Consumer and
Corporate Affairs
Canada

Bureau of Competition
Policy

Policy Directorate

Consommation et
Affaires commerciales
Canada

Bureau de la
politique de concurrence

Direction générale
de la politique

EUROPE 1992: THE REGULATED SECTORS; THE SCOPE FOR EXPANSION OF COMPETITION POLICY; AND THE IMPLICATIONS FOR CANADIAN BUSINESSES

Discussion Paper

LKC
HC
241.25
.C3
M66
1992
c.2

Canada

DEPARTMENT OF CONSUMER & CORPORATE AFFAIRS
LIBRARY
OCT 13 1993
BIBLIOTHÈQUE
MINISTÈRE DE LA CONSOMMATION ET DES CORPORATIONS

EUROPE 1992: THE REGULATED SECTORS; THE SCOPE FOR EXPANSION OF COMPETITION POLICY; AND THE IMPLICATIONS FOR CANADIAN BUSINESSES

Joseph Monteiro
Economics and International Affairs Branch,
Bureau of Competition Policy,
Consumer and Corporate Affairs Canada

March 1992

IN= 11703

HC241.2
.M66
1992
MAIN
c.1

EUROPE 1992:
THE REGULATED SECTORS; THE SCOPE FOR EXPANSION OF COMPETITION POLICY; AND THE IMPLICATIONS FOR CANADIAN BUSINESSES

The Economics and International Affairs (EIA) *Discussion Papers* are intended to disseminate information and to stimulate comment and criticism on economic issues related to antitrust policy. The analysis and conclusions of EIA *Discussion Papers* represent those of the authors and do not reflect the views of the Department of Consumer and Corporate Affairs. Information on the EIA *Discussion papers* may be obtained by writing to Derek Ireland, Director, Economics and International Affairs, Bureau of Competition Policy, Department of Consumer and Corporate Affairs, Place du Portage, Phase I, 20th Floor, Hull, Quebec.

TABLE OF CONTENTS

EUROPE 1992:THE REGULATED SECTORS; ITS IMPLICATIONS FOR CANADIAN BUSINESSES AND THE SCOPE FOR EXPANSION OF COMPETITION POLICY

EXECUTIVE SUMMARY

An important part of the Europe 1992 initiatives includes liberalization in a number of important regulated sectors. Due to the opening of these markets to competition for the first time in a meaningful way, it will have implications for Canadian businesses. However, it should be noted that since the Economic Community is going through a transition phase involving a considerable degree of uncertainty these implications are of a tentative nature. As a result of the liberalization and potential for increase in competition there will also be scope for the expansion of competition policy.

I. AIR TRANSPORT SERVICES

Since the start of the Europe 1992 initiative, two packages of measures have been implemented, one in December 1987 and the other in November 1990 for expanding the scope of competition between airlines in the Economic Community. Recently, a third package has been adopted which is to go into effect on January 1, 1993. In addition, measures have been adopted to apply the EC Competition Law to air transport services.

Implications for Canadian Businesses in Air Transport Services

The major implication for Canadian airlines from the *price competition reforms* pertains to fifth freedom operations within the Economic Community. On fifth-freedom* routes only Community airlines can become the price leader. This should affect the competitive position of Canadian airlines even with the price matching provision. This is because Canadian airlines may not be able to introduce fares based on their fully allocated costs if they are lower than Community airline fares and because the matching provision pertains to the normal economy fare and not the lowest fare on that route. These considerations could call for Canadian bilateral agreements to be re-negotiated to provide for flexibility of fares to ensure instantaneous matching so that Canadian airlines are not competitively handicapped.

A number of implications for Canadian airlines flow from the *market access reforms*. The elimination of ranges on capacity shares for Community carriers on

* Third freedom refers to the right to set down in a State passengers emplaned in the State of Registry of the aircraft. For example, British Airways sets down at Frankfurt passengers emplaned at London. Fourth freedom refers to the right to emplane in a State passengers whose destination is the State of Registry of the aircraft. For example, British Airways emplanes at Frankfurt passengers flying to London. Fifth freedom right refers to the right to emplane passengers in the State other than the State of Registry and to set down those passengers in a third State. For example Air Canada enplanes at London passengers who are set down at Dusseldorf. Sixth freedom rights refers to 'behind the gateway traffic' from other Member States feeding third- and fourth-freedom services. For example Lufthansa enplanes passengers at Athens and Rome for a flight from Frankfurt to Montreal.

intra-Community services should sharpen competition among Community airlines and perhaps by extension between Community airlines and Canadian airlines on fifth-freedom segments within the Community. Further, the removal of restrictions on third- and fourth-freedom air services should enable Community airlines to develop and mobilize an even more efficient sixth-freedom network. This could leave Canadian airlines at a competitive disadvantage due to capacity constraints and lower load factors as opportunities for sixth-freedom services from the U.S. are rather limited. Furthermore, the introduction of cabotage within a Member State as a result of the third package, when joined with fifth-freedom rights, would place Community carriers in an even stronger competitive position as a result of a superior airline network.

The Council Regulations on the *application of competition policy* make applicable the rules of competition to Canadian fifth-freedom operators within the Community. Since various cooperative agreements among Community airlines may operate in a manner so as to disadvantage Canadian airlines, these agreements need to be monitored.

The most important implications flow from *proposals regarding other airline measures,* particularly those pertaining to cabotage. Since the Community is now considered as one market or entity, traffic between the Member States or fifth-freedom rights with third countries are considered to be equivalent to cabotage. As a result, the Community may want to redress any perceived imbalance in reciprocity. Canada accordingly may want to hold on to any existing fifth-freedom rights with Member States as they are safeguarded. However, globalization, alliances, pooling and marketing arrangements may diminish the importance of cabotage and fifth-freedom issues over the longer term.

Scope for Expansion of Competition Policy in Air Transport Services

The scope for the application of competition rules to business undertakings in air transport services has been particularly enhanced in the areas of collusion, abuse of dominance and mergers. Commissioner Brittan recently came out against a proposed Brussels-based alliance involving British Airways, Sabena of Belgium, and KLM Royal Dutch Airways on the basis that it would reduce passenger choice. Agreements may also be exempted. In the area of abuse of a dominant position, the first air transport services case on reservation systems was brought to the Commission. The Commission decided that Sabena had abused its dominant position in the market for computerized flight reservations in Belgium and imposed a fine. In a case involving a merger, the Commission has intervened in the British Airways acquisition of British Caledonian Airways, obtaining undertakings in addition to those given to the United Kingdom Mergers and Monopolies Commission.

II. TELECOMMUNICATIONS

The telecommunications sector includes a wide range of goods and services; the most important are telephone, fax, data transmission and satellite communications. The four major proposals in the Green Paper to liberalize competition are examined hereafter.

Implications for Canadian Businesses in Telecommunications

A number of implications flow from reforms on *access to the telecommunications terminal market.* Economic operators are granted the freedom in the EC to import, market, connect, bring into service and maintain terminal equipment. While these reforms were basically intended to promote intra-EC competition, the absence of any exclusion of non-EC operators appears to imply that the market will be opened to Canadian telecommunication terminal operators. In practice, it has been suggested that this would require the establishment of a Canadian subsidiary in the EC, because of Community content rules. However, a Canadian telecommunication company, already with a subsidiary located in any Member State, will now be able to sell anywhere within the Community.

The removal of these barriers to trade will allow Community firms to attain full economies of scale in production perhaps creating 'world-scale' firms. As larger firms emerge, niches will exist for a number of a small specialized firms where Canadian companies could succeed. The best opportunities for Canadian firms would accordingly arise in specialized customer equipment markets and other areas where economies of scale are least important.

The opening of the telecommunication services market to any operator through *market access reforms in telecommunication services* is expected to have a few implications for Canadian businesses. The absence of any specific exclusion of non-EC operators implies that the market could be open to Canadian telecommunication operators. However, the supply of such services will be subject to licensing procedures. EC content rules may require the establishment of a Canadian subsidiary before it can provide services anywhere in the Community. Canadian firms may have greater opportunities supplying information to Community based firms on how to provide increasingly sophisticated information services, rather than actually providing the services themselves which would require access to the public network.

The *open network provision measures* (ONP) should enable Canadian based EC firms to provide telecommunications services more readily within the Community, thereby opening up opportunities and reducing costs. Canadian firms operating in the Community should welcome this development provided they are not excluded from the unified market by virtue of the ONP standards.

Public procurement measures imply that Canadian communication firms will have to locate a subsidiary in Europe to meet the EC content rule or to enter into reciprocal procurement agreements with a Community firm. International trade agreements, for example the GATT, could provide Canadian exporters with increased access to Community markets. These agreements may have to be reviewed to ensure that all sectors are covered.

Scope for Expansion of EC Competition Policy in Telecommunications

The scope for the application of competition rules to business undertakings in telecommunications has particularly been enhanced in the areas of collusion and abuse of dominance. Regarding collusion, Telecom Administrations decided to abolish a clause fixing terms for leasing, following the recommendation of the Commission that it violated Article 85 of the EEC Treaty. In the area of abuse of dominance, British Telecommunications prohibited private message-forwarding agencies in the United Kingdom from relaying telex messages received from and intended for other countries on grounds that it abused its dominant position.

III. FINANCIAL SERVICES

Financial services includes a wide range of activities such as banking, insurance, and dealing in securities and stocks. Measures have been taken to open these markets to competition and several other measures are being proposed to further liberalize these markets.

Implications for Canadian Businesses in Financial Services

The *measures to facilitate entry into the banking market* have several implications. A Canadian bank with an incorporated subsidiary in a Member State will be granted a single licence to do business throughout the Community on the same basis as an EC bank, thereby receiving identical treatment. As a result, opportunities could now be available for Canadian banks to do business in any other EC Member State either by way of establishment without prior authorization or through the provision of services. However, a Canadian bank with only a branch in an EC Member State will not be permitted access throughout the Community, as it will not qualify for a single licence.

A single banking licence could also create anomalies because banks from non-EC countries would be allowed to perform services in the EC not permitted in their home country. However with the recent Canadian legislative reforms, this possibility appears to have been reduced. Significant Community market penetration is not expected due to restructuring from the wave of mergers, acquisitions and alliances. Niches however exist where Canadian banks have a recognized expertise for example in mergers and acquisitions, particularly larger

deals, and in fund management.

