140 388	211,14	64,50
1.270	ex 0714 20 10	Sweet potatoes, whole, fresh (intended for human consumption)	98,95	4 174	781,50	202,59	690,51	22 594	75,77	151 536	228,30	69,55
2.10	ex 0802 40 00	Chestnuts (<i>Castanea</i> spp.), fresh	143,65	6 052	1 139,41	293,90	1 004,39	32 897	109,94	220 150	331,10	101,14
2.20	ex 0803 00 10	Bananas (other than plantains), fresh	47,75	2 011	378,74	97,69	333,86	10 935	36,54	73 179	110,06	33,62
2.30	ex 0804 30 00	Pineapples, fresh	37,76	1 591	299,52	77,25	264,03	8 647	28,90	57 872	87,03	26,58
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	134,44	5 664	1 066,33	275,05	939,98	30 787	102,89	206 032	309,87	94,66

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.50	ex 0804 50 00	Guavas and mangoes, fresh	169,64	7 147	1 345,55	347,07	1 186,10	38 849	129,83	259 980	391,00	119,44
2.60		Sweet oranges, fresh :										
2.60.1	0805 10 11 0805 10 21 0805 10 31 0805 10 41	— Sanguines and semi-sanguines	34,48	1 454	272,35	70,60	240,64	7 874	26,40	52 809	79,56	24,23
2.60.2	0805 10 15 0805 10 25 0805 10 35 0805 10 45	— Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins	45,93	1 935	364,31	93,97	321,14	10 518	35,15	70 391	105,86	32,34
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	37,08	1 562	294,16	75,87	259,30	8 493	28,38	56 837	85,48	26,11
2.70		Mandarins (including tangerines and satsumas), fresh ; clementines, wilkings and similar citrus hybrids, fresh :										
2.70.1	ex 0805 20 10	— Clementines	147,40	6 210	1 169,12	301,56	1 030,58	33 755	112,80	225 891	339,73	103,78
2.70.2	ex 0805 20 30	— Monreales and Satsumas	77,52	3 266	614,91	158,61	542,04	17 753	59,33	118 810	178,69	54,58
2.70.3	ex 0805 20 50	— Mandarins and wilkings	65,95	2 782	520,88	135,03	460,23	15 059	50,50	101 001	152,17	46,36
2.70.4	ex 0805 20 70 ex 0805 20 90	— Tangerines and others	88,15	3 713	699,18	180,34	616,33	20 186	67,46	135 092	203,17	62,06
2.80	ex 0805 30 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	48,55	2 045	385,08	99,33	339,45	11 118	37,15	74 404	111,90	34,18
2.85	ex 0805 30 90	Limes (<i>Citrus aurantifolia</i>), fresh	95,84	4 038	760,21	196,09	670,13	21 949	73,35	146 885	220,91	67,48
2.90		Grapefruit, fresh :										
2.90.1	ex 0805 40 00	— white	54,91	2 313	435,54	112,34	383,93	12 575	42,02	84 153	126,56	38,66
2.90.2	ex 0805 40 00	— pink	75,31	3 173	597,35	154,08	526,57	17 246	57,63	115 417	173,58	53,02
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	81,31	3 425	644,93	166,35	568,51	18 620	62,22	124 611	187,41	57,25
2.110	0807 10 10	Water-melons	10,32	435	81,50	21,12	72,01	2 356	7,90	15 803	23,81	7,25
2.120		Melons (other than water-melons) :										
2.120.1	ex 0807 10 90	— Amarillo, Cuper, Honey dew (including Cantalene), Onteniente, Piel de Sapo (including Verde Liso), Rochet, Tendral, Futuro	56,44	2 378	447,73	115,49	394,67	12 927	43,20	86 508	130,10	39,74
2.120.2	ex 0807 10 90	— other	132,48	5 581	1 050,80	271,04	926,28	30 339	101,39	203 030	305,35	93,28
2.130	0808 10 91 0808 10 93 0808 10 99	Apples	67,95	2 863	538,98	139,02	475,11	15 561	52,00	104 138	156,62	47,84
2.140		Pears										
2.140.1	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Pears — Nashi (<i>Pyrus pyrifolia</i>)	244,83	10 315	1 941,90	500,90	1 711,79	56 067	187,37	375 204	564,30	172,38
2.140.2	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Other	68,88	2 902	546,37	140,93	481,62	15 774	52,71	105 567	158,77	48,50
2.150	0809 10 00	Apricots	25,50	1 078	202,14	52,37	177,93	5 786	19,58	39 065	58,99	17,80
2.160	0809 20 10 0809 20 90	Cherries	90,53	3 825	718,45	185,77	632,16	20 401	69,52	138 679	209,44	63,20
2.170	ex 0809 30 00	Peaches	182,01	7 668	1 443,70	372,39	1 272,63	41 683	139,30	278 945	419,53	128,16

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.180	ex 0809 30 00	Nectarines	82,65	3 490	653,93	169,38	577,04	18 814	63,39	126 770	190,90	57,88
2.190	0809 40 11 0809 40 19	Plums	146,63	6 177	1 163,03	299,99	1 025,21	35 579	112,22	224 715	337,97	103,24
2.200	0810 10 10 0810 10 90	Strawberries	300,57	12 663	2 384,05	614,95	2 101,55	68 833	230,03	460 634	692,79	211,63
2.205	0810 20 10	Raspberries	1 336,1	56 503	10 597,8	2 745,00	9 303,49	300 265	1 025,9	2 042 614	3 092,02	933,75
2.210	0810 40 30	Fruit of the species <i>Vaccinium myrtillus</i>	136,31	5 755	1 079,64	279,74	950,71	30 917	104,59	209 154	315,16	95,45
2.220	0810 90 10	Kiwi fruit (<i>Actinidia chinensis</i> Planch.)	157,48	6 635	1 249,12	322,20	1 101,10	36 065	120,52	241 348	362,98	110,88
2.230	ex 0810 90 80	Pomegranates	62,30	2 625	494,21	127,47	435,65	14 269	47,68	95 489	143,61	43,87
2.240	ex 0810 90 80	Khakis (including Sharon fruit)	295,15	12 465	2 335,24	604,90	2 060,65	67 186	226,39	452 705	681,74	206,72
2.250	ex 0810 90 30	Lychees	329,14	13 901	2 604,20	674,56	2 297,98	74 924	252,46	504 846	760,25	230,53

COMMISSION REGULATION (EEC) No 3229/91

of 6 November 1991

opening a standing invitation to tender for the export of 400 000 tonnes of durum wheat held by the Italian intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3653/90⁽²⁾, and in particular Article 7 (5) thereof,Whereas Article 3 of Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market in cereals⁽³⁾, as amended by Regulation (EEC) No 2203/90⁽⁴⁾, provides that cereals held by the intervention agencies shall be disposed of by invitation to tender;Whereas Commission Regulation (EEC) No 1836/82⁽⁵⁾, as last amended by Regulation (EEC) No 3043/91⁽⁶⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas on 17 October 1991 Italy notified the Commission that it wished to put up for sale for export to the Soviet Union and Algeria 400 000 tonnes of durum wheat held by its intervention agency; whereas it is possible to accede to that request;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Italian intervention agency may, in accordance with the conditions laid down in Regulation (EEC) No 1836/82, open a standing invitation to tender for the export of 400 000 tonnes of durum wheat held by it.

