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NEWSLETTER

**Editors:**  
Bernhard Friess  
Nicola Pesaresi

**Address:**  
European Commission,  
J-70, 00/123  
Wetstraat 200, rue de la Loi  
Brussel B-1049 Bruxelles  
Tel.: (32-2) 295 76 20  
Fax: (32-2) 295 54 37

**World Wide Web:**  
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# competition policy **NEWSLETTER**

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*Revision of the Antitrust de minimis notice*

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## EUROPEAN COMPETITION DAY

### *Pharmaceutical Products and Competition*

11 October, in Antwerp, Belgium, 13.30-17.30 hrs

For information, please contact:

European Commission, DG Competition  
Directorate A, Unit A1  
Mr Ansgar Held (32-2 299 18 24)

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## Commission adopts communication on state aid and risk capital

*Ben SLOCOCK, Directorate General Competition, unit A03*

**On 23 May the Commission adopted a communication on state aid and risk capital <sup>(1)</sup>. It sets out how the Commission will assess, under the state aid rules, measures designed to promote the growth of risk capital markets. An increase in risk capital is an objective which the European Union (EU) has been pursuing particularly strongly since the summit of the Member States in Lisbon in March 2000. The Commission has recognised that public funds may play a part in achieving this. At the same time, it wants to maintain a careful control on state aid within the EU, and has found that existing state aid rules are not well adapted to the types of measures which have been developed by Member States' authorities to stimulate an increase in risk capital activity.**

The document responds to a request by EU Finance Ministers, made in September 2000 in Versailles, to clarify the rules under which risk capital measures will be assessed under the state aid rules. This followed the experience of the Commission and Member States with certain such measures which clearly constituted state aid and could not be found compatible with existing state aid rules. Existing rules generally insist that state aid be linked to certain specific types of expenditure (fixed investments, research and development, training etc, known as 'eligible costs'), whereas risk capital is often aimed simply at providing working capital for new and growing businesses. A further problem was that measures were being designed not to provide funding directly, but rather to provide incentives to potential investors to do so. Such measures were not compatible with the existing rules.

### Measures not constituting state aid, applicability of Article 87(1)

The document explains that Governments can take many measures to promote risk capital which have no state aid impact. Indeed, the Commission has made it clear that the philosophy underlying the

strategy for developing the EU risk capital market attributes primary importance to the creation of an environment favourable to creating and sustaining new and innovative businesses, through structural and horizontal measures. However, the Commission has also recognised 'a role for public funding of risk capital measures limited to addressing identifiable market failures' <sup>(2)</sup>.

Even this may not constitute state aid if public capital is provided on terms which would be acceptable to a private investor operating under normal market economy conditions. An important part of the document is section IV, which explains in what circumstances Government intervention in this area falls under the state aid definition in Article 87(1) of the Treaty. A number of existing texts already cover this area including the 1984 communication on government capital injections <sup>(3)</sup>, the 1998 notice on the application of the state aid rules to measures relating to direct business taxation <sup>(4)</sup> and the notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees <sup>(5)</sup>. The new text is not in any sense replacing or derogating from those but trying to clarify their application in the specific circumstances of measures to promote risk capital. It explains that measures may confer state aid on enterprises at any of three different levels: firstly, on investors who are being provided with incentives to provide this kind of finance; secondly on an investment vehicle (such as a fund) through which this finance is channelled; and thirdly on the enterprises to whom risk capital finance (defined as equity financing to companies in their start-up and development phases) is provided.

### Reasons for a new approach

As already noted, the Commission has found that some such measures, while constituting state aid at one or more of these levels, cannot be found compatible with the Treaty under the existing rules which the Commission has laid down and which set out how it intends to exercise its discretion under Article 87(3) of the Treaty. At the same time

<sup>(1)</sup> Available at [http://europa.eu.int/comm/competition/state\\_aid/legislation/aid3.html#D](http://europa.eu.int/comm/competition/state_aid/legislation/aid3.html#D) (section VIII)

<sup>(2)</sup> Progress Report on the Risk Capital Action Plan, COM(2000) 658 final, 18.10.2000, section 3.4.

<sup>(3)</sup> Bulletin EC 9-1984, reproduced in 'Competition law in the European Communities', Volume IIA

<sup>(4)</sup> OJ C 384 of 10.12.1998, p.3.

<sup>(5)</sup> OJ C 71 of 11.03.2000, p.14.

some of these measures appeared to be well designed and potentially less distortive of competition than some more traditional aid measures, notably because through the involvement of private investors they provided a built-in safeguard against aid being used to support non-viable firms. Such reasoning led the Commission to consider whether a new approach was needed to accommodate this form of measure.

Since risk capital is a quintessentially commercial activity, and largely a private sector one, and given the attendant risks of public intervention (distortion of markets for capital and in favour of recipients of 'cheap money', displacement of the private sector) the justification for accepting state aid needs to be carefully made. In line with its previously stated position quoted above, the Commission took the view that state aid can be justified when there is evidence of market failure. Market failure, in the true economic sense of an imperfect functioning of the market mechanism, is in fact the (often unstated) justification for much state aid policy: the externalities involved in research and development, training and environmental protection are classic textbook examples of market failure where intervention can improve economic efficiency.

## Market failure

Before authorising state aid for risk capital, therefore, the Commission will insist that the measure is addressing an identified market failure. This condition will be assumed to be met at lower transaction levels (€500,000, rising to €750,000 or €1,000,000 in regions eligible for regional aid under Articles EC 87(3)(c) and (a) respectively), because at these lower levels the transaction costs are high relative to the transaction size, which causes a form of market imperfection. The Commission will examine whether any state aid measure is proportionate to the presumed market failure it is devised to meet, and will seek to ensure that any distortion is minimised. It believes that this can best be achieved by measures which are just sufficient to ensure that market investors provide capital and which result in investment decisions being taken on a commercial basis and on terms as close as possible to those which would prevail in the normal economy.

## Form of aid

The document makes clear that, here as for other types of state aid, the Commission is fairly open as to the form of the state aid measure. This point was made because of the wide variety of mechanisms which have been or could be devised in this area. In the period leading up to the document's adoption, when a draft was distributed to Member States and also posted on the DG Competition website, a number of proposals were made which were applicable only to measures in a certain form, such as the creation of investment funds providing incentives to market investors to participate. Other mechanisms which the Commission is prepared to accept as being capable of meeting the terms of the communication include grants to venture capital funds to cover part of their administrative and management costs, other financial instruments in favour of risk capital investors or of venture capital funds to provide extra capital for investment, Guarantees to risk capital investors or to venture capital funds against a proportion of investment losses, or guarantees given in respect of loans to investors/funds for investment in risk capital <sup>(1)</sup>, and fiscal incentives to investors to undertake risk capital investment.

## Compatibility criteria

Apart from the 'market failure' criterion, the Commission sets out in the document certain others against which it will assess risk capital measures when determining whether to find them compatible under the Treaty. In another departure from traditional methods of state aid control, these criteria are not expressed as 'black and white' conditions which must be fulfilled but rather as elements which will be regarded as positive or negative in the overall assessment. The first such criterion is the size and level of development of the enterprises targeted by the measure (restriction to small enterprises, and medium-sized enterprises at their start-up and other early stages and in assisted areas will be a positive element). This is because the Commission feels not only that the arguments for market failure are stronger at this smaller end of the market, but also the risks of distortion of competition are much less.

Another 'positive element' is the existence of safeguards to reduce distortion of competition between investors. In particular, the Commission will regard positively a call for tender for the establishment of any 'preferential terms' given to investors,

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<sup>(1)</sup> The second alternative is one means of intervention of the US Small Business Administration in favour of Small Business Investment Companies.

or the availability of any such terms to other investors. The absence of any such check against over-compensation to investors, or a measure where the risk of losses is borne entirely by the public sector and/or where the benefits flow entirely to the other investors will be considered as a negative element.

In line with the view that investment decisions should be taken on a commercial basis, the Commission will assess whether the measure ensures that such decisions will be profit-driven. A link between investment performance and the remuneration of those responsible for investment decisions will be a positive element. This could in particular be shown to be met if the measure includes the contribution of significant amounts of capital provided by market investors.

The document takes a cautious approach towards sectoral measures. In general, the Commission has a consistently less favourable view of sectoral state aid measures. But it also recognises that that many

private sector venture capital funds focus on specific innovative technologies or even sectors, and it will therefore be prepared to accept measures with a sectoral focus where this has a commercial as well as a public policy logic.

## **Conclusion**

The new communication represents a significant innovation in state aid control, in several respects. Although of a rather different nature, it can be seen in the context of other new developments such as the procedural regulation and exemption regulations: like them it is an attempt to bring state aid control instruments up to date so that they reflect both reality and the Commission's priorities. The Commission will no doubt gain experience of applying it and has therefore explicitly reserved the right to adjust it in the light of that experience. In principle however the communication has been adopted to apply for 5 years.



## Revision of the 1997 Notice on agreements of minor importance (de minimis Notice)

*Luc PEEPERKORN, Directorate General Competition, Unit A-2*

**The Commission adopted on the 16<sup>th</sup> of May a draft de minimis Notice and invites comments from industry, consumer organisations and other interested third parties. The revision is part of the Commission's review of the EC competition rules. By defining when agreements between companies are not caught by the prohibition of Article 81(1) of the Treaty, the Notice will reduce the compliance burden for companies, especially smaller companies. At the same time DG Competition will be better able to avoid examining cases which have no interest from a competition policy point of view and will thus be able to concentrate on more important cases.**

### Introduction

During the discussions leading to the adoption of Council Regulations 1215/99 and 1216/99 <sup>(1)</sup> and Commission Block Exemption Regulation 2790/1999 <sup>(2)</sup> (the BER on vertical restraints) the Member States and the Commission discussed the need to review the current de minimis Notice <sup>(3)</sup> once the new EC competition rules for vertical restraints were adopted. It was considered necessary to assure coherence between the new BER on vertical restraints and the de minimis Notice. In addition, the Council asked in a declaration issued on adoption of the two Council Regulations '...to consider that clauses on territorial protection concerning active sales included in the hardcore list should not inhibit the establishment of territories allocated to distributors, including franchisees, if, due to very small market shares, such agreements have no adverse impact on either competition or market integration.'

The Commission in its counter declaration took note of the recommendation. It was clear from the discussions that a review of the de minimis Notice would be required, at least to harmonise it with the

BER on vertical restraints. This review has become even more necessary now that the new EC competition rules on horizontal agreements have also been adopted. <sup>(4)</sup>

### Key features of the proposed new de minimis Notice

The draft de minimis Notice has the following key features distinguishing it from the current de minimis Notice:

- 1) It only deals with the question of what is not an appreciable restriction of competition.*

The current de minimis Notice is somewhat ambiguous. It refers both to what is an appreciable restriction of competition and an appreciable effect on trade between Member States without separating the two. However, it uses only market share thresholds to quantify appreciability. Market share thresholds of the level proposed in the enclosed new draft de minimis Notice are useful to define what is not an appreciable restriction of competition. However, they are not good indicators of what is an appreciable effect on trade between Member States. For the latter, which is directly linked to market integration, a turnover threshold, possibly combined with a much lower market share threshold, could be a good indicator. Therefore, the new de-minimis Notice with higher market share thresholds can no longer be linked to the issue of effect on trade in the way it is done under the current Notice.

Furthermore, in the discussion on the reform of Regulation 17 an important aspect is the delineation of the jurisdiction between EC law and national law. In the proposed new Regulation 17 this delineation is foreseen along the lines of whether

<sup>(1)</sup> OJ L 148, 15.6.1999, p. 1 and p. 5.

<sup>(2)</sup> OJ L 336, 29.12.1999, p. 21.

<sup>(3)</sup> OJ C 372, 9.12.1997, p. 13.

<sup>(4)</sup> Commission Block Exemption Regulation 2658/2000 on specialisation agreements and Commission Block Exemption Regulation 2659/2000 on R&D agreements, OJ L 304, 5.12.2000, p. 3 respectively p. 7, and Commission Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, OJ C 3, 6.1.2001, p. 2.

trade between Member States is affected or not. <sup>(1)</sup> In the light of the final outcome of this discussion, it may be necessary to define in a separate notice what appreciable effect on trade means. This discussion can not and should not be pre-empted at this stage.

2) *The market share thresholds are raised from 5% to 10% for agreements between competitors and from 10% to 15% for agreements between non-competitors.*

In line with a more economic approach it is proposed to raise the current thresholds. In the horizontal and vertical guidelines <sup>(2)</sup> indications are already given that for non-hardcore restrictions competition concerns can not be expected when companies do not have a certain degree of market power. The proposed thresholds take account of this while at the same time staying low enough to be applicable whatever the overall market structure looks like. This more economic approach fits in with the current practice of most Member States and the Commission.

It is proposed to keep different thresholds for agreements between competitors and agreements between non-competitors. The latter concern usually vertical relationships where the product of the one is the input of the other. This means that the exercise of market power by one of the parties to the agreement (higher price of its product) would normally hurt the demand for the product of the other party. The companies involved in the agreement therefore usually have an incentive to prevent the exercise of market power by the other. The opposite is true for agreements between competitors. As both parties produce substitute products, the exercise of market power by one party may benefit the other party to the agreement. This may provide an incentive to behave more easily in an anti-competitive way.

3) *It contains a 5% market share threshold for situations of cumulative effect.*

The current de minimis Notice (paragraph 18) excludes from its benefit agreements operated on a market where 'competition is restricted by the cu-

mulative effects of parallel networks of similar agreements established by several manufacturers or dealers.' This means in practice that firms operating in sectors like the beer and petrol sector can usually not benefit from the de-minimis Notice. The proposed draft Notice seeks to repair this by introducing a special but lower market share threshold of 5% for such markets. In line with the economic approach chosen and the Guidelines on Vertical Restraints (in particular paragraphs 73, 142 and 189 thereof), the draft text clarifies that cumulative effects are created by parallel networks of agreements which have similar effects on the market.

4) *It contains the full hardcore list of the horizontal and vertical Block Exemption Regulations.*

The current Notice contains a very wide hardcore list in the field of vertical restraints. The exclusion from the benefit of the current Notice of 'vertical agreements which have as their object to confer territorial protection to the participating undertakings or third undertakings' (paragraph 11, current Notice) effectively excludes all restrictions on active and passive sales in any type of distribution agreement. For vertical agreements the new Notice takes over the hardcore list of the BER on vertical restraints, which allows certain sales restrictions in particular types of distribution agreements. For horizontal agreements the new Notice takes over the hardcore list of Block Exemption Regulation 2658/2000.

The Council declaration invited the Commission to consider that hardcore clauses concerning active sales restrictions should not inhibit the establishment of distribution territories, including for franchisees, if, due to very small market shares, such agreements have no adverse impact on either competition or market integration.

On economic grounds it would be justifiable to limit or eliminate the hardcore list for very low market share levels. It is perfectly legitimate to argue that companies with very low market shares are not able to restrict competition by for instance restricting active sales into other territories.

However, such special treatment of active sales restrictions would require an additional market share threshold because the threshold of 15% is considered too high to allow restrictions on active selling

<sup>(1)</sup> Article 3 of the Proposal for a Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ C 365 E, 19.12.2000, p. 284 - 296.

<sup>(2)</sup> Respectively Commission Notice – Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, see footnote 4, and Commission Notice – Guidelines on Vertical Restraints, OJ C 291, 13.10.2000, p. 1.

by dealers within a selective distribution system or franchise system. In addition, using a market share threshold for hardcore restrictions would create numerous market definition battles, as such market share threshold would work as a very sharp edge. Below the threshold a certain restriction would be considered outside Article 81(1), while above the market share threshold the same restriction would be hardcore and normally not exemptable. This is very different from the use of market share thresholds in Block Exemption Regulations, where they only separate agreements that are automatically exempted from agreements that may be exempted after individual scrutiny.

It is therefore proposed in the draft Notice that the hardcore list should be a copy of the hardcore lists from the relevant Block Exemption Regulations. This was supported by a majority of Member States' delegates in an informal expert meeting held on 2 March. In addition, it is made clear that this is without prejudice to the jurisprudence of the Community Courts, which indicates that hardcore restrictions may escape the prohibition laid down in Article 81(1) in particular in cases where the agreement does not affect trade between Member States because the parties only have weak positions on the markets concerned. <sup>(1)</sup> It is also made clear that agreements between SMEs are rarely capable of affecting trade between Member States.

## Conclusion

The draft de minimis Notice proposes to make the Notice coherent with the new rules for vertical and horizontal agreements. The draft Notice reflects an economic approach and incorporates the hardcore lists of the new Block Exemption Regulations.

With the increased market share thresholds the Notice will reduce the compliance burden for those agreements currently not covered by a block exemption regulation, especially agreements of smaller companies. At the same time the Commission's services will be better able to avoid examining cases which have no interest from a competition policy point of view and will thus be able to concentrate on more important cases.

The draft Notice on agreements of minor importance is published for comments in the Official Journal <sup>(2)</sup> and is also available on the internet at the following address:

<http://europa.eu.int/comm/competition/antitrust/deminimis/>

The Commission invites all interested parties to submit their written observations on the draft notice. Observations should be sent before the 20<sup>th</sup> of July 2001.

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<sup>(1)</sup> See the following judgements of the Court of Justice: Case 5/69 Völk v Vervaecke (1969) ECR 295; Case 1/71 Cadillon v Höss (1971) ECR 351; Case 19/77 Miller International Schallplatten v Commission (1978) ECR 131; Case C-70/93 BMW AG v ALD Auto-Leasing D GmbH (1995) ECR I-3439; Case C-306/96 Javico International and Javico AG v Yves Saint Laurent Parfums SA (1998) ECR I-1983.

<sup>(2)</sup> OJ C 149, 19.05.2001, p. 18.



## Distribution sélective et Internet

*Manuel MARTÍNEZ-LÓPEZ, Directorate General Competition, unit F.1.*

L'entrée en vigueur du Règlement CE n° 2790/99 de la Commission <sup>(1)</sup> au 1er juin 2000 et la publication au J.O. du 13 octobre 2000 des Lignes Directrices sur les restrictions verticales <sup>(2)</sup>, («le règlement» et «les lignes directrices» ci-après), ont parachevé la réforme en profondeur des règles communautaires de concurrence applicables aux accords de distribution. L'ampleur du changement est appréciable pour la distribution sélective, qui, pour la première fois, a vocation à être couverte par une exemption par catégories. La réforme a aussi mis à jour la politique de la Commission en matière de distribution via Internet y compris dans les réseaux sélectifs. De l'application de cette politique témoigne, parmi d'autres affaires, la clôture récente de l'examen des accords de distribution sélective notifiés par Yves Saint-Laurent Parfums, après que celui-ci a explicité que la vente par Internet n'est pas interdite par principe dans son réseau agréé <sup>(3)</sup>.

Pourtant, réconcilier la distribution sélective avec l'utilisation d'Internet comme canal de distribution n'est pas sans susciter des problèmes, d'autant que celle-ci est souvent bâtie sur la notion de qualité du conseil et du service au client, dispensés dans le point de vente physique. Ces problèmes peuvent être traités en abordant le cadre d'application des règles de concurrence en la matière, les effets concurrentiels positifs d'Internet comme canal complémentaire du réseau sélectif «physique» et, enfin, les zones d'ombre qui peuvent subsister par rapport aux critères applicables à la distribution sélective via Internet.

### Adéquation des critères de sélection et application du règlement

Aux fins d'application du règlement, pour qu'il y ait distribution sélective, il faut et il suffit que le fournisseur s'engage à vendre les biens contractuels uniquement à des distributeurs sélectionnés sur la base de critères définis et que les distributeurs

s'engagent à ne pas vendre les biens à d'autres revendeurs non agréés. Sous réserve des conditions générales d'application du règlement, l'exemption par catégories n'est pas subordonnée au contrôle a priori du caractère objectif et adéquat des critères de sélection aux propriétés ou à la nature du produit <sup>(4)</sup>. La distribution sélective s'affranchit ainsi de l'essentiel du précédent cadre d'analyse que fournissaient la pratique décisionnelle de la Commission et la jurisprudence des juridictions communautaires. En deçà du seuil non négligeable pour les produits de marque de 30% de part de marché, au contrôle administratif ex ante ou juridictionnel au cas par cas se substitue le contrôle du marché. Celui-ci déterminera ex post et en dernier ressort, si le choix d'une distribution sélective et les critères retenus, par ailleurs lourds de conséquences commerciales pour le fournisseur, satisfont l'attente du consommateur.

### L'interdiction de vente sur Internet comme restriction caractérisée dans le règlement

Paradoxalement, la contrepartie à cet assouplissement favorisant pour tout produit d'être distribué par un réseau sélectif est une attitude résolument favorable à l'utilisation d'Internet comme canal de vente au sein du réseau agréé. Aussi lorsqu'elle explicite son interprétation et sa politique vis-à-vis des restrictions caractérisées reprises à l'Article 4 du règlement, la Commission énonce-t-elle dans les lignes directrices le principe que la liberté pour le distributeur de faire de la publicité et de vendre via Internet devrait aussi être effective dans un réseau de distribution sélective <sup>(5)</sup>.

