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Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 394/2002
of 1 March 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 1 March 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	167,9
	204	156,2
	212	145,4
	624	207,6
	999	169,3
0707 00 05	052	185,6
	068	155,6
	204	78,4
	624	135,7
	999	138,8
0709 10 00	220	223,0
	999	223,0
0709 90 70	052	144,1
	204	68,2
	999	106,2
0805 10 10, 0805 10 30, 0805 10 50	052	51,9
	204	46,6
	212	57,3
	220	57,4
	421	29,6
	600	48,8
	624	79,1
	999	53,0
0805 50 10	052	44,3
	600	50,5
	999	47,4
0808 10 20, 0808 10 50, 0808 10 90	060	40,6
	388	126,2
	400	120,8
	404	94,0
	508	94,1
	524	83,8
	528	87,3
	720	116,3
	728	125,5
	999	98,7
0808 20 50	388	91,6
	400	89,9
	512	82,9
	528	83,3
	720	116,7
	999	92,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 395/2002**of 1 March 2002****on the opening of a standing invitation to tender for the resale on the internal market of some 20 000 tonnes of rice held by the Italian intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1987/2001 ⁽²⁾, and in particular the last indent of Article 8(b) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 75/91 of 11 January 1991 laying down the procedures and conditions for the disposal of paddy rice held by intervention agencies ⁽³⁾ adopts the provisions concerning those procedures and conditions.
- (2) For a very long time now the Italian intervention agency has been storing a very large quantity of round-grain paddy rice. A standing invitation to tender should be opened for the resale on the internal market of some 20 000 tonnes of round-grain paddy rice held by the Italian intervention agency.
- (3) 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 shall open, on the terms laid down in Regulation (EEC) Nos 75/91, a standing invitation to

tender for the resale on the internal market of some 20 000 tonnes of round-grain paddy rice held by that agency.

Article 2

1. The closing date for the submission of tenders in response to the first partial invitation to tender shall be 13 March 2002.

2. The closing date for the submission of tenders in response to the last partial invitation to tender shall be 26 June 2002.

3. Tenders must be lodged with the Italian intervention agency at the following address:

Ente Nazionale Risi (ENR)
Piazza Pio XI, 1
I-20123 Milan
(Tel. (39-02) 885 51 11; fax (39-02) 86 13 72/86 55 03).

Article 3

By no later than Tuesday of the week following the closing date for the submission of tenders, the Italian intervention agency shall notify the Commission of the quantities and the average prices of the various lots sold.

Article 4

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

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 271, 12.10.2001, p. 5.

⁽³⁾ OJ L 9, 12.1.1991, p. 15.

COMMISSION REGULATION (EC) No 396/2002**of 1 March 2002****laying down detailed rules for the application of the specific measures adopted in respect of fruit, vegetables, plants and flowers for the benefit of the Canary Islands**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) ⁽¹⁾, and in particular Article 9(2), Article 10(5), Article 11(2) and Article 14(3) thereof,

Whereas:

- (1) Detailed rules should be laid down for the application of Articles 9, 10 and 11 of Regulation (EC) No 1454/2001, which provide for aid measures for fruit, vegetables, plants and flowers, and Article 14, which provides for aid measures for the cultivation of potatoes.
- (2) Article 14 of Regulation (EC) No 1454/2001 provides for the grant of area aid for the cultivation of potatoes for human consumption in respect of an area not exceeding 9 000 hectares cultivated and harvested each year. Detailed rules for the grant of the aid should be laid down to reflect the distinctive cultural and climatic features of the Canary Islands archipelago.
- (3) Article 9 of Regulation (EC) No 1454/2001 provides for the grant of aid for the marketing on the Canary Islands market of the products referred to in that Article. The aid must be fixed on a flat-rate basis in the light of the average value of each of the products to be determined, within the limits of annual quantities established for each product category. To make it possible for this provision to be implemented, a list should be drawn up of the products eligible for the aid based on the supply requirements of the regional markets, the categories should be established on the basis of the average value of the products covered, a maximum quantity should be fixed for the Canary Islands as a whole and detailed rules should be laid down for the grant of the aid.
- (4) For the grant of the different aid amounts a distinction should be made between the producer organisations referred to in Council Regulation (EC) No 2200/96 of

28 October 1996 on the common organisation of the market in fruit and vegetables ⁽²⁾, as last amended by Commission Regulation (EC) No 911/2001 ⁽³⁾, and other producers.

- (5) For the purpose of implementing the marketing aid measures and financing the economic study referred to in Articles 10 and 11 respectively of Regulation (EC) No 1454/2001, and in the interests of legislative simplification, the provisions adopted by Commission Regulation (EEC) No 2173/92 of 30 July 1992 laying down detailed rules for the application of specific measures adopted in respect of fruit, vegetables, plants and flowers for the benefit of the Canary Islands ⁽⁴⁾, as repealed by Regulation (EC) No 21/2002 ⁽⁵⁾, should be incorporated in this Regulation subject to the adjustments which experience has shown to be desirable and which the amendments to the Council Regulation demand.
- (6) With regard in particular to the marketing aid for the conclusion of annual contracts referred to in abovementioned Article 10, the concept of annual contract needs to be defined and a basis established for calculating the amount of the aid, set at 10 % of the value of the production marketed, free at destination, and at 13 % in situations where Article 10(4) applies. Provision should be made, lastly, for arrangements for allocating the quantities qualifying for aid in situations where there is an overrun of the limits set in that Article.
- (7) Specific rules should be laid down to ensure that the quantities fixed are monitored and that the conditions set for the grant of the aid are met. To that end, a system of approval of operators involved in the distribution and catering sectors, local authorities and food processors who undertake to meet certain requirements would appear to ensure the satisfactory administration of the local marketing aid scheme. General provisions applicable to these measures as a whole, especially those concerning monitoring and notification, should also be set out in a final chapter.
- (8) To ensure the continuity of the aid schemes for the cultivation of potatoes and for marketing outside the Community and financing of the economic study, the provisions of Titles I, III and IV of this Regulation need to be made applicable with effect from 1 January 2002.
- (9) The joint meeting of the Management Committees for Fresh Fruit and Vegetables, for Processed Fruit and Vegetables, for Hops, and for Live Plants and Floriculture Products has not delivered an opinion within the time limit laid down by its Chairman,

⁽²⁾ OJ L 297, 21.11.1996, p. 1.

⁽³⁾ OJ L 129, 11.5.2001, p. 3.

⁽⁴⁾ OJ L 217, 31.7.1992, p. 56.

⁽⁵⁾ OJ L 8, 11.1.2002, p. 15.

⁽¹⁾ OJ L 198, 21.7.2001, p. 45.

HAS ADOPTED THIS REGULATION:

TITLE I

Potato production

Article 1

1. Aid for the cultivation of potatoes for consumption falling within CN codes 0701 90 50 and 0701 90 90 as provided for in Article 14 of Regulation (EC) No 1454/2001 shall be granted in respect of areas:

- (a) that have been sown and for which all normal cultivation work has been completed;
- (b) for which an aid application has been made in accordance with Article 2 below, such applications being deemed to be declarations of cultivated area.

2. Aid may be granted twice each year in respect of a given area.

3. In order to check that the maximum area referred to in Article 14 of Regulation (EC) No 1454/2001 has been observed, where cultivation aid is granted twice in a given year in respect of a given area, the area in question shall be multiplied by 2.

Where the total area for which aid is requested exceeds the maximum area referred to in Article 14 of Regulation (EC) No 1454/2001, the aid shall be granted to applicant producers in proportion to the area shown in their aid applications.

4. Where the potato crop has not reached harvesting stage, the competent Spanish authorities may acknowledge that cases of *force majeure* and natural disasters seriously affecting the area cultivated by the declarant justify continued entitlement to the aid.

Cases of *force majeure* and natural disasters shall be notified to the competent Spanish authorities within five working days of the date on which they occur. Evidence thereof shall be provided within one month following notification.

Spain shall inform the Commission forthwith of cases of *force majeure* or natural disasters it recognises as justifying continued entitlement to the aid.

Article 2

1. Interested growers shall submit an aid application to the competent authorities by a date to be set by them. The date set shall allow the necessary on-the-spot checks to be carried out.

2. Aid applications shall contain at least:

- the name, first name and address of the applicant,
- the cultivated area in hectares and ares, and the land register reference or particulars regarded as equivalent by the body responsible for checking areas of land.

TITLE II

Local marketing

Article 3

1. The lists of the products qualifying for the aid provided for in Article 9 of Regulation (EC) No 1454/2001, classified by category, shall be as shown in column II of Annex I for fruit and vegetables, and in column II of Annex II for flowers and live plants.

2. The products shall be the subject of supply contracts as referred to in Article 4 and comply with the standards established in accordance with Title I of Regulation (EC) No 2200/96 as regards fruit and vegetables and in accordance with Council Regulation (EEC) No 316/68 of 12 March 1968 fixing quality standards for fresh cut flowers and fresh ornamental foliage⁽¹⁾, as regards flowers and plants, or, where no such standards have been adopted, the quality specifications contained in the contracts.

3. The aid shall be granted within the limits of the annual quantities shown in column III of Annexes I and II, by product category.

4. The aid amounts applicable for each product category are shown in columns IV and V of Annexes I and II. The amounts shown in column V shall apply, for all products, to producer organisations recognised in accordance with Articles 11 and 14 of Regulation (EC) No 2200/96 and the amounts shown in column IV shall apply to other individual producers and producer groups.

Article 4

1. Supply contracts as referred to in Article 9(1) of Regulation (EC) No 1454/2001 shall be concluded between individual producers, producer groups or producer organisations and the approved operators referred to in Article 5.

2. Contracts shall include:

- (a) the business names of the parties to the contract;
- (b) a precise description of the products covered by the contract;
- (c) the total quantity to be supplied and the forecast supply schedule;
- (d) the references and areas of the parcels on which the products are grown and the names and addresses of each grower concerned;
- (e) the duration of the undertaking;
- (f) the method of packaging and particulars concerning transport (conditions and costs);
- (g) the precise stage of delivery.

3. Contractors may increase, by not more than 30 %, the quantity initially specified in the contract, by means of an amending clause.

4. Contracts and amending clauses shall be signed not less than 10 days before the start of the deliveries concerned and before a deadline set by the competent authorities, which may differ for each product.

⁽¹⁾ OJ L 71, 21.3.1968, p. 8.

5. The competent authorities may adopt additional provisions concerning contracts, in particular regarding compensation in the event of failure to observe contractual obligations or the fixing of a minimum quantity for each contract.

Article 5

1. Economic operators in the wholesale or retail food trade or in catering, local authorities and food processors wishing to participate in the aid scheme shall submit an application for approval to the body designated by the competent authorities before a date set by the latter.

The body shall lay down the conditions for approval and shall publish each year a list of approved operators not less than one month before the deadline for the signing of contracts.

2. The approved operators shall give an undertaking to:

- (a) market or process the products covered by the supply contracts exclusively in the Canary Islands;
- (b) keep specific accounts for the performance of the supply contracts;
- (c) forward, at the request of the competent departments, any supporting documents concerning the performance of the contracts and the fulfilment of undertakings given under this Regulation.

Article 6

Producers, producer groups and producer organisations wishing to qualify under the aid scheme shall send a declaration together with a copy of the contract referred to in Article 4 to the competent authorities before a date set by the latter.

Article 7

1. Where the documents referred to in Article 6 indicate that the quantities provided for in Article 3(3) are likely to be exceeded, the competent authorities shall fix a temporary reduction coefficient to be applied to aid applications falling within this category and shall inform the interested parties thereof. The coefficient, which shall be equivalent to the ratio between the quantities shown in columns III of Annexes I and II, and the quantities contained in the contracts plus any additional amounts under amending clauses, shall be set before any decision is taken to grant the aid and at the latest one month after the deadline referred to in Article 4(4).

2. Where paragraph 1 is applied, the competent authorities shall establish, at the end of the year, the definitive reduction coefficient to be applied to aid applications falling within the category concerned and submitted during the year.

TITLE III

Marketing outside the Canary Islands

Article 8

1. For the purposes of Article 10 of Regulation (EC) No 1454/2001, 'annual contract' means a contract in which an operator, whether a natural or legal person, established else-

where in the Community gives an undertaking before the start of the marketing period for the product or products in question to buy all or part of the production of an individual producer or a producer organisation with a view to marketing it outside the Canary Islands.

2. Operators who intend to submit an application for aid shall send the annual contract to the competent Spanish authorities before the start of the marketing period for the product or products in question. The contract shall include at least:

- (a) the business names of the contracting parties and their places of establishment;
- (b) a precise description of the products covered by the contract;
- (c) the total quantity to be supplied and the forecast supply schedule;
- (d) the references and areas of the parcels on which the products are grown and, in the case of producer organisations, the names and addresses of each producer;
- (e) the duration of the undertaking;
- (f) the method of packaging and particulars concerning transport (conditions and costs);
- (g) the exact delivery stage.

3. The competent authorities shall assess the contracts for conformity with Article 10 of Regulation (EC) No 1454/2001 and this Regulation. They shall verify that the contracts contain all the information specified in paragraph 2. They shall inform the operator whether paragraph 6 is likely to be applied.

4. For products other than tomatoes and for the purpose of calculating the aid, the value of marketed production, delivered to destination zone, shall be evaluated on the basis of the annual contract, the particular transport documents and any other supporting documents submitted to justify the application for payment.

The value of the marketed production to be taken into account shall be equivalent to that of a delivery at the first port or airport of unloading.

The competent authorities may request any additional information or supporting documentation required to calculate the aid.

5. Applications for aid shall be submitted by the buyer who enters into the commitment to market the product.

6. Where the quantities covered by aid applications exceed the limit of 300 000 tonnes in the case of tomatoes falling within CN code 0702 or 10 000 tonnes in the case of other products, as laid down in Article 10(2) of Regulation (EC) No 1454/2001, the competent authorities shall decide on a uniform reduction coefficient to be applied to all aid applications for the products concerned.

7. The increase in aid provided for in Article 10(4) of Regulation (EC) No 1454/2001 shall be paid on presentation of the commitments entered into by the partners to pool, for a period of not less than three years, the knowledge and know-how required to achieve the objective of the joint venture. These commitments shall include a clause prohibiting cancellation before the end of the aforementioned three-year period.

Where the aforementioned commitments are broken, the buyer may not submit an application for aid for the marketing year concerned.

TITLE IV

Study concerning fruit and vegetables

Article 9

1. The contract to carry out the study referred to in Article 11 of Regulation (EC) No 1454/2001 shall be awarded by invitation to tender on the responsibility of the competent authorities.

2. The draft invitation to tender and the specifications shall be sent to the Commission by the competent authorities. The Commission shall make known its observations, if any, within a period of one month following the date of receipt of the draft.

3. The competent authorities shall send a copy of the final study to the Commission, which shall present its observations, if any, within 45 days of the date of receipt of the study.

4. The Community's financial contribution shall be paid subject to:

- compliance with the provisions of Article 11 and the specifications together with the observations presented,
- payment of the contribution from the Spanish public authorities.

TITLE V

General provisions

Article 10

1. The marketing year shall run from 1 January to 31 December.

2. Applications for aid shall be submitted to the department designated by the Spanish authorities in accordance with the models established by the latter and within the periods laid down by them.

3. The applications for marketing aid shall be accompanied by invoices and all other supporting documents relating to the measures undertaken, in particular the references of the supply contracts and annual contracts.

4. The competent administration, having verified the applications for aid and the relevant supporting documents, shall, in the three months following the end of the period for lodging applications, pay the aid calculated in accordance with this Regulation.

5. Within 15 working days of receipt of the aid referred to in Title II, the producer organisation shall pay its members, by bank or postal transfer, the full amount received.

Article 11

Spain shall communicate to the Commission:

- (a) no later than 31 May, a report on the implementation of the measures referred to in this Regulation in the preceding marketing year showing in particular:
 - the areas which have qualified for the aid referred to in Title I,
 - broken down by aid amount and by product set out in Annexes I and II, the quantities which have qualified for the aid referred to in Title II,
 - broken down by product and their value within the meaning of the second subparagraph of Article 8(4), the quantities which have qualified for the aid and the increased aid referred to in Title III,
- (b) no later than 31 May, broken down by category or product, provisional data concerning the quantities covered by contract for the current year;
- (c) no more than one month following their publication, the detailed rules adopted for the application of this Regulation.

Article 12

1. The national authorities shall take all the measures necessary to guarantee compliance with the conditions to which the grant of the aid provided for in Articles 9, 10 and 14 of Regulation (EC) No 1454/2001 is subject.

2. Checks carried out shall involve administrative and on-the-spot checks. The administrative checks shall be exhaustive and shall involve cross-checks, in particular with the data of the integrated administration and control system.

On the basis of a risk analysis, the national authorities shall carry out random on-the-spot checks on aid applications representing at least 10 % of the quantities, 5 % of the areas and 5 % of the growers for the marketing aids referred to in Articles 9 and 10 and accounting for at least 5 % of the areas and 5 % of the beneficiaries of the aid for the cultivation of potatoes referred to in Article 14.

The national authorities shall withdraw the approvals referred to in Article 5 where the commitments to which they are subject are not fulfilled. They may suspend the payment of aid for one or more marketing years depending on the seriousness of the irregularities uncovered.

3. Where aid has been paid out unduly, the competent administration shall recover the sums paid out, with interest from the date on which the aid is paid out to the date on which it is repaid by the beneficiary.

Where the undue payment has been made because of a false declaration, false documents or serious negligence on the part of the recipient, a penalty equal to the amount paid out unduly, with interest calculated in accordance with the first subparagraph, shall be imposed.

The interest rate shall be that applied by the European Central Bank to its principal refinancing transactions published in the 'C' series of the *Official Journal of the European Communities*, in force on the date of the undue payment and increased by three percentage points.

4. The aid recovered shall be paid to the paying authorities or agencies and deducted by them from the expenditure financed by the European Agricultural Guidance and Guarantee Fund.

