EC COMPETITION POLICY NEWSLETTER

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Editorial

by Alexander SCHAUB, Director-General for Competition

You are holding in your hands (or visualising on your screen) the tenth issue of the EC Competition Policy Newsletter. This would in any event warrant a look back on three years during which DG IV has taken a new approach to information and transparency. And a successful one for that: 30,000 old-fashioned "hard" copies of each Newsletter issue are printed and rapidly exhausted. Moreover, all published issues are permanently available on the World Wide Web (http://europa.eu.int/en/comm/dg04/newsle/index). Comments from all over the world confirm that the Newsletter is regarded as a valuable source of information.

However, this issue also marks two changes to the team that has ensured the success of our publication, neither of which should go unnoticed.

The first change is the departure of the Newsletter's initiator and first editor, Christopher Wingfield Jones. After eleven years working in the EC competition policy field and notably in DG IV, of which three have been as the Assistant to the Director-General for Competition, Christopher has found a new challenge in an area where competition is developing quickly throughout the European Union, namely energy markets. It goes without saying that each issue of the EC Competition Policy Newsletter is always the product of a joint effort within DG IV - however, the Newsletter's success owes much to Christopher's commitment... and indeed energy. I should like to express my gratitude and wish him well in his future career.

The second change concerns DG IV's Information Officer, Panagiotis Alevantis. Since his arrival, Panagiotis has not only been instrumental in implementing a wholly new information policy, but also a driving force behind many a successful initiative in this field. He has anticipated at an early stage developments such as the success of the Internet, which we regard as normal today and which makes the EC Competition Policy Newsletter accessible to large numbers of interested readers whom we could not otherwise reach. This being the last issue he will co-ordinate before his imminent departure, I shall take the opportunity to acknowledge Panagiotis' contribution to steering DG IV onto the information highway.

As from this issue, the new editor of the Competition Policy Newsletter is Stefan Rating who will endeavour to maintain the high standard of the publication and continue the further development of the project. Starting in May 1997, Terence Whaley will be the new Information Officer, notably responsible for DG IV's external information services. Issues relating to our presence on the World Wide Web will be the domain of our *webmaster* Gérald Messiaen. All three remain open to any suggestion or comment regarding DG IV's information tools, and in particular the EC Competition Policy Newsletter.

La política de competencia en América Latina: una nueva área de interés para la Unión Europea*

por Juan Antonio RIVIÈRE MARTÍ, Consejero, DG IV-A

LA GRAN DÉCADA ECONÓMICA

América del Sur y Centroamérica son de una gran actualidad desde el punto de vista de la política de competencia. Desde principios de los años noventa se asiste en esa parte del mundo a un afianzamiento de los regímenes democráticos y a unas políticas económicas que incluyen la apertura de los mercados al comercio internacional. La conjunción de estos factores ha llevado aparejado un crecimiento económico notable en esta área de más de 460 millones de habitantes.

Las políticas económicas desarrolladas, en diversos grados según el país, han sido políticas de ajuste económico, saneamiento financiero, estricto control de sus divisas, desarme arancelario, favorecimiento de las inversiones extranjeras, privatizaciones de las empresas públicas y desarrollo de la integración económica regional. Después de unas décadas de intervencionismo estatal en la economía con los defectos del dirigismo y de las estructuras monopolísticas, se ha descubierto de nuevo el dinamismo de la economía de libre mercado y se ha perseguido la competitividad de las empresas. Persisten grandes retos de creación de empleo y de reducción de la pobreza, que también deben ser tenidos en cuenta.

APOYO INTERNACIONAL

Esta evolución económica y política ha favorecido la creación y la puesta al día de las legislaciones de competencia existentes en la región, realizándose modificaciones y mejorándose los medios para su aplicación. Este proceso ha recibido sustento a nivel internacional. Por un lado, mediante iniciativas propias de la región, como la creación del Mercosur, el relanzamiento de la Comunidad Andina, el Sistema de Integración Centroamericano, el Sistema Económico Latinoamericano y del Caribe, el Área de Librecomercio de las Américas, la Organización de los Estados Americanos y el definir Nafta. Por otro lado, entre las instituciones que han apoyado esta evolución mediante iniciativas diversas de asesoramiento y conferencias figuran el Banco Mundial, la Conferencia de las Naciones Unidas para el Comercio y Desarrollo (UNCTAD), la Organización Mundial del Comercio (OMC) y la Organización Europea de Cooperación y Desarrollo Económico (OECD).

TRADICIÓN Y MODERNIDAD EN LAS REGLAS DE COMPETENCIA

En el cuadro de la página siguiente, se recoge la lista de las legislaciones de competencia vigentes. En la actualidad tienen reglamentación de competencia los países siguientes: Argentina, Brasil, Chile, Perú, Colombia, Venezuela, México, Costa Rica, Panamá y Jamaica. Además existen normas regionales de competencia para el Mercosur y el Pacto Andino. Los países que actualmente tienen en proyecto su legislación son Bolivia, El Salvador, Guatemala, Nicaragua, y la República Dominicana.

La tradición legislativa antimonopolista es antigua en el Brasil, donde se remonta al siglo pasado, y bastante larga en otros de los países de la región: en la Argentina se remonta a 1919, en México a 1934, en Colombia a 1959 y en Chile a 1973. El ordenamiento jurídico de los países latinoamericanos ha estado en gran parte inspirado, desde el logro de su independencia, en el modelo jurídico latino europeo. En cuanto a las reglas de competencia, la prohibición de las prácticas concertadas o acuerdos restrictivos entre competidores, el abuso de posición dominante y el control de las operaciones de concentración se encuentran reglamentados, en gran medida, por las legislaciones latinoamericanas. Si bien se puede decir que ha existido en parte inspiración de las reglas de competencia de las Comunidades Europeas en la redacción de las reglamentaciones, también es verdad que, hoy en día, dichos conceptos jurídicos tienen un reconocimiento universal como guardianes de la organización de la economía de mercado.

UN CONCEPTO AMPLIO DE COMPETENCIA

Aunque las características económicas propias difieren de un país a otro, las políticas de ajuste económico desarrolladas han requerido medidas de organización en muchas áreas próximas a la legislación en materia de competencia. Entre éstas destacan los derechos de los consumidores, normalizaciones técnicas, reglas sobre inversiones, Derecho Mercantil con especial mención del registro de patentes y marcas, defensa comercial, privatizaciones y sectores de servicios regulados. Las reglas de competencia se integran en este conjunto de mejoras de la organización económica. Hay quienes consideran aquéllas esenciales; en el fondo, sin embargo, mal podrían aplicarse si la organización de la economía no ofreciese un mínimo de garantías de funcionamiento estable.

AUTORIDADES DE COMPETENCIA MODERNAS

Todas las legislaciones mencionadas instauran un ente, cuya denominación varía (Autoridad, Comisión, Consejo, Fiscalía o Superintendencia), al que otorgan la responsabilidad de aplicar las disposiciones de competencia. La legislación de algunos países ha separado la instrucción del expediente de la decisión final, que compete a un tribunal creado al efecto. El cuadro de la última página recoge la lista de autoridades de competencia nacionales. Algunas de éstas tienen capacidad interpretativa y pueden emitir también resoluciones o dictámenes que facilitan la aplicación de las normas de la competencia. En algunos países el ámbito de aplicación de la parte dispositiva de dichas normas es reducido. Las disposiciones administrativas relativas a los poderes de la autoridad de competencia y las disposiciones procesales suelen ser más extensas. Algunas legislaciones nacionales dan fe del objetivo de reducir formalismos y trámites burocráticos.

LA CULTURA DE LA COMPETENCIA

Por lo general, las autoridades de competencia en América Latina tienen que hacer frente al desafío de aplicar la legislación de competencia con medios administrativos y financieros limitados. Por añadidura, la economía consta de sectores con un alto grado de concentración y habituados al intervencionismo estatal o a la concertación empresarial. De ahí que se requiera un esfuerzo para crear la "cultura" de la competencia. El fomento de la competencia empieza en la propia Administración del Estado, mediante la formación de sus funcionarios, y pasa por la adecuación de los planes de estudios académicos de las universidades. A fin de concienciar a la sociedad es preciso explicar a las empresas y a los profesionales liberales el objetivo de la economía de libre mercado y la utilidad de legislar en defensa de la competencia. Resulta sin duda más arduo aplicar las reglas de defensa de la competencia en América Latina que en economías de alto grado de desarrollo industrial como las existentes en la Unión Europea.

PAÍS/GRUPO	LISTA DE LEGISLACIONES DE COMPETENCIA
ARGENTINA	Ley N/ 22.262 de Defensa de la Competencia, de 01.08.1980.
BRASIL	Lei N/ 8884, de 11.06.1994, alterada pela Lei N/ 9069 de 29.06.1995, Prevenção e repressão as infrações contra ordem econômica Lei N/ 9021, de 30.03.95, Autarquia do CADE Resolução n/ 5, de 28.8.96 do CADE. Disciplina as formalidades e os procedimentos, no CADE, relativos aos atos de que trata o art. 54 da Lei N/ 8884. Resolução n/ 6, de 2.10.96 do CADE
COLOMBIA	Ley 155 de 24.12.1959, prácticas comerciales restrictivas. Decreto n/ 1302 de 01.06.1964, Decreto n/ 2153 de 30.12.1992, reestructura la Superintendencia
COSTA RICA	Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor, de 20.12.1994.
CHILE	Decreto Ley n/ 211, de 1973. Defensa de la libre competencia; previene y sanciona las prácticas monopólicas, modificada por el Decreto Ley n/ 2760 de 03.07.1979.
JAMAICA	The Fair Competition Act. de 09.03.1993
MERCOSUR	Decisión n/ 21/94-CMC Defensa de la Competencia. Pautas Generales de Armonización. Decisión n/ 18/96 Protocolo de Defensa de la Competencia del Mercosur 17.12.1996
MÉXICO	Ley Federal de Competencia Económica, de 24.12.1992. Reglamento interior de la Comisión Federal de Competencia, de 12.10.1993.
PACTO ANDINO	Decisión 285 de 21.03.1991. Normas para prevenir o corregir las distorsiones en la competencia generadas por prácticas restrictivas de la libre competencia.
PANAMÁ	Ley N/ 29 de 1 de febrero de 1996, por la cual se dictan normas sobre la Defensa de la Competencia y se adoptan otras medidas.
PERÚ	Decreto n/ 701 de 05.11.1991. Prácticas monopólicas, controlistas y restrictivas de la libre competencia. Decreto Ley n/ 25868 de 06.11.1992, de organización del Indecopi. Decreto Legislativo N/ 807, de 16.04.96, Facultades, normas y organización del Indecopi
VENEZUELA	Ley de 13.12.1991, para promover y proteger el ejercicio de la libre competencia. Reglamento N/ 1, de 21.01.93; Reglamento N/ 2, de 21.05.96 Instructivo N/ 1, de 12.07.93; Instructivo N/ 2, de 23.05.94

LA GLOBALIZACIÓN DE LAS OPERACIONES

Por otro lado, las autoridades de competencia latinoamericanas, aun sin disponer de una larga experiencia doctrinal y jurisprudencial, tienen que

enfrentarse con la necesidad de un desarrollo legislativo propio y con problemas de competencia semejantes a los planteados en Europa o Estados Unidos. Por ejemplo, en los sectores de las telecomunicaciones, de la televisión digital, de las tarjetas de crédito, de bienes de consumo producidos por multinacionales, de la distribución en el sector del automóvil, etc., los desafíos a la libre competencia se han globalizado. Existe pues un fuerte interés tanto por conocer la doctrina aplicada en otros países como por cooperar en la instrucción y resolución de asuntos de actualidad.

PROYECCIÓN INTERNACIONAL DE LA UNIÓN EUROPEA

De forma similar, en la Unión Europea la política de competencia ha ido asimismo cobrando una mayor proyección internacional. La necesidad de una cooperación entre los Estados miembros y la Comisión Europea se acrecienta. La intensidad de las relaciones comerciales entre Estados Unidos y la Unión Europea ha llevado a la conclusión de un acuerdo de cooperación mutua en materia de competencia, que se verá completado en breve por un acuerdo de comitología. El desarrollo de la economía de mercado en los países de la Europa central y oriental (PECO), unido a su posible adhesión a la Unión Europea, han permitido a ésta exportar su modelo de libre competencia. Del mismo modo el objetivo de convertir en socios a los países mediterráneos mediante la firma de acuerdos de libre comercio ha proyectado el interés por la asunción de reglas de competencia en estos países terceros. Todas estas iniciativas en favor de los PECO, las antiguas repúblicas soviéticas y los países del entorno mediterráneo están apoyadas por programas de cooperación técnica tales como Phare, Tacis o Meda, todos ellos dotados de vastos recursos financieros. Además la presencia de la Unión Europea en los foros internacionales tales como la OMC le ha permitido lanzar iniciativas multilaterales.

ACUERDOS MARCO DE COOPERACIÓN

La Unión Europea ha creado una red de acuerdos marco de cooperación con los países de América Latina. Cabe destacar el Acuerdo marco interregional de cooperación con el Mercosur, de 15 de diciembre de 1995 (DOCE 1996 nº L 69), que en una segunda fase prevé la posibilidad de crear una área de libre comercio. La idea de apoyar el proceso de integración económica del Mercosur es de gran importancia.

Existen acuerdos marco de cooperación específicos con la Argentina, firmado el 2 de abril de 1990 (DOCE 1990 nº L 295, p. 66), con el Brasil, firmado el 29 de junio de 1995 (DOCE 1995 nº L 262, p. 53), y con Chile, firmado el 21 de junio de 1996 (DOCE 1996 nº L 209, p. 1). En la actualidad se está negociando un acuerdo con México que tiene como objetivo constituir una área de libre comercio. Las relaciones comerciales de la Unión Europea se han desarrollado también mediante otros dos Acuerdos marco de cooperación: uno, firmado el 26 de junio de 1992, con el Acuerdo de Cartagena y sus países miembros, el llamado Pacto Andino (DOCE 1993 nº C 25, p. 32), el otro, concluido el 22 de febrero de 1993, con las Repúblicas de Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá, el llamado Istmo Centroamericano (DOCE 1993 nº C 77, p. 30). La referencia a la importancia de las reglas de competencia se considera incluida en el concepto de normas y disciplinas comerciales.

El artículo 5-3º del Acuerdo marco interregional entre la Unión Europea y el Mercosur prevé lo siguiente: "La cooperación cubrirá principalmente los temas siguientes: a) las disciplinas comerciales, las relativas a las prácticas restrictivas de competencia (...)", a lo que el artículo 11-2º añade: "La cooperación estará dirigida en particular a:...c) identificar y eliminar los obstáculos a la cooperación industrial entre las Partes mediante medidas que favorezcan el respeto de las leyes de la competencia y su alineamiento a las necesidades del mercado (...)".

LAS ORIENTACIONES PARA LA COOPERACIÓN DE 1996-2000

La cooperación financiera y técnica con América Latina alcanzá en 1995 un volumen de 205 millones de ECU, invertidos en proyectos de desarrollo orientados a resolver problemas macroeconómicos y sectoriales. A la cooperación económica correspondiera 56 millones de ECU, destinados a mejora rel contexto económico, a formentar la integración sectorial y a favorecer la expansión de la economía. Para otros ámbitos de cooperación se dispuso de 80 millones de ECU. La ayuda total concedida ascendió a 520 millones de ECU. A finales de 1995 la Comisión recibió el apoyo del Consejo de Ministros en sus orientaciones 1996-2000 para que la cooperación se hiciera extensiva al apoyo de las instituciones, la lucha contra la pobreza, las reformas económicas, la mejora de la competitividad, la formación y la integración regional abierta. Últimamente el Informe Bertens del Parlamento Europeo ha considerado importante la elabotación una nueva propuesta y el diseño de un programa de acción global a la altura de los cambios realizados.

GRAN DINAMISMO COMERCIAL

El dinamismo de América Latina no sólo ha sido percibido por el Parlamento Europeo. Algunos Estados miembros de la UE desarrollan actividades a través de sus agencias de cooperación, como es el caso de Alemania y España. Los líderes políticos europeos han subrayado con frecuencia la importancia de las relaciones con esa zona, siendo el más reciente ejemplo el del Presidente de la República Francesa. Hace tiempo que las empresas europeas son conscientes del incremento de las relaciones comerciales. Los flujos de comercio exterior se situaron en 1995 en torno a los 40.000 millones de US$. Las

tres cuartas partes de las inversiones europeas se centran, dada su extensión geográfica y grado de desarrollo, en Brasil, México, Argentina y Chile. Sin embargo, el interés europeo abarca también a los demás países latinoamericanos. Hay un elemento del comercio exterior que es revelador de esta dinámica comercial: entre 1993 y 1995, América Latina ha contribuido en aproximadamente un 10,4% al incremento total del comercio exterior de la Unión Europea. Esta cifra es más del doble de la parte del comercio exterior total comunitario que corresponde al comercio con América Latina.