Ce principe est énoncé en rapport avec la restriction caractérisée visée par l'Article 4, alinéa c) du règlement. Celle-ci concerne la restriction des ventes actives ou passives aux utilisateurs finals par les détaillants agréés au sein d'un système de

<sup>(1)</sup> JO L336 du 29.12.1999, p.21

<sup>(2)</sup> JO C291 du 13.10.2000, p.1.

<sup>(3)</sup> Voir communiqué de presse IP/01/713 du 17.5.2001.

<sup>(4)</sup> C'est dans le cadre d'une éventuelle procédure individuelle de retrait du bénéfice de l'exemption que les lignes directrices prévoient un contrôle a posteriori de cette adéquation (Lignes Directrices, point 186). De même, le souci d'éviter les effets cumulatifs d'une couverture importante des canaux de distribution sélectifs dans un secteur donné fait l'objet aussi d'un traitement à posteriori, par la possibilité d'un retrait sectoriel du bénéfice de l'exemption (Lignes Directrices, point 189).

<sup>(5)</sup> Lignes directrices, ch III, section 3, point 53.

distribution sélective. L'application de l'Article 4 c) est le corollaire implicite de deux prémices dans les lignes directrices: puisqu'en bout de ligne d'Internet se trouvent des utilisateurs finals et toute restriction des ventes, actives ou passives, à de tels acheteurs dans un système sélectif est visée par le l'article 4 c), l'interdiction de iure ou facto d'exploiter un site Internet et, partant, sans doute, les restrictions sensibles à son utilisation, équivalent à des restrictions de telles ventes. Cette appréciation est faite sans préjudice, bien sûr, qu'une telle interdiction puisse aussi être appréhendée par la restriction visée à l'article 4 b) dans un système qui combine une exclusivité territoriale ou la nature sélective du réseau, dès lors que la mise sur Internet d'un produit est, en tant que telle, assimilée à une vente passive <sup>(1)</sup>.

In fine, il découle des lignes directrices qu'une telle interdiction prive les accords de distribution sélective de la protection juridique qu'offre le règlement, l'exemption individuelle de telles restrictions en vertu de l'Article 81(3) du Traité CE étant improbable pour la Commission <sup>(2)</sup>. Bien entendu, la non-applicabilité du règlement d'exemption n'exonère pas de l'obligation de démontrer qu'un accord interdisant l'utilisation d'Internet au sein d'un réseau sélectif tombe sous le coup de l'interdiction énoncée à l'Article 81(1). Cette obligation incombe à l'autorité de concurrence ou, devant une juridiction nationale, à la partie qui invoquerait une infraction à l'Article 81(1).

## Internet comme vecteur de distribution et de concurrence

Le principe de libre utilisation d'Internet dans les réseaux sélectifs posé par la Commission porte l'appréciation implicite qu'Internet permet de commercialiser les produits dans des conditions valorisantes, dans le cas des réseaux sélectifs dont les points de vente physiques et la qualité des services offerts, ont fait l'objet d'agrément. L'interaction avec l'utilisateur final, y compris par le rattachement au site de personnel qualifié, et la présentation des produits que permet Internet, situent la vente via le site dans le prolongement de l'offre de qualité que préservent les critères de sélection, quitte à être complétées par d'autres

critères spécifiques au site <sup>(3)</sup>. Toutefois, à défaut d'être utilisée, la possibilité qu'offrent au fournisseur les lignes directrices quant à la détermination de ces derniers ne saurait être opposable au distributeur agréé qui vend déjà les produits dans le point de vente physique. En effet, si le distributeur agréé dispose déjà d'un site et si le fournisseur d'une marque n'a pas édicté de critères, ce dernier devrait motiver un éventuel refus que les produits de sa marque y soient commercialisés.

Tout comme pour l'application du règlement à la distribution sélective, le principe de libre utilisation d'Internet fait abstraction de l'adéquation à la nature du produit. Cela se déduit de sa formulation même, car il n'est pas tempéré par des considérations tenant à la spécificité des marchés de produits concernés. Seules des raisons objectives à même de justifier une interdiction catégorique y dérogeraient <sup>(4)</sup>, ce qu'on peut concevoir, par exemple, pour des raisons de santé ou d'ordre publics.

Le caractère général se déduit aussi du fait que l'interdiction de mise d'un produit sur le Net au sein du réseau sélectif agréé n'est pas assimilée à une interdiction de vente par correspondance classique, que la Commission a pu estimer comme ne restreignant pas appréciablement la concurrence pour certains produits de luxe <sup>(5)</sup>. C'est que la vente par correspondance classique via catalogue multi-produits n'offre ni ne semble pouvoir offrir au consommateur la vitrine de présentation et l'interaction que peut offrir un site Internet. Les caractéristiques d'Internet et ses virtualités comme canal de commercialisation et comme vecteur d'intensification de concurrence à long terme peuvent donc expliquer l'attitude favorable à son développement d'une autorité de concurrence. Internet est un facteur de progrès technique favorisant l'investissement matériel et immatériel, susceptible d'abaisser les barrières à l'entrée et les coûts de transaction. Internet peut aussi dynamiser la concurrence tant au niveau inter-brand, en primant les fournisseurs innovants sachant adapter leur offre, qu'au niveau intra-brand, en primant l'efficacité dans la logistique des distributeurs. Certes, les virtualités que l'*e-commerce* recèle sont encore loin d'être matérialisées et les prévisions

<sup>(1)</sup> Lignes Directrices, points 50 et 51.

<sup>(2)</sup> Lignes directrices, point 46.

<sup>(3)</sup> Lignes directrices, point 51.

<sup>(4)</sup> Lignes directrices, point 52.

<sup>(5)</sup> Décision d'exemption de la Commission une procédure d'application de l'article 85 du traité CE [devenu article 81] du 16.12.1991 concernant le système de distribution sélective Yves Saint-Laurent Parfums (92/33/CEE), JOCE L12 du 18.1.1992, p. 24. Arrêt du TPI du 12.12.1996, « Groupement d'achat Edouard Leclerc contre Commission », Aff. T-19/92, Rec. 1996, p. II 1851.

chiffrées à ce sujet sont entachées d'incertitude, quand ce n'est d'exagération. Mais, tout en étant un vecteur d'achat effectif, les prévisions sur le e-commerce ignorent l'effet de levier que donne la comparabilité des offres au consommateur, qui peut ensuite s'adresser à son distributeur agréé au bout de la rue, pourvu de l'information glanée. Enfin, Internet favorise l'inter-pénétration économique entre Etats membres voulue par le Traité et rend le marché unique plus proche du citoyen. Par sa nature même, Internet est donc un vecteur de commercialisation affectant potentiellement le commerce entre Etats membres.

Au regard de ces facteurs, l'article 81 (1) sous c) vise en général des accords qui limitent les débouchés, le développement technique et les investissements, qui sont autant de domaines favorisés par Internet. Plus particulièrement, pour les accords de distribution, le Tribunal a pu estimer que « un système de distribution sélective qui aurait pour conséquence d'exclure certaines formes de commercialisation capables de vendre les produits dans des conditions valorisantes, par exemple dans un emplacement ou espace adapté, aurait pour seul effet de protéger les formes de commerce existantes de la concurrence des nouveaux opérateurs et ne serait donc pas conforme à l'Article 85 [devenu depuis Article 81], paragraphe 1, du Traité » et enjoint la Commission à veiller à ce que les formes modernes de distribution ne soient pas exclues des réseaux sélectifs de manière injustifiée <sup>(1)</sup>. Il semble donc relativement aisé de considérer qu'un accord interdisant l'utilisation d'Internet, forme moderne de distribution s'il en est, remplirait les conditions d'application de l'interdiction, sous réserve que les effets de l'accord sur la concurrence ne soient pas insignifiants.

### **Les restrictions et effets indirects résultant des critères d'utilisation d'Internet**

La position d'une interdiction catégorique de promotion et vente sur Internet de la part du réseau sélectif agréé dans les accords avec le fournisseur à l'égard de l'article 81(1) du traité et du règlement d'exemption ne semble donc pas difficile à établir. Il n'en va pas de même vis-à-vis des diverses restrictions qui peuvent résulter des critères de sélection des sites Internet, sur lesquelles les lignes directrices ne fournissent pas d'orientation. Pour reprendre une terminologie désuète, entre le blanc d'une permission sans réserves et le noir d'une interdiction catégorique, peuvent apparaître des

«zones grises». Certaines obligations peuvent affecter la concurrence inter-brand à l'intérieur des sites, ce qui peut aggraver un effet cumulatif éventuel. En outre la pratique d'application du règlement dépendra selon que l'obligation contractuelle restreignant l'utilisation d'Internet, de par sa noirceur, puisse ou non être assimilée à une restriction des ventes à l'utilisateur final.

### **Effets inter-brand**

Des effets cumulatifs dans les marchés à distribution multi-marques peuvent provenir du souci des fournisseurs d'obtenir une place de choix dans le site du distributeur. Un tel souci, par ailleurs rationnel dans la perspective individuelle de chaque fournisseur, peut se traduire dans la réservation soit d'espaces permanents dédiés pour les produits de sa marque ou de son groupe dans le site soit d'espaces transitoires dans la home page lors du lancement de nouveaux produits, dans le cas des produits connaissant une forte saisonnalité ou des pics de vente importants, par exemple à Noël. Or la «navigabilité» du site, que ce soit techniquement ou visuellement, appelle des arbitrages par le distributeur confronté à de telles demandes. L'effet concurrentiel des solutions possibles peut varier selon que le fournisseur fasse de la réservation d'espace préférentiel une condition sine qua non d'agrément ou que le distributeur réserve unilatéralement de tels espaces aux marques et produits les mieux vendus. Le pouvoir de négociation des parties et, à terme, la réalité commerciale des ventes effectives via Internet détermineront l'existence ou non d'un effet cumulatif et la magnitude du problème.

D'autres effets négatifs inter-brand peuvent résulter d'un échange d'information entre le fournisseur et le distributeur ou d'obligations de reporting par rapport aux ventes des marques concurrentes dont le niveau de détail ou de désagrégation irait au-delà du nécessaire pour connaître le positionnement de la marque en général. En fonction du degré de concentration du marché et de la part des réseaux sélectifs, la transparence résultante peut être plus préjudiciable que bénéfique dans des marchés où la concurrence est rigidifiée par une sélectivité très stricte.

### **Restrictions indirectes à l'utilisation ou au développement d'Internet**

Les critères d'agrément spécifiques pour Internet ne devraient pas viser a priori un but différent des

<sup>(1)</sup> Galec c. Commission, précité, points 122, 170.

critères pour le point de vente physique. Ce postulat a comme conséquence qu'une très grande différence dans les critères peut être à même de décourager l'utilisation de sites par certains distributeurs. Cela peut être le cas pour des exigences de service de conseil plus étendues que celles applicables au point de vente physique, éventuellement assorties d'obligations disproportionnées de compétences linguistiques pour fournir du conseil aux demandes des consommateurs d'autres Etats membres. De telles exigences peuvent grandement limiter l'utilisation d'Internet dans un secteur et réserver de facto la e-distribution à quelques chaînes de distribution en substituant à la sélection par la concurrence le choix du(des) fournisseur(s).

La limitation des liens avec d'autres sites imposée au site du distributeur agréé, tout comme la prise en compte de la nature et de la répartition du chiffre d'affaires des différentes activités du site comme critère d'agrément peut, selon la formulation précise, discriminer des distributeurs agréés exerçant une activité multi-produits. Il peut en découler une exclusion a priori de certains canaux de distribution et une restriction de la capacité du distributeur agréé d'exploiter son site. Cela ne serait pas sans rappeler la jurisprudence du Tribunal à ce sujet, mentionnée précédemment.

D'autres limitations peuvent viser directement les ventes dans le site, dès lors qu'elles limitent le nombre de produits pour chaque transaction. C'est dans la mesure où la limitation se fait en tenant compte d'une quantité jugée raisonnable et normale pour l'achat d'un consommateur final, en rapport avec l'étanchéité du réseau sélectif, qu'une telle limitation peut sembler n'être pas assimilable à une restriction des ventes aux consommateurs. En revanche, il n'est pas aisé de voir comment une limitation quantitative des ventes totales du

distributeur agréé via le site pourrait être objectivement justifiée pour autant que le distributeur ne délaisse pas son activité dans le point de vente physique et son volume d'achats total. Une telle limitation peut être énoncée en chiffres absolus ou, indirectement, comme un ratio de ventes dans le site par rapport au point de vente physique. Les deux modalités peuvent rapidement constituer des entraves au développement de la vente par Internet au détriment des ventes au consommateur.

La pratique d'application du règlement et des lignes directrices sur la distribution sélective et Internet devra encore se nourrir d'expérience. Cette brève revue essentiellement qualitative permet de conclure à deux remarques générales. D'une part, la plupart des problèmes éventuels de concurrence que peut soulever un contrat de distribution sélective couvrant la vente via Internet ne sont pas foncièrement différents de ceux du monde physique. D'autre part, les obligations incluses dans un contrat d'agrément Internet dans un réseau sélectif seront d'autant moins problématiques qu'elles seront proches des obligations du contrat pour le point physique.

La politique énoncée par la Commission sur la question d'Internet dans les lignes directrices, adoptées le 24 mai 2000, semble se situer dans le prolongement du Conseil Européen qui, réuni à Lisbonne deux mois auparavant, a affirmé notamment que «pour exploiter pleinement le potentiel électronique de l'Europe, il faut créer les conditions qui permettront au commerce électronique et à Internet de prospérer <sup>(1)</sup>. S'il est clair que la mise en œuvre de la politique de la concurrence en la matière n'est pas une condition suffisante pour atteindre cet objectif, elle n'en demeure pas moins nécessaire.

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<sup>(1)</sup> Conseil Européen de Lisbonne les 23 et 24 mars 2000, Conclusions de la Présidence, point 10.



## Structural versus behavioural remedies: American hesitations in the telecommunications sector

*Christophe de LA ROCHEFORDIERE, Directorate General Competition, unit C-1*

One of the peculiar aspects of network industries such as the telecommunications sector is the existence of vertically integrated incumbent operators, both dominant upstream on the market of access to infrastructure and downstream on the various retail services markets. While access rules based on sector specific legislation normally allow for competition to develop rapidly on the upstream infrastructure markets and long distance calls retail markets, the incumbents' gatekeeper position on the local loop infrastructure makes it extraordinarily difficult to develop competition on the downstream market for the provision of local telecom services. The latter phenomenon raises the question of the desirability of structural vertical separation of the incumbents' activities.

Arguably structural vertical separation increases the transparency of the incumbents' respective upstream and downstream costs and margins and facilitates the proof of any cross-subsidisation between upstream and downstream activities, or of any discrimination between the incumbents' own downstream activities and their competitors on the retail market. One of the main arguments in favour of structural remedies is the difficulty to monitor behavioural measures: indeed, regulators are not equipped to monitor the incumbents' detailed behaviour and prices. Behavioural remedies lead to a cumbersome set of rules, which can hinder competition, instead of promoting it. In particular they often lead to price fixing policies, which are contrary to basic principles of market economy. Instead of this, structural remedies render most of the regulatory package unnecessary, allow for basic competition rules to apply and reduce the scope for anti-competitive behaviour. They may allow for the alleviation or even the cancellation of price regulation on retail prices, and potentially its limitation to a key set of access prices. The benefit of structural separation is normally expected to be a level playing field between the incumbent's and its competitors' retail activities. Increased competition over the long run leads to increased efficiency and lower prices for consumers.

Against such pro-structural arguments, the incumbents' main habitual lines of defence are to underline the high restructuring and social costs

involved, the increased transaction costs, and to suggest that there is thus a total absence of benefits for the end-users. The outcome, according to incumbents, would be highly damaging for consumers and would increase welfare costs.

### First case of structural separation in the USA telecom sector

In 1984-85, shortly after the AT&T divestiture, the FCC investigated structural measures to be imposed upon regional Bells (<sup>1</sup>) in order to prevent cross-subsidisation and exclusionary pricing. In 1985, however, despite preliminary orientations in favour of structural separation, the FCC decided not to impose on the Bells structural vertical separation between their wholesale and retail operations.

This issue however resumed when it became clear after the 1996 Telecom Act that regional Bells would enter the long distance and data broadband markets, provided they could demonstrate that they had opened their local market to competition. Conflicts over access charges and conditions between long distance and alternative local carriers (Competitive Local Exchange Carriers, 'CLECs') on one side, and the regional Bells on the other became more crucial. Structural vertical separation of regional Bells was in this context viewed by competitive carriers as the best way to circumvent the existing asymmetric situation in local markets. In June 1997, the Connecticut Department of Public Utilities issued an Order approving a plan for the structural separation of Southern New England Telephone's ('SNET') retail and wholesale business units. As part of the plan, SNET was to transfer all of its retail operations to SNET's competitive local exchange carrier affiliate, SNET America, and to discontinue its retail offerings. The company complied with the order and implemented the split.

### AT&T and other competitive carriers against Verizon

This first case created expectations on the possibility to implement swiftly vertical separation of

(<sup>1</sup>) The regional Bells or « Baby Bells » are the local incumbents, which were created as a result of the AT&T divestiture of 1982-84.



regional Bells. Experience elsewhere however demonstrated that this was not an easy route. The main protagonists of this battle before State regulatory authorities have been Verizon, AT&T and local carriers.

Verizon is a typical large regional Bell enjoying considerable market power owing to its control of access to end-users, mainly in the North-Eastern states where it is present (although it is altogether present in 31 US states). It was formed in 1998 as the result of the merger between Bell Atlantic and GTE (completed only in 2000). It is one of the most important telecommunications companies in the US. By the beginning of 2001 it held about 63 million access lines <sup>(1)</sup>. The company generated US\$ 65 billion income in 2000 and has 260,000 employees. Verizon is an extremely profitable company: in 2000 it generated US\$ 11.8 billion net income.

Against this wealthy situation, the financial situation of AT&T, which faces fiercer competition on its core business in the long distance market, is less comfortable. In 2000, while its turnover of US\$ 65 billion was comparable to Verizon's, its profits decreased from US\$ 5.4 billion to US\$ 3.4 billion <sup>(2)</sup>. The management reacted to the erosion of profitability by launching in late 2000 an ambitious restructuring programme which will result in the creation of four new companies operating under the AT&T brand, providing wireless, broadband, consumer and business services. The structural separation of operations is expected to result in higher efficiency and increased value of the consolidated company.

AT&T and other long distance or alternative local carriers have regularly argued that Verizon's access prices are too high and that other access conditions to its network do not reflect Verizon's own practice with its downstream retail activities and are therefore discriminatory. In March 1999 several competitive carriers, including AT&T, brought the matter before a State regulatory agency, the Public Utilities Commission (PUC) of Pennsylvania. In their petition the parties argued that structural separation was the most efficient tool to ensure local telephone competition where a large incumbent monopoly controls the local access market.

On 26 August 1999, the PUC issued the Global Telephone Order (GTO) which found that Verizon, the local incumbent controlling 90% of

the local business market and almost 100% of the local residential market, had abused its market power by providing its competitors less than comparable access to its network or engaged in other discriminatory conduct. In Chapter XVI of the GTO, the PUC recalled *'the serious conflict of interest and opportunity for anticompetitive conduct associated with an incumbent local exchange carrier (ILEC) that provides both retail services directly to local service customers and wholesale services to other telecommunications carriers competing for those same local service customers.'* <sup>(3)</sup> The PUC went on arguing that *'The functional/structural separation issue arises because of BA-PA's (Bell Atlantic Pennsylvania, now Verizon) dual role as both supplier and competitor to other local exchange carriers who must rely on BA-PA for the ordering, provisioning, maintenance, and operation of network elements that BA-PA's competitors need to provide their own local services to customers. If the potential conflict of interest created by this dual role is not adequately addressed, an unlevel playing field will be created, which will severely hamper the development of a new, vibrant and effective competitive telecommunications market in Pennsylvania.'*

Verizon in its defence had argued in favour of a mere functional separation between its wholesale and retail activities. The PUC found *that the non-structural remedy proposed by BA-PA would be less effective in preventing market power abuses and more costly to enforce. This is because a non-structural approach would require continuing regulatory oversight and violations are more difficult to detect.* It concluded that the incumbent's *overwhelming competitive presence and concomitant ability to exercise market power, including the ability to provide itself with anticompetitive cross-subsidies and the opportunity and incentive to discriminate against competing telecommunications carriers in the provision of wholesale services, strongly supports our conclusion that structural separation is necessary to provide the local service competition.* This order from the PUC was clearly a victory for competitive carriers who welcomed it and considered it to be a landmark decision.

Verizon reacted vigorously. It neither cooperated in the new proceeding procedure nor even less implemented the structural separation order, arguing that it was both illegal and unworkable at reasonable cost. It sued the State in Pennsylvania's

<sup>(1)</sup> Source: Verizon, <http://newscenter.verizon.com/>

<sup>(2)</sup> Source: AT&T, [www.att.com](http://www.att.com), Annual report 2000.