TITLE VI

Final provisions

Article 13

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

Titles I, III and IV shall apply from 1 January 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

FRUIT AND VEGETABLES

Product category	CN code	Product	Quantity (tonnes)	Aid (EUR/tonne)	
I	II		III	IV	V
A	ex 0703 10	Onions	16 320	40	120
	0704 90	Cabbages			
	0709 90 60	Sweet com			
	ex 0709 90 90	Pumpkins			
	ex 0709	Other vegetables not elsewhere specified			
	0805 40 00	Grapefruit			
	0805 50 10	Lemons			
	0807 11 00	Watermelons			
	ex 0807 19 00	Melons			
B	0703 20 00	Garlic	32 830	90	180
	ex 0703 90 00	Leeks			
	0704 10 00	Cauliflowers			
	0705	Lettuce and chicory			
	ex 0706 10 00	Carrots			
	0707 00 05	Cucumbers			
	0709 30 00	Aubergines (egg-plants)			
	0709 40 00	Celery			
	ex 0709 60 10	Peppers			
	0709 90 20	Chard and cardoons			
	0709 90 70	Courgettes			
	0714 20	Sweet potatoes			
	0805 10	Oranges			
	ex 0805 20	Mandarins			
	0806 10 10	Tables grapes			
	0808 10	Apples			
	0808 20	Pears			
	0809 10 00	Apricots			
	0809 30	Peaches and nectarines			
	0809 40 05	Plums			
	ex 0810 90 95	Other temperate fruit not elsewhere specified			
C	0708 20 00	French beans	14 550	120	210
	ex 0709 70 00	Spinach			
	ex 0709 90	Cress			
	ex 0802	Almonds			
	0804 20 10	Fresh figs			
	0804 30 00	Pineapples			
	0804 40 00	Avocados			
	ex 0804 50 00	Mangoes			
	0807 20 00	Papaws (papayas)			
	0810 10 00	Strawberries			
	ex 0810 90 95	Cactus figs (prickly pears) and other tropical fruit not elsewhere specified			
D	ex 0701 90	Potatoes harvested from 1 April to 31 December	30 000	60	150

ANNEX II

FLOWERS AND LIVE PLANTS

Product category	CN code	Product	Quantity (units)	Aid (EUR/unit)	
I	II		III	IV	V

Category A: Cuttings

A	0602 90 45	Cuttings	24 000 000	0,010	0,011
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Category B: Flowers

B 1	0603 10	Flowers with a value of between EUR 0,07 and EUR 0,15/unit	8 000 000	0,018	0,019
B 2	0603 10	Flowers with a value of between EUR 0,16 and EUR 0,45/unit	6 000 000	0,040	0,044
B 3	0603 10	Flowers with a value of between EUR 0,46 and EUR 1,20/unit	1 090 000	0,060	0,066

Category C: Plants

C 1	0602 90	Plants with a value of between EUR 0,15 and EUR 0,45/unit	2 500 000	0,045	0,048
C 2	0602 90	Plants with a value of between EUR 0,46 and EUR 1,50/unit	1 000 000	0,222	0,240
C 3	0602 90	Plants with a value of between EUR 1,51 and EUR 3,00/unit	750 000	0,456	0,480
C 4	0602 90	Plants with a value of more than EUR 3,01/unit	500 000	0,601	0,637

COMMISSION REGULATION (EC) No 397/2002**of 1 March 2002****fixing the maximum aid for concentrated butter for the 264th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽³⁾, as last amended by Regulation (EC) No 124/1999 ⁽⁴⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

- (2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 264th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

- | | |
|---------------------|-----------------|
| — maximum aid: | EUR 105/100 kg, |
| — end-use security: | EUR 116/100 kg. |

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 45, 21.2.1990, p. 8.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 398/2002**of 1 March 2002****fixing the maximum purchasing price for butter for the 45th invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 13 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EC) No 1614/2001 ⁽⁴⁾, provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the interven-

tion price applicable and that it may also be decided not to proceed with the invitation to tender.

- (2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 45th invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 26 February 2002, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 333, 24.12.1999, p. 11.

⁽⁴⁾ OJ L 214, 8.8.2001, p. 20.

**COMMISSION REGULATION (EC) No 399/2002
of 1 March 2002**

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 92nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽³⁾, as last amended by Regulation (EC) No 635/2000 ⁽⁴⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price

or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices and the maximum aid and processing securities applying for the 92nd individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 350, 20.12.1997, p. 3.

⁽⁴⁾ OJ L 76, 25.3.2000, p. 9.

ANNEX

to the Commission Regulation of 1 March 2002 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 92nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		85	81	—	81
	Butter < 82 %		83	79	—	79
	Concentrated butter		105	101	105	101
	Cream		—	—	36	34
Processing security	Butter		94	—	—	—
	Concentrated butter		116	—	116	—
	Cream		—	—	40	—

COMMISSION REGULATION (EC) No 400/2002**of 1 March 2002****concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled round grain A rice issued in Regulation (EC) No 2007/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1987/2001 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2007/2001 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed.

(4) 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

No action shall be taken on the tenders submitted from 22 to 28 February 2002 in response to the invitation to tender for the export refund on wholly milled round grain A rice to certain third countries issued in Regulation (EC) No 2007/2001.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 271, 12.10.2001, p. 5.

⁽³⁾ OJ L 272, 13.10.2001, p. 13.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 401/2002
of 1 March 2002**

concerning tenders submitted in response to the invitation to tender for the export to certain third European countries of wholly milled round, medium and long grain A rice issued in Regulation (EC) No 2008/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1987/2001 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2008/2001 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed.

(4) 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

No action shall be taken on the tenders submitted from 22 to 28 February 2002 in response to the invitation to tender for the export refund on wholly milled round, medium and long grain A rice to certain third European countries issued in Regulation (EC) No 2008/2001.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 271, 12.10.2001, p. 5.

⁽³⁾ OJ L 272, 13.10.2001, p. 15.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 402/2002**of 1 March 2002****fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 2009/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1987/2001 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2009/2001 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

- (3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

- (4) 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 maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2009/2001 is hereby fixed on the basis of the tenders submitted from 22 to 28 February 2002 at 203,00 EUR/t.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 271, 12.10.2001, p. 5.

⁽³⁾ OJ L 272, 13.10.2001, p. 17.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 403/2002**of 1 March 2002****fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2010/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1987/2001 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2010/2001 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) 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 maximum export refund on wholly milled long grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2010/2001 is hereby fixed on the basis of the tenders submitted from 22 to 28 February 2002 at 297,00 EUR/t.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 271, 12.10.2001, p. 5.

⁽³⁾ OJ L 272, 13.10.2001, p. 19.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 404/2002**of 1 March 2002****concerning tenders submitted in response to the invitation to tender for the export of husked long grain rice to the island of Réunion referred to in Regulation (EC) No 2011/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1987/2001 ⁽²⁾, and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion ⁽³⁾, as amended by Regulation (EC) No 1453/1999 ⁽⁴⁾, and in particular Article 9(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2011/2001 ⁽⁵⁾ opens an invitation to tender for the subsidy on rice exported to Réunion.
- (2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95

and on the basis of the tenders submitted, to make no award.

- (3) On the basis of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89, a maximum subsidy should not be fixed.
- (4) 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

No action shall be taken on the tenders submitted from 25 to 28 February 2002 in response to the invitation to tender referred to in Regulation (EC) No 2011/2001 for the subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 271, 12.10.2001, p. 5.

⁽³⁾ OJ L 261, 7.9.1989, p. 8.

⁽⁴⁾ OJ L 167, 2.7.1999, p. 19.

⁽⁵⁾ OJ L 272, 13.10.2001, p. 21.

COMMISSION REGULATION (EC) No 405/2002
of 1 March 2002
fixing the export refunds on beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

300 kilograms, and, on the other on adult bovine animals of a live weight of at least 300 kilograms.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Commission Regulation (EC) No 2345/2001 ⁽²⁾, and in particular Article 33(12) thereof,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products ⁽³⁾, as amended by Regulation (EEC) No 3209/89 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 33 of Regulation (EC) No 1254/1999 provides that the difference between prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EEC) No 32/82 ⁽⁵⁾, as last amended by Regulation (EC) No 744/2000 ⁽⁶⁾, Regulation (EEC) No 1964/82 ⁽⁷⁾, as last amended by Regulation (EC) No 2772/2000 ⁽⁸⁾, and Regulation (EEC) No 2388/84 ⁽⁹⁾, as last amended by Regulation (EEC) No 3661/92 ⁽¹⁰⁾, lay down the conditions for granting special export refunds on certain cuts of beef and veal and certain preserved beef and veal products.
- (3) It follows from applying those rules and criteria to the foreseeable situation on the market in beef and veal that the refund should be as set out below.
- (4) Given the current market situation in the Community and the possibilities of disposal in certain third countries in particular, export refunds should be granted, on the one hand, on bovine animals intended for slaughter of a live weight greater than 220 kilograms and less than

- (5) Export refunds should be granted for certain destinations on some fresh or chilled meat listed in the Annex under CN code 0201, on some frozen meat listed in the Annex under CN code 0202, on some meat or offal listed in the Annex under CN code 0206 and on some other prepared or preserved meat or offal listed in the Annex under CN code 1602 50 10.

- (6) In view of the wide differences in products covered by CN codes 0201 20 90 9700 and 0202 20 90 9100 used for refund purposes, refunds should only be granted on cuts in which the weight of bone does not exceed one third.

- (7) In the case of meat of bovine animals, boned or boneless, salted and dried, there are traditional trade flows to Switzerland. To allow this trade to continue, the refund should be set to cover the difference between prices on the Swiss market and export prices in the Member States.

- (8) In the case of certain other cuts and preserves of meat or offal shown in the Annex under CN codes 1602 50 31 to 1602 50 80, the Community share of international trade may be maintained by granting a refund corresponding to that at present available.

- (9) In the case of other beef and veal products, a refund need not be fixed since the Community's share of world trade is not significant.

- (10) Commission Regulation (EEC) No 3846/87 ⁽¹¹⁾, as last amended by Regulation (EC) No 2556/2001 ⁽¹²⁾, establishes the agricultural product nomenclature for the purposes of export refunds.

- (11) In order to simplify customs export formalities for operators, the refunds on all frozen cuts should be brought into line with those on fresh or chilled cuts other than those from adult male bovine animals.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 315, 1.12.2001, p. 29.

⁽³⁾ OJ L 34, 9.2.1979, p. 2.

⁽⁴⁾ OJ L 312, 27.10.1989, p. 5.

⁽⁵⁾ OJ L 4, 8.1.1982, p. 11.

⁽⁶⁾ OJ L 89, 11.4.2000, p. 3.

⁽⁷⁾ OJ L 212, 21.7.1982, p. 48.

⁽⁸⁾ OJ L 321, 19.12.2000, p. 35.

⁽⁹⁾ OJ L 221, 18.8.1984, p. 28.

⁽¹⁰⁾ OJ L 370, 19.12.1992, p. 16.

⁽¹¹⁾ OJ L 366, 26.12.1987, p. 1.

⁽¹²⁾ OJ L 348, 31.12.2001, p. 1.

- (12) Checks on products covered by CN code 1602 50 should be stepped up by making the granting of refunds on these products conditional on manufacture under the arrangements provided for in Article 4 of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products ⁽¹⁾, as amended by Regulation (EEC) No 2026/83 ⁽²⁾.
- (13) Refunds on female animals should vary depending on their age in order to prevent abuses in the export of certain pure-bred breeding animals.
- (14) Opportunities exist for the export to certain third countries of heifers other than those intended for slaughter, but to prevent any abuse control criteria should be laid down to ensure that these animals are not more than 36 months old.
- (15) Under Article 6(2) of Regulation (EEC) No 1964/82, the special refund is to be reduced if the quantity of boned meat to be exported amounts to less than 95 %, but not less than 85 %, of the total weight of cuts produced by boning.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

- 1. The list of products on which export refunds as referred to in Article 33 of Regulation (EC) No 1254/1999 are granted

and the amount thereof and the destinations shall be as set out in the Annex to this Regulation.

- 2. The products must meet the relevant health marking requirements of:

- Chapter XI of Annex I to Council Directive 64/433/EEC ⁽³⁾,
- Chapter VI of Annex I to Council Directive 94/65/EC ⁽⁴⁾,
- Chapter VI of Annex B to Council Directive 77/99/EEC ⁽⁵⁾.

Article 2

The grant of the refund for product code 0102 90 59 9000 of the nomenclature for export refunds and for exports to the third country 075 listed in the Annex to this Regulation shall be subject to presentation, when the customs formalities for export are completed, of the original and one copy of the veterinary certificate signed by an official veterinarian certifying that these are heifers of an age of not more than 36 months. The original of the certificate shall be returned to the exporter and the copy, certified as being in accordance with the regulations by the customs authorities, shall be attached to the application for payment of the refund.

Article 3

In the case referred to in the third subparagraph of Article 6(2) of Regulation (EEC) No 1964/82 the rate of the refund on products falling within CN code 0201 30 00 9100 shall be reduced by EUR 14,00/100 kg.

Article 4

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 62, 7.3.1980, p. 5.

⁽²⁾ OJ L 199, 22.7.1983, p. 12.

⁽³⁾ OJ L 121, 29.7.1964, p. 2012/64.

⁽⁴⁾ OJ L 368, 31.12.1994, p. 10.

⁽⁵⁾ OJ L 26, 31.1.1977, p. 85.

ANNEX

to the Commission Regulation of 1 March 2002 fixing export refunds on beef

Product code	Destination	Unit of measurement	Refunds (')
0102 10 10 9120	A00	EUR/100 kg live weight	53,00
0102 10 10 9130	B02	EUR/100 kg live weight	15,50
	B03	EUR/100 kg live weight	9,50
	039	EUR/100 kg live weight	5,00
0102 10 30 9120	A00	EUR/100 kg live weight	53,00
0102 10 30 9130	B02	EUR/100 kg live weight	15,50
	B03	EUR/100 kg live weight	9,50
	039	EUR/100 kg live weight	5,00
0102 10 90 9120	A00	EUR/100 kg live weight	53,00
0102 90 41 9100	B02	EUR/100 kg live weight	41,00
0102 90 51 9000	B02	EUR/100 kg live weight	15,50
	B03	EUR/100 kg live weight	9,50
	039	EUR/100 kg live weight	5,00
0102 90 59 9000	B02	EUR/100 kg live weight	15,50
	B03	EUR/100 kg live weight	9,50
	039	EUR/100 kg live weight	5,00
	075 ⁽⁹⁾	EUR/100 kg live weight	53,00
0102 90 61 9000	B02	EUR/100 kg live weight	15,50
	B03	EUR/100 kg live weight	9,50
	039	EUR/100 kg live weight	5,00
0102 90 69 9000	B02	EUR/100 kg live weight	15,50
	B03	EUR/100 kg live weight	9,50
	039	EUR/100 kg live weight	5,00
0102 90 71 9000	B02	EUR/100 kg live weight	41,00
	B03	EUR/100 kg live weight	23,00
	039	EUR/100 kg live weight	14,00
0102 90 79 9000	B02	EUR/100 kg live weight	41,00
	B03	EUR/100 kg live weight	23,00
	039	EUR/100 kg live weight	14,00
0201 10 00 9110 ⁽¹⁾	B02	EUR/100 kg net weight	71,50
	B03	EUR/100 kg net weight	43,00
	039	EUR/100 kg net weight	23,50
0201 10 00 9120	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 10 00 9130 ⁽¹⁾	B02	EUR/100 kg net weight	97,00
	B03	EUR/100 kg net weight	56,50
	039	EUR/100 kg net weight	33,50
0201 10 00 9140	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0201 20 20 9110 ⁽¹⁾	B02	EUR/100 kg net weight	97,00
	B03	EUR/100 kg net weight	56,50
	039	EUR/100 kg net weight	33,50

Product code	Destination	Unit of measurement	Refunds (°)
0201 20 20 9120	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0201 20 30 9110 ⁽¹⁾	B02	EUR/100 kg net weight	71,50
	B03	EUR/100 kg net weight	43,00
	039	EUR/100 kg net weight	23,50
0201 20 30 9120	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 20 50 9110 ⁽¹⁾	B02	EUR/100 kg net weight	123,00
	B03	EUR/100 kg net weight	71,50
	039	EUR/100 kg net weight	41,00
0201 20 50 9120	B02	EUR/100 kg net weight	58,50
	B03	EUR/100 kg net weight	17,50
	039	EUR/100 kg net weight	19,50
0201 20 50 9130 ⁽¹⁾	B02	EUR/100 kg net weight	71,50
	B03	EUR/100 kg net weight	43,00
	039	EUR/100 kg net weight	23,50
0201 20 50 9140	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 20 90 9700	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 30 00 9050	400 ⁽³⁾	EUR/100 kg net weight	23,50
	404 ⁽⁴⁾	EUR/100 kg net weight	23,50
0201 30 00 9060 ⁽⁶⁾	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0201 30 00 9100 ⁽²⁾ ⁽⁶⁾	B02	EUR/100 kg net weight	172,00
	B03	EUR/100 kg net weight	102,00
	039	EUR/100 kg net weight	60,00
	809, 822	EUR/100 kg net weight	152,50
0201 30 00 9120 ⁽²⁾ ⁽⁶⁾	B08	EUR/100 kg net weight	94,50
	B09	EUR/100 kg net weight	88,00
	B03	EUR/100 kg net weight	56,50
	039	EUR/100 kg net weight	33,00
	809, 822	EUR/100 kg net weight	83,50
0202 10 00 9100	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0202 10 00 9900	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0202 20 10 9000	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0202 20 30 9000	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50

Product code	Destination	Unit of measurement	Refunds (°)
0202 20 50 9100	B02	EUR/100 kg net weight	58,50
	B03	EUR/100 kg net weight	17,50
	039	EUR/100 kg net weight	19,50
0202 20 50 9900	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0202 20 90 9100	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0202 30 90 9100	400 ⁽³⁾	EUR/100 kg net weight	23,50
	404 ⁽⁴⁾	EUR/100 kg net weight	23,50
0202 30 90 9200 ⁽⁶⁾	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0206 10 95 9000	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0206 29 91 9000	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0210 20 90 9100	039	EUR/100 kg net weight	23,00
1602 50 10 9170 ⁽⁸⁾	B02	EUR/100 kg net weight	22,50
	B03	EUR/100 kg net weight	15,00
	039	EUR/100 kg net weight	17,50
1602 50 31 9125 ⁽⁵⁾	A00	EUR/100 kg net weight	88,50
1602 50 31 9325 ⁽⁵⁾	A00	EUR/100 kg net weight	79,00
1602 50 39 9125 ⁽⁵⁾	A00	EUR/100 kg net weight	88,50
1602 50 39 9325 ⁽⁵⁾	A00	EUR/100 kg net weight	79,00
1602 50 39 9425 ⁽⁵⁾	A00	EUR/100 kg net weight	30,00
1602 50 39 9525 ⁽⁵⁾	A00	EUR/100 kg net weight	30,00
1602 50 80 9535 ⁽⁸⁾	A00	EUR/100 kg net weight	17,50

⁽¹⁾ Entry under this subheading is subject to the submission of the certificate appearing in the Annex to amended Commission Regulation (EEC) No 32/82.

