EC COMPETITION POLICY NEWSLETTER

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The proposal for a European competition agency

by Karel VAN MIERT, Commissionner responsible for Competition

Community competition law comprises rules covering the activities of private enterprises, state monopolies, monopoly rights and state aid granted by Member States, some of which are not applied at national level. All these rules are currently applied and enforced by the Commission (Article 89 EC Treaty). However, at the Inter-governmental Conference, launched in Turin on 29 March 1996, the German government has put forward a proposal designed to change the current institutional order. They argue that a competition agency separate from the Commission should be created. This agency would be charged with the application of the competition rules *vis-à-vis* private enterprises (i.e. the prohibition of restrictive arrangements (Article 85 EC Treaty) and abuses of a dominant position (Article 86 EC Treaty) as well as EC merger control (Council Regulation (EEC) No 4064/89) ["antitrust rules"]), whereas the Commission would retain the responsibility for enforcing the remaining competition rules and, of course, for conducting competition policy. Both sets of rules are equally important even in quantitative terms. In 1995, there were:

- 668 "antitrust" cases (559 new cases of restrictive arrangements and abuse of dominant positions and 109 merger cases), and
- approximately 685 state monopoly and monopoly rights as well as state aid cases.

In my view the proposal to add another agency to the already existing 12 is flawed for a number of reasons.

COMPETITION POLICY IS CLOSELY LINKED TO OTHER COMMUNITY POLICIES

Community competition policy serves special objectives which are unique to a Union of 15 Member States. The Community was founded with the aim of establishing a common market and an economic and monetary union. In order to achieve these ambitious goals the Community has a number of common policies at its disposal. The common policies, of which competition policy forms a part, are closely interlinked.

The classical example of the link between policies is the single market programme which aims at creating an internal market without frontiers. The Community applies these common policies hand in hand in order to abolish barriers for trade between

Member States and to open up national markets for other European competitors. Competition policy plays an important rôle in this. Thus, whereas internal market policy introduces directives in order to open up public procurement markets and stimulates the establishment of European technical standards, competition policy ensures that these constraints are not replaced by new ones. Companies must not be allowed to thwart the emerging internal market through restrictive agreements, abuses or mergers which would allow them to keep markets partitioned, block exports and imports and impede new entrants. In the same way Member States must not be allowed to replace eliminated forms of protectionism by state aids or exclusive rights accorded to monopolies. More generally, competition policy ensures that the single market with its efficiency gains becomes a reality and not only a theoretical possibility.

The close link between commun policies also means that the competition principle is already taken into account at a very early stage of the development of measures of the Community, for instance, in the areas of research&technical development, regional or environmental policy.

This link between policies is reflected in the institutional order of the Community. The mandate of a European competition authority has been given to the same institution which has been entrusted with the comprehensive task "[of ensuring] the proper functioning and development of the common market" (Article 155 EC Treaty) (the Commission). This enables the competition rules to be applied jointly, and more effectively, with other common policies. To take the enforcement of the competition rules away from the Commission would render it more difficult to achieve the ambitious objectives of the Union.

ALL COMMUNITY COMPETITION RULES FORM A UNITY

As I have already pointed out, there is a broad range of Community competition rules. These rules allow an effective competition policy. They form a unity which requires a uniform approach. This means, for instance, that the effects of a state aid on competition have to be assessed in the light of all other Community competition rules (see, for example, CFI 1995 ECR II, 1971 *Aitec, British Cement Association, Blue Circle, Castle, Rugby and Titan v Commission.* The antidumping rules are also a part of this unity, see ECJ 1992 ECR I, 3843 *Extramet v Council*). If applied coherently, the rules mutually reinforce each other. A uniform approach is particularly relevant for those cases where all the instruments have to be applied together.

The combined use of the rules has been essential in the past to make the single market programme a success. At present, the comprehensive application of the full range is crucial for the Community to liberalise the markets, amongst other, for telecommunications, postal services, energy and transport.

Take, for example, the sector of air transport. Cases of state aid to "flag carriers", and the formation of strategic alliances occurring in the industry (see, for instance, the alliance of Swissair/Sabena), are found together and have to be analysed together. The same applies to state aid for "national champions" as well as abuses of dominant position (see, for example, Air Lingus/Ryan Air case). Finally, cases of access to essential facilities such as ground-handling services at airports have to be dealt with (see the cases of Frankfurt/Main and Milan).

In future, the full range of Community competition rules will again be instrumental for integrating the national economies of new Member States into the existing single market in order to create an even larger single market. The same holds for the structural changes occuring as a consequence of the creation of the European Monetary Union.

The proposed creation of an agency would make it much more difficult to apply all the strands of Community competition law coherently. Thus, for example, the Commission would remain responsible for the control of state aid but the agency would control the transaction for which the state aid may have been granted. The agency in turn would be responsible for the prohibition of an abuse committed by a private enterprise in one Member State, whereas the Commission would have to deal with a similar abuse in another Member State where it has been committed by an undertaking to which a Member State granted monopoly rights (see, for instance, the Holyhead and Rødby cases where ferry operators were refused access to these ports). Responsibilities would thus be split-up where they should not.

The dilution of enforcement of the Community competition rules would not be the only result of the split-up. It would also have negative repercussions for the further progress of the single market, liberalisation, enlargement and monetary union.

THE COMMISSION IS THE APPROPRIATE COMPETITION AUTHORITY FOR THE COMMUNITY

The legislators of the Treaty of Rome entrusted the Commission with the responsibility of applying the Community competition rules (Article 89 EC Treaty). They believed rightly that only the Commission would possess the authority and legitimacy with the wider public necessary to reconcile possible conflicts between policies and to set priorities for the promotion of the principle of competition in view of the evolving Community. And, in fact, the Commission has developed competition policy and its instruments successfully on the basis of a consensus which it achieved throughout the Community in spite of the differences between Member State in terms of approaches, stages of development and weight attributed to competition policy.

The consensus at Community level has allowed the Commission to develop a fully-fledged system of legal instruments (including merger control since 1990) and to exercise an effective competition law enforcement. Outside observers acknowledge the control practice as competition-oriented and reasonably strict. The German government, for example, stated with regard to EC merger control that "*all in all there exists no reason for substantial criticism of the decisional practice" (German government in an official publication of the German Bundestag on the Activities' Report of the Bundeskartellamt for 1995. The original German text reads: "In der Gesamtbewertung sieht sie keinen Anlaß zu wesentlicher Kritik an den Ergebnissen der Entscheidungsfindung*").

The Commission would not be able to fulfill its comprehensive task as effectively as at present, if it had to cede the application of the Community antitrust rules to an agency. The agency, on the other hand, would lack the authority and the flexibility to apply the competition rules successfully in the Community context. What is more, its democratic accountability is uncertain. The proposal would thus also impede the objectives of the Community through the weakening of an institution key to its success.

ARGUMENTS GIVEN FOR THE CREATION OF A EUROPEAN COMPETITION AGENCY

Not just law enforcement

One of the main arguments used to justify the creation of an agency is that decisions in individual competition cases should not be a task for a politically oriented decision-making body.

However, it is a strength of Community competition policy and law that is not to be developed and applied in isolation but as an integral part of other Community policies and by the Commission. It is due to these factors that competition policy has been a success in the past and that a comprehensive and effective body of case law and practice has been developed. The Community finds itself in a unique situation which requires policies, legal instruments and an institutional order for which there is no parallel in the Member States.

It is unlikely that "pure" and dogmatic law enforcement through an agency could have been equally successful in the Community context. The pursuance of the Community objectives requires political judgement. Certainly, the Commission must only consider competition criteria and apply the rule-of-law. However, to the extent that the competition rules leave room for assessment and discretion, it can use this room to apply the rules in an evolutionary manner and in view of other Community policies. The application of any rules can only be delegated to an agency once the development of the Community has reached a certain maturity and there exists a widely shared consensus on the policy and its rules. This is not the case for Community competition policy at the moment. There is a wide range of views between Member States on the emphasis to be given when applying this policy but, more importantly, the rules themselves are still evolving to adapt to radical changes of the economic and political environment because of liberalisation, enlargement and monetary union.

Whilst policy and application of the rules must evolve to meet these challenges, it is noteworthy that Community procedures provide a system of legal 'checks and balances'. The College of Commissioners has to take account of proceedings which include oral hearings of the parties and the deliberations of an Advisory Committee of Member States' competition experts. All decisions are subject to close scrutiny of the European Courts which look remorselessly into all the procedural and substantive issues a case raises. Of the many decisions taken in the last 40 years, none has ever been annulled because it had been motivated by other than competition considerations.

Moreover, the proposal for an agency would, contrary to its objective, increase the risk of decisions in individual cases being taken on political considerations. It is more than likely that the creation of the agency could only become acceptable by the parallel establishment of a new level of political control. A public interest test exists in one form or other in almost all Member States, including notably Germany (In Germany the Minister of Economics can overrule a prohibition decision of the Bundeskartellamt in a merger case on request of the parties. Of the 108 prohibition decisions of the Bundeskartellamt 6 have been overturned on political grounds by the Minister in 1973-1994). It would allow the Commission to override the competition based decisions of the agency on political grounds. Obviously, that power would have to be exercised when the parties or individual Member States raise arguments of political or industrial opportunity in favour of the merger.

The above described two step-decision-making could also introduce an undesirable element of conflict between Member States. It could trigger the reappraisal of agency decisions, and the Commission, which would have to overrule the agency by putting competition considerations aside.

Efficiency

It is also alleged that an agency would be more efficient than the Commission dealing with the constant increase in the number of cases. In view of the future enlargement of the Community the Commission should, it is argued, therefore be relieved of the burden of decisions on individual competition cases.

It is difficult to imagine how the creation of an additional enforcement entity could render the application of the competition rules more efficient. Whereas the agency would apply the antitrust rules, the Commission would continue to enforce the other competition rules. Since the legal procedures, consultation mechanisms with Member States and multi-linguistic regime would remain unchanged, the growing number of cases would pose the same difficulties to an agency as it would to the Commission.

It is likely, however, that the split-up would render law enforcement less efficient than it is at present. The need for close cooperation between the two authorities in order to ensure coherent application of all Community competition rules would most probably prolong proceedings in individual cases and would certainly require more resources to accomplish the task. Also, the introduction of a two-stage procedure for mergers, which would allow parties to request a review by the Commission or the Council on non-competition grounds, would certainly prolong the decision-making process.

Contrary to what is alleged, the proposed agency would render competition law enforcement less efficient and, thus, less effective than at present.

ENABLING PROVISION

In the absence of consensus on the implementation of the suggestion, it has been proposed to add only an enabling provision to the Treaty in order to allow the creation of a competition agency in the future. However, this proposal would not only meet the same objections as the creation of the agency itself but would further aggravate the concerns. This is because existing deep divergences of opinion on the future institutional structure would only have been papered over.

The result would be that the Commission would find it more difficult to conduct an independent competition policy and apply the competition rules autonomously. Any Member State not satisfied with a decision of the Commission in an individual case, could at any time call or threaten to call for the transfer of the Commission's competences to an agency by application of the suggested enabling provision. This would not only destabilise the Commission in developing competition policy and law but also have the perverse effect of "politicising" the decision-making process in individual cases.

CONCLUSION

The proposed creation of an agency, which would enforce the Community antitrust rules separately from the Commission, would cut important links between competition policy and other Community policies. It would endanger the current comprehensive and uniform application of all competition rules and weaken the Commission as the promotor of the Community. The agency would, thus, have a negative impact not only on the effectiveness of the competition rules but also on the future progress of the common market and the economic and monetary union. The proposal would therefore cause a big reorganisation and involve many risks for the small result of removing a theoretical concern.

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Liberalization policy and State aid in the air transport sector

By Michael NIEJAHR and Giuseppe ABBAMONTE, DG VII-C-2

On 1 January 1993, the third and final package of measures for the liberalization of the Community's internal air transport market entered into force. This package completes the process of gradual market liberalization which started with a limited initiative on inter-regional air services in 1983, followed by two consecutive packages of liberalization measures in 1987 and 1990 as well as rules for the free provision of air cargo services between the Member States of the Community in early 1991.

THE THIRD PACKAGE

The third package essentially consists of three complementary sets of regulations.

First, Council Regulation (EEC) No 2407/92 (OJ No L 240, 24.8.1992, p. 1) establishes common rules on the licensing of air carriers. Any undertaking which complies with those rules, including the obligations of being majority owned and effectively controlled by Member States or nationals of Member States, is entitled to receive an operating licence permitting it to carry out carriage by air of passengers, mail and cargo for remuneration or hire.

In its decision of July 1995 in the case of Swissair/Sabena (OJ No L 239, 7.10.1995, p. 19), the Commission had the opportunity to provide extensive guidance of its interpretation of the ownership and control requirements enshrined in the Regulation. It stated that those requirements are essentially designed to safeguard the interests of the Community's air transport industry and, in particular, to ensure that market access possibilities under the third package will effectively be exploited by Community air carriers and will not be exercised, either directly or through subsidiaries, by air carriers from third countries. First, the majority ownership requirement is complied with if at least 50% plus one share of the (equity) capital of the air carrier concerned are owned by Member States and/or national of Member States. The remaining shares may indeed be held by one or more investors from third countries, and such shareholding must not in itself be considered incompatible with that requirement (although the scale of the third-country investment as well as the distribution of the shares within each group of shareholders need to be taken into account in any assessment under the effective control requirement). Second, the effective control requirement is complied with if Member States and/or nationals of Member States have, either individually or acting together with other Member States or nationals of Member States, the ultimate decision-making power in the management of the air carrier concerned. They must be able, either directly or indirectly through appointments to the decisive corporate bodies of the carrier, to have the final say on such key questions as, for example, the carrier's business plan, its annual budget or any major investment or cooperation projects. Such ability must not be substantially dependent upon the support of individuals or companies from third countries.

Second, Council Regulation (EEC) No 2408/92 (OJ No L 240, 24.8.1992, p. 8) provides that an air carrier holding such a licence generally enjoys free access to all intra-Community routes. No distinction is made any longer between scheduled and non-scheduled flights, nor between air passenger and air cargo services. The operation of cabotage services continues, until April 1997, to be subject to certain limitations pertaining to their consecutive nature and the capacity which can be offered. Moreover, the Regulation contains a number of well-defined safeguard clauses allowing a Member State, under the control of the Commission, to intervene in the principle of free market access for public policy reasons such as, for example, the maintenance of air services to remote regions, airport policy or the protection of the environment. Member States have so far made use of those safeguard clauses primarily to distribute traffic between airports belonging to the same airport system (Article 8) and to impose public service obligations on regional routes (Article 4).

The Regulation entrusts the Commission with special decision-making powers to control the application of any of the safeguard clauses mentioned above. In this area, the Commission is therefore not required to have recourse to the normal infringement procedure of Article 169 of the Treaty. In the first three years of application of the third package, the Commission made use of

those special decision-making powers in order to ensure that Community air carriers were granted access to the airport of Paris(Orly). That access was initially obstructed by the way in which the French authorities distributed the traffic between the airports of the Paris airport system (Orly and Charles-de-Gaulle). In three decisions of May 1993 (OJ No L 140, 11.6.1993, p. 51) and April 1994 (OJ No L 127, 19.5.1994, pp. 28 and 35), the Commission found the French measures in question to be discriminatory and disproportionate in relation to the policy objectives pursued and, thus, incompatible with the requirements of Article 8(1) of the Regulation.

As a matter of practice, the Commission's intervention was crucial for an effective and timely liberalization of the air transport market in France since Orly accounted for some 85% of the domestic air services to and from Paris. The importance of the Commission's special decision-making powers in this context is illustrated by the follow-up to the two decisions of April 1994. In both cases, the French authorities appealed to the Court of Justice and, in addition, applied for interim measures suspending the effects of the second decision concerning access to the routes Paris(Orly)-Marseille and Paris(Orly)-Toulouse. After the Court had rejected that latter application for interim measures (1994 ECR I-5229), the French authorities complied with their obligations under Community law by implementing the contested decision and, thus, established a *fait accompli* from which no roll-back was possible any more. In February 1996, the French authorities eventually withdrew their appeal. The French authorities also withdrew their appeal against the first decision concerning access to the route between Paris(Orly) and London after they had committed themselves to abide by the Commission's reasoning in the context of the state aid procedure concerning Air France (OJ No L 254, 30.9.1994, p. 73) and revised their traffic distribution rules for the Paris airport system in a way which the Commission, in a futher decision of March 1995 (OJ No L 162, 13.7.1995, p. 25), found to be acceptable.

Third, Council Regulation (EEC) No 2409/92 (OJ No L 240, 24.8.1992, p. 15) allows an air carrier to freely set its fares and rates for the services operated within the internal market under the above-mentioned rules. Again, Member States may intervene in that pricing freedom under safeguard clauses allowing them to withdraw excessively high passenger fares or to stop sustained downward developments of such fares (so-called downward spirals). Cargo rates, in contrast, cannot be subject to such interference. Neither of those intervention possibilities has been used so far.

The Commission services have, however, established informal guidelines to be followed in any future cases. According to those guidelines, the safeguard clauses are exceptions to the general principle of price freedom and, as such, must be interpreted strictly and applied only in exceptional circumstances. An air fare will generally not be challenged as excessively high if there are no legal or factual barriers to market entry, and if there is a high degree of competition on the route or routes concerned. In all other cases, the final assessment will be based on a qualitative analysis of, first, the respective fare operating ratio and, second, the comparison with fares charged by the carrier under investigation for other comparable services. Moreover, any intervention in the case of sustained downward development of air fares presupposes at least two previous rounds of fare decreases by the carriers operating on the route or group of routes concerned. Such intervention will only be required if none of those carriers is able to generate profits from its operations. Neither does it suffice that the carriers merely lose revenues (but are still operating profitably), nor that only some of the operating carriers suffer from losses.

IMPACT OF THE THIRD PACKAGE

The third package has largely replaced the bilateral agreements between Member States, which used to impose a multitude of restrictions on the provision of international air services, and can truly be called revolutionary as regards both its substantive content and the number of states involved in the liberalization process. It is now possible to set up an air carrier anywhere in the Community in accordance with one single set of rules and to operate between two Community airports without generally being subject to any restrictions on capacity, frequency or pricing. The new rules have thus introduced the flexibility which the Community's air transport industry needs to face the global challenges. They allow the air carriers to become more efficient in their operations and, thus, to offer better and cheaper services to their coustomers.

In the first three years of its application, the third package has produced some encouraging results and further market developments can be expected. Member States have altogether licenced some 800 air carriers of which around 20% operate scheduled air services. Moreover, there has been a significant increase in competition both in the domestic air transport markets of some of the larger Member States as well as

on some of the existing international routes within the Community. Finally, air carriers have over the past three years introduced a large number of low promotional fares for passenger transport. The levels of basic fares for business travel, in contrast, have so far remained relatively stable. It is notably in this latter area where increased competition should result in further fare decreases over the years to come.

ANCILLARY AIR TRANSPORT LEGISLATION

The Community has also enacted several ancillary sets of rules in order to establish the conditions for fair and equitable competition. Those rules include, in particular, regulations on the allocation of airport slots (OJ No L 14, 22.1.1993, p. 1) and the operation of computerized reservation systems (OJ No L 220, 29.7.1989, p. 1 and OJ No L 278, 11.11.1993, p. 1) as well as directives on the mutual acceptance of cockpit personnel licences (OJ No L 373, 31.12.1991, p. 21) and the gradual phasing-out of noisy aircraft (OJ No L 76, 23.3.1992, p. 21). Moreover, the Community has created a legal framework for the certification of aircraft, maintenance organizations and air operators and for the licensing of personnel involved in aviation safety and aircraft operations (OJ No L 373, 31.12.1991, p. 4). Finally, reference should be made to a draft directive on the gradual liberalization of the ground-handling market at Community airports which is presently passing through the legislative process (common position adopted by the Council on 28 March 1996, OJ No C 134, 6.5.1996, p. 30). The directive, if adopted, is aimed at increasing competition in that particular market and, thus, reducing the costs and improve the quality of ground-handling services.

COMPETITION AND STATE AID POLICY

The internal air transport market would, however, not be complete without an effective enforcement of the competition rules of the Treaty and the Merger Regulation (OJ No L 395, 30.12.1989, p. 1).

As regards the enforcement of the competition rules applying to undertakings, the Commission has repeatedly acknowledged the need for a restructuring of the airline industry (most recently in the XXV Report on Competition Policy, § 76) and, thus, is generally prepared to look favourably on mergers and alliances between air carriers. The Commission therefore approved, albeit subject to certain conditions, the merger between Swissair and Sabena in July 1995 (Case No IV/M.616) and the alliance between Lufthansa and SAS in January 1996 (OJ No L 54, 5.3.1996, p. 28). The two cases are discussed in more detail in respectively summer 1995 and spring 1996 editions of the *Competition Policy Newsletter.*

The most important and most contentious policy area is the control of state aids granted to individual air carriers by the Member States. Before the entry into force of the liberalization measures, at the time when the air transport sector was tightly regulated by virtue of bilateral agreements between the Member States, there was little point in strictly controlling state aid. Those agreements regulated air transport between two countries and prevented free competition from taking place on the corresponding routes. In a report of March 1992 (Document SEC(92) 431 final), the Commission indicated that several air carriers were benefiting from public funding which often took the form of direct operating aid. That finding was not surprising since a large part of the Community air carriers are state owned undertakings benefiting from privileged financial relations with the public entities.

With the exception of two cases involving Sabena (OJ L 300, 31.10.1991, p. 48) and Iberia (XXII Report on Competition Policy, p.269), the situation only changed after the entry into force of the third package which opened up the possibilities for meaningful competition between the air carriers and, thus, created a situation where state aid severly distort competition in the market-place. Between 1993 and 1994, the Commission scrutinized the restructuring programmes of several state-owned airlines, including Aer Lingus (OJ L 54, 25.2.1994, p. 30), TAP (OJ L 279, 28.10.1994, p. 29), Air France (OJ L 254, 30.9.1994, p. 73) and Olympic Airways (OJ L 273, 25.10.1994, p. 22), and made its authorization of the aid elements involved in those programmes subject to increasingly stringent conditions. The main elements of this new policy, which are clearly spelt out in the Commission's guidelines on the application of Articles 92 and 93 of the Treaty and Article 61 of the EEA Agreement to state aids in the aviation sector (OJ C 350, 10.12.1994, p. 5), can be summarized as follows :

* Direct operating aid is prima facie prohibited. It can only be acceptable in the form of a reimbursement for compliance with standards required by public service obligations imposed under Article 4 of Council Regulation (EEC) No 2408/92 or as aid of a social character under Article 92(2)(a) of the Treaty.

* Any other aid to an individual air carrier, for example aid involved in a recapitalization programme of the airline, can only be authorized if it forms part of a comprehensive and self-

contained restructuring programme which is designed to restore the carrier's financial health within a reasonable time period and does not envisage, or in fact implies the risk, that further aid will be required in the future.

* Any such authorization of restructuring aid will include conditions which are designed to prevent, *inter alia*, that trade is affected to an extent contrary to the common interest and that the beneficiary carrier transfers its problems onto its competitors (e.g. prohibition of price leadership on the European routes or prohibition to buy stakes in other air carriers).

* Restructuring aid to an airline which has already received such aid before will only be allowed under exceptional circumstances, unforeseeable and external to the company (the so-called one-time-last-time principle).

The one-time-last-time principle does not mean, however, that a Member State is prevented from entering into any financial transaction with an air carrier it owns. Article 222 of the Treaty in fact explicitly acknowledges the existence of public ownership systems and, thus, enshrines the right for the Member States to invest or divest in company capital. According to a consolidated case-law of the Court of Justice (see case C-40/85, *Belgium v Commission*, (1986) ECR 2321; case C-142/87, *Belgium v Commission*, (1990) ECR I-959), in order to examine whether a financial transaction between a Member State and a company involves aid the Commission applies the market economy investor principle. No state aid is involved if a private investor of a size comparable to that of the bodies administering the public sector, would have provided capital of such amount under the same circumstances. A capital injection into a state-owned air carrier by the Member State is only subject to the one-time-last-time principle if, on the basis of the market economy investor principle, it has been demonstrated that it amounts to state aid.