Canadian banks planning to open up subsidiaries or planning to acquire EC Community credit institutions will require authorization from the competent authorities of a Member State. Before granting authorization, the Commission will determine whether EC banks are provided with 'effective market access' (i.e. the right of establishment) and 'national treatment' (i.e. non-discrimination of EC banks in comparison to Canadian domestic banks) in Canada. Where comparable market opportunities do not exist -- for example because of differences in the ranges of permissible banking activities or opportunities as a result of less liberal banking laws -- these differences will be a matter for negotiation. This lack of equivalent treatment will not be a basis for retaliation. Member States however may limit or suspend requests for authorization or acquisitions by financial entities governed by the laws of third countries, if EC companies encounter difficulties in establishing themselves in those countries. This reciprocity issue will not be retroactive and should be taken advantage of before January 1, 1993 by Canadian banks planning to open in the EC.

Implications similar to the above will result from *measures to facilitate entry into the non-life insurance and life assurance market.*

There is the possibility that Canadian financial centers could lose ground to the established financial centers of London, Frankfurt and Paris. This is because the European Commission has attempted to construct a financial system which is designed to be less constrained and less regulated than in North America. However, the possibility of Canadian financial centres losing ground appears to be reduced as a result of the Canadian financial reforms which were recently given Royal Assent.

Scope for Expansion of EC Competition Policy in Financial Services

The scope for the application of competition rules to undertakings in financial services has already been enhanced in the area of collusion. In the Dutch Banking case, the Commission's strong pro-competitive stance has prompted several associations of Dutch banks to end agreements following objections raised by the Commission. Notwithstanding its stance, the Commission granted exemption from Article 85(1) to the circulars concerning simplified clearance procedures for cheques and other banking procedures on grounds that the procedures have redeeming benefits. Recently, the Commission wrote to the European Banking Federation indicating that agreements on interest rates at national levels should be avoided or abandoned as the practice restricts competition having an effect similar to a cartel.

IV. ENERGY

A few measures have been approved by the Commission, because of the general belief that energy should be progressively driven by market forces. The Commission has recently made additional proposals aimed at completing the internal market in electricity and gas.

Implications for Canadian Businesses in Energy

The *measures to facilitate cross-frontier transit* between high pressure grids in natural gas, or cross-frontier transit between high voltage grids in electricity, will not have significant implications for Canadian businesses. State owned monopolies will continue to dominate the gas and electricity subsectors leaving little room for competition within any of these subsectors. The exclusive rights that these monopolies enjoy in importing and exporting natural gas and electricity would have to be abolished for there to be any scope for third countries. A recent Court ruling and Commission action however could open the door for competition between State owned monopolies and possibly third party competition including potential Canadian companies in the Community at a later date.

Measures to provide *third party access* recently were proposed. Beginning on January 1, 1993 a system of third party access to large industrial consumers and distributors will be introduced. The system of third party access will be extended on January 1, 1996. The opening up of these subsectors to competition in electricity generation and construction of electricity lines and gas pipelines could provide opportunities for Canadian businesses in the Community.

The *price transparency reforms* do not have any direct implications for Canadian businesses. It is possible however, that over the longer term the publication of energy prices prevailing in the EC and other countries could create an incentive for Community industrial end users to push for measures to abolish exclusive export and import rights of the State owned monopolies and to provide the possible opportunities for non-Member States in the EC market.

Scope for Expansion of EC Competition Policy in Energy

The scope for the application of competition rules to undertakings in energy has been enhanced in the areas of collusion, monopoly and mergers. The Commission granted an exemption from the application of Article 85(1) to parts of an agreement regarding the supply of German coal, known as the "Jahrhundertvertag", to that country's public electricity supply industry. The exemption had been granted because the agreement serves to safeguard electricity supplies for the consumer and therefore contributes to improving the generation and distribution of electricity. However, since the agreement limits the possibility of

intra-Community trade, the exemption was not intended to be granted in its entirety and the agreement will apply to a reduced quantity of coal in line with the Commission's proposal. The Commission recently concluded an examination of a complaint against an agreement entered into by CAMPSA, the Spanish petroleum monopoly which was considered as being contrary to Articles 85 and 86 of the EEC Treaty. With respect to mergers, an investigation has been started recently into the acquisition by the West German Ruhrgas AG of 35 per cent of the East German Verbundnetz AG, which owns the gas pipeline network in the German Democratic Republic.

V. CONCLUDING REMARKS

In light of the importance of the regulated sectors, which account for more than fifteen percent of the Economic Community's gross domestic product of approximately five trillion Canadian dollars, a number of supplementary reforms are being planned so that the key reforms have their maximum effect. In air transport services, measures are being considered in areas pertaining to external policy; harmonization; and infrastructure. In telecommunications, measures are being planned to liberalize the market based on the proposals of the Green Paper which have not been implemented, for example in areas such as receiving antennae and satellite broadcasts; alignment of tariffs and costs; and numerous accompanying measures. In financial services, reforms are being planned to harmonize policies for example in value added tax and withholding tax; on stock exchange listing prospectus; and prohibition of insider trading. In energy, the Commission is considering important measures related to removal of barriers to trade; and other measures to improve competition.

Increased opportunities for Canadian businesses as a result of the regulatory reforms are likely to arise particularly in telecommunications and financial services. In telecommunications, market niches are likely to exist for Canadian subsidiaries in the Economic Community where economies of scale in production are not important, such as the specialized computer equipment market and the specialized information services market. In financial services, opportunities are likely to arise particularly in niches where Canadian businesses have a recognized expertise, for example in mergers and acquisitions; marketing of life insurance and pension products by life assurance companies; management of large pension funds; unit trusts and mutual funds; and the securities business.

In the past the regulated sectors examined in this paper were exempt from the application of the Competition Law. However, in light of the recent developments, the competition rules in the EEC Treaty are now applicable. The scope for the application of competition rules has particularly been enhanced in the areas of collusion, abuse of dominance and mergers. This has resulted in a number of initial cases where the Commission has successfully put an end to infringements of the competition rules.

EUROPE 1992: THE REGULATED SECTORS; THE SCOPE FOR EXPANSION OF COMPETITION POLICY; AND THE IMPLICATIONS FOR CANADIAN BUSINESSES*

An important part of the Europe 1992 initiatives includes liberalization in a number of important regulated sectors like air transport services, communications, financial services, and energy. This liberalization opens these sectors and markets to the full force of the free market incentive. This liberalization and potential for increase in competition will expand the role of competition policy in the Economic Community.[1] Due to the importance of these sectors and the opening of these markets to competition for the first time in a meaningful way, these developments will have implications for Canadian businesses. However, it should be noted that, since the Economic Community is going through a transition phase involving a considerable degree of uncertainty, these implications are of a tentative nature.

The important measures to implement this liberalization is summarized in Table 1 of the Annex.

I. AIR TRANSPORT SERVICES

Regulatory Reforms

Since the start of the Europe 1992 initiative, two packages of measures have been implemented, one in December 1987 and the other in November 1990, for expanding the scope of competition between airlines in the Economic Community. A third package has recently been proposed to go into effect on January 1, 1993.[2] In addition, measures have been adopted to apply the EC Competition Law to air transport services. This liberalization which is described in greater detail hereafter and summarized in Table 2 of the Annex is only one element of the common transport policy, the other elements being external policy, harmonization and infrastructure.

* Mr. Derek Ireland is to be credited for the encouragement, valuable discussion and patience for reading this paper.

Price Competition. Competition was introduced through the first and second packages[3] by providing opportunities for flexibility of air fares; this flexibility was broadened in the third package of measures. A new fare submitted by an air carrier to a Member State cannot be disapproved without double disapproval. Examination of new fares must not lead to disapproval if the fare is reasonably related to the applicant's long term cost, taking into account the need for a satisfactory return on capital, the needs of consumers and the competitive market situation. Fares on inclusive tour arrangements or fares on groups larger than six shall be approved automatically. Air carriers shall not charge air fares or rates excessively high or unjustifiably low. Only Community air carriers shall be entitled to introduce lower fares than the existing ones. Third countries operating in the Community will be able to match the normal economy fare, unless otherwise provided for in an agreement.[4]

Access to the Market. The third package of measures on access further liberalizes those adopted in the first and second packages.[5] All capacity sharing limitations are eliminated from January 1, 1993. However, the safeguard to stabilize market share in the event of financial damage that was contained in the second package on shares of capacity has been retained. Restrictions on multiple designation of carriers are eliminated.[6]

A Member State may impose a public service obligation in respect of scheduled air services to a regional airport in its territory on vital routes. Access may be limited to one carrier on that route. Combination of points in the operation of scheduled air services are also permitted without constraints. Restrictions on fifth-freedom[7] and cabotage rights have been phased out in accordance with Council commitments to stimulate the development of the Community air transport sector and commitments to improve services. The exercise of traffic rights between a third country and the Community shall be settled in an agreement between the third country and the Community.[8]

Measures on the Application of Competition Policy to Airlines. A third

important element of the 1987 package was the adoption of two Council Regulations. The first pertained to the application of rules on competition to undertakings in the air transport sector.[9] This regulation which came into force on January 1, 1988 lays down detailed rules for the application of Articles 85 and 86 of the Treaty of Rome to air transport.[10] The regulation also provides for: exceptions for certain technical agreements; procedures on complaints and the conveyance of the results of such procedures; powers of the Commission and the way the powers of investigation and sanction are to be conferred; and the review of the Commission decision.

The second regulation was intended to create greater legal clarity concerning EC competition policy treatment of certain types of agreements used in the air travel sector. It outlines a number of types of agreements that are not considered to be in violation of EC competition law.[11]

Proposals Regarding Other Airline Measures. The European Community plans to launch other measures on external policy, harmonization and infrastructure. The most important pertain to external policy which deal with cabotage; community competence; and the application of competition rules to third countries.

Implications for Canadian Businesses in Air Transport Services

Implications from Price Competition Reforms. The competitive position of Canadian airlines on fifth-freedom operations within the European Community will undoubtedly be affected, as only Community airlines can become the price leader on third- fourth- and fifth-freedom routes. This will undoubtedly affect the competitive position of Canadian airlines even with the price matching provision. This is because Canadian airlines may not be able to introduce fares based on their fully allocated costs if they are lower than Community airline fares and since the matching provision pertains to the normal economy fare and not the lowest fare on that route. These considerations could call for Canadian bilateral agreements to be

re-negotiated to provide for flexibility of fares to ensure instantaneous matching so that Canadian airlines are not competitively handicapped.

Implications from Market Access Reforms. The elimination of ranges on capacity shares for Community carriers on intra-Community services, as a result of the second package of reforms, should sharpen competition among Community airlines and by extension between Community airlines and Canadian airlines on fifth-freedom segments within the Community. Since constraints on fifth-freedom capacity may be retained in bilateral agreements with Canada, despite the third package eliminating restrictions, these bilateral agreements should be examined to see that these constraints are eliminated as of January 1, 1993. This will ensure that Canadian airlines are not placed at a competitive disadvantage as a result of a smaller potential market and correspondingly increased cost from a lower load factor.