FACTOR DE FOMENTO DE LA INTEGRACIÓN ECONÓMICA

La aplicación de las reglas de competencia en América Latina es un elemento importante del desarrollo económico y de la integración regional de aquellos mercados. Allí donde existe seguridad jurídica y certeza de su aplicación, los riesgos de conflictos comerciales y políticas de defensa comercial se reducen considerablemente. Desde la Dirección General de la Competencia de la Comisión Europea (DG IV) se ha seguido de cerca este interesante proceso durante el año 1996. Así se ha confeccionado un compendio de legislaciones de competencia de América Latina y un repertorio de sus autoridades nacionales respectivas a fin de fomentar su conocimiento. Dicho compendio se hará llegar a quienes lo soliciten al n° de fax +32-2-2969803 o a la dirección e-mail *juan.riviere@dg4.cec.be* (indicando su nombre y apellidos, empresa o institución, función en ésta, dirección, teléfono/fax y, en su caso, señas de correo electrónico). También se ha realizado un inventario para evaluar las posibilidades de colaboración técnica tanto con países individuales como con asociaciones o grupos de países (Mercosur, Pacto Andino, Istmo Centroamericano).

ÁREAS DE COOPERACIÓN

En la actualidad se están estudiando las posibilidades y modalidades de cooperación entre las autoridades de competencia de la Unión Europea y de América Latina. Las opciones a considerar se encuadran en tres grandes ámbitos:

1.- Formación: En este apartado cabría incluir periodos de intercambio o prácticas de funcionarios en las respectivas autoridades de competencia, conferencias, seminarios y cursos de formación universitaria. Esta experiencia debería favorecer los conocimientos prácticos de la aplicación de reglas y la doctrina de competencia.

2.- Lazos institucionales: Se trataría de estrechar la cooperación entre autoridades de competencia para favorecer un intercambio de informaciones sobre la gestión y la mejora procedimental de sus actividades.

3.- Fomento de la integración económica: Ello requeriría un mayor arraigamiento de la cultura de competencia, incluyendo tanto a las empresas como a los profesionales, y el simultáneo desarrollo del ordenamiento jurídico propio.

Se trata de objetivos ambiciosos a examinar tanto por parte de las instituciones comunitarias como por las autoridades nacionales de competencia de los Estados miembros y de América Latina, respectivamente. En función de la evolución de las relaciones se decidirán las medidas específicas para poner en práctica esta cooperación. Últimamente una misión de prospectiva ha sido enviada a los países integrantes del Mercosur para evaluar las posibilidades de asistencia técnica por parte de la Unión Europea. Una nueva área de cooperación con América Latina está naciendo - compite a cada uno asumir sus responsabilidades para lograr llevar las relaciones en materia de política de competencia a una nueva dimensión.

País	Lista de Autoridades de Competencia
ARGENTINA	**Comisión Nacional de Defensa de la Competencia** Ministerio de Economía y Obras y Servicios Públicos
BRASIL	**Conselho Administrativo de Defesa Econômica CADE**, Secretaria de Direito Econômico. Ministério da Justiça Secretaria de Acompanhamento Económico. Ministério da Fazenda
COLOMBIA	**Superintendencia Delegada para la Promoción de la Competencia** Superintendencia de Industria y Comercio. Ministerio de Industria y Comercio.
COSTA RICA	**Comisión para la Promoción de la Competencia**. Unidad Técnica de Apoyo, Ministerio de Economía, Industria y Comercio
CHILE	**Fiscalía Nacional Económica**
JAMAICA	Fair Trading Commission
MÉXICO	**Comisión Federal de Competencia** Secretaria de Comercio y Fomento Industrial - SECOFI
PANAMÁ	Ministerio de Comercio e Industrias
PERÚ	**Comisión de Libre Competencia del Indecopi** Instituto Nacional de Defensa de la Competencia y de la Protección de Propiedad Intelectual **Tribunal de Defensa de la Competencia y de la Propiedad Intelectual**
VENEZUELA	Superintendencia Pro-Competencia

This article will shortly be available in English, French, German and Portuguese on DG IV's internet site (under Speeches - see page 44 for details).

Cet article sera bientôt disponible en Anglais, Français, Allemand et Portuguais sir le site internet de la DG IV (sous Speeches - pour plus de details voir à la page 44)

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.*

L'accès au dossier dans les procédures de concurrence

par Kris DEKEYSER, IV-E-1

L'accès au dossier est une phase importante de la procédure dans toutes les affaires de concurrence contentieuses (interdictions avec ou sans amende, interdiction d'une opération de concentration, rejet de plainte, etc.). Dans le cadre de cet accès, il s'agit pour la Commission de concilier deux obligations opposées, à savoir l'obligation de respecter les droits de la défense et l'obligation de protéger des informations confidentielles des entreprises.

A la lumière de la jurisprudence de la Cour et du TPI et notamment de la jurisprudence dite "Carbonate de soude" [Arrêts du Tribunal de Première Instance du 29 juin 1995 dans les affaires T-30/91 *Solvay / Commission*, T-36/91 *ICI / Commission* et T-37/91 *ICI / Commission*, Recueil 1995, pp. II-1775, II-1847 et II-1901], et afin d'accroître la transparence vis-à-vis des entreprises, la Commission a souhaité systématiser et clarifier sa pratique concernant l'accès au dossier, en adoptant une communication concernant les règles de procédure interne pour le traitement des demandes d'accès au dossier dans les cas d'application des articles 85 et 86 du traité CE, des articles 65 et 66 du traité CECA et du règlement n° 4064/89 du Conseil [Règlement (CEE) n° 4064/89 du Conseil, du 21 décembre 1989, relatif au contrôle des opérations de concentration entre entreprises (JO L 395 du 30.12.1989, p. 1)].

La communication, qui a été publiée au Journal Officiel C 23 du 23 janvier 1997, concerne l'étendue et les limites de l'accès au dossier ainsi que les modalités d'application pratique (Il convient de préciser toutefois que les règles de procédure interne exposées dans la communication portent essentiellement sur les droits des entreprises mises en cause dans l'instruction d'une infraction présumée; elles ne portent pas sur les droits de parties tierces, et notamment des plaignants.).

L'objet de l'accès au dossier étant de permettre aux destinataires d'une communication des griefs de se prononcer sur les conclusions auxquelles est parvenue la Commission, les entreprises mises en cause doivent avoir accès à tous les documents qui constituent le "dossier" d'instruction de la Commission (DG IV), à l'exception des catégories de documents identifiées dans l'arrêt *Hercules* [Arrêt du tribunal de Première Instance du 17 décembre 1991 dans l'affaire T-7/89 *Hercules*, Recueil 1991, p. II-1711]: les secrets d'affaires des autres entreprises, les documents internes de la Commission et les autres informations confidentielles.

Toutes les pièces rassemblées dans le cadre de l'instruction d'un dossier ne sont donc pas communicables et la communication donne des critères permettant de distinguer les documents communicables et ceux qui ne le sont pas.

Sur le plan administratif et pratique, certaines dispositions nouvelles sont mises en oeuvre dès le stade de l'instruction afin de faciliter l'accès ultérieur au dossier.

- Pour des raisons de simplification et d'efficacité administratives, les documents internes sont dorénavant classés dans le recueil des documents internes relatifs au cas sous instruction, qui est par principe non accessible et qui contient tous les documents internes en ordre chronologique. Ces documents concernent notamment les instructions internes de la hiérarchie relatives au traitement de l'affaire, les consultations des autres services, la correspondance avec les autres autorités publiques, les projets ou autres documents de travail, etc.

- Certains documents qui ont été recueillis par la Commission au cours de vérifications effectuées dans les entreprises, sont normalement restitués aux entreprises concernées dans les plus brefs délais si, après examen approfondi, ils s'avèrent sans intérêt pour l'affaire en cause.

- Afin de faciliter la détermination du caractère accessible ou non des documents, il sera dorénavant demandé systématiquement aux entreprises qui font l'objet d'une mesure d'instruction de

(i) préciser quelles informations (documents ou parties de documents) elles estiment être couvertes par le secret des affaires, ainsi que les documents confidentiels dont la divulgation leur causerait préjudice;

(ii) de fournir une justification écrite de cette revendication; et

(iii) de donner à la Commission une version non confidentielle suffisamment significative des documents pour lesquels elles réclament la confidentialité (avec suppression des passages confidentiels).

Les revendications de confidentialité manifestement fondées, ou tout au moins fondées à première vue sont provisoirement acceptées (Il y a des dispositions spécifiques aux procédures préparatoires dans les affaires de concentration.).
Les revendications de confidentialité manifestement non fondées, par exemple celles qui concerneraient des informations déjà publiques, ou la totalité de la documentation en cause de manière globale et indiscriminée, ne sont pas acceptées et la Commission en informe l'entreprise.

L'appréciation définitive du caractère confidentiel d'un document ne pourra être formulée toutefois qu'à l'issue de l'instruction d'une affaire, lors de l'établissement de la communication des griefs.

Si une divergence de vue persiste, la question est alors soumise au Conseiller-Auditeur qui peut mettre en oeuvre la procédure de décision prévue à l'article 5, paragraphe 4 du mandat du Conseiller-Auditeur [Décision de la Commission du 12 décembre 1994, relative au mandat des conseillers-auditeurs dans le cadre des procédures de concurrence devant la Commission (JO L 330 du 21.12.1994, p. 67)].

Il convient de rappeler le principe selon lequel un document qui constitue la preuve d'une infraction ou , en sens contraire, un document manifestement à décharge d'une entreprise ne peut être considéré comme confidentiel à l'égard des entreprises en cause.

- Une dernière innovation dans la phase préparatoire pour l'accès au dossier concerne la liste énumérative des documents, qui est établie désormais selon les principes suivants :

a) Cette liste comprend la numérotation continue de toutes les pages du dossier d'instruction et l'indication (sur base d'un code de classification) de la mesure dans laquelle le document est accessible et des entreprises auxquelles cet accès est autorisé.

b) Un code d'accès est attribué sur cette liste à chaque document

- document accessible
- document partiellement accessible
- document non accessible

L'énumération des documents non accessibles comporte une indication succincte permettant d'identifier leur contenu et leur objet, de telle sorte que toute entreprise ayant demandé l'accès au dossier soit en mesure de déterminer, en connaissance de cause, si ces documents sont susceptibles d'être pertinents pour sa défense et d'évaluer l'opportunité de revendiquer l'accès à ceux-ci nonobstant cette classification.

Pour les documents accessibles et partiellement accessibles, une telle indication du contenu de ces documents est sans objet étant donné que les entreprises ont un accès "physique" à ceux-ci. Seuls les passages sensibles sont masqués de telle sorte qu'il est possible, pour l'entreprise qui a accès, de déterminer la nature de l'information masquée (e.g. chiffre d'affaires).

En ce qui concerne les modalités d'application pratique de l'accès aux dossiers, qui, selon les circonstances, peuvent aller de quelques dizaines de pages à plusieurs dizaines de milliers de pages, la règle générale sera dorénavant que les entreprises sont invitées à examiner sur place, dans les locaux de la Commission, les documents accessibles.

Si l'entreprise estime, sur base de la liste des documents qui lui est donnée, que certains documents non accessibles lui sont nécessaires pour sa défense, elle peut en faire état dans une demande motivée adressée au Conseiller-Auditeur.

Lorsqu'il s'agit d'un dossier peu volumineux, la Commission pourra proposer à l'entreprise l'envoi par la poste de la totalité des pièces accessibles.

Pour les affaires instruites sur la base des articles 85 et 86, ne seront désormais annexés à la communication des griefs ou à la lettre de rejet de plainte que les preuves et les documents cités à l'appui des griefs ou du rejet de plainte.

Les modalités d'accès au dossier ainsi prévues devraient pouvoir s'appliquer sans difficulté sauf pour les dossiers en cours, déjà constitués avant l'adoption de ces nouvelles dispositions; ces dossiers devront, en conséquence, être traités au cas par cas.

L'accès au dossier constitue une étape-clef de la procédure administrative, permettant aux entreprises d'exercer de manière satisfaisante les droits de la défense, tout en conciliant la nécessité de la protection des informations sensibles et l'intérêt public à ce qu'il soit mis fin aux infractions aux règles de concurrence.

La Commission est convaincue que la mise en oeuvre de ces nouvelles modalités permettra de résoudre de manière pragmatique et efficace la plupart des problèmes rencontrés à l'occasion d'une telle procédure tout en satisfaisant pleinement le droit des entreprises d'être entendues par la Commission. ■

Clauses suspectes dans un accord de règlement à l'amiable

par Philippe CHEVALIER, IV-C-3

Le règlement à l'amiable d'une plainte déposée en mai 1995 devant la Commission a amené les services de la DGIV à exprimer leur profonde inquiétude quant à l'existence et la nature de certaines stipulations contenues dans l'accord de règlement conclu entre une entreprise plaignante et l'entreprise mise en cause.

L'accord prévoit que le plaignant retire sa plainte, et que l'entreprise en cause modifie certaines de ses pratiques et paie au plaignant une somme de l'ordre de 4 millions d'Ecus. Cependant, dans sa version originale, il imposait à l'entreprise plaignante l'obligation de rembourser partiellement la somme payée, si la Commission décidait, avant certaines dates, d'adresser une communication des griefs à l'entreprise en cause, attaquant certaines des pratiques mentionnées dans la plainte. La version originale de l'accord stipulait en outre que le plaignant ne devait pas, directement ou indirectement, encourager les services de la Commission à poursuivre ou à reprendre leurs investigations, nonobstant le droit du plaignant de se soumettre à l'obligation de répondre à une demande de renseignements contraignante de la Commission, telle que prévue par l'article 11 du règlement No 17.

Les services de la DGIV ont fortement critiqué ces stipulations, qui pouvaient entraver le bon déroulement de l'enquête menée dans cette affaire, considérant qu'elles avaient pour effet de décourager une entreprise, qui jusqu'alors avait été une source très utile de renseignements, de continuer à coopérer ouvertement avec la Commission et à fournir des informations.

Suite à ces critiques, la Commission fut informée que toute référence à des demandes contraignantes de renseignements avait été effacée de l'accord, que l'accord avait été modifié pour explicitement garantir au plaignant le droit de discuter avec les services de la Commission des termes du règlement à l'amiable et de tout sujet s'y rapportant, et que l'entreprise en cause avait renoncé aux remboursements partiels tels que expressément prévus dans la version originale de l'accord.

Les services de la Commission ne se sont pas exprimés sur la compatibilité de l'accord original avec le droit communautaire de la concurrence. Cet accord, notamment par les clauses de remboursement qu'il contenait, semblait néanmoins contraire à l'ordre public et donc nul de plein droit. Il est à noter que les services de la Commission n'ont pas critiqué le paiement de dommages et intérêts en tant que tel, mais le fait que leur montant dépendait de la suite que la Commission entendait donner à cette affaire. ■

Die Kommission schlägt eine neue Bagatellbekanntmachung vor

von Stefan RATING

HINTERGRUND

Die Kommission legte am 22. Januar 1997 einen Entwurf zur Änderung ihrer Bekanntmachung über Vereinbarungen von geringer Bedeutung vor (ABl. 1997 Nr. C 29, S. 3). Die sog. "Bagatellbekanntmachung" erläutert, welche Vereinbarungen nach Auffassung der Kommission grundsätzlich nicht unter Artikel 85 Absatz 1 des EG-Vertrages fallen. Der ersten Bekanntmachung dieser Art aus dem Jahre 1970 (ABl. 1970 Nr. C 64, S. 1) folgte nach sieben Jahren eine zweite (ABl. 1977 Nr. C 313, S. 3) und schließlich im Jahre 1986 eine dritte (ABl. 1986 Nr. C 231, S. 3), die in ihrer Ende 1994 geänderten Fassung (ABl. 1994 Nr. C 368, S. 20) bis heute fortgilt.

Erklärtes Motiv der Kommission ist eine Verringerung ihrer Belastung mit Anmeldungen solcher Vereinbarungen, deren Auswirkungen auf den Wettbewerb im Gemeinsamen Markt nicht spürbar sind. Dies hat bereits die derzeitige geltende Bekanntmachung bewerkstelligt, allerdings um den Preis einer gewissen Rechtsunsicher-

heit für die Unternehmen. Darüber hinaus hat sie nach Auffassung der Kommission den Spielraum für eine Senkung der Zahl unnötiger Anmeldungen nicht ausgeschöpft und schließlich mit neueren Entwicklungen, sowohl auf gemeinschaftsrechtlichem als auch auf wirtschaftlichem Gebiet, nicht Schritt gehalten.

DERZEITIGER ANSATZ

Nach geltender Auffassung der Kommission erfaßt Artikel 85 Absatz 1 des EG-Vertrages im allgemeinen nicht Vereinbarungen zwischen Unternehmen, deren gemeinsamer Umsatz bis zu 300 Millionen ECU beträgt und deren Marktanteile für die relevanten Güter oder Dienste zusammen 5 Prozent nicht übersteigen. In diesen Fällen leitet die Kommission grundsätzlich weder auf Antrag noch von Amts wegen Prüfungsverfahren ein; im Ausnahmefalle der Anwendbarkeit des Artikels 85 Absatz 1 sieht sie davon ab, ein Bußgeld zu verhängen.

