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Contents

Livre blanc sur la modernisation des règles d'application des articles 81 et 82 du Traité

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Le 28 avril dernier, la Commission a adopté un livre blanc sur la modernisation des règles d'application des articles 81 et 82 du traité. Ce document ouvre un vaste débat : celui de la réforme du règlement n°17, pierre angulaire du système d'application des articles 81 et 82 dont l'élaboration remonte au début des années 1960.

Le livre blanc marque un choix motivé en faveur d'une option de réforme particulière mais il offre une base de discussion. Depuis sa publication, de nombreuses tables rondes ont été organisées avec des associations d'entreprises et des avocats, un groupe de travail a été mis en place avec des représentants des Etats membres et de multiples colloques se sont tenus. Le délai fixé pour la présentation d'observations par les tiers intéressés a expiré le 30 septembre. Une centaine d'observations écrites émanant des Etats membres, d'entreprises et d'associations d'entreprises, d'avocats ou d'universitaires est parvenue à la Commission. Le Parlement européen et le Conseil économique et social se sont saisis du dossier. C'est sur la base de toutes ces réactions au Livre blanc que la Commission va élaborer une proposition de règlement qui sera présentée au Conseil et au Parlement.

Le traité de Rome a posé un principe général d'interdiction des ententes restrictives de concurrence tempéré par une règle d'exception, l'article 81§3, mais a laissé ouverte la question des modalités d'application de cette exception. Deux types de régimes étaient concevables : un régime d'autorisation similaire à celui qui existait dans le traité CECA ou un régime dit d'exception légale. Dans un régime d'autorisation, les ententes doivent être notifiées à une autorité administrative qui accorde ou refuse le bénéfice d'une exemption. Dans un régime d'exception légale, tout juge et toute autorité compétente saisie d'un litige, peut et doit examiner si une entente restrictive remplit ou non les conditions posées par le traité.

Au début des années 1960, l'Europe de la concurrence restait à créer : seuls deux des six Etats membres avaient une législation en la matière, il n'existait qu'une seule véritable autorité de concurrence, le droit européen était embryonnaire. La rédaction très générale de l'article 81§3 et la rigueur du principe d'interdiction rendaient l'évaluation de la légalité de leurs ententes par les entreprises délicate. La Commission, institution jeune, avait besoin d'être informée des types d'accords existants

et de développer une réelle connaissance des différents secteurs économiques.Dans ce contexte, le choix d'un régime d'autorisation centralisé s'est rapidement imposé. Le règlement n°17 a créé un système dans lequel les ententes restrictives de concurrence affectant le commerce entre Etats membres doivent, pour bénéficier d'une exemption, être notifiées à la Commission, qui dispose d'une compétence exclusive pour appliquer l'article 81§3. L'exemption ne peut, sous réserve d'exceptions limitative-ment énumérées (article 4§2 du règlement n°17) être rétroactive que jusqu'à la date de la notification. Les ententes restrictives non exemptées sont nulles de plein droit.

Ce système a permis le développement d'un droit cohérent et la diffusion d'une « culture de concurrence » dans toute la Communauté. La politique de concurrence est aujourd'hui perçue, à juste titre comme un pilier de la construction européenne, véritable police du marché commun.

Une réforme nécessaire

Malgré les élargissements successifs de la Communauté et en dépit de la création dans tous les Etats membres d'autorités de concurrence crédibles, le système du début des années 1960 n'a pas connu jusqu'à présent de modifications substantielles.

Le système du règlement n°17 présente aujourd'hui deux travers importants : il ne permet plus de garantir l'efficacité du contrôle et représente une contrainte bureaucratique exces-sive pour les entreprises.

Dans une Communauté de quinze Etats membres, un contrôle centralisé ne permet pas d'assurer une protection efficace de la concurrence. L'intégration croissante des économies européennes a considérablement élargi le champ d'application du droit communautaire et par là même la compétence de la Commission. L'existence du monopole d'application de l'article 81§3 bloque l'appli-cation décentralisée, tant par les juridictions que par les autorités de concurrence et laisse la Commission, seule véritable garante du respect des règles de concurrence.

Ceci est d'autant plus préoccupant que la moitié des affaires que la Commission traite provient des notifications. Or, les notifications n'apportent pas à la Commission les affaires importantes du point de vue de la concurrence. Les chiffres sont éloquents : en 35 ans, la Commission n'a été informée d'accords justifiant une décision d'interdiction par une notification que dans 9 cas. Dans les 5 dernières années, moins de 1% des notifications ont donné lieu à une décision d'interdiction. Tandis que la Commission se consacre à l'analyse de ces accords, elle ne peut instruire suffisamment les plaintes dont elle est saisie et mener les procédures d'offices nécessaires contre les infractions les plus graves qui, elles, ne sont jamais notifiées.

Le second travers du système actuel est la bureaucratie qu'il génère et l'insuffisance de sécurité juridique qu'il confère aux entreprises. Le règlement n°17 ne crée pas comme le règlement sur les concentrations de véritable obligation de notification mais il comporte cependant une très forte incitation à notifier pour les entreprises. Or, les notifications ont un coût important, que les entreprises les effectuent elles-mêmes ou par l'intermédiaire d'avocats spécialisés.

Or, la procédure prévue par le règlement n°17 s'est rapidement révélée trop lourde pour être systématiquement suivie. Aux termes du règlement, la Commission devrait, pour chacune des ententes qui lui sont notifiées, examiner l'affaire, publier une communication au journal officiel dans les 11 langues afin de permettre au tiers de faire valoir leurs observations, soumettre un projet de décision au Comité consultatif et enfin, adopter la décision et la publier, dans toutes les langues. Compte tenu du nombre considérable d'affaires, la Commission a rapidement réservé cette procédure complexe aux cas les plus importants et adopte en moyenne moins d'une dizaine de décisions formelles par an. Plus de 90% des procédures sont clôturées de manière informelle, notamment par l'envoi de « lettres administratives de classement », et ce après des délais souvent jugés trop longs. Ces lettres, simples éléments de fait dont les juridictions peuvent tenir compte, ne sont qu'exceptionnellement précédées d'une publication au Journal Officiel permettant aux tiers de faire valoir leurs observations (en 1997, 7 publications au titre de l'article

19§3 sur 210 lettres administratives, soit 3% des cas) : la transparence du système n'est pas assurée.

Le règlement n°17, s'il a permis le développement d'un corpus complet de règles cohérentes, n'est plus adapté à l'Europe de la fin du vingtième siècle. Les procédures qu'il a instituées se sont révélées impraticables. Une réforme s'impose. Elle est d'autant plus nécessaire que la politique de concurrence fera demain face à deux défis majeurs : l'élargissement à de nouveaux pays membres et la globalisation croissante des économies.

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Il existe aujourd'hui un large consensus sur la nécessité de réformer le règlement n°17 et sur les objectifs que doit poursuivre la réforme, c'est-à-dire l'efficacité de la politique de concurrence et la simplification du contrôle administratif. Depuis les années 1980, de nombreuses propositions de réformes ont été avancées tant par les Etats membres que par les universitaires et les praticiens. Certaines des propositions se limitaient à des aménagements marginaux du système du règlement n°17 tandis que d'autres envisageaient un bouleversement profond et un partage du pouvoir d'exemption entre la Commission et les autorités de concurrence nationales.

Après une analyse scrupuleuse de ces différentes options, la Commission est arrivée à la conclusion que des aménagements mineurs du système actuel ne sont pas en mesure d'assurer une application efficace des règles de concurrence dans une Communauté élargie et que l'option d'une décentralisation des notifications vers les autorités nationales présente plus de dangers que d'avantages. En conséquence, le Livre blanc prend clairement position en faveur d'une option différente : l'adoption d'un système d'exception légale.

Cette option consiste dans l'abolition du régime d'autorisation et du système de notification qui en est le corollaire. Dans un système d'exception légale, l'article 81§3 serait, à l'instar de l'article 81§1 ou de l'article 82, applicable non seulement par la Commission mais par toute autorité et toute juridiction nationale. L'article 81 deviendrait, comme l'article 82, une norme d'interdiction unitaire. Les ententes restrictives de concurrence qui affectent le commerce entre les Etats membres, c'est-à-dire les ententes qui tombent sous le coup de l'article 81§1, seraient licites ab initio dès lors qu'elles remplissent les conditions posées par l'article 81§3. Aucune procédure d'autorisation par une autorité administrative, et partant aucune notification, ne serait plus nécessaire.

Le Livre blanc considère que l'adoption d'un régime d'exception légale permettrait de renforcer la protection de la concurrence et de simplifier le contrôle administratif, remplissant ainsi les exigences posées par l'article 83 du traité.

Une application plus efficace des règles de concurrence communautaires

L'adoption d'un système d'exception légale renforcerait la protection de la concurrence d'une double manière : en permettant une décentralisation effective de l'application des règles et en facilitant le recentrage de l'action de la Commission sur les restrictions les plus graves.

La réforme proposée dans le Livre blanc renforcerait la protection de la concurrence en facilitant une décentralisation effective non seulement vers les autorités nationales mais également vers les juridictions nationales.

Dans une Communauté élargie, il est nécessaire pour assurer une protection efficace de la concurrence, de confier l'application des règles à plusieurs décideurs. Actuelle-ment, les juridictions nationales appliquent les articles 81§1 et 82, la Cour de Justice ayant reconnu un effet direct à ces dispositions au début des années 1970. Mais l'efficacité de leur intervention est largement compromise par la possibilité que les entreprises attaquées ont de notifier leur accord auprès de la Commission et de bloquer de facto l'action judiciaire. Il est souhaitable de leur permettre d'appliquer pleinement l'article 81 pour trois raisons. (i) Elles ont des pouvoirs dont ne disposent pas les autorités nationales ou la Commission, comme celui d'octroyer des dommages et intérêts aux victimes d'infractions, d'ordonner l'exécution forcée d'un contrat ou de prononcer plus rapidement et de manière plus

efficace que les autorités, des mesures d'urgence. (ii) Elles peuvent faire application simultanément du droit de la concurrence et du droit commercial général, ce qui simplifie les procédures lorsque le droit communautaire de la concurrence n'est qu'un des aspects d'un litige. (iii) Enfin, donner aux juridictions nationales le pouvoir d'appliquer effectivement l'article 81 devrait accroître les actions judiciaires dans ce domaine et contribuer ainsi à l'application efficace du droit communautaire.

L'adoption d'un système d'exception légale permet également la décentralisation vers les autorités nationales de concurrence. Ceci suppose naturellement que les sept Etats membres qui ne l'ont pas déjà fait dotent leurs autorités du pouvoir d'appliquer le droit communautaire. Il existe un intérêt manifeste à mieux utiliser les synergies existantes entre la Commission et ces autorités spécialisées qui disposent souvent de ressources importantes et d'une très bonne connaissance de leurs marchés nationaux respectifs.

L'adoption d'un système d'exception légale permet la suppression du régime de notifications, devenu inefficace en termes de protection de la concurrence. Or, la suppression de ce système de notification permettrait à la Commission de concentrer son action sur les restrictions les plus graves. Dans ce contexte, les plaintes revêtiraient une importance accrue et le Livre blanc envisage par conséquent d'améliorer leur traitement, notamment par l'introduction d'un délai de quatre mois au terme duquel la Commission devrait informer le plaignant de ses intentions vis-à-vis de sa demande.

La réforme devrait de surcroît s'accompagner d'un renforcement des moyens d'action de la Commission dans la répression des infractions. Le Livre blanc propose à cette fin différentes mesures, notamment l'actualisation des montants d'amendes et d'astreintes, la simplification du recours aux questions orales dans le cadre de l'instruction ou encore la réforme des mécanismes d'autorisation judiciaire des vérifications.

La simplification du contrôle administratif

En second lieu, l'adoption d'un système d'exception légale simplifierait le contrôle administratif, seconde exigence de l'article 83§2 b) du traité. Les entreprises ne seraient plus tenues de notifier leurs accords restrictifs de concurrence à la Commission et pourraient, lorsqu'ils remplissent les conditions de l'article 81§3, s'adresser directement aux juridictions nationales pour en obtenir l'exécution.

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A la lecture des observations qui sont parvenues à la Commission, deux principales questions surgissent : (i) comment assurer une application cohérente du droit communautaire dans un système de compétences parallèles et (ii) comment maintenir un niveau de sécurité juridique suffisant pour les entreprises ?

Assurer une application cohérente du droit communautaire

Dès qu'une norme est appliquée par une pluralité de décideurs, il existe un risque de voir des décisions divergentes adoptées. Ceci n'est pas spécifique au droit de la concurrence mais est caractéristique de toutes les règles communautaires appliquées directement par les juridictions nationales. La cohérence de l'application du droit communautaire est, en définitive, assurée par la Cour de Justice à laquelle les juridictions nationales peuvent poser des questions préjudicielles au titre de l'article 234 du traité.

La Commission, gardienne des traités, aura cependant une responsabilité particulière vis-à-vis de l'application cohérente des règles. Par l'adoption de règlements d'exemption par catégorie sur habilitation du Conseil et de lignes directrices, elle devra clarifier le droit afin de permettre aux autorités et aux juges d'apprécier la légalité des ententes qui leur seront soumises. Les décisions individuelles d'interdiction contribueront également à préciser le droit, traçant une frontière claire entre les ententes interdites et les ententes licites.

Au-delà du mécanisme de l'article 234 et de la nécessaire clarification du cadre législatif, il apparaît nécessaire, en matière de concurrence, de mettre en place des mécanismes plus souple de

prévention et de résolution des conflits. La problématique de la cohérence se pose en des termes différents selon qu'elle concerne les autorités ou les juridictions nationales.

La Commission et les autorités de concurrence nationales formeront un véritable réseau au sein duquel la cohérence devra être assurée grâce à des mécanismes efficaces d'information et de coopération. Le Livre blanc envisage tout d'abord une obligation d'information de la Commission par les autorités nationales de tous les cas d'application du droit communautaire, obligation symétrique de celle qui existe déjà dans le chef de la Commission. Cette information devrait être fournie en temps utile, c'est-à-dire lors de l'ouverture d'une procédure et surtout, avant sa clôture afin de permettre à la Commission d'intervenir. Le Livre blanc prévoit également le maintien du pouvoir de la Commission de dessaisir les autorités nationales en engageant elle-même une procédure (actuel article 9§3 du règlement n°17). Enfin, le corollaire nécessaire de la réforme est la mise en place d'un système d'échange d'informations confidentielles et de transferts de dossier efficace. Ces différentes mesures devraient permettre d'assurer une approche cohérente des restrictions de concurrence par tous les membres du réseau sous le contrôle de la Commission.

La problématique de la cohérence des jugements rendus par les différentes juridictions nationales est quelque peu différente. Dans une même affaire, la *Convention de Bruxelles de 1968 sur la reconnaissance et l'exécution des décisions de justice* assure qu'une seule juridiction est saisie d'un même litige et que sa décision, devenue définitive, est reconnue et exécutée dans toute la Communauté. En outre, la Cour de Justice a posé dans l'affaire *Delimitis* le principe selon lequel les juridictions doivent s'efforcer d'éviter les conflits avec les décisions à venir de la Commission. Ce principe, qui s'applique a fortiori aux décisions effectivement prises est un puissant facteur de cohérence de l'application des règles. Dans le même arrêt *Delimitis*, la Cour a rappelé que les juridictions nationales peuvent s'adresser à la Commission pour obtenir toute information d'ordre factuel, juridique ou économique. Il est également envisagé de permettre à la Commission de se constituer partie intervenante (*amicus curiae*) devant une juridiction nationale sous réserve de l'accord du juge saisi. Le Livre blanc évoque enfin la possibilité d'introduire une obligation d'information de la Commission par les juges nationaux des cas d'application du droit communautaire de la concurrence similaire à celle qui existe en droit allemand. Les modalités de fonctionnement d'un tel système et la possibilité pour la Commission d'assurer un suivi utile des informations qui lui parviendraient doivent être examinées en détail dans les mois qui viennent.

Le Livre blanc avait anticipé la question délicate du maintien de la cohérence du droit communautaire dans un système de compétences parallèles. Les solutions qu'il esquisse ne sont pas définitives et les contributions des Etats membres mais également des tiers devront permettre de définir les mécanismes les plus adaptés.

Maintenir la sécurité juridique des entreprises à un niveau satisfaisant

La seconde question essentielle soulevée par les observations est celle de la sécurité juridique des entreprises. A cet égard, il convient de rappeler que la Cour de Justice a défini l'exigence de sécurité juridique comme la nécessité d'éviter les conflits de décisions et non, comme le droit pour les entreprises d'obtenir une prise de position de la Commission sur leur accord en l'absence d'une compétence exclusive et d'un système de notifications. La problématique de la sécurité juridique est donc étroitement liée à celle de la cohérence exposée plus haut. Cependant, le Livre blanc indique les raisons pour lesquelles la sécurité juridique des entreprises serait maintenue à un niveau satisfaisant dans un système d'exception légale.

Les entreprises sont aujourd'hui largement en mesure d'apprécier elles-mêmes la compatibilité de leurs ententes avec le droit communautaire grâce au développement du corpus législatif, à la pratique décisionnelle de la Commission riche de plus de 150 décisions d'exemption et à une jurisprudence abondante.

D'autre part, la situation des nombreuses entreprises qui ne

notifient actuellement pas leurs accords restrictifs, découragées par l'improbabilité d'obtenir une décision formelle, sera considérablement améliorée. Ces milliers d'ententes, aujourd'hui nulles même si elles remplissent les conditions de l'article 81§3, seront automatiquement légalisées par l'adoption d'un système d'exception légale.

La question de la sécurité juridique se posera d'ailleurs essentiellement pour les grandes entreprises détenant un pouvoir de marché important, c'est-à-dire pour celles qui ont les moyens d'y répondre. La *communication de minimis* s'applique pour les entreprises détenant une part de marché inférieure à 5% (accords horizontaux) ou 10% (accords verticaux). La nouvelle génération de règlements d'exemption comportera des seuils de parts de marché (le projet de règlement d'exemption en matière de restrictions verticales comporte un seuil à 30%) réglant très largement le problème des petites entreprises.

Néanmoins, au cours des consultations de l'industrie, les entreprises ont souligné la difficulté, dans certains cas où il n'existe pas de précédent, d'évaluer la légalité d'un accord. Plusieurs observations écrites demandent que soit préservée la possibilité de s'adresser à la Commission en cas de doute sérieux sur la légalité d'un accord afin d'obtenir un avis. Il est suggéré de créer un système comparable à celui de *« business review letters »* américaines. A condition de remplir certaines conditions et sous réserve de la discrétion de la Commission pour émettre un avis, les entreprises pourraient ainsi s'adresser aux services de la Commission et leur demander de se prononcer sur leurs intentions à l'encontre d'une entente. Dans la mesure où leurs priorités le permettraient, les services de la Commission pourraient adresser à l'entreprise une lettre motivée exposant les raisons pour lesquelles ils envisagent ou ils n'envisagent pas d'action contre l'accord en cause. Cette proposition est actuellement à l'étude. Ceci présenterait certainement de grands avantages mais il convient naturellement d'éviter que le régime de notification ne soit pas purement et simplement remplacé par un régime de « demandes d'avis », ce qui tiendrait en échec l'un des objectifs de la réforme, le recentrage de l'action de la Commission sur les restrictions les plus graves.

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Les nombreuses contributions adressées à la Commission doivent à présent être analysées pour permettre aux principes énoncés dans le Livre blanc de prendre corps dans une proposition de texte réglementaire. D'autres textes devront être modifiés ou créés : à titre d'exemples, les communications sur la coopération avec les autorités et les juridictions nationales devront être révisées, une communication spécifique sur les plaintes devra être élaborée. Des mesures concrètes de formation des juges nationaux devront être prises et le réseau constitué par la Commission et les autorités nationales devra établir les règles de son fonctionnement. Le Livre blanc n'est que la première pierre de la profonde réforme des règles d'application des articles 81 et 82 indispensable au bon fonctionnement d'une Communauté dont l'élargissement est désormais à l'ordre du jour.

OPINION AND COMMENTS

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

The British Interactive Broadcasting Decision and the application of competition rules to the new digital interactive television services

Andres FONT GALARZA, COMP-C-2

I. INTRODUCTION

The Commission exempted on 15 September 1999 pursuant to Article 81 (3) of the EC Treaty the creation of a joint venture company, British Interactive Broadcasting Ltd (BiB, now named Open)[1]. Open's parent companies are BSkyB Ltd, BT Holdings Limited, Midland Bank plc and Matsushita Electric Europe Ltd. Open is to provide a new type of service, digital interactive television services, to consumers in the United Kingdom. This involves putting in place the necessary infrastructure and services to allow companies, such as banks, supermarkets and travel agents, to interact directly with the consumer. The following services will form part of the Open digital interactive television service: home banking, home shopping, holiday and travel services, down-loading of games, learning on line, entertainment and leisure, sports, motor world, a limited collection of "walled garden" internet sites provided by a third party and e-mail and public services. An important element of this infrastructure is a digital set top box. Open will subsidise the retail-selling price of digital satellite set top boxes

The Commission's decision (hereinafter the BiB decision) follows the substantial undertakings given by the parties to the Commission in order to ensure that the digital interactive television services market in the UK remains open to competition.

The BiB decision is an important precedent for the Commission's assessment of the competition impact of the new interactive services which are being developed and offered to the consumers in the digital world. These services are of a huge potential economic importance and are part of what some start to call the future "digital capitalism" structure of our markets in a context of technological convergence and globalisation.

The BiB decision follows the policy set out by the Commission in previous cases concerning mergers and joint ventures in the pay-TV sector between dominant players in the telecommunication and media markets[2] (III). Nevertheless, this decision incorporates clarifications and novelties, which refine the previous Commission's case law in various aspects such as market definition and non-competition clauses (IV). Some interesting conclusions for future operations can also be drawn from the remedies given by the parties to obtain the Commission's clearance (V).

II. SUMMARY OF THE BiB DECISION

The decision considers that the combination of the very significant market power of BT and in particular of BSkyB in related markets to that in which BiB will be active such as the customer access infrastructure market, the technical services for pay-tv and digital interactive services, the pay-tv market and the market for the wholesale supply of film and sport channels for pay-tv, risked eliminating a substantial part of competition on the markets for digital interactive TV services.

The main element of concern raised by the Commission pursuant to Article 81 EC was that the operation eliminated BT and BSkyB as potential competitors in the digital interactive television services market. Both have sufficient skills and resources to launch such services and both would be able to bear the technical and financial risks of doing so alone. Given the market positions of BT and BSkyB in markets related to the one in which Open will be active, the restriction of competition between them is appreciable. The conditions imposed and described in the

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1 Case No IV.36.539-British Interactive Broadcasting/Open, decision not yet published.

2 See for a general overview Temple Lang J,. "Media, Multimedia and European Community Antitrust Law", FCLI, 1996.

decision should ensure that this risk does not materialise and that, in particular, competition to BT comes from the cable networks, that third parties are ensured sufficient access to BiB's subsidised set top boxes and to BSkyB's films and sport channels and that set top boxes other that BiB's set top box can be developed in the market, so that the digital interactive television services market remains open to competition.

The provisions of Article 81(1) of the EC Treaty are declared inapplicable, for a period of seven years. As for the duration of the exemption decision, the Commission examined the conditions prevailing on the UK market, in order to ascertain what would be the minimum period for which BiB would need the support of its parent companies to establish itself as a viable business in the new market of the digital interactive television services[3].

III. THE BiB DECISION AS A CONTINUATION OF THE COMMISSION'S "BALANCED APPROACH"[4] IN THE EMERGING MEDIA MARKETS

The Commission in this decision and in particular in its assessment pursuant to Article 81 (3) EC confirms the referred balanced approach. The latter means in short that the Commission takes a favourable view of the potential benefits for the consumers of the technical progress developed by the companies co-operating in these new emerging media and telecommunication markets. At the same time the Commission must make sure that those potential benefits do not turn in the medium/long run into disadvantages to the consumers, in particular in terms of excessive prices to be paid for those services, as a result of anticompetitive restrictive agreements or damaging permanent structural changes in the market pursuant to the creation or strengthening of dominant positions.

The approach, irrespective on whether each operation notified to the Commission was cleared or prohibited is, therefore, fundamentally the same for an assessment made under Article 81 EC such as in the BiB decision or an assessment made under the Merger Regulation[5]. The latter is particularly true under the new regime set out by Article 2.4 of the Merger Regulation. Indeed, the media sector is undoubtedly one in which the spill-over effects envisaged in Article 2.4 are more likely to be found given the strategic interest of telecommunication and media companies in being present in all neighbouring converging fields. Consequently a direct or indirect assessment under Article 81 EC is likely anyhow to be undertaken by the Commission in this kind of operations in the future. In practice the only difference in this field, in dealing with a full-function or a non full-function joint venture under the Merger Regulation or under Regulation 17, is with regard to procedural issues or the nature of the remedies[6] which are considered appropriate to solve the competition concerns.

In the BiB decision the Commission takes into account that in developing the Open joint venture, the parties have overcome the current technological limitations of both satellite broadcast technology and narrowband telecommuni-cations customer access infrastructure. The former is, for the time being, capable of only one-way communication and could not alone provide interactive services of the type envisaged by Open. The latter, while capable of the two-way communication inherent in telephony is not, at the moment, suitable for services, which require a higher bandwidth. In combination, however, they enable provision of a new form of service to a vast majority of consumers in the United Kingdom. Retailers of goods and services also obtain a new outlet for their products. The creation of

3 See, with regard to the need to justify properly the duration, the ruling on 15.09.98 of the CFI in the European Night Services case, paragraphs 230 and 231.

4 See "EC Competition Law and digital pay Television" by Linsey Mc Callum, Competition Policy Newsletter 1999, number 1 February.

5 See for example: MSG decision, M.649 [1994] OJ L 364/1; Nordic Satellite Distribution, M.490, [1995] OJ L 53/20; Bertelsmann/Kirch/Première and Deutsche Telecom/Beta-Research, Commission decisions of 27 May 1998; case IV/M.1439-Telia/Telenor, decision of 13.10.99, not yet published.

6 See Drauz, G.; "Remedies under the merger regulation", FCLI, 1996, p.219.

the joint venture, therefore, contributes to an improvement in the distribution of goods and technical and economic progress.

Until recently, services comparable to those of Open have been available only via the Internet and using personal computers as a display screen. However, the still limited penetration of personal computers in the United Kingdom has prevented such services from reaching the mass market. Almost all households in the United Kingdom possess a television set. Purchase of an Open/BSkyB digital set top box would give them access to interactive services via television screens. The introduction of a new service of this type is of benefit to consumers.

The Commission also took into account that BT and BSkyB have the necessary expertise to provide some form of interactive services individually. However, by co-operating together in Open they are able to provide a better service and to do so more quickly. Their participation, together with Midland Bank and Matsushita, is thus indispensable to the creation of Open, and to its ultimate establishment on a new market. BT has gained skills and experience in the course of its past interactive television trials in the development and integration of interactive multimedia services, which it contributes, to the joint venture. This is in addition to its expertise in the provision of telecommunications services, which have been vital to the operation of the Open telecommunications return path and its connections with the servers. BSkyB contributes its experience in set top box design and operation, together with its knowledge of consumer demand for pay TV. Midland contributes expertise in the area of merchant acquiring and transaction management, and the integration of these services into the Open infrastructure. Finally, Panasonic contributes its technical expertise, particularly in the area of set top box design.

Therefore, the Commission concluded that the creation of Open met all conditions for an individual exemption pursuant to Article 81 (3) of the EC Treaty and that pursuant to the modifications done to the notified operation and the conditions imposed upon the parties, all possible appreciable restrictive effects of the operation were eliminated and that the balance of the operation following the Commission's intervention is in favour of technological progress and consequently of the consumers.

IV. THE MAIN LEGAL POINTS OF THE BiB DECISION

In a number of aspects this case constitutes a new legal development or clarification of Commission's case law.

1. Market definitions

In the telecommunications and media fields the decision contributes new market definitions which will undoubtedly be relevant for upcoming operations to be notified to the Commission. Other market definitions present in the BiB decision contain interesting clarifications to previous Commission practice.

1.1. The digital interactive television services market

The Commission concluded that end-user demand substitutability for a package of interactive services is distinguishable from demand substitutability of the individual services which form part of the package or from close alternative sources of supply for the customers of BiB's services such as high-street retailing or interactive services via personal computers. The Commission also concluded that digital interactive television services and pay-television services are different markets.

The conclusion of the Commission with regard to the distinction from high-street retailing seems pretty obvious given that the characteristics of the retailing services of the type to be offered by BiB and high-street retailing are clearly different as seen by the shopper. Furthermore, there is likely to be a price difference between goods or services purchased in the high street and those obtained via a package of digital interactive television services. Finally, the promotion of an interactive service brand, distinct from that of the individual content providers, strongly suggests that BiB regards its own services as distinct from those of high-street retailing.

The distinction between markets for digital interactive services available via television sets and

those available via personal computers could be seen as more disputable. The Commission concluded with a separate product market after considering that a small permanent increase in the price of such services available via TV sets is unlikely to be constrained by the existence of services available on PCs. While TV sets are ubiquitous, in the UK only some 25% of households have a PC and less than half of these are equipped with a modem. Moreover, the relatively high cost of a PC means that the switching cost for end-users would be high. The differences between TV sets and PCs both in purchase prices and in their characteristics of use have also been taken into account and so has the apparent differences in environments, the living room being the traditional place for the TV whereas the working room or corner is the place for the PC. Digital interactive services delivered to televisions can also be distinguished from services delivered to PCs by the fact that interactivity can be integrated into traditional broadcast entertainment channels.

This distinction is confirmed by the reaction of some retailers who have said that they will target different customers using different brands belonging to the same group of companies when providing digital interactive services available via TV sets and PCs.

Finally with regard to the distinction concerning the pay television market the Commission decides, also for the first time, that the demand for, and characteristics and intended use of, pay-television services are largely different from those of digital interactive television services, the former being largely entertainment services, the latter being largely transactional or informational services. The business scope of interactive television service providers such as BiB excludes forms of entertainment where viewing itself is the primary form of entertainment for the viewer, such as pay-tv channels. The digital interactive television services market is complemen-tary to and separate from, that for pay television.

1.2. Customer access infra-structure market for telecommunications and related services

It is extremely relevant as a precedent for next telecommu-nication operations that the Commission defines for the first time a customer access infrastructure market for telecommunications and related services.

The Commission explains in the decision the transition in the market from the past consumer's demand by consumers for telecommunications services almost exclusively consisting of voice telephony services to the present situation in which demand for data services - such as internet access - has grown significantly and even bypassed telephony in volume. To provide these services, companies need infrastructure capable of bringing them into the home. The Commission examines in the decision the infrastructures capable to meet the demand for the new telecommunication and related services emerging in the market on terms of two-way communication capability, transmission capacity and prices of the services. After discarding the inclusion in the market definition of wireless fixed networks and digital mobile networks based on the GSM standard or on the DCS 1800 standard[7], the Commission concludes that the relevant infrastructure market only includes the traditional copper network of BT, and the cable networks of the cable operators[8].

1.3. Markets for the wholesale supply of films and sports channels for pay television

The Commission decides also for the first time on a separate market for the wholesale supply of film and sports channels[9] after a

7 See, however, the impact of the introduction of the next generation mobile standard, the universal mobile telecommunications system (UMTS).

8 Cable TV networks are capable of providing a range of services from basic telephony through on-demand services to full broadcast services.

9 Before this decision, in the context of the Merger Regulation, the Commission took into account, without motivating the existence of a distinct market, "the market for the wholesale supply of films and sports channels for retail pay-tv" : see Commission Decision of 3 December 1998 (Case No IV/M.1327 -NC/Canal+/CDPQ/ BankAmerica), OJ C 233, 14.8.1999, p. 51. The relevance of the supply of film and sport channels was also extensively considered in the assessment of the

detailed analysis of the wholesale price of acquiring such channels. The Commission found that the price of film and sport channels was far higher than that of other basic channels and that small permanent increases in relative prices have been profitable. The Commission did not consider necessary for the purposes of the case to decide whether there are separate wholesale markets in respect of films and sports channels, even if that seems to be the case[10].

Indeed, experience has shown that, to be successful as a pay television operator, it is essential to include film and sports channels as part of the service. In other words movies and sports are key sales drivers[11]. Pay television operators' demand for particular channels reflects the demand of their subscribers. Pay television channels composed of recently released films and live exclusive coverage of attractive sports events attract the largest viewing figures. The subscriptions to such channels are the most expensive: while thematic or general interest pay television channels are supplied to customers as part of a package, film and sports channels are charged on an individual basis. For pay-tv, the fact that sports and films programmes achieve very high viewing rates is crucial, as it is a reflection of viewer's willingness to pay more for sports and films channels.

1.4. Pay television

There is no change in the classic distinction by the Commission case law between pay television and free to air television[12]. It is not new either that the Commission considers there is no reason to distinguish between markets for analogue and digital pay television[13]. Digital pay-tv is only a further development of analogue pay-tv and therefore does not constitute a separate relevant product market from a competition point of view. Moreover, account should be taken of the fact that in the next few years analogue broadcast pay-tv is likely to be superseded by digital broadcast pay-tv.

It is, however, worth noting that the Commission for the second time in a few months, in a media case dealt with under Regulation 17, defines a single pay television market with no distinction between modes of transmission[14]. Pay television is available to subscribers in the United Kingdom by various means of transmission: digital terrestrial, satellite (analogue and digital) and cable (analogue, with digital cable services expected to start up in the near future). In the United Kingdom, it is not appropriate to distinguish between pay-television markets on the basis of their mode of transmission. Pay-television services provided by one means of transmission act as a competitive constraint on their provision using other means. Historical data shows this to be the case in respect of pay television delivered by satellite and cable. It is clear from

pay television market in the Bertelsmann/Kirch/Premiere decision, in particular paragraphs 34 and 48, without defining a separate market.