The removal of restrictions on third- and fourth-freedom air services should enable Community airlines to develop and mobilize an even more efficient sixth-freedom network (i.e. "behind the gateway" traffic from other Member States feeding third- and fourth-freedom services). This would supplement local passenger services, improve services and enhance payload on their routes beyond the Community, which could be same plane service. This will have certain economic effects on Canadian airlines competing with Community airlines on third- and fourth- freedom services and fifth- and sixth-freedom services. This could leave Canadian airlines at a competitive disadvantage due to lower load factors as opportunities for sixth-freedom services from the U.S. are rather limited.[12]

The introduction of cabotage within a Member State, as a result of the third package, when joined with fifth-freedom rights would place Community carriers in an even stronger competitive position as a result of a superior airline network.

Implications from Measures on the Application of Competition Policy. Canadian operators in the Community will be required to comply with the competition rules of the Community, as the Council Regulations make applicable the rules of competition to fifth-freedom operators within the Community. The second regulation, in particular, can have indirect implications for Canadian airlines. Various cooperative agreements among Community airlines potentially could operate in a manner so as to disadvantage Canadian airlines. For example, the first regulation on allocation of slots at airports operated in a manner to eliminate competition in congested airports. This led the Commission to publish revised draft regulations on slots and to consider a code of conduct on the issue. To ensure that Canadian airlines are not discriminated against or placed at a competitive disadvantage vis-a-vis Community airlines, these agreements need to be monitored and examined in consultation with Canadian airlines.

Implications from Proposals Regarding Other Airline Measures. A number of very interesting general implications follow from a recent EC communication on external policy.[13] First, cabotage is considered to be the cornerstone of the Community's policy with third countries. Traffic between the Member States or fifth-freedom rights with third countries are considered to be equivalent to cabotage, as the Community is now considered as one market or entity. As a result of this, the Community may want to redress any perceived imbalance in reciprocity. This could mean that, in the future, if Canada wants fifth-freedom rights between Member States, the Community may want cabotage privileges in Canada or very favourable rights in exchange. Canada accordingly may want to hold on to any existing fifth-freedom rights with Member States as these rights are safeguarded.

Second, on Community competence, the Commission has indicated that it has exclusive competence to deal with commercial agreements and non-commercial agreements. Member States are therefore no longer entitled to negotiate or conclude agreements on matters falling within the ambit of the common commercial policy. Because fifth-freedom services (air commercial agreements) for third country air carriers raise special concerns not merely nationwide but for the Community as

well, the Community has felt it necessary to exercise competence. In practice, this would mean that Member States are no longer competent to grant new fifth-freedom traffic rights to Canada but that they will have to refer requests for such fifth-freedom rights to the Commission. Finally, the Commission has indicated that competition rules will be applicable to third country airlines on routes between them and the Community. Canadian airlines flying on routes to the Community will want to take this new factor into consideration.

Consideration of the implications would not be complete without mentioning the increasing trend towards globalization. Canadian airlines, third country airlines and Community airlines have concluded a number of alliances, pooling arrangements, and marketing arrangements between themselves. This may well diminish the importance of cabotage and fifth-freedom services in the Community for Canadian airlines, with the result that the specific implications discussed earlier could to some extent be modified.

Scope for Expansion of Competition Policy in Air Transport Services

A very direct role to control anti-competitive behavior has been given to the Commission in the Council Regulation on fares and rates. In addition, the scope for the application of competition rules to undertakings in air transport services has been particularly enhanced in the areas of collusion, abuse of dominance, and mergers. Commissioner Brittan recently came out against a proposed Brussels-based alliance involving British Airways, Sabena of Belgium, and KLM Royal Dutch Airways on the basis that it would reduce passenger choice. Agreements may be exempted from the prohibition of Article 85(1) by the Commission where the agreement bears some redeeming features such as economic, technical and consumer benefits. This is illustrated in the adoption of regulations on slot allocation at airports, computer reservations services and airport ground services.[14]

In the area of abuse of dominance, the first air transport services case on reservation systems was brought to the Commission. Sabena, the Belgian national

carrier, refused to allow London European Airways (LEA) access to its computer reservation system, SAPHIR.[15] LEA, a British carrier serving Brussels was a new competitor with lower fares that sought access to the SAPHIR system so that it would be listed in the terminals of the Belgian travel agencies. The travel agencies which use the system account for 80% of the agency reservation system. The Commission decided that Sabena had abused its dominant position in the market for computerized flight reservations in Belgium and imposed a fine.[16]

Cases involving mergers have also been brought to the Commission. In the British Airways acquisition of British Caledonian Airways, the Commission has intervened obtaining undertakings in addition to those given to the United Kingdom Mergers and Monopolies Commission. These undertakings place a ceiling on the operations of British Airways at Gatwick up to 1992 and ensure that the merger does not lead to new constraints on slots at Heathrow airport. The undertakings therefore provide opportunities for entry of other airlines on the routes served by the merging airlines.

II. TELECOMMUNICATIONS

The telecommunications sector includes a wide range of goods and services, such as telephone, electronic mail, fax, data transmission and satellite communications. The four major proposals from the Green Paper[17] to liberalize competition are examined hereafter and summarized in Table 3 of the Annex.

Regulatory Reforms

Access to the Telecommunications Terminal Market. In the telecommunications terminal equipment market (terminal equipment means equipment directly or indirectly connected to the termination of a public telecommunications network to send, process or receive information; it also means receive-only satellite stations not reconnected to the public network) a Commission

Directive went into effect on May 16, 1988 which permitted competition which was previously distorted. The telecommunications industry in the past in each Member State was wholly or partly a public undertaking or a private enterprise which enjoyed a state monopoly.

Economic operators would now have the right to import, market, connect, bring into service and maintain terminal equipment. The undertakings to whom these "special" or "exclusive" rights were granted previously were withdrawn. Users now have access to the new public network termination points and physical characteristics of these points are now to be published. Technical specification and type approval procedures for terminal equipment are now to be communicated to the Commission and to be published. The drawing up of technical specifications is entrusted to an independent body. These requirements allow users to have access to the terminal equipment of their choice due to increased transparency. As well, undertakings are now required to provide customers with the opportunity to terminate leasing or maintenance contracts with maximum notice of one year. Similar requirements exist for terminal equipment requiring or not requiring type approval.[18]

Doubts surrounding the validity of this Directive have been dismissed in the European Court of Justice's judgement of March 1991. The Court indicated that parts of the Directive dealing with "special" rights should be annulled as a result of its ambiguity and open-endedness.

Access to the Telecommunication Services Market. In the market for telecommunications services, the Commission Directive of June 28, 1989 was designed to oblige Member States to allow competition in the field of telecommunication services. The Telecommunication Services Directive includes services designed to improve telecommunication services, such as information services which provide access to data bases, remote data-processing services, transaction services, and teleaction services. This Directive does not apply to telex,

mobile radiotelephony, paging and satellite services. The Directive was considered necessary because restrictions, such as the use of infrastructure and tariffs disproportional to costs, limited the supply of telecommunications services.

Under the 1989 Directive, exclusive or special rights of the national telecommunications authority in the supply of telecommunication services other than voice telephony are withdrawn. Further, any necessary measures are to be taken to ensure that any operator is entitled to supply telecommunications services. This would allow other suppliers of services to address themselves to users. Regarding packet-or circuit-switched data services, Member States may until 31 December 1992 or until January 1, 1996, prohibit economic operators from offering leased line capacity for simple resale to the public.

Where Member States maintain special or exclusive rights for the provision of public telecommunication networks, they are to take the necessary measures to make the conditions governing access to the networks objective and non-discriminatory, and as well to take measures to publish the conditions. Member States are to ensure that from 1 July 1991, the grant of operating licences and the control of type approval and mandatory specifications are carried out by a body independent of the telecommunications organizations. As soon as the special or exclusive rights are withdrawn, customers of telecommunications services bound by long term contracts can terminate a contract subject to six months notice.[19]

Other Measures to Facilitate Access. Also relevant is the Council Directive of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of Open Network Provision (ONP). This Directive concerns the harmonization of conditions for open and efficient access to and use of public telecommunication networks and services. It is intended to facilitate access of private companies, particularly those established in Member States, to public telecommunication networks and service.

Prior to the implementation of the ONP Directive, the provision of

telecommunication services between EC Member States was often made difficult or impossible by differing standards for technical interfaces, divergent conditions of use or discriminatory tariff principles. This ONP Directive is intended as a step toward eliminating such obstacles.[20] The ONP conditions must satisfy certain principles: objectivity, transparency and accessibility through publication, as well as equality of access and freedom of discrimination. Harmonized tariffs must be consistent with these principles. There are four main elements of the ONP Directive: standards for technical interfaces and services features; the possibility of mandatory European standards; freedom of choice for users; and a work program in the field of ONP.[21]

In addition, there were other measures to promote competition through reforms to speed up border procedures for granting clearance to goods entering a particular Member State; better harmonizing intellectual property laws; elimination of barriers to capital flows and government impediments to foreign investment in specific industries or sectors; and transparency of regulations and regulatory procedures.

Public Procurement Measures to Enhance Competition. The Utilities Directive outlines competitive procurement procedures for the granting of major supplies and construction contracts by public entities in the water, energy, telecommunications and transportation sectors. Through a flexible system involving Community-wide publicity for calls for bids, specification of supplies and works in ways that encourage competition, and common rules for all potential participants in the Community, it provides for contracts to be awarded in ways consistent with good commercial practice and with regard to the principle of non-discrimination. Special considerations apply to the treatment of non-EC bids, including reciprocal agreements.

The Utilities Directive requires that bids having more than fifty percent EC content be given a minimum preference over third country bids equal to three percent of the value of the contract. This Directive, however, places no obligation on the Member States to accept third country bids in cases where they are low

enough to overcome the three percent Community preference. Rather, the Member States can give EC bids a higher cost advantage, or even refuse to consider non-EC bids, unless the relevant third country has signed a reciprocal procurement agreement with the Community in the relevant sector.[22]

Measures on the Application of Competition Policy to Telecommunications. In light of changes in the competitive conditions, the Commission has adopted guidelines on the application of EEC competition rules to the telecommunications sector. The guidelines explain the general principles of the competition rules applicable to telecom undertakings (Articles 85 and 86 of the EEC Treaty) and their relationship with competition rules applicable to the Member States (Article 90). Specific sections are devoted to restructuring, satellites and the interplay with international conventions.

