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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 487/97

of 17 March 1997

**amending Regulation (EEC) No 1318/93 on detailed rules for the application of
Council Regulation (EEC) No 2067/92 on measures to promote and market
quality beef and veal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2067/92 of 30 June 1992 on measures to promote and market quality beef and veal⁽¹⁾, and in particular Article 4 thereof,

Whereas Commission Regulation (EEC) No 1318/93⁽²⁾, as last amended by Regulation (EC) No 715/96⁽³⁾, lays down the detailed rules for the application of the above-mentioned Regulation;

Whereas Articles 4 and 5 of Regulation (EEC) No 1318/93 lay down the deadlines for submitting applications for financing to the competent bodies in each Member State and for forwarding the applications to the Commission;

Whereas, pending the conclusions of the discussions which are now in progress on possible changes to Annex I to Regulation (EEC) No 1318/93, the deadline for the submission of applications for measures beginning in 1998 should be postponed;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1318/93 is hereby amended as follows:

1. The second sentence of Article 4 (1) is replaced by the following:

‘However, applications for promotion measures beginning in 1998 may be submitted up to 30 September 1997.’

2. The second sentence of Article 5 (1) is replaced by the following:

‘However, for applications submitted in 1997, it shall forward each application and the corresponding reasoned opinion within 15 days of its receipt.’

Article 2

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

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

Done at Brussels, 17 March 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 57.

⁽²⁾ OJ No L 132, 29. 5. 1993, p. 83.

⁽³⁾ OJ No L 99, 20. 4. 1996, p. 13.

COMMISSION REGULATION (EC) No 488/97
of 17 March 1997
on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated vegetable oil to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾;

Whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilize either rapeseed oil or sunflower oil; whereas the contract for the supply of such each lot is to be awarded to the tenderer submitting the lowest tender;

Whereas, for a given lot, given the small quantities to be supplied, the packaging methods and the large number of destinations of the supplies, provision should be made for

the possibility for tenderers to indicate two ports of loading, where necessary not belonging to the same port area,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The supply shall cover the mobilization of vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders relating to the lots specified in the Annex shall cover either rapeseed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil to which they relate.

For lot A, notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 17 March 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation Nos** ⁽¹⁾: 131/96 (A1); 132/96 (A2); 133/96 (A3); 136/96 (A4); 134/96 (A5); 137/96 (A6)
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma
(tel: (39-6) 57 971; telex: 626675 WFP I)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: A1: Nicaragua; A2: Honduras; A3: Guatemala; A4: Bolivia; A5: Madagascar; A6: Rwanda
6. **Product to be mobilized**: vegetable oil: refined rapeseed oil or refined sunflower oil
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽⁸⁾: see OJ No C 114, 29. 4. 1991, p. 1 (III. A (1) (a) or (b))
8. **Total quantity (tonnes net)**: 1 257
9. **Number of lots**: 1 in 6 parts (A1: 483 tonnes; A2: 153 tonnes; A3: 200 tonnes; A4: 262 tonnes; A5: 65 tonnes; A6: 94 tonnes)
10. **Packaging and marking** ⁽⁶⁾: see OJ No C 267, 13. 9. 1996, p. 1 (10.4 A, B and C.2)
see OJ No C 114, 29. 4. 1991, p. 1 (III.A.(3))
Language to be used for the marking: A1 — A4: Spanish; A5 + A6: French
11. **Method of mobilization**: mobilization of refined vegetable oil produced in the Community.
Mobilization may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Stage of supply**: free at port of shipment ⁽¹⁰⁾
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 28. 4 — 18. 5. 1997
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 1. 4. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 15. 4. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment: 12. 5 — 1. 6. 1997
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire,
Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels
(telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

LOTS B, C

1. **Operation Nos** ⁽¹⁾: 130/96 (B); 138/96 (C)
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma
(tel.: (39-6) 57 971; telex: 626675 WFP I)
4. **Representative of the recipient**: B: Attn. WFP Representative, 1191 Corniche El Nil, Boulak, Cairo
C: WFP Yemen, Attn. Country Director, Khorashi Bldg, Siteen Street, Sana'a
5. **Place or country of destination** ⁽³⁾: B: Egypt; C: Yemen
6. **Product to be mobilized**: vegetable oil: refined rapeseed oil or refined sunflower oil
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽⁸⁾: see OJ No C 114, 29. 4. 1991, p. 1 (III. A (1) (a) or (b))
8. **Total quantity (tonnes net)**: 487
9. **Number of lots**: 2 (B: 250 tonnes; C: 237 tonnes)
10. **Packaging and marking** ⁽⁶⁾ ⁽⁹⁾: see OJ No C 267, 13. 9. 1996, p. 1 (10.4 A, B and C.2)
see OJ No C 114, 29. 4. 1991, p. 1 (III.A. 3))
Language to be used for the marking: English
11. **Method of mobilization**: mobilization of refined vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward-processing arrangements
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: B: Alexandria; C: Hodeidah
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 28. 4 — 11. 5. 1997
18. **Deadline for the supply**: 1. 6. 1997
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 1. 4. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 15. 4. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 12 — 25. 5. 1997
 - (c) deadline for the supply: 15. 6. 1997
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾:
Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard,
Bâtiment Loi 130, bureau 7/46,
Rue de la Loi/Wetstraat 200, B-1049 Brussels
(telex: 25670 AGREC B: fax: (32-2) 296 70 03/296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Article 7 (3) (g) of Regulation (EEC) No 2200/87 shall not be applicable to tenders submitted.
- (⁵) Commission delegation to be contacted by the successful tenderer: OJ No C 114, 29. 4. 1991, p. 33.
- (⁶) Notwithstanding OJ No C 114, point III.A (3) (c) is replaced by the following: 'the words "European Community"'.

- (⁷) The successful tenderer shall supply to the beneficiary or its representative, on delivery, a sanitary certificate.
- (⁸) Tenders shall be rejected unless they specify the type of oil to which they relate.
- (⁹) The free holding period for containers must be at least 15 days.
- (¹⁰) Notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.

COMMISSION REGULATION (EC) No 489/97

of 17 March 1997

laying down detailed rules for the application of the specific measures adopted in respect of fresh fruit and vegetables, plants and flowers for the benefit of the French overseas departments (FOD)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments ⁽¹⁾, as last amended by Regulation (EC) No 2598/95 ⁽²⁾, and in particular Articles 13 (4) and 16 thereof,

Whereas Article 13 of Regulation (EEC) No 3763/91 introduces aid for the supply of the regional market of the French overseas departments (hereinafter referred to as 'FOD') with fruits, vegetables, flowers and live plants, and for the production of green vanilla and essential geranium and vetiver oils; whereas detailed rules for the application of this Article should be adopted;

Whereas, pursuant to the provisions of the above-mentioned Article 13, the amount of the aid for the supply of the regional market of the FOD is fixed on a flat-rate basis for each of the product categories to be determined, based on the average value of the products so covered, within the limits of annual quantities established for each product category; whereas the list of products eligible for aid should be established as a function of the supply needs of the regional market, and the categories should be determined on the basis of the average value of the products covered, so as to fix a maximum quantity for the FOD as a whole, providing for the apportionment of quantities by the national authorities to ensure the best match between available resources and regional needs; whereas this requirement justifies the supply of products in a FOD other than the one where the product was harvested;

Whereas special arrangements should be adopted for monitoring compliance with the quantities fixed and the conditions for granting aid; whereas, to this end, it would appear that satisfactory management of the supply arrangements can be ensured by a procedure for approving, as parties to supply contracts, operators in the distribution sector, enterprises in the catering sector or mass caterers who agree to comply with certain rules;

Whereas for aid for the production of green vanilla of ECU 6,04 per kilogram on the one hand, and for aid for the production of essential geranium and vetiver oils of ECU 44,68 per kilogram on the other, satisfactory application of these measures in the framework of existing marketing structures can be ensured by procedures for approving, in the first case, processors preparing dried vanilla or vanilla extracts and, in the second, local collection and marketing bodies which undertake in particular to transfer to the producers the full amount of aid and to allow any checks or inspections required; whereas the quantities fixed in the abovementioned Article 13 (2) and (3) are upper limits which, according to the latest estimates notified by the French authorities, will not be reached in the medium term; whereas for the sake of good management, in view of the needs of the very remote regions concerned, it seems advisable to use the resources thereby made available for the purposes of the abovementioned supply arrangements in the regional markets;

Whereas, in order to simplify the legislation, the body of this Regulation should include the provisions adopted for implementing the marketing aid scheme, based on the conclusion of annual contracts, introduced by Article 15 of Regulation (EEC) No 3763/91; whereas this means incorporating the provisions of Title III of Commission Regulation (EEC) No 667/92 ⁽³⁾, as last amended by Regulation (EC) No 1363/95 ⁽⁴⁾, into this Regulation, and repealing that Regulation;

Whereas such a measure makes it necessary to define the notion of annual contracts and to specify the base for the calculation of the amount of aid, which is set by the aforementioned Article 15 at 10 % of the value of the production marketed, free at destination, or at 13 % in the conditions specified in paragraph 4 of that Article; whereas provision should be made for a mechanism to apportion quantities eligible for aid where the limits laid down in that Article are exceeded;

Whereas general provisions applicable to these measures as a whole, especially those concerning control and notification, should be set out in a final chapter;

⁽¹⁾ OJ No L 356, 24. 12. 1991, p. 1.