10 The UK Office of Fair Trading concluded that films and sports each constitute separate wholesale programming supply markets for pay television, in The Director-General's Review of BSkyB's Position in the Wholesale Pay-tv Market, December 1996. The Commission is very likely to decide on this matter in future cases related to sporting events rights.

11 See Wachtmeister, AM. "Broadcasting of Sports Events and Competition Law", Competition Policy Newsletter, 1998, number 2, June.

12 See MSG Media Service, at paragraphs 32 and 33; Commission Decision 1999/153/EC (IV/M993 - Bertelsmann/Kirch/Premiere), OJ L 53, 27.2.1999, p. 1, at paragraph 18; Commission Decision 1999/242/EC (IV/36.237 - TPS), OJ L 90, 2.4.1999, p. 6.

13 See Commission decisions Bertelsmann/Kirch/Premiere, at paragraph 18 and TPS.

14 The first decision was TPS on 3 March 1999. See as a background, the MSG and in particular the NSD decisions. See also the decision in the Telia/Telenor case, case IV/M.1439. Some parties have argued that there is an inconsistency between some of the merger decisions and the approach taken by the Commission in the TPS and BiB cases. However the alleged inconsistencies do not seem to exist after a careful reading of the relevant decisions. There seems to be a confusion between "infrastructure markets" for which separate markets might exist and markets at retail level for which the Commission has clearly stated in the TPS and in the BiB decision that there is a single market irrespective of the means of transmission. Anyhow, the markets are national and the appreciation could change depending on the market assessed.

end-user behaviour that the services are considered as substitutes. The composition of cable and satellite pay-television services is broadly similar[15] as is the price. The Commission examined the player's penetration rate in cabled areas and the corresponding "churn rate"[16] which lead to the same conclusion. Furthermore, it was concluded that the fact that satellite customers may have purchased a satellite set-top box and/or satellite dish does not create such a significant lock-in effect that switching between satellite and cable services is unlikely. There is no justification, either, for distinguishing a separate product market in respect of digital terrestrial pay television.

1.5. Technical services for digital interactive television services and pay television

The Commission has defined a product market for the wholesale provision of the technical services necessary for pay television in a number of decisions[17].

The Commission finds in the BiB decision that there is a very large area of overlap between the technical services necessary for pay-television and the services necessary for digital interactive television such as the making available of set-top boxes or the electronic programme guide[18]. The Commission decides, in balance, that the relevant product market is that for technical services necessary for digital interactive television services and for pay television[19].

Finally the Commission recognises that the skills and technologies underlying each of the individual technical services necessary for pay-television and/or digital interactive television services are different in some aspects and that, therefore, narrower product markets may exist[20]. However, the Commission leaves this point open in the BiB decision, as it is not necessary for the purposes of the case.

15 In terms of premium film and sports channels, BSkyB's channels are available via both satellite and cable. Differences in the composition of the basic packages of service are not significant.

16 "Churn rate" represents the average number of customers who stop their subscription to a pay-television service over a given period of time.

17 See for example, Bertelsmann/Kirch/Premiere, at paragraphs 19, 20 and 21.

18 The digital interactive television services also include the provision of conditional access services for non-broadcast (that is, on-line) data ("access control services") and transaction management services (a transaction management system (TMS) is a system to allow financial transactions to be conducted in a secure environment.

19 See MSG Media Service, at paragraph (31)(f) the same conclusion is advanced.

20 See also Joint OFTEL and DTI Notice and Consultation – July 1997, Chapter 3, paragraph 25.

2. **Assessment of the non-competition provision under Article 81 (3) EC**

A clause in the notified agreement states that BiB's parent companies cannot hold more than a 20% stake in a competing company. The Commission in the decision considers that this element cannot be considered a directly related and necessary restriction to the operation. The reason given in the decision is that the referred clause is not limited to the acquisition of a material influence but it does include the purchase of shares for investment purposes only.

Given that the Commission assessed the referred element under Article 81 (3) it is clear that the Commission considered the prohibition on holding more than a 20% in a competing company as an appreciable restriction of competition. Indeed, it restricts competition because it impedes BiB's parents investing in other companies wishing to enter the new market and prevents other potential competitors relying on the investments of BiB's parents and their particular input in the digital television interactive services market.

However, it can be inferred from the decision and, in particular from the arguments used in the decision to exempt the clause pursuant to Article 81 (3) that even if the Commission cannot consider that 20% benchmark as a directly related and necessary restriction because it does not amount, in principle, to the exercise of a material influence in a competing undertaking, there is a large spectrum of influence,

relevant for competition assessment, between that "material influence", close to the notion of control developed under the Merger Regulation, and a pure financial investment. The Commission considered that the 20% limitation amounts to a degree of influence which falls short of that "material influence" but which is objectively necessary for the investors and for the operation to ensure that the parent companies have no substantial incentive to transfer to a competitor the ideas and strategies that are being developed by BiB in its new market and ensures the commitment of the parties to BiB and eventually to BiB's success in the market. In other words, it would not merely be a question of being able to have a decisive influence over the competing company: a parent might give the competitor very valuable ideas or information, even without having control, if it had a sufficient incentive to do so.

The decision refers to commercially valuable information in the form of strategies and ideas that are being developed in the new BiB market which might be transferred to a competitor in the absence of the 20% prohibition. As a matter of example of those strategies and ideas the decision mentions the right moment to launch the service and the modalities of entering the market; e.g.whether the set-top-box should be offered for free to potential subscribers, special offers, pricing structure...These examples illustrate that a 20% investment, without a need for control, can create an incentive to transfer some very significant strategic information.

The above assessment should be read in the specific circumstances of the case. This is a new industry. New products being developed and brought to the market place in a revolutionary way. A full start-up situation in a very unusual industry in its potential: there is enormous value to a first mover advantage. The parents are pioneering a new industry and radical changes are taking place in very short periods of time. Ideas have more value than control.

V. THE CONDITIONS TO AUTHORISE THE OPERATION

1. Summary of the conditions

The conditions imposed on the parties can be summarised as follows:

a) To ensure competition from the cable networks

In the customer access infrastructure market and in the corresponding telecommunication and interactive services markets that can be provided via this infrastructure, the most significant competition facing incumbents comes from the actual and potential owners of the cable networks who can compete with them in the provision of telecommunication services and with their affiliate companies such as BiB in the provision of digital interactive services. Therefore, in the BiB decision the Commission examined the possible scenario in which BT was to expand its cable interests and at the same time participate in the operation of BiB. In that case, BT would not have an incentive to develop, through its cable networks, digital interactive television services of the kind to be provided by BiB, and it would not have an incentive to facilitate third parties to compete with BiB in the provision of these digital interactive television services via its cable networks. Therefore, it is a condition of exemption that BT has agreed not to expand its existing cable television interests in the United Kingdom.The Commission notes in the decision that it has further agreed to divest itself of its existing interests. This will allow competition in the provision of broadband cable infrastructure to develop independently of BT throughout the United Kingdom and to counterbalance the restrictive effects of the combination of BT and BSkyB in BiB.

b) To ensurethird party access to BiB-subsidised set-top boxes

BiB is to subsidise the set-top box, which will be used both for its own service and for BSkyB's digital pay-television service.

The Commission considered in the decision that third party access to BiB-subsidised set-top boxes was important for the assessment of the case because of the market position of BSkyB in the pay-television market. In theory, competitors to BiB and BSkyB, which wished to provide services using digital satellite, could launch a competing set-top box. However, the capital costs of establishing a competing infrastructure, combined with the

general reluctance of consumers to acquire more than one set-top box, makes this unlikely.

If competing providers of digital interactive services were to be denied access to BiB-subsidised set-top boxes, or were to be granted access on terms less favourable than BiB and/or BSkyB, then a substantial part of competition on the downstream services markets would be eliminated. To avoid the latter the Commission imposed a number of conditions, such as the legal separation of BiB's companies and a transparent and non discriminatory subsidy recovery mechanism, which prevent the BiB subsidy mechanism from being used as an artificial barrier to entry on the market for digital interactive TV services.

c) To ensure third party access to BSkyB's pay-tv channels

BSkyB's channels are supplied both to cable operators and to the digital terrestrial operator, ONdigital. The channels are then offered to subscribers, as part of the latter's own pay-television service. However, they act only as distributors of the channels and must distribute them without modification of their content. They may not add, or indeed remove, any elements without BSkyB's consent.

BiB's cable and digital terrestrial competitors will not be able to place interactive links in the most popular pay television channels in the United Kingdom. This would only be possible if both technical and commercial obstacles were overcome. They would require them to reach an agreement with a competitor, BSkyB, which has significant market power in upstream markets.

It was, therefore, necessary to impose a condition on BSkyB's wholesale supply of its film and sports channels to its cable and digital terrestrial competitors. BSkyB will be obliged to offer to distribute its film and sports channels either with or without (clean feed) interactive applications, at the choice of the purchaser on a non-discriminatory basis. This prevents BSkyB from bundling interactivity at the wholesale supply level with its channels to the detriment of both competitors to BiB on the digital interactive TV services market and its own competitors in pay-tv.

2. Conclusions on the significance of the conditions

a) Combined approach: structural and behavioural remedies

In order to solve the competitions concerns raised by the operation the Commission imposed a number of conditions. Some of these conditions are of a structural character such as the divestiture of BT's cable interests or the unbundling of BSkyB's pay television offer and the Open's digital interactive television services. Some other remedies are of a behavioural character such as the operation of the Symulcript arrangements with all conditional access providers or the provision of technical information by BiB and BSkyB regarding the functional features of BiB boxes. This combined approach is a pragmatic one which respects the principle of proportionality and it is particularly fitted in the legal framework of Regulation 17 or Article 2.4 assessments under the Merger Regulation.

b) Interrelation between regulatory and competition remedies[21].

The present decision is also a good example of the interrelation needed between sectoral regulation and competition law in order to ensure both certainty to enable investments and an open market in which the operators will not be tempted to foreclose the market and gain supracompetitive rents rather than facing competition.

The Commission in the BiB decision considers the implementation of Directive 95/47[22] in the UK and the commitments given by BSkyB in relation to the UK regulatory regime « as a fact basic to the making of the decision ». If the relevant UK authorities were to bring an action against BSkyB for infringement of these obligations, the Commission would consider this situation under Article 8 (3)(a) of Regulation 17. A number of elements in the conditions related to the availability of a clean feed,

21 See Temple Lang,J,. "Community Antitrust Law and national regulatory procedures", FCLI,1996.

22 Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals, OJ [1995] L 281/51.

the operation of the Symulcript arrangements and of the subsidy recovery mechanism, follow the same approach.

VI. CONCLUSION

The BiB decision goes along the lines of previous Commission decisions in the media field in particular the structural assessments made under the Merger Regulation of the Community pay television markets. The BiB decision confirms for the first time in the context of a new emerging market of huge potential growth, the digital interactive television services, the determination of the Commission to impede the creation in some markets of the Union of permanent dominant positions which would deprive the consumers of those countries of the benefits of competition. If in the future these markets develop as expected, from the demand point of view, it must be ensured that consumers will be able to choose between various providers of services.

One step beyond in the application of the essential facility theory

Enrico Maria ARMANI, DG COMP-D-2

On 14 January 1998, the European Commission adopted a decision[23] finding that Frankfurt airport was abusing its dominant position by not giving access to other companies to provide ground handling services (third party handling) nor granting to airlines the right to provide ground handling services themselves (self handling). Since then, the Commission services have been asked in several occasions to provide clarifications on this matter. Given the persistent interest raised by this decision, it was found appropriate to publish an article that would provide a brief description of the case and comment thereon. The comments reflect personal views of the author.

1. THE FRANKFURT AIRPORT CASE

1.1. Content of the Decision

The origin of the case is a complaint lodged by three European carriers (Air France, KLM and British Airways) against the operator of Frankfurt airport (Flughafen Frankfurt AG, in short FAG) who had monopolised the market for the provision of ground handling services at that airport.

The Commission found that two service markets were involved:

- the market for the provision of airport facilities for the landing and take-off of aircraft;
- the market for the provision of ramp-handling services;
- in both cases, the relevant geographic market was defined as Frankfurt airport; which was found to constitute a substantial part of the common market.

After having established that FAG holds a dominant position on the first market, the Commission found that FAG abused that position in order to reserve the ramp handling services market for itself. FAG had thus extended its dominant position from the airport facilities market to the ramp-handling services market. The legal analysis followed the lines indicated by the European Court of Justice in the Telemarketing case[24].

FAG argued that its decision to bar independent ramp-handlers and to prohibit self handling was justified for four reasons: physical constraints, property rights, organisational rights and historical rights. None of these arguments were found convincing except for

23 Commission Decision 98/190/EC, OJ L72 of 11 March 1998, p.30.

24 Ruling of 3 October 1985, Case 311/84, ECR, p.3261.

a minor part of the airport where physical constraints appeared to exist.

Since FAG's decision to reserve the ramp handling services market for itself could not be justified objectively, it constituted an abuse of a dominant position within the meaning of Article 82 of the Treaty. FAG has accordingly been required to terminate its abuse and to submit to the Commission, within three months, a precise plan for opening up the market to independent third party handlers and self-handling airlines.

It should be noted that on the same day, the Commission adopted a second decision[25] related to the same issue. This second decision was adopted pursuant to Article 9 of Council Directive 96/67/CE on access to the ground handling market at Community airports.

The two decisions are complementary to each other to the extent that they both aim at ensuring the opening of the ground handling services market to competition at Frankfurt airport, but are addressed to different parties (respectively to FAG and to the Federal Republic of Germany). Only the former decision is commented upon in this article since the latter falls under the competence of Directorate General for Transport.

1.2. Follow up

On 18 March 1998, FAG informed the Commission that it had decided not to challenge the decision in question before the European Court of First Instance. It subsequently submitted a plan for the opening of the market to third party handling and to self handling which the Commission considered to meet the requirements of its decision.

However, the Commission also considered that the mere implementation of this plan would not have been sufficient to ensure the liberalisation of the market because FAG had taken counter measures to prevent it.

When the airport became aware that the market ramp handling services it provided to airlines would have to be opened up to competition, it sought to preserve the substance of its old monopoly by concluding long-term contracts with its best customers, covering periods of three to ten years. In practice, FAG was cornering the market before being made to end its monopoly.

The Commission immediately informed the airport that this practice was contrary to Community law and evoked the possibility of opening a new proceeding. Before such proceeding was necessary, FAG informed the Commission that it would allow its customers to terminate without penalty any contracts concluded for a period of years, and that it would not conclude any more such contracts in future.

2. COMMENT

Besides the logic of the decision itself, this case gave rise to a number of interesting issues that are briefly outlined hereafter.

2.1. The legal basis

The decision in question was adopted pursuant to Article 3 of Council Regulation N°17 of 6 February 1962. However, the question arose whether it should not have been adopted pursuant to Article 4 of Council Regulation (EEC) N° 3975/87 of 14 December 1997, which would have involved different procedures.

The latter regulation "lays down the rules for the application of Articles 81 and 82 to air transport services" (...) "between community airports" (Article 1, §1 and §2 of Regulation N° 3975/87). The Commission considered that ground handling services, although ancillary and indispensable to the air transport activities are services rendered to the air carriers as opposed to the passengers. Such services cannot accordingly be considered as air transport services and therefore do not fall within the scope of Regulation N° 3975/87.

This statement sounds obvious for the majority of the services concerned: clearly cleaning the inside or the outside of a plane, or catering the plane, cannot be reasonably considered as an air transport service. However, the situation is less clear for a certain number of activities. For example, one could argue that the transfer of luggage from the check in counters to the plane, is part of the services rendered to the final consumer (i.e. the passenger) who bought an air ticket in exchange of

25 Commission Decision 98/387/EC, OJ L173 18 June 1998, p.32.

an air travel service for him/herself and his/her luggage. Since this service physically begins at the check-in counter, the transfer of the luggage from the check-in counter to the plane could be regarded as part of the overall air transport service provided to the final consumer and might therefore fall under the scope of Regulation N° 3975/87.

The Commission considered however, that it is only the carrier who sells air transport services (to the final consumer), even if that carrier may subcontract the execution of part of the service in question to a third party. The contractual relationship between the airline and its subcontractors should be regarded as mere provision of services (falling within the scope of Regulation N° 17/62).

2.2. The limits of property and entrepreneurial rights

As indicated above, the Commission defined two separate markets making thereby the distinction between the action of providing the infrastructure and the action of providing services within that infrastructure. On the basis of this distinction, the Commission considered, that since the market for the provision of landing and take-off facilities in the Frankfurt area is a substantial part of the common market, and since FAG holds a dominant position in that market, FAG was obliged to allow competition in the market for the provision of ground handling services.

It is noteworthy that the Commission made this distinction although accepting that ground handling services are complementary to the landing and take-off of aircrafts. This complementarity lead the respondent (FAG) to argue, that in its view, the service it provided to airlines consisted of a "full package service" (i.e. the provision of airport facilities including the related services) and that on this basis, the Commission's decision inter-fered with its property and entrepreneurial rights.

The Commission did not deny such interference but replied that the competition rules may impose limitations on property and entrepreneurial rights when this is justified for the general interest (as actually already stated by the European Court of Justice in previous case law[26]). In the present instance, the Commission noted that given the general interest of introducing competition on the ramp and the lack of a suitable alternative, limiting FAG's rights would be "neither disproportionate nor excessive".

Nevertheless, the author believes that limiting such fundamental rights should be handled with caution because it may also lead to counterproductive results. For example, it is clear that the obligation to allow competitors to provide ancillary services within a certain infrastructure reduces the profitability of that infrastructure and that a reduced expected profitability discou-rages potential investors. This is the equivalent of saying that in some cases limiting the scope of property and entrepreneurial rights to promote competition may in the long term, result in an obstacle or even a barrier to investment. Clearly, raising obstacles to investment can neither be an objective nor a consequence of a sound competition policy.

2.3. The obligation on the operator of an essential facility

The decision requesting FAG to allow its competitors on the ramp also constitutes a further step in the application of the essential facilities theory[27] to physical infrastructure in Europe.

In the cases it has handled so far, the Commission made clear, that, the operator of an essential infrastructure (e.g. a port) had the obligation to grant access to all potential users of that infrastructure on a non-discriminatory basis. In other words, the essential facility theory had been so far applied only to the primary function of the infrastructure in question, in so far as it put an obligation of neutrality on the infrastructure operator with regard to the users of that infrastructure. Examples of these cases are the Holyhead case[28] or

26 See inter alia ruling of 13 December 1979, Case 44/79 – Hauer vs Land Rheinland Pfalz, ECR p. 3727

27 See John Temple Lang, Fordham International Law Journal, December 1994.

28 Commission decision of 11 June 1992 in case B&I Line vs. Sealink (XXIInd Report on Competition Ruling, point 219).

the London European vs. Sabena case[29].

The FAG decision innovates in this respect, because it extends this obligation to granting access to potential operators who are not users of that infrastructure in question but who are willing to render services to the users of that infrastructure. The FAG decision does not address a case where FAG would have discriminated between the airlines (i.e. the primary users of the airport), but a case where the airport operator had not granted the right of access to potential operators who wanted to provide ancillary services to the airlines within the airport.

In the Commission view, a facility may be characterised as essential not only from the perspective of the users of that facility, but also from the perspective of any kind of operator who attempts to meet a demand which originates within that facility. This implies that, unless a valid justification may be invoked, the European competition rules impose the operator of such a facility to grant access to its premises not only to potential users of the facility but also to potential service providers within that facility.

2.4. The definition of the relevant geographic market

The statement that an infrastructure like the airport of Frankfurt constitutes a substantial part of the Common Market, is not new. The most famous precedent is probably the Port of Genoa case[30]. However, the FAG decision is innovative to the extent that the Commission considered that the geographical delimitation of the market should not exclusively make a reference to the airport catchment area (and therefore encompass only neighbouring airports) but should also take into consideration the "hub" role of the airports (thereby accepting that airports who are distant from one another may belong to the same geographical market).

Clearly, the Commission cannot ignore the evolutions that occurred in the air transport market since the liberalisation packages and in particular the fact that airlines increasingly compete against each other with their networks (who are shaped following the so called hubs and spokes). Thanks to the liberalisation of the air industry in Europe, carriers (and in particular new entrants) have a choice where to establish their hub. In this respect, carriers may consider establishing their hub outside their home base as did for instance, the UK carrier Virgin, who established its hub in Brussels. This evolution has the consequence that airports are now increasingly entering into competition against each other.

The author accordingly expects that the geographical delimitation of the market for the provision of infrastructures will be affected by this evolution in the air transport market, because the degree of substitutability between airports is likely to grow (provided, however that airport capacity constraints may be overcome). And in the long term, it is not excluded that the essentiality of each infrastructure will be more and more difficult to demonstrate.

3. CONCLUSION

Last but not least, the author would like to stress that the Commission has taken several competition decisions relating to essential transport facilities like ports and airports in the recent past. This is per se an indicator of the importance of a fair access to infrastructure for a sound development and liberalisation in the transport sector. In this respect, the various actions taken by the Commission (both from the competition and transport policy perspective) in the field of infrastructure, demonstrate the high level of priority the Commission dedicates to this sector.

29 Commission decision of 4 November 1998, OJ L317/47 of 24 November 1998, P.47.

30 Ruling of 10 December 1991, case C-179/90, ECR, p.I-5889.

Alitalia-KLM: A new trend in assessing airline alliances ?

Enrico Maria ARMANI, DG COMP-D-2

"Note."[31]

On 11 August 1999, the European Commission authorised the alliance between the Italian airline Alitalia and the Dutch airline KLM. The investigation of the proposed alliance brought the Commission to address a certain number of issues linked to the air transport sector in an innovative way compared to the two most significant precedents: Swissair-Sabena (IV/M.616 of 20.7.1995) and Lufthansa-SAS (IV/35.545 of 16.1.1996). The present paper outlines the three elements of the decision that the author considers to be the most interesting: the choice of the Merger Regulation as a legal basis, the market definition and the undertakings submitted by the parties to overcome the competition concerns raised by the operation.

1. THE LEGAL BASIS

The striking element in this context is that the Commission assessed the alliance between Alitalia and KLM under the Merger Regulation[32] despite the fact that these airlines neither merged nor constituted any Joint venture as a separate legal entity. In fact, it should even be said that the parties originally submitted an application pursuant to Articles 3(2) and 5 of Regulation No 3975/87 thereby considering that their agreement did not fall under the scope of the Merger Regulation. However, subsequent discussions with the Commission services lead the parties to reconsider their position and to submit a notification under the Merger Regulation.

The Commission decision of 11 August 1999 has created a precedent as regards the nature of the operations that fall under the scope of the Merger Regulation in so far as the alliance between Alitalia and KLM is the first contractual Joint Venture authorised under that Regulation. To date, the only contractual operations that have been captured under the Merger Regulation were contractual mergers resulting in the creation of a single economic unit i.e. in a de facto amalgamation of the undertakings concerned[33].

The Alitalia-KLM alliance would not be described as a contractual merger because the operation would not give rise to a single economic entity: both parties continue to have businesses that are excluded from the alliance (e.g. charter operations, maintenance, ...) , independent decision making bodies etc. However, the parties reached (by contractual means) such a degree of integration that the operation could be considered as the constitution of a Full Function Joint Venture.

This conclusion has been reached given the coexistence of the following elements:

(i) the fact that Alitalia and KLM pool all their scheduled passengers and cargo operations and cease to operate in these markets outside the Alliance. This implies that neither party has any commercial interest related to scheduled air transport outside of the Alliance;
(ii) the fact that Alitalia and KLM share the operating revenues and costs of these activities. This element coupled with the previous one is evidence that the Alliance will be run in a profit maximising way;
(iii) the fact that the day to day business will be jointly run;
(iv) the fact that Alitalia and KLM will jointly adopt the main strategic and commercial decisions;
(v) the fact that the tangible assets (aircrafts in particular) and the operating personnel (crew, land operations, sales forces, etc ...) of each of the

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31 The author also wishes to thank Ms Pamela LARKIN for her invaluable help in the drafting of this article.

32 Council Regulation No. 4064/89 as last amended by Regulation No. 1310/97

33 See paragraph 7 of the Commission notice on the concept of concentration (98/C 66/02).

parties is exclusively dedicated to the Alliance;

(vi) the duration of the agreement (10 years) coupled to high exit costs.

All these elements taken together led the Commission to consider that the criteria for considering the operation as a Full Function Joint Venture (i.e. a more in-depth cooperation than a simple agreement) were fulfilled and that the Merger Regulation accordingly applied.

2. MARKET DEFINITION

The Commission Decision of 11 August 1999 also clarifies market definition in air transport, to the extent that it focuses on the demand side.

Demand can be defined as the need for passengers to be transported (or for a shipper to forward goods) from point A to point B following certain conditions of timing, comfort, etc. This transportation may occur with direct flights between airports A and B, with indirect flights between the same airports and also with direct or indirect flights between airports that are reasonably substitutable to the "preferred" airports A and B. Clearly the substitutability between direct and indirect flights as well as the substitutability between airports depends on a number of factors like the nature of the item transported (time-sensitive passengers, price-sensitive passengers, cargo, ...), the total travel time, the frequencies operated on the routes and the travel conditions.

This assessment led the Commission to define the relevant markets as point-of-origin/point-of-destination pairs (therefore including routes or bundle of routes) instead of city pairs or "routes".

In view of such market definition, the Commission came to the conclusion that the prospected Alliance did not raise competition concern with respect to cargo but rose concerns in two point-of-origin / point-of-destination pairs as regards the transport of passengers (time-sensitive and non-time-sensitive): the pairs between on the one side, the Amsterdam area and on the other side, the Milan and Rome areas.

This conclusion leads to three comments:

(i) As regards intra-European point-of-origin / point-of-destination pairs (and in particular short haul routes), the investigation showed that indirect routes are not reasonably substitutable to direct routes where these exist.

(ii) The other Italy-Netherlands point-of-origin / point-of-destination pairs have not been considered problema-tic because the Commission considered that Alitalia was not a credible entrant on the routes between Italy and the Netherlands other than the ones it already operates. The Commission reached this conclusion considering that such routes would not fit Alitalia's network strategy which is organised around two hubs (Rome and Milan) and spokes.

(iii) Cargo was considered as non problematic in view of the high substitutability that exists in this market. This assessment is valid for both intercontinental point-of-origin / point-of-destination pairs (given the wide possibilities of routing the goods) and for intra-European pairs (given the wide possibilities of alternative transport means, like trucks).

This definition of the relevant market based on the demand side however, does not imply that the "supply" side of the question was left aside. Clearly an airline does not operate point-of-origin / point-of-destination pairs, but routes. In addition, aircrafts carry a mix of passengers: some passengers start and end their journey on the route in question, other passengers come from "behind" origins or travel to "beyond" destinations. This implies that the same product (a flight on a said route) has to serve several markets, an element which the carrier has to take into account when developing its strategy. These considerations played a significant role in assessing the remedies to overcome the competition concerns raised by the Alliance.

3. THE UNDERTAKINGS SUBMITTED BY THE PARTIES TO OVERCOME THE COMPETITION CONCERNS

The analysis of the Commission showed that in absence of adequate remedies the proposed concentration would have resulted

in the creation of dominant position on the two point-of-origin/point-of-destination pairs corresponding to the two hub-to-hub routes involved by the operation (Amsterdam-Milan and Amsterdam-Rome). These dominant positions were protected by barriers to entry such as congested airports (at both ends) and the disproportion between the high capacity offered by the parties (in terms of seats and frequencies) and the relative thinness of the markets concerned. The clearance of the operation had therefore to be linked to the adoption of remedies likely to remove this competition concern.

The decision of 11 August 1999 represents a major evolution also with respect to the remedies that the Commission accepted to clear the operation. First the Commission strengthened the intensity of remedies already applied in the past. Second it imposed innovative remedies. Third it linked the duration of the undertakings to a tangible outcome.

This evolution reflects the experience acquired from the two cases mentioned above (Swissair-Sabena and Lufthansa-SAS) where it appeared that the conditions imposed were not sufficient to lead to the entrance of new operators on the hub to hub routes. In both cases, not only did no new operator show up but also the level of prices on the routes concerned seem to be significantly higher than prices on comparable routes where competition exists. New remedies had therefore to be developed.

The market tests which the Commission conducted prior to the Alitalia-KLM decision have shown that the remedies retained are adequate to remove the competition concerns raised by the operation. It cannot be excluded however, that additional or different remedies may be necessary in future cases should the present ones prove not to be far reaching enough.

3.1. The strengthening of "traditional" remedies

As in the other cases, remedies have been imposed to overcome the slot shortages at congested airports. In practice, the parties have to make available slots to new entrants at Amsterdam-Schiphol, Milan-Malpensa and Rome-Fiumicino. However, the number of slots to be made available have been significantly increased: Alitalia and KLM have undertaken to make available to new entrants up to 336 weekly slots. This is equivalent to 168 weekly slots per route concerned vs. respectively 32 and 28 weekly slots per route concerned in the Swissair-Sabena and SAS-Lufthansa cases.

It should be added that this remedy has been further strengthened by the undertaking of the parties

(i) to make sufficient slots available at peak time and
(ii) to make available slots not only for the routes concerned but also for other destinations if the segment to that destination is linked to a segment on a relevant route. This will allow airlines based in third airports to operate from their base airport to one of the three airports concerned (Schiphol, Malpensa or Fiumicino) with a stop-over in one of the other two airports concerned.

This remedy is accompanied by an obligation to interline and to give access to the parties' Frequent Flyer Programmes.

3.2. "Innovative" remedies

The major innovative remedy is the obligation for the parties to reduce their frequencies when a new entrant starts operating on the route. This reduction shall be equivalent to the number of frequencies operated by the new entrant (up to a maximum of 40% of the frequencies actually operated) and shall be effective for a period of two years.

This frequency reduction remedy is unprecedented. In the previous cases, the only similar remedy was a cap in the increase of frequencies (maximum +25% in Swissair-Sabena and maximum +1 frequency in Lufthansa-SAS) and applied for a much shorter period of time (6 months).

Frequency reduction can be seen as an alternative mean to obtain a reduction of the parties' capacity in a sector where asset divestitures are not easy to implement.

The standard practice in Merger cases where the concentration leads to the creation or the strengthening of a dominant position is to require the parties to divest part of their activities in the market(s) concerned. However,

this practice is difficult to implement in the air transport sector because the divestiture of one or more aircraft does not necessarily lead to a reduction of capacity on the route(s) affected by the concentration (given that aircraft are not allocated to routes). The undertaking to reduce the number of frequencies on the routes concerned, conversely, serves the same objective as asset divestiture in so far as it leads to a capacity reduction by the incumbent to the advantage of the new entrant.

It should also be noted that the parties will reduce their frequencies only in presence of a new entrant and in line with the new entrant's operations. This provision aims at preserving the consumers' interests. If Alitalia and KLM were to reduce their frequencies *a priori*, the consumer would have been faced with a shortage of supply and in any case with a deterioration of the service (in terms of available flight times).

Besides frequency reductions, Alitalia and KLM also proposed other innovative remedies. In particular, they undertook to take the necessary measures

(i) to allow any new entrant to be displayed in the first CRS screen (this is a crucial factor of success for an airline) and
(ii) to refrain from tying Italian or Dutch travel agents by means of loyalty or fidelity schemes.

3.3. Duration

Finally the Decision of 11 August 1999 has guaranteed that the undertakings remain valid until effective credible competition has been established. In practice, the undertakings remain valid until a competitor has operated on the routes concerned for at least two years.

4. Conclusion

The Decision of 11 August 1999 has authorised the Alliance between Alitalia and KLM. In assessing the case, the Commission has considered that the Alliance was globally pro-competitive, in particular in view of the fact that these airlines are largely complementary. It is therefore expected that the consumer will benefit from the unity of Alitalia and KLM.

Nevertheless, the analysis also showed that the operation would have led to monopoly positions on two markets: Amsterdam-Milan and Amsterdam-Rome. Therefore, bearing in mind the interest of the consumer, the Commission has led the parties to accept "severe" undertakings that will significantly increase the contestability of the markets in question. It is expected that this increased contestability will attract potential entrants and until then, will exercise a competitive pressure on the parties to maintain a high quality/price ratio, which is the real interest of the consumer.

Application of Articles 81 & 82 EC and 65 ECSC
Main developments between 1st June and 30th September 1999

Commission sets out its policy on commissions paid by airlines to travel agents

John FINNEGAN, DG COMP-D-2

The European Commission is investigating a series of complaints it has received in relation to commissions paid by airlines to travel agents. These complaints concern a possible abuse of a dominant position by airlines operating loyalty rebate schemes which effectively tie travel agents to a dominant airline, discouraging the travel agent from selling tickets for other airlines to their customers. As a first step, the European Commission has acted on a complaint it received from Virgin and has investigated British Airway's (BA) incentives schemes to travel agents. On 14 July the Commission adopted a negative Decision addressed to BA. The Decision imposed a fine of €6.8 million on BA for abusing its dominant position as a buyer of air travel agency services from United Kingdom travel agents. For at least the past seven years BA has been offering travel agents extra commission payments in return for their meeting or exceeding their previous year's sales of BA tickets. This makes the travel agents loyal to BA, discouraging them from selling travel agency services to other airlines and has created an illegal barrier to airlines that wish to compete against BA on the UK markets for air transport.

The commissions offered by BA were equivalent to a "loyalty discount" i.e. a discount based not on cost savings but on loyalty, of the type consistently condemned as an exclusionary abuse of a dominant position in the past. It is well established Community law that a dominant supplier cannot give incentives to its customers and distributors to be loyal to it, so foreclosing the market from the dominant firm's competitors. The effect of this abuse is to try and counteract the effect of market liberalisation by maintaining the dominant airline's market share at its old levels and by penalising travel agents who divert some of their customers to relatively new competitors. Incentives of this type given by a dominant firm are clearly illegal. A dominant firm should only provide supplementary commissions to travel agents where these reflect extra services provided by the agent or efficiencies realised.