Implications for Canadian Businesses in Telecommunications[23]

Implications from Reforms on Access to the Telecommunications Terminal Market. The freedom granted to economic operators in the EC to import, market, connect, bring into service and maintain terminal equipment could have important implications for Canadian businesses. While these reforms were basically intended to promote intra-EC competition, the absence of any exclusion of non-EC operators implies that the market will be opened to Canadian telecommunication terminal operators. In practice, it has been suggested that this would require the establishment of a Canadian subsidiary in the EC, because of Community content rules. However, a Canadian telecommunications company, already having a subsidiary located in any Member State, will now be able to sell anywhere within the Community. This would increase the potential for Canadian subsidiaries in the EC to increase their sales to other Member States.

The removal of these barriers to trade will allow Community firms to attain full economies of scale in production. This would permit Community equipment suppliers to reduce costs via greater specialization and longer production runs,

perhaps creating 'world-scale' firms. As larger firms emerge, niches could emerge for a number of a small specialized firms where Canadian companies could succeed. The best opportunities for Canadian firms would accordingly arise in specialized customer equipment markets and other areas where economies of scale are least important. If EC 'world-scale' firms penetrate Canadian markets, this need not mean a decline of employment in Canada to the extent that these EC firms establish production facilities in Canada to serve the North American market. [24]

Implications from Reforms on Access to the Telecommunication Services Market. The opening of the telecommunication services market to any operator is expected to have some implications for Canadian business. The absence of any specific exclusion of non-EC operators implies that the market will be open to Canadian telecommunication operators. However, the supply of such services will be subject to licensing procedures. EC content rules may require the establishment of a Canadian subsidiary before it can provide services anywhere in the Community.

The provision of leased lines forms an essential part of any telecommunication organization's system. However, economic operators are prohibited from offering leased line capacity for simple resale to the public. Consequently, it is difficult to assess the opportunities for Canadian firms in this EC market. Canadian firms may have greater opportunities supplying information to Community based firms on how to provide increasingly sophisticated information services, rather than actually providing the services themselves which would require access to the public network.

Implications from Other Measures to Facilitate Access. The Open Network Provision (ONP) has been adopted to achieve a more competitive supply of telecommunication services. The provision of telecommunication services between EC Member States was often made difficult by differing standards for technical interfaces, divergent conditions, and discriminating tariff principles. Canadian firms operating in the Community should welcome this development provided they are not excluded from the unified market by virtue of these

standards. These measures should enable Canadian based EC firms to provide telecommunications services more readily within the Community, thereby opening up opportunities and reducing costs.

In the development of European voluntary standards, it is anticipated that information on draft standards will be made available to Canadian businesses, through the Standards Council of Canada. The views of Canadian businesses on these standards are expected to be transmitted by the Standards Council of Canada, a member of the International Organization for Standardization, to standardization bodies and thereafter to the European Telecommunication Standards Institute which is responsible for the harmonized standards being adopted by the ONP.[25]

The provision designed to speed up border procedures should reduce costs associated with customs clearance, making the products of Canadian subsidiaries more competitive with products produced in the importing Member State. The measures to harmonize intellectual property laws in the EC should reduce any concerns of Canadian telecommunications companies, leading perhaps to greater increase in sales in the Community. The measures eliminating barriers to capital flows and the impediments of EC Member State governments to investment should enable Canadian investors to invest in industries in which they were previously restricted. The transparency of regulations and regulatory procedures would also be helpful for Canadian businesses in deciding which businesses to enter and what products to export and sell in the Community.

Implications from Public Procurement Reforms. The public procurement measures for non-EC countries have important implications for Canada. The measures imply that Canadian communication firms will have to locate a subsidiary in Europe to meet the EC content rule or to enter into reciprocal procurement agreements with a Community firm. International trade agreements could be reviewed from the perspective of providing Canadian exporters increased access to Community markets. For example, the communication sector is presently excluded from agreements such as the GATT.

A number of general implications follow. A major policy to achieve the EC 1992 initiative is the scientific and technological (S&T) support program in a number of strategic sectors. Major EC expenditures on R&D due to the Europe 1992 initiative have several implications for Canadian companies, particularly if these expenditures give European companies the lead and pre-competitive edge in telecommunications by the year 2000. In response to this competitive challenge, there may be a need for Canadian businesses and government to assess the extent of resources committed to R&D in the telecommunication and advanced technology sectors, which are expected to grow rapidly over the current decade.

The opportunity to acquire both technology and a market presence in the Community might require Canadian participation in the Community's S&T programs. However, participation of Canadian companies in the European S&T program is limited by Commission policies requiring research facilities in Europe. This may require exploration of other avenues like joint ventures, acquisitions and licensing arrangements. Existing Canadian government programs should continue to support cooperative R&D with the Community to ensure access and encourage technical cooperation between Canadian and EC industries.

Implications from Measures on the Application of Competition Policy to Telecommunications. Canadian companies doing business in the Community will be required to comply with the competition rules, regardless of whether the company is based in the Community or elsewhere.

Scope for Expansion of EC Competition Policy in Telecommunications

The scope for the application of competition rules to undertakings in telecommunications has particularly been enhanced in the areas of collusion and abuse of dominance. Regarding collusion, in a first landmark case concerning telecom operators,[26] Telecom Administrations decided to abolish a recommendation to its member organizations which fixed the terms for leasing out

international telecommunications circuits following the intervention by the European Commission. The Commission found that the recommendation violated Article 85 of the EEC Treaty.

In the area of abuse of dominance, the British Telecommunications case was the first case in which the Community's competition rules were applied to the telecommunications sector.[27] British Telecommunications prohibited private message-forwarding agencies in the United Kingdom from relaying telex messages received from and intended for other countries. This prevented users established in other Community Member States from taking advantage of differences in tariff structure or real costs, or indeed currency fluctuations, to relay telex messages for countries outside Europe via the United Kingdom. The Commission therefore concluded that British Telecommunications abused its dominant position.

III. FINANCIAL SERVICES

Financial services includes a wide range of activities such as banking, insurance, and dealing in securities and stocks. Measures have been taken to open these markets to competition and several other measures are being proposed to further liberalize these markets. The key reforms in each of these sectors are examined in the following paragraphs and summarized in Table 4 of the Annex.

Regulatory Reforms

(a) Banking

The first real steps towards establishing a common market in banking were taken in 1977 through the first Council Directive on credit institutions.[28] Further progress was made with the second Council Directive of 15 December 1989 on banking, which is to go into effect in January 1993.

Measures to Facilitate Entry into the Banking Market. The central aim of this 1989 Directive is to provide banks in one European country with the freedom to do business in any other EC Member State. Member States may no longer require authorization or endowment capital for branches of credit institutions. Thus a single banking licence is valid throughout the Community. Prudential supervision is to be based on the principle of home country control, and relations with third countries are to be governed by special provisions. A non-EC bank with only an EC branch will not qualify for a single licence; this restriction however does not apply to subsidiaries already established in the Community.

Member States shall also provide that banking activities can be carried on by the establishment of a branch, or by way of the provision of services, by any credit institution authorized and supervised by the competent authorities of another Member State.[29] Thus, banks will be allowed to market their products throughout the EC without establishing branches in every Member State.

The list of banking activities (fourteen) has been greatly expanded to cover new activities, including all forms of transaction in securities. The Directive applies to all credit institutions. Credit institutions in the EC provide a wide variety of services including lending, leasing, foreign exchange services, financial futures, credit cards, fund management and securities trading.[30] The Directive refers to other legislation which define banks own funds, harmonized solvency ratios, rules for the guarantee of deposits and rules to limit risk concentration.[31]

To ensure stability and confidence in the financial system, the Directive provides for initial capital authorization, information about persons envisaging an acquisition or sale of a credit institution, and limitations in participation in non-financial activities. Furthermore, it provides for cooperation among the banking authorities of the Member States and reaffirms the principle of home control.[32]

(b) Insurance

In the area of non-life insurance (property and damage insurance), early reforms were made to achieve freedom of movement and the freedom to provide services, but progress was delayed.[33]

Measures to Facilitate Entry into the Insurance Market. The third Directive on non-life insurance adopted on July 27, 1990, which is not yet in effect, will establish a true single market for non-life insurance in the European Community. It will enable insurance undertakings authorized in any Member State to set up branches and to provide services for individual consumers on the basis of the single licence under the supervision and according to the rules of the home Member State.[34] Until now, due to the need for separate authorization, there have been twelve separate markets for non-life insurance in the Community. Authorization shall be sought from the home country and not be evaluated in relation to the economic requirements of the market; as well authorization shall be sought for extension of business to other classes of non-life insurance. Relations with third countries are governed by special provisions.

The Directive also abolishes undertakings which were granted monopolies on classes of non-life insurance. Localization of assets in Member States is provided for; however, Member States shall not require localization in a particular Member State. Further, to avoid distortion in competition resulting from different forms of indirect taxes and other factors, provision exists for applying the tax system where the risk is situated.[35] Other provisions provide for coordination of essential rules of prudential and financial supervision, acquisition and their disposal, mutual recognition of supervision between Member States and investment in particular assets.

A proposal on the third life assurance Directive has recently been finalized by the Commission.[36] It will permit companies to operate freely throughout the Community on the basis of the rules operating in their country of establishment,

and will provide a common set of prudential rules applicable to all Community life assurance companies. This Directive will not oblige companies to invest in particular assets or confine their assets to a single Member State. However, a list of the different types of assets which can be acquired, and the percentage of total assets which each asset can represent, will be prescribed. Member States will be able to limit this list and reduce the above maximum percentage for companies established on its territory. However, Member States will not be able to require investment in public bonds.[37] The Directive also provides for consumer protection rules.

(c) Securities

Measures to Facilitate Entry into the Securities Market. In the securities market, the two key developments[38] that have fostered competition were undertakings for collective investment in transferable securities (UCITS), which was adopted on 1 November 1985 and came into effect in October 1989, and a proposal on investment services which was adopted in 1989 but is not yet in effect. Competition between transferable securities will be possible as a result of UCITS since mutual funds and unit trusts that have been approved in one Member State will be allowed to be marketed in competition with other transferable securities throughout the EC. The proposal adopted in investment services will permit the establishment of branches throughout the Community, offering a wide range of services in Member States on the basis of a single licence.