⁽²⁾ OJ No L 267, 9. 11. 1995, p. 5.

⁽³⁾ OJ No L 71, 18. 3. 1992, p. 13.

⁽⁴⁾ OJ No L 132, 16. 6. 1995, p. 8.

Whereas the main features of aid to the production of green vanilla and essential geranium and vetiver oils were set out in the new Article 13 (2) and (3) of Regulation (EEC) No 3763/91, which came into force in November 1995; whereas consequently provision should be made for paying this aid for 1996 in accordance with specific transitional conditions determined by the French authorities;

Whereas in order to ensure the management of all the measures on the basis of calendar years, the provisions of this Regulation should apply, unless an explicit exception is made, from 1 January 1997;

Whereas the measures provided for in this Regulation are in accordance with the joint opinion of the Management Committee for Fruit and Vegetables and the Management Committee for Live Plants,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Aid for supplying the regional market

Article 1

The aid provided for in Article 13 of Regulation (EEC) No 3763/91 shall be granted in respect of fresh fruit and vegetables with the exception of bananas other than plantains falling within CN code 0803 00 11, flowers and live plants listed in Chapters 6, 7 and 8 of the Combined Nomenclature, pepper and fruits of the genera *Capiscum* and *Pimenta* falling within CN code 0904 and the spices falling within CN code 0910, for supply to the FOD market under the conditions laid down in this Chapter.

Article 2

1. The aid shall be granted to the producers referred to in Article 3 in respect of the products listed in Annex I under three categories A, B and C:

- (a) which comply with the standards established pursuant to Title I of Commission Regulation (EC) No 2200/96⁽¹⁾ as regards fruit and vegetables or, where such standards have not been established for the products concerned, with the quality specifications in the supply contracts referred to below; however, products presenting special characteristics linked to tropical production conditions shall not be excluded;
- (b) and which are covered by supply contracts between the types of operator referred to in Article 3 for one or more marketing periods, concluded before the commencement of the relevant period, or before a date fixed by the competent authorities.

2. The amounts of aid applicable to each category of product shall be those set out in Annex II.

3. The aid shall be paid up to the annual quantities for each category of product set out in Part 1 of Annex I.

The competent authorities shall determine for each FOD the products and quantities thereof in respect of which aid may be granted. They shall adjust the apportionment in the light of specific needs and available quantities.

4. Where justified by the supply needs for one or more products, the competent authorities may grant the aid for supply to a FOD other than the one in which the product concerned was harvested.

Article 3

1. Supply contracts shall be concluded between individual producers or producer groups on the one hand and, on the other, operators in the distribution sector, enterprises in the catering sector or mass caterers established in the production region and approved by the national authorities, without prejudice to Article 2 (4).

The increase in aid provided for in the sixth subparagraph of Article 13 (1) of Regulation (EEC) No 3763/91 shall apply to contracts concluded by producers' organizations recognized in accordance with Article 11 of Regulation (EC) No 2200/96 or producer groups recognized under Council Regulation (EEC) No 1360/78⁽²⁾ with operators in the distribution sector, enterprises in the catering sector or mass caterers.

2. The national authorities shall grant approval, upon application, to the distributors, enterprises and mass caterers referred to in paragraph 1 which undertake in writing to:

- (a) supply the regional market with the products covered by the supply contracts;
- (b) keep separate accounts for the supply contracts;
- (c) provide the competent authorities, when the latter so request, with all supporting documentation concerning the implementation of the contracts and fulfilment of the undertakings made pursuant to this Regulation.

Article 4

1. Producers wishing to benefit from the aid arrangements shall send to the administration designated by the competent authorities, not later than the deadline set by those authorities, a declaration accompanied by a copy of a supply contract or preliminary contract as referred to in Article 3 (1), giving at least the following information:

⁽¹⁾ OJ No L 29, 7. 2. 1996, p. 3.

⁽²⁾ OJ No L 166, 23. 6. 1978, p. 1.

- business names of the parties to the supply contract,
- a precise description of the products covered by the supply contract,
- an indication of the quantities to be supplied during the marketing period(s),
- the forecast supply schedule.

2. The competent authorities may set a minimum quantity for each aid application. Where the total quantities in the abovementioned declarations exceed, in respect of one or more categories of products, the quantities in respect of which aid may be granted, the competent authorities may fix, for that category or those categories of products, a percentage corresponding to the proportion of the supply contract for which an aid application may be submitted.

Article 5

Where the quantities for which aid applications are submitted exceed the maximum quantities set for a product or category of products, the competent authorities shall set a coefficient of reduction to be applied to all aid applications in respect of that product or category of products.

CHAPTER II

Aid for the production of green vanilla and essential oils of geranium and vetiver

Article 6

1. Production aid for green vanilla falling within CN code ex 0905 intended for the production of dried (black) vanilla or vanilla extracts as provided for in Article 13 (2) of Regulation (EEC) No 3763/91 shall be paid to the green vanilla producer via the processors approved by the competent authorities.

Where necessary for the proper application of the measure, the authorities shall specify the technical characteristics of the green vanilla, production of which is eligible for aid.

2. The competent authorities shall grant approval to processors established in the production region:

- (a) whose plant and equipment is suitable for the preparation of dried (black) vanilla or vanilla extracts;
- (b) and who undertake in writing:
 - to transfer the full amount of ECU 6,04 per kg to the green vanilla producer pursuant to one or more supply contracts not later than one month

from the date of payment of the aid by the competent authorities,

- to keep separate accounts for transactions connected with the application of this Article,
- to allow any checks or inspections required by the competent administrations and to notify all information relating to the application of this Article.

Article 7

1. Production aid for essential oils of geranium and vetiver falling within CN codes 3301 21 and 3301 26 as provided for in Article 13 (3) of Regulation (EEC) No 3763/91 shall be paid to producers through local collection and marketing bodies approved by the competent authorities.

The aid shall be paid for finished products obtained in accordance with recognized manufacturing procedures and having the technical characteristics published by the competent authorities.

2. The competent authorities shall grant approval to the bodies referred to in paragraph 1 established in the production region which undertake in writing:

- (a) to transfer to the producers the full amount of ECU 44,68 per kg of essential oils of geranium and vetiver pursuant to one or more supply contracts not later than one month from the date of payment of the aid by the competent authorities;
- (b) to keep separate accounts for transactions connected with the application of this Article;
- (c) to allow any checks or inspections required by the competent administrations and to notify all information relating to the application of this Article.

Article 8

1. Where the quantities for which aid applications are made under Article 6 or 7 exceed the annual quantities laid down in Part 2 of Annex I, the competent authorities shall set a percentage reduction to be applied to all applications.

2. The competent authorities shall adopt the necessary additional administrative provisions for the application of Articles 6 and 7, in particular as regards the submission of aid applications, and shall carry out the necessary checks on green vanilla producers, dried vanilla and vanilla extract processors, producers of geranium and vetiver oils and the collection and marketing bodies for these products.

They may make payment of the aid conditional upon the presentation of delivery notes jointly signed by the producer and, as the case may be, the processors or the approved collection and marketing bodies.

CHAPTER III

Aid for marketing under annual contracts*Article 9*

1. For the purposes of Article 15 of Regulation (EEC) No 3763/91, 'annual contract' means a contract by which an operator, either a natural or legal person established elsewhere in the Community, outside the FOD, undertakes, before the beginning of the marketing period for the product or products in question, to purchase all or part of the production of an individual producer, producer's association or union in the FOD, with a view to marketing it elsewhere.

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

The contract shall at the very least include the following information:

- (a) the business names of the contracting parties and their places of establishment;
- (b) the description of the product or products;
- (c) the quantities concerned;
- (d) the duration of the commitment;
- (e) the marketing schedule;
- (f) the packaging and presentation method and information relating to transport (conditions and costs);
- (g) the exact delivery stage.

3. The competent administrations shall assess the contracts for conformity with Article 15 of Regulation (EEC) No 3763/91 and with this Regulation. They shall verify that the contracts contain all the information specified in paragraph 2 above.

They shall inform the operator whether paragraph 6 is likely to be applied.

4. 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 information or additional supporting documentation required to calculate the aid.

5. Applications for aid shall be submitted by the buyer who entered into the commitment to market the product in the month following the end of the marketing period.

Where the management of the aid scheme so requires, the competent administrations may specify marketing periods or years for each product.

6. Where, for a given product and for a given overseas department, the quantities for which aid is requested exceed the volume of 3 000 tonnes laid down in Article 15 of Regulation (EEC) No 3763/91, or, in the case of melons falling within CN code ex 0807 10 90, the limit laid down in paragraph 5 of the above Article, the national authorities shall determine a uniform percentage reduction to be applied to all aid applications.