⁽²⁾ The refund is granted subject to compliance with the conditions laid down in amended Regulation (EEC) No 1964/82.

⁽³⁾ Carried out in accordance with amended Commission Regulation (EEC) No 2973/79 (OJ L 336, 29.12.1979, p. 44).

⁽⁴⁾ Carried out in accordance with amended Commission Regulation (EC) No 2051/96 (OJ L 274, 26.10.1996, p. 18).

⁽⁵⁾ OJ L 221, 18.8.1984, p. 28.

⁽⁶⁾ The lean bovine meat content excluding fat is determined in accordance with the procedure described in the Annex to Commission Regulation (EEC) No 2429/86 (OJ L 210, 1.8.1986, p. 39).

The term 'average content' refers to the sample quantity as defined in Article 2(1) of Regulation (EC) No 2457/97 (OJ L 340, 11.12.1997, p. 29). The sample is to be taken from that part of the consignment presenting the highest risk.

⁽⁷⁾ Article 33(10) of amended Regulation (EC) No 1254/1999 provides that no export refunds shall be granted on products imported from third countries and re-exported to third countries.

⁽⁸⁾ The refund is granted only on products manufactured under the arrangement provided for in Article 4 of amended Council Regulation (EEC) No 565/80.

⁽⁹⁾ The grant of the refund is subject to compliance with the conditions referred to in Article 2 of this Regulation.

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are defined as follows:

B02: B08 and B09

B03: Ceuta, Melilla, Iceland, Norway, Faroe Islands, Andorra, Gibraltar, Vatican City, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Albania, Slovenia, Croatia, Bosnia and Herzegovina, Yugoslavia, Former Yugoslav Republic of Macedonia, the communes of Livigno and Campione d'Italia, Helgoland, Greenland, Cyprus, stores and provisions (destinations referred to in Articles 36 and 45, and if appropriate in Article 44, of Commission Regulation (EC) No 800/1999, as amended)

B08: Malta, Turkey, Ukraine, Belarus, Moldova, Russia, Georgia, Armenia, Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, Morocco, Algeria, Tunisia, Libya, Egypt, Lebanon, Syria, Iraq, Iran, Israel, West Bank/Gaza Strip, Jordan, Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Yemen, Pakistan, Sri Lanka, Myanmar (Burma), Thailand, Vietnam, Indonesia, Philippines, China, North Korea, Hong Kong

B09: Sudan, Mauritania, Mali, Burkina Faso, Niger, Chad, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Côte d'Ivoire, Ghana, Togo, Benin, Nigeria, Cameroon, Central African Republic, Equatorial Guinea, São Tomé and Príncipe, Gabon, Congo, Congo (Democratic Republic), Rwanda, Burundi, Saint Helena and dependencies, Angola, Ethiopia, Eritrea, Djibouti, Somalia, Uganda, Tanzania, Seychelles and dependencies, British Indian Ocean Territory, Mozambique, Mauritius, Comoros, Mayotte, Zambia, Malawi, South Africa, Lesotho.

COMMISSION REGULATION (EC) No 406/2002**of 1 March 2002****deciding not to accept tenders submitted in response to the 284th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Commission Regulation (EC) No 2345/2001 ⁽²⁾, and in particular Article 47(8) thereof,

Whereas:

- (1) Commission Regulation (EC) No 562/2000 of 15 March 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef ⁽³⁾, as last amended by Regulation (EC) No 1564/2001 ⁽⁴⁾, lays down buying standards. Pursuant to the abovementioned Regulation, an invitation to tender was opened pursuant to Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender ⁽⁵⁾, as last amended by Regulation (EC) No 238/2002 ⁽⁶⁾.
- (2) Article 13(1) of Regulation (EC) No 562/2000 lays down that a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received. In accordance with Article 13(2) of that Regulation, a decision may be taken not to proceed with the tendering procedure.
- (3) Once tenders submitted in respect of the 284th partial invitation to tender have been considered and taking account, pursuant to Article 47(8) of Regulation (EC) No 1254/1999, of the requirements for reasonable support

of the market and the seasonal trend in slaughterings and prices, it has been decided not to proceed with the tendering procedure.

- (4) Article 1(7) of Regulation (EC) No 1209/2001 of 20 June 2001 derogating from Regulation (EC) No 562/2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards as buying-in of beef ⁽⁷⁾, as last amended by Regulation (EC) No 2579/2001 ⁽⁸⁾, also opens buying-in of carcasses and half-carcasses of store cattle and lays down special rules in addition to those laid down for the buying-in of other products. For the 284th partial invitation to tender, no tender has been submitted.
- (5) In the light of developments, this Regulation should enter into force immediately.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

No award shall be made against the 284th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89.

Article 2

This Regulation shall enter into force on 2 March 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 315, 1.12.2001, p. 29.

⁽³⁾ OJ L 68, 16.3.2000, p. 22.

⁽⁴⁾ OJ L 208, 1.8.2001, p. 14.

⁽⁵⁾ OJ L 159, 10.6.1989, p. 36.

⁽⁶⁾ OJ L 39, 9.2.2002, p. 4.

⁽⁷⁾ OJ L 165, 21.6.2001, p. 15.

⁽⁸⁾ OJ L 344, 28.12.2001, p. 68.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 December 2001

concerning the conclusion of a Framework Agreement between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes

(2002/179/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 13, 61, 95, 129, 137, 149(4), 150(4), 151(5), 152(4), 153(4), 156, 157, 166, 175(1) and 308, in conjunction with the second sentence of the first subparagraph of Article 300(2), the second subparagraph of Article 300(3), and Article 300(4) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the assent of the European Parliament ⁽²⁾,

Whereas:

- (1) The Resolution of the EU-Turkey Association Council of 6 March 1995 looked forward to initiatives being taken in a number of fields to broaden the scope of EU-Turkey cooperation, including possible participation in certain Community programmes.
- (2) The European Council in Luxembourg in December 1997 made participation in the Community programmes a way of stepping-up the enhanced pre-accession strategy for candidate countries, such participation being determined case-by-case. At the same time, a European Strategy for the Republic of Turkey was established which allowed the same possibility for that country. Following the European Council meetings in Helsinki in December 1999 and, in particular, in Nice in December 2000, the case-by-case approach in this field could be shifted to a more far-reaching one embracing most of the Community programmes.
- (3) The Helsinki European Council stated that the Republic of Turkey is a candidate country destined to join the Union on the basis of the same criteria applied to the

other candidate countries, and that, building on the existing European Strategy, the Republic of Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms and that the Republic of Turkey will also have the opportunity to participate in Community programmes and agencies and in meetings between candidate countries and the Union in the context of the accession process.

- (4) In accordance with the negotiating directives adopted by the Council on 5 June 2001, the Commission has negotiated on behalf of the Community a Framework Agreement with the Republic of Turkey on the general principles for its participation in Community programmes.
- (5) With regard to some of the programmes covered by the Agreement, the Treaty provides for no powers other than those under Article 308.
- (6) The specific terms and conditions regarding the participation of the Republic of Turkey in the Community programmes, in particular the financial contribution payable, should be determined by the Commission on behalf of the Community. For that purpose the Commission should be assisted by a special committee appointed by the Council.
- (7) The Republic of Turkey may apply for financial assistance for participation in Community programmes under Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the form of economic and social structures in the framework of the Euro-Mediterranean partnership ⁽³⁾, under Council Regulation (EC) No 764/2000 of 10 April 2000 regarding the implementation of

⁽¹⁾ OJ C 304 E of 20.10.2001, p. 342.

⁽²⁾ Opinion delivered on 11.12.2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 189, 30.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 2698/2000 (OJ L 311, 12.12.2000, p. 1).

measures to intensify the EC-Turkey Customs Union ⁽¹⁾, or under Regulation (EC) No 257/2001 of the European Parliament and of the Council of 22 January 2001 regarding the implementation of measures to promote economic and social development in Turkey ⁽²⁾.

- (8) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the EC Treaty, is not participating in the part of this Council decision adopted with reference to Title IV of the EC Treaty, and Denmark is not bound by this part of this Council decision nor subject to its application.
- (9) The United Kingdom and Ireland intend to participate in the adoption of the Council Regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters and when it is adopted, the United Kingdom and Ireland will be bound by it and subject to its application. In respect of any future Community instrument adopted under Title IV of the EC Treaty, implementing or establishing any future Community programme, the United Kingdom and Ireland will only be bound by the part relating to Title IV of the EC Treaty of this Council decision and subject to its application, if the United Kingdom and Ireland are bound by that instrument in accordance with the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the EC Treaty.
- (10) The Agreement should be reviewed by the Commission at regular intervals.
- (11) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Framework Agreement between the European Community and the Republic of Turkey on the general principles for the

participation of the Republic of Turkey in Community programmes, is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

1. The Commission is authorised to determine, on behalf of the Community, the specific terms and conditions regarding the participation of the Republic of Turkey in each individual programme, including the financial contribution payable. The Commission shall be assisted in this task by a special committee appointed by the Council.

2. Where the Republic of Turkey requests external assistance, the procedures provided for in Regulation (EC) No 1488/96, in Regulation (EC) No 764/2000, in Regulation (EC) No 257/2001, and in similar Regulations providing for Community external assistance to the Republic of Turkey that may be adopted in the future, shall apply.

Article 3

No later than three years after the date of entry into force of the Agreement, and every three years thereafter, the Commission shall review the implementation of the Agreement and report thereon to the Council. The report shall be accompanied, where necessary, by appropriate proposals.

Article 4

The President of the Council is authorised to designate the person(s) empowered to sign the Agreement in order to bind the Community.

Article 5

The President of the Council shall, on behalf of the Community, give the notifications provided for in Article 9 of the Agreement ⁽³⁾.

Done at Brussels, 17 December 2001.

For the Council

The President

A. NEYTS-UYTTEBROECK

⁽¹⁾ OJ L 94, 14.4.2000, p. 6.

⁽²⁾ OJ L 39, 9.2.2001, p. 1.

⁽³⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

FRAMEWORK AGREEMENT**between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes**

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE REPUBLIC OF TURKEY, hereinafter referred to as 'Turkey',

of the other part,

Whereas:

- (1) The Resolution of the EU-Turkey Association Council of 6 March 1995 looked forward to initiatives being taken in a number of fields to broaden the scope of EU-Turkey cooperation, including possible participation in certain Community programmes.
- (2) The European Council in Luxembourg in December 1997 made participation in the Community programmes a way of stepping-up the enhanced pre-accession strategy for candidate countries, such participation being determined case-by-case. At the same time, a European Strategy for Turkey was established which allowed the same possibility for that country. Following the European Council meetings in Helsinki in December 1999 and, in particular, in Nice in December 2000, the case-by-case approach in this field could be shifted to a far-reaching one embracing most of the Community programmes.
- (3) The Helsinki European Council stated that Turkey is a candidate country destined to join the Union on the basis of the same criteria applied to the other candidate countries, and that, building on the existing European strategy, Turkey, like other candidate countries, will benefit from a pre-accession strategy to stimulate and support its reforms, including the opportunity to participate in Community programmes and agencies and that the Republic of Turkey will also have the opportunity to participate in Community programmes and agencies and in meetings between candidate countries and the Union in the context of the accession process.
- (4) Turkey has expressed the wish to participate in a number of Community programmes.
- (5) The specific terms and conditions, including financial contribution, regarding the participation of Turkey in each particular programme should be determined by agreement between the Commission of the European Communities, acting on behalf of the Community, and the competent authorities of Turkey,

HAVE AGREED AS FOLLOWS:

Article 1

Turkey shall be allowed to participate in all Community programmes opened to participation of candidate countries of Central and Eastern Europe, in accordance with the provisions adopting these programmes.

Article 2

Turkey shall contribute financially to the general budget of the European Union corresponding to the specific programmes in which Turkey participates.

Article 3

Turkey's representatives shall be allowed to take part, as observers and for the points which concern Turkey, in the management committees responsible for monitoring the programmes to which Turkey contributes financially.

Article 4

Projects and initiatives submitted by participants from Turkey shall, as far as possible, be subject to the same conditions, rules and procedures pertaining to the programmes concerned as are applied to Member States.

Article 5

The specific terms and conditions regarding the participation of Turkey in each particular programme, in particular the financial contribution payable, will be determined by agreement between the Commission, acting on behalf of the Community, and the competent authorities of Turkey.

If Turkey applies for Community external assistance on the basis of Council Regulation (EC) No 390/2001 of 26 February 2001 on assistance to Turkey in the framework of the pre-accession strategy and in particular on the establishment of an Accession Partnership ⁽¹⁾, pursuant to Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership ⁽²⁾, or Council Regulation (EC) No 764/2000 of 10 April 2000 regarding the implementation of measures to intensify the EC-Turkey Customs Union ⁽³⁾, or Regulation (EC) No 257/2001 of the European Parliament and of the Council of 22 January 2001 regarding the implementation of measures to promote economic and social development in Turkey ⁽⁴⁾, or pursuant to any similar Regulation providing for Community external assistance to Turkey that may be adopted in future, the conditions governing the use by Turkey of the Community assistance shall be determined in a Financing Memorandum.

Article 6

The Agreement shall apply for an indeterminate period.

It may be denounced by either Party by giving six months' notice in writing.

Article 7

No later than three years after the date of entry into force of this Agreement, and every three years thereafter, both Contracting Parties may review the implementation of this Agreement on the basis of actual participation of Turkey in one or more Community programmes.

Article 8

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of Turkey.

Article 9

This Agreement shall enter into force on the day on which the Contracting Parties have notified each other of the completion of their respective procedures.

Article 10

The Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Turkish languages, each of these texts being equally authentic.

⁽¹⁾ OJ L 58, 28.2.2001, p. 1.

⁽²⁾ OJ L 189, 30.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 2698/2000 (OJ L 311, 12.2.2000, p. 1).

⁽³⁾ OJ L 94, 14.4.2000, p. 6.

⁽⁴⁾ OJ L 39, 9.2.2001, p. 1.

Hecho en Bruselas, el veintiséis de febrero del dos mil dos.

Udfærdiget i Bruxelles den seksogtyvende februar to tusind og to.

Geschehen zu Brüssel am sechszwanzigsten Februar zweitausendundzwei.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Φεβρουαρίου δύο χιλιάδες δύο.

Done at Brussels on the twenty-sixth day of February in the year two thousand and two.

Fait à Bruxelles, le vingt-six février deux mille deux.

Fatto a Bruxelles, addì ventisei febbraio duemiladue.

Gedaan te Brussel, de zesentwintigste februari tweeduizendtwee.

Feito em Bruxelas, em vinte e seis de Fevereiro de dois mil e dois.

Tehty Brysselissä kahdentenakymmenentenäkuudentena päivänä helmikuuta vuonna kaksituhattakaksi.

Som skedde i Bryssel den tjugosjätte februari tjugohundratvå.

Brüksel'de, ikibin iki yihnin Şubat ayının yirmi altıncı günü imzalanmıştır.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

Per la Comunità europea

Voor de Europese Gemeenschap

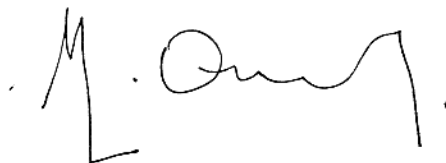
Pela Comunidade Europeia

Euroopan yhteisön puolesta

För Europeiska gemenskapen



Türkiye Cumhuriyeti adına



COMMISSION

COMMISSION DECISION

of 5 December 2001

relating to a proceeding under Article 82 of the EC Treaty

(COMP/37.859 — De Post-La Poste)

(notified under document number C(2001) 3644 CORR.)

(Only the Dutch and French texts are authentic)

(Text with EEA relevance)

(2002/180/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, the first Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by Regulation (EC) No 1216/1999 ⁽²⁾, and in particular Article 15(2) thereof,

Having regard to the complaint lodged by Hays Information Management SA on 7 April 2000 alleging infringement of Article 82 of the EC Treaty by La Poste and requesting the Commission to put an end to this infringement,

Having regard to the Commission decision of 1 June 2001 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission in accordance with Article 19(1) of Regulation No 17 and with Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty ⁽³⁾,

Having regard to the final report of the Hearing Officer,

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

Whereas:

I. FACTS

A. The complainant

- (1) The complainant, Hays Information Management SA (hereinafter called 'Hays'), is the Belgian subsidiary of Hays plc, a private company incorporated under English law active in the United Kingdom, continental Europe and the United States of America. In 1975 Hays plc launched Document Exchange ('DX') ⁽⁴⁾ in the United Kingdom, a closed-user-group mail delivery service offering express, business-to-business professional courier services (before-9 a.m. next-day delivery).

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽²⁾ OJ L 148, 15.6.1999, p. 5.

⁽³⁾ OJ L 354, 30.12.1998, p. 18.

⁽⁴⁾ DX is the generic name of the document exchange service provided by Hays DX.