Implications for Canadian Businesses in Financial Services[39]

Implications from Measures to Facilitate Entry into the Banking Market. A Canadian bank with an incorporated subsidiary in a Member State will be granted a single licence to do business throughout the Community on the same basis as an EC bank, thereby receiving identical treatment. As a result, opportunities will now be available to Canadian banks to do business in any other EC Member State either by way of establishment without prior authorization or through the provision of services. However, a Canadian bank with only a branch in an EC Member State will

not be permitted access throughout the EC, as it will not qualify for a single licence.[40] A single banking licence could also create anomalies because banks from non-EC countries would be allowed to perform services in the EC not permitted in their home country. However with the recent Canadian legislative reforms, this possibility appears to have been reduced, as banks in Canada can provide comparable services either directly or indirectly to those provided by banks in the Community.[41]

The restructuring presently underway due to a wave of mergers and acquisitions, participation agreements, alliances of bankers and insurance companies and other arrangements, could provide European banks with a competitive edge. Further, distribution networks, which are essential for private banking, are not controlled by Canadian banks; consequently significant EC market penetration by Canadian banks is not expected. Niches, however, exist where Canadian banks have a recognized expertise, for example: in mergers and acquisitions particularly larger deals; and in fund management.

Canadian banks planning to open up subsidiaries or planning to acquire EC Community credit institutions will require authorization from the competent authorities of a Member State. Before granting authorization, the Commission will determine whether EC banks are provided with 'effective market access' (i.e. the right of establishment)[42] and 'national treatment' (i.e. non-discrimination of EC banks in comparison to Canadian domestic banks) in Canada. Where comparable market opportunities do not exist these differences will be a matter for negotiation. However, lack of equivalent treatment will not be a basis for retaliation.[43] The above consideration often referred to as the reciprocity issue will not be retroactive. Canadian credit institutions planning to operate or acquire credit institutions in the EC should take advantage of this before January 1, 1993 when the Banking Directive becomes effective.

Implications from Measures to Facilitate Entry into the Insurance Market. A Canadian non-life insurance or life assurance company with an incorporated

subsidiary in a Member State will be granted a single licence to do business throughout the Community on the same basis as an EC non-life insurance or life assurance company. This means that the Canadian company can carry on business by way of establishment, without authorization in any Member State if it has a subsidiary in the EC, or by way of freedom to provide services. As a result, opportunities will now be available to Canadian non-life insurance companies already established in the EC. These opportunities will enable them to do business in any other EC Member State, especially as monopolies previously granted to undertakings are abolished. However, extensions of business to other classes for which a Canadian company is currently not authorized shall require further authorization.

EC non-life insurance companies are likely to benefit more than Canadian non-life insurance companies established in the EC. This is because EC firms have been adapting to market integration by building up European networks of national significance covering a larger perimeter. Further, Europeans are leading the way in the integration of banking and insurance.

Canadian life assurance companies in the EC may have difficulties coping with the increased competition as a result of stronger EC life assurance companies who can now create EC-wide distribution networks and bank-insurance alliances. However, the limited capability of Canadian firms to create distribution networks could be partly compensated by the extensive experience of Canadian firms in life assurance and pension products. Canadian companies are in a position to negotiate agreements from their beachhead in the United Kingdom with local institutions in Continental Europe, thus avoiding the expense, risk, and delay of building distribution networks. Reciprocity applies to the establishment of a Canadian non-life insurance or life assurance undertaking in the EC or the acquisition of a EC non-life insurance or life assurance undertaking.[44]

Implications from Measures to Facilitate Entry into the Securities Market. Canadian investment companies duly authorized will be allowed to provide

investment services across national borders within the Community or to set up branches in the other Member States without additional authorization. A Canadian branch of an investment company will be accorded the same treatment as any branch of an EC investment company.

Canadian investment branches in the Community could be successful given their expertise in the management of large pension funds, unit trust and mutual funds. Their techniques and software for administering large accounts could be easily adapted to European markets to provide a high quality service. The Canadian securities industry could also promote the quality of its North American research on securities, which is based on a strong knowledge of corporations. Reciprocal treatment is also applicable to the securities industry and will not be retroactive before January 1, 1993.[45]

There are also a number of general implications. The policy of attempting to make the Community a world center of financial innovation in the 1990s and beyond could have implications for Canadian businesses.[46] The European Commission has attempted to construct a financial system less constrained and less regulated than Japan, U.S.A, or Canada. With the globalization of financial markets, capital is now extremely mobile and gravitates to centers where the most financial innovation and freedom are possible. Canadian financial centers as a result could lose ground to the established financial centers of London, Frankfurt and Paris. However, this possibility appears to be reduced as a result of the Canadian financial reforms which were recently given Royal Assent.

Scope for Expansion of EC Competition Policy in Financial Services

The scope for the application of competition rules to undertakings in financial services has already been enhanced in the area of collusion. In the Dutch Banking case,[47] the Commission's position has prompted several associations of Dutch banks -- which accounted for 90% of total deposits and assets of banks in the Netherlands -- to end agreements following objections raised by the Commission.

The agreements provided for uniform minimum commissions for several banking services between banks and customers, uniform value dates for debit and credit operations, uniform exchange rates and margins for foreign currency transactions, and uniform commissions and exclusive arrangements for foreign currency brokers pertaining to financial services.

Recently, the Commission has taken a further step in order to accelerate application of the competition rules in the banking sector by writing to the European Banking Federation.[48] The Commission indicated that agreements on interest rates at national levels should be avoided or abandoned as the practice restricts competition having an effect similar to a cartel.

The Commission in the Dutch banking case granted exemption from Article 85(1) to the circulars concerning simplified clearance procedures for cheques denominated both in guilders and in foreign currencies. Similarly, payment systems based on electronic cards, which gives access to cash dispensers throughout the EC, may not have unacceptable effects on competition, and are being studied to determine how a certain degree of interoperability of the systems can be achieved.

IV. ENERGY

The energy sector includes various types of energy subsectors which are classified into subsectors such as natural gas, electricity, oil and petroleum products, and solid fuels.[49] The introduction of reforms to achieve the internal energy market has somewhat lagged behind the implementation of reforms in the other regulated sectors, due to the reticence of the Member States. Nevertheless, a few measures have been approved by the Commission, because of the general belief that energy should be progressively driven by market forces[50] and recently additional proposals aimed at completing the internal market in natural gas and electricity have been made.[51] The reforms are described briefly below and summarized in Table 5 of the Annex.

Regulatory Reforms

(a) Natural Gas and Electricity

The use of natural gas in the EC is gaining popularity and its share of primary energy consumption has dramatically increased relative to other types of energy in the last few years. Electricity is by far the most common form of energy in the EC. So far two measures have been implemented each in natural gas and electricity. The first Directive, which was adopted on October 29 1990, pertains to the liberalization of intra-community transfrontier trade in gas and electricity.[52] The second Directive which was adopted on 29 June 1990 pertains to price transparency to industrial end-users.[53] The latter Directive is considered to be crucial to the completion of the internal market.

Measures to Facilitate Cross-frontier Transit in the Natural Gas Market. The Directive on gas transit was the first stage in facilitating entry into the natural gas market. This Directive would provide for the right of access to transmission through high pressure grids,[54] and thus addresses the restrictions to the free flow of natural gas over national borders which may prevent normal commercial arrangements between interested parties. The Directive contains the modalities for enforcing the right of transit for natural gas between transmission companies. A representative body of organizations responsible for the grids will be set up to assist the Commission in the preparation of the necessary modalities.

These first stage measures are expected to improve the Community's security of natural gas supply and reduce costs by coordinating the building and operation of interconnections required for trade in natural gas. The measures as well would increase the potential for liberalization of trade and competition by enforcing the right of transit for the transport of natural gas between transmission companies. As a result, consumers would benefit due to more efficient energy infrastructures, improved overall competitiveness of these industries resulting in lower prices, and improved trade (since there are some regions in the Community which suffer from

lack of capacity and others from excess capacity).

Measures to Facilitate Cross-frontier Transit in the Electricity Market. The first stage of the Electricity Directive requires the Member States to take the necessary measures to facilitate the transit of electricity between high voltage grids of Member States. Contracts concerning electricity transit between major grids are to be negotiated between the entities responsible for the grids concerned. The conditions of transit must be non-discriminatory and equitable for all the parties concerned, must not involve any abuse or unjustified restriction and must not endanger the security and quality of the service.

This Directive is intended to liberalize trade in electricity by removing the obstacles to transit. This would increase trans-frontier exchanges of electricity between Member States in the Community. The transfers of electricity between high voltage grids will have implications for investments, will reduce the cost of investment and the fuels involved in electricity generation and transmission, will ensure optimum use by the means of production, and will improve cooperation between generation and transmission companies of Member States thereby reducing costs.[55] As a result, more efficient energy infrastructures could result, improving the overall competitiveness of EC industries.

Third Party Access Measures in the Natural Gas and Electricity Markets. The gas and electricity markets will be made accessible to third parties in two additional stages. The second stage beginning on January 1, 1993 will include the limited introduction of a system of third party access. Large industrial energy consumers whose consumption exceeds 100 Gwh of electricity or 25, 000, 000 m^3 of gas, and distributors who supply at least 3 percent of electricity or 1 percent of the gas consumed in their Member States will be granted access to the network. The third stage starting on January 1, 1996 will extend the system of third party access to the network based on the experience of the first stage.

The third party access measures are designed to introduce competition and

open up the market to new distributors, to permit fair and non-discriminatory competition through unbundling of accounts of production, transmission and distribution, and to permit consumers to choose their suppliers and to benefit from competition.

Price Transparency Reforms in the Natural Gas and Electricity Markets. The first stage of the Directive on transparency of gas prices and electricity prices charged to industrial end-users obliges gas distribution companies to send price information to the Commission every six months. Prices will be published by the Statistical Office and made available to actual and potential consumers without breaching the confidentiality of contracts. The Directive as well would enable industrial end-users to seek those suppliers which are the cheapest. This would promote competition not only between suppliers of a particular type of gas but also between suppliers of various types of energy. Lack of price transparency makes it impossible for industrial end-users to make a rational assessment of available choices. Further, when energy prices are not transparent, these prices are capable of containing elements of State Aid that are unauthorized by the Commission, or can cover up the anti-competitive practices of undertakings in breach of the Community rules on competition. A reduction of gas and electricity prices to industrial end-users would also lower the cost of production in industries.

At the second stage, the Commission is also considering additional price transparency measures with regard to large gas and electricity consumers in the Community.[56] Additional liberalization measures are being planned which will further enhance and affect competition.

(b) Oil and Petroleum Products

The oil and petroleum product subsector, by contrast to other energy subsectors, is already subject to competition. However, a number of obstacles need to be removed relating to consumer prices generally and more specifically to: 1)

obstacles arising from the existence of oil monopolies; 2) exclusive rights on refining, marketing and prohibition of cross-frontier delivery; 3) obstacles relating to internal transport; and, 4) differences in the rules, technical standards and in quality standards.