For the future, the Commission and BA have identified a set of principles. These are the result of fruitful co-operation between BA and the European Commission. Applying these principles will prevent BA from engaging in the type of behaviour criticised in this decision. These principles will also establish clear guidance for any other airline in a similar situation. The Commission will indeed take all measures necessary to ensure that the principles in this Decision are applied to other EC airlines in equivalent situations.

1. Commissions offered to different travel agents are differentiated to the extent that the differences reflect:

1.1. Variations in the cost of distribution through different travel agents; or
1.2. Variations in the value of the services provided to British Airways by different travel agents in the distribution of its tickets.

2. Commissions increase at a rate which reflects:

2.1. Savings in British Airways' distribution costs; or
2.2. An increase in the value of services provided by the travel agent to British Airways in the distribution of its tickets.

3. Commissions relate to sales made by the travel agent in a period not exceeding six months.
4. Commissions do not have targets that are expressed by reference to the sales made by the travel agent in a preceding period.
5. Commissions increase on a straight line basis above any base line stated in the agreement.
6. The commission paid on any ticket does not include any increase in the commissions paid on all other British Airways tickets issued by the travel agent.
7. Travel agents are free to sell the tickets of any other airline and the goods or services supplied by any third party.

Revised TACA

Charles WILLIAMS, DG COMP-D-2

Introduction

The Commission's TACA (Trans-Atlantic Conference Agreement) decision of 16 September 1998 found that certain agreements between the liner shipping companies party to the TACA restricted competition and neither fell within the block exemption of liner conferences nor qualified for individual exemption. Under those agreements, the TACA parties fixed prices for inland transport, restricted the availability of individual service contracts between shipping lines and their customers, and fixed freight forwarder commissions. The decision also found that the TACA parties had abused their joint dominant position.[34]

After the Commission's decision of September 1998, several shipping lines withdrew from the TACA leaving eight members and on 29 January 1999, the remaining eight TACA members notified an amended agreement ("Revised TACA").

On 17 February 1999, the eight TACA members together with twelve other lines notified the "North Atlantic Agreement" which would have replaced the Revised TACA with a new conference with over 70% market share. The North Atlantic Agreement was subsequently abandoned after the Commission and the US Federal Maritime Commission (FMC) had begun enquiries.

On 6 May 1999, the Commission published a summary of the Revised TACA agreement.[35] Under the competition procedures applicable in the transport sector,[36] the Commission has 90 days from the date of such publication in which it can raise serious doubts and so continue its investigation into the case. If the Commission takes no action in the 90-day period, an agreement is automatically exempted for six years in relation to maritime transport and three years in relation to inland transport. Following the publication of a summary the Commission received critical comments on the agreement from shippers' associations.

Maritime transport aspects

As regards the maritime transport aspects of the Revised TACA, the Commission informed the parties within the 90-day period that it had serious doubts whether their revised agreement could be cleared in its current form. The Commission's investigation is continuing, and centres on whether the parties' arrangements (particularly as concerns the exchange of information) could harm competition between the parties when they negotiate and agree individual service contracts with shippers.

Inland transport aspects

As regards inland transport, the Revised TACA no longer contains an inland tariff. The parties have instead agreed that that they could adopt a "not-below-cost" rule. Under such a rule each line would agree, where they provide maritime transport services pursuant to the conference tariff, not to charge a price less than the direct out-of-pocket cost incurred by it for inland transport services supplied within the EEA in combination with those maritime services. The Commission did not within the 90-day period raise serious doubts against the not-below-cost rule with the consequence that the not-below-

34 Commission decision of 16 September 1998, Case IV/35.134 – TACA, OJ L95, 9.4.1999, p. 1; IP/98/811. See also Competition Policy Newsletter, 1999 Number 1 February, p. 17.

35 OJ C125, 6.5.1999, p. 6.

36 For maritime transport: Council Regulation (EEC) No. 4056/86 of 22.12.1986 laying down detailed rules for the application of Articles 85 and 86 (now Articles 81 and 82) of the EC Treaty to maritime transport, OJ L 378, 31.12.1986, p. 4. Also available on the Internet at: http://europa.eu.int/comm/dg04/lawenten/en/405686.htm.
For inland transport: Council Regulation (EEC) No. 1017/68 of 19.07.1968 applying rules of competition to transport by rail, road and inland waterway, OJ L 175, 23.7.1968, p. 1 (Special Edition 1968 I, p. 302). Internet: http://europa.eu.int/comm/dg04/lawenten/en/101768.htm

cost rule is deemed exempt for three years.

The Commission accepts that a not-below-cost rule would avoid the risk that below-cost pricing on the inland leg would undermine the stability brought about by the conference maritime tariff. In the FEFC Decision[37] (paragraphs 135-139) the Commission recognised that, in the absence of collective price fixing for carrier haulage services, the members of the FEFC might charge shippers rates which are below their costs of buying in such services, the effect of which would be similar to offering a discount off the conference tariff for the maritime transport. The Commission did not however accept that the then arrangements of the FEFC to fix the price for carrier haulage were indispensable to achieve the objective of stability. The FEFC Decision expressly left open to what extent other kinds of agreement might fulfil the conditions of Article 81(3), and referred to the Commission's 1994 Maritime Transport Report to the Council[38] in which the Commission stated that, if appropriate, it would be prepared to consider granting individual exemption to a not-below-cost provision.

The particular type of not-below-cost rule adopted by the parties is that no line would charge a price less than its direct out-of-pocket costs for inland transport services. Overhead and administration costs, and costs of repositioning empty containers, would be excluded. The rule would mean that each line's price would be set by reference to its own costs, and not some industry average, and is similar to the "first option" identified in the Carsberg Report which considered the issue of inland price fixing by liner conferences[39]

Price competition would not be eliminated. In addition to competition from outside the conference altogether and from merchant haulage on the inland leg, the not-below-cost rule would only apply to situations where the parties were providing maritime transport services pursuant to the tariff. Thus, the rule would not be applicable to carriage under individual service contract.

37 Commission Decision of 21 December 1994, Far Eastern Freight Conference, OJ L 378, 31.12.1994, p.17.

38 SEC(94)933 final, 8.6.1994

39 Final report of the multimodal group (chaired by Sir Bryan Carsberg), November 1997, at paragraphs 90 and 91.

Commission renews the exemption of United International Pictures BV

Torben TOFT, COMP-C-2

Introduction

On 9 September 1999, the Commission renewed, by means of an administrative 'comfort' letter[40], the exemption from 1989[41] under Article 81(3) of the EC Treaty of the agreements establishing United International Pictures BV (UIP). However, the Commission has reserved the right to re-examine the UIP exemption, if it learns of any new elements affecting the appreciation of the case, particularly those arising from complaints; in any event, it may do so 5 years after the issuing of the comfort letter.

UIP is a film distribution company established on 1 November 1981 by Paramount Pictures Corporation, Universal Studios Inc. and Metro-Goldwyn-Mayer Inc. (the Partners). The Partners originally distributed their films through their own separate organisations. By creating UIP they choose to pool their distribution activities, not just within the EU, but world-wide, except for the United States, Puerto Rico and Canada. The aim of granting UIP exclusive rights to distribute their respective products was to avoid administrative duplication. In the EU, UIP has subsidiaries in all Member States, except Portugal, where it distributes its films through a licensee.

1. The first exemption of UIP in 1989

The UIP agreements were first notified to the Commission on 11 February 1982. The Commission considered, after a preliminary examination of the agreements, that restrictions of competition falling under Article 81(1) resulted both from the creation of joint venture itself and from certain provisions in the UIP agreements, in particular some exclusivity clauses. The Commission therefore opened proceedings against UIP on 21 May 1985. Oral hearings on the issue were held in 1986 and following further discussions with the Commission's services, the parties revised the notified agreements and provided a number of undertakings to minimise the restrictive effects of UIP in order to meet the requirements for an exemption.

The modifications were designed to ensure the highest possible degree of autonomy for the Partners in the conduct of their business and to take into account the specific characteristics of the industry. The changes also affected UIP's operating Committees by limiting their management powers in the preparation of release plans for the individual films of the Partners. The Commission also required an amendment to the provision regarding co-production agreements to ensure that the Partners remained independent from each other, as well as from UIP, and could enter into co-production agreements with third parties in the EU. The exclusivity provisions were limited in their effect, as they only gave UIP a right of first refusal to the Partners' films, meaning that the Partners must first offer their films to UIP for distribution in the EU rather than making UIP the only possible distributor. Should UIP elect not to distribute a film, the parent company would be entitled to require UIP to distribute the film, to distribute the film itself or to use a third party.

The parties also gave several undertakings to the Commission regarding the maintenance of appropriate records and the establishment of an arbitration procedure. Arbitration is considered to be a practical means of solving problems common to the cinema industry, such as allocation of films and access to the exhibitors' screens. Arbitration was seen to particularly benefit small independent exhibitors.

A further factor leading to the Commission's exemption of UIP was the deterioration of the European film market, which it described in its decision in the

40 See IP/99/681.

41 Commission Decision of 12 July 1989 (O.J. No. L 226 of 3.8.1989, p. 25). See also IP/89/559.

following terms: *"Cinema admissions declined by an average of 40% in the Community from 1970 to 1986, levelling out since 1987. Box-office revenue fell also by approximately 26% during the 1970 to 1986 period although it has shown signs of recovery since 1987"* [42].

2. The renewed exemption

The UIP exemption expired on 26 July 1993. The Commission received a request for its renewal on 22 June 1993.

Following UIP's application for a renewal of the exemption, the Commission received a number of informal complaints regarding UIP's commercial behaviour. The Commission therefore launched an investigation at the premises of UIP in June 1996. However, the Commission's investigators found no evidence of anti-competitive practices. Also none of the complainants provided the Commission with any substantive evidence of any anti-competitive behaviour on the part of UIP.

UIP does not seem to provide the Partners with any value added as a tool for an anti-competitive co-ordination of release dates in a market, which is generally characterised by transparency regarding the fixing of release dates. Moreover, film is a heterogeneous product, which is a factor reducing the risk of an anti-competitive co-ordination of release dates. Furthermore, throughout the Commission's investigation as well as at the oral hearing in September 1998, the case for a renewal of the exemption of UIP was supported by a considerable number of players in the European market (independent producers, distributors and exhibitors), who all brought evidence of UIP's efficient performance and good commercial behaviour.

The Commission's new investigation also showed that the European film market has developed from a state of constant deterioration into a sound, even growing market. Despite this, UIP does not seem to have had any particular impact on the Community market and its structure. The balance of power between EU and US films has remained relatively constant over the past years. In most EU markets UIP is facing competition from a number of strong distributors and exhibitors who also have countervailing powers. There is no indication that UIP has such a market power in any Member State that renders it immune to competition, thus permitting the Partners to reap the rationalisation benefits derived through UIP, without passing any of those benefits onto the market. Moreover, the Commission found that UIP performed only moderately over the period covered by the first exemption. In 1989 UIP's average EU market share was 22%, in 1997 it was 13% and in 1998 17%.

The Commission therefore considered that a renewal of the exemption would be possible, particularly after UIP and the Partners amended the UIP agreements extending the Partner's autonomy further and gave undertakings regarding UIP's commercial behaviour. The Commission therefore published a summary[43] of the revised UIP agreements and undertakings indicating that they appeared to meet the criteria for an exemption pursuant to Article 81(3) of the EC Treaty. No third-party comments were submitted in reply to the notice, which provided any new or substantive elements that could change the legal assessment of the case.

3. The new additional changes made to the UIP agreements

The amendments to the UIP agreements concern the following two areas:

First, UIP's right of first refusal to distribute the partners' films in the EU is now applied on a Member State[44] basis, rather than for the whole EU as one territory. The later approach prevented the Partners from varying their national distribution strategies, blocking alternative distribution arrangements in territories where UIP had less an interest. The agreement is now less restrictive of competition as, in countries where UIP does not distribute a Partner's film, alternative distributors may be used. This should contribute to diversifying the supply of films in the Member States.

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42 §47 of the 1989 decision.

43 Publication in accordance with Article 19(3) of Regulation 17 (OJ C 205, of 20.7.1999, p. 6).

44 Except for Belgium/Luxembourg and the UK/Republic of Ireland, which would be treated as one territory.

Secondly, UIP is no longer required to make its best efforts to maximise each Partner's profits for each film distributed by UIP. Originally exempted, this is now seen as an incentive for UIP to co-ordinate film releases across the EU. However, the Commission has accepted the retention of such a 'best efforts' provision in the individual franchise agreements concluded between UIP and the individual Partners. Such individual clauses are not an incentive for UIP, or the Partners, to co-ordinate film releases across the EU.

4. The undertakings given by UIP

In addition to amending their agreements the Partners have given a series of undertakings, which include not only those given in 1989, but also certain revisions and additions. These undertakings essentially aim at assuring that the Partners maintain the highest possible degree of autonomy in the conduct of their business, that UIP will deal with cinemas on a fair and equitable basis, and set out the efforts which UIP and the Partners will undertake in respect of local film industries. UIP agreed that the Commission publishes a non-confidential version of the undertakings on its homepage (http://europa.eu.int/comm/dg04/entente/undertakings/30566.pdf"). The Commission considers this to be an efficient manner in which to provide interested third parties access to the undertakings and thus to hold the parties accountable for the respect of the undertakings given.

Décision d'exemption du 3 mars 1999 relative à la création de TPS - Télévision Par Satellite (J.O. L90 DU 2 avril 1999 p. 6)

Jacques LOVERGNE, COMP-C-2

Cette affaire concerne la création, à la fin de 1996, d'une plate-forme numérique par satellite, TPS («télévision Par Satellite »), qui se positionne sur le marché français de la télévision à péage comme concurrent de Canal+ et de CanalSatellite. Canal+, chaîne payante «premium » et CanalSatellite, lancée en 1992 sous forme de bouquet analogique, puis au début de 1996, sous forme de bouquet numérique, se trouvent en position dominante sur le marché français de la télévision à péage. Ces deux sociétés enregistrent actuellement respectivement 4,4 millions et 1,1 millions d'abonnés. A leur côté, une autre plate-forme numérique par satellite, AB-Sat, a vu le jour en 1996, un peu avant TPS. Toutefois, elle s'est présentée comme offre complémentaire de celle de CanalSatellite, plutôt que comme véritable concurrente. Cette plate-forme ne compte officiellement que 100.000 abonnés. TPS, de son côté, enregistrait 630.000 abonnés à la fin février 1999.

Les parties à ces accords créant TPS sont les radiodiffuseurs français TF1, M6, France 2 et France 3 ainsi que France Télécom et Suez Lyonnaise des Eaux.

La décision du 3 mars a accordé une attestation négative à la constitution de l'entreprise TPS. Les accords comportaient d'autre part une clause de non-concurrence, qui a été considérée comme accessoire à la création de TPS et ne relevant donc pas de l'application de l'article 85 §1 du Traité pendant la période de lancement, d'une durée de 3 ans.

Par contre deux clauses ont été considérées comme restrictives de concurrence parce qu'elles limitaient l'offre de programmes disponibles pour les concurrents de TPS. Il s'agit de la clause accordant un droit de priorité à TPS sur les chaînes et services télévisuels contrôlés par ses associés ainsi qu'une disposition selon laquelle les quatre chaînes

généralistes – TF1, M6, France 2 et France 3 – sont distribuées en exclusivité, en qualité numérique, sur TPS. Ces deux dernières dispositions bénéficient d'une exemption pour une durée de 3 ans à compter de la commercialisation de TPS.

Cette décision importante atteste du caractère parfaitement adapté des règles générales de la concurrence pour l'appréciation des alliances stratégiques dans le secteur du développement de la technologie numérique.

Certains aspects de cette décision méritent quelques commentaires sur la démarche suivie par les services de la Commission ; il s'agit, d'une part, de l'appréciation du caractère pro-concurrentiel de la création de TPS et, d'autre part, de l'analyse qui a conduit à exempter pour une période de 3 ans les clauses restrictives de concurrence.

LE CARACTÈRE PRO-CONCURRENTIEL DE LA CRÉATION DE TPS

En accordant une attestation négative à la création de TPS, la Commission a estimé que l'entrée de ce nouvel opérateur sur le marché de la télévision à péage était de nature a favoriser la concurrence face à un opérateur jusque là en situation de monopole sur le marché français.

1. La question du marché pertinent

CanalSatellite a contesté la définition traditionnelle du marché pertinent dans des affaires similaires[45] qui a été reprise dans la décision TPS ; la décision identifie un marché de la télévision payante distinct de la télévision en clair.

Il ne correspond pas à la réalité de mettre sur un même pied télévision payante et télévision généraliste ; en effet, la source de financement est différente – abonnements dans un cas, recettes publicitaires et redevances dans le second –, le contenu des programmes diffère, la relation avec le téléspectateur n'est pas la même, les attentes du consommateur sont différentes.

A l'occasion de la présente décision, la question a été posée de savoir s'il fallait procéder à une segmentation plus fine du marché de la télévision payante.

Concernant une segmentation selon la technologie utilisée – analogique ou numérique – la décision TPS, dans le droit fil des décisions précédentes, souligne que la télévision numérique n'est qu'un stade de développement ultérieur de la télévision analogique et qu'il y a donc lieu de les considérer comme appartenant à un seul marché.

Pour ce qui concerne la segmentation selon le mode de diffusion – câble, satellite, hertzien – la décision TPS a considéré qu'il n'y avait pas lieu d'établir une distinction parce que les modalités d'exploitation de la télévision payante étaient similaires quel que soit le mode de diffusion. En particulier s'agissant du câble et du satellite, il a été constaté que les offres et le prix étaient identiques.

La question s'est posée de savoir si l'offre de bouquets numériques regroupant un grand nombre de chaînes thématiques payantes et l'offre d'une chaîne payante unique diffusée en mode analogique par voie hertzienne, comme Canal+, devaient être incluses dans le même marché. Il a été constaté que dans les deux cas l'offre de programmes est essentiellement ciblée sur le cinéma et le sport, que la commercialisation des abonnements s'opère par le biais d'un réseau de distribution, qu'ils utilisent un terminal associé à un système de décodage, qu'enfin ils nécessitent un système de gestion des abonnés. En raison de ces similarités, il a été considéré que les deux offres faisaient partie du même marché.

2. Une alliance pro-concurentielle

Dans l'analyse, qui a conduit à considérer que l'article 85-1 ne s'appliquait pas, les services de la Commission ont examiné si la création de TPS ne pouvait pas entraîner des comportements d'entente entre les sociétés fondatrices de TPS. Ils ont donc été amenés à examiner les

45 Affaire N° IV/ M. 110 – ABC/Générale des Eaux/Canal+/ W.H.Smith TV – Décision du 10.9.1991 – Affaire N° IV/M.410 – Kirch/Richemont/Telepiù – Décision du 2.8.1994 – Affaire N° IV/M.489 _ Bertelsmann/News International/Vox – décision de la Commission du 5.5.1995 – Affaire IV/M.469 – MSG Media Service – Décision du 9.11.1994 – Décision du 27 mai 1998 Bertelsmann/ Kirch/Premiere J.O. L53 du 27 février 1999 p.1

différents marchés de produits en cause afin d'apprécier si des risques de coordination de comportements entre les associés n'existaient pas.

Au terme de l'analyse, il a été considéré que de tels risques n'existaient pas. Soit parce que les différents opérateurs n'étaient pas présent sur le marché et qu'il n'y avait pas de risque de fausser la concurrence entre eux, comme c'était le cas sur le marché de la télévision à péage et sur celui des services techniques liés à la télévision à péage. Soit parce que la concurrence entre les opérateurs est telle que tout risque de collusion est à écarter comme c'est le cas pour l'acquisition de droits pour la programmation en clair. Soit, enfin, parce que des clauses des accords excluent à priori tout risque, comme pour le marché de la commercialisation des chaînes thématiques compte tenu de la clause octroyant à TPS un droit de priorité sur les chaînes thématiques de ses associés.

Dès lors que cet examen se révélait négatif, et parce que les sociétés fondatrices de TPS n'étaient pas présentes sur le marché de la télévision payante, il devenait clair que la création de TPS s'analysait comme l'entrée sur le marché d'un nouvel opérateur qui allait directement concurrencer l'opérateur historique.

Il en résulte un effet immédiat pour le consommateur, qui bénéficie d'une gamme de choix plus large liée à cette extension de l'offre et des conditions financières plus satisfaisantes. L'effet sur les prix lié à la présence de deux plates-formes numériques concurrentes sur un même marché géographique est la première traduction concrète du renforcement de la concurrence effective.

Il est à cet égard intéressant de regarder les conditions du lancement en Belgique du bouquet numérique de Canal+ sur le câble en Wallonie. De janvier à juin 1999 l'abonné paye le même abonnement que précédemment, à partir de juin il paiera un abonnement de 1935 Francs belges (soit 47,97€) pour le service «basic » à comparer avec le prix de l'abonnement CanalSatellite Thématique en France qui est de 110Francs français (16,77€) ou de l'abonnement CanalSatellite Grand s'élevant à 149 francs français la première année (22,71€). La différence entre les deux marchés est précisément qu'en Belgique Canal+ est le seul opérateur à proposer un bouquet numérique et donc un service de télévision à péage.

EXEMPTION DE LA CLAUSE D'EXCLUSIVITÉ

Il s'agit ici d'expliquer les raisons pour lesquelles la Commission a estimé que cette clause pouvait être exemptée au titre de l'article 85-3 et sur la base de quelle analyse elle a estimé que la durée de cette exclusivité devait être limitée à 3ans à compter de la commercialisation de l'offre de programmes de TPS.

3. Les raisons de l'exemption

L'échec sur le marché allemand de la plate-forme concurrente de Premiere, DF1 du groupe Kirch, montre la nature risquée de cette activité même lorsque l'opérateur est une compagnie puissante. Il faut également souligner que la Cour des Comptes française, dans son rapport annuel 1998, a indiqué le caractère risqué et aléatoire de l'engagement de France Télévision dans TPS.

La puissance financière des actionnaires de TPS n'est qu'un des aspects qu'il convient de retenir. En effet aucun d'entre eux n'avait d'expérience en matière ni de télévision à péage, ni du numérique, face à Canal+ et CanalSatellite, opérateurs historiques qui respectivement, lors du lancement de TPS, avaient 4,2 millions d'abonnés à Canal+ et 350.000 abonnés à CanalSatellite Analogique, et avait lancé CanalSatellite numérique dès février 1996. TPS avait un handicap considérable pour s'installer sur le marché.

La situation était encore plus nette en ce qui concerne l'accès indispensable à des contenus tant en films de première exclusivité qu'en matière de droits de diffusion d'événements sportifs. Il convient en effet de rappeler que la situation, en ce qui concerne les droits de cinéma, est encore très déséquilibrée en France : Canal+ détiendrait des droits représentant environ 87% de la production de films américains, en terme d'entrées en salle en France[46] .

46 Avis N° 98-A-14 du Conseil de la Concurrence en date du 31 août 1998 relatif à la fusion-absorption de la société Havas par la Compagnie Générale des Eaux – Bulletin Officiel de la Concurrence, de la Consommation

Pour ce qui concerne les films français, selon le CSA[47], Canal+ pré-achète environ 80% des droits de diffusion sur la télévision à péage de films français ; en 1996 Canal+ a pré-acheté 107 films sur les 134 produits en France[48]. Par comparaison, TPS en 18 mois a acquis les droits de diffusion cryptée de seulement 16 films français et en 1997, selon le Centre National de la Cinématographie (CNC), TPS a seulement pré-acheté les droits de diffusion d'initiative française de 6 films. La disproportion entre les deux chiffres est donc particulièrement nette.

Pour les droits sportifs, une étude d'Eurostaf révèle que CanalSatellite disposerait des droits relatifs aux 242 matches du championnat de France de football, alors que TPS ne disposerait que des droits relatifs à environ 132 matches de football par an. La disproportion que montrent ces chiffres est nette.

Etant donné la difficulté de pénétrer le marché français de la télévision payante, on peut considérer que l'exclusivité qui lie TPS aux chaînes généralistes est indispensable, en tant qu'élément différenciateur et produit d'appel, au lancement et à l'implantation du nouvel entrant TPS. Cet élément permettant à TPS d'être le seul à pouvoir proposer une offre incluant les chaînes généralistes avec une qualité de son et d'image numérique.

La Commission considère donc que sans cette exclusivité, TPS n'aurait pas pu lutter à armes égales avec ses concurrents. Le succès de son lancement aurait été très aléatoire faute d'être en mesure de proposer un produit attractif et singularisé.

4. Durée de l'exclusivité

Les fondateurs de TPS n'avaient pas fixé de durée précise à l'exclusivité lors de la conclusion de leur accord.

Toute exemption au titre de l'article 85-3 doit prévoir la durée de validité de celle-ci. Les fondateurs de TPS estimaient qu'une durée de 10 ans leur semblait appropriée. Toutefois la Commission a estimé devoir limiter la durée de l'exemption à 3 ans.

La fixation de la durée de validité d'une clause d'exclusivité, comme celle prévue dans les accords de création de TPS, est toujours un exercice difficile. Le choix final est le résultat de la pondération de plusieurs critères qui est fonction des circonstances propres à chaque cas. S'il ne s'agit pas d'une science exacte au sens mathématique du terme, cette analyse constitue un effort d'objectivité et de neutralité.

Objectivité, parce que les services de la Commission se fondent d'abord sur les données propres au projet d'entreprise conduit par les partenaires ; les investissements initiaux sont pris en compte, le rythme des investissements ultérieurs prévus intervient également. Il faut également tenir compte des prévisions des associés sur la rapidité de leur développement sur le marché, de leurs prévisions d'amortissement, des perspectives de rentabilité... Tout cela implique une analyse des documents stratégiques de l'entreprise qui relèvent pour la plupart de la confidentialité propre aux secrets d'affaires.

Objectivité également, parce que la Commission examine les perspectives réelles de développement du marché à partir d'études menées par des consultants externes dont la neutralité est garantie. Elle est ainsi en mesure de confronter les données réelles aux prévisions fournies par les opérateurs du projet.

Neutralité enfin, parce qu'elle tient compte de la structure concurrentielle existante et qu'elle veille à ce que l'avantage concurrentiel procuré aux bénéficiaires de l'exemption ne procure pas un avantage disproportionné vis à vis de leurs concurrents actuels ou potentiels. L'octroi d'un avantage pour une durée trop longue serait de nature à fausser le jeu de la concurrence. A cet égard, la Commission s'attache à examiner l'étendue de l'exclusivité ; plus celle-ci est large, plus la durée devra être limitée dans le temps afin de préserver les intérêts légitimes des autres opérateurs.

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et de la répression des fraudes du 7 octobre 1998

47 CSA – « La télévision à péage par satellite – Les risques de position dominante » - Août 1997

48 Décision du Conseil de la concurrence 98-D-70 du 24 novembre 1998 relative à la saisine de TPS dans le secteur des droits de diffusion audiovisuelle.

CONCLUSION

Deux observations en guise de conclusion.

Tout d'abord, dans cette décision, la Commission a suivi les analyses concurrentielles en utilisant les règles générales telles qu'interprétées par la jurisprudence de la Cour de Luxembourg. Elle a suivi sa pratique décisionnelle habituelle comme dans tout autre cas. Cela indique clairement, une fois encore, qu'il n'est pas nécessaire d'avoir recours à des règles sectorielles spécifiques pour des secteurs de nouvelles technologies, comme certains le réclament périodiquement.

Ensuite, il est plus que probable que la Commission et ses services n'en auront pas terminé avec ce cas ; il est, en effet, plus que vraisemblable que les parties demanderont à la Commission un renouvellement de l'exemption au-delà du 15 décembre 1999. Il appartiendra alors d'examiner si les conditions qui ont conduit à accorder le bénéfice de l'exemption sont toujours remplies, sachant que conformément à une jurisprudence constante[49], il appartient aux entreprises demandant le bénéfice de l'exemption d'établir la preuve que les conditions pour celle-ci sont remplies.

49 Voir notamment attendu 262 affaire T–29/92 Vereniging van Samenwerkende Prijsregelende Orgasisaties in de Bounwnijverheid e.a. contre Commission – Arrêt du 21 février 1995 REC 1995 p. II.375.

La Commission approuve le nouveau système d'échanges d'informations entre producteurs de tracteurs et machines agricoles

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Suite à l'intervention de la Commission européenne, les producteurs de tracteurs et machines agricoles, ainsi que leurs associations, se sont engagés à modifier leurs modalités d'échanges d'informations dans l'Union européenne (UE). Les nouvelles modalités rendent les échanges compatibles avec les règles de concurrence de l'UE et seront mises en œuvre au plus tard le 31 octobre 1999.[50]

Ces nouvelles modalités portent sur les échanges des données individuelles de chaque concurrent ainsi que sur les échanges des données agrégées. A la suite de cet accord, la Commission a clôturé les dossiers à l'encontre des producteurs de tracteurs et machines agricoles ainsi que de leurs associations.

Historique

Suite à une vérification en 1989 la Commission avait découvert que les producteurs de tracteurs et machines agricoles, les associations de producteurs et les associations d'importateurs organisaient divers échanges d'informations tant au niveau national qu'international. Ces échanges d'informations portaient sur des données individuelles et agrégées d'immatriculations, de livraisons et de ventes pour des périodes mensuelles, trimestrielles et annuelles et couvrant des territoires géographiques nationaux et plus restreints, comme par exemple la province, le département et même dans certains cas des localités par code postal. Les échanges au niveau national étaient organisés soit par les associations de producteurs soit par les associations d'importateurs. Les échanges internationaux étaient organisés par les producteurs eux-mêmes.

En 1992, la Commission avait décidé que l'échange organisé au Royaume-Uni, étant donné la forte concentration du marché où les quatre producteurs les plus importants totalisaient 80% des ventes de tracteurs, produisait des effets anticoncurrentiels parce qu'il amoindrissait substantiellement la concurrence entre le nombre restreint de concurrents significatifs et qu'il renforçait les obstacles à l'accès de non-membres au marché[51]. Deux

50 Voir également communiqué de presse IP/99/690 du 20 septembre 1999

51 Décision de la Commission du 17 février 1992 publiée au Journal

membres de l'échange, John Deere et Fiat, devenu entre temps New Holland, introduisirent un recours devant le Tribunal de Première Instance qui le 27 octobre 1994 confirma pleinement la décision de la Commission[52]. Suite aux pourvois contre la décision du TPI, la Cour de Justice confirma en date du 28 mai 1998 la décision du TPI[53].

Dès lors que des systèmes similaires d'échanges d'informations nationaux étaient organisés dans tous les Etats membres de l'UE par les associations de producteurs et importateurs, la Commission a décidé de mettre en conformité tous ces échanges similaires organisés dans l'UE par les producteurs et les associations puisque le niveau de concentration du secteur est élevé dans tous les Etats membres. Il en va de même pour les échanges internationaux organisés par les producteurs eux-mêmes.

Nouvelle situation

La Commission a déterminé une série de principes pour le futur. L'application de ces principes évitera que les systèmes d'échanges d'informations concernant les tracteurs et machines agricoles produisent des effets anticoncurrentiels dans l'UE.

Les principes établis par la Commission sont les suivants.

1. Les données individuelles ne peuvent être échangées avant qu'une période de douze mois se soit écoulée entre la date de l'événement sur lequel porte l'échange et la date d'échange.
2. Les échanges de données agrégées de marché, dont l'ancienneté peut être inférieure à douze mois, sont permis si les données proviennent d'au moins trois vendeurs appartenant à des groupes industriels ou financiers différents. Lorsque le nombre de vendeurs est inférieur, l'échange n'est permis que si le nombre échangé concerne au moins 10 unités.

Le Comité européen des groupements de constructeurs du machinisme agricole (CEMA) s'est engagé pour son compte et le compte de ses associations membres à respecter ces principes. Les quatre producteurs les plus importants au niveau mondial, à savoir John Deere, New Holland, Case et AGCO se sont engagés à ne participer à des échanges d'informations dans l'Union qu'à la condition que ces échanges obéissent à ces mêmes principes. Ces engagements sont pris indépendamment de la source et du niveau de détail à l'origine des informations.

Ces mêmes principes sont valables pour les associations d'importateurs de tracteurs et machines agricoles dans l'UE.

Conclusion

Ces principes établissent des indications claires pour n'importe quel échange d'informations similaire organisé dans un secteur économique dont la concentration est similaire à celle du marché des tracteurs et machines agricoles.

Afin de clôturer les procédures ouvertes, la Commission a envoyé des lettres administratives « de confort » aux associations à l'égard desquelles une affaire était ouverte. Elle prendra toutes les mesures nécessaires pour veiller à ce que ces principes soient appliqués dans des situations équivalentes.

Officiel n° L 68, p.19, dans l'affaire UK Agricultural Tractors Registration Exchange ; voir IP/92/146.

52 Arrêts du 27 octobre 1994 dans les affaires John Deere contre Commission (Affaire T-35/92, publié au Recueil 1994, p. II-0957) et New Holland contre Commission (Affaire T-34/92, publié au Recueil 1994, p. II-0905).

53 Arrêts du 28 mai 1998 dans les affaires John Deere contre Commission (Affaire C-7/95, publié au Recueil 1998, p. I-3111) et New Holland contre Commission (Affaire C-8/95, publié au Recueil 1998, p. I-3175).

The Commission approves joint venture between P&W and GE for new aircraft engine

Monika EKSTRÖM, COMP-F-2

Introduction

On 14 September 1999, the Commission adopted a Decision by which it approved the creation of a joint venture between Pratt & Whitney (P&W) and General Electric Aircraft Engines (GE). The joint venture, called the Engine Alliance, is created to develop and sell a new jet engine intended for Airbus' future, very large aircraft, known as the A3XX. The new engine may also equip possible future extended versions of the B747-400 aircraft that Boeing is considering launching.

