EC COMPETITION POLICY NEWSLETTER

Editor: Stefan Rating

Address : European Commission, C150, 00/158 Wetstraat 200, rue de la Loi Brussel B-1049 Bruxelles tel. +322 2957620 fax. +322 2955437

Electronic Mail : X400: C=be;A=rtt;P=cec; OU=dg4;S=info4 Internet: info4@dg4.cec.be
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LA CONFERENCE INTERGOUVERNEMENTALE ET LA POLITIQUE COMMUNAUTAIRE DE CONCURRENCE

Ce texte a été rédigé d'après un discours de Karel VAN MIERT, Commissaire responsable de la Concurrence

J'ai eu de nombreuses occasions, le long de ces derniers mois, de discuter sur l'opportunité de modifier les Traités communautaires en ce qui concerne les règles de concurrence. En effet, pour la première fois depuis les origines de la Communauté, les règles de concurrence ont fait l'objet de l'attention des États membres dans le cadre d'une conférence intergouvernementale, notamment sur la question des relations entre les règles communautaires de concurrence et les services publics nationaux. C'était donc sans doute un rendez-vous important pour notre politique de concurrence.

Maintenant, le Sommet d'Amsterdam ayant adopté le 19 Juin un projet de réforme des Traités[1], le moment est venu de réaliser une première évaluation des résultats de cette conférence, ce que je vais essayer de faire dans les pages qui suivent. Je commence déjà par constater avec satisfaction que les États membres ont réaffirmé leur compromis avec une politique de concurrence qui, tout en étant respectueuse avec les objectifs nationaux d'intérêt général, soit appliquée d'une façon ferme et cohérente à tous les entreprises, indépendamment de leur régime de propriété.

Réaffirmation du rôle de la Commission en tant que gardienne des règles de concurrence

Certaines propositions avaient été faites, au début de la conférence, d'enlever à la Commission son rôle d'instance d'application des règles communautaires de concurrence. Il s'agissait, d'une part, des propositions de confier la politique communautaire de concurrence à une "agence indépendante"[2] et, d'autre part, d'éliminer le pouvoir que l'article 90§3 du Traité reconnaît à la Commission d'adopter des directives visant à préciser les obligations que le Traité impose aux États membres en matière de libéralisation.

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1 Les textes (version provisioire) du projet de Traité qui affectent la concurrence sont réproduits dans ce même numéro du *EC Competition Policy Newsletter*, section "Recent developments on Liberalisation and State Intervention" 5P.37 et ss.).

2 Voir Karel VAN MIERT, "The proposal for a European competition agency", *EC Competition Policy Newsletter* (Vol.2 No 2, Summer 1996).

Je constate avec satisfaction que ces initiatives n'ont pas abouti et que le rôle de la Commission en tant que gardienne des règles de concurrence a été pleinement confirmé. J'interprète ceci comme une reconnaissance de la part des États membres du caractère équilibré de la politique menée par la Commission dans l'exercice de ces fonctions. Je continuerai donc à m'efforcer pour combiner, d'une façon appropriée, la prudence dans notre approche avec le rigueur nécessaire au respect des principes du Traité.

Les services d'intérêt économique général et la politique de concurrence

Quant au règles de fond, la question des relations entre les services d'intérêt économique général et les règles communautaires a aussi fait l'objet de plusieurs initiatives dans le cadre de la conférence.

En effet, d'après certains, les règles du Traité seraient "déséquilibrées" en faveur de la libre concurrence et au détriment des services publics nationaux. Le Traité serait donc expression d'une idéologie ultra-libérale et il serait indispensable de procéder à un "re-équilibrage" afin d'inscrire l'intérêt général en pied d'égalité avec la concurrence. Objectif privilégié de ces demandes "re-équilibrage" serait l'article 90 du Traité, règle qui interdit les restrictions de concurrence allant au delà de qui est indispensable à la réalisation des missions d'intérêt économique général. Ces demandes ont influencé la position de certains États membres, dont la France et la Belgique, qui ont proposé dans le cadre de la conférence d'inclure dans le Traité des dispositions concernant les services publics qui auraient vraisemblablement eu l'effet de modifier l'équilibre de l'article 90.

J'ai souvent eu l'occasion de le dire par le passé: cette vision négative à l'égard de l'article 90 était fondée sur des malentendus. Il faut se méfier des approches trop dogmatiques et privilégier plutôt les démarches pragmatiques. Je suis d'accord que la politique de concurrence n'est pas un but en soi et encore moins une religion, mais j'aimerais bien qu'on aborde avec la même attitude pragmatique et ouverte, les concepts de Service Public et de Monopole Public.

Il me semble que si le débat entre Service Public et libéralisme économique a émergé dernièrement avec force, c'est que notre environnement économique et social a subi une mutation rapide au cours des quinze dernières années. Cette mutation présente un défi stimulant à la notion de Service Public en même temps qu'elle remet en question la trilogie traditionnelle Service Public/Entreprises Publiques/Monopoles Publics.

La position de la Commission sur les services d'intérêt général

Ainsi que la Commission l'avait expliqué dans sa communication du 11 septembre 1996 sur les services d'intérêt général en Europe, les dispositions du Traité de Rome posent les principes d'un équilibre évolutif entre Service Public et concurrence[3]. Certes, la Commission partageait et partage l'objectif d'assurer que la libéralisation soit pleinement compatible avec le maintien de services publics de qualité. La Commission était néanmoins persuadée que cette compatibilité pouvait être pleinement assurée dans le cadre des règles communautaires existantes. Elle considérait en particulier que le Traité établissait déjà un équilibre entre les objectifs nationaux de Service Public et les objectifs communautaires d'intégration et qu'il ne fallait pas le modifier.

En effet, le point de départ du Traité est, bien entendu, le principe de libre circulation au sein d'un marché intérieur. Comme dans les systèmes nationaux la liberté économique est la règle et les interventions publiques sur le marché restent l'exception. Les dispositions du droit communautaire de la concurrence qui touchent particulièrement les Services Publics sont articulées autour de cette distinction entre le principe et l'exception. C'est notamment l'architecture des articles 90 et 92 du Traité.

Le Traité, contrairement à ce que j'entends ici et là, ne s'oppose donc en rien à ce que l'objectif légitime d'accroissement du bien-être des citoyens qui caractérise toute politique publique, soit poursuivi par le biais de Services Publics. Au contraire, le Traité reconnaît que les règles de concurrence peuvent, dans de tels cas, faire l'objet de limitations.

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[3] Voir *EC Competition Policy Newsletter* (Vol.2 No 3), pp. 14-22 et 41-42.

Le fameux article 90 sur ce point est très clair. Il pose les bases fondamentales de l'équilibre voulu par le Traité entre Service Public et concurrence. Il n'édicte pas d'interdiction absolue des monopoles légaux, mais il organise un régime dérogatoire au principe de concurrence, lorsque l'exception est justifiée par l'exercice d'une mission d'intérêt économique général et que le développement des échanges n'est pas affecté dans une mesure contraire à l'intérêt de la Communauté.

L'article 92 édicte, quant à lui, une interdiction de principe des aides d'État qui faussent ou menacent de fausser la concurrence, pour autant qu'elles affectent le commerce entre États membres. Mais là aussi, il existe un régime d'exception, sous réserve d'un contrôle de proportionnalité par la Commission.

Pour être tout à fait complet, je mentionnerai pour conclure sur ce point, l'article 222 du Traité qui affirme la neutralité de celui-ci à l'égard du régime de propriété des entreprises. En d'autres termes, il n'appartient pas à la Commission de dire si une entreprise doit être publique, mixte ou privée. Contrairement à ce qui a parfois été affirmé, le droit communautaire n'exige donc pas la privatisation des entreprises publiques.

L'ensemble de ces règles me semble répondre assez bien à l'exigence de conciliation entre les objectifs de Service Public et le respect des libertés fondamentales inscrites dans le Traité. Il en découle qu'une modification de ces règles et notamment de l'article 90 du Traité n'était nullement nécessaire pour protéger le Service Public. Une telle modification aurait par contre risqué de soustraire certains opérateurs dans des secteurs-clé de l'économie européenne de tout contrôle communautaire, en créant des conditions déloyales de concurrence entre les opérateurs des différents États membres, entre des opérateurs privés et publics ou en dégradant la compétitivité de l'industrie européenne.

Or, le fait que la responsabilité essentielle pour les services publics appartienne aux États ne veut pas dire que la Communauté n'a pas un rôle positif à jouer pour développer le Service Public. Ainsi que la Commission l'a expliqué dans sa communication du 11 septembre 1996, de nombreuses initiatives communautaires prises dans le cadre des compétences existantes contribuent d'ores et déjà d'une façon positive à atteindre - en parallèle avec les États membres - des objectifs de Service Public. C'est le cas des initiatives sectorielles visant à assurer un niveau minimal de service universel pour tous les citoyens de l'Union. C'est aussi le cas de nombreuses actions prises en matière d'environnement, de consommateurs ou de Réseaux Trans-européens. La Commission s'était engagée à poursuivre et développer ces initiatives et s'était montrée favorable à traduire cet engagement par l'inclusion dans l'article 3 du Traité d'un paragraphe "u" (voire, *"une contribution à la promotion des services d'intérêt général"*).

Cette proposition avait pour but de permettre le développement progressif d'initiatives communautaires en matière de Service Public sans bouleverser la logique du partage des compétences entre la Communauté et les États et sans modifier l'équilibre actuel entre les objectifs communautaires d'intégration économique et les objectifs nationaux de Service Public.

Le nouvel article 7D

Un nouvel article 7D concernant les "services d'intérêt économique général" (accompagné d'une déclaration dans l'Acte finale) a été adopté dans le projet de Traité d'Amsterdam. A mon avis, cet article correspond très largement aux objectifs de la Commission tels qu'explicités dans sa communication de septembre 1996 sur les services d'intérêt général en Europe.

En effet, d'un côté, cet article rend davantage explicite l'attachement de la Communauté aux objectifs d'intérêt économique général, en ligne avec la proposition de la Commission d'inclure une mention dans l'article 3 du Traité. Il constitue donc un signal qui devrait rassurer ceux qui croyaient, à tort, à une manque de sensibilité communautaire à l'égard de l'intérêt général.

En même temps, ce nouvel article 7D confirme essentiellement l'équilibre actuel du Traité. En effet, l'idée que les services d'intérêt économique général doivent fonctionner dans des conditions qui leur permettent d'accomplir leurs missions était déjà implicite dans l'article 90§2, dans la jurisprudence de la Cour de Justice et dans la pratique de la Commission. La mention " *sans préjudice des articles 77, 90 et 92* " confirme par ailleurs que le nouvel

article 7D ne peut en aucun cas être interprété comme une modification de ces dispositions.

Il me semble donc que le résultat de la conférence en ce qui concerne les relations entre l'intégration communautaire et les services d'intérêt général a été positif. Quoique modeste, ce nouvel article 7D est satisfaisant, car il permet d'avancer progressivement avec des actions communautaires contribuant d'une façon positive aux objectifs de Service Public sans modifier l'équilibre actuel entre les objectifs communautaires d'intégration et les objectifs nationaux de Service Public.

L'article 7D devrait dès lors être bien accueilli par les vrais partisans du Service Public, même s'il ne plaira pas à ceux qui, sous prétexte de l'intérêt général, visaient simplement à protéger les positions établies de certains opérateurs.

D'autres textes concernant des services d'intérêt général dans des secteurs particuliers

Deux autres textes concernant des services d'intérêt général dans des secteurs spécifiques, ont aussi été introduits dans le projet de Traité. Il s'agit d'un protocole sur le Service Public de radiodiffusion et d'une déclaration sur les établissements de crédit de droit public en Allemagne. Évidemment, ils doivent être lus à la lumière du nouvel article 7D et donc comme des textes qui témoignent de l'importance attachée aux objectifs de Service Public et qui confirment pour l'essentiel l'équilibre actuel du Traité, tel que traduit notamment par les articles 90 et 92.

Protocole sur le Service Public de la radiodiffusion

Les États membres ont décidé d'adopter, dans le cadre de la conférence, un protocole sur le Service Public de radiodiffusion. Ce protocole souligne la sensibilité particulière du secteur de la radiodiffusion, qui est due à des raisons culturelles et de pluralisme. Ces raisons se traduisent souvent par des missions spécifiques qui sont confiés à certains opérateurs de radio et/ou de télévision. Le protocole nous rappelle que ces circonstances particulières doivent être prises en considération lors de l'examen des modalités de financement à la lumière des règles de concurrence.

Je ne peux qu'être d'accord avec ces idées. Il est tout à fait clair que les États membres sont compétents pour définir et conférer des missions de Service Public aux opérateurs de radio et télévision, ainsi que pour financer ces missions. Simplement, il va de soi que ces compétences doivent être exercées dans le respect des règles communautaires, ce qui implique notamment que le financement est soumis à la règle de proportionnalité: il doit servir à financer les missions et ne peut pas aller au delà de ce qui est nécessaire à cet égard. Or, le protocole reconnaît ces mêmes principes. Il est donc très largement en ligne avec l'approche actuelle de la Commission, même si on pourrait s'interroger sur sa valeur ajoutée.

Déclaration sur les établissements de crédit de droit public en Allemagne

La conférence a aussi adopté, suite à une initiative de l'Allemagne, une déclaration sur les établissements de crédit de droit public de cet État membre.

La déclaration n'implique évidemment pas que tous les établissements de droit public allemands sont effectivement chargés de missions d'intérêt économique général. Il est certes envisageable que certains établissements aient reçu des Autorités publiques des missions consistant en l'établissement d'une infrastructure financière couvrant l'ensemble du territoire. Or, la déclaration n'exempte pas la Commission et les tribunaux de l'obligation que le Traité leur impose de vérifier dans chaque cas précis si des missions d'intérêt économique général ont effectivement été confiées à l'entité en question. Il va de soi qu'une déclaration ne pourrait en aucun cas produire des tels effets. De la même façon, la déclaration ne leur exempte pas de leur obligation de s'assurer que tout avantage éventuel répond au principe de la proportionnalité et notamment qu'elle ne porte pas atteinte aux conditions de concurrence dans une mesure qui dépasse ce qui est nécessaire à l'exécution des missions précitées.

Il me semble évident que, même si cette déclaration ne vise que les établissements de crédit de droit public existant en Allemagne, les mêmes principes sont d'application partout dans l'Union européenne, en ce qu'ils

correspondent aux règles existantes. A cet égard, une déclaration de la présidence du Conseil d'Amsterdam a invité la Commission à examiner si l'on peut étendre les effets de la déclaration aux autres États membres. Les résultats de cet étude contribueront probablement à fixer les orientations futures de la politique de concurrence dans le secteur bancaire. Je suis en tout cas d'avis qu'il faudra veiller à assurer des conditions égales de concurrence pour tous les institutions de crédit de l'Union européenne, ce qui a une importance toute particulière dans la perspective de la mise en place de l'Union économique et monétaire.

Régions ultra-périphériques

Le nouvel article 227.Art. 21.2 du Traité prévoit l'adoption par le Conseil, sur proposition de la Commission, de réglementations spécifiques visant à préciser les conditions d'application des règles communautaires dans les régions ultra-périphériques (îles Azores, Madeira, Canaries, et départements français d'outre-mer). Ces réglementations devront viser entre autres, le domaine des aides d'état. Quant à l'orientation de ces textes, ils devront d'un côté prendre en considération les contraintes spécifiques de ces régions et, d'autre côté, ne pas mettre en danger l'intégrité et la cohérence du Droit communautaire, y compris le marché intérieur et les politiques communes (dont la politique de concurrence). En tout cas, le contenu de ce régime sera fixé dans des actes législatifs futurs.

Appréciation d'ensemble

Les résultats de la conférence intergouvernementale me semblent plutôt satisfaisants pour la politique de concurrence. Les textes adoptés, et notamment le nouvel article 7D, sont positifs, en ce qu'ils confirment dans une très large mesure les règles de fond existantes et les pouvoirs de contrôle de la Commission. Ceci, ensemble avec le fait que l'attachement communautaire aux objectifs d'intérêt général ait été davantage explicité, implique que les objectifs que la Commission s'était marqué dans sa communication sur les services d'intérêt général en Europe ont été largement atteints.

Même si les textes finalement adoptés sont assez satisfaisants, certaines des initiatives qui étaient à leur source l'étaient beaucoup moins. Il faut donc, d'un côté, se féliciter des améliorations et des changements, parfois très substantiels, introduits dans le cadre de la conférence. Il faut malheureusement, d'autre côté, déplorer l'existence d'une tendance chez certains d'essayer d'échapper aux contraintes découlant des règles de concurrence par le biais de dérogations *ad hoc* à inclure dans le Traité. Même si ces dangers ont heureusement pu être évités dans cette conférence, des telles initiatives n'ont contribué en rien à renforcer l'idée d'une politique communautaire de concurrence cohérente et applicable de la même manière à tous les opérateurs et dans tous les États membres de l'Union européenne. En tant que Commissaire responsable de la concurrence, je ne peux que les déplorer.

State aid in the ECSC steel sector

by Alexander SCHAUB, Director-General for Competition

The steel Aid Code - a suitable instrument to ensure fair competition in a sector in transition

Contrary to the EC Treaty, where we find a prohibition of State aid in principle but an extensive list of exceptions and exemptions in Article 92, the ECSC Treaty, covering the sectors of steel and coal, stipulates in Article 4 lit. c the strict prohibition of any State aid in any form whatsoever without any exception. Nevertheless the steel sector has during the last decades been one of the most aided sectors in the Community. Severe struc-tural problems namely in the second half of the Seventies and the early Eighties affected this core sector of Member State's industries to an extent that several hundred thousand citizens and entire regions were threatened by unemployment and unprecedented economic decline. In this situation the Member States concerned were prepared to grant important amounts of State aid to steel undertakings. The massive subsidization of the steel industry in a number of Member States led to a situation in which the freedoms of the common market created by the ECSC Treaty were questioned: In order to protect their industry from subsidized intra-community imports certain Member States even considered the introduction of countervailing measures.

The Community found itself in a situation in which the unacceptable high level of aid had to be reduced through the introduction of an effective control mechanism. The first Steel Aid Code of 1980, however, had only a limited impact. The second Steel Aid Code of 1981 made up with a number of deficiencies. The main step forward in this period was the policy of the Commission to allow aid only in return for capacity reduction in order to reduce the structural over-capacity that was the major problem of the sector.

By the mid Eighties the Commission could conclude that the capacity reduction needed was mainly achieved and that the steel companies were in such a financial shape that they would be viable under normal market conditions. Consequently, the Third Steel Aid Code of 1985 limited aid to the steel industry to research and develop-ment, environmental protection, closure aid and regional investment aid that does not lead to capacity increases in those Member States which had not granted aid under the previous Steel Aid Codes. The Fourth Steel Aid Code of February 1989 prolonged these provisions up until the end of 1991. The Fifth Steel Aid Code, in force from 1992 to 1996, again prolonged the possibility for aid for research and development, under the same conditions valid for the EC sectors, environmental protection and closure, but limited regional investment aid to Eastern Germany, Greece and SMEs in Portugal, up until the end of 1994.

The Steel Aid Code had become a widely accepted and recognized instrument to ensure fair competition in the steel sector while promoting constant progress in industrial technology and environmental protection. It allowed closures of unviable capacities under socially acceptable conditions thus contributing to a constant move towards a balance between capacity and demand. It is the basis for an effective Community control of State aid by the Commission.

The crisis of the early Nineties

Although previous efforts had led to a significant reduction of capacity a general slow down in economies and a remaining over-capacity of at least 19 million tons led to a new severe crisis of the steel industry in the early Nineties. The Commission tried to promote a voluntary reduction of capacities through offering Community aid for social measures related to closures. It invited the steel industry to propose plans for capacity reductions and suggested a joint effort of the industry to achieve the necessary reductions. This innovative proposal,

however, was not honoured by the steel industry.

Again Member States approached the Commission to allow State aid for rescue and restructuring of the most ailing companies in order to avoid severe regional and social difficulties. The Commission was prepared to accept new restructuring aid only in return for massive capacity cuts and as a final measure to render the companies economically viable. In December 1993 the Council gave its assent to a series of exceptional decisions under Article 95 of the Treaty allowing aid for six companies in Eastern Germany, Italy, Spain and Portugal. A smaller case concerning Ireland was cleared in 1995. The restructuring plans provided for an overall capacity reduction of 5.4 million tons in hot-rolled products. Although the Commission's general approach to privatization is neutral it was clearly an important factor in the Commission's positive attitude towards these exceptional aid plans since it helped to demonstrate that the new companies should be viable in the future. The implementation of the decisions was made subject to a strict monitoring procedure conducted by the Commission which is still continued vigorously.

Member States solemnly declared that the *ad hoc* Article 95 ECSC decisions were exceptional in nature and expressed their determination not to use this process in the future any more. The Commission was requested to ensure a strict aid discipline based on the provisions of the Steel Aid Code as a crucial element for the future competitiveness of the European steel industry.

In 1995 and 1996 the Commission allowed closure aid under the Steel Aid Code for the Italian *Bresciani* cases, leading to a capacity reduction of 5.2 million tons in return for a relatively limited amount of aid. The additional capacity reduction achieved by the industry itself amounted to 5.8 million tons. The total capacity reduction achieved as result of the crisis management therefore totals 16.4 million tons in hot-rolled products, an amount close to the over-capacity identified.

Aid discipline

The Commission continued its vigorous State aid control under the Fifth Steel Aid Code. In 1995 it adopted two negative decisions blocking proposed restructuring aid in favour of the German steel company *Neue Maxhütte* and ordering the reimbursement of illegal aid already granted to this company. Another negative decision concerned illegal aid paid to the German steel undertaking *Hamburger Stahlwerke* .

In 1996 it adopted twenty negative decisions, of which the most important concerned the Belgian steel company *Forges de Clabecq* , the Italian *Falck Acciaierie di Bolzano* and *Alti forni e Ferriere di Servola* which had received aid incompatible with the Steel Aid Code. The other cases concerned regional investment aid that was no longer possible under the Steel Aid Code and other aid proposals that were not in line with the provisions of the Steel Aid Code.

The Sixth Steel Aid Code

The Sixth Steel Aid Code entered into force at the beginning of this year, running until the expiry of the ECSC Treaty in the year 2002. Under the new code State aid is only allowed for research and development and environmental protection, under mainly the same rules in force for the other industry sectors, and for closures. A new element of the Sixth Code is the possibility to allow aid also for partial closures, with strict rules to avoid any spill-over of aid to the remaining activities of the enterprise in question, and more effective powers of the Commission to fight illegal non-notified aid.

The Commission will continue to be vigilant in applying the Code and will vigorously investigate cases where aid may have been granted in breach of the rules. Where the Commission finds that illegal aid is involved it will not hesistate to take appropriate action, including, if necessary, ordering the immediate suspension and recovery of the aid.

The development with regard to State aid in the steel sector during the last decades has shown that only a strict Community control under the exclusive responsibility of the Commission bound to clear and fair rules is able to create a level playing field for all competitors in the common Community steel market. Member States have, step-by-step, accepted the key role of the Commission in this regard. The Commission has shown its ability to withstand even strong pressure from single

national or regional Governments or companies concerned.

Fair competition amongst efficient and flexible companies is the best safeguard for competitive jobs in Europe. Market forces should be allowed to select the less efficient companies obliged to leave the market in recurrent periods of low demand and prices which are typical for the steel industry. The Commission and Member States will endeavour to contribute towards the constant modernization of the industry. Major efforts will continue to limit the social and regional impact of necessary closures of the less competitive capacities.

Heading towards the expiring of the ECSC Treaty

Recent developments in the European steel industry show three major aspects, all of which are indi-cators for a general strengthening of its competitve position: Coo-peration, Concentration, Speciali-zation and Privatization.

An important number of acquisitions and cooperations among the European steel industry were agreed during recent years. These operations led to cost advantages mainly through the concentration of product groups and commercial activities heading at better customer service. I am convinced that the recently cleared merger of the steel activities of Thyssen and Krupp will not mark the end of this development.

A result of these cooperations and acquisitions is also a move towards greater specialisation. Traditional steel producers which used to make all types of steel products are abandoning less profitable product lines and focussing their activities on those they make the best. I trust that these moves will help in the development of competitive producers in a truly common market for steel. The European monetary union will help to reduce the costs of exchange rate variations.

The Commission will continue to use its powers under the competition rules of the ECSC Treaty to ensure that concentrations and agreements between steel producers do not restrict or distort competition in the common market. And it would continue its vigorous policy of investigating and attacking cartels or other concerted practices that are illegal.

During the last five years most of the previously state-owned steel enterprises in Europe, such as Usinor Sacilor of France, Voest Alpine of Austria, Siderúrgia Nacional of Portugal, Ilva of Italy, Sidenor of Spain and EKO Stahl of Germany have been privatized The privatization of previously state-owned companies can only be helpful for the market in the longer term and contributes to the general restructuring of the European steel industry.

I am therefore convinced that the transition of the European steel industry under the ECSC Treaty, which was the first step in European integration, from an over-sized sector under heavy public influence into a modern and internationaly competitive industry will be achieved when the ECSC Treaty expires by the year 2002. The sector will then be integrated into the general economic and legal framework of the EC Treaty. However, we should not lose sight of certain rules and practices developed under the ECSC Treaty which are well suited to the industry. Discussions amongst Member States, the Commission and the industry in this regard should be initiated soon so that we would well prepared enter into a new era of the European steel industry after July 2002.

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 Commisson's or DG IV's views.*

Développements récents de la jurisprudence en matière de distribution sélective

par Paolo CESARINI, IV-F-3

Suite aux recours en annulation introduits par le Groupement d'achat Édouard Leclerc (hypermarchés) et la société Kruidvat (chaîne de magasins en libre service), le Tribunal de première instance a rendu, le 12 décembre 1996, trois arrêts qui confirment, pour l'essentiel, la légalité des décisions de principe adoptées par la Commission dans les affaires *Yves Saint Laurent* (J.O. n° L12 du 18.1.1992) et *Givenchy* (J.O. n° L236 du 19.8.1992) . Ces arrêts présentent un grand intérêt car, d'une part, ils clarifient les règles matérielles applicables au secteur de la distribution sélective en parfumerie et, d'autre part, apportent des précisions nouvelles au sujet des rôles respectifs des instances communau-taires et des juridictions ou des autorités nationales dans l'application des règles de concurrence du traité à l'égard de ces réseaux de distribution.