These principles were tested in the most recent (second) case concerning Iberia. In January 1995, the Spanish authorities asked the Commission to approve a capital injection of 130 billion pesetas into Iberia. The Commission applied the market economy investor principle with the assistance of an external consultant and, notably in view of the high risk and cash drain associated with Iberia's investments in South America, concluded that the envisaged transaction amounted to state aid. The Commission then indicated to the Spanish authorities that, as Iberia had already received restructuring aid in 1992 and could not rely in this case on any exceptional circumstances, unforeseeable and external to the company, it would not be possible to approve the transaction. After intensive discussions with the Commission, Iberia and the Spanish authorities eventually agreed to sell the major part of the company's investments in South America to a holding controlled by US banks and to reduce the amount of the capital injection to 87 billion pesetas. On the basis of those changed circumstances and in view of a number of additional commitments by the Spanish authorities, the Commission came to the conclusion that the transaction satisfied the market economy investor principle. The future cashflows generated by Iberia, appropriately discounted at the company's cost of capital, exceeded the capital outlay. Therefore, no state aid elements were involved. Consequently, the Commission raised no objections in respect of the recapitalization plan of the Spanish air carrier in January 1996 (OJ No L 104, 27.4.1996, p. 25).

The Iberia case gives strong evidence that the Commission is determined to adhere to the one-time-last-time principle and to allow restructuring aid once and only once. This case is, however, not the first where the Commission applied the market economy investor principle and concluded that the financial transactions involved did not contain any state aid elements. In fact, there are three precedents of May, July and October 1995 involving, respectively, Lufthansa, Sabena and the French air carrier AOM. A negative application of the market economy investor principle is found in the CDC case, where the Commission considered that the subscription by the French public bank CDC to FF 1.5bn bonds issued by Air France did not take place under market conditions. The transaction would not have been entered into by a rational private investor and amounted to state aid (OJ L 258, 6.10.1994, p. 26).

Finally, it should be recalled that the Commission also investigated and decided other state aid cases in the air transport sector regarding, *inter alia*, compensation for the deficit incurred by TAP on the air routes to and from the Azores and Madeira (OJ L 260, 8.10.1994, p. 27) and aid granted for the operation of air routes to and from Sardinia (OJ L 26, 2.2.1996, p. 29). Those two cases demonstrate that the Commission is generally willing to authorize any direct operating aid granted outside the framework of any duly established public service obligations only in cases where either the aid is of a social character or Art. 4 of Council Regulation (EEC) No 2408/92 does not (yet) apply (such as the air routes to and from the Azores).■

OPINIONS AND COMMENTS

*In this section DG IV officials outline developments in Community competition procedures. It is important to recognise that the opinions put forward in this section are the **personal views** of the officials concerned. They have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's or DG IV's views.*

La révision du règlement sur le contrôle des concentrations: la proposition de la Commission

par Eric CUZIAT, DG IV-B

Suite à la publication de son Livre vert sur la révision du règlement relatif au contrôle des concentrations d'entreprises (Règlement du Conseil (CEE) n° 4064/89 du 21 décembre 1989) (COM (96) 19 final; voir également Competition policy newsletter - number 1 - volume 2 - Spring 1996 pages 8 à 10) et du débat qui s'en suivit, la Commission a adopté le 10 juillet dernier une proposition de modification du règlement sur les concentrations (NB: La version finalisée de cette proposition dans les onze langues officielles de l'Union sera transmise dans le courant de l'été au Conseil et au Parlement Européen. Elle sera dès lors disponible pour les parties intéressées et publiée au JOCE).

Cette proposition se présente sous la forme de deux projets distincts, sous couvert d'une seule communication au Conseil et au Parlement Européen. En effet, compte tenu de l'existence d'une double base juridique (article 1er paragraphe 3 du règlement pour la révision des seuils, d'une part, et articles 87 et 235 du Traité pour toute autre modification) et des modalités de vote attachées à chacune de ces deux bases (majorité qualifiée dans le premier cas, unanimité dans le second), la Commission a présenté deux projets de règlement, l'un relatif à la réduction des seuils, y compris le dispositif pour les plurinotifications, l'autre relatif aux autres changements dont le nouveau régime pour les entreprises communes.

LA RÉDUCTION DES SEUILS DE CONTRÔLABILITÉ ET LE DISPOSITIF POUR LES PLURINOTIFICATIONS

Comme la Commission l'a démontré dans son Livre vert, un grand nombre d'opérations ayant des effets transfrontaliers significatifs dans la Communauté échappe au contrôle communautaire, compte tenu du niveau élevé des seuils actuels. Or, la Commission a considéré que pour de telles concentrations, l'intervention communautaire se justifie conformément au principe de subsidiarité. De plus, la Commission a constaté qu'un certain nombre d'opérations de concentration, en dessous des seuils, étaient notifiées auprès de plusieurs autorités nationales de contrôle. Nonobstant la multi-notifiabilité de ces opérations qui constitue un très fort indice de leur caractère communautaire, la Commission, consciente des problèmes spécifiques en termes de délais et de sécurité juridique que posent les plurinotifications aux entreprises, a considéré qu'il convenait de résoudre également cette question.

Pour les raisons exposées ci-dessus, la Commission proposait dans son Livre vert de réduire les seuils de contrôlabilité des opérations de concentration, aujourd'hui fixés à 5 milliards et 250 millions d'écus, à 2 milliards d'écus pour ce qui concerne le chiffre d'affaires mondial réalisé par l'ensemble des parties à la concentration et à 100 millions d''écus pour ce qui concerne le chiffre d'affaires communautaire réalisé par au moins deux des entreprises concernées. Par ailleurs, la Commision proposait, à titre subsidiaire, de résoudre le problème de notifications multiples par une procédure spécifique.

A la lumière des débats engagés dans le cadre de la révision du règlement, la Commission est parvenue à la conclusion qu'il était nécessaire de combiner les deux propositions du Livre vert, afin de recueillir un plus large consensus sur le niveau des seuils et

d'apporter, en tout état de cause, une réponse aux problèmes posés par les plurinotifications.

La Commission propose donc de réduire les seuils actuels à 3 milliards d'écus pour ce qui concerne le chiffre d'affaires mondial et à 150 millions d'écus pour ce qui concerne le chiffre d'affaires communautaire. La règle des deux tiers demeurerait quant à elle inchangée. De plus, entre ces nouveaux seuils et des seuils planchers de 2 milliards et 100 millions d'écus, la compétence exclusive de la Commission serait étendue aux seules opérations qui seraient notifiables auprès de trois autorités nationales de contrôle.

Le dispositif envisagé pour le traitement des plurinotifications s'inscrit dans le cadre des options présentées dans le Livre vert. Les consultations avec les Etats membres et les représentants du monde des affaires ont permis d'en affiner certains éléments. Toutes les opérations de concentration se situant entre les seuils ci-dessus mentionnés et ne satisfaisant pas à la règle des deux tiers seraient de dimension communautaire et notifiables auprès de la Commission, dès lors qu'elles rempliraient les conditions d'examen (critères de seuils ou autres) dans au moins trois Etats membres de la Communauté européenne, que le système de chacun de ces trois Etats soit obligatoire ou volontaire. L'opération de concentration serait réputée remplir les conditions pour être soumise à examen dans le cadre des systèmes nationaux mentionnés par les parties dans la notification, à moins que les Etats membres concernés n'informent la Commision que tel n'est pas le cas dans un délai de deux semaines à compter de la réception par ces Etats membres de tous les renseignements requis. Toute opposition devrait être motivée par écrit. La Commission, quant à elle, se bornerait à vérifier si les Etats membres ont réagi dans le délai imparti, sans contrôler en propre si les critères nationaux ont effectivement été remplis ou non. Dans le cadre de ce nouveau dispositif, la première phase d'examen serait prolongée de deux semaines.

Certains détails de cette procédure devront être fixés par la suite dans un nouveau règlement d'application, notamment devraient y figurer les circonstances dans lesquelles la Commision pourrait déclarer une notification incomplète, lorsque l'information fournie par les parties est insuffisante aux yeux des Etats membres pour déterminer l'application de leurs dispositions nationales de contrôle.

LES AUTRES PROPOSITIONS DE MODIFICATION

Les dispositions de renvoi

L'article 9 est modifié de sorte que dans les affaires où un marché distinct à l'intérieur d'un Etat membre ne constitue pas une partie substantielle du marché communautaire, l'Etat membre limiterait sa demande de renvoi à démontrer que l'opération affecte un tel marché sans avoir à prouver l'existence d'une menace de création ou de renforcement d'une position dominante. Une telle modification trouve sa justification dans le fait que la Commission ne peut interdire une concentration que dans la mesure où elle crée ou renforce une position dominante dans une partie substantielle du marché commun.

Pour ce qui concerne l'article 22, la proposition de la Commission ouvre à plusieurs Etats membres la possibilité d'effectuer une demande de renvoi commune dans les affaires où une position dominante serait créée ou renforcée dans une zone géographique étendue à leurs territoires. De plus, les dispositions relatives à la suspension s'appliqueraient aux concentrations renvoyées à la Commission sur la base de l'article 22 pour autant qu'elles n'auraient pas été mises en oeuvre à la date où les parties seraient informées par la Commission qu'une telle demande a été formulée.

Le traitement des entreprises communes

Prenant en compte les préoccupations exprimées lors de la consultation quant au traitement différencié des entreprises communes, la Commission a décidé de proposer une solution qui

combine les avantages de chacun des deux groupes d'option qui figuraient dans le Livre vert.

Dans le cadre de la proposition de la Commission, le concept de concentration, tel que défini à l'article 3 du règlement, est étendu à toutes les entreprises communes de plein exercice. Par conséquent, les entreprises communes qualifiées aujourd'hui de "coopératives" et qui sont "de plein exercice" seraient désormais soumises au champ d'application et à la procédure du règlement sur les concentrations. Pour les entreprises communes coopératives d'exercice partiel, la situation demeurerait inchangée.

Sur le fond, et puisque les entreprises communes coopératives de plein exercice seraient considérées comme des concentrations, le critère de la position dominante prévu à l'article 2 du règlement leur serait appliqué à titre principal. Toutefois, les critères de l'article 85(1) et (3) du Traité pourraient leur être appliqués si nécessaire, ceci dans la mesure où l'entreprise commune conduirait à la coordination du comportement concurrentiel d'entreprises qui restent indépendantes. L'application de l'article 85(1) et (3) s'effectuerait alors non pas selon les procédures du règlement 17 mais selon celles du règlement sur les concentrations qui présente le double avantage d'un délai bref et d'une décision formelle.

Désormais, une seule décision de compatibilité ou d'incompatibilité avec le marché commun serait adoptée. Pour ce qui concerne les aspects éventuels relevant de l'article 85(1) et (3), la décision accorderait une exemption pour la durée de vie de l'entreprise commune. Néanmoins, une disposition permettrait à la Commission de révoquer sa décision sur ces aspects, pour autant qu'avec le temps la position des sociétés mères sur le marché serait renforcée de telle manière que la coordination de leur comportement concurrentiel ne correspondrait plus aux exigences de base de l'article 85(3).

Enfin, il convient de préciser que les opérations de cette nature tombant en dessous des seuils de contrôlabilité seraient de la compétence des Etats membres. Pour ce qui concerne les aspects coopératifs de ces entreprises communes, le régime actuel de répartition des compétences entre la Commission et les Etats membres continuerait de s'appliquer.

Le revenu bancaire et les propositions de "toilettage"

Pour ce qui concerne la base de calcul du chiffre d'affaires des établissements financiers et autres établissements de crédit, la Commission, afin de mieux refléter l'activité de la totalité du secteur bancaire, propose de substituer au dixième des actifs, le produit brut bancaire, conformément à la définition du produit bancaire figurant dans la directive 86/635/CEE. Par ailleurs, l'allocation géographique du chiffre d'affaires serait basée sur la localisation de la branche ou de la division accordant le prêt ou fournissant le service.

Plusieurs propositions de "toilettage" peaufinent ou clarifient le texte du règlement. On retiendra notamment l'introduction d'une base légale expresse pour les engagements de première phase (dans ce cas de figure, la première phase est portée à six semaines pour faciliter la consultation des Etats membres et des tiers intéressés), de même que pour les restrictions accessoires couvertes en première phase. On signalera enfin l'harmonisation de la période de suspension avec l'adoption d'une décision finale.

La proposition de modification du règlement sur les concentrations dépasse par conséquent la simple révision des seuils ou des mécanismes de renvoi, prévue par le règlement lui-même. C'est un projet, somme toute ambitieux, que la Commission transmet au Conseil puisqu'il s'attache également à étendre le champ d'application du règlement aux plurinotifications et à l'ensemble des entreprises communes de plein exercice. De plus, la Commission a saisi l'opportunité qui lui était ici donnée d'optimiser encore la mise en oeuvre du règlement sur les concentrations, au travers d'un "toilettage" du texte. Il appartient désormais au Conseil de traduire ces propositions dans un nouveau règlement mieux adapté aux réalités du marché intérieur. ■

La communication de la Commission concernant la non-imposition d'amendes ou la réduction de leur montant dans les affaires portant sur des ententes.

par Vincent JORIS, DG IV-A-2

Sur proposition de M. Van Miert, la Commission a adopté, le 10 juillet 1996, une communication prévoyant - à certaines conditions - de réduire l'amende qui aurait été normalement imposée aux entreprises qui dénoncent auprès d'elle certains types d'ententes illicites, voire - dans certains cas - de ne leur infliger aucune amende en échange de leur coopération.

Comme les autres communications de la Commission en matière de concurrence, celle-ci codifie largement la pratique antérieure de l'institution en la matière. D'autre part, elle annonce aux opérateurs économiques la façon dont la Commission entend réagir lorsqu'une entreprise la contacte pour dénoncer des ententes illicites qui lui étaient inconnues ou pour lui fournir des informations facilitant sa mission de sanction de ces ententes.

LE BUT VISÉ PAR LA COMMUNICATION

L'objectif de ce nouvel instrument est de contribuer à la lutte de la Commission contre les ententes secrètes les plus dangereuses, à savoir celles qui visent à fixer des prix ou des quotas de production ou de vente, à se partager des marchés ou à interdire les importations ou les exportations. Ces agissements, entraînant des augmentations de prix et des réductions de choix, sont préjudiciables pour les consommateurs, mais aussi pour les entreprises qui, du fait de leur protection artificielle, ne sont pas tentées d'innover et donc d'être compétitives. Il est dès lors crucial de pouvoir découvrir ces pratiques et y mettre fin.

Or, l'expérience récente prouve qu'il est bien souvent très difficile à la Commission de déceler des ententes dont le secret a tendance à être d'autant mieux gardé que les profits qui en sont tirés sont importants. Les moyens que mettent en oeuvre certaines entreprises pour les cacher sont parfois sophistiqués, allant jusqu'à l'organisation de fausses inspections pour enseigner à leur personnel comment faire disparaître efficacement les preuves des ententes illicites. Le but premier de la communication est par conséquent de percer le mur du silence organisé autour de ces ententes secrètes.

De plus, l'absence de lignes directrices en la matière ne permettait pas à la Direction générale de la concurrence d'indiquer aux entreprises quelle contrepartie elles obtiendraient en échange d'aveux de participation à ces ententes.

L'ÉVOLUTION DE LA PROPOSITION

La source d'inspiration de la proposition est le programme de clémence ("leniency programme"), introduit en 1978 par le "Department of Justice" des Etats-Unis et élargi en 1993, au profit des entreprises lui proposant leur coopération avant que le "Department" ait connaissance de l'entente (1978) ou, lorsqu'il connaît celle-ci, avant qu'il ait des preuves suffisantes pour pouvoir la sanctionner (1993).

Le projet initial proposait de n'infliger aucune amende aux entreprises qui: (i) informeraient la Commission de l'existence d'une entente avant que la Commission n'ait officiellement procédé à des vérifications sur l'affaire ou, (ii) seraient les premières à proposer leur coopération au cours des étapes préliminaires de l'examen d'une affaire, à un moment où la Commission n'a pas encore obtenu suffisamment de preuves pour

motiver l'adoption d'une décision infligeant des amendes.

Le projet de communication traitait également des cas dans lesquels les entreprises collaboreraient avec la Commission sans toutefois satisfaire aux critères mentionnés ci-dessus. Aux entreprises coopèrant pleinement avec la Commission après que des vérifications ont déjà été réalisées, il était prévu d' octroyer une réduction très importante de l'amende, définie comme une réduction d'au moins 50 % du montant de l'amende qu'il aurait été approprié d'infliger sans leur coopération.

Lorsqu'une entreprise aurait coopéré sans être la première, la communication prévoyait que des réductions pouvaient encore être accordées, tout en précisant qu'il était impossible de donner à l'avance des indications sur leur niveau, en raison de la diversité des situations relevant de cette catégorie. Cette approche s'inspirait de la politique suivie par la Commission, telle qu'illustrée par sa décision dans l'affaire "Cartonboard" (décision du 13.07.1994, IV/33833, J.O. n°L 243 du 19.09.1994).

Cette proposition fut approuvée par la Commission en tant que projet le 6 décembre 1995 et publiée au Journal Officiel n° C 341, du 19 décembre 1995. Le texte approuvé et publié différait de la proposition originelle en ce qu'il excluait le caractère automatique de la non-imposition, de manière à préserver le pouvoir d'appréciation de la Commission dans chaque cas. La publication avait pour but de recueillir les observations de tous les intéressés sur ce projet.

Cette publication a donné lieu à des prises de position d'une dizaine d'associations, européenne ou nationales, d'entreprises, d'une association d'avocats et de plusieurs cabinets d'avocats. En résumé, les associations d'entreprises se montraient hostiles au projet, alors que, parmi les associations et cabinets d'avocats, les opinions étaient partagées. Le projet a également été examiné par les experts gouvernementaux des Etats membres, à leur réunion du 18 janvier 1996. L'accueil y a été généralement favorable.

Le projet publié a été profondément remanié pour tenir compte de ces observations.

LA COMMUNICATION ADOPTÉE

Le champ d'application de la communication a été précisé. Le nouveau texte s'applique aux seules infractions qui y sont expressément énoncées. Il s'agit de concertations secrètes, constituant des violations graves de l'article 85. Si les ententes horizontales sont principalement visées, les accords verticaux ne sont pas exclus, s'ils prennent l'une des formes énoncées dans le texte.

Le titre B (non-imposition d'amende ou réduction très importante de son montant) vise les cas où une entreprise dénonce un cartel avant que la Commission ait procédé à une vérification et sans que celle-ci dispose d'informations suffisantes pour prouver l'existence de l'entente. Cette section a été la plus profondément modifiée. L'objectif principal a été de trouver un équilibre entre la nécessité de préserver la marge d'appréciation de la Commission et celle d'offrir aux entreprises une sécurité juridique suffisante.

Une première innovation majeure, répondant à l'exigence de laisser au Collège son pouvoir d'appréciation pour fixer dans chaque cas le montant de l'amende, consiste dans la suppression du caractère automatique de la non-imposition. C'est pourquoi les titres B (non-imposition) et C (réduction très importante) anciens ont été fusionnés. Toutefois, la sécurité juridique ainsi que l'attractivité de la communication ont conduit à fixer une fourchette de réduction, d'un minimum de 75 % pouvant aller jusqu'à la non-imposition totale.

Le titre C (réduction importante du montant de l'amende) vise les dénonciations intervenant après que la Commission a procédé à des vérifications. Pour que des dénonciations intervenant à ce stade justifient une réduction significative d'amende, il faut que ces vérifications aient été infructueuses. Elles ne doivent donc pas avoir apporté de preuves suffisantes pour justifier l'engagement d'une procédure, au sens de l'article 9 §3 du règlement n° 17.

Pour ces dénonciations la fourchette de réduction est de 50 à 75%.

Mais, dans les deux hypothèses, (dénonciations avant et après verifications) l'entreprise doit remplir cumulativement les 4 conditions suivantes :

- être ***la première*** à apporter des éléments déterminants pour prouver l'existence de l'entente,
- avoir mis fin à sa participation à l'activité illicite au plus tard au moment où elle dénonce l'entente,
- fournir à la Commission toutes les informations dont elle dispose au sujet de l'entente et maintenir une coopération totale tout au long de l'enquête,
- ne pas avoir contraint une autre entreprise à participer à l'entente ni eu dans celle-ci un rôle déterminant.

De ces conditions celle consistant à n'accorder la non-imposition,une réduction très importante ou une réduction importante qu'à la première entreprise dénonciatrice est capitale, car elle crée un climat général de méfiance entre les entreprises participant à l'infraction.

En effet, chaque entreprise participante se rend compte qu'elle pourrait échapper à toute amende si elle était la première à dénoncer l'infraction, tandis qu'elle serait punie par une amende si l'une des autres entreprises la devançait.

Chaque entreprise a donc intérêt à essayer d'être la première à dénoncer l'infraction, sauf si elle est assurée qu'aucune des autres n'a l'intention de dénoncer. Dès qu'une entreprise perçoit la possibilité qu'une autre entreprise puisse faire le pas, il devrait se déclencher une course à la dénonciation. Ce mécanisme tend à ébranler de façon déterminante la stabilité et donc la durée moyenne des ententes. La prévision de cet effet est également de nature à diminuer l'attrait de participer à de nouvelles ententes.

Quant aux entreprises qui coopèrent sans remplir toutes les conditions exposées ci-dessus, elles bénéficieront d'une réduction de 10 à 50% (titre D: réduction significative du montant de l'amende). Comme dans le projet initial, les hypothèses visées sont nombreuses. Parmi elles doit être mise en évidence celle de la non-contestation de la matérialité des faits après réception de la communication des griefs.

Cet exemple est d'une très grande importance pratique. Il existe de nombreux précédents d'entreprises ayant demandé spontanément quelle réduction d'amende leur serait octroyée si elles reconnaissaient les faits sur lesquels la Commission fondait ses accusations. La reconnaissance de la matérialité des faits par une entreprise partie à une entente secrète facilite considérablement le travail de la Commission, en particulier à l'égard des autres parties à cette entente, et lui épargne des ressources précieuses pour la suite de la procédure.

Enfin, il y a lieu de préciser que

- la communication ne concerne pas les initiatives individuelles d'un membre du personnel d'une entreprise ; elle ne vise que les démarches émanant d'une entreprise même;
- ce n'est qu'au moment où la Commission adoptera sa décision de constatation d'infraction qu'elle appréciera si les conditions sont remplies;
- la communication ne modifie pas les conséquences civiles de l'infraction;l'infraction ne disparaît pas du fait qu'elle a été reconnue; l'entente reste contraire à l'article 85 §1 et, dès lors, est nulle en vertu de l'article 85 §2; ses victimes pourront bénéficier de dommages-intérêts, accordés par les juridictions nationales compétents

DEPUIS L'ADOPTION

Depuis son adoption, la communication a été publiée au Journal Officiel n° C 207, du 18.07.1996.

Surtout, son utilité paraît confirmée. Depuis son adoption une entreprise a déjà approché la Direction générale de la Concurrence pour dénoncer une entente inconnue de celle-ci. ■

La politique européenne de concurrence en 1995

Karel VAN MIERT présente au Parlement Européen le XXVème Rapport sur la politique de concurrence

Le Commissaire Karel Van Miert a présenté le 30 mai le 25ème rapport sur la politique de concurrence à la Commission Economique et Monétaire et de la Politique Industrielle du Parlement Européen (COM (96) 126 final - IP/96/457). A cette occasion, il a prononçé un discours, le texte duquel est repris ci-dessus.

" Ladies and gentlemen,

As last year, I very much appreciate the opportunity to present the competition report "en primeur" to the European Parliament, before it is released to the press.