P&W and GE are two of the world's three manufacturers of big jet engines, the third competitor being Rolls-Royce plc (RR). RR does not have to develop a completely new engine, but will be able to offer a derivative of its existing Trent engine for the A3XX.

The Engine Alliance will be owned and run on an equal basis by P&W and GE, who have divided the responsibility for the different parts. P&W will be responsible for the low-pressure system and GE for the core system. The Engine Alliance will be responsible for the final assembly of the new engine and for the sales and marketing thereof.

A Notice was published pursuant to Article 19(3) of Regulation No 17[54] on which a number of interested third parties submitted observations. The submissions concerned primarily the content and wording of the undertakings given by the parties. Certain third parties believed that the indicated thrust range of the new engine had become too wide creating a risk that the joint venture would reduce competition between the parties in market segments where they currently compete.

Article 81(1)

In its Decision, the Commission came to the conclusion that, although it may be economically more efficient for the parties to develop the new engine jointly, it would be technologically and economically feasible for both parties to develop it independently. The creation of the Engine Alliance appreciably restricts competition for the new engine, since it reduces the choice of engine suppliers from three potential suppliers to two. It is therefore caught by the prohibition set out in Article 81(1) of the EC Treaty.

Article 81(3)

However, the Commission considers that the joint venture fulfils the conditions for exemption under Article 81(3) of the EC Treaty. It enables each of P&W and GE to concentrate on the specific elements where it has a technological advantage allowing the parties to jointly develop a new engine fulfilling stricter performance targets than any existing engine within a shorter time frame and at a lower cost than would otherwise have been possible. Competition will not be eliminated, since RR will be able to offer its Trent engine in competition with the new engine.

The scope of the Engine Alliance

Since there are only three competitors on the market for large jet engines, it is important that the co-operation does not extend into other market segments where P&W and GE currently compete and where they both have high market shares. The Commission considers that there is a risk that the joint venture will provide an incentive in the future for the parties to adapt the new engine for use on other aircraft instead of individually developing new engines. This would have the effect of reducing competition between the parties. The Decision is therefore granted on condition that the co-operation remains limited to a specific engine that is exclusively intended for the A3XX aircraft and to any future, four-engine aircraft of Boeing,

54 OJ C 339, 7.11.1998, p. 3.

designed for more than 450 passengers.

Obligations imposed

In order to enable the Commission to monitor the parties' compliance with the above condition, the Decision is also subject to a number of obligations:

- P&W and GE shall notify the Commission of any proposed change of the scope of the Engine Alliance;
- the Engine Alliance shall be a separate legal entity with separate accounting records and auditing records from its parent companies. The Engine Alliance shall submit the auditing records to the Commission;
- P&W and GE personnel shall not market the new engine, but only act as client contacts;
- If a customer requests a bid for several engines, including P&W's and GE's own engines and the new engine, the terms of sale of the new engine shall be stated separately. P&W and GE shall not disclose to the Engine Alliance or to each other the terms of their separate offers;
- P&W, GE and the Engine Alliance shall establish safeguards to prevent the exchange of competitively sensitive information concerning P&W's and GE's separate engine offerings.

Undertakings given by the parties

In addition to the above condition and obligations, the parties have offered a number of undertakings:

- The Engine Alliance will not seek, solicit or impose conditions of exclusivity into its bids or contracts for the development or supply of the new engine to airframe manufacturers, except for campaigns in which another engine manufacturer has offered to enter into an exclusive agreement;
- The Engine Alliance will make available engine manuals and related technical information to third parties in order to enable them to perform basic service and maintenance of the new engine;
- GE will report to the Commission in writing any purchase orders placed by its subsidiary General Electric Capital Aviation Services (GECAS) for any new aircraft powered by the new engine.

Duration

The Decision to exempt the joint venture is granted for a period of 15 years and will cover the period from the notification of the agreements until 26 September 2011. The relatively long period is justified by the fact that the Decision concerns a sector with long development periods in which investments are typically not recovered before at least 15 years.

Monitoring of Regulation (EC) n° 1475/95 concerning the distribution of motor vehicles

Ulrich KRAUSE-HEIBER, COMP-F-2

INTRODUCTION

The block exemption Regulation relating to motor vehicle distribution[55] entered into force on July 1, 1995 [56] and will expire on September 30, 2002. It allows selective and exclusive distribution and servicing agreements in the car sector, provided that they enhance efficient distribution of the products concerned and can be regarded as indispensable for attaining rationalization and efficiency in the motor vehicle industry.

In Article 11, paragraph 1, the Regulation provides that "the Commission will evaluate on a regular basis the application of this Regulation, particularly as regards the impact of the

55 Commission Regulation (EC) n° 1475/95 on the application of Article 81 (3) EC to certain categories of motor vehicle distribution and servicing agreements (OJ L 145, 29.6.1995, p. 25).

56 It replaced Regulation (EEC) n° 123/85.

exempted system of distribution on **price differentials** of contract goods between the different Member States and on **the quality of service to final users**". It also obliges the Commission to draw up a **report on the evaluation** of this Regulation until 31 December 2000, particularly taking into account the criteria provided for in paragraph 1. In this respect, it is desirable to know more about the facts and the real economic context in which car distribution takes place.

CAR PRICE DIFFERENTIALS

As concerns the evaluation of car price differences, the Commission publishes, since 1993, twice a year a Report on Car Prices[57], accompanied by a press release. This report is aimed at analyzing car price differentials across the European Union, and improving price transparency for consumers. In its most recent report of 1 May, 1999[58] the Commission has found that price differentials are still too high for many models.

QUALITY OF SERVICE TO FINAL USERS

The quality of service to final users is another core aspect which has to be considered when evaluating the application of the Regulation. The principle of a single market requires in particular that consumers shall be able to purchase motor vehicles wherever in the Community prices or terms are most favourable, and that effective competition on the maintenance and repair markets is ensured.

REPORT ON THE EVALUATION OF THE REGULATION

In order to prepare this report the Commission has, as a first step, designed and sent a number of questionnaires to the most important parties directly concerned by the Regulation. The Commission considers it indispensable to consult parties in all sectors concerned, in order to obtain a differentiated picture of the parties' interests and opinions.

Bearing in mind the above aspects, the Commission has prepared eight types of questionnnaires, which have been addressed to

- individual car manufacturers (and to their associations for information)
- individual importers and/or their associations
- consumer associations
- associations of independent resellers and intermediaries
- associations of producers of spare parts
- associations of independent repairers
- associations of franchised dealers
- companies active in electronic commerce (car sales via the internet).

With the aim of improving transparency of this action, these questionnaires have been made accessible on the Competition Directorate-General's home-page[59].

OBJECTIVES OF THIS ACTION

It should be recalled that the current block exemption, which runs for a period of seven years, was adopted by taking into account the specific characteristics of the motor vehicle sector and the foreseeable changes in competition in that sector[60]. Consequently, the sending of the questionnaires has three objectives.

Current state of car distribution?

First, this action shall provide to the Commission a description of the recent evolution of the sector. To this end, the interested parties have to submit facts and figures about their respective activities. Manufacturers are requested to submit detailed information about the structure of their respective distribution systems, while franchised dealers are questioned about their cross-border sales and about how they respond to competition emanating from parties outside their respective networks.

57 Available from the Commission Offices in the Member States and on the homepage of the Competition Directorate-General (http://europa.eu.int/comm/dg04/aid/en/car)

58 See press release IP/99/554 of 22nd July, 1999.

59 See footnote 58.

60 See recital (32) of Commission Regulation n° 1475/95.

Objectives of the Regulation attained?

Secondly, it is intended to check whether the objectives of the Regulation, as formulated at its entry into force, have been attained. As motor vehicles are consumer durables which require expert maintenance and repair, most manufacturers cooperate with selected dealers and repairers in order to provide specialized distribution and servicing for the product. Such arrangements are likely to enhance efficient distribution of the products concerned, and the exclusive and/or selective nature of the distribution system has been regarded as indispensable for attaining rationalization and efficiency in the motor vehicle industry. This has been the basic motivation for allowing restrictive distribution and servicing agreements in the car sector.

In particular, the Regulation aims at securing greater independence for dealers vis-à-vis car manufacturers. Dealers are allowed to sell cars of other manufacturers under certain conditions. To ensure effective competition on the maintenance and repair markets, car manufacturers or suppliers (wholesalers or importers) are not allowed to impede access by independent spare part producers and distributors to the markets or to restrict the dealer's right to procure spare parts of equivalent quality from firms of his/her choice outside the network. Furthermore, car manufacturers must provide repairers outside the network with the technical information they need to enable them to repair and maintain cars produced by them.

Multidealerships, opening-up of the markets in spare parts, greater competition in the field of repairs, all serve the aim of increasing consumers' choice in accordance with the principles of the single market. Similarly, there is a requirement that consumers are able to buy a car and to have it maintained wherever in the European Union prices or terms are most favourable. Therefore, dealers must not be prevented from meeting demand from outside their allotted sales area, and in particular from abroad.

Consequently, a great deal of the questions relate to these aspects and are destined to provide the Commission with an insight into the practical transposition of clauses contained in the Regulation. As an example, consumers are asked to submit their experiences made so far, in particular as to the purchase of a car, warranty works and after-sale service. As the Regulation is destined to ensure consumers' freedom to buy a car anywhere in the European Union, experiences made by consumers in this respect are of particular interest to the Commission.

New techniques of marketing and distribution?

Finally, the Commission would like to know whether the technical evolution of cars and the elaboration of new marketing and distribution methods (as the marketing and sales via the internet or through hypermarkets) does not call into question the basis for a specific Regulation on car distribution. In this context, the question of whether the so-called "natural" link between distribution of new cars and the after-sale service still exists, it has to be examined. Furthermore, it is apparent that manufacturers themselves are currently assessing possible ways of re-organizing their distribution systems, in order to meet future challenges.

All parties have therefore been invited to submit their views on future developments in the car distribution sector, up to the end of 2010 and beyond that date.

TIMETABLE FOR THE ADOPTION OF THE REPORT

The replies to the questionnaires will be submited during the month of November 1999. The results of their evaluation will constitute a major basis for the draft report, which after discussion with Government Experts (Advisory Committee) will be adopted by the Commission by the end of the year 2000.

UK Beer Cases

Nils VON HINTEN-REED, COMP-F-3

This year the Commission has exempted the standard leases of the three largest brewers in the UK[61]. This conclusion followed an exhaustive examination by the Commission services of the way in which the national brewers Bass, Scottish and Newcastle ("S&N") and Whitbread have operated the contractual agreements with their lessees. The Commission considered that the tied lessees could compete on a level-playing field with their "free trading" competitors, and that an exemption from EC competition rules was justified.

Background

The Commission's involvement in UK public house leases stemmed from the fact that the Commission considers that the specification of the beer tie as it is commonly used in the UK does not fulfil the requirements of the so-called beer block exemption (Title II of Commission Regulation No 1984/83).

Due to the price differential between beer sold to tied and free-of-tie public houses, extensive litigation was initiated in the UK. This led UK brewers to notify their standard lease agreements to the Commission.

As this was a practice used by the other UK brewers, the Commission requested the UK Office of Fair Trading (OFT) to look into the matter and, following a three month enquiry, the OFT published in May 1995 its report on their "enquiry into brewers' wholesale pricing policy". Sir Bryan Carsberg, the then Director General of the OFT, concluded on 16 May 1995 that, "while I acknowledge that a minority of tied tenants on long leases have experienced some hardship, I do not believe that the differential wholesale pricing policy of brewers has in general placed the tied trade at a disadvantage to free houses." There were therefore insufficient grounds for a reference (of a complex monopoly) to the Mergers and Monopolies Commission. The report and the underlying submissions of the biggest UK brewers (the so-called "national brewers[62]") were made available at a later stage to the Commission services.

Whitbread was the first case for which the Commission was able to finalise its preliminary assessment as to the price differential and countervailing benefits. In September 1997, a 19(3) Notice was printed in the Official Journal of the European Communities (OJ C 294 - 27.9.1997). The Notice attracted 135 observations from lessees and other interested parties, 92 of which asked for their observations to be treated as formal complaints. The 19(3) Notices for Bass (OJ C 36 - 3.2.1998) and S&N (OJ C 814 - 13.1.1998) also generated observations: 26 and 22 observations were received for S&N and Bass respectively, of which 22 and 16 respectively asked for their observations to be lodged as formal complaints.

1 The Commission's main findings for national brewers

The national brewers' standard leases are typical UK property tie agreements. In other words, a company (in this case a national brewer) owns a retail outlet which it does not operate itself, but instead rents out to an independent entrepreneur in exchange for a contractual rent and the obligation to buy all his beer (of certain specified types) from the landlord-brewer.

Article 81(1)

Such leases fall within the scope of Article 81(1) if they meet two conditions set down in the

61 Commission Decision of 24 February 1999, *Whitbread,* OJ L 88/26
Commission Decisions of 16 June 1999, *Bass* and *Scottish & Newcastle,* OJ L 186/1

62 The largest brewer is Scottish and Newcastle (S&N) with 28-29%. The other main ones are Bass (23%), Carlsberg-Tetley (16%) and Whitbread (14-15%). There are a dwindling number of regional brewers with market shares well below 5% and a large number of brewers below 1%.

Delimitis judgment[63]: (a) the national on-trade beer market must be foreclosed and (b) the agreements of the brewer in question must contribute significantly to that foreclosure.

The Commission considered that based on 1997/98 data the UK on-trade beer market was foreclosed in view of the totality of on-trade beer throughput covered by the property tied, managed houses and loan tied outlets of all the brewers operating in the UK and the beer which non-brewing pub companies are obliged to buy from local brewers, and also other factors relating to the opportunities for access to, and the competitive forces on, the market.

The Commission also considered that the tied networks of Bass, S&N and Whitbread[64] contribute significantly to that foreclosure. For Bass the tied sales accounted for 18% of volume-throughput in 1990/91 and 13.7% in 1996/97. For S&N the tied sales accounted for 6.16% in 1990/91 and 9.44% in 1997/98 and for Whitbread the tied sales represented 7.59% in 1990/91 and 6.12% in 1997/98.

Article 81(3)

The Commission found that, on average, the lessees which are tied to Bass, S&N and Whitbread had to pay more for their beer purchases than individual operators who buy the same beer from the same brewer (so-called free traders). However, the Commission considered that an exemption was warranted because Bass, S&N and Whitbread tied lessees are, on average, on a level-playing field with their other competitors.

In the case of S&N the price differential the lessees faced was compensated by so-called countervailing benefits, such as lower rent ("rent subsidy"). It was not necessary to include other countervailing benefits as the rent subsidy more than compensated for the price differential.

In the case of Bass the price differential the lessee faced was compensated by a rent subsidy; bulk buying and procurement services ("value added services"); benefit of co-investment by Bass ("investment"); the benefit of non-rentalised repairs ("repairs"); the benefit of certain business planning, performance review and development initiatives offered free of charge to lessees ("support franchise"); valuable direct operational support offered to each lessee ("direct operational support"); support provided by Bass in the form of literature and assessment schedules, administration and printing costs ("set up and development costs"); and, finally, Bass has made certain promotions and marketing offers exclusive to lessees ("promotions").

Finally, in the case of Whitbread, the price differential the lessees faced was, more or less, compensated by so-called countervailing benefits, such as lower rent ("rent subsidy"), valuable business advice offered by Whitbread to the lessees ("professional services"), rebates on non-beer items ("procurement benefits") and the benefit of co-investment by Whitbread during the lease ("capital expenditure"). Moreover, the Commission considered that the specification of the beer tie by type enabled a more practical operation of beer supply arrangements in the UK than the specification provided for in the beer block exemption. The specification of tie by type made it easier to introduce the brands of foreign or new brewers to the national brewer's price lists. This was an important consideration in view of the high percentage of all beer sold in the UK as draught beer in public houses and the difficulties faced by foreign and new brewers to penetrate the UK market independently.

The Commission therefore decided to grant a time limited individual exemption to the standard leases of these brewers. As Whitbread still owned a large leased estate and continued to enter into 20-year leases with tenants, it was considered that a long exemption period was required and so the Commission concluded that the exemption should extend until 31 December 2008. For Bass and S&N, where the leased estate had either been sold off or was in the process of being converted to managed houses, the Commission decided on a shorter exemption end-date, namely 31 December 2002 which was considered to enable both Bass and S&N to base their commercial decisions with the

63 Court of Justice, Case C-234/89, Stergios Delimitis v. Henninger Bräu, ECR 1991, p.I-935.

64 Consists of the brewer's property tied, managed houses and loan tied outlets, plus, in principle, the beer which its "wholesale partners" are under an obligation to buy.

remaining tenanted houses on a reasonable level of legal security.

Following the adoption by the Commission of these three 81(3) decisions for Whitbread (OJ L 88 - 31.3.1999), Bass (OJ l 186 - 19.7.1999) and S&N (OJ l 186 - 19.7.1999), the remaining 29 complainants all received a copy of the decision, which constituted a formal rejection of their complaints.

The sale of the Bass leased estate on June 8, 1998 to a non-brewing pub company, Punch Taverns, has continued a process of opening the UK on-trade beer market up for both UK and foreign brewers. Punch Taverns continued to source part of its beer requirements from Bass, but also diversified its sourcing to include other UK national and regional brewers. Punch Taverns notified its leases to the Commission (Case No. IV/37.044/F3) and was given a negative clearance comfort letter on 27 March 1998. Another good example of this trend has been the experience of the Grand Pub Company (formerly Inntrepreneur and Spring) which now sources its brands from a diversified portfolio from national and regional brewers. The duration of contracts with supplying brewers (typically two to five years) is structured so that a proportion of the business can be re-tendered at frequent intervals. Over the period 1998-2003, approximately 98 per cent of the beer throughput will provide an opportunity for third party brewers to tender for. The Grand Pub Company have not a single volume commitment to any of the 15-20 brewers whose brand(s) are currently listed on their price list. The Grand Pub Company thereby offers a gateway for this already substantial number of brewers, and, theoretically[65] for all other national or foreign brewers, to the UK on-trade market. The Commission therefore gave a negative clearance comfort letter to the notification of these beer supply agreements (Case IV/36.916/F3 Grand Pub Company) on 27 March 1998.

65 The Commission recognises that there are practical limits as to the number of "product lines" (not necessarily equal to brands as one brand might be stocked in different container sizes) that a pub company can stock and distribute efficiently to its tied outlets.

Fujitsu/Siemens : la structure des marchés comme indice d'une possible coordination

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Le 30 septembre 1999, la Commission européenne a décidé d'autoriser la création d'une entreprise commune de plein exercice entre Fujitsu Limited (Fujitsu) et Siemens AG (Siemens). La Commission a examiné l'opération au regard du règlement sur les concentrations[66], et plus particulièrement au titre de son Article 2, paragraphe 4 qui dispose que pour autant qu'une entreprise commune ait pour objet ou pour effet la coordination du comportement concurrentiel de ses sociétés mères, cette coordination doit aussi être appréciée selon les critères de l'Article 81 du traité CE.

Trois caractéristiques de l'examen entrepris par la Commission méritent d'être plus particulièrement mentionnées : (1) L'enquête s'est concentrée sur les éventuels coordinations du comportement concurrentiel entre les sociétés mères sur les marchés voisins de l'opération ; (2) la structure des marchés candidats à la coordination a été le facteur déterminant dans l'analyse d'une coordination probable des deux sociétés mères ; (3) une des parties notifiantes a pris l'engagement, en première phase de l'investigation, de céder une filiale présente sur un marché candidat à la coordination.

Enquête concentrée sur les éventuels coordinations entre les sociétés mères

Très rapidement l'examen de l'opération a révélé que la constitution de l'entreprise commune ne créerait, ni ne renforcerait de position dominante sur les marchés géographiques sur lesquels l'entreprise commune exercera son activité (ordinateurs de bureau, portables, postes de travail et serveurs). L'enquête a donc quasi exclusivement porté sur l'analyse de la structure de certains marchés voisins de l'opération et sur la question de savoir si cette structure amenait les sociétés mères à coordonner leurs activités précédemment indépendantes.

Analyse de la structure des marchés candidats à la coordination

Ont été retenus, exclusivement, les marchés de produits ou services où Fujitsu et Siemens sont présents simultanément et qui ont une relation directe avec ceux de l'entreprise commune. L'examen des parts de marchés des deux groupes a permis de déterminer que sur tous ces marchés, à l'exception de celui des DRAM[67] et des stations de travail financières[68], la position conjointe de Siemens et Fujitsu n'était pas suffisamment importante pour que l'entreprise commune puisse avoir l'effet de coordonner les deux sociétés mères ou que cet effet puisse être appréciable sur le marché considéré. Le marché des DRAM et celui des stations de travail financières sont les seuls où Fujitsu et Siemens détiennent conjointement une part de marché supérieure à 15%. Ces deux marchés ont en outre la caractéristique d'être concentrés.

(1) DRAM. La structure du marché des DRAM a milité en faveur du peu d'intérêt économique pour Fujitsu et Siemens de coordonner leurs activités concurrentielles sur ce secteur d'activités particulier. Les caractéristiques de ce marché sont les suivantes : faible prévisibilité, mutations technologiques fréquentes dues à l'arrivée de nouvelles générations de composants électroniques, importance des clients constitués essentiellement par des grands équipementiers. Ces facteurs structurels démontrent que, malgré

66 Le règlement (CEE) n° 4064/89 du Conseil, tel que modifié en dernier lieu par le règlement (CE) n° 1310/97.

67 Dynamic Random Access Memory

68 Les stations de travail sont utilisées dans le secteur bancaire. Elles se composent de guichets automatiques et de distributeurs de billets de banque, reliés à un ordinateur central. C'est là que s'effectuent les opérations de vérification, en liaison avec les comptes bancaires informatisés.

la concentration du marché, aucun lien d'interdépendance n'existe entre les membres de l'oligopole. Sur ce marché aucun effet de coordination n'a donc été retenu.

(2) Stations de travail financières. Le marché des stations de travail financières ne présente pas les caractéristiques précédemment mentionnées. La structure de l'offre possède, par contre, les particularités suivantes : une possible constitution d'un duopole avec des parts de marchés symétriques entre d'une part Siemens et Fujitsu et d'autre part NCR ; des concurrents avec des parts de marchés inférieures à 10% ; un marché mature. Ces facteurs structurels conduisent les sociétés mères a coordonner leurs activités sur ce marché particulier. Ces problèmes sérieux quant à la concurrence sur le marché des stations de travail financières, ont par ailleurs été confirmés par des tiers dans des réponses à des demandes d'information adressées par la Commission.

Engagement de cession d'actifs en phase 1 sur un marché candidat à la coordination

L'enquête des services de la Direction Générale Concurrence n'a cependant pas dû se prolonger en phase 2 parce que Siemens a tout de suite levé les doutes exprimés par la Commission en prenant l'engagement de céder Siemens Nixdorf Retail and Banking Systems GmbH, une filiale présente sur ce marché, conformément aux conditions négociées avec la Commission. C'est le premier cas de concentration dans laquelle une des parties notifiantes a pris l'engagement de céder une filiale présente sur un marché candidat à la coordination en première phase de l'investigation[69]. Cette solution a été obtenue très rapidement parce que Siemens avait déjà annoncé depuis plusieurs mois son intention de quitter ce marché, indépendamment de la constitution de l'entreprise commune avec Fujitsu.

Cet engagement démontre, cependant, l'importance que la Commission accorde à l'analyse des créations de sociétés communes, au titre de l'Article 2(4) du règlement sur les concentrations. Cette analyse de la coordination du comportement concurrentiel des sociétés mères sur les marchés candidats à la coordination tels que définis dans l'Article 2(4) est conduite en s'inspirant des critères mentionnés dans l'Article 2(1) en tenant compte de la structure des marchés en cause et de la position des parties sur ces marchés.

En attendant la vente effective de sa filiale, l'obligation pour Siemens de céder cette activité supprime tout intérêt à coordonner son comportement avec celui de Fujitsu. Après la vente, ce marché ne sera plus candidat pour une éventuelle coordination puisque seul Fujitsu restera actif dans ce secteur. Compte tenu de la nature de cet engagement, il n'a pas été jugé nécessaire de le présenter au marché et a donc été accepté en l'état.

La Commission a donc autorisé l'opération de concentration, sous réserve que Siemens respecte pleinement cet engagement.

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69 L'engagement en phase 1 pris dans l'affaire IV/M.1327 NC/Canal+/CDPQ/Bank America n'a pas concerné une cession d'activités.

Recent Developments and Important decisions

Tiina PITKÄNEN and John KEMP, COMP-B

Introduction and Statistical Overview

General developments

The number of incoming notifications has been steady since the first quarter of the year. During the period between 1st May and 31st August a total of **93 operations** were **notified**. This means one operation more than over the previous four-month period. There were **83 Decisions** on cases under the Regulation's main provisions (**Articles 6, 8 and 9**) which means two decisions less than over the previous four month period when 85 decisions were taken under the main articles. The Commission took 2 total referral decisions to the competent authorities of the Member States (see below).

During the period, there were a total of 7 decisions to open a detailed enquiry (Article 6(1)(c)). Four operations have meanwhile been withdrawn: the acquisition of joint control by *Hutchison Port Holdings Ltd.* and the *Rotterdam Port Authority* over the Rotterdam container terminal operator *ECT*, which was notified during the first quarter of the year, was withdrawn just before a negative decision was taken. More recently, the proposed merger between *Kvaerner Pulp and Paper* and *Ahlström Machinery Group* was withdrawn only one day before the Commission could issue a negative decision. Similarly, the planned acquisition by *KLM* of full control of *Martinair* was withdrawn after the Commission raised objections. Unfortunately, the absence of a formal decision means that the general public is deprived of a full analysis of the issues raised by these cases.

The proposed take-over of *trans-o-flex* by *Deutsche Post,* which also was notified during the first quarter of the year, was withdrawn before the Statement of Objections was issued. Also, the operation, by which *Elf Aquitaine* notified its intention to acquire control of *Saga Petroleum ASA*, was withdrawn during the initial investigation period.

Other main developments that occurred during the period were in particular the first decision revoking an earlier clearance decision under the Merger Regulation (see below). Also, the Commission imposed fines for failing to notify a concentration and for providing incorrect information in two cases (see below). The Commission also took one decision under Article 21 (see below).

Application of the new merger regime (Articles 2(4), 6(2) and 7(4))

During the period, five decisions involving **joint ventures** where the risk of parental co-ordination required an analysis under **Article 2(4)**[70] were taken. In the case involving *Skandia*, *Storebrand* and *Pohjola*[71] concerning the insurance sector, the Commission approved the joint venture with commitments. The Commission concluded that the operation will have only minor effects on competition in the Nordic countries, with the exception of Norway, where Skandia has a significant market presence through Vesta, a wholly owned subsidiary of Skandia P&C Insurance Company Ltd (publ). In order to remedy the competition concerns rising from the combined market shares of Storebrand and Vesta in Norway, Skandia agreed to divest its Vesta Forsikring A/S subsidiary there, thus avoiding a further strengthening of Storebrand's market position. In the co-operation case involving *KLM* and *Alitalia*[72] in the airline sector, the operation was also approved subject to commitments. The Commission authorised this concentration during the first phase investigation in view of the companies' significant undertakings to promote the entrance of new competitors on two hub-to-hub routes, Amsterdam-Milan and

70 See especially Newsletter 1/1999

71 Case No.JV.21; Article 6(1)b and 85(3) decision with undertakings of 17 August 1999

72 Case No.JV.19; Article 6(1)b decision with undertakings of 11 August 1999

Amsterdam-Rome, where the Commission found that the Alliance between Alitalia and KLM raised competition concerns. The Commission concluded in its investigation that the concentration would have created a monopoly on these routes. To overcome this anti-competitive situation, Alitalia and KLM proposed to take a set of measures that will facilitate the entrance of potential competitors. The extensive undertakings offered include a commitment to make slots available to existing competitors and new entrants who apply to operate on any of the two routes in question; a commitment to reduce the parties' frequencies on the Amsterdam-Milan and/or Amsterdam-Rome routes when a new entrant airline starts operations; a commitment to enter into interline agreements with the new entrant airline and to give the new entrant the opportunity to participate in *KLM's* and *Alitalia's* Frequent Flyer Programme; a commitment to refrain from tying travel agents and corporate customers in Italy and The Netherlands respectively with loyalty or other similar rebate schemes; and a commitment to ensure that, once a competing airline has entered on the route(s) in question, the first screen of the computer reservation system (CRS) is not filled with the flights of the Alliance and that consumers will be informed about the precise code-share arrangements.

Three co-operation cases were approved without undertakings: a joint venture between *Chronopost* and *Correos*[73] concerning postal services; a joint venture between *Mannesmann*, *Bell Atlantic* and *OPI*[74] in the field of telecommunications; and the establishment of a new joint venture between *Ericsson*, *Nokia* and *Psion*[75] also in the telecommunications sector. Furthermore, a co-operative joint venture between *Fujitsu* and *Siemens*[76] is currently under investigation.

The clear upward trend in decisions where the Commission has used its powers to accept **remedies during the first phase of investigation (article 6(2))** continued during the period. 6 cases which would normally have been subject to second phase investigations could instead be cleared after six weeks. This means that the number of decisions where first phase remedies have been accepted already exceeds last years total of 9 decisions.

The **new regime on suspension (Article 7(1))** provides that concentrations under the Merger Regulation may not be implemented until clearance or the expiration of the deadline. Following a request by the parties, the Commission may, however, grant a derogation from the suspension. In deciding such requests, the Commission is required to take into account the effects of the suspension on the undertaking(s) concerned or on third parties and the potential threat to competition posed by the concentration. In the period, the Commission issued a provisional decision under Article 7(4) in *Rhodia/Donau Chemie/Albright & Wilson*[77] refusing the parties to adopt certain measures that would have been essentially the equivalent of a partial implementation of the operation. The reasons for the refusal were that the operation raised competition concerns and the fact that the parties failed to show any serious damage resulting from the stand-still period, not suffered by any party to the merger. The competition concerns were subsequently resolved by undertakings and, when the Commission finally adopted a decision based on Article 6(1)b, it was never necessary to adopt a final decision under Article 7(4).

Decisions to carry out a detailed investigation (Article 6(1)c)

The period saw a wave of proceedings opened under Article 6(1)c of the Merger Regulation. The Commission initiated proceedings in a total of 7 notified operations. In *Ahlström/ Kvaerner*[78], the European Commission decided to open a full

73 Case No.JV.18; Article 6(1)b decision without undertakings of 1 June 1999

74 Case No.JV.17; Article 6(1)b and 85(3) decision without undertakings of 21 May 1999

75 Case No.JV.6; Article 6(1)b and 85(3) decision without undertakings of 11 August 1999

76 Case No.JV.22, decision pending

77 Case No.IV/M.1517 - Rhodia/ Donau Chemie/Albright & Wilson; provisional Article 7(4) decision of 15 June 1999

78 Case No. IV/M. 1431-Ahlström/ Kvaerner; Article 6(1)c decision of 3 May 1999

investigation based on competition concerns regarding the supply of machinery, engineering and maintenance services in the chemical pulping sector. The Commission decided to extend its investigation of the notified operation, because there were serious concerns that the parties' overlapping activities would create or strengthen a dominant position in a number of equipment markets within the chemical pulping sector world-wide. In particular, the Commission was concerned about the parties' strong position in the supply of chemical digesters, components of bleaching lines, washing equipment, recausticizing equipment, evaporators, recovery boilers and lime kilns as well as their position as regards green field operations. The operation raised similar concerns also in relation to world-wide refurbishment and maintenance of chemical digesters, washers and recovery equipment. The operation has meanwhile been withdrawn.

The Commission also opened an in-depth investigation on the proposed acquisition by *Airtours plc* of *First Choice plc*[79]. The focus of the Commission's investigation is on oligopoly aspects, that is, the possibility that as a result of the merger, the market structure would become concentrated in such a way that the major players could collectively have a dominant position, with consequent adverse effects on prices and/or other key competition matters. In particular, the Commission considered that the notified operation could allow the major firms to adopt similar pricing, supply and other strategies more easily and reduce the ability of small tour operators to compete effectively. The operation raises concerns over the availability of airline capacity for the smaller tour operators. Essentially similar concerns are also raised about effective access for smaller operators to distribution of their products through the major suppliers' travel agency chains.

The Commission further decided to open proceedings in two parallel cases in the oil and gas sector, namely, in the proposed merger between oil companies *Exxon* and *Mobil*[80] and between *BP Amoco* and *Atlantic Richfield*[81]. The Commission considers that both transactions raise serious concerns in the upstream level of the oil industry, that is, in the exploration for and the production of crude oil and natural gas, as well as in several other product markets (wholesale transmission of gas in the Netherlands and in Germany, base oils, aviation lubricants, retail sales of motor fuels in Germany, Luxembourg, the Netherlands, the UK, Austria and the French toll motorways, and the supply of jet fuel to Gatwick airport).

The Commission also decided to open an extended investigation of the state owned Swedish telecom operator *Telia's* and the Norwegian State owned telecom operator *Telenor's*[82] plans to combine their businesses. The proposed operation gives rise to serious competition concerns, which could not be eliminated by the modifications to the deal offered by the companies during the six-week investigation period. The Commission identified a number of competition concerns in this case, in particular with regard to the new entity's "gate-keeper" function concerning access to infrastructure needed for various telecommunication and TV distribution services, and its strong position as a provider of services over those infrastructures.

The Commission opened also an in-depth investigation into the proposed acquisition of *Sphinx* by *Sanitec*[83] in the field of bathroom products. The Commission identified concerns resulting from the strength of the parties' combined position in a number of ceramic sanitary ware products in the Nordic countries (Norway, Finland, Sweden, Iceland, Denmark), where they would account for over three quarters of the market, and in the Benelux, where the concentration would lead to combined market shares above 50%.

