II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 24 June 1996

relating to a proceeding pursuant to Article 85 of the EC Treaty and Article 53 of the EEA Agreement (IV/34.607 — Banque Nationale de Paris — Dresdner Bank)

(Only the French and German texts are authentic)

(Text with EEA relevance)

(96/454/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Articles 2, 6 and 8 thereof,

Having regard to the application for negative clearance and the notification seeking exemption, submitted on 27 January 1993 pursuant to Articles 2 and 4 of Regulation No 17,

Having regard to the summary of the application and the notification published [2] pursuant to Article 19 (3) of Regulation No 17 and Article 3 of Protocol 21 to the Agreement on the European Economic Area,

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

Whereas:

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 312, 23. 11. 1995, p. 13.

A. THE FACTS

1. THE NOTIFIED COOPERATION AGREEMENT

(1) **The notification**

The cooperation agreement was formally notified to the Commission of the European Communities on 27 January 1993 in accordance with Articles 2 and 4 of Regulation No 17. It provides for full and, in principle, exclusive cooperation world-wide between Banque Nationale de Paris SA (BNP) and Dresdner Bank AG (DB) in the banking sector. It is of indefinite duration and was approved at the annual general meetings of the two banks.

(2) **The aims of the cooperation**

— The two banks wish to meet the growing challenge in the banking sector that is posed by new competitors such as foreign banks, insurance companies, companies with their own in-house banks, and also the credit card companies that are offering an ever-expanding range of financial services. To that end, the two banks plan to achieve synergies in order to reduce costs, chiefly through very close cooperation in logistics and certain international activities.

— The two banks wish to meet the challenges of the single market and the globalization of markets where customers are increasingly requiring international financial services. They therefore plan to strengthen their presence in countries other than France and Germany ('third countries') in order both to compete more strongly with foreign banks and to offer their customers in France and Germany a much wider range of international financial services.

(3) **Concept underlying the cooperation**

BNP and DB both wish to remain:

— in their home markets, leading universal banks,

— in the Single European Market, leading universal banks with branches or subsidiaries in at least the major European countries,

— present in all the major financial centres, offering appropriate services.

(4) **The four areas of cooperation**

(a) *Cooperation in organizational matters and through the exchange of information*

In order to achieve synergies, reduce costs and risks, and improve customer services, the cooperation agreement provides for some harmonization of the two banks' organization, in particular through the exchange of information and the joint development of data-processing instruments, office automation and economic data. Agreement was also reached on setting up the appropriate agreements and technical means for reducing transfer costs and times for cross-frontier payments. The partners will also exchange staff and consult each other before any public announcements, including publicity about their cooperation.

There will also be an exchange of information on economic and general subjects and on new business opportunities, new products or specialized financing techniques.

(b) *Specific areas of cooperation*

In the field of international financing, the partners, their structures in third countries and the holding company in which they will place their third country business at the appropriate time (see point (c)) will be arranged so as to appear, in the eyes of the market, as one and the same counterparty. They will invite each other to participate in all types of financing (direct loans, leasing, financial instruments or other arrangements) in which banks other than domestic banks are involved. A partner requested to participate in this way may refuse to participate in the proposed financing only on reasonable grounds which must be explained to the other party. If other financial institutions invite one of the partners to form a syndicate, that party must make every effort to ensure that the other is also invited.

As regards merchant banking, capital markets and the placing of securities in third countries, the partners will cooperate in the search for synergies and savings in the development of new products and in order to maximize investments.

As regards securities and their placing, derivatives, asset management and investment banking, the two banks will cooperate without geographic limits. The form of cooperation depends on the actual product: it may involve the development of new products or strategies, concerted marketing or the exchange of information.

(c) *Information in activities outside France and Germany ('third countries')*

This area of cooperation is aimed at expanding the two banks' scope for providing their customers with international financial services by improving and regrouping their structures in these countries.