Article 2

1. The invitation to tender shall cover a maximum of 400 000 tonnes of durum wheat to be exported to the Soviet Union and Algeria.

2. The regions in which the 400 000 tonnes of durum wheat are stored are stated in Annex I to this Regulation.

Article 3

The export licences shall be valid from their date of issue, within the meaning of Article 9 of Regulation (EEC) No 1836/82, until the end of the third month following.

Tenders submitted in response to this invitation to tender may not be accompanied by applications for export certificates pursuant to Article 44 of Commission Regulation (EEC) No 3719/88⁽⁷⁾.

Article 4

1. Notwithstanding Article 7 (1) of Regulation (EEC) No 1836/82 the time limit for submission of tenders in response to the first partial invitation to tender shall expire on 13 November 1991 at 1 p.m. (Brussels time).

2. The time limit for submission of tenders in response to the subsequent partial invitations to tender shall expire each Wednesday at 1 p.m. (Brussels time).

3. The last partial invitation to tender shall expire on 26 February 1992.

4. Tenders shall be lodged with the Italian intervention agency.

Article 5

The Italian intervention agency shall notify the Commission of the tenders received not later than two hours after expiry of the time limit for the submission thereof. Notification shall be made as specified in the table in Annex II to this Regulation, to the telephone, telex or telefax numbers in Annex III.

Article 6

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

⁽⁷⁾ OJ No L 331, 2. 12. 1988, p. 1.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 362, 27. 12. 1990, p. 28.

⁽³⁾ OJ No L 139, 24. 5. 1986, p. 36.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 5.

⁽⁵⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁶⁾ OJ No L 288, 18. 10. 1991, p. 21.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

(tonnes)	
Place of storage	Quantity
Cuneo	6 570
Torino	8 577
Alessandri	3 403
Verona	714
Treviso	10 057
Rovigo	12 152
La Spezia	1 220
Ferrara	48 260
Ravenna	14 315
Reggio Emilia	1 542
Bologna	1 000
Parma	6 727
Livorno	13 800
Siena	10 799
Ancona	22 659
Macerata	205
Pesaro	5 062
Perugia	1 740
Viterbo	51 338
Roma	11 000
Frosinone	1 430
Bari	39 974
Foggia	42 816
Potenza	5 750
Matera	9 000
Catanzaro	25 815
Trapani	2 047
Messina	2 872
Catania	8 538
Siracusa	3 908
Palermo	10 479
Cagliari	13 492
Oristano	2 739
	400 000

*ANNEX II***Standing invitation to tender for the export of 400 000 tonnes of durum wheat held by the Italian intervention agency**

(Regulation (EEC) No 3229/91)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) (')	Price increases (+) or reductions (—) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1						
2						
3						
etc.						

(') This price includes the increases or reductions relating to the lot to which the tender refers.

ANNEX III

The only numbers to use to call Brussels are [DG VI-C-1 (Attention : Messrs Thibault and Brus)]:

- telex : AGREC B 22037
 AGREC B 22070 (Greek characters)
- telefax : — 235 01 32
 — 236 10 97
 — 236 20 05.

COMMISSION REGULATION (EEC) No 3230/91

of 6 November 1991

fixing for Great Britain the level of the variable slaughter premium for sheep
and the amounts to be charged on products leaving region 1

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to the Act of Accession of Spain and
Portugal,

Having regard to Council Regulation (EEC) No 3013/89
of 25 September 1989 on the common organization of
the market in sheepmeat and goatmeat⁽¹⁾, as last
amended by Regulation (EEC) No 1741/91⁽²⁾,

Having regard to Commission Regulation (EEC) No
1633/84 of 8 June 1984 laying down detailed rules for
applying the variable slaughter premium for sheep and
repealing Regulation (EEC) No 2661/80⁽³⁾, as last
amended by Regulation (EEC) No 1075/89⁽⁴⁾, and in
particular Articles 3 (1) and 4 (1) thereof,

Whereas the United Kingdom is the only country which
grants the variable slaughter premium, in region 5, within
the meaning of Article 22 (2) of Regulation (EEC) No
3013/89 whereas it is necessary therefore for the Commis-
sion to fix, for the week beginning the 14 October 1991,
the level of the premium and the amount to be charged
on products leaving that region;

Whereas Article 3 (1) of Regulation (EEC) No 1633/84
stipulates that the level of the variable slaughter premium
is to be fixed each week by the Commission;

Whereas Article 4 (1) of Regulation (EEC) No 1633/84
lays down that the amount to be charged on products
leaving region 1 shall be fixed weekly by the Commis-
sion;

Whereas in the Annex to Commission Regulation (EEC)
No 3618/89 of 1 December 1989 on the application of
the guarantee limitation arrangements for sheepmeat and
goatmeat⁽⁵⁾ the weekly amounts of the guide level are set
out pursuant to Article 25 of Regulation (EEC) No
3013/89;

Whereas, pursuant to the provisions of Article 24 (2) and
(3) of Regulation (EEC) No 3013/89, for the week begin-
ning the 14 October 1991, the variable slaughter
premium for sheep certified as eligible in the United
Kingdom is to be in accordance with the amounts fixed
in the Annexes hereto; whereas, for that week, in the
light of the Judgment of the Court of Justice of 2
February 1988 in Case 61/86, the provisions of Article 9
(5) of Regulation (EEC) No 3013/89 and of Article 4 of
Regulation (EEC) No 1633/84 lead to the amounts to be
charged on products, leaving region 1, being fixed in
accordance with those Annexes;

Whereas, as regards the controls necessary for the appli-
cation of the provisions relating to the said amounts, the
system of controls provided for by Regulation (EEC) No
1633/84 should be maintained without prejudice to the
preparation of any more specific provisions;

HAS ADOPTED THIS REGULATION:

Article 1

For sheep or sheepmeat certified as eligible in the United
Kingdom in region 1, within the meaning of Article 22
(2) of Regulation (EEC) No 3013/89, for the variable
slaughter premium during the week beginning the 14
October 1991, the level of the premium is fixed at ECU
88,424 per 100 kilograms of estimated or actual dressed
carcase weight within the limits laid down by Article 1 (1)
(b) of Regulation (EEC) No 1633/84.

Article 2

For products referred to in Article 1 (a) and (c) of Regula-
tion (EEC) No 3013/89 which left the territory of region 1
during the week beginning the 14 October 1991, the
amounts to be charged shall be equivalent to those fixed
in the Annexes hereto.

Article 3

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

It shall apply with effect from 14 October 1991.

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 163, 26. 6. 1991, p. 41.

⁽³⁾ OJ No L 154, 9. 6. 1984, p. 27.

⁽⁴⁾ OJ No L 114, 27. 4. 1989, p. 13.