79 Case No. IV/M.1524-Airtours/ First Choice; Article 6(1)c decision of 3 June 1999

80 Case No. IV/M.1383-Exxon/ Mobil; Article 6(1)c decision of 9, June 1999

81 Case No. IV/M.1532-BP Amoco/Atlantic Richfield; Article 6(1)c decision of 10, June 1999

82 Case No. IV/M.1439-Telia/ Telenor; Article 6(1)c decision of 15, June 1999

83 Case No. IV/M.1578-Sanitec/ Sphinx; Article 6(1)c decision of 3, August 1999

The Commission decided to open an in-depth investigation into the merger between *AlliedSignal Inc.* and *Honeywell*. This followed the receipt of a large number of complaints relating to certain overlapping activities in commercial avionics and in particular the potential breadth and strength of the combined entity in this sector.

Decisions adopted in the initial phase (Article 6(1)b)

Decisions involving remedies

In the decision *Rhodia/Donau Chemie/Albright & Wilson*[84], the Commission approved the acquisition of the British company *Albright & Wilson plc* by the French company *Rhodia S.A.*, a subsidiary of *Rhône-Poulenc*, subject to undertakings. The Commission found that the merger would give rise to competition concerns on the European markets for ingredients in fire extinguisher powders, fermentation product agents, oral care abrasives and leavening agents. Rhodia agreed to eliminate the overlap through a combination of trademark licensing, provision of customer lists, non-compete clauses and toll manufacturing agreements.

The Commission cleared, subject to extensive undertakings by the parties, the merger between *Hoechst* (Germany) and *Rhône-Poulenc* (France) into *Aventis*[85]. Both parties are active in pharmaceuticals, plant protection and production, chemicals and animal health. The Commission investigation showed that the operation as notified raised competition concerns in a number of product areas. With regard to some specific pharmaceutical and plant protection areas, the companies submitted commitments (assets or licences divestments) in those markets where competition concerns were identified. As regards pharmaceuticals, the operation raised competition concerns with respect to certain active substances which are used to make the pharmaceutical products. To remedy the competition concerns in this area, the companies undertook to renounce production and marketing of one of their main products on this market. *Hoechst* and *Rhône-Poulenc* further submitted a commitment in order to remove the competition concerns resulting from the overlap created by the operation between two advanced anti-thrombotics. In each of these cases, the companies undertook to grant the licence for each product respectively to the licensor or alternatively to find an independent and viable competitor important enough to develop and market the product. Finally, since the operation would have created a dominant position in the cobalamines active substances area, the companies proposed to the Commission to grant a licence regarding one of the companies' main products to a third party. In plant protection, the Commission identified a competition problem with regard to Isoproturon (IPU)-based cereal herbicides. The companies consequently submitted an undertaking to sell the IPU-business of *AgrEvo* in order to solve the competition problem in this area. In insecticides against cockroaches, the operation was likely to lead to a dominant position of the companies in France. *Hoechst* and *Rhône-Poulenc* agreed to grant an exclusive licence for one of their products to a third party. Finally, in order to remove any competitive concerns in the field of chemical and animal health, the companies committed themselves to divest most of their respective activities in chemicals (Rhodia, Celanese et al.) and in animal health (Hoechst Roussel Veterinär GmbH).

The merger in case *AT&T/MediaOne*[86] focused almost entirely on the United States. The operation gave rise to limited overlaps and vertical integration primarily in fixed telephony services in the United Kingdom and in Internet services in Belgium, the Netherlands and the UK. Given the competitive positions of *AT&T* and *MediaOne*, the Commission considered that the operation did not create or strengthen a dominant position on these markets and that the effects of the merger on competition in the European Union were marginal. *AT&T* and *MediaOne* have joint control over *Telewest Communications plc*, a company active in cable television and

84 Case No.IV/M.1517-Rhodia/ Donau Chemie/Albright & Wilson; Article 6(1)b decision of 13 July 1999

85 Case No.IV/M.1378-Hoechst/ Rhône-Poulenc; Article 6(1)b decision of 9 August 1999

86 Case No.IV/M.1551-AT&T/ MediaOne; Article 6(1)b decision of 23 July 1999

telecommunications services in the United Kingdom. When first assessing the *BT/AT&T*[87] joint venture, the Commission had concerns over a possible co-ordination between *BT* and *Telewest*. *AT&T* removed these concerns by committing to create a greater structural separation between *AT&T* and *Telewest*.

After completing the merger with *MediaOne*, *AT&T* will have a direct interest in *Telewest*, and could therefore have information and influence over *Telewest*. To the extent that this would result in a breach of the structural separation between *AT&T* and *Telewest*, this would need to be investigated in the context of the implementation of the commitments submitted in the *BT/AT&T* case. During the course of the investigation, *AT&T* submitted an undertaking to dispose of *MediaOne's* interest in *Telewest*. The Commission took note of this undertaking in its decision.

In case *Vodafone/Airtouch*[88], the Commission approved the merger between the British company *Vodafone Group plc* and the Californian *AirTouch Communications, Inc.* subject to commitments. The Commission concluded in its analysis that the relevant geographic market for mobile telecommunication is national since permanent roaming is currently not an economically sensible alternative. In relation to mobile telecommunications, the Commission identified a competition problem in the German market, where both parties are active through joint ventures (*E-Plus* and *D2* respectively). As a consequence of the merger, the parties would have had joint control in two of the four operators in the German market (*D2* and *E-Plus*) which together command a significant share of the market. To remedy these competition concerns, *Vodafone* agreed to sell its stake in *E-Plus*, which eliminated the overlap between the parties in the German market for mobile telecommunication.

In *Sanofi/Synthélabo*[89], the Commission revoked its clearance decision of 15 March 1999[90] pursuant to Article 6(3)(a) of the Merger Regulation. After receiving third parties' observations, the Commission had to consider possible competition concerns being created in the area of stupefying active substances which the parties had not described in their notification. Therefore, the clearance decision was considered to be based on incorrect information. Following the revocation decision, the parties submitted to the Commission the relevant information relating to stupefying active substances. The parties further undertook to divest the *Synthélabo* activities in the area of stupefying active substances and, consequently, the Commission adopted the final clearance decision. The Commission decided to impose fines on both *Sanofi* and *Synthélabo* for providing incorrect information in relation to the proposed operation (see below).

Decisions on referrals to Member States

The Commission decided, pursuant to Article 9 of the Merger Regulation, to refer to the Spanish authorities (*Dirección General de Economía y Defensa de la Competencia*) the examination of the acquisition by the Dutch brewing group *Heineken* of *Grupo Cruzcampo S.A.*, the leading Spanish brewer[91]. *Heineken*, the second largest brewer in the world, operating in Spain through its Spanish affiliate *El Aguila*, intends to acquire from the UK drinks and spirits group *Diageo* 88.21% and from the Danish brewery group *Carlsberg A/S* 10.53% of the issued shares of *Cruzcampo*. The Spanish authorities made their request, the first referral request ever made by the Spanish authorities, on the grounds that the operation threatened to create or strengthen a dominant position in certain distinct markets (possible collective dominance within the Spanish territory and possible single dominance in several regional Spanish markets). Spanish brewers achieve their highest market shares in the areas surrounding their production facilities and there are indications that competition operates in Spain at a regional level. Overall, there

87 Case No.JV.15; Article 6(1)b decision of 30 March 1999

88 Case No.IV/M.1430-Vodafone/ Airtouch; Article 6(1) b decision of 21 May 1999

89 Case No.IV/M.1397-Sanofi/ Synthélabo; Article 6(1)b decision of 17 May 1999

90 Case No.IV/M.1397-Sanofi/ Synthélabo; Article 6(3)a decision of 21 April 1999

91 Case No.IV/M.1555-Heineken / Cruzcampo; Article 9(3) decision of 17August 1999

are five main brewers in Spain: *El Aguila*, *Cruzcampo*, *Mahou*, *San Miguel* and *Damm*. Together with *El Aguila* and *Cruzcampo*, the new entity would be the strongest player in certain markets and it would achieve very high market shares, with little presence of other competitors, in Andalucia, Extremadura and Valencia.

The Commission decided to refer to the French national authorities the proposed concentration notified by the two rock-salt producers in France, *Compagnie des Salins du Midi et des Salines de l'Est (CSME)* and *MDPA/SCPA*[92]. The national authorities had informed the Commission, that the planned joint venture threatened to create or strengthen a dominant position on the market for ice-control salt in the north-east of France. CSME is one of the largest salt producers in Europe and holds a strong position in France, especially as regards salt for deicing the roads. MDPA/SCPA is also a strong producer of ice-control salt. In this sector, the dimension of the geographic markets is limited by the high proportion of transport costs in the final price of ice-control salt. According to the analysis conducted by the national authorities, and shared by the Commission, the north-east of France in particular constitutes a distinct market in which the parties would have a market share exceeding 80 % and where they would benefit from a number of competitive advantages. Furthermore, also the other French regions using ice-control salt were likely to be affected by the operation. Taking into consideration the facts observed by the national authorities and confirmed by the initial investigation carried out by the Commission, the Commission decided to refer the case to the application of French national competition law.

Decision under Article 21

In Case *BSCH/A.Champali-maud*[93] *Banco Santander Central Hispano (BSCH)* and *Mr Antònio Champalimaud* conclu-ded an agreement to exchange shares. In addition, a shareholders agreement granted to *BSCH* joint control over the group of financial companies of Mr A. Champalimaud. The Minister of Finance of Portugal decided to oppose the operation on 18th June 1999. By Decision of 20 July 1999, the European Commission requested the Republic of Portugal to suspend the measures taken by the Portuguese authorities against the agreements between *BSCH* and *A. Champalimaud*. The decision was adopted pursuant to Article 21 of the EC Merger Regulation, which grants the Commission exclusive powers to assess concentration operations of community dimension.

The decision indicates that, insofar the measures of the Portuguese Authorities are based on the protection of national and strategic interests, they are contrary to Article 21 of the EC Merger Regulation, both because the Portuguese Authorities failed to notify them to the Commission and because such interests could not be considered as legitimate. The decision also points out that there are strong doubts as to whether the measures adopted by the Portuguese Authorities are in fact based on prudential rules, which is one of the legitimate interests that may warrant a national decision relating to a concentration of Community dimension. In view of this, by not notifying the measures to the Commission, the Portuguese authorities also failed to comply with their obligations under the EC Merger Regulation. In particular, the Commission requested the suspension of the decision by the Minister of Finance of 18th June 1999 to oppose the operation and the measures deriving thereof, such as the suspension of voting rights of *BSCH* and *A. Champalimaud* in Mundial Confiança imposed by the Instituto de Seguros de Portugal.

By decision of 3 August 1999, the Commission cleared the operation between *BSCH* and *A. Champalimaud* under the EC Merger control rules. The decision of the Commission considered that the agreements concluded between *BSCH* and *A. Champalimaud* were compatible with the common market and did not create a dominant position.

The Commission has subse-quently decided to open an accelerated infringement proce-dure against the Republic of Portugal for not suspending the measures against the *BSCH/Champalimaud*

92 Case No.IV/M.1522-CSME/ MSCA/Rock; Article 9(3) decision of 11 June 1999

93 Case No.IV/M.1616-BSCH/ A.Champalimaud; Article 21 decision of 3 August 1999

operation, as it was requested by the Commission Decision of 20 July 1999[94]. The Commission decided to launch an accelerated procedure due to the need for a prompt solution in this case. The operation between *BSCH* and *A. Champalimaud*, although approved under the EC Merger rules, could not be put in place. Moreover, *Banco Comercial Português* announced its intention to launch bids over the companies of the Champalimaud group, which required that the legal situation concerning the control of these companies had to be clarified quickly.

Other developments

The Commission imposed fines under the provisions of the Merger Regulation in two cases. This has already occurred in one previous decision[95]. A fine of 219,000 EUR was imposed on the Danish company *A.P. Møller*[96] for failing to notify and for putting into effect three concentrations[97]. In its decision the Commission took into account in particular the fact that the infringements lasted for a significant period of time and that A.P. Møller should have been aware of its obligation to notify the respective transactions under the Merger Regulation.

In another case, *Sanofi/ Synthélabo*, the original decision was based on incorrect information and the Commission consequently revoked its original clearance decision. The Commission consequently imposed fines on both *Sanofi* and *Synthélabo*[98] for providing incorrect information. By imposing fines in this particular case the Commission is emphasising the importance it attaches to the requirement under the Merger Regulation to supply complete and correct information. This is essential to enable the Commission to adopt its decisions within the strict deadlines of the Merger Regulation and in the full knowledge of the relevant facts.

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94 The Commission, under a proposal by Commissioner Monti, had already opened a procedure against Portugal because the Decision by the Minister of Finance of 18th June 1999 could also be in breach of the freedom of establishment, the free movement of capitals and the EC Directives.

95 The first time a fine was imposed under the Merger Regulation was in case IV/M.920-Samsung/AST; Article 14 decision of 18 February 1998

96 Case No.IV/M.969-A.P.Møller; Article 14 decision of 10 February 1999

97 The three transactions were Case No IV/M.988 - Maersk DFSD Travel; Case No IV/M.1005 - Maersk Data/Den Danske Bank and Case No IV/M.1009 - Georg Fischer/DISA

98 Case No.IV/M.1543-Sanofi/ Synthélabo; Article 14 decision of 28 July 1999

STATE AID

Main developments between 1st June and 30th September 1999

Most recent developments

Madeleine TILMANS, COMP-G-1

La Commission prépare les premières exemptions par catégorie en matière d'aides d'État

Le 28 juillet 1999 la Commission a adopté trois projets de règlements d'exemptions par catégorie, respectivement pour les aides d'État en faveur des petites et moyennes entreprises (PME), les aides à la formation et la règle de minimis. Ces règlements exempteront ces catégories d'aide de l'obligation de notification préalable à la Commission.

C'est la première fois que la Commission recourra aux exemptions par catégorie pour les aides d'État depuis que le Conseil l'y a autorisée par le règlement n° 994/98 du 7 mai 1998. Ce règlement permet à la Commission de déclarer certaines catégories d'aides d'État compatibles avec le marché commun pour autant qu'elles respectent certaines conditions et de les exempter des obligations de notification et d'autorisation préalable par la Commission.

La Commission a choisi de proposer, dans un premier temps, des règles relatives aux aides en faveur des PME et de la formation, domaines où les critères de compatibilité sont déjà bien définis et respectés dans les projets notifiés. L'expérience acquise par la Commission et les États membres dans ces domaines permet de remplacer le contrôle préalable par un contrôle a posteriori. En substance, les projets de règlements prévoient des critères précis s'inspirant directement des principes définis aujourd'hui dans des lignes directrices et encadrements communautaires. Le principal objectif de l'initiative de la Commission est de libérer ainsi les ressources affectées à l'appréciation des nombreux cas standard dont la compatibilité avec les règles communautaires ne pose normalement pas de problème. Le système gagnera ainsi en efficacité et les services de la Commission pourront mieux se concentrer sur les cas importants. La responsabilité des États membres pour l'application des règles communautaires en matière d'aide d'État sera accrue. Les entreprises bénéficieront de modalités administratives simplifiées et d'une plus grande transparence.

La Commission propose en outre de fixer dans un règlement la règle concernant les aides d'importance mineure, dite « de minimis ». Selon cette règle, tant que le montant accordé à une entreprise sur une période de trois ans reste inférieur à 100 000 euros, il ne s'agit pas d'une aide d'État au sens de l'art. 87 paragraphe 1 du traité. actuellement, la règle de minimis fait l'objet d'une communication de 1996. L'objectif du présent projet est de la fixer dans un règlement et ainsi d'améliorer la sécurité juridique.

Après avoir consulté le comité consultatif en matière d'aides d'État à la fin du mois de novembre 1999, une version, éventuellement modifiée, des projets sera publiée au Journal officiel afin de solliciter les commentaires des parties intéressées. L'adoption de la version finale des règlements est prévue pour l'an 2000.

Les textes des trois projets d'exemption sont disponibles sur Internet à l'adresse suivante: http://europa.eu.int/comm/dg04/laiwaid/aid.htm

Commission adopts new guidelines on rescue and restructuring aid to firms in difficulty

On 8 July the Commission adopted revised guidelines for state aid granted to rescue and restructure firms in difficulty. The new text represents in several respects a tightening of the rules, in line with the commitment made by the Commission in the Single Market Action Plan in 1997. Aid for rescue and restructuring companies in difficulty has been at the centre of some of the largest and most controversial state aid cases in recent years. The Commission has repeatedly expressed its concern about the level of such aid in the European Union, which is often given on an "ad hoc" basis in response to a sudden crisis and which is particularly distortive of the single market.

The new text, which replaces the previous guidelines adopted in 1994, strengthens the rules in several areas, notably

- on repeated restructuring aid. The "one time last time" rule rules out a second restructuring aid for a company for ten years after the end of its first restructuring.
- on which firms can be considered as firms in difficulty and can therefore benefit from rescue and restructuring aid. New firms and firms formed out of the assets of previous ones are excluded.
- on the ability of Member States to give aid approved for other reasons (such as regional aid) to companies undergoing an aided restructuring.

At the same time it maintains the basic principles of the old text: rescue aid is a short term holding operation while the future prospects of the enterprise are assessed, and can be granted only in the form of loans and guarantees. Restructuring aid can only be granted in the context of a detailed restructuring plan which will restore the company to viability.

The Commission's seventh survey on state aid in the EU, published in March 1999 (COM(1999)148 final), showed a decrease in the level of state aid given on an ad hoc basis from an annual average of €15,500 million in the period 1993-95 to €12,400 million in the period 1995-97. However, this decrease was accounted for entirely by the progressive reduction in aid in the new Länder of Germany. In other parts of the Community, notably in Spain and France, the level of such aid increased between the two periods. Over 95% of such aid in the EU is accounted for by four Member States: France, Germany, Spain and Italy.

The new rules cover the special situation which has applied to rescue and restructuring aid in the new Länder of Germany. In recent years the Commission has made special allowances for cases arising there in view of the special difficulties associated with the regions' emergence from being a non-market economy. The new text sets clear time limits to this special treatment, the Commission being of the view that the justification for special treatment is now at an end.

The new guidelines were published in the *Official Journal of the European Communities* on 9 October (OJ C 288, p. 2; they are also available on the Competition DG's website at http://europa.eu.int/comm/dg04/laid/aid3.htm#D). As a result, and with some exceptions, the new rules are already in effect for aid to large firms. They will come into effect for all firms from 1 July 2000. They will be valid for five years from publication.

Germany - Commission, subject to certain conditions, decides to confirm its decision of May 1996 to authorize aid in favour of Dow/Buna SOW Leuna Olefinverbund GmbH (BSL)

On 26 May 1999, the Commission decided to close the Article 88(2) proceeding, reopened on 10 December 1997, and to raise no objection against changes in aid of altogether DM 9.5 billion (€ 4.8 billion), which it had previously approved on 29 May 1996. The aid was awarded in the context of the privatisation of the chemical complex « Buna SOW Leuna Olefinverbund GmbH (BSL) » in the new German Länder Sachsen-Anhalt and Sachsen, the remnant of one of the three largest complexes of the chemical industry of the former German Democratic Republic.

The Commission's approval of the aid in May 1996 was made subject to the fulfillment of several conditions among which figured in particular the German authorities' obligation of notification to the Commission of any deviation from the privatisation contract.

Early September 1997, the German authorities submitted two new contractual agreements between Dow and BvS to the Commission, by which the privatisation contract was amended. These amendment agreements concerned changes in installations that were to be built or modernised.

In its Decision of 10 December1997 to reopen the case, the Commission took well into account that the overall aid sum of DM 9.5 billion was not changed by the amendment agreements. Nevertheless, it nourished serious doubts if the alterations within BSL's restructuring contained in these agreements could still be regarded as being covered by the Commission Decision of 29 May

1996. Inter alia, it could not be excluded that increases in capacities, foreseen in particular for BSL's benzene and butadiene plant, could have a negative impact on competition and trade between Member States.

In addition, the Commission had serious doubts if the energy contracts concluded between BSL and the electricity provider VKR, do not contain elements of aid. These doubts emerged from the enormous differences in price which BSL will have to pay during the restructuring period and that one which it will pay afterwards. This difference seemed to be artificial and it could not be excluded that the very high energy price during the restructuring period, when losses would be covered by BvS, could subsidise the much lower energy price in the period after.

In the course of the procedure and following the Commission's respective pressure, the German Government agreed to exclude from the aided investment the increases in capacities for both the benzene and the butadiene plant. In doing so, a further Amendment Agreement would be concluded between BvS and BSL in which it would be explicitly held that BvS would not contribute to the financing of capacity increases of both the benzene and the butadiene plant. Regarding the other items for which the Commission had reopened the Article 88(2) proceeding, there was no additional aid involved, the aid to be paid corresponded to the amount and it was limited to those capacities which were approved by the Commission on 29 May 1996. In addition, a study elaborated by an independent consultant commissioned by the Commission arrived at the conclusion that the energy contracts could be explained by other factors than the aid package the Commission had approved on 29 May 1996.

The Commission therefore concluded that the amendments were, in spite of some minor alterations which are unavoidable in such a huge restructuring programme, well within the scope of its Decision of 29 May 1996 and decided to close its investigation by a Decision not to raise objections provided that the German authorities would, within one month after its conclusion, submit an Amendment Agreement taking account of their engagement concerning the non-BvS contribution to the capacity increase

Germany – Commission approves restructuring aid to SKET Maschinen- und Anlagenbau GmbH, Saxony-Anhalt

By decision of 21 July 1999, the European Commission decided to approve restructuring aid in the amount of DM 57,800,000 (some 29.5 million EURO) to SKET Maschinen- und Anlagenbau GmbH, Magdeburg, a company situated in a area eligible for regional assistance.

The beneficiary company was traditionally active in the field of the construction of made to order heavy machinery. The European Commission initially had doubts concerning the restructuring of the company when the aid was first notified in 1997. SKET MAB emerged form a failed conglomerate SKET SMM which was the subject of a negative Commission decision in 1997. Because of the uncertain future of SKET MAB, which had at the time no investor, the Commission decided to open the 88.2 EC Treaty procedure into the aid to the company. These doubts were resolved after the sale of the company to the two investors and the provision of further information by the German authorities concerning the restructuring plan.

The aid measures will fund a restructuring plan designed to return the company to long term profitability and complete its integration into the operations of its two private investors, the Enercon Group and the LMB Group. The Enercon Group is active in the development, design and erection of wind turbines worldwide- and as a result of the privatisation, SKET MAB will have closer connection to that sub-market. The LMB Group is active in a similar market to that of SKET MAB. The aid is restricted to the minimum required to implement the aid programme. It complies with the Community guidelines for the rescue and restructuring of firms in difficulty.

The Netherlands - Commission decides that the tax measure 'partially accelerated depreciation for R&D laboratories' does not constitute state aid.

In May 1999 the Commission decided to raise no objections to the notified tax measure 'partially

accelerated depreciation for R&D laboratories', as the measure does not constitute state aid. This decision is interesting because it is the first decision of the Commission taken under the "Commission notice on the application of the state aid rules to measures relating to direct business taxation" (OJ C 384/3 of 10.12.1998) resulting in the conclusion that the notified tax measure was of a general nature.

The proposed measure allows part of the investment in an R&D laboratory to be eligible for accelerated depreciation. The percentage of the investment to which the accelerated depreciation can apply will be determined on a yearly basis, but will never exceed 50%. The other part of the investment must be depreciated according to the normal depreciation rules for buildings. Investments are defined as investments in R&D laboratories in which projects will be carried out, that comply with the definition of R&D projects laid down in the Dutch "tax law reducing the wage tax on research personnel". In principle, the building has to be used for R&D during its whole lifetime. Investment in equipment is not eligible. Investment in land is also excluded. Only newly constructed buildings and extensions of existing buildings which will function as an R&D laboratory will be eligible.

The Commission considered that:

- The Dutch authorities do not have discretionary powers in relation to the application of the measure. On the basis of objective criteria, it will be determined which investments can be regarded as investments for R&D laboratories. In a given calendar year, for all the companies whose investments meet the specific conditions, the same percentage is applicable for the part of the investment that may benefit from accelerated depreciation.
- The measure is not sector specific. The measure will be open to all companies on an equal access basis. It has no regional or local scope within the meaning of point 17 of the above mentioned Commission notice on direct taxation. The measure will apply to the entire territory of the Netherlands. Therefore, the benefit does not represent any specificity, neither per sector, per region, or per category (SME, etc.).
- The measure meets the conditions of point 13 of the "Commission notice on the application of the state aid rules to measures relating to direct business taxation". In this point it is amongst others stated that 'measures pursuing general economic policy objectives through a reduction of the tax burden related to certain production costs, for example research and development, do not constitute state aid provided that they apply without distinction to all firms and to the production of all goods'. The notified measure aims to encourage research and development by reducing its costs.

Therefore, the Commission came to the conclusion that the measure concerns a general tax measure within the meaning of point 13 of the "Commission notice on the application of the state aid rules to measures relating to direct business taxation".

The Netherlands - Commission approved aid to a long-term research programme at Shell Chemicals

In July 1999, the European Commission has approved aid up to 11.3 million Euro (NLG 25m) to stimulate a long-term research programme at Shell Chemicals BV expected to cost up to 30 million Euro (NLG 66.4m). The research programme is a common initiative of the Dutch government and Shell Chemicals. There is a general decline of R&D-investments in the petrochemical industry in the Netherlands as well as a shift from long term research to short term research. There is a need to reverse this downward trend of long-term research and to stimulate long term research activities in co-operation with the (international) academic world and especially with the knowledge infrastructure.

The supported research programme will focus on three themes: catalysis, pervasive analytical methods and molecular toxicology:

- 'Catalysis' research aims at investigating catalytic activity of new homogeneous organo-metal complexes and other heterogeneous or homogeneous catalytic materials. This research could result in new materials;

- 'Pervasive analytical methods' research focuses on techniques which allow a better understanding of the nature and/or composition of materials and product streams. The research programme addresses the development of sophisticated analytical methods and instruments for the identification and quantification of the constituents of complex process streams.

- The main goal of the research in the field of molecular toxicology is to get a better understanding of how certain molecular structures interact with human cells in order to develop scientifically sound assessments methods of risks to human health caused by chemical exposures.

The Commission analysed the precise objectives of the notified R&D-programme and concluded that it is a combination of fundamental and industrial research. The aid serves amongst others as a 'catalyst' to intensify the co-operation between Shell Chemicals and the academic world and has consequently an incentive effect. The aid intensity amounts up to 37,6%. The aid was approved by the Commission as it was considered in conformity with the community framework for state aid for research and development.

Germany - Commission approves several special tax provisions in the law introducing an ecological tax reform

On 21 April 1999, the Commission approved several special tax provisions in the law introducing an ecological tax reform ("Ecotax law") for the benefit of certain sectors of the economy.

The German government had notified the Commission of several tax exemptions contained in the Ecotax law in January and February 1999 under State aid rules. Among these were in particular the reduced tax rates and a tax refund claim for the producing industry, as well as reduced tax rates for the agriculture and forestry sector and rail transport services. These special provisions reduce the full tax rate for electricity and mineral oil up to as little as 20%, thus relieving the benefiting companies from a part of the tax, while all companies have to pay higher taxes than before the introduction of the law.

The Commission considered that these special provisions were in accordance with the EC-Treaty and decided to approve them for three years pursuant to the Community guidelines on State aid for environmental protection[99], taking into account its previous practice and the environmental policy of the EU.

While the general increase or introduction of energy taxation, as provided for in the Ecotax law, does not represent State aid which has to be approved by the Commission, exemptions from such a general tax in the form of reduced tax rates or refunds may have to be qualified as State aid, if they intend to favour certain undertakings or sectors of industry. The Commission considered that this was in principle the case for the reduced tax rate in the Ecotax law and that the conditions of Article 87 (1) EC-Treaty were fulfilled. Only for the tariff reductions in favour of passenger transport operated by trolley buses, the Commission considered that Article 87 (1) EC Treaty did not apply since trade between Member States was not affected.

The Commission decided, however, not to raise any objections to the notified measures, since they could benefit from an exemption under Article 87 (3) (c) EC-Treaty. In particular, it saw them as being in line with the Community guidelines on State aid for environmental protection, its past practice with regard to similar schemes in other Member States and the environmental policy of the Community.

The Community guidelines on State aid for environmental protection recognise that the introduction of environmental taxes and charges can involve State aid because some firms may not be able to stand the extra financial burden immediately and require temporary relief. Such State aid in the form of relief from

99 Community guidelines on state aid for environmental protection, OJ C 72, 10.3.1994, p. 3.

environmental taxes represents operating aid, but may nevertheless under certain conditions and assessing the case on its merits, be approved in exceptional cases (cf. point 3.4. of the mentioned guidelines).

Having balanced all the circumstances of the case and taking into account its previous practice and the environmental policy of the Community, the Commission decided that the conditions for such an approval were fulfilled. In its decision, it took into account that at the time of the decision, not all Member States of the Community or third countries imposed such energy taxes and the introduction of environmental taxes therefore affected the competitive position of undertakings concerned. The Commission took furthermore into account that the German government committed itself to renotify for approval the measures after three years at the latest, unless prior to that the second stage of the ecological tax reform is notified to the Commission. It further took note thereof that the German government assumed that the German industry would continue to respect the voluntary agreements entered into previously and would continue its efforts to reduce energy consumption and increase energy efficiency. Finally, the Commission took into account that the German law was in line with the Commission Proposal for a Council Directive restructuring the Community framework for the taxation of energy products of 1997.

The full text of the decision can be found in the authentic language on the Internet site: http://europa.eu.int/comm/sg/sgb/state_aids/.

Germany - Commission opens the 88 § 2 procedure into aid in favour of the producers of energy from renewable sources resulting of the impact of a new electricity tax on Grid Feed-In Law (Strom-einspeisungsgesetz)

On 20 July 1999, the Commission decided to initiate a state aid investigation pursuant to Art. 88 (2) EC into the impact of the new German electricity tax, which was introduced on 1 April 1999, on the amount to be paid pursuant to the Grid Feed-In Law for feeding in energy from renewable sources. The investigation is concerned solely with the increase in the feed-in price resulting from the electricity tax, and not with the existing price. A decision would affect only the price paid after 1 January 2001.

The Commission takes the view that the feed-in price constitutes state aid under Article 87(1) of the EC Treaty in favour of the producers of energy from renewable sources and that therefore the German Government should have notified the planned increase in the price resulting from the introduction of the electricity tax. The German Government failed to do so. Although it notified certain measures relating to the ecotax, it did not notify their impact on the feed-in price. This aspect is specifically excluded from the described above Commission decision of 21 April 1999 approving the law on ecotax.

On 1 April 1999 Germany introduced an electricity tax as part of the Law on the initiation of the ecological tax reform. The tax is imposed on electricity consumed in Germany and is incorporated in the basis for the calculation of the feed-in price under the Grid Feed-In Law. The feed-in price is calculated on the basis of the average price paid for electricity by the final consumer. Therefore, it will increase in relation to the amount that would be paid without the new electricity tax.

At this stage of the procedure, the Commission doubts whether the increase in the feed-in price is compatible with EU law, and most notably with the EU guidelines on state aid for environmental protection.[100] The feed-in price constitutes operating aid. The EU guidelines state that operating aid for the production of renewable energies will be assessed on its merits.

One of the EU's declared aims is to promote the generation of electricity using renewable sources of energy. The Commission is convinced that most renewable energy sources still require support, as their production costs prevent them from competing in the marketplace with conventional energy sources. The 1997 White Paper also distinguishes between wind energy, which, in the right locations, is basically competitive, and other renewable sources of energy, such as photovoltaic energy and biomass, which still need support.[101]

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[100] Idem footnote 99.

[101] *Energy for the future: renewable sources of energy – White Paper*

Particularly in relation to wind energy, however, the Commission doubts that the across-the-board increase in the feed-in price is necessary for all plants and wonders whether it does not lead to some of them being overcompensated. These doubts are based primarily on the fact that since 1990 there has been a steady and significant fall in production costs.[102] In the case of wind energy, costs fell by roughly 50% between 1990 and 1995 although, of course, current costs vary greatly depending on the particular location.

In view of these doubts, the Commission has opened an investigation under Article 88(2) of the EC Treaty. This in no way constitutes a prior decision.

The Commission has expressly pointed out that the investigation is confined to the increase in the price resulting from the electricity tax and does not concern the previous feed-in price. Owing to the calculation method in the Grid Feed-In Law, it will also relate only to the price paid after 1 January 2001. If it proved impossible to settle the matter by that date, only aid paid after the date could be viewed as illegal.

The Commission recognises that the intended increase in the price can, at least in part, be offset by movements in the electricity price in Germany. Prices have already fallen as a result of the liberalisation of the electricity market. However, this has no bearing on the question of whether the measure should have been notified. The Commission will, however, take account of movements in the electricity price in its final decision.

Allemagne - La Commission ouvre la procédure à l'égard de l'octroi éventuel d'aides à Deutsche Post dans le cadre du remboursement de ses obligations de service public

DP, qui a succédé à l'ancienne administration allemande des postes, assure le service postal universel sur l'ensemble du territoire et, en outre, propose des services postaux et des services de fret dans le secteur ouvert à la concurrence. En juillet 1999, la Commission a décidé d'ouvrir la procédure au titre de l'article 88 § 2 du traité CE à l'égard d'aides éventuelles dont bénéficierait la société Deutsche Post AG (DP) et qui résulteraient d'une surcompensation par l'Etat des coûts que cette dernière expose pour remplir ses obligations de service public.

DP est tenue par la loi de proposer sur l'ensemble du territoire allemand un service de base de distribution du courrier et des colis. Par ailleurs, elle assure également d'autres services, notamment pour des clients commerciaux, sur une base purement commerciale et sans mandat particulier de l'État. Afin de permettre à DP d'assurer de façon rentable les services postaux de base dont elle est chargée sur l'ensemble du territoire, l'État lui a conféré un monopole sur une partie du courrier. C'est également l'État qui détermine la rémunération pour les services de base.