Si le recours formé par la société Kruidvat a été rejeté par le TPI comme irrecevable (affaire T-87/92), les deux arrêts *Groupement d'achat Édouard Leclerc c. Commission* (affaires T-19/92 et T-88/92) ont permis en revanche au TPI de se prononcer sur le fond des requêtes et de trancher sur l'ensemble des aspects litigieux soulevés par les requérants. Dans ce contexte, il convient d'attirer tout particulièrement l'attention sur un certain nombre d'indications résultant de ces arrêts.

Sur la compatibilité de principe avec l'article 85§1 de la distribution sélective dans le secteur des cosmétiques de luxe

Cette nouvelle jurisprudence a mis un terme au débat portant sur la légalité de la distribution sélective dans le secteur des produits cosmétiques de luxe, le TPI ayant pleinement confirmé l'analyse de la Commission quant à la nature des produits en cause et à l'adéquation de celle-ci par rapport au mode distribution utilisé par la plupart des fabricants du secteur.

A cet égard, le raisonnement du TPI s'appuie sur la jurisprudence de la Cour, selon laquelle les systèmes de distribution sélective constituent en élément de concurrence conforme à l'article 85§1 du traité, s'il est satisfait à quatre conditions, à savoir:

(i) qu'une telle forme de commercia-lisation soit néces-saire, eu égard à la nature des produits concernés, afin de préserver leur qualité et pour en assurer le bon usage (arrêts de la Cour du 11 décembre 1980, *L'Oréal*, affaire 31/80, Rec. p. 3775, point 16, interprété à la lumière de l'arrêt du 25 octobre 1977, *Metro I*, affaire 26/76, Rec. p. 1875, points 20 et 21 et de l'arrêt du Tribunal du 27 février 1992, *Vichy/ Commission* , T-19/91, Rec. p. II-415, points 69 à 71);

(ii) que le choix des revendeurs s'opère en fonction de critères objectifs de caractère qualitatif fixés d'une manière uniforme à l'égard de tous les revendeurs potentiels et appliqués de façon non discriminatoire (arrêts *Metro I*, point 20, et *L'Oréal*, point 15, ainsi que l'arrêt de la Cour du 25 octobre 1983, *AEG/Telefunken* , affaire 107/ 82 Rec. p. 3151, point 35);

(iii) que le système en cause vise à atteindre un résultat de nature à améliorer la concurrence et donc à contrebalancer les effets restrictifs inhérentes aux systèmes de distribution sélective, notamment en matière de prix (arrêts *Metro I*, points 20 à 22, *AEG*, points 33, 34 et 73, ainsi que l'arrêt de la Cour du 22 octobre 1986 , *Metro II*, affaire 75/84, Rec. p. 3076, point 45); et

(iv) que les critères de sélection utilisés n'aillent pas au-delà de ce qui est nécessaire pour assurer la commercialisation, dans des conditions optimales, des produits en cause (arrêts *L'Oréal*, point 16, et *Vichy/Commission* , points 69 à 71).

En s'agissant des produits de parfumerie, le TPI a observé d'abord que "la notion de "propriétés" des cosmétiques de luxe [...] ne peut être limitée à leurs caractéristiques matérielles mais

englobe également la perception spécifique qu'en ont les consommateurs, et plus particulièrement leur aura de luxe" (point.109). Il a relevé en suite qu'il s'agit en l'espèce de produits qui, d'une part, sont d'une haute qualité intrinsèque et, d'autre part, possèdent un caractère de luxe "qui relève de leur nature même" (*ibidem*). Quant à la question de savoir si la distribution sélective constitue une exigence légitime dans le cas de produits qui possèdent de telles caractéristiques, le TPI a souligné qu'un tel mode de distribution ne se situe en dehors du champ d'application de l'article 85§1 que "s'il est objectivement justifié compté tenu également de l'intérêt des consommateurs" (point 112). A cet égard, le Tribunal reconnaît notamment "qu'il est dans l'intérêt des consommateurs recherchant des cosmétiques de luxe que l'image de luxe de tels produits ne soit pas ternie, faute de quoi ils ne seraient plus considérés comme des produits de luxe" (point 114) et que par conséquent "des critères qui ne visent qu'à assurer leur présentation valorisante poursuivent un résultat qui est de nature à améliorer la concurrence, par la préservation de cette image de luxe" (point.113). Cela étant, le Tribunal a observé aussi que, s'il est dans l'intérêt du consommateur de pouvoir se procurer des cosmétiques de luxe vendus dans des bonnes conditions de présentation, il est également dans son intérêt "qu'un système de distribution fondé sur cette considération ne soit pas appliqué de façon excessivement restric-tive"(point 116). Ainsi, un système qui exclurait à priori certaines formes de distribution capables de vendre les produits en cause dans des conditions valorisantes "aurait pur seul effet de protéger les formes de commerce existantes de la concurrence des nouveaux opérateurs et ne serait donc pas conforme à l'article 85§1 du traité" (*ibidem*).

Sur la licéité des critères de sélection qualitatifs au regard de l'article 85§1

Sur la base de telles prémisses, le TPI a en suite confirmé, en large partie, l'appréciation portée par la Commission à l'égard des critères qualitatifs de sélection qui fixent les conditions d'accès des revendeurs aux réseaux de distributeurs agréés mis en place par YSL et Givenchy. Ainsi, des exigences telles que la qualification professionnelle du revendeur, l'environnement et la localisation appropriés du point de vente, l'apparence extérieure et l'aménagement intérieur du magasin, ainsi que son enseigne, ont été reconnues par le TPI comme étant des critères objectifs, nécessaires pour assurer la vente de ces produits dans des bonnes conditions de présentation et, de ce fait, comme compatibles avec l'article 85§1 du traité.

L'analyse du TPI s'est écartée de celle de la Commission à l'égard d'un seul critère de sélection, à savoir celui permettant au fabricant de tenir compte, lors de l'évaluation de la candidature d'un nouveau point de vente, de l'importance relative de l'activité de parfumerie par rapport aux autres activités exercées dans le magasin. Ce critère a été regardé par le TPI comme pouvant entraver l'agrément des points de vente "multi-produits" (e.g. les hypermarchés) et, dans cette mesure, comme étant visé par l'article 85§1. Le TPI a donc statué qu'il avait lieu d'annuler les décisions uniquement en ce qui concerne la partie de ces décisions qui portait sur l'applicabilité de la "règle de raison" à l'égard de la clause en question. Le TPI a jugé qu'un tel critère de sélection était visé par l'article 85§1 mais il ne s'est pas prononcé sur son exemptabilité éventuelle. Cependant, même en l'absence d'une indication expresse du TPI à ce sujet, il paraît logique de considérer que, dans la mesure où cette clause a été regardée comme n'ayant "aucun rapport avec l'exigence légitime de la préservation de l'image de luxe des produits concernés"(point 144), un tel critère de sélection ne saurait remplir toutes les conditions (et notamment la première) de l'article 85§3.

Dans ce contexte, le TPI a en outre rejeté le grief soulevé par le requérant selon lequel les affiliés du groupement d'achat Édouard Leclerc seraient exclus *a priori* des réseaux de distribution sélective en cause. A cet égard, le Tribunal a observé que "le requérant n'a pas établi à suffisance de droit qu'il existe actuellement des barrières à l'entrée de la grande distribution dans la distribution des cosmétiques de luxe, pourvu que ses points de vente soient adaptés d'une façon appropriée à la vente de tels produits" (point 161). Cependant, le TPI a ajouté que "il appartient à la Commission de veiller, notamment en cas de demande de renouvellement de la décision, à ce que les formes modernes de distribution ne soient pas exclues du réseau [...] d'une manière injustifiée" (point 162).

Ensuite, le TPI a apporté des précisions nouvelles en ce qui

concerne l'appréciation de l'effet cumulatif produit par l'existence de réseaux parallèles dans le secteur en cause. En particulier, les arrêts précisent que l'effet cumulatif d'autres réseaux serait susceptible d'écarter l'applicabilité de la "règle de raison" uniquement dans certaines conditions, et notamment si l'on démontre "premièrement, qu'il existe des barrières à l'entrée sur le marché à l'encontre de nouveaux concurrents aptes à vendre les produits en question, de sorte que les systèmes de distribution sélective en cause ont pour effet de figer la distribution au profit de certains canaux existants [...], ou, deuxièmement, qu'il n'y a pas de concurrence efficace, notamment en matière de prix, compte tenu de la nature de produits en cause" (point 174). En ce qui concerne ce deuxième aspect, le Tribunal a spécifié qu'une telle notion de concurrence efficace couvre à la fois la concurrence inter-brand et intra-brand. Le requérant n'ayant pas apporté les éléments de preuve nécessaires à ce sujet, le Tribunal a rejeté son grief selon lequel l'article 85§1 aurait été violé dans le cas d'espèce du fait que des réseaux semblables existent dans tout le secteur concerné, de sorte qu'aucune place ne serait laissée à d'autres formes de distribution.

Sur le bien-fondé des décisions à l'égard de l'article 85§3

Le TPI a rejeté l'ensemble des moyens et arguments du requérant tirés d'une prétendue violation de l'article 85§3. Rappelons que les obligations contractuelles que la Commission avait exemptées concernaient la procédure d'admission des nouveaux revendeurs dans le réseau, le chiffre minimal d'achats annuels, les obligations en matière de stockage et de coopération publicitaire, l'interdiction de vendre un produit n'ayant pas fait l'objet d'un lancement officiel par le fabricant sur le marché national, ainsi que l'obligation de vendre un nombre minimal de marques concurrentes.

Sur les rôles respectifs des instances communautaires et des juridictions ou autorités de concurrence nationales

Il découle des arrêts du TPI que, s'il appartient à la Commission de vérifier, sous le contrôle du Tribunal, la *conformité de principe* des critères contractuels de sélection avec les exigences posées par l'article 85, il incombe en revanche aux juridictions ou aux autorités nationales "de statuer, à la lumière le cas échéant de la jurisprudence de la Cour et du Tribunal, sur la question de savoir si les critères de sélection [...] ont été appliqués dans un cas concret d'une manière discriminatoire ou disproportionnée, entraînant ainsi une violation de l'article 85§1. Il incombe notamment aux juridic-tions ou aux autorités nationales de veiller à ce que les critères en cause ne soient pas utilisés pour empêcher l'accès au réseau de nouveaux opérateurs capables de distribuer le produits en cause dans des conditions qui ne sont pas dévalorisantes" (point 123).

Il s'agit là d'un développement de la jurisprudence communautaire en matière d'application décentralisée des règles de concurrence qui, en l'espèce, vise à assurer que les litiges individuels survenus à l'échelle nationale ou locale soient traités par les instances qui sont les plus à même pour en examiner les faits, en tenant compte des réalités commerciales et des habitudes de consommation locales. De plus, cette nouvelle jurisprudence ouvre la voie à des recours ponctuels devant les juridictions nationales qui, par une application directe de l'article 85§1 en conjonction avec les instruments de droit civil, sont ainsi appelées à garantir que les distributeurs victimes d'une mise en oeuvre discriminatoire ou disproportionnée des critères de sélection puissent avoir accès aux réseaux de distribution sélective.

LA COMMISSION A APPROUVE DES PROPOSITIONS DE REGLEMENTS DU CONSEIL VISANT A PERMETTRE LA PLEINE APPLICATION DES REGLES DE CONCURRENCE AUX TRANSPORTS AERIENS ENTRE LA COMMUNAUTE ET LES PAYS TIERS (IP/97/420)

par Eric VAN GINDERACHTER, IV-D-2

La Commission européenne a adopté, le 16 mai 1997, un Mémorandum [4] qui comporte deux propositions de règlements du Conseil concernant l'application des règles de concurrence, Articles 85 et 86 du Traité, aux transports aériens et plus particulièrement aux liaisons Communauté/pays tiers. Ces deux propositions de règlements publiées au Journal Officiel des Communautés du 31 mai 1997 [5] ont été transmises au Conseil en date du 20 mai 1997.

La première proposition vise à étendre le champ d'application du règlement n°3975/87 [6] du Conseil, qui vise à ce jour uniquement les transports aériens entre aéroports de la Communauté, aussi à l'ensemble des liaisons Communauté/pays tiers. Une telle extension doterait la Commission des pouvoirs d'appliquer directement et pleinement les articles 85 et 86 du Traité à des accords restrictifs de concurrence sur de telles liaisons, comme par exemple les alliances entre compagnies aériennes européennes et de pays tiers, et non plus indirectement par le biais de la procédure du régime transitoire prévu par l'article 89 du Traité comme c'est le cas actuellement.

La seconde vise à habiliter la Commission à octroyer des exemptions par catégorie pour certains accords restrictifs de concurrence sur ces mêmes liaisons.

Au vu de l'internationalisation croissante du marché du transport aérien et du nombre grandissant d'alliances entre compagnies aériennes portant sur les liaisons avec les pays tiers, la Commission estime que la nécessité de la doter des mêmes pouvoirs d'action en ce qui concerne le transport aérien sur les liaisons avec les pays tiers que ceux dont elle dispose pour les liaisons aériennes entre aéroports de la Communauté et pour les autres secteur économiques se voit accrue. Ces propositions visent donc à soumettre le secteur de l'aviation aux mêmes principes d'un point de vue procédural que les autres secteurs économiques en ce qui concerne l'application des règles de concurrence.

La procédure de l'article 89 du Traité sur la base de laquelle la Commission a ouvert la procédure à l'encontre d'un certain nombre d'alliances actuelles a été clairement prévue comme un régime transitoire par les auteurs du Traité. L'article 89 s'applique en l'absence d'un règlement octroyant à la Commission les pouvoirs d'appliquer directement les articles 85 et 86. Le régime transitoire de l'article 89 ne permet pas à la Commission d'agir avec toute l'efficacité voulue pour aborder les questions soulevées par les alliances. Cette proposition, si adoptée, mettra fin au régime transitoire prévu par les articles 88 et 89.

I. Rappel du cadre réglementaire actuel

Le règlement n° 3975/87 du Conseil détermine les modalités d'application des règles de concurrence (articles 85 et 86 du traité) applicables aux entreprises de transport aérien. Il est l'équivalent du règlement n° 17/62 du Conseil et donne à la Commission les moyens d'appliquer directement les articles 85 et 86 aux infractions et de les sanctionner. Son champ d'appli-cation vise cependant à ce jour uniquement les transports

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4 Document COM (97).218.

5 JO n° C 165 du 31.5.97, p. 13 à 15

6 Le règlement n°3975/87 du Conseil détermine les modalités d'application des règles de concurrence applicables aux entreprises de transport aérien. (JO n°L 374 du 31.12.87, p.1) modifié en dernier lieu par le règlement n°2410/92 (JO n° L 240 du 24.8.92, p.18).

aériens entre aéroports de la Communauté.
Le règlement n° 3976/87 du Conseil qui a ce même champ d'application concerne l'application de l'article 85(3) du traité à des catégories d'accords restrictifs de concurrence dans le domaine des transports aériens.

Il s'agit d'un règlement d'habilitation octroyant à la Commission le pouvoir d'accorder des exemptions par catégorie pour certains accords. Les derniers règlements d'exemption par catégorie adoptés sur cette base dans le marché intérieur sont les règlements n° 1617/93 et n° 3652/93 de la Commission [7].

II. Retrait des Propositions de la Commission de 1989

Le 8 septembre 1989, la Commission avait déjà fait une proposition au Conseil pour élargir le champ d'application du règlement n° 3975/87 à l'ensemble des liaisons avec les États tiers. De manière concomitante, elle avait soumis une proposition de règlement, largement semblable au règlement n° 3976/87, mais distincte, habilitant la Commission à octroyer des exemptions par catégorie pour certaines catégories d'accords portant sur ces liaisons. Ces deux propositions n'ont toutefois pas été adoptées par le Conseil. La Commission a dès lors également, le 16 mai 1997, décidé de retirer ses propositions de 1989.

III. Nouvelles propositions de la Commission

Après analyse, il est apparu en effet que les deux propositions [8] soumises en 1989 étaient dépassées du point de vue du texte et que le mémorandum explicatif accompagnant ces propositions devait être largement révisé afin de l'actualiser au nouveau contexte existant qui est très différent de celui prévalant à cette époque (à savoir, troisième paquet de libéralisation du transport aérien entré en vigueur totalement le 1er avril 1997, développement récent des alliances sur les liaisons Communauté/pays tiers, particuliè-rement atlantiques, ...). Elles ont par conséquent été remplacées par les deux nouvelles propositions susvisées.

Le mémorandum explicatif actualisé accompagnant les deux nouvelles propositions détaille **les facteurs nouveaux** qui se sont produits depuis l'examen par le Conseil des propositions de 1989 de la Commission. Ces éléments nouveaux renforcent la nécessité de doter maintenant la Commission des mêmes pouvoirs d'action vis-à-vis des transports aériens offerts sur les lignes avec les pays tiers que ceux qui lui sont conférés actuellement par le règlement n° 3975/87 pour assurer le respect des règles de concurrence aux transports aériens entre aéroports de la Communauté.
Ces facteurs sont principalement les suivants:

Libéralisation du marché interne
Par rapport à 1989, le contexte réglementaire a été substantiellement modifié par l'introduction du troisième paquet de libéralisation du marché communautaire de l'aviation en 1993 et sa pleine mise en vigueur le 1er avril 1997.
A partir du moment où les restrictions réglementaires existantes antérieure-ment sur les comportements commerciaux des transporteurs aériens sont éliminées, les questions de concurrence se posent avec encore plus d'acuité. Dans certains cas, les vols sur le marché communautaire ne s'inscrivent en effet que comme une étape initiale ou comme le prolongement d'un vol à destination d'un pays tiers. L'octroi de tels moyens d'action apparaît dès lors indispensable pour éviter que les effets bénéfiques résultant du processus de libéralisation en cours soient en

[7] Les derniers règlements d'exemption de groupe adoptés pour les services aériens entre aéroports de la Communauté l'ont été en 1993. Il s'agit du règlement n° 1617/93 de la Commission concernant l'application de l'article 85(3) à certaines catégories d'accords ayant pour objet la planification conjointe et la coordination des horaires, l'exploitation de services en commun, les consultations tarifaires pour le transport des passagers et la répartition des créneaux horaires dans les aéroports . (JO n°L 155 du 26.6.93, p.18 modifié en dernier lieu par le règlement n°1523/96 (JO n°L 190 du 31.7.96, p.11)) et du règlement n° 3652/93 concernant l'application de l'article 85(3) au système informatisé de réservation pour les services de transport aérien. (JO n°L 333 du 31.12.93, p.37).

[8] Elles remplacent celles soumises en 1989 figurant au document COM (89) 417 final (aux Annexes I et III) qui ont été remises au Conseil le 8 septembre 1989 et publiées au. JO n° C 248 du 29.9.1989, respectivement p. 7 et p. 10.

partie annihilés par des comportements restrictifs des opérateurs commerciaux.

Faiblesse du volet externe

la libéralisation du marché communautaire de l'aviation reste fragile dans la mesure où ce marché demeure incomplet sur le plan externe. Il continue en effet à être soumis aux accords bilatéraux entre États membres de la Communauté et les États tiers qui n'incluent normalement pas de mécanisme prévoyant un système d'application effective des règles de concurrence communautaires.

Dans certains cas, le Conseil a reconnu ce problème et a accordé à la Commission des mandats de négociation qui comportent un volet concurrence (Suisse, pays associés d'Europe centrale et États Unis). Un bon exemple est le mandat donné par le Conseil à la Commission en juin 1996 visant à établir entre l'UE et les USA une zone d'aviation commune (**"Common Aviation Area"**) où les transporteurs aériens des deux entités pourraient fournir librement leurs services et se concurrencer sur une base commerciale et équitable. Le volet concurrence constitue un élément important des futures négociations dans le cadre de ce mandat. Pour que la Communauté puisse être considérée comme un interlocuteur crédible, il est souhaitable que la Commission dispose de ses pouvoirs normaux d'appliquer directement les articles 85 et 86 du Traité aux vols avec les pays tiers y compris les vols avec les États Unis.

Nécessité d'établir un cadre légal plus structuré pour pallier les lacunes du système actuel.

Le développement rapide, récemment, d'une nouvelle génération **d'alliances** entre transporteurs aériens portant sur les lignes CE/pays tiers (en particulier CE/USA) ayant des effets importants sur la concurrence[9], notamment à l'intérieur du marché communautaire, a imposé à la Commission, en juillet 1996, d'ouvrir la procédure au titre de l'article 89 du traité vis à vis de certains de ces accords, en vue de procéder à un examen complet de leur compatibilité au regard des règles de concurrence communautaires.

Parallèlement à ces actions de la Commission au titre de la procédure de l'article 89, deux États Membres ont engagé en parallèle une procédure au titre de l'article 88 du traité afin de statuer sur l'admissibilité de deux de ces alliances au regard des mêmes règles de concurrence.

Le double examen d'un même accord par deux autorités, celle d'un État membre au titre de l'article 88 du traité, et la Commission européenne au titre de l'article 89, est non seulement coûteux pour les entreprises parties à l'accord tant du point de vue financier que du point de vue du temps consacré, mais peut aussi mener à une insécurité juridique. L'extension du champ d'application du règlement (CEE) n/ 3975/87 aux liaisons aériennes internationales avec les pays tiers offrirait donc aux entreprises **le clair avantage d'un seul contrôle de la légalité de leur accord** (**"one stop shop"**) au regard des règles communautaires de concurrence selon une procédure beaucoup moins lourde et plus directe que celle prévue par le régime transitoire de l'article 89 du traité et sans être soumises à un risque de décisions contradictoires.

Si elle se voit octroyer les pouvoirs demandés sur les liaisons avec les pays tiers, la Commission mènera, en conformité avec les règles existantes pour les autres domaines économiques, les procédures en liaison étroite et constante avec les Etats membres qui ont le droit de formuler toutes observations sur ces procédures.

Nouvelles propositions adoptées le 16 mai 1997

La première est un projet de proposition de règlement modifiant le règlement n° 3975/87 de manière à étendre son champ

9 Décision de la Commission du 3 juillet 1996 d'ouvrir la procédure au titre de l'article 89 du traité à l'encontre des alliances suivantes portant sur les liaisons atlantiques: British Airways/American Airlines, Lufthansa/ SAS/United Airlines, Swissair/Sabena/ Austrian. Airlines/Delta Airlines, KLM/Northwest./ British Airways/ USAir et du 27 novembre 1996 à l'encontre de l'alliance suivante portant sur les liaisons avec la Suisse: Swissair/Sabena/Austrian. Airlines. A la suite de cette décision de la Commission et après avoir voté une loi spéciale à cet effet (EU Competition law (articles 88 and 89) Enforcement Regulations 1996), les autorités britanniques ont ouvert,en août 1996, sur la base de l'article 88 du traité la procédure pour examiner la compatibilité de l'alliance British Airways/American Airlines au regard du droit communautaire de la concurrence. Les autorités allemandes ont aussi ouvert la procédure sur la base de l'article 88 pour examiner la compatibilité de l'alliance Lufthansa/ SAS/United Airlines

d'application à l'ensemble des liaisons Communauté/pays tiers.

A l'instar de la proposition de 1989, elle comporte aussi une disposition, l'article 18bis, prévoyant des consultations en cas de conflit résultant de l'application du règlement avec les dispositions d'un pays tiers et notamment avec des dispositions contenues dans des accords bilatéraux entre un État membre et un pays tiers.

La deuxième constitue, comme dans la proposition de 1989, un projet de règlement ad hoc, distinct du règlement n° 3976/87 [10]. Elle vise à permettre à la Commission d'accorder des exemptions de groupe pour certains accords restrictifs dans le domaine des transports aériens entre la Communauté et les pays tiers concernant la planification conjointe, la coordination des capacités et des horaires, le partage de recettes, l'organisation des consultations tarifaires pour le transport de passagers avec leurs bagages pour autant qu'elles soient indispensables à l'interligne, l'exploitation en commun d'un service sur une liaison nouvelle ou de faible densité, ainsi que la répartition des créneaux dans les aéroports.

[10] Il s'agit d'un projet distinct du règlement n° 3976/87 du Conseil qui concerne l'application de l'article 85 paragraphe 3 à des catégories d'accords dans le domaine des transports aériens.(JO n°L 374 du 31.12.87, p.9) modifié en dernier lieu par le règlement n°2411/92 (JO n°L 240 du 24.8.92, p.19). La liste des accords restrictifs pour lesquels l'habilitation est demandée est plus large (cas des accords de partage de recettes et de coordination des capacités)que la liste actuelle des accords couverts par le règlement n° 3976/87 afin de tenir compte de la situation existante sur certaines liaisons avec les pays tiers. Il est à relever que dans le marché intérieur, ces deux catégories d'accords étaient aussi initialement exemptées sous certaines conditions par le premier paquet de règlement d'exemption (voir règlement n° 2671/88 de la Commission adopté à la suite du premier paquet de libéralisation .(JO n°L 239 du 30.8.88, p.9)).

Most important recent developments

LINER SHIPPING CONSORTIA - NON-OPPOSITION (ARTICLE 7 OF REGULATION 870/95)
JOINT OPERATIONAL SERVICE AGREEMENT (CASE NO IV/ 35.770) AND
WEST COAST/MEDITERRANEAN AGREEMENT (CASE NO 35.774)

On 5 March 1997, the Commission adopted decisions not to oppose exemption for the Joint Operational Service Agreement (Case No IV/ 35.770) and the West Coast/Mediterranean Agreement (Case No 35.774) and accordingly allowed both agreements to benefit from the group exemption for liner shipping consortia contained in Regulation 870/95.

In accordance with Article 7 of Regulation 870/95, if the Commission does not wish a notified agreement to benefit from the group exemption, it has six months, counting from the date of notification, to inform the parties that it wishes to oppose the exemption. In both cases, further information was requested from the parties and was received on 7 October 1996. As the Commission has decided not to oppose exemption, the two agreements will be exempt for the life of the Regulation, ie until 21 April 2000. The Parties also obtained the benefit of Article 13 of the Regulation.