Damit findet schon heute auf zahlreiche Vereinbarungen, insbesondere solche zwischen kleinen und mittleren Unternehmen (KMU), das Kartellrecht der Mitgliedstaaten Anwendung. Voraussetzung dafür ist, daß die aktuellen oder potentiellen Auswirkungen dieser Vereinbarungen auf den Handel entweder auf das Gebiet eines Mitgliedstaats beschränkt bleiben oder in nur geringem Maße den innergemeinschaftlichen Wirtschaftsverkehr betreffen. Gleiches gilt jedoch für Vereinbarungen, welche trotz ihrer objektiven Eignung, den Handel zwischen Mitgliedstaaten zu beeinträchtigen, eine Wettbewerbsbeschränkung weder bezwecken noch bewirken. In diesen Fällen ist nach ständiger Rechtsprechung das Tatbestandsmerkmal der Spürbarkeit einer Beschränkung innergemeinschaftlichen Handels nicht erfüllt.

NEUER VORSCHLAG

Die Kommission schlägt nunmehr vor, in einer neuen Bekanntmachung allein auf die Spürbarkeit der Wettbewerbsbeschränkung abzustellen und dieses Merkmal nur noch anhand eines der beiden oben genannten quantitativen Kriterien bestimmen: Der Entwurf sieht keine Gesamtumsatzschwelle mehr vor. Es entfällt damit die Privilegierung KMU gegenüber größeren Unternehmen, da nach Überzeugung der Kommission auch im Lichte der einschlägigen Rechtsprechung nicht der Umsatz, sondern allein die Marktstellung der Beteiligten für die Spürbarkeit einer Wettbewerbsbeschränkung den Ausschlag gibt.

Die Kommission sieht keine Gefahr einer Wettbewerbsverfälschung in Vereinbarungen zwischen Großunternehmen deren Marktanteile bestimmte Schwellen nicht überschreiten. Diesbezüglich unterscheidet der Entwurf zwischen horizontalen und vertikalen Vereinbarungen und bezeichnet erstere als grundsätzlich stärker wettbewerbsbeschränkend. Vertikale Vereinbarungen beschränken zwar ebenfalls den Wettbewerb, wenn sie den Zugang Dritter zu Absatzmärkten oder Versorgungsquellen erheblich beeinträchtigen und so eine Marktabschottung oder die Erstarrung bestehender Wettbewerbsstrukturen fördern, tragen andererseits aber zur Entwicklung eines dynamischen Wettbewerbs im Binnenmarkt bei.

Die Kommission schlägt daher vor, die Spürbarkeitsschwelle vertikaler Wettbewerbsbeschränkungen auf einen kumulierten Marktanteil der beteiligten Unternehmen von 10% anzuheben, ein Wert, der in dem weiteren Zusammenhang des Grünbuches zur EG-Wettbewerbspolitik gegenüber vertikalen Wettbewerbsbeschränkungen (vgl. Beitrag von L. Peeperkorn in Competition Policy Newsletter Bd. 2, Nr. 3, S. 10 ff.) von Interesse ist. Für horizontale Vereinbarungen hingegen beabsichtigt die Kommission, eine Schwelle in Höhe von 5% beizubehalten. In Ermangelung einer Umsatzschwelle würde der Nutzen beider Schwellen und somit der Bekanntmachung zur Feststellung der Bedeutung einer Vereinbarung weitgehend von der Transparenz der relevanten Märkte abhängen.

BEDEUTUNG DER NEUEN SCHWELLEN

Die Kommission weist in Übereinstimmung mit der ständigen Rechtsprechung des EuGH darauf hin, daß auch die neuen Schwellenwerte nur Hinweischarakter haben würden. Einerseits können Vereinbarungen, die der Entwurf nicht erfaßt, von geringer Bedeutung im Sinne des gemeinschaftsrechtlichen Kartellverbotes sein, andererseits Vereinbarungen unterhalb der Schwellen dennoch in den Anwendungsbereich des Artikels 85 Absatz 1 fallen. Zur Verdeutlichung letzterer Möglichkeit nennt der Entwurf bestimmte horizontale und vertikale Kartelle, die besonders schwere Wettbewerbsbeschränkungen im Sinne des Artikels 85 Absatz 1 mit sich bringen, namentlich Absprachen zur Festsetzung von Preisen oder von Produktions- oder Absatzquoten sowie

solche zur Aufteilung der Märkte oder der Versorgungsquellen. Behält sich die Kommission auch vor, gegen derartige Vereinbarungen ungeachtet der Marktanteilsschwellen einzuschreiten, so erklärt sie doch, dies allein in Fällen eines deutlichen Gemeinschaftsinteresses an der Prüfung tun zu wollen.

Umgekehrt könnten auch nach Annahme des Bekanntmachungsentwurfes Vereinbarungen von gemeinschaftsweiter Bedeutung weiterhin dem Kartellverbot entgehen, sofern sie sich günstig auf den Wettbewerb auswirken. Insofern würden die Bekanntmachungen der Kommission von 1968 über die zwischenbetrieblicheZusammenarbeit und von 1993 über die Behandlung kooperativer Gemeinschaftsunternehmen unverändert fortgelten. Der EuGH hat die Anwendung dieses Grundsatzes u. a. auf Gebietsbeschränkungen in Alleinvertriebs- und Lizenzvereinbarungen, auf Wettbewerbsverbote in Unternehmensveräußerungsverträgen sowie auf Alleinbezugsverpflichtungen in Vertriebsvereinbarungengutgeheißen.

KMU

Trotz der vorgesehenen Aufhebung der Priviliegierung von KMU gegenüber großen Unternehmen entspringt der Reformvorschlag der Überzeugung der Kommission, daß Vereinbarungen zwischen KMU auchbei Überschreitung der Marktanteilsschwellen grundsätzlich nicht Artikel 85 Absatz 1 verletzen dürften. Dies begründet der Vorschlag damit, daß solche Vereinbarungen im allgemeinen weder gemeinschaftsweite Bedeutung erlangen noch spürbare Einschränkungen des Wettbewerbs bewirken. Selbst wenn dies der Fall ist soll in aller Regel kein hinreichendes Interesse der Gemeinschaft daran bestehen, das Verfahren zu betreiben. Die Kommission schlägt daraufhin vor, künftig Vereinbarungen zwischen KMU grundsätzlich nicht zu prüfen. Zur Begriffsbestimmung greift sie auf ihre Empfehlung vom 3. April 1996 betreffend die Definition der Kleinen und mittleren Unternehmen (ABl. 1996, Nr. L 107, S. 4) zurück, womit im Ergebnis ein sehr hoher Anteil der Unternehmen in sämtlichen Mitgliedstaaten erfaßt würde.

Der Bekanntmachungsentwurf sieht jedoch zwei Ausnahmefälle vor, in denen die Kommission sich grundsätzlich auch einer Vereinbarung zwischen KMU annehmen würde: Zum einen den Fall eines Kartells, das sich auf einen wesentlichen Teil des relevanten Marktes erstreckt und darauf den Wettbewerb stark beeinträchtigt, zum anderen den einer Vielzahl gleichartiger Verträge, die eine Erstarrung der Wettbewerbsstrukturen auf dem relevanten Markt zu verursachen drohen (sog. "Netzwerkeffekt"). In beiden Fällen bliebe ein Einschreiten der Kommission zur Aufrechterhaltung wirksamen Wettbewerbs erforderlich.

TECHNISCHE ÄNDERUNGEN

Die Kommission hält schließlich einige Änderungen technischer Art für notwendig. So erwähnt der Entwurf außer der Verordnung des Rates Nr. 17 (ABl. 1962 Nr. 13, S. 204) auch jene Verordnungen des Rates, welche die Anwendung der Wettbewerbsregeln auf die drei Verkehrsbereiche im einzelnen regeln. Des weiteren enthält er einen ausdrücklichen Hinweis auf den Umstand, daß er nicht die Anwendung des nationalen Rechts der Mitgliedstaaten hindert. Schließlich entspricht die Definition des Begriffes des relevanten Marktes in dem Entwurf jener des Formblatts A/B Anmeldungen nach der Verordnung Nr. 17 (Anhang zur Verordnung (EG) Nr. 3385/95 der Kommission, ABl. 1994 Nr. L 377, S. 31).

NÄCHSTE SCHRITTE

Der Bekanntmachungsvorschlag ist in den elf Amtssprachen der Gemeinschaft auf dem *World Wide Web* (http://europa.eu.int/en/comm/dg04/dg4home.htm) zugänglich. Die Kommission hat in den zwei auf die Veröffentlichung folgenden Monaten zahlreiche Stellungnahmen erhalten, die sie nunmehr auswerten und bei der Erarbeitung einer endgültigen Fassung der neuen Bekanntmachung berücksichtigen wird.

This article will shortly be available in English on DG IV's internet site (under Speeches - see page 44 for details).

ANTI-TRUST RULES

Application of Articles 85 & 86 EC and 65 ECSC
Main developments between 1st January and 31st March 1997

Most important recent developments

CSK ET GIST-BROCADES METTENT FIN À UN ACCORD DE DISTRIBUTION DE PRÉSURE

CSK (Coöperatieve Stremsel- en Kleurselfabriek), une coopérative néerlandaise qui produit et qui vend de la présure animale, et *Gist-brocades*, qui produit également de la présure, mais d'origine biotechnologique, avaient conclu un accord réciproque de distribution exclusive qu'ils ont ensuite notifié auprès de la Commission.

La présure animale et la présure d'origine biotechnologique sont, en ce qui concerne leurs caractéristiques, des produits substituables utilisés pour la fabrication du fromage. L'utilisation de la présure de nature biotechnologique n'est pas encore admise dans tous les États membres. Aux Pays-Bas, l'utilisation de la présure de nature biotechnologique pour la fabrication du fromage n'est pas autorisée de manière générale mais néanmoins le ministre peut accorder une autorisation individuelle. La présure animale et la présure d'origine biotechnologique sont par conséquent des produits concurrents.

L'accord stipulait que CSK devenait, aux Pays-Bas, le *distributeur exclusif* de la présure produite par Gist-brocades. Par contre, en dehors des Pays-Bas, Gist-brocades était *formellement* désigné comme distributeur *non-exclusif* de la présure animale produite par CSK. Toutefois, Gist-brocades était, *de facto*, considéré comme distributeur *exclusif*. L'accord prévoyait notamment que CSK pouvait vendre, mais uniquement après concertation avec Gist-brocades, à d'autres revendeurs dans le territoire concédé à ce dernier, si CSK considérait que Gist-brocades n'y réalisait pas assez de ventes. Cette disposition n'a jamais été appliquée. De plus, les ventes réalisées par CSK, mais destinées à l'exportation, étaient considérées par ce dernier comme une "dérogation" à l'accord et n'étaient exécutées qu'après concertation avec Gist-brocades.

Les services de la Commission ont fait savoir à ces entreprises que cet accord était à considérer comme un accord réciproque de distribution exclusive entre fabricants de produits concurrents, ce qui revient en fait à un accord horizontal de partage de marché sur le plan géographique. Un tel accord n'est pas exemptable. De plus, CSK a été informée que, vu sa part de marché importante aux Pays-Bas, pareil accord pourrait constituer dans son chef un abus de position dominante. En effet, l'accord en question permettait à CSK de contrôler la distribution aux Pays-Bas d'un produit concurrent et de protéger ainsi sa position sur le marché.

CSK et Gist-brocades ont communiqué qu'ils n'étaient pas d'accord avec l'interprétation donnée dans cette lettre d'avertissement et qu'ils ont mis fin à leur accord de distribution pour des raisons commerciales.

COMMISSION SERVICES CLEAR THE GLOBAL EUROPEAN NETWORK AGREEMENT TO CREATE HIGH QUALITY TRANS-EUROPEAN TELECOMMUNICATIONS NETWORKS.

The European Commission's competition services have given clearence to the Global European Network (GEN) agreement to provide high quality digital links between Member States. This agreement amongst the major European telecommunications operators will considerably improve the quality of trans-European network telecommunications services. The European Commission's competition services have secured amendments to the agreement in order to preserve competition between the companies involved and ensure free and fair access for third parties.

The main amendments are :

(a) Each signatory will refrain from entering into a collective concerted pricing arrangement and will negotiate

on a bilateral basis the conditions under which it will give access to its GEN capacity.

(b) Each signatory will offer in its public tariff access to GEN capacity on a non-discriminatory basis to third parties. These will thus be able to access GEN capacity on the same basis as to the signatories.

The GEN agreement was signed by British Telecom, Deutsche Telekom, France Télécom, Telecom Italia, Telefónica de España. It will create a 2 Mbit/s fibre optics telecommunications network between the signatories' nodes using so-called PDH (Plesiosynchronous Digital Hierarchy) technology. The network will improve the speed of circuit provision, the network availability and quality and reliability of service.

Although they take a favourable approach towards the improvements trans-European telecommunications networks can bring, the European Commission's competition services have stated that at the same time they will closely scrutinise such agreements which involve dominant operators in order to ensure the development of pro-competitive structures.

In particular, the conditions under which third parties can access European leased lines remain a strong concern for the European Commission. For that reason, the European Commission services have warned the parties that the negative clearance of the agreement does not mean that signatories may abuse their strong if not dominant positions in this market. At the same time, the European Commission is, in the context of the ONP leased line Directive, examining the application of the ONP principle in Member States.

Should a complaint be made regarding access to European leased line capacities, or should the European Commission become aware that the conditions under which access is provided are discriminatory or excessive, individual cases pursuant Article 86 EC will be opened against the telecommunications operators in question. IP/97/242 [1997/03/20]

THE COMMISSION ADOPTS A STATEMENT OF OBJECTIONS AGAINST UNILEVER CONCERNING FREEZER CABINET EXCLUSIVITY IN THE IRISH ICE CREAM MARKET

The European Commission has decided to adopt a new statement of objections against Unilever, which outlines its intention to find that the company's distribution arrangements for so-called "impulse" ice cream in Ireland infringe the Community's competition rules. Unilever provides freezer cabinets "free on loan" to retailers, subject to the condition that the cabinets are to be used exclusively for the storage of its products. In the light of objections made in July 1993 by the Commission to this practice, Unilever had proposed a number of modifications to its distribution arrangements but the changes have not been effective in achieving their objective of opening up the market. The Commission intends to find that, in the circumstances of the Irish market, this provision of cabinets has the practical effect of precluding most of the recipient outlets from selling ice cream other than Unilever's, thereby contravening the competition rules.

In September 1991 and July 1992 respectively, the Commission received complaints from Masterfoods Ireland Ltd (Mars) and Valley Ice Cream Ltd relating to the distribution arrangements operated by HB Ice Cream Ltd (a subsidiary of the Unilever group, now trading as Van den Bergh Foods Ltd) for its impulse ice cream products in the Republic of Ireland. In July 1993, the Commission provisionally concluded that the arrangements infringe both Articles 85 & 86 of the EC Treaty, and addressed a "Statement of Objections" against Van den Bergh Foods to that effect.

In the light of these objections, Unilever, which is the leading supplier of ice cream in most EU countries, proposed a number of modifications to its arrangements. In particular, an option allowing retailers to hire purchase freezer cabinets from Unilever was proposed as an alternative to the traditional free on loan offer. It was felt that these proposals would be likely to render Unilever's distribution arrangements compatible with the competition rules by facilitating an evolution toward wider freezer cabinet ownership by retailers. This would enable retail outlets to offer for sale the products of any supplier, thereby contributing to a real opening up of the Irish impulse ice cream market. Once the changes were introduced, the Commission expressed its intention to take a favourable view of them (see IP/95/229).

However, while a new pricing scheme has been put in place, and a number of Unilever's older cabinets have been sold to retailers in an attempt to encourage a move toward cabinet ownership, the option of hire purchasing freezer cabinets has proved unattractive. The changes have thus not been effective in achieving their objective. The Commission can therefore no longer maintain its favourable view of the modified distribution arrangements.

IP/97/147 [1997/02/21]

SETTLEMENT REACHED WITH BELGACOM ON THE PUBLICATION OF TELEPHONE DIRECTORIES - ITT WITHDRAWS COMPLAINT

Competition Commissioner Karel van Miert's services have reached a settlement with Belgacom, the Belgian national telecommunications operator, on the conditions under which publishers of telephone directories in Belgium have access to data regarding subscribers of Belgacom's voice telephone services (access to listing services). Following the settlement, directory publishers in Belgium will be charged a price which is set in such a way that Belgacom can recover the costs it incurs in the collection, treatment and provision of the subscriber data required for publishing purposes, plus a reasonable profit margin. This cost-oriented approach will lead to a very substantial reduction of more than 90% in the amount originally charged to telephone directory publishers.

As a result of this settlement, ITT Promedia N.V., the Belgian directory-publishing subsidiary of the US ITT World Directories company, has withdrawn its complaint lodged with the European Commission. The company alleged inter alia that the conditions which Belgacom intended to apply for access to its subscriber data for publishing telephone directories were excessive and discriminatory and thus caught by Article 86 of the EC Treaty. The initial price equal to 34% of the turnover of the directory publishers and 200BF per line of data was already in 1995 brought down to 16% of turnover and 67 BF per line. At the end of 1995 the Commission issued a formal statement of objections against Belgacom.