La Commission a été saisie de plaintes selon lesquelles DP subventionnerait ses services ouverts à la concurrence à partir de bénéfices réalisés dans le cadre de son monopole sur la distribution du courrier et aurait également financé avec les recettes provenant de son monopole les reprises de sociétés qu'elle a effectuées au cours des dernières années. C'est ainsi que les fonds excédentaires provenant du service public auraient été utilisés pour financer les pertes dans le secteur des colis, tant pour le service universel de base, qui représente une obligation de service public, que pour les services proposés en libre concurrence à des clients commerciaux. D'autre part, DP, qui a racheté au cours des dernières années de nombreuses entreprises au niveau international en vue de renforcer sa situation dans le secteur des services postaux et de fret, aurait financé cette politique d'expansion par des profits issus du secteur réservé.

Du point de vue du droit communautaire, s'il y a rémunération excessive des coûts engendrés par l'exercice d'une obligation de service public, dans le cas présent le service universel de distribution des lettres et des colis, il y a aide d'État.

Afin d'établir l'existence de telles aides, la Commission se réfère au comportement d'un investisseur

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for a Community strategy and action plan, COM (97) 599 final, 26.11.1997.

102 Cf. Commission working paper, *Electricity from renewable sources and the internal electricity market*, SEC (1999) 470 final, 13.4.1999, p. 10.

privé opérant dans une économie de marché. Compte tenu des informations dont elle dispose actuellement, la Commission doute que tel ait été le comportement de l'Etat en l'occurence. A cet égard, elle examinera notamment la pertinence des observations du gouvernement allemand selon lesquelles, d'une part, le financement des services, tant public que commercial, de distribution des colis constituerait un investissement judicieux destiné à les restructurer en vue d'y réaliser à l'avenir des bénéfices et, d'autre part, l'acquisition d'entreprises à l'étranger aurait été réalisée, non au moyen de recettes provenant du monopole, mais grâce à des ventes de terrains et des revenus issus du secteur ouvert à la concurrence. A cet égard, elle examinera également si un tel comportement est comparable à celui d'un investisseur privé dans une économie de marché.

S'il apparaît en conclusion que le financement des obligations de service public de la DP dépasse les coûts en résultant pour cette dernière et constitue des aides d'Etat, la Commission appréciera la compatibilité de ces aides avec le marché commun et examinera, notamment, si elles s'inscrivent dans la ligne et respectent les prescriptions des lignes directrices communautaires pour les aides au sauvetage et à la restructuration des entreprises en difficulté. À cet égard, elle tiendra compte des "charges héritées du passé" qui, selon le gouvernement allemand, pèseraient sur DP en raison de son ancien statut d'administration.

D'autres plaintes portent sur les activités de la "caisse de soutien de la poste", qui finance les pensions des retraités de DP, ainsi que sur le fait que DP est exemptée du respect de différentes dispositions légales. Le caractère d'aide de ces dispositions et, dans l'affirmative, leur compatibilité avec le marché commun, seront également examinés dans le cadre de la présente procédure.

Allemagne - La Commission autorise la "carte des aides à finalité régionale" dans les cinq nouveau Länder pour la période 2000-2003 et ouvre la procédure à l'égard des régions ouest-allemandes et de la Ville de Berlin

Le 8 juillet, la Commission a autorisé la "carte" pour la période 2000-2003 en ce qui concerne les régions proposées par l'Allemagne pour l'octroi d'aides régionales au titre de la dérogation de l'article 87 paragraphe 3 lit. c, du traité CE (régions ouest-allemandes et ville de Berlin), la Commission a ouvert la procédure prévue à l'article 88 paragraphe 2, du traité CE. Elle éprouve des doutes relatifs à la compatibilité avec le marché commun de ce volet de la "carte régionale" eu égard au dépassement du plafond de la population de 5.8%, aux intensités d'aides retenues et à l'absence d'une modulation de ces intensités d'aides.

Belgique, France, Pays-Bas - La Commission ouvre la procédure à l'égard des projets de "carte des aides à finalité régionale" pour la période 2000-2006

La Commission a pris des décisions d'ouverture de la procédure au titre de l'article 88, paragraphe 2, du traité CE à l'égard des projets de "carte des aides à finalité régionale" pour la période 2000-2006 qui lui avaient été notifiés respecti-vement par la Belgique, la France et les Pays-Bas. Elle a pris ces décisions après avoir constaté notamment ce qui suit. En ce qui concerne la Belgique, la carte proposée dépasse de 5,2 % le plafond de 30 % de couverture de population autorisé et son élaboration ne respecte pas toutes les exigences de la méthode établie selon les lignes directrices en la matière. En ce qui concerne la France, les taux d'aides prévus dépassent les maxima autorisés et l'inclusion d'une partie seulement de certaines zones d'emploi ne semble pas conforme aux lignes directrices pour les aides régionales. En ce qui concerne les Pays-Bas, les maxima d'intensité sont dépassés dans certaines zones et l'unité géographique de base n'est pas conforme.

France - La Commission ouvre la procédure à l'égard d'aides d'Etat en faveur des radiodiffuseurs publics France 2 et France 3

La Commission avait été saisie en 1994 d'une plainte émanant du radiodiffuseur privé TF1 à l'encontre du régime de financement des deux radiodiffuseurs publics France 2 et

France 3. Le plaignant estimait que France 2 et France 3 bénéficiaient de financements dépassant les coûts qu'ils supportaient du fait de leur mission de service public.

Après avoir, par décision du 3 février 1999, enjoint aux autorités françaises de lui fournir les informations nécessaires, la Commission, le 20 juillet 1999, a décidé d'ouvrir la procédure prévue à l'article 88 paragraphe 2 du traité CE à l'égard d'aides accordées aux deux chaînes publiques entre 1988 et 1994 sous forme d'augmentations de capital et de subventions *ad hoc*.

La Commission a pris sa décision après avoir constaté que les mesures en cause ne découlaient pas d'une réglementation instaurée par une loi existant avant l'entrée en vigueur du traité CE, ou la libéralisation des marchés de la radiodiffusion, et qu'elles ne constituaient donc pas des "aides existantes" au sens de l'article 88 § 1 du traité CE, mais bien des aides nouvelles tombant sous l'application des dispositions de l'article 87 § 1 du traité CE.

Quant au fond, la Commission estime tout d'abord que ces mesures ne peuvent pas être assimilées à un investissement réalisé par un opérateur privé dans une économie de marché même si tel serait le cas selon les autorités françaises qui arguent qu'elles auraient permis à France 2 et à France 3 de redevenir rentables. Il apparaît en effet que le rendement des investissements réalisés est inférieur aux taux du marché et que, par conséquent, les mesures prises par la France doivent être considérées comme des aides publiques. D'autre part, en ce qui concerne la compatibilité de ces aides avec le traité CE, la Commission doute que celles-ci soient conformes aux réglementations communautaires concernant les aides à la restructuration, les aides à la culture ou le remboursement des coûts supplémentaires liés à la mission de service public des deux radiodiffuseurs.

La procédure actuellement ouverte n'inclut pas l'examen de l'aide accordée sous la forme de la perception annuelle d'une redevance qui fera l'objet d'une procédure ultérieure dès que le caractère d'aide existante ou non au sens de l'article 88 § 1 du traité CE aura été déterminé.

Italie - La Commission ouvre la procédure à l'égard de certaines mesures d'aide en faveur du radiodiffuseur public RAI (Italie) et ne soulève pas d'objections à l'encontre d'autres mesures

La Commission avait été saisie en 1996 d'une plainte de la part du radiodiffuseur privé Mediaset à l'encontre du financement de la RAI, celui-ci alléguant en particulier que les fonds versés par l'Etat sous la forme de redevances annuelles, d'augmentations de capital et de subventions ad hoc n'étaient pas proportionnés aux coûts supportés par la RAI pour l'accomplissement de ses missions de service public.

Après avoir, par décision du 3 février 1999, enjoint aux autorités italiennes de lui fournir les informations nécessaires à l'appréciation du caractère d'aides des mesures existant en faveur de la RAI, la Commission, le 20 juillet 1999, a décidé d'ouvrir la procédure prévue à l'article 88 paragraphe 2 du traité CE à l'égard de l'exonération fiscale des plus-values résultant de la revalorisation des actifs de la RAI en 1993, de l'augmentation de capital accordée par l'IRI en 1992 et du prêt consenti par la Caisse des dépôts et consignations en 1995, ces mesures constituant des aides d'État tombant sous l'application de l'article 87 du traité CE. Au stade actuel des informations en sa possession, la Commission éprouve des doutes sérieux quant à la compatibilité de ces aides avec le marché commun.

Par contre, elle a décidé de ne pas soulever d'objection à l'encontre des mesures suivantes : la réduction de 154 à 40 milliards de LIT de la taxe de concession payée par la RAI, le prêt consenti par Cofiri en 1997 et le prêt de factoring octroyé par Cofiri Factor en 1990. La Commission a conclu que ces mesures ne constituent pas des aides d'État au sens de l'article 87 § 1 du traité CE étant donné qu'elles n'ont procuré aucun avantage économique à la RAI. En effet, les prêts consentis par Cofiri et Cofiri Factor ont été conclus aux conditions du marché et la réduction de la taxe de concession n'a pas favorisé la RAI par rapport à ses concurrents mais a simplement réduit l'avantage de ceux-ci, la RAI payant encore une taxe nettement plus élevée que celle imposée à ces derniers.

Enfin, la présente ouverture de procédure ne concerne pas l'aide accordée à la RAI sous la forme

des redevances annuelles d'abonnement car la Commission n'est pas encore en mesure, à ce stade, d'établir s'il s'agit ou non d'une aide existante au sens de l'article 88, pararaphe 1, du traité CE.

Allemagne - La Commission autorise la plupart des aides prévues dans le cadre de la privatisation de Chemie GmbH Bitterfeld Wolfen (CBW)

En juillet 1997, la Commission avait ouvert la procédure au titre de l'aticle 88 § 2 du traité CE à l'égard d'aides à octroyer dans le cadre de la privatisation de l'ancienne Chemiekombinat Bitterfeld-Wolfen, devenue Chemie GmbH Bitterfeld-Wolfen (CBW) en mars 1997. Les aides projetées s'élevaient au total à 95,1 millions de DEM, dont 28,8 millions au titre du régime, déjà approuvé par la Commission, "Tâche commune - Amélioration de la structure économique régionale". Le solde se répartissait en 57,3 millions d'aides à la restructuration et 9 millions au titre de couverture des pertes.

Le 20 juillet 1999, la Commission a clos la procédure qu'elle avait ouverte à l'époque à l'égard du solde des aides, soit 66,3 millions de DEM. Elle a décidé d'autoriser les aides à la restructuration pour un montant de 57,3 millions de DEM après avoir constaté que les prescriptions des lignes directrices concernant les aides au sauvetage et à la restructuration des entreprises en difficulté étaient respectées, notamment en ce qui concerne les perspectives de viabilité de l'entreprise et le taux de participation financière de l'investisseur privé. Par contre, en ce qui concerne l'aide de 9 millions de DEM pour la couverture des pertes, la Commission a estimé qu'étant donné la situation actuelle de CBW, la nécessité de cette aide nétait pas établie, que celle-ci était dès lors incompatible avec le marché commun et elle en a interdit l'octroi.

The Netherlands - Commission prohibits State aid in favour of certain Dutch service stations

On July 20th 1999, the European Commission decided to declare incompatible the aid in favour of 450 service stations located nearby the border to Germany out of a total of 633 stations which benefit from the Dutch aid scheme designed to compensate service stations for higher taxes than those levied on competitors on the German side of the border.

With this decision, the Commission closes its in-depth investigation initiated on June 1998 to ascertain the compatibility with the common market of a notified aid intended to compensate the owners of 633 Dutch service stations located close to the German border for the alleged decline in turnover resulting from the increased Dutch excise duty on light oil charged since July 1st, 1997. The aid consists of a subsidy, which is calculated on the quantity of light oil supplied. It decreases in proportion to the distance to the German border. According to the Dutch government, total subsidies should amount to some 57.2 million Euro (HFL 126 million), depending on the turnover recorded by the service stations. The aid is scheduled to be granted over a maximum of three years, i.e. until 1 July 2000.

The Commission considers that such a compensation constitutes an operational aid incompatible with the EC Treaty except if the subsidy does not exceed the de minimis threshold of 100.000 Euros over a three years period, in which case it does not constitute a state aid in the meaning of article 87 § 1 of the Treaty

After having examined closely all the purchasing contracts and questionnaires provided by the Dutch authorities, the Commission found that the aid exceeds the de minimis threshold regarding 450 of the eligible 633 service station. The Commission has requested the Dutch authorities to recover the incompatible aid from these service stations. On the contrary, the Commission found that there is no accumulation exceeding 100.000 Euros of subsidy granted to the remaining 183 service stations. Therefore these subsidies fall under the de minimis rule and do not constitute state aid.

Germany - Commission decides aid to Lautex GmbH Weberei und Veredelung (Saxony) intended for restructuring to be incompatible with the common market

In July 1999, the Commission ruled that restructuring aid of around DM 120 Mio (some EURO 61 Mio) to Lautex was incompatible with the common market. Lautex GmbH, active in the textile market (weaving and finishing), was in state ownership

under constant restructuring with a view to privatisation. It had received aid during period of the "Treuhandregimes" up to the end of 1995. Further restructuring aid was awarded thereafter details of which were submitted to the Commission in January 1997. The privatisation to the Daun Group in November 1997 involved modifications to the aid package. The Daun Group is also active in the textile market. In April 1998, a further investor, the Maron Group, also active in the textile market, became involved as an investor and Lautex became a joint venture between the two parent groups. In 1999, the Daun Group left.

The restructuring aid was not approved because the criteria in the Commission's 1994 Guidelines for Rescue and Restructuring Firms in Difficulty were not satisfied. In particular, the restructuring plan had changed continuously, capacity development was unclear and an increase could not be excluded. In addition, where restructuring aid is awarded in the context of a privatisation, the Commission expects a significant contribution from the new owners. In the case of Lautex, the contribution was too low. The Commission also refused to accept a reverse asset take over as an investor contribution.

Allemagne - La Commission décide que la Westdeutsche Landesbank Girozentrale (WestLB) a bénéficié d'aides d'Etat illégales et incompa-tibles avec le marché commun lors de la cession à son profit de la Wohnungsbau-förderungsantalt (Wfa) par le Land de Rhénanie-du-Nord-Westphalie

Le 8 juillet 1999, la Commission européenne a décidé qu'à l'occasion du transfert en sa faveur d'un établissement public, la Wohnungsbauförderungs-anstalt (Wfa), la Westdeutsche Landes-bank Girozentrale (WestLB) avait bénéficié d'aides d'Etat illégales et incompatibles avec le marché commun de la part du Land de Rhénanie-du- Nord-Westphalie. En effet, dans le cadre de ce transfert, le Land n'a réclamé qu'une rémunération de 0,6 %, ce qui nettement inférieur à ce qu'aurait réclamé un investisseur opérant dans une économie de marché. La Commission a dès lors interditla poursuite de l'aide à l'avenir et a imposé la restitution par la WestLB des montants déjà octroyés.

Fin 1991, le Land de Rhénanie-du-Nord-Westphalie a décidé de céder la Wfa, qui lui appartenait, à la WestLB. Cette opération devait permettre à cette dernière de respecter les dispositions plus sévères sur les fonds propres qui sont entrées en vigueur en 1993. Ces critères de solvabilité imposent aux établissements de crédit un niveau minimum déterminé de fonds propres. Afin de fournir ces fonds propres sans avoir à mobiliser de crédits budgétaires supplémentaires, le Land, en sa qualité de principal actionnaire de la WestLB, a choisi le moyen inhabituel de la cession d'un établissement d'intérêt public à une banque opérant dans des conditions de concurrence.

La Wfa et l'ensemble de son patrimoine demeureront affectés à l'aide à la construction de logements, dans le cadre d'un montage qui fait d'elle un "établissement dans l'établis-sement". Toutefois, l'opération permet également à la WestLB d'utiliser une partie des fonds propres de la Wfa pour garantir ses propres activités. La rémunération, dont la perception ne devait débuter que deux ans après la cession, a été fixée à 0,6 % de la partie utilisable du capital. La structure de propriété de la WestLB n'a pas été modifiée.

Suite à une plainte de la part du Bundesverband Deutscher Banken (Fédération des banques allemandes) qui considérait que cette faible rémunération comportait une aide d'État incompatible en faveur de la WestLB, la Commission avait ouvert en 1997 la procédure au titre de l'article 88 § 2 du traité CE qu'elle vient de clore. Dans sa décision, la Commission conclut que la rémunération de 0,6 % ne correspond pas à celle qu'aurait réclamée un investisseur normal, eu égard aux coûts de financement que la WestLB aurait dû supporter pour ce capital si elle avait dû s'adresser au marché. Etant donné qu'au début des années 90, les expectatives d'un investisseur normal dans le secteur bancaire se situaient plutôt au delà de 12% (après impôts), la Commission a considéré que, dans le cas présent, la rémunération normale aurait dû

s'élever à 9,3 % (après impôts). Elle a estimé, en effet, qu'un taux inférieur se justifiait du fait que les fonds affectés à l'aide à la construction de logements ne sont pas librement disponibles et que la WestLB ne peut utiliser qu'une partie des fonds propres de la Wfa pour ses calculs de solvabilité.

La renonciation du Land de Rhénanie-du-Nord-Westphalie à une rémunération appropriée constitue une aide d'État tombant sous l'application des dispositions de l'article 87 § 1 du traité CE et représente au total, pour les années 1992 à 1998, une somme de 808 millions d'euros. Cette aide étant incompatible avec le marché commun, elle doit être restituée par la WestLB, augmentée des intérêts y afférents depuis la date du transfert.

COMPETITION POLICY IN THE CENTRAL AND EASTERN EUROPEAN COUNTRIES

At the Competition Conference of the CEECs and the EC Commission in Bratislava on 26 May 1998 it was agreed, in order to strengthen awareness of competition enforcement in the CEECs, to create a special section in this Newsletter for contributions on competition issues from the CEECs. The articles in this section are delivered under the sole responsibility of the authors and the views expressed in these articles do not necessarily reflect those of the Commission or DG IV.

Competition policy in transition economies: the case of Romania

Dr. Gheorghe OPRESCU
Eric D. ROHLCK

(note[103])
It has been more than two years since the Competition Law entered into force in Romania[104]. Now is a good time for an analysis and for some conclusions on how the law has been interpreted and enforced, especially in relation to privatizations.

It appears that - after substantial hesitations - Romania is starting the process of deregulation (meaning the step back of the state from the economy) and liberalization (meaning the promotion of competition). Apparently, there is sufficient political will for the process of allocation of resources to be based on market mechanisms; this is also the aim of the competition legislation.
However, it is not surprising that – at least in this incipient phase – the effects of the market mechanisms are perceived by the population to be rather negative[105], both from an economic and a social point of view. International competition is thought to be the main reason for the decline of the domestic firms. Few people are aware that the economic liberalization is harmful only for the inefficient companies, but beneficial for the welfare of the society as a whole. Psychologically, however, many see this not as a step forward but an indication of the collapse of the "true" Romania.

On the other side, it is true that the market mechanisms do not always function efficiently. Monopolies or firms in oligopolistic markets will enjoy market power and will be able to diminish the effects of competition, either by forming cartels or by imposing administrative barriers or by other means. All these lead to a decrease in economic growth and inhibit private initiative and foreign investments.

Market failures can be generated either by events within the business sector itself or by the activities of the regulatory and political authorities (Government, Parliament, the privatization authority, or other public institutions). One remedy for the first category is the legislation for the protection of competition, which forbids certain types of behavior of the firms and tries to avoid market monopolization[106]. The latter category may be dealt with by trying to influence the decision-makers. For example, the Romanian competition law requires the Competition authorities – at least in theory if not in practice – to evaluate the impact of laws and draft Government decisions and to propose changes. The Competition Council is also capable of more pro-active competition advocacy. However, the implementation of this attribute depends both on the openness of the political leaders and the internal politics and desire of the Council itself. Although the constraints on the business sector by the Competition Law are compulsory, those referring to the influence on the decision-makers are discretionary.

In the case of an economy in transition from communism to capitalism, such as Romania, they are undertaking a huge process of economic and institutional changes – a process rarely before seen in history in the now stable and mature economies. Moreover, they have to create a favorable climate for private initiative, but

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104 Romanian Law on Competition, Law No. 21/1996.

105 A recent opinion poll showed that 60% of the subjects think that the individual welfare depends on the state. Also, another poll indicated that a majority of the people feel that their economic life was better under communism; however, there was not the desire to return to that system.

106 In Romania, Law no. 21/1996.

in an economic environment used to, and still heavily influenced by, the direct control and intervention of the state. This is complicated further by the incredible influx of new technologies and industries in an economy that is in many ways closer to the industrial revolution than the microprocessor revolution.

Some provisions of the competition legislation are the same everywhere, for instance, those referring to price fixing between direct competitors. At the same time, the legal framework, and enforcement thereof, in transition countries is often dynamic and often unpredictable in order to facilitate the adjustment to a dynamic market-driven economy and to satisfy varying political goals. The privatization process is an excellent example of this dynamic, political and competitive problem.

In accordance with the current legal provisions, the privatization process falls under the legislation of competition protection. Most of the individual privatization acts are economic concentrations, as defined by the law and they should be notified and approved by the Competition Council. The rationale is that privatizations could create anti-competitive effects through the restructuring of the markets and possibly through their efficiencies.

There are however significant differences between isolated privatizations practiced in the U.S. and West Europe and the massive restructuring of the East European economies involving hundreds or thousands of privatizations. The large scale replacement of state ownership with private ownership leads to substantial changes in the system of incentives and may determine by itself a significant increase in the technical and productive efficiency. Moreover, depending on the politics, privatizations do not always have efficiency objectives, but may have other political/social motivation with a view to avoid bankruptcy, and preserve jobs, among others.

In a privatization process where the supply of firms is substantial, some of them may attract only a few (sometimes only one) potential buyers; there are also cases when there are no offers[107]. As a result, the alternatives to privatization may be drastically reduced, resulting in an increase in the negotiating power of the buyers.

Therefore, there is a certain tension between the necessity of a quick privatization and the creation or preservation of a competitive environment. In other words, because of budgetary reasons, the Government may be tempted to conclude privatizations with significant actual or potential anti-competitive effects. There are also outside pressures by international financial institutions to get objective criteria to show a country is moving forward and thus, justify large loans; privatization is one such criteria. The bigger the market share a company has, the bigger is its market value and the higher the bid. It is always more attractive to buy a monopoly. For these reasons, the highest bid comes often from direct or potential competitors of the company to be privatized, which raises the most concern for the competition authorities. Money earned by the budget in such cases may offset at least some part of the welfare loss incurred by an anti-competitive privatization. This is however only a short-term perspective. On a long-term basis, the allocative efficiency is significantly diminished. Experience in the United States has shown that it is easier to stop potential anticompetitive acquisitions *before* they occur than to either break the company apart after or otherwise deal with anticompetitive behaviors such as cartels or monopolization. Romania, Poland, Slovakia and Bulgaria introduced the concept of the competition authorities controlling the privatization process. Unfortunately, there is little evidence on how this was really enforced.

The Czech Republic however has a different approach. In principle, any concentration between competitors should have the approval of the Ministry of Economic Competition[108]. An additional provision gave the privatization process some leeway

107 Bankruptcy is one of the most important pieces of legislation with its incumbent institutions that needs to be in place to step in when the privatization mechanism fails.

108 Office for the Protection of Economic Competition of the Czech Republic - Act on the Protection of Economic Competition no. 63/1991 Coll., Brno, 1997.

to operate without intervention. The Competition Law would not be enforced against either the National Property Fund or the Land Fund "until after the expiry of a 12 month period following the acquisition of control over another competitor's undertaking". In other words, the privatization process was taken out from the control of the competition authorities. This approach is easier to understand when analyzing the principles upon which privatization has been based: **speed; restructuring through private new owners and not the state; price is not a priority, but only a criterion to differentiate between different offers.**

Literature notes that other countries, such as Argentina, Venezuela, Philippines, Mexico, exempt the privatization process from competition review[109].

The arguments FOR such an approach are based on the inherent advantages of privatization: improvements in the economic results of the firms; better employment opportunities once state subsidies are cut-off (which inevitably will happen sooner or later); private owners do a better restructuring of the firms; and increased overall incomes for the budget. There is another argument: competition authorities - in Romania, as well as in other transition economies – are not strong enough to deal with hundreds or even thousands of cases a year. Plus, the Romanian experience has shown that there is unlikely to be serious competitive problems, as the Competition Council investigated *only one* privatization – in the cement industry – beyond the initial 30-day review period and that acquisition was ultimately authorized.

The arguments AGAINST such a competition hands-off approach are based on the well-known fact that competition is the only way to force a firm to pass on to consumers part of the benefits obtained by increasing technical efficiency, and thus determining an increase in the allocative efficiency. Politically expedient privatization without competition analysis run the risk of creating long-term problems for a short-term benefit.

A solution to this dilemma – privatization vs. competition protection – is a successful policy for attracting foreign investment.

The resulting increase in competition could diminish the unlikely potential negative effects of a privatization. The efficiency losses determined by the emergence of firms with market power will be lower when the institutional system and the capital market will allow private investments to answer quickly to the market signals (prices and profits, mainly). Another solution to this dillema is a more proactive involvement of the competition authorities before privatization, during the demonopolization phase of the restructuring.

On the other side, any postponement or half-measure in the reform process, the lack of transparency and credibility will have as result the preservation of monopolies, independently of how determined the competition authorities are to enforce the specific legislation. The table below tries to show the main situations that may arise during the privatization process:

	Both the buyer and the acquired firm are already present on the domestic (Romanian) market	**The buyer is not present – exporting or otherwise - on the domestic (Romanian) market**
Horizontal concentration	A	D
Vertical concentration	B	E
Conglomerate type concentration	C	F

109 Roger Alan Boner, "The Basics of Antitrust II: Emerging Market Economies", April 1993.

Cases D, E and F (the last one is met in a lower number of cases, mainly when investment funds are involved) represent the foreign investment process. Concentrations realized in these cases rarely raise competitive concerns in transition countries, due to the fact that the structure of the market does not change. Because a dominant position is not "created" the authorities must see if it "consolidates" such a position through the financial power of the buyer. This analysis should be done, has been done[110], and will be done in the future (for instance, the potential acquisition of the Dacia car maker by Renault).

Paradoxically or not, in case A – the acquisition is made by a Romanian direct competitor, presumably weaker than an international one - may raise many more concerns. The same is valid when foreign firms which are already present on the domestic market are expanding their market share through acquisitions (for example, in the beer and sugar industries in Romania). The approach of the competition authorities is a different one; the only acquisition that has been forbidden until now by the Competition Council in Romania involved a Romanian buyer[111].

Case B may create lower concerns but can not be neglected, mainly when the vertical acquisitions may affect the upstream access of the competitors to sources of raw materials or the downstream one to distribution networks. This case may be more prevalent as a buyer wants to create efficient vertical integrations especially where having a captive customer of raw material production assures a more stable and reliable long-term investment opportunity. The recent attempt of Coca-Cola to buy the French company *Orangina* is an example that may be followed in transition economies.

Case C usually involves the acquisition by domestic firms of domestic state-owned companies. In most of these cases, such operations may be pro-competitive, especially when the state firms would close if not privatized.

In many cases, the benefits of the privatization process may outweigh the concerns of the competition authorities. Privatization in some sectors is crucial for the whole process of reform; one of these is the banking sector. In some countries like Hungary and Poland, privatization of the banking sector is almost finished, while Romania is just beginning. The delay of this process has been intentional and affected both the structural reform of the economy and the individual banks themselves. The aim was to continue to subsidize – through the state banks – the inefficient state industries. In the first years of the transition, subsidization has been done through the state budget, but this was no longer possible once the international financial institutions have become more and more involved in Romania. Therefore, state banks have been obliged to continue the process, thus making impossible any restructuring done through the imposition of hard budget constraints on the firms. The objective was a social one – mainly to avoid the increase of unemployment. The resulting growth, however, was unsustainable, and – enlarging the sense of the well-known notion – we could say that it was an "immiserizing growth" because it determined the current decrease in economic welfare. The present banking crisis is mainly due to the state. The short-term beneficiaries of the crisis have been the employees in state-owned companies, but the bill is now being paid by the entire population.

The tension between privatization and the competition policy is that the privatization authorities want to sell fast and at a high price which may cause competitive problems in at least two areas: (i) a higher price plus quick sale are better accomplished if a dominant position is sold and/or (ii) the buyer is given extraordinary facilities to help entice it but at the same time may include anticompetitive aspects. In this latter case, the Competition Council must analyze the ancillary contracts and arrangements as part of the privatization.

The facilities that may be offered to entice investors may take different forms and thus need different analyses:

110 See cases: Lafarge-Romcim, RWE-REBU, OTE-Romtelecom (the last one had the specificity that the acquired company was a legal monopoly).

111 Case Eurotrading-Azomures.

a/ *The sale of a company as it is, without any spin-off or externalization of some activities*

In some cases the potential investor may not accept any division of the target company, which would otherwise be required for competition protection reasons. In such situations, the state is in a delicate position: if it **starts** to be concerned about the competitive environment only when the sale is imminent, its credibility would be damaged and its ability to complete a successful privatization would be hampered. The state could stay away from these problems if it considers the company's structure before privatization when it was the majority owner. However, accepting privatizations with certain likely anti-competitive effects may have a long-term impact, leading to higher prices and a decrease in the allocative efficiency.

b/ *The split-up of big companies, mainly by externalizing their inefficient components*

In some cases, the investors are interested only in certain parts of a company; therefore, the state must undertake a certain restructuring before privatization. Under the Romanian competition law, the state is required to seek advice of the competition authorities for such a division. In general, there are few if any reasons for competition concerns to be triggered. Other than the possibility that inefficient "pieces" will remain unsold, the most common concern is the re-acquisition of the pieces.

c/ *The temporary protection of the domestic market*

The investors or the inefficient domestic firms may ask for an increase of customs duties or – to achieve the same result – to oppose to their decrease. Other methods – like the imposition of excessively high quality or health standards for imports or the necessity to obtain licenses for the export of raw materials – may have the same effect. A clear example is the recent "campaign" in Romania against the liberalization of the export of wood. Until January 1, 1998, such exports were forbidden, while the price of the wood on the internal market was fixed by the state at levels substantially lower than regional market prices. As a result, the downstream industries (furniture, etc.) were subsidized, as the price of their inputs were controlled, while their output was mainly exported at international prices. By signing the Association Treaty in 1993, Romania was obliged to liberalize the export of woods after 5 years. Once export was allowed, the price was not controlled anymore by the state; as a result, wood input prices significantly increased and, consequently, negatively perceived by the furniture industry lobby. However, the price liberalization process could not be stopped (even though certain groups of interests attempted to get the Competition Council to intervene and stop such free market behavior).

In a broader sense, restrictive trade policies are intended to protect concentrated market structures and thus higher prices. The real solution in this case is liberalization and promotion of international and regional competition.

d/ *Fiscal facilities*

Fiscal facilities include, among other things, tax exemption, diminishing or payment deferral, debt rescheduling. Such facilities are rather normal in countries that want to be attractive for foreign investors. Their competitive impact, however, can be significant. The competition authorities may have a role to play by limiting them to the period necessary for undertaking the agreed investment program. The analysis of these facilities in the transition economies will change substantially with the enforcement of the community rules regarding the state aid.

Legislation on competition protection and a false dilemma: state monopoly vs. private monopoly

In the context of a majority state-owned economy, the competition authorities may have a positive approach even in cases when a state monopoly is transformed into a private monopoly through privatization, taking into consideration the changes in governance and the system of incentives. In the culture of the new competition authorities in transition economies, the idea that a private monopoly is worse than a state monopoly is commonplace. However, this denotes only a partial understanding of the facts presented in the literature. The correct formulation would be that **in specific conditions** a private

monopoly **may be** worse (from the society point of view) than a state monopoly; in other conditions, the reverse is true as well – a state monopoly may be worse than a private monopoly. The difference is made by the way the monopoly – state or private -- is regulated (or *not* regulated), independent of its ownership[112]. "Regulation" comes from "rules", which means – in our case - the establishment of the necessary rules as a substitute for competition for the activities of natural or legal monopolies (because in the case of other monopolies, the competition authorities have the instruments to deal with).

"State regulation" does not however mean a discretionary intervention, as it is often understood in countries with less developed market mechanisms. This is the well-known situation of *rules vs. discretion*. "Regulation" should mean the imposition of clear, transparent, difficult to change and compulsory rules both for the regulated *and for the regulator*. The State essentially determines what the best "competitive" prices and terms should be in the regulated industry.

In Romania and, probably, in other transition economies – *monopolies have not in the past and presently are not being properly regulated if at all.* "Regulation", as such, was or is done to extract economic rent in favor of different groups of interests – employees in the respective monopoly, select consumers, or other industries. This is one explanation, for instance, for the high level of wages in such sectors, despite their inefficiencies. Regulation had in view only price controls, in order not to fuel inflation and to protect population – but only on a short-term basis. Price control was an instrument of social protection, used to redistribute incomes and not to correct inefficiencies generated by imperfect competition.

The practice of State imposed low prices could not go forever. On the one side, their result was a decapitalization of the respective sectors, leading to the impossibility to maintain *at least* the existing quality level of the service. On the other side, the current liberalization process will oblige domestic monopolies to face international competition; it is the case for instance of the recently-privatized *Romtelecom*, which has been allowed a "grace" period to increase its efficiency, but who will have to compete with foreign firms starting 2003. Therefore, the main strategy of the domestic monopolies currently is to attract foreign investments, either through privatization or concession. Unfortunately, the issue of foreign investment in utilities and infrastructure is a sensitive one from a politically point of view; the recent press campaign triggered by the privatization of Romtelecom is a proof.