The Parties to the Joint Operational Service Agreement (JOS) are Andrew Weir Shipping Ltd (trading as Ellerman), Iscont Lines Ltd, KNSM Kroonburgh and Zim Israeli Navigation Ltd. The JOS is a joint liner shipping service between the ports of Felixstowe, Antwerp, Rotterdam and Hamburg and the port of Limassol in Cyprus and the ports of Ashdod and Haifa in Israel. The parties agree on the amount of capacity to be used in the joint service and currently operate four vessels offering a fixed day, weekly service to each of the six ports of call. Two of the vessels are provided by Zim, one by Iscont and one jointly by Ellerman/KNSM. The relevant market in this case is scheduled maritime transport services between ports in Northern Europe and ports in Cyprus and Israel.

The Parties to the West Coast/Mediterranean Agreement (WC/Med) are Andrew Weir Shipping Ltd (trading as Ellerman), KNSM Kroonburgh BV and Zim Israeli Navigation Ltd. The WC/Med is a joint liner shipping between the ports of Liverpool and Dublin and the ports of Lisbon, Leixoes, Malta, Palermo, Salerno, Piraeus, Limassol in Cyprus and Ashdod and Haifa in Israel. The parties agree on the amount of capacity to be used in the joint service and currently operate three vessels offering a service every ten days to each of the eleven ports of call, except that Lisbon and Leixoes are called at on alternate sailings. One of the vessels is provided by Zim and two by Ellerman/KNSM.

These services cover two distinct markets: (i) services between Northern European/Portuguese ports and central Mediterranean ports and (ii) services between Northern European/Portuguese ports and ports in Israel and Cyprus. In the case of the market for transport services between between Northern European/Portuguese ports and central Mediterranean ports some road haulage services may be substitutable for maritime transport services as a result of a very wide range of ferry services.

Since there is a significant overlap between the markets in which the two consortia operate, it was necessary to assess their combined market shares. For the reasons described below it was also appropriate to take into account not only containerised cargo but also non-containerised cargo.

Almost all cargo can be containerised and, over time, it is likely that the degree of containerisation in most maritime markets involving Member States will be very high. In mature markets, such as the Northern Europe/US or the Northern Europe/Far East markets, the process of change towards containerisation is more or less complete and few, if any, non-

containerised cargoes are left which are capable of being containerised.

Furthermore, once a type of cargo regularly becomes containerised it is very unlikely ever to be transported again as non-containerised cargo. The reasons for this are that shippers become accustomed to shipping in smaller but more frequent quantities and become accustomed to the fact that once cargo has been loaded into a container, it is easier to ship onwards from the port of delivery to the ultimate consignee using multimodal transport. Containerised cargo is also much more secure against pilferage.

Thus, as the degree of containerisation increases, shippers of non-containerised cargoes turn towards containerised services but once those shippers have become accustomed to shipping in containers they do not revert to non-containerised shipping. Such examples of one-way substitutability are not uncommon.

In less mature markets, such as the one affected by the JOS and WC/Med Agreements, the degree of containerisation is much less and the transitional process by which commodities become transported exclusively in containers is still under way. The reasons for this include the substantial investments required to convert to containerisation and the fact that inland transport facilities are less sophisticated than in mature markets.

It was therefore reasonable to accept the parties' argument that many of the non-containerised cargoes moving between the ports in question could not only become containerised but could switch back if the price of containerised transport increased too rapidly or too greatly.

On the basis of the above analysis, the Commission came to the conclusion that the parties enjoyed combined shares of the relevant markets of between forty and fifty percent. In view of the fact that there is substantial through traffic in the Mediterranean, it was considered that such markets shares did not give the parties the possibility of eliminating competition. The Commission also concluded that the other three conditions of Article 85(3) were satisfied for the reasons elaborated in Regulation 870/95.
(see also the Commission's press release : IP/97/357)

COMMISSION FINES IRISH SUGAR FOR ABUSE OF ITS DOMINANT POSITION ON THE IRISH SUGAR MARKET

On 14 May 1997, in a decision which found that the company had infringed Article 86 of the Treaty, the Commission imposed a fine of 8.8 million ECU on Irish Sugar plc, a subsidiary of the Greencore Group.

The decision against Irish Sugar concerns a series of infringements since 1985. Irish Sugar is the sole processor of sugar in the island of Ireland and has a share of over 90% of the sugar market within Ireland. The decision states that Irish Sugar has abused its dominant position on the Irish sugar market by seeking to restrict competition both from imports of sugar from other Member States and from small sugar packers within Ireland.

In the late 1980s Irish Sugar and its subsidiary Sugar Distributors Limited (SDL) sought to restrict competition from imports of sugar from France and Northern Ireland by offering selectively low prices to customers of an importer of French sugar, swapping Irish Sugar's own Siucra brand of packaged sugar for an imported brand and offering selective "border" rebates to customers for packaged sugar that were located close to the Northern Irish border. These practices formed part of a policy of dividing markets and excluding competitors. Moreover, wholesale and retail customers which did not receive selective low prices and rebates were placed at a competitive disadvantage in the retail sugar market.

Since at least 1985 Irish Sugar has offered rebates on purchases of bulk sugar to industrial customers that export part of their final product to other Member States. These "sugar export rebates" vary between customers for the same tonnage of sugar and vary over time without any consistent relationship to sales volumes or currency changes. Both the practice of offering sugar export rebates and the ad hoc manner in which the scheme is administered discriminates against customers that supply only the Irish market and places them at a competitive disadvantage in their trading

relations with third parties - one Irish food processor is given a rebate to compete with a French processor in France whereas another Irish food processor receives no rebate to compete with that same French company on the Irish market. The system of rebates on exports to other Member States also distorts the common sugar regime.

Since 1993 Irish Sugar has sought to restrict competition from small sugar packers within Ireland by discriminating against them in the prices that it has charged for bulk sugar, thereby placing them at a competitive disadvantage, notably vis à vis Irish Sugar itself. Irish Sugar has also offered rebates to certain wholesalers and food retailers that have been dependent on increases in their purchases of Irish Sugar's own Siucra brand, thereby making it difficult for small competitors to gain a foothold in the market.

Through its infringements Irish Sugar has been able to maintain a significantly higher price level for packaged retail sugar in Ireland compared with that in other Member States, notably in Northern Ireland, and has been able to keep its ex-factory prices, particularly for bulk sugar for "domestic" Irish consumption, amongst the highest in the Community, to the detriment of both industrial and final consumers in Ireland.

In setting the level of the fine the Commission took into account the fact that the infringements represent a serious breach of Community law, that several have been recognised as abuses of a dominant position by the European Court of Justice and that they have taken place over a long period of time.

ASSAINISSEMENT DU SECTEUR DE L'ABATTAGE DE BOVINS AUX PAYS-BAS

La Commission a formellement rejeté des plaintes introduites par trois abattoirs néerlandais. Ces entreprises se sont opposées notamment au prélèvement décrété par le Produktschap voor Vee en Vlees ("PVV") pour financer le fonds de compensation mis à la disposition du Stichting Saneringsfonds Runderslachterijen ("SSR"), prélèvement qui doit être payé par tous les abattoirs néerlandais. Le fonds de compensation finance l'acquisition des installations d'abattage "non rentables" et leur fermeture.
Les faits de l'affaire et leur appréciation par la Commission peuvent être résumés comme suit:
Le PVV est un organisme semi-public qui est habilité par la législation néerlandaise à prendre, dans l'intérêt public, des mesures contraignantes concernant le secteur en cause. Les mesures décrétées par le PVV entrent en vigueur après approbation ministérielle.
Le SSR est une association d'entreprises. Elle fut fondée par le PVV et plusieurs abattoirs représentant la majorité de la capacité néerlandaise d'abattage de bovins.
Dans le cadre des règlements de nature publique qui ont pour but d'assainir le secteur de l'abattage de bovins aux Pays-Bas, notamment par une réduction de la capacité des abattoirs, le PVV a chargé le SSR de la mise en oeuvre du plan de restructuration.
Les prélèvements décrétés par le PVV sont considérés comme des taxes. Les paiements du fonds d'assainissement du secteur de l'abattage de bovins ont été notifiés à la Commission comme aide d'état. En décembre 1993 et en juillet 1995, la Commission a décidé de ne pas soulever d'objections à l'encontre de ce programme d'aide.
Sur cette base, le SSR a finalisé l'acquisition et la fermeture d'installations d'abattage néerlandaises représentant 333.000 abattages/an (abattages totaux aux Pays-Bas: 1,1 millions; abattages totaux dans l'EU plus de 22 millions).
Les plaignants considèrent que les décisions du PVV et du SSR et les accords que cette dernière association a conclus en vue de la fermeture des installations d'abattage, ont des effets anticoncurrentiels et sont en infraction avec l'article 85 § 1 du traité CE, sans qu'il soit possible d'accorder des exemptions.
Les décisions de rejet de plaintes concluent qu'il n'y a pas lieu pour la Commission, en fonction des éléments dont elle a connaissance, d'intervenir à l'égard du comportement du PVV et du SSR mis en cause en vertu des dispositions de l'article 85 § 1 du traité CE.
La particularité de l'affaire réside dans le mélange entre action publique (plan de restructuration et aide d'état pour financer ce plan) et action privée dans le cadre des décisions prises par les autorités publiques. Cette particularité fait que l'affaire se distingue de la pratique établie par la Commission

en matière de cartels de crise structurelle (voir 12ème Rapport sur la politique de concurrence, points 38 et ss.).
Plus particulièrement, le plan de restructuration ainsi que son financement, arrêtés par des règlements du PVV, sont des actes publiques et ne tombent pas, dès lors, dans le champ d'application de l'art. 85 § 1 du traité CE.
En ce qui concerne les décisions prises par le SSR et les accords conclus par cette association d'entreprises en vue de la mise en oeuvre du plan de restructuration, les plaignants n'étaient pas en mesure de démontrer l'existence d'effets sensibles sur la concurrence dans les marchés pertinents (ceux des bovins de boucherie, des services d'abattage, des carcasses bovines et de la viande bovine fraîche ou surgelée), attribuables au comportement en cause du SSR. En effet, la restriction de concurrence figurant dans les accords conclus avec des abattoirs fermés résulte d'une clause qui interdit à ces entreprises de continuer et de reprendre leurs activités pour une période de 30 ans. Or, la Commission a notamment constaté que l'offre de la viande bovine aux consommateurs communautaires n'était pas susceptible de subir, suite aux accords en question, des modifications appréciables, ni en ce qui concerne la quantité ou la qualité, ni en ce qui concerne le prix.

Press releases

THE COMMISSION IMPOSES THE DISSOLUTION OF UIP'S PAY-TV DISTRIBUTION JOINT VENTURE

Following the intervention of the European Commission Directo-rate-General for Competition, the parties to UIP Pay-TV, a joint venture company created by a series of agreements by the same parties in UIP-BV, have agreed to dissolve the branch of the company which is active in the distribution of films produced by the three parent companies, to pay-TV broadcasters. The dissolution was necessary to safeguard competition in the market for the supply of programmes for pay-television transmission in the EU. The Commission's services now consider that these agreements, as modified, fulfil the conditions laid down in the Treaty.

The most important changes, which affect only the EU territory, are the following.

UIP's parent companies will no longer join forces to license or to market their films for Pay-TV. The remaining UIP Pay-TV operations will be brought to an end within 18 months, and UIP Pay TV will then be dissolved. The sole activities left will be the administration of altogether nine contracts. It is anticipated that seven of these will expire at the latest in 1999. As far as the remaining two long-term contracts between UIP and broadcasters are concerned, the broadcaster will be given the option to "split" the agreement into separate agreements with each of UIP's parent companies on the same commercial terms.
The Commission services, in requiring the dissolution of UIP's activities in the EU pay-television market, indicate that it will not tolerate the joint selling and joint licensing by large enterprises within an anti-competitive structure, unless it has a beneficial impact on the relevant market.

In 1991, two of the parties notified the agreements for UIP's distribution to pay television broadcasters, later joined by MGM-Pathé in 1992. Earlier agreements had also been notified to the Commission. In 1993, the European Commission's services concluded that the agreements contained restrictions of competition and therefore fall under the general prohibition in Article 85(1) of the EC Treaty. The agreements limited the parent companies from entering into agreements with other distributors for the distribution of their films. Additionally, the requirement in the franchise agreement that UIP must use its best efforts to maximise the gross receipts from the pictures, suggested that the movies of one parent company must not be licensed to the detriment of the films of the other two parent companies.

The parties to the UIP BV joint venture, which is based in The Netherlands, are : Paramount Pictures International (a division of Viacom International (Netherlands) B.V., a subsidiary of Viacom Inc.); MGM International B.V. (a subsidiary of Metro-Goldwyn-Mayer Inc.) and MCA International B.V. (a subsidiary of MCA Inc., 80 % owned by the Seagram Company Limited).

(IP/97/227) [1997-03-17]

LA COMMISSION IMPOSE LA DISSOLUTION DE UIP-PAY TV, COMPTOIR COMMUN DE VENTE DE FILMS, AUX CHAÎNES À PÉAGE.

A la suite de l'intervention de la Direction Générale de la Concurrence de la Commission Européenne, les entreprises-mères de UIP-Pay TV (comptoir commun de vente crée contractuellement entre les mères de UIP-B.V.) ont accepté la dissolution du service de cette société chargé de la distribution aux chaînes à péage des films produits

par ses entreprises-mères. Cette dissolu-tion était nécessaire à la préservation de la concurrence sur le marché de la fourniture des programmes aux chaînes à péage. Les services de la Commission considèrent désormais que ces accords, tels qu'ils ont été amendés, remplissent les conditions posées par le Traité.

Les amendements les plus importants, qui ne sont applicables que sur le territoire de l'Union Européenne, sont les suivants:

Les entreprises-mères de UIP Pay-TV cesseront de distribuer et de commercialiser en commun leurs films aux chaînes à péage. Il sera mis un terme aux activités actuelles de UIP Pay-TV dans un délai de 18 mois; UIP Pay-TV sera alors dissoute. La seule activité que conservera alors UIP Pay-TV consistera simplement à exécuter neuf contrats, dont sept doivent expirer en 1999 au plus tard. S'agissant des deux autres contrats, dont le terme est plus long, le radiodiffuseur se verra laisser la possibilité de scinder son contrat en plusieurs contrats distincts, à conclure individuellement, dans les mêmes conditions commerciales, avec chacune des entreprises-mères.

En exigeant la dissolution des activités de UIP Pay-TV au sein du marché de la télévision à péage, les services de la Commission font connaître leur détermination à ne pas tolérer la vente et la distribution en commun, organisées entre grandes entreprises regroupées au sein de structures anticon-currentielles, si ces opérations ne se traduisent pas par un impact favorable sur le marché pertinent.

En 1991, deux des entreprises-mères - ralliées par MGM-Pathé en 1992 - ont notifié les accords organisant la distribution, par UIP, des films produits par les entreprises-mères aux chaînes à péage. Des accords antérieurs avaient également été notifiés à la Commission. En 1993, les services de la Commission sont parvenus à la conclusion que ces accords contenaient des restrictions de concurrence, et tombaient donc sous le coup de la prohibition générale édictée par l'article 85(1) du Traité CE. Ces accords limitaient en effet la liberté des entreprises-mères de confier contractuellement la distribution de leurs films à d'autres distributeurs que UIP. En outre, aux termes de ces accords, UIP devait s'employer à maximiser les recettes brutes dégagées par l'ensemble de ces films; la portée implicite de cette disposition était que les films de l'une des entreprises-mères ne devaient pas être distribués au détriment des films des deux autres entreprises-mères.

Les mères de la filiale commune, qui est établie aux Pays-Bas, sont: Paramount Pictures International, qui appartient à Viacom International Netherlands B.V., elle même filiale de Viacom Inc.; MGM International B.V., filiale de Metro-Goldwyn-Mayer Inc.; et MCA International B.V., filiale de MCA Inc., détenue à 80 % par Seagram Company Limited.

(IP/97/227) [1997-03-17]

THE EUROPEAN COMMISSION INVITES THE INTERNATIONAL GROUP OF P&I CLUBS TO INCREASE COMPETITION BETWEEN ITS MEMBERS.

On 2 June 1997 Mr. Karel van Miert, the Commissioner responsible for competition, addressed a statement of objections to the International Group of P&I Clubs, a world-wide association of marine insurers, indicating that the arrangements concluded within this association are in breach of EC competition rules. The Commission could only grant an exemption from these rules if the International Group allows more competition between its members.

The P&I Clubs members of the International Group account for around 89% of the world-wide market for protection & indemnity (P&I) marine insurance. This type of insurance provides cover to shipowners against liabilities for contractual or third party damages, such as oil pollution, crew or passengers injury or collision with other vessels. Several arrangements concluded within the International Group allow the P&I Clubs to share the claims received from shipowners that exceed a certain amount.

In 1985 the Commission granted some of these arrangements a formal exemption from EC competition rules for ten years. Upon expiry of this exemption, the P&I Clubs requested its renewal. The Commission launched a wide investigation, requesting information from the main market players concerned (the International Group, the individual P&I Clubs, brokers, re-insurers,...). Its aim was to review how the claim-sharing arrangements had functioned since the adoption of the exemption decision.

The Commission has now reached the preliminary conclusion, embodied in a statement of objections, that the arrangements concluded within the International Group, while continuing to produce benefits for the maritime industry and its customers, unduly restrict competition between the P&I Clubs in two main aspects:

- first, they oblige all the P&I Clubs to offer the same level of cover, even if a large number of shipowners wishes to obtain substantially lower levels than the ones offered at present (this was the object of the complaint from the Greek Shipping Cooperation Comittee, an association of shipowners) and

- second, they impose limits to price competition between the P&I Clubs. The Commission exempted some of these limits in 1985, after amendments to the original International Group

Agreement had been introduced. These amendments have not proved sufficient to improve competition on prices between the P&I Clubs and, therefore, the price limits can not be exempted as they stand today.

The International Group of P&I Clubs has the right to reply to the Commission's objections in writing and orally before the Commission adopts its final position on the case. Commissioner van Miert expressed his openness to engaging in a dialogue with the International Group to discuss alternative arrangements which could be exemptable.
(IP/97/493)

THE ELECTRABEL CASE: THE COMMISSION OBTAINS SATIS-FACTION ON THE REVISION OF THE STATUTES OF MIXED INTER-COMMUNAL ELECTRICITY DISTRIBUTION COMPANIES IN BELGIUM

On the initiative of Commissioner Van Miert, who is responsible for competition policy, the Commission has decided to suspend the action which it had initiated against Electrabel and the mixed distribution companies in Belgium regarding a possible infringement of the European competition rules.

The Commission's decision follows the presentation by Electrabel - a subsidiary of Société Générale de Belgique - active in the sector of electricity production and distribution and by Intermixt, the association whose members are the representatives of the communes in the distribution companies, to meet the concerns raised by the Commission in 1996 regarding the adoption of new statutes (called "third generation statutes") by the distribution companies.

The Commission is satisfied with this development which will allow from 2006 the opening of a significant part of the distribution companies' requirements to competition. This opening could provide a major opportunity for several independent producers or for other European producers who would be interested in being active on the Belgian electricity market.

In addition the mixed distribution companies will be free from 2011 to obtain the whole of their requirements from suppliers of their choice. From the same date the communes who wish to have a different partner in the distribution company will be able to dissolve the company and seek a new partner.

The proposals which have now been accepted by the Commission will be brought into force as and when the mixed intercommunal companies hold General Meetings. This process may take several months.

The file will be formally closed without further action once all the amendments have been put into place.

The movement in favour of competition which has been introduced into the new statutes following the action of the Commission should benefit domestic consumers and small and medium-sized undertakings connected to the networks of the mixed distribution companies. At the same time the Commission has been concerned not to undermine the principles of security and regularity of supply which are of particular importance for the communes and to which the relevant authorities have been particularly attentive.

Following several contacts between the Commission and the parties, a solution was reached which the Commission finds satisfactory. The new statutes will be modified, in all three regions of the country, so as to provide for the following changes:

- exclusive supply of electricity by Electrabel will cease completely in 2011. Thereafter all distribution companies will be free to obtain supplies from the supplier of their choice;

- from 2006 the exclusivity will be lifted for 25% of the distribution companies' requirements. Each of them will have the right, after giving 4 years notice, to obtain from third parties a quantity of electricity equivalent to 25% of its total requirements for supply after 2006. The electricity will be constant supply ("baseload"), while Electrabel will continue to supply the balance, including peak load supplies. The security of supply for the 25%, which the distribution company may source from a third party, will be guaranteed by the supply or another producer prepared to provide this;

- Electrabel will not oppose the dissolution of the distribution company after 2011, with full compensation for Electrabel, if the communes associated in the distribution company so decide;

- the financial arrangements for the Electrabel shares to be held by the communes will include provision to allow the communes protection from any fall in the value of the shares. Furthermore, these financial arrangements will come to an end at the same time as Electrabel's remaining supply rights, in 2011.

The Commission's concerns over the new statutes

In the spring of 1996, the Commission began to look into the renewal of the distribution companies' statutes and sent Electrabel and Intermixt a letter setting out its observations on several points:
- the period of the new statutes, which would prolong for several

years the duration of the partnership between Electrabel and the communes to between 20 and 30 years depending on the distribution company concerned;

- a clause in the statutes granting Electrabel the exclusive right to supply the distribution company with the electricity required for resale to its final consumers. This clause was to operate for the whole duration of the new statutes, i.e. for 20 to 30 years;

- certain aspects of the arrangements to permit communes to hold "Electrabel" shares.

The Commission concluded that the adoption of the new statutes could involve infringements of Articles 85 and 86 of the EC Treaty. Article 85 prohibits agreements between undertakings which have the object or effect of restricting competition. Article 86 prohibits abuses of dominant position.

The Commission invited Electrabel and Intermixt to make proposals to modify the statutes, failing which it proposed to initiate a procedure in order to prohibit the new statutes.

Former statutes, new statutes and proposed amendments

Before 1996 mixed intercommunal companies had statutes with periods of validity until between 1998 and 2022. In 1996 new statutes were adopted simultaneously by all the mixed intercommunal companies (with the exception of one). These new statutes run until between 2016 and 2026 (20-30 years duration). The Commission took action because it considered that the new statutes could contribute to foreclosing for a long period the market for the supply of electricity to mixed intercommunal companies (primary electricity which is resold by the intercommunal company to its customers) and the supply of distribution services (within the mixed intercommunal company, Electrabel carries out the day-to-day distribution functions).

The parties proposals will:

- open up 25% of primary electricity supply to mixed intercommunal companies after 2006. This should lead to an opening of around 1 000 MW of baseload supply, which is the equivalent of about 5 independent producers with medium sized (200 MW) gas turbines or the equivalent of 1 nuclear power station (900 MW);

- lead to complete liberalisation of power supply to mixed intercommunals after 2011;

- provide the possibility for communes to dissolve their intercommunal company after 2011 subject to fair compensation to Electrabel.

The Flemish authorities requested the parties in September 1996 to limit the duration of the exclusive supply obligation to 2011. This amendment was not considered sufficient by the Commission which made contact with the Belgian Government in order to avert them concerning any formal approval on their part of a situation which appeared contrary to European competition law.

Background

Mixed intercommunal distribution companies carry on their activities in partnership with Electrabel. The 17 mixed intercommunal companies in Belgium cover more than 500 communes and over 80% of the electricity distributed in the country supplying daily a population of more than 8 million
The distribution of electricity in Belgium is the responsibility of the communes. They may organise distribution in different ways: through concessions, by distribution themselves (régies), "pure" intercommunal companies and "mixed" intercommunal companies.

Pure intercommunal companies can be established to associate communes in carrying out in common a variety of activities of public interest.

Mixed intercomunal companies are an association between communes and a private partner. In the case of distribution of electricity the private partner is in all cases Electrabel. Mixed intercommunal companies represent 82% of electricity distribution in Belgium. The remaining 18% is distributed by pure intercommunal companies and by individual communes.

Intercommunals are regulated by a law dated 22 December 1986. Regional Decrees have also been adopted in this area, in particular in Wallonia, with the Decree dated 5 December 1996 which organises the operation of interecommunal companies, whether pure or mixed, which operate in the Wallon region. The competent authorities in each region oversee the statutes and the activities of intercommunal companies so as to ensure that they operate within the law and not in a manner contrary to the public interest.

TRANSPORT MARITIME
CONSORTIUMS DE COMPAGNIES MARITIMES DE LIGNE

La Commission a autorisé le 9 janvier 1997 un accord de consortium dans le secteur des transports maritimes.

Le 16 août 1995, trois compagnies maritimes, Finncarriers, Poseidon et United Baltic Corporation ont introduit, sur la base des articles 12 paragraphe 1 des règlements N/1017/68 et N/ 4056/86 du Conseil, une demande d'exemption individuelle au titre de l'article 85(3) du traité pour l'accord instituant la Conférence maritime de la Mer du Nord.

Il s'agit d'un accord par lequel les parties assurent en commun des services réguliers par transbordeur pour le transport de divers types de cargaisons de roulage et de cargaisons conteneurisées entre différents ports et localités de Finlande et d'une part différents ports et localités de Belgique et des Pays Bas et d'autre part différents ports et localités du Royaume Uni et de là vers l'Irlande.

Cet accord, a bénéficié d'une exemption individuelle ne s'agissant pas d'un accord de consortium tombant dans le champ d'application du règlement d'exemption par catégorie de la Commission concernant cette catégorie d'accords, le règlement n/ 870/95 du 20 avril 1995 [1] puisqu'il s'agit d'un consortium pour une large partie non conteneurisé.

Dans le délai de 90 jours qui lui était imparti pour se prononcer après la publication du contenu essentiel de la demande dans le Journal Officiel qui a eu lieu le 19 octobre 1996 [2]., la Commission a estimé que les conditions de l'article 85(3) étaient remplies et ne s'est pas opposée à cet accord de sorte que les activités maritimes menées dans ce cadre et relevant du règlement n/ 4056/86 sont exemptées pour une périodc dc six ans ct les activités terrestres relevant du règlement n/°1017/68 qui étaient mineures, sont exemptées pour une période de trois ans.

La Commission a en effet constaté que la coopération en question a accru l'efficacité des opérations des parties et leur a permis d'engager des investissements considérables en matière d'équipements spécialement adaptés aux conditions climatiques rencontrées en hiver dans la Baltique et aux besoins spécifiques des chargeurs finlandais se trouvant dans des régions périphériques.