During the course of 1996, Belgacom endeavoured to meet the Commission's concerns and submitted a business proposal regarding access to its subscriber data for publishers which has now culminated in the present settlement. In assessing Belgacom's proposal, the Commission's services were assisted by an expert consulting firm to verify the cost-oriented basis of the proposal. ITT was invited to comment during the course of these discussions.

Belgacom has agreed to drop any variable component in relation to the turnover or profit of directory publishers and instead to adopt a cost-oriented approach, allowing it to recover its costs plus a reasonable profit margin. Furthermore, as of 1997, a distinction will be made between basic data, i.e. data and updates which are essential for publishing telephone directories and which directory publishers will thus continue to acquire from Belgacom, and a range of optional supplemental information, which can be acquired from Belgacom or from other market sources.

For the years 1995 and 1996, the cost allocation method applied in the particular circumstances of this case produces total annual costs of 372 million BF to be divided equally between the two current directory publishers in Belgium, ITT and Belgacom's subsidiary Belgacom Directory Services (BDS). At present, this translates into a price per line of data of 37 BF per line of basic data and 10 BF for supplemental data (such data having already been imbedded in the data provided over the last two years).

Belgacom has undertaken to continue its pricing for basic data, with respect to which publishers are dependent on it, following the cost-oriented method agreed for 1995/96. With respect to supplemental data, prices will be determined on a market-oriented basis. Several factors could lead to a change in prices for basic data in the future:

- downward evolution: if, as could be expected in the light of planned software changes or new technologies, the costs entailed in collecting, treating and providing basic data goes down (this downward evolution could possibly be limited by an upward evolution if the number of subscriber data increases)

- changed allocation of the relevant cost base: if the number or scope of publishers using the data changes.

The principles established in this case regarding access to data required for directory publishing on a cost-oriented

basis are not only relevant from the point of view of competition policy, but are likewise in line with the EU policy orientation on directories reflected in the ONP voice telephony directive and the Commission's communication on directories . The principle of cost-orientation is applicable throughout the EU.

Finally, the Commission will continue to closely survey future developments in this market, in close cooperation with the competent national authorities.

IP/97/292 [1997/04/11]

THE COMMISSION APPROVES A REVISED COOPERATION ARRANGEMENT BETWEEN SWEDISH MATCH SVERIGE AB AND SKANDINAVISK TOBAKSKOMPAGNI A/S CONCERNING THE PRINCE BRAND OF CIGARETTES IN SWEDEN

The European Commission has decided to approve a revised cooperation arrangement between Swedish Match Sverige AB and Skandinavisk Tobakskompagni A/S concerning the Prince brand of cigarettes in Sweden. Following serious doubts expressed by the Commission as to the compatibility with the competition rules of their exclusive licensing arrangement, the two companies have come forward with a radical re-definition of their continued cooperation. The changes, which meet the Commission's concerns, will involve an important structural overhaul of the Swedish cigarette market, and should contribute to a real and immediate increase in competition.

Swedish Match Sverige AB, formerly Svenska Tobaks AB, dominates the Swedish cigarette market. It is still the only manufacturer, and physical distributor, of cigarettes in Sweden. Skandinavisk Tobakskompagni is a Danish tobacco conglommerate active primarily in Denmark. Skandinavisk Tobakskompagni's Prince brand, which enjoys a strong position in the Swedish cigarette market, has since 1961 been produced, distributed and sold in Sweden by Swedish Match under an exclusive licencing arrangement. This was notified to the Commission following Sweden's accession to the EU. Under the agreement, prices were unilaterally set by Swedish Match, and the cigarettes sold by Swedish Match's sales force. The Commission informed the parties that, as a long-term exclusive manufacturing and sales license between two major cigarette manufacturers, dominant on neighbouring geographic markets, the agreement gave rise to serious concern regarding its compatibility with Articles 85 and 86 of the EU Treaty.

The parties have now agreed to radically alter the terms of their future relationship concerning the Prince brand. Their continued cooperation will take the form of two separate agreements for contract manufacture and physical distribution by Swedish Match until the end of 2001 : Swedish Match will manufacture the currently licensed variants of the Prince cigarette for sale by Skandinavisk Tobaks-kompagni in the Swedish market, and will handle the physical distribution of Prince cigarettes on a non-exclusive basis. Skandinavisk Tobakskompagni is to become solely responsible for all sales, marketing and pricing of Prince in Sweden with immediate effect. The agreements will come into effect during 1997.

These new arrangements should avoid any negative impact which might have resulted for either company from a more abrupt change. In particular, Swedish Match had made substantial investments in relation to the production and distribution of the Prince brand, prior to Sweden's accession to the Community and the applicability of its competition rules. After 2001, the contract manufacture and distribution agreements will be terminable on one year's notice.

The amended agreements will have the effect of placing essential control of Prince in the hands of the brand owner, Skandinavisk Tobaks-kompagni, while at the same time allowing it to continue benefiting from Swedish Match's manufacturing and distribution infrastructure. This will effectively introduce a new competitor of considerable strength onto the Swedish cigarette market, thereby immediately increasing competition.

IP/97/80 [1997/01/31]

Other 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. RAPID is available free of charge through the Commission's EUROPA server on the World Wide Web.

IP/97/243 [1997-03-20] The European Commission approves a joint venture in the sector of polyurethane foams

IP/97/227 [1997-03-17] The Commission imposes the dissolution of UIP's Pay-TV distribution joint venture

IP/97/113 [1997-02-14] Car prices in the European Union on 1 November 1996 : lowest in the Netherlands, dearest in Germany

IP/97/85 [1997-02-05] Television without frontiers and major (sports) events : Commission Communication

IP/97/50 [1997-01-23] Competition and transparency : the Commission adopts a notice on access to file (see page 6 of this issue)

IP/97/42 [1997-01-22] The Commission invites for comments on the envisaged revision of the Notice on agreements of minor importance (see page 8 of this issue)

IP/97/12 [1997-01-15] Maritime transport : the Commission gives green light to the North Sea Liner Conference Agreement ■

Judgments

Judgment of the Court of First Instance of 15 January 1997, Case T-77/95: Syndicat français de l'express international and Others v Commission of the European Communities (Competition).

Judgment of the Court of 20 February 1997, Case C-128/95: Fontaine SA and Others v Aqueducs: Automobiles SARL Preliminary ruling (Competition Vehicle distribution Parallel imports Regulation (EEC) No 123/85 Applicability as against third parties Independent reseller Definition of 'new vehicle' and second-hand vehicle') (Second Chamber)

Opinion of Advocate General P. Léger, 20 February 1997, Case C-219/95 P : Ferriere Nord SpA v Commission of the European Communities ; Appeal against the judgment of the Court of First Instance (First Chamber) of 6 April 1995 in Case T-143/89 Ferriere Nord v Commission Refusal to annul Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.553 - Welded steel mesh)

Opinion of Advocate General F.G. Jacobs, of 27 February 1997, Joined Cases C-114/95 and C-115/95 : Texaco A/S v Middelfart Havn and Others; Olieselskabet Danmark a.m.b.a. v Trafikministeriet and Others: Preliminary ruling Østre Landsret Interpretation of Arts 9 to 13, 18 to 29, 86, 90 and 96 of the EC Treaty Interpretation of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries and Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport Interpretation of the EC-Sweden and EC-Norway free trade agreements National legislation on user charges for public and private commercial ports levied on domestic and imported products Surcharge of 40% affecting imported goods only

Opinion of Advocate General G. Tesauro, 27 February 1997, Case C-41/96 : V.A.G.Händlerbeirat e. V. v Firma SYD-Consult: Preliminary ruling Landgericht Hamburg Interpretation of Art. 85 of the EC Treaty and Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements National legislation on unfair competition requiring that the system be watertight for members to be able to obtain injunctions prohibiting third parties from distributing the products concerned Distinction between distribution systems which are watertight in theory and systems which are watertight both in theory and in practice

Judgment of the Court of 11 March 1997, Case C-264/95 P : Commission of the European Communities v Union internationale des chemins de fer (UIC) (Appeal Competition Transport by rail Legal basis for a decision Regulation No 1017/68 Scope) (Full Court)

Judgment of the Court, of 18 March 1997, Case C-282/95 : Guérin Automobiles v Commission of the European Communities (Appeal Competition Complaint Action for failure to act Notification under Article 6 of Regulation No 99/63/EEC Definition of a position terminating the failure to act Cross-appeal limited to costs) (Full Court)

Judgment of the Court, of 18 March 1997, Case C-343/95 : Diego Calì & Figli Srl v Servizi ecologici porto di Genova SpA (SEPG) Preliminary ruling (Harbour company Prevention of pollution Legal monopoly Abuse of a dominant position) (Full Court)

MERGERS

Application of Council Regulation 4064/89
Main developments between 1st January and 31st March 1997

Summary of the most important recent developments

Kristin SCHREIBER, Heiner BRUHN, DG IV-B-4

During the first quarter of 1997 (up to 2nd April) the Commission took 36 decisions under the Merger Regulation relating to 30 cases. These include one clearance decision under Article 8(2) of the Regulation without undertakings (Coca Cola Enterprises/AmalgamatedBeverages), one divestiture decision under Article 8(4) of the Regulation (Kesko / Tuko), one clearance decision under Article 6(1)(b) of the Regulation with undertakings (Bank Austria / Creditanstalt), as well as three decisions under Article 6(1)(c) of the Regulation to begin in-depth "Phase 2" investigations (British Telecom / MCI, Blokker / Toys R US and Boeing / Mc Donnell Douglas.

COCA-COLA ENTERPRISES / AMALGAMATED BEVERAGES GREAT BRITAIN

On 22 January 1997, the Commission decided to clear the acquisition by Coca-Cola Enterprises Inc (CCE) of the British bottling operation Coca-Cola & Schweppes Beverages Ltd (CCSB) Detailed "phase 2" investigations on this case had been opened by the Commission on 19th September 1996 (cf. Competition Newsletter of Autumn 1996).

CCSB bottles and sells a wide variety of soft drinks including Coca-Cola, Schweppes Mixers, Fanta, Sprite and Canada Dry. CCE is the world's largest bottler of Coca-Cola products. The Commission came to the conclusion that CCE, for the purposes of the Merger Regulation, is controlled by The Coca-Cola Company (TCCC).

CCE would acquire the whole of the share capital of Amalgamated Beverages Great Britain Ltd (AGBG), the parent company of CCSB, from the present shareholders, Cadbury Schweppes plc (CS), which had a 51% equity shareholding, and TCCC, which held the remaining 49% interest.

Virtually all CCSB's production was of brands owned by or licensed to its parents. TCCC products, including its strongest brand, Coca-Cola, made up the major part of the turnover of CCSB. Following the operation, CS would no longer produce and market soft drinks itself in Great Britain. However, CS brands would be bottled and marketed by the new entity under long term licensing arrangements concluded with CCE. These arrangements were, at the time of the Commission's decision, being examined under Article 85 and, following an agreement by the parties to alter them, they were given the green light by the Commission on 24 February 1997.

With regard to market definition, the Commission concluded that it was possible to distinguish a distinct product market for cola-flavoured carbonated soft drinks (colas) in Great Britain. Colas are the single largest flavour of carbonated soft drinks in the United Kingom, accounting for about half the consumption of this category. In reaching this conclusion, the Commission considered a number of factors including the following: brand and image are key driving factors in the consumption of colas, whereas price and taste were more important factors in the consumption of other carbonated soft drinks (CSDs); a large majority of market players (competitors and customers) considered colas to be a separate market and the parties themselves and their competitors defined their marketing and pricing policies on the basis of a cola market. In addition, the advertising and marketing initiatives of the major cola competitors in response to the recent (1994/95) introduction of premium own-label colas and Virgin Cola were directed almost exclusively towards colas rather than other soft drinks.

The Commission's investigation determined that CCSB was, at the time of the decision, dominant in the cola market in Great Britain. This dominance stems from the very high market shares of Coca-Cola supplied by CCSB in the overall cola market (about 60%) and in each of the three distribution channels, multiple groceries, impulse and on-premise. In

addition, Coca-Cola is a "must stock" item in multiple grocers, wholesalers and cash & carries. Moreover, CCSB´s broad portfolio which enables customers to obtain all or a very large part of their requirements from a single source and the economies of scale in purchasing, production and distribution arising from the combined potfolio are also factors contributing to the significant market strength of CCSB. In the cola market, CCSB with its sales of Coca-Cola had a market share nearly three times that of its nearest competitor, Britvic, which bottles and markets Pepsi in Great Britain. Virgin Cola, a recent entrant into the market, only had a very small share of the cola market, almost all of which was derived from sales to the multiple grocers channel. Own label colas achieved a comparatively large share of sales in multiple grocers, but they had only 10% of the overall cola market in Great Britain. While the multiple grocers channel was the largest of the three channels, it accounted for less than half of the total sales of colas. In the other channels, neither Virgin Cola nor the premium own label colas had any significant market share.

The Commission's investigation concluded that, through the operation, CCSB's dominance on the cola market in Great Britain would be transferred to CCE and thus to TCCC, the latter becoming a fully vertically integrated company in Great Britain combining the roles of brand owner and bottler. In addition, through the licensing arrangements between CCE and CS, CS´s products would continue to be produced, marketed and distributed by the new CCSB and would therefore fall under TCCC´s control.

The Commission examined both vertical and horizontal/conglomerate aspects of the operation in the context of a possible strengthening of CCSB´s position in the relevant market. With regard to vertical issues, the Commisison identified certain advantages that could accrue to a fully integrated TCCC such as the ability to coordinate more effectively promotions by the bottler with advertising by the brandowner. However, the Commisison also recognised that TCCC already exercised substantial influence if not de facto control over the marketing of its own products and the overall commercial strategy of CCSB. Similarly, with respect to horizontal / conglomerate aspects, the Commission recognised that TCCC´s acquisition of control over the full CCSB portfolio would not represent a significant change in the market, as the advantages arising from the broad portfolio were to a large extent already available to CCSB.

While the operation would result in a structural change which could also lead to a change in the market behaviour of CCSB, the Commission considered that it was not possible to differentiate sufficiently between the opportunities deriving directly from the operation and those which already existed. In the specific circumstances of this case, there was no adequate evidence to conclude with a sufficient degree of certainty that the operation would lead to a reinforcement of CCSB´s dominant position.

In any event, however, the Commission took note of the fact that CCE undertook that CCSB shall not impose (a) exclusivity obligations on customers with regard to colas; (b) target rebates for periods exceeding three months; (c) combined target rebates which apply to Coca-Cola and other products; nor (d) tying provisions. It was concluded that these undertakings addressed at least some of the concerns raised by third parties.

KESKO / TUKO

On 20 November 1996, following a request from the Finnish Office of Free Competition under Article 22 of the Merger Regulation, the Commission had decided that the acquisition of Tuko by Kesko, two Finnish companies active in the sale of daily consumer goods in Finland, was incompatible with the common market (cf. Competition Newsletter of Autumn 1996). Since Kesko did not, in the course of the procedure which led to the adoption of the prohibition decision of 20 November, offer any undertaking capable of addressing the competitive concerns identified, it was necessary to eliminate the dominant position created by the acquisition of Tuko. At the time when the Article 8(3) prohibition decision was adopted, the concentration had, indeed, already been completed since Kesko acquired control over Tuko on 27 May 1996 by acquisition of shares. The Commission decided not to include in its prohibition decision measures in application of Article 8(4) of the Merger Regulation and announced that a separate decision would be adopted.

Therefore, on 19 February 1997 the Commission adopted a decision under Article 8(4) of the Merger Regulation setting out measures in order to restore effective competition on the

Finnish markets for retail and cash and carry sales of daily consumer goods.

The decision orders Kesko to divest the daily consumer goods business of Tuko to a purchaser which must be a viable existing or prospective competitor, independent of and unrelated to the Kesko group and possessing the financial resources and proven expertise which enables it to maintain and develop the divested business as an active competitor to Kesko. The Commission's decision also provides for the appointment of an independent trustee who will ensure that the order is fully complied with and notably that the purchaser will meet the defined purchaser standards in order to ensure that the divested business constitutes an active competitive force on the Finnish daily consumer goods market.

In reaching the divestiture decision, the Commission took into account the necessary degree of proportionality and flexibility required to ensure that the divestment of Tuko can be carried out in an appropriate way and within a reasonable period of time.

BANK AUSTRIA / CREDITANSTALT

On 11 March 1997, the Commission approved the acqusition of sole control in Creditanstalt-Bankverein (Creditanstalt) by Bank Austria Aktiengesellschaft (Bank Austria) following undertakings which eliminated competition concerns identified during the first phase of the merger procedure. Already in earlier cases (notably Swissair/Sabena and Répola/Kymmene), the Commission had accepted substantial undertakings during the first phase of investigation which eliminated the competition concerns identified and thus made the opening of proceedings redundant.