(c) Solid Fuels

Intra-Community trade in coal is insignificant and the financial situation in this subsector has generally deteriorated with the exception of the United Kingdom. The principle reason is a fall in imported coal prices, notwithstanding that producers have signed long-term contracts with major consumers. These agreements considerably restrict competition from imported coal and other energy sources. Between 1965 and 1986, about ECU 50,000 million were spent on aid schemes to support coal production.

State Aid Reforms. Though stricter control over State Aid generally has been considered important to the completion of the internal market, no specific direction has been given on the likely measures to be adopted in the coal industry after 1993. This task is rendered difficult because of the general problems associated with subsidies. For example, in a certain Member State, the subsidy is collected from consumers through a levy on electricity prices and not from the State. The levy is paid to electricity generators to compensate them for the differences in price between domestic and imported coal.

Implications for Canadian Businesses in Energy

Implications from Measures to Facilitate Cross-frontier Transit in the Energy Market. The measures to facilitate cross-frontier transit between high pressure grids in natural gas, or cross-frontier transit between high voltage grids in electricity, will not have significant implications for Canadian businesses. State owned monopolies will continue to dominate the gas and electricity subsectors leaving little room for competition within any of these subsectors. The exclusive rights that these

monopolies enjoy in importing and exporting natural gas and electricity would have to be abolished for there to be any scope for third countries. A recent Court ruling and Commission action,[57] however, could open the door for competition between State owned monopolies and possibly third party competition, including potential Canadian companies, in the Community at a later date.

Implications from Third Party Access Measures in the Natural Gas and Electricity Markets. The measures to facilitate third party access to open up the market to competition could have implications in the future for Canadian businesses in the Community. At the present however, since there are no large Canadian industrial consumers and distributors of electricity and gas, the second stage measures designed to open up the market to third parties are unlikely to have any immediate implications.

Implications from Price Transparency Reforms. The price transparency reforms do not have any direct implications for Canadian businesses. It is possible however, that the publication of energy prices prevailing in the EC, Canada and third countries could create an incentive for EC industrial end users to push for measures to abolish exclusive export and import rights of the State owned monopolies and to provide opportunities for non-Member States in the EC market.

Implications from State Aid Reforms in Energy. State Aid has a direct bearing on EC market competition and implications for third countries. Should there be a reduction of State Aid to the coal industry after 1993, there could be a reduction in Community coal production and an increase in imports of coal. At present, the price of Community coal is twice that of imported coal, and therefore reductions in State Aid could lead to further import penetration in the future.

Scope for Expansion of EC Competition Policy in Energy

The scope for the application of competition rules to undertakings in energy has already been enhanced. The Commission had granted an exemption from the application of Article 85(1) to parts of an agreement regarding the supply of German

coal, known as the "Jahrhundertvertag", to that country's public electricity supply industry, as it serves to safeguard electricity supplies for the consumer and therefore contributes to improving the generation and distribution of electricity. However, since the agreement limited the possibility of intra-Community trade, the exemption was not intended to be granted in its entirety.[58] The agreement which runs until the end of 1995, will reduce the amount of coal purchased by German electricity generators under the agreement to approximately twenty percent which is in line with the Commission's proposal on Member States purchases of coal to protect indigenous energy sources.[59]

The Commission recently concluded an examination of a complaint against an agreement entered into by CAMPSA, the Spanish petroleum monopoly, and the city of Madrid on 14 March 1986. The agreement was considered as being contrary to Articles 85 and 86 of the EEC Treaty. On the basis of representations from the Commission, the Spanish Government provided assurances that the agreements have been suspended and that it did not intend to enter similar agreements.[60]

In so far as mergers are concerned, investigations have been started recently into the acquisition by the West German Ruhrgas AG of 35 per cent of the East German Verbundnetz AG, which owns the gas pipeline network in the German Democratic Republic. Ruhrgas seems to have a dominant position in the natural gas market in the Federal Republic of Germany. Its acquisition of a strategic position in the German Democratic Republic might cause serious problems to competition, threatening the objective to introduce more competition into the energy sector.[61]

V. CONCLUDING COMMENTS

In light of the importance of the regulated sectors which account for more than fifteen percent of the Economic Community's gross domestic product of approximately five trillion Canadian dollars, a number of supplementary reforms

are being planned so that the key reforms have their maximum effect. In air transport services, measures are being considered in areas pertaining to external policy; harmonization (for example air safety, fair competition, consumer protection and environment); and infrastructure. In telecommunications, measures are being planned to liberalize the market based on the proposals of the Green Paper which have not been implemented, in areas such as receiving antennae and satellite broadcasts; alignment of tariffs and costs; and numerous accompanying measures. In financial services, reforms are being planned to harmonize policies for example in value added tax and withholding tax; on stock exchange listing prospectus; and prohibition of insider trading. In energy, which has somewhat lagged behind the other regulated sectors in the introduction of reforms, major reforms have recently been proposed. The Commission is also considering other measures in electricity and gas networks on the harmonization of technical standards for supply; price transparency; integration of energy networks of Member States; investment in energy projects; and removal of barriers to trade (for example removal of statutory monopolies, exclusive rights, statutory restrictions and State Aid).

With the greatest concentration of wealth on earth, the European Community's impact on Canada and the rest of the world is obvious. Canada is EC's second largest trading partner. However, of central concern is whether Europe 1992 will create opportunities for Canadian businesses. Of the regulated sectors examined opportunities for Canadian businesses are greatest in telecommunications and financial services. In telecommunications, the regulatory reforms are likely to bring increased opportunities for Canadian EC subsidiaries in product and market niches where economies of scale in production are not important, such as the specialized computer equipment market and the specialized information services market. In financial services, opportunities are likely to arise for Canadian subsidiaries of financial institutions established in the EC before July 1, 1993, based on the freedom granted by a single licence to establish in any Member State or the freedom to provide services. Opportunities are likely to exists particularly in niches where Canadian businesses have a recognized expertise, for example in mergers and acquisitions; marketing of life insurance and pension products by life assurance

companies; management of large pension funds; unit trusts and mutual funds; and the securities business.

In addition to the possible opportunities, Europe 1992 is also likely to increase the potential for EC companies with respect to their Canadian subsidiaries. This is particularly so in air transport services and in telecommunications and to a lesser extent in financial services. In air transport services, the reforms relating to market access - third- fourth- and fifth-freedom, and cabotage if implemented - are likely to lead to a more efficient Community airline system. In telecommunications, the formation of Community 'world scale' firms are likely to result in economies of scale. In the financial sector, the restructuring could produce a more integrated network with greater market penetration. Further, the creation of possible barriers against Canadian businesses as a result of Europe 1992 has also been examined. This is likely to arise in the air transport services sector due to constraints on Canadian carriers' freedom to price in the Community and perhaps in other sectors if reciprocal treatment of EC firms in Canada is not provided.

On an overall basis, Europe 1992 appears to call for a more strategic approach by Canadian businesses. This could involve either expansion by establishment or acquisition or bilateral negotiation; strategic alliances; rationalization schemes focussing on appropriate product niches; or withdrawal. Canadian businesses will have to adjust to the new reality of a unified Europe as a very powerful economic force.

In the past the regulated sectors examined in this paper were exempt from the application of the Competition Law. However, in light of the recent developments, the competition rules in the EEC Treaty are now applicable. The scope for the application of competition rules has particularly been enhanced in the areas of collusion, abuse of dominance and mergers. This has resulted in a number of initial cases where the Commission has successfully put an end to infringements of the competition rules.

ANNEX

Table 1 ANNEX

Key Reforms, their Major Features, and Date of Effect

Sector-Key Reforms	Major Features	Effect
Air Transport Services		
1. Directive on Fares (1987)[62]	Economic fares subject to double approval. Two discount zones were established.	Dec. 31, 1987.
2. Decision on Capacity & Access (1987)[63]	Constraints on capacity, multiple designation, and entry relaxed.	Dec. 31, 1987.
3. Regulation on Fares (1990)[64]	Automatic approval in simpler zones.	Nov. 1, 1990.
4 Regulation on Access & Capacity (1990)[65]	Further relaxation for example removal of constraints.	Nov. 1, 1990.
Telecommunications		
1. Directive on Terminal Equipment (1988) [66]	Freedom to import, market, etc. terminal equipment. Procedures will be published.	May 16, 1988.
2. Directive on Telecommunication Services (1989)[67]	Exclusive or special rights withdrawn. Economic operators are free to supply.	June 28, 1989.
3. Directive on Open Network Provision (1990)[68]	Provision is set for standards, mandatory standards, choice for users, and work program.	Jan. 1, 1991.
Financial Services		
i) Banking		
1. Second Council Banking Directive (1989)[69]	Entry in EC on single licence. List of banking activities expanded.	Jan. 1, 1993.
ii) Insurance		
1. Third Directive on Non Life Insurance (1990)[70]	Entry in EC on single licence.	Not yet in in effect.
2. Third Directive on Life Assurance (1991)[71]	Entry in EC on single licence.	Not yet in effect.
3. Directive for Motor Insurance (1988)[72]	Freedom to provide services.	Not yet in effect.
iii) Securities		
1. Directive on Transferable Securities (1985)[73]	Free marketing of units.	October 1 1989.
Energy		
1. Directive on Natural Gas and Electricity (1989)[74]	Limited access to network transmission.	July 1, 1991.
2. Directive on Price Transparency (1989)[75]	Publication of price information.	July 1, 1991.

Table 2

Summary of Major Reforms in Air Transport Services

1987 Package	1990 Package	1991 Package
A. Pricing	A. Pricing	A. Pricing
1. Introduction of fares based on economic factors subject to double approval.	1. Automatic approval of fares in simpler and more efficient zones. Double approval for fares outside the zones.	1. New Fares cannot be disapproved without double disapproval.
2. Two zones of prices : a) a discount zone, and b) a deep discount fare.	2. Three zones of price: a) normal economy fare zone, b) a discount zone, and c) a deep discount zone.	2. ITC and Group travel fares are automatically approved.
	3. Price leadership only by Community carriers on third- fourth- and fifth-freedom service.	3. Price leadership only by Community carriers on third- fourth- and fifth-freedom service. Matching by third countries of normal economy fares are permitted.
	4. Member States shall not be prevented from concluding more flexible pricing arrangements.	
B. Access	B. Access	B. Access
1. Capacity sharing range: 45% to 55% to be increased later to 40% to 60%.	1. Capacity sharing range abolished. It can be increased by 7.5% over each season, subject to constraints (regional airports excluded).	1. Capacity sharing restrictions abolished.
2. Multiple designation on routes (180,000 passengers per year or 1000 round trip flights).	2. Multiple designation on routes (140,000 passengers or 800 round trip flights, later 100,000 passengers or 600 round trip flights).	2. Constraints on multiple designation eliminated.
3. Third-and fourth- freedom rights on scheduled air services between regional and hub airports, and between hub airports subject of derogations.	3. Derogations on third- and fourth-freedom rights on scheduled air service between regional and hub airports, and between hub airports removed.	
4. Annual capacity restrictions of 30 percent of seat capacity on fifth-freedom rights subject to derogations.	4. Fifth-freedom rights were further liberalized. Seat capacity restriction to no more than 50 percent of annual capacity.	4. Fifth-freedom capacity restriction eliminated.
5. Combination of service points on scheduled air service permitted subject to derogations.	5. Constraints on combination of services removed.	5. Constraints on combination of services removed.
		6. Cabotage authorized between airports open to international traffic.
C. Competition		
1. Regulation applying rules on competition to undertakings in air.		
2. Regulation outlining types of agreements not in violation of the competition law, and conditions to be met to qualify for exemption.		