⁽⁵⁾ OJ No L 351, 2. 12. 1989, p. 18.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 6 November 1991 fixing for Great Britain the level of the variable slaughter premium for sheep and the amounts to be charged on products leaving region 1

(ECU/100 kg)

CN code	Amounts	
	A. Products qualifying for the premium specified in Article 24 of Regulation (EEC) No 3013/89	B. Products specified in Article 4 (4) of Regulation (EEC) No 1633/84 ⁽¹⁾
	Live weight	Live weight
0104 10 90	41,559	0
0104 20 90		0
	Net weight	Net weight
0204 10 00	88,424	0
0204 21 00	88,424	0
0204 50 11		0
0204 22 10	61,897	
0204 22 30	97,266	
0204 22 50	114,951	
0204 22 90	114,951	
0204 23 00	160,932	
0204 30 00	66,318	
0204 41 00	66,318	
0204 42 10	46,423	
0204 42 30	72,950	
0204 42 50	86,213	
0204 42 90	86,213	
0204 43 00	120,699	
0204 50 13		0
0204 50 15		0
0204 50 19		0
0204 50 31		0
0204 50 39		0
0204 50 51		0
0204 50 53		0
0204 50 55		0
0204 50 59		0
0204 50 71		0
0204 50 79		0
0210 90 11	114,951	
0210 90 19	160,932	
1602 90 71 :		
— unboned (bone-in)	114,951	
— boned or boneless	160,932	

⁽¹⁾ Eligibility for these reduced amounts is subject to compliance with the conditions laid down in the second subparagraph of Article 5 (3) of Regulation (EEC) No 1633/84.

COMMISSION REGULATION (EEC) No 3231/91**of 6 November 1991****concerning applications for STM licences for cereals submitted on 1 to 4 November 1991 for imports of common wheat, barley and maize into Portugal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 252 (1) thereof,

Whereas Commission Regulation (EEC) No 1367/91 of 24 May 1991 laying down detailed rules for applying the supplementary trade mechanism to imports of cereals into Portugal⁽¹⁾ sets a target ceiling of 220 000 tonnes for common wheat, 300 000 tonnes for maize to be broken down into equal monthly quantities;Whereas, pursuant to Article 6 (2) of Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism (STM)⁽²⁾, as last amended by Regulation (EEC) No 3296/88⁽³⁾, the Commission has been notified of applications received on 4 November 1991 for STM licences for imports of common wheat and maize into Portugal which are well in excess of the ceiling set; whereas measures should be taken to deal with this situation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for STM licences which were submitted on 1 to 4 November 1991 and notified to the Commission shall be accepted for the tonnages applied for, adjusted by a coefficient of:

- 0,43 for common wheat falling within CN code 1001 90 99,
- 0,10 for maize falling within CN code 1005 90 00.

2. The issue of STM licences concerning imports of common wheat and maize into Portugal from 5 to 30 November 1991 is hereby suspended.

Article 2

This Regulation shall enter into force on 7 November 1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 130, 25. 5. 1991, p. 31.

⁽²⁾ OJ No L 57, 1. 3. 1986, p. 1.

⁽³⁾ OJ No L 293, 27. 10. 1988, p. 7.

COMMISSION REGULATION (EEC) No 3232/91

of 6 November 1991

fixing the import levy on molasses

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar ⁽¹⁾, as last amended by Regulation (EEC) No 464/91 ⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levy on molasses was fixed by Commission Regulation (EEC) No 1854/91 ⁽³⁾, as last amended by Regulation (EEC) No 3168/91 ⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 1854/91 to the information at present available to the Commission that the levy at present in force should be altered pursuant to Article 1 of this Regulation;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last subparagraph of Article 3 (1) of Council Regu-

lation (EEC) No 1676/85 ⁽⁵⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁶⁾,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 5 November 1991,

HAS ADOPTED THIS REGULATION:

Article 1

The import levy referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of molasses falling within CN codes 1703 10 00 and 1703 90 00, ECU 0,64 per 100 kilograms.

Article 2

This Regulation shall enter into force on 7 November 1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 54, 28. 2. 1991, p. 22.

⁽³⁾ OJ No L 168, 29. 6. 1991, p. 27.

⁽⁴⁾ OJ No L 300, 31. 10. 1991, p. 17.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

COMMISSION REGULATION (EEC) No 3233/91

of 6 November 1991

adjusting the corrective amount on the import of cucumbers into the
Community of Ten from Spain

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

Having regard to the Act of Accession of Spain and
Portugal,

Having regard to Council Regulation (EEC) No 3709/89
of 4 December 1989 laying down general rules for imple-
menting the Act of Accession of Spain and Portugal as
regards the compensatory mechanism for imports of fruit
and vegetables from Spain ⁽¹⁾, and in particular Article 4
(2) thereof,

Whereas Article 152 of the Act of Accession introduces
from 1 January 1990 a compensatory mechanism for
imports into the Community as constituted on 31
December 1985, hereinafter called 'the Community of
Ten', of fruit and vegetables from Spain for which a
reference price is fixed with regard to third countries;

Whereas Regulation (EEC) No 3709/89 lays down general
rules for applying the said compensatory mechanism and
Commission Regulation (EEC) No 3815/89 ⁽²⁾ lays down
detailed rules for applying the said compensatory
mechanism;

Whereas Commission Regulation (EEC) No 3077/91 ⁽³⁾,
as last amended by Regulation (EEC) No 3209/91 ⁽⁴⁾,
introduces a corrective amount on imports of cucumbers
into the Community of Ten from Spain;

Whereas Article 3 (4) of Regulation (EEC) No 3709/89
lays down the conditions under which a corrective
amount introduced pursuant to Article 3 (1) of the said
Regulation, is to be adjusted; whereas the said conditions
require that the corrective amount on imports of cucum-
bers from Spain into the Community of Ten be adjusted,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EEC) No 3077/91 'ECU 18,41'
is replaced by 'ECU 29,40'.

Article 2

This Regulation shall enter into force on 7 November
1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 363, 13. 12. 1989, p. 3.
⁽²⁾ OJ No L 371, 20. 12. 1989, p. 28.

⁽³⁾ OJ No L 290, 22. 10. 1991, p. 31.
⁽⁴⁾ OJ No L 303, 1. 11. 1991, p. 70.

COMMISSION REGULATION (EEC) No 3234/91

of 6 November 1991

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EEC) No 464/91 ⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 ⁽⁴⁾ thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar ⁽³⁾, as last amended by Regulation (EEC) No 1489/76 ⁽⁴⁾, provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 3 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar ⁽⁵⁾; whereas, furthermore, this refund should be fixed in accordance with Article 5 (2) of Regulation (EEC) No 766/68; whereas candy sugar is defined in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar ⁽⁶⁾, as last amended by Regulation (EEC) No 1714/88 ⁽⁷⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination;

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last subparagraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 ⁽⁸⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁹⁾,
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

Whereas it follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 7 November 1991.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 54, 28. 2. 1991, p. 22.

⁽³⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁴⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽⁵⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁶⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽⁷⁾ OJ No L 152, 18. 6. 1988, p. 23.