The DX service has since expanded throughout the United Kingdom (more than 38 000 subscribers and 4 000 document exchanges), and into Ireland (starting in 1980, with over 3 000 subscribers and 153 document exchanges), France (starting in 1991, with over 300 subscribers and 51 document exchanges) and Belgium (starting in 1982, with 1 840 subscribers and 200 document exchanges). The document exchange network in Belgium consists mainly of insurance companies. In the financial year 1999/2000, Hays's DX business in Belgium achieved a turnover of BEF 105 million. ⁽⁵⁾

B. The undertakings concerned

- (2) De Post-La Poste (hereinafter called 'La Poste') is an independent public undertaking incorporated under Belgian law subject to the Act of 21 March 1991 on the reform of certain public economic undertakings. It holds the statutory postal monopoly (reserved services) as defined in Article 144 *octies* (1) and (2), of the Act of 21 March 1991, as amended by Article 21 of the Royal Decree of 9 June 1999 ⁽⁶⁾. In 1999 La Poste's turnover came to BEF 71 billion. The turnover of the mail business unit in 1999 was BEF 51,9 billion ⁽⁷⁾.
- (3) The other undertaking against which the complaint is directed, Key Mail, was founded under the name Air Business Belgium ('ABB') in 1984. In 1992 it changed its name to Key Mail. At the time of the complaint, Key Mail was a public limited liability company incorporated under Belgian law providing mail services to the financial and insurance sectors and international courier services to exporters. In 1998 Key Mail achieved a turnover of approximately BEF 240 million. At the end of 2000 it sold its entire mail business to the La Poste subsidiary eXbo Services International SA ('eXbo').
- (4) Since May 1998 the business-to-business service in question has been offered to the insurance industry jointly by La Poste and ABB. On 24 January 2000 ABB concluded, together with La Poste, an agreement concerning the business-to-business service with the Union Professionnelle des Compagnies d'Assurance ('UPEA') ⁽⁸⁾. La Poste and ABB are defined in the agreement as joint 'Operator' of the service to which the agreement relates. La Poste and ABB both helped to actually set up the integrated network that was needed in order to provide the business-to-business service. ABB's contribution included helping to develop a mail-addressing software package, and input on the liaison and item sorting/counting activities provided for in Article 5(4) of the business-to-business service agreement. For this, ABB was granted entitlement to [...] ^(*) of the amount that La Poste would charge under the agreement ⁽⁹⁾.
- (5) Nevertheless, despite having helped to work out the practical arrangements for providing the service to the insurance industry and to negotiate, conclude and implement the resulting agreements, ABB is not a beneficiary of the postal monopoly. Consequently, it does not have the power to link the tariff advantages enjoyed by mail covered by the monopoly to signature of the new agreement on business-to-business mail, the postal monopoly holder alone being able to grant such advantages.

C. Subject matter of the case

- (6) This Decision concerns the cancellation by La Poste of the preferential tariff previously granted to the UPEA for business-to-private mail ⁽¹⁰⁾ covered by the monopoly and the withdrawal of that act of cancellation only once the UPEA had signed a new business-to-business agreement proposed by La Poste. La Poste thus obliged the UPEA, which wished to retain the benefit of the preferential tariff agreement, to purchase from it the new business-to-business service also. The investigation into this case was commenced following receipt of an application from Hays made under Article 3 of Regulation No 17 on 7 April 2000.

⁽⁵⁾ See Hays's comments of 25 January 2001, p. 2.

⁽⁶⁾ Moniteur Belge ed. 2 of 18 August 1999, 30697(30713).

⁽⁷⁾ See profit and loss account in La Poste's Annual Report, 1999.

⁽⁸⁾ Agreement between La Poste and Key Mail of 24 January 2000, Annex 11 to La Poste's comments of 21 November 2000.

^(*) Business secrets.

⁽⁹⁾ See Article 7 of the agreement between La Poste and Key Mail, Annex 11 to La Poste's comments of 21 November 2000.

⁽¹⁰⁾ The term 'business-to-private mail' is used in this Decision to designate the general letter post service market as defined in recital 37.

D. Background

- (7) The insurance sector in Belgium comprises 240 insurance companies, 105 of which, including the largest companies in Belgium, are members of the UPEA.
- (8) In 1982 Hays, through its Hays DX division, set up in Belgium a network dedicated to the exchange of documents between insurance companies and between insurance companies and insurance brokers ⁽¹¹⁾. A subscription agreement was signed between the UPEA and Hays on 14 June 1982 ⁽¹²⁾. This subscription agreement with the UPEA was renewed each year before being concluded for a period of one year, renewable by tacit agreement each year from 1998 ⁽¹³⁾. The service is subscribed to mainly for consignments between insurance companies in Belgium, France, Ireland and the United Kingdom ⁽¹⁴⁾. The Hays DX system consists of a closed network ensuring the transport of mail between users subscribing to the service via personalised boxes located at exchange points (document exchanges). Only members subscribing to the network may exchange, through the network, their business-to-business mail ⁽¹⁵⁾. Mail is deposited at document exchanges by network members themselves, in their capacity as senders of mail items, and is collected daily from them by Hays messengers before being sorted at a Hays sorting centre. The mail is then distributed by Hays among the document exchanges of destination, where it is collected by other network members in their capacity as addressees of the items.
- (9) The services provided by Hays DX guarantee the insurance industry fixed, predetermined mail deposit and delivery times corresponding to the customer's office hours. Hays thus states that any letter or small parcel deposited before 17.30 at the document exchange of departure ⁽¹⁶⁾ is at the disposal of the correspondent at the document exchange of destination generally before 09.00 the following working day ⁽¹⁷⁾. Members of the network form part of closed groups of users: the list of members of the system, who alone can exchange documents via the DX, is exhaustive, and their relationship with other DX network members is a business one. Moreover, with the mail service being specific to a closed user group, the risk of losing items is greatly reduced.
- (10) A network dedicated to the exchange of documents allows considerable efficiency gains over the general letter post service which are passed on in the form of lower charges compared with the letter post service. The Hays DX system thus offers prices (less VAT) 40 % lower than the letter post service provided by La Poste ⁽¹⁸⁾.
- (11) Starting in 1996 La Poste granted the UPEA price reductions on business-to-private mail in return for a commitment covering [...] letters a year (the '2026 agreement'). The 2026 agreement granting this preferential tariff was concluded with the UPEA on 6 April 1996 for a period of two years. The tariff advantages are of the order of [...] compared with ordinary postal tariffs ⁽¹⁹⁾.

⁽¹¹⁾ This fact is not contested by La Poste and ABB; see, for example, the agreement between La Poste and Key Mail under 'Rétroactes'.

⁽¹²⁾ See Annex 2 to Hays's comments of 4 April 2001 (agreement of 14 June 1982).

⁽¹³⁾ See Annexes 3 and 4 to Hays's comments of 4 April 2001.

⁽¹⁴⁾ The Hays DX service is the successor to a network set up by the UPEA for the mutual exchange of documents between large insurance companies in Belgium; hence the leading part played by large insurance companies in the maintenance of the Hays DX system: according to Hays's comments of 25 January 2001, point 54, the large insurance companies are the DX system's main customers, the 11 largest accounting for 40 % of the total turnover achieved with the 167 companies subscribing to the system.

⁽¹⁵⁾ See in Annex 2 to the complaint of 7 April 2000 the 1997/1998 and 2000 directories of the DX service in Belgium.

⁽¹⁶⁾ As stated in Article 1(7) of the membership rules, the exact timetable is forwarded once the DX account is opened (this concerns the 17.30 limit, which may be extended to, say, 18.00 depending on the exchange). Friday's mail is collected on Saturday and distributed on Monday.

⁽¹⁷⁾ See Article 3(1) of the DX membership and use rules in Annex 2 to the complaint of 7.4.2000. According to Hays, 99 % of items deposited between 17.30 and 18.00 arrive before 09.00 the next day and are therefore delivered within 12 to 15 hours of deposit. Again according to Hays, this speed of service is regularly tested by users of the network.

⁽¹⁸⁾ See the complaint of 7 April 2000, p. 3.

⁽¹⁹⁾ A reduction in the universal postal service tariff is authorised under Article 12 of Directive 97/67/EC of the European Parliament and of the Council provided it is transparent and non-discriminatory.

- (12) It is clear from documents submitted by La Poste that contact was first established with the UPEA over a new business-to-business mail service through a letter from La Poste to the UPEA dated 24 March 1997 ⁽²⁰⁾. In its reply of 18 April 1997 the UPEA first of all expressed interest in the renewal of the preferential tariff contained in the agreement of 4 April 1996.
- (13) In March and August 1997 the UPEA sent La Poste volume estimates concerning business-to-business mail based on estimates by its members Groupe Josi, GAN, AG (Fortis), AXA Belgium, Winterthur and Commercial Union. These estimates yielded a total volume of some seven million items a year ⁽²¹⁾.
- (14) On 11 August 1997 La Poste sent the UPEA a preliminary proposal concerning a network for handling UPEA members' business-to-business mail with 'collection daily, from Monday to Friday, between 15.00 and 17.00 at each contact point ([...])' and 'distribution of mail the next day, between 07.00 and 08.00, at each contact point'. Billing would be 'individual and monthly'. The prices applicable to mail items 'in the Assurmail network' (emphasis added by the Commission) were those as at 1 July 1997 ⁽²²⁾.
- (15) On 19 November 1997 the UPEA informed Hays, which was already a document exchange provider, of some of the main features required for a network for the mutual exchange of mail between users ⁽²³⁾. By this stage, apart from Hays DX, two companies had shown an interest in providing the UPEA with such a network: La Poste and ABB, each of these companies having put in a separate bid ⁽²⁴⁾.
- (16) On 9 February 1998 La Poste offered a further price reduction of [...] % 'on La Poste's best proposals currently in your possession' ⁽²⁵⁾. On the same day the UPEA's managing board asked its members to consider the business-to-business mail issue in greater detail. An ad hoc working group composed of representatives of the UPEA's Productivity Committee was then set up ⁽²⁶⁾.
- (17) On the expiry of the 2026 agreement granting a preferential tariff for mail covered by the monopoly, La Poste and the UPEA prolonged the agreement on 8 April 1998 for a period of two years ⁽²⁷⁾. The benefits accruing to UPEA members under the agreement are considerable, the cost savings to companies being put by the UPEA at BEF 140 million a year ⁽²⁸⁾.

⁽²⁰⁾ Annex 1 to La Poste's comments of 21 November 2000. According to La Poste the letter of 19 April 1997 from the UPEA to La Poste was the first document in which the UPEA made this request; see La Poste's comments of 17 August 2001, point 5.

⁽²¹⁾ Item 2 of La Poste's reply of 12 July 2001 to the statement of objections; see also Annex 8 to La Poste's comments of 21 November 2000.

⁽²²⁾ See the annexes to the UPEA's fax message to Hays dated 19 November 1997, Annex 2 to Hays's comments of 16 October 2000.

⁽²³⁾ See the description of the 'main elements' of a 'business mail exchange network' in the UPEA's fax message to Hays of 19 November 1997, Annex 2 to Hays's comments of 16 November 2000 and Annex 3 to Hays's comments of 24 July 2001. In its comments of 9 August 2001, at point 4, La Poste disputes the claim that the document entitled 'Main elements of the business mail exchange network' emanated from La Poste. According to La Poste, it 'would appear that this page has been taken from the original proposal which Key Mail presented on its own'. However, La Poste does not deny that the UPEA, be it the author of this document or not, used the document in order to clarify its expectations and the requirements of the insurance companies vis-à-vis Hays.

⁽²⁴⁾ See the agreement between La Poste and ABB under 'Rétroactes': Key Mail, a company specialising in the reposting and delivery of small parcels within 24 hours, became interested in the sector and made proposals to the insurers and brokers concerned. At the same time La Poste also proposed to take over this business for its own account. See also separate offer by La Poste of 11 August 1997, Annex 1 to La Poste's comments of 21 November 2000.

⁽²⁵⁾ Letter of 9 February 1998 from La Poste to the UPEA, Annex 4 to Hays's comments of 24 July 2001. This document was submitted by La Poste as an annex to its comments of 14 February 2001.

⁽²⁶⁾ See document in Annex 7 to Hays's comments of 16 October 2000.

⁽²⁷⁾ See Article 9 of the 2026 agreement: 'The agreement shall be concluded for an initial period of two years. It shall enter into force on 9 April 1998 and shall be renewed tacitly each year starting from the expiry date, 8 April 2000.'

⁽²⁸⁾ Source: UPEA newsletter *Assurinfo* No 7 of 24 February 2000, p. 4 of Annex to Hays's fax of 13 October 2000.

- (18) On 28 May 1998, in response to a request from the UPEA ⁽²⁹⁾, La Poste and ABB submitted a joint proposal concerning business-to-business mail ⁽³⁰⁾. This offer provided for 'the setting-up of a network for the collection and distribution of business mail coming from the insurance industry in the broad sense', which included companies, brokers and such like. According to the offer, the added value to be gained from a partnership between La Poste and ABB aimed at 'setting up an integrated network meeting the expectations of the insurance industry' resided in 'the suppleness and flexibility of the structure created' ⁽³¹⁾. Moreover, La Poste declared: 'The strength and size of La Poste combined with the adaptability of Key Mail enables us to envisage an almost limitless expansion, within a period to be determined, of our services and of our network'.
- (19) According to paragraph 3 of the offer of 28 May 1998, La Poste is to effect 'distribution and withdrawals from the customer's address and the operators' (UPEA, brokers). Each operator undertakes, in agreement with La Poste, to establish in advance a timetable of frequencies, days and times of passing of the postal services. Distribution will be effected every morning from Monday to Friday, between 07.00 and 09.00, and collection from Monday to Friday between 15.00 and 18.00, at the customer's address and the operators'. The times of passing being fixed in agreement with La Poste. According to paragraph 6 of the offer, 'collection and distribution of business items will be performed by La Poste. Transport and sorting will be carried out by Key Mail.'
- (20) By letter dated 15 July 1998 La Poste and ABB clarified certain aspects of their proposal of 28 May 1998. They stressed the opportunities for expanding the network once it was established 'at a few weeks' notice, allowing us to set up the necessary structures'. For the first time, the offer of 15 July 1998 required a minimum volume of [...] items a year: 'To enable us to install infrastructure which allows mail to be picked up and deposited each day, a minimum commitment of [...] items a year strikes us as a reasonable basis for discussion'.
- (21) However, in October 1998 the UPEA concluded that the network dedicated to the exchange of business-to-business mail already provided by Hays to its members since 1982 was more advantageous than the new network outlined by La Poste/ABB. An internal UPEA memo ⁽³²⁾ states that:

'... the business mail exchange dossier has been examined in greater depth these last few months following the favourable outcome of talks with La Poste about preferential tariffs (April 1998). To this end, an ad hoc working group composed of representatives of the Productivity Committee (PC) and of various brokers' federations has studied in minute detail the offers of Hays (BDE) and of La Poste/Key Mail.

The PC has come to the conclusion that Hays's offer is financially more attractive to insurers.

⁽²⁹⁾ UPEA letter of 19 May 1998, Annex to La Poste's comments of 14 February 2001.

⁽³⁰⁾ By its letter of 28 May 1998 La Poste communicated a 'joint reply from La Poste and Key Mail' containing 'our best tariff offer'. The offer related to business-to-business mail 'from the insurance industry in the broad sense (companies, brokers and such like)' and did not yet talk of a minimum volume of items (Annex 6 to Hays's comments of 16 October 2000). See also Annex 2 to La Poste's comments of 21 November 2000.

⁽³¹⁾ Letter from La Poste dated 28 May 1998, p. 2.

⁽³²⁾ Annex 7 to Hays's comments of 16 October 2000.

The PC proposes to consolidate the current position and, in the short term, to continue working with Hays pending a liberalisation of postal services in 2003 (1 January).'

- (22) By circular dated 21 October 1998 'to managers of companies members or non-members of the UPEA' ⁽³³⁾, the UPEA recommended that companies should continue to work with Hays in 1999. The circular describes the Productivity Committee's conclusions in the following terms:

'Business mail exchange system: maintenance of the status quo

Following the renewal on 8 April 1998 of the 2026 preferential tariff agreement for a period of three years, the Productivity Committee has submitted the current business mail exchange system (Hays-BDE) to a critical examination. Applying the same criteria, it has also studied a system which La Poste, in collaboration with Key Mail, has proposed as an alternative to this exchange.

The Productivity Committee has come to the conclusion that the solution proposed by Hays-BDE is financially more attractive to insurers. This position was endorsed by the Managing Board on 12 October.

As a result, the UPEA recommends that companies should continue to work with Hays-BDE in 1999.'

- (23) Consequently, by letter dated 21 October 1998 ⁽³⁴⁾, the UPEA explained to La Poste that Hays's offer was 'the more attractive' and that the choice stemmed from the application of 11 criteria. The UPEA accordingly rejected the latest offer from La Poste and Key Mail concerning business-to-business mail and informed La Poste of its decision to continue 'for the time being' with the Hays DX system. In the last paragraph of its letter, the UPEA stated that it 'appreciated La Poste's having dealt with the business (business-to-business) ⁽³⁵⁾ mail issue independently of the existing agreement on preferential tariffs'. On the preferential tariff agreement itself, the UPEA confirmed its willingness to continue, and develop further, its collaboration with La Poste within the Committee.

⁽³³⁾ Document submitted by La Poste on 14 February 2001. The French version was submitted by Hays in Annex 8 to its comments of 16 October 2000.

⁽³⁴⁾ The letter of 21 October 1998 was submitted by La Poste as an annex to its comments of 14 February 2001.

⁽³⁵⁾ The UPEA calls the business-to-business network "business mail".