7. The increase in aid provided for in Article 15 (4) of Regulation (EEC) No 3763/91 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 of the contract 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.

CHAPTER IV

General provisions*Article 10*

1. Applications for aid for supplying the regional market as referred to in Chapter I, for the production aid referred to in Chapter II and for the marketing aid referred to in Chapter III shall be submitted to the administrations designated by the French authorities in accordance with the models established by the latter and within the period(s) prescribed by them.

2. The applications shall be accompanied by invoices and all other supporting documents relating to the measures undertaken, in particular the reference of the supply contracts for the aid referred to in Chapters I and III.

3. The competent administrations, having verified the applications for aid and the relative supporting documents, shall pay out, in the two months following the end of the period for lodging applications for aid referred to in paragraph 1, the aid determined in accordance with Chapters I, II, and III.

Article 11

1. The national authorities shall take all the necessary measures to guarantee compliance with the conditions to which the grant of the aid provided for in Articles 13 and 15 of Regulation (EEC) No 3763/91 is subject.

To that end, they shall carry out random on-the-spot checks on aid applications representing at least 20 % of the quantities and 10 % of the beneficiaries.

They shall withdraw the approvals referred to in Articles 3 (2), 6 (2) and 7 (2) where the commitments to which they are subject are not fulfilled.

They may suspend the payment of aid according to the seriousness of the irregularities discovered.

2. Where aid has been paid out unduly, the competent administrations shall recover the sums paid out, with interest from the date on which the aid was paid out to the date on which it was 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 above subparagraph, shall be imposed.

The interest rate shall be that applied by the European Monetary Cooperation Fund to its transactions in ecus as 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.

3. 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.

Article 12

France shall send the Commission, within three months of the entry into force of this Regulation, the additional detailed rules adopted for the application of Articles 13, 14 and 15 of Regulation (EEC) No 3763/91.

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

Done at Brussels, 17 March 1997.

Article 13

For the purposes of Article 13 (2) and (3) of Regulation (EEC) No 3763/91, aid applications for 1996 shall be submitted to the administration designated by the competent authorities under the conditions adopted by the latter.

The aid shall be paid on presentation, to the satisfaction of the competent authorities, of evidence that the products in respect of which the right to aid arises have actually been, as appropriate, harvested with a view to the production of dried (black) vanilla or vanilla extract or manufactured in compliance with customary technical procedures and collected by the bodies responsible for marketing them.

The competent authorities shall ensure, using appropriate checks, that the aid applications and supporting documents are true and exact.

Article 14

Regulation (EEC) No 667/92 is hereby repealed.

Article 15

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

It shall apply from 1 January 1997, with the exception of Article 14 which shall apply from its entry into force.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

1. Products referred to in Article 2 (1)

Maximum quantities referred to in Article 2 (3)

Category A		
CN code	Product	Quantity
0701	potatoes	10 350 (tonnes)
ex 0706 10	carrots	
ex 0707	cucumbers	
0709 90 90	chouchous/christophines	
0803 00 11	plantains	
0804 30	pineapples	
0807 11 00	watermelons	
ex 0603	tropical flowers (standard anthurium, alpinas, heliconias)	6 600 000 (units)

Category B		
CN code	Product	Quantity
0702	tomatoes	12 400 (tonnes)
ex 0703 10	onions	
ex 0704	cabbages	
ex 0705	lettuce	
0709 90 10	salad vegetables other than lettuce	
0709 30 00	aubergines	
0714 20 10	sweet potatoes	
ex 0714 90 11	yams, dachines or taro	
ex 0714 90 19	yams, dachines or taro	
ex 0709 90 90	turban squash	
0804 40	avocados	
ex 0804 50 00	mangoes	
ex 0805	citrus fruit (oranges, mandarins, lemons and limes, grapefruit and pomelos)	
0807 19 00	melons	
0807 20 00	papayas	
ex 0810 90 30	lychees	

Category C		
CN code	Product	Quantity
0703 20	garlic	375 (tonnes)
0708 20	green beans	
ex 0710 30 10	turmeric	
0810 10	strawberries	
ex 0810 90 40	passion fruit, maracuja, granadilla	
ex 0810 90 85	rambutan	
ex 0603 10	tropical flowers (hybrid anthurium, orchids, Canna indica)	500 000 (units)
0603 10 11	roses	
0603 10 51	roses	

2. Maximum quantities referred to in Article 8

CN code	Product	Quantity (kilograms)
ex 0905	green vanilla	45 000
3301 21	essential oil of geranium	12 500
3301 26	essential oil of vetiver	2 500

ANNEX II

Amounts of aid referred to in Article 2 (2) and increased aid referred to in the second subparagraph of Article 3 (1)

Category A

CN code	Product	Aid (Article 2)	Increased aid (Article 3)
0701 ex 0706 10 ex 0707 0709 90 90 0803 00 11 0804 30 0807 11 00	potatoes carrots cucumbers chouchous/christophines plantains pineapples watermelons	ECU 0,15/kg	ECU 0,1575/kg
ex 0603	tropical flowers (standard anthurium, alpinas, heliconias)	ECU 0,15/unit	ECU 0,1575/unit

Category B

CN code	Product	Aid (Article 2)	Increased aid (Article 3)
0702 ex 0703 10 ex 0704 ex 0705 0709 90 10 0709 30 00 0714 20 10 ex 0714 90 11 ex 0714 90 19 ex 0709 90 90 0804 40 ex 0804 50 00 ex 0805 0807 19 00 0807 20 00 ex 0810 90 30	tomatoes onions cabbages lettuce salad vegetables other than lettuce aubergines sweet potatoes yams, dachines or taro yams, dachines or taro turban squash avocados mangoes citrus fruit (oranges, mandarins, lemons and limes, grapefruit and pomelos) melons papayas lychees	ECU 0,23/kg	ECU 0,2415/kg

Category C

CN code	Product	Aid (Article 2)	Increased aid (Article 3)
0703 20 0708 20 ex 0710 30 10 0810 10 ex 0810 90 40 ex 0810 90 85	garlic green beans turmeric strawberries passion fruit, maracuja, granadilla rambutan	ECU 0,30/kg	ECU 0,3150/kg
ex 0603 10 0603 10 11 0603 10 51	tropical flowers (hybrid anthurium, orchids, Canna indica) roses roses	ECU 0,30/unit	ECU 0,3150/unit

COMMISSION REGULATION (EC) No 490/97
of 17 March 1997
amending the import duties in the cereals sector

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

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector⁽³⁾, and in particular Article 2 (1) thereof,

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 486/97⁽⁴⁾;

Whereas Article 2 (1) of Regulation (EC) No 1249/96 provides that if during the period of application, the

average import duty calculated differs by ECU 5 per tonne from the duty fixed, a corresponding adjustment is to be made; whereas such a difference has arisen; whereas it is therefore necessary to adjust the import duties fixed in Regulation (EC) No 486/97,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 486/97 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 18 March 1997.

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

Done at Brussels, 17 March 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ No L 161, 29. 6. 1996, p. 125.

⁽⁴⁾ OJ No L 75, 15. 3. 1997, p. 41.

ANNEX I

Import duties for the products listed in Article 10 (2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by sea from other ports ⁽²⁾ (ECU/tonne)
1001 10 00	Durum wheat ⁽¹⁾	17,96	7,96
1001 90 91	Common wheat seed	30,73	20,73
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	30,73	20,73
	medium quality	35,74	25,74
	low quality	60,53	50,53
1002 00 00	Rye	66,39	56,39
1003 00 10	Barley, seed	66,39	56,39
1003 00 90	Barley, other ⁽¹⁾	66,39	56,39
1005 10 90	Maize seed other than hybrid	73,81	63,81
1005 90 00	Maize other than seed ⁽³⁾	73,81	63,81
1007 00 90	Grain sorghum other than hybrids for sowing	66,39	56,39

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2 (4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

- ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of ECU 14 or 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(for 14 March 1997)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	129,43	133,81	120,37	104,37	172,43 (¹)	124,00 (¹)
Gulf premium (ECU/tonne)	30,21	20,84	9,50	12,21	—	—
Great lake premium (ECU/tonne)	—	—	—	—	—	—

(¹) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 12,90 per tonne; Great Lakes — Rotterdam: ECU 24,23 per tonne.

3. Subsidy (third paragraph of Article 4 (2) of Regulation (EC) No 1249/96: ECU 0,00 per tonne).

COMMISSION REGULATION (EC) No 491/97
of 17 March 1997
establishing the standard import values for determining the entry price of
certain fruit and vegetables

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 18 March 1997.