Conclusions

Because mass privatizations and competition policy are unique to transition economies like Romania, special attention had to be paid to properly adopting the relevant legislation and then to properly enforcing this legislation.

The adoption of the relevant legislation is the easier task because there are enough international pieces of legislation already validated by practice that can be applied to the individual state needs. Some of the problems with taking provisions wholesale from the EU law and its regulations are that those provisions are uniquely tailored for a community of states, not a single state, much less a single state in this transitional phase. Provisions have been included in the Romanian Competition Law that explicitly inserts the competition authorities into the privatization process.

Enforcement of the competition law is however much more difficult to bring in line with the international practice. There are several reasons for this. One reason is the *quality of the staff enforcing the law*. Public officers in transition economies are usually not familiar with or even hostile to privatization and free market mechanisms. If the people working for the state, the privatization authorities and the competition authorities are not sincerely favorable to market mechanisms, then any subsequent effort to train personnel or encourage them to follow the law

112 We do not forget that a state monopoly is easier – at least theoretically – to break up in order to allow for competition.

is useless.[113] Also, managers are rather old, not familiar with free market and hostile to losing state control or losing their jobs if they do not follow the path of the decision-maker. As a result, enforcement may be aggressive or passive and discretionary, with inconsistent outcomes and effects on the market.

Another significant problem with enforcement rests with the *ultimate decision-makers*. On the one side, they have to provide strong guidance to managers and staff. On the other side, they should build an institution where one or two persons do not and cannot change the course of the agency. Therefore, there is a need for coherent internal policies for interpreting law and regulations, so that everyone applies them consistently and for strong and unifying leaders. Otherwise, the competition authorities could be captured by different lobby groups (political, business, consumers, etc.) and practically "disappear", thus putting into danger the long-term viability of the institution.

A key problem here in Romania in enforcing the competition law is that as a *law enforcement agency* we have few lawyers; there is a significant need for their guidance. For example, in the U.S., E.U., and even in neighboring Bulgaria, the vast majority of the investigating staff is comprised of lawyers, while in Romania they are very few in number.

Additionally, our experience has shown however that effective twinning arrangements with international competition advisors have proved to be a significant step forward for staff's, manager's, and decision-makers' legal and analytical skills.

It is true that the transition to the market economy involves substantial costs for the population. Some people are willing to assume these costs, some others are not. This may involve a complex discussion of social and inter-generational issues, but this is not the right moment to do it. However, due to these considerations, a human resources strategy of the competition authorities based on young graduates appears to be the optimal one.

Competition policy should be a constant part of the policy mix of the transition economies. The existence of such a policy would considerably ease the competition review of the privatization process and confer credibility to the competition authorities. On the one side, the control of the privatization process is necessary in order not to undermine the long-term objectives of the countries involved. On the other side, the size of the process is so large that it inevitably has a selective character. In the end, the merger control will become more and more important once the privatization process approaches its end.

113 In early 1998, a consultant to the State Ownership Fund stated that of the staff with whom he worked, over 50% were genuinely hostile to the privatization process.

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Documentation...

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

SPEECHES AND ARTICLES

International co-operation in competition matters - where are we four years after the Van Miert Report ? - PONS - Zurich - 9/07/99

The Regulatory Challenges in the emerging Competition in the EU - UNGERER - Scientific Society of Infocommunications - Budapest - 5/07/99

La Politique européenne de concurrence et l'accès aux infrastructures de transport - PONS - Gênes - 25/06/99

La Politique européenne de concurrence et l'accès aux infrastructures de transport - PONS - Gênes - 25/06/99

Local Loop Unbundling - UNGERER - London - 14/06/99

Auf dem Weg zu einem europäischen Multimediarecht - KLOTZ - ZUM - 1/06/99

EC Competition Policy in Relation to Airports - DRABBE - TORINO - 13/04/99

COMMUNITY PUBLICATIONS ON COMPETITION

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, EL, 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, EL, EN, FR, IT, NL, PT).

Competition law in the European Communities-Volume IIA-Rules applicable to State aid
Situation at 30 June 1998; this publication contains the text of all legislative acts relevant to Articles 42, 77, 90, 92 to 94.
Catalogue No: PD-15-98-875-xx-C (xx=language code: ES, DE; EN, FR, IT, NL, PT, the other versions will be available later).

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= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

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: ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV))

Merger control law in the European Union-Situation in March 1998
Catalogue No: CV-15-98-899-xx-C (xx=language code: ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

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

Application of EC State aid law by the member state courts
Catalogue No: CM-20-99-365-EN-C

Dealing with the Commission (Edition 1997)-Notifications, complaints, inspections and fact-finding, powers under Articles 85 and 86 of the EEC Treaty
Catalogue No: CV-95-96-552-xx-C (xx= ES, DA, DE, EN, FR, IT, NL, PT, FI,SV)

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

Final report of the multimodal group - Presented to Commissioner Van Miert by Sir Bryan Carsberg, Chairman of the Group (Ed. 1997).
Catalogue No: CV-11-98-803-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)-volume II B 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) EN, FR, DE

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); EL (81-95); (ES et PT (86-95); FI et SV (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, EL, 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, EL, 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, EL, 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, EL, 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, EL, 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

XXVIII Report on Competition Policy 1998
Catalogue No: CV-20-99-785-xx-C

European Community on Competition Policy 1998
Catalogue No: CV-20-99-301-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

XXVII Report on Competition Policy 1997
Catalogue No: CM-12-98-506-xx-C

European Community on Competition Policy 1997
Catalogue No: Cv-12-98-263-XX-C (xx= FR, ES, EN, DE, NL, IT, PT, SV, DA, FI)

XXVI Report on Competition Policy 1996
Catalogue No: CM-04-97-242-xx-C

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

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

European Community competition policy 1994 (xx=ES, DA, DE, EL,

EN, FR, IT, NL, PT, FI, SV). Copies available through Cellule Information DG IV

XXIIIe Report on competition policy 1993
Catalogue No: CM-82-94-650-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

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

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

Fifth survey on State aid in the European Union in the manufacturing and certain other sectors (Edition 1997)
Catalogue No: CV-06-97-901-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Sixt survey on State aid in the European Union in the manufacturing and certain other sectors
Catalogue No: CV-18-98-704-xx-C

Septième rapport sur les aides d'Etat dans le secteur des produits manufacturés et certains autres secteurs de l'Union européenne [COM (1999) 148 final]
Catalogue No: CB-CO-99-153-xx-C (xx= language code: DE, FR; the other versions will be available later)

OTHER DOCUMENTS and STUDIES

The application of articles 85 & 86 of the EC Treaty by national courts in the Member States
Cat. No: CV-06-97-812-xx-C (xx= FR, DE, EN, NL, IT, ES, PT)

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

Video : Fair Competition in Europe-Examination of current
Cat. No: CV-ZV-97-002-xx-V (xx= ES, DA, DE, GR, EN, FR, IT, NL, PT, FI, SV)

Communication de la Commission: Les services d'intérêt général en Europe (Ed. 1996)
Cat. 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)
Cat. No: CM-98-96-865-EN-C

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

Services de télécomunication en Europe: statistiques en bref, Commerce, services et transports, 1/1996
Cat. 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.]
Cat. No: CM-92-95-853-EN-C

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

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

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

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

Bierlieferungsverträge in den neuen EU-Mitgliedstaaten Österreich, Schweden und Finnland - Ed. 1996
Cat. 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)
Cat. No: CM-90- 95-089-EN-C

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

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

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

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

Forum consultatif de la comptabilité: subventions publiques (Ed. 1995)
Cat. 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)
Cat. 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,
Cat. No: CV-89-95-018-EN-C

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

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

Growth, competitiveness, employment: The challenges and ways forward into the 21st century: White paper (Ed. 1994)
Cat. 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
Cat. No: CM-NF-93-0629 A C

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

International transport by air, 1993
Cat. 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
Cat. No: CM 76 93 6733 A C

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

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

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ARTICLES 81, 82 (RESTRICTIONS AND DISTORTIONS OF COMPETITIO BY UNDERTAKINGS)

25.09.1999
C 272 1999/C 272-0014 Communication made pursuant to Article 19(3) of Council Regulation No 17 concerning request for negative clearance or for exemption pursuant to Article 81(3) of the EC Treaty (Case No IV/E-2/36.732 - Solvay-Sisecam)Text with EEA relevance

24.09.1999
C 270 1999/C 270-0007 Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 81(3) of the Treaty to categories of agreements and concerted practicesText with EEA relevance

23.09.1999
C 269 1999/C 269-0006 Notification of a joint venture (Case No IV/F-2/37.612 - Techjet Aerofoils Ltd)Text with EEA relevance

11.09.1999
C 259 1999/C 259-0011 Notification of a cooperation agreement (Case No IV/F-2/37.532 - Alstom/Fiat)Text with EEA relevance

08.09.1999
L 237 1999/L 237-0010 Corrigendum to Commission Decision 1999/573/EC of 20 May 1999 relating to a proceeding under Article 81 of the EC Treaty (Case IV/36.592 - Cégétel +4) (OJ L 218 of 18.8.1999)

01.09.1999
C 248 1999/C 248-0004 Notice published under Article 19(3) of Council Regulation No 17 concerning an application for negative clearance or for exemption pursuant to Article 81(3) of the EC Treaty (Case No IV/32.150 - Eurovision)Text with EEA relevance

27.08.1999
C 242 1999/C 242-0005 Notification of a licensing system - Case No IV/C-3/37.506 - DVD Patent Licensing ProgrammeText with EEA relevance

20.08.1999
C 237 1999/C 237/0002 Notification of cooperation agreements (Case No IV/37.590/F3 -Pfizer + Hoechst Marion Roussel AG)Text with EEA relevance

18.08.1999
L 218 1999/L 218/0024 Commission Decision of 27 July 1999 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case IV/36.581 - Télécom Développement)Text with EEA relevance (notified under document
L 218 1999/L 218/0014 Commission Decision of 20 May 1999 relating to a proceeding under Article 81 of the EC Treaty (Case IV/36.592 - Cégétel + 4)Text with

EEA relevance (notified under document number C(1999) 1194)

31.07.1999
C 220 1999/C 220-0023 Commission notice pursuant to Article 19(3) of Council Regulation No 17 and Article 3 of Protocol 21 of the European Economic Area Agreement concerning - Case No IV/37.459 - Global One IIText with EEA relevance

26.07.1999
L 193 1999/L 193-0023 Commission Decision of 30 April 1999 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.250 - Europe Asia Trades Agreement) (notified under document number C(1999) 983)Text with EEA relevance relevance

20.07.1999
C 205 1999/C 205-0006 Notice published pursuant to Article 19(3) of Council Regulation No 17 concerning an application for a renewal of the Commission decision of 12 July 1989 to grant an exemption pursuant to Article 81(3) of the EC Treaty (Case No IV/C.2/30.566 - UIP Cinema)

19.07.1999
L 186 1999/L 186-0028 Commission Decision of 16 June 1999 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case IV/35.992/F3 - Scottish and Newcastle) (notified under document number C(1999) 1474)
L 186 1999/L 186-0001 Commission Decision of 16 June 1999 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case IV/36.081/F3 - Bass) (notified under document number C(1999) 1472)

09.07.1999
C 193 1999/C 193-0005 Notification of cooperation agreements (Case No IV/37.536 - Mobilityleaders)Text with EEA relevance

29.06.1999
L 163 1999/L 163-0061 Commission Decision of 26 January 1999 relating to a proceeding pursuant to Article 85 of the EC Treaty (Case IV/36.253 - P&O Stena Line) (notified under document number C(1998) 4539)

26.06.1999
C 181 1999/C 181-0019 Commission notice pursuant to Article 19(3) of Council Regulation No 17 concerning case No IV/37.182 - Esat/Coras Iompair Eireann (CIE)Text with EEA relevance

16.06.1999
C 168 1999/C 168-00009 Case No IV/37.406 - Nordiska Satellitaktiebolaget (NSAB)Text with EEA relevance

15.06.1999
L 148 1999/L 148-0005 Council Regulation (EC) No 1216/1999 of 10 June 1999 amending Regulation No 17: first Regulation implementing Articles 81 and 82 of the Treaty
L 148 1999/L 148-0001 Council Regulation (EC) No 1215/1999 of 10 June 1999 amending Regulation No 19/65/EEC on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices

CONTROL OF CONCENTRATIONS / MERGER PROCEDURE

30.09.1999
C 277 1999/C 277-0005 Non-opposition to a notified concentration (Case No IV/M.1551 -AT&T/Mediaone)Text with EEA relevance
C 277 1999/C 277-0005 Non-opposition to a notified concentration (Case No IV/M.1595 - British Steel/Hoogovens (see also IV/ECSC.1310))Text with EEA relevance
C 277 1999/C 277-0004 Prior notification of a concentration (Case No IV/M.1672 - Volvo/Scania)Text with EEA relevance

29.09.1999
C 270 1999/C 270-0006 Prior notification of a concentration (Case No IV/M.1575 - Thyssen Krupp/VDM Evidal/KME Schmöle)Text with EEA relevance
C 270 1999/C 270-0005 Prior notification of a concentration (Case No IV/M.1698 - RWA/Nordsee/Cerny)Text with EEA relevance
C 270 1999/C 270-0004 Opinion of the Advisory Committee on concentrations given at the 58th meeting on 16 November 1998 concerning a preliminary draft decision relating to Case IV/M.1225 - ENSO/STORAText with EEA relevanceC(1998) 3653)
C 270 1999/C 270-0009 Commission Decision of 25 November 1998 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case No IV/M.1225 - Enso/Stora)Text with EEA relevance (notified under docume
C 270 1999/C 270-0007 Non-opposition to a notified concentration (Case No IV/M.1593 -STS/Teerbau)Text with EEA relevance

28.09.1999
C 272 1999/C 272-0008 Prior notification of two concentrations (Case No IV/M.1663 - Alcan/Alusuisse) (Case No

IV/M.1715 - Alcan/Pechiney)Text with EEA relevance
C 272 1999/C 272-0007 Prior notification of a concentration (Case No IV/M.1679 - France Télécom/STI/SRD)Text with EEA relevance

25.09.1999
C 272 1999/C 272-0011 Prior notification of a concentration (Case No IV/M.1681 - Akzo Nobel/Hoechst Roussel Vet)Text with EEA relevance
C 272 1999/C 272-0013 Prior notification of a concentration (Case No IV/M.1696 - Onex/Air Canada/Canadian Airlines)Text with EEA relevance
C 272 1999/C 272-0012 Prior notification of a concentration (Case No IV/M.1702 - Vedior/Select Appointments)Text with EEA relevance

23.09.1999
C 269 1999/C 269-0007 Prior notification of a concentration (Case No IV/M.1707 - Gilde Buy-Out Fund/Synbra)Text with EEA relevance
C 269 1999/C 269-0008 Prior notification of a concentration (Case No IV/M.1686 - DaimlerChrysler Services/MB-automobilvertriebsgesellschaft)Text with EEA relevance

22.09.1999
C 267 1999/C 267-0023 Prior notification of a concentration (Case No IV/M.1571 - New Holland/Case)Text with EEA relevance
C 267 1999/C 267-0022 Prior notification of a concentration (Case No IV/M.1597 - Castrol/Carless/JV)Text with EEA relevance

21.09.1999
C 266 1999/C 266-0004 Initiation of proceedings (Case IV/M.1630 - Air Liquide/BOC)Text with EEA relevance

20.09.1999
C 264 1999/C 264-0018 Ion-opposition to a notified concentration (Case No IV/M.1556 - Mo och Domsjf/SCA)Text with EEA relevance

17.09.1999
C 263 1999/C 263-0006 Non-opposition to a notified concentration (Case No IV/M.1489 -YIT/Valmet/Rauma)Text with EEA relevance
C 263 1999/C 263-0003 Withdrawal of notification of a concentration (Case No IV/M.1431 - Ahlström/Kvaerner)Text with EEA relevance

16.09.1999
C 262 1999/C 262-0006 Non-opposition to a notified concentration (Case No IV/M.1589 - Meritor/ZF Friedrichshafen)Text with EEA relevance

14.09.1999
C 260 1999/C 260-00002 Prior notification of a concentration (Case No IV/M.1689 - Nestlé/Pillsbury/Häagen-Dazs US)Text with EEA relevance
C 260 1999/C 260-00003 Prior notification of a concentration (Case No IV/M.1694 - EMC/Data General)Text with EEA relevance

11.09.1999
C 259 1999/C 259-0010 Prior notification of a concentration (Case No IV/M.1651 - Maersk/Sea-Land)Text with EEA relevance
C 259 1999/C 259-0009 Prior notification of a concentration (Case No IV/M.1601 - Allied Signal/Honeywell)Text with EEA relevance

10.09.1999
C 257 1999/C 257-0003 Prior notification of a concentration (Case No IV/M.1699 - TPG Bacchus/Bally)Text with EEA relevance
C 257 1999/C 257-0002 Prior notification of a concentration (Case No IV/M.1649 - Gefco/KN Elan)Text with EEA relevance

09.09.1999
C 256 1999/C 256-0005 Withdrawal of notification of a concentration (Case No IV/M.1412 - Hutchison Whampoa/RMPM/ECT)Text with EEA relevance
C 256 1999/C 256-0004 Non-opposition to a notified concentration (Case No IV/M.1305 - Eurostar)Text with EEA relevance

08.09.1999
C 255 1999/C 255-0004 Prior notification of a concentration (Case No IV/M.1641 - Linde/AGA)Text with EEA relevance
C 255 1999/C 255-0003 Non-opposition to a notified concentration (Case No IV/M.1574 -Kirch/Mediaset)Text with EEA relevance
C 255 1999/C 255-0005 Prior notification of a concentration (Case No IV/M.1691 - Aegon/Guardian Life)Text with EEA relevance

07.09.1999
C 254 1999/C 254-0003 Prior notification of a concentration (Case No IV/M.1659 - Preussen Elektra/EZH)Text with EEA relevance
C 254 1999/C 254-0004 Prior notification of a concentration (Case No IV/M.1654 - Telexis/EDS)Text with EEA relevance
C 254 1999/C 254-0005 Non-opposition to a notified concentration (Case No IV/M.1378 -Hoechst/Rhône-Poulenc)Text with EEA relevance

04.09.1999
C 253 1999/C 253-0017 Prior notification of a concentration (Case No IV/M.1674 - Maersk/ECT)Text with EEA relevance

03.09.1999
C 252 1999/C 252-0002 Prior notification of a concentration (Case No IV/M.1628 - TotalFina/Elf Aquitaine)Text with EEA relevance
C 252 1999/C 252-0003 Prior notification of a concentration (Case No IV/M.1642 - Elf Aquitaine/TotalFina)Text with EEA relevance

02.09.1999
C 250 1999/C 250-0006 Prior notification of a concentration (Case No IV/M.1643 - IBM/Sequent)Text with EEA relevance
C 250 1999/C 250-0007 Prior notification of a concentration (Case No IV/JV.22 - Fujitsu/Siemens)Text with EEA relevance

01.09.1999
C 248 1999/C 248-0009 Non-opposition to a notified concentration (Case No IV/M.1606 - EDF/South Western Electricity)Text with EEA relevance
C 248 1999/C 248-0010 Non-opposition to a notified concentration (Case No IV/M.1517 - Rhodia/Donau Chemie/Albright & Wilson)Text with EEA relevance
C 248 1999/C 248-0010 Non-opposition to a notified concentration (Case No IV/M.1572 -ISS/Abilis)Text with EEA relevance
C 248 1999/C 248-0008 Prior notification of a concentration (Case No IV/M.1656 - Huhtamäki Oyj/Packaging Industries Van Leer)Text with EEA relevance
C 248 1999/C 248-0009 Non-opposition to a notified concentration (Case No IV/M.1592 - Toyota Motor/Toyota Denmark)Text with EEA relevance

31.08.1999
C 247 1999/C 247-0005 Non-opposition to a notified concentration (Case No IV/M.1455 -Gruner + Jahr/Financial Times/JV)Text with EEA relevance
C 247 1999/C 247-0004 Prior notification of a concentration (Case No IV/M.1669 - DeutscheTelekom/One2One)Text with EEA relevance

28.08.1999
C 245 1999/C 245-0030 Prior notification of a concentration (Case No IV/M.1623 - AlliedSignal/MTU)Text with EEA relevance
C 245 1999/C 245-0029 Non-opposition to a notified concentration (Case No IV/M.1494 - Sair Group/AOM)Text with EEA relevance

26.08.1999
L 225 1999/L 225-0012 Commission Decision of 18 February 1998 imposing fines for failing to notify and for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of Council Regulation (EEC) No 4064/89 (Case IV/M.920 - Samsung/ASTT
C 241 1999/C 241-0008 Non-opposition to a notified concentration (Case No IV/M.1547 - Lufthansa/Amadeus/Start)Text with EEA relevance
C 241 1999/C 241-0008 Non-opposition to a notified concentration (Case No IV/M.1438 - British Aerospace/GEC Marconi)Text with EEA relevance
C 241 1999/C 241-0007 Prior notification of a concentration (Case No IV/M.1682 - Ashland/Superfos)Text with EEA relevance
C 241 1999/C 241-0003 Opinion of the Advisory Committee on Concentrations given at the 51st meeting on 20January 1998 concerning a preliminary draft decision relating to Case IV/M.920 - Samsung/ASTText with EEA relevance

25.08.1999
C 240 1999/C 240-0002 Prior notification of a concentration (Case No IV/M.1557 - EDF/Louis Dreyfus)Text with EEA relevance

24.08.1999
C 239 1999/C 239-0008 Non-opposition to a notified concentration (Case No IV/M.1536 - Wind/Enel STC)Text with EEA relevance
C 239 1999/C 239-0007 Prior notification of a concentration (Case No IV/M.1630 - Air Liquide/BOC)Text with EEA relevance
C 239 1999/C 239-0006 Prior notification of a concentration (Case No IV/M.1644 - Wienerberger/DSCB/Steinzeug)Text with EEA relevance

20.08.1999
C 237 1999/C 237/0004 Non-opposition to a notified concentration (Case No IV/M.1498 -Aegon/Transamerica)Text with EEA relevance
C 237 1999/C 237/0003 Prior notification of a concentration (Case No IV/M.1653 - Buhrmann/Corporate Express)Text with EEA relevance

19.08.1999
C 236 1999/C 236/0005 Non-opposition to a notified concentration (Case No IV/M.1567 - Lucchini/Ascometal (see also ECSC.1309))Text with EEA relevance
C 236 1999/C 236/0003 Prior notification of a concentration (Case No IV/M.1627 - CU Italia/Banca delle Marche/JV)Text with EEA relevance

C 236 1999/C 236/0004 Prior notification of a concentration (Case No IV/M.1633 - RWE/Vivendi/BerlinerWasserbetriebe)Text with EEA relevance

17.08.1999

C 234 1999/C 234-0007 Re-notification of a previously notified concentration (Case No IV/M.1596 - Accor/Colony/Blackstone/Vivendi) Text with EEA relevance

C 234 1999/C 234-0008 Prior notification of a concentration (Case No IV/M.1670 - FCC/GERIL/ENGIL)Text with EEA relevance

14.08.1999

C 233 1999/C 233-0050 Non-opposition to a notified concentration (Case No IV/M.1552 - Babcock Borsig/AE Energietechnik)Text with EEA relevance

C 233 1999/C 233-0051 Non-opposition to a notified concentration (Case No IV/M.1327 -NC/Canal+/CDPQ/Bank America)Text with EEA relevance

C 233 1999/C 233-0050 Non-opposition to a notified concentration (Case No IV/M.1541 -Kingfisher/ASDA)Text with EEA relevance

C 233 1999/C 233-0049 Prior notification of a concentration (Case No IV/M.1559 - STN Atlas Marine Electronics/SAIT Radio Holland)Text with EEA relevance

13.08.1999

C 231 1999/C 231-0005 Non-opposition to a notified concentration (Case No IV/M.1484 - Alstom/ABB)Text with EEA relevance

C 231 1999/C 231-0006 Non-opposition to a notified concentration (Case No IV/M.1533 - Artemis/Sanofi Beaute)Text with EEA relevance

C 231 1999/C 231-0005 Non-opposition to a notified concentration (Case No IV/M.1492 - Hyundai Electronics/LG Semicon)Text with EEA relevance

12.08.1999

C 229 1999/C 229-0011 Prior notification of a concentration (Case No IV/M.1640 - Aceralia/UCIN)Text with EEA relevance

C 229 1999/C 229-0012 Prior notification of a concentration (Case No IV/ECSC.1313 - Aceralia/UCIN)Text with EEA relevance

11.08.1999

C 228 1999/C 228-0011 Non-opposition to a notified concentration (Case No IV/M.1432 - Agfa-Gevaert/Sterling)Text with EEA relevance

C 228 1999/C 228-0012 Non-opposition to a notified concentration (Case No IV/M.1603 - General Motors Acceptance Corporation/AAS)Text with EEA relevance

C 228 1999/C 228-0011 Non-opposition to a notified concentration (Case No IV/M.1585 - DFDS/FLS Industries/DAN Transport)Text with EEA relevance

C 228 1999/C 228-0012 Non-opposition to a notified concentration (Case No IV/M.1558 - Cinven/Investcorp/Zeneca Chemicals)Text with EEA relevance

10.08.1999

C 227 1999/C 227-0022 Initiation of proceedings (Case No IV/M.1578 - Sanitec/Sphinx)Text with EEA relevancece

C 227 1999/C 227-0021 Prior notification of a concentration (Case No IV/M.1661 - Crédit Lyonnais/Allianz-Euler/JV)Text with EEA relevance

C 227 1999/C 227-0020 Prior notification of a concentration (Case No IV/M.1632 - Reckitt & Colman/Benckiser)Text with EEA relevance

C 227 1999/C 227-0019 Non-opposition to a notified concentration (Case No IV/M.1470 - Goodyear/Sumitomo)Text with EEA relevance

C 227 1999/C 227-0018 Non-opposition to a notified concentration (Case No IV/M.1549 - Deutsche Post/ASG)Text with EEA relevance

C 227 1999/C 227-0019 Non-opposition to a notified concentration (Case No IV/M.1580 - CAI/Platinum)Text with EEA relevance

07.08.1999

C 225 1999/C 225-0010 Prior notification of a concentration (Case No IV/M.1660 - Bank of New York/Royal Bank of Scotland/RBSI Security Services)Text with EEA relevance

C 225 1999/C 225-0012 Non-opposition to a notified concentration (Case No IV/M.1612 -Wal-Mart/ASDA)Text with EEA relevance

C 225 1999/C 225-0011 Prior notification of a concentration (Case No IV/M.1618 - Bank of New York/Royal Bank of Scotland Trust ank)Text with EEA relevance

05.08.1999

C 223 1999/C 223-0003 Prior notification of a concentration (Case No IV/M.1617 - Royal & Sun Alliance/Trygg-Hansa)Text with EEA relevance

04.08.1999

C 222 1999/C 222-0021 Prior notification of a concentration (Case No IV/M.1621 - Pakhoed/Van Ommeren)Text with EEA relevance

03.08.1999

C 221 1999/C 221-0007 Non-opposition to a notified

concentration (Case No IV/M.1573 - Norsk Hydro/Saga)Text with EEA relevancå
C 221 1999/C 221-0006 Non-opposition to a notified concentration (Case No IV/M.1513 - Deutsche Post/Danzas/ Nedlloyd)Text with EEA relevance

31.07.1999
C 220 1999/C 220-0028 Non-opposition to a notified concentration (Case No IV/JV.1 - Telia/Telenor/Schibsted)Text with EEA relevance
C 220 1999/C 220-0028 Non-opposition to a notified concentration (Case No IV/JV.8 - Deutsche Telekom/Springer/Holtzbrink/Infosee k/Webseek)Text with EEA relevance
C 220 1999/C 220-0027 Non-opposition to a notified concentration (Case No IV/M.1562 - Heidelberger Zement/Scancem)Text with EEA relevance

29.07.1999
C 216 1999/C 216-0010 Non-opposition to a notified concentration (Case No IV/M.1516 - Thomson-CSF/Eurocopter)Text with EEA relevance
C 216 1999/C 216-0009 Non-opposition to a notified concentration (Case No IV/M.1496 - Olivetti/Telecom Italia)Text with EEA relevance
C 216 1999/C 216-0010 Non-opposition to a notified concentration (Case No IV/M.1569 - Gränges/Norsk Hydro)Text with EEA relevance
C 216 1999/C 216-0009 Non-opposition to a notified concentration (Case No IV/M.1449 - Sabena/Snecma)Text with EEA relevance

28.07.1999
C 215 1999/C 215-0006 Prior notification of a concentration (Case No IV/M.1601 - AlliedSignal/Honeywell)Text with EEA relevance
C 215 1999/C 215-0005 Prior notification of a concentration (Case No IV/M.1631 - Suez Lyonnaise/Nalco)Text with EEA relevance

27.07.1999
C 214 1999/C 214-0006 Prior notification of a concentration (Case No IV/M.1594 - Preussag/Babcock Borsig)Text with EEA relevance
C 214 1999/C 214-0007 Non-opposition to a notified concentration (Case No IV/M.1539 -CVC/Danone/Gerresheimer)Text with EEA relevance relevance

23.07.1999
C 211 1999/C 211-0015 Non-opposition to a notified concentration (Case No IV/M.1527 - OTTO Versand/Freemans)Text with EEA relevance
C 211 1999/C 211-0014 Prior notification of a concentration (Case No IV/M.1629 - Knorr-Bremse/Mannesmann)Text with EEA relevance
C 211 1999/C 211-0013 Prior notification of a concentration (Case No IV/M.1637 - DB Investments/SPP/Öhman)Text with EEA relevance

22.07.1999
C 8 1999/C208-0003 Non-opposition to a notified concentration (Case No IV/M.1369 - Thyssen Handel/Mannesmann Handel (see ECSC.1292))Text with EEA relevance
C 8 1999/C208-0004 Non-opposition to a notified concentration (Case No IV/M.1371 - La Poste/Denkhaus)Text with EEA relevance
C 8 1999/C208-0003 Non-opposition to a notified concentration (Case No IV/M.1512 - Dupont/Pioneer Hi-Bred International)Text with EEA relevance
C 8 1999/C208-0003 Non-opposition to a notified concentration (Case No IV/M.1497 - Novartis/Maïsadour)Text with EEA relevance

21.07.1999
C 206 1999/C 206-0019 Non-opposition to a notified concentration (Case No IV/M.1493 - United Technologies/Sundstrand)Text with EEA relevance

20.07.1999
C 205 1999/C 205-0003 Non-opposition to a notified concentration (Case No IV/M.1404 - General Electric/Alstom)Text with EEA relevance
C 205 1999/C 205-0004 Prior notification of a concentration (Case No IV/M.1593 - STS/Teerbau)Text with EEA relevance

17.07.1999
C 203 1999/C 203-0010 Non-opposition to a notified concentration (Case No IV/M.1485 - Carlyle/Honsel)Text with EEA relevance

16.07.1999
L 183 1999/L 183-0001 Commission Decision of 11 November 1998 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case IV/M.1157 – Skanska/Scancem)
L 183 1999/L 183-0029 Commission Decision of 10 February 1999 imposing fines for failing to notifyand for putting into effect three concentrations in breach of art. 4 & 7(1) of Council

Regulation (EEC) No 4064/89 (Case IV/M.969 - A. P. Møller)
C 201 1999/C 201-0004 Opinion of the Advisory Committee on Concentrations given at the 59th meeting on 9 January 1999 concerning a preliminary draft decision relating to Case IV/M.969 - A. P. MøllerText with EEA relevance
C 201 1999/C 201-0005 Opinion of the Advisory Committee on Concentrations given at the 57th meeting on 23 October 1998 concerning a preliminary draft decision relating to Case IV/M.1157- Skanska/ScancemText with EEA relevance

14.07.1999
C 197 1999/C 197-0003 Prior notification of a concentration (Case No IV/M.1504 - NSR/VSN/CMI/IGO Plus)Text with EEA relevance
C 197 1999/C 197-0004 Prior notification of a concentration (Case No IV/M.1616 - Antonio de Sommer Champalinaud/Banco Santander Central)Text with EEA relevance
C 197 1999/C 197-0002 Non-opposition to a notified concentration (Case No IV/M.1469 - Solvay/BASF)Text with EEA relevance
C 197 1999/C 197-0002 Withdrawal of notification of a concentration (Case No IV/M.1609 - ELF Aquitaine/Saga Petroleum)Text with EEA relevance

13.07.1999
C 195 1999/C 195-0007 Prior notification of a concentration (Case No IV/JV.21 - Skandia/Storebrand/Pohjola)Text with EEA relevance
C 195 1999/C 195-0008 Prior notification of a concentration (Case No IV/M.1598 - Hicks, Muse, Tate & Furst Investment Partners/Hillsdown Holdings)Text with EEA relevance

12.07.1999
C 194 1999/C 194-0003 Prior notification of a concentration (Case No IV/M.1615 - HSBC/Lindengruppen/CIH)Text with EEA relevance
C 194 1999/C 194-0002 Prior notification of a concentration (Case No IV/M.1494 - SAirGroup/AOM)Text with EEA relevance
C 194 1999/C 194-0004 Prior notification of a concentration (Case No IV/M.1589 - Meritor/ZF Friedrichshafen)Text with EEA relevance

09.07.1999
C 193 1999/C 193-0004 Prior notification of a concentration (Case No V/ECSC.1311 - British Steel/Sogerail)Text with EEA relevance
C 193 1999/C 193-0006 Non-opposition to a notified concentration (Case No IV/M.1509 - Ispat/Unimetal)Text with EEA relevance
C 193 1999/C 193-0006 Non-opposition to a notified concentration (Case No IV/M.1409 - Fyffes/Capespan)Text with EEA relevance