⁽⁸⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁹⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 6 November 1991 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund	
	per 100 kg	per percentage point of sucrose content and per 100 kg net of the product in question
1701 11 90 100	33,60 ⁽¹⁾	
1701 11 90 910	34,32 ⁽¹⁾	
1701 11 90 950	⁽²⁾	
1701 12 90 100	33,60 ⁽¹⁾	
1701 12 90 910	34,32 ⁽¹⁾	
1701 12 90 950	⁽²⁾	
1701 91 00 000		0,3652
1701 99 10 100	36,52	
1701 99 10 910	37,31	
1701 99 10 950	37,31	
1701 99 90 100		0,3652

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

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

COMMISSION REGULATION (EEC) No 3235/91**of 6 November 1991****fixing the maximum export refund for white sugar for the 28th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 963/91**

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

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 464/91⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 963/91 of 18 April 1991 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾ requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EEC) No 963/91, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 28th partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 28th partial invitation to tender for white sugar issued pursuant to Regulation (EEC) No 963/91 the maximum amount of the export refund is fixed at ECU 39,959 per 100 kilograms.

Article 2

This Regulation shall enter into force on 7 November 1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 54, 28. 2. 1991, p. 22.

⁽³⁾ OJ No L 100, 20. 4. 1991, p. 9.

COMMISSION REGULATION (EEC) No 3236/91**of 6 November 1991****fixing the aid for cotton**

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

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 thereto, as amended by the Act of Accession of Spain and Portugal, and in particular Protocol 14 annexed thereto, and Commission Regulation (EEC) No 4006/87 ⁽¹⁾,

Having regard to Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton ⁽²⁾, as last amended by Regulation (EEC) No 791/89 ⁽³⁾, and in particular Article 5 (1) thereof,

Whereas the amount of the additional aid referred to in Article 5 (1) of Regulation (EEC) No 2169/81 was fixed by Commission Regulation (EEC) No 2880/91 ⁽⁴⁾, as last amended by Regulation (EEC) No 3201/91 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 2880/91 to

the information at present available to the Commission that the amount of the aid at present in force should be altered as shown in Article 1 to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The aid for unginne cotton referred to in Article 5 of Regulation (EEC) No 2169/81 shall be ECU 68,643 per 100 kilograms.

Article 2

This Regulation shall enter into force on 7 November 1991.

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

Done at Brussels, 6 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 377, 31. 12. 1987, p. 49.

⁽²⁾ OJ No L 211, 31. 7. 1981, p. 2.

⁽³⁾ OJ No L 85, 30. 3. 1989, p. 7.

⁽⁴⁾ OJ No L 274, 1. 10. 1991, p. 48.

⁽⁵⁾ OJ No L 303, 1. 11. 1991, p. 50.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 October 1991

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/32.737 — Eirpage)

(Only the English text is authentic)

(91/562/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

I. THE FACTS

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 4, 6 and 8 thereof,

Having regard to the application for negative clearance and the notification for exemption, submitted under Articles 2 and 4 of Regulation No 17 on 17 May 1988 by Bord Telecom Eireann and Motorola Ireland Ltd of a joint venture agreement and related agreements and documents, concerning the setting up, promotion and operation of a nationwide interconnected paging service,

Having regard to the summary of the application and notification published pursuant to Article 19 (3) of Regulation No 17 ⁽²⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

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

A. The parties and the service concerned

- (2) Telecom was corporatized in 1984. Pursuant to Section 87 of the Postal and Telecommunications Services Act 1983 (the Act), in conjunction with the Telegraph Act of 1869, it continues to enjoy a statutory exclusive privilege with respect to telecommunications infrastructures and the provision of certain telecommunications services, subject to the powers of Telecom itself (Section 89) and of the Minister for Communications (Section III) to grant licences to third parties to provide telecommunications services within the exclusive privilege of Section 87.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 294, 24. 11. 1990, p. 3.

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

- (3) Motorola is a wholly-owned subsidiary of Motorola Inc. of Illinois, USA, which, with a worldwide turnover of US \$ 9 billion in 1989, is one of the world leaders in mobile communications equipment and services. Before embarking on the Eirpage joint venture, Motorola, which had a turnover of £ 10,7 million and 120 employees in 1989, offered merely telecommunications equipment, including paging receiver units, and not paging services⁽¹⁾.

- (4) The paging service offered by Eirpage falls within the broader category of mobile communication services in general, which includes mobile telephones and mobile radios. Paging is a one-way means of communicating with someone on the move who carries a pocket-sized receiving unit, which receives varying signals, such as tone (beep), voice, numerical or computerized messages, depending on the sophistication of the receiver. The person carrying the pager can only receive messages, not reply to calls.

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

- (5) In Ireland, the mobile communications sector is at present composed of traffic via mobile radios (35 %), mobile telephones (40 %) and pagers (25 %). Eirpage at present covers 13 % of mobile

communications, and with 7 400 subscribers, approximately 60 % of the overall paging sector.

Aside from Eirpage, there are at least eight companies providing operator-assisted paging services mainly in the Dublin area or other population centres such as Cork and Limerick. The number of subscribers of these companies ranges from under 100 to approximately 2 000. Eirpage plans to cover virtually all regions of the country and aims at achieving 10 000 customers, nationwide, by 1992. By July of 1991, 87 % of the geographical surface of the Republic of Ireland, representing 90 % of the population, was covered with more than 30 transmitters in operation.

B. The agreements as originally notified

- (6) The notification involves six documents:

1. *The joint venture agreement:*

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

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

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

2. The *business plan* annexed to the joint venture agreement sets out Eirpage's basic objectives and the forecast agreed by the parties as to the projected financial outcome of Eirpage's first five years of operation.

⁽¹⁾ As of 1 August 1991, an independent company, Sigma Wireless Communications Ltd, has taken over Motorola's role as importer of Motorola products in Ireland and as Eirpage agent.

3. The *marketing service and business development agreement* between Telecom, Motorola and Eirpage relates to the provision of expertise by Motorola to Eirpage and by the latter to Telecom personnel.
4. The *operating agreement* between Telecom and Eirpage fixes the terms under which Telecom will provide access to the public network to Eirpage. Telecom agrees to install and maintain the physical attributes necessary to operate the paging system, namely antennas, transmitters and the paging exchange needed to interconnect to the public network, cumulatively referred to as the 'Facilities'. These Facilities belong to Telecom and form part of the public telecommunications network. Although the cost was initially estimated at less than £ Irl 1 million, the actual expenditure has risen to twice that amount due, *inter alia*, to a wider geographical coverage than originally planned. Telecom received approximately £ Irl 500 000 for the project under the Community's 'STAR' programme which aims at developing less forward regions by improving access to advanced telecommunications services.

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

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

5. The *standard agency agreement*:

Eirpage does not itself sell the paging service directly to customers, but does so via a network

of independent, non-exclusive agents. Once an agent has found a new customer, the actual subscriber agreement is signed between the customer and Eirpage. The subscription rates and other conditions are fixed by Eirpage. Agents receive an on-going monthly commission ranging from 10 % to 30 %, depending on the number of subscribers they have found for Eirpage, and provided those subscribers remain 'live'. Agency agreements can be terminated by either party on an annual basis.