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

Done at Brussels, 17 March 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 17 March 1997 establishing the standard import values
for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 15	204	64,6
	212	95,7
	624	117,4
	999	92,6
0707 00 15	052	128,0
	999	128,0
0709 10 10	220	121,3
	999	121,3
0709 90 73	052	111,9
	204	85,7
	999	98,8
0805 10 01, 0805 10 05, 0805 10 09	052	56,9
	204	43,9
	212	46,1
	448	22,9
	600	41,1
	624	49,1
	999	43,3
0805 30 20	052	54,6
	600	73,6
	999	64,1
0808 10 51, 0808 10 53, 0808 10 59	060	66,2
	388	106,0
	400	100,3
	404	101,6
	508	87,1
	512	89,7
	524	80,1
	528	98,7
	999	91,2
0808 20 31	039	97,7
	388	64,9
	400	83,3
	512	67,1
	528	69,2
	999	76,4

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 December 1996

concerning the conditions imposed on the second operator of GSM radiotelephony services in Spain

(Only the Spanish text is authentic)

(97/181/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

September 1994⁽¹⁾. That requirement does not apply to the public operator, Telefónica de España.

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

The undertaking and services concerned

Having given the Spanish authorities, by letter of 23 April 1996, and Telefónica de España SA, by letter of 30 May 1996, notice to submit their comments on the Commission's objections to the initial payment imposed on Airtel Móvil SA,

- (2) Telefónica de España is a Spanish public undertaking as defined in Article 2 of Commission Directive 80/723/EEC of 25 June 1980 concerning the transparency of financial relations between Member States and public undertakings⁽²⁾.

The Spanish Government has decisive influence over Telefónica de España for three reasons:

Whereas:

THE FACTS

The national measure in question

- (1) The Spanish Government has imposed an initial payment for the grant of a second concession for the establishment and operation on Spanish territory of a network for the provision of a public mobile radiotelephony service using the pan-European digital system, GSM (global system for mobile communications) ('GSM service').

- (i) The Spanish State is the single largest shareholder in Telefónica de España. When the Commission opened this case, the Spanish State held 31,8 % of the issued share capital. It currently holds 21,16 % of the issued share capital. The remaining shares are divided between approximately 300 000 shareholders.

- (ii) The Spanish Government has the right to appoint a representative with the right of veto over the decisions of the board of directors of Telefónica de España. Under Article 2 (9) of Royal Decree Law (*Real Decreto-Ley*) 6/1996 of 7 June 1996⁽³⁾, this post will only be abolished from 1 January 1998.

That requirement is laid down in Articles 9 (4) and Article 16 of the tendering criteria which were approved by Ministerial Decision (*Orden*) of 26

⁽¹⁾ Boletín Oficial del Estado (BOE) No 231, 27. 9. 1994, p. 29778.

⁽²⁾ OJ No L 195, 29. 7. 1980, p. 35.

⁽³⁾ BOE No 139, 8. 6. 1996, p. 18 975.

- (iii) By virtue of the concession contract of 26 December 1991 ('Concession Contract')⁽¹⁾, the Spanish Government has the right directly to appoint 25 % of the members of the board of directors of Telefónica de España. As a result of this and the fact that the Spanish State is the largest shareholder, the Spanish Government appointed 18 out of the 25 current members of the board of directors including the president.

The shares of Telefónica de España are listed on the Spanish stock exchanges as well as in New York, London, Frankfurt and Tokyo. In terms of its turnover (PTA 1 740 500 million in 1995) and its results (PTA 133 200 million in 1995), Telefónica de España is among the ten largest telecommunications operators in the world. It has a workforce of 69 570 employees and over 16 million subscribers.

Telefónica de España thus constitutes a public undertaking or an undertaking to which Member States grant special or exclusive rights within the meaning of Article 90 (1) of the EC Treaty.

- (3) Telefónica de España provides 'transmission', 'final' and 'value added' telecommunications services throughout Spain by virtue of Telecommunications Act (*Ley de Ordenación de las Telecomunicaciones*) 31/1987 of 18 December 1987⁽²⁾ ('LOT') and the Concession Contract. Telefónica de España has been the monopoly provider of some of these services (such as voice telephony services falling within the meaning of Article 1 of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services⁽³⁾), whereas there is limited competition for other services (such as GSM services). Telefónica de España has been also granted special rights together with Ente Público Retevisión ('Retevisión') and the Organismo Autónomo de Correos y Telégrafos, both public undertakings, to provide transmission capacity for telecommunication services.

On 7 June 1996, by Royal Decree Law 6/1996 the monopoly on voice telephony and the oligopoly on corresponding infrastructures were formally abolished. The Spanish Government is now able to grant concessions to new national or regional operators. Retevisión will transfer its telecommunication assets to a new entity which has been licensed to provide full telecommunications

services and has been mandated to sell 80 % of its shares in a restricted tender. However, it is not expected that the new entity will be operational before mid-1997.

Under the LOT and its Concession Contract, Telefónica de España has been able to provide GSM services without having taken part in any tendering procedure. This is more fully described in point 7 below. Telefónica de España has been authorized by the Spanish Government to transfer its licence for the provision of mobile telephone services — analogue and GSM — to Telefónica Servicios Móviles, S.A. ('Telefónica Servicios Móviles'), a wholly owned subsidiary of Telefónica de España. All references in this Decision are to Telefónica de España because the licence to operate GSM radio-telephony services was originally granted to this company.

- (4) Cellular digital mobile telephony complying with the GSM standard has been developed recently in Europe and enables subscribers both to send and receive calls anywhere in the Community, as well as in some other European countries. This system, which uses digital technology, a code and a subscriber identity module card, has greater potential than traditional analogue radiotelephony systems. Digital technology provides higher quality, high-speed data transmission and encryption enhancing the confidentiality of communications and is more economical in its use of frequencies than analogue systems. Furthermore, the GSM system is based on common Community standards regarding common frequency bands approved at Community level and, unlike analogue systems which are often incompatible from one Member State to another, has the makings of one of the pan-European services, whose promotion is under Council Recommendation 87/371/EEC of 25 June 1987⁽⁴⁾, one of the main objectives of the European Union's policy on telecommunications. Lastly, the emerging market for GSM services is particularly dynamic: according to some studies, the number of users in Western Europe could grow from a little over 1 million in 1993 to 15-20 million in the year 2000⁽⁵⁾.
- (5) The Council has adopted Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public

⁽¹⁾ BOE No 20, 23. 1. 1992, p. 2 132.

⁽²⁾ BOE No 303, 19. 12. 1987, amended, *inter alia*, by Act 32/1992 of 3 December 1992.

⁽³⁾ OJ No L 192, 24. 7. 1990, p. 10.

⁽⁴⁾ OJ No L 196, 17. 7. 1987, p. 81.

⁽⁵⁾ 'Scenario Mobile Communications up to 2010 — study on forecast developments and future trends in technical development and commercial provision up to the year 2010', Eutelis Consult, October 1993.

pan-European cellular digital land-based mobile communications in the Community⁽¹⁾ which reserves the 890-915 and 935-960 MHz frequency bands for the introduction of a common system of digital GSM radiotelephony. These common frequency bands allow several competing operators to coexist. The GSM service began operating commercially in the Community in late 1992; since then, every Member State except Luxembourg has granted licences to two operators, while Luxembourg has announced that it will follow the same path. Sweden has granted three GSM licences.

The European Conference of Postal and Telecommunications Administrations (CEPT), the forum for the national regulatory authorities of 36 countries (including Spain), has recommended that competition between operators of GSM services be actively encouraged and the regulatory barriers which are restricting such competition be abolished⁽²⁾.

Following this amendment to the LOT, the Spanish Government adopted Royal Decree 1486/1994 of 1 July 1994⁽⁴⁾ ('the Royal Decree'), which approves the technical regulation (*Reglamento Técnico*) for the provision of 'value added' mobile automatic telecommunication services. Article 2 of the technical regulation (Annex to the Royal Decree) states that GSM services are to be provided in competition. Article 4 of the technical regulation states that GSM services are to be provided by Telefónica de España and one competing licensee. The first Transitional Provision of the technical regulation indicates the procedure for Telefónica de España to obtain a licence without going through a tendering procedure.

The Royal Decree does not expressly provide for an initial payment for the GSM licence. However, Article 4, fourth paragraph, subparagraph (a), of the technical regulation states that one of the factors to be taken into account when assessing the application of the second operator for a licence is the 'maximization of financial contributions'.

(8) By Ministerial Decision of 26 September 1994⁽⁵⁾ the Spanish Government adopted the tendering criteria and opened the tendering procedure for a second operator's licence for the provision of GSM services. The second operator's concession is for 15 years with an extension envisaged for five years thereafter. The other terms of the concession are listed in the tendering criteria.

Articles 9 and 16 of the tendering criteria provided for a minimum initial payment to the Treasury of PTA 50 095 billion. Some indication of the relative weight that would be attached to the different tendering criteria was given. The effect of the last paragraph of Article 16 was that offers of less than PTA 50 000 million would automatically be eliminated.

Background

The Ministry of Public Works, Transport and Environment awarded the second operator's concession by Ministerial Decision of 29 December 1994⁽⁶⁾ to Airtel Móvil SA (at that time known as 'Alianza Internacional de Redes Telefónicas, SA') in spite of the fact that the initial payment of PTA 85 000 million was not the highest initial payment offered (the highest initial payment offer being PTA 89 000 million).