I firmly believe that the cooperation and the dialogue with the European Parliament is an essential condition for a successfull competition policy. In fact, today, more than ever before, competition policy is deeply involved in the citizens' daily life. It is therefore increasingly subject to close and critical scrutiny at all levels within the European Union and indeed beyond - it is no longer a marginal subject that is only of interest to specialists. Acting in close liaison with the European Parliament may thus help to bring about the wide democratic consensus which is indispensable to have an effective competition policy.

I am pleased that in sensitive and crucial areas of my policy, the European Parliament has shown itself to be a solid ally in the interest of European industry and citizens.

In your Resolution on the previous competition report, you have requested a further strengthening of transparency and democratic accountability in competition matters. You may know that, following meetings with the President of your Committee, Mr von Wogau and Mrs. Riis-Jørgensen, I have sent a letter to confirm my firm willingness to continue the policy of openness with the European Parliament. I have indicated in this letter that I am ready to meet the Parliament more frequently to discuss recent developments and more specific competition policy issues and decisions. These discussions could take the form of regular two-monthly meetings or hearings within the framework of this Committee.

I hope that, in the next few months, we will be able to agree upon a practical working scheme for these regular meetings.

FORM AND CONTENT OF COMPETITION REPORT

This year's report differs in presentation from the previous competition reports.

In view of the success of last year's separate brochure which summarized the major decisions and developments in the field of competition, I have decided to produce a much shorter report and to publish it entirely in the form of a brochure. The document highlights the main policy developments, decisions and legislation. It situates the competition developments within their wider context of other Community policies, such as industrial policy, internal market, Information Society, R&D, social policy and environmental policy. This reflects that Commission's view that competition policy should be applied in conjunction with other Community policies to form a set of coherent instruments to realize basic Community objectives.

In addition to the Commission's report, the Directorate-general for Competition is preparing a more descriptive report of competition cases in 1995, including complete lists of references. It will be published around the summer in all languages of the Community together with the Commission's report.

SHARP INCREASE OF NEW CASES

1995 has seen an increase of more than 35 % of the overall number of new cases.

The increase has been more than 42 % in the field of restrictive agreements and abuse of dominant positions. The Commission handled a record number of merger notifications : up from 100 in 1994 to 114 in 1995. Also in the area of state aid, the Commission registered a huge increase of notifications (680 compared to 510 in 1994) and it adopted a record number of decisions.

The increase is partly due to the accession of three new Member States to the European Union on 1 January 1995. It is certainly also a sign that European industries are increasingly

aware that their playing field is Europe as a whole. In addition, the rapidly changing and increasingly global economic environment gives firms an incentive to cooperate or merge so as to remain competitive.

In the field of state aid, the increase also results from greater transparency and stricter control by the Commission, which gives rise to a higher number of notifications and complaints.

I do not expect that the number of competition cases will decrease in the near future. On the contrary, I believe that it will further grow in the coming years. To that we must add another factor. The ability to react quickly to changes in the market place is an essential element of the competitiveness of European industry. It is therefore important to maintain an efficiently administered competition policy.

For these very reasons, and, in view of the limited resources at its disposal, it is self-evident that the Commission has to fix priorities in order to maintain an effective competition policy.

CORE COMPETITION POLICY ACTIONS

Competition policy has two major objectives which are to a large extent complementary : competitiveness and development of the European economy on the one hand and consumer protection on the other hand. Both objectives are present in the Commission's continuing enforcement of the existing competition rules to all kinds of restrictions of competition - be they by means of state or private action - which affect the competitiveness of European industries or which affect the consumers' access to products and services. Sometimes it has to do this in sectors, such as transport and telecommunications, where different anti-competitive issues arise simultaneously. In such cases, the Commission has the ability to use the whole array of instruments at its disposal (e.g. rules on restrictive agreements and abuse of a dominant position; liberalization measures; merger control; and control of state aid) to ensure the optimum outcome.

NEED TO SECURE OPEN MARKETS

Restrictive agreements and abuse of dominant positions which act to exclude new competitors from the market or which seal off national markets are a first type of cases which deserve the Commission's priority attention.

In 1995, the Commission has continued to take vigilant action where companies, through anti-competitive agreements or practices, wall off national markets by restricting parallel imports and prevent consumers from taking advantage of price differences between Member States (Glasurit; Organon). With the same end in view, the new regulation on car distribution in Europe ensures that individual consumers are free to carry out personal imports.

The need to safeguard and improve the competitiveness of European industry requires that markets remain open and accessible to companies attempting to exploit the possibilities offered by the single market. The Commission has therefore pursued a stringent policy where companies attempt, be it through restrictive agreements or unilateral action, to obstruct the access of new entrants to the market (Unilever/Mars; Van Marwijk/FNK-SCK).

The Commission's strict approach vis-à-vis this type of restrictions is particularly important in sectors which traditionally were protected by regulatory monopoly or exclusive rights, and which, as a result of their liberalization, create new possibilities for market entry. Recent examples are : ground handling services; discriminatory landing fees (Brussels airport); discrimination against second mobile phone operators (Omnitel, Mobistar). Other cases of the same nature are Roscoff and Elsinor concerning access to port facilities for competing ferry services.

CONTINUATION OF PROCESS OF LIBERALIZATION OF TRADITIONALLY MONOPOLIZED MARKETS

The liberalization of traditionally monopolized markets remains an important priority of today's competition policy. Once achieved, these competition driven markets will enhance competitiveness and innovation, and thereby create new jobs. At the same time, universal public services, to which all citizens have equal access at affordable prices, should be safeguarded in areas where market forces are inadequate. For this reason, a sector-by-sector approach is the most appropriate. For example, with the support of the European Parliament, decisive progress has been made in legislative provisions liberalizing telecommunication services which, as a sector subject to rapid innovation, can bypass national boundaries. I refer to the liberalization of mobile telephones, alternative networks and voice telephony on 1 January 1998. I deplore that the same progress has not been possible in the energy sector given the importance of this sector for the competitiveness of European economy.

COOPERATION AND STRUCTURAL ADJUSTMENT

Today's economic environment is characterized by dynamic markets, innovation and globalization (with the concurrent sharp increase in competitive pressures which it entails). As a result, companies are looking for different forms of cooperation to enable them to remain competitive on the market by improving their R&D, reducing their costs and developing new products.

In principle the Commission takes a positive view where such cooperation leads to efficiencies which outweigh the disadvantages in competition terms. The Commission's positive approach to strategic alliances in the telecom sector (Atlas/Phoenix) and cooperation agreements between major air carriers (Lufthansa/SAS) are just two examples of how it has done so recently.

In doing so however, the Commission has sought to ensure that such cooperation between firms does not prevent third party access to the market. As a matter of fact, only those companies which are used to competition and which perform well in open and dynamic markets will be able to do so as well on a wider scale - be it in other geographic areas or in a more global economy in general. Only by securing competitive and growth oriented market-structures, can the current restructuring process in sectors such as telecommunications generate new services at competitive prices, reduced costs for industry, new investment and employment.

The Commission has also a pro-active role to play to cultivate the conditions which make dynamic markets possible. For instance, it has adopted a new block exemption authorizing certain categories of agreements on technology transfers, which is expected to facilitate the diffusion of technological innovations within the Union.

Mergers and acquisitions also have an important impact on employment and investment. Although in the short run they may lead to layoffs, in the medium to long term, they have a number of positive effects on investment and employment.

The Commission's role in this field is to secure those positive effects. Mergers which create or strengthen a dominant position may hurt other industries as well as the final consumer. Moreover, in emerging markets, concentrations in an early stage of market formation may lead to foreclosure effects that are discouraging technological innovation and investment by market entrants. It is precisely this concern which has led the Commission to prohibit operations in the media sector, which is of growing significance in the development of the Information Society (Nordic Satellite Distribution, RTL/Veronica/Endemol).

CONTROL OF STATE AID

The Community's competition policy would be incomplete without a strict state aid policy. The Commission's fourth survey on state aid in the Community has shown that, while there is a slow but steady fall, total aid granted remains high. Further efforts are therefore necessary to reduce aid levels by strengthening control mechanisms and improving transparency.

In the first place, the prerequisite for an efficient state aid control is that Member States notify all aid measures to the Commission and do not put them into effect before the Commission has approved them. The continued violation by Member States of the notification obligation has induced the Commission to take further steps to make Member States respect that obligation. In a communication adopted in May the Commission thus reserved its right, in certain cases, provisionally to order Member States to recover aid granted in breach of the notification obligation until the Commission had adopted a final decision approving the aid. Moreover, in a notice on cooperation with national courts the Commission has shown its willingness to assist them to protect the rights of companies against non-notified aid granted to competitors.

An efficient state aid control does not mean, however, that all state aid should be prohibited. In fact, the majority of the decisions taken by the Commission are positive. Many state aid measures pursue objectives in the interest of the Community, such as economic and social cohesion, a sufficient degree of R&D and environmental protection, the development of SMEs, and the necessity of allowing time for structural adjustment, in particular for social reasons. Other cases have shown the necessity for the Commission to take into consideration the particular characteristics of the sector involved (Credit Lyonnais; French Post Office). The Commission's role is to verify whether these aid measures do not go beyond what is necessary to achieve those fundamental Community objectives and that they do not distort competition and affect trade between Member States unduly.

The Commission adopted, for the first time, employment aid guidelines explaining under which conditions state aid to firms to promote employment may be approved. Moreover, it adopted a new framework on state aid for R&D,

confirming its favourable approach to this kind of aid. This shows that the Commission's state aid policy continues to play an active role in overcoming structural unemployment and in strengthening the competitiveness of the European economy.

ADJUSTMENTS TO REINFORCE THE EFFICIENCY AND TRANSPARENCY OF COMPETITION POLICY

The current political and economic situation necessitates the continuous modernization of the instruments and procedures available to the Commission, in order to improve the relevance, efficiency and transparency of competition policy.

PRIORITIZATION

I already referred to the need to be more selective in dealing with individual competition cases. For this purpose, several instruments have already been developed. Some of them may need to be broadened or refined further (for example : concept of de minimis). New instruments may need to be considered and we might have to explore the boundaries of current law, in particular procedural rules.

DECENTRALIZATION

Where the Commission has to be selective, the role of national authorities and courts in competition cases becomes more important. The Commission stimulates, where appropriate, more frequent application of the competition rules by national courts and national competition authorities. In cases where an appreciable economic effect is felt mainly in one Member State, national courts and authorities may be better placed to handle the case.

In the field of anti-trust, the preparation of a new notice on cooperation between the Commission and national competition authorities is well advanced, and will complement the existing one on cooperation with the national courts.

Decentralized enforcement should not, however, lead to differing application of competition law in the European Union. The Commission therefore attaches great importance to communication and cooperation between national and Community officials. Moreover, the majority of Member States now have competition laws which substantially resemble those of the Community. This process of "soft harmonization" is a natural consequence of the integration process, which creates pressure for a level-playing field throughout the Community.

In the field of state aid, the subsidiarity principle dictates that the Community must have exclusive competence because Member States cannot be asked to control their own state aid expenditures in a fair way vis-à-vis their neighbours. However, one aspect can be handled at national level : national courts may act upon complaints by the competitors of the firm supported by state aid, and in particular it may control whether required notification and approval procedures have been followed by the Member State. The Commission has also published a notice in this area.

SIMPLIFICATION AND TRANSPARENCY

The current legislative framework on competition is sometimes felt by industry as a too strait-jacket which does not necessarily respond to current economic realities. The Commission is therefore making efforts to simplify and review its policy where necessary. I have already mentioned the new group exemption for technology transfer agreements. In the field of state aid, the Commission started working on a revised and consolidated regional framework. The new notice on state aid of minor importance also simplifies the use of this instrument for Member States.

For the same purpose of simplification and review, the Commission is preparing a green paper setting out different alternatives for future policy in the area of vertical restraints. My services have already started preparing a similar review exercise for horizontal cooperation arrangements (in particular specialization and R&D). It both cases, the results will be submitted to a wide and in-depth public consultation of all interested political and socio-economic partners. I look forward to hearing your views on these matters which I will fully take account of in deciding which line to take.

The Commission is also publishing more frequently guidelines to explain how it intends to apply the competition rules. I refer for example to the guidelines on cross-border credit transfers, the employment aid guidelines and the recently adopted new SME guidelines.

THE IMPORTANCE OF AN EFFICIENTLY ADMINISTERED COMPETITION POLICY

Where structural adjustment is involved, companies are right to expect from the Commission decisions that are efficient, timely and transparent. In the field of merger control, the Commission's record

is particularly successful in this respect. Most of the decisions are taken in the initial examination period of four weeks. The remaining operations (seven in 1995) which enter into an in-depth investigation are completed within another four months.

However, further improvements are still possible. In January of this year the Commission published a Green Paper which seeks to further increase the efficiency of merger control. It examines how to extend the advantage of the one-stop-shop principle to operations with cross-border effects which today may be confronted with the problem of multiple notifications of the same transaction in several Member States. Multiple national filings increase uncertainty, effort, and cost for business and may lead to conflicting decisions.

Your Committee has already been consulted on the Merger Green Paper. I am very grateful for your support to the reduction of the thresholds. I am looking forward to have the opinion of the European Parliament on all aspects of the Green Paper. I can not but stress the role which the European Parliament plays in this whole exercise.

The need for an efficient administrative procedure also exists for cooperation agreements which involve structural changes and important investment. An accelerated procedure has already been introduced for structural cooperative joint ventures. The Commission is now considering whether the current "voluntary" procedure should not be turned into a procedure which sets legally binding deadlines for all full function joint ventures.

INTERNATIONAL COOPERATION

The increasing globalization of the world economy and the changing pattern of modern trade have encouraged the Community to co-operate in competition matters with its trading partners where possible.

The report on competition policy in the new trade order, drafted by an independent group of experts at my request, is a valuable contribution to the necessary development in this field. It recommends on the one hand the strengthening of bilateral cooperation on the basis of the current EC/US agreement, and on the other hand the elaboration of a plurilateral cooperation framework.

On bilateral cooperation, the Commission has already started examining the report's proposals with the Member States' competition authorities with a view to determining how we should proceed.

On the multilateral front, I and my colleagues hope in the coming weeks to be able to present a Commission position with a view to launching discussion on the need for an international framework in the WTO.

Another important task lies in building up our relations with the Countries of Central and Eastern Europe (CEEC), as well as the ex-USSR states and the Mediterranean States. We have experienced competition as an element of democracy. We are convinced that our partner countries can likewise benefit from this experience. We are therefore actively involved in a process of technical assistance and cooperation. I am happy that the CEEC Countries are progressively introducing and implementing our competition rules.

CONCLUSION

Despite the increasing workload, I am convinced that the Commission is perfectly capable of ensuring an effective competition policy, fully adapted to a rapidly changing economic and political environment. Competition policy should be seen and applied in conjunction with other Community policies to form a set of coherent instruments to realise basic Community objectives.

What is sometimes presented as a weakness is a strength. Community competition policy can only be effective, if it takes fully into account the economic and political realities in a rapidly changing common market.

This is one of the major reasons why I do not favour the establishment of a separate European cartel office. Moreover, the actual system ensures a coherent policy as the same authority applies all different competition rules. A separate office would not be an adequate means to increase efficiency, but would rather reduce efficiency.

Finally, and most importantly, the actual institutional framework allows the European Parliament to be closely associated to this policy through its fruitful cooperation with the Commission." ■

ANTI-TRUST RULES

Application of Articles 85 & 86 EC and 65 ECSC
Main developments between 1st April and 31st July 1996

Summary of the most important recent developments

by Joos STRAGIER, DG IV-A-1 in collaboration with Hugo VERLACKT DG IV-F-2 and Stephen RYAN DG IV-F-3

ACCORDS DE COOPÉRATION

Banque Nationale de Paris/Dresdner Bank

Le 24 juin 1996, la Commission a décidé d'exempter pour une période de dix ans, l'accord de coopération entre la Banque Nationale de Paris (BNP) et la Dresdner Bank (DB) (IP/96/567).

L'accord prévoit une coopération globale et en principe exclusive au niveau mondial de la BNP et de la DB. Cette coopération comporte quatre volets. Les deux banques se rapprocheront dans le domaine de leur organisation interne, en particulier par un échange d'information et un développement commun dans le domaine de l'informatique, de la bureautique, des informations économiques, ainsi que des nouveaux produits ou techniques financiers. En deuxième lieu, BNP et DB vont coopérer dans le domaine des financements internationaux, du merchant banking, des marchés des capitaux et du placement des titres. Le troisième volet de la coopération vise à renforcer les possibilités des deux banques d'offrir des services financiers internationaux à leur clientèle respective par l'amélioration et le regroupement de leurs entités dans les pays hors de l'Allemagne et de le France. Finalement, en ce qui concerne les marchés domestiques, chaque partie s'est engagée à mettre à la disposition de l'autre tous ses services au meilleur prix et à offrir lui même la gamme la plus large possible de services en provenance de l'autre partenaire à sa propre clientèle.

L'accord initialement notifié prévoyait que chaque partie peut émettre un véto absolu à un accord de coopération que l'autre partie souhaite conclure avec un concurrent national de la première. Néanmoins, les deux banques ont accepté, suite à la demande de la Commission, de limiter ce droit de refus aux cas où l'accord de coopération avec la tierce banque implique l'utilisation de savoir-faire ou de secrets d'affaires résultant de la coopération entre BNP et DB ou provenant de la banque détenant le droit de véto. Cette modification a été confirmée dans une annexe à l'accord de coopération.

La présence de chacune des deux banques sur le marché national de services bancaires de son partenaire étant plutôt faible, la Commission a d'abord constaté que la coopération dans le domaine de l'organisation, des marchés des capitaux et de la gestion des actifs sur les marchés nationaux respectifs ne conduit pas à une restriction sensible de la concurrence actuelle. La même constatation vaut pour l'engagement de chacune à mettre à la disposition du partenaire ses propres produits bancaires pour qu'il puisse les distribuer sur son marché national. En revanche, la Commission a conclu que ces aspects de la coopération sont en mesure de restreindre de manière non négligeable la concurrence potentielle entre ces deux banques. A cet égard, la Commission a pris en considération les facteurs suivants: le cadre législatif communautaire qui a facilité l'accès des banques aux marchés tierces dans la Communauté; la future introduction de la troisième phase de l'Union monétaire ainsi que l'introduction de la monnaie unique; et les nouvelles voies de distribution de services bancaires. La Commission considère que ces facteurs devraient permettre aux grandes banques universelles, comme les parties en cause, de développer de manière indépendante leurs activités sur des marchés autres que leurs marchés nationaux. Selon la Commission, la coopération est telle que les deux banques n'auront plus d'intérêt économique à faire ainsi.

Néanmoins, la Commission a décidé que les conditions d'exemption sont remplies. La coopération conduira à une amélioration de la production des services financiers offerts aux particuliers et aux entreprises ainsi qu' à une amélioration de la distribution des services et des produits de chacune dans le pays de l'autre. Toutes les restrictions que la Commission a pu constater sont indispensables pour atteindre les améliorations résultant de la coopération. Cela vaut également pour le droit de véto comme il a été modifié sur demande de la Commission. Pour le reste, la coopération ne conduit pas à une élimination de la concurrence sur les marchés allemands et français.

La Commission a fixé la durée de l'exemption à dix ans pour pouvoir

réexaminer éventuellement les effets de la coopération dans un délai raisonnable après la mise en place de l'Union monétaire.

En ce qui concerne les marchés bancaires dans les pays "tiers" qui sont également affectés par la coopération, la Commission n'a pas pu constater une restriction sensible de la concurrence. Cela vaut également pour les activités de dimension internationale, en particulier les activités sur les marchés financiers. Vu la taille relative des deux banques sur ces marchés internationaux, la coopération ne va pas restreindre la concurrence de manière sensible. Au contraire, elle est plutôt favorable à la concurrence en renforçant la position des deux banques au niveau international.

BFGoodrich/ Messier-Bugatti

Dans le domaine des roues et freins pour avions commerciaux, notamment les Airbus A-330/340 et A-321, la Commission a autorisé un accord de coopération entre les sociétés BFGoodrich des Etats-Unis et Messier-Bugatti en France par l'envoi d'une lettre administrative (comfort-letter).

BFGoodrich et sa division BFG Aerospace sont actives dans l'industrie aérospatiale et fabriquent plusieurs composants d'avion. D'autres sociétés du groupe fabriquent des instruments et des équipements électroniques ou sont actives dans la chimie.
Messier-Bugatti est une filiale du constructeur français de moteurs d'avion Snecma. Ses activités comprennent divers composants d'avion comme les roues et freins.

En vue de participer à une soumission pour les roues et freins des avions Airbus A-330/340 et A-321 et de répartir les risques financiers liés à une telle opération, les deux parties ont mis sur pied une filiale commune qui coordonne les activités des sociétés mères concernant les produits destinés aux avions Airbus en question. Ceci comprend notamment le développement en commun des produits, la présentation des offres au constructeur d'avion, la recherche de la clientèle chez les lignes aériennes, l'organisation de la fabrication des composants par les mères et la mise à la disposition de la clientèle d'un service après-vente.

Une caractéristique de ce marché est qu'il est mondial et que le nombre d'opérateurs est réduit, surtout en ce qui concerne les constructeurs d'avions. Pour sauvegarder un degré maximal de concurrence dans ce type de marché il est indispensable que des opérateurs peuvent coopérer dans des programmes de coopération concrets sans pour autant perdre leur liberté de coopérer dans d'autres programmes avec d'autres partenaires.

La Commission a veillé à s'assurer que dans le domaine du service après-vente, où un grand nombre d'opérateurs indépendants sont présents, les sociétés certifiées par les autorités aéronautiques soient assurées d'un accès garanti aux pièces et aux manuels d'instruction nécessaires à la bonne exécution de l'entretien et de la réparation des roues et freins des avions en question.

ORGANISATIONS PROFESSIONNELLES

Fenex

Le 5 juin, la Commission a pris une décision constatant que l'association néerlandaise des expéditeurs Fenex a enfreint l'article 85 en établissant et diffusant des tarifs conseillés d'expédition.

La Commission a pu constater que, pour une période allant du 10 janvier 1989 jusqu'au 1er juillet 1993, Fenex a distribué à ses membres annuellement des listes de tarifs en florins, ou en pourcentages, avec un tarif minimum exprimé en florins pour différentes services d'expédition à prester dans les ports maritimes et aux frontières terrestres.

Etant une fédération d'organisations d'expéditeurs néerlandais jusqu'au 22 juin 1991 et depuis cette date, une association regroupant directement des sociétés d'expédition, Fenex constitue une association d'entreprises au sens de l'article 85 (1).

Lors de la procédure, Fenex a fait valoir que les tarifs en cause n'ont qu'une valeur de recommandation qui ne limite pas la liberté des expéditeurs de fixer leurs tarifs. Cette recommandation ne constituerait pas une décision d'association au sens de l'article 85 (1). Pour la Commission, l'élaboration et la diffusion de tarifs conseillés par Fenex doivent être interprétées comme l'expression fidèle de la volonté de l'association de coordonner le comportement de ses membres sur le marché en cause. La pratique d'élaboration et de diffusion de tarifs recommandés est une activité régulière et constante de Fenex depuis de très nombreux années. De plus, les sociétés membres de l'association avaient manifestement un intérêt commun à coordonner leur comportement en ce qui concerne les tarifs des prestations en cause. En outre, les recommandations tarifaires sont accompagnées de circulaires exprimant la ferme volonté de l'association que ses recommandations soient suivies d'effets. En fin, l'élaboration et la diffusion de tarifs recommandés constituaient pour Fenex une activité pour laquelle elle était clairement habilitée. Conformément à la jurisprudence de la Cour de Justice

(Affaire 8/72 Cementhandelaren contre Commission, Rec. 1972, 977; Affaire 45/85 Verband der Sachversicherer contre Commission, Rec. 1987, 405; voir également affaires jointes 209 à 215 et 218/78 Heintz van Landewyck contre Commission, Rec. 1980, 3125 et affaires jointes 96-102, 104, 105, 108 et 110/82 NV IAZ International Belgium contre Commission, Rec. 1983, 3369), la Commission a considéré que la pratique de tarifs recommandés de Fenex avait un objet anticoncurrentiel.