At the time Eirpage was launched, sellers of paging equipment, existing paging service providers and other interested parties were invited to become Eirpage agents. At present, there are 20 agents including three service providers which continue to offer their own operator-assisted, local rather than nationwide, paging services alongside finding subscribers for Eirpage. Among the sellers of paging equipment which act as Eirpage agents are TEIS, a Telecom subsidiary involved in the provision of terminal equipment, and Sigma Wireless Communications Ltd, which in August of 1991 took over Motorola's role as Eirpage agent.

Eirpage is obliged by the agency agreement not to discriminate amongst the agents. Sales leads which come to Eirpage are passed on to agents in a rotating alphabetical order.

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

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

6. The *standard subscriber agreement* :

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

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

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

1. *Market entry by third parties*

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

- (a) Telecom has given a written undertaking to make available to persons satisfying the relevant licensing and financial requirements the facilities necessary for operating a wide-area interconnected paging service, under the same conditions as those which apply to Eirpage. These include the obligation on the paging operator to use such equipment for not less than a specified period mutually agreed upon by the parties on the basis of the total investment made by Telecom and

the payment to Telecom of an annual charge calculated to remunerate the cumulative capital cost fully amortized over that period together with a reasonable return over the capital cost ; in respect of the provision by Telecom of interconnection, space and other services, such as maintenance, the standard commercial charges shall apply, as they do to Eirpage.

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

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

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

(b) *licensing and frequency allocation :*

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

- (i) All paging service operators, regardless of whether the service offered is interconnected, operator-assisted, regional or

national, must receive a frequency allocation in the form of a licence under the Wireless Telegraphy Act 1926. Frequency/spectrum management is carried out under the sole competence of the Minister for Communications. Thus, Eirpage itself is dependent on the Minister for frequency allocation on the same footing as other paging service providers, and has received licences to that effect.

- (ii) Companies interested in providing a paging service interconnected to the public telecommunications network require in addition to the frequency allocation licence, a licence under the Telecommunications Act 1983. This licence can be granted at the applicant's choice either by the Minister for Communications, after consultation of Irish Telecom, whose opinion is, however, not binding, or by Telecom itself; refusals by the latter are subject to appeal. Contrary to the licence under the 1926 Act, Eirpage did not require a licence under the 1983 Act because it is a subsidiary of Telecom and thus enjoys the exclusive privilege bestowed on the latter under Section 87.

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

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

licence under the 1983 Act, is the only company providing interconnected paging services, so that an actual application of the licensing procedure has not yet taken place.

2. Cross-subsidization and preferential tariffs

Written assurances have been provided by a chartered accountant that Eirpage pays full cost and expenses to Telecom and to Motorola for staff, facilities and services. Telecom does not cross-subsidize Eirpage's activities through revenues from services reserved to Telecom as the national telecommunications organization, nor does Eirpage enjoy any preferential tariffs for the use of facilities provided by Telecom, such as leased lines. Eirpage operates at arm's length from both parent companies with its own separate offices and all expenditure is funded through a bank overdraft facility which is entirely separate from either parent company. Eirpage establishes its own financial statements, independent of Telecom's annual accounts.

3. The paging equipment market

Eirpage only provides a paging service and does not sell paging equipment. The parties have stated that the Eirpage system has been configured specifically to offer maximum compatibility with the products of all manufacturers. As stated above, Eirpage agents are free to sell whatever equipment they want, with or without the Eirpage name or logo attached. In case of enquiries to Eirpage concerning manufacturers' equipment, information is provided regarding all manufacturers or their representatives in Ireland. Only average prices are quoted to customers, not the prices of a particular brand of equipment.

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

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

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

4. The standard agency agreement

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

- (a) clause 4 (a) has been redrafted in order to clarify that only sales leads which have been passed on to a given agent by Eirpage must first be used by that agent to promote the Eirpage service; if the latter is not suitable for the customer, the agent is subsequently free to promote his own service. In all other contacts with potential customers, the agent is free to promote his own service first or in any case on the same basis as the Eirpage service;
- (b) clause 4 (c) which imposed an absolute obligation on agents of loyalty to Eirpage 'in all matters', was too broad and has been redrafted to reflect the agent's freedom to continue pursuing his own interests; Eirpage's instructions need only be followed in respect of specific Eirpage matters;

- (c) clause 4 (f) obliged an agent to bring to the attention of Eirpage any information it received which was likely to be of benefit to Eirpage in marketing the services. This obligation could not be reconciled with an agent's legitimate wish to continue or start competing with Eirpage and has been deleted;
- (d) in clause 4 (l), it has been clarified that the designation 'Eirpage Authorized Agent' is subsidiary to the agent's own denomination;
- (e) the post-term non-compete obligation of Clause 9.7 (i), whereby agents were prevented for a period of three years following the termination of the agency agreement from soliciting persons who at the time of termination were Eirpage subscribers, has been deleted;
- (f) direct competitors of Eirpage, i.e. paging companies providing interconnected paging services, should not be permitted as agents. This also means that existing agents who do not yet provide such services but decide to enter that specific sub-market at a later date, must at that point relinquish their position as an Eirpage agent. Furthermore, an Eirpage agent may not at the same time be the agent for other paging service providers offering interconnected paging services. Provisions reflecting the above have been added to the agency agreement.

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

In the event the joint venture agreement is terminated, Telecom and Motorola must be free to compete with each other immediately. To that end, the post-term non-compete obligation provided for in Article 18.2 of the joint venture agreement has been deleted at the request of the Commission.

D. Third parties' observations

- (8) The Commission did not receive any observations following publication of the notice required by Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1)

- (9) Although Motorola owns 49 % of the joint venture company and is thus, strictly speaking, a minority shareholder, the Board of Directors which actually runs Eirpage consists of an equal number of directors representing each parent company, whereby all decisions of the Board require a majority vote and most business decisions of any consequence unanimity. Consequently, the two parties to the agreement, both of which are economic operators involved in commercial activities, in reality share joint control of the joint venture, so that the arrangements involve agreements between two independent undertakings and must thus be considered under Article 85 (1). In this context, it is not only the joint venture agreement itself which must be assessed, but the accompanying agreements which implement certain aspects of the cooperation, namely the operating agreement between Telecom and the joint venture company, the standard agency agreement which establishes the system whereby the service is offered to consumers and the standard subscriber agreement.
- (10) The market directly concerned by the joint venture agreement is the provision of paging services, i. e. a one-way means of contacting someone on the move. Paging offers the advantage above other forms of mobile communications of being relatively — up to 50 % — cheaper in terms of the price of equipment and running costs. Also, mobile telephones are larger in size and thus more unwieldy than paging receive units. In this sense paging at present represents a distinct market. These factors could be expected to fade in the future, so that the choice between a mobile telephone and a pager would no longer depend on size or cost. Paging would, however, continue to exist as a separate option in the mobile communications sector because it offers one-way communications, a distinct advantage in keeping down the billing costs.
- (11) Telecom and Motorola are potential competitors for the provision of paging services. Telecom's expertise in the provision of infrastructure has in the past facilitated its entry into markets for various value-added services, such as Eirpac and Eircell.

Given Telecom's general know-how and more specifically and technological similarities between communicating by mobile telephone and paging, and in view of its financial position, this ease of entry would also apply with respect to the paging sector.