- (6) Germany, Greece, France, the Netherlands and the United Kingdom have authorized or decided to authorize a third operator to offer cellular digital radiotelephony services, on a higher frequency band, on the basis of the DCS 1800 specifications. Under Article 2 of Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications⁽³⁾, Member States must grant licences for operating mobile systems according to the DCS 1800 standard by 1 January 1998 at the latest. Further, Member States may not restrict the combination of mobile technologies or systems and in all circumstances must take account of the requirement to ensure effective competition between the operators competing in the relevant markets.

- (7) Following amendments to the LOT by Act 32/1992 of 3 December 1992, the market for the provision of GSM services was liberalized as from 31 December 1993. Therefore, the provision of GSM services is no longer regarded as a 'final' service for which special and exclusive rights can be granted. GSM services are now considered as 'value added' services which should be provided in competition.

⁽¹⁾ OJ No L 196, 17. 7. 1987, p. 85.

⁽²⁾ *Review of the Requirements for the Future Harmonization of Regulatory Policy Regarding Mobile Communication Services*, CEPT/ECTRA (92) 57, p. 17.

⁽³⁾ OJ No L 20, 26. 1. 1996, p. 59.

⁽⁴⁾ BOE No 168, 15. 7. 1994, p. 22 672.

⁽⁵⁾ BOE No 231, 27. 9. 1994, p. 29 779.

⁽⁶⁾ BOE No 4, 5. 1. 1995, p. 464.

In accordance with Article 9 of the tendering criteria, Airtel Móvil had to make the initial payment when it formally obtained the licence by signing the concession contract on 3 February 1995. On the same day Telefónica de España was simultaneously granted a corresponding GSM licence without making any such payment.

- (9) By letter of 6 February 1995 the Commission expressed its reservations about the procedure which had been adopted for the selection of a second operator which had included less favourable conditions for the second operator than for Telefónica de España.

By letter of 20 April 1995 the Spanish Government replied to the Commission setting out the circumstances of the licensing process which according to the Spanish Government compensated for the initial payment made by Airtel Móvil.

On 1 July 1995 Telefónica de España began operating its GSM services commercially.

By its letter of 18 July 1995 the Commission asked the Spanish Government for clarification on the right to use alternative telecommunication networks, on the right to interconnect directly with leased line networks and on the methodology that would be used to revise the interconnection tariffs with the fixed network. This was so that the Commission could assess whether those factors would give the second operator benefits which would outweigh the competitive disadvantage established by the imposition of the initial payment.

On 3 October 1995, Airtel Móvil began its operations.

By its letter of 27 November 1995 the Spanish Government replied to the Commission stating that the second operator could establish its own infrastructure, and also use Retevisión and Correos y Telégrafos infrastructure as an alternative to the Telefónica de España network, that no request for direct interconnection had been received by the Spanish Government and that the issue of tariff reductions would be examined in 1996.

At a meeting on 16 January 1996 between the Spanish Government and the Commission, the Spanish Government stated that it would be impossible to redress the imbalance between Telefónica de España and the second operator by imposing a similar initial payment fee of PTA 85 000 million on Telefónica de España. The Spanish Government

proposed that a possible solution would be to reduce the interconnection tariffs over the 15-year period of the concession. The reduction would apply to both Telefónica de España and to the second operator. It stated that this would be finalized in September 1996 and would amount to a 25 % reduction in these tariffs.

The Commission remained of the view that this proposal would not affect the imbalance between the two operators.

By letter of 23 April 1996 the Commission gave formal notice to the Spanish Government either:

- (i) to reimburse the initial payment to the second operator or adopt other corrective measures; or
- (ii) to submit its comments on the Commission's arguments.

By letter of 30 May 1996 the Commission asked Telefónica de España for observations on its letter of 23 April 1996 to the Spanish Government. A copy of the letter of formal notice of 23 April 1996 was enclosed.

At a meeting on 28 April 1996 between the Spanish Government and the Commission, the Spanish Government proposed that the imbalance between Telefónica de España and the second operator could be corrected if Telefónica de España transferred the cost of operating the 'TRAC' project ('Tecnología Rural de Acceso Celular' or Cellular Rural Access Technology) to its mobile telephone branch, Telefónica Servicios Móviles. Under that service, Telefónica de España charges customers in sparsely populated upland regions fixed telephony rates for connections to the public fixed telephone network using mobile analog technology and infrastructure. The Commission investigated that proposal further and, by letters of 29 April 1996 and 10 May 1996 requested further information to complete its assessment of the proposal. Having received no reply to either of its letters, the Commission sent a reminder on 3 June 1996. By its letter of 7 June 1996, the Spanish Government provided some of the information requested. However, the information provided did not contain sufficient data on the real cost of the TRAC system to Telefónica Servicios Móviles. Consequently, the Commission could not assess the extent to which that proposal would redress the balance between the two GSM operators.

At a meeting with the Spanish Government on 9 July 1996, the Commission emphasized that the matter had not been resolved and that the Spanish

Government should put forward a new proposal. To date, no reply has been received by the Commission to its letter of formal notice of 23 April 1996, no observations have been submitted by Telefónica de España on the letter of formal notice of 23 April 1996 and no further proposals have been made by the Spanish Government.

THE COMMISSION'S ASSESSMENT

Article 90 (1)

- (10) Article 90 (1) provides that, in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States must neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular those relating to competition.

Telefónica de España is a public undertaking which has been granted exclusive rights to operate the fixed telecommunications network and offer voice telephony and mobile analog radiotelephony services. The Concession Contract also grants Telefónica de España the right to operate a GSM radiotelephony network, which qualifies as a special right to the extent that this operator was designated otherwise than according to objective and non-discriminatory criteria.

The imposition of the initial payment on the second operator is a State measure within the meaning of Article 90 (1).

Article 86

The relevant market

- (11) The relevant market is that for cellular digital mobile radiotelephony services. It should be distinguished from the market in fixed voice telephony and from the market for all other mobile telephone communications services.
- (12) The Commission has defined the market in voice telephony in Directive 90/388/EEC. The Directive draws a distinction between 'services whose provision consists wholly or partly in the transmission and routing of signals on the public telecommunications network' and mobile radiotelephony services, which are excluded from its scope.
- (13) Voice telephony within the meaning of that Directive is the principal service provided on the fixed public network, that is between given network termination points. These termination points are

defined as 'all physical connections and their technical access specifications'. In mobile communications, on the other hand, the termination point is located at the radio interface between the base station of the mobile network and the mobile station, which means that there is no physical termination point. The definition of voice telephony services in Article 1 of the Directive therefore does not apply to mobile telephony services.

- (14) According to the case-law of the Court of Justice of the European Communities⁽¹⁾, for a product to be regarded as forming a market which is sufficiently differentiated from other markets, it must be possible for it to be singled out by such special features distinguishing it from other products that it is only to a limited extent interchangeable with them and is only exposed to their competition in a way that is not significant.

Clearly, there is very little interchangeability between mobile radiotelephony and telephony using the fixed network: users taking out a subscription for a carphone or portable telephone do not normally cancel their previous subscription for a telephone installed at their home or workplace. Therefore, mobile radiotelephony is indeed a new, additional service, not a substitute for traditional telephony. This distinction is also reflected in a significant price differential.

Admittedly, wider dissemination of mobile radiotelephony might ultimately lead to a single telecommunications system serving markets that are for the time being separate. However, the conditions on which Article 86 is to apply must be assessed on the basis of present demand and not on developments that could take place at some unspecified time in the future.

- (15) It having been established, for the above reasons, that mobile radiotelephony should not be regarded as forming part of the market in voice telephony services offered using the fixed network, it remains to be seen whether, and to what extent, there might be grounds for distinguishing between the cellular mobile radiotelephony services based on the GSM standard which are the subject of this Decision (in Spain given the brandname *Movistar* by Telefónica de España) and cellular radiotelephony services using analogue technology (in Spain given the brandname *Moviline* by Telefónica de España).

The Commission notes that the GSM system of cellular mobile radiotelephony is more than just a technical refinement of the earlier analog techno-

⁽¹⁾ Case 27/76, *United Brands v. Commission*, [1978] ECR 207.

logy. In addition to the advantages offered by GSM in terms of the quality of voice reproduction and more efficient use of the available spectrum (thus accommodating substantially more users on a given frequency allocation), this service provides new facilities that cater for the needs of only some users of mobile radiotelephony:

- (i) based as it is on a Community standard, GSM can become a pan-European service. Under 'roaming' agreements between network operators, the system permits any user to make calls from his phone outside the national territory of the operator with which he has taken out a subscription; this facility is available throughout the territory of the parties to the GSM Memorandum of Understanding in Europe and other parts of the world. Some users who, for business purposes, use mobile radiotelephony services only within the country or within a particular region, are not interested in this new feature. For others, however, this may be a reason for deciding to subscribe,
- (ii) in addition to voice transmission, the GSM service can be used to transmit large quantities of data; again, this feature meets the specific needs of only some of the existing or potential customers for mobile radiotelephony services,
- (iii) the digital coding of messages means that a far greater degree of security can be achieved than via the analogue system, again an advantage of interest to only some users (particularly business customers),
- (iv) digital technology makes it possible to offer a whole range of advanced telecommunications services which are not available (or which can be made so only at considerably higher cost) via an analogue network. These include sophisticated call-line identification, voice mail (including short message services ("SMS")) and call-security services.