(IP/97/12)

1. Règlement (CE) n°870/95 de la Commission, du 20 avril 1995, concernant l'application de l'article 85, paragraphe 3, du traité à certaines catégories d'accords, de décisions et de pratiques concertées entre compagnies maritimes de ligne (consortiums) en vertu du règlement (CEE) n°479/92 du Conseil (JO L 89 du 21.01.1995, p.7)
2. JO C 310 du 19.10.1996, p.7

Press releases

The full texts of Commission's Press releases are available on-line from the RAPID database,on the day of their pblication 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/97/511 [1997-06-11]
Commission continues its investigation into the proposal of P&O and Stena to merge their cross-Channel ferry services

IP/97/943 [1997-06-05]
The European Commission invites the International Group of P&I Clubs to increase competition between its members (see page 15 of this issue)

IP/97/420 [1997-05-20]
Commission proposes full implementation of competition rules also to air transport between the Union and third countries

IP/97/414 [1997-05-15]
The Commission authorizes the acquisition of joint control of both the RTE companies and SSM Coal B.V. by SHV Deelnemingen Maatschappij B.V. and Rheinbraun Brennstoff GmbH

IP/97/405 [1997-05-14]
Commission fines IRISH SUGAR for abuse of its dominant position on the Irish sugar market (see page 12 of this issue)

IP/97/364 [1997-04-29]
European Commission authorises the creation of Champion Profil joint venture between ProfilARBED and Etablissements Métallurgiques J Champion SA

IP/97/363 [1997-04-29]
The European Commission authorises the acquisition by the Hoogovens Group of 50% of Usines Gustave Boel

IP/97/357 [1997-04-25]
Commission clears Liner Shipping Consortia (see page 11 of this issue)

IP/97/351 [1997-04-25]
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Settlement reached with Belgacom on the publication of telephone directories - ITT withdraws complaint

Judgments

Judgment of the Court of 17 June 1997, Case C-70/95: Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia. Reference for a preliminary ruling: Tribunale amminstrativo regionale per la Lombardia - Italy.
Order of the President of the Court of 17 June 1997, Joined Cases C-151/97 P(I) and C-157/97 P(I): National Power plc and PowerGen plc v British Coal Corporation and Commission of the European Communities. (Appeal).

Judgment of the Court of First Instance (Second Chamber, extended composition) of 12 June 1997, Case T-504/93:
Tiercé Ladbroke SA v Commission of the European Communities. Action for annul-ment - Rejection of a complaint - Article 86 - Reference market - Collective dominant position - Refusal of concession of a

transmission licence - Article 85 (1) - Clause on prohibition of retransmission.

Judgment of the Court (Sixth Chamber) of 5 June 1997, Case C-41/96: VAG-Händlerbeirat eV v SYD-Consult.
Reference for a preliminary ruling: Landgericht Hamburg - Germany.
Article 85(3) of the EC Treaty - Regulation (EEC) No 123/85 - Selective distribution system - 'Imperviousness' of the system as a precondition for its enforceability against third parties.
Judgment of the Court of First Instance (Second Chamber, extended composition) of 14 May 1997, Case T-77/94: Vereniging van Groothandelaren in Bloemkwekerijprodukten, Florimex BV, Inkoop Service Aalsmeer BV and M. Verhaar BV v Commission of the European Communities.
Competition - Closure of procedure on a complaint in the absence of a response by the complainants within the time-limit notified to them - Compatibility with Article 85(1) of the EC Treaty of a fee levied on suppliers who have concluded agreements relating to the delivery of floricultural products to undertakings established on the premises of a cooperative auction society - Compatibility with Article 85(1) of the EC Treaty of an exclusive purchase obligation accepted by certain wholesalers reselling such products to retailers in a specific trading area forming part of the same premises - Discrimination - Effect on trade between Member States - Assessment by reference to a body of rules taken as a whole - Lack of appreciable effect.

Judgment of the Court of First Instance (Second Chamber, extended composition) of 6 May 1997, Case T-195/95: Guérin Automobiles v Commission of the European Communities.
Competition - Action for damages - Inadmissibility.

Judgment of the Court (Fifth Chamber) of 24 April 1997,Case C-39/96: Koninklijke Vereeniging ter Bevordering van de Belangen des Boekhandels v Free Record Shop BV and Free Record Shop Holding NV. Reference for a preliminary ruling: Arrondissementsrechtbank Amsterdam - Netherlands. Article 85 of the EC Treaty - Article 5 of Council Regulation No 17 - Provisional validity of agreements pre-dating Regulation No 17 and notified to the Commission - Provisional validity of agreements amended after notification.

NOTICE

REVIEW OF THE COMMISSION'S POLICY TOWARDS HORIZONTAL CO-OPERATION AGREEMENTS

The Commission has consistently acknowledged that co-operation among firms, particularly between small and medium-sized enterprises, is in most cases economically desirable without presenting difficulties for competition policy. This is reflected, inter alia, in the existence of two block exemption regulations covering research and development (R&D) and specialisation.
These two block exemption regulations are however due to expire soon and, as a preliminary to considering their future, we have decided to conduct a wider review of our policy on horizontal co-operation agreements in general. As part of this review, DG IV has launched a factual study to try to develop a better understanding of whether EC law in this area adequately addresses the needs of competition policy whilst reflecting today's economic realities.

To enable us to do this, we have drawn up a questionnaire which has been circulated widely to companies within the Community. We have also placed the questionnaire on DG IV's internet site at:

http://europa.eu.int/en/comm/dg04/entente/en/quesrev.htm

We should be grateful if any companies that are interested in this review and would like to contribute to our fact finding exercise could complete and return this questionnaire to us. It can either be downloaded as a Word document and returned via e-mail, or returned to us by post at the address below. Further copies of the questionnaire can also be obtained from thes address below. Could we have all responses by 29 August 1997 please.

The address to get the questionnaire and to send your replies by post is:

Review of Horizontal Co-operation Agreements
c/o Mr Ali Nikpay
C150 4/122
Rue de la Loi 200
B - 1049 Brussels
BELGIUM
Fax: 00322 296 9799

MERGERS

Application of Council Regulation 4064/89
Main developments between 1st April and 23rd July 1997

Summary of the most important recent developments

Jean-Louis ARIBAUD, DG IV-B-1

The second quarter of 1997 has been concluded with an important event : on 30th June the Council adopted Regulation No 1310/97 amending Regulation 4064/89 on the control of concentrations between undertakings (s. OJ No L 180/1 - 09.07.1997). The reviewed Merger Regulation will enter into force on 1st March 1998. The Council's final step concludes the extensive discussions which followed the submission of the Commission proposal and mainly focused on the treatment of merger cases with significant cross-border effect which would be subject to notification in several Member States, since they do not meet the thresholds required for Commission jurisdiction.

The period between 1st April and 30th July has also been marked by intensive activity with respect to the number as well as to the scope of the decisions taken in merger cases. The Commission took 64 decisions under the Merger Regulation relating to 48 cases. This total included three decisions under Article 8 (Anglo American / Lonrho; British Telecom / MCI, Blokker / Toys 'R' Us and Boeing / Mc Donnell Douglas) of which three were clearances with conditions and obligations, and the third a "double" decision under Articles 8(3) and 8(4) (declaration of incompability with the common market and order of divestiture). Furthermore, one clearance decision with undertakings under Article 6(1)(b) was taken (Lyonnaise des Eaux / Suez), as well as three decisions to initiate in depth "Phase 2" investigations (The Coca-Cola Company / Carlsberg, Guinness / Grand Metropolitan and Siemens / Elektrowatt). A further merger case was the subject of a partial referral under Article 9 of the Regulation (Rheinmetall / British Aerospace / STN Atlas).

MERGER REVIEW

Taking into account the considerable efforts, costs and legal uncertainty created by multiple national filings of the same transaction, the Council has decided to extend the scope of the Merger Regulation in order to ensure a 'one-stop shop' system at the Community level. In addition to the current thresholds defined in Article 1 paragraph 2 of the current Regulation (which remain unchanged), a new combination of criteria will thus apply to such merger cases. Pursuant to Article 1 paragraph 3 of the reviewed Regulation, in 1998, concentrations will also have to be notified to the Commission where (a) all the undertakings concerned achieve a combined aggregate worldwide turnover of more than ECU 2500 million; and (b) in each of at least three Member States, a combined aggregate turnover exceeding ECU 100 million. Further provisions in Article 1 paragraph 3 state that a Community dimension applies where (c) in each of the three Member States included for the purpose of (b), each of at least two of the undertakings concerned achieve an aggregate turnover exceeding ECU 25 million; and (d) each of at least two of the undertakings concerned achieve an aggregate Community-wide turnover of more than ECU 100 million. Finally, the 'two-thirds rule' laid down in Article 1 paragraph 2 will also apply to these new criteria.

In the Amending Regulation the Council approved other important modifications aiming at an improvement of merger control proceedings in order to pursue a reduction of the constraints on the undertakings and to simplify the implementation of the control. The amendments seek to ensure that the procedures and deadlines foreseen by the Merger Regulation will apply to every joint venture, provided that they perform on a lasting basis all the functions of an autonomous economic entity. For cooperative joint ventures, an appraisal under the criteria of Article 85 of the Treaty will also take place at the same time as the dominance test. Furthermore, the possibility for the merging parties to enter into commitments during the first stage of examination will be explicitly foreseen. In the event that such commitments will form

the basis for a clearance decision, the first phase will be extended to six weeks, in order to facilitate the assessment of the adequacy of the proposals by the Commission in liaison with the Member States. Additional modifications provide for the simplification of the conditions for a referral to the competent authorities of the Member States is also noteworthy. Under Article 9 (b), a case will be referred on request from a Member State, where the affected market does not form a substantial part of the common market. Having concluded this review, the Commission is now in the process of updating the implementation Regulation No 3384/94, the Form CO and the interpretative communication.

DECISIONS UNDER ARTICLE 8 OF THE REGULATION

Blokker / Toys 'R' Us

On 26th June, the Commission decided that the acquisition by Blokker in February 1997, of the "mega" stores operated in The Netherlands by Toys 'R' Us would lead to the strengthening of Blokker's dominant position in the Dutch market of specialised toy outlets and, therefore, was incompatible with the common market. Blokker, one of the major retail operators in The Netherlands, is mainly active in the retail trade of household articles, toys and other products. Toys 'R' Us, one of the world's largest toy retailers, became active on the Dutch market in 1993.

The detailed investigation was opened following a request from the Dutch government under Article 22 of the Merger Regulation (cf. Competition Newsletter of Spring 1997). Under this provision and contrary to the normal procedures under the Merger Regulation, the implementation of the transaction is not suspended during the examination. For this reason, the same decision under Article 8 of the Regulation, required Blokker to divest the Toys 'R' Us stores to an independent third party unconnected to the Blokker group. While this order was designed to ensured that effective competition would be restored on the market, the divestiture process was also intended to optimise the possibility for the Toys "R" stores to be sold to a third party.

The relevant market in this case is the market for retail outlets which sell a broad assortment of toys throughout the year in The Netherlands. The investigation concluded that prior to the acquisition of the Dutch Toys 'R' Us stores, Blokker already had a dominant position on the market of specialised toy outlets. Blokker's dominance results from its significant market share (almost four times larger than that of its nearest competitor) and the substantial advantage it enjoys by operating different retail formulae, thus placing Blokker in a gatekeeper position vis-à-vis suppliers with regard to access to the retail market. Although the operation led only to a small increase in market share, the Commission considered that the stores and the Toys 'R' Us concept have considerable market potential, in particular within the Blokker group. Moreover, through the addition of the Toys 'R' Us sales formula to the existing Blokker formats, the latter would be able to obtain access to the important market segment of large-scale suburban retailing in which only Toys 'R' Us is active. Therefore, the Commission concluded that the operation strengthened Blokker's dominant position.

The divestiture order, based on certain proposals which the parties offered in the course of the proceedings, includes the obligation to start, as soon as practical, negotiations with interested third parties with a view to sell a majority shareholding in the Dutch Toys 'R' Us business to an independent undertaking. The acquirer must be unconnected to the Blokker group and be able to maintain and develop the Dutch Toys 'R' Us stores as a viable and active competitor to the Blokker group. Nevertheless, the Commission accepted that Toys 'R' Us and Blokker would each retain a minority shareholding in the Toys 'R' Us business (not exceeding 20 % each) in order to demonstrate their confidence in the business and to ensure its development into a viable company. However, after a certain period of time or in any event as soon as desired by the interested third party, Blokker shall completely cease its presence in the Toys 'R' Us business.

Following this decision, effective competition can be restored on the market for specialised toy outlets in The Netherlands, while optimising the possibility for a

continued presence of the Toys 'R' Us stores on the Dutch market.

Anglo American Corporation / Lonrho

After the prohibition decision of 24th April 1996 in the case IV/M.619 - Gencor/Lonrho, a decision under Article 8 was applied for the second time to the markets for platinum group metals. The first operation was rejected by the Commission, since it would have created a position of duopolistic dominance in the markets for platinum and rhodium (cf. Competition Newsletter vol.2 - n.2). This second case was notified in 1996, as Anglo American Corporation (AAC) acquired de facto control over Lonrho within the meaning of the Merger Regulation, by way of purchase of a shareholding amounting to 28%. The Commission decided to initiate a detailed investigation in December 1996 (cf. Competition Newsletter of Autumn/end 1996), since serious concerns arose due to the fact that both Anglo and Lonrho control platinum mines.

The investigation came to the conclusion that the companies' market shares, their low-cost reserves and the likely decrease of Russia's market position in the future, would have led to a combined Anglo/Lonrho having an estimated world market share for platinum production in excess of 60% in a few years' time. Despite the relatively small size of the parties' operations in platinum business relative to the size of their overall activities, the Commission was mindful of the importance of platinum as a raw material for catalysts. Therefore, it considered as appropriate to require a reduction of AAC's shareholding in Lonrho to less than 10%, in order to remedy the adverse effect on competition in the markets for platinum group metals. AAC was not required to sell its shares immediately in order to allow it time to negotiate a sale. However it had to transfer the shares to a trustee in the intervening period, during which time the shares could only be voted with the prior approval of the Commission. After AAC agreed to this solution, the Commission decided to clear the case under Article 8(2) of the Regulation, on 23th April of 1997.

A more obvious solution consisting of a disposal of Lonrho's platinum operations was excluded because Lonrho was unable to sell its platinum business to any company other than Gencor, which would not have been acceptable, given the previous prohibition decision in the Gencor / Lonrho case. However, in the event that Lonrho would sell its platinum business to a third party, unconnected to Gencor or Anglo, or should Gencor's application to the Court of First Instance be upheld, resulting in a sale of Lonrho's platinum division to Gencor, then Anglo's shares in Lonrho would be returned by the trustee.

This decision maintains the strict application of European competition rules to the platinum sector and permits the three South African platinum producers - Anglo, Lonrho and Gencor - to continue to exist separately. As regards the impact of the agreement on the Commission's application of merger control policy, it should be noted that this decision was the first occasion on which the Commission has required the transfer and possible disposal of shares in a quoted company as a remedy to its competition concerns. Moreover the decision reinforces the Commission's consistent approach that a minority shareholding in a company may allow its holder to control the target by controlling a majority of votes at shareholders' meetings.

British Telecom / MCI

The second decision under Article 8(2) of the Regulation was taken on 14th May, four months after the launch of a "2nd phase" in depth-investigation. The Commission's initial inquiry gave rise to serious concerns with respect to the positions of both British Telecom (BT), the UK-based supplier of telecommunications services and equipment and MCI, the US-based diversified communications company in the markets for international voice telephony services on the UK-US route and for audioconferencing services in the UK (cf. Competition Newsletter vol.3 - n.1).

After investigation the Commission concluded that, given the current capacity shortage in existing international transmission facilities between the UK and the US, as well as the parties' significant capacity entitlements on existing transatlantic submarine cables, the merger would have created or reinforced a dominant position in the market for

international voice telephony services on the UK-US route, since for technical reasons satellites do not currently provide a satisfactory substitute that would be likely to compete with cable in the supply of international voice telephony services at the required quality and performance standards. As a result of the merger, BT/MCI would have been able to carry UK-US traffic over its own end-to-end international transmission facilities, thereby internalising the payments which any other telecoms operator would have had to make to a foreign correspondent carrier in order to have outgoing international calls terminated in the destination country. Furthermore, the combination of BT's and MCI's cable capacities would have allowed the merged entity to further restrict or control the opportunities of entry faced by the new prospective operators which were granted an international facilities license in the UK.

The impact of the merger on the UK market for audioconferencing services was also carefully examined, taking into account both the parties' very high combined market share (over 80%) as well as the specific features of this market, where newcomers experience difficulties in their attempt to establish themselves on the market by challenging the reputation and proven record of both BT and MCI. For these reasons the Commission concluded that the merger was likely to create or reinforce a dominant position in the UK audioconferencing market.

However, the Commission considered that the undertakings proposed by the parties during the proceedings were sufficient to address the competition concerns envisaged in the above mentioned markets and therefore declared the merger compatible with the common market, subject to the condition of the parties' full compliance with the following commitments, which must be monitored by the Commission. The parties agreed (i) to make available to new operators in the UK, without delay and at reasonable prices all of their current and prospective overlapping capacity on the UK-US route resulting from the merger on the transatlantic cable; (ii) to sell BT's capacity which is currently leased to other operators on the UK-US route at their request and on reasonable terms and conditions; (iii) to sell to other operators, at their request and without delay, Eastern end matched half circuits currently owned by BT to enable them to provide international voice telephony services on the UK-US route on an end-to-end basis; and (iv) to arrange for the divestiture of MCI's audioconferencing business in the UK.

Boeing / McDonnell Douglas

After an intensive five-month investigation, the Commission found that Boeing, a fully integrated civil and military aerospace company, already had a dominant position in the world-wide market for large commercial jet aircraft. Boeing's existing dominance stems from its very high market share (64% world-wide), the size of its fleet in service (60% world-wide), and the fact that it is the only manufacturer that offers a complete family of aircraft. This position cannot be challenged by potential new entrants, given the extremely high barriers to entry in this hugely capital intensive market. Boeing's dominance was further demonstrated by the recent conclusion of long-term exclusive supply deals with three of the world's leading carriers, American, Delta and Continental Airlines, who would have been unlikely to lock themselves into twenty year agreements with a supplier who did not already dominate, and seemed likely to continue to dominate, the large jet aircraft market.

The most immediate reinforcement of Boeing's dominance in large commercial jet aircraft would arise through Boeing's increase in overall market share (in terms of current order backlog) from 64% to 70%. Moreover, Boeing could add to its already existing monopoly in the largest wide-body aircraft segment (the segment of the Boeing 747) a further monopoly in the smallest narrow-body segment.

The Commission recognised that Douglas Aircraft Company (DAC, the commercial aircraft division of MDC) had suffered a decline in its business performance in recent years. Nevertheless, Boeing itself declared that it would be able to benefit from DAC's remaining competitive potential. The acquisition of such an advantage constitutes a strengthening of a dominant position under EU law.

Another vital element in the strengthening of Boeing's dominance would result from the large increase of Boeing's customer base, from 60% to 84% of the current world-wide fleet in service. By ensuring preferential access to this customer base, Boeing would increase opportunities for future sales through significant leverage over existing MDC aircraft users (through customer support services for example). Closer ties with those airlines that currently use MDC aircraft would give Boeing the opportunity to better identify and influence customer needs, or to induce them to change their current MDC aircraft for Boeing models. In particular, Boeing could use this leverage to induce airlines to enter into long term exclusive deals. Boeing has already entered into exclusive agreements with airlines which are the first, third and fourth largest operators of MDC aircraft. Prior to these agreements, exclusivity deals of this kind had never been used in this industry. The proposed merger would further enhance Boeing's capability to enter into similar exclusive agreements in the future, and could create a knock-on effect on other large airlines which could be induced to enter into similar deals.

Although the Commission's investigation did not lead it to conclude that the proposed merger would create or strengthen dominance in the defence or space sectors, the Commission considers that Boeing's dominant position on the civil aircraft market would be significantly strengthened as a result of the addition of MDC's defence and space business. The acquisition of the world's number two defence manufacturer and leading manufacturer of military aircraft would considerably enhance Boeing's access to publicly-funded R&D and intellectual property. The large increase in Bocing's dcfcncc-related R&D would confer an increase in know-how and other general advantages as well as an increase in the benefits obtained from the transfer of military technology to commercial aircraft. The combination of Boeing's and MDC's know-how and patent portfolio would be a further element for the strengthening of Boeing's dominance. Moreover, the overall combination of both the civil and defence and space activities of the two companies would increase Boeing's bargaining power vis-à-vis suppliers, enabling Boeing to leverage its relationships with suppliers to the detriment of its competitors.

Boeing has proposed remedies, with a view to resolving the reinforcement of the dominant position resulting from the combination of the competitive potential of DAC with Boeing's dominant position, from the increased opportunity for exclusive contracts, which have a foreclosure effect on the market, and from the overall effects ("spillover") arising from military operations, in particular research and development, on large commercial jet aircraft activities. As far as the first point is concerned, the Commission's investigations revealed that no existing aircraft manufacturer was interested in acquiring DAC from Boeing, nor was it possible to find a potential entrant to the commercial jet aircraft market who might achieve entry through the acquisition of DAC. In view of the impossibility of a divestment of DAC, Boeing commits itself to maintain DAC as a separate legal entity for a period of ten years and to supply to the Commission reports, publicly available and certified by an independent auditor, on DAC's results. Moreover, Boeing proposes to limit the leverage effect created by MDC's existing fleet, by committing itself not to link the sale of Boeing aircraft to its access to the DAC fleet in service. As far as exclusive deals are concerned, Boeing commits itself to refrain from further such deals until 2007, and not to enforce the exclusivity rights in the existing contracts. On the overall effects, Boeing has offered to concede to competitors non-exclusive licenses for patents, together with underlying know-how, held by Boeing arising from publicly-financed R&D. Moreover, Boeing commits itself to provide to the Commission, for a period of 10 years, an annual report on "non-classified" aeronautical projects in which it participates, and which benefit from public financing. These commitments will increase transparency of links between civil and military activities. Finally Boeing commits itself not to profit from its relationships with suppliers in order to obtain preferential treatment. This package of remedies, taken as a whole, addresses the competition problems identified by the Commission, and the Commission

has therefore decided to declare the operation compatible with the common market.
In accordance with the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, the European Commission and the Federal Trade Commission carried out consultations. The Commission took into account concerns expressed by the U.S. Government relating to important US defence interests. The Commission took the US Government's concerns into consideration to the extent consistent with EU law, and limited the scope of its action to the civil side of the operation, including the effects of the merger on the commercial jet aircraft market resulting from the combination of Boeing's and MDC's large defence and space interests.

Finally, the Commission reached its decision after a rigorous analysis based on EU merger control law, and in accordance with its own past practice and the jurisprudence of the European Court. The Commission stated that it expected Boeing to comply fully with its decision, in particular as regards the commitments made by Boeing to resolve the competition problems identified by the Commission. Therefore, the Commission will strictly monitor Boeing's compliance with these commitments. The EU Merger Regulation allows for appropriate measures to be taken by the Commission in the event of non-compliance by Boeing.

IMPORTANT DECISIONS UNDER ARTICLE 6 OF THE REGULATION

Coca-Cola / Carlsberg

On 2nd May, the Commission decided to initiate a detailed investigation into the creation of a joint venture and the transfer of assets between The Coca-Cola Company and Carlsberg. In the first stage, the operation only affects Denmark and Sweden but will be extended, in the future, to cover the whole of the Nordic and Baltic regions. The operation concerns an amalgamation of the companies' soft drinks activities in these regions, as well as certain licence agreements and a distribution joint venture with the Swedish brewer Falcon, which is jointly owned by Carlsberg and the Finnish brewing company Sinebrychoff.

In a recent decision, the Commission defined a relevant product market for cola flavoured carbonated soft drinks (colas), distinct from other soft drinks (cf. Competition Newsletter of Spring 1997). In this case, the market shares of the parties are more than 60% in the Danish cola market, more than 50% in an overall Danish carbonated soft drink market, more than 40% in non-cola soft drinks in Denmark, and above 70% in the Swedish cola market.

Given in particular the high market shares, the Commission did not exclude after preliminary inquiry, that the operation would lead to the strengthening of a dominant position in the Danish cola market, and the creation of dominant position in non-cola soft drinks in Denmark. Furthermore, detailed investigation was deemed necessary to verify whether a dominant position would be reinforced in the Swedish cola market.

Because of concerns that the merged company would have an adverse effect on competition in the Danish and Swedish soft drink markets, the Commission therefore decided to initiate the "second phase" four month investigation into the effects of the operation. A final decision is expected by the 12th of September.

Guinness / Grand Metropolitan

On 16 May, Guinness PLC ("Guinness") and Grand Metropolitan PLC ("GrandMet") notified their intention to merge all of their business activities into a new entity. Guinness's principal business activities are in the distilling and marketing of Scottish whisky ("Scotch") and other spirits, and the brewing and marketing of beer. Grand Met is a UK group with a portfolio of interests in the food and beverages sector. By sales volume GrandMet and Guinness are respectively the first and second largest suppliers of spirits in the world, and the second and third largest operators in the EU. Each party owns a number of leading international brands. The new company's worldwide turnover would be over twice that of its two next largest competitors (Seagram of Canada and Allied Domecq of the UK).

On 6th June the Commission decided to continue its investigation into the proposed merger, which would result in the creation of the world's largest company in the alcoholic beverages industry. The Commission expressed several concerns, including the significant overlaps resulting from the proposed merger, and the large portfolio of leading brands which would be brought together. The Commission found that the merged entity would result in significant overlaps in the spirits sector, with combined market shares of over 40% in the whiskey sector in certain European national markets. Furthermore the parties would own such a share of whisky distilleries in Scotland that they might be able to influence the market position of their competitors, as well as their pricing strategies. The merger could also result in significant overlaps in white spirits, in particular gin and vodka, in some national markets.

The Commission was also concerned that the merger would provide the parties, due to their ownership of a significant number of leading brands across a range of different spirit categories, with such a portfolio of 'must stock' brands as to provide a significant reinforcement of their bargaining position with their customers, whether wholesalers or retailers. It was not excluded at this stage that the merger would give rise to a dominant position in one or more of the markets concerned.

With its decision under Article 6(1)(c), the Commission entered a second-phase examination period, until 27 October 1997, in which to complete its investigation and take a final decision on the case.