<sup>(3)</sup> Available on the PUC's web site, <http://puc.paonline.com/>

Commonwealth Court for lack of legal standing of the PUC to order such action. The Court in October 2000 rejected Verizon's submission and confirmed the PUC's authority to order structural separation. Verizon also asked the Supreme Court of Pennsylvania to hear its case, which the Court however denied.

Verizon estimated that the costs of structural separation of its operations in Pennsylvania would be considerable –at least in the magnitude of US\$ 1 billion, plus 300 million per year– and that they would outweigh any foreseeable benefits. It argued that the plan would be harmful to consumers who would have to bear additional costs per line of US\$ 60 to 80 per year, and would threaten 7.600 jobs throughout the state <sup>(1)</sup>. AT&T responded to these arguments by commissioning an economic study concluding that the restructuring costs had been considerably inflated by Verizon and would not go beyond US\$ 41, i.e. less than 5% the cost announced by Verizon.

The battle reached its acme after a state administrative judge in January 2001 recommended the PUC to proceed with the structural separation plan. The judge considered that “by failing to provide verifiable cost studies, Verizon did not meet its burden of proof that a full structural separation would cost approximately \$ 1 billion, as it contends” and that Verizon's failure warranted the implementation of the PUC's 1999 decision.

### Recent reversal of the regulator's approach

On 22 March 2001, however, Pennsylvania's PUC cancelled its 1999 order and released Verizon from the obligation of full structural separation of its retail and wholesale activities. The PUC considerably softened its previous decision by requesting a functional separation between the company's retail and wholesales activities, and imposing a “code of conduct” upon Verizon expected to be requesting non discriminatory behaviour from the company (the code of conduct was to be finalised later on). Fines for non-compliance with regulatory access requirements were increased. The PUC's new order thus reverted to a more conventional behavioural approach. The PUC, although it publicly criticised Verizon for a misleading information campaign, did not fine the company for the non-compliance with the 1999 order and considered that *Pennsylvania consumers will benefit more from the expeditious implementation of functional separation of Verizon's wholesale and*

*retail divisions (...) than they would from a structural physical division resulting in the likelihood of prolonged litigation and regulatory micro-management which even competitors do not see as a successful formula for bringing local telephone competition to Pennsylvania.* If Verizon does not accept the PUC order, which is very unlikely, it will face the possibility of full structural separation and the break-up of the company.

In its press release issued on 22 March 2001 the PUC declared that its new order ‘*strikes a workable balance between Verizon and its competitors who say full structural separation is the only way to hold Verizon accountable for its actions*’. However *functional* separation was not a compromise solution between the parties' opposite submissions but had rather been the core option defended by Verizon already throughout the 1999 proceedings, which the PUC rejected at the time. Instead of being sanctioned, non compliance with the law was thus rewarded with new, more favourable legislation meeting Verizon's core objectives. The local incumbent thus clearly won its fight against the regulator. Verizon welcomed the decision, considered that the PUC had backed up from a ‘*very dangerous idea*’ and announced that it would continue business as usual. The stock market reacted positively, and two months after the decision of Pennsylvania's PUC, which was followed in April by the FCC's decision to allow Verizon to develop long distance carrier activities in Massachusetts, the company's stock value had gained more than 10% in spite of the financial markets' current scepticism on telecom stocks.

This was a serious defeat for AT&T and the competitive carriers, the potential consequences of which extend far beyond Pennsylvania. The fight in favour of a structural separation of the regional Bell's upstream and downstream operations is an almost nation-wide conflict, for AT&T and other competing operators had filed similar petitions in several states.

Taking into account the previously underlined flaws of behavioural remedies with regard to monitoring and enforcement, it is doubtful that any straight jacket requirements imposed in the PUC's new code of conduct will be easy to monitor, nor efficient. Experience rather suggests that regulators and competition agencies are neither equipped to deal with the incumbents' day to day hindering practices, nor to assess the appropriateness of the incumbents prices, given the great complexity of costing models in the telecom industry: the PUC's own recognition in its 1999 order that ‘*a non-*

<sup>(1)</sup> Source: Verizon, <http://newscenter.verizon.com/>, January 26, 2001.

*structural approach would require continuing regulatory oversight and violations are more difficult to detect'* contradicts the new behavioural approach followed. Competitive local carriers even contended that the whole behavioural approach of the local loop unbundling requirements is flawed: *No rational company could be expected to do what BA-MA and other RBOCs (the regional Bells) are being asked to do in their current form: help competitors take away their customers. Compliance with any regulatory scheme that accommodates such a structural conflict of interest will be grudging in the best of times, deceptive in the worst of times, and expensive and vexatious all of the time.'* <sup>(1)</sup>

While it is too early at this stage to anticipate all the detailed implications of this decision by the Pennsylvanian regulator, it is clear that the standards in terms of transparency and pro-competitive conduct requirements have now, with the new decision, been set at a much lower level than in the 1999 order. There is no incentive for the company's downstream activities unit to maximise its profits, since the company's performance is only assessed at consolidated level: thus, predatory prices on the downstream market remains a strong temptation for the company if it can compensate losses with monopoly profits from upstream services. In any case, it shall remain very difficult to prove any discriminatory behaviour that Verizon's functional 'upstream unit' might engage in between its downstream unit and its competitors, since such relations shall not be governed by contractual arrangements between both parties, as it would have been the case if full structural separation had been implemented. Accounts of the two 'functional units' will remain merely notional, based on analytical accounting which involves complex assumptions on cost sharing, and do not offer the same reliability as the one warranted by audited accounts of an incorporated company. As a result, assessment of cost orientation will remain a very difficult exercise for any regulator. It is thus not surprising that the PUC's March 22 order was welcomed by Verizon as an unambiguous victory.

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It is worth noting that, while the constituency in favour of vertical structural separation in network industries is widening at an international level, it remains extremely difficult to mandate such

measures in the telecommunications industry: in the USA, the only experience so far has been the implementation of structural separation in Connecticut. At this stage it is probably too early, while this debate is far from being closed, to draw definitive conclusions on the remedies, whether behavioural or structural, that US regulatory and antitrust authorities will opt for.

So far the message from the new administration seems to have been *softer rules – tougher punishments*: the current approach is obviously to soften the behavioural constraints upon regional Bells, by progressively allowing them to compete on long distance and local broadband markets. On the other hand, the new FCC Chairman recently asked Congress for the power to impose higher fines against regional Bells that engage in anti-competitive behaviour. If confirmed, and given the extreme difficulty to assess and prove day to day anti-competitive behaviour, it remains to be seen whether this will prove to be the appropriate policy mix in a sector where local incumbents exercise considerable market power. The FCC and the States regulators may have to reassess the structural remedies option if over time the deceiving results of the first years of local loop unbundling are confirmed, i.e. if unbundling does not deliver what it was meant to, competition in the local telecommunications markets.

This debate is important for Europe, where the policy mix in the field of telecommunications has so far by and large privileged behavioural approaches. The liberalisation of telecommunications markets has required an extensive regulatory package – the second generation of this package is presently being discussed. The most recent legislative step was the adoption of the EC Regulation mandating access to incumbents' local loop <sup>(2)</sup> throughout the Community, which entered into effect on 2 January 2001. The behavioural approach followed requires detailed legislation based on the ONP (open network provision) principles and a cumbersome hands-on monitoring. National regulatory agencies have for this purpose been set up in each Member State and been entrusted to monitor the incumbents' practices, particularly their access and retail prices. The Commission additionally ensures compliance by the Member States with the Community sector specific legislation in place, which requires numerous infringement proceedings. Only in exceptional circumstances and for ring-fenced

(1) Source: December 17, 1999, Memorandum in support of the consideration of the structural separation of Bell Atlantic's wholesales and retail operations submitted by NextLink, Global NAPs, COVAD Communications, RCN-BeCo Com, available on [http://www.state.ma.us/dpu/telecom/99-271/Structural\\_Separation/Nextlink\\_et\\_al.htm](http://www.state.ma.us/dpu/telecom/99-271/Structural_Separation/Nextlink_et_al.htm)

(2) EC Regulation 2887/2000, 18 December 2000, OJ L 336, 30.12.2000.

purposes did Community policies privilege structural remedies in the telecommunications sector: the 1999 Cable Directive, based on Article 86 of the EC Treaty, required telecom incumbents to incorporate their cable operations into a separate entity.

However, as outlined in the '1999 Review' which preceded the new regulatory package proposed by the Commission in 2000 for electronic communications services <sup>(1)</sup>, sector specific legislation is by nature temporary and should over the long run be

phased out in order to bring back competition conditions in the telecom sector basically in line with normal competition rules. Before achieving this ambitious long run goal, which requires a very significant loss of market power by the current incumbents, EC policy makers may in due course have to revisit the initial implicit choice made in the nineties between structural and behavioural remedies. Meanwhile some incumbent operators will perhaps have discovered the beauty of structural separation in terms of efficiency gains on its own merits.

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<sup>(1)</sup> Available on [http://europa.eu.int/information\\_society/newsroom/index\\_en.htm](http://europa.eu.int/information_society/newsroom/index_en.htm)



# Use of EC Competition Rules in the Liberalisation of the European Union's Telecommunications Sector: Assessment of Past Experience and some Conclusions <sup>(1)</sup>

*Herbert UNGERER, Directorate General Competition, unit C-2*

The liberalisation of telecommunications represents one of the most fundamental structural changes to which EU competition policy has contributed to date and forms now the backbone of the e-Europe policy, which has become a central Commission policy line. The question remains which lessons can be drawn from that experience. With this objective in mind this report reviews the past experience of application of competition rules in the sector and addresses the question about a generalisation of this experience in its conclusions.

## I. Background

- In *British Telecommunications* <sup>(2)</sup>, the Court of Justice confirmed that EU competition rules applied to the telecommunications sector. This established legal limits to the monopoly structure of the sector, as well as a requirement to act for the Commission, in order to pre-empt future complaints and lengthy legal procedures.
- From 1985 onwards, the 1992 Single Market Program provided a strong political incentive and framework particularly in the initial phase <sup>(3)</sup>.

The combination of these factors resulted in the issuing by the Commission of:

- The 1987 Telecommunications Green Paper which set a comprehensive policy framework for EU action in the telecommunications sector <sup>(4)</sup>.

The main subsequent stages were:

- The 1992 Review, resulting in the decision on full liberalisation by 1<sup>st</sup> January 1998. The results of this report later formed the core action of the Bangemann report;

- The 1995 Telecom Reform Package, integrating full liberalisation into EU legislation, subsequently adopted during 1996-1997;
- The Reform Package served as a basis for the Community's position in the WTO negotiations on the liberalisation of telecom services, agreed in 1997. The requirement for Member States to spell out clear commitments in the context of the schedule set out in that agreement further stabilised the process;
- Full liberalisation on 1 January 1998;
- The convergence debate, starting fully with the Convergence Green Paper <sup>(5)</sup>;
- The Telecom Reform Package of July 2000, aiming at consolidating the *acquis* in telecom liberalisation and integrating convergence principles into the Community's legislative framework.

This latest development has culminated in the political agreement by Council on the Reform Package in April 2001 opening the way towards final adoption by the European Parliament and the Council in the second stage of the codecision procedure. This latest reform package integrates further competition law principles into the regulatory framework, in particular as regards the use of market definitions and the concept of dominant positions as developed under competition law as the basis for future regulation of the sector. The analysis of these aspects falls outside the objectives of this report. <sup>(6)</sup>

<sup>(1)</sup> At the time of writing this report the author was Advisor for the Directorate Information, Communication and Multimedia. He is now head of the Media Unit. Shortened version. Personal views of the author only.

<sup>(2)</sup> *British Telecommunications*, OJ L 360/36 (1983), on appeal in *Italy v Comm'n*, Case 41/83 1985 ECR 873 (C.J.).

<sup>(3)</sup> A similar role is now being played by the e-Europe programme and the political cover by the Lisbon and Feira European Councils for the July 2000 telecom reform package.

<sup>(4)</sup> European Commission, *Towards a Dynamic European Economy—Green Paper on the Development of a Common Market for Telecommunications Services and Equipment*, COM (87) 290 (1987).

<sup>(5)</sup> Green Paper on the convergence of the Telecommunications, Media, and Information Technology Sectors and the Implications for Regulation, COM (1997) 623.

<sup>(6)</sup> See however analysis elsewhere in this issue and Commission Working Document on Proposed New Regulatory Framework for Electronic Communications Networks and Services – Draft Guidelines on market analysis and the calculation of significant market power under Article 14 of the proposed Directive on a common regulatory framework for electronic communications networks and services, COM (2001)175, 28 March 2001.



## II. Use of Article 86

A major innovation and a unique feature of the EU telecommunications liberalisation drive were the extensive use of Article 86 powers by DGCOMP.

Based on the positions set out in the 1987 Telecommunications Green Paper the Commission adopted in 1988 respectively 1990 two directives based on Article 86(3) with a view to implementing the major liberalisation goals of the Green Paper. On 16 May 1988 it adopted the Telecommunications Terminal Directive (88/301/EEC) <sup>(1)</sup> which opened the markets for telecommunications terminal equipment on which most European telecommunication administrations enjoyed monopoly rights at that time. The Directive set out in particular the obligations for the Member States to withdraw all special and exclusive rights with regard to terminal equipment and to ensure that economic operators had the right to import, market, connect, bring into service and maintain terminal equipment.

The opening of the telecommunications services market was initiated by the second Directive, the so-called Services Directive of 28 June 1990 <sup>(2)</sup>. This Directive had a structure very similar to the Terminal Equipment Directive. It provided for the removal of special and exclusive rights granted by Member States for the supply of all telecommunications services other than voice telephony.

Given the political significance of these directives as regards their substance, but perhaps even more as regards the nature of the legal act taken, both decisions were challenged in the Court of Justice by a number of Member States <sup>(3)</sup>. In its Judgement of 19 March 1991 on the Terminal Equipment Directive <sup>(4)</sup> and its Judgement of 17 November 1992 on the Services Directive <sup>(5)</sup> the Court confirmed the legality of the Directives in all essential points.

From the Commission's point of view two conclusions could be drawn from these Judgements as regards the further development of European telecommunications policy:

— First, the Court had confirmed the Commission's power to adopt directives under Article

86(3) in order to clarify obligations of the Member States deriving from this article. It had also confirmed that the Commission could clarify the obligations of the Member States in a specific sector and that this power could go as far as requiring Member States to withdraw special and exclusive rights <sup>(6)</sup>.

- Secondly, the Court had confirmed that where the withdrawal of special or exclusive rights can be required, the Commission could also set out the conditions in order to make the abolition of special and exclusive rights effective <sup>(7)</sup>. Examples for such conditions in the Services Directive are the provisions concerning the authorisation of services or the provisions on publication requirements. In political terms such conditions made it possible to link the liberalisation measures into the general policy measures for the sector and ensure the creation of a coherent framework at Community level.
- The Court ruling allowed taking a highly proactive stance with regard to further application of Article 86(3) Directives for advancing liberalisation. Universal service goals (services of general economic interest in the sense of Article 86(2)) were to be achieved with the 'least restrictive means'.

Subsequently, the Commission adopted a series of Directives based on Article 86 liberalising satellite communications, mobile communications and use of Cable TV networks for telecommunications purposes. These series of Article 86 Directives (issued as amendments of the original Telecommunications Services Directive) culminated in the 1996 Full Competition Directive establishing the date of full liberalisation on 1 January 1998 that was the ultimate step and decisive for the success of the overall policy. The particular issue dealt with was the abolition of the derogation under Art. 86(2) for the public telecommunications network and for public voice telephony.

The very basis of this pro-active approach in the telecommunications sector was that the Commission recognised the objective of universal service in the sector, but that it strongly emphasised proportionality of measures to secure this goal. It

<sup>(1)</sup> Commission Directive 88/301/EEC, on competition in the markets in telecommunications terminal equipment, OJ L 131/73 (1988).

<sup>(2)</sup> Commission Directive 90/388/EEC, on competition in the markets for telecommunications services, OJ L 192/10 (1990).

<sup>(3)</sup> France, with Germany and other Member States joining, tested the Directive in the Court.

<sup>(4)</sup> France v. Comm'n, Case C-202/88, 1991 ECR I-1259 (C.J.).

<sup>(5)</sup> Spain v. Comm'n, Joined Cases C-271/90, C-281/90 and C-289/90, 1992 ECR I-5833 (C.J.).

<sup>(6)</sup> Going substantially beyond the approach in the first Transparency Directive – the first Commission Directive based on Article 86(3)

<sup>(7)</sup> Laying in effect the foundations of what could develop into an «effects doctrine» for the application of Article 86

generated, by broad consultation exercises, the general conviction that this task could be secured by less restrictive means than retention of monopoly rights, e.g. by financial contributions or the creation of universal service funds. The telecommunications sector is now seen as the best demonstration in the Community that the goals of competition and public service can therefore be complementary and mutually reinforcing <sup>(1)</sup>.

Another important result of the work was the clarification of procedures. Steps were taken to ensure measures in this area to have a similar degree of transparency as other measures in the competition field. Particularly, the introduction of a two-month public comment period and the establishment of consultation procedures with the Council and the European Parliament were of critical importance.

### III. The GlobalOne Case

A major factor in the success of the liberalisation programme was the screening of the major strategic alliances which started to take shape during the mid-nineties in anticipation of liberalisation and which commanded substantial Member States' interests and attention. At the time these alliances qualified as co-operative joint ventures and were subject to screening under Regulation 17, Articles 81 and 82, TEC<sup>2</sup>.

The basic situation was that in the existing pre-1998 market environment (with monopolies still persisting) these preparatory moves by the large incumbents would not have qualified for exemption under Article 81(3), given the potential of leveraging existing monopoly power into the new markets shaped by liberalisation and technological development. However, instead of taking a static approach, a dynamic solution was chosen. The Member States concerned were encouraged to change market conditions (by accelerating liberalisation), in order to make a clearing of the alliances (with conditions) possible. The dynamics of the process thus created a parallelism of interest (in accelerating liberalisation) between incumbents (in order to have their alliances cleared), Member States (in order to allow the development of the potential of their national markets) and the

Commission (in order not to be obliged to block new services and new technologies). This was probably the turning point in the liberalisation exercise. It created substantial political impetus for rapid implementation of the legislative liberalisation framework by key Member States, both in Council and at national level for preparing national legislation in time and creating a national infrastructure of NRAs <sup>(3)</sup>.

In this context, the Global One case stands out, both in its own right and as a precursor to other alliances, which followed.

The GlobalOne case concerned a combined alliance of DT (Deutsche Telekom) and FT (France Telecom), the first and second largest player on the European telecommunications market, and a global link-up with Sprint, one of the major US carriers, with a number of associated transactions <sup>(4)</sup>. The objective of the venture was to offer advanced telecom services on a trans-European and global basis.

The details of the venture were set out in the Notices published in the framework of the procedures under Regulation 17, and in the final Decision by the Commission <sup>(5)</sup>.

It became during the analysis undertaken under Article 81 and 82 rapidly clear that a link-up of that magnitude would not be acceptable under (then still existing) national monopoly market conditions. It was therefore up to the Member States regulating the national markets concerned to change those market conditions and to make firm commitments on accelerated liberalisation, as already mandated by the (then still draft) Full Competition Directive.

The outcome of the case is well known. The global venture was approved with a number of stringent conditions. But the main modification of the market environment which made the approval possible were the commitments by France and Germany to agree to the liberalisation of alternative infrastructure by 1st July 1996 and to accelerate preparation of the full liberalisation by 1st January 1998.

<sup>(1)</sup> The general approach of the Commission to public service goals was subsequently elaborated further in the two Commission communications on services of general interest of September 1996 (JO C 281, 26.9.1996) and September 2000.

<sup>(2)</sup> Subsequent to the amendment of the Merger Regulation in 1997 and its extension to cover also joint ventures with cooperative effects, most of them would now qualify for review under that regulation (as do most of current alliances cases).

<sup>(3)</sup> National Regulatory Authorities established according to the Article 86 Directives and the ONP framework. National Competition Authorities interact with the NRA, according to provisions of the respective Member States laws.

<sup>(4)</sup> GlobalOne is now entirely owned by FT.

<sup>(5)</sup> European Commission Notice on Atlas, OJ C 377/9 (1994), the alliance between DT and FT; European Commission Notice on Phoenix, JC184/11 (1995), the global link-up between Atlas and Sprint; Commission Decisions 96/546/EC and 96/547/EC of 17.7.1996, Atlas and Phoenix (OJ L 239, 19.9.1996, p.23 / p.57), subsequently referred to as GlobalOne.

With this outcome, synergies between Article 86 measures and scrutiny of cases under Article 81/82 played a determining role in the liberalisation of the European telecommunications sector.