In view of the above, the simple replacement of analogue radiotelephony by the GSM system is not envisaged, in the short term. On the contrary, it is likely that, even if there is a discernible drift of customers from one to the other, the two systems will continue to exist in parallel for several years to come⁽¹⁾, meeting largely different needs. It has been found that, even in countries where the GSM system is fully operational, some operators are continuing to invest in the analogue network. These factors draw a distinction between the GSM and analogue markets.

- (16) On the basis of the abovementioned considerations and the current circumstances, and taking into account the possible evolution of the market, GSM radiotelephony services should therefore probably be regarded as also constituting a separate market from the market for analogue mobile telephony.

In any event, the conclusions of the legal analysis would not be different, even if analogue mobile telephony and GSM constituted two segments of the same market. As will be seen below (paragraph 21), this would only imply a slightly different formulation of the first hypothesis of abuse.

- (17) In accordance with the case-law of the Court of Justice, this market, which currently extends over the whole of Spain, is a substantial part of the common market.

The dominant position

- (18) In accordance with the case-law of the Court of Justice, an undertaking which has a legal monopoly in the provision of certain services may occupy a dominant position within the meaning of Article 86 of the Treaty⁽²⁾. This applies in the case of Telefónica de España and its wholly owned subsidiary, Telefónica Servicios Móviles, which until recently were the only undertakings legally able to offer the telecommunications networks for the public, voice telephony and analog radiotelephony in Spain. These are therefore three markets in which they enjoy a dominant position. As stated above, the recent authorization granted to Retevisión to operate in the market for voice telephony and underlying infrastructures will not have any significant impact on the market share enjoyed by Telefónica de España for some time.

The abuse of a dominant position

- (19) The Court of Justice has ruled that 'a system of undistorted competition, as laid down in the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators'⁽³⁾.

Such equality of opportunity is particularly important for new entrants to a market in which a dominant operator on a related but separate market is in the course of establishing itself, like Telefónica de España and its subsidiary, Telefónica Servicios Móviles.

⁽¹⁾ Ministerial Decision of 13 March 1995, BOE No 101, 28. 4. 1995, p. 12 573.

⁽²⁾ Case 311/84, *Centre belge d'études de marché - Telemarketing (CBEM) v. Compagnie luxembourgeoise de télédiffusion and Information publicité Benelux*, [1985] ECR 3261.

⁽³⁾ Case C-202/88, *France v. Commission*, [1991] ECR I-1223, paragraph 51, p. 1271.

(20) Telefónica de España already enjoys the following major advantages for acquiring a dominant share of the market in GSM radiotelephony:

(i) a head start: it began developing its network before the second operator and can therefore offer better geographical cover; it began its service on 1 July 1995 while the second operator began its services on 3 October 1995;

(ii) potential customers: Telefónica de España's analog radiotelephony service, Moviline, had 1 235 690 subscribers in October 1996 and is acquiring 10 000 to 20 000 new subscribers each month;

existing subscribers to Moviline, the analog service, may be seen as a potential customer base for Movistar, the GSM service;

(iii) an existing distribution network: the network is known to the public, since Telefónica de España can market its GSM service on a shared basis with its Moviline distributors;

(iv) specific information: through its experience with Moviline, it has specific information on the calling habits of Spanish subscribers, by consumer categories and region. Moreover, since it also enjoys a dominant position in the supply of fixed links for the networks of GSM operators, it will continue to obtain important information on traffic flows. In reality there is currently no realistic alternative for the second operator other than the Telefónica de España network;

(v) economies of scale for infrastructure: Telefónica de España was until June 1996 the sole licensee of fixed voice telephony services and is currently the sole operator active in that market. Telefónica de España was also until 3 October 1995 the sole operator of mobile telephony. As a result of this, Telefónica de España has had sites and aerials available for establishing its GSM network which are not available to its competitor. In addition, certain autonomous communities subsidise the development of the analog radiotelephony network in those areas where there is an insufficient wire network (via the TRAC-project).

Contrastingly, the second operator is, as described, operating under more onerous constraints than Telefónica de España as a result of the initial payment mentioned above.

If Telefónica de España extended its dominant position on the market in wire telephony or analog

mobile telephony into the market in GSM radiotelephony by increasing the costs of its rival (for example by imposing interconnection charges which were not justified by the costs involved), that would infringe Article 86. The same analysis would apply if there is one market for all mobile radiotelephony services and Telefónica de España strengthened its position in that market in the same way.

(21) Under Article 90 (1) of the EC Treaty, Spain must refrain from enacting measures which would, by increasing the costs of access of the sole rival of a public undertaking on a market newly opened to competition, significantly distort this competition. Given the additional financial burden imposed on its only competitor, Telefónica de España will have the choice between two commercial strategies of which each would be a violation of Article 90 (1) read in conjunction with Article 86. Those commercial strategies are: either (i) to extend or strengthen its dominant position; or (ii) to limit production, markets or technical development within the meaning of Article 86 (b).

(i) Extension ⁽¹⁾ or strengthening of the dominant position of the public undertaking

The initial payment of PTA 85 000 million made by the second operator on this market will necessarily have to be covered from income. The second operator will therefore have difficulties in competing with the first operator through lower tariffs. The first operator, Telefónica de España, which does not have to make the same payment and which, moreover, is aware of the second operator's cost structure through its current dominance in the market for infrastructure, could be encouraged to extend its current dominant position on the fixed infrastructure market and the analogue mobile telephony market into the market in GSM radiotelephony by reducing its tariffs. If there is only one market for radiotelephony services, instead of an extension there would be a strengthening of Telefónica de España's dominant position in this market.

Moreover, Telefónica de España could use the PTA 85 000 million saving made to extend its distribution network, to price its services aggres-

⁽¹⁾ See, for example, the Judgment of the Court of Justice in Joined Cases C-271/90, C-281/90 and C-289/90, *Kingdom of Spain, Kingdom of Belgium and Italian Republic v. Commission*, [1992] ECR I-5833, paragraph 36.

sively in the GSM market where it faces competition from the second operator, to make special offers to potential subscribers and/or to conduct intensive advertising campaigns for example. The choice of this strategy induced by the State measure could threaten the economic viability of the second operator.

Thus, Telefónica de España is in a position where it could extend or strengthen its dominant position thanks to the competitive advantage provided by the distortion of the costs structure resulting from the initial payment. This renders the State measure contrary to Article 90 read in conjunction with Article 86.

- (ii) Limitation of production, markets or of technical development within the meaning of Article 86 (b)

The need to finance PTA 85 000 million will delay the investments of the new entrant, which will have to use part of its initial capital to cover the initial payment, which will therefore not be available either for appropriate investment in the development of its network or for tariff reductions. The second operator was indeed obliged to increase its capital by some PTA 40 000 million in February 1996 in order to be able to follow its investment plan.

That might also encourage Telefónica de España to delay the development of the GSM radiotelephony network and to concentrate its efforts on the Moviline analog system. The Moviline system is more attractive since the bulk of the investments have already been amortized and it has better coverage.

The initial investment for establishing a GSM network in Spain amounts to about PTA 250 000 million. The initial payment, when added to the initial investment, therefore increases the second operator's need for financing by more than one-third. The fact that applicants for the second concession were aware of the future distortion of competition on the GSM market in Spain in favour of Telefónica de España does not affect the existence of an imbalance. Undertakings which wished to enter the market had no choice but to take this handicap into account in their business plan.

In the second hypothesis, Telefónica de España which, as has been pointed out, is aware of the second operator's cost structure through its dominant position in the infrastructure market,

might be encouraged to retain higher tariffs for its GSM services than it would in the absence of the State measure in question. It could limit production, markets or technical development within the meaning of Article 86 (b) as regards GSM, which involves a more advanced technology, to the benefit of the older analogue service. This would delay the move towards personal communications combining mobile and fixed networks, which will only be possible if the tariffs for mobile communications fall substantially.

The fact that Telefónica de España could behave in this way would be a consequence of the fact that, on the one hand, it benefits from a favourable position as a result of its monopoly over the Moviline system and is granted sufficient wavebands to continue this service, and, on the other, the Spanish Government has financially penalized the only undertaking authorized to establish a competing GSM service. The delayed roll-out of the GSM and the resulting limitation of technical progress to the detriment of consumers would therefore be caused by the State measure in question, that is the imposition of the PTA 85 000 million fee on the second operator alone.