Lyonnaise-des-Eaux / Suez

In May 1997, the French groups Lyonnaise des Eaux and Compagnie de Suez proposed to merge their activities into a new entity, which becomes one of France's largest industrial groups, notably active in the utility sector.
After preliminary examination, the Commission concluded that the transaction did not rise any competitive concerns in most of the numerous markets concerned since, either only one of the merging parties was active on the respective markets (such as industry, mining, finance for Suez; or media for Lyonnaise), or both groups were active on distinct geographic markets (such as energy, water supply, cable TV), or the effect on the markets remained limited (such as on construction, property development, engineering or others).
However, the Commission found that the impact of the concentration in the sector of waste management in Belgium was likely to raise serious doubts, in spite of the minor interest of the parties in this market, as compared to their overall activities. The Commission concerns, related to the treatment of industrial waste, household garbage disposal and as industrial cleaning services, would have justified the opening of an in-depth investigation. However the parties proposed undertakings during the first phase of examination, which were accepted by the Commission, as they offered clear structural remedies to address the identified competition problems.

Lyonnaise des Eaux on the one hand committed to divest most of its interests in the sector of disposal and cleaning services in Belgium. On the other hand, the parties agreed that either Suez or Lyonnaise des Eaux would sell its interests in the treatment of industrial waste in Belgium. The decision provides further for the means for a rapid divestiture, under the monitoring of the Commission.

REFERRAL UNDER ARTICLE 9 OF THE REGULATION

Rheinmetall / British Aerospace / STN Atlas

This case was subject to both a partial referral limited to the affected markets for systems leadership for armoured vehicles, and a clearance under Article 6(1)(b) of the Regulation, for the remaining aspects of the concentration. Rheinmetall AG, a German holding company active in machine tools, civil electronics, automobile and military technology, proposed to acquire - together with the UK company British Aerospace Plc - joint control over STN Atlas Elektronik GmbH (STN). The German company STN manufactures products for marine technology and naval electronics, as well as systems and simulation technology.

In the context of the competitive assessment the Commission

examined the markets for systems leadership for armoured vehicles, marine technology, systems technology and short range air defence systems. With the exception of the markets for systems leadership, there were no geographic overlaps, no market share additions and no vertical foreclosure effects on the markets mentioned. All relevant product markets are markets for military technology which the Commission has traditionally characterized as national markets, because such markets have traditionally only been accessible to a marginal extent to foreign competition.

The German competition authority based its request for the referral of the case on the concern that the concentration threatened to create a dominant position of Rheinmetall as a systems leader for armoured vehicles on the German market. Integration of STN into the Rheinmetall group would give Rheinmetall access to such resources as command, control and information systems which is crucial for the development and construction of armoured vehicles. In the course of its investigation, the Commission received complaints from market participants which expressed concerns similar to those of the Bundeskartellamt. Given the fact that the risk of the creation of a dominant position of Rheinmetall on this circumscribed market in Germany could not be eliminated, the Commission decided to refer the case to the Bundeskartellamt as far as this aspect of the operation is concerned.

At the same time the Commission reached the conclusion that, apart from these markets, the proposed concentration would not lead to the creation or strengthening of a dominant position and therefore declared it compatible with the common market with the exception of the aspects mentioned.

Press releases

IP/97/644 [1997-07-14]
Commission authorises a joint venture between Cable & Wireless and Maersk Data

IP/97/630 [1997-07-09]
union Bank - Nimit International SA merger : not within the scope of the merger Regulation says the European Commission

IP/97/606 [1997-07-03]
The Commission authorises the creation of a joint-venture by Rhône-Poulenc and Merck

IP/97/599 [1997-07-03]
Commission approves joint venture between Munich Re and three French insurance companies

IP/97/592 [1997-07-01]
Commission clears acquisition of the German company SPAR Handels AG by the French group ITM

IP/97/591 [1997-07-01]
Commission approves the acquisition of joint control of Crediop by the banking groups Dexia and San Paolo

IP/97/575 [1997-06-27]
Commission authorises the acquisition by Ferrostaal AG of Sole Control of DSD Dillinger Stahlbau GmbH

IP/97/574 [1997-06-27]
Commission approval for the acquisition of TH. Goldschmidt AG by Viag

IP/97/557 [1997-06-24]
Commission clears the acquisition by ICI of the Specialty Chemicals Division of Unilever

IP/97/556 [1997-06-24]
Commission authorises the acquisition by Deutsche Bank and Dresdner Bank of joint control of ESG EDV-Service-Gesellschaft für Hypothekenbanken

IP/97/548 [1997-06-23]
Commission opens in depth enquiry on Guinness/Grand Metropolitan merger

IP/97/547 [1997-06-20]
The Commission authorises the acquisition of joint control by Bank of America and General Electric on the Spanish Company Cableuropa

IP/97/542 [1997-06-19]
Commission clars acquisition of APV by SIEBE

IP/97/541 [1997-06-19]
Commission approves the creation of TARGOR, a joint venture between HOECHST and BASF for polypropylene

IP/97/525 [1997-06-17]
The Commission approves a concentration in the sectors of retail grocery and "do it yourself" in Italy

IP/97/519 [1997-06-13]
Commission clears the acquisition by Abeille Vie of sole control of Société d'Epargne Viagère and Sinafer

IP/97/518 [1997-06-13]
The Commission clears the creation of a joint venture between Vallourec and Timet

IP/97/517 [1997-06-12]
Commission approves Stet holding in Mobilkom Austria

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IP/97/516 [1997-06-12]
The Commission clears acquisition of Hoechst AG's specialty chemicals business by Clariant

IP/97/505 [1997-06-10]
The European Commission authorises the acquisition of AST by SAMSUNG byt considers imposing a fine for late filing

IP/97/498 [1997-06-06]
Commission clears acquisition by TYCO of ADT in the fire and security alarm sector

IP/97/496 [1997-06-05]
Commission gives green light to merger between Compagnie de Suez and Lyonnaise des Eaux

IP/97/494 [1997-06-05]
The Commission approves the acquisition of the sole control by Worms & Cie of the Group Saint-Louis

IP/97/488 [1997-06-04]
The Commission clears the acquisition of 21% of Vallourec by Mannesmannröhren-Werke and the establishment of a joint venture combining their seamless tube activities

IP/97/476 [1997-06-03]
Hochtief and Deutsche Bank withdraw their notification to the Commission regarding their acquisition of joint control over Philipp Holzmann

IP/97/417 [1997-05-16]
The Commission authorises the joint venture between Warner Bros, Lusomundo and Sogecalge to develop multiplex cinemas in Spain

IP/97/406 [1997-05-14]
The Commision clears the BT-MCI merger subject to full compliance with specific undertakings submitted by the parties

IP/97/400 [1997-05-13]
"Our analysis of the Boeing-Mc Donnell Douglas file is conducted strictly on the basis of the European Merger Regulation, and nothing else" Mr Karel van Miert says

IP/97/398 [1997-05-13]
Commission clears the creation of a joint venture in the consumer credit sector

IP/97/392 [1997-05-06]
Commission clears the acquisition by Tesco of ABF's businesses in the Irish retail sector

IP/97/385 [1997-05-06]
The Commission adopts revised fuidelines for state aid in the maritime transport sector

IP/97/386 [1997-05-05]
European Commission initiates detailed investigation into the creation of a joint venture between the Coca-Cola Company and Carlsberg

IP/97/381 [1997-05-02]
The Commission approves the acquisition by Tenneco of the Protective Packaging and Flexible Packaging Divisions of KNP BT

IP/97/376 [1997-04-30]
Commission authorises Siemens' acquisition of holding in HUF

IP/97/353 [1997-04-25]
The Commission refers the case Rheinmetall/British Aerospace/STN Atlas to the Bundeskartellamt as far as the affected markets for systems leadership for armoured vehicles are concerned and otherwise clears the planned concentration

IP/97/352 [1997-04-25]
Commission clears franchise of UK privatised Thameslink Railway Network

IP/97/345 [1997-04-24]
The Commission approves the acquisition of joint control of J.M. Voith GmbH by Deutsche Bank and Commerzbank

IP/97/338 [1997-04-23]
European Commission clears Anglo American's purchase of Lonrho shares subject to the stakes being reduced to less than 10%

IP/97/329 [1997-04-22]
Commission approves the acquisition of sole control of Mannesmann Hoesch Präzisrohr GmbH by Mannesmannröhren-Werke

IP/97/325 [1997-04-18]
Kesko Oy fulfills Commission order to divest the daily consumer goods business of Tuko Oy

IP/97/318 [1997-04-17]
Commission approves joint venture creating second national telecommunications operator in Switzerland

IP/97/288 [1997-04-10]
The Commission authorises the acquisition of control by Rheinbraun Brennstoff GmbH of Agenzia Carboni S.r.l.

IP/97/268 [1997-04-03]
Commission approves joint-venture between Cereol and Ösat

IP/97/267 [1997-04-03]
Commission declares RSB PSG/TENEX nuclear forwarding joint venture not to be a concentration under the EC Merger Regulation

LIBERALISATION & STATE INTERVENTION

Application of Article 90 EC
Main developments between 1st April and 15th July 1997

Libéralisation et interventions étatiques Application de l'article 90 du Traité CE

Résumé des développements les plus récents, premier semestre 1997

José-Luis BUENDÍA SIERRA, DG IV-A-1

LE PROJET DE TRAITÉ D'AMSTERDAM ET LA POLITIQUE COMMUNAUTAIRE DE CONCURRENCE

Le projet de Traité d'Amsterdam, tel que adopté par la Conférence Inter-Gouvernamentale, contient plusieurs textes qui se réfèrent aux rélations entre les services publics nationaux et les règles communautaires de concurrence. Il s'agit surtout du nouvel article 7D sur les services d'intérêt économique général. Cet article est accompagné d'une déclaration *ad hoc*, d'un protocole sur le Service Public de la radiodiffussion et d'une déclaration sur les institutions publiques de crédit en Allemagne. Ces textes sont analysés par Mr. VAN MIERT dans un article publié dans ce même numéro du Newsletter.

Services d'intérêt économique général

Un nouvel article 7D concernant les "services d'intérêt économique général" et une déclaration dans l'Acte finale ont été adoptés.

Article 7D

"Sans préjudice des articles 77, 90 et 92, et eu égard à la place qu'occupent les services d'intérêt économique général parmi les valeurs communes de l'Union ainsi qu'au rôle qu'ils jouent dans la promotion de la cohésion sociale et territoriale de l'Union, la Communauté et ses Etats membres, chacun dans les limites de leurs compétences respectives et dans les limites du champ d'application du présent traité, veillent à ce que ces services fonctionnent sur la base de principes et dans des conditions qui leur permettent d'accomplir leurs missions."

Déclaration à insérer dans l'Acte final

"Les dispositions de l'article 7 D relatives aux services publics sont mises en oeuvre dans le plein respect de la jurisprudence de la Cour de justice, en ce qui concerne, entre autres, les principes d'égalité de traitement, ainsi que de qualité et de continuité de ces services."

Service Public de radiodiffusion

Le protocole interprétatif suivant a été adopté par la conférence:
"LES HAUTES PARTIES CONTRACTANTES,

"CONSIDERANT que la radiodiffusion de Service Public dans les Etats membres est directement liée aux besoins démocratiques, sociaux et culturels de chaque société ainsi qu'à la nécessité de préserver le pluralisme dans les médias,

"SONT CONVENUES des dispositions interprétatives ci-après, qui sont annexées au traité instituant la Communauté européenne :

"Les dispositions du présent traité sont sans préjudice de la compétence des Etats membres de pourvoir au financement du Service Public de radiodiffusion dans la mesure où ce financement est accordé aux organismes de radiodiffusion aux fins de l'accomplissement de la mission de Service Public telle qu'elle a été conférée, définie et organisée par chaque Etat membre et à condition que ce financement n'altère pas les conditions des échanges et de la concurrence dans la Communauté dans une mesure qui serait contraire à l'intérêt commun, étant entendu que la réalisation du mandat de ce Service Public doit être prise en compte."

Etablissements de crédit de droit public en Allemagne

La déclaration suivante a été adoptée par la Conférence:

"La conférence prend connaissance de l'avis de la Commission, qui estime que les règles de concurrence en vigueur dans la Communauté permettent de prendre pleinement en compte

les services d'intérêt économique général assurés en Allemagne par les établissements de crédit de droit public, ainsi que les avantages qui leur sont accordés en compensation des coûts inhérents à ces prestations. A cet égard, cet Etat membre demeure compétent pour déterminer comment il donne aux collectivités territoriales les moyens de remplir leur mission, qui est d'offrir, dans les régions qui relèvent de leur juridiction, une infrastructure financière efficace couvrant l'ensemble du territoire. Ces avantages ne doivent pas porter atteinte aux conditions de concurrence dans une mesure qui dépasse ce qui est nécessaire à l'exécution des missions particulières et qui va à l'encontre des intérêts de la Communauté."

Appréciation d'ensemble

Ainsi qu'il découle de l'analyse réalisée par Mr. VAN MIERT, les résultats de la CIG semblent plutôt satisfaisants pour la politique de concurrence [11] . Les textes adoptés confirment dans une très large mesure les règles de fond existantes et les pouvoirs de contrôle de la Commission. Ceci, ensemble avec le fait que l'attachement communautaire aux objectifs d'intérêt général ait été davantage explicité, implique que les objectifs que la Commission s'était marqué dans sa communication sur les services d'intérêt général en Europe ont été largement atteints.

Média

Décision de l'article 90.3 adressée à la Belgique concernant le monopole de publicité conféré par la Communauté flamande à la chaîne de télévision VTM

La Commission a adopté le 26 juin une décision qui déclare incompatible avec les articles 90 et 52 du Traité CE le droit exclusif conférée en matière de publicité télévisée à la chaîne privée VTM. Ce droit exclusif avait été accordé à VTM notamment par décisions de l'exécutif flamand de novembre 1987 et décembre 1991, sur la base des dispositions de la législation flamande sur les média, qui limitent à une seule société non publique le droit de s'adresser à l'ensemble de la Communauté flamande et de diffuser de la publicité.

La procédure de la Commission a étré engagée à la suite d'une plainte déposée par la chaîne VT4 Ltd., organisme de télévision privée anglaise, qui fait partie du groupe audiovisuel Scandinavian Broadcasting System. Par arrêté de janvier 1995 du Ministre des affaires culturelles, VT4 s'est vu refuser l'accès au réseau cablé flamand, en raison du monopole de VTM et du fait que pour les autorités flamandes VT4 ne serait qu'un organisme flamand qui se serait établi au Royaume-Uni afin de se soustraire à l'application de la législation de la Communauté flamande. Le Conseil d'Etat a cependant suspendu l'arrêté à la demande de VT4, qui a pu ainsi commencer à distribuer son programme sur le réseau de télédistribution en Flandre et à Bruxelles.

La décision de la Commission estime que l'octroi à VTM du monopole de la publicité télévisée destinée au public flamand constitue une violation de l'article 90 en liaison avec l'article 52 du Traité dans la mesure où ce monopole équivaut à exclure tout opérateur originaire d' un autre Etat membre, qui voudrait s'installer en Belgique afin de transmettre sur le réseau de télédistribution belge des messages de publicité télévisée destinés au public flamand. Le fait que les dispositions en cause s'appliquent indistinctement tant à l'égard des entreprises autres que VTM, établies en Belgique, qu'à l'égard des entreprises originaires d'autres Etats membres n'est pas de nature à exclure le régime préférentiel dont bénéficie VTM du champ d'application de l'article 52 du Traité.

La Commission estime que dans la présente affaire, il n'existe pas de raisons impérieuses d'intérêt général, au sens de la jurisprudence de la Cour, telles que des objectifs de politique culturelle qui pourraient justifier le monopole de VTM.

Les objectifs de politique culturelle invoqués par l'exécutif flamand (maintien du pluralisme dans la presse écrite flamande via les recettes publicitaires de VTM, dont les actionnaires sont des éditeurs de quotidiens flamands) ne peuvent être poursuivis par des moyens qui reviennent à éliminer toute concurrence et qui, de surcroit, ne donnent aucune garantie quant à l'affectation des recettes publicitaires au soutien des journaux.

[11] Voir Karel VAN MIERT : "La Conférence intergouvernementale et la politique communautaire de concurrence", pp. 1 à 5 de ce numéro.

En effet, ces recettes, qui sont réparties entre les actionnaires de la presse écrite en fonction du pourcentage qu'ils détiennent dans le capital de VTM, pourraient tout aussi bien être affectées à des activités dépourvues de toute finalité culturelle. En outre, il n'est pas exclu que le capital de VTM puisse se concentrer dans les mains d'un seul actionnaire au détriment de la préservation du pluralisme dans le secteur des médias. Ainsi, alors qu'à l'origine VTM était composée de 9 actionnaires, seuls trois groupes, à savoir Persgroep NV, Roularta Mediagroep et les filiales belges du groupe néerlandais VNU, demeurent à l'heure actuelle.

Il est à noter qu'en raison de cette évolution du marché les autorités belges admettent que des motifs d'intéret général ne peuvent plus à l'heure actuelle être invoquées en faveur de VTM.

La décision de la Commission permet définitivement à VT4 , ainsi qu'à d'éventuels autres opérateurs de la Communauté de s'installer ou créer un établissement secondaire en Flandre afin de transmettre sur le réseau de télédistribution belge, des messages de publicité télévisée destinés au public flamand.

Télécommunications

La directive de la Commission du 13 mars 1996 relative à la réalisation de la pleine concurrence sur le marché des télécommunications , fondée sur l'article 90.3, a fixé la date du 1er janvier 1998 pour l'introduction de la concurrence dans les services de téléphonie vocale et la fourniture d'infrastructures (sous réserve des périodes additionnelles accordées aux Etats membres avec des réseaux moins développés ou de très petits réseaux).

En parallèle, le Parlement et le Conseil sont en train de finaliser un premier train de mesures d'harmonisation visant à créer un marché européen fondé sur des principes communs pour l'accès aux réseaux et aux services, un environnement réglementaire commun et des normes harmonisées pour les services et les technologies: le 10 avril 1997, le Conseil et le Parlement européens ont adopté une directive établissant un cadre commun pour les régimes de licences. Une directive précisant les principes applicables à l'interconnexion des réseaux des opérateurs et à l'accès des fournisseurs de services aux réseaux est en voie de publication tandis que les touches finales sont apportées pour définir le service téléphonique universel qui sera garanti sur toute l'étendue de la Communauté. Ce cadre est complémenté par des règles sur la protection des données et le respect de la vie privée.

L'obligation faite aux États membres de libéraliser leur marché est renforcée par la discipline imposée par l'accord de l'Organisation mondiale du commerce sur les services de télécommunications de base que les États membres ont signé le 15 février de cette année. Aux termes de cet accord, les obligations générales du GATS (accord général sur le commerce des services) s'appliqueront à toute fourniture de services de télécommunications publics et privés, et tous les États membres seront soumis aux règles et procédures de règlement des différends de l'OMC.

Rapport sur la mise en oeuvre du cadre réglementaire des télécommunications dans l'UE

La Commission européenne a approuvé le 29 mai un rapport sur l'état de la mise en oeuvre par les États membres du cadre réglementaire des télécommunications. Avant la libéralisation totale, prévue pour le 1er janvier 1998, du marché des télécommunications de l'Union, la Commission veut s'assurer que les États membres ont satisfait aux obligations que leur imposent la législation de l'Union européenne et l'accord de l'Organisation mondiale du commerce sur les services de télécommunications de base. Le tableau qui se dégage est plutôt encourageant. Bon nombre d'États membres ont transposé l'ensemble du cadre réglementaire ou l'auront fait pour la fin de l'année 1997. Dans un autre groupe important de pays, les grands principes seront transposés à cette date, mais l'indispensable droit dérivé devra encore être adopté.

La première priorité de la Commission, conformément au Traité, est de veiller à ce que la réglementation communautaire soit transposée complètement et correctement dans le droit national, et l'évaluation de cette transposition au stade actuel se fonde sur l'ampleur de cette transposition dans les États membres. Comme certains délais fixés dans ce cadre réglementaire ne sont pas encore échus, ce processus se poursuivra jusqu'à la fin de l'année 1997 et au-delà pour les États membres qui ont bénéficié d'une prolongation des délais. La prochaine étape consistera à s'assurer que les mesures transposées sont

appliquées correctement, c'est-à-dire qu'elles induisent une réorientation sur le marché et sur son fonctionnement. La Commission a également retenu un certain nombre d'aspects réglementaires qui ne figurent pas dans le cadre réglementaire, comme la sélection de l'opérateur, la transférabilité du numéro et l'accès à la boucle locale à des tarifs non amalgamés, mais qui donne une idée des progrès réalisés vers la libéralisation complète du marché. Il ressort de la réglementation de ces aspects dans certains États membres que la libéralisation est très avancée sur ces marchés.

Le rapport montre que de gros progrès ont été faits dans la transposition dans le droit national de l'ensemble complexe de règles qui forment le cadre réglementaire des télécom-munications. Cependant, des efforts considérables doivent encore être déployés pour que l'application de la réglementation nationale soit effective sur le marché. À cet égard, la Commission a fait état de son intention de surveiller activement la situation de manière à assurer l'accès aux marchés tout en préservant la qualité et la disponibilité des services au consommateur.

En procédant à l'évaluation de l'état de mise en oeuvre du cadre réglementaire, la Commission a tenu compte du fait que des États membres ayant des réseaux moins développés ou des très petits réseaux ont le droit, en application des directives en matière de concurrence, de demander une prolongation des délais de mise en oeuvre pour certaines échéances fixées pour la mise en oeuvre. La Commission, qui avait déjà l'année dernière accordé une prolongation à l'Irlande, a décidé d'accorder des prolongations au Portugal, au Luxembourg à la Grèce et à l'Espagne.

Octroi de périodes de mises en oeuvre additionnelles pour la libéralisation des télécommunications

Conformément à la demande du Conseil exprimée dans ses résolutions du 23 juillet 1993 et du 23 décembre 1994, les directives 96/2/CE et 96/19/CE de la Commission modifiant respectivement la directive 90/388/CEE en ce qui concerne les communications mobiles et personnelles et en ce qui concerne la réalisation de la pleine

État membre	obligation de la directive	date prévue dans la directive	demande	accordée
Irlande	+ libéralisation de la téléphonie vocale et des réseaux publics de télécommunications	1.1.1998	1.1.2000	1.1.2000
	+ suppression des restrictions à l'offre d'infrastructures alternatives			
	+ autorisation interconnexion internationale des réseaux mobiles	1.7.1996	1.7.1999	1.7.1997
		févr. 96	1.1.2000	1.1.1999
Portugal	+ libéralisation de la téléphonie vocale et des réseaux publics de télécommunications	1.1.1998	1.1.2000	1.1.2000
	+ suppression des restrictions à l'offre d'infrastructures alternatives			
	+ autorisation infrastructures propres réseaux mobiles	1.7.1996	1.1.1997	1.7.1997
	+ autorisation interconnexion internationale des réseaux mobiles	févr 96	1.1.1998	none
		févr 96	1.1.1999	1.1.1999
Grèce	+ libéralisation de la téléphonie vocale et des réseaux publics de télécommunications	1.1.1998	1.1.2003	31.12.2000
	+ suppression des restrictions à l'offre d'infrastructures alternatives	1.7.1996	1.7.2001	1.10.1997
Luxembourg	+ libéralisation de la téléphonie vocale et des réseaux publics de télécommunications	1.1.1998	1.1.2000	31.3.1998
	+ suppression des restrictions à l'offre d'infrastructures alternatives	1.7.1996	1.7.1998	1.7.1997
Espagne	+ libéralisation de la téléphonie vocale et des réseaux publics de télécommunications	1.1.1998	1.12.1998	1.12.1998

concurrence sur le marché des télécommunications, prévoyait que des périodes additionnelles de mise en oeuvre seraient accordées - en ce qui concerne certaines de leurs dispositions - à l'Irlande, l'Espagne, le Portugal, la Grèce ainsi qu'au Luxembourg.

Le 27 novembre 1996, la Commission avait ainsi déjà accordé de telles périodes additionnelles à l'Irlande. Au début de 1997, elle a continué son examen des demandes des autres Etats membres concernés et a également accordé des périodes additionnelles de mise en oeuvre le 12 février 1997 au Portugal, le 7 mai au Luxembourg, le 10 juin à l'Espagne et finalement le 18 juin à la Grèce. Le tableau suivant résume le contenu de ces 5 décisions.

Application de la décision de la Commission relative à la discrimination dans l'octroi des concessions GSM en Espagne

Le 18 décembre 1996 la Commission avait adopté une décision enjoignant l'Espagne de mettre fin à la distorsion de concurrence résultant du paiement initial de 85 milliard de ESP exigé du second opérateur GSM, Airtel Móvil, et auquel le premier opérateur, Telefónica (qui était à l'époque une entreprise publique), n'avait pas été soumis pour l'obtention de sa licence. Le 30 avril 1997, la Commission a donné son accord à la mise en oeuvre du paquet de mesures correctives envisagées par le Gouvernement espagnol pour mettre fin à cette distorsion. Les principales mesures de ce paquet sont le droit pour le second opérateur de s'interconnecter au réseau fixe de Telefónica sans charges jusqu'à un montant de 15 milliards de ESP, la prorogation de la durée de la licence d'Airtel Móvil de 15 à 25 ans, la libération anticipée et l'attribution à Airtel Móvil de 4,5 MHz additionnels dans la bande de fréquences de 900 MHz, et l'extension de la licence d'Airtel Móvil, sans paiement d'une nouvelle redevance, lui permettant d'opérer des service mobiles également dans la bande de fréquence DCS-1800.

Communication concernant la téléphonie sur Internet

Le 2 mai, la Commission a publié pour avis, une communication concernant les services de téléphonie sur Internet. La position de la Commission est que ce service ne peut à ce jour pas être considérée comme de la téléphonie vocale parce qu'un certain nombre de conditions ne sont pas encore remplies. La Commission envisage de publier une version finale de sa communication sur la base des commentaires reçus.