To that end, they agree to identify synergies and, in time, to group together their existing banking activities in third countries, with the exception of the United States. This may in particular be achieved by combining operations into one or more joint subsidiaries, by acquiring a 50 % holding in a partner's subsidiary or by eventually establishing a joint holding company which would initially be a financial holding company and could eventually become a fully operational bank.

Each partner will notify any new activities to the other and discuss them on the basis of a feasibility study in order to reach harmonized conclusions. The other partner will be invited to participate in such activities. The offer may be rejected by the partner only for very substantial reasons.

If a partner wishes to dispose of its share of a joint activity, it must obtain the agreement of the other party. A holding that is to be sold must first be offered to the partner. If a partner wishes to sell an entity which it wholly owns, it must inform the other partner and allow it to express an opinion.

As regards cooperation between the partners, the holding company and structures in third countries, the agreement provides that if a partner does not have the means of supplying a customer with the appropriate service for an international transaction, it must refer the customer to its partner. The partners are also required to grant credit to each other's customers in countries where one or the other does not engage in such activities, subject to terms and possibly guarantees to be agreed jointly by all the parties concerned. Interbanking activities (exchange transactions, securities, options, futures, swaps, etc.) by bodies involved in the cooperation must also be given priority by each partner, provided that the transactions are offered at competitive rates.

The offices representing the two partners in third countries will be physically merged whilst retaining autonomy and their own identity, except in cases where it seems preferable to have a single joint office.

If one of the partners (the informing party) wishes to conclude a cooperation agreement with a third party, whether or not limited sectorally or geographically, it must inform the other partner (the informed party) of its intention. If the latter does not agree, it must give its reasons. If the informing party, after duly considering the reasons given by the informed party for its refusal, intends to pursue its plan and if the proposed agreement does not affect any vital interests of the informed party but could on the contrary be vital to the informing party, the latter is free to act as it wishes.

(d) *Cooperation on the French and German markets*

This area of cooperation is aimed at increasing the range of services available through the two networks and thus improving the competitiveness of the two banks.

To that end each partner undertakes to make available to the other all its services at the best price and in turn to offer its own customers the widest possible range of the services provided by its partner. As a result of their joint activities in third countries, the two banks will be able to offer their customers at home at range of new services from those countries.

As regards the activities of the two banks on their home markets, the agreement provides that the partners are free to act as they wish, unless one of them wishes to conclude a cooperation agreement with a home country competitor: before concluding such an agreement, it must inform its partner.

If a partner is unable to provide its home customers with an international service, it must call on the other partner, or one of the structures in a third country, or the holding company, as soon as the latter has become a fully operational bank.

With regard to the question of the partners' activities on each other's home markets, the cooperation agreement does not restrict access to such markets by existing subsidiaries or by the creation of new subsidiaries or branches or by the acquisition by one partner of a competitor on the other's domestic market. On the other hand, it does limit the extent to which one partner may operate on the other's domestic market by cooperating with a competitor of the latter: agreements with a partner's domestic competitor may be concluded only with the latter's express consent. More specifically, if one partner is considering concluding a cooperation agreement, even one that is limited geographically or sectorally, with a third party, it must inform the other partner of its intention. If the latter fails to agree, it must state its reasons to the former.

Whereas the agreement initially notified to the Commission gave the informed party the absolute right to withhold approval (Annex A.1, paragraph 3, last sentence), the two banks agreed, in response to a request by the Commission, to limit this right of absolute and irreversible refusal to cases where a cooperation agreement with a third party involves the utilization of know-how or business secrets which the informant received from the informed party or which results from the cooperation. 'Know-how' in this context is the know-how defined in Article 10 of Commission Regulation (EC) No 240/96 of 31 January 1996 on the application of Article 85 (3) to certain categories of technology transfer agreements [1]. This limiting of the right to refuse approval to cooperation between one of the banks with a domestic competitor of the other bank was clarified in an Annex to the cooperation agreement which was notified to the Commission on 23 January 1995.

