PROTOCOL 25

ON COMPETITION REGARDING COAL AND STEEL

Article 1

1. All agreements between undertakings, decisions by associations of undertakings and concerted practices in respect of particular products referred to in Protocol 14 which may affect trade between Contracting Parties tending directly or indirectly to prevent, restrict or distort normal competition within the territory covered by this Agreement shall be prohibited, and in particular those tending:

   (a) to fix or determine prices,

   (b) to restrict or control production, technical development or investment,

   (c) to share markets, products, customers or sources of supply.

2. However, the competent surveillance authority, as provided for in Article 56 of the Agreement, shall authorize specialization agreements or joint-buying or joint-selling agreements in respect of the products referred to in paragraph 1, if it finds that:

   (a) such specialization or such joint-buying or joint-selling will make for a substantial improvement in the production or distribution of those products;

   (b) the agreement in question is essential in order to achieve these results and is not more restrictive than is necessary for that purpose; and

   (c) the agreement is not liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the products in question within the territory covered by the Agreement, or to shield them against effective competition from other undertakings within the territory covered by the Agreement.

If the competent surveillance authority finds that certain agreements are strictly analogous in nature and effect to those referred to above, having particular regard to the fact that this paragraph applies to distributive undertakings, it shall authorize them also when satisfied that they meet the same requirements.

3. Any agreement or decision prohibited by paragraph 1 shall be automatically void and may not be relied upon before any court or tribunal in the EC Member States or the EFTA States.

Article 2

1. Any transaction shall require the prior authorization of the competent surveillance authority, as provided for in Article 56 of the Agreement, subject to the provisions of paragraph 3 of this Article, if it has in itself the direct or indirect effect of bringing about within the territory covered by the Agreement, as a result of action by any person or undertaking or group of persons or undertakings, a concentration between undertakings at least one of which is covered by Article 3, which may affect trade between Contracting Parties, whether the transaction concerns a single product or a number of different products, and whether it is effected by merger, acquisition of shares or parts of the undertaking or assets, loan, contract or any other means of control.

2. The competent surveillance authority, as provided for in Article 56 of the Agreement, shall grant the authorization referred to in paragraph 1 if it finds that the proposed transaction will not give to the persons or undertakings concerned the power, in respect of the product or products within its jurisdiction:

   - to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for those products, or
   - to evade the rules of competition instituted under this Agreement, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

3. Classes of transactions may, in view of the size of the assets or undertakings concerned, taken in conjunction

with the kind of concentration to be effected, be exempted from the requirement of prior authorization.

4. If the competent surveillance authority, as provided for in Article 56 of the Agreement, finds that public or private undertakings which, in law or in fact, hold or acquire in the market for one of the products within its jurisdiction a dominant position shielding them against effective competition in a substantial part of the territory covered by this Agreement are using that position for purposes contrary to the objectives of this Agreement and if such abuse may affect trade between Contracting Parties, it shall make to them such recommendations as may be appropriate to prevent the position from being so used.

Article 3

For the purposes of Articles 1 and 2 as well as for the purposes of information required for their application and proceedings in connection with them, 'undertaking' means any undertaking engaged in production in the coal or the steel industry within the territory covered by the Agreement, and any undertaking or agency regularly engaged in distribution other than sale to domestic consumers or small craft industries.

Article 4

Annex XIV to the Agreement contains specific provisions giving effect to the principles set out in Articles 1 and 2.

Article 5

The EFTA Surveillance Authority and the EC Commission shall ensure the application of the principles laid down in Articles 1 and 2 of this Protocol in accordance with the provisions giving effect to Articles 1 and 2 as contained in Protocol 21 and Annex XIV to the Agreement.

Article 6

Individual cases referred to in Articles 1 and 2 of this Protocol shall be decided upon by the EC Commission or the EFTA Surveillance Authority in accordance with Article 56 of the Agreement.

Article 7

With a view to developing and maintaining a uniform surveillance throughout the European Economic Area in the field of competition and of promoting a homogeneous implementation, application and interpretation of the provisions of the Agreement to this end, the competent authorities shall cooperate in accordance with the provisions set out in Protocol 23.