Résultats de la Consultation sur une politique de numérotation pour les services de télécommunications en Europe

Dans la perspective de la libéralisation du marché des télécommunications dans l'Union européenne, la disponibilité de numéros appropriés, attribués de façon équitable, transparente et non discriminatoire, est une condition essentielle pour une concurrence efficace, pour l'innovation et pour le choix du consommateur. En effet, une pleine concurrence ne pourra être atteinte que si les utilisateurs peuvent choisir voire présélectionner des compagnies de téléphone concurrentes et garder leur numéro de téléphone ou de prestataire de services. La portabilité des numéros permet aux utilisateurs de conserver leur numéro lorsqu'ils souhaitent changer d'opérateur et de faire le meilleur choix en termes de qualité, de service et de coût.

La Commission avait publié en novembre 1996 un livre vert qui a donné lieu à une large consultation. La Commission a approuvé le 21 mai une communication sur les résultats de la consultation relative au livre vert sur une politique de numérotation dans le domaine des services de télécommunications. Suite à ces résultats, la Commission propose en particulier les objectifs suivants:

- A partir du 1er janvier 1998 dans un marché concurrentiel, les utilisateurs doivent avoir la possibilité de choisir pour chaque communication la compagnie dont l'offre est la plus intéressante en termes de qualité, de service et de coût.
- A partir de 1999, un espace européen de numérotation permettra d'ouvrir des services tels que les numéros verts et les services à tarif majoré à l'échelle européenne.
- A partir du 1er janvier 2000, les utilisateurs doivent pouvoir garder leur numéro de téléphone lorsqu'ils changent d'opérateur et avoir la possibilité de sélectionner une compagnie par défaut, afin d'éviter de composer l'indicatif de la comagnie à chaque appel.

Transports

Système de rabais sur les redevances d'atterrissage à l'aéroport de Zaventem

Déjà en 1995, la Commission avait adopté une décision art. 90(3) [12] du Traité CE demandant aux autorités belges de mettre fin au système de rabais sur les taxes d'atterrissage en vigueur à l'aéroport de Zaventem. Dans sa décision, la Commission avait considéré que ce système constituait une mesure étatique au sens de l'article 90(1) du Traité CE ayant pour effet d'appliquer à l'égard de compagnies aériennes des conditions inégales à des prestations, liées à l'atterrissage et au décollage, équivalentes en leur infligeant de ce fait un désavantage dans la concurrence. Ce système constituait donc une infraction à l'article 90(1) du Traité en liaison avec l'article 86.

Le seuil très élevé de 5 mio BF de redevances à atteindre était tel que le rabais ne pouvait bénéficier qu'à un transporteur basé à Bruxelles et ceci au détriment des autres transporteurs communautaires. Il fallait en effet effectuer quotidiennement 6 à 7 fréquences (un atterrissage et un décollage) pour atteindre ce seuil.

La Commission avait estimé qu'un tel système ne pourrait se justifier que par des économies d'échelle qui seraient réalisées par le gestionnaire de l'aéroport et qui n'existent pas dans le cas d'espèce. En effet, le traitement d'un atterrissage ou décollage d'un avion requiert le même service quelque soit son propriétaire et quelque soit le nombre d'avions appartenant à une même compagnie. Ce système visait donc à favoriser la compagnie nationale belge.

Le Royaume de Belgique ne s'est pas conformé à la décision de la Commission. Il a déposé un recours devant la Cour de Justice visant à l'annulation de la décision. Ce recours, qui n'a pas encore été tranché par la Cour de Justice, n'est cependant pas suspensif d'exécution aux termes de l'article 185 du Traité.

C'est pourquoi, par lettre du 29 mai 1996, la Commission a adressé aux autorités belges une lettre de mise en demeure pour non respect de sa décision. N'ayant reçu aucune réponse satisfaisante, la Commission a décidé d'émettre un avis motivé sur base de l'article 169 du Traité CE qui a été notifié en décembre 1996 aux autorités belges. N'ayant reçu aucune réponse ou communication des mesures prises, suite à l'avis motivé, la Commission a décidé le 19 mars dernier de saisir la Cour de Justice au titre de l'article 169.

Par ailleurs, d'autres procédures ont été ouvertes à l'encontre de systèmes similaires dans trois autres États membres. Des lettres de mise demeure ont été envoyées en mai 1997 portant sur des systèmes de rabais similaires et sur la modulation des taxes d'atterrissage selon l'origine du vol (domestique/international).

[12] JO L216 du 12 septembre 1995

Energie

Proposition de directive pour le marché intérieur du gaz naturel

Les discussions sur la proposition de directive concernant les règles communes pour le marché intérieur du gaz naturel se sont poursuivis sous présidence néerlandaise. La proposition de compromis présentée par la présidence a permis d'avancer sur de nombreux points, mais des divergences subsistent sur deux points: le régime des contrats d'approvisionnement avec des clauses "take or pay" et le calendrier pour l'ouverture du marché. Il est souhaitable que ces deux questions puissent être résolues pendant la présidence luxembourgeoise.

Monopoles nationaux à caractère commercial

La Commission estime insuffisant l'aménagement du monopole autrichien des tabacs

En adhérant à l'UE, les trois derniers Etats membres (Autriche, Finlande et Suède) se sont engagés, notamment, à aménager leurs monopoles nationaux à caractère commercial conformément aux principes de non-discrimination exigés par l'article 37 du traité CE. Ces aménagements devaient être réalisés dès la date d'adhésion (le 1er janvier 1995), sauf pour le monopole autrichien des tabacs manufacturés pour lequel la possibilité d'un aménagement progressif au cours d'une période de transition de trois années a été accordée.

En dépit de cette facilité, l'Autriche est néanmoins soumise au respect d'une série de conditions précises,

prescrites par l'Acte d'adhésion, aptes à garantir une progressivité réelle dans l'aménagement. L'Autriche doit en effet procéder à l'abolition de son droit exclusif d'importation par l'ouverture progressive, dès la date d'adhésion, de contingents à l'importation de produits en provenance d'Etats membres, les volumes de ces contingents, à ouvrir au début de chacune des trois années de la période de transition accordée, étant dûment fixés à ladite Acte. De plus ces contingents doivent être ouverts à tous les opérateurs sans restrictions et les produits importés dans le cadre de ces contingents ne peuvent pas être soumis, en Autriche, à un droit exclusif de commercialisation au niveau du commerce de gros. En tant que dispositions claires, précises et non conditionnelles, ces obligations sont immédiates et directement applicables.Le non-respect de ces clauses avait conduit la Commission à engager en septembre 1995 la procédure d'infraction prévue au traité et à envoyer à l'Autriche une lettre de mise en demeure.

L'Autriche avait ensuite adopté en décembre 1995 une loi d'aménagement qui prévoyait la suppression intégrale, à partir du 1er janvier 1996, et donc anticipativement par rapport à l'échéance fixée à l'Acte d'adhésion, des droits exclusifs d'importation et de commercialisation existants dans les échanges intra-communautaires. Cependant, cette loi comporte encore certains aspects incompatibles avec l'Acte précitée, notamment en matière:

- d'octroi de licences de commerce de gros (obligation pour les opérateurs d'être propriétaires d'un entrepôt fiscal),
- d'obligation pour le grossiste de livrer les tabacs manufacturés aux débits à ses risques et coûts et
- de critères auxquels les bâtiments pour le stockage des produits du tabac doivent répondre et qui ne sont pas précisés, imprécision qui ne contribue pas à la sécurité juridique des opérateurs concernés.

Ainsi, la Commission estime qu'il y a toujours manquement aux obligations de non discrimination. La Commission a donc décidé de passer à la phase suivante de la procédure d'infraction avec l'envoi à l'Autriche d'un avis motivé de l'article 169 du Traité.

Press releases

The full texts of Commission 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/97/569 [1997-06-26]
European Commission requests Flemish Government to end VTM advertising monopoly

IP/97/539 [1997-06-18]
Greece has to complete the liberalisation of its telecommunications market before January 2001

IP/97/509 [1997-06-11]
Telecom liberalisation in Spain: Commission accepts a short additional period

IP/97/462 ~[1997-05-29]
Countdown to 1 January 1998: Report on implementation of the EU telecommunications regulatory package

IP/97/374 [1997-04-30]
Commission reaches agreement with Spain concerning second GSM licence

IP/97/373 [1997-04-30]
Greek government proposes to speed up telecommunications liberalisation

STATE AID

Main developments between 1st April and 15th July 1997

Summary of the most important recent developments

FIFTH SURVEY ON STATE AID IN THE EU

Results of the Survey

In April the Commission published the Fifth Survey on State Aid in the EU (COM (97) 170). It shows that in the years 1992 to 1994 the then twelve Member States of the Union spent an average of ECU 95 billion a year in public assistance to industry, agriculture, transport, fisheries and coal mining. Industry, which occupies the centre of the survey, alone received an average of ECU 43 billion a year over the period. Whereas in the previous periods reviewed, the volume of aid given by the Member States to industry had been falling slowly but steadily, no such tendency is observed in the Fifth Survey, which shows that aid to industry remains stable by comparison with the preceding period (1990 -92). The large sums granted in State aid threaten to jeopardise the completion of the single market, and indeed the achievement of economic and monetary union.

The high overall figures conceal, as can be seen from the following table, wide variations between countries and differing trends.

The apparent stable trend of the overall volume of industry aid is in fact due to the decrease in aid levels seen in eight of the Member States being offset by an increase in aid in the four others. Germany topped the league with a total of ECU 17 billion, the lion's share going to the new *Länder*, which received ECU 13 billion. These figures are largely attributable to the industrial restructuring of East Germany and are matched by a marked decrease in aid given in the Old Länder. Of the four big countries, the United Kingdom gave the least in aid to industry, the volume falling from ECU 2.5 bil-lion a year in 1990-92 to ECU 1.4 billion a year in 1992-94.

In the context of cohesion, a cause for concern is that industry in the big, industrially powerful countries - Germany, France, the United Kingdom and Italy - receives most in public assistance, their share of the Community total rising from 82% in 1990 -92 to 85% in 1992 -94. Over the same period the four "cohesion" countries - Greece, Portugal, Spain and Ireland - saw their share of the total fall from 9.3% to 8.3%.

The most marked trend observed in the survey, a trend which will very likely be confirmed by the figures for 1994-96, is the explosion in the share of aid to industry which goes in one -off

State aid to manufacturing industry
Annual averages 1990 -92 and 1992 -94

	as a percentage of value added		in ECU per person employed*		in ECU '000 000*	
	1990-92	**1992-94**	1990-92	**1992-94**	1990-92	**1992-94**
Belgium	7.9	**4.8**	3 015	**1 773**	2 297	**1 331**
Denmark	1.9	**2.8**	639	**1 017**	337	**511**
Germany	3.5	**4.8**	1 514	**2 012**	13 965	**17 410**
Old Länder	-	**-**	*921*	***553***	*7 373*	***4 156***
New Länder	-	**-**	*5 415*	***11 610***	*6 592*	***13 254***
Greece	12.5	**10.5**	1 785	**1 588**	1 180	**1 035**
Spain	2.1	**1.7**	605	**571**	1 738	**1 494**
France	2.7	**3.3**	1 114	**1 350**	5 280	**6 006**
Ireland	2.7	**3.5**	1 271	**1 837**	314	**463**
Italy	8.9	**8.4**	2 397	**2 379**	12 321	**11 529**
Luxembourg	3.5	**2.9**	1 669	**1 267**	62	**48**
Netherlands	2.5	**2.1**	994	**822**	1 003	**812**
Portugal	4.6	**4.4**	514	**480**	618	**568**
United Kingdom	1.4	**0.8**	439	**279**	2 484	**1 433**
EUR 12	3.8	**4.0**	1 296	**1 419**	41 600	**42 639**

* 1990-92 averages at 1993 prices

measures to assist individual firms: from 7% of the overall volume in 1990-92, that proportion had risen to some 36% in 1992-94. Although this figure is partly attributable to the restructuring of East German industry, the trend is worrying.

Conclusions drawn by the Commission

The finding of the Fifth Survey that aid has stabilised to the current high levels points to the fact that Commission action alone is not enough, but that commitment from Member States to the reduction of aid budgets is needed to bring aid levels down.

To counteract the damaging effects of national aid policies on economic cohesion in Europe - the share of the cohesion countries, with the exception of Ireland, is shrinking from year to year -, the Commission is proposing new guidelines for the regional aid granted by Member States, to gradually reduce the intensity of aid of this kind in all eligiblc regions.

As a response to the considerable rise in "ad hoc" aid, the Commission, by streamlining the procedures for aid schemes of a more general nature which contribute to EU objectives - aid for environmental purposes, SMEs, training, research, or energy saving, for example -, intends to liberate a substantial part of its resources to the examination of the most important aid cases.

The Commission furthermore proposes to tighten even further the rules on aid towards the rescue and restructuring of enterprises in difficulty. The Commission is aware of the role played by aid of this kind, especially in cushioning the social effects of restructuring, but the aid must be strictly confined to a level which ensures the ultimate viability of the enterprise without recourse to further aid.

Finally, the Commission also intends to propose a set of across-the-board guidelines which will allow it to vet those individual cases in which large amounts of aid are to be paid out and which are very often liable to cause serious distortion of competition. This is because Member States, faced with budgetary restrictions, are tending to concentrate regional aid on a few large investment projects.

The Survey may be consulted on DG IV's homepage at: http://europa.eu.int/en/comm/dg04 /lawaid/en/rap5.htm.

La Commission a décidé de clôturer par biais d'une décision négative la procédure ouverte à l'égard des interventions publiques en faveur de Ferdofin Srl.

Par décision pris le 21 avril 1997 la Commission avait ouvert la procédure prévue par le Code des aides à la sidérurgie au regard des aides d'État octroyées par l'Italie à l'entreprise Ferdofin Siderurgica Srl.

Ayant pris note de la décision des autorités italiennes, suite à l'ouverture de la procédure, de ne plus envisager l'octroi de la garantie publique prévue par l'article 2 bis de la loi italienne n°.95/1979, la Commission a examiné si la loi en tant que telle constitue une aide d'État à la lumière des dispositions communautaires, notamment - pour ce qui relève de la présente décision - du traité CECA.

A cet égard, il y a lieu d'observer que, contrairement aux procédures de faillite prévues par le droit italien, la procédure en question n'est pas réservée à toutes les entreprises, mais seulement aux grandes entreprises, c'est-à-dire, aux entreprises employant au moins 300 personnes qui se trouvent en situation d'insolvabilité. De plus, il y a des raisons pour estimer que la possibilité que les dispositions de la loi en question échappent - en tant qu'hypothéti ques mesures générales - à l'application des dispositions du droit communautaire en matière d'aides d'État soit exclue car l'administration extraordinaire dépend de l'exercice du pouvoir discrétionnaire de l'administration publique, notamment en ce qui concerne la continuation de l'exercice des activités d'entreprise.

Pour ce qui concerne le transfert de ressources étatiques, il y a lieu de constater que l'administration extraordinaire comporte certains avantages économi ques concrétisant le transfert de ressources de l'État ou ayant une incidence sur le budget de l'État, notamment:

- s'agissant des dettes envers le fisc et les organismes publics de prévoyance et sécurité sociale, l'entreprise peut bénéficier de l'exonération des exécutions individuelles;
- quant aux cotisations sociales, l'entreprise bénéficie de l'exonération du paiement des amendes et sanctions pécuniaires relatives au non-versement des cotisa tions;

Or, toutes ces mesures constituent des aides d'état dans la mesure où l'état renonce à ses créances vis-à-vis de l'entreprise.

A la lumière de ce qui précède la Commission est parvenue à la conclusion que la loi en question constitue une aide d'État. Pour ce qui est de la compatibilité avec le marché commun,. il convient de relever que si d'une part - dans le cadre des règles du traité CE - la compatibilité dudit système d'aide pourrait éventuellement être évaluée à la lumière des lignes directrices sur les aides au sauvetage ou à la restructuration, d'autre part - dans le cadre du traité CECA - la comptabilité éventuelle de ces aides ne peut être déterminée que sur la base des trois dérogations établies de façon exhaustive par le code des aides à la sidérurgie. Or, il ressort du dossier que l'intervention publique en cause ne peut viser ni la protection de l'environnement, ni la recherche et le développement ni, enfin, la fermeture.
Par conséquent, la Commission a décidé de clôturer la procédure prévue par l'article 6, paragraphe 5, du code des aides à la sidérurgie à l'égard des aides d'État octroyées à Ferdofin, en adoptant une décision final négative déclarant lesdites aides illégales et incompatibles avec le marché commun. La Commission a, dès lors, décidé d'enjoindre aux autorités italiennes de récupérer les aides en cause ainsi que d'informer la Commission, dans un délai de deux mois de la notification de sa décision des mesures qu'il aura prises pour s'y conformer (case C 8/96).

Commission opens the procedure for possible aid to Philips and Rabobank under the technolease transaction

The Commission decided on 23 April 1997 to open the procedure for possible aid to the electronics manufacturer Philips and the Dutch Rabobank under the technolease transaction. Under the technolease transaction Philips sold at the end of 1993 certain know-how to Rabobank for DFL 2.78 billion (1.26 billion ECU) of which Rabobank immediately paid in cash DFL 600 million (272 million ECU) to Philips. Simultaneously, Philips leased-back the know-how from Rabobank for a period of 10 years to assure that Philips could continue to use the know-how for its business. In return for the lease-back Philips pays Rabobank an annual royalty payment of DFL 140 million. Rabobank is in addition entitled to 50% of the proceeds of licenses based on the know-how.
The Commission is examining if the Philips and Rabobank transaction involves discriminatory application of tax rules by which the enterprises would have obtained undue benefits. Sale- and lease-back transactions for material assets are common operations (for instance in the aeronautics and fixed property sector) but it remains to be assessed if the common and specific tax rules have been correctly applied in the present case concerning immaterial assets.
Although, the Dutch authorities have already submitted certain information to the Commission, which is necessary for its assessment of the case, additional information is indispensable. The Commission has therefore addressed a letter to the Dutch authorities requesting full disclosure of the fiscal treatment of the technolease transaction of Philips and Rabobank (case NN 38/97).

Commission closes investigation on research and development aid to Olivetti S.p.A.

On 4 June 1997 the Commission has decided to close an investigation on a proposal to give research and development aid to Olivetti S.p.A. The Italian government had proposed to grant some ECU 7,7 million in aid to the company for the development of portable multimedia personal computers, a project which began in 1993. An investigation was initiated into the aid proposal in April 1996 because it did not appear to be in conformity with European Union state aid rules on research and development.
Following the opening of the investigation in April 1996, Olivetti representatives and the Italian authorities revealed that the project - originally of a duration from March 1993 to January 1998 - had been stopped by Olivetti in June 1995, prior even to the notification by the Italian authorities to the Commission in December 1995. The project had been stopped because of cost/revenue considerations, and Olivetti took on a Taiwanese partner in research & development and production of personal computers. Nevertheless, the Italian authorities insisted on maintaining the aid proposal, and in September 1996, submitted a scaled-down project of a duration

from March 1993 to June 1995, with a proposal now to grant aid of ECU 2.3 million.
The Commission was obliged to carry out a complete analysis of the research and development project, including a study of market and technology trends in portable personal computers and multimedia technologies from the start of the project in 1993 to the present time. In broad terms, the findings were that the tasks described in the aid proposal were those required by any portable personal computer manufacturer in 1993. At the present time, all portable personal computers on the market provide support for multimedia applications.
When it became apparent that the Commission was poised to take a decision forbidding the granting of aid to Olivetti because of the potential threat to distort competition, the company stated - nearly one year after the investigation had begun - that it did not wish to receive the aid. The Italian authorities have subsequently withdrawn the aid proposal and undertaken not to grant the aid (case).

Commission disapproves most of the state aid proposed in favour of Hoffmann-La Roche for the production of Orlistat, a new anti-obesity drug

The Commission decided on 21 May 1997 not to approve most of the state aid proposed by the Austrian authorities in favour of Hoffmann-La Roche (hereafter, HLR) for the construction and operation of a plant located in Linz for the production of an intermediate substance for Orlistat, a new anti-obesity drug.
The Commission found that the aid for Research and Development amounting to ÖS 300 million (22 MECU) does not conform with the state aid guidelines for Research and Development. The Commission considered that the requirements of the necessity for the aid, the incentive effect and the pre-competitive nature of the work proposed were not present.
The Commission based its refusal of approving the aid on the fact that the project began in 1986 because of future market opportunities and without the view of receiving state aid. Moreover, the Orlistat project is a typical drug development project in the pharmaceutical industry, which is a core activity of HLR, and essential in contributing to the company's future success. The incentive effect of the proposed aid - an inducement for the company to carry out research which it would not otherwise have pursued - is consequently non existent. Finally, at the time of the notification, the project was already at the phase III - clinical trials, and in no way falling within the different categories of Research and Development within the meaning of the Community Framework for Research and Development. In fact, clinical trials can be described as pre-marketing activities, aimed at mandatory testing of drugs to address safety concerns among the general public and are therefore well beyond the pre-competitive development activity phase.
Moreover, the Austrian authorities presented a series of measures aimed at the reduction of risks caused by accidents as "environmental". In fact, the proposed measure are clearly described as targeted towards reducing the risk of explosion as well as the release of harmful substances in case of operating plant malfunction. The main purpose of these measures is to prevent catastrophic occurrences, minimising harm to humans, and not primarily aimed at reducing environmental damage. Moreover, according to company literature, safety measures aimed at reducing the risk of accidents are a key part of the business activities of HLR, the necessity of the aid (ÖS 39.61 million or 2.9 MECU) has therefore not been demonstrated. On this basis, the Commission considered that the aid proposal for the safety measures foreseen is not compatible with the common market.
However, the Commission approved aid up to ÖS 42.8 million (3.1 MECU) for two series of environmental measures which will reduce the release of gases or waste into the environment (air and water). The approval was given on the basis that HLR goes beyond its usual internal environment management requirements, as well as going beyond emissions standards required by the Austrian legislation (case C 6/96).

Commission demands reimbursement of aid from the aeronautics company Casa

On 30th April 1997 the Commission decided to demand reimbursement of Pta 1,917 million (ECU 12 million) aid from the Spanish state owned aeronautics company Casa. Casa received a loan of Pta 7,210 million (ECU 45 million) in the period 1991 -

1993 to finance the development project for the new Casa-3000 aeroplane, a turbo propeller aircraft with 70 to 80 seats.
On 27 December 1991 Casa and the then Ministry of Industry, Trade and Tourism signed a co-operation agreement in respect of the Casa-3000 project. The agreement provided for the granting of a repayable loan for the feasibility, definition and development stage of the Casa-3000 programme for the amount of Pta 32,897 million (around ECU 209 million) to be paid in annual instalments during the development of the aircraft. The amount of the loan was set in order to cover 70% of Casa's development cost for the new aircraft. However, the project was stopped in 1994, but the Spanish authorities have so far not demanded reimbursement of the loan by Casa.
The Commission investigation started as early as in February 1992 when the Spanish authorities were requested to inform the Commission about the state intervention for the project. On 27 September 1994 the Commission decided that the aid level for the project was higher than could be allowed under its policy for aid to research and development. It therefore started a full scale investigation. In the beginning of 1996 it became clear that the project was definitively suspended. Casa had so far received Pta 7,210 million (ECU 45 million) for total incurred costs of Pta 8,973 million (ECU 57 million). In its decision the Commission held that a final aid intensity of 59% could be allowed. The difference of 21% between the loan granted to Casa (covering 80% of the costs) and the acceptable aid level (59%) is the amount of Pta 1,917 million (ECU 12 million) which has to be claimed back by the Spanish authorities from Casa (case C 45/94).

French textile plan: Commission refuses to authorize past aid but is willing to discuss a general reduction in employers' social security contributions

On 9 April 1997 the Commission adopted a negative final decision on aid under the French plan for reducing social security contributions in the textile, clothing and leather/footwear industries. The Commission does not find fault with the plan's aims of job creation but rather with the fact that it supports certain sectors only. It took a similar stance in earlier decisions on the reductions in social security contributions which Italy wanted to grant to its footwear industry and which Belgium had introduced under the Maribel bis/ter scheme.
It should be stressed that, for some 11,300 of the 13,000 firms concerned, the arrangements laid down in the French textile plan do not give rise to any problem: aid granted to those firms does not exceed the de minimis threshold, i.e. ECU 100 000 over a period of three years. On the other hand, the Commission's decision requires the aid to be recovered in cases where that threshold is exceeded.
The French authorities have been invited to discuss with the Commission ways of broadening the system, for example to cover all sectors which are heavily dependent on manual labour. In this context, high-level meetings have taken place together with several expert meetings with a view to find a new concept that could be approved by the Commission as was the case with the new Belgian so-called Maribel quater plan.
The Commission's attitude towards the French plan was foreseeable. In the Commission's notice on state aid policy and the reduction of labour cost, the Commission's positive attitude towards social cost reduction schemes is confirmed, as long as they do not exclusively apply to sensitive or crisis sectors.
The French plan, which has been allocated a budget of FF 2.1 billion per year for a period of 18 months, grants aid to employers in the form of reductions in, or exemptions from, their social security contributions in respect of the lowest paid. Firms in the four sectors concerned have undertaken, in return for the aid, to safeguard existing levels of employment and create new jobs (by hiring young unemployed people). Clearly, the Commission does not find fault with the aims pursued by the French authorities but rather with the methods they have chosen for achieving them and the consequences of those methods. The aims are to be achieved thanks to transfers of public funds, whereas the same objectives are attained or will in future have to be attained in other Member States through sectoral agreements without public assistance.
The Commission takes the view that the costs arising from agreements which firms in a particular sector conclude with

their employees, whether those agreements relate to the reorganisation of working time or to other aspects resulting in higher wages or paid leave over and above that required in the sector, should normally have been borne by the firms themselves. The fact that extra costs are incurred by the employers through having to comply with provisions of the agreements which extend beyond their legal obligations does not alter this view. Public assistance to defray these costs, voluntarily incurred by businesses, would be acceptable only if it were generally available and not restricted to certain sectors.

The national authorities must ensure, among other things, that the conditions in which they grant aid for creating and/or safeguarding jobs do not have the effect of shifting unemployment problems from one Member State to another. The Commission therefore has to take a strict stance when assessing sectoral aid which entails this risk, such as the aid provided for by the French textile plan, in order to nip in the bud any escalation or uncontrolled development of such measures.

Commission approves training program at Philips Semiconductor B.V.

On 18 June 1997 the Commission approved a training program, supported by the European Social Fund (ESF) and the Dutch province of Gelderland, aiming at retraining unemployed and employees threatened with unemployment.