- (24) Then, on 30 October 1998, La Poste sent the UPEA a letter stating that it was terminating the 2026 (preferential tariff) agreement, which had been concluded shortly before, on 8 April 1998 ⁽³⁶⁾. In this letter, La Poste gave no reason for its sudden change of attitude regarding the preferential tariff, simply terminating the 2026 agreement 'in accordance with the provisions of Article 10(2) thereof'. Article 10(2) of the 2026 agreement stipulates that: 'The signatories may terminate the agreement on 12 months' notice at the end of the initial period (two years) and thereafter on each annual expiry date'. The termination did not therefore take immediate effect: pursuant to Article 10(2) of the 2026 agreement, the termination of 30 October 1998 did not take effect until 12 months after the initial two-year period, i.e. until 8 April 2001.
- (25) The UPEA's reaction, which was forthcoming on 12 November 1998 ⁽³⁷⁾, mentions a meeting allegedly held between it and La Poste in the wake of the termination letter of 30 October 1998 at which La Poste is said to have explained that the termination of 30 October 1998 should be interpreted as a 'precautionary measure' 'in good time' which would allow the UPEA to reconsider its rejection of the business mail offer. In the light of the clear wording of the letter of 12 November 1998 the UPEA realised it would have to accept this 'additional partnership' if it wished to retain the benefit of the preferential tariff:

'By your letter dated 30 October 1998 you terminate the preferential tariffs agreement of 8 April 1998 with effect within the time limits set out in Article 10(2).

I understand, from the meeting devoted to it, that the termination is to be interpreted as a "precautionary" measure in that the UPEA is being warned in good time that it is impossible to revise the existing agreement in the absence of an additional partnership' (emphasis added by the Commission).

- (26) Following the unilateral termination by La Poste of the 2026 agreement on 30 October 1998 and the UPEA's reply, the negotiations between La Poste and the UPEA were suspended for several months. They were resumed in May 1999. By letter dated 19 May 1999 La Poste resumed direct contact with Commercial Union, an insurance company, with a view to 'envisaging once more collaboration with the insurance industry in relation to both business and non-business mail' ⁽³⁸⁾.
- (27) In reply to a letter from the UPEA dated 22 December 1999 stating that the UPEA did not wish there to be any 'direct link' between the two dossiers, La Poste confirmed on 5 January 2000 that there was no link between the business-to-business dossier and the renewal of the business-to-private agreement, while agreeing to the agreement signature formalities taking place at the same time: 'for the rest, as we have stated on many occasions, we have at no time linked the present dossier and the renewal of the 2026 agreement.

Of course, with a view to adding extra lustre to our future relationship, we do not see any difficulty in agreeing to your request that the two contracts be signed simultaneously' ⁽³⁹⁾.

⁽³⁶⁾ The letter of 30 October 1998 was submitted by La Poste as an annex to its comments of 14 February 2001.

⁽³⁷⁾ The letter of 12 November 1998 was submitted by La Poste as an annex to its comments of 14 February 2001.

⁽³⁸⁾ Document submitted by La Poste in Annex 1 to its comments of 14 February 2001.

⁽³⁹⁾ Document submitted by La Poste in Annex 1 to its comments of 14 February 2001.

- (28) However, this letter of 5 January 2000 did not reverse La Poste's unilateral termination of 30 October 1998, which remained in force and could still take effect at the latest 12 months after the expiry of the initial term of the business-to-private agreement, i.e. on 8 April 2001.
- (29) It was only on 27 January 2000 that the 2026 agreement, signed on 8 April 1998 and terminated by La Poste on 30 October 1998, was renewed for a period of three years. The business-to-business agreement (the '10 000-1 agreement') between La Poste and ABB, on the one hand, and the UPEA, on the other, was signed on the same day. The agreement on the Hays DX service was then terminated by the UPEA by registered letter dated 21 March 2000 with effect from 30 June 2000 ⁽⁴⁰⁾.
- (30) The new business-to-business mail handling service run by La Poste in collaboration with ABB ⁽⁴¹⁾ was provided to a closed group of approximately 1 400 users (insurance companies and brokers), known as 'operators', who exchange documents of a strictly business nature among themselves ⁽⁴²⁾. In order to meet the standards of reliability demanded by the insurance industry for the mutual exchange of documents, La Poste and ABB set up the 'specific network' promised in their commercial offers dedicated to exchanges within the insurance industry.
- (31) As promised in the commercial offers, the new business-to-business network offered 'the suppleness and flexibility' of a deposit and delivery of business-to-business mail arranged with the customer in advance. Pursuant to Article 5(2) of the 10 000-1 agreement, 'Each operator undertakes, in agreement with the manager of the office concerned, to establish in advance a timetable of frequencies, days and times of passing of the postal services'. Article 5(3) of the business-to-business agreement stipulates that 'Distribution will be effected every morning from Monday to Friday, between 07.00 and 09.00, and collection from Monday to Friday, between 16.00 and 18.00, at the customer's address and the operators'. The times of passing being fixed in agreement with the manager of the post office concerned'.
- (32) The 10 000-1 agreement governing business-to-business mail concluded by the UPEA was a framework agreement not directly binding on the insurance companies which were members of the UPEA. The members of the UPEA remained free to use if they wished the service provided by the agreement, the UPEA having no mandate to act directly on behalf of its members. It is clear from the commitment of [...] letters a year (see Article 17 of the 10 000-1 agreement), a quantity which the UPEA's business-to-business mail could not achieve on its own, that, despite the lack of a specific mandate, the UPEA concluded the 10 000-1 agreement in the interests of and for use by its members. This is confirmed by Article 7 of the 10 000-1 agreement, which establishes a system of individual invoicing for each member: 'Invoices shall indicate the total volume of items posted and the volumes broken down by operator'. In addition, as indicated above, pursuant to Article 5(1) of the 10 000-1 agreement, La Poste effects withdrawals at the premises not only of the UPEA, but also of the insurance companies. Lastly, pursuant to Article 5(2) of the 10 000-1 agreement, La Poste's times of passing are agreed between La Poste and the insurance companies themselves.
- (33) After receiving the Commission's statement of objections on 6 June 2001, La Poste terminated, on receipt of a registered letter dated 20 June 2001, the business-to-business agreement vis-à-vis the UPEA. La Poste transmitted to the Commission internal instructions to all its post offices with a view to the immediate cessation of the business-to-business service as of 26 June 2001 ⁽⁴³⁾. According to these instructions, the service covered by the preferential tariff agreements was to continue normally.

⁽⁴⁰⁾ See Annex 5 to Hays's comments of 4 April 2001.

⁽⁴¹⁾ With La Poste acting as prime contractor; see La Poste's comments of 21 November 2000, point 15.

⁽⁴²⁾ See Article 17 of, and Annex 1 to, the 10 000-1 agreement between the UPEA and La Poste.

⁽⁴³⁾ Annex 5 to La Poste's comments of 9 August 2001: 'The Assurmail service will therefore cease to exist on 27 June 2001. Consequently, the 2026 and 3026 agreements will continue normally.'

According to La Poste, its business-to-business service came to an end on 27 June 2001. La Poste informed the Commission that it had nevertheless acceded exceptionally to a request by the companies AXA and Fortis to carry out a final collection on 27 June 2001. As from 28 June 2001, according to La Poste, no more collections were made under the business-to-business agreement ⁽⁴⁴⁾.

- (34) As of 3 July 2001, La Poste transferred the management of the new business-to-business mail services to one of its private-law subsidiaries, eXbo ⁽⁴⁵⁾. As a distinct legal entity, eXbo will keep separate accounts. When the transfer takes effect, La Poste itself will no longer provide any business-to-business mail services. By electronic mail dated 28 June 2001, eXbo sent the UPEA an offer concerning a mutual exchange of documents within a closed user group, without any home collections or deliveries, reserved for insurance professionals ⁽⁴⁶⁾.

II. LEGAL ASSESSMENT

A. Applicability of Article 82 of the Treaty

- (35) La Poste is an undertaking which provides services for a consideration on various postal markets. It is therefore an undertaking within the meaning of the competition rules of the Treaty, irrespective of the way in which it is organised and of whether it operates as a public or private enterprise ⁽⁴⁷⁾.

B. The relevant markets

- (36) There are two relevant markets in this case. Firstly, the market for the general letter post service intended for correspondence with the general public, on which La Poste has abused its dominant position. And secondly, the market for the provision of business-to-business mail services to a closed group of users for the exchange of their business mail, on which the effects of the abuse have made themselves felt.
- (37) The general letter post service ⁽⁴⁸⁾ is protected by the postal monopoly provided items weigh less than 350 grams. In Belgium, La Poste holds the postal monopoly defined in Article 144 *octies* (1) and (2), of the Act of 21 March 1991, as amended by the Royal Decree of 9 June 1999. Moreover, the Commission's investigation established that in Belgium there are no private enterprises operating in the general letter post service sphere handling letters weighing more than 350 grams. La Poste is therefore the only enterprise active in the general letter post service sphere. The business-to-private service forms part of the general letter post service market.
- (38) A business-to-business mail service provided to a closed user group for the exchange of their business mail can therefore be distinguished from other basic postal services by virtue of specific characteristics ⁽⁴⁹⁾ as a result of which it is scarcely interchangeable with them and is affected only to an insignificant degree by competition from them ⁽⁵⁰⁾. Against this background, the degree of interchangeability between products or services must be assessed by reference to their objective characteristics, the structure of supply and demand on the market and competitive conditions ⁽⁵¹⁾. In the present case the substitutability analysis shows that the provision of business-to-business and business-to-private services constitute two distinct markets.

⁽⁴⁴⁾ La Poste's comments of 9 August 2001, point 33.

⁽⁴⁵⁾ Letter from La Poste dated 14 June 2001.

⁽⁴⁶⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 58. However, the structural separation of the reserved area and the new business-to-business service offered by eXbo, though creating total transparency in financial relations between the reserved area and the services open to competition, cannot ensure in the long run that La Poste will in future refrain from any tying between monopoly services and services open to competition.

⁽⁴⁷⁾ Judgment of the Court of Justice of 23 April 1991 in Case C-41/90 *Höfner and Elser v Macrotron* [1991] ECR I-1979, paragraphs 21 et seq.

⁽⁴⁸⁾ The general letter post service concerns the delivery of items of correspondence to the addresses shown on the items; see the Commission notice on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services (OJ C 39, 6.2.1998, p. 2, at point 2.3).

⁽⁴⁹⁾ According to the Commission notice on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services (OJ C 39, 6.2.1998, p. 2, at point 2.4), a document exchange does not include the collection and the delivery to the addressee of the postal items transported.

⁽⁵⁰⁾ Case 66/86 *Ahmed Saeed Flugreisen and Silver Line Reisebüro* [1989] ECR 803, paragraphs 39 and 40, Case 27/76 *United Brands* [1978] ECR 207, paragraphs 11 and 12, and Case T-30/89 *Hilti* [1991] ECR II-1439, paragraph 64.

⁽⁵¹⁾ Case 322/81 *Michelin v Commission* [1983] ECR 3461, paragraph 37, and Case T-83/91 *Tetra Pak v Commission* [1994] ECR II 755, paragraph 63.

(a) *Demand substitutability*

- (39) The demand substitutability between the two services is weak. Consequently, there is no cross-elasticity of demand as a function of price. From the point of view of users, business-to-business services are distinct from business-to-private services and are not interchangeable with the latter because, by setting up an integrated network allowing efficiency gains, business-to-business services can offer much cheaper rates than the general letter post service. The tariff is – 40 % (less VAT) for the Hays DX service⁽⁵²⁾ and [...] for the business-to-business service of La Poste⁽⁵³⁾.
- (40) In contrast to business-to-business services, the general letter post service offers neither the withdrawal nor the distribution of mail at predetermined times delimited and defined in terms of 'subscribers' desiderata'⁽⁵⁴⁾ and hence does not guarantee a handing-in of early-morning incoming mail between 07.00 and 09.00, but no later than the time offices open, and a withdrawal of outgoing mail as late as possible, that is, between 16.00 and 18.00 when offices close, allowing an immediate processing of mail by the customer⁽⁵⁵⁾. La Poste itself considers its business-to-business service to be 'an adaptation of the existing postal service'⁽⁵⁶⁾. In contrast to the general letter post service, in order to ensure the required reliability, the business-to-business service is provided through a specific network dedicated to the addresses of subscribers to the service, thus making it possible to avoid any source of failure in the general postal network and thus to minimise the risks of items being lost. Furthermore, the business-to-business service, unlike the general letter post service, provides a back-up, affording additional security in the event of a postal strike.
- (41) The distinction between the general letter post service and the business-to-business service is moreover confirmed by La Poste itself⁽⁵⁷⁾ on several occasions:
- under the terms of the agreement between ABB and La Poste of 24 January 2000, La Poste and ABB must combine their offers 'in order to meet certain specific demands of the insurance industry'⁽⁵⁸⁾ (emphasis added by the Commission). This agreement of 24 January 2000 between La Poste and ABB, which was concluded specially in order that the parties might satisfy demand from insurance companies, indicates that La Poste considers that the general letter post service is not suited to satisfying the specific demand emanating from insurance companies,
 - in its comments of 9 August 2001 La Poste described the service provided under the business-to-business agreement as 'a specific category of mail, that which insurance companies and brokers send to each other. This mail is known as business mail and has been the subject of an offer of a further reduction under the 10 000 agreements'⁽⁵⁹⁾ (emphasis added by the Commission). La Poste therefore considers the mail which insurance companies and brokers send to each other to be a 'specific category of mail',
 - in its first reply to the Commission's requests for information, La Poste described its business-to-business service as being more than just a 'basic postal service'⁽⁶⁰⁾,

⁽⁵²⁾ See the complaint of 7 April 2000, p. 3.

⁽⁵³⁾ For the first weight tranche of up to 20 g the formula produces a tariff that is [...] % lower than the ordinary postal tariff: BEF 17 — [...] % = BEF [...] + [VAT] = BEF [...] — [...] % = BEF [...].

⁽⁵⁴⁾ See the description of the 'main elements' of such a network in the UPEA's fax to Hays dated 19 November 1997, Annex 2 to Hays's comments of 16 October 2000.

⁽⁵⁵⁾ On the other hand, pursuant to Article 5(3) of the 10 000-1 agreement, La Poste committed itself contractually vis-à-vis the UPEA to comply with certain predetermined times for the distribution and withdrawal of mail covered by the business-to-business agreement. La Poste has therefore made a contractual commitment concerning two additional services within the meaning of the judgment in Case C-320/91 *Corbeau* [1993] ECR I-2533, at paragraph 19, namely collection from the sender's address and more reliable distribution.

⁽⁵⁶⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 79. See also La Poste's comments of 14 February 2001, p. 3.

⁽⁵⁷⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 79. See also La Poste's comments of 17 May 2000, point 20, La Poste's comments of 9 August 2001, point 67, the comments of 21 November 2000, points 25, 35 and 150; see also the agreement between La Poste and Key Mail of 24 January 2000, Annex 11 to La Poste's comments of 21 November 2000.

⁽⁵⁸⁾ The agreement between La Poste and Key Mail of 24 January 2000, under 'Rétroactes', Annex 11 to La Poste's comments of 21 November 2000.

⁽⁵⁹⁾ La Poste's comments of 9 August 2001, point 67.

⁽⁶⁰⁾ La Poste's reply of 17 May 2000, point 20.

- moreover, in its comments of 21 November 2000 La Poste described its business-to-business service as having been developed in order to provide 'a new system for handling mail in the insurance sector' ⁽⁶¹⁾ the introduction of which was 'prayed for by the industry' and therefore met insurance companies' and brokers' expectations better than did the general letter post service ⁽⁶²⁾,
- according to La Poste, the development by La Poste/ABB of a 'new business mail handling service better meets the expectations of insurance companies and brokers and permits the entry of a new operator in the area of the handling of those enterprises' business mail, an area in which Hays has been established for the past 20 years or so without having to face any competition' ⁽⁶³⁾ (emphasis added by the Commission),
- according to La Poste, the introduction of the new business-to-business mail handling service therefore signified 'the entry of a new operator, whether dominant or not on neighbouring markets, in a sector where there used to be no competition...' ⁽⁶⁴⁾ (emphasis added by the Commission),
- according to the terms of Article 5(3) of the business-to-business agreement, La Poste entered into a contractual commitment vis-à-vis the UPEA to comply with certain predetermined times of distribution and withdrawal of mail covered by the agreement, these being fixed by common accord between the operator and the manager of the post office concerned. This commitment meets precisely the needs of insurance companies for an immediate processing of their incoming mail as soon as their offices open and for the depositing of outgoing mail when their office is closed ⁽⁶⁵⁾.

(42) In view of the very clear terms previously used by La Poste itself to describe its business-to-business service provided to a closed group of users, La Poste cannot credibly argue, in its reply to the statement of objections, that the depositing and delivery of postal items at predetermined times is not an additional characteristic or part of the business-to-business service but simply an 'organisational measure' taken in respect of all customers of La Poste who generate a substantial volume of mail that cannot be posted in public letterboxes ⁽⁶⁶⁾. Even if La Poste has since the early 1980s applied a system for the advanced distribution of 'direct bundles' ⁽⁶⁷⁾, the integrated business-to-business service provided by La Poste under the business-to-business agreement was clearly more than just an 'advance distribution' in several respects ⁽⁶⁸⁾:

- the 'integrated network' of the business-to-business service does not, like the advance distribution of 'direct bundles', confine itself to providing distribution between 07.00 and 09.00 without any contractual commitment as to the exact time of that distribution,
- the perfect concordance between customers' needs and the commitment entered into by La Poste under Article 5(3) of the business-to-business agreement show that the fixing of predetermined times is much more than an 'internal organisational measure',

⁽⁶¹⁾ La Poste's comments of 21 November 2000, point 25.

⁽⁶²⁾ La Poste's comments of 21 November 2000, point 25.

⁽⁶³⁾ La Poste's comments of 21 November 2000, point 35.

⁽⁶⁴⁾ La Poste's comments of 21 November 2000, point 150.

⁽⁶⁵⁾ See the UPEA's list of 19 November 1997, Annex 2 to Hays's comments of 16 October 2000; 'Pick-up and delivery schedules will be delimited and defined in the light of the desiderata of the parties concerned'.

⁽⁶⁶⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 76, and its comments of 17 August 2001, point 19.