Par ailleurs, dans sa décision, la Commission a fait une distinction entre la diffusion par une organisation professionnelle de tarifs conseillés d'une part et la diffusion d'indications facilitant pour les entreprises, le calcul de leurs propres structures de prix de revient afin de leur permettre d'établir de façon autonome leurs prix de vente. Les tarifs conseillés sont de nature à inciter les entreprises en cause à aligner leurs tarifs, abstraction faite de leurs prix de revient. Ce risque n'est en revanche pas inhérent à un schéma de calcul de coûts.

Eudim

Eudim est une association de grossistes en matériel pour installations, avec pour objectif de promouvoir le commerce de gros européen dans trois segments : plomberie, chauffage et sanitaires.

La Commission a reçu une plainte contre les membres de cette organisation professionnelle qui auraient enfreint l'article 85 (1) en limitant le nombre des membres à un seul par pays, en appliquant un gentlemen's agreement visant au partage du marché et en échangeant des informations commerciales de caractère confidentiel, notamment sur les prix.

L'existence d'une "règle du marché national" limitant les activités transfrontalières de chacun des membres a pu être confirmée par la Commission au cours de son enquête. En outre, la Commission a pu établir que les membres d'Eudim échangent des informations confidentielles concernant les prix d'achat auprès des fournisseurs d'une part et le marché des clients d'autre part.

La Commission a considéré que l'échange d'informations concernant le marché des fournisseurs n'était pas de nature à restreindre la concurrence sur le marché de gros en cause. S'agissant des informations relatives au marché des clients, la Commission a considéré que les échanges ne restreignaient pas la concurrence dans la mesure où ils étaient limités à des informations générales et non confidentielles. Par contre, l'échange d'informations confidentielles et individuelles, telles que le volume des ventes et les parts de marché, est susceptible de restreindre la concurrence, en particulier sur un marché oligopolistique. Dans le cas d'espèce, la Commission a considéré que le marché de gros du matériel pour installations est trop fragmenté pour être considéré comme oligopolistique. Dès lors l'échange d'informations individuelles et confidentielles entre les membres d'Eudim sur le marché des clients n'aurait pas d'effet sensible sur la structure concurrentielle du marché de gros en cause.

Bienque Eudim a nié l'existence de tout accord territorial, les membres d'Eudim ont indiqué explicitement dans une déclaration formelle que chacun d'eux est libre de vendre ses produits et de s'établir partout où il le juge opportun. Cette déclaration est inclue dans les nouveaux arrangements en vigueur au sein d'Eudim qui ont ont été formellement notifiés à la Commission.

La Commission a indiqué qu'elle a l'intention d'adopter une position favorable à l'égard de ces accords modifiés (Communication faite conformément à l'article 19 §3 du Règlement n 17, JO C 111 du 17.4.96).

MARITIME TRANSPORT : COMMISSION GIVES GREEN LIGHT TO FIVE CONSORTIUM AGREEMENTS

On the basis of proposals from Mr Van Miert, the Commission has recently authorised a series of consortium agreements in the maritime transport sector. These are the first cases involving the application of the regulation which the Commission adopted on 20 April 1995 (see IP/95/409 and Annex) and which grant a block exemption to liner shipping consortia offering international maritime liner services from one or more Community ports. Liner shipping consortia are agreements between shipping companies, the object of which is to bring about cooperation for the joint operation of a maritime liner transport service by means of various arrangements. Four of these consortium agreements, all of which existed before the entry into force of the regulation, have been authorised and may operate until 21 April 2000, the date on which the regulation expires.

So far as the fifth agreement, it is not a consortium falling within the scope of the exemption regulation and has been granted individual exemption.

The Commission has been able to establish that each of these consortia has not only allowed the participating shipping lines to rationalise their activities but has also contributed to significant improvements in the quality and frequency of liner shipping services

offered to shippers as well as, in some cases, the number of ports served. The Commission has checked that the consortia remain subject to effective competition on the routes where they operate thereby guaranteeing that shippers obtain a fair share of the benefits which result from these agreements.

The following five consortia will benefit from exemption.

(1) St Lawrence Coordinated Service

On 13 October 1995, Canada Maritime Limited and Orient Overseas Container Line (UK) notified to the Commission the St Lawrence Coordinated Service (SLCS), a consortium agreement under which these shipping companies operate a joint liner service between the port of Montreal in Canada and various ports in North-West Europe.

On 27 March 1996, the Commission decided not to oppose this agreement and to allow it to benefit from the group exemption. In order to be able to benefit from exemption, the parties agreed to delete, at the request of the Commission, a clause in the agreement which required all goods of Quebec or Ontario origin or destination to be shipped via the port of Montreal, which restricted the possibility of the parties to use, even within the scope of a different agreement, the competing Canadian port of Halifax. This clause was not considered to be indispensable for the objectives of the consortium. The deletion of this clause clearly shows the wish of the Commission not to allow parties to a consortium agreement to impose restrictions of competition relating to routes other than the routes on which the consortium operates.

(2) East African Container Service

On 17 October 1995, six shipping companies notified to the Commission the East African Container Service (EACS), a consortium agreement under which they operate a joint liner service between ports in Europe (including in the UK and Mediterranean) and ports in East Africa and the Red Sea. The six companies are The Charente Steam-Ship Co Ltd, DSR-Senator Lines, Ellerman Lines Ltd, P&O Containers Ltd, WEC Lines, Mediterranean Shipping Company. On 27 March 1996, the Commission a decided not to oppose the agreement and to allow it to benefit from the group exemption.

(3) Joint Mediterranean Canada Service

On 19 October 1995, Canada Maritime Limited and DSR-Senator Lines notified to the Commission the Joint Mediterranean Canada Service (JMCS), a consortium agreement under which these shipping companies operate a joint liner service between the port of Montreal in Canada and various ports in the eastern Mediterranean. On 2 April 1996 the Commission decided not to oppose the agreement and to allow it to benefit from the group exemption.

(4) Joint Pool Agreement

On 20 October 1995, Andrew Weir Shipping Ltd and Euro Africa Shipping Line Co Ltd notified to the Commission the Joint Pool Agreement (JPA), a consortium agreement under which these shipping companies operate a joint liner service for the transport of goods between the British ports of Hull and Felixstowe and the Polish port of Gdynia. On 1 April 1996 the Commission a decided not to oppose the agreement and to allow it to benefit from the group exemption.

(5) Agreement benefitting from Individual Exemption - Exemption Decision of 9 April 1996

On 11 August 1995, Finncarriers Oy Ab and Poseidon Schiffahrt AG applied to the Commission for an exemption under Article 85(3) of the EEC Treaty in respect of the Baltic Liner Conference Agreement. Under the agreement the parties operate a joint service on a jointly agreed schedule at jointly agreed tariff and service arrangement rates. The joint service consists in the provision of regular ferry services for ro-ro, container and rail/ferry traffic between ports and points in Finland and (i) ports and points in Germany (and other Continental points via German ports) and (ii) ports and points in Scandinavia (Sweden, Denmark and Norway), with a small volume of traffic to and from Russia via Finland to those countries.

The parties take joint investment decisions, in particular for the acquisition of vessels and equipment that are specifically designed for the climatic conditions where they operate and which are also specially designed to meet the specific needs of Finnish shippers. The joint service is managed by Finncarriers.

Such an agreement which brings about a highly integrated joint service does not amount to a consortium agreement falling within the scope of the regulation adopted in April 1995 since it does not concern exclusively the transport of goods principally by containers. A large part of the goods are not containerised and the consortium is therefore unable to benefit from the group exemption and must benefit from an individual exemption if it is to be authorised.

In order to obtain the comments of third parties, in accordance with normal procedures, the Commission published a notice in the Official Journal on 16 February 1996 setting out a summary of the application. No observations were received and within a period of ninety days following publication the Commission considered that the conditions of Article 85(3) were fulfilled and decided on 9 April 1996 not to oppose the exemption of this agreement; Accordingly, in accordance with the applicable regulations, the maritime activities are exempted for a period of six years and the inland activities (which in this case are minor) are exempted for a period of three years.

Principal Features of Commission Regulation No 870/95

This favourable treatment on the part of the Commission is explained by the advantages brought about by consortia. In general, they help to improve not only productivity but also the quality and the frequency of the liner transport services offered to transport users by rationalising the activities of the member companies and by the economies of scale which they bring about.

The conditions and obligations that a consortium must respect in order to benefit from the block exemption are set out in article 5 to 9 of Regulation No 870/95. These conditions and obligations are attached to the block exemption in order to guarantee that the requirements of Article 85(3) of the Treaty are fulfilled. Above all, they seek to ensure that consortia are operating in trades where they remain subject to effective competition in order to guarantee that shippers obtain a fair share of the benefits resulting from these agreements.

To that effect, a consortium which wishes to benefit automatically from the block exemption must have a trade share below 30% or 35% depending on whether or not it is a consortium operating within a liner Conference.

The benefit of the group exemption is still available through a simplified opposition procedure to a consortium whose trade share exceeds the limits of 30% or 35% but is not above 50% of the direct trade provided it fulfils the other conditions contained in Regulation No 870/95 and provided the Commission does not oppose exemption within a period of six months counting from the date of notification.

Where a consortium enjoys a trade share above 50% or where it does not fulfil the other conditions which the regulation attaches to the benefit of the block exemption, such an agreement must be notified to the Commission so as to apply for individual exemption pursuant to Article 85(3) of the Treaty.

Finally, the regulation provides a favourable procedural regime for consortia existing at the date of entry into effect of the Regulation As a result, consortia existing on that date which have a trade share higher to 50% but which fulfil the other conditions of the block exemption may, for a period of six months following the entry into force of the Regulation, also benefit from the simplified opposition procedure. [IP/96/400] 96/05/08

ABUSE OF DOMINANT POSITION

Interbrew

Le brasseur belge Interbrew a notifié à la Commission une circulaire interne réglant la politique de commercialisation à suivre par ses filiales en Europe pour les produits du groupe. La circulaire confiait la responsabilité, pour chaque pays concerné, à une filiale spécifique du groupe. En outre, les filiales étaient soumises aux règles suivantes :

- interdiction de vendre les produits dans un autre territoire ;

- transfert de chaque commande d'un acheteur d'un autre territoire vers la filiale responsable du pays concerné ;

- transfert de chaque commande destinée à un autre pays mais émanant d'un acheteur local sans activité commerciale locale vers la filiale responsable ;

- même transfert pour des acheteurs locaux ayant pratiqué des exportations (parallèles) dans le passé, à moins que ces derniers puissent prouver que la commande était destinée à un client du territoire local ;

- même traitement que décrit ci-dessus pour un acheteur local dont les commandes accusent une augmentation disproportionnée par rapport au marché local ; et

- mesures d'accompagnement quant à la reprise des vidanges provenant d'un autre pays.

Par sa notification, Interbrew a demandé à la Commission de se prononcer à l'égard de cette circulaire "intra-groupe" sur la non-applicabilité de l'article 85.

Conformément à l'arrêt de Tribunal de Première Instance du 12 janvier 1995 dans l'affaire T-102/92 Viho Europe contre Commission, la Direction Générale de la Concurrence a d'abord considéré que la circulaire n'est pas constitutive d'un accord restricif de concurrence au sens de l'article 85 (1) en ce qui concerne les relations entre les

entreprises au sein du groupe Interbrew. Il en est autrement de l'obligation pour chaque filiale du groupe de soumettre l'exécution de commandes de certains acheteurs -qui sont supposés d'exporter- établis sur son territoire de responsabilité à une condition d'accepter une clause de destination (qui revient à une condition explicite ou implicite de ne pas exporter). Cette obligation aboutirait à un accord restrictif couvert par l'article 85 (1) au moment que cet accord est effectivement conclu entre quelconque filiale et son distributeur.

Dans l'affaire Viho, le Tribunal ne s'est pas prononcé sur la question de savoir si la politique de distribution de Parker en confiant à une filiale la commercialisation de ses produits dans un Etat Membre et en contraignant les acheteurs à s'approvisionner exclusivement auprès d'une filiale déterminée, pourrait être constitutive d'un abus de position dominante. En effet, le Tribunal a pu constater que dans le cas d'espèce il n'y avait pas suffisamment d'éléments pour conclure que Parker se trouve en position dominante sur le marché concerné.

Dans le cas d'espèce, les services de la Commission ont considéré que Interbrew se trouve en position dominante sur le marché belge de la bière. De plus, la concrétisation des différentes instructions contenues dans le circulaire constituerait un abus de cette position dominante d'Interbrew. Le fait que les comportements abusifs auraient lieu dans un marché géographique relevant autre que celui dans lequel Interbrew est en position dominante, n'exclut pas l'application de l'article 86, dans la mesure où ces comportements ont pour effet de maintenir et/ou à cloisonner les différents marchés nationaux permettant Interbrew de mieux exploiter sa position dominante sur le marché belge.

En particulier, la mise en oeuvre de la politique de distribution comme elle a été décrite dans la circulaire, permettra à Interbrew de protéger le marché belge de la concurrence "intrabrand" des bières d'Interbrew en provenance d'autres Etats membres. En effet, les importateurs parallèles belges, et dès lors les consommateurs belges, se verraient limités considérablement dans leur possibilité de s'approvisionner en bières d'Interbrew en France où certains produits du groupe sont moins chers qu'en Belgique.

Pour ces raisons , la DG IV a envoyé à Interbrew une lettre d'avertissement. Informée de cette prise de position, Interbrew a indiqué que les instructions du circulaire n'ont pas été mise en oeuvre, et elle les a retirées sous réserve de tous ses droits.

L'intervention de la DG IV dans cette affaire confirme sa politique d'interdire toute entrave au commerce parallèle résultant soit d'un accord entre entreprises, soit d'un abus de position dominante. En effet, dans un marché unique, le consommateur doit avoir la possibilité de se procurer un produit là où son prix est le plus intéressant et le commerce parallèle doit pouvoir exercer sa fonction d'arbitrage.

Novo Nordisk

Undertakings have been accepted from Novo Nordisk, the Danish pharmaceutical company, which are designed to ensure competition in the markets for components of Novo Nordisk's insulin self-injection delivery systems.

Novo Nordisk is Europe's leading insulin producer. In 1985 Novo Nordisk introduced a new method of insulin self-injection, the so-called "insulin pen" system. For many diabetes sufferers, this has proved more convenient than traditional self-injection delivery systems such as the hypodermic syringe. About a third of all diabetics in Europe already employ such pen systems and the trend is continuing. The systems consist of an injection device (the "pen"), non-refillable cartridges containing the insulin dosage, and disposable needles. Other companies now produce similar pen delivery systems, including manufacture of the various components, some of which are compatible with Novo Nordisk systems. Compatible components in this context are those which can safely and effectively be used in combination with the Novo Nordisk products, and which do not cause the system to malfunction in any material way.

On the foot of a complaint by US-based medical device manufacturer, Becton Dickinson, the Commission's Directorate-General for competition carried out an investigation and arrived at the preliminary conclusion that Novo Nordisk occupies a dominant position on the insulin market, and on the markets for the various components of pen delivery systems, in most Member States. It concluded that it has been abusing its dominance, contrary to the Community's competition rules, by in some instances disclaiming liability for the malfunction of its pen products, or refusing to guarantee such products, when they are used in conjunction with the compatible components of other manufacturers. Objection was made not only to the explicit disclaimer of liability by Novo Nordisk in such circumstances, but equally to the phrasing of disclaimers in such a way as to create unfounded confusion or uncertainty in the minds of consumers as to the safety or effectiveness of using non-Novo Nordisk components in its pen delivery systems.

Objection was also made by DG IV to the claim by Novo Nordisk that some

components were incompatible with Novo Nordisk systems because of their inability to facilitate the carrying out of an ancilliary and optional "function check" designed to check dosage accuracy. This check was not considered material to the issue of compatibility. Novo Nordisk, while expressly contesting the allegations made in the complaint and the Commission's preliminary conclusions, has now undertaken to take measures which meet the Commission's concerns: liability disclaimers, whether expressed orally or in writing, will no longer be used in relation to the issue of combined use of Novo Nordisk insulin pen products with other manufacturers' compatible components. Novo Nordisk has furthermore indicated that it will not treat other manufacturers' components as incompatible with its pen systems merely on the basis of their inability to enable the ancilliary "function check" for its pen products to be carried out.

The wording of its safety warnings to patients for all relevant packaging, promotional material and product literature will be revised throughout the EEA in accordance with these undertakings. These changes, including adaptation of existing stock, will be introduced on a country by country basis as soon as the necessary regulatory approval has been obtained. Clear instruction concerning the new position will also be given to Novo Nordisk sales and marketing staff in all EEA countries.

Deutsche Telekom

On the 25th of June, Commissioner Karel Van Miert sent a letter to the German Minister of Post and Telecommunications, Mr Wolfgang Bötsch marking his agreement on a series of conditions for the introduction of new business customer tariffs by Deutsche Telekom.

Deutsche Telekom AG's (DT) had originally planned to introduce new tariffs as from 1 January 1996. The Commission consequently launched an own initiative investigation concerning DTs plans for the introduction of rebates for providing voice services to business customers in order to assess whether the public telecom operator is abusing its dominant position. Such abuse could result in unfair elimination of new competition in that part of the business market which has recently been liberalised. The Commission had also received a complaint (January 1996) from all the major competitors of DT in the recently liberalised areas of network and business voice services in Germany (CNI, RWE, Telliance, Plusnet, Meganet, Viag Intercom, Worldcom).

In a provisional assessment of the proposed tariff scheme the Commission's Directorate General for Competition concluded that the new tariffs were incompatible with the competition rules of the Treaty. It was clear in particular that the tariffs would discriminate in favour business customers vis a vis residential customers, that they would have 'price squeezing' effects on competitors, and that they represented "bundling" i.e. the undue linking of the provision of monopoly and competitive services. The modifications and conditions now agreed between Commissioner Van Miert and Mr Bötsch aim at eliminating these problems.

The Commission requires that the following conditions are met:

- New business customer tariffs will not enter into force before 1 November 1996.

- The new tariffs will not be applied retroactively.

- The Federal Minister of Posts and Telecommunications confirms that on the date of entry into force of new business customer tariffs at least two licences for the construction or ownership and control of alternative infrastructure for the provision of liberalised services have come into force in Germany.

- The Federal Minister of Posts and Telecommunications undertakes to ensure, that new access agreements between Deutsche Telekom and its competitors for the "break in" and "break out"[Passing calls into and out of DT's network] of DT's public switched telecommunications network are concluded at the latest at the time of entry into force of the new business customer tariffs. He will encourage the parties to initiate negotiations on such agreements immediately.

- Deutsche Telekom will ensure a strict separation between its general voice telephony offerings by Deutsche Telekom AG and the offering of Corporate Network solutions at least until 1 January 1998. (6) Deutsche Telekom must offer trial rebates to domestic customers before the new business customer tariffs enter into force. These rebates will be generally applied as from 1 January 1997 at the latest.

Since these conditions will meet the Commission's concerns regarding the compatibility of DT's proposed tariffs with the competition rules of the Treaty, Mr Van Miert said in his letter that he intends to suspend the Commission investigation until the measures requested have been fully implemented, and that he would recommend the Commission formally close the procedure once these conditions are met.

The implementation of these measures is also expected to have important positive effects on the broader competitive structure of German telecoms markets. In particular:

- The introduction of the new tariffs will be delayed until the effective opening of alternative infrastructures and until one year before the introduction of full competition for voice telephony.

- Corporate Network providers competing with DT will get favourable terms of access (lower tariffs) for the network "break in" and "break out".

- A clear separation of DT's offerings will increase market transparency for its customers - Residential customers will benefit from rebates introduced in parallel with the rebates for business customers.

A number of telecommunications organisations in the European Union are currently considering major reform of their tariffs in preparation for full liberalisation of telecoms markets in 1998. The Commission encourages the rebalancing of tariffs in so far as this reflects commercial adaptation to competitive conditions. However, until full liberalisation is achieved close attention must be paid to the effects and motivations of tariff reforms.

Currently competition is growing in the recently liberalised markets such as business and data services, while other areas, such as access to end customers and public voice telephony, will mostly remain closed until 1998. In this run up period there is a risk that incumbent telecommunications operators may restructure tariffs in such a way as to exploit the difference between increasing price elasticities in the competitive markets and the lower price elasticity (due to absence of competition) in the latter. This could harm the new suppliers of liberalised services, by "price squeezing" them out of the market.

During the current adjustment period, the Commission will therefore pay special attention to these aspects, in order to avoid anti-competitive effects.

[IP/96/543] 96/06/25

Press releases

The full texts of Commission's Press releases are available on-line from the RAPID database, on the day of their publication by the Commission's Spokesman's Service. To obtain access to RAPID, please write to ***EUR-OP Information, Marketing and Public Relations (OP/4B)*** *2 rue Mercier L-2985 Luxembourg tel. +352 2929 42455, fax +352 2929 42763*

COMMISSIONER VAN MIERT SATISFIED WITH VISA DROPPING ITS PROPOSED RULE

Mr Van Miert, the EU competition Commissioner, has announced that he is satisfied with the recent decision of the EU Board of Visa International to drop the proposal that would have banned its members from issuing competing cards. Before Visa's Board meeting, Mr Van Miert has warned taht Visa's propsal could not be accepted. Visa USA also confirmed to the Commission that its rules do not prevent the EU branches, parnts or subsidiaries of Visa USA members from issuing competing cards. As a consequence, the Commission's Directorate General for Competition (DG IV) intends soon to close its investigation of these matters.

This investigation was launched in January after some of Visa's competitors, such as American Express and Dean Witter Discover, made formal complaints to the Commission. The Commission's DG IV has reached the preliminary view that Visa's proposal, if adopted, would have infringed the EC competition rules because it would have restircted competition between international cards systems as well as between banks wich issue cards riding on those systems. The Commission is determined to ensure that payment card markets are kept open and that access by new competitors is not impeded. IP/96/585 [96/07/03]

Other press releases

IP/96/432 : FINANCIAL SERVICES: MEETING CONSUMERS' EXPECTATIONS - COMMISSION ADOPTS GREEN PAPER [96/05/22]

IP/96/456 : ELSINORE PORT OPENED FOR ACCESS TO A NEW COMPETING FERRY SERVICE [96/05/30]]

IP/96/462 : COMMISSION CLEARS BRITISH GAS NETWORK CODE [96/05/31]

IP/96/627 : THE COMMISSION PROHIBITS TARIFF CONCERTATIONS IN THE FIELD OF THE AIR TRANSPORT OF CARGO [96/07/10]

IP/96/629 : CARTEL BUSTING : COMMISSION FORESEES LOWER OR NO FINES FOR COMPANIES DISCLOSING EXISTENCE OF ILLICIT PRACTICES [96/07/10]

IP/96/685 : MONITORING THE APPLICATION OF COMMUNITY LAW - 1995 REPORT [96/07/23]

IP/96/695 : NEW MECHANISM FOR REGULATORY TRANSPARENCY WITH REGARD TO INFORMATION SOCIETY SERVICES [96/07/24

IP/96/713 : EU'S DUTY-FREE ARRANGEMENTS UNSATISFACTORY [96/07/29]

IP/96/718 : COMMISSION TO CARRY OUT DETAILED INQUIRY IN FINNISH SUPERMARKET CASE [96/07/26]

Court Judgements

*These summaries of Court Judgements have been prepared by DG IV officials and represent their **personal views** on the Judgement. These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's or DG IV's views. The CELEX document numbers for these Judgements are also included within brackets.*

THE ENGLISH HIGH COURT'S JUDGMENT IN IBERIA U.K. LTD V (1) BPB INDUSTRIES PLC AND (2) BRITISH GYPSUM LTD

The facts

The defendants (BPB Industries Plc and British Gypsum Ltd) are major suppliers of plasterboard to the UK and for the purposes of Article 86, occupy a dominant position in that market. When the plaintiff (Iberian UK Ltd) began to import cheaper Spanish plasterboard to the UK, the defendants took steps to protect their market. The plaintiff have complained to the Commission of abuse of dominant position by the defendants. Having initiated infringement proceedings, the Commission adopted a decision (89/22) in which it found breaches of Article 86 and imposed fines on both defendants. This decision was subsequently appealed to the CFI (Case T-65/89) and then to the ECJ (Case C-130/93P). In both cases the appeals were dismissed in their entirety.