Table 3 ANNEX

Summary of Major Reforms in Telecommunications

A. **Measures to Facilitate Access in the Terminal Equipment Market**

1. Economic operators are granted the right to import, market, connect, bring into service, and maintain terminal equipment.
2. Rights previously granted to undertakings were withdrawn.
3. Access to new termination points and publication of their physical characteristics.
4. Publication of procedures for terminal and other equipment.
5. Opportunity to terminate leasing and maintenance contracts (with maximum one year notice).

B. **Measures to Facilitate Access in the Telecommunications Services Market**

1. Exclusive or special Rights of National Telecommunications Authorities in the supply of telecommunservices withdrawn (excepting voice telephony).
2. Any economic operator is entitled to supply telecommunication services.
3. Economic operators prohibited from offering leased line capacity for simple resale, regarding packet-or circuit- switched data services (until 31 December 1992 which may be extended). Conditions of such service shall be published.
4. Where Member States maintain special or exclusive rights for the provision and operation of public telecommunications networks, conditions of such services are to be published.
5. Opportunity to terminate long term contracts for telecommunications services (with maximum six months notice).

C. **Other Measures to Facilitate Access**

1. Standards for technical interfaces and service features.
2. Possible mandatory European standards to guarantee the interoperability of trans-frontier Community service.
3. Freedom of choice for users.
4. Work program in the field of Open Network Provision for further integrating European telecommunication networks.

D. **Public Procurement Measures to Facilitate Competition**

1. A flexible system involving Community-wide publicity for calls for bids.
2. Specification of supplies, and works in ways that encourage competition.
3. Common rules for all potential participants in the Community.
4. Good commercial practice, with regard to the principle of non-discrimination in awarding contracts.
5. Non-EC bids subject to special considerations, including reciprocal agreements.

Table 4

Summary of Major Reforms in Financial Services

A. Banking

First Directive (1977)	Second Directive (1989)	
1. Freedom of establishment is subject to authorization in each Member State. 2. Cross-frontier services are not to be provided. 3. Banking activities are not defined.	1. Freedom to establish is provided by a single licence for the entire EC. 2. Freedom is provided for cross-frontier services. 3. List of banking activities is expanded 4. Branches can be established without endowment capital. 5. Rules on banking supervision are established.	

B. Insurance

First Directive	Second Directive	Third Directive
(i) Non-life Insurance (1973) 1. Market access is subject to authorization in each Member State. 2. Authorization for class of business is not based on market situation. Authorization is needed for extension to other classes. 3. Conditions are provided for exercise of business. 4. Conditions are provided for withdrawal.	(i) Non-life Insurance (1988) 1. Freedom to provide services is subject to authorization. -Large risks based on home county control and mass risk based on host country control.	(i) Non-life Insurance (1990) 1. Freedom to do business anywhere or establish anywhere in the EC based on a single licence. 2. Authorization for class of business not based on market situation. Authorization needed for extension to other classes. 3. Undertakings that were granted monopolies in the past were abolished. 4. Provision exists for investment in certain categories of assets to cover technical provisions, with limits on value. 5. Provision exists for acquisition of insurance undertaking or its disposal. 6. Undertakings are taxed where risk is situated.
(ii) Life Assurance (1979) 1. Authorization is required in each Member State. 2. Authorization is required for each class of life assurance business. Additional authorization is needed for extension to other classes. 3. Business is to be separated of established life assurance companies.	(ii) Life Assurance (1988) 1. Freedom is granted to provide cross-frontier service. Authorization is needed by an undertaking from the Member State without need to establish. 2. Product is taxed from where product is purchased. 3. Member State may not prevent policy holder from purchasing a commitment from an undertaking in another Member State.	(ii) Life Assurance (1991) 1. Freedom is provided to establish or to provide cross-frontier services without authorization or the need for establishment based on a single licence. 2. Common set of prudential rules are provided. 3. Set of consumer protection rules are provided.

C. Investment Services (1985)

1. Mutual and unit trusts approved in one Member State will be allowed to be marketed throughout the EC.
2. Investment firms will be allowed to provide cross-border service or set up branches based on single authorization.
3. Credit institutions authorized to provide investment services provided for in the Directive will not require further authorization.

Table 5

Summary of Major Reforms in Energy

A. Natural Gas

1. Measures are adopted to provide for the right to transit natural gas through high pressure transmission grids between Member State' gas companies.
2. Provision is made for non-discriminatory conditions and removal of unjustified restrictions.
3. Gas and distribution companies are to send price information to the Commission every six months.
4. Prices are to be published by the Statistical Office and made available to potential consumers.
5. Third party access to large industrial consumers and distributors.
6. Extension of third party access.

B. Solid Fuels

1. No significant economic reforms have been implemented. However, measures regarding State Aids are anticipated after 1993.

C. Electricity

1. Measures are adopted to facilitate transit of electricity between high voltage grids of Member States.
2. Provision is made for non-discriminatory conditions and removal of unjustified restrictions.
3. Electricity distribution companies are to send price information to the Commission every six months.
4. Prices are to be published by the Statistical Office and made available to potential consumers.
5. Third party access to large industrial consumers and distributors.
6. Extension of third party access.

D. Oil and Petroleum Products

1. No significant economic measures have been introduced.

FOOTNOTES

1 EEC Competition Policy in the Single Market, (Second Edition) European Documentation, Periodical 1/1989, pp. 6-7. See "'Trustbusters' Play Influential Role in EC," The Journal of Commerce, January 6, 1992, pp. 1A and 3A.

2 See "Commission Adopts Third Package of Air Transport Measures," Information P 90, Brussels, 17 July 1991.

3 See Council Directive (EEC) No. 87-601, of 14 December 1987, OJ No. L 374-1, 31.12.87, articles 3, 4 and 5 and see Council Regulation (EEC) No. 2342-90, of 24 July 1990, OJ No. L 217-1, 11.8.90, preamble and articles 3(6), 4(3)(b), 4(5) and 7.

4 See Proposal for a Council Regulation (EEC) on fares and rates for air services, COM(91) 275 final, Brussels, 18 September 1991, articles 6(3), 3(1)(a), 3(1)(b), 4(1), 3(2), 3(3), 9 and preamble.

5 See Council Decision (EEC) No. 87-602, of 14 December 1987, OJ No. L 374-1, 31.12.87, articles 3, 5, 6 and 8 and see Council Regulation (EEC) No. 2343-90, of 24 July 1990, OJ No. L 217-8, 11.8.90, articles 4, 5(3)(c), 5(4), 6, 7, 8(1), 11 and 12.

6 See Proposal for a Council Regulation (EEC) on access for air carriers to intra- Community air routes, COM(91) 275 final, Brussels, 18 September 1991, articles 8, 6, 7, and Preamble.

7 Third freedom refers to the right to set down in a State passengers emplaned in the State of Registry of the aircraft. For example, British Airways sets down at Frankfurt passengers emplaned at London. Fourth freedom refers to the right to emplane in a State passengers whose destination is the State of Registry of the aircraft. For example, British Airways emplanes at Frankfurt passengers flying to London. Fifth freedom right refers to the right to emplane passengers in the State other than the State of Registry and to set down those passengers in a third State. For example Air Canada enplanes at London passengers who are set down at Dusseldorf. Sixth freedom rights refers to 'behind the gateway traffic' from other Member States feeding third- and fourth-freedom services. For example Lufthansa enplanes passengers at Athens and Rome for a flight from Frankfurt to Montreal.

8 See footnote 6, article 5 and Preamble.

9 See Council Regulation (EEC) No. 3975-87, of 14 December 1987, OJ No. L 374-1, 31.12.87.

10 Article 85(1) of the Treaty of Rome forbids collusive agreements, however agreements may be exempted from this prohibition where it bears some redeeming features. Article 86 prohibits the abuse of a dominant position. This article applies to a non-exhaustive list of abuses, a few of the abuses that have been specified are: unfair prices or other unfair trading conditions; limiting production markets or technical developments; discrimination; and tied selling.

11 See Council Regulation (EEC) No. 3976-87, of 14 December 1987, OJ No. L 374-9, 31.12.87.

12 See "The European Community's Common Air Transport Policy and Implications for Bilateral Service Agreements Between Member States and Third Countries," by Randolph Gherson, London, September 24-27, 1990, pp. 23, 24, 32 and 33.

13 See Proposals for a Council Decision, COM (90) 17 final , Brussels, February 1990, pp. 5, 6, 7, 12 and 14.

14 See Commission Regulation (EEC) No. 2671-88, of 26 July 1988, OJ No. L 239-9, 30.8.88, Commission Regulation (EEC) No. 2672-88, of 26 July 1988, OJ No. L 239-13, 30.8.88 and Commission Regulation (EEC) No. 2673-88, of 26 July 1988, OJ No. L 239-17, 30.8.88.

15 For example, see "Sabena Agrees to Give 'London European Airways' Access to its Computer Reservation System SAPHIR," Press Release IP(87)215, Brussels, 3 June 1987.

16 See "Commission Fines Sabena," Press Release IP(88)677, Brussels, 4 November 1988.

17 For example, see "Telecommunications the New Highways for the Single European Market," European File, October 1988, pp. 8-9.

18 See Commission Directive of 16 May 1988, (88-301-EEC), OJ No. L 131-73, 27.5.88, Articles 2, 3, 4, 5, 6, 7 and preamble (paragraphs 14 and 15).

19 See Commission Directive of 28 June 1990, (90-388-EEC), OJ No. L 192-10, 24.7.90, Articles 1(2), 2, 3, 4, 7, 8 and preamble (paragraph 31).