The mutual consent of the partners is not required in the case of day-to-day trading activities, although they must give each other preferential treatment in this area.

(5) **The structures set up by the agreement**

The BNP and DB management boards will meet twice a year to decide on joint strategy and to take unanimous decisions on any proposals relating to the notified cooperation agreement submitted to them by a committee.

The committee, which will meet three times a year and be chaired alternately be each bank, will define priorities and the measures to be taken by the two partners. It must, in particular, examine the recommendations of the cooperation secretariat and submit proposed amendments to the agreement at bi-annual meetings of the BNP and DB boards.

The cooperation secretariat will be composed of representatives of the two banks. It must assist the partners in the practical implementation of the cooperation, but must also make recommendations relating to necessary improvements ot the agreement, which it must submit to the committee.

(6) **Cross-holdings**

The partners plan to strengthen their cooperation at the appropriate time by establishing cross-shareholdings of 10 % of the issued shares.

2. CURRENT RELATIONS BETWEEN BNP AND DB

(7) BNP and DB agreed in the past to appoint a director of BNP to DB's supervisory board and a director of DB to BNP's board of directors.

They also created a joint venture to gain access to the market of former Czechoslovakia. BNP and DB each hold 37 % of BNP-KH-Dresdner Bank RT in Hungary, 26 % of which is held by Országos Kereskedelmi és Hitelbank Rt. The two transactions have been authorized by the Commission [2].

BNP and DB also have joint holdings in the following:

- United Overseas Bank, Geneva, Lugano, Luxembourg, Monaco, Bahamas, Montevideo: BNP and DB each hold 50 %,
- BNP-AK-Dresdner Bank AS, Istanbul, Smyrna: BNP 30 %, DB 30 % and AK-Bank Group 40 %,
- Société Financière pour les Pays d'Outre-mer with activities in Africa: BNP 48,4 %; DB 25,8 %; BBL 25,8 %,
- BNP-Dresdner Bank (Polska) SA, Warsaw: BNP 50 %; DB 50 %,
- BNP-Dresdner Bank (Russia), St Petersburg (+ branch in Moscow): BNP 33 %; Dresdner Bank 33 %; Europabank (wholly owned by DB) 17 %; SFA (Société Financière Auxilière, Paris, wholly owned by BNP) 17 %,
- BNP-Dresdner Bank (Bulgaria) AD, Sofia: BNP and DB each hold 40 %; EBR 20 %.

3. THE PARTIES TO THE NOTIFIED AGREEMENT AND THEIR POSITION ON THE FINANCIAL MARKETS

(8) (a) **Banque Nationale de Paris**

BNP is a full-service bank operating directly or indirectly through subsidiaries, chiefly in France, but also in other European countries, French-

[1] OJ No L 31, 9. 2. 1996, p. 2.

[2] Commission Decision of 4 February 1991 in Case IV/M.021 — BNP/Dresdner Bank (OKHB) (OJ No C 34, 9. 2. 1991, p. 20);
Commission Decision of 26 August 1991 in Case IV/M.124 — BNP/Dresdner Bank (CS) (OJ No C 226, 31. 8. 1991, p. 28).

speaking countries and world-wide. In Germany, it owns a branch in Frankfurt with two agencies attached. It also has a subsidiary there specializing in mergers and acquisitions.

Its total consolidated balance sheet in 1994 (1993) was ECU 222 (224) billion. Of its 54 469 (56 141) employees, 13 169 (13 851) work abroad. BNP has a total of 2 511 (2 575) offices world-wide, of which 497 (567) are outside France.

The BNP group wholly owns Natio-Vie, a life insurance company. Together with UAP it created a joint venture, Natio-Assurance, to market UAP's non-life insurance.

The capital is held as follows:

— UAP: 14,32 %

— Core capital shareholders: 15,48 %

— French State: 2,31 %

— Public: 67,89 %.

On the basis of its total consolidated balance sheet for 1993, BNP ranks fourth in France, seventh in Europe and 19th world-wide.