Bank Austria and Creditanstalt are universal banks, which are mainly active in Austria, and which have a large number of participations in companies in a variety of economic sectors. The biggest shareholder of Bank Austria is Anteilsverwaltung Zentralsparkasse (AVZ). The city of Vienna provides an indirect guarantee, via AVZ, for Bank Austria's liabilities. The concentration gave rise to a detailed competitive assessment of its implications in the banking sector and in one of the industrial participations, namely the construction sector.

The Commission considered that, following the concentration, the two undertakings would not only be by far the leading suppliers of banking services in Austria, but would also be the only bank with significant market shares active in all relevant product segments. In addition, the parties involved in the concentration were active on European foreign markets, while their major competitors in Austria were almost exclusively active in that Member State.

Both in private and company customer banking services in Austria the parties to the concentration, together with GiroCredit, which had to be added to them, reached significant market shares, which were several times higher than those of the next largest competitor, in a number of product segments (e.g. credit business, stocks and shares and deposits). In addition, the Austrian banking markets are characterized by market access barriers, so that there was a risk of the creation or reinforcement of a dominant position. Further competition concerns stemmed from the addition of participations which Bank Austria and Creditanstalt each held in the specialized banks Österreichische Kontrollbank (OeKB) and Österreichische Investitionskredit AG (Investkredit) which are active in the public interest. OeKB is active in the area of export insurance and financing, Investkredit in the unwinding and award of subsidized credits. There was a risk that the influence deriving from these participations would further increase the already strong joint market position of Creditanstalt und Bank Austria.

However, Bank Austria had given undertakings to the Commission, which eliminated the competitive concerns relating to the implications of the proposed concentration in the banking sector. Bank Austria, or rather AVZ, committed itself vis à vis the Commission to sell its stake in GiroCredit. In addition, Bank Austria entered into the commitment to reduce the calculated participation of Bank Austria and Creditanstalt in OeKB to the level of participation which Bank Austria and GiroCredit currently hold together. Furthermore, Bank Austria would not extend its influence in Investkredit beyond the level of influence which it had, together with GiroCredit, prior to the concentration. This way, a solution, which was neutral from the point of view of competition, could be found for the two specialized banks.

Competition problems in the construction sector arose from the fact

that while Bank Austria already had close links with several large Austrian construction companies which already had a strong position on the Austrian construction markets (particularly in civil engineering excluding the construction of buildings), it would indirectly acquire, through the acquisition of Creditanstalt, a majority stake in the large Austrian construction company Universale.

For this reason, Bank Austria had committed itself vis à vis the Commission to either sell its stake in Universale or its participation in another large Austrian construction company, Stuag. Both alternatives were considered by the Commission to be equivalent from a competition point of view and to be suitable for the elimination of the competitive concerns stemming from the concentration.

BT/MCI

The first case in 1997 in which the Commission decided (on 30 January) to launch an in-depth "Phase 2" investigation concerned the proposed merger between British Telecommunications plc (BT) and MCI Communications Corporation (MCI). The merger would take place against a background of rapid change in the telecommunications sector, and in particular the granting of 44 new international facilities licences in the UK at the end of the year, the prospects of further liberalisation in the U.S. market and the planned liberalisation of the European market in 1998.

BT is a UK-based supplier of telecommunications services and equipment. Its main services and products are local and long distance telephone exchange lines to homes and businesses, international telephone calls to and from the United Kingdom, and the supply of telecommunications equipment for customers' premises. MCI is a US-based diversified communications company, offering consumers and businesses a portfolio of integrated services, including long distance, wireless, local, paging, messaging, Internet and information services as well as outsourcing and advanced global communications. BT and MCI also operate jointly a venture known as Concert, which supplies value-added and enhanced services to multi-national business customers.

The Commission's detailed investigation, which will have to be completed at the latest by Mid-June 1997, will particularly focus on two relevant markets : international voice telephony services on the UK - US route and the market for audio-conferencing services in the UK.

The Commission considers BT to be dominant on the UK market for international voice telephony since it originates and terminates more than 70% of the traffic. There is a risk that the proposed merger will strengthen this dominant position on the UK - US route. The following issues will be particularly addressed in this respect. First, the merged entity could henceforth self-correspond on the UK - US route for all its traffic, i.e. carry transatlantic traffic over end-to-end connections owned entirely by it. Other competitors on the route could do so as well, but only over time and to a limited extent. In any case this would be possible only after considerable investments. BT's significant position in the local loop in the UK and hence in traffic origination and termination implies an important barrier in this respect.

Secondly, such self-correspondence and the cost advantage, not easily replicated by other UK competitors could result in an increased share of MCI's traffic being terminated by BT rather than by Mercury. Furthermore, the new entity BT - MCI could also use its advantageous cost position on the US - UK route to hub traffic from the US to other EU countries via the UK. Profitable hubbing of such traffic could, under certain circumstances and given the rule of proportionate return, further reduce the market share and position of BT's UK competitors.

Thirdly, the possibilities for these competitors to react would depend on their ability to self-correspond or to establish correspondent relations with other carriers on more favourable terms so as to constrain BT - MCI. Given, however, that the merger significantly enhances the merged parties' ownership of cable capacity at the UK end, the effective competition provided by the 44 new international facilities licence holders only own or lease a small proportion of cable capacity.

The ability of incumbents to competitively constrain BT - MCI will depend on their being able to reconfigure their existing cable capacities which are to a large extent matched with BT. This reconfiguration is considered technically not difficult, but requires the consent of BT.

The other area of serious concern with regard to compatibility with the common market concerned the audio-conferencing market in the UK on which the proposed merger would create a dominant position giving the parties a combined market share of over 80 %. On that market, the Commission considered that market growth was to a major extent accounted for by a more intensive use of established customers, rather than by the customers' base becoming larger. Therefore, despite the fact that investment requirements are relatively low, the reputation and proven record of incumbents may prove difficult to challenge, as might be demonstrated by the fact that both BT's and MCI's market shares have been increasing over the last years.

BLOKKER/TOYS "R" US

The second case on which the Commission decided to open an in depth "Phase 2" investigation concerns the take-over of the Dutch operations of Toys "R" Us by Blokker Holding B.V. Proceedings were opened on 21 February 1997. Blokker is a major retail chain in the Netherlands whose principal activities are retail trade in household articles, toys and other products. It sells toys through its chains of specialised toy retail shops (Bart Smit and Intertoys) and through its household articles retail shops. Toys "R" Us (Netherlands) B.V. is a wholly owned subsidiary of Toys "R" Us Inc. (U.S.), which is one of the world's biggest toy retailers. It became active on the Dutch market in 1993 and is currently operating 9 "mega"stores. Blokker will take over 6 out of the existing 9 shops by subleasing the premises and through the purchase of inventory and stocks. It will also take over the personnel and will obtain an exclusive franchise to operate the Toys "R" Us formula in the Netherlands. The remaining 3 stores shall be closed.

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. This is the third time (after RTL/Veronica/Endemol in 1995 and Kesko/Tuko in 1996) that the Commission opens "Phase 2" investigations in a case referred to it by a Member State under Article 22 of the Merger Regulation.

Blokker has by far the largest market share as a retailer in the Netherlands and therefore holds a significant position as a retailer and a purchaser of toys. The combined market share on the relevant toy retail market will be substantial, more than three times larger than that of the nearest competitor. The proposed concentration could lead to the strengthening of a dominant position in the Netherlands and thus raised serious doubts with regard to its compatibility with the common market. During the detailed investigation of the case, which will have to be completed at the latest by the beginning of July, particular emphasis will be put on the examination of the likely increase of Blokker's market power in the relevant retail markets as well as on the potential of Toys "R" Us as part of the Blokker group , in particular the effects of the combination of the new retail formula of Toys "R" Us suburban "mega" stores and Blokker's familiarity with the Dutch retail market.

BOEING/MC DONNELL DOUGLAS

On 19 March 1997, the Commission decided to proceed with an in-depth "Phase 2 " investigation into a third case: the proposed merger between the Boeing Company and the Mc Donnell Douglas Corporation (MCD) The operation would lead to the creation of the largest aerospace company in the world.

With a market share of more than 60%, Boeing is by far the leading player in the overall world market for commercial jet aircraft of more than 100 seats. Following the proposed merger, there will be a further increase in Boeing´s market share and only one remaining competitor, Airbus. Furthermore, the merger would lead to a large increase in Boeing´s defence and space business. According to the Commission, whilst Boeing´s commercial aircraft operations have usually accounted for 70% to 80% of its total business, around 70% of MCD´s total business is related to defence and space Without taking into account the recently completed acqusition of Rockwell Defence and Aereospace, Boeing would, approximately triple its defence and space activities through the merger with MCD.

During its in-depth investigation, which will have to be completed at the latest by the end of July, the Commission will particularly focus on the impact of the proposed merger on the market for large commercial aircrafts. In this respect, the Commission is going to evaluate to what extent the additional competitive potential of MCD in commercial aircraft could lead to a strengthening of Boeing´s already existing leading position as well as to what extent the large increase in Boeing´s defence and space business could strengthen its market position in commercial aircraft, for example in terms of overall financial resources, greater access to technology developed in the defence and space sector, and increased bargaining power vis-à-vis equipment suppliers. ■

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. RAPID is available free of charge through the Commission's EUROPA server on the World Wide Web.

IP/97/250 [1997-03-25] Commission clears a merger concerning Birmingham International Airport

IP/97/236 [1997-03-19] Commission begins an in-depth investigation of the Boeing / McDonnell Douglas Merger.

IP/97/210 [1997-03-12] Commission approves the acquisition of Creditanstalt by Bank Austria after undertakings

IP/97/204 [1997-03-11] Commission approves merger in business travel services.

IP/97/199 [1997-03-11] Transfer of Undertakings: Commission adopts a Memorandum explaining the acquired rights of workers

IP/97/170 [1997-03-03] Commission authorises the acquisition of Air Liberté by British Airways

IP/97/169 [1997-02-28] Commission authorises the acquisition of the joint control of the BBC's home service transmission by an international consortium

IP/97/168 [1997-02-27] Commission clears joint venture of Bodensee-werk gerätetechnik gmbh and EHG Elektroholding gmbh & co

IP/97/167 [1997-02-27] Moving Forward the Bank-SME Dialogue: The Final Report of the Round Table of Bankers and SMEs

IP/97/150 [1997-02-25] Commission approves the acquisition by UPM-Kymmene of Finnpap in the Finnish paper industry

IP/97/149 [1997-02-25] Commission initiates second phase proceedings on the take-over of the Dutch operations of TOYS "R" US by BLOKKER

IP/97/146 [1997-02-21] Commission approves merger in the temporary employment services sector

IP/97/145 [1997-02-21] Commission approves joint-venture between Telia and Ericsson

IP/97/144 [1997-02-21] Commission clears acquisition by Archer-Daniels-Midland company of Grace Cocoa Associates

IP/97/142 [1997-02-20] Commission authorises the acquisition by the Sidmar group of control of Ferrometalli Safem S.p.A

IP/97/135 [1997-02-19] Commission orders KESKO OY to divest the daily consumer goods business of TUKO OY

IP/97/128 [1997-02-18] Commission clears TV joint venture of CLT-UFA and Universal in Poland

IP/97/127 [1997-02-18] Commission authorizes joint venture of DBV-Winterthur and Gothaer Versicherungen

IP/97/126 [1997-02-18] The Commission gives the go-ahead to the joint venture between HEWLETT-PACKARD and PHILIPS

IP/97/123 [1997-02-17] The Commission approves the acquisition by KNP group of two paper merchants in Germany and Italy

IP/97/121 [1997-02-14] The Commission approves management buy-in of Finnish Chemicals Oy

▹ MERGERS

IP/97/104 [1997-02-10] Commission authorizes the acquisition of the Italian Unione Italia-na di Riassicuriazione S.P.A. by Schweizerische Rückver-sicherungs-Gesellschaft

IP/97/101 [1997-02-07] Commission clears the acquisition of Mees-pierson by Fortis

IP/97/100 [1997-02-07] Commission approves joint venture in the construction industry

IP/97/76 [1997-01-31] Commission initiates second phase proceedings on BT-MCI merger

IP/97/69 [1997-01-29] Commission approves the acquisition by TRW of Magna Automotive Holding (Germany) gmbh

IP/97/41 [1997-01-22] Commission clears the acquisition of the British bottler Coca-Cola & Schweppes Beve-rages by Coca-Cola Enterprises, Inc.

IP/97/11 [1997-01-14] The Commission authorizes the acquisition by Rheinbraun Brennstoff GmbH and SHV Energy N.V. of joint control of the hard coal trading activities of Stinnes AG

Judgments

Opinion of Advocate General G. Tesauro, 6 February 1997, Case C-68/94 French Republic v Commission of the European Communities; Annulment of the Commission decision of 14 December 1993 taken in the context of the Community control of concentrations between undertakings established by Council Regulation (EEC) No 4064/89 (Decision 94/449/EC of 14 December 1993 relating to a proposed concentration between the German under-takings Kali+Salz / MdK / Treuhand)

Opinion of Advocate General G. Tesauro, 5 February 1997, Case C-30/95 Société commerciale des potasses et de l'azote (SCPA) and Others v Commission of the European Communities; Partial annulment of Commission Decision 94/449/EC of 14 December 1993 relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Case No IV/M.308 — Kali+Salz/MdK/Treuhand)

Opinion of Advocate General C.O. Lenz, 6 February 1997, Case C-39/96 Koninklijke Vereeniging ter Bevordering van de Belangen des Boekhandels v Free Record Shop B.V. and Others: Preliminary ruling — Arrondissementsrecht-bank te Amsterdam — Interpretation of Art. 85 of the EC Treaty and Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty — Agreement or decision of an association of undertakings on a price system imposed for books — Conditions for the provisional validity of an agreement notified to the Commission in 1962 and subsequently amended to a minor extent

LIBERALISATION & STATE INTERVENTION

Application of Article 90 EC
Main developments between 1st January and 31st March 1997

Most important recent developments

THE COMMISSION APPROVES TIMETABLE FOR FULL TELECOMMUNICATIONS LIBERALISATION IN PORTUGAL

Upon request from the Portuguese Government, the European Commission has today approved a timetable for the full liberalisation of telecommunications in Portugal from 1 January 2000. Voice telephony will be completely liberalised from that date. In the meantime, direct international connections for GSM mobile phone providers will be liberalised from 1 January 1999.
As far as infrastructures are concerned, the opportunity will be given for competitors to enter the Portuguese market from the middle of this year. Alternative infrastructure providers for already liberalised services will be permitted from 1 July 1997 and Portugal must liberalise without delay the market for GSM mobile phone alternative infrastructure. Under the liberalisation Directives, Portugal was entitled to request a derogation period up to 2003.

Voice telephony

On request of the Portuguese Government, the voice telephony deadline of 1 January 2000 was granted because Portugal Telecom needed to rebalance tariffs and increase telephone penetration further before the introduction of full competition.

Alternative infrastructure for already liberalised services

The Portuguese request for the liberalisation of alternative infrastructures for already liberalised services (such as telephone services for Closed User Groups) was not granted beyond the middle of 1997. The Commission believed that any potential reduction in revenues on the provision of leased circuits would be compensated by growth in the market and that the development of the network could be continued with the additional implementation period granted for voice telephony. The Commission stated that an extension to July 1999 which the Portuguese Government had requested could not be justified.

International GSM connection

The Commission has accepted the request in full concerning the direct international interconnection of GSM operators. This was because there was a realistic risk of substitution between international GSM and international fixed telephony which would threaten the development of the telecommunications network in Portugal.

Alternative infrastructure for GSM services

The Commission rejected Portugal's request to postpone the lifting of restrictions on the provision of alternative infrastructure for mobile and personal communications services. The Commission believed that the liberalisation of this section of the market without delay did not pose a threat to Portugal Telecom's revenues and hence to the necessary structural adjustments and development of the network.

The obligation and dates requested and granted are summarised in the table below.

Liberalisation of voice telephony and underlying networks:
- forseen in Directives: 1 January 1998
- requested by Portugal: 1 January 2000
- *granted: 1 January 2000*

Liberalisation of the use of own/alternative networks for other already liberalised services:
- forseen in Directives: 1 July 1996
- Requested by Portugal: 1 July 1999
- *granted: 1 July 1997*

Direct international interconnection of mobile networks with other mobile or fixed networks
- forseen in Directives: February 1996
- requested by Portugal: 1 January 1999
- *granted :* *1 January 1999*

Alternative infrastructure for mobile networks
- forseen in Directives: February 1996
- requested by Portugal: 1 January 1998
- *granted :* *none*

Background

The Full Competition directive (Directive 96/19/EC) which provided for the introduction of full competition the telecommunications sector on 1 January 1998 entitled five Member States (Ireland, Greece, Luxembourg, Portugal and Spain) to submit requests for derogations from that deadline to the Commission. The Decision concerning Ireland was taken on 27 November 1996 and provided for a date of full liberalisation by 1 January 2000. Greece and Luxembourg have also submitted requests for derogations. Spain will not apply for a full derogation and its request has been recently published (IP/96/1231).