The plaintiff also brought an action for damages in the English High Court alleging that, contrary to Article 86 of the Treaty, the defendants had acted in breach of their statutory duty so as to abuse their dominant position. It is in this context that the High Court dealt with the issue of whether a party could, in national proceedings, rely on conclusions of facts and issues reached by the Commission, the CFI and the ECJ in related proceedings. In essence, the plaintiff wanted to be able to proceed with its claim without having to prove from scratch that the defendants had abused their dominant position.

Legal background: "res judicata" and abuse of process

The plaintiff's arguments were based largely on the common law doctrine of "res judicata" in the form known as "issue estoppel". Namely, a party to civil proceedings is not entitled to make against the other party an assertion, if the same assertion was made in previous civil proceedings between the same parties and found to be incorrect. The plaintiff claimed that it is not open to either party to relitigate in the High Court issues which have been determined in the resolution of that dispute in European proceedings.

The High Court gave consideration to the nature of Commission proceedings in competition cases and held that in relation to Article 85 and 86 investigations, although proceedings took on an adversarial character, they were administrative in nature and could not be treated as civil for the purposes of issue estoppel.

Alternatively, the plaintiff argued that it would be an abuse of process for the defendants to deny the correctness and applicability of the findings in the European proceedings.

The High Court held that even though the facts did not fall squarely within the doctrine of issue estoppel, the doctrine could be extended beyond the above definition. In any case it was irrelevant whether not being able to relitigate previously decided facts and issues is termed issue estoppel or abuse of process, since both are manifestations of the same group of public policy considerations.

Relationship between national and European proceedings

In examining public policy considerations, the court looked at the relationship between national and European proceedings and, in particular, the risk of conflicting decisions associated with the competence the Commission shares with national courts in applying Article 85(1) and 86. The court referred to certain principles on the avoidance of conflicting decisions. These are restated in the Commission's notice on cooperation between national courts in applying Articles 85 and 86 of the EEC Treaty (OJ C 39, 13.2.1993) (at paragraphs 18, 19 and 33). These principles are worth citing here.

In Stergio Delimitis v. Henniger Brau [1991] ECR I-935, the ECJ held that:

"conflicting decisions would be contrary to the general principle of legal certainty and must, therefore, be avoided when national courts give decisions on agreements or practices which may subsequently be the subject of a decision by the Commission..."

This was consistent with the ECJ's decision in Foto-Frost v. Hauptzollamt Lübeck-Ost [1987] ECR 4199:

"Divergences between courts in the Member States as to the validity of Community acts would be liable to place in jeopardy the very unity of the Community legal order and detract from the fundamental requirement of legal certainty."

Also, Advocate General Van Gerven in H J Banks & Co. Ltd. v. British Coal Corporation [1994] ECR 1209 stated that:

"the duty of cooperation which.... Article 5 of the EEC Treaty imposes on the national court (and which applies expressly to acts of the institutions) entails for the national court the obligation in relation to a decision adopted by the Commission and relied upon or challenged by the parties before the court, to mitigate as far as possible in the interests of the Community the risk of a ruling that conflicts with that decision."

The High Court also quoted a number of English authorities in support of the proposition that the English court should order a stay, where to do otherwise would run the risk of conflicting with the Commission's decision.

The High Court's Conclusions

On the basis of the above, the High Court concluded the following:

1. The English courts should take all reasonable steps to avoid or reduce the risk of arriving at a conclusion which is at variance with a decision of, or on appeal from, the Commission in relation to competition law.

2. Except in the clearest cases of breach or non-breach, it will be a proper exercise of discretion to stay proceedings in the English courts to await the outcome of the European proceedings.

3. It follows that if as a matter of public policy national courts are required to stay proceedings pending the resolution of European competition proceedings, then the latter should have a major impact in proceedings before the national court (otherwise there is no point in there being a stay).

4. Where, as here, the parties have disputed the same issues before the Commission and have had real and reasonable opportunities to appeal from an adverse decision, there is no injustice in obliging them to accept the result obtained in Europe. Therefore, whether expressed in terms of res judicata or abuse of process, it would be contrary to public policy to allow persons who have been involved in competition proceedings in Europe to deny in the English courts the correctness of the conclusions reached in Europe. It would be an abuse of process to allow the defendants to mount a collateral attack on the Commission decision in proceedings against any party before any national court.

5. Thus the Commission Decision, the judgment of the CFI and/or the opinion of the AG and the judgment in the ECJ are conclusive of facts and issues in the relevant national proceedings. The defendants, being addressees of these decisions are bound by them. The issue of whether such decisions were admissible did not arise in this case, but the court held that a stay of the national proceedings followed by mere admissibility of the result in Europe would enable at least one of the parties to plead arguments as to why the Commission, the CFI and the ECJ were wrong. This goes against the cases cited above. C. MITROPOULOS [694J0018]

Other Judgements

Extracts are published in the weekly publication " Les activités de la Cour de Justice et du Tribunal de Première Instance des CE", available on-line from the RAPID database, a few days after its publication.

Conclusions de M. C.O. Lenz du 25 avril 1996 : Aff.C-73/95 P Viho Europe BV / Commission; Pourvoi contre l'arrêt du Tribunal, rendu le 12 janvier 1995, dans l'affaire T-102/92 - Annulation de la décision de la Commission rejetant la plainte de VIHO visant à faire constater une infraction à l'art. 85, par. 1, du traité CE de la part de Parker Pen (IV/32.725 - VIHO/Parker Pen II) - Obligation imposée par la société mère à ses filiales de se limiter à leur zone de distribution

Arret de la Cour du 2/5/96: Aff. C-18/94 Barbara Hopkins e.a. / National Power plc e.a.; Prejudicielle; Traite CECA Discriminations entre producteurs Application des art. 4 et 63 du traite. Effet direct - Abus de position dominante Art. 86 du traite Reparation des dommages resultant de la violation de ces dispositions Competences respectives de la Commission et du juge national; (Sixieme chambre)

Conclusions de M. D. Ruiz-Jarabo Colomer du 27/6/1996 Aff. C-333/94-P; Tetra Pak International SA / Commission ; Pourvoi contre l'arrêt du Tribunal dans l'affaire T-83/91 opposant Tetra Pak International à la Commission - Refus d'annuler la décision 92/163/CEE de la Commission relative à une procédure d'application de l'art. 86.

Ordonnance du Tribunal du 3 juin 1996, Aff. T-41/96 R Bayer AG / Commission; Concurrence, Procédure de référé; Sursis à exécution

Arrêt du Tribunal du 11 juillet 1996, Aff. T-528/93, T-543/93, T-546/93 Métropole Télévision / Commission; Annulation de la décision (CEE) 403/93 de la Commission du 11 juin 1993 - inapplicabilité de l'art 85 § 1 aux disposition statutaires de l'UER-Restrictions dans l'accès au marché des spectatcles sportifs retransmis en Eurovision.

Conclusions de M. Tesauro du 9 juillet 1996 Aff. C-282/95-P Guérin Automobiles / Commission

Conclusions de M. Lenz du 11 juillet 1996, Aff. C-264/95 P Commission / UIC Billets de transports ferroviaires

MERGERS

Application of Council Regulation 4064/89
Main developments between 1st April and 31st July 1996

Summary of the most important recent developments

Kristin SCHREIBER, DG IV-B-4

NUMBER OF CASES AND DECISIONS

The second quarter of 1996 has seen an increase in the number of decisions taken by the Commission under the Merger Regulation. Between 1st April and 22nd July, the Commission took 54 decisions under the Regulation. This total includes one prohibition decision under Article 8(3) of the Regulation (Gencor/Lonrho), three decisions under Article 8(2) of the Regulation (clearance with conditions and obligations : Ciba-Geigy/Sandoz and Holland Media Groep; clearance without conditions : Shell / Montecatini- the two latter decisions replacing earlier decisions adopted by the Commission) as well as four decisions under Article 6(1)(c) of the Regulation to begin in depth "Phase 2" investigations into cases on which the Commission had serious doubts (Ciba-Geigy / Sandoz, Telefonica / Sogecable / Cablevision, Kesko / Tuko and Saint Gobain / Wacker Chemie /NOM).

This brought the total number of cases on which decisions have been taken during the first half of 1996 (up to 31st July) to 73.

Gencor/Lonrho

Following five months of detailed investigations, the Commission decided on 24th April 1996 to declare incompatible with the common market the proposed merger in the platinum sector between Impala Platinum, controlled by the South African company Gencor and Lonrho platinum division (LPD), a South African subsidiary of the British Company Lonrho PLC.

Both Gencor and Lonrho have substantial operations in the European Union. The Commission considered that the merger would lead to the creation of a duopoly dominating the world market for platinum and rhodium as a result of which effective competition would be significantly impeded in the common market within the meaning of Article 2(3) of the Merger Regulation.

The parties have - seen relatively - lower market shares in the Common market than in other parts of the world and have argued that the operation would, therefore, only have a minor impact on the common market. However, the platinum market is a world market and prices for platinum are set at the world market level. Therefore, anticompetitive effects of the operation in the platinum market would be felt in the European Community, for example through higher prices, for all the platinum sold in Europe.

The merger between Gencor and Lonrho would have enabled these two companies to reach roughly equal market shares in the platinum market as the other South African Group Amplats (Anglo American Platinum Corporation); i.e. approximately 35% each, the other major supplier being Russia with an approximate market share of 25%. Half of the Russian supplies come from stocks.

In addition to this situation with regard to market shares, it has to be noted that the market for platinum has special features which increase the potential for the existence of a dominant duopoly :

1) Only 20% of the trade in platinum is transacted in the exchanges of London, New York and Tokyo. The bulk (80%) of the trade is determined by long-term contracts.

2) The demand for platinum in its three major fields of application is inelastic at current prices since there are virtually no substitutes for platinum. The three major uses for platinum are jewellery (38%), the manufacturing of motor car catalytic converters (32%) and industrial catalysis applications (20%), particularly in chemicals, glass manufacturing and the production of liquid crystals for television and computer screens.

3) Purchasers have a very limited margin for negotiations and clearly no countervailing buyer power.

4) On the supply side, the absence of genuine alternatives is an important factor, especially given the distribution of world reserves. The South African groups control 90% of world reserves, the remaining 10% being located in Russia.

Since Russia started in 1990 to lower its stock levels, these stocks may be reduced to almost zero by the end of the century.

5) Over recent years two main elements have contributed to the relative fall in platinum price : the Russian stock liquidation and Lonrho's relatively low production costs. Lonrho's absorption in the planned merger would therefore have led to less competition in the market.

It is worth underlining that, from the outset of the procedure, the South African Authorities have been kept informed by the Commission of developments in this case and have attended the hearings organised in Brussels.

Ciba-Geigy/Sandoz

On 17th July, after four months of extensive investigations, the Commission approved the proposed merger between Ciba-Geigy and Sandoz into Novartis. The decision was granted under the condition that the parties comply with an undertaking given in the area of animal health.

The activities of Ciba-Geigy and Sandoz overlap in four areas : health care (where Novartis will become the second largest producer behind Glaxo Wellcome), animal health (number 2 behind Pfizer), crop protection (number 1) and seeds (number 2 behind Pioneer). Ciba has an aggregate worldwide turnover of ECU 13.1 billion, Sandoz of ECU 9.1 billion.

The Commission decided to open proceedings on 2nd May because of serious concerns with regard to the merger's compatibility with the Common Market. At that time, it could not be excluded that the merger would lead to the creation of dominant positions in a number of markets, not least because of its complexity and because of the combination of Ciba-Geigy's and Sandoz tremendous research and development potential. Further investigations eliminated all but one of these concerns. Indeed, while over 100 affected markets were identified, the merger is predominantly of a complementary nature.

Even in overlapping markets, market share additions were found, in most cases, not to be significant and where they are, the merger will nevertheless not lead to a dominant position. Novartis will continue to face competition in all areas from a number of major competitors, including Glaxo Wellcome, Upjohn Pharmacia, Bayer, BASF, Agrevo, Rhône-Poulenc and many others. The presence of these competitors and the real possibility of market entry as well as the price restraining effects of generics (both in the health care and the crop protection area) will ensure that markets remain dynamic.

The Commission also examined very closely the R&D activities of the merging parties. While the merger will result in a significant combined R&D potential - Novartis having for instance twice as large a potential as the next competitor in crop protection R&D - it was considered that enough other companies have the required "critical mass" at their disposal to alleviate concerns.

Commission's investigations in the R&D area focused on developments in the field of gene technology and gene therapy in which the parties have a particular strength. In the course of its investigations, the Commission established that the two companies could, as a result of holdings in U.S. companies, have exclusive access to a combination of possible future patents in the area of particular gene therapies for brain and other tumours which might result in foreclosure effects.

However, given a number of uncertainties linked notably to the unclear patent situation (the patents in question have not yet been granted), as well as to doubts about the success of the method of treatment and about the possibility of technically circumventing the patents, the Commission concluded that it can not be said with sufficient probability that the merger will lead to the creation or strengthening of a dominant position on any future market. However, the Commission has taken note that the merging parties have declared their readiness to use their influence so that non-exclusive licenses shall be granted for those possible future patents which might cause the foreclosure.

The remaining competition concern related to the market for small animal

ectoparasiticides (SAE), mainly products for treatment of fleas and ticks in cats and dogs.

This market can be split in two ways : according to the place where the product is administered (the animal or the environment) and according to the nature of the product (" adulticides" killing mostly adult parasites and Insect Growth Regulators (IGR's) which interrupt the reproductive cycle of the parasite).

Adulticides and IGR's cannot be considered as full substitutes. The merging parties will have a particularly strong position in the important IGR market segment. Ciba-Geigy and Sandoz control three out of the five worldwide available active substances.

In terms of the SAE market's development, access to IGR active ingredients is crucial for competitors' ability to develop IGR products. Access to one active ingredient of Sandoz (methoprene) has been of particular importance to competitors. In order to solve the identified competition problem, the parties have undertaken to grant non-exclusive licenses for methoprene and to supply the licensees with this active ingredient until the commencement of production by the licensee, but for a maximum period of 2 years.

Subject to the condition of full compliance with this commitment made by the parties, the Commission declared the concentration compatible with the Common Market and with the functioning of the EEA agreement.

Bosch/Allied Signal

On 10th April 1996, the Commission approved the acquisition by Robert Bosch GmbH of Allied Signal's total worldwide hydraulic brakes business, including anti-block systems (ABS) for hydraulic brakes. While Bosch does not manufacture hydraulic brakes and related components, Allied Signal reaches slightly over 30% market share in the "actuation systems" market (behind the leading ITT and ahead of Lucas) and just under 20% in the "foundation systems" market (after Lucas and ITT).

The Commission particularly examined the market for ABS for hydraulic brakes for which Bosch has an EEA market share of 50% (30% on a worldwide basis) a share which has, however, been continuously diminishing. Allied Signal only has low market shares, both on a worldwide basis and in the EEA. Apart from ITT, none of Bosch's competitors in the EEA market (Kelsey-Hayes, Nissin Kogyo and Lucas) reach market shares of over 5%. The Commission concluded that the concentration would not create or strengthen a dominant position of Bosch because of ITT's significant and increasing market share nor would it lead to an anticompetitive oligopoly consisting of Bosch and ITT.

Indeed, the demand side of the ABS market is very powerful. In addition, ABS are an inhomogeneous, very complex technical product, in which there is constant innovation and where special instructions from car manufacturers play an important role. It is a market characterized by great uncertainty about future trends which can therefore be expected to give rise to an intensification of competition.

This market analysis of the Commission was to a certain extent confirmed by the decision of **Lucas and Varity** to enter into a full merger which was approved by the Commission on 15th July. Although Varity, through its subsidiary Kelsey-Hayes is the world's largest producer of ABS, its current market share in Europe is indeed just under 5%, with Lucas reaching an even lower share. It is therefore expected that the merger will provide the new entity with the potential to compete effectively with the leading integrated brakes manufacturers and in particular with Bosch and ITT.

Holland Media Groep (HMG)

On 17th July 1996 the Commission approved the Dutch TV joint venture Holland Media Groep SA (HMG) in a modified form. Initially HMG had been set up as a joint venture between RTL4 SA (RTL), Vereniging Veronica Omroeporganisatie (Veronica) and Endemol Entertainment Holding BV (Endemol) for the operation of the three Dutch general interest channels RTL4, RTL5 and Veronica. Following an in depth investigation, on 20th September 1995, the Commission declared this operation - which had already been completed - incompatible with the common market.

The Commission's investigation of this case was initiated following a request from the Dutch government to this effect, based on Article 22 of the Merger Regulation. Since the required turnover thresholds set out in

the Merger Regulation were not reached by the parties, the Commission would, in the absence of the Dutch request, have had no jurisdiction to deal with the case. However, given that there is no suspension effect for cases under Article 22, the parties had been entitled to complete the operation.

In its decision of 20th September the Commission concluded that the HMG joint venture would lead to the creation of a dominant position on the TV advertising market in The Netherlands and to the strengthening of Endemol's already existing dominant position on the Dutch TV production market.

As a reaction to the Commission's Article 8.3 decision, Endemol completely withdrew its participation in HMG. Furthermore, HMG entered into the commitment vis-à-vis the Commission to transform RTL5 from a general interest channel into a news channel.

The withdrawal of Endemol from HMG has removed the structural link between the largest Dutch TV producer and the leading commercial TV broadcaster in The Netherlands, a link which resulted in the strengthening of Endemol's dominant position.

After the withdrawal, HMG will no longer have the preferential access to Endemol's productions. In addition, the withdrawal from HMG also allowed Endemol to set up a new sports channel in The Netherlands, together with other parties.

Furthermore, after the transformation of RTL5 into a news channel, HMG will only operate two general interest channels with coordinated program schedules, giving thereby more room for competing general interest channels. Finally, the largest part of the current market shares of RTL5 in the TV advertising market will be probably set free for competition. Taking also into account the future market entry of the new sports channel, it can be expected that the current market share of HMG in TV advertising will decrease to a level which would be close to the position of RTL4 and RTL5 before the creation of HMG which was around 50%.

In view of the modifications of the joint venture and on the basis of HMG's commitment vis-à-vis the Commission with regard to RTL5, the Commission was now able to declare the concentration compatible with the common market and to adopt a decision based on Article 8.2 of the Regulation.

Amendment of Shell/Montecatini Decision

On 24th April 1996, the Commission decided to amend its Decision 94/811 EC of 8.6.1994 which had authorized the establishment of Montell, a joint venture in the polyolefins sector between Shell and Montedison, subject to conditions and obligations corresponding to commitments given by the parties. In its initial Decision, the Commission considered that, as a result of the establishment of Montell, two fully-owned subsidiaries of the Royal Dutch/Shell group of companies would be linked with the two leading technologies for the manufacture of polypropylene (PP). These were : Montedison's Spheripol technology and the Unipol technology developed by Union Carbide Corporation (UCC) and Shell Oil, a Royal Dutch/Shell US subsidiary. In particular, Shell would be the industrial leader of Montell, which would develop and market Spheripol, while Shell Oil would be an important contributor to the Unipol technology package through the supply of catalysts.

In the Commission's view, Royal Dutch Shell's control over the competitive behaviour of its two subsidiaries would affect the rivalry between Spheripol and Unipol, which was the main competitive relationship on the market for the licensing of PP technology and associated services. Other existing PP technology providers or potential entrants into the market were not likely to represent a significant constraint on the exercise of market power by the parties in the short to medium term. For these reasons, the Commission concluded that the notified concentration would lead to dominance on the PP technology market unless Montedison's PP technology business would be kept separate from Montell. The Decision, therefore, contained a condition which required that Montedison's Polypropylene (PP) technology business would remain outside Montell and would be transferred to a separate company, Technipol.

However, after the adoption of the original decision, Shell Oil divested all its interests and assets in the PP technology business to Union Carbide Corporation (UCC), including its interests and assets in the Unipol technology business. In the light of these developments, the parties asked the Commission to review its original Decision, in order to assess whether

the separation of Montedison's PP technology business from Montell was still necessary.

The Commission's investigation showed that, following the divestiture, Unipol would fall outside the scope of influence of Shell and UCC would be endowed with all the necessary assets and resources to continue competing effectively against Technipol on the market. The divestiture of Shell Oil's business on its own would therefore ensure that the creation of Montell would not lead to a dominant position on the market for the licensing of PP technology. The separation of Montedison's PP technology business from Montell was therefore no longer a necessary condition from the point of view of Community competition law.

On this basis, the Commission amended its original decision by revoking the conditions and obligations relating to Montedison's PP technology business. The possibility for such a review was expressly provided in the original Decision itself (par. 118).

GEHE/Lloyds Chemists (Referred to UK)

On 22nd March 1996, the Commission decided that the public bid by GEHE for Lloyds Chemists should be referred to the UK Competition Authorities for further investigation. At that time, Lloyds was already subject to a bid by UniChem, another leading British chemist. This parallel UniChem bid for Lloyds did not fall under the Merger Regulation and had already been referred by the UK Competition Authorities to the Monopolies and Mergers Commission (MMC). Referral of the GEHE/Lloyds case to the UK Authorities therefore presented the advantage of allowing both bids to be examined by the same regulatory authority on a coordinated timeframe.

Lloyds owns the second largest (after Boots) chain of retail pharmacies in the UK with over 900 outlets and has in recent years entered the business of pharmaceutical wholesaling, now being the third largest UK wholesaler. Through its AAH subsidiary, GEHE is the largest pharmaceutical wholesaler in the UK and, at the retail level, GEHE also owns a large chain of some 360 retail pharmacies. UniChem is the second largest UK wholesaler and owns a chain of around 400 retail pharmacies.

On 19th July, the UK Secretary of State for Trade and Industry announced that DTI accepted the conclusion reached by MMC that both the UniChem and the GEHE bid for Lloyds would operate against the public interest in the wholesale pharmaceutical market. (The retail pharmacy sector is not expected to be adversely affected by either merger). It was decided by the UK that neither merger could go ahead unless UniChem and GEHE undertook, by 18th October, first to divest certain pharmaceutical wholesaling businesses operated by Lloyds and, second, identified, within the same deadline, a firm buyer or buyers with whom agreements in principle have been reached to purchase the depots concerned. Those buyers would have to be unconnected with the company acquiring Lloyds and should be capable of running the depots as effective full-line wholesaling businesses. Buyers will have to be approved by the Secretary of Trade and Industry. He announced that if no such undertakings are given or if no suitable buyers are identified by the cut-off date, either or both mergers will be blocked.

It is worth underlining that, with regard to the substance of the issue, the conclusion reached by MMC is fully consistent with the result of the Commission's investigations.

Telefonica / Sogecable / Cablevision

On 26th July 1995 Telefonica and Sogecable together with Canal Plus, Spain agreed to merge their activities relating to the supply of services to operators of cable, audiovisual and television services in a joint venture, Cablevision. This joint venture also has indirect effects on the voice telephony and data communications markets. At the time, the companies concerned considered the operation to be of a purely national dimension and no notification was made to the Commission. On 1st March 1996, the Spanish Government authorized Cablevision as a concentration with national dimension. The operation was completed and Cablevision has been active on the market for several months. However, the Commission took the view that the operation required notification under the Merger Regulation (see also below) and the parties finally submitted a notification on 31st May. On 19th July 1996, the Commission decided to initiate an in depth investigation of the operation because of serious doubts with regard to its compatibility with the common market. The Commission notably

believes that the concentration could, on the one hand, lead to foreclosure effects by preventing market entry of new competitors into the market of services to operators of cable, audiovisual and television services and, on the other hand, delay the effects of the forthcoming liberalisation of the market for voice telephony in Spain. The Commission initiated detailed "Phase 2" investigations in two other cases: Kesko/Tuko and Saint Gobain/Wacker Chemie/NOM.