(9) (b) **Dresdner Bank**

DB is a full-service bank which operates directly or indirectly through subsidiaries, chiefly in Germany but also in other European and non-European countries. Two of its subsidiaries are in France, one is the Banque Veuve Morin-Pons SA with branches in Paris, Lyon and Strasbourg. The other is the Banque Internationale de Placement, Paris.

Its total consolidated balance sheet in 1994 (1993) was ECU 210 (197) billion. Of its 44 884 employees (1994), some 3 000 work abroad. Of a total of 1 583 branches, 58 are outside Germany.

DB operates in some *Länder* in Germany as a distributor of insurance contracts for Allianz, and for Hamburg-Mannheimer in others.

The capital is held as folows:

— Allianz AG Holding: 21,97 %

— FGF Frankfurter Gesellschaft für Finanzwerte mbH: 10,60 %

— Vermo Vermögensverwaltungsgesellschaft mbH: 10,58 %

— Employees and pensioners: 1,90 %

— General public and institutional investors: 54,95 %.

On the basis of the 1993 balance sheet, DB ranks second in Germany, 12th in Europe and 26th world-wide.

4. THE POSITION OF THE TWO BANKS IN EACH OF THE EEA COUNTRIES IN 1994

(10) The notified cooperation has an impact on all the activities of the two banks. It will, in practice, affect virtually all the banking and financial services markets on which the two banks operate with the exception of the insurance services market.

The following table shows the position of both banks in some of the EEA countries, all activities included. The percentages indicate the position of BNP and DB in those countries on the basis of a country-by-country comparison of the market share held by each of the two banks with the total market share held by all banks:

Country	BNP	DB
France	approximately 7 %	under 1 %
Germany	under 1 %	approximately 5 %
Luxembourg	under 3 %	approximately 5 %

(The exact figures are business secrets.)

In the other EEA countries, the position of each bank, apart from BNP in Ireland, is negligible, being under 1,4 % in two cases (DB in Ireland and BNP in Greece), and not above 1 % in the other cases.

In the five principal areas of banking (loans to banks, loans to customers, securities, bank deposits and customer deposits), the respective positions of BNP and DB do not vary by more than 2 % from the figures indicated above.

The market shares for 1994 are as follows:

German market

According to the details provided for 46 different banking and financial services, DB's shares of the markets for retail services (individuals and small firms) in a few cases exceed the figure stated above by some 2 % and, in just one case, by some 5 %, whilst in most cases the figure is below the percentage indicated above. On the other hand, its shares of the markets (wholesale customers) in most cases considerably exceeds the above figure of some 5 %. In the case of two wholesalebanking services, 0B's share even reaches some 20 %. The position of BNP with regard to the various services it offers on the German market is negligible.

French market

The details supplied for 26 different banking and financial services indicate that BNP's share of the markets for retail services differs only slightly from the figure given above. In only one market does it achieve about 10 %. Its shares of the market for wholesale services are slightly higher than those stated above, except in one case where its market share amounts to some 20 %. The share of all the markets held by DB in France is negligible.

Luxembourg market

According to the figures provided for five types of services, in one case DB holds some 11 % of the relevant market, in two cases below 5 % and in two cases only a very slight share. The figures provided for BNP for the same five services are in one case under 3 %, in three cases under 1,5 % and in one case under 8 %, whereas the position of DB in this area is roughly 11 %.

(11) Following publication of a notice [1] pursuant to Article 19 (3) of Regulation No 17, the Commission did not receive any comments from other interested parties.

B. LEGAL ASSESSMENT

1. ARTICLE 85 (1) OF THE EC TREATY AND ARTICLE 53 (1) OF THE EEA AGREEMENT

(12) (a) **Agreement between undertakings**

The notified cooperation agreement is an agreement between undertakings.