08.07.1999
C 191 1999/C 191-0006 Prior notification of a concentration (Case No IV/M.1547 - Lufthansa/Amadeus/Start)Text with EEA relevance
C 191 1999/C 191-0007 Prior notification of a concentration (Case No IV/M.1555 - Heineken/Cruzcampo)Text with EEA relevance
C 191 1999/C 191-0005 Prior notification of a concentration (Case No IV/M.1578 - Sanitec/Sphinx)Text with EEA relevance
C 191 1999/C 191-0007 Non-opposition to a notified concentration (Case No IV/M.1362 - Baywa AG/RWA)Text with EEA relevance

07.07.1999
C 190 1999/C 190-0004 Prior notification of a concentration (Case No IV/M.1574 - Kirch/Mediaset)Text with EEA relevance
C 190 1999/C 190-0004 Prior notification of a concentration (Case No IV/M.1553 - France Télécom/Editel/Lince)Text with EEA relevance
C 190 1999/C 190-0005 Non-opposition to a notified concentration (Case No IV/M.1529 - Havas Advertising/Media Planning)Text with EEA relevance

06.07.1999
C 189 1999/C 189-0005 Prior notification of a concentration (Case No IV/M.1378 - Hoechst/Rhône-Poulenc)Text with EEA relevance
C 189 1999/C 189-0006 Non-opposition to a notified concentration (Case No IV/M.1561 - Getronics/Wang)Text with EEA relevance
C 189 1999/C 189-0004 Prior notification of a concentration (Case No IV/JV-19)Text with EEA relevance
C 189 1999/C 189-0006 Non-opposition to a notified concentration (Case No IV/M.1560 - TI Group/Walbro)Text with EEA relevance

02.07.1999
C 186 1999/C 186-0007 Prior notification of a concentration (Case No IV/M.1588 - Tyco/Raychem)Text with EEA relevance
C 186 1999/C 186-0008 Non-opposition to a notified concentration (Case No IV/M.1255

- Flughafen Berlin)Text with EEA relevance
C 186 1999/C 186-0008 Non-opposition to a notified concentration (Case No IV/JV.16 - Bertelsmann/VIAG/Game Channel)Text with EEA relevance

01.07.1999
C 185 1999/C 185-0005 Prior notification of a concentration (Case No IV/M.1596 - Accor/Colony/Blackstone/Vivendi) Text with EEA relevance
C 185 1999/C 185-0004 Prior notification of a concentration (Case No IV/M.1592 - Toyota Motor/Toyota Denmark)Text with EEA relevance

29.06.1999
C 183 1999/C 183-0003 Non-opposition to a notified concentration (Case No IV/M.1491 - Robert Bosch/Magneti Marelli)Text with EEA relevance
C 183 1999/C 183-0004 Prior notification of a concentration (Case No IV/M.1470 - Goodyear/Sumitomo)Text with EEA relevance

26.06.1999
C 181 1999/C 181-0018 Initiation of proceedings (Case No IV/M.1439 - Telia/Telenor)Text with EEA relevance
C 181 1999/C 181-0017 Prior notification of a concentration (Case No IV/M.1603 - General Motors Acceptance Corporation/AAS)Text with EEA relevance
C 181 1999/C 181-0016 Prior notification of a concentration (Case No IV/M.1612 - Walmart/ASDA)Text with EEA relevance
C 181 1999/C 181-0015 Prior notification of a concentration (Case No IV/M.1556 - Mo och Domsjö/SCA AB/SCA Hygiene Products)Text with EEA relevance
C 181 1999/C 181-0013 Prior notification of a concentration (Case No IV/M.1534 - Pinault-Printemps-Redoute/Gucci)Text with EEA relevance
C 181 1999/C 181-0014 Prior notification of a concentration (Case No IV/M.1510 - BT/AT&T/JapanTelecom)Text with EEA relevance
C 181 1999/C 181-0018 Non-opposition to a notified concentration (Case No IV/M.1518 - Lear/United Technologies)Text with EEA relevance

24.06.1999
C 179 1999/C 179-0003 Prior notification of a concentration (Case No IV/ECSC.1310 - British Steel/Hoogovens)Text with EEA relevance
C 179 1999/C 179-0004 Prior notification of a concentration (Case No IV/M.1606 - EDF/South Western Electricity)Text with EEA relevance
C 179 1999/C 179-0005 Prior notification of a concentration (Case No IV/M.1609 - Elf/Saga)Text with EEA relevance
C 179 1999/C 179-0003 Prior notification of a concentration (Case No IV/M.1595 - British Steel/Hoogovens)Text with EEA relevanc

23.06.1999
C 178 1999/C 178-0015 Non-opposition to a notified concentration (Case No IV/M.1489 -YIT/Valmet/Rauma)Text with EEA relevance
C 178 1999/C 178/0018 Inapplicability of the Regulation to a notified operation Case No IV/JV.12 - Ericsson/Nokia/Psion/Motorola)Text with EEA relevance
C 178 1999/C 178-0014 Non-opposition to a notified concentration (Case No IV/M.1519 - Renault/Nissan)Text with EEA relevance
C 178 1999/C 178-0015 Non-opposition to a notified concentration (Case No IV/JV.2 - ENEL/FT/DT)Text with EEA relevance
C 178 1999/C 178-0016 Non-opposition to a notified concentration (Case No IV/JV.7 - Telia/Sonera/Lithuanian Telecommunications)Text with EEA relevance
C 178 1999/C 178-0017 Non-opposition to a notified concentration (Case No IV/JV.9 - Telia/Sonera/Motorola/Omnitel)Text with EEA relevance
C 178 1999/C 178-0016 Non-opposition to a notified concentration (Case No IV/JV.4 - Viag/Orange UK)Text with EEA relevance
C 178 1999/C 178-0014 Non-opposition to a notified concentration (Case No IV/M.1448 - MAN Roland/Omnigraph (II))Text with EEA relevance
C 178 1999/C 178-0017 Non-opposition to a notified concentration (Case No IV/JV.11 - @ Home Benelux BV)Text with EEA relevance

22.06.1999
C 176 1999/C 176-0009 Non-opposition to a notified concentration (Case No IV/M.1474 - Maersk/Safmarine)Text with EEA relevance
C 176 1999/C 176-0012 Non-opposition to a notified concentration (Case No IV/M.1434 - Schneider/Lexel)Text with EEA relevance
C 176 1999/C 176-0011 Non-opposition to a notified concentration (Case No IV/M.1506 - Singapore Airlines/Rolls-Royce)Text with EEA relevance
C 176 1999/C 176-0010 Non-opposition to a notified concentration (Case No IV/M.1500

- TPG/Technologistica)Text with EEA relevance
C 176 1999/C 176-0012 Non-opposition to a notified concentration (Case No IV/M.1482 -Kingfisher/Grosslabor)Text with EEA relevance
C 176 1999/C 176-0010 Non-opposition to a notified concentration (Case No IV/M.1450 - SMS/Mannesmann Demag)Text with EEA relevance
C 176 1999/C 176-0009 Non-opposition to a notified concentration (Case No IV/M.1476 - Adecco/Delphi)Text with EEA relevance
C 176 1999/C 176-0008 Prior notification of a concentration (Case No IV/M.1585 - DFDS/FLS Industries/DAN Transport)Text with EEA relevance
C 176 1999/C 176-0011 Non-opposition to a notified concentration (Case No IV/M.1459 -Bertelsmann/Havas/BOL)Text with EEA relevance

19.06.1999
C 173 1999/C 173-0020 Prior notification of a concentration (Case No IV/M.1471 - Statoil/ICA/JV)Text with EEA relevance

17.06.1999
C 170 1999/C 170-0004 Initiation of proceedings (Case No IV/M.1383 - Exxon/Mobil)Text with EEA relevance
C 170 1999/C 170-0004 Prior notification of a concentration (Case No IV/M.1562 - Heidelberger Zement/Scancem)Text with EEA relevance

16.06.1999
C 168 1999/C 168-0004 Prior notification of a concentration (Case No IV/M.1551 - AT&T/MediaOne)Text with EEA relevance

15.06.1999
C 167 1999/C 167-0004 Initiation of proceedings (Case No IV/M.1532 - BP Amoco/Atlantic Richfield)Text with EEA relevance
C 167 1999/C 167-0004 Prior notification of a concentration (Case No IV/M.1581 - AT&T/Unisource/AUCS)Text with EEA relevance

12.06.1999
C 66 1999/C166-0010 Prior notification of a concentration (Case No IV/M.1572 - ISS/Abilis)Text with EEA relevance
C 66 1999/C166-0011 Prior notification of a concentration (Case No IV/M.1549 - Deutsche Post/ASG)Text with EEA relevance

11.06.1999
C 165 1999/C 165-0002 Prior notification of a concentration (Case No IV/M.1569 - Gränges/Norsk Hydro)Text with EEA relevance

09.06.1999
C 162 1999/C 162-0007 Initiation of proceedings (Case No IV/M.1524 - Airtours/First Choice)Text with EEA relevance
C 162 1999/C 162-0008 Prior notification of a concentration (Case No IV/M.1517 - Rhodia/Donau Chemie/Albright & Wilson)Text with EEA relevance
C 162 1999/C 162-0005 Prior notification of a concentration (Case No IV/M.1573 - Norsk Hydro/Saga)Text with EEA relevance
C 162 1999/C 162-0007 Withdrawal of notification of a concentration (Case No IV/M.1328 - KLM/Martinair)Text with EEA relevance
C 162 1999/C 162-0006 Prior notification of a concentration (Case No IV/M.1536 - Wind/Enel STC)Text with EEA relevance

08.06.1999
C 161 1999/C 161-0003 Prior notification of a concentration (Case No IV/M.1497 - Novartis/Maïsadour)Text with EEA relevance
C 161 1999/C 161-0004 Prior notification of a concentration (Case No IV/M.1539-CVC/Danone/Gerresheimer)Text with EEA relevance

05.06.1999
59 1999/ 159-0002 Prior notification of a concentration (Case No IV/M.1513 - Deutsche Post/Danzas/Nedlloyd)Text with EEA relevance
59 1999/ 159-0004 Prior notification of a concentration (Case No IV/M.1590 - HSBC/RNYC/Safra)Text with EEA relevance
59 1999/ 159-0003 Prior notification of a concentration (Case No IV/M.1552 - Babcock Borsig/AE Energietechnik)Text with EEA relevance

04.06.1999
C 157 1999/C157-0007 Non-opposition to a notified concentration (Case No IV/M.1467 - Rohm and Haas/Morton)Text with EEA relevance
C 157 1999/C 157-0007 Non-opposition to a notified concentration (Case No IV/M.1487 - Johnson & Son/Melitta/Cofresco)Text with EEA relevance
C 157 1999/C 157-0006 Prior notification of a concentration (Case No IV/M.1580 - CAI/Platinum)Text with EEA relevance
C 157 1999/C 157-0005 Prior notification of a concentration (Case No IV/M.1438 - British Aerospace/GEC Marconi)Text with EEA relevance

02.06.1999
C 155 1999/C 155-0006 Non-opposition to a notified concentration (Case No IV/M.1521 UBS/Groupe Valfond)Text with EEA relevance
C 155 1999/C 155-0005 Prior notification of a concentration (Case No IV/M.1563 - Ford/Plastic Omnium)Text with EEA relevance
C 155 1999/C 155-0004 Prior notification of a concentration (Case No IV/M.1558 - Cinven/Investcorp/Zeneca Chemicals)Text with EEA relevance
C 155 1999/C 155-0003 Prior notification of a concentration (Case No IV/M.1564 - Astrolink)Text with EEA relevance

01.06.1999
C 152 1999/C 152-0003 Non-opposition to a notified concentration (Case No IV/M.1514 - Vivendi/US Filters)Text with EEA relevance

LIBERALISATION

10.07.1999
C 197 1999/C 197-0039 Commission Directive 1999/64/EC of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entitiesText with EEA

STATE AID

25.09.1999
C 272 1999/C 272-0010 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 272 1999/C 272-0007 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning the aid C 21/99 (ex C 74/97 and NN 27/99, ex N 793/96) - Germany - Kali und Salz GmbHText with EEA relevance
C 272 1999/C 272-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 272 1999/C 272-0003 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 272 1999/C 272-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

20.09.1999
C 264 1999/C 264-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 264 1999/C 264-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

11.09.1999
C 259 1999/C 259-0006 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 259 1999/C 259-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 259 1999/C 259-0002 State aid - Invitation to submit comments pursuant to Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry concerning aid C 45/99 (ex NN 43/99) - Investment aid for Myria

07.09.1999
L 236 1999/L 236-0014 Commission Decision of 11 May 1999 on State aid which the Italian authorities have implemented in favour of the sugar sector (notified under document number C(1999) 1363)

04.09.1999
C 253 1999/C 253-0004 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning the aid C 61/98 (ex NN 189/97) Lenzing Lyocell GmbH & Co. KG, AustriaText with EEA relevance
C 253 1999/C 253-0014 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 253 1999/C 253-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

02.09.1999
L 232 1999/L 232-0024 Commission Decision of 21 April 1999 on the state aid granted by Germany to Dieselmotorenwerk Rostock GmbHText with EEA relevance (notified under document number C(1999) 1121)

31.08.1999
L 230 1999/L 230-0004 Commission Decision of 21 April 1999 in a procedure under Article 88 of the ECSC Treaty concerning state aid granted by Germany to Neue Maxhütte Stahlwerke GmbH

(notified under document number C(1999) 1123)
L 230 1999/L 230-0009 Commission Decision of 4 May 1999 on the state aid which Portugal is planning to grant to Companhia de Têxteis Sintéticos, SA (Cotesi)Text with EEA relevance (notified under document number C(1999) 1268)

28.08.1999
L 227 1999/L 227-0001 Commission Decision of 22 December 1998 on aid granted by the Republic of Austria to Ergee Textilwerk GmbH (notified under document number C(1998) 4568)Text with EEA relevance
C 245 1999/C 245-0015 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning case C 43/99 (ex C 12/94, ex NN 11/94) - Capital contribution to EniChemText with EEA relevance
C 245 1999/C 245-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 245 1999/C 245-0009 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 39/99 (ex E 2/97) - English Partnerships (EP) under the Partnership Investment Programme (PIP)Text with EEA relevance
C 245 1999/C 245-0024 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the aid C 46/99 (ex NN 59/99) - Germany - Kvaerner Warnow Werft - Exceeding of capacity limitation in 1997Text with EEA relevance
C 245 1999/C 245-0027 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning measure C 68/99 (ex NN 96/99, ex C 7/97) - Law No 95/79 on extraordinary administration of large firms in crisisText with EEA relevance
C 245 1999/C 245-0003 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsvance
C 245 1999/C 245-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 245 1999/C 245-0005 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning the measure No C 20/99 (ex NN 11/99) - Italy - Provincia Autonoma di Bolzano - Creation of a public undertaking for the production and dis

25.08.1999
L 224 1999/L 224-0010 Commission Decision of 9 December 1998 on State aid which Germany is planning to implement in favour of MCR Gesellschaft für metallurgisches Recycling mbH, Eberswalde (Brandenburg)Text with EEA relevance (notified under document

21.08.1999
C 238 1999/C 238/0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 238 1999/C 238/0003 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 238 1999/C 238/0015 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 32/99 (ex NN 28/99) - Germany - State guarantee for meat processing company, Greuáener Salamifabrik GmbH
C 238 1999/C 238/0004 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty,concerning State aid C 41/99 (ex N 49/95) - EFBE Verwaltungs GmbH & Co. Management KG, Germany (now Lintra Beteiligungsholding GmbH, together with Zeitzer Mas

20.08.1999
L 220 1999/L 220/0033 Commission Decision of 9 December 1998 on State aid granted by Germany to a lignite-fired power station in CottbusText with EEA relevance (notified under document number C(1998) 4275)
L 220 1999/L 220/0028 Commission Decision of 11 November 1998 concerning aid granted by Germany to ESF Elbestahlwerk Feralpi GmbH, Riesa, SaxonyText with EEA relevance (notified under document number C(1998) 3556)

14.08.1999
C 233 1999/C 233-0022 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning aid No C 32/93 (ex NN 41/99) - Spain - aid to Ferries Golfo de VizcayaText with EEA relevance 1999
C 233 1999/C 233-0025 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the measure C 42/99 (ex N 351/98) - Measures in favor of the port sectorText with EEA relevance
C 233 1999/C 233-0029 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the aid C 36/99 (ex NN 29/98) - Korn Fahrzeuge und Technik GmbH, Gera

(Thüringen)Text with EEA relevance
C 233 1999/C 233-0037 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid measure No C 38/99 (ex NN 26/99) - Spain - Decree of 8 July 1998 fixing aid for agricultural producers for production for industrial processing
C 233 1999/C 233-0039 State aidText with EEA relevance
C 233 1999/C 233-0045 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 233 1999/C 233-0002 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning measure No C 70/98 (ex N 274/98) - Italy (Marche) - Amendments to the regional SPD for Objective 5b - 1994 to 1999
C 233 1999/C 233-0048 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA
C 233 1999/C 233-0048 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

13.08.1999
L 213 1999/L 213-0025 Commission Decision of 28 July 1999 on the granting of aid for the production of table olives in Portugal (notified under document number C(1999) 2462)
L 213 1999/L 213-0029 Commission Decision of 28 July 1999 on the granting of aid for the production of table olives in Greece (notified under document number C(1999) 2465)
L 213 1999/L 213-0021 Commission Decision of 28 July 1999 on the granting of aid for the production of table olives in Spain (notified under document number C(1999) 2459)

07.08.1999
C 225 1999/C 225-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 225 1999/C 225-0006 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid No C 37/99 (ex NN 25/99) - Spain - Decree 35/1993 of 13 April 1993 on the financing of operating capital in the agricultural sector
C 225 1999/C 225-0003 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

05.08.1999
C 223 1999/C 223-0009 State aid (99-002 Iceland) - EFTA Surveillance Authority notice pursuant to Article 1(2) of Protocol 3 of the Surveillance and Court Agreement, to other EFTA States, EC Member States and interested parties concerning State aid in the form of temporary re
C 223 1999/C 223-0005 Decision of the Court of 12 June 1998 in Case E-4/97 (Decision on admissibility in direct action case): Norwegian Bankers' Association v. EFTA Surveillance Authority, supported by The Kingdom of Norway, represented by the Office of the Attorney General
C 223 1999/C 223-0008 Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1(3) of Protocol 3 to the surveillance and Court Agreement - EFTA Surveillance Authority decision not to raise objectionsmeasures - Effect on trade - Aid schemes)59(2) E
C 223 1999/C 223-0007 Judgment of the Court of 20 May 1999 in Case E-6/98: Government of Norway v. EFTA Surveillance Authority (Action for annulment of a decision of the EFTA Surveillance Authority- State aid - General measures - Effect on trade - Aid schemes)59(2) EEA - Proc
C 223 1999/C 223-0006 Judgment of the Court of 3 March 1999 in Case E-4/97: Norwegian Bankers' Association v. EFTA Surveillance Authority (Action for annulment of a decision of the EFTA Surveillance Authority - State aid - Exceptions under Article 59(2) EEA - Procedures)
C 223 1999/C 223-0008 Authorisation of State aid pursuant to Article 61 of the EEA Agreement and Article 1(3) of Protocol 3 to the Surveillance and Court Agreement - EFTA Surveillance Authority decision not to raise objections

31.07.1999
C 220 1999/C 220-0014 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid No C 27/99 (ex NN 69/98) - Tax exemptions and privileged loans in favour of utilities with majority public shareholdingText with EEA relevance
C 220 1999/C 220-0019 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the aid measure C 1/99 (ex N 704/98) - Portugal - measures in favour of the Portuguese pig sectorText with EEA relevance
C 220 1999/C 220-0004 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the aid measure C 4/99 (ex N 182/98) Italy

(Sardinia) Regional law of 4 February 1998, EAGGF guidance expenditure and other urgent interventions for agriculture

30.07.1999
L 198 1999/L 198-0001 Commission Decision of 14 October 1998 conditionally approving aid granted by France to Société Marseillaise de Crédit (notified under document number C(1998) 3210)Text with EEA relevance
L 198 1999/L 198-0015 Commission Decision of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors (notified under document number C(1998) 3211)Text with EEA relevance.

26.07.1999
L 193 1999/L 193-0001 Commission Decision of 3 February 1999 concerning State aid which the Spanish Government has granted to the company Hijos de Andrés Molina SA (Hamsa) (notified under document number C(1999) 41)Text with EEA relevance

24.07.1999
C 213 1999/C 213-0012 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 26/99 (ex NN 63/98) - Dessauer Geräteindustrie GmbHText with EEA relevance
C 213 1999/C 213-0008 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 213 1999/C 213-0009 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 213 1999/C 213-0019 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid No C 23/99 (ex N 22/A/98) - Aid for the promotion of agricultural products
C 213 1999/C 213-0023 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 30/99 (ex NN 51/99) - the Netherlands - Combined transport Rotterdam-PragueText with EEA relevance
C 213 1999/C 213-0005 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

17.07.1999
C 203 1999/C 203-0003 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid No C 28/99 (ex NN 18/99) - Incorrect application of the de minimis rules under the Thuringia working capital programme of 20 July 1993Text with EEA relevance
C 203 1999/C 203-0007 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 203 1999/C 203-0009 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

13.07.1999
L 177 1999/L 177-0024 Commission Decision of 28 October 1998 on State aid which Spain is planning to implement in favour of AG Tubos Europa SAText with EEA relevance (notified under document number C(1998) 3438)
L 177 1999/L 177-0027 Commission Decision of 4 May 1999 on the granting by Spain of aid to the coal industry in 1999Text with EEA relevance (notified under document number C(1999) 1379)

12.07.1999
C 194 1999/C 194-0005 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 194 1999/C 194-0014 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning the aid C 18/99 (ex NN 16/99) - Germany - State aid awarded by the THA/BvS in favour of UCB Chemie GmbH, Linde AG, Sa
C 194 1999/C 194-0008 State aid - C 2/97 (ex N 854/95) - The NetherlandsText with EEA relevance
C 194 1999/C 194-0006 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 194 1999/C 194-0009 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning the aid/measure C 14/99 (ex NN 1/99) - France - Support for TASQ SAText with EEA relevance
C 194 1999/C 194-0007 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 194 1999/C 194-0018 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty, concerning the aid/measure C 22/99 (ex NN 117/98) - Spain -RamondínText with EEA relevance
C 194 1999/C 194-0005 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases

where the Commission raises no objectionsText with EEA relevance

03.07.1999
C 187 1999/C 187-0017 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 187 1999/C 187-0002 State aid - Invitation to submit comments pursuant to Article 88(2) (ex Article 93(2)) of the EC Treaty concerning the aid C 83/98 (ex N 40/98) - Italy (Sardinia) - Regional restructuring plan for holdings engaged in the growing of protected agri
C 187 1999/C 187-0014 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections
C 187 1999/C 187-0015 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 187 1999/C 187-0016 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

26.06.1999
C 181 1999/C 181-0023 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

24.06.1999
L 157 1999/L 157-0049 EFFA Surveillance Authority Decision 339/98/COL of 3 December 1998 regarding the Norwegian Government's financing of the Arcus group of companies (State Aid No 95-021 (Norway))

19.06.1999
C 173 1999/C 173-0018 State aid - C 24/95 (ex N 682/93) - GermanyText with EEA relevance
C 173 1999/C 173-0018 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

17.06.1999
L 150 1999/L 150-0028 Commission Decision of 2 December 1998 concerning State aid granted by the region of Friuli-Venezia Giulia and the Italian Government to SelecoText with EEA relevance (notified under document number C(1998) 4035)

16.06.1999
L 149 1999/L 149-0040 Commission Decision of 28 October 1998 on State aid implemented by Spain in favour of SNIACE SA, located in Torrelavega, CantabriaText with EEA relevance (notified under document number C(1998) 3437)

12.06.1999
C 66 1999/C166-0006 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevanc
C 66 1999/C166-0002 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
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C 66 1999/C166-0004 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance
C 66 1999/C166-0009 State aid - C 84/98 (ex N 100/98) -

10.06.1999
L 145 1999/L 145-0032 Commission Decision of 3 February 1999 concerning State aid granted by Germany to Spindelfabrik Hartha GmbHText with EEA relevance (notified under document number C(1999) 326)
L 145 1999/L 145-0018 Commission Decision of 4 November 1998 on aid granted by France to Nouvelle Filature Lainière de RoubaixText with EEA relevance (notified under document number C(1998) 3515)
L 145 1999/L 145-0027 Commission Decision of 11 November 1998 on aid for the INMA SpA shipyard. under Italian Law No 564/93, converted by Law No 132/94Text with EEA relevance (notified under document number C(1998) 3584)

09.06.1999
L 144 1999/L 144-0021 Commission Decision of 28 October 1998 on aid granted by Germany to Neptun Industrie Rostock GmbHText with EEA relevance (notified under document number C(1998) 3435)

05.06.1999
L 142 1999/L 142-0032 Commission Decision of 14 October 1998 on a proposal by Austria to grant aid to LiftgmbHText with EEA relevance (notified under document number C(1998) 3212)
C 159 1999/ 159-0005 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objectionsText with EEA relevance

C 159 1999/ 159-0006 Authorisation for State aid pursuant to Articles 87 and 88 (ex Articles 92 and 93) of the EC Treaty - Cases where the Commission raises no objections

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DEVANT LE TRIBUNAL

Aff. T-90/99 - Salzgitter AG / Commission : Annulation de la décision de la Commission SG (99) D/1542, du 3 mars 1999, d'ouvrir la procédure prévue à l'article 6 , paragraphe 5, de la décision n. 2496/96/CECA de la Commission, du 18 décembre 1996, instituant des règles communautaires pour les aides à la sidérurgie par rapport aux interventions financières en faveur de l'entreprise Salzgitter AG qui découlent de la loi allemande visant à contribuer au développement de la zone le long de la frontière avec l'ancienne RDA

Aff. T-95/99 - Satellimages TV5 SA / Commission : Annulation de la décision du 15 février 1999, relative à une procédure d'application de l'art. 86 du traité CE (IV/36.968 - Satellimages/TV5-Deutsche Telekom) ouverte suite à la plainte déposée par la requérante, concernant la politique de prix appliquée par Deutsche Telekom aux chaînes de télévision par satellite voulant accéder à ses services de télédistribution par câble

Aff. T-98/99 - UPS Europe SA / Commission : Recours en carence tendant à faire constater que la Commission s'est illégalement abstenue de prendre une décision sur la plainte déposée par la requérante sur le fondement de l'art. 92 du traité CE, concernant une aide d'état illégale prétendument accordée par l'Allemagne dans le cadre de l'acquisition partielle de DHL par la Deutsche Post AG

DEVANT LA COUR

Aff. C-111/99 P - Lech-Stahlwerke GmbH et Neue Maxhütte Stahlwerke GmbH/Commission - Allemagne-Royaume-Uni : Pourvoi contre l'arrêt du Tribunal (cinquième chambre élargie), rendu le 21 janvier 1999, dans les affaires jointes T-129/95, T-2/96 et T-97/96 opposant Neue Maxhütte Stahlwerke et Lech-Stahlwerke à la Commission, par lequel le Tribunal a rejeté des recours en annulation contre trois décisions concernant des projets d'aides du Freistaat Bayern à l'entreprise Neue Maxhütte Stahlwerke GmbH - Comportement d'un investisseur privé - Principe de proportionnalité - Motivation - Droits de la défense

Aff. C-165/99 - Autriche / Commission : Annulation de la décision K (1999) 325 endg. concernant une aide d'Etat sous forme d'exemption de l'accise sur les boissons en ce qui concerne la vente directe au lieu de production de vin et d'autres boissons fermentées

Aff. C-194/99 P - Thyssen Stahl AG / Commission : Pourvoi contre l'arrêt du Tribunal (deuxième chambre élargie), rendu le 11 mars 1999, dans l'affaire T-141/94 opposant Thyssen Stahl AG à la Commission - Annulation de la décision 94/215/CECA de la Commission, du 16 février 1994, relative à une procédure d'application de l'article 65 du traité CECA concernant des accords et pratiques concertées impliquant des producteurs européens de poutrelles

Aff. C-195/99 P - Krupp Hoesch Stahl AG / Commission : Pourvoi contre l'arrêt du Tribunal (deuxième chambre élargie), rendu le 11 mars 1999, dans l'affaire T-147/94 opposant Krupp Hoesch Stahl AG à la Commission - Annulation de la décision 94/215/CECA de la Commission, du 16 février 1994, relative à une procédure d'application de l'article 65 du traité CECA concernant des accords et pratiques concertées impliquant des producteurs européens de poutrelles

Aff. C-196/99 P - Siderúrgica Aristrain Madrid SL / Commission : Pourvoi contre l'arrêt du Tribunal (deuxième chambre élargie), rendu le 11 mars 1999, dans l'affaire T-156/94 opposant Siderúrgica Aristrain Madrid SL à la Commission - Annulation de la décision 94/215/CECA de la Commission, du 16 février 1994, relative à une procédure d'application de l'article 65 du traité CECA concernant des accords et pratiques concertées impliquant des producteurs européens de poutrelles

Aff. C-197/99 P - Belgique et Forges de Clabecq SA / Commission : Pourvoi contre l'arrêt du Tribunal (quatrième chambre élargie), rendu le 25 mars 1999, dans l'affaire T-37/97 opposant les Forges de Clabecq à la Commission, par lequel le Tribunal a rejeté un recours en annulation de la décision déclarant incompatibles avec le marché commun certaines interventions financières en faveur de la SA Forges de Clabecq

Aff. C-198/99 P - Empresa Nacional Siderúrgica SA (Ensidesa) / Commission : Pourvoi contre l'arrêt du Tribunal (deuxième chambre élargie), rendu le 11 mars 1999, dans l'affaire T-157/94 opposant Ensidesa à la Commission - Annulation de la décision

94/215/CECA de la Commission, du 16 février 1994, relative à une procédure d'application de l'article 65 du traité CECA concernant des accords et pratiques concertées impliquant des producteurs européens de poutrelles

Aff. C-199/99 P - British Steel plc / Commission : Pourvoi contre l'arrêt du Tribunal (deuxième chambre élargie) rendu le 11 mars 1999, dans l'affaire T-151/94 opposant British Steel à la Commission - Annulation de la décision 94/215/CECA de la Commission, du 16 février 1994, relative à une procédure d'application de l'article 65 du traité CECA concernant des accords et pratiques concertées impliquant des producteurs européens de poutrelles

Aff. C-238/99 P - Limburgse Vinyl Maatschappij (LVM) NV et Limburgse Vinyl Maatschappij (LVM) e.a. / Commission : Pourvoi contre l'arrêt du Tribunal du 20 avril 1999, dans les affaires jointes T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 et T-335/94, opposant Limburgse Vinyl Maatschappij (LVM) e.a. à la Commission («PVC II») par lequel le Tribunal a rejeté le recours en annulation de la requérante contre la décision 94/599/CE de la Commission relative à une procédure d'application de l'article 85 du traité CE (devenu art. 81 CE)

Aff. C-244/99 P - DSM NV et DSM Kunststoffen BV et Limburgse Vinyl Maatschappij (LVM) e.a. / Commission : Pourvoi contre l'arrêt du Tribunal du 20 avril 1999, dans les affaires jointes T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 et T-335/94, opposant Limburgse Vinyl Maatschappij (LVM) e.a. à la Commission («PVC II») par lequel le Tribunal a rejeté le recours en annulation de la requérante contre la décision 94/599/CE de la Commission relative à une procédure d'application de l'article 85 du traité CE (devenu art. 81 CE)

Aff. C-245/99 P - Montedison SpA et Limburgse Vinyl Maatshappij (LVM) e.a. / Commission : Pourvoi contre l'arrêt du Tribunal du 20 avril 1999, dans les affaires jointes T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 et T-335/94, opposant Limburgse Vinyl Maatschappij (LVM) e.a. à la Commission («PVC II») par lequel le Tribunal a rejeté le recours en annulation de la requérante contre la décision 94/599/CE de la Commission relative à une procédure d'application de l'article 85 du traité CE (devenu art. 81 CE)

Aff. C-247/99 P - Elf Atochem SA et Limburgse Vinyl Maatschappij (LVM) e.a. / Commission : Pourvoi contre l'arrêt du Tribunal du 20 avril 1999, dans les affaires jointes T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 et T-335/94, opposant Limburgse Vinyl Maatschappij (LVM) e.a. à la Commission («PVC II») par lequel le Tribunal a rejeté le recours en annulation de la requérante contre la décision 94/599/CE de la Commission relative à une procédure d'application de l'article 85 du traité CE (devenu art. 81 CE)

Aff. C-250/99 P - Degussa-Hüls AG et Limburgse Vinyl Maatschappij (LVM) NV e.a. / Commission : Pourvoi contre l'arrêt du Tribunal du 20 avril 1999, dans les affaires jointes T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 et T-335/94, opposant Limburgse Vinyl Maatschappij (LVM) e.a. à la Commission («PVC II») par lequel le Tribunal a rejeté le recours en annulation de la requérante contre la décision 94/599/CE de la Commission relative à une procédure d'application de l'article 85 du traité CE (devenu art. 81 CE)

Aff. C-251/99 P - Enichem SpA et Limburgse Vinyl Maatschappij (LVM) e.a. / Commission : Voir l'affaire C-250/99

Aff. C-252/99 P - Wacker-Chemie GmbH et Hoechst AG et Limburgse Vinyl Maatschappij (LVM) e.a. / Commission : Voir l'affaire C-250/99

Aff. C-254/99 P - Imperial Chemical Industries plc (ICI) et Limburgse Vinyl Maatschappij (LVM) e.a. / Commission : Voir l'affaire C-250/99

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