Kesko/Tuko

On 26 July the Commission decided to open proceedings on the acquisition of Tuko Oy by Kesko Oy. Kesko and Tuko are active in Finland in the wholesale and retail of daily consumer goods (both food and non-food products) and specialty goods (including building materials, clothing, shoes and household electronics).

As in the Holland Media Groep case, the Commission's investigation was initiated following a request from a Member State to this effect, based on Article 22 of the Merger Regulation. In the absence of the Finnish request, the Commission would have had no jurisdiction to deal with the case since both Kesko and Tuko achieve more than two thirds of their Community-wide turnover in one Member State, Finland.

The decision to open proceedings was based on serious doubts as to the compatibility of the acquisition with the common market. During the detailed investigation of the case, particular attention will be devoted to the high market shares in the Finnish market, notably in the area of daily consumer goods. In addition, foreclosure effects for potential competitors wishing to enter the Finnish market as well as for suppliers of daily consumer goods cannot be excluded and will have to be closely examined.

Saint-Gobain/Wacker Chemie/NOM

On 31st July the Commission opened proceedings for a detailed investigation of the proposed joint venture between two subsidiaries of Saint-Gobain and Wacker Chemie and NOM (a private state-owned Dutch investment and development company) for the manufacture, processing, marketing and sale of silicon carbide.

Silicon carbide is a synthetic, extremely hard and heat resistant mineral which is used among other application in the abrasives, the refractory and the iron and steel industry.

The Commission is concerned that the proposed joint venture may lead to a dominant position in silicon carbide for abrasive and refractory applications in the EEA. The operation will, indeed, combine the two most important Western European producers of silicon carbide, under the leadership of Saint-Gobain, which will in this process become by far the largest producer of silicon for these applications in the EEA. Additional concerns stem from the fact that Saint-Gobain's silicon carbide business is vertically integrated and from the possibility that, if dominant positions were identified, this vertical integration could further distort competition.

Key issues during the investigations will be the possibility to use substitutes for silicon carbide in abrasive and refractory applications as well as to source silicon carbide for these applications from outside the EEA.

Final decisions on this case as well as on Kesko / Tuko and Telefonica / Sogecable / Cablevision shall be adopted by the Commission at the latest by end of November / beginning of December.

COURT DECISION ON SOGECABLE

On 12.07.1996 the Judge President of the Court of First Instance (CFI) decided to reject the request from Sogecable for interim measures by declaring the appeal irreceivable.

Sogecable had brought action against the Commission before the CFI asking the Court to quash the Commission "decision" allegedly taken on 6.2.1996 (letter from the Director General of DG IV informing the parties that, on the basis of the information in the Commission's possession, Cablevision was a concentration with a Community dimension within the meaning of the Merger Regulation) and subsequently requested interim measures under Articles 185 and 186 of the Treaty.

Sogecable notably asked the Court to decide that the Commission will not take any decision under the Merger Regulation in particular with regard to Articles 8, 13, 14 and 15 (definitive decisions on the compatibility of the concentration with the Common

Market or imposing fines to the undertakings) before the Court would rule on the validity of the acts challenged in the main appeal.

The Court stated that when assessing the receivability of the appeal, it was first necessary to check whether the interim measures requested are compatible with the division of competencies between the Community institutions and in particular between the Community Judiciary and the Commission.

The President of the Court ruled that, in the context of interim measures, it is not possible for the Judge to take a decision that would impede the Commission to accomplish its powers of investigation and sanction immediately after the starting of an administrative procedure and even before the Commission has adopted the provisional or definitive decisions that the parties want to avoid.

The Judge President stated that if the request of the plaintiff was accepted, the Judiciary would not be in the role of controlling the Commission but rather replacing the Commission in the exercise of its administrative functions. The granting of interim measures in the context of an administrative Commission procedure is only possible under exceptional circumstances that have to be proven by the parties. ■

Press releases

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STATE AID

Main developments between 1st April and 31st July 1996

Summary of the most important recent developments

second quarter of 1996

by Roland KOBIA, DG IV-G-1

INTRODUCTION

Pendant la période de référence (1/4/1996 à 30/6/1996) et pour ce qui concerne les textes de portée générale, la Commission a adopté une communication sur les aides d'Etat en relation avec les réductions du coût du travail (*cfr infra*). Elle est également sur le point d'adopter un encadrement sur les aides d'Etat aux entreprises situées dans des quartiers urbains défavorisés. En mai, les services de la Commission ont tenu avec les experts des Etats membres et de l'Autorité de Surveillance de l'AELE, une réunion multilatérale au cours de laquelle ont été discutés le projet de codification des règles en matière d'aides à finalité régionale, les futures lignes directrices en matière de ventes ou locations de terrain publics à des entreprises ainsi que la nécessité du maintien d'un régime particulier dans le secteur du textile/confection. La Commission est enfin en train de finaliser la constitution de son Cinquième "Rapport sur les aides d'Etat dans le secteur des produits manufacturés et certains autres secteurs de l'Union européenne" qui couvrira la période 1993-1994. La parution de ce dernier est prévue avant la fin 1996.

Pour ce qui concerne les cas spécifiques, de nombreuses et importantes décisions ont été prises pendant la période de référence (*cfr infra*). Un fait marquant de cette période est assurément le nombre élevé, tant en termes relatif qu'absolu, de décisions finales négatives, conditionnelles ou mixtes. Cette tendance constitue une nouvelle confirmation de la volonté de la Commission de veiller à la stricte application des règles en matière d'aide d'Etat dans un contexte difficile de surenchère des interventions publiques. La Commission est tout particulièrement attentive aux violations de l'obligation de notification contenue dans l'article 93§3 du traité CE et est résolue à user de tous les instruments nécessaires pour lui assurer un effet utile.

TEXTE DE PORTÉE GÉNÉRALE

La communication de la Commission sur la réduction des coûts du travail en relation avec les aides d'Etat (Non encore publiée.)

En juin, la Commission a adopté une communication confirmant et clarifiant sa position et son préjugé favorable, au titre des règles de concurrence en matière d'aides d'Etat, vis-à-vis des mesures publiques qui visent à réduire les coûts indirects du travail. Cette communication prend place dans le cadre du Livre Blanc "Croissance, Compétitivité, Emploi" ainsi que du Pacte de confiance pour l'emploi lancé par le Président J. Santer.

La communication encourage les mesures de réduction des coûts du travail, notamment en faveur des bas salaires, dans la mesure où elles ne sont pas ciblées de manière spécifique sur des secteurs considérés comme sensibles, en situation de surcapacité ou en crise. L'expérience a cependant montré que ce sont ces secteurs qui sont le plus souvent visés par les mesures envisagées par les Etats membres. Or, des réductions sectoriellement ciblées ont généralement pour effet de transférer les difficultés et les problèmes de chômage vers les entreprises concurrentes qui ne bénéficient pas de telles mesures. Elles risquent d'avoir un impact négatif sur la compétitivité à long terme et donc sur l'emploi et d'entraîner une surenchère d'aides entre Etats membres. La Commission propose par conséquent des pistes alternatives visant le même objectif mais respectant le droit communautaire. Ainsi, les mesures de réduction du coût du travail ne relèveront pas de l'article 92§1 CE: a) lorsqu'elles s'appliquent à toutes les entreprises ou à certaines catégories de travailleurs seulement; b) lorsqu'elles tombent sous la règle *de minimis* (JOCE C68 du 6.3.1996); et c) lorsqu'elles concernent des activités ne faisant pas l'objet d'échanges entre Etats membres (les services de proximité notamment). Les autres mesures constitueront des aides d'Etat qui pourront, le cas échéant, être approuvées sur une base régionale (zones de développement), sociale (création d'emploi parmi les catégories les plus défavorisées) ou horizontale (PME).

Cette communication présente un double intérêt. D'abord, elle contribue, dans le domaine social, à clarifier la notion d'"aide d'Etat" au sens de l'article 92§1 CE par rapport à la notion de "mesure générale" visée notamment par les articles 101 et 102 CE. Ensuite, elle rend compte du soutien de la politique de concurrence aux objectifs

communautaires de lutte contre le chômage et d'amélioration de la compétitivité des entreprises.

CAS SPÉCIFIQUES

Les aides à la recherche-développement

Le cas Olivetti. (Aide d'Etat N812/95) En mai, la Commission a ouvert la procédure contradictoire de l'article 93§2 CE à l'encontre d'une aide proposée en faveur de l'entreprise Olivetti SpA pour le développement d'ordinateurs personnels multi-média pour usage individuel ou de groupe. Le projet s'inscrit dans un secteur qui fait clairement l'objet d'échanges entre Etats membres et où la concurrence entre opérateurs européens est importante (Siemens-Nixdorf et Vobis en Allemagne, ICL en Grande Bretagne, Bull en France). L'aide proposée consiste en un prêt à taux réduit de 37 millions d'écus en 1996, couvrant 100% des coûts éligibles et remboursable sur une période de 10 ans. L'intérêt prévu pour le remboursement du prêt donnerait une intensité d'aide actualisée de 20,75%. La Commission a émis de sérieux doutes sur la nécessité de l'opération, considérant que le projet semble constituer une opération naturelle pour l'entreprise qui ne va pas au-delà des efforts normaux de recherche et développement (R&D). Le caractère incitatif de l'aide n'est donc pas encore démontré et il apparaît que l'entreprise pourrait en tout état de cause procéder à la réalisation de ce projet sans aide eu égard aux perspectives lucratives ouvertes dans ce domaine.

L'intérêt de ce cas réside notamment dans le fait qu'il a permis un examen de ce qui est ou non une activité normale de R&D pour une entreprise active dans un secteur hautement concurrentiel et en développement très rapide, activité qui pourrait être conduite sans aides d'Etat; il a permis aussi un examen de la nature "précompétitive" d'un projet de R&D. Si les aides à la R&D jouissent généralement d'un préjugé favorable de la part de la Commission, cette dernière tient à éviter que les Etats membres n'utilisent cette voie afin d'octroyer des aides à des projets qui tiennent plus des aides à l'investissement normal ou pire encore au fonctionnement qu'à de véritables activités de R&D, particulièrement dans des secteurs de haute technologie comme les ordinateurs personnels ou les semi-conducteurs. De telles aides peuvent se révéler particulièrement distorsives sur le commerce intra-communautaire.

Transrapid. (Aide d'Etat N175b/94) En mai, la Commission a approuvé le programme allemand pour le développement du système ferroviaire Transrapid, basé sur la propulsion magnétique. L'apport public total du gouvernement allemand se monte à DM 560 millions jusqu'à 1999, budget de développement qui constitue la continuation d'un programme de recherche commencé dans les années '70 dans le but de transporter passagers et fret à une vitesse comprise entre 300 et 500 Km/h.

L'aide a été approuvée car la Commission a acquis la conviction que ce projet allait au-delà du seul intérêt de l'industrie allemande et promouvait l'intérêt communautaire. Le gouvernement allemand a en effet ouvert l'accès des fonds publics à toute entreprise européenne intéressée à prendre part dans le projet de développement.

Taxe parafiscale sur certains produits pétroliers au profit de l'Institut français du Pétrole (IFP)(France). (Aide d'Etat C48/94) En mai, la Commission a décidé de clore la procédure de l'article 93§2 CE ouverte à l'encontre de mesures en faveur d'industries de raffinage, pétrochimie et autres industries connexes, financées par une taxe parafiscale perçue sur certains produits pétroliers et versée à l'IFP. La Commission a considéré que les mesures ne constituaient pas des aides au sens de l'article 92§1 CE, après avoir notamment obtenu l'engagement des autorités françaises de supprimer l'exonération prévue pour les produits exportés.

Cette décision est intéressante en ce qu'elle applique les dispositions de l'Encadrement des aides à la Recherche et Développement (JOCE C83 du 11.4.1986) sur l'existence ou non d'une aide d'Etat au sens de l'article 92§1CE et éclaircit la position de la Commission vis-à-vis des aides parafiscales. La décision dispose que le mécanisme ne constitue une aide ni en faveur de l'IFP (en ce qu'il est un établissement de recherche public à but non lucratif), ni en faveur des entreprises bénéficiant *in fine* des résultats de la recherche menée par l'IFP (de par l'absence de discrimination dans l'accès aux résultats et de par la cession des résultats normalement au prix du marché). Ainsi, sur la base de données factuelles montrant que les entreprises étrangères sont dans ce cas des clients plus importants de l'IFP en termes de chiffre d'affaires que les entreprises françaises et outre l'absence d'aide au sens de l'article 92§1 CE, la Commission a estimé qu'en l'espèce la présomption de discrimination selon laquelle une taxe parafiscale financant un régime d'aides bénéficie "par la force des choses" principalement aux entreprises nationales était renversée.

Les aides régionales

La révision de la carte luxembourgeoise. (Aide d'Etat N70/96) En mai, la Commission a approuvé, dans le cadre de l'article 93§3 CE, la nouvelle carte des zones de développement au Grand-Duché de Luxembourg ainsi que les nouveaux taux d'intensité d'aide y afférents. La nouvelle carte est caractérisée par une réduction substantielle de la couverture de population nationale aux aides régionales (de 78,97% à 42,5%), du territoire couvert par ces aides (de 58% à 45%) ainsi que du nombre de communes éligibles (de 53% à 38%). De même, si les taux d'intensité d'aide faciaux sont restés les mêmes (17,5%-20% et 25% bruts), ils ont néanmoins connu une baisse en termes relatifs.

Cette décision est intéressante à plusieurs titres : elle marque la fin de l'exercice de révision des cartes des zones de développement de tous les Etats membres (même si de nouvelles révisions sont entre-temps déjà prévues en Italie, au Danemark et en Allemagne); elle confirme la politique générale de la Commission en matière de réduction des couvertures de population aux aides régionales (faisant ainsi application du principe de concentration des aides) ainsi que des taux maxima d'intensité d'aide; elle assure enfin une plus grande cohérence géographique entre les interventions des objectifs régionaux des Fonds structurels et celles des autorités publiques nationales.

Les aides dans les secteurs encadrés

Le secteur automobile

Volkswagen/Mosel and Chemnitz. (Aide d'Etat C62/91 - ex NN75, 77, 78, 79/91). En juin, la Commission a pris sur ce cas une décision finale partiellement négative. Le cas concerne une aide de DM 779,8 millions que les autorités allemandes envisagaient d'octroyer à Volkswagen, sous le couvert d'aides à finalité régionale (les régions de Mosel et Chemnitz étant des zones éligibles sur la base de l'article 92§3.a CE), sous forme de subventions directes, d'amortissements spéciaux et de remboursements d'impôts sur le bénéfice. L'intensité de l'aide envisagée s'élevait à 30,5% à Mosel et 27,3% à Chemnitz. Suite à une analyse coûts/bénéfices comparative destinée à mesurer la proportionnalité entre l'aide proposée et les problèmes régionaux, la Commission en a conclut que l'intensité du handicap régional s'élevait à 22,3% pour Mosel et 20,8% pour Chemnitz. Ainsi, une aide à un tel investissement dans un secteur souffrant de surcapacité structurelle a été considérée comme devant s'en tenir à ce qui est strictement nécessaire pour compenser le handicap régional respectif des deux sites. La Commission a finalement décidé d'approuver DM 539,1 millions et de refuser le reste du montant proposé, *ie* 240,7 millions, ce montant ayant été considéré incompatible avec l'article 92§3.c CE pour non respect du critère de proportionnalité.

Deux éléments intéressants de ce cas résident dans la définition d'un *greenfield project* dans l'analyse coût/bénéfice et dans la question de la capacité. Pour ce qui concerne le premier point, les handicaps d'exploitation de 5 années seront pris en considération par comparaison avec une expansion, alors que seules les trois premières années de production sont prises en compte. Pour ce qui concerne le second point, la Commission considère maintenant que le marché des voitures normales passagers souffre de surcapacité structurelle avec la conséquence que les aides d'Etat ne pourront être approuvées dans ce segment qu'à hauteur du handicap régional calculé dans l'analyse coût/bénéfice.

Mercedez-Benz/Ludwigsfelde (MBL). (Aide d'Etat C61/91 - ex NN74, 80/91). En juin, la Commission a pris une autre décision partiellement négative dans le secteur automobile. Suite à l'intention des autorités allemandes d'octroyer une aide à la restructuration de DM 132,8 millions en faveur d'un projet d'investissement (de DM 239,8 millions) à Ludwigsfelde, la Commission a identifié trois types d'intervention : une compensation des pertes par la Treuhandanstalt, des prêts à l'investissement, des subventions régionales ainsi qu'un élément d'aide dans la vente de participations. Dans son analyse de la compatibilité des aides, la Commission les a considérées comme des aides à la restructuration devant être analysées à la lumière des conditions contenues dans les lignes directrices sur les aides d'Etat au sauvetage et à la restructuration. (JOCE C368 du 23.12.1994) La vérification des conditions de viabilité à long terme endéans une période raisonnable, de non affectation des conditions de concurrence par le biais de réductions de capacité et de proportionnalité entre l'aide et les coûts et bénéfices de la restructuration, ont ainsi amené la Commission à accepter l'aide à hauteur de DM 124,3 millions. La réduction de capacité s'est faite à un niveau similaire à l'intensité de l'aide (51,8% pour cette dernière et 48,6% pour la première). Les DM 8,6 millions restants et constitués du prix de vente des participations ont, eux, été considérés comme non proportionnels avec les coûts et bénéfices du plan de restructuration et, par là, refusés pour incompatibilité avec l'article 92§3.c CE. Leur valeur avait en effet été estimée à DM 16,47 millions alors que MBL avait payé le portefeuille 7,9 millions.

Les fibres synthétiques

La Seda de Barcelona. (Aide d'Etat C56/94) En avril, la Commission a adopté une décision finale conditionnelle à l'encontre d'aides non notifiées octroyées par les autorités espagnoles à l'entreprise productrice de fibres synthétiques *La Seda de Barcelona*. La décision d'approbation a été prise sur la base de trois éléments principalement. D'abord, l'entreprise, dans le cours de la procédure de l'article 93§2 du traité CE, a fourni un plan de restructuration qui doit permettre de revenir à la viabilité endéans une période raisonnable. Ensuite, la capacité de production totale de l'entreprise -pour ce qui concerne les produits tombant dans le champ d'application de l'encadrement des aides dans le secteur des fibres synthétiques (JOCE C346 du 30.12.01992 prolongé par JOCE C224 du 12.8.1994) - devait être réduite de 25%, ce qui a été considéré comme "significatif" par la Commission. Cette considération est fondée sur la viabilité probable à long-terme de l'entreprise, sur sa localisation dans une zone de développement et sur le fait que les changements vont aboutir à une réduction nette de la capacité productive dans l'Espace Economique Européen d'environ 1%, améliorant par là le taux moyen d'utilisation des capacités pour les produits en cause. Enfin, l'aide est limitée au minimum nécessaire pour mener à bien la restructuration, le critère de nécessité étant ainsi rempli. L'approbation de l'aide a toutefois été soumise à la fourniture par les autorités espagnoles d'un rapport annuel démontrant la pleine application du plan de restructuration.

Ce cas montre à nouveau que le terme "significatif" utilisé dans l'encadrement des fibres synthétiques est une notion qui doit être interprétée au cas par cas sur la base des mérites propres de l'affaire et nécessite des analyses économiques approfondies menées par la Commission, avec le cas échéant l'aide d'experts indépendants.

Le secteur sidérurgique (traité CECA)

Walzwerk Ilsenburg GmbH. (Aide d'Etat C11/95 - ex N777/94). En mai, la Commission a adopté une décision finale négative à l'égard d'aides d'Etat proposées par le gouvernement allemand à l'entreprise en question sous forme d'un subside à l'investissement de DM 5,85 millions et d'un abattement fiscal de DM 0,9 million. En effet, la base juridique permettant l'approbation d'aides régionales à l'investissement dans le secteur sidérurgique n'était plus applicable, le délai utile étant forclos. Il faut rappeler à cet égard que sous le traité CECA, toute aide à l'industrie sidérurgique est prohibée. Face à ce principe d'incompatibilité plus rigide que sous le traité CE, le Code des aides à la sidérurgie (JOCE L362 du 31.12.1991) permettait toutefois l'octroi d'aides dans certains cas particuliers tels les activités de R&D.

Le même Code permettait également des aides régionales à l'investissement sur le territoire de l'ex RDA. Cependant, cette dernière possibilité existait uniquement jusqu'au 31.12.1994, les notifications devant être déposées à la Commission au plus tard le 30.6.1994. Or, dans le cas d'espèce, la notification a été enregistrée en date du 25.11.1994, trop tard pour que la Commission puisse terminer la procédure de l'article 6§3 du Code (consultation des Etats membres) et prendre une décision avant le 31.12.1994.

Le raisonnement utilisé dans le cas d'espèce est similaire à celui que la Commission a développé dans les cas Halyvourgia Thessalia, Reinwald Recycling et Hansa Chemie Abbruch.

Les aides dans les secteurs non encadrés.

Chaussure

Intervention extraordinaire au soutien de la production et de l'emploi (Italie). (Aide d'Etat C23/95 - ex NN 59/94). En avril, la Commission a adopté une décision finale négative à l'égard d'aides sous forme de fiscalisation totale ou partielle des charges sociales patronales pour les PME du secteur en question dans le but de créer des postes de travail.

Les critiques de la Commission ne portaient bien entendu pas sur les objectifs poursuivis par les autorités italiennes en matière de création d'emploi (dont l'approche était par ailleurs novatrice car ciblée sur des catégories défavorisées de chômeurs), mais plutôt sur les modalités utilisées pour atteindre ces objectifs et les conséquences qui en découlaient. C'est le caractère sectoriellement ciblé, qui plus est sur un secteur déjà leader au niveau européen et dans lequel le volume d'échanges intracommunautaires est très fort, qui a motivé la position négative de la Commission dans ce cas. La Commission donne ici une confirmation supplémentaire de sa politique défavorable vis-à-vis des aides ciblées sectoriellement. La position de la Commission en matière de réduction des coûts du travail a fait l'objet d'une nouvelle communication qui permet un certain ciblage (*cfr supra*).

Textile, Habillement, cuir, chaussure

Mesures expérimentales de baisse des charges sociales ("Plan Borotra")(France). (Aide d'Etat N246/96) En mai, la Commission a pris une décision présentant certaines similarités avec le cas précédent des "Chaussures en Italie". Elle a en effet

décidé d'ouvrir la procédure de l'article 93§2 CE à l'encontre de mesures de suppression des charges sociales patronales au niveau du Salaire Minimum Garanti (SMIG) et un allégement dégressif jusqu'à 1,5 fois ce dernier prévues pour les seuls secteurs industriels en question. De par le caractère ciblé sectoriellement dans des secteurs connaissant d'importants échanges intracommunautaires, la Commission a des doutes sur la compatibilité de telles propositions dans la mesure où, jusqu'à présent, les autorités françaises n'ont pu apporter aucun élément démontrant la rationalité économique et la nécessité objective d'un traitement dérogatoire à l'efficacité générale du système des charges sociales.

Une fois encore, la Commission se montre réticente vis-à-vis de mesures qui pourraient provoquer une escalade (et probablement un jeu à somme nulle aggravé de dépenses publiques inutiles) des aides sectorielles entre Etats membres avec comme conséquence la refragmentation artificielle du Marché Unique. La Commission est toutefois consciente des problèmes graves d'emploi dans l'Union et étudie les possibilités d'atteindre les mêmes objectifs au travers de mesures moins distorsives, telles des aides générales à l'emploi ciblées sur certaines catégories de chômeurs.