#### IV. Collective Use of Case Procedures

While the application of Article 86 directives established the very base for the liberalisation of the telecommunications sector in the Community, and the full use of the synergy between the review of the alliances of the major market operators and the liberalisation goals was most striking in the screening of the GlobalOne alliance, four other instruments available under competition rules played a major role:

- The use of Article 86 Decisions directed at individual Member States, in order to reduce the transition periods;
- The opening of Article 86 procedures to progress the liberalisation of the mobile sector;
- The use of own initiative procedures under Regulation 17 in a highly focused manner;
- The ‘rediscovery’ and launching of sector inquiries under Article 12 of Regulation 17

#### *Transition periods*

Once the basic liberalisation dates were established under the Article 86 Full Competition Directive, the market distortions introduced by the transition periods for a number of Member States — without which political agreement and the passing of the 1995 package could not have been achieved — became a major issue. The use of Article 86 Decisions directed at individual Member States turned out to be a highly efficient means of reducing these distortions.

The Full Competition Directive foresaw that the Commission would review the justification for the transition periods politically agreed in Council. In the case of telecommunications, the Commission addressed Decisions based on Article 86(3) to the five Member States concerned that shortened the transition periods very substantially. It thus demonstrated that individual Decisions can be used successfully to reduce market distortions when they are caused by the maintenance of exclu-

sive and special rights no longer justified under the test of Article 86(2).

#### *Mobile communications*

While the early development of the advanced GSM digital technology throughout the eighties was one major factor in this success, the other one was the rapid introduction of the new technology into the marketplace by competition in Member States markets. The market introduction under competition led to the rapid attainment of economies of scale for the new technology — a major advantage with regard to other competing technologies on the world market.

At a time when there was still no general Directive on the liberalisation of mobile communications issued, the launching of a number of individual procedures <sup>(1)</sup> — directed at Member States that lagged the liberalisation of mobile markets in the other Member States — led to a substantial acceleration of liberalisation respectively to the establishment of non-discriminatory procedures for mobile licences. Most of the procedures could be terminated before the issuance of a Decision because the Member States concerned complied. Two cases gave rise to formal Article 86 Decisions <sup>(2)</sup>. The two decisions aimed at ensuring fair entry conditions for the new mobile entrants and thus contributed decisively towards efficient market opening of mobile communications in the markets concerned.

The effect of the combined use of individual procedures was largely equivalent — and to a certain degree superior in political acceptability — to the use of the instrument of an Article 86 Directive in the initial phase of market opening of the mobile markets. The Mobile Directive of January 1996 consolidated this acquis.

#### *Collective use of own initiative procedures under Regulation 17*

During the liberalisation exercise the own initiative powers of the Commission under Regulation 17 were used extensively <sup>(3)</sup> and in a focused manner to target possible abuses which would have had a major impact on the progress of the introduction of competition. The procedures aimed particularly at passing on rapidly the advan-

<sup>(1)</sup> Individual Article 86 procedures were initiated with regard to Austria, Belgium, Ireland, Italy and Spain.

<sup>(2)</sup> Decision GSM radiotelephony services in Italy OJ L 280, 23.11.1995; Decision GSM radiotelephony services in Spain OJ L 76, 18.3.1997.

<sup>(3)</sup> During certain periods the own initiative procedures in the telecom sector accounted for more than 50% of all own initiative investigations in DGCOMP.

tages of liberalisation in terms of price reductions and service development to the consumer — a major objective in order to show as rapidly as possible effective consumer benefits and to secure sustained public support for liberalisation.

Major examples were the Mobile Interconnect proceeding and the Accounting Rate proceeding. In January 1998, the Commission launched an investigation into interconnection charges between fixed and mobile operators opening fifteen cases, i.e. one for each Member State due to growing concern about persistently high prices for mobile communications particularly for fixed to mobile calls. The objective of the Commission's investigation was to check whether: prices charged by the incumbent fixed network operator for terminating mobile calls into its fixed network were excessive or discriminatory; termination fees charged by mobile operators, which have joint control among themselves over call termination in their networks, were excessive, and, the revenues retained by the incumbent fixed network operator on fixed to mobile calls were excessive.

In May 1999, the Commission announced that it had decided to conclude the EU-wide investigation. This followed an assessment of the substantial price reductions of more than 80% in some cases, in response to the investigation. The Commission recalled that 'in conducting the inquiry, launched in February 1998, the Commission co-operated closely with national competition agencies and national regulatory authorities (NRAs) in the EU Member States.'

The Commission stated however on the occasion that it intended 'to pursue the scrutiny of competitive conditions within an overall sector enquiry of telecoms on key issues, including current roaming conditions between mobile operators.'

The Commission took a similar approach in the Accounting Rate proceeding. Both proceedings showed that the collective use of individual own initiative procedures — well targeted — can have substantial impact and will in many cases lead to a collective change of behaviour of market operators.

## *Sector inquiries*

The ultimate measure available under Regulation 17 to survey development of competitive structures and behaviour across whole sectors is the instrument of a Sector Inquiry <sup>(1)</sup> as defined in Article 12 of the Regulation.

The instrument was used for the first time in the telecom sector in the post-1998 period, with a triple investigation announced in July 1999 (and subsequently launched during 1999/2000) <sup>(2)</sup> Sector Inquiries by their basic vocation should result in measures remedying the structural and behavioural problems leading to the anti-competitive effects which may be discovered.

The current Sector Inquiries are still ongoing.

## **V. Access and Interconnection: Interplay of Competition Law and Sector Regulation**

Given that liberalisation of a monopoly sector does not create a 'green field' situation (if divestiture measures cannot be taken) and generates a situation characterised by one (or very few) powerful players holding bottleneck positions on the network, the handling of access and interconnection is the most crucial factor, in telecoms as in other utility sectors, for the creation of an effective competitive situation. During the telecom liberalisation exercise this issue was tackled from the start in a systematic manner.

At the same time, it was on this crucial issue that the Commission decided its strategic orientation concerning the relationship between Community competition rules and sector specific regulation. This orientation was spelt out in the Telecom Access Notice <sup>(3)</sup>.

Under sector-specific regulation (the 'ONP' framework), a general obligation to supply access is imposed on public network operators with Significant Market Power (the «SMP» operators). The ONP Directives impose on TOs (Telecommunications Operators) having Significant Market Power certain obligations of transparency and non-discrimination that go beyond those that would normally apply under Article 82 of the Treaty. ONP Directives lay down obligations

<sup>(1)</sup> Sector inquiries have been very rarely used by DGCOMP in the past. Before their use in the telecom sector, only two sector inquiries are recorded, one of them resulting in a block exemption.

<sup>(2)</sup> The sector inquiries launched concern the competitive conditions in the leased line market, in the roaming (mobile communications) market, and in the local loop.

<sup>(3)</sup> Commission Notice on the Application of the Competition Rules to Access Agreements in the Telecommunications Sector, OJ C 265, 22.8.1998. Hereunder «Access Notice».



relating to transparency, obligations to supply, and pricing practices. These obligations are enforced by the NRAs, which also have jurisdiction in ensuring effective competition.

However, the *Notice* also states that ‘if interim injunctive relief were not available, or if such relief was not likely adequately to protect the complainant’s right under Community Law, the Commission could consider that the national proceedings did not remove the risk of harm, and could therefore commence its examination of the case [or examination could be started by the National Competition Authorities or be brought before the Courts] under EU competition rules’.

It is interesting to note that the full and speedy enforcement of fair interconnection and access under this regime of sector specific rules was mainly achieved by combination with Recommendations (‘soft legislation’), and the threat of intervention under EC competition rules, in case that a satisfactory situation would not be achieved.

The main approach in practice was ‘benchmarking’ of interconnection rates. The method was first used in the DT discount case of 1997 where the three lowest interconnection rates were taken as a benchmark and used as a test regarding unfair pricing under Article 82. The subsequent ONP Recommendation on Interconnection Pricing was based on the same benchmark principle and established price ranges for interconnection rates across the EU, based on the «best practice» of the three Member States with the lowest interconnect rates at the time of the issuing of the Recommendation.

In summary, the strategic orientation taken in the *Access Notice* — the principle to give priority to action under a (strong) national sector specific regulatory framework as long as that action terminated competition problems in an efficient and pro-competitive manner and to stay or suspend procedures under Community competition rules to that extent — and a resulting close correlation of the application of competition rules and sector specific interconnection regulation in a defined manner was highly successful in establishing pro-competitive access in the EU’s liberalised telecom market, and fundamental for the success of the overall liberalisation exercise. It made close networking with the (sector specific) National Regulatory Authorities — the NRAs — and the National Competition Authorities crucial and proved the merits of the concept of decentralised enforcement. However, the critical issue of unbundling of the local loop also demonstrated the limits of the approach. While in the telecom sector it was possible — in a favourable political climate

— to resort to a specific Article 95 regulation on local loop unbundling, this remains a major problem in other utility sectors where sector specific regulation is still not as developed or which are still not covered by such regulation to the same extent.

## VI. Conclusions

The objective of this brief review of past experience in the application of competition rules in the telecom sector was to assess in how far lessons could be drawn from the success of the telecom liberalisation exercise:

- The success of competition policy in the liberalisation of the telecom sector was mainly due to a carefully designed inter-institutional process which was led in a consistent manner by the Commission over a period of ten years and which generated broad political backing.
- The policy objectives of the exercise were clearly expressed (innovation, new markets) and were acceptable both to Parliament and Council and to the European public, once reassurance about universal service was given. A major element was without doubt the amount of new technology and innovation entering the sector which led to high growth rates — again made possible by the progressive liberalisation — and absorbed to a large extent initial concerns about the cost of adjustment, in particularly market share losses by incumbents and loss of jobs. In the second half of the nineties privatisation was an additional driving force.
- High priority was given early in the process to developing a decentralised sectoral regulatory enforcement structure, with the creation of the sector specific National Regulatory Authorities (the NRAs), supported in many instances by the National Competition Authorities (the NCAs).
- The Commission policy in this sector was developed in a uniquely close co-operation between the Commission’s sectoral policy approach and its application of competition rules, symbolised since 1997 by the Joint Team (JT) between the two DGs most concerned (DG Information Society and DG Competition) and the joint implementation reports issued at regular intervals. This led to the design of a highly consistent regulatory scheme that deals with questions such as access to the incumbents network — a key issue in any liberalised utility sector.



- Within that framework competition policy played a central part in the success of the overall exercise, with on the one hand extensive use of its Article 86 powers and on the other hand, substantial synergies between the main instruments applicable under competition law — particularly concerning synergies between liberalisation measures and the screening of the large alliances/mergers, with the GlobalOne investigation standing out as a major example.

Those factors must be kept in mind when assessing if the policy mix chosen at the time could be re-applied under current circumstances. This reflection must be a first step in an assessment of the possibility of use of the approach in other sectors — which anyway will be characterised by very different situations.

Clearly the environment has evolved as far as application of competition instruments is concerned:

- The Commission has since reviewed and defined further the framework concerning the use of its powers under Article 86. In other sectors — e.g. electricity, railways and postal services — the liberalisation schedules, generally much more open-ended, are based on Articles 95 and 71 respectively.

The Communication on services of general interest does not exclude future action in this area — nor the emphasis on the principle of proportionality <sup>(1)</sup>, which was the very foundation of the approach in telecom liberalisation. It announces that the Commission's approach to the use of Article 86 «will be further clarified».

- With the extension of the Merger Regulation to cover full function co-operative joint ventures, the framework for the review of alliances/mergers has changed. This has to be taken into account.
- Regulation 17 itself is undergoing substantial change with the current reform process. On the one hand this offers the opportunity to substantially strengthen the use of competition law in the Member States on telecom cases — where sector -specific regulation is currently more and more also penetrating into the pure competition field. On the other hand, the imminent decentralisation requires the build-up of a network of National Competition Authorities

in this area and the reviewing of the ways of operation, particularly in own initiative cases, which have been a major instrument in the liberalisation process. Without doubt, the reform of Regulation 17 can open substantial opportunities for work sharing with the national level.

- The current telecom 2000 reform package — integrating competition law elements into the sector specific framework particularly as regards market definitions — will bring a growing importance of the application of competition principles for the sector in principle. Experience will have to be gathered in the future development of these principles and the future balance between sector specific regulation and competition law.

All of this means that the current approach to the application of competition rules in the telecom and media sectors may itself have to be substantially reviewed, both in a European and global context. It also means that the telecom liberalisation exercise — itself changing — can only serve to a limited extent for drawing lessons for other sectors.

Other sectors — such as electricity, railways, and postal services — have all their own and different characteristics and need their own tailored approach. The policy mix for different sectors will be different. Many of the conclusions that can be drawn from the telecom liberalisation exercise are reflected in the new proposals and the decisions for the accelerated liberalisation of other utility sectors and related action under competition law.

Competition policy instruments can make a critical contribution to overall Community policies for these sectors, if their use is correlated and synergies are allowed to develop, as the telecom exercise has shown.

A number of other conclusions may be drawn:

- Clarify interpretation and procedures applying to action under Article 86 — as an ultimate safeguard to prevent serious market distortions between Member States in the network based industries.
- Develop principles further for ensuring access to bottleneck facilities under competition law wherever the refusal to an essential bottleneck facility would significantly impede effective competition in the common market or in a

<sup>(1)</sup> The Communication on Services of General Interest in Europe of 20 September emphasises three basic principles: «Neutrality with regard to the public or private ownership of companies; Member States' freedom to define services of general interest, subject to control for manifest error; and *proportionality* requiring that restrictions of competition and limitations of the freedoms of the Single Market do not exceed what is necessary to guarantee effective fulfilment of the mission» (emphasis added).

substantial part of it and could be found incompatible with the development of the common market. This may be the only way of tackling bottleneck situations that are not covered by sector specific regulators in a comprehensive and operationally efficient manner.

- Use of Sector Inquiries when situation in the respective sectors so require — and defining the objectives and procedures applying to those inquiries in a clear manner.
- Develop a strong de-centralised enforcement structure — by closely networking with

national regulators and competition authorities in the key priority sectors.

There is one global lesson to be drawn from the telecom experience: European competition policy can achieve substantial change and make a major measurable contribution to economic growth and consumer benefit in the Community when the different instruments of competition law and the rights of initiative available under those rules are applied in a pro-active and co-ordinated manner with the strategic objectives of the European Union in mind.



## **L'arrêt Aéroports de Paris**

### **Un arrêt important qui confirme la politique de la Commission dans le secteur des infrastructures aéroportuaires**

*Corinne Dussart-Lefret, Directorate General Competition, unit D-3*

#### **Historique**

La Commission a adopté le 11 juin 1998 <sup>(1)</sup> une décision au titre de l'article 82 du traité CE à l'encontre d'Aéroports de Paris (ADP) lui enjoignant de mettre en place un système de redevances commerciales non discriminatoires. ADP a déposé un recours en août 1998 contre la décision.

L'affaire en cause concernait une plainte déposée par AFS, Alpha Flight Services, une entreprise de restauration en vol (catering), à l'encontre du régime de redevances commerciales appliqué dans les aéroports de Paris (Orly et Roissy Charles De Gaulle). AFS et OAT, filiale du Groupe Air France, sont des prestataires concurrents pour la fourniture de services de catering à Orly. ADP appliquait des taux de redevances tant commerciales que d'occupation différents. L'application de taux identiques à ceux de OAT aurait permis une diminution de la redevance de AFS d'environ 3.5 millions de francs. La redevance appliquée aux compagnies aériennes qui réalisent elles-mêmes leur restauration en vol, était soit nulle soit inférieure à celle des prestataires pour le compte de tiers. De telles différences n'avaient pas de justification objective et diminuaient de façon discriminatoire le coût de revient des services de certains prestataires. Non seulement le jeu de la concurrence entre prestataires de services d'assistance s'en trouvait faussé, mais également le jeu de la concurrence entre transporteurs aériens puisque certains bénéficiaient d'avantages en terme de coût, soit par le biais des distorsions entre prestataires aux tiers, soit par le biais du traitement abusivement favorable de l'auto-assistance.

#### **Principales conclusions du jugement du tribunal de première instance**

Le Tribunal de première instance a rejeté par son arrêt du 12 décembre 2000 <sup>(2)</sup> le recours d'ADP. ADP avait invoqué 7 moyens à l'appui de son recours.

#### **Le règlement de procédure applicable**

Le premier moyen porte sur le règlement de procédure applicable. ADP a soutenu que le règlement applicable était le règlement 3975/87 relatif aux transports aériens ou l'article 85 du CE en non pas le règlement 17/62. Le Tribunal considère que *le règlement 3975/87 s'applique uniquement aux activités concernant directement la prestation de services de transports aériens et que les activités qui ne concernent pas directement une telle prestation de services relèvent du règlement 17*. Le tribunal ne s'est cependant pas prononcé sur les services d'assistance en escale mais sur les services de gestion des aéroports. Cependant, le tribunal a continué en indiquant qu'il *ne saurait être considéré que toutes les pratiques opérées sur tous les marchés situés en amont du transport aérien doivent être appréhendées dans le cadre du règlement 3975/87 au seul motif qu'elles pourraient avoir certaines répercussions indirectes sur le marché des transports aériens*. La pratique de la Commission selon laquelle les services d'assistance en escale relèvent du règlement 17/62 semble par conséquent être confirmée par le Tribunal. Selon le tribunal, les activités qui ne sont pas directement des services de transport aérien relèvent clairement du règlement 17/62 et non pas de l'article 85.

Le deuxième moyen porte sur une violation de procédure. Le Tribunal a déclaré que si la communication des griefs et la décision ne doivent pas présenter de contradiction, il n'en va pas de même entre la position de la Commission lors de l'audition et la décision et ceci parce que l'entreprise mise en cause a eu l'opportunité de présenter ses commentaires par écrit à la communication des griefs.

Le tribunal a considéré que le troisième moyen tiré de la violation de l'obligation de motivation n'est pas fondé. ADP estimait notamment qu'il existait un doute sur la portée de l'injonction faite à ADP et que la Commission avait omis de proposer des moyens de mettre fin à l'infraction. Sur ce dernier

<sup>(1)</sup> JO L 230 du 18.8.1998 p.10

<sup>(2)</sup> Arrêt du 12 décembre 2000 dans l'affaire T-128/98 non encore publié au recueil

point, le Tribunal a rappelé qu'il est de jurisprudence constante que la décision a imposé une obligation claire et la Commission n'est pas tenue d'imposer les moyens de mettre fin à l'infraction.

## L'activité d'entreprise et l'abus au sens de l'article 82 du traité

Le quatrième moyen tiré de la violation de l'article 82 se divise en 5 branches, toutes rejetées par le tribunal, parmi lesquelles la question de savoir si ADP exerce une activité d'entreprise au sens de l'article 82 du traité. Le tribunal a confirmé que la mise à disposition d'installations aéroportuaires moyennant le paiement d'une redevance est une activité économique même si en droit français il s'agit de la gestion du domaine public. Le tribunal a considéré que le paiement d'une redevance, le fait qu'il s'agisse d'une facilité essentielle pour les prestataires de services, que cette activité puisse être exercée par une entreprise privée et la jurisprudence *Italie/Commission* <sup>(1)</sup> et *Deutsche Bahn* <sup>(2)</sup> sont autant d'éléments fondant sa position. Sur l'abus, le tribunal a dit pour droit que le comportement d'ADP correspondait bien aux dispositions de l'art. 82: *Lorsque l'entreprise bénéficiaire du service se situe sur un marché distinct de celui sur lequel est présent l'offreur de service, les conditions d'applicabilité de l'article 86 du traité sont remplies dès lors que la bénéficiaire se trouve, du fait de la position dominante occupée par l'offreur, dans une situation de dépendance économique par rapport à celui-ci, sans qu'il soit nécessaire qu'ils soient présents sur le même marché. Il suffit que la prestation proposée par l'offreur soit nécessaire à l'exercice, par la bénéficiaire, de sa propre activité.* Le Tribunal a également rejeté l'argument d'ADP selon lequel il n'y avait pas de discrimination puisque AFS avait librement offert, lors d'un appel d'offre, cette redevance. En effet, la notion d'exploitation abusive est une notion objective qui vise les comportements d'une entreprise en position dominante qui sont de nature à influencer la struc-

ture du marché et que pour une telle entreprise le fait de lier même à leur demande des acheteurs est constitutif d'abus.

Comme cinquième moyen, ADP a invoqué l'article 86(2) arguant que les règles de concurrence ne peuvent pas lui être appliquées afin de lui permettre d'accomplir sa mission d'intérêt général. Le tribunal a estimé qu'ADP n'avait pas établi en quoi la décision en question le mettrait dans l'impossibilité d'exercer sa mission de service public, ni que l'application des règles de concurrence serait de nature à faire échec à l'accomplissement de celle-ci.

ADP a considéré que, en réduisant la redevance en cause à un simple dédommagement des services rendus par l'administrateur du domaine public, la Commission porte atteinte à la valorisation dudit domaine. Le tribunal a clairement rejeté cet argument car la Commission n'a pas mis en cause le niveau des redevances, mais leur caractère discriminatoire.