(b) **Restriction of competition**

(13) (aa) *Definition of the relevant markets in the field of financial services*

Traditionally, banking and other financial services may be divided into three major categories: retail banking services, wholesale banking services for undertakings and legal entities and activities related to financial markets [2]. Each of the three categories comprises a large number of different activities and services which, to the extent that a service or product is not sufficiently interchangeable with another, each constitute separate relevant product or service markets [3].

Retail banking services comprise a large number of activities: current accounts, savings accounts, off-balance-sheet business (open-end investment companies, unit trusts, pension funds, etc.), term accounts, customer credit, loans guaranteed by mortgages or other loans, consumer credit for customers, all other types of customer credit, cheques, international Eurocheques [4], debit cards, credit cards [5], travellers cheques, etc. It also includes the other banking services, such as ancillary services (safety deposit boxes), stockbroking and management of stock deposits.

Banking services for undertakings and legal entities (wholesale banking) comprise the following activities: deposits for industrial customers, investment loans to companies including international financing, loans to public authorities, commercial paper, factoring and leasing [6].

Activities connected with the financial markets include the following financial services: advice on mergers and acquisitions, the raising and underwriting of capital, intervention and intermediation on financial markets, asset management [7].

(1) OJ No C 312, 23. 11. 1995, p. 13.

(2) Commission Decision of 11 April 1995 in Case IV/M.573 — ING-Barings, paragraph 13 (OJ No C 114, 6. 5. 1995, p. 6); Commission Decision of 23 November 1995 in Case IV/M.643 — CGER-Banque/SNCI, paragraph 11 (OJ No C 293, 8. 11. 1995, p.8).

(3) See Comission notice of 3 September 1986 on agreements of minor importance which do not fall under Article 85 (1) of the Treaty establishing the European Economic Community, paragraph 11 (OJ No C 231, 12. 9. 1986, p. 2).

(4) Commission Decision 92/212/EEC, paragraph 8 *et seq.* (OJ No L 95, 9. 4. 1992, p. 50).

(5) Commission Decision of 20 December 1993 in Case IV/M.391 — BAI/Banca Popolare di Lecco, paragraph 7 (OJ No C 4, 6. 1. 1994, p. 3).

(6) Commission Decision of 23 October 1995 in Case IV/M.643 — CGER-Banque/SNCI, paragraph 11 (OJ No C 293, 8. 11. 1995, p. 8).

(7) Commission Decision of 30 August 1993 in Case IV/M.319/CCF/Charterhouse, paragraph 6 (OJ No C 247, 10. 9. 1993, p. 4). For a detailed description of these markets, see Commission Decision of 28 June 1995 in Case IV/M.597 — Swiss Bank Corporation/S. G. Warburg, paragraphs 8/19 (OJ No C 180, 14. 7. 1995, p. 4).

As regards the relevant geographic markets, the following distinction must be made: individuals and small firms, for reasons relating to the financial amounts involved, the currency concerned, the non-transparency of foreign banking markets and language difficulties, have access only to the credit institutions in the Member State in which they reside. The relevant geographic markets, which concern retail banking activities, are national (1).

Wholesale banking services are essentially national because the provision of such services calls for a close relationship between a bank and its customers if it is to provide appropriate services (2). This does not, however, apply to activities involving banks from several countries, such as international financing, where the geographic market would be international.

As regards activity on the financial markets, the Commission noted that equity and debt issues are global activities where the operators are in competition on an international level (3). As regards the markets in money market trading, foreign exchange trading and derivative trading, the Commission notes that the dimension of these markets is international (4). On the other hand, as regards merger and acquisition advice, the geographic market has, at the present time, a national dimension (5). The geographic dimension of other serivces in this area of banking, is also international, although services are often also supplied by national branches to local customers.

(14) The following section (bb) examines the restrictive effects of the cooperation agreement on national banking markets. Section (cc) will cover the effects of the agreement on banking and financial markets with an international dimension.

(1) Commission Decision of 28 July 1995 in Case IV/M.611 — Dresdner Bank/Kleinwort Benson, paragraph 11 (OJ No C 207, 12. 8. 1995, p. 11).