This decision creates certainty for the rapidly developing Portuguese market. It also provides a positive environment for national and global alliances which may be shaped in that market.

World trade negotiations

The agreement of the Portuguese derogation is also relevant to the negotiations on telecommunications at the World Trade Organisation (WTO), in Geneva. Thanks to this internal liberalisation schedule, and to other changes concerning Spain and Belgium, it was possible in December for the EU to improve its offer to other trading partners. This show of EU leadership, coordinated with an improvement in the US offer, was very positively received. This should contribute to a better basic telecommunications agreement by the end of negotiations at the end of this week, and more generally to constructive talks on outstanding agenda items of interest to the EU.

IP/97/118 [1997/02/12]

Other 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. RAPID is available free of charge through the Commission's EUROPA server on the World Wide Web.

IP/97/183 [1997-03-05] Commission adopts an Action Plan on Satellite communications in the Information Society

IP/97/45 [1997-01-23] Telecommunications Liberalisation: The impact on employment

Court Judgments

Judgment of the Court of 20 February 1997, Case C-107/95 P : Bundesverband der Bilanzbuchhalter eV v Commission of the European Communities Law governing the institutions (Appeals — Action for annulment — Admissibility — Refusal by the Commission to commence proceedings against a Member State for failure to fulfil obligations — Refusal by the Commission to take measures under Article 90(3) of the EC Treaty) (Fifth Chamber)

STATE AID

Main developments between 1st January and 31st March 1997

Summary of the most important recent developments

co-ordinated by Torben TOFT, DG IV-G-1

MARIBEL QUATER - NEW SCHEME APPROVED AS A GENERAL MEASURE

The Commission on 25 March 1997 approved the new Belgian scheme known as "Maribel quater", which is intended to promote the employment of manual workers. The scheme provides for a reduction in social security contributions for all firms employing manual workers. The reduction is in the form of a flat rate amount plus an additional reduction in proportion to the extent to which the firm relies on manual labour.

The new scheme, which will enter into force on 1 July 1997, replaces the "Maribel bis/ter" scheme. That scheme granted an additional reduction to firms whose main activity was in one of the sectors most exposed to international competition. On 4 December 1996 the Commission decided (see IP/96/1127) that the "Maribel bis/ter" scheme was unlawful aid that was incompatible with the Community competition rules. In the new scheme, the Belgian Government has accordingly reverted to the system used in the "Maribel 1" scheme, which was a general measure that did not differentiate between sectors.

The reduction in social security contributions under "Maribel" will be calculated as follows: annual reduction per manual worker of approx ECU 500 + (500 x X). The X coefficient represents the proportion of the firm's total work force accounted for by manual workers and may vary from 0.01 to 0.66. In the case of small businesses with no more than five employees, the scheme provides for an annual flat rate reduction of approx. 840 ECU per employee.

The proposed scheme was deemed to be a general measure and not aid because of its general nature, automatic application and the fact that it does not discriminate a priori between sectors. The fact that the reductions allowed differ from one firm to another in line with the proportion of manual workers in the total work force does not detract from the general nature of the measure. The Commission took the view that such differences were justified by employment policy considerations, because of the differing levels of social security contributions as a proportion of firms' total wage bills. Furthermore, the risks of manual workers being made redundant as a result of automation are greater in firms employing a large proportion of manual workers. Lastly, the Commission found that the parameter used was transparent and objective (case N 132/97).

COMMISSION PROPOSES TO THE EU INDUSTRY MINISTERS TO CLEAR RESTRUCTURING AID FOR SHIPYARDS IN SPAIN, GERMANY AND GREECE

The Commission will propose to the Industry Ministers at their meeting on 24 April 1997 a series of aid measures to support restructuring of shipyards in Spain, Germany and Greece. However formal Council adoption will have to await the Parliament's opinion. In all three cases the aid now envisaged does not significantly alter the relative competitive situation on the market of the ship-yards concerned. In the German case the aid replaced both former aid lost in the cash concentration system and the investments to be made by the private investor. In the case of Greece and Spain, a large part of the aid is due to interest that the enterprises had to pay on loans taken out by them because either for budgetary or legal reasons the Government concerned was not in a position to pay the aid concerned.

If the Council of Ministers accepts the derogation proposed to the existing legislation, then the Commission would be in a position to formally pronounce itself on the three cases. A vital element for the Commission is the undertaking by the governments concerned to pay no more rescue aid, restructuring type aid or loss guarantees to these yards in the future. In addition the Commission is

insisting on important reduction in production capacity in Germany and Spain. Strict monitoring of the conditions imposed will also be put in place.

The Commission has delayed until now its decisions regarding requests from three Member States (Germany, Greece and Spain) to grant aids in support of the restructuring of certain of their yards. However in view of the lack of any positive outcome to the OECD meeting last week the Commission feels obliged to act if the future of the yards concerned is not to be jeopardised. The three cases in question concern restructuring that were underway and were discussed in the context of the OECD agreement.

Spain

In the case of Spain, aid is needed for a further restructuring of the public yards in order for them to return to viability by the end of 1998. A large part of the proposed aid are measures (amounting to 180 billion pesetas or approx. 1.087 billion ECU) which were provided for in a derogation for Spain under the OECD agreement. In addition certain other measures are essential for viability, made up as follows: past interest payments (62 billion pesetas or approx. 374 million ECU); tax credits(58 billion pesetas or approx. 350 million ECU); and a capital injection (15 billion pesetas or approx. 90,5 million ECU). The past interest payments related to loans taken on in the period 1988 to 1994 to cover delays in the payment of previously approved aid. As such these payments are therefore unlikely to have any significant distorting effect on competition.

As a counterpart for the aid a capacity reduction of 30000 cgrt in the public yards is proposed (from 240000 cgrt to 210000 cgrt). This would be supplemented by the continued closure to shipbuilding of the public yard at Astano (capacity 135000 cgrt) and a capacity reduction in the private yards of 17500 cgrt.

The Commission proposes that strict monitoring arrangements should be established to ensure that the resulting production limitations are respected. Furthermore the Commission has stressed the finality and exceptional nature of the aid package. The Commission accepts the Spanish Government's undertaking that, should any public yard not achieve viability by the end of next year, no more restructuring aid will be possible. The Commission proposes that this should be a condition for the authorisation of the current aid package.

Germany

In east Germany two shipyards under restructuring, MTW-Schiffswerft and Volkswerft, were deprived from large amounts of restructuring aid granted to them through transactions with their former mother company Bremer Vulkan. The Commission opened a formal investigation procedure on this misuse of aid. According to the results of further investigations now available from auditors it is evident that these questionable transactions were beyond control of the yards.

After the collapse of the Bremer Vulkan Verbund the yards had to be taken over by the State again in view of a re-privatisation which is currently at an early stage of preparation. For the continuation and completion of the restructuring programs new aid in the range of 1 billion DM (approx. 533 million ECU) is needed. Basically the aid is needed to replace the misused funds and to replace the expected own contributions from Bremer Vulkan. The vast part of the restructuring measures will be completed by end of 1998.

The physical works under the restructuring programmes remain virtually unchanged. The capacity of the shipyards will remain unchanged as well. The German government made the commitment to ensure that the capacity limitations will be fully respected until end of the year 2000, and to extend this limitation until end of 2005 unless the Commission authorises an earlier termination of the limitations.

In its assessment of the capacity aspects of the aid the Commission took into account that the Bremer Vulkan Werft in Bremen-Vegesack, one of the largest shipbuilding facilities in Germany, will be closed from late summer 1997.

Comprehensive monitoring arrangements are foreseen to supervise the use of the aid, compliance with the restructuring plans and enforcement of the capacity limitations.

Greece

In 1990 Greece obtained a derogation from the normal Community rules on operating aid for shipbuilding and was allowed to pay operating aid to its public yards, if linked to their privatisation until 31.12.1991. On the basis of the undertakings given by the Greek Government that its public yards would be privatised by 31

March 1993, the Commission accepted, on 23 December 1992, that the write-off of the debts of the four yards concerned by the derogation - in the amounts notified to it - was common market compatible.

The privatisation of the "Hellenic shipyard" was, however, only achieved in September 1995, when the State sold 49% of its shares to a co-operative of the yard's workers. Whilst the Commission had approved in 1992 a maximum of GDR 44.0 billion (approx. 144 million ECU) as aid for debts write-off linked to the privatisation of the yard, this amount has meanwhile increased due to interests and penalties. The Greek Government has therefore requested authorisation from the Commission to write-off GDR 54.525 billion (approx. 178,5 million ECU) in debts. Considering that the conditions for the yard to become viable have been met and in view of the social and strategic importance of that yard for the region and the whole country, the Commission takes the view that it is reasonable to provide a basis for declaring compatible aid for debts' write-off to cover the debts existing when the privatisation took place.

SOCIÉTÉ FRANÇAISE DE PRODUCTION - OPENING OF ARTICLE 92(3) PROCEDURE

On 12 February 1997 the Commission decided to open an inquiry into aid amounting to almost FF 2.5 billion (approx. 379 million ECU) for the restructuring and privatisation of Société française de Production, a French company that makes TV programmes. It has also approved emergency aid of FF 350 million (approx. 53 million ECU) pending the implementation of the plan for restructuring of SFP which has finally been presented by the French authorities.

On 20 December 1996 the French authorities presented a plan for restructuring SFP, which is related to an earlier offer to take over the business made by Images Télévision International et Générale d'Images and accepted by the French Government in July 1996. New aid totalling FF 1.192 million (ECU 182 million) linked to the offer was notified to the Commission at the end of December 1996. The French authorities had announced that they would provide an advance of FF 350 million (approx. 53 million ECU) before the end of 1996 to meet SFP's cash flow requirements. The company was virtually insolvent and, if the State had not stepped in, would have had to be wound up.

The French authorities have also notified the Commission, within the framework of the restructuring and privatisation plan, of aid for financial restructuring amounting to FF 1.300 million (approx. 197 million ECU) to cover the debt created when previous aid was repaid, as prescribed by the Commission in October 1996. The Commission then took the view that, without a restructuring plan, SFP's operations would continue to be loss making and the aid would therefore have to be treated as equivalent to unauthorised operating aid. The total cost of the operation to the State will thus be FF 2.492 million (approx. 378 million ECU) (NN 12/97).

LA COMMISSION DÉCIDE DE NE PAS SOULEVER D'OBJECTIONS À L'ÉGARD DE L'EXONÉRATION FISCALE DES BIOCARBURANTS

La Commission a décidé le 9 avril 1997 de ne pas soulever d'objections à l'égard de l'exonération de la Taxe intérieure sur les produits pétroliers (TIPP) que la France entend accorder à certains biocarburants. Cette défiscalisation sera accordée à ces produits indépendamment du mode de culture ou du type de matière première végétale servant à les produire. L'objectif de ce dispositif est l'introduction d'une quantité limitée de biocarburants dans les carburants pour véhicules à moteur et dans le fuel domestique.

Le bénéfice de cette exonération de la TIPP sera accordé aux unités (sites) de production de biocarburants agréées par les autorités françaises à la suite d'une procédure d'appel à candidatures publiée au Journal Officiel des Communautés Européennes. Cet agrément autorisera les unités en question à mettre en marché en France un volume défini de biocarburants qui bénéficiera de l'exonération fiscale prévue par la loi de finances annuelle.

Cet agrément pourra avoir une durée de trois ou neuf ans selon que les entreprises aient récemment fait ou non d'importants investissements spécifiques en matière de production de biocarburants. L'attribution de l'agrément pour l'une ou l'autre durée est fonction des caractéristiques précises que les autorités françaises mesureront sous forme de ratios et dont les valeurs critiques ont été communiquées à la Commission.

La Commission constate que ce projet s'inscrit dans la stratégie de réduction de la dépendance énergétique du pétrole, de développement des sources énergétiques alternatives, d'une meilleure utilisation des ressources agricoles et de la politique communautaire de protection de l'environnement.

La Commission s'est néanmoins réservée le droit de vérifier que la mise en oeuvre effective dudit dispositif se fait de façon objective et non discriminatoire et qu'il n'a pas pour effet ou pour résultat de favoriser l'écoulement prioritaire de la production nationale de biocarburants. A cet effet, la présente décision demande que des rapports contenant les résultats des appels à candidature pour l'attribution des agréments soient communiqués à la Commission. (cas N 941/97).

AID SCHEME IN FAVOUR OF SME IN EAST GERMANY

The European Commission decided on 26 February 1997 to approve an aid scheme in favour of SME in difficulties in East-Germany. The scheme foresees aid given under the so-called 'Vertragsmanagement' activity from the BvS or the BMGB in the form of extensions of loans and guarantees, waiver of loans and, exceptionally, granting of new loans or outright grants. Amounts up to DM 3 million (approx. 1.6 million ECU) per beneficiary may be made available. The beneficiaries will be SME complying with the community definition. Between 150 and 200 companies are expected to benefit from this scheme each year until the end of the year 2000.

Even though "Vertragsmanagement" is not intended as an aid scheme, there are certain types of operations that boil down to aid in practice. Examples for transactions including no aid are all corrections of material or formal errors in the contract, specifications that were foreseen at the start but failed the achieved aim, etc. Transactions implying aid are those where the BvS fails to act as a private investor and accepts to modify certain contract provisions in order to support the company in question. The scheme applies basically in the following two situations: - the BvS grants rescue measures for companies to avoid their bankruptcies or - it makes available financial resources to facilitate a restructuring process. The Commission has verified that the notified scheme complies with the Community guidelines on aid for Rescue and Restructuring of firms in difficulty (case NN 45/96).

COMMISSION INITIATES PROCEEDINGS IN RESPECT OF THE AID FOR THE RESTRUCTURING OF GAN

On 12 March 1997 the Commission decided to initiate proceedings in respect of the capital injection of FF 11 billion (approx. 1.67 billion ECU) and the state guarantee estimated at FF 9 billion (approx. 1.37 billion ECU) which the French Government plans to grant to GAN. The difficulties encountered by this banking and insurance group since 1993, following losses in the property and insurance sectors, have already led the French Government to provide a capital injection of FF 2.86 billion (approx. 434 million ECU). The Commission decided to approve that aid on 18 September 1996 subject to full implementation of the restructuring plan submitted to it (see IP/96/842). However, those measures have turned out to be insufficient. On 3 March the French authorities notified the Commission of new measures aimed at restructuring the group. The French Government now has one month to provide the Commission with all the information it needs to examine the matter.

The additional measures notified by the French authorities on 3 March break down as follows:

– a capital injection of FF 11 billion (approx. 1.67 billion ECU) designed to re-establish the capital base of UIC (a property development subsidiary of GAN) following its 1996 losses and to give the insurance companies an appropriate financial structure. UIC is to receive FF 7.1 billion (approx. 1.08 billion ECU) and the insurance companies FF 3.9 billion (approx. 592 million ECU) ;

– a government commitment to cover the estimated losses of FF 9 billion (approx. 1.37 billion ECU) which GAN will incur in implementing the guarantees it will have to provide, as part of the restructuring operation, for loans granted to the hived-off property company Baticrédit Finance et Cie.

These measures are necessary for GAN's survival since the recovery plan drawn up in 1996 seems to have failed. Under that plan, the group should have recorded a profit of FF 120 million (approx. 18 million ECU) in 1996 and one of FF 1,574 million (approx. 239 million ECU) in 1997. In fact, the losses for 1996 are likely to amount to some FF 15 billion (approx. 2,28 billion ECU). The

government support will enable GAN to limit its 1996 losses to approximately FF 5 billion (approx. 759 million ECU). The Commission will have to re-examine whether the previous FF 2.86 billion (approx. 434 million ECU) capital injection was compatible with the Treaty and also analyse the reasons for the plan's failure, notably whether material changes in circumstances could have affected the Commission's earlier assessment or whether other factors were involved. The French authorities will have to submit a realistic and detailed restructuring plan setting out the group's return to viability (case N136/97).

COMMISSION OPENS THE PROCEDURE AGAINST FINANCIAL MEASURES IN RESPECT OF INFRALEUNA GMBH

The Commission decided on 12 March 1997 to open proceedings pursuant to Article 93(2) EC Treaty for financial measures amounting to ECU 532.5 million notified in favour of Infraleuna GmbH in Sachsen-Anhalt, situated on one of the major production sites which constitutes an important part of the East German "chemical triangle".

Given the nature of the site, with interconnected production plants and the multitude of investors, an original solution had to be found to manage the installations. This has led to the creation of "Infraleuna GmbH". The main tasks of the company are to offer an operational site infrastructure, to supply services to the companies on the Leuna site and to become a "low profit" service supplier enabling the site to be interconnected and the inter-company supplies to be settled. The case is special as the kind of services offered by the Infraleuna GmbH are normally provided by the regional authorities and little is known on the possible economic effect of subsidies in this ambit.