## Les implications de ce jugement pour la politique de concurrence

Cet arrêt est important au moins sur trois aspects: une clarification du règlement de procédure applicable aux infrastructures de transport, la qualification d'activité d'entreprise à la gestion d'un aéroport et d'entreprise à son gestionnaire et la confirmation après *Corsica ferries* <sup>(3)</sup> que les entreprises en cause peuvent ne pas être sur les mêmes marchés pour que les conditions de l'article 82 soient remplies.

Cet arrêt confirme la politique suivie par la Commission dans le secteur des infrastructures des transports et plus particulièrement à leur accès non discriminatoire. Cette politique s'appuie sur 6 décisions <sup>(4)</sup> dont une dans le secteur portuaire. Une de ces décisions fait l'objet d'un recours devant la Cour de Justice. Les conclusions de l'avocat général rendues le 19 octobre 2000 suivent la position de la Commission. L'arrêt est attendu pour le 1<sup>er</sup> trimestre de 2001.

(1) Arrêt du 20 mars 1985 affaire 41/83 Rec. p. 873.

(2) Arrêt du 21 octobre 1997 affaire T-229/94 Rec. p. II-1689.

(3) Affaire C-18/93 Corsica Ferries Rec. p. I-1783.

(4) Décision de la Commission du 28/06/1995 (JO L 216/95) *aéroport de Bruxelles national*; Décision de la Commission du 11/06/1998 (JO L 230/98) *AFS/ADP*; Décision de la Commission du 10/02/1999 (JO L 69/99) *aéroports finlandais*; Décision de la Commission du 10/02/1999 (JO L 69/99) *aéroports portugais*; Décision de la Commission du 26/07/2000 (JO L 208/00) *aéroports espagnols* et décision du 21/10/1997 (JO L 301/97) *pilotage dans le port de Gènes*



## Commission acts against Duales System Deutschland AG for the abuse of a dominant position

*Michael GREMMINGER and Gerald MIERSCH,  
Directorate General Competition, unit D3*

### Introduction

On April 20, 2001, the Commission adopted a decision finding that Duales System Deutschland AG (DSD), a company which created 'The Green Dot' (Der Grüne Punkt) trademark, is restricting competition by abusing its dominant position in the market for organising the collection and recycling of sales packaging in Germany. The Commission found that, in certain cases, the payment system used by DSD disadvantages its customers and prevents the entry of competitors in the market concerned. The decision is limited to one provision of DSD's trademark agreement and does not call into question the existence and overall functioning of the DSD system. The service agreements between DSD and its collectors are not affected by this Article 82 procedure. These agreements, which are central to the original notification under Article 81, have been amended by bringing forward their date of expiration to the end of 2003 at the latest. In this regard the Commission intends to issue a decision under Article 81 of the EC Treaty during the course of this year.

### Background

DSD is the only undertaking that operates a comprehensive packaging take-back system in Germany. The system serves to meet the requirements laid down in the German Packaging Ordinance (GPO) as well as in EC Directive 94/62 on Packaging and Packaging waste. So far as sales packaging is concerned, § 6(1) of the GPO prescribes that every distributor and manufacturer using sales packaging is obliged to take back, free of charge, used sales packaging from customers at or in the immediate vicinity of the point of sale. § 11 of the GPO allows manufacturers and distributors to delegate their responsibility to third parties, which carry out their obligations for them (so-called self-management solutions). Under § 6(3) of the GPO, the take-back obligation for sales packaging is suspended for those manufacturers and distributors participating in a comprehensive so-called exemption-system like DSD which throughout the distributors' sales territory guaran-

tees a regular collection of used sales packaging from the final consumer.

The trademark agreement, together with other agreements, was notified to the Commission in September 1992. Various related complaints were received as well. Since the notification, the notified agreements have been on several occasions changed and adapted due to the intervention of the Commission. In November 1999 a new complaint against DSD by its potential competitor VfW, and by L'Oréal and others was received. VfW and L'Oréal alleged that DSD was abusing its dominant position by preventing competitors from entering the market by applying a tying practice on the basis of the payment provision of DSD's trademark agreement.

### Relevant market

The Commission found the widest conceivable definition of the market to be a single market for organising the take-back and recovery of used sales packaging collected from private final consumers. On this market, undertakings fulfil their Packaging Ordinance obligations either by themselves taking back and recovering used sales packaging or by participating in a system which exempts them from their obligations. Both possibilities appear to those subject to the obligations to be equally well suited to meeting the requirements of the GPO regarding sales packaging collected from private final consumers and hence are to be considered basically interchangeable. Although there may be differences between a self-management solution and participation in an exemption system which limit their interchangeability and which may suggest that a narrower market definition would have been more appropriate, the Commission did not have to take a final decision on which of the two conceivable market definitions should be applied, since DSD occupies a dominant position whichever definition is applied.

### Dominance

DSD is currently the only undertaking to offer an exemption system in Germany. At present competition only exists on the edge of the market where

there is an overlap with self-management solutions. The strength and market positions of competitors active in that area are not comparable to those of DSD. Even on the broadest possible market definition DSD has a market share of well above 80%. The Commission therefore concluded that DSD has a dominant position on the market.

### Abuse of a dominant position

According to the trademark agreement, membership of the system is organised in such a way that DSD agrees to use the trademark and guarantees the participating company (called the licensee) that it will effect the collection, sorting and recycling of used sales packaging in such manner as to exempt participating undertakings from their obligations under the Packaging Ordinance.

The payment provision of the trademark agreement requires the licensee to pay for all the sales packaging brought on the German market that bears the Green Dot mark, irrespective of whether DSD actually provides its exemption service or not. DSD thus links the fee payable under the agreement not to the use of the service exempting the other party from its take-back and recycling obligations but solely to the use of the Green Dot mark on sales packaging. In specific scenarios this contractual arrangement does not safeguard the basic principle of «no service, no fee». Abuse always occurs where an obligated undertaking avails itself of DSD's exemption service only in respect of some of its sales packaging or dispenses entirely with DSD's exemption service in Germany, in particular where it decides to have some of the sales packaging of a product in Germany disposed of using a self-management solution or a competing exemption system, or to have all of the sales packaging of a product in Germany disposed of using a self-management solution or a competing exemption system, while participating in a system which uses the Green Dot mark in other Member States.

In all these examples the licensee would be obliged under the payment provision of the trademark agreement to pay the licence fee for using the Green Dot for all marked sales packaging although DSD would only provide a partial service or no service at all. This would lead to a double payment situation (the licensee has to pay the competitor and DSD), which makes it economically unattractive to contract with a competitor of DSD.

A solution which might initially seem possible in this context, i.e. not to mark with the Green Dot mark that packaging which is not to be covered by the DSD system in Germany, would, in a not

inconsiderable number of cases, be economically unrealistic:

- In order to avoid the double payment situation the obliged undertakings would have to run (at least) two different packaging and distribution lines (packaging with and without the Green Dot). This of course comes with additional costs, which totally or at least largely offset the possible cost advantage offered by a competitor of DSD.
- Furthermore there are situations where it is in organisational terms difficult or simply not possible for the producer to control the flow of its packaging through the distribution/marketing channel, in particular when relying on independent intermediaries (for example wholesalers).
- In addition an obliged undertaking cannot foresee whether the end-consumers will dispose of the packaging near their households or leave it in the premises of the seller.
- Finally, the standardised marketing of many products within the common market, such as by way of a standardised multi-language Euro-packing, would not be possible.

Consequently the Commission concluded in its decision that DSD is abusing its dominant position on the basis of the payment provision of its trademark agreement, by claiming the full licence fee for the use of its Green Dot trademark in situations where the collection and recycling service is provided by competitors. As long as DSD makes the licence fee dependent solely on the use of the mark, it is imposing unfair prices and commercial terms on undertakings which use the exemption service for only some of their sales packaging or who do not use it at all in Germany, but participate in a Green Dot system in another Member State. As a consequence obliged undertakings, which obviously want to avoid a double payment situation (or the need for several packaging and distribution lines), are in practice prevented from contracting with competitors of DSD. In their actual effect, these terms are very close to amounting to an exclusivity requirement. They thereby make it much more difficult for competitors to enter the market, strengthen DSD's dominant position and further weaken competition. There is no equality of opportunity for competitors. Against the background of hitherto very weak marginal and residual competition, and given that the only counterbalance to the dominant undertaking which is effective in the short term takes the form of smaller competing suppliers on the edge of the market, the Commission found that this

conduct constitutes a particularly severe case of abuse.

### **No objective justification**

In the Commission's view, there is no objective justification for DSD's abusive behaviour. DSD sought to argue that the Commission's interpretation of competitive behaviour on the market was legally not possible within the framework of the GPO. DSD further argued that its trademark would be diluted. Both arguments were rejected. The Commission had asked the German Government for the official interpretation of the relevant provisions of the GPO and concluded that the German law did not prevent the combination of the two basic alternatives foreseen for the obliged undertakings in the GPO and having the Green Dot mark on all distributed packaging. Therefore the competitive behaviour which the Commission is imposing on DSD is not in conflict with the GPO. As regards trademark-protection related arguments the Commission found that the proper meaning of the trademark is that the consumer can, but is not obliged to, dispose of the packaging by using the DSD-system, therefore the Green Dot mark has to be seen as a «disposal option». In its decision the Commission concluded that the consumer cannot be led by the Green Dot mark to believe that the disposal option offered by DSD is the only available option. The effect of DSD's use

of the trademark therefore goes beyond what is necessary to protect its legitimate commercial interests.

### **Fines**

The Commission levied no fines on DSD. It is acknowledged that DSD notified its trademark arrangement to the Commission back in 1992 and that the Commission's competition concerns have been raised at a rather late stage of the procedure. Furthermore DSD could not easily have relied on previous decisions of the Commission or case law of the Court in order to ascertain its responsibilities under the EC competition rules.

### **Conclusion**

Comprehensive systems for the collection and recycling of sales packaging such as introduced by DSD in Germany represent new markets. This decision underlines the Commission's intention to take a firm line with regard to the possibility of access to these new types of markets to other service providers and underlines that the Commission will not accept abusive market behaviour, which would consolidate the dominant position of the existing operator.

[In May/June of 2001 DSD lodged an appeal with the Court of First Instance against the Commission Decision.]

## Commission Decision prohibits Glaxo Wellcome's Spanish pricing system

Annette KLIEMANN, Directorate General Competition, unit F-3

### 1. Introduction

On 8 May 2001 the Commission decided to prohibit the dual pricing system which Glaxo Wellcome (GW) had introduced for all its pharmaceutical products in Spain. <sup>(1)</sup> According to GW's new sales conditions Spanish wholesalers were required to pay a higher price for Glaxo products which they export to other Member States than the price they pay when reselling the same products for consumption on the domestic market. The system clearly aimed at the reduction of parallel trade within the Single Market. The Commission found that the system partitions the Common Market along national lines, thereby interfering with the principal Community objective of integrating markets. It also reduces price competition for GW products by making exports of cheaper Spanish products to other Member States impossible or at least more difficult. The Commission did not find that the system fulfilled the conditions for an exemption under Art 81 (3) EC-Treaty.

The case is important because it underlines the Commission's determination to object to distribution systems which perpetuate the partitioning of the Single Market into national markets even in a sector which is heavily regulated. The case is novel since for the first time a pharmaceutical company has sought to justify the restrictions to parallel trade by economic and consumer welfare arguments. The Commission carefully looked into these justifications but did not find any of them convincing upon closer scrutiny.

### 2. Background

The case began in March 1998 when Glaxo Wellcome Spain notified its new sales conditions to the European Commission. Its parent company, GlaxoWellcome PLC — now merged with Smith-KlineBeecham into GlaxoSmithKline (GSK) — later filed a supplementary notification. GSK is one of the world's largest pharmaceutical companies. GW's stated reason for the new sales conditions was to limit the adverse effects [*namely parallel trade*] which result from different

Member State legislation, in particular the Spanish and UK systems of pharmaceutical pricing.

The Commission received complaints from a Spanish wholesaler and European and Spanish associations of wholesalers involved in parallel trade of pharmaceutical products. On 13 July 1999 <sup>(2)</sup>, the Commission adopted a Statement of Objections which was followed by an oral hearing of all interested parties in December 1999. These included EFPIA (European Federation of Pharmaceutical Industries and Associations) which intervened on GW's side.

GW applied the sales conditions only from March 1998 until January 1999 when interim measures by the Spanish competition defence tribunal (Tribunal de Defensa de la Competencia) became binding upon it. Also after the interim measures had expired in July 1999, GW abstained from implementing its system.

### 3. Assessment under Art. 81 (1) EC-Treaty

Clause 4A of GW's new sales conditions sets a price for each product which Spanish wholesalers purchase if they resell the product for domestic consumption (the '4A' price). If the wholesalers plan to export the product, they have to pay a higher price (the '4B' price). The 4A price is set in function of the regulatory maximum retail price in Spain. The 4A price is said to be the 'market price'. GW intends to monitor the compliance with Clause 4 by charging the difference between the 4A and the 4B price in case it finds out that products purchased at the lower price have been exported.

The Commission qualifies GW's system as a restriction of competition «by object» because it aims at impeding parallel trade. Moreover, Clause 4 is tantamount to an export ban in a considerable number of cases (i.e. whenever the higher 4B price takes away the economic incentive to export) while it impedes parallel trade in other cases in very much the same way as a system of dual

<sup>(1)</sup> See Commission Press Release IP/01/661 of 8 May 2001.

<sup>(2)</sup> See Commission Press Release IP/99/522 of 15 July 1999.



pricing (i.e. whenever that higher price reduces the economic incentive to export).

The ECJ has already once considered export bans as a restriction «by object» in the pharmaceutical sector (*Sandoz* <sup>(1)</sup>). In any event, GW's price system can be classified as a dual pricing system in spite of the fact that the public authorities set maximum resale prices for each product. This is because the authorities set these maximum prices after negotiations with the pharmaceutical companies. Moreover, there is evidence showing that GW has at times set retail prices below the maximum and that it has obtained price increases for certain products which were prime candidates for parallel trade. Like export bans, dual pricing systems have been regarded as restrictions 'by object'. <sup>(2)</sup>

The Commission has also looked into the effects of the GW system in order to identify in which cases the system makes exports impossible or at least more difficult. While not denying that the 4B price often takes away or reduces the incentive for wholesalers to export, GW submits that its system does not have an anticompetitive effect. It contends that its dual pricing system only remedies a distortion of competition created by the divergence between state pricing regulations within the Community. This divergence allegedly leads to 'low price' and 'high price' Member States.

However, the ECJ has already declared that this divergence does not exempt the pharmaceutical sector from the application of the EC Treaty's free movement provisions (*Merck Primecrown*) <sup>(3)</sup>. There is therefore no *a priori* exception to the application of the competition provisions to agreements impeding parallel trade in this sector. Besides, this is in line with the case law for other sectors, e.g. cars, where the divergence between national tax systems likewise does not give manufacturers an excuse for interfering with parallel trade.

In any event, the high exports of GW products from Spain to the United Kingdom which prompted GW to introduce the dual pricing system, appear to have been caused mainly by the appreciation of the British Pound, not by the divergence between Spanish and UK price regulations. Currency fluctuations have never been accepted as a justification for restrictions of parallel trade. The Commission also takes the view that the difference

between the national regulatory regimes should not be overstated.

#### 4. Assessment under Art. 81 (3) EC-Treaty

Despite the finding of a restriction 'by object', the Commission accepts the principle that there is no restriction of competition which could at least in theory not be exempted (ECJ judgement in *Matra Hachette*) <sup>(4)</sup>. The Commission therefore goes at length into the merits of a series of economic arguments advanced by GW in order to justify the new sales conditions. These arguments focus on the need to preserve adequate R&D activities of pharmaceutical companies. GW argues that parallel trade causes substantial losses (in the sense of foregone revenue and profits). This affects its R&D budget. This in turn leads to less innovation, a key factor for competition in this market. A dual pricing system aimed at limiting parallel trade, avoids losses and thereby preserves the financial means to make the adequate R&D investments. The system thus promotes technical progress.

In the Commission's view, GW has not proven a causal link between the existence of parallel trade and possible losses for its R&D budget. It is true that pharmaceutical companies spend important sums on R&D — roughly 15% of their total budget. However, losses stemming from parallel trade could just as well be deducted from the companies' other budget items, such as the extensive marketing costs. The Commission considers that in any event, these losses are too marginal to severely affect GW's R&D investment decisions.

GW further contends that parallel trade may lead to shortages of supply for its products in Spain and that its system would thus improve distribution according to the first condition of Art. 81 (3). The Commission could not find any evidence for this contention.

GW also insists that for pharmaceutical products parallel trade cannot achieve any benefits for the consumer. From a consumer welfare perspective, the consumer is therefore better off with GW's system than with parallel trade. In its decision, the Commission notes that it is for the notifying party to justify the restriction of competition resulting from the agreement by showing that this restriction fulfils the conditions of Art. 81 (3). It is not for the

<sup>(1)</sup> Case 277/87 *Sandoz v. Commission* [1990] ECR I -45.

<sup>(2)</sup> Commission Decision 78/163/EEC in Case No IV/28.282 - *The Distillers Company Limited*, OJ L 50, 22.2.1978, p.16.

<sup>(3)</sup> Joined Cases C-267/95 and C-268/95, *Merck&Co Inc. v. Primecrown Limited*, [1996] ECR I-6285.

<sup>(4)</sup> Case T-17/93 *Matra Hachette v. Commission* [1994], ECR II 595.



Commission to prove that its intervention against this restriction increases consumer welfare. It nevertheless adds that consumers may benefit directly from parallel trade in cases where they co-finance the products they purchase and that parallel trade gives national health systems opportunities for achieving costs savings for the benefit of their membership.

## **5. Sanctions**

The Commission has not imposed any fines since the sales conditions were notified to it. GW has to bring the infringement to an end and inform the Commission within two months about the steps it has taken in order to achieve this.

## Commission fines JCB Service for its restrictive distribution agreements in several Member States

*Manuel MARTÍNEZ-LÓPEZ, Directorate General Competition, unit F-1*

On 21 December 2000, the Commission adopted a decision finding that JCB Service, the UK-based parent company of the JC Bamford Group, infringes Article 81 of the EC Treaty and imposed on it a 39.6 million Euro fine <sup>(1)</sup>. The JCB Group is the world's fifth largest manufacturer of construction and earthmoving machines and also manufactures agricultural machines and material handling equipment. Its turnover in 1999 was in excess of 1.2 billion Euro. The infringements concern the distribution agreements and practices between JCB and its network of authorised distributors, which resell JCB construction machines and their spare parts in the EC.

The infringements result from the combination of restrictions in JCB's distribution agreements and practices in several Member States. The various agreements or practices between JCB and its authorised distributors include i) instructions restricting sales outside allotted territories, ii) a restriction on cross-supplies between authorised distributors in Member States, where JCB had incorporated distribution subsidiaries, and the rest of the authorised network in the EC, iii) implementation of two different bonus and fee systems, which disadvantage out of territory sales and iv) occasional joint fixing of resale prices and discounts across territories. There is evidence that the restrictions were implemented and enforced in the United Kingdom, France, Italy and Ireland. The period during which at least one of these restrictions was implemented runs from 1988 until 1998.

JCB accounts for more than 10% of all construction machines sold in the EC and has established a lasting leadership in relation to backhoe loaders, for which it has held over 40 % of the EC market for several decades. In previous merger cases involving this kind of equipment, the Commission identified distinct product markets by machine

category for all construction machines <sup>(2)</sup>. As to the geographic market definition, the agreements by their nature aim to isolate from the rest of the EC, several national markets where, moreover, JCB's position is important. Under possible alternative definitions of the relevant product market in the EC, either all construction machines or separate markets by category and their spare parts, JCB's share is important in at least one of the possible markets. A definitive definition under Article 81(1) was not indispensable, since the condition that the likely effect of the agreements and practices on inter-state trade -and competition- be appreciable, is fulfilled under each alternative definition.

As is usual in this kind of infringement case, the manufacturer's policy and actions were triggered by major price differentials across territories in the EC, which were as much as 70% for the same product. Although price differentials do not necessarily create a competition problem where they result from objective factors, they are often the reason behind attempts to shelter territories and dealerships from intra-brand competition. This is to the detriment of purchasers who are still deprived of the benefits of an integrated market more than forty years after the EC Treaty.

Each of the above measures runs contrary to the ban on restrictive agreements laid down in Article 81 and would have constituted an infringement even if implemented in isolation. The fact that the measures are combined further increases their potentially restrictive effects <sup>(3)</sup>, given that such combination pursues a restrictive object.

There is no evidence that JCB has brought the infringements to an end, even though there is proof that they existed until 1998 only. The Commission has, therefore, also concluded that JCB's agreements and practices include hardcore restrictions, which deprive them from the benefit of its new

<sup>(1)</sup> IP/00/1526 of 21.12.2000.

<sup>(2)</sup> Commission decision of 18 December 1998 in Case IV/M.1235-*New Holland/Orenstein & Koppel* (points 8 and 13); Commission decision of 28 October 1999 in Case M-1571-*New Holland/Case*, (points 55-56). The New-Holland-Case decision shows that JCB and its competitor New-Holland-Case would have occupied a collective dominant position in the market for backhoe loaders within the EEA if the latter had not proposed the sale of its subsidiary, Fermecc, prior to the Commission's clearance decision.