⁽⁶⁷⁾ According to La Poste, 80 000 addresses in Belgium which receive on average 15 mail items or more a day in rural areas and 25 mail items or more a day in urban areas benefit daily from an 'advance delivery' between 07.00 and 09.00; La Poste's comments of 9 August 2001 in reply to letters from the Commission dated 17 and 31 July 2001 (hereinafter called 'La Poste's comments of 9 August 2001'), points 60 and 61.

⁽⁶⁸⁾ As indicated clearly by La Poste itself in its reply of 17 May 2000 to the Commission's request for information of 17 April 2000, point 20.

- La Poste does not dispute the fact that the times predetermined with each customer for morning distribution and for withdrawal between 16.00 and 18.00, as stipulated in Article 5(3) of the 10 000-1 agreement, were always complied with from the time the business-to-business service began until the time it ended ⁽⁶⁹⁾.

(b) *Supply substitutability*

- (43) From a supply point of view the market for the provision of business-to-business services and that for the provision of business-to-private services differ appreciably. The provision of the business-to-business service calls for a high degree of reliability. The reliability required by the insurance industry for the mutual exchange of documents as referred to above has pointed up the need to create infrastructure separate from the public postal network. Moreover, the setting-up of a specific, dedicated network makes it possible to handle the mail of a closed group within shorter deadlines than those of the standard service. The limitation to the addresses of subscribers to the service makes it possible also to minimise the risk of items being lost. Only a mail service specific to a closed group of users can effectively reduce that risk. Lastly, unlike the general letter post service, the business-to-business service incorporates a system of safeguards and hence a guarantee that is not provided by the general letter post service ⁽⁷⁰⁾.
- (44) As La Poste has rightly pointed out, the reason for the non-substitutability is that, in these commercial offers, from the time of the first offer of 11 August 1997 ⁽⁷¹⁾, La Poste promised a 'daily collection, from Monday to Friday, between 15.00 and 18.00 (rural or urban areas) at each contact point ([...])' (emphasis added by the Commission).
- (45) This non-substitutability from a supply standpoint can be seen even more clearly from the joint offer made by La Poste and ABB to the UPEA on 28 May 1998, which promised to 'ensure the setting-up of a network for the collection and distribution of business mail coming from the insurance industry in the broad sense (companies, brokers and such like)' (emphasis added by the Commission).
- (46) In the offer of 28 May 1998, La Poste and ABB explain that 'the added value' to be gained from a partnership with La Poste/ABB 'aimed at setting up an integrated network meeting the expectations of the insurance industry' was 'the suppleness and flexibility of the structure created' and that this network was 'flexible and adaptable to each partner's needs' (emphasis added by the Commission).
- (47) Moreover, in point VIII of its offer of 15 July 1998 La Poste explained that 'To enable us to install infrastructure which allows mail to be picked up and deposited each day, a minimum commitment of [...] items a year strikes us as a reasonable basis for discussion'; it would be possible to expand the network 'at a few weeks' notice, allowing us to set up the necessary structures' (emphasis added by the Commission).
- (48) As Article 5(4) of the 10 000-1 business-to-business agreement rightly pointed out, a further reason for the non-substitutability is that, unlike the general letter post service, the private company Key Mail, which does not hold the postal monopoly, 'carries on the liaison and item sorting/counting activities referred to in this agreement'; and pursuant to Article 19 of the business-to-business agreement, 'In case of need, La Poste and Key Mail undertake reciprocally to perform the tasks entrusted to each of them'. Pursuant to Article 6(5) of the business-to-business agreement, 'To underline the urgent nature of consignments, a bar code shall feature prominently on the front of each item'. Lastly, pursuant to Article 18, 'In order to ensure that items are handled urgently, they must bear the distinctive signs provided for in Articles 6(3) and 6(5)'.

⁽⁶⁹⁾ See Hays's comments of 5 March 2001, p. 9, under 'schedules compatible with the organisation of the mail'.

⁽⁷⁰⁾ See Article 19 of the 10 000-1 agreement of 27 January 2000 and the description of the back-up under point 6 of the offer by La Poste and Key Mail of 28 May 1998. See also Article 6 of the agreement between La Poste and ABB: 'Should La Poste be unable to perform the tasks it has undertaken to perform under the attached agreement (the 10 000-1 agreement), Key Mail shall take its place in accordance with the following procedures:...'.
⁽⁷¹⁾ Annex 1 to La Poste's comments of 21 November 2000.

- (49) In these circumstances, La Poste cannot claim that the business-to-business service is not provided through a 'specific network' ⁽⁷²⁾. Moreover, contrary to what La Poste maintains, the fact that deliveries under the business-to-business agreements are made by the usual postmen or by those responsible for distributing 'direct bundles' ⁽⁷³⁾ does not alter the fact that La Poste set up a network for the collection and distribution of business-to-business mail connecting some 1 400 users (insurance companies and brokers), called 'operators' in the 10 000-1 agreement, who are served every working day via this specific, dedicated network. These users are served daily at specific times, and hence outside La Poste's normal deliveries.
- (50) Furthermore, contrary to what La Poste maintains, the creation of a 'specific network' does not prevent staff working for La Poste in the provision of universal services from also being used to provide a specific service such as the business-to-business one. The postal network is not a fixed infrastructure usable only for certain specific services. The staff of a public postal operator are not assigned once and for all to a particular service, but on the contrary can perform many functions either in the reserved sector or in sectors open to competition.
- (51) The relevant geographic market in the case of the general letter post service is Belgium, owing mainly to the exclusive rights La Poste enjoys in that country. The relevant geographic market in the case of the business-to-business mail service provided to a closed group of users for the exchange of their business mail is also Belgium owing to the fact that, at present, providers generally work at the national level, most of the subscribers to the services in question being established in Belgium. However, the Hays DX example shows that the service, which is not covered by special or exclusive rights vested in operators within the meaning of Article 86(1) of the Treaty, is capable of extending beyond national boundaries. Thus subscribers to the business-to-business service provided by Hays already have, and have had since May 1995, the opportunity to exchange documents with insurance companies connected to the British, French and Irish networks.

C. Dominant position

- (52) La Poste holds the postal monopoly defined in Article 144 *octies* (1) and (2), of the Act of 21 March 1991, as amended by the Royal Decree of 9 June 1999. It thus has a dominant position on the Belgian market for the general letter post service for items weighing less than 350 grams. Furthermore, in the absence of other private enterprises providing basic postal delivery services for items weighing more than 350 grams, the dominant position of La Poste covers basic postal delivery services as a whole, irrespective of the weight/price limit applying to the reserved area defined by Belgian legislation. According to the case-law of the Court of Justice of the European Communities, the territory of a Member State constitutes a substantial part of the common market ⁽⁷⁴⁾.

D. Abuse of a dominant position

- (53) Point (d) of the second paragraph of Article 82 of the Treaty stipulates that an abuse of a dominant position may consist in 'making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts'.
- (54) The case-law of the Court of Justice is quite clear regarding tying as referred to in point (d) of the second paragraph of Article 82. It is already evident from the *Michelin* case ⁽⁷⁵⁾ that an undertaking which has a dominant position on a market and which supplies different groups of products may not, in principle, make a tariff advantage granted on sales on one market dependent on the attainment of a target for sales on another market.

⁽⁷²⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 76.

⁽⁷³⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 76.

⁽⁷⁴⁾ *Michelin* (see footnote 51), paragraphs 102 to 104.

⁽⁷⁵⁾ *Michelin* (see footnote 51), paragraphs 92 et seq.

- (55) Since the business-to-private postal service covered by the monopoly and the business-to-business service provided to a closed group of users are separate services ⁽⁷⁶⁾ and since La Poste let stand the termination, notified on 30 October 1998, of the business-to-private agreement granting the preferential tariff to the UPEA until the UPEA had signed the agreement relating to business-to-business mail on 27 January 2000, La Poste made the granting of the preferential tariff for business-to-private mail covered by the monopoly (the 2006 agreement) subject to the UPEA's acceptance of the additional business-to-business mail service (the 10 000-1 agreement). La Poste thus committed an abuse within the meaning of point (d) of the second paragraph of Article 82 of the Treaty.
- (56) In these circumstances, La Poste cannot claim that any link which might have resulted from the termination of 30 October 1998 would at all events have been only of very short duration, the UPEA having been informed on 5 January 2000, before the signature of the 2026 and 10 000-1 agreements, that there was no link between the two matters ⁽⁷⁷⁾. Since the termination would have taken effect only as from 8 April 2001 ⁽⁷⁸⁾, it had a long-term effect. So long as La Poste did not withdraw its termination, it was clear that the preferential tariff provided for in the business-to-private agreement would no longer have any effect after 8 April 2001. The negotiations on business-to-business mail between La Poste/ABB and the UPEA were carried out under the permanent threat that neither the UPEA nor its members would benefit from the preferential rate after 8 April 2001. In simply stating on 5 January 2000 that there was no link between the two agreements, La Poste did not in any way withdraw the threat stemming from the termination notified on 30 October 1998. The practice of tying can thus also be established after 5 January 2000 ⁽⁷⁹⁾. The termination notified on 30 October 1998 is not an 'isolated act' which could not have had any influence on the UPEA's opting for the business-to-business agreement ⁽⁸⁰⁾, but a measure which, through the withdrawal of a significant financial benefit as regards business-to-private mail, represented a powerful incentive to enter into the business-to-business agreement offered by La Poste/ABB. The termination was therefore such as to impose on the UPEA, on 27 January 2000, the agreement relating to the business-to-business service so as to obtain an extension of the preferential tariff on the same day.
- (57) Only the signature of the two agreements simultaneously thus brought about a change in La Poste's position as regards the extension of the business-to-private agreement. Since La Poste changed its position with regard to an extension of the business-to-private agreement only on 27 January 2000, the date on which the UPEA agreed to sign the business-to-business agreement, it cannot claim that the signing of the two agreements was arranged simultaneously for simple reasons of 'practical organisation' and at the UPEA's request ⁽⁸¹⁾. In point of fact, since the threat that the preferential tariff would expire at the latest on 8 April 2001 was withdrawn only on 27 January 2000 when the business-to-business agreement was signed by the UPEA, the simultaneous signing was the only absolute guarantee for the UPEA that, by signing the business-to-business agreement which it had rejected in 1998, it would ensure that the preferential tariff would be extended ⁽⁸²⁾. The UPEA's request that the business-to-private and business-to-business agreements be 'finalised jointly' proves that the business-to-business agreement was imposed on it as a result of the permanent threat that it would no longer benefit from the preferential tariff after 8 April 2001.

⁽⁷⁶⁾ See the definition of the relevant market.

⁽⁷⁷⁾ La Poste's reply of 12 July 2001 to the statement of objections, points 43 and 110.

⁽⁷⁸⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 110: 'under the terms of Article 10(2) of the 2026 Agreement, the termination would have taken effect only on 8 April 2001, i.e. two and a half years later, 12 months' notice being applicable as from the end of the initial period' (emphasis added by the Commission).

⁽⁷⁹⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 164: 'However, the Commission has not established any "practice" of linkage on the occasion of resumption of the negotiations between La Poste and the UPEA in 1999 or, at least, after La Poste's letter to the UPEA of 5 January 2000...'. In its comments of 17 August 2001, point 47, La Poste simply states that 'after the letter of 30 October 1998, the lack of any link between the agreements [business-to-business and business-to-private] was stated by La Poste on several occasions, both to the insurance companies and to the brokers' (emphasis added by the Commission). The Commission would emphasise that, since this Decision relates to La Poste's conduct vis-à-vis the UPEA, any clarifications vis-à-vis the companies are not relevant.

⁽⁸⁰⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 100.

⁽⁸¹⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 117.

⁽⁸²⁾ UPEA letter to La Poste of 22 December 1999.

- (58) Furthermore, the terms of the UPEA letter of 12 November 1998, which have not been contested, show that, on the basis of a meeting held on this subject with La Poste, the UPEA understood the termination to be a 'warning', 'in good time', and that it should accept the additional business-to-business mail offer if it wished to keep the preferential tariff after the ending of the 2026 agreement. The UPEA was thus clearly aware of the powerful incentive to conclude the business-to-business agreement provided by the persistent threat of the ending of the preferential tariff for mail covered by the monopoly.
- (59) La Poste has not contested the validity of the UPEA's perception, expressed in its letter of 12 November 1998, that it was 'impossible' to revise the agreement granting the preferential tariff in the absence of an 'additional partnership' ⁽⁸³⁾. Neither at the hearing nor at any other time during the Commission's proceedings did La Poste dispute the holding of the meeting to which the UPEA refers in its letter of 12 November 1998 or the content or subject of that meeting as described by the UPEA. La Poste did not therefore challenge the existence of such a meeting or the validity of the UPEA's perception as expressed in its letter of 12 November 1998. Furthermore, at the hearing held on 24 July 2001, La Poste was not able to provide any explanation why the business-to-private agreement was terminated on 30 October 1998, a few days after the UPEA's refusal of the last offer by La Poste/ABB regarding business-to-business mail, only six months after its renewal on 8 April 1998 and 29 months before its expiry on 8 April 2001 ⁽⁸⁴⁾. Lastly, throughout the entire Commission proceedings, La Poste did not put forward any other reason for the termination involving any considerations other than the desire to link the preferential tariff to the conclusion of the business-to-business agreement, such as, for example, the inadequate commercial viability of the agreement. In the light of the UPEA's letter of 12 November 1998, the credibility of which is not disputed by La Poste, there is sufficiently clear and consistent evidence of the commission by La Poste of the infringement referred to in point (d) of the second paragraph of Article 82 of the Treaty.
- (60) In the absence of any alternative explanation by La Poste as regards the date of the letter of termination a few days after the UPEA's refusal to subscribe to the business-to-business agreement offered by La Poste/ABB and as regards the reason why the business-to-private agreement was terminated six months after its renewal on 8 April 1998 and 29 months before it was due to end on 8 April 2001, the explanation set out in the UPEA's letter of 12 November 1998 is unchallenged and remains the only explanation for such unilateral termination.
- (61) Since the unilateral termination was not withdrawn until the simultaneous signing of the business-to-business and business-to-private agreements on 27 January 2000, it was that which prompted the UPEA to reverse its initial decision to reject the offer made by La Poste and ABB as regards business-to-business mail. La Poste's behaviour between 30 October 1998 and 27 January 2000 thus made continuation of the preferential tariff conditional upon the signing of the business-to-business agreement.
- (62) Since the explanation set out in the UPEA's letter of 12 November 1998 is undisputed and remains the only explanation for La Poste's conduct between 30 October 1998 and 27 January 2000, La Poste cannot claim that, for proof to exist that the preferential tariff for business-to-private mail (the 2026 Agreement) was 'subordinated' to the UPEA's acceptance of the supplementary business-to-business mail service (the 10 000-1 agreement), the documents exchanged when the 2026 and 10 000-1 agreements were concluded or the agreements themselves ⁽⁸⁵⁾ would have had to stipulate a 'contractual subordination' ⁽⁸⁶⁾.

⁽⁸³⁾ UPEA letter of 12 November 1998, annexed to La Poste's comments of 14 February 2001.

⁽⁸⁴⁾ In reply to clear and direct questions put by the Commission in this respect, La Poste confined itself to stating that it did not wish to enter into speculation as to the motives of the staff responsible at La Poste at the material time.

⁽⁸⁵⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 163, and La Poste's comments of 17 August 2001, point 41.

⁽⁸⁶⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 163; see also La Poste's additional comments of 17 August 2001, point 37.

E. The effects on competition

1. *The competition link between the two closed-user-group mail exchange systems*

- (63) La Poste disputes the competition link between its business-to-business network and the Hays closed-user-group mail exchange network⁽⁸⁷⁾. However, La Poste's argument that its business-to-business service operates on a different market than the Hays DX service is contradicted by: (1) the business offers of La Poste itself; (2) the facts of the case; and (3) the point of view of the users of closed-user-group mail exchange systems.
- (64) In the first place, La Poste itself initially regarded its proposed business-to-business mail service as being similar to a document-exchange service. La Poste introduced its new business-to-business service as a proposal similar to a document-exchange system⁽⁸⁸⁾.
- (65) Similarly, following the UPEA's invitation to tender for an infrastructure dedicated to business-to-business mail in the insurance sector, three companies showed interest: Hays, La Poste and Key Mail⁽⁸⁹⁾. This shows that the three companies, which responded to the same invitation to tender, were competing with one another and considered themselves to be competitors for the business-to-business service covered by the UPEA's invitation to tender⁽⁹⁰⁾.
- (66) Furthermore, from the point of view of most of the users of closed-user-group mail exchange systems, there is a substitutability link between the business-to-business service offered by La Poste and the Hays DX system. The link stems from the almost identical features of the two services and is confirmed by the ease with which all the major customers were able to switch from one service to the other within the space of only a few weeks. The business-to-business mail services offer almost identical services:
- deposit and delivery at times determined in advance with the customer: the Hays DX system and La Poste's business-to-business mail system both offer longer time spans between the withdrawal of income mail and the depositing of outgoing mail, so that incoming mail can be processed throughout office hours. The two services thus offer very early delivery/distribution (between 07.00 and 09.00), but no later than the time offices open, and the depositing of mail with the operator as late as possible, i.e. when offices close (after 17.00), allowing mail to be processed immediately. The universal service, by contrast, which does not set deposit or delivery times, meets general public demand, since for the general public the precise day or time at which the item is delivered is less important,
 - a high degree of reliability: the Hays DX system and La Poste's business-to-business mail are both intended for a closed group of users served by a specific network that provides the necessary reliability. The establishment of a specific dedicated network makes it possible to process the mail of a closed group within shorter deadlines than the traditional service. Restricting the service to subscribers also makes it possible to minimise the risk of items being lost. Furthermore, so as to be competitive with Hays's private system, La Poste established a back-up for its business-to-business mail that would provide additional security in the event of a postal strike⁽⁹¹⁾. By contrast, there is no back-up system to cover cases where La Poste was unable to provide the general letter post service,

⁽⁸⁷⁾ La Poste's reply of 12 July 2001 to the statement of objections, points 68 to 71, and La Poste's comments of 3 July 2000, points 28 and 29.