The overall costs of the program are estimated at HFL 22 million (ECU 10.2 million). The approved aid consist of HFL 6.6 million (ECU 3 million) granted by the ESF and HFL 2 million (ECU 0.9 million) granted by the province of Gelderland. The region of Arnhem-Nijmegen is recognised by the Commission a so-called objective-2 region i.e. a region in industrial decline. Philips Semiconductors B.V. has constructed a new plant in Nijmegen, and it is expected that this investment will lead to the direct creation of some 600 new jobs and will stimulate regional employment in the supplying and service industries.

In order to reply to the need of trained employees, the company has set-up a two-year schooling program. The total number of people that will be trained are 1285. The project addresses, for an important part, to unemployed (600) which need training in order to qualify for the job vacancies. For the recruitment of new staff, the company will also address to vulnerable labour categories such as young unemployed, women and long-lasting unemployed. The expected effects of the project are an improvement of the position of the participants on the labour market and the realisation of an important reinforcement of the economical structure for the region (case N 906/96).

Commission opens proceedings on aid granted to Triptis Porzellan GmbH

On 2 May 1997, the Commission decided to open a procedure with respect to the restructuring aid granted to Triptis Porzellan GmbH in Triptis in Thüringen. The aid is provided by the successor to the Treuhandanstalt, the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS).

On 1 July 1990, when the Treuhandanstalt took over the state owned VEB Porzellanwerk Triptis from the GDR, there were about 900 employees. In September 1993 the enterprise was privatised and a restructuring of the company started involving a reduction of the work force so that at present, the enterprise employs 326 workers. However, early 1995 the management realised that the restructuring of the enterprise would not be successful, if based only on the company's own financial resources. Therefore the BvS was asked for financial support. The aid takes the form of the award and the subsequent waiver of a loan, amounting to DM 8 million. The aid is given in the framework of a "concerted action", meaning that all interested parties (investors, workers, BvS) make an effort to restructure the company. In this context the Hessische Landesbank waives DM 10 million of a larger debt package.

The Commission has examined the aid in the light of the guidelines on state aid for rescuing and restructuring firms in difficulty. It has decided to open the procedure under Article 92(3) of the EC Treaty, because the case raises two particular questions:

(1) As the Hessische Landesbank is state owned, the Commission has doubts whether it really acted as a private banker waiving part of the debt and consequently about the exact amount of aid.

(2) Triptis produces in a market which suffers from strong overcapacity. The company has reduced its capacity in the

framework of the entire restructuring process by 50%, but no further capacity reduction is planned. In view of the strong over-capacity in the porcelain sector, it is open to doubt whether the aid measures in favour of Triptis do not unduly distort competition and whether the payment may not harm the competitors which do not receive aid. In other cases in the same sector, objections to possible aid have been formulated by competitors. These should therefore have the opportunity to express their opinion to the Commission (case NN 129/96).

Commission opens procedure on aid to Porcelanas del Norte S.A.L. "PONSAL"

The European Commission decided on 2 May 1997 to open proceedings pursuant to Article 93(2) of the EC Treaty concerning restructuring aid to Ponsal which manufactures and sells ceramics for tableware and decoration, as the Commission at this stage has doubts whether the aid is compatible with the common market.

Ponsal, which is located in Pamplona in the province Navarra, has suffered financial problems for many years and in order to overcome this situation, in 1994, it drafted a restructuring plan which required an investment of approximately Pts 3000 million (18 million ECU). In order to support the implementation of the restructuring plan, the government of Navarra awarded aid consisting in a guarantee (Pts 1200 million / 7,2 million ECU), a direct subsidy for job creation (Pts 100 million/ 0,6 million ECU) and a subsidy of 20% for investment in fixed assets. According to the Spanish authorities the aid measures were based on several existing aid schemes preceding Spain's adhesion to the European Community and which had never been objected to by the Commission.

The Commission nevertheless considered that there were serious doubts whether all measures complied with the aforementioned schemes and in April 1996 it requested Spain to provide evidence that the rules of the scheme were complied with.

The Spanish authorities informed the Commission that Ponsal had filed for bankruptcy and waived public claims amounting to Pts 3100 million (18,6 million ECU). Meanwhile a newly founded company called "Commercial Europea de Porcelanas" had continued Ponsal's activities. In order to support the establishment of the new company the regional authorities of Navarra had awarded further aid which was also based on existing aid schemes preceding Spain's adhesion to the Community. In addition, the Commission noticed from press reports that the regional authorities of Navarra had paid another Pts 750 million (4,5 million ECU) to Comercial Europea de Porcelanas. The Spanish authorities have not provided any information on such aid (case NN 188/95).

Commission raises no objection to aid for OPEL, Spain

The Commission has decided on 23 May 1997 not to raise any objection to aid granted by Spain for a project designed to apply new technology in the painting system, so as to reduce pollution. Switching from the present system based on organic solvents to the new water based paint method will make it possible to reduce emissions well beyond current mandatory standards. The total environmental protection investment involved in the project amounts to PTA 2 210.8 million (13 million ECU), but the eligible cost calculated on the basis of the criteria set out in the Community framework on state aid to the motor vehicle industry and in the Community guidelines on state aid for environmental protection is PTA 574.93 million (3,4 million ECU). This reduction takes account of the savings generated under the new method. Consequently, the aid is provided in the form of a direct grant applying the intensity ceiling of 30% of the eligible costs.

The Commission takes the view that the aid qualifies for the derogations provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement, since the aid does not affect trade to an extent contrary to the common interest (case N 669/96).

Press releases

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IP/97/662 [1997-07-15]
Le contrôle des aides d'Etat dans le secteur de l'automobile : nouvelles règles pour la période 1998-2000

IP/97/661 [1997-07-15]
Mieux contrôler les aides d'Etat en les rendant plus transparentes pour les citoyens : la Commission propose uen première étape dans la réforme

IP/97/657 [1997-07-15]
Commission authorises plan leading to privatisation of Lloyd Triestino and Italia di Navigazione.

IP/97/656 [1997-07-15]
Commission authorises state aid for the Italian airline Alitalia

IP/97/650 [1997-07-15]
State aid - Germany - ECSEC steel sector GEORGSMARIENHÜTTE: Commission initiates state aid procedure

IP/97/649 [1997-07-15]
State aid : Spain Commission closes proceeding concerning aid to Grupo de Empresas Álvarez (GEA) - Galicia

IP/97/648 [1997-07-15]
State aid : Greece Commission closes procedure concerning Hellenic Shipyard and approves investment aid

IP/97/647 [1997-07-15]
State aid : Spain Commission investigates aid to the companies of the froup Magefesa and its successors

IP/97/646 [1997-07-15]
State aid : Spain Commission approves aids for restructuring the publicly owned shipyards

IP/97/645 [1997-07-15]
State aid : Finland Commission approves regional aid to Valmet Automotive in suport of an invstment project in Uusikaupundi, Finland

IP/97/624 [1997-07-09]
Commission asks Portugal to end aid for "Empresa para a Agroalimentacão e Cereais S.A. (EPAC)"

IP/97/598 [1997-07-02]
State aid : The Netherlands - Commission approves the cost allocation rules of NedCar motor vehicles

IP/97/597 [1997-07-02]
Commission opens state aid procedure against Everts Erfurt GmbH, Thuringia

IP/97/594 [1997-07-02]
Aid for improving and modernising farms in Spain

IP/97/538 [1997-06-18]
The commission adopts a Communication aiming at ending public support for short-term export credit insurance

IP/97/537 [1997-06-18]
State aid: Ireland Commission authorises a production loans scheme offered by the Irish Film Board

IP/97/536 [1997-06-18]
State aid: Portugal Commission approves aid scheme for youn entrepreneurs in Portugal

IP/97/535 [1997-06-18]
State aid: Austria Commissio authorises ÖS 345 million in aid to BMW Steyr

IP/97/534 [1997-06-18]
State aid : The Netherlands Commission approves training programme at Philips Semi-conductor B.V.(see page 50 of this issue)

IP/97/529 [1997-06-18]
Draft Council Directive on harmonization of export credit insurance

IP/97/487 [1997-06-04]
State aid: Germany - Commission approves setting-up of Liquidity Fund by the Land of Berlin for firms in difficulty

IP/97/485 [1997-06-04]
The Commission decides to close an investigation on research and devolopment aid to Olivetti S.p.A. (see page 47 of this issue)

IP/97/482 [1997-06-04]
Commission raises no objection to state aid scheme for Swedish shipping

IP/97/439 [1997-05-23]
State aid: Commission initiates proceedings on aid which the Grand Duchy of Luxembourg plans to grant to ARBED

IP/97/438 [1997-05-23]
State aid: Finland The Commission has decided to consider a guarantee scheme aimed at improving the financial structure and growth of SME's as not constituting State aid

IP/97/437 [1997-05-23]
State aid: Spain Commission raises no objection to aid for OPEL (see page 51 of this issue)

IP/97/436 [1997-05-23]
State aid: Italy Extension of validity of the Italian map of areas eligible for regional aid under Article 92(3)(c) and of regional aid schemes

IP/97/435 [1997-05-23]
Commission approves aid scheme for firms in the French Overseas Departments

IP/97/434 [1997-05-23]
Commission approves closure aid for the Bremer Vulkan Werft GmbH

IP/97/430 [1997-05-22]
State aid: Gernany - Aid in favour of SKET Schwermaschinenbau Magdeburg GmbH (SMM), Saxony-Anhalt

IP/97/426 [197-05-21]
State aid: Austria - The Commission does not approve most of the state aid proposed by the Austrian Authorities in favour of Hoffmann-La Roche for the productionof Orlistat, a new anti-obesity drug (see page 48 of this issue)

IP/97/383 [1997-05-02]
State aids: Germany - The commission clears four cases in favour of East German companies

IP/97/380 [1997-05-02]
State aid: Spain European Commission decides to open a procedure on aid to Porcelanas de Norte S.A.L. "PONSAL" (see page 51 of this issue)

IP/97/379 [1997-05-02]
State aid: Germany - European Commission opens proceedings for aid granted to Triptis Porzellan GmbH, Thüringen (see page 50 of this issue)

IP/97/375 [1997-04-30]
State aid: Italy - Commission decides that aid to Ferdofin Siderurgica Srl is illegal (see page 45 of this issue)

IP/97/372 [1997-04-30]
State aid: Spain - European Commission has decided to demand reimbursement of Pta 1.917 million (ECU 12 million) aid from the aeronautics company Casa

IP/97/368 [1997-04-30]
Th Commission authorises a total of £ 891 million in aid to cover the ingerited liabilities of the United Kingdom coal industry

IP/97/361 [1997-04-30]
State aid given to Asociación General Agraria Mallorquina S.A. (AGAMA) in Spain

IP/97/337 [1997-04-23]
State aids: Netherlands - The Commission has decided to open the procedure for possible aid to Philips and Rabobank under the technolease transaction (see page 47 in this issue)

IP/97/312 [1997-04-16]
Commission approves the aid and the privatisation of Almagrera S.A.

IP/97/311 [1997-04-16]
State aid: Germany - Aid for Union Werkzeugmaschinen GmbH, Saxony

IP/97/310 [1997-04-16]
State aids: Italy - Commission approves capital injections into ENIRISORSE

IP/97/309 [1997-04-16]
State aids: Germany - Commission decides to open proceedings on aid to Dörries Scharmann GmbH

IP/97/308 [1997-04/16]
State aid: Worried Commission proposes stricter rules

IP/97/305 [1997-04-16]
Commission raises no objection to fourth and final tranche of state aid to TAP

IP/97/304 [1997-04-16]
Commission raises no objection to the release of state aid worth FF1bn to Air France and blocked since 1996

IP/97/301 [1997-04-16]
Aid for Hijos de Andres Molina S.A. (HAMSA) in Andalusia (Spain)

IP/97/285 [1997-04-09]
State aid: France - Commission decides not to raise any objection to tax exemption for biofuels

IP/97/282 [1997-04-09]
French textile plan: Commission refuses to authorize past aid but is willing to discuss a general reduction in employers' social security contributions

IP/97/264 [1997-04-02]
State aids: United Kingdom - Commission approves an investment aid package to LG Electronics Wales Ltd, South Wales

IP/97/263 [1997-04-02]
State aid: Spain - Commission decides to temrinate proceedings against the national programme for the development of renewable energy sources

IP/97/261 [1997-04-02]
State aid: France - Commission extends investigation proceedings on aid measures for Société de Banque Occidentale (SDBO) initiated on 18 September 1996

IP/97/257 [1997-04-02]
Mr. Van Miert reacts to USTR Charlene Barshefsky's statement on state aid to European shipyards

Judgments

Order of the Court of 30 June 1997, Case C-66/97 : Banco de Fomento Exterior SA v Amándio Mauricio Martins Pechim, Maria da Luz Lima Barros Raposo Pechim and Confecções Téxteis de Vouzela Lda (CTV). Reference for a preliminary ruling: Tribunal Civel da Comarca de Lisboa - Portugal. Reference for a preliminary ruling - Inadmissibility.

Judgment of the Court of 15 May 1997, Case C-355/95: Textilwerke Deggendorf GmbH (TWD) v Commission of the European Communities and Federal Republic of Germany. State aid - Commission

decisions suspending payment of certain aids until previous unlawful aid has been repaid.
Judgment of the Court (Fourth Chamber) of 15 May 1997, Case C-278/95 P.: Siemens SA v Commission of the European Communities.
Appeal - State aid - General aid - Definition of aid.

Order of the President of the Court of 30 April 1997, Case C-89/97 P(R).: Moccia Irme SpA v Commission of the European Communities.
Application for interim measures - Suspension of operation of a measure - Legal interest in bringing proceedings - State aids.

Judgment of the Court (Sixth Chamber) of 15 April 1997, Case C-292/95: Kingdom of Spain v Commission of the European Communities. Action for annulment - Framework on State aid to the motor vehicle industry - Retroactive prolongation - Article 93(1) of the EC Treaty.

Judgment of the Court (Fourth Chamber) of 15 April 1997, Case C-272/95: Bundesanstalt für Landwirtschaft und Ernährung v Deutsches Milch-Kontor GmbH. Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany. Aid for skimmed-milk powder - Systematic inspections - Costs of inspections.

INTERNATIONAL

Main developments between 1st April and 15th July 1997

Summary of the most important recent developments

Alicia VAN CAUWELAERT

BILATERAL RELATIONS WITH THE UNITED STATES OF AMERICA

Report on application of the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, 1 July 1996 to 31 December 1996

On 4 July 1997 the Commission adopted the second report on the application of the 1991 Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws[13] ("the Agreement") for the period I July 1996 to 31 December 1996[14]. This report complements the first report on the application of the Agreement which covered the period 10 April 1995 to 30 June 1996[15]. It was decided to report on this relatively short period of six months so that in subsequent years it would be possible to report on the same calendar year as the Annual Report on Competition Policy.

During the period under review cooperation between the Commission and its counterparts in the United States has continued to be very positive and has contributed greatly to the effective resolution of a number of cases.

The report illustrates this cooperation by reference where possible to cases which have been closed during the period under review. For example the report refers to the successful cooperation in merger cases such as *Sandoz/Ciba-Geigy* where close contacts between the Commission and the FTC helped to ensure that compatible decisions were taken by both competition authorities.

The cooperation in the *IRI/Neilsen* case is also detailed in the report. As the conduct in question was primarily addressed to contractual practices implemented in Europe and had its greatest impact within Europe, the US Department of Justice (DoJ) let the Commission take the lead once it was confident that it had a firm intention to act. The Commission conducted negotiations with Nielsen to arrive at an acceptable solution ensuring that competition was not distorted. At every stage during negotiations the DoJ was informed of progress and given an opportunity to comment on the undertakings it was proposed to seek from Nielsen. Once the Commission had secured the necessary undertakings from Nielsen, the DoJ was able to conclude that the practices it had been investigating would not continue, and thus it closed its investigation. Cooperation in this case greatly benefited from the waivers which were obtained by the Commission from both the defendant and the complainant enabling the Commission to have open and frank discussions with the DoJ

The Agreement continues to provide a framework for meaningful and useful cooperation between the Commission and the United States. The cooperation that was described in the first report to the Council and the European Parliament has continued to bring benefits on both sides of the Atlantic. Benefits, not only to the competition authorities but also to the companies involved as it is everyone's interest that compatible solutions be found.

EC/US POSITIVE COMITY AGREEMENT

On the 18th of June 1997 the Commission adopted a proposal for a joint Council and Commission decision to conclude an agreement between the European Communities and the

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13 *Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws* (OJ L 95, 27.4.95, pp. pp.45 - 50 as corrected by OJ L 131\38 of 15.6.95).

14 Com(97)346 final

15 Adopted 8 October 1996, Com (96)479final

Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws[16].
The principle of positive comity provides that a Party adversely affected by anticompetitive behaviour occurring in whole or in part in the territory of another Party may request that other Party to take action.

The proposed agreement builds on the successful cooperation which has taken place between DG IV and its US counterparts, the Department of Justice and the Federal Trade Commission, under the 1991 Agreement regarding the application of competition laws.

Positive comity, which was introduced into EC/US relations by Article V of the 1991 Agreement, is reinforced by the proposed Agreement. The circumstances in which a request for positive comity will normally be made and the manner in which such requests should be treated are laid down more clearly. Even more importantly the proposed Agreement creates a presumption that in certain circumstances a Party will normally defer or suspend its own enforcement activities. This will be particularly the case where anticompetitive behaviour does not affect consumers in the territory of the Requesting Party or the behaviour is occurring principally in and directed principally towards the other Party's territory.

The Agreement must be adopted jointly by the Council and the Commission. In so far as the proposed Agreement relates to the competition rules of the EC Treaty, the legal basis for the Council to conclude the Agreement is Article 87 of the EC Treaty in conjunction with the first subparagraph of Article 228 paragraph 3 thereof. The European Parliament must be consulted before the Council can conclude the Agreement. To the extent that the Agreement applies to ECSC products, Articles 65 and 66 of the ECSC Treaty form the legal basis for the Commission to conclude the proposed Agreement. The Council is at present seeking the opinion of the European Parliament.
In contrast to the 1991 Agreement mergers are not within the scope of the proposed Agreement due to EC and US merger legislation, which would not allow a deferral or suspension of action as envisaged by the Agreement.

The proposed positive comity Agreement is an important development in relations with the US and represents a commitment on the part of the US and the EC to cooperate with respect to antitrust enforcement rather than seeking to apply their antitrust laws extraterritorially. The Commission is confident that the proposed Agreement will further strengthen existing cooperation to the benefit of consumers and companies alike.

CANADA

EC/CANADA COOPERATION AGREEMENT

In the beginning of July 1997 a draft Agreement between the European Communities and the Government of Canada regarding the application of their competition laws was finalised. This draft has been approved by the Council's Working Group on Economic Questions and will shortly be sent to the European Commission for approval.

As the Agreement is within the competence of both the Council and the Commission it must be concluded by a joint decision of the Council and the Commission. Article 228(3) EC Treaty requires the Council to consult the European Parliament before concluding the Draft Agreement.

Due to the globalisation of many sectors and the increase in the number of cases being examined by both the European Commission and Canada the need for cooperation has become apparent. It is important that two competition authorities dealing with the same case do not impose conflicting remedies or that the cumulation of their respective remedies does not cancel out the viability of the business concerned.

The proposed Agreement is very similar to the Agreement entered into with the United States in 1991[17]. The Agreement provides

16 COM (97) 233

17 Agreement between the European Communities and the Government of

for the notification of cases under investigation which may affect the important interests of the other Party. This notification procedure will ensure that each authority is aware of the activities of the other authority, allowing cases of common concern to be easily identified. Once a case has been identified as raising significant issues for both sides, it will be possible for the Parties to activate the cooperation or coordination provisions of the Agreement.

The Parties may agree to coordinate their enforcement activities and provide each other with assistance, thus increasing the likelihood that anticompetitive behaviour will be brought to an end as effeciently and effectively as possible. Coordination by the competition authorities may also be beneficial for companies as it will reduce the likelihood of conflicting decisions being made. Of course, such coordination and assistance may only take place where it is consistent with the laws and important interests of the Parties.

Like the 1991 EC/US Agreement the proposed EC/Canada Agreement contains provisions on both positive and negative or traditional comity. Positive comity provides that one Party may request the other Party to take enforcement action. Traditional or negative comity provides that a Party will consider all relevant factors where its enforcement activities may affect the important interests of the other Party. By taking each others interests into account in the enforcement of anticompetitive laws the likelihood of conflict is greatly reduced.

Article VII of the Draft Agreement provides for the exchange of information between the Parties. This clause is quite limited as the Agreement does not alter existing laws. The Parties may not exchange information where it is contrary to either existing law or to their important interests. At present the Commission is under a strict obligation of confidentiality with regard to information which it collects from companies in the application of competition laws. However the Agreement encourages the Parties to seek the consent of the companies concerned in order to allow the Parties to exchange information normally considered confidential. The Parties are under an obligation to maintain the confidentiality of any information provided to it under the Agreement.

The Draft Agreement if entered into will greatly increase the ability of DG IV and the Canadian competition authority to cooperate with each other. By providing a framework for cooperation the Draft Agreement should increase the effectiveness of antitrust enforcement and reduce the number of cases in which the competition authorities make conflicting or incompatible decisions. The Draft Agreement will also lead to a much closer relationship between the Commission and the Canadian competition authority and to a greater understanding of each others competition policy.

ORGANISATION MONDIALE DU COMMERCE

Commerce et concurrence

La Conférence de Singapour a décidé le 11 décembre 1996 "d'établir un groupe de travail pour étudier les problèmes relatifs aux liens entre les échanges et la politique de la concurrence, y compris les pratiques anticoncurrentielles, afin d'identifier tous domaines qui mériteraient d'être examinés au sein de l'OMC" (cf. H. Morch, B. Carton et P. Arhel, Competition Policy Newsletter, Vol. 2, n° 3, 1997).

Le Professeur Frédéric Jenny, Vice Président du Conseil de la Concurrence français, a été choisi par consensus pour présider ce groupe. La parfaite maîtrise du sujet, qu'il a manifestée au sein du groupe de travail Van Miert, ainsi que l'efficacité avec laquelle il préside le bureau du CLP de l'OCDE ont été déterminants dans ce choix. On peut y voir un gage d'efficacité pour les travaux du groupe, qui s'est réuni pour la première fois les 7 et 8 juillet 1997.

Le Groupe a fixé son ordre du jour et a décidé de se réunir à nouveau deux fois avant la fin de l'année et au moins quatre fois en 1998, avant de rendre son rapport au

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the United States of America on the application of positive comity principles in the enforcement of their competition laws See OJ L 95, 27.4.95, pp.45 - 50 as corrected by OJ L 131/38 of 15.6.95.

Conseil Général, comme le prévoit son mandat.

Télécommunications

Le 15 février 1997, les membres de l'OMC ont conclu un accord sur l'accès au marché des services de télécommunication de base ("accord GTBGTB"). Cet accord, qui couvre plus de 93 % du marché mondiales des télécommunications comporte l'engagement de 69 gouvernements d'ouvrir leur marché de télécommunications à la concurrence étrangère. La plupart des parties se sont accordées sur des principesréglementaires régulateurs comprenant notamment la prévention des pratiques anticoncurrentielles : adoption de mesures appropriées pour empêcher les plus importants fournisseurs (major suppliers), seuls ou conjointement, d'engager ou de maintenir des pratiques anticoncurrentielles. Ces pratiques incluent notamment les subventions croisées, l'utilisation d'informations obtenues auprès de la concurrence et le défaut de communication aux concurrents, dans un délai utile, des informations techniques sur les installations essentielles, ou d'informations commerciales pertinentes nécessaires pour la fourniture des services.
L'accord est en cours de ratification. Il étend au plan mondial, à la même date-clé du 1er janvier 1998, le processus de libéralisation des télécommunications en cours à l'intérieur de l'Union européenne.

Différend entre les Etats-Unis et le Japon sur l'accès au marché japonais du film et du papier photographique.

Le 13 juin 1996, les USA ont, en se fondant sur les accords GATT et GATS et sur la décision de 1960 sur les pratiques restrictives de concurrence (annexée à l'accord GATT), demandé à l'OMC la mise en oeuvre de consultations concernant l'accès au marché japonais du film et du papier photographique (cf. H. Morch, B. Carton et P. Arhel, art. précité).

Les trois procédures évoluent à un rythme différent :

- GATT : l'aspect droit de la concurrence est accessoire dans cette procédure. Elle constitue cependant un bon exemple d'articulation entre les pratiques anticoncurrentielles et les entraves au commerce et pourrait dès lors être riche d'enseignements pour le débat sur la mise en placc d'un cadre international de règles de concurrence (cf. supra). La Commission a souligné ce point dans le mémoire qu'elle a adressé à l'OMC le 11 avril 1997, en sa qualité de tierce partie. Le rapport intérimaire du panel est attendu pour la fin de l'année.

- GATS : la procédure est encore au stade des consultations.

- Décision de 1960 : la procédure est actuellement bloquée : le Japon affirme qu'il accepterait des consultations sur les pratiques de Fuji sur le marché japonais, à conditions que les USA acceptent à leur tour des consultations sur les pratiques de Kodak sur le marché américain. Les USA semblent vouloir accepter cette condition, mais sous réserve qu'aucun lien ne soit établi entre les deux consultations.

TRANSPORT AERIEN

Après la libéralisation du secteur du transport aérien, la Commission concentre ses efforts sur les relations avec les pays tiers.

- Négociation d'accords de transport aérien avec divers pays tiers.

* USA : deux réunions, caractérisées par un esprit d'ouverture, ont eu lieu, à Washington en octobre 1996 et à Bruxelles en avril 1997.

* Pays associés d'Europe centrale : les premiers contacts ont été noués. Ils ont notamment montré que si la législation de ces pays est, conformément aux accords européens, calquée sur les articles 85 et ss., en revanche, pour l'heure, aucun d'eux n'a adopté de règlement d'exemption dans le secteur du transport aérien.

- Extension des pouvoirs de la Commission.