<sup>(3)</sup> For instance, where competition across different Member States has been weakened by instructions to authorised distributors in Member State A not to sell in Member State B, restrictive effects are compounded if the latter have also to pay penalties when such sales are discovered in Member State B and authorised distributors in Member State B are prevented from purchasing genuine manufacturer's products from Member State A at an appreciably lower cost than in B.

block-exemption under Regulation (EC) 2790/99 on vertical agreements, pursuant to Article 4 thereof. This is independent of JCB's share of more than 30% of all backhoe loaders sold in the EC <sup>(1)</sup>. As stated in the Commission Guidelines on Vertical Restraints and confirmed in this case, the individual exemption of vertical agreements containing such hardcore restrictions is unlikely <sup>(2)</sup>.

JCB's agreements, which grant exclusive territorial dealerships, are combined, in certain Member States, with restrictions on sales to unauthorised resellers. Consistent with its practice of application of Article 81(3) regarding construction machines and similar sectors, the Commission has found that a combination of exclusive and selective distribution, which restricts passive out-of-territory sales, is not indispensable to attain benefits in terms of improved distribution, were users to derive a fair share of them at all <sup>(3)</sup>. The Commission has, therefore, rejected JCB's argument that its agreements should benefit by analogy with the rationale of the block-exemption provided for motor vehicle distribution agreements under Regulation (EC) 1475/95. Not only do the contested agreements and practices include restrictions which deprive them from such benefit under Article 6 of the Regulation; but also the Commission applies such regulation strictly *ratio materia*, consistent with case-law.

A particular aspect in connection with the possibility of granting an individual exemption pursuant to Article 81(3), which remains currently subject to notification requirements pursuant to Article 4 of Council Regulation 17, is that JCB had notified distribution agreements applicable in most EC Member States in 1973 and amended them in 1975 following Commission warnings. Such warnings had specifically related to clauses which then were removed from the written contracts re-notified by JCB in 1975. Nevertheless, the Commission warnings were ignored and the agreements and practices fined in the decision are basically those objected to in 1973. The deci-

sion is consistent with the line taken by the Commission already then. JCB's claims that it has behaved in accordance with the notification are, therefore, dismissed. Indeed reinforcing notified agreements with unnotified restrictions renders the notification system meaningless.

For the purposes of setting the amount of the fine, the combination of restrictions aimed at partitioning the geographic market across national borders in the EC is characterised as a very serious infringement which, in this case, has lasted for a long duration. Pursuant to the applicable *Guidelines* <sup>(4)</sup>, the Commission considers that such infringements jeopardise the proper functioning of the single market and are, therefore, very serious. Indeed such qualification has been given in the implementation of the *Guidelines* to cases involving vertical agreements where various restrictive measures were implemented in combination such as *Volkswagen* and *Opel Netherlands* <sup>(5)</sup>. Where such combination was not apparent and, among other factual differences, the evidence of implementation was scarce, other restrictions on parallel trade which have been subject to infringement decisions have been recently <sup>(6)</sup> qualified as minor. With regard to infringements in vertical agreements, these decisions are evidence of a careful weighing up of the factual circumstances in each case taking into account, inter alia, the effective ability of the undertakings to harm competition and downstream operators, their size, the nature of the measures at hand and whether they were implemented under duress.

The decision orders JCB to bring the infringements to an end and spells out the various means by which the distribution agreements must be brought in line with EC Competition rules. Commenting on the decision, Competition Commissioner Mario Monti said: '*It is shocking that important companies present in all Member States still jeopardise the most fundamental principles of the internal market to the detriment of distributors and, ultimately, consumers*'.

<sup>(1)</sup> Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices. OJ L 336, 29.12.1999 p. 0021.

<sup>(2)</sup> Commission Notice - Guidelines on Vertical Restraints OJ C 291 of 13.10.2000, page 1, point 46.

<sup>(3)</sup> Commission Regulation (EEC) No 1983/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements OJ L 173, 30/06/1983 p.1 Recital 8 and Article 3, *Ford Agricultural*, Commission Decision of 15.12.1992, OJ L 20, 28.1.1993, point 18.

<sup>(4)</sup> Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty, OJ C9 of 14.1.1998, section A, 3<sup>rd</sup> indent.

<sup>(5)</sup> *Volkswagen-Audi*: L 124 - 25/04/1998 p. 60, IP/98/94 of 28.1.1998, IP/00/725 of 6.7.2000; Commission decision of 20.9.2000 in case COMP.F.2/36.516 / *Opel Netherlands*, IP/00/1028 of 20.9.2000. The addresses have lodged appeals of these decisions before the EC Courts.

<sup>(6)</sup> IP/00/713 of 5.7.2000, Commission decision of 5.7.2000 in case COMP.F.1/36.516 / *Nathan-Bricolux*, not yet published; Competition Policy Newsletter 2000, n°3, October, p. 49.

## First decision concerning retail price maintenance: Commission imposes a € 30.96 million fine on Volkswagen AG for retail price maintenance measures on the German market

*Ulrich KRAUSE-HEIBER and Konrad SCHUMM, Directorate General  
Competition, unit F-2*

### 1. Introduction

On 30 May 2001, the European Commission adopted a decision <sup>(1)</sup> imposing a fine of € 30.96 million on Volkswagen AG, the biggest German, and European, car manufacturer, for having instructed its German Volkswagen dealer network in 1996 and 1997 to observe 'price discipline' as regards the new VW Passat, and not to sell this model at prices considerably below the recommended list price.

### 2. The measures identified

The measures identified in the decision consisted of three circular letters sent out in 1996 and 1997, in which the dealers were urged to limit or not to grant rebates to customers in respect of the sale of the (then) new VW Passat model, which was launched on the German market in October 1996 (Limousine version) and in June 1997 (Estate version).

Prior to these actions, Volkswagen AG had become aware of the fact that a number of dealers had offered this new model for sale with substantial discounts, meaning that the car could be bought considerably below the recommended list price.

In addition to these circular letters, the company addressed individual letters to certain dealers, warning them against granting large discounts, and threatening them with retaliatory measures (for

example the termination of the dealer contract) should they not comply with this instruction. Volkswagen sought to justify these measures by claiming that they were needed both to support its dealers' profitability and to preserve the brand image of the new model, which in Volkswagen's view would be damaged if dealers were to grant large discounts on the recommended manufacturer-determined list price.

### 3. Significance of the case for competition policy

This case is the third in a series of proceedings concerning motor vehicle distribution <sup>(2)</sup>. Unlike the two previous cases, this second decision against Volkswagen AG does not concern measures that directly hinder the re-export of new cars. However, the case also has to be seen in the context of the monitoring of the relevant block exemption regulation No. 1475/95 on motor vehicle distribution and servicing. On 15 November 2000, the Commission adopted an evaluation report on the application of this regulation <sup>(3)</sup>.

Measures taken to limit discounts aim at fixing retail prices and represent a so-called «hard core» restriction of competition <sup>(4)</sup>. This is the first Commission decision regarding resale price maintenance and confirms, in the area of vertical restraints, the Commission's strict policy on price fixing practices.

<sup>(1)</sup> See Commission Press Release IP/01/760 of 30.5.2001.

<sup>(2)</sup> A first decision against Volkswagen was adopted on 28 January 1998. It found that Volkswagen and its Italian importer had obstructed re-exports of Volkswagen and Audi cars from Italy into other Member states, in particular Germany and Austria; see Press Release IP/98/94 of 28 January 1998. This decision has been largely confirmed by the European Court of First Instance, in its judgment of 6 July 2000; see IP/00/725 of 6 July 2000. The fine of € 102 million – reduced to € 90 million by the Court – is one of the highest ever imposed on a single company. Volkswagen challenged this judgment before the ECJ in September 2000; these proceedings are pending. In its decision of 20 September 2000, the Commission imposed a fine of € 43 million against Opel Nederland and General Motors Nederland for obstruction of exports of new Opel cars from the Netherlands. The companies appealed against this decision to the CFI, in December 2000.

<sup>(3)</sup> This Report, together with other useful information, is available on the DG COMP Website: [http://europa.eu.int/comm/competition/car\\_sector/](http://europa.eu.int/comm/competition/car_sector/).

<sup>(4)</sup> Price fixing measures are listed in Article 81 (1) a) as incompatible with the EC Treaty and are therefore prohibited. Retail price maintenance also figures as a «hard core» restriction of competition in Article 4 a) of the new general block exemption regulation on vertical restraints (Commission (EC) Regulation 2790/1999 of 22 December 1999), which applies to all vertical agreements except agreements concerning motor vehicle distribution for which Regulation (EC) No. 1475/95 applies.

The measures in question infringed consumers' rights under the current block exemption regulation applicable to motor vehicle distribution and servicing (Regulation (EC) No 1475/95)<sup>(1)</sup>, which protects both the dealer's right to set prices freely, and the consumer's right to negotiate prices, including appropriate discounts. This type of measure is 'black listed' in Article 6 (1), point 6, of the Regulation, which provides that the exemption shall not apply where *«the manufacturer... directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods»*.

#### 4. The legal assessment

These circular letters became part of the contractual relationship between Volkswagen AG and its dealers and are therefore to be considered as agreements within the meaning of Article 81 (1). The circular letters gave practical effect to this contractual relationship as regards the pricing policy for the new VW Passat. The dealer contracts usually provide for recommended list prices for new cars, and by sending these circulars, Volkswagen AG instructed its dealers to consider the recommended prices as essentially binding, and to limit or not to grant rebates to customers. The same is true for the letters of admonishment addressed to individual dealers. Volkswagen AG thus established a system of agreements aimed at securing price discipline for the new VW Passat model.

The measures had as their object the restriction of price competition among VW dealers, since the measures targeted an essential element of competition and led *per se* to a restriction of competition. It should be noted that, according to established case law, it is sufficient to establish that the object of a measure is contrary to Article 81 (1) and it is therefore not necessary for the Commission to demonstrate that the measures had any practical effect.

The object of the measures was to fix resale prices and thus to eliminate an essential element of competition: the ability to grant rebates. In the car sector, dealers normally grant discounts, which may attain on average 10%, and Volkswagen's instructions can therefore be seen as an effort to compel the dealers to deviate from their normal commercial behaviour. The restriction of competition, which concerned all German Volkswagen

dealers, not only aimed to restrict intra-brand competition between German Volkswagen dealers, but also between Volkswagen dealers in Germany and Volkswagen dealers abroad. The VW Passat is a very popular model in Germany, especially compared to other models in the same segment. All these considerations support the conclusion that the measures adopted by Volkswagen aimed at an appreciable restriction of price competition.

The measures aimed at maintaining or reinforcing an artificially high price zone for the new VW Passat model in Germany, and were also liable to dampen private exports from and to increase private imports into Germany. Those measures were thus by their nature capable of affecting trade between the Member States within the meaning of Article 81 (1) of the EC Treaty.

#### 5. The fine

By its decision, the Commission imposed a fine of € 30.96 million on Volkswagen AG. The imposition of the fine can be explained *inter alia* as follows<sup>(2)</sup>:

The company was aware that the object of its measures was a restriction of competition. Although, as addressees of the measures initiated by Volkswagen AG, the German VW dealers were parties to the anti-competitive agreement, they had to accept it under pressure, and therefore no fine was imposed upon them.

The Commission found that the measures adopted by Volkswagen AG aimed at eliminating or restricting price competition, by obliging dealers to deviate from their normal business behaviour. Leaving the quality of service aside, discounts to customers are the most important tool available to dealers for competing with other dealers. Such measures represent a severe interference with competition and are therefore by their nature a very serious infringement of competition rules.

Although the infringement concerned only one model (in two versions) from Volkswagen's product range, this popular model has a large share of vehicle sales within a segment for which demand in Germany is strong. The circular letters were addressed to the whole German VW dealer network and thus concerned all sales of the VW

(1) Commission Regulation (EC) No. 1475/95, which has been applicable since 1.10.1996 and which will expire on 30.9.2002, like the previous Commission Regulation (EEC) No 123/85 which applied until 30.9.1996. Regulation No. 1475/95 authorises a system of selective and exclusive distribution for motor vehicles.

(2) See for the criteria to be applied Article 15 (2) of Regulation No. 17 and Commission Guidelines on the method for the setting of fines, OJ C 9, 14.1.1998.



Passat in Germany <sup>(1)</sup>. As regards the geographic scope of the infringement, the Commission found that its main impact was within one Member State (Germany), which accounts for a large share of all car sales in the EU. It would also be likely to have had an effect on consumers from other Member States. In light of all these considerations, the Commission considered that, for the determination of the fine, the infringement should be considered as serious.

As to the duration of the infringement, it began on 26.9.1996, the date of the first circular letter to dealers, and lasted until 6.9.1999, the date of a circular letter sent by Volkswagen, informing all German VW dealers that the instructions and warnings contained in the three preceding circular letters had been lifted and that they should not fear any retaliatory measures. The infringement therefore lasted for almost three years.

The fine also takes into account, as one of two aggravating factors, that two of the three circular letters and a number of the individual letters to dealers not only contained instructions to obey price discipline, but also admonishments, warnings and threats to adopt legal steps in case of non-compliance. It further took account of the fact that on the date of the first circular, the Volkswagen Sales Manager for Germany had requested dealers to give him details of all dealers lacking in price discipline, thereby introducing an indirect monitoring system which reinforced the pressure that the circular letter already imposed on dealers directly.

Following the first decision on Volkswagen and the one on Opel Nederland, this case is another illustration of a car manufacturer not fully respecting the rules of the current block exemption regulation No 1475/95.

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<sup>(1)</sup> Sales of the VW Passat in Germany amounted to about 400,000 units during the three years in question.

## **Distribution automobile**

### **Audition des 13 et 14 février 2001 concernant le Rapport d'évaluation du règlement (CE) n° 1475/95 de la Commission sur la distribution automobile.**

*Nieves NAVARRO-BLANCO et Christophe DUSSART, Directorate General Competition, F-2*

La DG Concurrence a organisé, les 13 et 14 février 2001, une audition à Bruxelles sur la distribution automobile, en vue de permettre à toutes les parties intéressées d'exposer oralement leur point de vue à propos du rapport d'évaluation sur le règlement 1475/95, et des deux études de consultants indépendants qui l'accompagnent.

#### **Historique**

Le 15 novembre 2000, la Commission adoptait le rapport sur l'évaluation du règlement n° 1475/95 concernant les accords de distribution et de service de vente et d'après-vente de véhicules automobiles. Le rapport présente une analyse factuelle approfondie du régime régissant la distribution automobile et le service après-vente. Il examine en particulier si les présupposés sur lesquelles le règlement était fondé continuent d'être valables, et si les objectifs poursuivis ont été atteints.

Le rapport d'évaluation a été publié sur l'Internet, conjointement avec deux études effectuées pour le compte de la DG Concurrence par des consultants. Les études fournissent un point de vue indépendant sur deux questions-clé dans ce domaine. La première étude est une analyse économique des différentiels de prix dans l'Union européenne ('Car Price Differentials in the European Union: An Economic Analysis' des Profrs. Frank Verboven de l'Université d'Anvers et Hans Degryse de l'Université Catholique de Louvain) et le second document examine le lien dit 'naturel' entre la vente et le service après-vente ('The Natural Link between Sales and Services' d'Autopolis, bureau d'études britannique spécialisé dans les questions liées à l'industrie automobile).

#### **L'Audition des 13 et 14 février 2001**

Le but général de l'audition était de donner à toutes les parties intéressées actives sur le marché automobile la possibilité d'exprimer oralement leur point de vue sur le rapport d'évaluation et les deux études.

Plus de 320 participants ont assisté à l'audition. Ils représentaient quelque 120 organisations nationales ou européennes et entreprises, dont l'ACEA (Association des Constructeurs Européens d'Automobiles), JAMA (Japanese Automobile Manufacturers Association), le CECRA (Conseil Européen du Commerce et de la Réparation Automobiles), le BEUC (Bureau Européen des Unions de Consommateurs) et la FIA (Fédération Internationale de l'Automobile). Trois Parlements nationaux (Allemagne, France, Royaume-Uni) étaient représentés, ainsi que les Etats membres.

L'ensemble des entreprises et associations opérant dans le secteur automobile étaient conviées à participer à ce débat. Tout au long de ces deux journées, la DG Concurrence s'est efforcée de garantir aux différents groupes d'intérêt une représentation équitable et équilibrée. Pour certains groupes (constructeurs, distributeurs, réparateurs indépendants et consommateurs notamment), elle a accordé à l'organisme professionnel le plus représentatif, généralement la fédération européenne, un temps de parole global, que celui-ci devait répartir entre ses sociétés et/ou organisations membres.

#### **Déroulement de l'Audition**

La première journée de l'audition a été consacrée à une discussion générale du rapport, sous forme d'un forum permettant un libre échange de vues entre les groupes concernés.

Au programme de la seconde journée figuraient deux sessions plus techniques et plus structurées. Un certain nombre de thèmes précis ont été abordés, qui découlaient du rapport lui-même et des deux études des consultants.

La matinée a surtout été consacrée à des interventions sur le système réglementaire qui serait le mieux à même de garantir une concurrence effective sur le marché des services après-vente. Utilisant l'étude demandée par la Commission sur le lien entre la vente et l'après-vente comme point de départ, un certain nombre de questions

spécifiques ont été discutées, notamment: l'accès aux informations techniques nécessaires pour la réparation et l'entretien des véhicules automobiles, l'approvisionnement en équipement de diagnostic des réparateurs indépendants, l'accès au marché du service après-vente par les équipementiers, le rôle du service après-vente dans la conservation de la valeur de marque, la protection de la sécurité et de l'environnement, les nouveaux formats pour l'entretien des voitures.

Au cours de l'après-midi, les intervenants se sont exprimés sur la meilleure façon de garantir une concurrence effective sur le marché de la vente de véhicules neufs, se fondant ici sur l'étude demandée par la Commission sur les différentiels de prix des voitures dans l'Union européenne. Parmi les nombreux sujets abordés, qui prenaient en considération la nécessité de réaliser les objectifs du marché intérieur, les obstacles aux importations parallèles, l'impact du commerce électronique/Internet, l'impact d'un mouvement vers la «lean distribution» ont été particulièrement développés.

## Résultats de l'Audition

Un total de 58 orateurs sont intervenus au nom de leurs associations/entreprises respectives.

Les constructeurs à travers l'ACEA, et les concessionnaires par la voix de CECRA notamment, ont réaffirmé leur soutien au maintien du règlement. En revanche, les consommateurs à travers le BEUC ont manifesté leur mécontentement persistant. Les équipementiers et les réparateurs indépendants ont insisté sur la nécessité, quelque soit le futur régime choisi, de maintenir les clauses dites «noires» du règlement actuel visant à garantir une concurrence effective sur le marché de l'après-vente. <sup>(1)</sup> Ces derniers ont également souligné qu'une application du règlement général d'exemption par catégories pour les restrictions

verticales <sup>(2)</sup>, qui instaure un nouveau régime juridique entré en vigueur en 2000 pour les autres secteurs économiques que l'automobile, ne leur paraissait pas adéquate à ce sujet. Les nouveaux opérateurs sur le marché, agissant notamment par le biais de l'Internet, se sont montrés très créatifs en terme de contenu, remettant notamment en cause dans le régime actuel certaines contraintes liées au statut de mandataire.

La DG Concurrence a rappelé que si le rapport d'évaluation analysait avec un oeil critique le régime actuel, il ne préjugait toutefois pas de l'avenir et que la position de la Commission était ouverte à ce stade.

Poursuivant ce travail d'analyse lié au futur de la distribution automobile, les services de la DG Concurrence ont lancé un appel d'offre pour une troisième étude, au champ plus étendu, qui a pour but d'examiner l'impact potentiel de différents scénarios réglementaires sur toutes les parties concernées. Dès la réalisation de cette étude, attribuée au consultant Arthur Andersen, et après la consultation habituelle, devraient être publiées pendant l'automne 2001 des propositions concernant le régime qui s'appliquera à la distribution et à l'entretien des véhicules automobiles après l'expiration du règlement n° 1475/95 le 30 septembre 2002.

Le Rapport d'évaluation sur le règlement 1475/95, les deux études «Car Price Differentials in the European Union: An Economic Analysis» et «The Natural Link between Sales and Services», ainsi que le texte/slides de la plupart des interventions des orateurs lors de l'Audition du 13/14 février 2001, sont publiés sur Internet sur le site de la DG Concurrence — Car Sector Page à l'adresse suivante:

[http://europa.eu.int/comm/competition/car\\_sector/distribution/eval\\_reg\\_1475\\_95/report/](http://europa.eu.int/comm/competition/car_sector/distribution/eval_reg_1475_95/report/)

<sup>(1)</sup> Il s'agit essentiellement de l'article 6 paragraphe 1 points 9, 10, 11 et 12 du règlement n° 1475/95, visant à garantir l'accès des équipementiers sur le marché de l'après-vente.