The Commission has decided to open proceedings pursuant to Article 93(2) EC Treaty as at the present stage it has to assume that all financial measures constitute aid as it has not been sufficiently demonstrated that they will only finance infrastructure necessary for the common good of the site. Furthermore, the effect of the measures has, at the present stage, to be seen on the level of the two shareholders Linde AG and Leuna Caprolactam GmbH (25% each, 49% BvS until 2003) in their quality as producers and other users already established on the Leuna site. Infraleuna GmbH is bound to "low-profit principles" and therefore will pass on all the benefits of the aid measures to its users. The Commission sees the risk of a spill-over effect of the measures in view of the fact that considerably lowered costs for infrastructure services may lead to lower production costs.

The Commission has serious doubts whether the derogations set out in Article 92(3)(a) EC Treaty and in Article 92(3)(c) EC Treaty apply as in its view it is not assured that the aid intensity will stay below the threshold permitted for big companies (35%) and the presented company concept cannot be regarded as detailed restructuring plan leading to viability. As the case is very complex it requires an in-depth assessment and third parties shall be enabled to give their view on the case (cases N 727/96 and NN 1/97).

COMMISSION GIVES CONDITIONAL AUTHORISATION FOR THE EXTENSION TO WEST BERLIN OF THE SPECIAL DEPRECIATION AND INVESTMENT ALLOWANCE SCHEMES

The European Commission decided on 12 February 1997 that the extension of the German special depreciation and investment allowance schemes to include West Berlin is in principle compatible with the common market, in so far as the schemes do not apply to the processing and marketing of agricultural products.

The Commission's authorisation is subject to a number of conditions:

– Replacement investment is to be excluded from both schemes: the schemes are to apply only to initial investment in equipment and construction goods which was begun after 31 December 1995.

– Where the investment is outside an assisted area (in 1996 only part of West Berlin constituted an assisted area), the investment allowance is to be confined to "small" enterprises, as defined in the guidelines on aid to SMEs, and there is to be no special depreciation.

– Aid under these schemes may be combined with other forms of public assistance only up to the usual ceilings: 15% gross for SMEs outside assisted areas, and inside assisted

areas 35% gross for large enterprises and 45% gross (no more than 30% net) for SMEs (case C 34/96).

COMMISSION INITIATES PROCEEDINGS AGAINST TAX RELIEF MEASURES OPENING THE PROCEDURE IN AN EAST-GERMAN CASE OF FISCAL INCENTIVES

The European Commission decided on 26 February 1997 to initiate proceedings against an amendment to Section 52.8 of the German Income Tax Act. The new clause is a tax relief measure, applicable from 1996 to 1999, allowing a tax debt to be postponed and in some cases even waived entirely; it is intended to promote the market in shares in enterprises located in the new Länder and West Berlin, and thus to increase their equity capital base. The firm need not be operating in any particular industry, and several thousand firms may qualify.

The Commission is not satisfied that the measure is compatible with the common market, for the following reasons:

– The measure constitutes operating aid, and the Commission has consistently held that operating aid is admissible only by way of exception and on certain conditions in assisted areas. No such aid may be granted in West Berlin.

– There is substantial danger of abuse, because of the definition of the firms eligible, which makes no reference to economic independence.

– The special tax treatment is available only if the firm in which the holding is acquired has its registered office and head office in one of the new Länder or West Berlin. The Commission has held that such measures run counter to the freedom of establishment (Article 52 of the EC Treaty), because the benefit of the measure would be confined to firms satisfying these requirements. (case NN 9/96). ■

Press releases

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IP/97/251 [1997-03-26] State aid: Belgium: Commission gives green light to Maribel scheme in support of manual labour

IP/97/235 [1997-03-19] Commission proposes to the Industry Ministers of the EU to clear restructuring aid for shipyards in Spain, Germany and Greece

IP/97/218 [1997-03-12] The Commission opens a procedure concerning the possible misuse of shipbuilding development aid to Indonesia

IP/97/217 [1997-03-12] The Commission approves aid to Vauxhall Motor Ltd in support of an investment project in Ellesmere Port, Cheshire (UK)

IP/97/215 [1997-03-12] French textile plan: statement by Mr Van Miert

IP/97/214 [1997-03-12] The Commission authorises DM 70 million aid measures to Aircraft Services Lemwerder GmbH

IP/97/213 [1997-03-12] The Commission opens proceedings against financial measures in favour of Infraleuna GmbH, Sachsen-Anhalt

IP/97/212 [1997-03-12] The Commission opens investigation into aid to Cordex, a Portuguese rope and cord manufacturer

IP/97/159 [1997-02-26] New Länder and Berlin: Commission initiates proceedings against tax relief measures

IP/97/158 [1997-02-26] The Commission authorises the prolongation of the Greek shipbuilding scheme until 31 December 1997

IP/97/157 [1997-02-26] La Commission autorise les aides en faveur de l'entreprise MAO dans le cadre du démantèlement du secteur

IP/97/156 [1997-02-26] The Commission approves an aid scheme in favour of SMEs in East Germany

IP/97/117 [1997-02-12] West Berlin: Commission gives conditional authorisation for the extension to West Berlin of the special depreciation and investment allowance schemes

IP/97/116 [1997-02-12] Commission opens investigations into aid of about FF 2.5 billion to Société Française de Production (SFP)

▹ STATE AID

IP/97/114 [1997-02-12] The Commission investigates on restructuring aid to Keller SpA and Keller Meccanica SpA in Italy

IP/97/93 [1997-02-05] The Commission has initiated a procedure against an aid scheme for road haulage in Friuli-Venezia Giulia

IP/97/92 [1997-02-05] Commission initiates proceedings with regard to restructuring aid for Stahl und Hartgußwerke Bösdorf AG

IP/97/91 [1997-02-05] Commission approves aid scheme for transport in northern regions of Sweden

IP/97/89 [1997-02-05] The Commission approves the prolongation of the Dutch Subsidy Regulation for the newbuilding of sea-going ships until 31 December 1996

IP/97/88 [1997-02-05] The Commission approves the prolongation of two Finnish aid schemes for shipbuilding

IP/97/87 [1997-02-05] State aid: Commission takes three positive decisions concerning Germany

IP/97/86 [1997-02-05] The Commission requires a Danish shipyard to repay the excess aid granted in relation to five vessels

SPEECH/97/17 [1997-01-23] State aid and codes of conduct - The road ahead (organised by Forum Europe) "What rules for Europe's transport Revolution ?" Address by the Rt honourable Neil Kinnock Member of the European Commission responsible for Transport and TransEuropean Networks Concert Noble, Brussels 23 January 1997

IP/97/43 [1997-01-22] The Commission opens a procedure against a State aid scheme for combined transport in the Netherlands

IP/97/40 [1997-01-22] Commission seeks clarification concerning French horserace betting measures

IP/97/39 [1997-01-22] The Commission approves the release of a final tranche of restructuring aid for the Peene Werft

IP/97/38 [1997-01-22] Commission decides to initiate proceedings with regard to aid for Neptun Industrie Rostock and Dieselmotorenwerk Vulkan

IP/97/37 [1997-01-22] Commission approves new Danish regional aid map for 1997-99

IP/97/36 [1997-01-22] Commission initiates proceedings against extension of aid scheme in Sicily

IP/97/9 [1997-01-08] The Commission decides to widen its investigation on Spanish aids to publicly-owned shipbuilding

IP/97/8 [1997-01-08] The Commission decides to extend its procedure on Greek aid to the Hellenic shipyard

Court Judgments

Opinion of Advocate General C. O. Lenz, Case C-292/95 Spain v Commission of the European Communities; Annulment of the Commission decision of 6 July 1995 extending retroactively as from 1 January 1995 the decision of 23 December 1992 concerning the Community integration of State aids to the automobile industry Judgment of the Court of 14 January 1997, Case C-169/95 : Kingdom of Spain v Commission of the European Communities (State aids — Aid for the construction of a steel foundry in the Province of Teruel, Spain) (Full Court)

Judgment of the Court, of 27 February 1997, Case T-106/95 Fédération française des sociétés d'assurances (FFSA) and Others v Commission of the European Communities (State aid — Public undertaking — Combined application of Article 92 and Article 90(2) of the EC Treaty — Additional costs arising from performance of particular tasks assigned to the public undertaking — Competitive activities) (Third Chamber, Extended Composition)

Judgment of the Court, of 20 March 1997, Case C-24/95 : Land Rheinland-Pfalz v Alcan Deutschland GmbH Preliminary ruling (State aid — Recovery — Application of national law — Limits) (Full Court)

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1 Télécommunications et Postes	***Herbert UNGERER***	2968623/2968622
Coordination Société d'information - Cas relevant de l'Article 85/86	*Suzette SCHIFF*	2957657/2954785
2 Médias, éditions musicales	***Anne-Margrete WACHTMEISTER***	2953895/2960266
- Aspects de propriété intellectuelle	*Sebastiano GUTTUSO*	2951102/2954363
3 Indu. de l'information, électronique de divertissement	***Fin LOMHOLT***	2955619/2951150

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DIRECTION D **Services**	***Humbert DRABBE***	2950060/2952701
1 Services financiers (banques, assurances)	***Luc GYSELEN***	2961523/2959987
2 Transports et infrastructures des transports	***Serge DURANDE***	2957243/2954623
3 Commerce et autres services	. . .	
DIRECTION E **Industries de base et énergie**	***Rafael GARCÍA PALENCIA***	2950253/2950900
1 Acier, métaux non ferreux, produits minéraux non métalliques, bâtiment, bois, papier, verre	***Maurice GUERRIN***	2951817/2951816
2 Prod. chimiques de base & transformés, caoutchouc	***Wouter PIEKÉ***	2959824/2956422
3 Energie et eau	***Paul MALRIC-SMITH***	2959675/2964903
4 Cartels et Inspections	***Pierre DUPRAT***	2953524/2954850
Chef adjoint d'unité notamment chargé des Cartels	*Julian JOSHUA*	2955519
DIRECTION F **Industries des biens d'équipement et de consommation**	***Sven NORBERG***	2952178/2959031
1 Indu. mécaniques et électriques et industries diverses	***Franco GIUFFRIDA***	2956084/2950663
2 Automobiles, autres moyens de transport et construction mécanique connexe	***Dieter SCHWARZ***	2951880/2950479
3 Produits agricoles, alimentaires, pharmaceutiques, textiles et autres biens de consommation	***Jürgen MENSCHING***	2952224/2961179
DIRECTION G **Aides d'Etat**	***Asger PETERSEN***	2955569/2958566
Conseiller	***Francisco ESTEVE REY***	2951140
Conseiller	. . .	
Task Force "Aides dans les nouveaux Länder	***Stefaan DEPYPERE***	2990713/2952007
1 Politique des aides d'Etat	***Anne HOUTMAN***	2959628/2969719
Chef adjoint d'unité	. . .	
2 Aides horizontales	***Claude ROUAM***	2957994/2954592
3 Aides à finalité régionale	***Loretta DORMAL-MARINO***	2968603/2952521
Chef adjoint d'unité	*Klaus-Otto JUNGINGER-DITTEL*	2960376
4 Acier, métaux non ferreux, mines, construction navale automobiles et fibres synthétiques	***Martin POWER***	2955436/2950991
Chef adjoint d'unité	*Geert DANCET*	2960993/2950068
5 Textiles, papier, industrie chimique, pharmaceutique, électronique, construction mécanique & autres secteurs manufacturiers	***Cecilio MADERO VILLAREJO***	2960949/2955900
Chef adjoint d'unité	. . .	
6 Entreprises publiques et services	***Ronald FELTKAMP***	2954283/2960450
7 Analyses,inventaires et rapports	***Reinhard WALTHER***	2958434/2955410

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

Netzzugang aus Sicht der Europäischen Union - UNGERER - CeBIT/38. VDPI Fachtagung - Hannover - 13/03/97

EU's regler om statsstøtte - PETERSEN - EU-ret & Mennesleret - 1/03/97

Maßnahmen der EU zur Öffnung des Telekommunikationsmarktes für neue Wettbewerber - Van Miert - Online '97 - Hamburg - 4/02/97

Banque - Concurrence - PIFFAUT - L'Observateur de Bruxelles - Bruxelles - 1/02/97

Conference de presse - Van Miert - Bruxelles - 22/01/97

The European dimension in Competition Policy - JONES - London - 21/01/97

The Future of State Aid Control - MEDERER - 20/01/97

Commission adopts Green Paper on vertical restraints in EU competition policy - PEEPERKORN - 20/01/97

La politique de Concurrence Européenne La politique de concurrence européenne dans le domaine audiovisuel - PONS - 20/01/97

Naar een moderner mededingingsbeleid in de Europese Unie: het staatssteunbeleid - DANCET - Maandschrift Economie - 1/01/97

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.

Videos

Fair competition in Europe: This video - that lasts 16 minutes 45 seconds - is a layperson introduction to the most important elements of european competition policy. The video uses fictitious examples to briefly explain how the Commission combats cartels and how it prevents the creation of dominant positions in the context of mergers and acquisitions at european and world level. The video also describes the questions raised by the adoption of State subsidies as well as the main objectives of the liberalisation policy implemented actively by the Commission in the telecommunications sector. This video is addressed to an informed public that wants to make a first contact with european competition policy (students, professional associations, corporate lawyers, executives, SMEs etc.). It can be ordered through the Office for official Publications of the European Communities (use catalogue number CV-ZV-97002-xx-V with xx=language code i.e. EN, DE, FR, SV, PT, IT, NL, DA=15, FI, GR; available in all languages, price 20 ECU)

Legislation

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: CM-29-93-A02-xx-C (xx=language code: ES, DA, DE, GR, EN, FR, IT, NL, PT).

Competition law in the European Communities-Volume IA-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: CM-29-93-A01-xx-C (xx=language code: ES, DA, DE, GR, EN, FR, IT, NL, PT).

Competition law in the European Communities-Addendum to Volume IA-Rules applicable to udertakings. Situation at 1 March 1995. Catalogue No: CM-88-95-436-xx-C (xx=language code: ES, DA, DE, GR, EN, FR, IT, NL, PT).

Merger control in the European Union Catalogue No: CV-88-95-428-xx-C

(xx=language code: ES, DA, DE, GR, EN, FR, IT, NL, PT).

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. Catalogue No: CV-77-92-118-EN-C

Competition Law in the European Communities - volume IIB - Explanation of rules applicable to state aid. Catalogue No: CM-03-97296-xx-C (xx=language code)

Competition law in the EC- Vol III A -- Rules in the international order. Situation at 31 December 1995. Catalogue No: CM-89-95-858-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT, FI, SV)

Official documents

Interim report of the multimodal group - Presented to Commissioner Van Miert by Sir Bryan Carsberg, Chairman of the Group. Catalogue No: CM-95-96-350-EN-C

Green paper on vertical restraints in EC competition policy -COM (96) 721- (Ed. 1997) Catalogue No: CB-CO-96-742-xx-C (xx= ES DA DE GR EN FR IT NL PT SV FI)

Community Competition Policy in the Telecommunications Sector (Vol. I: July 1995; Vol. II: March 1997) a compedium prepared by DG IV-C-1; 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. - Copies available through DG IV-C-1 (tel. +322-2968623, 2968622, fax +322-2969819).

Brochure explicative sur les modalités d'application du Règlement (CE) N° 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)

The institutional framework for the regulation of telecommunications and the application of EC competition rules Final Report (Forrester Norall & Sutton). Catalogue No: CM-94-96-590-EN-C

Competition aspects of access pricing-Report to the European Commission December 1995 (M. Cave, P. Crowther, L. Hancher). Catalogue No: CM-94-96-582-EN-C

Competition decisions

Recueil des décisions de la Commission en matière d'aides d'Etat -Article 93, paragraphe 2 (Décisions finales négatives)- 1964-1995 Catalogue No: CM-96-96-465-xx-C [xx=FR, NL, DE et IT (1964-1995); EN et DA (73-95); GR (81-95); (ES et PT (86-95); SV et FI (95)]

Recueil des décisions de la Commission en matière de concurrence - Articles 85, 86 et 90 du traité CEE-64/72 Catalogue No: CM-76-92-996-xx-C (xx=DE, FR, IT, NL.)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-73/80 Catalogue No: CM-76-92-988-xx-C (xx=DA, DE, EN, FR, IT, NL.)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-81/85 Catalogue No: CM-79-93-792-xx-C (xx=DA, DE, GR, EN, FR, IT, NL.)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-86/88 Catalogue No: CM-80-93-290-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-89/90 Catalogue No: CV-73-92-772-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-90/92 Catalogue No: CV-84-94-387-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-93/94 Catalogue No: CV-90-95-946-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

Competition reports

European Community Competition policy 1995 (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT, SV, FI). Copies available through the Cellule Information

XXV Report on Competition Policy 1995 Catalogue No: 94-96-429-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT, SV, FI)

European Community competition policy 1994 (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT, SV, FI). Copies available through Cellule Information DG IV

XXIV Report on competition policy 1994 Catalogue No: CM-90-95-283-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT, SV, FI)

XXIIIe Report on competition policy 1993 Catalogue No:

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CM-82-94-650-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

XXIIe Report on competition policy 1992 Catalogue No: CM-76-93-689-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT

XXIe Report on competition policy 1991 Catalogue No: CM-73-92-247-xx-C (xx= ES, DA, DE, GR, EN, FR, IT, NL, PT)

4ième rapport sur les aides d'Etat dans l'Union Européenne dans le secteur des produits manufacturés et certains autres secteurs Catalogue No: CM-92-95-368-xx-C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT, SV, FI)

Other documents and studies

Proceedings of the European Competition Forum (coedition with J. Wiley) Catalogue No: CV-88-95-985-EN-C

Study of exchange of confidential information agreements and treaties between the US and Member States of EU in areas of securities, criminal, tax and customs (Ed. 1996) Catalogue No: CM-98-96-865-EN-C

Proceedings of the 2nd EU/Japan Seminar on competition (Ed. 1995) Catalogue No: CV-87-95-321- EN-C.