Although the Motorola company in Ireland did not provide paging services prior to Eirpage, but was solely a manufacturer of telecommunications hardware, including paging equipment, the Motorola group worldwide has extensive experience in this sector which is in fact available for the benefit of Eirpage pursuant to the Marketing Services and Business Development Agreement. Motorola is therefore a potential competitor for the provision of the service.

- (12) Through the Eirpage joint venture, Telecom and Motorola have joined together to set up and provide a service which they could potentially have pursued individually; the joint venture agreement prohibits either party from engaging in a competing wide-area interconnected paging service either independently or in association with others. The consequence of these arrangements is that instead of two competing companies offering the service in question there is only one, which must be considered to be a restriction of competition. Also, the fact that potential competitors are faced by a joint venture between the national telecommunications company and a subsidiary of one of the world leaders in mobile telecommunications which will initially and indefinitely — until further licences are granted — be the only provider of interconnected paging services, may have a deterrent effect on potential market entrants and thus further restrict competition.

In view of the foregoing considerations, the agreements which form the basis for the creation and operation of the joint venture are deemed to constitute restrictions of competition falling within Article 85 (1). The same is true with regard to the system whereby intermediaries are used to offer the service to end-users, as laid down the standard agency agreement. These arrangements form an integral part of the operation of the joint venture. Moreover, the restrictions flowing from the agency system are reinforced by the fact that companies offering paging services in competition with the Eirpage service have been appointed as Eirpage agents.

- (13) The notified arrangements relate to a service extending over the entire territory of the Republic of Ireland and as such are capable of affecting trade between Member States. The fact that an agreement has as its object only the marketing of products (or services) in a single Member State does not mean that trade between Member States cannot be affected. In the case at hand, both a detrimental and a beneficial impact on trade from other Member States can be envisaged as regards the paging service market. The fact that the joint venture company will initially be the only provider of interconnected wide-area paging services in Ireland may have a dissuasive effect on market entry by competitors from other Member States. Conversely, the promotion of the concept of paging as such which the joint venture company is committed to accomplishing, may be expected to attract other providers of (complementary) paging services also from other Member States, which are free to apply for the necessary licences and start operating once these have been obtained.

In the closely linked paging equipment market, which was, even before the inception of Eirpage, characterized by an overriding presence of distributors and subsidiaries of equipment manufacturers from other Member and non-Member States, the stimulation of sales brought about by the joint venture is likely to attract further imports or investments.

Furthermore, Motorola forms part of a group operating throughout Europe (and worldwide) in the mobile communications services and equipment markets; Motorola's activities in Ireland must be seen as part of the European operations of the group as such, which necessarily implies repercussions also outside Ireland.

In view of the foregoing circumstances, the joint venture arrangements can be expected to have an appreciable effect on intra-Community trade, and Article 85 (1) applies.

B. Article 85 (3)

- (14) Subject to the changes implemented by the parties in the agreements as notified and in view of the undertakings provided with respect to a number of

issues which originally stood in the way of a favourable decision, the Commission has concluded that the cooperation between Telecom and Motorola contributes to the development of telecommunications services in Ireland, thereby directly benefiting consumers of such services as well as undertakings involved in the telecommunications sector. These benefits could not have been achieved as rapidly and to the same extent in the absence of the joint venture and therefore outweigh the restriction of competition brought about by the joining together of two potential competitors.

- (15) In a country where two-thirds of the population lives in sparsely populated rural areas, Eirpage has undertaken to provide a service beyond the more profitable urban areas in which existing paging service providers had hitherto concentrated their activities. By the end of 1991, 34 transmitters should be installed at strategic points throughout the national territory, thereby covering virtually all of Ireland. These truly nationwide communications links can be expected to contribute to business efficiency and especially enable small and medium-sized business to expand their activities geographically, thereby contributing to economic progress in Ireland.

Although the joint venture arrangements relate only to the provision of paging services, the directly connected paging equipment market can be expected to benefit from the increased number of paging service subscribers requiring paging receive units, thus stimulating production in this sector.

- (16) A fair share of the benefits resulting from the cooperation accrue directly to consumers.

End-users, that is subscribers to the service, can benefit from an enhanced paging service which offers several features not available from existing paging companies, in particular nationwide coverage and interconnection to the public network. Furthermore, Eirpage offers a wider choice of services than previously available from one single source, ranging from the simplest tone only communication to the more sophisticated alphanumeric and voice messages. Within this

range of possibilities the individual needs and budgets of each user will allow him to opt for full nationwide or regional coverage, and for the simpler or the more sophisticated type of service. These options offer advantages for all users, namely those using the service primarily for private, e.g. family or social, purposes, and business users who can thus ensure varying degrees of communication to increase their operating efficiency.

The Eirpage service is offered to customers not by the joint venture company itself, but via a network of agents who have a direct financial interest in finding new clients and keeping existing ones, and therefore compete with each other. This agency system ensures that there is a choice for consumers as regards the agent with whom he wants to deal and the conditions he can enjoy for using the Eirpage service. Furthermore, the standard form agency agreement between Eirpage and its agents obliges the latter to ensure adequate maintenance and after-sales service, and perform guarantees with respect to the paging equipment supplied to subscribers. The maximum one-year duration of the standard subscriber agreement leaves consumers free to change to another service provider at reasonable notice.

Finally, the paging equipment market will automatically expand along with an increasing number of subscribers to paging services. This increased demand for paging receive units and the freedom of agents and subscribers to choose whatever brand they wish, can be expected to lead to a wider choice of products, and at lower prices.

- (17) The arrangements between the parties contain no restrictions which are not indispensable to the attainment of the ensuing benefits for the duration of the exemption.
- (18) The joint venture agreement itself was indispensable in enabling the parties to offer as rapidly as possible a service which in terms of technical features and geographic coverage represents a new option in this sector. Neither party acting on its own could have offered the service as rapidly and effectively as their cooperation has enabled them to do.

Having been corporatized relatively recently, Telecom's transition from a governmental department to a commercial operator has been gradual, and

initially its activities centred on traditional telecommunications services. Although Telecom was admittedly able to set up a mobile telephone service (Eircell) by itself, selling telephones, which are familiar to everyone, is easier than selling the new and unknown concept of paging, especially in rural areas where the population may be less susceptible to new technologies. By way of comparison, Telecom's experience in launching Eirpac (data network) has been less favourable. Acting alone, Telecom could have set up a paging system in the Dublin area only, which would have deprived the general population of the enhanced services now offered by Eirpage nationwide.

Unlike Telecom, Motorola is a purely commercially driven company and does not have Telecom's determination to provide nationwide telecommunications services. Thus, even if Motorola had obtained a licence to provide a paging service interconnected to the public network, it would not have been interested in extending the service to marginally profitable rural areas; the same would have applied to any other purely commercial operator. Given the fact that two-thirds of the population lives in rural areas, this solution would have resulted in a much less extensive coverage. In fact, existing paging companies have until now confined their services to Dublin and the four or five other larger towns in Ireland where investment per customer is minimized.