<sup>(2)</sup> Règlement (CE) n° 2790/1999 de la Commission, du 22 décembre 1999, concernant l'application de l'article 81, paragraphe 3, du traité à des catégories d'accords verticaux et de pratiques concertées — Journal officiel n° L 336 du 29/12/1999 p. 0021-0025

## Commission terminates infringement procedure against production and sales license agreements between Philip Morris and Altadis

*Carlota REYNERS FONTANA, Directorate General Competition, unit F-3*

The European Commission has decided to close an infringement procedure against tobacco companies Philip Morris of the United States and Spain's Tabacalera (merged with Seita of France in 1999 to form Altadis) regarding licence agreements to produce and sell cigarettes in Spain. The agreements originally gave Tabacalera a *de facto* total or quasi production exclusivity for L&M and Marlboro cigarettes to be sold in Spain for a period of respectively five and six years. Following Commission action, the agreements were modified to allow for competition on the Spanish market.

### 1. Background

In January 1999, Philip Morris entered into production and sales licensing agreements for its Marlboro and L&M cigarettes with Tabacalera. These agreements build upon a long standing contractual relationship between these two companies which goes back to the seventies when Tabacalera held a legal monopoly for the manufacture, import, distribution and sale of cigarettes in Spain.

The agreements, which were notified to the European Commission for regulatory clearance, granted Tabacalera the right to manufacture 'authorised volumes' of Marlboro and L&M cigarettes for sale onto the Spanish market via the designated wholesaler Logista (since 1999 an independent distributor belonging to the Altadis group). For Marlboro cigarettes, the agreement was entered into for 6 years and the authorised volume represented roughly 60% of Spanish demand whereas for L&M, the agreement was only entered into for 5 years but the authorised volume amounted to the volume necessary to satisfy the entire local market.

### 2. Commission's objections

After an early warning mid 1999, the Commission addressed a formal statement of objections on 26.6.2000. The main objection was that the agreements conferred upon Tabacalera a *de facto* partial (Marlboro) or total (L&M) production exclusivity in Spain and hence, deprived Philip Morris of the possibility to manufacture itself the cigarettes

outside Spain and to ship them subsequently for sale onto the Spanish market.

The Commission acknowledged that Philip Morris could to some extent determine Tabacalera's manufacturing costs regarding the cigarettes under license. Philip Morris could indeed set the purchase price for raw tobacco, the production quality norms and the royalties to be paid by Tabacalera. The Commission also recognised that the notified agreements left unfettered Philip Morris' freedom to set the retail price and, more generally, the marketing strategy for the cigarettes under license. However, there was evidence showing that Philip Morris could manufacture itself these cigarettes profitably for the Spanish market. Moreover, the parties' market shares in Spain were high. Together they held roughly a 75% share of the relevant market. Under these conditions, the Commission considered that the notified agreements restricted competition to an appreciable extent.

### 3. Proposed amendments

Following the Commission's objections, the two companies offered to shorten by one year the duration of the license agreements which will now end in 2004, for Marlboro, and 2003, for L&M. They also agreed to progressively reduce the authorised production volumes each year. In the remaining years covered by the license agreements, the authorised production volumes for L&M cigarettes (100%) will almost be halved while the authorised volumes for Marlboro will shrink to less than 20%.

The Commission considered that these modifications will lead to a phasing out of the current license agreements. While accepting that the parties needed a few years to bring their long-standing relations to an end, the Commission considered that the adaptation of the authorised production volumes combined with the already existing interbrand competition at retail level will considerably reduce and eliminate the restrictions of competition identified in the Commission's statement of objections. Under these circumstances, the Commission has decided to bring the infringement procedure to an end.

## Dutch fishermen are allowed to land and auction catches in foreign ports as result of Commission's investigation

*Barbara NIJS, Directorate General Competition, unit F-3*

At the initiative of the European Commission, eight quota management groups of Dutch fishermen have changed their internal rules with regard to the management of fishing quotas to bring them in line with competition rules. The internal rules initially limited the number of landings of catches in non-Dutch harbours. They also prescribed that the fishermen sell all catches to be auctioned through Dutch fish auctions only.

The quota management groups are private associations which represent the great majority of fishermen in the Netherlands. The names of the eight groups are: Groepscontingent Nieuwe Diep, Contingentgroep Delta Zuid, Groep van de P.O. Oost, Groep van de P.O. Wieringen, Groep Nederlandse Vissersbond I, Groep Nederlandse Vissersbond II, Groep Nederlandse Vissersbond III and Groep Texel.

The groups were established to ensure compliance with the EU fisheries quotas – a characteristic of the common organisation of the European fisheries market – and to facilitate quota-swapping between the members of the groups. Quota-swapping means that the members of a group are allowed to rent or hire quotas (or parts of quotas) to or from other members of the group.

The Commission warned all eight groups in November 1999 that their original internal rules contained provisions incompatible with article 81

of the EC treaty, because they obliged the members of the groups to land their catches of fish in the Netherlands and to have those catches auctioned through auctions that were recognised by the group. This deprived fishermen of the opportunity to freely choose the harbour they want to land their catches in and to freely choose the auction where they want to sell those catches. As a consequence, competition between Dutch fishermen was restricted. This obligation also excluded harbours, auctions and other service providers (transport etc.) located in other Member States from competing for Dutch fish catches.

Following the Commission's own initiative investigation, the groups have amended their rules by allowing their members an unlimited number of landings in non-Dutch harbours and by putting in place a non-discriminatory and objective recognition scheme for fish auctions. The recognition is necessary to ensure that non-Dutch auctions also inform the groups of sales of Dutch catches so that the groups can effectively ensure compliance with the EU quota requirements.

The Commission's services have accepted the groups' proposals since they remove the above mentioned anti-competitive restrictions. After the groups had informed their members of the amendments of their rules, the Commission closed the case.





## Merger Control: Main developments between 1<sup>st</sup> January 2001 and 30<sup>th</sup> April 2001

*Neil MARSHALL, Carina JOERGENSEN and Kay PARPLIES,  
Directorate General Competition, Directorate B*

### Recent cases – Introductory remark

The number of cases notified to the Commission rose by over 30% in the first four months of 2001. Between 1<sup>st</sup> January 2001 and 30<sup>th</sup> April 2001 there were 127 cases notified to the Commission, compared to 95 in the first four month period of 2000 and 92 in the same period in 1999. The Commission took 110 final decisions, 5 of which followed in depth investigations (1 prohibition and 4 conditional clearances) and 4 of which were conditional clearances at the end of an initial investigation ('Phase 1'). The Commission cleared 103 cases in Phase 1, 43 of which were cleared in accordance to the simplified procedures introduced in September 2000. In addition, the Commission took two referral decisions pursuant to Article 9 of the Merger Regulation and opened in depth investigations in 8 cases – one of which (BHP/Caemi) <sup>(1)</sup> was immediately withdrawn.

*Decisions following an additional  
four month investigation  
(Decisions pursuant to Article 8, Merger  
Regulation)*

### Metso/Svedala <sup>(2)</sup>

Following an in depth investigation, in January 2001 the Commission authorised the merger between Metso Corporation and Svedala AB, two Nordic companies with world-wide activities in the production and distribution of machinery for the rock and mineral processing industry. The merger creates one of the largest rock crushing equipment manufacturers world-wide. Clearance was possible after it was agreed that Svedala's jaw crusher and cone crusher businesses as well as Metso's primary gyratory crusher business will be divested to an independent competitor. This commitment was necessary to ensure effective competition on the markets for rock crushing equipment in the European Economic Area (EEA) and in individual Member States.

Metso is a Finnish company, established in 1999 through the merger of Valmet Corporation and Rauma Corporation. It is active in three main business areas: machinery including rock and mineral processing, automation and control technology, and fibre and paper technology. Svedala is a Swedish construction and mineral processing equipment company active in equipment for mineral recovery, processing and handling equipment, rock crushing equipment, transport systems, and compaction equipment.

The competitive impact of the operation will be in the field of rock crushing equipment, which is sold both by Svedala and by Metso. Rock crushing equipment principally aims at reducing the size of rock in order to make it suitable for its expected application. It is therefore primarily used for the production of aggregates and cement, and in the mining industry.

The operation would have led to very substantial market shares at national and EEA-wide level in the cone crusher markets (above 60% at EEA-wide level and above 50% in most Member States), in the primary gyratory market (above 60% EEA-wide), and, to a lesser extent, in the jaw crusher markets (above 50% in most Nordic countries for aggregate and construction jaw crushers and above 35% at EEA-wide level for mining jaw crushers). In addition, the Commission's investigation showed that Metso and Svedala benefit from specific advantages over their competitors, due to their high reputation, their broad product portfolio and their wide geographic coverage. Furthermore, there are significant barriers to entry into the rock crushing equipment markets because customers tend to be very risk averse and because local presence and quality of after-sales services are essential factors in these markets. Potential competition would therefore not have been a credible deterrent to prevent the parties from exerting their significant market power. The operation would thus have resulted in dominant positions in all the above mentioned markets.

<sup>(1)</sup> COMP/M.2363

<sup>(2)</sup> COMP/M.2033

However, the parties have offered undertakings that will result in a complete divestment of Svedala's cone and jaw crushers businesses, as well as in the divestment of Metso's primary gyratory business. As a result, the overlaps between the parties' activities in the markets where the Commission had identified competition concerns will be entirely removed. Therefore, the undertakings offered by the parties correctly resolve the competition concerns created by the operation.

Of the basis of the bilateral agreement on antitrust co-operation between the European Commission and the United States of America, the European Commission collaborated with the Federal Trade Commission in the analysis of this transaction. The Commission has also held discussions with the competition authorities of Australia, Canada and South Africa.

### SCA/Metsä Tissue <sup>(1)</sup>

On 31 January 2001, the Commission blocked the proposed takeover of Finnish tissue paper manufacturer Metsä Tissue by its Swedish competitor SCA Mölnlycke on competition grounds. This was only the 14<sup>th</sup> time that the Commission has prohibited a merger since 1990, out of a total of over 1,500 cases notified for regulatory clearance in the past 10 years. As this indicates, prohibition is clearly a decision of last resort when the companies did not or insufficiently address the Commission's concerns about creation or strengthening of dominant positions.

The deal would have given SCA sole control of Metsä Tissue Corp, and as a result would have created or strengthened dominant market positions in a total of 26 hygienic tissue products in Sweden, Norway, Denmark and Finland. As such, it would have severely limited consumer choice for tissue products, such as kitchen towels and toilet paper, and would have enabled manufacturers to raise customer prices. The Commission's investigation showed very high market shares (up to 90% in some markets) throughout the entire Nordic region (Sweden, Norway, Denmark and Finland) for toilet paper and kitchen towels.

Hygienic tissue products can be divided into different categories, such as toilet paper, kitchen towels, handkerchiefs and napkins. These products are either sold through retailers ('consumer products') or to corporate customers, such as hotels, schools, hospitals etc. ('Away-from-home

products' – AFH). The parties and most other tissue manufacturers have developed their own branded products but also supply supermarkets and other large consumers with private-label products.

The operation would combine SCA's Edet toilet paper and kitchen towels with Metsä Tissue's own well known brands Lambi, Leni and Serla, leaving little room for alternative suppliers. The Commission found that Nordic supermarkets' countervailing buyer power would be insufficient to restrain the merged company's market power. The investigation showed that with such a powerful player no competitors would be ready to penetrate the market due to very high investment costs, including the costs of introducing a new brand.

The Commission's investigation also showed that the operation would lead to the creation of single dominant market positions in 21 tissue paper markets in Sweden, Norway and Denmark, to the creation of duopolistic dominant positions in two tissue product markets in Finland between the merged entity and Fort James of the United States — and to the strengthening of dominant positions in three product markets in Finland.

During the in-depth investigation, the parties re-submitted undertakings already offered in first phase. These undertakings, which included the divestiture of certain assets, had already been rejected in the first phase as they did not address any of the competition issues identified for consumer and AFH tissue products in Finland or for private-label consumer tissue products in Denmark. Furthermore, the proposed divestment package contained insufficient capacity in a number of product markets for the buyer to compete effectively with the merged entity and to effectively restrain SCA's market power in Sweden, Norway, Denmark and Finland.

In these circumstances the Commission had no choice but prohibit the deal to ensure that Nordic consumers would continue to benefit from sufficient choice of products at competitive prices.

### EdF/EnBW <sup>(2)</sup>

In February, the Commission authorised, subject to conditions, the acquisition of joint control of German electricity company Energie Baden-Württemberg AG (EnBW) by Electricité de France (EdF) and Zweckverband Oberschwäbische Elektrizitätswerke (OEW), an association

<sup>(1)</sup> COMP/M.2097

<sup>(2)</sup> COMP/M.1853

of nine south-west German districts. The operation, as initially notified to the Commission, would have led to the strengthening of EdF's dominant position on the market for eligible (i.e. large) customers in France. In order to eliminate these competition concerns, EdF will make available to competitors 6,000 Megawatts of generation capacity located in France, equal to 30 percent of the eligible market. Furthermore, EdF has undertaken not to exercise its voting rights in French electricity generator Company Nationale du Rhône (CNR) and to withdraw its representative from the CNR board of directors. Finally, the parties have committed to divest EnBW's shareholding in Swiss electricity company WATT AG.

EdF is a wholly state-owned French company active in all fields of supply and transport of electricity in France. Through its subsidiary EdF International («EdFI»), a holding company, EdF has shareholdings in electricity companies in many European countries. OEW is an association of nine public districts in the Southwest of Germany. Its main purpose is to hold shares in companies active in the energy sectors. EnBW is a vertically integrated electricity utility active in all fields of supply and transport of electricity mainly in the Southwest of Germany.

The Commission received a notification on 31 August 2000 according to which EdF would acquire a stake of 34 percent in EnBW, therefore taking joint control with OEW in Germany's fourth largest electricity firm. In its in-depth investigation the Commission assessed the deal's impact on the French market for supply of electricity to eligible customers. Eligible customers in France are industry clients which consume more than 16 gigawatthour/year (GWh/year) and are free to choose their electricity supplier according to French and Community law.

The investigation concluded that EdF enjoyed a dominant position on the French market for the supply of eligible customers with a market share of approximately 90%. EnBW is one of the most likely potential competitors in the French market and would be one of the strategically best placed companies to enter the market for the supply of eligible customers. EnBW's supply area is in the Southwest of Germany and has a long common border with France. Two of the four Franco-German interconnectors are in the EnBW supply area. Furthermore, EnBW has access to generation capacity situated in France under a number of contractual long-term agreements with EdF.

By acquiring EnBW, EdF would also increase its potential for retaliation in Germany and would thus become less exposed to competition in France. Following the transaction, EdF would be in a position to use its presence in Germany at least to a certain extent in order to deter actual competitors such as RWE, E.ON and HEW from pursuing aggressive competition for the supply of eligible customers in France. Since those competitors do not have a similar potential for retaliation in France, they would be further discouraged from aggressively challenging EdF's position in France.

The Commission's investigation also showed that EnBW has a controlling stake in WATT AG, a major Swiss electricity producer, while EdF has traditionally enjoyed a close commercial relationship with ATEL, another important player in the Swiss electricity market. This means that through its shareholding in EnBW, EdF would also considerably strengthen its foothold in Switzerland and eliminate WATT as a potential competitor on the French market.

Finally, the transaction would also significantly contribute to EdF's outstanding position as a Pan-European supplier. EdF is already active in a number of Member States, including Austria, Italy, Sweden and the United Kingdom. Following the proposed concentration, EdF would have a strong foothold in Germany and would be in a unique position to offer truly Pan-European services to industrial and commercial customers.

### TPO/TPG/SPPL <sup>(1)</sup>

In March, the Commission authorised the creation of two joint ventures with world-wide activities for outbound cross-border mail by The Post Office (TPO) of the United Kingdom, TNT Post Group N.V. (TPG) of the Netherlands and Singapore Post Private Limited (SPPL). This authorisation is conditional upon TPG selling the business carried out by TNT International Mail in the Netherlands in order to prevent a strengthening of TPG's dominant position on the Dutch market for outbound cross-border business mail. TPG, TPO and SPPL have also offered an 'up-front buyer' undertaking, meaning that they will not complete or implement the transaction before a binding sale agreement has been signed with a purchaser approved by the Commission.

TPO, TPG and SPPL are the national public postal operators (PPOs) of the UK, the Netherlands and Singapore respectively. The companies plan to set

<sup>(1)</sup> COMP/M.1915

up two joint ventures named Delta and NewCo, which will be active in the provision of outbound cross-border mail services and, to a limited extent, outbound cross-border parcel services. Delta will be active world-wide with the exception of the Asia Pacific region, which will be covered by NewCo. The Commission's examination focused on Delta.

Whilst the two joint ventures would generally appear to be pro-competitive, the Commission identified possible competition problems in the UK and the Netherlands and, therefore, started an in-depth investigation on 15 November 2000. The Commission's concerns arose from the elimination of competition between the businesses being contributed to Delta and the respective parent companies, TPG in the Netherlands and TPO in the UK.

Following further investigation, the Commission reached the conclusion that the concentration would not lead to the creation or strengthening of a dominant position in the UK. While the parties will have relatively high market shares in the market for outbound cross-border business mail, there are a number of other players in the market with significant shares, including consolidators and third country PPOs. Consolidators are companies which collect mail and subsequently negotiate special rates with PPOs or with local delivery companies in order to distribute the «consolidated» mail in the country of destination.

By contrast, the investigation confirmed the Commission's concerns in relation to the market for outbound cross-border business mail in the Netherlands. There are fewer operators on the Dutch market than on the UK market, and they are all relatively small. With the exception of TPO, which has been able to obtain a significant part of outbound traffic destined to the UK, none of the foreign PPOs active in the Netherlands, including Deutsche Post, have achieved sizeable market shares. The concentration would, therefore, have had the effect of eliminating competition between the dominant player, TPG, and the most successful entrant into the Dutch market, TPO.

To remedy these concerns, the parties committed to divest the business that is currently undertaken by TNT International Mail in the Netherlands (TNT IM Netherlands). This is the part of TPG in the Netherlands that was originally intended to be contributed to the Delta joint venture.

The Commission took the view that the success of the remedy depends to a large extent on the characteristics of the purchaser, in particular whether it will be able to generate sufficient volumes and have access to a cost efficient network such that it will be able to sell its outbound cross border mail services at prices that are comparable to those which TNT IM Netherlands is currently able to offer. In the light of this, the parties have proposed an up-front buyer solution, in other words they have committed themselves not to complete the notified concentration until a binding sale and purchase agreement has been reached with a buyer approved by the Commission. The commitment specifies the time period in which this has to be achieved.

### **Bombardier/ADtranz <sup>(1)</sup>**

On 3 April the Commission decided to authorise the takeover of DaimlerChrysler's rail business division ADtranz by Bombardier of Canada, subject to commitments. As initially notified, the operation would have led to the creation of a dominant position on the markets for regional trains and trams in Germany. But the companies offered a number of divestments and other undertakings which will ensure the emergence of a strong competitor in Germany to replace the elimination of competition from ADtranz.

ADtranz (Germany) was created in 1995 through the pooling of the rail business activities of ABB and Daimler-Benz (now called DaimlerChrysler), as Chrysler acquired sole control in 1999. ADtranz makes rail rolling stock and signalling equipment. Canada's Bombardier is active in the aircraft, rail transportation equipment and recreational product industries.

The acquisition will make Bombardier the world's largest integrated producer of railway equipment, ahead of Alstom of France and Germany's Siemens, the three heavy weights in the rail equipment industry both in Europe and in the rest of the world.

An in-depth investigation into the ADtranz deal confirmed the Commission's concerns about reduction of competition in the markets for regional trains and trams/light rail vehicles in Germany. However, the parties submitted commitments which will result in the development of Stadler Rail, a Swiss company active in Germany, as a strong independent supplier of regional trains and trams/light rail vehicles.

<sup>(1)</sup> COMP/M.2139



Stadler Rail will take over to a large extent the current market position of ADtranz. The commitments will also ensure that two independent suppliers of electrical propulsion (Kiepe and ELIN) remain active in both markets, which will allow for future consortia with Stadler and other non-integrated mechanical suppliers. The Commission has, therefore, reached the conclusion that, on the basis of the undertakings submitted by the Parties, the notified concentration will not lead to a dominant position in the German markets for regional trains and trams/light rail vehicles.

*Conditional clearances after Phase 1  
(pursuant to Articles 6(1)(b) and 6(2))*

**United Airlines/US Airways <sup>(1)</sup>**

In January, the Commission authorised UAL Corp., whose principal operating subsidiary is United Airlines Inc., to acquire US Airways Group Inc. The Commission's review showed that the operation could raise competition concerns on four transatlantic routes (Frankfurt-Philadelphia, Charlotte and Pittsburgh and Munich-Philadelphia). To resolve these concerns, United submitted undertakings in the form of slot divestitures at Frankfurt and Munich which will facilitate the entry of new competitors on those routes.