The Commission has adopted a similar analysis in a case involving an initial payment in Italy. Having demanded corrective measures without result, the Commission adopted Decision 95/489/EC addressed to Italy under Article 90 (3) of the EC Treaty⁽¹⁾. The Commission has since been informed that such corrective measures have been taken or are in the process of being taken.

In accordance with the case-law of the Court of Justice⁽²⁾, Article 90 (1) precludes Member States from enacting measures likely to cause an undertaking to infringe the provisions to which it refers, in particular, in the case in point, those contained in Article 86.

In conclusion, under either hypothesis, the State measure concerned is contrary to Article 90 (1) read in conjunction with Article 86 of the Treaty.

⁽¹⁾ OJ No L 280, 23. 11. 1995, p. 49.

⁽²⁾ See, for example, Case C-41/90, *Höfner v. Macrotron*, [1991] ECR I-1979, Case C-260/89, *Elliniki Radiophonia Tileorassi Anonimi v. Dimotiki Etairia Pliroforissis and Others*, [1991] ECR I-2925, and Case C-323/93, *Société civile agricole d'insémination de la Crespelle/Coopérative d'élevage et d'insémination artificielle du département de la Mayenne*, [1994] ECR I-5077.

- (22) Member States are liable pursuant to Article 90 (1) and Article 86 of the Treaty only where the behaviour of the company in question is capable of affecting trade between Member States. Trade between Member States could be affected here for the following reasons:

Any extension or strengthening of Telefónica de España's dominant position as well as any limitation of production, markets or technical development in relation to GSM is likely to delay the process of progressive reduction of tariffs for GSM telephony. In fact, in the absence of the initial payment of PTA 85 000 million imposed on the second operator, price competition would have been stronger since the introduction of GSM services in Spain and GSM tariffs would have fallen more quickly:

- if GSM tariffs do not fall as quickly as they would have done in the absence of the State measure in question, residents in other Member States will be less likely to take out subscriptions with Spanish operators as an alternative to other national or foreign operators. By way of illustration, a business or individual based in France will not be encouraged to purchase a Spanish SIM card and to make calls using the card under the roaming agreements between operators, because Spanish tariffs are not as low as they would have been had the second operator been able to use the initial payment of PTA 85 000 million to reduce its tariffs,
- any delay in the process of reducing tariffs would in turn delay the development of mobile telephony services such as improved subscription terms and conditions and more advanced technical services described above. This would discourage new investments in the Spanish telecommunication services markets by undertakings established in other Member States where there is effective competition and where new services have emerged,
- any delay in the process of steadily reducing tariffs may reduce generally the level of international telephone traffic from Spain. Undertakings and individuals with large mobile telecommunications needs will tend to subscribe to foreign operators or to use 'call back' systems in order to take advantage of lower tariffs in other Member States,

- any limitation of production, markets or of technical development within the meaning of Article 86 (b) may reduce the level of imports from other Member States of technical equipment required for investment in the mobile telephony market and for development of an effective and efficient infrastructure.

The reply of the Spanish authorities

- (23) The Spanish Government has made the following submissions to the Commission:

- under the terms of the concession granted by the Spanish Government to Telefónica de España in 1991, Telefónica de España obtains a GSM concession without any further payment. Therefore, the Spanish Government cannot impose an initial payment of PTA 85 000 million on Telefónica de España. Further the Spanish Government argued, whilst rejecting the principle of compensation, that the relevant figure for the initial payment was PTA 50 095 000 million rather than PTA 85 000 million. It argued that Airtel Móvil had raised the original fee requested from PTA 50 095 000 million to PTA 85 000 million itself without an obligation to do so. The minimum initial payment imposed by law was PTA 50 095 000 million and that was the figure to be taken into account,
- the Spanish Government considered that a possible solution would be a reduction in the interconnection tariffs for the duration of the 15-year licence,
- finally, the Spanish Government also proposed to transfer to Telefónica Servicios Móviles the cost of the TRAC project.

The Commission's assessment

- (24) Although the second operator itself offered a fee of PTA 85 000 million, the Commission disagrees with the argument that the initial payment was voluntary since it was one of the selection criteria in the tendering procedure⁽¹⁾. Each tenderer had to offer the highest initial payment possible under its business plan to have a chance of winning the

⁽¹⁾ Case C-272/91, *Commission v. Italy*, [1994] ECR I-1409, paragraph 11.

concession. Only some indication as to the relative weight that would be attached to the different selection criteria was given. The most clear indication was given with respect to the minimum initial payment. The initial payment was thus one of the selection criteria under the tendering procedure and it was payable on the date that the concession was signed. It is, therefore, clearly a State measure.

The selection procedure for the second GSM operator was not in reality a tendering procedure as such. The selection procedure in Spain was a hybrid combining the characteristics of comparative bids and a tender. One of the criteria compared was the initial payment which the applicant offered to pay on obtaining the second concession. It was therefore difficult to know which of the criteria were essential. The fact that the concession was awarded in the absence of any clear indication implies that any of them could have been of importance.

- (25) The Commission does not accept that the reduction in interconnection tariffs proposed by the Spanish Government would restore the level playing field, because the Spanish Government refused to consider an asymmetric tariff reduction in favour of the second operator alone.
- (26) The solution offered by the Spanish Government whereby investments in the TRAC project would offset the second operator's initial payment cannot be accepted in the present circumstances.

Apart from the fact that the information provided by the Spanish authorities does not allow a proper evaluation of the real impact of such investments, and that it is not possible to ensure that this solution is anything more than a pure accounting operation, the solution cannot be accepted at this stage since the provision of a universal service by Telefónica de España, including the service in remote areas, is in the current circumstances balanced out by the exclusive or special rights granted to Telefónica de España. Moreover, in implementing the TRAC system, Telefónica de España has benefited from public subsidies including ERDF aids.

- (27) The Commission considers that in this case the obligation imposed on the second Spanish operator alone to make the initial payment of PTA 85 000 million is incompatible with Article 90 (1) together with Article 86.

- (28) The aim of this procedure is to cause the Spanish Government to take the necessary steps to remove the distortion of competition; the most obvious step would be to reimburse sum paid by Airtel Móvil.

If the Spanish Government so requests, the Commission would be prepared to examine whether the infringement could be terminated by adopting other corrective measures, provided that they properly balance out the disadvantage suffered by the second operator.

It is incumbent upon the Spanish Government to make proposals in this respect. The Spanish Government should in any case provide figures for such proposals, showing that they properly offset the PTA 85 000 million paid by the second operator.

However, imposing on Telefónica Servicios Móviles an identical payment would not be considered an adequate compensatory measure in the present circumstances, in particular as long as no cost accounting is implemented serving to ensure that the burden of such payment is allocated to Movistar only.

- (29) Certain corrective measures have already been mentioned during bilateral talks with the Spanish Government:
- (i) granting Airtel Móvil access to Telefónica de España's TACS 900 customer database, while maintaining the confidentiality of personal data;
 - (ii) revision of the tariff conditions on an asymmetrical basis for interconnection with Telefónica de España's switched telephone network;
 - (iii) non-discriminatory access by both Telefónica Servicios Móviles GSM service and Airtel Móvil to the same number of GSM frequencies including the acceleration of the liberalization of the GSM frequencies currently used by Telefónica de España for its analog service;
 - (iv) extending the duration of Airtel Móvil's concession in line with the recent Spanish decision regarding the cable television licences.

Moreover, the revocation of the concession already granted to Airtel Móvil can in no circumstances be considered to be an appropriate remedy for the breach. It would eliminate the only existing competitor to Telefónica Servicios Móviles on the GSM market and the monopoly enjoyed by Telefónica de España for analog mobile telephony and

GSM services during the period necessary for a new tendering procedure would render competition even more difficult as a result of the extra time advantage.

Article 90 (2)

- (30) Article 90 (2) of the Treaty provides that undertakings entrusted with the operation of services of general economic interest are subject to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The Spanish Government has not relied on this provision to justify imposing the initial payment on the second operator alone.

The Commission considers, for its part, that in this case a derogation under Article 90 (2) is not warranted, because there are no factors to support the conclusion that the initial payment is justified by the performance in law or in fact of a service of general economic interest.

CONCLUSION

- (31) In view of the foregoing, the Commission considers that the competitive disadvantage in the form of the initial payment imposed on the second operator alone for its concession to operate a GSM network in Spain constitutes an infringement of Article 90 (1) of the Treaty read in conjunction with Article 86,

HAS ADOPTED THIS DECISION:

Article 1

Spain shall take the steps necessary to remove the distortion of competition resulting from the initial payment imposed on Airtel Móvil SA and to secure equal conditions for operators of GSM radiotelephony on the Spanish market by 24 April 1997 at the latest by:

- (i) reimbursing the initial payment imposed on Airtel Móvil, or
- (ii) adopting, after receiving the agreement of the Commission, corrective measures equivalent in economic terms to the obligation imposed upon the second GSM operator.

The measures finally adopted shall not undermine the competition resulting from the authorization of the second GSM operator on 29 December 1994.