⁽⁸⁸⁾ Item 12 in La Poste's reply of 12 July 2001 to the statement of objections.

⁽⁸⁹⁾ See Hays's complaint of 7 April 2000, p. 4.

⁽⁹⁰⁾ See the description of the 'principal elements' of a business mail exchange network in the UPEA's fax to Hays of 19 November 1997, Annex 2 to Hays's comments of 16 October 2000.

⁽⁹¹⁾ Article 6 of the agreement between La Poste and Key Mail, Annex 11 to La Poste's comments of 11 November 2000.

- cheaper prices than the basic postal service: the Hays DX system and La Poste's business-to-business mail both offer cheaper prices than conventional mail. Furthermore, both offer ex post invoicing, monthly in the case of La Poste and yearly in the case of Hays DX. By contrast, ex post invoicing is not available with the traditional service.

- (67) In conclusion, it is evident from its characteristics, the needs it meets and its cheaper prices than the traditional service that the business-to-business mail service provided by La Poste to a closed group of users in the insurance sector in Belgium is aimed at the same clientele and meets the same needs as the Hays DX service. Furthermore, in setting up a specific network dedicated to such clientele, La Poste's business-to-business mail service was organised in the same way as the Hays DX service on the basis of a network dedicated to its subscribers.
- (68) Even if the agreement relating to the business-to-business mail service provided by La Poste formed part of the reserved sector and, for that reason, constituted a separate market for the exchange of documents ⁽⁹²⁾, the business-to-business services provided by La Poste and by Hays DX to insurance companies remain, from the user's point of view, closely linked adjacent markets. This is evident from the fact that all of the major customers of the Hays DX system, the UPEA and the 11 largest insurance companies which are members of the UPEA, left Hays DX to join the competing business-to-business service of La Poste within a period of a few months, between March and July 2000. The ease with which the switch can be made from one service to another within a period of only a few weeks shows that, if the two services do not form part of the same market, they do form part of closely linked adjacent markets.
- (69) In conclusion, the abuse which La Poste is considered to have committed has thus had repercussions on competition on the same market for closed-user-group mail exchange systems, or, if La Poste's system were not to form part of that market, on a closely linked adjacent market which is open to competition.

2. The lack of any equivalence between the volume handled by La Poste and the volume which Hays said it has lost is not relevant.

- (70) An economic analysis shows that, contrary to what La Poste maintains, the effect on competition cannot be challenged on the grounds that there is no equivalence between the volume handled by La Poste and that which Hays claims to have lost ⁽⁹³⁾. Because of the 'network effect' inherent in closed-user-group service systems, the impact on the system losing customers is inevitably greater than the number of consignments actually handled in the business-to-business network established by La Poste. The total turnover of a closed-network mail service depends on the number of transactions between members ⁽⁹⁴⁾. When an undertaking leaves Hays's network to join the network established by La Poste, Hays loses a volume of mail which is equivalent to the number of transactions lost between such undertaking and the other members of the DX system. By contrast, the volume gained by La Poste depends on the number of transactions between members of the network established by La Poste. During the initial phase of the switch between the two networks, the number of members of the DX system will not correspond to the number of members of La Poste's network. Nor, however, will the number of transactions between undertakings which are members of the DX network correspond to the number of transactions which will exist in La Poste's network. This shows that the impact on the Hays DX system will be very great precisely at the start of the switchover of customers to La Poste's system: if the number of undertakings using the DX system is greater than the number of undertakings belonging to La Poste's network, the transactions lost by Hays's DX will exceed the transactions initially gained by La Poste ⁽⁹⁵⁾.

⁽⁹²⁾ La Poste's comments of 14 February 2001, p. 3, La Poste's reply of 12 July 2001 to the statement of objections, point 81, and La Poste's comments of 17 August 2001, point 23.

⁽⁹³⁾ La Poste's reply of 12 July 2001 to the statement of objections, points 81, 173 and 178.

⁽⁹⁴⁾ Economic report submitted by Hays on 24 July 2001, Annex 11 to Hays's comments of 24 July 2001, p. 15.

⁽⁹⁵⁾ See footnote 14 in the economic report submitted by Hays as Annex 11 to the comments of 24 July 2001.

3. *If it lacks 'critical mass', a closed-user-group mail exchange infrastructure cannot be maintained*

- (71) Lastly, contrary to what La Poste maintains, La Poste's tying of the agreements relating to business-to-private and business-to-business mail prevents the establishment of alternative systems for the handling of business-to-business mail ⁽⁹⁶⁾. Since, in a closed mutual mail exchange system such as DX, the attractiveness of belonging to the system depends on the number of participants, as each undertaking wishes to be able to correspond with the largest possible number of other undertakings, the loss of customers as a result of tying by La Poste may result in the DX system's losing customers not directly concerned by the tying: the loss of certain large subscribers may trigger a 'chain reaction' that makes the DX system less attractive ⁽⁹⁷⁾. In particular, following the initial defections, the network becomes less attractive to the remaining subscribers because they have fewer correspondents accessible through the closed system. If members who are important senders and receivers of items leave the network, the network necessarily becomes much less attractive to the remaining members ⁽⁹⁸⁾. Their departure brings in its wake the departure of small and medium-sized accounts. La Poste's tying thus had a very considerable impact on competition. Following the UPEA's termination on 21 March 2000 of its subscription to the Hays network, the 11 largest insurance companies, representing some 40 % of the turnover achieved with the 167 insurance companies subscribing to the system ⁽⁹⁹⁾, left the network between July and December 2000. The departure of the 11 largest insurance companies prompted the immediate departure of more than 100 brokers ⁽¹⁰⁰⁾. These included the 122 leading brokers in Belgium, who similarly accounted for 40 % of the turnover achieved with insurance brokers ⁽¹⁰¹⁾.
- (72) In such circumstances, if it lacks critical mass, the DX system cannot be maintained in Belgium. In its offer of 15 July 1998, La Poste itself indicated that a minimum commitment of [...] items a year was the basis required to justify the establishment of an additional infrastructure for a dedicated business-to-business mail service ⁽¹⁰²⁾. Lastly, if the insurance sector, which represents 85 % in volume and turnover terms of the Hays DX system in Belgium, no longer uses the system, the system can no longer be maintained with only 15 % of the customers outside the insurance sector.

4. *Tying between services covered by a monopoly and services open to competition always has repercussions on competition*

- (73) La Poste used its monopoly resources as regards the business-to-service to 'impose' the additional business-to-private service on the UPEA. Since, by virtue of the postal monopoly, Hays was not in a position to offer the same tariff advantages or indeed the business-to-private service, La Poste, thanks to its statutory monopoly, was able to exert a powerful incentive which eventually persuaded the UPEA that accepting the business-to-business agreement was economically preferable to losing the preferential tariff on business-to-private mail. It should be noted in this respect that, in its Decision in the *Atlas* case ⁽¹⁰³⁾, the Commission identified the harmful effects on competition, where undertakings holding a statutory monopoly exploit the monopoly resources in order to gain advantages in activities open to competition. The Commission stated that such companies 'could eliminate competition by using discounts on reserved services... to attract their clients to use Atlas' non-reserved services' ⁽¹⁰⁴⁾. It is precisely this scenario which is evident in this case.

⁽⁹⁶⁾ See La Poste's comments of 21 November 2000, pp. 7 and 8.

⁽⁹⁷⁾ Hays notes that, since the departure of the large accounts, i.e. the 11 largest insurance companies, the 'chain reaction' accelerated since there was less and less incentive to remain in a system which has fewer and fewer correspondents to whom documents may be sent and who are likely to send documents back.

⁽⁹⁸⁾ See Hays's comments of 25 January 2001, point 55.

⁽⁹⁹⁾ See Hays's comments of 25 January 2001, point 54.

⁽¹⁰⁰⁾ See Hays's comments of 25 January 2001, point 54.

⁽¹⁰¹⁾ See Hays's comments of 25 January 2001, point 54.

⁽¹⁰²⁾ See La Poste's letter to the UPEA of 15 July 1998, Annex 2 to La Poste's comments of 21 November 2000. See also Article 17 of the 10 000-1 and 10 000-2 agreements.

⁽¹⁰³⁾ Commission Decision 96/546/EC of 17 July 1996 (Case IV/35.337 — *Atlas*), OJ L 239, 19.9.1996, p. 23, recital 60.

⁽¹⁰⁴⁾ See Decision 96/546/EC (see footnote 103), paragraph 60.

F. Effect on trade between Member States

- (74) Article 82 does not require it to be proved that abusive conduct has in fact appreciably affected trade between Member States, but that it is capable of having that effect ⁽¹⁰⁵⁾.
- (75) It should first be noted that, since it was set up in 1982, the Hays DX document exchange network has expanded beyond Belgium and links Belgium with other Member States such as France, the United Kingdom and Ireland. Secondly, as is evident from the above economic analysis, a cross-frontier document exchange system that did not have the volume that was essential to its operation could not be maintained solely for DX subscribers abroad. Following the elimination of the Hays system from the Belgian market, DX subscribers abroad will no longer have access to their usual correspondents in Belgium. Consequently, even if La Poste's business-to-business service is aimed only at consignments whose sole destination is within Belgium ⁽¹⁰⁶⁾, La Poste's tying prevents exchange flows of documents through a specific cross-frontier document exchange network ⁽¹⁰⁷⁾.
- (76) Furthermore, document exchange flows from Belgium to other Member States and consignments from such countries to Belgium using the Hays DX network will cease and will be replaced by La Poste's general international letter post service. 'Patterns of trade' are thus liable to be affected and indeed deflected from their normal course if La Poste's tying has the ultimate effect of eliminating this document exchange network from Belgian territory.
- (77) In addition, trade between Member States is affected by conduct which eliminates or is liable to eliminate the establishment of a competitor from another Member State within Belgium. Such conduct leads to market sharing between Member States. Consequently, contrary to what La Poste maintains, the 'patterns of trade' criterion is not decisive.
- (78) The provision of certain services such as the business-to-business mail service requires the establishment of a branch on national territory. However, contrary to what La Poste maintains, the requirement that the provider of a business-to-business service which has its head office in another Member State but which seeks to pursue its business on Belgian territory must set up an establishment in Belgium does not have the effect of excluding the existence of trade between Member States. The fact that the branch would be eliminated from the Belgian market affects the financial relationship between the branch and the parent company ⁽¹⁰⁸⁾. Furthermore, La Poste's tying is capable of affecting the position of foreign companies wishing to establish themselves in Belgium and thus tends to make access to the Belgian market more difficult ⁽¹⁰⁹⁾.
- (79) In conclusion, La Poste's conduct was such as to compartmentalise the relevant market and thus impede the economic interpenetration which the Treaty seeks to bring about.

G. Article 86(2) of the Treaty

- (80) La Poste is not relying on the derogation provided for in Article 86(2) of the Treaty to justify its policy of tying within the meaning of point (d) of the second paragraph of Article 82 of the Treaty. Furthermore, there is no reason why the tying of agreements within the meaning of point (d) of the second paragraph of Article 82 of the Treaty in the insurance sector in Belgium might contribute to performing the task of general economic interest assigned to La Poste.

⁽¹⁰⁵⁾ *Michelin* (see footnote 51), paragraph 104.

⁽¹⁰⁶⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 86.

⁽¹⁰⁷⁾ La Poste's reply of 12 July 2001 to the statement of objections, point 85.

⁽¹⁰⁸⁾ Case 45/85 *Verband der Sachversicherer e.V. v Commission* [1987] ECR 405, paragraph 48.

⁽¹⁰⁹⁾ *Verband der Sachversicherer* (see footnote 108), paragraph 50.

- (81) At all events, the Commission takes the view that tying within the meaning of point (d) of the second paragraph of Article 82 of the Treaty impedes trade to an extent contrary to the Community interest. As already stated, such conduct results in the sealing-off of the Belgian market for business-to-business services. This sealing-off of a national market impedes the exchange of business-to-business mail, to an extent contrary to the Community interest.

H. Article 15 of Regulation No 17

- (82) Under Article 15 of Regulation No 17, an infringement of Article 82 of the Treaty which has been committed either intentionally or negligently may be sanctioned by the imposition of a fine of up to EUR 1 million or alternatively of up to 10 % of the turnover of the undertaking in the preceding business year, whichever is the greater. The chronology of events in the negotiations between the UPEA and La Poste/ABB, and in particular the fact that La Poste let stand the termination of 30 October 1998 of the business-to-private agreement granting the preferential tariff to the UPEA until the UPEA had signed the agreement relating to business-to-business mail on 27 January 2000, point to the conclusion that the tying of the two agreements by La Poste was intentional. In this context, it should be noted that, on several occasions, Hays expressly drew La Poste's attention to the fact that tying by an undertaking in a monopoly position was contrary to the Community competition rules.
- (83) In determining the amount of the fine, the Commission must take account, in particular, of the gravity and the duration of the infringement.

Gravity of the infringement

- (84) In assessing the gravity of the infringement, account must be taken of its nature, its specific impact on the market and the size of the relevant geographic market.

1. The nature of the infringement

- (85) Tying by undertakings in a dominant position has already been ruled against on several occasions by the Court of Justice.
- (86) Furthermore, La Poste made use of the privileges and resources of its statutory postal monopoly in committing the abuse. Through such conduct, it sought specifically to seriously impede the access of non-monopoly postal service providers to the Belgian market. The infringements of Article 82 of the Treaty committed by La Poste had the specific effect of impeding the access of competing producers to the Belgian market for postal services not covered by the statutory monopoly. A policy of tying applied by an undertaking in a monopoly position in order to exclude an active competitor in a neighbouring market not covered by the monopoly must be regarded as a very serious infringement. Postal services in Europe generally feature the coexistence of a monopoly sector (for the general letter post service) and a sector open to competition, in particular for added value services. The Commission must therefore be vigilant in its effort to protect competition in markets which are distinct and different from the general service covered by the monopoly. All attempts to eliminate competition in non-monopoly postal services which involve a series of added-value services in relation to the general letter post service must be regarded as a very serious restriction of competition.

2. The specific impact on the market

- (87) In assessing the specific impact of the infringement on the market, account must be taken of the specific impact which the infringement had on the complainant's activities and the economic scale of such activities. In the present case, La Poste committed the abuse with the intention, which may have been achieved, firstly of eliminating from the Belgian market a private competitor of La Poste and, secondly, of eliminating the infrastructure of the competitor, already established in Belgium since 1982. In the financial year 1999/2000, Hays's document exchange business in Belgium accounted for a turnover of BEF 105 million. The tying practised by La Poste has had a negative impact on competition in this very specific document-exchange business which meets very particular requirements of a closed group of users as regards the exchange of their business mail. During the period in which the infringement was committed, the market shares of Hays DX in such business fell steadily and very appreciably.

3. The size of the relevant geographic market

- (88) Account must be taken of the fact that the anti-competitive effects of the relevant conduct are confined to a single Member State, Belgium.

4. Conclusion regarding the gravity of the infringement

- (89) On the basis of the above, it is apparent that the relevant conduct, on the one hand, involved infringements which were particularly anti-competitive in their nature and object and, on the other, had an impact on a very specific activity meeting the very particular requirements of a closed group of users in a single Member State. In view of these various factors, it must be concluded that the conduct constitutes a serious infringement.
- (90) Given the need to set the amount of the fine, in the light of its gravity, at a sufficiently dissuasive level to ensure that the infringement is not repeated, it is appropriate to set the amount at EUR 2 million.

Duration of the infringement

- (91) The infringements stem from La Poste's unilateral termination, on 30 October 1998, of the agreement with the UPEA granting the preferential tariff for monopoly mail until 27 June 2001, the date on which La Poste states that it ended the business-to-business service.
- (92) It follows from the above that the infringement was of medium duration, and it is therefore appropriate to apply an increase of 25 % to the amount set on the basis of its gravity.
- (93) Accordingly, the basic amount of the fine must be set at EUR 2,5 million.

Aggravating and attenuating circumstances

- (94) There are no aggravating or attenuating circumstances to be taken into consideration for the purposes of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

From 30 October 1998 to 27 June 2001 De Post-La Poste committed an infringement of Article 82 of the EC Treaty by making the agreement granting the preferential tariff for business-to-private mail covered by the monopoly subject to the acceptance, by the recipients of that benefit, of supplementary obligations as regards business-to-business mail.

Article 2

In view of the infringement referred to in Article 1, a fine of EUR 2,5 million is hereby imposed on La Poste.

The fine shall be paid in euro, within three months of the date of notification of this Decision, into bank account No 642-0029000-95 (IBAN code: BE 76 6420 0290 0095; SWIFT code: BBVABEBB) held by the European Commission at the Banco Bilbao Vizcaya Argentaria BBVA, Avenue des Arts 43, B-1040 Brussels.

After the expiry of that period, interest shall automatically be payable at the rate applied by the European Central Bank to its repo operations on the first day of the month in which this Decision is adopted, plus 3,5 percentage points, namely 6,77 %.

Article 3

This Decision is addressed to De Post-La Poste, Centre Monnaie, B-1000 Brussels.

This Decision shall be enforceable pursuant to Article 256 of the EC Treaty.

Done at Brussels, 5 December 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 28 February 2002
approving the plan presented by Luxembourg for the eradication of classical swine fever in feral
pigs in certain areas of Luxembourg

(notified under document number C(2002) 627)

(Only the French text is authentic)

(Text with EEA relevance)

(2002/181/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽¹⁾, and in particular Article 16(1) thereof,

Whereas:

- (1) Classical swine fever has occurred in the feral pig population in certain eastern areas of Luxembourg.
- (2) Luxembourg authorities have presented a plan for the eradication of classical swine fever in feral pigs covering the concerned areas of Luxembourg.
- (3) The submitted plan has been examined by the Commission and found to comply with the provisions of Directive 2001/89/EC.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

Article 1

The plan submitted by Luxembourg for the eradication of classical swine fever in feral pigs in certain areas of Luxembourg is hereby approved.

Article 2

Luxembourg shall bring into force the laws, regulations and administrative provisions for implementing the plan referred to in Article 1 from the date of adoption of this Decision.