(2) Commission Decision of 17 July 1995 in Case IV/M.596 — Mitsubishi Bank/Bank of Tokyo, paragraph 8 (OJ No C 198, 2. 8. 1995, p. 5).

(3) Commission Decision of 28 June 1995 in Case IV/M.597 — Swiss Bank Corporation/SG Warburg, paragraph 12 (OJ No C 180, 14. 7. 1995, p. 4).

(4) Commission Decision of 28 July 1995 in Case IV/M.611 — Dresdner Bank/Kleinwort Benson, paragraph 12 (OJ No C 207, 12. 8. 1995, p. 11) and Commission Decision of 30 August 1993 in Case IV/M.319 — BHF/CCF/Charterhouse, paragraph 8 (OJ No C 247, 10. 9. 1993, p. 4).

(5) Commission Decision of 28 June 1995 in Case IV/M.597 — Swiss Bank Corporation/SG Warburg, paragraph 9 (OJ No C 180, 14. 7. 1995, p. 4).

(15) (bb) *Restrictive effects of the notified agreement on the banking markets in so far as they have a national dimension*

(i) France and Germany

At present, as indicated by the balance sheet figures and the market shares held in each country, the two banks are not very active on each other's domestic market for banking services (BNP on the German market, DB on the French market). Cooperation in organizational matters (including the development of new data processing tools and the exchange of information), capital markets and asset management will not therefore lead to a significant restriction of existing competition. The same finding applies to the agreement whereby each partner supplies the other with banking products for distribution on their home markets.

On the other hand, the agreement will lead to a fairly considerable potential restriction of competition between the two banks for the following reasons.

It should first be pointed out that a few years ago, the Council removed the major legal obstacle to entry onto foreign markets by requiring Member States to introduce, by 1 January 1993 (6) single licence to engage in banking activities. It thus considerably facilitated the access of banks to these markets in the Community. There will soon be even greater opportunities for expansion beyond national frontiers with the introduction of the third phase of monetary union on the basis of Article 109j (4) of the Treaty and the introduction of a single currency. The new channels for distributing banking services, e.g. via electronic teller machines, telephones, computers (home banking), will also facilitate the distribution of banking services outside the domestic market without having to open a costly traditional distribution network.

Once these changes to the statutory and technical framework have taken place, the large full-service banks will be able to develop their activities independently in markets other than their home markets. In the present case, the parties to the agreement belong to the category of large full-service banks in the countries in which their headquarters are based (according to the 1993 consolidated balance sheet: BNP in France ranked fourth,

(6) 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 (OJ No L 386, 30. 12. 1989, p. 1).

DB in Germany ranked second) and at European level (on the basis of the 1993 consolidated balance sheet: BNP ranked seventh, DB ranked 12th). For that reason, the percentages which relate to the various banking activities referred to in recital 10 and which indicate the position of the two banks in their own countries do not adequately reflect their market power. It should be added that the countries in question constitute large, neighbouring geographic markets on which the two banks are both currently present. As there are still considerable differences in the banking and financial services provided by the large banks in the various Member States, it is very likely that the large banks in particular will endeavour to distribute some of these products outside their own countries after the introduction of monetary union.

Cooperation in organizational matters and the exchange of information will not only improve the internal performance of the two banks from a management standpoint. It will also lead to an exchange of know-how on customer electronic banking instruments. As a result, the electronic banking systems of the two banks will be improved, harmonized and interconnected. Both banks will then be able to offer their customers in the two countries a wider range of similar and improved electronic services. Following harmonization, it will no longer be in the interests of the two banks, as far as most of the services and products are concerned, to gain independent access to the banking markets of the partner's country and provide such electronic banking services.