Lesser geographic coverage of a service provided by Motorola alone would also have resulted in a more limited development of the paging concept as such, to the detriment of other service and equipment providers.

Finally, Motorola could not have been expected to bring to an independent venture Telecom's commitment to ensure maximum compatibility of all brands of paging equipment with its system.

The foregoing considerations have brought the Commission to the conclusion that in the absence of the combined efforts by the parties in setting up the Eirpage system, no nationwide enhanced interconnected paging service would have been available on the rapid timescale achieved as a result of their collaboration.

Furthermore, the Commission considers that the Eirpage system could not be set up or at least could not function satisfactorily, if the parties were not obliged for a limited period to refrain from engaging in directly competing projects. Also, it would be unreasonable to expect either party to invest its funds and expertise in the joint project, if there was a risk that the other would use those contributions either independently or in association with third parties who have not made the same commitment. In this context the Commission considers the non-competition obligation imposed by the joint venture agreement on the parties to be indispensable. It should be noted that this restriction is limited to the life of the agreement and applies only to one-way wide-area paging services interconnected to a fixed telecommunications network, which means that the parties remain free also during the term of the agreement to engage in other types of paging services, such as those referred to under recitals 4 and 5 above.

- (19) Certain aspects of the notified agreements which were not indispensable for achieving the benefits thereof were eliminated by the parties at the Commission's request in order to bring the arrangements in line with the requirements of Article 85 (3).

In the joint venture agreement itself, the three-year post-term non-competition obligation has been deleted, so that in case of dissolution of the joint venture, the two parties would immediately be free to compete with each other and with third parties on the market.

A number of clauses in the original standard agency agreement likewise required amendment or suppression; these changes are listed above under point 4 of recital 7.

- (20) The arrangements as they stand following the Commission's intervention during the course of the notification procedure do not afford the parties the possibility of eliminating competition in respect of a substantial part of the services and products in question.

In the first place, Eirpage is subject to actual competition from existing paging service providers, which account for 40 % of the paging sector and which in many cases offer a service complementary to that of Eirpage. Certain customers will prefer to opt for operator-assisted paging services, such as

notably medical paging, and these services are thus unaffected by Eirpage. The same applies to purely local paging systems.

Secondly, nothing prevents licensed operators from competing directly with Eirpage in the provision of interconnected (nationwide) paging. In view of the undertaking which Telecom has given during the course of the notification procedure to make facilities similar to those used by Eirpage available to other operators (see above under point 1 (a) of recital 7), competitors can either use that possibility or invest directly in the necessary facilities, which would in that case belong to them and not to Telecom.

In the light of the assurances given by the Department for Communications, the licensing requirements involved in offering paging services which were examined during the course of notification procedure were found not to form barriers to market entry. Although the licensing procedures are not within the power of the parties who have sought clearance or exemption from the Commission, the latter would be obliged to consider withdrawing the exemption granted under the present Decision if in the future it appears that those procedures act as a barrier to entry or deterrent to competition in the paging sector.

The one-year duration of the Eirpage subscriber agreement allows customers to switch upon a reasonable period of notice to an Eirpage competitor, if they so wish.

Thirdly, the paging market is directly influenced by developments in the mobile telephone and radio markets, as well as new technologies which are at present developing, such as Personal Communication Networks (PCN). At present, paging represents 25 % of the mobile communications sector in general.

Finally, Eirpage cannot merely be expected not to eliminate competition in the paging sector, but may in fact stimulate development also for the benefit of other paging service providers. This circumstance is due to the fact that Eirpage's marketing and advertising efforts promote the concept of paging as such, and not merely Eirpage's own service.

Also, although the Eirpage service does not tie in the sale of paging equipment, the increased use of paging services which is expected to develop, both with regard to Eirpage subscribers and those of

other paging service providers, will stimulate competition in the paging receive equipment market.

- (21) One issue which requires individual attention is the position of paging service providers who at the same time act as Eirpage agents. Of the eight paging service providers established in Ireland before Eirpage came on the market, three took the opportunity offered of becoming Eirpage agents. The services these companies offer can be distinguished from the Eirpage service in that they consist of operator-assisted as opposed to interconnected paging. One advantage of operator-assisted paging is that calls are screened by an operator; direct contact between the caller and the person carrying the paging unit is thus excluded. Certain categories of subscribers — such as doctors who do not want to be contacted directly by their patients — prefer this service above the direct communication made possible by interconnection. Also, the services of these companies are geographically limited to Dublin alone or a small number of other urban areas. Given the fact that the services provided by these companies fulfil different needs from those to which Eirpage caters, it can be expected that these three companies will continue to sell their own services next to those of Eirpage, whereby their independence has been improved by the various amendments in the standard agency agreement made at the Commission's request. Furthermore, by acting as Eirpage agents, these companies may be expected to acquire first-hand experience relating to interconnected paging services, thereby enhancing their competitive position if one day they decide to offer such services themselves in direct competition with Eirpage; in that case they could of course no longer act as Eirpage agents. Nevertheless, the Commission is aware of the potential conflict which may exist with respect to agents which offer their own services next to those of Eirpage, and will review the situation of these companies and any other paging service providers who become Eirpage agents within a short time-frame to assess whether this arrangement continues to fulfil the conditions of Article 85 (3).

C. Duration of the exemption and obligations

- (22) Pursuant to Article 6 (1) of Regulation No 17, the Commission is required to specify the date from

which an exemption is granted. The arrangements as notified on 17 May 1988 presented several aspects which prevented the granting of an exemption in this case. Following discussions with the Commission, the notifying parties made several firm proposals to meet the Commission's objections. These proposals concerned in particular the necessary amendments to the joint venture agreement itself, the operating agreement and the standard agency agreement. Furthermore, Telecom established the undertaking referred to above under point (1) (a) of recital 7 with regard to making available facilities similar to the Eirpage facilities, thus ensuring fair market entry to third parties interested in interconnected paging. Accordingly, the date on which the exemption takes effect will not be the date of notification, but 26 March 1990, the date by which all the required amendments and the undertaking by Telecom had been presented to the Commission.

- (23) Article 8 (1) of Regulation No 17 provides that exemptions under Article 85 (3) may be granted only for a specific period and that conditions and obligations may be attached to them.

In view of the characteristics of the Irish market which is characterized, *inter alia*, by slow growth, the novelty of the service being established by the parties, and the emergence of competing new technologies, the development of the joint venture can be expected to require a substantial period of time. Also, a joint venture involving the provision of a service, as opposed to, for example, the production of goods, requires a certain continuity in the relationship between the joint venture parents and third parties.

The final capital investments involved in setting up the infrastructure of the nationwide paging network were made by July 1991, whereupon the 10-year formula according to which Telecom will be reimbursed by Eirpage for its expenditures went into effect.

In view of the foregoing considerations, the Commission has concluded that a period of exemption ending on 31 July 2001 is appropriate in this case.