Article 2

Spain shall inform the Commission within three months following notification of this Decision of the steps it has taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 18 December 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION
of 24 February 1997
amending the Annex to Directive 91/629/EEC laying down minimum standards
for the protection of calves
(Text with EEA relevance)

(97/182/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves ⁽¹⁾, as amended by Council Directive 97/2/EC ⁽²⁾, and in particular Article 5 thereof,

Whereas as provided for in Article 6 of Directive 91/629/EEC, the Scientific Veterinary Committee has given an opinion on 9 November 1995, on the basis of which the Commission has drawn up a report which has been submitted to the Council and to the Parliament;

Whereas on the basis of the conclusions of this report, it is appropriate to amend certain provisions of the Annex to Directive 91/629/EEC;

Whereas calves kept indoors should be inspected by the owner or the person responsible for the animals at least twice daily and calves kept outdoors at least once daily;

Whereas based on data on disease incidence, immune system function and exercise, calves should be fed in such a way that their blood haemoglobin does not fall below a certain minimum level;

Whereas tethering of calves causes problems; whereas for that reason individually penned calves should not be tethered and group housed calves may only be tethered for a short period at the time of feeding milk;

Whereas calves should be fed fermentable material, appropriate in quality and sufficient in quantity to maintain the microbial flora of the gut and sufficient fibre to stimulate the development of villi in the rumen;

Whereas in addition to existing requirements for the provision of water, or other liquids, calves which are ill or are subject to hot weather conditions shall have access to fresh water;

Whereas in order to ensure adequate immunoglobulin levels in the blood, calves should receive sufficient colostrum within the first six hours of life and as soon as possible after birth;

Whereas 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 Annex to Directive 91/629/EEC shall be amended as follows:

1. Point 6 is replaced by the following text:

'6. All housed calves shall be inspected by the owner or the person responsible for the animals at least twice daily and calves kept outside shall be inspected at least once daily. Any calf which appears to be ill or injured shall be treated appropriately without delay and veterinary advice shall be obtained as soon as possible for any calf which is not responding to the stock-keeper's care. Where necessary, sick or injured calves shall be isolated in adequate accommodation with dry, comfortable bedding.'

2. Point 7 is replaced by the following text:

'7. The accommodation for calves must be constructed in such way as to allow each calf to lie down, rest, stand up and groom itself without difficulty.'

3. Point 8 is replaced by the following text:

'8. Calves shall not be tethered, with the exception of group-housed calves which may be tethered for periods of not more than one hour at the time of feeding milk or milk substitute. Where tethers are used, they shall not cause injury to the calves and shall be inspected regularly and adjusted as necessary to ensure a comfortable fit. Each tether shall be designed to avoid the risk of strangulation or injury and to allow the calf to move in accordance with point 7.'

⁽¹⁾ OJ No L 340, 11. 12. 1991, p. 28.

⁽²⁾ OJ No L 25, 18. 1. 1997, p. 24.

4. Point 11 is replaced by the following text:

'11. All calves shall be provided with an appropriate diet adapted to their age, weight and behavioural and physiological needs, to promote good health and welfare. To this end, their food shall contain sufficient iron to ensure an average blood haemoglobin level of at least 4,5 mmol/litre and a minimum daily ration of fibrous food shall be provided for each calf over two weeks old, the quantity being raised from 50 g to 250 g per day for calves from eight to 20 weeks old. Calves shall not be muzzled.'

5. In the first sentence of point 12, 'once' is replaced by 'twice'.

6. In point 13 a second sentence shall be added:

'However, in hot weather conditions or for calves which are ill, fresh drinking water shall be available at all times.'

7. A new point 15 is added as follows:

'15. Each calf shall receive bovine colostrum as soon as possible after it is born and in any case within the first six hours of life.'

Article 2

This Decision shall enter into force on 1 January 1998.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 24 February 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 25 February 1997

amending Decision 96/659/EC on protective measures in relation to Crimean
Congo haemorrhagic fever in South Africa

(Text with EEA relevance)

(97/183/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC⁽¹⁾, as last amended by Directive 96/43/EC⁽²⁾, and in particular Article 18 (7) thereof,

Having regard to Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries⁽³⁾, as last amended by Directive 96/43/EC and in particular Article 19 (7) thereof,

Whereas the presence of Crimean Congo haemorrhagic fever has been confirmed in South Africa;

Whereas Commission Decision 96/659/EC⁽⁴⁾ prohibited the importation of live ratites, and meat of ratites from South Africa until the situation was clarified;

Whereas new scientific research has permitted the risk relating to the importation of live ratites and meat of ratites to be clarified; whereas Commission Decision 96/659/EC can now be amended to take account of the knowledge gained;

Whereas, however, it is now appropriate to extend the decision to cover all areas where this disease is likely to occur;

Whereas Chapter III of Council Directive 91/494/EEC⁽⁵⁾ sets out the general animal health rules for the importation of poultry meat from third countries; whereas detailed veterinary conditions and certificates have not yet been adopted in the case of meat from ratites;

Whereas Chapter III of Council Directive 90/539/EEC⁽⁶⁾ sets out the general animal health rules for the importation

tion of live poultry from third countries; whereas detailed veterinary conditions and certificates have not yet been adopted in the case of ratites;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision 96/659/EC is amended as follows:

1. In the title, the words 'in South Africa' are deleted.
2. In Article 1 the words 'South Africa' are replaced by the words 'countries in Asia and Africa'.
3. Article 2 is replaced by the following:

'Article 2

1. In derogation to Article 1 above, Member States may authorise the importation of ratite meat provided that, in addition to the requirements of Council Directive 91/494/EEC, the provisions in Annex I are complied with.
2. In derogation to Article 1 above, Member States may authorise the importation of ratites provided that, in addition to the requirements of Council Directive 90/539/EEC, the provisions in Annex II are complied with.'
4. Article 3 is deleted.
5. The following Annexes I and II are added:

*ANNEX I***RATITE MEAT**

The competent authority shall ensure that the ratites are isolated in rodent-proof, tick-free surroundings for at least 14 days prior to slaughter.

Before moving to the tick-free surroundings, the birds shall either be examined to verify that they are tick-free or treated to ensure that all ticks on them are

⁽¹⁾ OJ No L 268, 24. 9. 1991, p. 56.

⁽²⁾ OJ No L 162, 1. 7. 1996, p. 1.

⁽³⁾ OJ No L 373, 31. 12. 1990, p. 1.

⁽⁴⁾ OJ No L 302, 26. 11. 1996, p. 27.

⁽⁵⁾ OJ No L 268, 24. 9. 1991, p. 35.

⁽⁶⁾ OJ No L 303, 31. 10. 1990, p. 6.

destroyed. The treatment used must be specified on the import certificate. Any treatment used shall not result in any detectable residues in the ratite meat.

Each batch of ratites shall be examined for ticks prior to slaughter. If any are detected, the entire batch shall again be subjected to the pre-slaughter isolation.

ANNEX II

LIVE RATITES

The competent authority shall ensure that the ratites are isolated in rodent-proof, tick-free surroundings for at least 21 days prior to export.

Before moving to the tick free surroundings, the birds shall be treated to ensure that all ectoparasites on them are destroyed. After 14 days in tick-free surroundings the ratites shall be subjected to the competitive ELISA test for antibodies to Crimean Congo haemorrhagic fever. Each and every animal entering the isolation

must give a negative result to the test. On arrival in the Community, the treatment for ectoparasites and the serological test shall be repeated.'

Article 2

Member States shall amend the measures they apply in respect of the importation of ratites and ratite meat to bring them into line with this decision. They shall inform the commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 25 February 1997.

For the Commission

Franz FISCHLER

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 1442/95 of 26 June 1995 amending Annexes I, II, III and IV of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

(Official Journal of the European Communities No L 143 of 27 June 1995)

Pages 29 and 30, Annex, part C, 1.2.2.1., 1.2.2.2. and 1.2.2.3., should read as follows:

'C. Annex III is modified as follows:

1. Anti-infectious agents
- 1.2. Antibiotics
- 1.2.2. Macrolides

Pharmacologically Active substance(s)	Marker Residue	Animal Species	MRLs	Target Tissues	Other provisions
1.2.2.1. Spiramycin	Spiramycin	Porcine	600 µg/kg 300 µg/kg 200 µg/kg	Liver Kidney, muscle Fat	Provisional MRLs expire on 1 July 1997 MRLs apply to all microbiological active residues expressed as Spiramycin-equivalent
1.2.2.2. Tylosin	Tylosin	Bovine, Porcine, Poultry Bovine	100 µg/kg 50 µg/kg	Muscle, liver, kidney Milk	Provisional MRLs expire on 1 July 1997
1.2.2.3. Erythromycin	Erythromycin	Bovine, ovine, porcine, poultry Bovine, ovine Poultry	400 µg/kg 40 µg/kg 200 µg/kg	Liver, kidney, muscle, fat Milk Eggs	Provisional MRLs expire on 1 June 2000 MRLs apply to all microbiological active residues expressed as Erythromycin-equivalent ²⁰