Le secteur sidérurgique (hors CECA)

Breda Fucine Meridionali (BFM). (Aide d'Etat C13/95 - ex NN9/95). En mai, la Commission a clos la procédure de l'article 93§2 CE par une décision finale négative déclarant à la fois illégales et incompatibles les d'aides d'Etat octroyées à l'entreprise BFM. Les aides versées ne trouvaient en effet justification dans aucune des dérogations prévues aux articles 92§2 et 92§3 CE. La Commission a considéré que les aides ponctuelles versées n'étaient destinées à permettre que la survie industrielle de BFM, sans aucune compensation justificatoire.

L'affaire touche aux relations entre l'Etat et les entreprises publiques et, dans ce cadre, au caractère d'aide des transferts de ressources entre eux. Ici, la Commission a considéré que les entreprises publiques peuvent tirer un avantage du fait d'être contrôlées par l'Etat lorsque ce dernier va au-delà de son simple rôle d'acteur économique propriétaire d'entreprises. Ainsi, l'application du critère de l'investisseur privé opérant dans des conditions normales de marché a permis à la Commission d'en conclure que, *mutatis mutandis* et toutes choses étant par ailleurs, l'octroi de prêts répétés, les injections de capital et l'effacement des dettes n'auraient pas été accessibles à une entreprise dont les propriétaires étaient privés.

Enfin, l'affaire est intéressante en ce qu'elle a connu également des développements en droit interne, Breda Fucine ayant notamment été exclue d'un marché public pour pratique commerciale déloyale. En effet, le Tribunal de Commerce de Bruxelles (Chambre des actions en cessation) a confirmé en date du 13 février 1995 un jugement précédent rendu par défaut le 26 décembre 1994 qui disposait "... *qu'en participant à <un> appel d'offres ... ,aux prix soumissionnés, alors qu'elle bénéficie de mesures d'aides d'Etat non régulièrement notifiées et qui font l'objet d'une procédure d'examen de la part des services de la Commission, et en enfreignant ainsi les articles 92 et 93 du traité de Rome, <Breda Fucine Meridionali> commet un acte contraire aux usages honnêtes en matière commerciale, interdit par l'article 93 de la loi du 14 juillet 1991*". Un recours par Breda Fucine devant la section Administration du Conseil d'Etat est actuellement pendant contre son exclusion de l'appel d'offres et la décision d'attribuer le marché public à un concurrent.

Press releases

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INTERNATIONAL DIMENSION OF COMPETITION POLICY

Main developments between 1st April and 31st July 1996

Summary of the most important recent developments

by Stefaan DEPYPERE, Brona CARTON and Yannick SCARAMOZZINO, DG IV-A-3

CENTRAL and EASTERN EUROPEAN COUNTRIES, BALTIC STATES, NEW INDEPENDENT STATES

During the second quarter, activity has been focused on horizontal events and the pre-accession strategy.

Horizontal Competition events

Competition Conference Brno. The second Conference between the Commission and the competition authorities of the Central and Eastern european Countries took place from 8-10 May in Brno (Czech Republic). Apart from the "traditional" participants (Hungary, Poland, Czech Republic, Slovak Republic, Romania, Bulgaria) four more countries are now taking part in these conferences : Estonia, Latvia, Lithuania and Slovenia.

The structure followed, to a large extent that of the Conference in Visegrad in 1995. The morning programme on the first day was dominated by speeches delivered by two EU representatives and a round table discussion between the head of the delegations.In the afternoon the participants split up into two working groups to give presentations on, and to discuss, antitrust and state aid issues, while a special programme for the delegation leaders was organised allowing them to discuss more general issues.On the last day of the conference the presidents of the working groups presented their report which was followed by a panel discussion and a press conference.

The main objective of the Conference was threefold :
- to underline the importance of cooperation in competition matters in the international field;
- to stress the role of competition policy as comprising not only antitrust, but also state aid, state monopolies of a commercial character, as well as undertakings with special and exclusive rights;
-to allow the officers of the various authorities to exchange ideas and to review technical matters together.

The main results can be summarized as follows :
-In the context of the pre-accession strategy, technical discussions, which have taken place in two working groups, were focused on issues related to the introduction and the implementation of antitrust rules and state aid control,
-The cooperation between the European Commission and the CEECs' competition authorities, at the Directors General's level, as well as at the experts' level, has been strengthened.

Conclusion. The Conference, financed under the PHARE programme, was well organised and can be considered a successful event in terms of being a follow-up to last year's Visegrad Conference. At the end of the conference, the Brno Joint Declaration on a joint action programme for competition was signed by all the CEEC representatives of the authorities responsible for antitrust and state aid, and by the Director General of DG IV.

Baltic Booster Conference. The Baltic Booster Conference, financed by the PHARE programme, was organised to boost competition policy development in the baltic States, so that it can catch up with practice in other Central European countries.

In each state a workshop was organised to tackle technical aspects of competition policy. Simultaneously, high level political contacts were organised to increase political awareness of competition policy issues and finally a larger scale conference took place, bringing together participants from the three States in one central location (Riga).An innovative aspect of the event consisted of the participation by a representative from one of the Member States and a competition specialist from a CEEC country to each of the meetings.

Main results. Intensive technical discussions enhanced knowledge about the contents and substance of competition law and policy. At the end of the Conference a Memorandum of Understanding between Competition Authorities of the Baltic States and an agreement of Co-operation between the Competition Authorities of the Republic of Latvia and Lithuania were signed. This is eminently justified by the economic interest to apply the same competition policy in these three small countries.

Collective Traineeship. Currently, the DGIV is finalising, in cooperation with certain Member States, the "Second Collective traineeship for officials of the Central and Eastern European authorities responsible for anti-trust policy and state aid control".This project, financed by PHARE, will take place in November.Taking into account the necessity to set up efficient state aid controls in these countries, this year's collective traineeship will be focused not only on anti-trust rules, as was the case last year, but also on state aid control.

Training for Academics. In the autumn, the first information and discussion programme for academics in Central European countries in the field of competition law and policy will take place in Athens.This project, financed by PHARE, aims to stimulate attention in the area of competition law and policy amongst scholars and academics in Central Europe. A further objective should be to analyze and approximate existing legislation within those CEECs with that of the EU. This should not only allow for an improvement in the functioning of CEEC competition authorities, but it should also establish a dialogue between the training staff and academics, with respect to their experiences regarding the functioning of competition authorities vis-a-vis their national competition laws. The hope is to encourage sustainable cross-country cooperation and the establishment and strengthening of networks between academics in the CEECs and academics in the EU.

Pre-accession strategy

The European Council in Madrid has invited the Commission to submit its Opinion on the Central and Eastern European countries' application for membership to the European Union, as soon as possible after the conclusion of the Intergovernmental Conference. For the preparation of its opinions, the Commission sent to each applicant country a technical questionnaire in April.This questionnaire aims to get a full appreciation of the actual and prospective progress of each candidate country in its preparations towards assuming the obligations of membership.The Competition section of the above mentioned questionnaire contains questions regarding antitrust, state aid, public undertakings and undertakings with special or exclusive rights (general aspects and sector-specific aspects) and state monopolies of a commercial character. Replies to the questionnaire are expected by the end of July 1996.

In June, a series of bilateral meetings between the Commission and each applicant country took place in Brussels . The objective of this series of meetings was to review progress and resolve problems regarding the questionnaire for the preparation of the Commission's Opinions. The DG IV has provided some assistance with technical issues raised by the candidate countries.

TOWARDS AN INTERNATIONAL FRAMEWORK OF COMPETITION RULES

On 18 June 1996, the Commission adopted a Communication (Communication from the Commission to the Council of 18 June 1996, "Towards an international framework of competition rules, COM(96) 284 final) to the Council on trade and competition, which addresses the problem of anti-competitive practices hindering effective access to foreign markets. The reason for adopting a Communication at this time is to prepare a Community position on trade and competition for the WTO Ministerial meeting in Singapore at the end of the year.

The Commission does not propose the creation of an international competition authority, with its own powers of investigation and enforcement, considering that this is not a feasible option at present. Rather, in line with the analysis and recommendations of the report of the independent group of experts, "Competition policy in the new trade order: strengthening cooperation and rules", the Commission prefers a gradual, building-block approach. To this end it proposes the creation of a working group in the WTO to examine those areas where consensus could be established. The first four blocks are outlined in the Communication.

Firstly, countries would commit themselves to assuring domestic competition structures. This would imply basic competition rules on merger control, abuse of monopoly power and other restrictive agreements. This would be coupled with adequate enforcement structures and a right of access for private parties to domestic enforcement authorities, including national courts.

Secondly, a core of common principles would be identified and would eventually be adopted at international level. The Commission suggests that it would be opportune to concentrate initially on 'horizontal' restraints, such as price or output fixing or market sharing cartels, bid-rigging, group boycotts, export cartels. Work on monopolies and 'vertical' restraints, e.g. exclusive distribution and supply agreements, would take longer but work could begin in parallel.

Thirdly, the elements of a cooperation instrument would be developed. These

would be based to a large extent on experience to date under the OECD Recommendation and various bilateral agreements and include provisions on notification, cooperation and information exchange between competition authorities. The instrument could also include a "positive comity" provision, enabling one competition authority to request another to investigate and if necessary take action where anti-competitive conduct on the latter's market affects the former's important interests Finally, the WTO's rules for settling disputes could be used if a country fails to set up adequate competition rules or fails to react to a request by another country to investigate a case.

The WTO is considered a more appropriate forum than either of the other existing multilateral fora, the OECD and UNCTAD, because of its near universal membership, its strong tools for settling disputes and the fact that it provides a forum for negotiations, consultations and information exchange to be conducted on a continuous basis.

Nonetheless, the OECD and UNCTAD have a continuing and important role to play in the trade and competition debate and the Commission proposes that both organizations should be asked to continue their work in this area, taking account of developments in the WTO.

As the group of experts suggested, the Commission considers that this international competition framework would initially draw members from the developed and advanced developing countries, although it would be open to any country prepared to accept the obligations which membership entails.

The EU, both at Community and Member State level, has some of the toughest competition rules in the world, coupled with a strong commitment to their enforcement. Globalisation and liberalisation are resulting in increased competition in Europe while encouraging European firms to seek new markets further afield. Anti-competitive conduct should not be allowed to exclude or limit European firms' access to foreign markets. Therefore, the Commission considers that it is clearly in the interests of the EU that competition on these markets is fair and that the competition rules are equitably enforced.

The Communication was discussed by the Full Members of the Council's Article 113 Committee at a meeting of 28 June, when it was given a generally warm reception. The Council will continue to consider the details of the proposal in the framework of the 113 Committee and intends to invite competition experts of the Member States to join their trade colleagues in defining a position on the Commission's proposals. ■

Parallel Importation and Local Business in Malta

by Bemadette GATT, Maltese trainee with DG IV-A-3

With the coming into force of the Competition Act, 1994 in Malta, one major source of concern for Maltese businessmen has been whether their business arrangements should be re-organised in a way as to allow for the possibility of parallel importation.

The source of this influence stems from the application and interpretation of the European Community competition rules, which have served, and continue to serve, as a model both for the enactment and application of Maltese competition law. Indeed, the European Court and the European Commission have not rarely annulled or condemned restrictive practices which tended to stifle parallel imports.

The idea of having parallel importation works in two stages. First, goods are lawfully marketed in the place of *export*, the foreign country. These goods are channelled to the place of *importation*, the domestic country, via an authorised distribution network, usually at a higher price. Taking advantage of the lower price, a third person buys the goods in the cheaper, foreign country and imports them in parallel into the dearer, domestic country.

Admittedly, there are arguments for and against the idea of parallel importation. From the positive side, making the goods available at a lower price through parallel importation is beneficial to consumers. As more distributors or producers enter

the market and seek customers, the quantity of goods increases, forcing prices further down. This fall in prices may also reflect a fall in costs as some distributors or producers strive to increase their profits by searching for even more efficient ways to make and supply the goods.

However, if parallel imports are allowed, there are also risks. Considering the situation *ex ante* i.e. at the time an agreement is concluded, there is much for commending that a distributor who has to invest to tool up and set up shop, and an intellectual property right holder who has to carry out research and development to materialise his inventive activities, be given the adequate protection and incentive to undertake the commercial risk. If parallel importers are allowed to free ride on the efforts of the distributor and the intellectual property right holder to sell their goods in an established market at a cheaper price or after copying something someone else has produced, the incentive to invest and take risks may be lacking.

In fact, at times both the European Court and Commission have been prepared to condone opposition to parallel imports (at least temporarily) when the necessity arose of encouraging incentives to invest. And this has been done at the expense of upholding the goal of establishing a common market.

Common and Internal Market Perspectives

Barring those exceptional instances where restrictions on parallel imports have been allowed at EC level, the Community has adopted a firm stand on the issue and the non-elimination of parallel imports has become an imperative in EC competition law enforcement. The rationale for such an approach in the Community is quite logical.

Parallel imports confront the EC with a complication not faced in other jurisdictions. The basic object of the EC is market integration: to create a unified market out of the several national markets of the Member States. Accordingly, an agreement to divide the common market along the frontiers of the Member States and to stay out of the competitors' territories in other States is the most serious of all breaches of EC competition law.

Against this market integration scenario, domestic competition law regimes are concerned almost exclusively with economic efficiency. In other words, when applying domestic competition law local authorities are primarily concerned with maintaining a healthy competitive environment within the national market.

This situation would logically lead to a less interventionist attitude than is expected under the EC system. Indeed, the different objectives pursued under the two systems serve to alter legal and economic perspectives. For example, a distribution system which compartmentalises the common market along national boundaries may serve to enhance interbrand competition at the expense of eliminating intrabrand competition across national boundaries. While such a system - which may introduce a new brand on the market - may be allowed under national competition regimes, it will definitely infringe the EC competition rules since there is an effect on trade between Member States.

As a result one should proceed with caution when following the EC attitude towards parallel imports: EC competition law if not necessarily performing the same function as national competition law.

Applying these premises within the local context, it was arguably not the intention of the Maltese legislator to adopt blindly the EC practice of prohibiting absolute territorial protection with the aim of opening up markets. The provisions of the Competition Act are infringed only where the obstruction of parallel imports restricts competition within the parameters of the Maltese market. Until Malta becomes an EU Member State, the scope of the local competition rules ought to be that of achieving the aims of economic efficiency and consumer welfare. It is against this background that the notion of parallel importation should be made to apply.

The Local Scene

The question which consequently needs to be addressed is to what extent can local agreements obstructing parallel imports survive the test imposed by section 5 of the Maltese Competition Act ?

By far the most common instances where parallel imports may be impeded occur in exclusive distribution or sole agency agreements, and trade mark licensing agreements. Taking, the relevant market to be the whole of the national market, a foreign manufacturer or wholesaler may supply goods to a local distributor, granting him absolute territorial protection, or a foreign licensor supplies trademarked goods to a local licensee enabling the latter to sue for infringement of trade mark law anyone who tries to import the same goods bearing the same trade mark.

Under the Maltese Competition Act, Section 5 declares unlawful any agreement between undertakings, any decision by an undertaking or by an association of undertakings and any concerted practice between undertakings having the object or effect or preventing, restricting or distorting competition within the relevant market.

Primafacie, both agreements mentioned above infringe section 5 since there exists an agreement between undertakings having the object or effect of restricting competition within the local market: the goods can be obtained by users from one source only, i.e. intrabrand competition is eliminated, there is no price competition,

the dealer need not strive for more cost-effective ways of getting the product to the consumer, the market would not adapt so flexibly to changes in consumer wants, etc.

However, a situation could arise where a local dealer would not consider it worthy to invest in bringing over to Malta a new brand of goods or to import a well-known brand and invest in providing the optimal quality in sales services unless he is protected, at least temporarily, from parallel imports via exclusive distribution agreements or trade mark licences.

Could one not say that allowing the impedition of parallel imports in such instances serves to promote interbrand competition and allows consumers a wider choice of brands at different prices than would be the case if the dealer is given no territorial protection and no incentive to invest and penetrate the market ? In other words, would not an agreement providing for absolute territorial protection in such circumstances serve to stimulate - and not restrict - competition on the local market and is therefore not caught by section 5 at all ?

The next crucial issue is whether the same argument holds once Malta becomes a European Union member. Upon EU accession, the Competition Act would apply in parallel with the Community competition rules and must be applied in a way as not to frustrate EU objectives, including that of market integration. The Act would regulate internal competition cases; whilst the Treaty rules would apply to cases having a European Union dimension.

At this stage there exists the threat that exclusivity which might otherwise be cleared under section 5, falls foul of the EC rules. If business agreements involving local businessmen aim at isolating the Maltese market from the rest of the common market, there is doubtlessly an effect on inter-state trade.

In such an eventuality it is hoped that, on account of the diminutive market shares which the majority of local undertakings have within the common market, agreements entered into between local undertakings and foreign enterprises do not exceed the threshold of the *de minimis* doctrine under EC law (currently set at a market share of not more than 5% and an aggregate turnover not exceeding 300 million ECU). Such agreements would then escape the application of the EC competition rules on account of the insignificant impact on the EU market.

Still, it is important to note that the *de minimis* doctrine does not apply where an agreement concluded in one country forms part of a network of similar agreements within the common market so that, although the single local agreement may not have an appreciable effect on the common market, the cumulative effect of the parallel agreements may serve to compartimentalise the common market along national boundaries.

Another possible solution would be for the foreign supplier to integrate forward and acquire the local undertaking as a subsidiary. Any arrangements concluded would then amount to unilateral conduct performed by a single economic unit and therefore cannot be considered to infringe EC rules on restrictive agreements (which regard only bilateral conduct).

However, unilateral conduct by a dominant entity stands to be controlled by Article 86 of the EC Treaty where a stricter yardstrick is applied (than under Article 85) and absolute exclusivity is condemned. Hence, one must beware whether an arrangement (concluded between foreign parent and local subsidiary) which had a *de minimis* effect during its initial stages proves to be successful and a position of dominance within the common market settles in. In such an eventuality, it is difficult to imagine how territorial protection will be allowed under Article 86.

Conclusion

The issue of parallel importation will continue to constitute a struggle on the market. Consumers will keep up an unremitting demand for cheaper prices and faster availability. But they will also want new and better products and sales services, and guarantees of quality.

It is hoped that the Maltese authorities will emphasise the goals of economic efficiency and consumer welfare when dealing with arrangements impeding parallel imports. An *ex ante* analysis of the market is called for when examining the effect of such clauses. If the market remains more competitive on account of providing an investor with territorial protection, there appears to be no reason why, in the particular circumstances examined above, the elimination of parallel imports should not be condoned, at least temporarily, until an adequate return is ensured. ■

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Documentation ...

This section contains details of recent speeches or articles given by Community officials that may be of interest. Copies of these are available from DGIV's home page on the World Wide Web. Future issues of the newsletter will contain details of conferences on competition policy which have been brought to our attention. Organisers of conferences that wish to make use of this facility should refer to page 1 for the address of DGIV's Information Officer.

SPEECHES AND ARTICLES

Règles de concurrence de l'Union Européenne applicables aux entreprises. Joos Stragier. Charleroi, 7.10.95

EU pharmaceutical forum. **Mergers, Joint Ventures and the Pharmaceutical Industry** by J. Gatti

Calendrier et mesures d'ouverture des télécommunications à la concurrence par J.F. PONS. Symposium international des télécommunications Monaco, le 22 mars 1996

Transport multimodal et fixation des taux de transport terrestre. Paris, le 28 mars 1996 par J.F.PONS

Distribution automobile et autres: les relations verticales entre règle de concurrence et règle de raison par R. GOYER (paru le 7 mars 1996 dans SEMAINE JURIDIQUE, Cahiers de Droit de l'Entreprise (Supplément)

The EU approach on demonopolisation issues - presentation delivered by Mr Claude RAKOVSKY Directorate General for Competition of the European Commission, BRNO, May 1996

Preparing for 1998 and beyond - Keynote address by Commissionner K. Van Miert at the IIC Telecommunications forum 15 July 1996 - [SPEECH/96/198]

Auswirkungen des EU-Beitritts Österreichs auf den öffentlichen Unternehmenssektor, by G. Obermann and K. Soukup, in Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, Band 19, Heft 1 1996 p. 95

COMMUNITY PUBLICATIONS ON COMPETITION

Unless otherwise indicated, these publications are available through the Office for Official Publications of the European Communities, 2 rue Mercier, L 2985 Luxembourg - Tel.4992821 - Fax 488573, or its sales offices (see last page).; use ISBN or Catalogue Number to order.

LEGISLATION

Competition law in the European Communities - volume 1A Rules applicable to undertakings, situation at 30 june 1994; this publication contains the text of all legislative acts relevant to Articles 85, 86 and 90. catalogue No: (xx=language code; 9 languages) CM 29-93-A01-xx-C

Competition law in the European Communities, Addendum to Volume IA: Rules applicable to udertakings situation as of 31 December 1994. catalogue No: (xx=language code; 9 languages) CM 88-95-436-xx-C

Merger control in the European Union, this publication contains the text of all legislative acts relevant to the Merger regulation; catalogue No: (xx=language code; 9 languages) CV 88-95-428-xx-C

Competition law in the European Communities - volume IIA Rules applicable to State aid, situation at 31 December 1994; this publication contains the text of all legislative acts relevant to Articles 42, 77, 90, 92 to 94. Catalogue No. (xx=language code; 9 languages) : CM-29-93-A02-xx-C

Brochure concerning the competition rules applicable to undertakings as contained in the EEA agreement and their implementation by the EC Commission and the EFTA surveillance authority, CV-77-92-118-EN-C

COMPETITION DECISIONS

Reports of Commission Decisions relating to competition
-Articles 85,86 and 90 of the EC Treaty.
Catalogue numbers:
* 64/72, in it, de, fr, nl: CM 76-92-996-xx-C
* 73/80, in da, de, en, fr, it, nl: CM 76-92-988-xx-C
* 81/85, in 7 languages: CM79-93-792-xx-C
* 86/88, 9 languages: CM 80-93-290-xx-C
* 89/90, 9 languages: CV 73-92-772-xx-C
* 90/92, 9 languages: CV 84-94-387-xx-C
* 93/94, 9 languages: CV 90-95-946-xx-C

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COMPETITION REPORTS

European Community competition policy 1995, 11 languages, (available on request through DG IV's Cellule Information)

XXV Report on competition policy 1995, 11 languages, CM-94-96-429-xx-C

XXIV Report on competition policy 1994, 11 languages, CM-90-95-283-xx-C

XXIIIeme Rapport sur la politique de concurrence 1993, 9 languages, CM 82-94-650-xx-C

XXIIe Rapport sur la politique de concurrence: 1992, 9 languages, CM 76-93-689-xx-C

XXIe Rapport sur la politique de concurrence: 1991, 9 languages, CM 73-92-247-xx-C

Fourth survey on State aid in the European Union in the manufacturing and certain other sectors (11 languages). ISBN 92-827-5381-6.

Older annual reports are also available on request.

OTHER DOCUMENTS and STUDIES

Community Competition Policy in the Telecommunications Sector, a compedium prepared by DG IV; it contains Directives under art 90, Decisions under Regulation 17 and under the Merger Regulation as well as relevant Judgements of the Court of Justice. Volume I and addendum; copies are available through DG IV-C-1 (tel. +322-2968623, 2968622, fax +322-2969819).

Interim report of the Multimodal group CM-95-96-350-EN-C

Survey of the Member States national laws governing vertical distribution agreements CM-95-96-996-EN-C

Brochure explicative sur les modalités d'application du Règlement (CE) Nº 1475/95 de la Commission concernant certaines catégories d' accords de distribution et de service de vente et d'après-vente de véhicules automobiles. Copies available through DG IV-F-2 (tel. +322-2951880, 2950479, fax. +322-2969800)

Proceedings of the 2nd EU/Japan Seminar on competition, CV-87-95321-EN-C.