Les règlements du Conseil n/ 3975/87, déterminant les modalités d'application des règles de concurrence aux entreprises de transports aérien et 3976/87, concernant l'application de l'article 85, paragraphe 3, du traité à des catégories d'accords et de pratiques concertées dans le domaine du transport aérien ne s'appliquent

qu'aux liaisons aériennes au sein de la Communauté, à l'exclusion des liaisons entre la Communauté et les pays tiers. Afin de combler cette lacune, la Commission a présenté au Conseil deux propositions de règlement le 16 mai.

- Contrôle de la conformité au droit de la concurrence des alliances conclues par les compagnies aériennes

La Commission vérifie actuellement la conformité aux articles 85 et 86 de diverses alliances entre des compagnies européennes et des compagnies américaines sur le transport aérien de passagers et de marchandises : British Airways/American Airlines, Lufthansa/SAS/United Airlines, KLM/Northwest et Swissair/ Sabena/Austrian Airlines/Delta.

La procédure, qui a commencé par la publication des premiers accords au JOCE (n° C 289/4 du 2 oct. 1996), suit son cours.

COMPETITION CONFERENCE IN SOFIA WITH THE CEEC

At 12-13 May 1997 the annual Competition Conference between the Heads of the competition and state aid authorities of the ten Associated Countries and the Commission took place in Sofia, Bulgaria.

During the plenary session of the Conference, speeches were delivered on the Commission's green paper on vertical restraints, essential facilities, state aid to public companies and state aid in the context of privatisation. This was followed up by two working groups on anti-trust and state aid where a wider range of topics were covered. The Conference concluded with a presentation and discussion in plenary of the conclusions reached in the two working groups and the adoption of a Joint Declaration.

Similar to last year in Brno, Czech Republic, the Conference proved extremely useful to establish and improve contacts with the CEEC competition authorities and to make a state of play on progress made in the field of competition law and enforcement in the CEEC since last year.

Anti-trust

Generally speaking, considerable progress has been made in the field of anti-trust in the CEEC since last year. In many of the Associated Countries new, ambitious and better competition laws have been adopted (i.e. the new Hungarian competition law which entered into force on 1 January 1997 and the new Romanian competition law which entered into force on 1 February 1997). In other countries new competition laws are in preparation, such as Estonia and Slovenia. Moreover, many competition authorities are functioning and dealing with a wide range of concrete cases. They very often also play a major role in ensuring that new laws respect the basic principles of free competition, be it in the field of energy, telecommunications, transport or in other sectors.

Consequently, the nature of assistance the Associated Countries need from DG IV is changing. Rather than receiving theoretical training there is now a more explicit need to discuss the application of competition law in concrete cases. In a response to this need DG IV intends to refocus its assistance in this direction. Moreover, as was made clear during the Conference, training of the competition authorities is not enough. To establish the "competition culture" necessary to ensure an efficient law enforcement, it will be necessary to extend the training to other actors in the market place, in particular judges, lawyers, academics and business people and even Members of Parliament.

State aid

In the field of state aid it is evident that much work still needs to be done in the Associated Countries to meet the requirements of approximation of the Europe Agreements and the Commission's White Paper on the integration of the CEEC into the Internal Market. In most of the Associated Countries the monitoring authority has only been established very recently (in Poland, Romania and Bulgaria only this year and in Slovenia it is not yet established) and is in the process of defining its role and powers. The most advanced Associated Countries are about to adopt or have recently adopted the first laws on state aid and state aid monitoring (the Baltic States have done particular good progress in this respect). A major problem concerns transparency and the establishment

of aid inventories. The monitoring authorities, which generally only have very limited human resources, have difficulties in obtaining the information necessary to establish credible aid inventories from the aid granting authorities even if they send out standardised questionnaires. One explanation may be that the aid granting authorities often do not know what constitutes a state aid and the system for granting support to the industry is not geared to provide the necessary information. Therefore, in many of the Associated Countries a reform of the state aid system is underway.

DG IV is encouraging and monitoring these reform efforts. It will continue to assist the CEEC in creating the necessary transparency, to help the still somewhat fragile monitoring authorities to combat the introduction of new incompatible state aid measures, to providc legal advice in the drawing up of new state aid legislation, to organise training and to draw up together with the CEEC a Special Guidance on state aid to take account of the particular circumstances of economies in transition.

Implementing Rules on state aid

The Europe Agreements with the Associated Countries provide that the Association Council shall, within three years of the entry into force of the relevant Europe Agreement, adopt the necessary rules for the implementation of the provisions on competition, both anti-trust and state aid [18].

Much more progress has been made in the adoption of the Implementing Rules for undertakings [19] whereas the adoption of Implementing Rules on state aid has turned out to be much more difficult to negotiate with the Associated Countries and with the Member States in the Council.

In the field of state aid, while draft Implementing Rules have been agreed upon between the Commission services and each of the Associated Countries, they have not yet been adopted by the Association Council. This is partly due to lengthy discussions with the Member States in the Council on the content of these rules.
An agreement has now been reached with Member States on the first set of Implementing Rules on state aid for the Czech Republic. The procedure for final adoption of these rules by the Association Council is however still rather long. The Czech Implementing Rules will further be used as a standard model for all other Associated Countries.

Content of the Czech Implementing Rules (IR)

According to Article 64 of the Europe Agreement with the Czech Republic (hereinafter "EA") and Article 8 of Protocol 2 to the EA (ECSC products) the granting of state aid is in principle incompatible with the proper functioning of the EA.

The IR provide that, subject to the procedural rules in force in the EC and the Czech Republic, the granting of state aid shall be surveyed and assessed as to its compatibility with the EA by the responsible monitoring authorities in the EC and the Czech Republic, respectively. The monitoring authority in the EC shall be the EC Commission, and in the Czech Republic the Ministry of Finance.

The compatibility of individual aid awards and programmes with the EA shall be assessed on the basis of the criteria arising from the application of Article 92 EC Treaty, including present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the EC as well as the case law of the Community Courts. The Community *de minimis* rule applies for the purpose of assessing the compatibility of aid with the EA.

During the first period of five years after the entry into force of the EA (i.e. until 1 January 1997) any public aid granted by the Czech Republic shall be assessed

[18] The three-year time-limit for the adoption expires on December 31, 1994 for Hungary, Poland, the Czech Republic and the Slovak Republic. For Romania and Bulgaria, the time-limit expired on December 31, 1995. The Europe Agreements with the Baltic States immediately set the limit at December 31, 1997. The time-limit for Slovenia is December 31, 1999.

[19] Implementing Rules for the competition rules applicable to undertakings have been adopted by the Association Council for the Czech Republic, Hungary, Poland and the Slovak Republic.

pursuant to the rules which apply to regions in the Community eligible for regional aid pursuant to Article 92(3)(a) EC Treaty. The period of five years may be extended for additional periods of five years by a decision of the Association Council [20]. The IR provide that the monitoring authorities shall submit a joint proposal to the Association Committee concerning the maximum aid intensities and specific regional coverage of areas eligible for national regional aid.

Moreover, the monitoring authorities shall jointly develop guidance on the compatibility of aid designed to combat the specific problems of the Czech Republic as it undergoes transition to a market economy ("Special Guidance").

In respect of ECSC products, Protocol 2 of the EA and the IR refer to the existing Community rules on state aid for ECSC products, including secondary legislation. However, Protocol 2 provides for specific rules governing aid for restructuring for an initial period of five years which can be extended by a decision of the Association Council.

The IR further provide specific procedures for consultation and problem solving. Whenever the important interests of one Party are affected by an aid programme or individual aid award, that Party may request information about this from the responsible authority. The affected party may furthermore request consultation with the other authority, or it may request that the other Party's monitoring authority initiate any appropriate procedures with a view to take remedial action. Where such consultations do not lead to a mutually acceptable solution, an exchange of views shall take place within the Sub-Committee for Competition established in the framework of the EA. Following this, the matter may be submitted to the Association Committee which may take appropriate recommendations for the settlement of these cases. This is without prejudice to any action under Article 64(6) of the EA and Article 8(6) of Protocol 2 to the EA[21]. Trade instruments should however only be used as a last resort.

Finally, the IR contain provisions to ensure transparency in the domain of state aid. The EA already obliges each Party to report annually to the other Party on the total amount and the distribution of the aid given and to provide, upon request information on aid schemes and individual cases of public aid. The IR provide that the EC Commission shall assist the Czech republic to draw up and thereafter update an inventory of its aid programmes and individual aid awards, established on the same basis as in the Community, in order to ensure and continuously improve transparency.

Enlargement and competition policy

On 15 July 1997 the Commission adopted the enlargement package on the accession of the 10 Associated countries to the Community.

Among the various documents making up the enlargement package competition policy features in two of those documents in particular, that is the *Commission Opinion* on each of the 10 Associated countries and the *Impact Study*. In its Opinions the Commission examines to what extent the Associated countries fulfill the criteria laid down by the European Council to become members of the Community, and what are the prospects for satisfying these criteria in a foreseeable future. The purpose of the Impact Study is to examine the consequences of accession on present and future Community policies.

As regards competition policy the Commission's conclusions may be summarized as follows:

The Commission Opinion (competition)

[20] Like Poland and Hungary it is likely that the Czech Republic will request an extension..

[21] According to these provisions, the Community or the Czech Republic may take appropriate measures if they consider that a particular practice is incompatible with the competition rules of the EA, and if such practice causes or threatens to cause serious prejudice to the interest of that Party or material injury to its domestic industry. Such measures may only be taken after consultationj within the Association Council or after 30 days following referral for such consultation. In the case of incompatible state aid, appropriate mesaures may only be adopted in accordance with the procedures and under the conditions laid down by GATT.

In the Opinions for each of the Associated countries a clear distinction is made between state aid and anti-trust. The rules and obligations in terms of approximation of legislation are different in the two areas and in most countries the authority appointed to control state aid is a department within the Ministry of Finance and not the anti-trust authority. Moreover, a clear distinction has been made between the approximation of legislation and the actual enforcement of the law.

Anti-trust

The Opinions reflect that in the area of anti-trust satisfactory progress has been made in terms of *approximation of legislation* in almost all Associated countries. The most advanced countries, such as Hungary, have already adopted a competition law sufficiently similar to EC competition law and are in the process of adopting secondary legislation, including block exemptions. Others have new draft laws in the pipeline which, once adopted, will fulfill the requirements in terms of approximation of legislation.

Moreover, the Commission notes the important role competition authorities have played in terms of "competition advocacy" in the legislative process in some Associated countries.

In a first stage, a *credible enforcement of the law* requires well functioning anti-trust authorities with sufficiently skilled staff to apply the law. In this repect the Commission notes that in most countries the anti-trust authority is in principle independent from government although it remains to be seen whether this will be respected in all cases. However, in a small number of countries this seems still to constitute a problem. It seems that the competition offices have the manpower required to enforce the law and that, in the most advanced countries, the staff have acquired a profound theoretical knowledge of competition law within a very short period of time. Even in less advanced countries important progress has been made in this respect.

However, what is still lacking is practical experience in applying the law, such as doing surprise inspections in companies and taking up cases *ex officio* (e.g. collecting data on possible cartels etc.). The high turnover of staff due to very low salaries remains a problem, in particular as regards lawyers, although the employment in the private sector of well educated competition lawyers may also have a positive spin-off effect. It seems that considerable resources are still used to investigate complaints from consumers and small undertakings who feel that dominant firms are abusing their position to impose onerous contract terms. While one may have sympathy with such complaints they do not constitute the most serious threat to competition in transition economies and the apparent very small number of cases dealing with hard core cartels, mergers and vertical restraints, such as resale price maintenance, gives rise to some concern. Moreover, the lack of powers or practical experience in carrying out surprise inspections in some countries and the very limited number of notifications in most, if not all, countries leaves one with the impression that much remains to be done to establish a true competition culture. For these reasons in the Opinion the Commission states that the enforcement of the law remains an important challenge in the future.

State aid

In the field of state aid much work remains to be done in all Associated countries. The main problems are lack of transparency in the granting of state aid and rather weak monitoring authorities on state aid with no real powers to enforce a credible state aid control. Moreover, in almost all countries it seems that a substantial amount of state aid is granted indirectly in the form of tax reliefs, tax arrears, guarantees, the writing off of bad loans granted by the state-owned banks etc. Such aid measures are difficult to detect and quantify and in most cases they constitute pure operating aid. In many Associated countries export aid is granted in order to boost domestic industry, which remain weak on export markets. Bankruptcy laws do not necessarily apply to all firms and the recent crisis in the financial sector in some Associated countries also give rise to concern.

The lack of progress in controlling state aid is reflected in the Opinions and includes countries which in other areas have made considerable progress, such as Hungary and Poland.

Nevertheless, the Opinions also conclude that some countries have made more progress than others, in particular the Baltic States where rather ambitious laws for the monitoring of state aid have been, or are in the process of being, adopted. It remains to be seen, however, whether these laws will be enforced.

The Impact Study (competition)

In the field of competition one of the major challenges of enlargement will be the heavier and more complex administrative burden imposed on the Commission due to a further increase in the number of cases and the logistical problems arising from having to deal with up to 25 Member States in 21 languages. Even with a possible further decentralisation of competition policy enforcement to the Member States and the adoption of more efficient procedures, in particular in the field of state aid, enlargement will necessitate additional human resources in order to avoid unacceptable delays in the handling of cases and policy developments.

Enlargement may constitute an important challenge to the Commission's attempt to further decentralise competition policy enforcement to the Member States while ensuring a uniform application of Community anti-trust policy throughout the Community. In most of the Associated countries the approximation of legislation in the anti-trust field is progressing satisfactorily, both as regards the substantive rules and the rules on procedure, and competition authorities have been set up to enforce the law. Although this may facilitate the application of Community competition law by the national authorities upon accession, it is equally true that this is not sufficient to establish the "competition culture" necessary for an efficient competition policy enforcement. It may be that this "competition culture" will not be fully achieved upon accession and that as a consequence hereof the Commission may be faced with certain difficulties in enforcing competition policy.

In the field of *state aid* the current rules on state aid seem to provide the flexibility needed to take account of any specificities of acceeding countries. However, enlargement will have an important impact on the Community regional aid policy. Under Community regional aid policy the population living in areas eligible for regional aid pursuant to Articles 92(3)(a) and (c) (the assisted areas) shall not exceed 50% of the Community total. As this limit is currently not far from being reached and provided this limit is maintained, the enlargement with countries with lower welfare levels will inevitably result in the crowding-out of a share of the population presently living in assisted areas. As concerns the current 92(3)(a) areas many would risk no longer to qualify for this status as the new entrants would reduce the average Community welfare levels to a considerable extent. Moreover, it is doubtful whether the monitoring authorities on state aid set up in the Associated countries will have the powers necessary to ensure a credible control of state aid up to accession and the skills and political support necessary to create a sufficient degree of transparency in the granting of state aid. This will in turn mean that upon acccssion a considerable increase in the Commissions workload may be foreseen, both in respect of the number of cases and the difficulties in dealing with them.

Global Standards Conference
Building the Global Information Society
for the 21st Century
New applications and business opportunities-Coherent standards and regulations
Sponsored by ISO/IEC/ITU
Hosted by the European Commission, DG III Industry
Brussels, 1 - 3 October 1997
Palace & Sheraton Hotels

The first conference to examine the questions related to creating standards for the Information Society will be held in Brussels on October 1-3, 1997. The Global Standards Conference, on building the Global Information Society for the 21st century, is a response to the recognition by the G7 Ministers in February 1995, of the importance of promoting interoperability to further develop the Global Information Society (GIS).

An international Steering Group, chaired by Mr. Bruno Lamborghini, Member of the Board of Olivetti, is coordinating the preparation of the Conference which focuses on market developments.
The aim of the event is to provide an open forum for the essential market players in the Information Society to exchange views regarding actual and potential applications and to identify factors leading to the successful and rapid implementation. It will also explore new ways to facilitate development of new products, markets and applications, and investigate the standards (voluntary and mandatory) and related technical regulations, and finally share perspectives on the appropriate timing of the implementation of applications to meet GIS/GII needs.

The Conference will be opened by Commissioner Dr Martin Bangemann and other G7 Ministers, such as Dr Günter Rexrodt (Germany), and will focus on four major themes, explored in parallel workshops on the second day, and each participating region has taken the lead role in coordinating one of the themes in synergy with the others :

- **Theme 1: Electronic Commerce** (US) - covering topics such as banking, financial services, teleshopping and trade
- **Theme 2 : Services to the Public** (Europe) - discussing information services, libraries, museums, distance welfare services, education, tele-medicine and intelligent transportation telematic systems
- **Theme 3 : Individual Use** (Canada) - focusing on interactive entertainment, tele-learning and the provision of information and communications
- **Theme 4 : Communications Infrastructure Interoperability** (Japan) - including statements from users, manufacturers and service providers, on technical convergence and related policy issues, and contributions from various global standards organisations

The results of these thematic workshops will be summarised and presented to all Conference delegates for discussion in the plenary session on the third and final day of the event but a open discussion on the Web has been launched.
The necessity to have a carefully balanced audience of deeply-interested actors, combined with the limited number of places available, imposes the necessity for early registration and payment of the 25.000 BEF fee. Registration forms, as well as all updates and relevant information on the Conference programme, can be found on the European Commission's ISPO Web site at http://www.ispo.cec.be/standards/conf97 and queries should be forwarded to the Conference secreatariat mailing box at glstdconf@dg3.cec.be

Conference Secretariat
European Commission -DG III - Industry
with the support of CEN
Rue de Stassart 36, B-1050, Brussels
Tel : +32-2-511 7455 Fax : +32-2-5118723
http://www.ispo.cec.be/standards/conf97
email : glstdconf@dg3.cec.be

INFORMATION SECTION

DG IV staff list

Télécopieur central : 295 01 28

Directeur général	*Alexander SCHAUB*	2952387/2954576
Directeur général adjoint plus particulièrement chargé des Directions C et D	*Jean-François PONS*	2994423/2962284
Directeur général adjoint plus particulièrement chargé des Directions E et F	*Gianfranco ROCCA*	2951152/2951139
Conseiller auditeur (chargé également de la sécur ité des informations)	*Joseph GILCHRIST*	2955673/2960246 télécopieur: 2969578
Assistant du Directeur général	*Stefan RATING*	2994009
directement rattachés au Directeur général :		
1 Personnel, Budget, Administration, Information	*Irène SOUKA*	2957206/2960189
2 Questions informatiques	*Guido VERVAET*	2959224/2951305
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Politique de concurrence, Coordination, Affaires Internationales et relations avec les autres Institutions	*Jonathan FAULL*	2958658/2965201
Conseiller	*Juan RIVIÈRE MARTÍ*	2951146/2960699
Conseiller	*Georges ROUNIS*	2953404
1 Politique générale de la concurrence et Coordination Chef adjoint d'unité	*Emil PAULIS* . . .	2965033/2966207
2 Affaires juridiques et législation Chef adjoint d'unité	*Helmut SCHRÖTER* . . .	2951196/2955911
3 Affaires internationales Chef adjoint d'unité	*Claude RAKOVSKY* . . .	2955389/2962368
DIRECTION B		
Task Force "Contrôle des opérations de concentration entre entreprises"	*Götz DRAUZ*	2958681/2952965
Télécopieur du Greffe Concentrations		2964301/2967244
1 Unité opérationnelle I	. . .	
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3 Unité opérationnelle III	*Roger DAOUT*	2965383/2965574
4 Unité opérationnelle IV	*Kirtikumar MEHTA*	2957389/2952871
DIRECTION C		
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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
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2 Médias, éditions musicales	*Anne-Margrete WACHTMEISTER*	2953895/2960266
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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	. . .	
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Chef adjoint d'unité	. . .	
5 Textiles, papier, industrie chimique, pharmaceutique, électroni que, construction mécanique & autres secteurs manufacturiers	*Cecilio MADERO VILLAREJO*	2960949/2955900
Chef adjoint d'unité	. . .	
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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 areavailable from DGIV's home page on the World Wide Web. Future issuesof the newsletter will contain details of conferences on competition policy which have ben 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

The competition policy of the European Union, its scope and impact on the Member States - PONS - Kiev - 8/07/97

Mapping the New Open Telecommunications Marketplace - Van Miert - IIC Telecommunications Forum - Brussels - 7/07/97

The application of EC Competition law to UK pub contracts: its scope and its limits - VAN ERPS - London - 17/06/97

Competition and regulation in newly liberalised industries - VAN MIERT - London University - London - 16/06/97

Impact of digital technologies on the telecommunications and television sectors - VAN MIERT- LSE Alumni - Rome - 12/06/97

Competition in Telecommunications - The Regulators Challenge UNGERER - Asia Telecom 97 Forum - Singapour - 10/06/97

European Competition Policy - in particular developments in policy on State aid control - SCHAUB - CIRFS General Assembly - Brussels - 14/05/97

Les enjeux économiques, sociaux et politiques de la concurrence en Europe - VAN MIERT- Forum Financier - Arlon - 13/05/97

L'aide d'état et l'environnement - NAESAGER - Asoc. distrib. électricité - Bruxelles Swissôtel - 9/04/97

The application of EU competition rules to the insurance sector. Past developments and current priorities - ESTEVA MOSSO - British Insurance Law Association Journal. - 1/03/97

COMMUNITY PUBLICATIONS ON COMPETITION

Unless otherwise indicated, these publications may be purchased form the sales agents of the European Communities (see last page); use ISBN or Catalogue Number to order.

Videos

Fair Competition in Europe

This short video outlining the principal aspects of European competition policy is available from the sales agents of EUR-OP, the Office for Official Publications of the European Communities (price 20 ECU).

When ordering please quote the catalogue number CV-ZV-97002-xx-V (replace xx by the code for the language version you wish to buy: Danish - DA; Dutch - NL; English - EN; Finnish - FI; French - FR; German - DE; Greek - GR; Italian - IT; Portuguese - PT; Spanish - ES; Swedish - SV).

Legislation

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 undertakings 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).

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 EC-Volume II B-Explanation of rules applicable to state aid Situation at December 1996 Catalogue No: CM-03-97-296-xx-C (xx=language code= FR; les autres versions suivront)

Competition law in the European Communities-Volume IIIA-Rules in the international field- Situation at 31 December 1996 (Edition 1997) Catalogue No: CM-89-95-858-xx-C xx= language code: IT, ES; the other versions will be available later)

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

Official documents

Interim report of the multimodal group - Presented to Commissioner Van Miert by Sir Bryan Carsberg, Chairman of the Group (Ed. 1996). Catalogue No: CM-95-96-350-EN-C

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

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) Nø 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)

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)]

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)

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.-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.-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.-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.-73/80 Catalogue No: CM-76-92-988-xx-C (xx=DA, DE, EN, FR, IT, NL.)

Recueil des décisions de la Commission en matièrre 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.)

Competition reports

European Community Competition policy 1996
Catalogue No: CM-03-97-967-xx-C (xx= ES*, DA*, DE*, GR*, EN*, FR*, IT*, NL*, PT*, FI*, SV*)

XXV Report on Competition Policy 1995 Catalogue No: CM-94-96-429-xx-C

European Community Competition Policy 1995 Catalogue No: CM-94-96-421-xx-C (xx= ES*, DA*, DE*, GR*, EN*, FR*, IT*, NL*, PT*, FI*, SV*)

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: 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)

Fifth survey on State aid in the European Union in the manufacturing and certain other sectors [COM(97) 170 final] (Edition 1997) Catalogue No: CB-CO-97-162-xx-C (xx= DE EN FR)

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

Examination of current and future excess capacity in the European automobyle industry - Ed. 1997 Catalogue No: CV-06-97-036-EN-C

Communication de la Commission: Les services d'intérêt général en Europe (Ed. 1996) Catalogue No: CM-98-96-897-xx-C xx= DE, NL, GR, SV

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

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

Services de télécomunication en Europe: statistiques en bref, Commerce, services et transports, 1/1996 Catalogue No: CA-NP-96-001-xx-C xx=EN, FR, DE

Report by the group of experts on competition policy in the new trade order [COM(96)284 fin.] Catalogue No: CM-92-95-853-EN-C

New industrial economics and experiences from European merger control: New lessons about collective dominance ? (Ed. 1995) Catalogue No: CM-89-95-737-EN-C

Proceedings of the European Competition Forum (coédition with J. Wiley) -Ed. 1996 Catalogue No: CV-88-95-985-EN-C

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

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

Bierlieferungsverträge in den neuen EU-Mitgliedstaaten Österreich, Schweden und Finnland - Ed. 1996 Catalogue No: CV-01-96-074-DE-C DE

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

Statistiques audiovisuelles: rapport 1995 Catalogue No: CA-99-56-948-EN-C

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

Impact of EC funded R&D programmes on human resource development and long term competitiveness (Ed. 1995) Catalogue No: CG-NA-15-920-EN-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

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

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

The geographical dimension of competition in the European single market (Ed. 1993) Catalogue No: CV-78-93-136-EN-C

International transport by air, 1993 Catalogue No: CA-28-96-001-xx-C xx=EN, FR, DE

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

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

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

The effect of different state aid measures on intra Community competition (Ed. 1990) Catalogue No: CM 59 90 702 EN C

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

OTHER PUBLICATIONS

Kartelrecht - VAN GERVEN, GYSELEN, MARESCEAU, STUYCK, STEENBERGEN - Story Scientia (1996), 1089 pages (Beginselen van Belgisch Privaatrecht, Vol XIII)

PUBLISHED IN THE OFFICIAL JOURNAL

1st April to 16 July 1997

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

26/06/97 C196 Notification of a standard-form selective distrivution contract (Case No IV/M.36.533/F-3)

21/06/97 C190 Communication pusuant to Art. 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the applicatio of Article 85 (3) of the Treaty to categories of agreements and concerted practices

18/06/97 C185 Communication of agricultural structure decisions C185 Notice pursuant to larticle 12 (2) of Council Regulation (EEC) No 4056/86 and Article 12 (2) of Council Regulation (EEC) No 1017/68 concerning case No IV/36.282 Arrangements between Sea-Land, P&O Nedlloyd, Maersk and OOCL ('Vessel Sharing Agreements')

3/06/97 C 168 Notification of agreements (Case No IV/36.474 - IBM/STET)

21/05/97 C 152 Notification of cooperation arrangements (Case No IV/36.478/F-3)

15/05/97 C 147 Notification of cooperation agreements (Case No IV/36.391/F1) C 147 Notification of production agreement (Case No IV/36.306 - HMG/Endemol)

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Competition Law in the European Communities - volume IB - Explanation of rules applicable to undertakings

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