20 See "Political Agreement Reached on Liberalization of Telecommunication Services," CMR 95,397, p. 51,580.

21 See Council Directive of 28 June 1990, (90-387-EEC), OJ No. L 192-10, 24.7.90, Article 3(1) and footnote 18, pp. 51580-51,581..

22 See Europe, No. 5201 (new series), February 24, 1990, p. 6, and Europe 1992 Working Group Report on Competition Policy, January 1991, p. 41.

23 1992 Implications of a Single European Market, Telecommunications and Computers, December 1989, External Affairs and International Trade Canada, pp. 4, 16, 19, 20, 21, 23, and 25. Europe 1992 and the Telecommunications and Informatics Sectors, Ottawa, December 4, 1989, External Affairs and International Trade Canada, pp. 3, 4, and 5.

24 See footnote 23, p. 23. It has been suggested by commentators that other entrants have tried but have failed, as Canada is still a Northern Telecom/Bell and Telecom Canada dominated market.

25 See Article 4(c), footnote 17.

26 "Telecom Operators Abolish Tariff Recommendations Following Commission Action," Press Release IP(90)188, Brussels, 6 March 1990.

27 See "Application of the Community's Competition Rules to the Telecommunication Sector," Press Release IP(82)305, Brussels, 14 December 1982.

28 For example, see "1992 and Beyond: Restructuring Europe's Financial Services," Mr. Geoffrey Fitchew, London, 17 February 1989.

29 See Second Council Directive of 15 December 1989 and Amending Directive 77-780-EEC, (89-646-EEC), OJ No. L 386-1, 30.12.89, Article 6, Article 9(4) and preamble and procedures and Article 18.

30 See Article 2 of 89-646-EEC, and Article 1 of Directive 77/780/EEC.

31 For example, see Directives 89-299-EEC and 89-647-EEC.

32 See Second Council Directive of 15 December 1989 and Amending Directive 77-780-EEC, (89-646-EEC), OJ No. L 386-1, 30.12.89, Articles 4(1), 11, 12(1), 12(2), 14, 15, and 16.

33 European Financial Common Market, European Documentation, Periodical 4/1989, p. 33.

34 See Proposal for a Third Council Directive and Amending Directives 73-239-EEC and 88-357-EEC, OJ, No. L 244-48, 28.9.90, Articles 5(1) and 8(1).

35 See Proposal for a Third Council Directive and Amending Directives 73-239-EEC and 88-357-EEC, COM(90) 348 final - SYN-291, Brussels, 31 August 1990, Articles 3, 4, 8, 14, 15(2), 18, 19, 19(2), and 41.

36 "Commission Proposes Third Life Assurance Directive," CMR, 676, 7 March 1991, pp. 1-2.

37 See Articles 4, 18 and 19 in Proposal for a Third Council Directive and Amending Directives 79/267/EEC and 90/619/EEC, COM (91) 57 final -SYN 329, Brussels, 22 March 1991.

38 "Implications of European Integration 1992 for US and Japanese Financial Institutions," Presentation by Mr. Frans Andriessen, 27 September 1989, pp. 7-8. See Council Directive of 20 December 1985, (UCITS), (85-611-EEC), OJ No. L 375-3, 31.12.1985.

39 1992 Implications of a Single European Market, Financial Services, September 1990, External Affairs and International Trade Canada, pp. 24., 29, 32, 39 and 40.

40 See Article 9(4) and preamble, 89-646-EEC.

41 "Banks will be allowed to own trust companies, but they won't be able to sell trust services directly. Each type of financial institution will be able to own certain types of non-bank companies, including mutual-fund, factoring and financial-leasing companies. But banks, ...will continue to be prohibited from the car-leasing business. Both banks (and trust companies...) may offer certain types of insurance products, such as export-credit insurance and credit card-related insurance, through their branch networks. But they won't be allowed to act as agents selling life or other types of insurance over the counter. ...there are specific regulations in the bank and insurance companies acts governing controlled bank activities, such as the sale of life and disability insurance on loans, mortgage insurance, personal accident and travel insurance." See "Financial services industry facing a brave new world," by Heather D. Whyte, The Financial Post, Many of these reforms appear to be a compromise between the previous financial regulations and the reforms introduced in the EC. For example, if a Canadian bank cannot sell securities or life insurance from the same office, there is nothing preventing the bank from directing the client to an office in an adjoining premise to obtain the securities or life insurance products from its subsidiaries.

42 One of the major reciprocity issues that have been identified is asset capitalization. Under the Bank Act, foreign banks in Canada are limited to 12 percent of all banking assets in Canada. This restriction could affect the growth of foreign banks if that ceiling is reached. Canadian banks in the EC do not have any similar restrictions. Another possible reciprocity issue is the 25 percent limit on total ownership of Canadian banks by foreign banks. These restrictions were removed against United States of America under the Free Trade Agreement and it is quite possible that the European Community could request similar treatment as part of reciprocity or enter into some other multilateral agreement with Canada.

43 See address "Developments in Banking Supervision Over the Last Decades and New Challenges," by Sir Leon Brittan, 17 November 1989, Brussels, p. 5.

44 The concerns expressed with regard to limits on foreign ownership of Canadian insurance undertakings and treatment of US insurance undertakings operating in Canada in footnote 42 are also applicable here.

45 See footnote 44 pertaining to similar concerns.

46 "Community to Become The World Center of Financial Innovation," Press Release IP(89)413, Brussels, 5 June 1989.

47 For example, see Commission Decision of 19 July 1989, (89-512-EEC), OJ No. L 253-1, 30.8.89.

48 "European Commission Calls for Termination of Interbank Agreements on Interest Rates," Information, IP(89)869, Brussels, 16 November 1989.

49 See Energy in the European Community, European Documentation, Periodical 7/1990, p. 24.

50 "Internal Energy Market: Commission Decides on Further Action to Open Up the Coal and Electricity Market," Press Release IP(89) 141, Brussels, 8 March 1989.

51 See "The Gas and Electricity Markets and 1992," Press Release P(92)5, Brussels, 22 January 1992.

52 See Proposal for a Council Directive , Com (89) 0334 final, Brussels, 1989 and See Proposal for a Council Directive, COM (89) 0336 final, Brussels, 1989 .

53 See Draft Council Directive, COM (89) 0332 final, Brussels, 1989.

54 Grids in the natural gas industry in North America are commonly referred to as pipeline networks. Transportation of gas under high pressure is generally on major transportation networks and not on local networks. It is also understood that it could be cheaper to transport gas via high pressure grids rather than lower pressure grids as the diameter of the pipe needed may be smaller.

55 See Directive No. 90/547, O J No. L313/31, 1990.

56 "Transparency of Consumer Energy Prices," COM (89) 123 final/2, Brussels, 30 March 1989, p. 2.

57 See "EC Takes Step Toward Ending State Energy Monopolies," The Journal of Commerce, N.Y., Friday, March 22, 1991, p. 11B.

58 The exemption was to run only until 31 March 1991. See "Commission to Exempt German Coal Supply Agreement," CMR 95,522, p. 51,756.

59 See "German Coal Supply Agreements," Press Release IP(91)1092, Brussels, 5 December 1991.

60 "The Commission Acts On The Agreement Between Campsa, The Spanish Oil Monopoly, And The City Of Madrid," Press Release IP(89)744, Brussels, 6 October 1989.

61 See "Commission to Investigate Ruhrgas Acquisition," CMR 95,541, p. 51,788.

62 See Council Directive (EEC) No. 87-601, of 14 December 1987 on fares for scheduled air services between Member States, OJ No. L 374-1, 31.12.87.

63 See Council Decision (EEC) No. 87-602, of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air-services routes between Member States, OJ No. L 374-1, 31.12.87.

64 See Council Regulation (EEC) No. 2342-90, of 24 July 1990 on air fares for scheduled air services, OJ No. L 217-1, 11.8.90.

65 See Council Regulation (EEC) No. 2343-90, of 24 July 1990 on access for air passenger capacity between air carriers on scheduled air services between Member States, OJ No. L 217-8, 11.8.90.

66 See Commission Directive of 16 May 1988 on competition in the markets in telecommunications terminal equipment (88-301-EEC), OJ No. L 131-73, 27.5.88.

67 See Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (90-388-EEC), OJ No. L 192-10, 24.7.90.

68 See Council Directive of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (90-387-EEC), OJ No. L 192-10, 24.7.90.

TITLES OF ECONOMICS AND INTERNATIONAL AFFAIRS DISCUSSION PAPERS IN THE DISCUSSION PAPER SERIES

1. Monteiro, Joseph, "Europe 1992: The Regulated Sectors; The Scope for Expansion of Competition Policy; and The Implications for Canadian Businesses." EIA 92-1, March 1, 1992. *Canadian Competition Policy Record*, (forthcomming).

2. Hewitt, Gary, "Advertising and Competition." EIA 92-1, 1992 (forthcomming).

69 See Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77-780-EEC, (89-646-EEC), OJ No. L 386-1, 30.12.89.

70 See Proposal for a Third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73-239-EEC and 88-357-EEC, COM(90) 348 final - SYN-291, Brussels, 31 August 1990, p. 2.

71 See Proposal for a Third Council Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC, COM (91) 57 final -SYN 329, Brussels, 22 March 1991.

72 See Proposal for a Council Directive amending, particularly as regards motor vehicle liability insurance, First Council Directive 73-239-EEC, and Second Council Directive 88-357-EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73-239-EEC, COM (88) 791 final - SYN 179, Brussels, 19 December 1988.

73 See Council Directive of 20 December 1985 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), (85-611-EEC), OJ No. L 375-3, 31.12.1985.

74 See Proposal for a Council Directive on the transit of electricity through transmission grids, COM (89) 0336 final, Brussels,1989 and Council Directive of May 1991 on the transit of natural gas through grids, (91-296-EEC), OJ No. L 147/37, 12.6.91.
The Directive on transit of electricity must be implemented by 1 July 1991. See Directive No. 90/547, O J No. L313/30, 1990.

75 See Draft Council Directive concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end users, COM (89) 0332 final, Brussels, 1989.
While Member States must implement the Directive by July 1, 1991, however, in the case of natural gas it will not be implemented in a Member State until five years after the introduction of that form of energy on to the market. See Directive No. 90/377, O J No. L185/16, 1990.

CACC / CCAC
11703
IN = 11703

LKC
HC 241.25 .C3 M66 1992 c.2
Monteiro, Joseph
Europe 1992 the regulated sectors : the scope for expansion of competition polic and the implications for Canadian

DATE DUE
DATE DE RETOUR

ARR McLEAN 38-296