The Institutional Framework for the Regulation of Telecom-munications and the Application of EC Competition Rules - Final Report, Forrester Norall & Sutton, CM-94-96-590-EN-C

Competition Aspects of Access Pricing -December 1995, M. Cave, P. Crowther, L. Hancher, CM-94-96-582-EN-C

Competition Aspects of Interconnection Agreements in the Telecommunications Sector, CM-90-95-801-EN-C

The effect of conglomerate mergers on competition; CM-59-90-039-EN-C

Surveys of the Member States' powers to investigate and sanction violations of national competition laws, CM 90-95-089-EN-C

L' Office de l'harmonisation dans le marche interieur, AH-89-95-260-FR-C

Information exchanges among firms and their impact on competition, CV 89-95-026-EN-C

Impact of EC-funded R&D programmes on human resource development and long-term competitiveness, CG NA-15-920-EN-C

Meeting universal service obligations in a competitive telecommunications sector, CV 83-94-757-EN-C

The geographical dimension of competition in the European single market, CV 78-93-136-EN-C

Copyright and information limits to the protection of literary and pseudo-literary works in the Member States of the EC, CM 75-92-049-EN-C

Evaluation of the Impact of European Community Research Programmes upon the Competitiveness of European Industry: Concepts and approaches, CD NA-14-198-EN-C

Competition and integration: Community merger control policy,CM AR-94-057-EN-C

Growth, competitiveness, employment: The challenges and ways forward into the 21st century: White paper, 9 languages, CM 82-94-529-xx-C

Growth, competitiveness, employment: The challenges and ways forward into the 21st century: "White paper" - Vol. 2 -Part C, CM NF-93-0629-A-C

EG-Wettbewerbsrecht und Zulieferbeziehungen der Automobilindustrie, CV 73-92-788-DE-C

Competition policy in the new trade order: strengthening international cooperation and rules, CM 91-95-124-EN-C

The impact of joint ventures on competition: The case of petrochemical industry in the EEC, CM 70-91-491-EN-C

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Forum consultatif de la comptabilite: subventions publiques, C-184-94-735-FR-C

Les investissements dans les industries du charbon et de l'acier de la Communaute: Rapport sur l'enquete 1993, CM 83-94-2963-A-C

Les investissements dans les industries du charbon et de l'acier de la Communaute: Enquete 1992, 9 languages, CM 76-93-6733-A-C

The effect of different state aid measures on intra-Community competition, CM 59-90-702-EN-C

Study on the impact of liberalization of inward cross-border mail on the provision of the universal postal service and the options for progressive liberalization: Final report, CV 89-95-018-EN-C

Green Paper on the development of the single market for postal services, 9 languages, CD NA-14-858-EN-C

COST allocation and cross subsidies, CV 83-94-894-EN-C

New industrial economics and experiences from European merger control: New lessons about collective dominance ? CM 89-95-737-EN-C

Competition and integration: Community merger control policy, CM AR-94-057-EN-C

The effects of intra-Community competition of export subsidies to third countries: The case of export credits, export insurance and official development assistance, CM 59-90-281-EN-C

Aid element of government R&D contracts, CM 70-91-314-EN-C

Concurrence et cooperation dans le transport aerien en Europe, CV 74-92-815-FR-C

European Economy, Supplement A, Recent economic trends, No 4 - 04/94, **State aid control in the context of other community policies,** 9 languages, CM-AS-94-004-xx-C.

European Economy,; "Competition and integration - Community merger control policy", Supplement A nr. 3/95, 9 languages, CM AS-95--005-xx-C,

Activities in favour of SMEs and the craft sector. European Commission. 1995. ISBN 92-827-5175-9 + version FR et DE.

Aides et prêts de l'Union européenne - Guide des financements communautaires. 1995. ISBN 92-827-4601-1.

Répertoire de jurisprudence de droit communautaire 1977-1990. 3 volumes. Cour de justice des Commuautés européennes.

Conference on Competition Policy. Organised by the European Commission in cooperation with the Office of Economic Competition of Hungary. Visegrad. 19-21 June 1995.

Les marchés publics en Europe - Les directives (+EN,DE) ISBN 92-826-8189-0.

The institutional framework for the regulation of telecommunications and the application of EC competition rules. Document DG IV. ISBN 92-827-6508-3.

Competition aspects of access pricing. Document DG IV. 1996. ISBN 92-827-6509-1 ■

PUBLISHED IN THE OFFICIAL JOURNAL

1st April to 31 July 1996

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Notification of a joint venture (Case No IV/36.054 - CGI+Lombard) (published on the 02-07-96 in OJ C191)

Notification of an agreement (Case No IV/36.061 - ECU Banking Association) (published on the 05-07-96 in OJ C194)

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WRITTEN QUESTION P-811/96 by David Hallam (PSE) to the Commission (26 March 1996) (96/C 183/92) Subject: European Union subsidies to the carpet industry (published on 24-06-96 in OJ C118)

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WRITTEN QUESTION P-709/96 by Richard Howitt (PSE) to the Commission (12 March 1996) (96/C 183/87) Subject: Mobil and BP merger (published on 24-06-96 in OJ C118)

WRITTEN QUESTION P-707/96 by Carl Lang (NI) to the Commission (12 March 1996) (96/C 183/86) Subject: Aid to the textile industry (published on 24-06-96 in OJ C118)

WRITTEN QUESTION E-3501/95 by Per Stenmarck (PPE) to the Commission (3 January 1996) (96/C 161/36) Subject: De-regulation of the postal services market (published on 05-06-96 in OJ C116)

WRITTEN QUESTION P-237/96 by Phillip Whitehead (PSE) to the Commission (31 January 1996) (96/C 122/79) Subject: Car distribution Regulation (published on 25-04-96 in OJ C112)

WRITTEN QUESTION E-166/96 by Bryan Cassidy (PPE) to the Commission (1 February 1996) (96/C 122/73) Subject: P & I Clubs - The International Group Agreement (IGA) (published on 25-04-96 in OJ C112)

WRITTEN QUESTION E-165/96 by Bryan Cassidy (PPE) to the Commission (1 February 1996) (96/C 122/72) Subject: P & I Clubs - The International Group Agreement (IGA) (published on 25-04-96 in OJ C112)

WRITTEN QUESTION E-164/96 by Bryan Cassidy (PPE) to the Commission (1 February 1996) (96/C 122/71) Subject: P & I Clubs - The International Group Agreement (IGA) (published on 25-04-96 in OJ C112)

WRITTEN QUESTION E-3563/95 by Irene Crepaz (PSE) to the Commission (5 January 1996) (96/C 112/78) Subject: Liberalization of the energy market: consumer protection (published on 17-04-96 in OJ C111)

WRITTEN QUESTION E-3453/95 by Susan Waddington (PSE) to the Commission (18 December 1995) (96/C 112/56) Subject: State subsidies to European airlines (published on 17-04-96 in OJ C111)

WRITTEN QUESTION E-3072/95 by Bartho Pronk (PPE) to the Commission (20 November 1995) (96/C 112/32) Subject: European generic pharmaceuticals industry (published on 17-04-96 in OJ C111)

WRITTEN QUESTION E-3134/95 by Jesus Cabezon Alonso (PSE) to the Commission (20 November 1995) (96/C 109/47) Subject: EU workers on board Moroccan fishing vessels (published on 15-04-96 in OJ C110)

WRITTEN QUESTION P-575/96 by Peter Skinner (PSE) to the Commission (1 March 1996) (96/C 173/129) Subject: Kimberley Clark/Scott merger and subsequent redundancies (published on the 17-06-96 in OJ C117)

WRITTEN QUESTION E-210/96 by Cristiana Muscardini (NI) to the Commission (5 February 1996) (96/C 173/64) Subject: Acquisitions by the Olivetti Group of telecommunications media (published on the 17-06-96 in OJ C117)

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Affaires introduites devant la Cour

Aff. C-67/96
Albany International BV / Stichting Bedrijfspensioenfonds Textielindustrie
Préjudicielle - Kantongerecht te Arnhem - Interprétation des art. 85, 86 et 90 du traité CE - Application à une fondation gérant un fond de pensions obligatoires pour les entreprises de l'industrie textile

Aff. C-106/96
Royaume-Uni / Commission
Annulation des décisions faisant l'objet du communiqué de presse de la Commission du 23 janvier 1996 (IP/96/67) - Aides aux projets européens pour combattre l'exclusion sociale

Aff. C-148/96 P (R) Anthony Goldstein / Commission; Pourvoi contre l'ordonnance de référé du Président du Tribunal, rendue le 27 février 1996, dans l'affaire T-235/95 - Ordonnance portatnt rejet d'une demande de mesures provisoires introduite dans le cadre d'une procédure tendant à faire constater la violation des art. 85 et 86 du traité CE par le "General Medical Council" organisme chargé de réglementer les professions médicales au Royaume-Uni.

Aff. C-163/96
Silvano Raso e.a.

Demande de décision préjudicielle - Pretura circondariale - La Spezia - Interprétation des art. 59, 86 et 90, par. 1, du traité CE - Réglementation nationale qui interdit aux entreprises concessionnaires d'un terminal portuaire d'avoir recours à l'activité d'entreprises autres que celles constituées par les anciennes compagnies ou groupes portuaires pour la prestation de services aux utilisateurs du terminal
Aff. C-176/96
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Demande de décision préjudicielle - Tribunal de première instance de Bruxelles - Interprétation des art. 6, 48, 85 et 86 du traité CE - Réglementation d'une fédération sportive qui fixe des périodes de transferts pour l'engagement de joueurs professionnels pouvant être alignés au cours d'une période de championnatAff. C-182/96
Allemagne / Commission

Annulation de la décision C(96)841 final concernant une aide fiscale en matière d'amortissements octroyée au profit d'entreprises allemandes -

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Aff. C-195/96
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Annulation de la décision C(96)1203 final de la Commission concernant une aide d'Etat concédée par le Freistaat Bayern à l'entreprise CECA Neue Maxhütte Stahlwerke GmbH

Affaires introduites devant le Tribunal

Aff. T-37/96: Luftfartsfunktionaererne / Commission; Annulation de la decision de la Commission 96/180/CE relative a une procedure d'application de l'art. 85 du traite CE et de l'art. 53 de l'accord EEE (IV/35.545 LH/SAS) - Accord de cooperation entre Lufthansa et SAS

Aff. T-38/96: Guerin Automobiles / Commission; Recours en carence tendant a faire constater que la Commission s'est illegalement abstenue de prendre une decision suite a la plainte deposee par la requerante sur le fondement de l'art. 85 du traite CE et du reglement (CEE) no 123/85 de la Commission et concernant l'imposition par la societe Nissan France d'un regime de concession incompatible avec les conditions dudit reglement - Nouvelle mise en demeure adressee a la Commission suite a l'exception d'irrecevabilite soulevee par celle-ci dans l'affaire T-195/95 - Recours en indemnite en reparation du prejudice pretendument cause par le comportement de la Commission

Aff. T-39/96: SGA / Commission; Recours en carence tendant a faire constater que la Commission s'est illegalement abstenue de prendre une decision ainsi que d'adopter des mesures provisoires suite a la plainte deposee par la requerante sur le fondement de l'art. 85 du traite CE et de l'art. 3 point 11 du reglement (CEE) no 123/85 de la Commission, et concernant les agissements de la societe Peugeot aupres des concessionnaires de ses filiales etrangeres afin de les empecher d'accepter de vendre des vehicules aux intermediaires francais - Nouvelle mise en demeure - Recours en indemnite en reparation du prejudice pretendument cause par le comportement de la Commission

Aff. T-31/96: Credit Lyonnais / Commission; Annulation de l'art. 2 c) de la decision (95/547/CE) de la Commission portant approbation conditionnee de l'aide accordee par la France a la banque Credit Lyonnais

Aff. T-32/96: Societe Generale / Commission (Voir affaire T-31/96)

Aff. T-41/96: Bayer / Commission; Annulation de la decision de la Commission relative a une procedure d'application de l'art. 85 du traite CE (IV/34.279/F3) ADALAT - Interdiction imposee par la requerante aux grossistes etablis dans les divers Etats membres d'exporter le medicament en question vers d'autres Etats membres - Demande de dommages-interets

Aff. T-45/96: Sodima / Commission; Recours en carence tendant a faire constater que la Commission s'est illegalement abstenue de prendre une decision suite a la plainte deposee par la requerante sur le fondement des art. 85 et 86 du traite ainsi que du reglement (CEE) no 123/85 de la Commission et concernant l'imposition par la societe Peugeot d'un regime de concession incompatible avec les conditions d'exemption etablies par ledit reglement - Nouvelle mise en demeure adressee a la Commission suite a l'exception d'irrecevabilite soulevee par celle-ci dans l'affaire T-190/95 - Recours en indemnite en reparation du prejudice pretendument cause par le comportement de la Commission

Aff. T-52/96: Sogecable / Commission; Annulation de la décision de la Commission de considérer que l'accord de création de la société "Cablevisión" constitue une opération de concentration de dimension communautaire, dans le sens du règlement (CEE) nu 4064/89, relatif au contrôle des opérations de concentration entre entreprises

Aff. T-65/96: Kish Glass / Commission; Annulation de la décision de la Commission, du 21 février 1996, rejetant la plainte de la requérante relative à une procédure d'application de l'art. 86 du traité CE (Affaire IV/34.193 - Kish Glass)

BOOKS and PUBLICATIONS

Received by DG IV' s library

GATS: the General Agreement on Trade in services: a guide for business/EU. European Commission. ISBN 92-827-4230-X.

The law of the European Community: including the EEA agreement by Andrew Evans. Dordrecht: Kluwer 1994. ISBN 82-518-3234-9.

Cases and materials: the law of the European Community including the EEA Agreement edited by Andrew Evans and Per Falk. Helsinki: Lakimiesliiton Kustannus, 1994. ISBN 82-518-3276-4

Konzeption, Formen und Wirkungen der Subventionen zur Förderung der Transformation in Ostdeutschland von Kersten Trojanus. München: IFO-Institut

für Wirtschaftsforschung, 1995. ISBN 3-88512-252-9.

Country profile-Lithuania 1993. European Commission 1996. ISBN 92-827-5952-0.

Kooperationsgruppen des Handels und Franchisesysteme in Europa aus der Sicht des EG-Wettbewerbsrechts von Volker Beuthien, Günter Christian Schwarz. ISBN 3-525-86053-6.

Droit communautaire des affaires. Tome 2. Droit communautaire de la concurrence par André Decocq. Paris: Cours de droit-Litec, 1995. 1994/95. ISBN 2-7111-2482-7.

Die Wettbewerbs- und Kartellgesetze der osteuropäischen Staaten/hrsg. und eingeleitet von Ulrich W. Schulze. Berlin Verl. 1994.

European Community air law by John Balfour. London Butterworths 1995. ISBN 0-406-05217-4.

Fordham Corporate Law Institute. 22nd annual conference on international antitrust law & policy. 1995.

Free movement of goods in the European Community under articles 30 to 36 of the Rome Treaty by Peter Oliver. London: Sweet & Maxwell, 1996. ISBN 0-421-51110-9.

Die Finanzierungshilfen des Bundes, der Länder und der internationalen Institutionen. Ausgabe 1995/96.

Electric utility regulation in the European Union - a country by country guide by Eugene D. CROSS. Chichester : Wiley, 1996

Competition policy : a game-theoretic perspective by Louis Philips. Cambridge : Cambridge University Press, 1995. ISBN 0-521-49871-6.

Cinema, television, video et nouveaux medias en Europe : annuaire statistique... by Ismo Silvo 1995/96. ISBN 92-871-2661-5

Commercial Communications. DG XV. March 1996. Vol. 1. Issue 3. C1-AA-96-003-EN-C.

Le Traité de Maastricht: genese, analyse, commentaires. J. Cloos, G. Reinesch, D. Vignes, J. Weyland. Bruxelles, Bruylant, 1994. ISBN 2-8027-0931-3.

Privatisations: un défi stratégique, juridique et institutionnel. P. Guislain avec la collaboration de M. Knerf. Bruxelles, De Boeck, 1995. ISBN 2-8041-1981-5.

EEC competition law handbook. M. van der Woude, C. Jones and X. Lewis. London, Sweet and Maxwell. 1995.

Sicherung des Leistungswettbewerbs durch das Verbot der unbilligen Behinderung in § 26 Abs. 4 GWB. J. Wuttke. Carl Heymanns Verlag KG. 1995.

Aspects juridiques de la concurrence martitime. G. Athanassiou. Paris, Pedone 1996. ISBN 2-233-00286-5.

Europe, concurrence et service public/Centre européen des entreprises à participation publique. Paris, Masson 1995. ISBN 2-225-84975-7

La consommation d'électricité, de gaz naturel et de fuel en France et les conditions de la concurrence entre les énergies. J.J. Rosa. Janvier 1996

Les communications cellulaires mobiles: stratégies de tarification et concurrence/OCDE. Paris, OCDE, 1996. ISBN 92-64-24789-0

Comparative Competition Policy. National Institutions in a global market. G. Bruce Doern and S. Wilks. Clarendon Press - Oxford, 1996

Competition policy. 1994 Workshop with the dynamic non-member economies. Organisation for economic co-operation and development. Paris 1996

The revival of Japanese competition policy and its importance for EU-Japan relations. S. Wilks with a preface by K. Sanekata. ISBN 0-905031-83-0

European consumer guide to the single market/EU (2nd edition)EN & FR. European Commission. 1996.

Trends in Europe. Consumer Attitudes and the Supermarket 1995. Report by A. Tordjman, HEC School of Management. France.

Die Kontrolle und Harmonisierung nationaler Beihilfen durch die Kommission der Europäischen Gemeinschaften. M. Rosenstock. Europäischer Verlag der Wissenschaften Peter Lang.

Subventions à l'industrie: manuel de notification/OECD. Paris, OCDE, 1995. ISBN 92-64-24318-6.

Forschungssubventionen aus wettbewerbspolitischer Sicht. M. Meyer. Baden-Baden, Nomos, 1995. ISBN 3-7890-3701-X.

Policy issues in insurance: investment, taxation, insolvency/OECD. Paris, OECD, 1996. ISBN 92-64-14787-X.

Aspects fondamentaux des assurances: investissement, fiscalité, insolvabilité/OCDE. Paris, OCDE, 1996. ISBN 92-64-24787-4

Guide de l'artisanat et de la petite entreprise dans l'Union européenne: Représentation -Services officiels - Politiques/UE, Commission européenne. Bruxelles, Delta 1995. ISBN 2-8029-0119-2.

The Merck index. An encyclopedia of chemicals, drugs and biologicals ed by

Susan Budavari, Maryadèle J. O'Neil (e. a.) 12th ed. 1996. ISBN 0-911910-12-3

Reshaping Greece's Energy Legislation: the Gradual Adjustment to EC Standards and Objectives. by Anna Papaioannou. Journal of Energy & Natural Resources Law. Vol. 14. N 1. February 1996

Öffentliche Unternehmen und die Beihilfeaufsicht der EU, Wie Subventionen von der Europäischen Kommission beurteilt verden, by Karl Soukup, MANZ, ISBN 3-214-08235-3

Coming up ....

The following publications are under preparation by DG IV; however, a budget has been allocated only for publications marked with an *:

EC Competition Policy Newsletter: autumn/Winter 1996

Competition law in the European Communities -volume 1B Explanation of rules applicable to undertakings.

Dealing with the Commission - notifications, complaints, inspections and fact-finding powers.

Competition law in the European Communities -volume 3A: International aspects of competition policy*

Competition law in the European Communities -Addendum to volume 2A: Rules applicable to State aid.

Actes Forum Européen de la Concurrence.(co-edition with J. Wiley) Catalog number: CV-88-95-985-EN-C*

L' application des articles 85/86 par les juridictions nationales*

Recueil des décisions sur les aides d'Etat*

Brochure sur la politique de la concurrence dans le Marché unique (concernant les art.85,86,90 et le règlement sur les concentrations)

Brochure sur la politique concernant les aides d'Etat

Brochure concernant des sujets présentant un intérêt pratique pour l'industrie de la Communauté et plus particulierement les PMEs

Video: Introduction to competition policy

Video: Dealing with the Commission - Notifications, complaints, inspections and fact-finding powers

Exchange of confidential Information Agreements and Treaties between the US and certain Member States ■

DG IV on the World Wide Web

Since the 25th of June 1996, DG IV has a home page on the Europa server available on the World Wide Web. Our address is ***http://europa.eu.int/en/comm/dg04/dg4home.htm.***

On the new homepage the following information can be found:

DG IV's Mission & Directory : Under this heading the user can find a brief description of the main areas of DG IV's activity and some introductury articles on European competition policy. DG IV's staff list is also available.

What is New : Most recent developments.

DG IV's areas of activity : for the main DG IV's areas of activity we already introduce (or plan to introduce in the near future) data for the following sub-headings:

Press releases issued during the past month : These documents are downloaded daily from the RAPID database; because of the updating procedure data is introduced with a delay of 2-3 working days.

Published in the Official Journal during the last 6 months : We plan to introduce the full text of important documents published in the Official Journal. Only the published version will be legally binding and data will

be introduced some days after publication.

Legislation in force : A full list by subject will be introduced. This sub-heading will in term contain an updated version of the legislation published in Vol IA: Rules applicable to undertakings; Vol IIA: Rules applicable to state aid; Vol IIIA: International dimension.

Commission Decisions on individual cases : A full list by year is already available for the antitrust and merger headings. A list of the most important decisions by subject year is also under preparation. We also plan at a later stage to introduce the text of the most important acts of the latest week, after their publication in the Official Journal.

Judgements of the European Court of Justice and the Court of First instance : According to preliminary information, the Court of Justice will inaugurate its own World Wide Web site later this year. By using extensive links we hope we will be able to provide : a) the schedule of the Court and the Court of First Instance; b) a full list of cases introduced; c) a full list of Judgments of the Court and the CFI by year and by subject; and d) the text of the most important acts of the latest week. Interested users can already find several comments and analyses drafted by DG IV officials and already published in the EC Competition Policy Newsletter.

Communications and important documents : this heading will eventually contain miscelaneous information of some importance (e.g. under the State Aid heading the reference rates used by the Commission to measure the aid element of state subsidies; under the Mergers heading the monthly and annual equivalences between the ECU and national currencies necessary for the calculation of the yearly turnover in ECUs)

Documentation, publications speeches and articles : This heading already contains all speeches of the Commissionner for Competition and of DG IV officials since 1993, as well as the Newsletter, the Annual Competition Report, the list of Community publications on Competition available to the public and what is coming up etc.

Special features : under the heading International Dimension the user will find links to the most important sites of national competition authorities. DG IV's publications are available in a portable document format (pdf) produced with the Adobe Acrobat® software. Interested users can download the documents but they will also need the Acrobat Reader® software to read them. This software is available free of charge and enables the user to read and print pdf documents on his/her printer without changing the initial format. In a certain way an exact facsimile "paper copy" of the original can be reproduced locally.

Finally, interested users should note that DG IV's pages are under construction. Members of DG IV's Cellule Information do their best - view the extremely limited resources available - to introduce data for each heading and we expect to cover all headings systematically as from September onwards. It goes without saying that your comments, ideas and corrections - even your positive feedback - are always welcome, preferably by e-mail (info4@dg4.cec.be). The site was set up since January 1996 by Gerald Messiaen, official at DG IV-01.

More Information ...

The Directorate General for Competition (DG IV) receives many requests with specific questions. It is in fact impossible, given the resources available, to investigate and reply individually to each one of them., so ***in the future we will answer only requests for the annual report and the Newsletter***. In order to better inform the public on Competition Policy, DG IV produces several publications, available through the Office for Official Publications of the European Union (see catalog under the heading Community Publications on Competition). We also publish three times a year the ***"EC Competition Policy Newsletter"***, available free of charge. Speeches by the Competition Commissioner and by officials from the Directorate General as well as general documentation will be systematically available through our WWW home pages. Please address your correspondence to :

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