- (24) In order for the Commission to perform its supervisory functions pursuant to Article 8 (3) of Regulation No 17, the parties must comply with the following reporting requirements during the period of exemption:

1. Telecom must inform the Commission forthwith and on a continuing basis of any requests for paging facilities made to it by third parties pursuant to its undertaking referred to above under point 1 (a) of recital 7, and the outcome of such requests.
 2. Eirpage must submit its annual financial statements to the Commission each year upon their issuance to allow for verification regarding cross-subsidization and preferential tariffs.
 3. At the same time as the submission of the annual financial statements, Eirpage shall provide the Commission with an updated list of all agents selling the Eirpage service and indicate which agents are at the same time paging service operators in their own right.
 4. In January 1995, the parties shall make available to the Commission information enabling it to review: (i) the development of the paging service market in Ireland; and (ii) the development of sales of Motorola paging receive equipment in Ireland compared to that of other brands.
 5. All three parties are required to inform the Commission forthwith of any amendments or additions to the joint venture agreement itself, the operating agreement, the standard Eirpage agency agreement, the standard Eirpage subscriber agreement, and likewise any change in the scope, nature or extent of the cooperation between them.
- (a) Bord Telecom Eireann shall inform the Commission forthwith and on a continuing basis of any requests made under the undertaking it has given to make paging facilities available to third parties;
 - (b) Eirpage Limited shall submit its annual financial statements to the Commission each year upon their issuance;
 - (c) Eirpage Limited shall at the same time as the submission of its annual financial statements provide the Commission with a list of all Eirpage agents and identify which agents are at the same time paging service operators in their own right;
 - (d) in January 1995, the parties shall submit a report to the Commission setting out (i) the development of the paging service market in Ireland, and (ii) the development of sales of Motorola paging receive equipment in Ireland compared to that of other brands;
 - (e) all three parties are required to inform the Commission forthwith of any amendments or additions to the agreements referred to in Article 1, and of any change in the scope, nature or extent of the cooperation between them.

Article 3

This Decision is addressed to the following undertakings:

1. Bord Telecom Eireann,
Merrion House,
Merrion Road,
IRL-Dublin 4.
2. Motorola Ireland Limited,
Unit 12C,
Santry Industrial Estate,
IRL-Dublin 9.
3. Eirpage Limited,
Anglesea House,
Donnybrook,
IRL-Dublin 2.

Done at Brussels, 18 October 1991.

For the Commission

Leon BRITTAN

Vice-President

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable for the period 26 March 1990 to 31 July 2001 to the joint venture agreement dated 23 February 1988 between Bord Telecom Eireann (Telecom) and Motorola Ireland Ltd (Motorola) and the relevant notified accompanying agreements: the operating agreement between Telecom and the joint venture company, the standard Eirpage agency agreement and the standard Eirpage subscriber agreement.

Article 2

The declaration of exemption contained in Article 1 shall be subject to the following obligations:

COMMISSION DECISION

of 23 October 1991

making an initial allocation to the Netherlands of part of the resources to be charged to the 1992 budget year for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community

(91/563/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3730/87 of 10 December 1987 laying down the general rules for the supply of food from intervention stocks to the most deprived persons in the Community⁽¹⁾,

Having regard to Commission Regulation (EEC) No 3744/87 of 14 December 1987 laying down the detailed rules for the supply of food from intervention stocks to the most deprived persons in the Community⁽²⁾, as last amended by Regulation (EEC) No 583/91⁽³⁾, and in particular Article 2 (3) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽⁴⁾, as last amended by Regulation (EEC) No 2205/90⁽⁵⁾, and in particular Article 2 (4) thereof,

Whereas on 3 October 1991, the Netherlands requested Commission authorization to initiate already in 1991 the action on its territory to be financed by resources chargeable to the 1992 budget and indicated the quantities of produce that it wished to distribute; whereas it is desirable to initiate the scheme now in the Netherlands by making an allocation to that country; whereas this allocation shall not exceed 50 % of the resources allocated by Commission decision to the Netherlands in respect of the plan for 1991;

Whereas in order to facilitate the implementation of this scheme it is necessary to specify the rate of exchange to be employed in converting the ecu into the national

currency and to do so at a rate which reflects economic reality,

HAS ADOPTED THIS DECISION:

Article 1

1. The allocation for the Netherlands of the appropriations referred to in Article 2 (3) of Regulation (EEC) No 3744/87 to be charged to the 1992 budget shall be ECU 1 643 000.

This sum shall be converted into national currency at the rate applicable on 2 January 1991 and published in the C series of the *Official Journal of the European Communities*.

2. Subject to the limit set out in paragraph 1, the following quantities of produce may be withdrawn from intervention for distribution in the Netherlands:

- 50 tonnes of butter,
- 200 tonnes of beef.

3. The withdrawals referred to in paragraph 2 may be made from 1 November 1991.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 23 October 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 352, 15. 12. 1987, p. 1.

⁽²⁾ OJ No L 352, 15. 12. 1987, p. 33.

⁽³⁾ OJ No L 65, 12. 3. 1991, p. 32.

⁽⁴⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁵⁾ OJ No L 201, 31. 7. 1990, p. 9.

COMMISSION DECISION**of 30 October 1991****suspending the buying-in of butter in certain Member States****(Only the German, Danish, English, French, Italian and Dutch texts are authentic)****(91/564/EEC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 1630/91 ⁽²⁾, and in particular the first subparagraph of Article 7a (1) and Article 7a (3) thereof,

Whereas Council Regulation (EEC) No 777/87 ⁽³⁾, as last amended by Regulation (EEC) No 1634/91 ⁽⁴⁾, sets out the circumstances under which the buying-in of butter and skimmed milk powder may be suspended and subsequently resumed and, where suspension takes place, the alternative measures that may be taken;

Whereas Commission Regulation (EEC) No 1547/87 ⁽⁵⁾, as last amended by Regulation (EEC) No 2011/91 ⁽⁶⁾, lays down the criteria on the basis of which the buying-in of butter by invitation to tender is to be opened and suspended in a Member State or, as regards the United Kingdom and the Federal Republic of Germany, in a region;

Whereas Commission Decision 91/546/EEC ⁽⁷⁾ suspends buying-in in certain Member States; whereas information on market prices shows that the condition laid down in Article 1 (3) of Regulation (EEC) No 1547/87 is currently met in Belgium, Denmark, France, Northern Ireland, Italy, Great Britain, the Federal Republic of Germany, Luxembourg and the Netherlands; whereas the list of Member States where that suspension applies must be adapted accordingly;

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

HAS ADOPTED THIS DECISION:

Article 1

The buying-in of butter by invitation to tender as provided for in Article 1 (3) of Regulation (EEC) No 777/87 is hereby suspended in Belgium, Denmark, France, Northern Ireland and Great Britain, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands.

Article 2

Decision 91/546/EEC is hereby repealed.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the United Kingdom and the Kingdom of the Netherlands.

Done at Brussels, 30 October 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 19.

⁽³⁾ OJ No L 78, 20. 3. 1987, p. 10.

⁽⁴⁾ OJ No L 150, 15. 6. 1991, p. 26.

⁽⁵⁾ OJ No L 144, 4. 6. 1987, p. 12.

⁽⁶⁾ OJ No L 185, 11. 7. 1991, p. 5.

⁽⁷⁾ OJ No L 297, 29. 10. 1991, p. 23.