The banks have undertaken to make available existing products and those to be developed to their partner for distribution on the latter's home market. They thus ensure that they hold a unique position on each other's markets. As far as the products and services thus made available are concerned, it will no longer be in the banks' financial interest to develop business independently in the partner's country and thus strengthen competition between the major banks in France and Germany. For these products, therefore, the agreement will restrict independent competition between the two banks in France and Germany.

Cooperation in the mutual distribution of the products described in the preceding paragraph is covered by an agreement between the two banks concerning the different services and products in question. If one partner does not wish to distribute through its branches a service or product proposed by the other partner, the latter is not free to cooperate with a third-party bank, for example for the distribution of the service or product. Under the exclusivity clause contained in Annex A.1 (3) to the agreement (see the fifth and sixth paragraphs of point 4 (d)) the partner that refuses to market a product in his own country may also prevent the other partner from doing so via another bank if the product in question involves shared know-how or business secrets. The clause may restrict potential competition between the two banks, especially in the case of new products that are likely to make it more difficult to market an existing product. The fact that such cooperation, outside the agreement, by one of the banks may be prohibited by the other only if the latter has a valid reason for such a prohibition (i.e. the service or product in question involves shared know-how or business secrets of the latter partner) simply limits the restrictive effects of the clause in question without eliminating them.

(ii) 'Third countries'

The cooperation will also affect banking markets in 'third countries'. Measures relating to organization and information exchange, the regrouping of structures in these countries and the particularly close cooperation, for example in stockbroking, will strengthen the weak position of the two banks and help them to compete with the banks established in those countries. Nevertheless, taking account of the weak presence of the two banks and their foreseeable development in those countries, competition on these mrkets will not be restricted to any considerable extent.

The agreement does not restrict competition appreciably in Luxembourg, where the market for banking and financial services is very open and all the major European and world banking groups are present. In the circumstances, it is unlikely that there will be a restriction of competition in this country.

(16) (cc) *Restrictions of competition on the banking and financial markets in so far as they are international*

As stated in the final paragraph of recital 13, certain banking services provided to firms and a majority of financial market activities have an international dimension. Cooperation in international financing, capital markets, stocks and shares, derivatives, asset management and investment banking (see point 4 (b)) thus affects the areas where banking has an international dimension. In view of the relative size of the two banks, both internationally and on the financial markets, cooperation in these areas will not allow BNP and DB to restrict competition appreciably as regards these activities. On the contrary, it is pro-competitive as it will strengthen the position of the two banks internationally so that they will in future be better able to compete against the large international banks, particularly American and Asian banks.

(17) (c) **Effects on cross-border trade**

Trade between Germany and France will be affected as the two banks will not, following the entry into force of the agreement, have any financial interest in competing against each other with regard to most of the services and products on their respective home markets. This applies both to the areas where they exchange know-how in order to develop new services and products and to the areas where they will be making products available to each other for distribution on their respective home markets.

To the extent that the two banks fail to agree on such a mutual distribution of their services and products, the clause enabling one partner to prevent the other from distributing a product on the former's home market by cooperating with a third-party bank gives each one the right to prohibit cross-border competition and thus affects trade in banking services between two Member States.

2. POSSIBLE EXEMPTION OF THE AGREEMENT PURSUANT TO ARTICLE 85 (3) OF THE EC TREATY AND ARTICLE 53 (3) OF THE EEA AGREEMENT FROM THE BAN ON THE RESTRICTION OF COMPETITION ON THE HOME MARKETS FOR BANKING SERVICES IN FRANCE AND GERMANY

(18) (a) **Improvement of production and distribution**

An improvement in the production of financial services provided to individuals and undertakings will result from the fact that the two banks will cooperate to improve their organization, in particular by introducing new data-processing tools and expanding their sources of financial data. By transfering existing know-how which, according to a report submitted to the Commission by the two banks, will involve at least half their activities, they will be able to provide improved or new services to their customers. For example, once cooperation is underway, they will be able to provide their customers with new electronic banking services and products, new possibilities relating to account and loan management at national and cross-border level, new forms of information and financial advice and new possibilities for managing capital market transactions, and new types of securities and derivatives. They will also be able to develop new structures for investment loans and import and export financing.