Competition Aspects of Interconnection Agreements in the Telecommunications Sector (Ed. 1995) Catalogue No: CM-90-95-801-EN-C

The effect of conglomerate mergers on competition (Ed. 1990) Catalogue No: CM-59-90-039-EN-C

Surveys of the Member States' powers to investigate and sanction violations of national competition laws (Ed. 1995) Catalogue No: CM-90- 95-089-EN-C

Information exchanges among firms and their impact on competition (Ed. 1995) Catalogue No: CV-89-95-026-EN-C

Meeting universal service obligations in a competitive telecommunications sector (Ed. 1994) Catalogue No: CV-83-94-757-EN-C

Competition and integration: Community merger control policy (Ed. 1994) Catalogue No: CM-AR-94-057-EN-C

Growth, competitiveness, employment: The challenges and ways forward into the 21st century: White paper (Ed. 1994) Catalogue No: CM 82 94 529 xx C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

Growth, competitiveness, employment: The challenges and ways forward into the 21st century: White paper (Ed. 1993)-Volume 2 Part C Catalogue No: CM-NF-93-0629 A C

EG Wettbewerbsrecht und Zulieferbeziehungen der Automobilindustrie (Ed. 1992) Catalogue No: CV-73-92-788-DE-C

Competition policy in the new trade order: strengthening international cooperation and rules (Ed. 1995) Catalogue No: CM-91-95-124-EN-C

Forum consultatif de la comptabilité: subventions publiques (Ed. 1995) Catalogue No: C 184 94 735 FR C

Les investissements dans les industries du charbon et de l'acier de la Communauté: Rapport sur l'enquête 1993 (Ed. 1995) Catalogue No: CM 83 94 2963 A C

Les investissements dans les industries du charbon et de l'acier de la Communauté: Enquête 1992 (Ed. 1993) 9 languages Catalogue No: CM 76 93 6733 A C

The effect of different state aid measures on intra Community competition (Ed. 1990) Cat. No: 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 (Ed. 1995) Final report, Catalogue No: CV-89-95-018-EN-C

Green Paper on the development of the single market for postal services, 9 languages Catalogue No: CD-NA-14-858-EN-C

Competition and integration: Community merger control policy Catalogue No: CM-AR-94-057-EN-C

Survey of the Member State National Laws governing vertical distribution agreements (Ed. 1996) Catalogue No: CM-95-96-996-EN-C

Bierlieferungsvertäge in den neuen EU-Mitgeliedstaaten-Österreich Schweden und Finland

PUBLISHED IN THE OFFICIAL JOURNAL

1st January to 31 March 1997

ARTICLES 85, 86 (RESTRICTIONS AND DISTORTIONS OF COMPETITION BY UNDERTAKINGS)

13/03/97 C 80 Notice pursuant to Article 12 (2) of Regulation (EEC) No 4056/86 concerning Case IV/MAR/36.253 - P& O Stena Line

10/03/97 C 75 Opinion of the Economic and Social Committee on the 'XXVth report on competition policy (1995)'

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6/03/97 C 70 Notification of a partnership agreement to set up and operate a digital pay-radio business for Europe (Case No IV/36.092 - Music Choice Europe)

1/03/97 C 65 Notification of a joint venture (Case No IV/36.308 - BT/News International - Springboard)

18/02/97 L 47 COMMISSION DECISION of 4 December 1996 relating to a proceeding pursuant to Article 85 of the Treaty establishing the European Community and Article 53 of the EEA Agreement (IV/35.679 - Novalliance / Systemform) (Only the German text is authentic) (Text with EEA relevance)

18/02/97 C 48 Notice pursuant to Article 19 (3) of Council Regulation No 17 concerning a request for negative clearance or an exemption pursuant to Article 85 (3) of the EC Treaty Case No IV/34.415 - IFCO

15/02/97 C 47 Notice relating to Case Nos IV/35.337 - Atlas and IV/35.617 - Phoenix/Global One

15/02/97 C 47 Notification of a joint venture agreement for the marketing of rights to world and regional reference maps and atlases (Case No IV/35.962 - De Agostini - Rand McNally Limited)

15/02/97 C 47 Notice pursuant to Article 19 (3) of Council Regulation No 17 concerning Case No IV/E-3/35.841 - Hydro Texaco Holdings A/S - OK Petroleum AB (Preem)

12/02/97 C 44 Notification of a joint venture (Case No IV/36.365 - NEC + Packard Bell + Bull)

12/02/97 C 44 Notice pursuant to Article 19 (3) of Council Regulation No 17 and Article 3 of Protocol 21 of the EEA Agreement concerning a request for negative clearance or an exemption pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement (Case No IV/35.830 - Unisource - Telefónica)

12/02/97 C 44 Notice pursuant to Article 19 (3) of Council Regulation No 17 and Article 3 of Protocol 21 of the EEA Agreement concerning a request for negative clearance or an exemption pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement (Case No IV/35.738 - Uniworld)

30/01/97 C 29 Notice of the Commission relating to the revision of the notice of 3 September 1986 on agreements of minor importance which are not caught by the provisions of Article 85 (1) of the EC Treaty

29/01/97 L 26 Commission Decision of 30 October 1996 relating to a proceeding under Article 85 of the EC Treaty (IV/34.503 - Ferry operators - Currency surcharges) (Only the English, French and Dutch texts are authentic)

28/01/97 C 27 Notification of a cooperative joint venture agreement in the aerospace sector (Case No IV/36.254-F/2 - Snecma/P& WC)

23/01/97 C 23 Commission Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89

21/01/97 C 21 Notification of a joint venture (Case No IV/36.351 - E 1 - Papierholz Austria)

21/01/97 C 21 Notification of standard form lease agreements and principles for change of use Case No IV/36.019 - SES

18/01/97 L 16 Commission Decision of 18 December 1996 relating to a proceeding under Article 85 of the EC Treaty and Article 53 of the EEA Agreement (Case IV/35.518 - Iridium)

(Only the English text is authentic) (Text with EEA relevance)

ARTICLE 90 (LIBERALISATION)

18/03/97 L 76 COMMISSION DECISION of 18 December 1996 concerning the conditions imposed on the second operator of GSM radiotelephony services in Spain (Only the Spanish text is authentic)

12/03/97 C 78 Proposal for a Council Directive amending Directive 77/388/EEC as regards the value-added tax arrangements applicable to telecommunications services

11/03/97 C 76 Communication from the Commission on the application of the competition rules to access agreements in the telecommunications sector - framework, relevant markets and principles

5/03/97 C 68 Commission Notice pursuant to Article 4 (1) (a) of Council Regulation (EEC) No 2408/92 Imposition of public service obligations in respect of scheduled air services within Portugal

5/03/97 C 68 Communication from the Commission under Article 4 (1) (a) of Council Regulation (EEC) No 2408/92 Imposition of public service obligations in respect of scheduled air services within France

24/02/97 C 56 Opinion of the Economic and Social Committee on 'Public service obligations in the internal energy market'

14/02/97 L 43 Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers

▹ INFORMATION SECTION

12/02/97 L 41 COMMISSION DECISION of 27 November 1996 concerning the additional implementation periods requested by Ireland for the implementa-tion of Commission Directives 90/388/EEC and 96/2/EC as regards full compctition in the telecommunications markets (Only the English text is authentic) (Text with EEA relevance)

30/01/97 L 27 Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity

30/01/97 C 30 Opinion of the Economic and Social Committee on the 'Proposal for a Council Decision regarding the definition and implementation of Community policy in the field of telecommunications and postal services'

30/01/97 C 30 Opinion of the Economic and Social Committee on the 'Universal service for telecommunications in the perspective of a fully liberalized environment'

30/01/97 C 30 Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on aid to shipbuilding'

8/01/97 C4 Request for implementation periods Spain (Pursuant to Commission Directive 90/388/EEC)

CONTROL OF CONCENTRATIONS/MERGER PROCEDURES

25/03/97 C 97 Prior notification of a concentration (Case No IV/M.901 - Go-Ahead/Via/Thameslink)

21/03/97 C 92 Prior notification of a concentration (Case No IV/M.886 - MRW/MHP

19/03/97 C 88 Prior notification of a concentration (Case No IV/M.900 - BT/TELE DK/SBB/Migros/UBS)

15/03/97 C 84 Prior notification of a concentration (Case No IV/M.905 - Schweizer Re/SAFR)

14/03/97 C 82 Prior notification of a concentration (Case No IV/M.894 - Rheinmetall/British Aerospace/STN Atlas)

11/03/97 C 76 Non-opposition to a notified concentration (Case No IV/M.859 - Generali/Prime)

5/03/97 C 68 Prior notification of a concentration (Case No IV/M.904 - RSB/Tenex/Fuel Logistic)

4/03/97 C 67 Prior notification of a concentration (Case No IV/M.786 - Birmingham International Airport)

26/02/97 C 59 Prior notification of a concentration (Case No IV/M.835 - Recticel/Greiner)

26/02/97 C 59 Prior notification of a concentration (Case No IV/M.877 - Boeing/McDonnell Douglas)

24/02/97 C 56 Opinion of the Economic and Social Committee on: - the 'Communication from the Commission to the Council and to the European Parliament regarding the revision of the merger regulation', - the 'Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings', and - the 'Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings - Articles 87 and 235'

22/02/97 C 53 Withdrawal of notification of a concentration (Case No IV/M.888 - Metallgesellschaft/AGIV)

18/02/97 C 48 Prior notification of a concentration (Case No IV/M.873 - Bank Austria/Creditanstalt)

15/02/97 C 47 Prior notification of a concentration (Case No IV/M.888 - Metallgesellschaft/AGIV)

15/02/97 C 47 Prior notification of a concentration (Case No IV/M.867 - Wagons-Lits/Carlson)

15/02/97 C 47 Non-opposition to a notified concentration (Case No IV/M.760 - Klöckner/ARUS)

7/02/97 C 38 Non-opposition to a notified concentration (Case No IV/M.862 - AXA/UAP)

5/02/97 C 36 Prior notification of a concentration (Case No IV/M.869 - BGT/EHG-AIM)

4/02/97 C 35 Non-opposition to a notified concentration (Case No IV/M.802 - Telecom Éireann)

4/02/97 C 35 Prior notification of a concentration (Case No IV/M.857 - British Airways/Air Libert.)

1/02/97 C 32 Request of examination of a concentration (Case No IV/M.890 - Blokker/Toys "R" Us)

31/01/97 C 31 Prior notification of a concentration (Case No IV/M.887 - Castle Tower/TDF/Candover/Berkshire - HSCo)

28/01/97 C 27 Prior notification of a concentration (Case No IV/M.879 - Vendex (Vedior)/Bis)

28/01/97 C 27 Prior notification of a concentration (Case No IV/M.882 - Archer-Daniels-Midland/Grace Cocoa Associates)

28/01/97 C 27 Prior notification of a concentration (Case No IV/M.871 - UPM-Kymmene/Finnpap)

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28/01/97 C 27 Prior notification of a concentration (Case No IV/M.846 - Philips/Hewlett-Packard)

24/01/97 C 24 Non-opposition to a notified concentration (Case No IV/M.853 - Bell Cable Media/Cable & Wireless/Videotron)

24/01/97 C 24 Prior notification of a concentration (Case No IV/M.878 - RTL 7)

24/01/97 C 24 Prior notification of a concentration (Case No IV/M.876 - Telia/Ericsson)

24/01/97 C 24 Non-opposition to a notified concentration (Case No IV/M.865 - Cable & Wireless / Nynex / Bell Canada)

23/01/97 C 23 Prior notification of a concentration (Case No IV/M.883 - Prudential Nominees Ltd/HSBC Equity Ltd/Finnish Chemicals Oy)

23/01/97 C 23 Prior notification of a concentration (Case No IV/M.884 - KNP BT/Bunzl/Wilhelm Seiler)

22/01/97 C 22 Non-opposition to a notified concentration (Case No IV/M.820 - British Aerospace/Lagardère SCA)

22/01/97 C 22 Prior notification of a concentration (Case No IV/M.875 - DBV/Gothaer/GPM)

18/01/97 C 19 Non-opposition to a notified concentration (Case No IV/M.843 - PTT Post/TNT/GD Express Worldwide)

17/01/97 C 18 Prior notification of a concentration (Case No IV/M.880 - Schweizer Re/Uniorias)

17/01/97 C 18 Non-opposition to a notified concentration (Case No IV/M.818 - Cardo/Thyssen)

17/01/97 C 18 Non-opposition to a notified concentration (Case No IV/M.848 - Ahold/CSC)

16/01/97 C 16 Non-opposition to a notified concentration (Case No IV/M.839 - Promodes/Garosci)

15/01/97 C 14 Prior notification of a concentration (Case No IV/M.850 - Fortis/MeesPierson)

14/01/97 L 11 COMMISSION DECISION of 24 April 1996 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case No IV/M.619 - Gencor/Lonrho) (Text with EEA relevance) (Only the English text is authentic)

14/01/97 L 11 COMMISSION DECISION of 18 October 1995 relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 (Case No IV/M.580 - ABB/Daimler-Benz) (Only the German text is authentic) (Text with EEA relevance)

14/01/97 C 13 OPINION of the Advisory Committee on Concentrations, delivered at its 33rd meeting on 4 October 1995, concerning a preliminary draft decision relating to Case No IV/M.580 - ABB/Daimler-Benz

14/01/97 C 13 OPINION of the Advisory Committee on Concentrations given at the 37th meeting on 9 April 1996 concerning a preliminary draft decision relating to Case No IV/M.619 - Gencor/Lonrho

11/01/97 C 8 Non-opposition to a notified concentration (Case No IV/M.811 - Creditanstalt-Bankverein / Treibacher)

11/01/97 C 8 Initiation of proceedings (Case No IV/M.754 - Anglo American Corporation/Lonrho)

9/01/97 C 5 Prior notification of a concentration (Case No IV/M.874 - AMEC plc/Financière Spie Batignolles SCA/Spie Batignolles SA)

STATE AID

22/03/97 C 93 Authorization for State aid pursuant to Articles 92 and 93 of the EC Treaty Cases where the Commission raises no objections

22/03/97 C 93 Authorization for State aid pursuant to Articles 92 and 93 of the EC Treaty Cases where the Commission raises no objections

22/03/97 C 93 STATE AID C 2/97 (N 854/95) Netherlands
22/03/97 C 93 STATE AID C 10/95 (ex N 286/94) Italy

20/03/97 C 90 STATE AID C 62/96 (ex N 829/96) France

19/03/97 C 88 Authorization for State aid pursuant to Articles 92 and 93 of the EC Treaty Cases where the Commission raises no objections

19/03/97 C 88 STATE AID C 56/96 (ex NN 174/95) Italy
19/03/97 C 88 STATE AID C 61/96 (ex N 408/B/96) Italy

18/03/97 C 87 STATE AID C 51/96 (ex NN 71/96) Italy (Sardinia)

14/03/97 C 82 STATE AID C 57/96 (ex NN 65/96) Austria

14/03/97 C 82 STATE AID C 48/96 (NN 51/96) Greece

13/03/97 L 72 COMMISSION DECISION of 10 February 1997 amending the boundaries of the less-favoured areas in the Federal Republic of Germany within the meaning of Council Directive 75/268/EEC (Only the German text is authentic)

▹ INFORMATION SECTION

13/03/97 C 80 STATE AID C 10/94 (ex NN 104/93) Greece

6/03/97 C 70 Authorization for State aid pursuant to Articles 92 and 93 of the EC Treaty Cases where the Commission raises no objections

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The following publications are under preparation by DG IV

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

Fifth survey on State aid

Study on the examination of current and future excess capacity in the european automobile industry

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What is New : Most recent developments.

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Press releases issued during the past month : 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 : a full list of acts published with publication references.

Legislation in force : Updated versions of legislation published in Vol IA: Rules applicable to undertakings; Vol IIA: Rules applicable to State aid; it will also contain shortly Vol IIIA: International dimension.

Commission Decisions on individual cases : Already available full list by year for the antitrust and merger headings. A list of the most important decisions by subject is also under preparation.

Judgements of the European Court of Justice and the Court of First instance : The schedule of the Court and the Court of First Instance (on competition affairs); full list of Judgments of the Court and the CFI by year; comments and analyses drafted by DG IV officials.

Communications and important documents : 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 : Speeches of the Commissionner for Competition and of DG IV officials since 1993; the Newsletter, the Annual Competition Report, the list of Community publications on Competition available to the public, what is coming up etc.

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