Article 3

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 28 February 2002.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 316, 1.12.2001, p. 5.

COMMISSION DECISION
of 28 February 2002
approving the amended plan presented by Austria for the eradication of classical swine fever in
feral pigs in Lower Austria

(notified under document number C(2002) 639)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/182/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽¹⁾, and in particular Article 16(1), fifth subparagraph thereof,

Whereas:

- (1) Classical swine fever has occurred in the feral pig population in an area of the Province of Lower Austria, Austria, in 2000 and early 2001.
- (2) Austrian authorities have applied the measures laid down in the plan for the eradication of classical swine fever in feral pigs covering the concerned areas of Lower Austria, which was approved by means of Commission Decision 2001/140/EC ⁽²⁾.
- (3) In the light of the favourable evolution in the situation Austria has submitted an amended plan for approval, pursuant to Article 16(1) of Directive 2001/89/EC.
- (4) The amended plan has been examined by the Commission and found to comply with the provisions of Directive 2001/89/EC.
- (5) For the sake of clarity it is appropriate to repeal Decision 2001/140/EC.

- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

The amended plan submitted by Austria for the eradication of classical swine fever in feral pigs in the Province of Lower Austria is hereby approved.

Article 2

Austria shall bring into force the laws, regulations and administrative provisions for implementing the plan referred to in Article 1 from the date of adoption of this Decision.

Article 3

Decision 2001/140/EC is hereby repealed.

Article 4

This Decision is addressed to the Republic of Austria.

Done at Brussels, 28 February 2002.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 316, 1.12.2001, p. 5.

⁽²⁾ OJ L 50, 21.2.2001, p. 22.

COMMISSION DECISION

of 28 February 2002

amending Decisions 95/233/EC and 96/482/EC as regards the importation of live poultry from third countries with respect to Bulgaria and repealing Decision 96/483/EC

(notified under document number C(2002) 641)

(Text with EEA relevance)

(2002/183/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from, third countries, of poultry and hatching eggs ⁽¹⁾, as last amended by Decision 2001/867/EC ⁽²⁾, and in particular Article 21, Article 23(1), and Articles 24 and 26 thereof,

Whereas:

(1) Commission Decision 95/233/EC ⁽³⁾, as last amended by Commission Decision 2001/751/EC ⁽⁴⁾, lists in principle third countries, from which Member States are authorised to import live poultry and hatching eggs including ratites and eggs thereof.

(2) Commission Decision 96/482/EC ⁽⁵⁾, as last amended by Commission Decision 2000/505/EC ⁽⁶⁾, lays down more detailed rules for the importation of live poultry and hatching eggs and the relevant animal health certificates.

(3) Commission Decision 96/483/EC ⁽⁷⁾, as last amended by Commission Decision 96/628/EC ⁽⁸⁾, establishes the list of third countries, which are entitled to use the specific models of animal health certificates.

(4) Bulgaria has requested to be authorised for exports of live poultry and hatching eggs to the Community and has submitted the necessary guarantees.

(5) An inspection carried out by the Commission's services to Bulgaria in October 2000 has shown that Bulgaria is covered by sufficiently well structured and organised veterinary services regarding the animal health status concerning poultry.

(6) Furthermore the Bulgarian veterinary authorities have been able to demonstrate that the specific animal health requirements as laid down in Decision 96/482/EC are fulfilled.

(7) It is appropriate therefore to add Bulgaria to the lists of third countries laid down by Decision 95/233/EC.

(8) Croatia was allowed to export live poultry and hatching eggs only from designated areas of its territory. Inspections carried out in September/October 1997 and October 2000 have revealed that there is no further need for regionalisation.

(9) For reasons of transparency the list in the Annex to Decision 96/483/EC should be incorporated into Decision 96/482/EC. At the same time Bulgaria shall be added to it and the whole country of Croatia shall be listed without regionalisation.

(10) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Annex I and Annex II to Decision 95/233/EC shall be replaced by Annex I and Annex II to this Decision.

Article 2

In Decision 96/482/EC Article 2(1) shall be deleted and replaced by the following:

‘1. Member States shall authorise imports of:

(a) breeding and productive poultry, coming from third countries or parts thereof listed in column A of part I of Annex I to this Decision and conforming to the requirements laid down in the model animal health certificate set out as Model A in part II of Annex I to this Decision;

⁽¹⁾ OJ L 303, 31.10.1990, p. 6.

⁽²⁾ OJ L 323, 7.12.2001, p. 29.

⁽³⁾ OJ L 156, 7.7.1995, p. 76.

⁽⁴⁾ OJ L 281, 25.10.2001, p. 24.

⁽⁵⁾ OJ L 196, 7.8.1996, p. 13.

⁽⁶⁾ OJ L 201, 9.8.2000, p. 8.

⁽⁷⁾ OJ L 196, 7.8.1996, p. 28.

⁽⁸⁾ OJ L 282, 1.11.1996, p. 73.

- (b) hatching eggs, coming from third countries or parts thereof listed in column B of part I of Annex I to this Decision and conforming to the requirements laid down in the model animal health certificate set out as Model B in part II of Annex I to this Decision;
- (c) day-old chicks, coming from third countries or parts thereof listed in column C of part I of Annex I to this Decision and conforming to the requirements laid down in the model animal health certificate set out as Model C in part II of Annex I to this Decision;
- (d) slaughter poultry, and poultry for restocking game supplies, coming from third countries or parts thereof listed in column D of part I of Annex I to this Decision and conforming to the requirements laid down in the model animal health certificate set out as Model D in part II of Annex I to this Decision,
- provided that they are accompanied by the relevant certificate, duly completed and signed.'

Article 3

Annex III to this Decision shall become part I of Annex I to Decision 96/482/EC and Annex I to Decision 96/482/EC shall become part II of Annex I.

Article 4

Decision 96/483/EC shall hereby be repealed.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 28 February 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

'ANNEX I

List of third countries from which Member States authorise imports of live poultry and hatching eggs, ratites and eggs thereof excluded

This is a list in principle and importations shall fulfil the relevant animal and public health requirements

ISO code	Country
AU	Australia
BG	Bulgaria
BR	Brazil
CA	Canada
CH	Switzerland
CL	Chile
CY	Cyprus
CZ	Czech Republic
HR	Croatia
HU	Hungary
IL	Israel
LV	Latvia
NZ	New Zealand
PL	Poland
RO	Romania
SI	Slovenia
SK	Slovak Republic
TN	Tunisia
US	United States of America'

ANNEX II

'ANNEX II

List of third countries from which Member States authorise imports of live ratites and eggs thereof

This is a list in principle and importations shall fulfil the relevant animal and public health requirements

ISO code	Country
AU	Australia
BG	Bulgaria
BR	Brazil
BW	Botswana
CA	Canada
CH	Switzerland
CL	Chile
CY	Cyprus
CZ	Czech Republic
HR	Croatia
HU	Hungary
IL	Israel
KE	Kenya
LV	Latvia
NA	Namibia
NZ	New Zealand
PL	Poland
RO	Romania
SI	Slovenia
SK	Slovak Republic
TN	Tunisia
US	United States of America
ZA	South Africa
ZW	Zimbabwe

ANNEX III

ANNEX I

PART I

List of third countries or parts of third countries which are authorised to use the model certificates A to D laid down in Annex I part II are marked with an X

ISO code	Country	Parts of the territory	Model certificates to be used			
			Breeding/ productive	Hatching eggs	Day-old chicks	Slaughter/ restocking
			A	B	C	D
AU	Australia		X	X	X	X
BG	Bulgaria		X	X	X	X
BR	Brazil	The States of Mato Grosso, Paraná, Rio Grande do Sul, Santa Catarina and São Paulo	X	X	X	X
CA	Canada		X	X	X	X
CH	Switzerland		X	X	X	X
CL	Chile		X	X	X	X
CY	Cyprus		X	X	X	X
CZ	Czech Republic		X	X	X	X
HR	Croatia		X	X	X	X
HU	Hungary		X	X	X	X
IL	Israel		X	X	X	X
NZ	New Zealand		X	X	X	X
PL	Poland		X	X	X	X
RO	Romania		X	X	X	X
SI	Slovenia		X	X	X	X
SK	Slovak Republic		X	X	X	X
US	United States of America		X	X	X	X

COMMISSION DECISION
of 28 February 2002
amending Decision 97/222/EC as regards imports of meat products from Latvia and Poland

(notified under document number C(2002) 645)

(Text with EEA relevance)

(2002/184/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽¹⁾, as last amended by Regulation (EC) No 1452/2001 ⁽²⁾, and in particular Article 21a thereof,

Whereas:

- (1) Commission Decision 97/222/EC ⁽³⁾, as last amended by Decision 2001/794/EC ⁽⁴⁾, lays down the list of third countries from which Member States authorise the importation of meat products.
- (2) To prevent the introduction of pathogens liable to endanger the Community's animal health status different treatments are required for imported meat products by Decision 97/222/EC.
- (3) The specific conditions for the treatment are dependent on the species from which meat products are obtained and on the corresponding animal health situation in the third country concerned, as indicated in part II of the Annex to Decision 97/222/EC by a coded reference to the different treatments provided for in part IV of the same Annex.
- (4) An inspection carried out in March 2001 to Latvia by the Commission's services has shown that the animal health status of the poultry sector and its control are satisfactory. As a result of this mission Latvia shall be authorised to export meat products of domestic poultry and of farmed feathered game to the Community.

(5) Poland has been authorised by Commission Decision 2001/849/EC ⁽⁵⁾ amending Decision 98/371/EC ⁽⁶⁾ for the importation of fresh pigmeat into the Community under certain conditions and consequently the requirements for importation of pigmeat products need to be adjusted.

(6) Decision 97/222/EC should therefore be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Part II of the Annex to Decision 97/222/EC is replaced by the text in the Annex to this Decision.

Article 2

This Decision shall apply for imports of meat products as certified from 1 March 2002.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 28 February 2002.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 302, 31.12.1972, p. 28.

⁽²⁾ OJ L 198, 21.7.2001, p. 11.

⁽³⁾ OJ L 89, 4.4.1997, p. 39.

⁽⁴⁾ OJ L 297, 15.11.2001, p. 20.

⁽⁵⁾ OJ L 315, 1.12.2001, p. 71.

⁽⁶⁾ OJ L 170, 16.6.1998, p. 16.

ANNEX

PART II

Third countries or parts thereof from where meat products are authorised for importation into the European Community

ISO code	Country of origin or part thereof	1. Domestic bovine 2. Farmed cloven-hoofed game (excluding swine)	Domestic ovine/caprine	1. Domestic porcine 2. Farmed cloven-hoofed game (swine)	Domestic soliped	1. Domestic poultry 2. Farmed feathered game	Domestic rabbit and farmed leporidae	Wild cloven-hoofed game (excluding swine)	Wild swine	Wild soliped	Wild leporidae (rabbits/hares)	Wild game birds	Wild land mammalian game (excluding ungulates, solipeds and leporidae)
AR	Argentina (1)	C	C	C	A	A	A	C	C	—	A	D	—
AU	Australia	A	A	A	A	A	A	A	A	—	A	A	A
BG	Bulgaria BG	D	D	D	A	D	A	D	D	—	A	D	—
	Bulgaria BG-1	A	A	D	A	D	A	A	D	—	A	D	—
	Bulgaria BG-2	A	A	D	A	D	A	A	D	—	A	D	—
	Bulgaria BG-3	D	D	D	A	D	A	D	D	—	A	D	—
BH	Bahrain	B	B	B	B	—	A	C	C	—	A	—	—
BR	Brazil	C	C	C	A	D	A	C	C	—	A	D	—
	Brazil BR-1	C	C	C	A	A	A	C	C	—	A	A	—
BW	Botswana	B	B	B	B	—	A	B	B	A	A	—	—
BY	Belarus	C	C	C	B	—	A	C	C	—	A	—	—
CA	Canada	A	A	A	A	A	A	A	A	—	A	A	A
CH	Switzerland	A	A	A	A	A	A	A	D	—	A	A	—
CL	Chile	B	B	B	A	A	A	B	B	—	A	A	—
CN	People's Republic of China	B	B	B	B	B	A	B	B	—	A	B	—
CO	Colombia	B	B	B	B	—	A	B	B	—	A	—	—
CY	Cyprus	C	C	C	A	A	A	C	C	—	A	A	—

ISO code	Country of origin or part thereof	1. Domestic bovine 2. Farmed cloven-hoofed game (excluding swine)	Domestic ovine/caprine	1. Domestic porcine 2. Farmed cloven-hoofed game (swine)	Domestic soliped	1. Domestic poultry 2. Farmed feathered game	Domestic rabbit and farmed leporidae	Wild cloven-hoofed game (excluding swine)	Wild swine	Wild soliped	Wild leporidae (rabbits/hares)	Wild game birds	Wild land mammalian game (excluding ungulates, solipeds and leporidae)
CZ	Czech Republic CZ	A	A	A	A	A	A	A	D	—	A	A	—
	Czech Republic CZ-1	A	A	A	A	A	A	A	A	—	A	A	—
	Czech Republic CZ-2	A	A	A	A	A	A	A	D	—	A	A	—
EE	Estonia	C	C	C	A	—	A	C	C	—	A	—	A
ET	Ethiopia	B	B	B	B	—	A	B	B	—	A	—	—
GL	Greenland	—	—	—	—	—	A	—	—	—	A	A	A
HK	Hong Kong	B	B	B	B	D	A	B	B	—	A	—	—
HR	Croatia	A	A	D	A	A	A	A	D	—	A	A	—
HU	Hungary	A	A	A	A	A	A	A	A	—	A	A	—
IL	Israel	B	B	B	B	D	A	B	B	—	A	D	—
IN	India	B	B	B	B	—	A	B	B	—	A	—	—
IS	Iceland	B	B	B	A	—	A	B	B	—	A	—	—
KE	Kenya	B	B	B	B	—	A	B	B	—	A	—	—
KR	Republic of Korea	—	—	—	—	D	A	—	—	—	A	D	—
LT	Lithuania	C	C	C	A	D	A	C	C	—	A	D	A
LV	Latvia	C	C	C	A	D	A	C	C	—	A	—	A
MA	Morocco	B	B	B	B	—	A	B	B	—	A	—	—
MG	Madagascar	B	B	B	B	D	A	B	B	—	A	D	—
MK	Former Yugoslav Republic of Macedonia	A	A	B	A	—	A	B	B	—	A	—	—

ISO code	Country of origin or part thereof	1. Domestic bovine 2. Farmed cloven-hoofed game (excluding swine)	Domestic ovine/caprine	1. Domestic porcine 2. Farmed cloven-hoofed game (swine)	Domestic soliped	1. Domestic poultry 2. Farmed feathered game	Domestic rabbit and farmed leporidae	Wild cloven-hoofed game (excluding swine)	Wild swine	Wild soliped	Wild leporidae (rabbits/hares)	Wild game birds	Wild land mammalian game (excluding ungulates, solipeds and leporidae)
MT	Malta	—	—	—	—	A	A	—	—	—	A	—	—
MU	Mauritius	B	B	B	B	—	A	B	B	—	A	—	—
MX	Mexico	A	D	D	A	D	A	D	D	—	A	D	—
MY	Malaysia MY	—	—	—	—	—	—	—	—	—	—	—	—
	Malaysia MY-1	—	—	—	—	D	A	—	—	—	A	D	—
NA	Namibia (!)	B	B	B	B	D	A	B	B	A	A	D	—
NZ	New Zealand	A	A	A	A	A	A	A	A	—	A	A	A
PL	Poland	A	A	A ⁽²⁾ D ⁽³⁾	A	A	A	A	D	—	A	A	—
PY	Paraguay	C	C	C	B	—	A	C	C	—	A	—	—
RO	Romania	A	A	D	A	A	A	A	D	—	A	A	A
RU	Russia	C	C	C	B	—	A	C	C	—	A	—	A
SG	Singapore	B	B	B	B	D	A	B	B	—	A	—	—
SI	Slovenia	A	A	D	A	D	A	A	D	—	A	D	—
SK	Slovak Republic	A	A	D	A	A	A	A	D	—	A	A	—
SZ	Swaziland	B	B	B	B	—	A	B	B	A	A	—	—
TH	Thailand	B	B	B	B	A	A	B	B	—	A	D	—
TN	Tunisia	C	C	B	B	A	A	B	B	—	A	D	—
TR	Turkey	—	—	—	—	D	A	—	—	—	A	D	—
UA	Ukraine	—	—	—	—	—	A	—	—	—	A	—	—

ISO code	Country of origin or part thereof	1. Domestic bovine 2. Farmed cloven-hoofed game (excluding swine)	Domestic ovine/caprine	1. Domestic porcine 2. Farmed cloven-hoofed game (swine)	Domestic soliped	1. Domestic poultry 2. Farmed feathered gamed	Domestic rabbit and farmed leporidae	Wild cloven-hoofed game (excluding swine)	Wild swine	Wild soliped	Wild leporidae (rabbits/hares)	Wild game birds	Wild land mammalian game (excluding ungulates, solipeds and leporidae)
US	United States of America	A	A	A	A	A	A	A	A	—	A	A	—
UY	Uruguay	A	A	B	A	D	A	—	—	—	A	D	—
YU	Federal Republic of Yugoslavia YU	D	D	D	A	D	A	C	C	—	A	—	—
	Federal Republic of Yugoslavia YU-1	A	A	D	A	D	A	A	D	—	A	—	—
	Federal Republic of Yugoslavia YU-2	D	D	D	A	D	A	C	C	—	A	—	—
ZA	South Africa (1)	C	C	C	A	D	A	C	C	A	A	D	—
ZW	Zimbabwe (1)	C	C	B	A	D	A	B	B	—	A	D	—

(1) See Part III for minimum treatment requirements for pasteurised meat products and biltong.

(2) For meat products prepared from fresh meat of domestic porcines in accordance with Decision 98/371/EC as amended by Decision 2001/849/EC in case of meat of Polish origin.

(3) For meat products prepared from fresh meat of farmed cloven-hoofed game (swine).'