The cooperation will also improve the distribution of services and products supplied by the other partner. In almost half the services analysed, that improvement will be achieved by each of the two banks making available to its partner its own products for distribution through its branches on its home market. It will thus be possible to go into one partner's bank and debit a current account held in the other partner's bank. Interconnection between the data-processing systems will also improve banking services accross frontiers, especially cross-frontier payments. The cooperation thus satisfies one of the Commission's objectives which is that the services provided by cross-border payment systems are improved [1].

(19) (b) **Benefit to consumers**

Consumers, especially individuals and undertakings in France and Germany, will benefit from the qualitative and quantitative improvements in banking services and their reciprocal distribution via the branches of both and from the setting-up of new forms and means of electronic banking.

[1] Notice on the application of EC competition rules to cross-border credit transfers, point 2 (OJ No C 251, 27. 9. 1995, p. 3). See also the notice of 18 November 1994 (COM(94) 436) entitled 'EU Funds Transfers: Transparency, Performance and Stability'.

(20) (c) **Indispensability of the restrictions for attaining the objectives**

The clauses relating to cooperation between the two banks, especially those relating to the exchange of know-how between them, and to the distribution of one partner's products by the other on its home market are indispensable in order to attain the abovementioned objectives.

In order to achieve the improvements, it is essential that each bank has a right of veto if its partner wishes to cooperate with one of its home competitors, if the cooperation involves shared know-how or know-how and business secrets of the former. Without the veto right, neither bank would be prepared to make available to the other the know-how needed to improve services. Both banks must also be able to protect their business secrets since the linked computer systems will inevitably also give each partner access to certain data classified as business secrets.

(21) (d) **Elimination of competition**

Elimination of competition on the French and German markets can be ruled out. In view of the relative position of the two banks in relation to other banks operating in those countries and that of the two banks in the different areas in which they operate (see recital 10), it is not expected that cooperation in the distribution and development of new services and products will enable them to eliminate competition in the various areas of banking.

Furthermore, the new banking products which the two banks will provide in the future are not protected by intellectual property rights. It is therefore highly likely that the other credit institutions, especially the major full-service banks present on these markets, some of which have also concluded cooperation agreements with foreign credit establishments, will also be offering new products.

3. DURATION OF THE EXEMPTION

(22) Pursuant to Article 8 of Regulation No 17, a decision in application of Article 85 (3) of the Treaty is issued for a specific period. To set the period of exemption, the Commission has taken account, on the one hand, of the fact that the financial markets will undergo a fundamental change in the future, namely through the establishment of European Monetary Union. This change will probably lead in the medium-term to an increase in competition in Europe's financial markets. On the other hand, the notified cooperation is complex and will affect practically all of BNP's and DB's activities. Its implementation will take several years. An exemption period of 10 years is appropriate before re-examining, subject to a potential request of the parties, the effects on competition of the cooperation. The exemption period will run from the date on which the two banks confirmed that they are prepared to amend the clause giving them an absolute right of veto in cases where one of them wishes to conclude a cooperation agreement with a home competitor of the other partner, namely 23 January 1995,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement, the provisions of Article 85 (1) of that Treaty and of Article 53 (1) of the EEA Agreement are hereby declared inapplicable for the period 23 January 1995 to 22 January 2005 to the cooperation agreement concluded between Banque Nationale de Paris SA and Dresdner Bank AG, as notified to the Commission with the amendment to the last sentence of Annex A.1 (3).

Article 2

This Decision is addressed to:

1. Banque Nationale de Paris SA
   16, Boulevard des Italiens
   F-75009 Paris
2. Dresdner Bank AG
   Jürgen-Ponto-Platz 1
   D-60301 Frankfurt am Main.

Done at Brussels, 24 June 1996.

For the Commission

Karel VAN MIERT

Member of the Commission