Both United Airlines Inc. and US Airways Group Inc. (US Air) are based in the United States. Their main area of operation is the United States, however, both airlines also operate flights between Europe and the United States, hence the regulatory review by the Commission of the European Union. The Commission's investigation concentrated on the effects of the operation on transatlantic flights between the European Economic Area the, i.e. the 15 EU states plus Norway, Liechtenstein and Iceland, and the United States. This transaction is also being examined by the US Department of Justice.

United is a member of the Star Alliance, which in Europe includes Lufthansa of Germany and Scandinavian carrier SAS among others. United has also an extensive transatlantic co-operation agreement with Lufthansa. Consequently, the Commission has taken the view that the present concentration would substantially reduce the competition previously existing between US Air and Lufthansa. On that basis, the operation has

been found to raise concerns on the four transatlantic routes that link the hubs of US Air and Lufthansa (namely Frankfurt-Philadelphia, Frankfurt-Pittsburgh, Frankfurt-Charlotte and Munich-Philadelphia). On Frankfurt-Philadelphia the operation will lead to the combination of the only operators of non-stop services and on Frankfurt-Pittsburgh, Frankfurt-Charlotte and Munich-Philadelphia, the operation will lead to the combination of the only operator of non-stop services (US Air) with the largest or second-largest provider of indirect flights.

A substantial barrier to entry or expansion on these routes is the congestion at Frankfurt and Munich airports. That congestion makes it difficult for airlines seeking to provide new or additional services on those routes to obtain the relevant slots necessary for those operations. The Commission's analysis has resulted in concerns that transatlantic passengers on the affected routes could suffer from less or no choice in terms of airlines and, consequently, higher prices.

In order to overcome the Commission's concerns, United committed itself to make available slots at Frankfurt and Munich that will facilitate the market entry of competing airlines. This would provide new frequencies on the routes in question and thereby give consumers a larger choice.

**Smith & Nephew/Beiersdorf/JV <sup>(2)</sup>**

At the end of January the Commission gave regulatory clearance to a proposed joint venture between British undertaking Smith & Nephew plc and Beiersdorf AG of Germany after the parties made substantial concessions to resolve competition concerns. The Commission found that the 50/50 joint venture, which will combine the parents' traditional wound care, immobilisation, bandaging and phlebology businesses, would lead to overlaps in numerous national markets. In particular, the commitments include the divestment of a significant number of brands. Smith & Nephew is a London-based company which develops, manufactures and distributes medical products, including wound management, casting and bandaging products. Beiersdorf, which is based in Hamburg, Germany, develops, manufactures and distributes medical products such as wound management, casting, bandaging and phlebology products.

The joint venture will combine the parents' activities in the following professional medical markets:

<sup>(1)</sup> COMP/M.2041

<sup>(2)</sup> COMP/JV.54

traditional wound care products, immobilisation products, bandaging products and phlebology products (compression, support and anti-embolism hosiery).

After analysing the markets, the Commission found the relevant markets to be national rather than EEA-wide. The formation of the joint venture by the parties, as originally notified to the Commission, would have led to overlaps in several national markets for professional first aid dressings (plasters), fixation bandages, support bandages and plaster of Paris casts, which gave rise to competition concerns. The national markets concerned include Germany, the Netherlands, Belgium, Denmark, Italy, Spain and the United Kingdom.

To remove the Commission's concerns, the parties undertook to divest certain trademarks and businesses either in specific countries, groups of countries or throughout the EEA. When evaluating the joint venture, the Commission also examined whether the creation of the joint venture might encourage the parent companies to co-ordinate their competitive behaviour in the retained businesses other than the JV. This was particularly important due to Smith & Nephew's strong market position in the advanced wound care market and Beiersdorf's equally strong position in the consumer markets for first aid dressings, bandages and orthopaedic soft goods. Following a detailed investigation, however, the Commission concluded that there is no such risk as the markets in which the parent companies will be active are clearly distinct.

### **Degussa/Laporte <sup>(1)</sup>**

In March, the Commission gave the go-ahead for Degussa AG, a German-based company belonging to E.ON AG, to acquire sole control of the British company Laporte PLC. While both companies are active in the manufacturing of speciality and other chemical products with substantial overlaps, they made a number of concessions in order to achieve regulatory clearance in the first phase of the investigation.

The parties' activities overlap in several markets but the Commission only had serious concerns in the product markets concerning persulfates, cationic reagents and hydroxy monomers. The parties are the only European manufacturers of persulfates, which are primarily used as polymerisation indicators in the plastic industry, where they

would have a combined market share in excess of 70 % in the European Economic Area.

Cationic reagents, which are mainly used for the production of starches for the paper industry, exist in two chemical forms that the Commission identified as separate markets; cationic reagent 151 and cationic reagent 188. The Commission found that the relevant geographic market for those products were EEA-wide although it accepted that for cationic reagent 151 there may even exist a world-wide market. In both markets the Commission found that the parties would have combined market shares in excess of 50%. Hydroxy monomers are mainly used to achieve properties like hardness, flexibility and durability for automotive paintings and refinishing, and the Commission's investigation showed that they are not easily replaceable by other chemicals. The Commission therefore found that they constitute a separate, European-wide market in which the parties have a combined market share of over 60%.

In order to render the concentration compatible with the common market, Degussa has committed itself to divest its persulfates plant in Rheinfelden, Germany, Laporte's Dutch plant at Zaltbommel, where all of Laporte's cationic reagents among other chemicals are manufactured, and Laporte's Hythe plant in the UK which includes all of Laporte's hydroxy monomers business.

In line with Commission policy, and in order to ensure that the assets to be divested constitute a viable business it was necessary to include activities which are related to markets where the Commission did not raise competition concerns. This was the only possible way to create an effective competitor in the cationic reagents and hydroxy monomers markets.

### **Buhrmann/Samas Office Supplies <sup>(2)</sup>**

In April, the Commission granted clearance to the proposed takeover of Samas's office supplies business by Buhrmann, subject to the divestiture of the Dutch office supplies activities of Corporate Express, a Buhrmann subsidiary. The transaction as originally notified would have given rise to competition concerns in the office supplies market in the Netherlands.

Buhrmann NV is a Dutch company active as a distributor of office products and as a paper merchant. In office supplies, it operates under the name Corporate Express, and its activities are

<sup>(1)</sup> COMP/M.2277

<sup>(2)</sup> COMP/M.2286

mainly concentrated in the EU and the US. Samas Groep NV is a Dutch company active in the manufacture and distribution of office furniture and the distribution of office supplies. Samas sells mainly in the Netherlands, the UK and Germany. In the Netherlands, Samas trades principally under the name Aspa. Buhrmann is only acquiring the office supplies division of Samas, which will remain active as a manufacturer and distributor of office furniture.

The Commission's investigation focused on the likely impact of the proposed transaction on the Dutch market for the distribution of office supplies. In the Netherlands, Samas and Buhrmann are respectively the number 1 and number 3 'contract stationers', the term used to describe distributors who sell a full range of office products on a «one-stop-shop» basis. The investigation revealed that the two companies are competing in a market for the provision of office supplies to customers employing a large number of office workers. The Commission concluded that, as a result of the proposed transaction, Buhrmann would have become the dominant distributor of office supplies to larger customers in the Netherlands. The company's sales would have been more than twice as great as those of its closest competitor, a position which would have risked inhibiting the opportunities for Buhrmann's rivals to compete effectively.

In order to satisfy the Commission's concerns, Buhrmann offered to divest the Dutch office supplies activities of its subsidiary Corporate Express. As a result of this divestiture, the Commission concluded that the operation will not lead to the creation of a dominant position on the office supplies market in the Netherlands and was therefore able to clear the deal.

### *Article 9 referral decisions*

#### **Enel/Infostrada <sup>(1)</sup>**

The Commission decided to refer to the Italian competition authorities – Autorità Garante della Concorrenza e del Mercato – the examination of the impact of the proposed acquisition of Infostrada by Enel and France Telecom on the Italian electricity sector. The electricity market is currently being liberalised in the whole of the European Union, but Enel still has a dominant position in Italy, leading the Italian authority to

fear that it might be able to protect its position in the electricity market by offering joint utility services.

The Italian competition authority asked the European Commission to refer the examination of certain aspects of the concentration to Italy, using Article 9 of the Merger Regulation 4064/89. Article 9 allows for such referrals if a national competition authority is concerned a merger could present a threat to effective competition on its own market.

The Autorità has argued that the acquisition of Infostrada would give to Enel the possibility to defend or strengthen its dominant position in the market for the supply of electricity. Enel, by jointly offering utilities and telecommunications services, and in particular using strategies such as joint billing and joint promotion of the bundled services, would be able to «lock in» its current electricity customers, reducing substantially the impact of the liberalisation on the Italian electricity markets. According to the Autorità, Infostrada has a non-negligible share of small and medium enterprises (SMEs) as customers. These customers would be particularly attracted by a «one stop shop» offer of utilities services and telecommunications services.

In referring the case, the Commission took the view that the Italian Competition Authority was best placed to carry out the investigation and has, therefore, not taken a final position on this issue.

The Commission's one-month review of the case showed that the deal would pose no competition problems on the telecommunications and Internet markets. The Commission has, therefore, adopted a decision clearing these aspects of the deal.

#### **Metsäliitto Osuuskunta/Vapo Oy <sup>(2)</sup>**

On 8 February 2001, the Commission decided to refer to the Finnish Competition Authority – Kilpailuvirasto – part of the examination of the impact of the proposed acquisition by Finland's Metsäliitto Osuuskunta of a stake in Vapo Oy, which is currently solely owned by the State of Finland. The decision followed a request by the Finnish Competition Authority to investigate the deal's impact on the market for wood based fuels, the market for peat or the combined market for wood based fuels and peat in Finland.

<sup>(1)</sup> COMP/M.2216

<sup>(2)</sup> COMP/M.2234

The transaction concerned the proposed acquisition of joint control by Metsäliitto over Vapo by acquiring a minority stake in the company. The transaction creates overlaps on the market for wood based fuels, sawn timber and wood procurement. The Commission cleared those aspects of the transaction that related to the markets for sawn timber and wood procurement as no competition concerns were raised.

Kilpailuvirasto asked the European Commission to refer the examination of a part of the concentration to the competent Finnish authorities, applying Article 9 of the Merger Regulation 4064/89. The Commission's findings in its first phase investigation support the preliminary analysis made by the Finnish Competition Authority in its referral request. In referring the case, the Commission took the view that the Finnish Competition Authority is best placed to carry out this investigation, especially since the Finnish Authority has only recently concluded an investigation into the alleged dominant position of Vapo in the Finnish peat markets.

### *Court of First Instance Decision*

#### **RAG/Saarbergwerke/Preussag Anthracite**

On 31 January 2001 the Court of First Instance ('CFI') annulled the Commission's decision of 29 July 1998 (COMP/ECSC.1252) by which the Commission authorised the merger aspects of the restructuring of the German coal industry. The CFI found that the Commission had not taken into account in its merger analysis the commercial and financial effects of the possible State Aid inherent in the price paid by RAG for Saarbergwerke which was then owned by the German State and the Land of Saar. The Commission will have to issue a new decision on this case in which it will have to address the competitive effects of any State Aid received. Furthermore, the judgement appears to impose a general duty on the Commission to examine the effects on competition of State Aid issues when adopting a merger decision.



## State aid:

### Main developments between 1<sup>st</sup> February and 31<sup>st</sup> May 2001

#### Germany — Recent developments on State guarantees for German public banks

*Karl SOUKUP and Stefan MOSER, Directorate General Competition, unit H03*

After intensification in the recent months of the contacts with the German Government, the European Commission adopted on 8 May 2001 a formal recommendation, proposing to the German Government so-called 'appropriate measures' in order to render the system of State guarantees for public law credit institutions ('Anstaltslast' and 'Gewährträgerhaftung') compatible with the State aid rules of the EC Treaty.

Anstaltslast could be translated as «maintenance obligation». It means that the public owners (e.g. Federal State, Länder, municipalities) of the institution are responsible for securing the economic basis of the institution and its function for the entire duration of its existence. Gewährträgerhaftung could be translated as «guarantee obligation». It stipulates that the guarantor will meet all liabilities of the bank which cannot be satisfied from its assets. Both guarantees are neither limited in time nor in amount. Also, the credit institutions do not have to pay any remuneration for them. The German credit institutions in public legal form which benefit from these guarantees comprise the 'Landesbanken', a number of special purpose banks and around 580 savings banks of widely varying size.

The adoption of the recommendation follows intensive contacts between the Commission services and the German authorities on the future of the system of State guarantees for public law credit institutions. In these contacts it became clear that concrete proposals were now emerging in Germany and that the discussions should be further intensified and formalised within the framework of an established procedure.

The adoption of the recommendation is the logical next step within such a procedure, which started with a letter of the Commission services on 26 January 2001, stating the preliminary opinion of the Commission that the guarantee system constitutes existing State aid which is not compatible with the common market. It is also recalled that the European Banking Federation filed on 21 December 1999 a complaint against Anstaltslast and Gewährträgerhaftung.

The recommendation adopted on 8 May 2001 confirms that the guarantee system has to be considered as State aid within the meaning of the Treaty: the measures are based on State resources and favour certain groups of undertakings, they distort competition and affect trade within the Community. However, since the system existed already when the EC Treaty entered into force in 1957 the aid qualifies as «existing» aid for which the Commission can only demand changes for the future, but cannot act retroactively.

The German Government has – from receipt of the recommendation on 11 May 2001 – two months to accept the Commission's request to adapt the system. In case of acceptance, it has until the end of September 2001 to submit detailed proposals on how actually to achieve compatibility with the State aid rules of the Treaty, keeping largely the choice of the specific solutions, provided they are in conformity with Community law.

It should be noted that the German Government announced recently that it would be willing to modify the guarantee system considerably. Such change would take place on the basis of a «platform model», which provides for abolishing Gewährträgerhaftung and modifying Anstaltslast in a way which would make State interventions subject to Commission control. Within this 'platform model' the German Government intends to allow for individual solutions for particular banks.

According to the Commission recommendation, compatibility with the EC rules should be achieved by 31 March 2002. However, it is explicitly provided for in the recommendation that the Commission can decide to agree to a later date if it considers this objectively necessary and justified in order to allow an appropriate transition for certain public banks to the adjusted situation. The Commission is aware of the necessity to protect existing creditors, who provided funds to the public law credit institutions on the basis of the guarantee system.

On the other hand, if the German Government decided not to accept the proposed appropriate



measures, the Commission would have to take the next step provided for by the procedural rules concerning State aid, which would be to initiate a formal State aid procedure. At the end of such a

formal investigation the Commission would then decide on the concrete measures Germany would have to implement in order to make the guarantee system compatible.

## United Kingdom — The Enhanced Capital Allowances scheme does not constitute State aid under article 87 (1) CE

*Brigitta RENNERT, Directorate General Competition, unit G02*

The Commission decided on 13 March 2001 not to raise objections to the UK Enhanced Capital Allowances scheme as the scheme does not constitute State aid under Article 87(1) EC.

Enhanced Capital Allowances are intended to provide a tax-driven incentive to encourage investment in energy saving technologies.

The scheme provides the possibility for accelerated tax relief for equipment in the following technology classes provided it meets strict energy saving criteria: lighting, pipe insulation, boilers, motors, variable speed drives, refrigeration and combined heat and power.

The maximum value of the tax deferral in net present value terms is about 6-7% of the value of the qualifying investment. The exchequer costs of the scheme will be about £ 100 million in 2001/02 and £ 140 million in 2002/03.

In its assessment, the Commission took in particular into account that:

- All businesses will be able to claim the enhanced capital allowances, regardless of size, industrial or commercial sector, or location.
- Similarly, no restrictions are imposed on the source of the equipment in the qualifying technology classes. The scheme is open to manufacturers world-wide and is being publicised in the UK and abroad.
- The eligible technologies respectively products are defined on the basis of objective criteria, applying EU standards where they exist and otherwise national standards. The technologies are not restricted by their nature for the use in specific sectors of the economy.

## **Germany — Prolongation of the «Beteiligungskapital für kleine Technologieunternehmen», a risk capital scheme for small technology companies**

*Brigitta RENNER, Directorate General Competition, unit G02*

The European Commission approved on 28 February 2001 the prolongation of a German risk capital scheme for small technology companies. Under the scheme private capital investors will be guaranteed parts of their investment for research and investment projects in young technology companies. The scheme will help to develop and stabilise the German risk capital market for early phase financing in companies which have the potential for fast growth and job creation. Until the end of 2002, the scheme will make available 192.5 million Euro (381.8 million DEM) in order to trigger a total participation volume of 2.7 billion Euro (5.2 billion DEM).

Recent studies demonstrated significant potential for new technology businesses in Germany which would require significant funding for research activities during their first years. These companies have the potential to grow faster than other companies and they have a stronger positive impact on job creation. One of the biggest obstacles for small technology companies is the lack of financing, as banks often shy the high risk and the management costs involved in such projects.

In order to facilitate the access of small technology companies to early phase risk financing, Germany set up an aid scheme 'Risk capital for small technology companies — Beteiligungskapital für kleine Technologieunternehmen (BTU)' which guarantees private capital investors parts of their investments mainly for research projects in small technology companies up to the age of five years. The scheme is implemented by two public banks, Kreditanstalt für Wiederaufbau (KfW) and a daughter of Deutsche Bank (tbG).

Although the German early phase risk capital market has developed positively over the last years, it is still a fragile market. The current aid scheme continues the German policy for developing and stabilising the early phase risk capital market, but adapted to the stage of development of the market. Germany limited in particular the target group to small technology companies up to five years and decreased the aid intensity to these small technology companies for investments and research and development projects.

## Italy — Commission raises no objections to an aid in favour of *ST Microelectronics* for three high-tech R&D projects in microchips

*Brice ALLIBERT, Directorate General Competition, unit G02*

On 11 April 2001, the Commission decided not to raise objections to aid granted to the company 'ST Microelectronics' for a R&D project aiming at developing technologies for next generation flash memories from 180 down to 100 nm wide.

Flash memories are non volatile memory chips. Their ability to retain their content even when power is off while keeping the possibility to be easily erased and rewritten makes them more and more widely used in wireless applications like cellular phones, digital cameras or smart cards.

The growing demand for ever smaller and ever more powerful memories drives a constant decrease of the size of these integrated circuits and the integration of ever more of them in one chip.

As the fabrication of integrated circuits is a very complex industrial process, involving many high technology steps, each new generation of such circuits necessitates the development of new design methods and new scientific and industrial instruments, drawing from the latest advances in fundamental physics, optics, material science or chemistry.

The project was notified in January 2000, in the framework of the Italian legislation providing for support to R&D activities (State aids nn. N 173/2000 and N 445/2000), which was vetted by the Commission last year.

It comprises three R&D subprojects – two, RA1 and RA2, at the industrial stage and one, IT, at the pre-competitive stage. According to the plan, the projects should be completed by 2003. Altogether, the eligible costs amount to 456 million Euro and the maximum allowed contribution to 143 million Euro. The IT project will include the building of a Pilot Line to test the new processes.

ST Microelectronics' decision to invest into advanced R&D equipment in the field of non-volatile Flash memories in the centre of Agrate Brianza (Italy) crucially depended on the guarantee of public support.

The Commission deemed the R&D projects, on the basis of a deeper scientific investigation, to be in line with the Community framework for State aid for research and development <sup>(1)</sup>.

<sup>(1)</sup> OJ C 45 of 17.2.1996, p. 6.

## United Kingdom — Commission takes a decision on the Climate Change Levy (CCL). It authorizes several exemptions but opens the 88 (2) EC procedure on the exemption for dual use fuels

*Brigitta RENNER, Directorate General Competition, unit G02*

*The European Commission decided on 28 March 2001 not to raise objections to the main elements of the UK's Climate Change Levy (CCL) due to come into force on 1 April 2001. The levy is being introduced in order to help meet the UK's international greenhouse gas abatement obligations and to progress towards the goal of reducing CO<sub>2</sub> emissions. It covers the use of fuel for lighting, heating and motive power in industry, commerce, agriculture, public administration and other services.*

*The UK authorities had notified several exemptions or reduced rates from the tax, for a period of ten years. These exemptions will contribute to an increase in the use of environmentally friendly energy sources and technology and provide an incentive for energy intensive companies to commit themselves to the achievement of considerable environmental improvements. The Commission raised no objections to most of the exemptions and reductions notified. However, on one point, namely the exemption for dual use fuels, it decided to open a formal investigation procedure in order to assess this exemption in more detail.*

The CCL takes forward the UK Government's policy on environmental taxation and is a central part of its strategy to achieve a 12.5% reduction in greenhouse gas emissions, agreed under the Kyoto protocol. The levy is estimated to save around 5 million tonnes of carbon p.a. by 2010. At least half of these savings should be achieved through CCL agreements with energy intensive sectors. The levy is expected to raise £ 1 billion in its first full year.

The tax will be levied at the point of sale to the final consumer. In order to avoid double taxation it will not apply where a taxable commodity is used to produce another taxable commodity. Mineral oils will not be brought within the scope of the tax because they are already subject to excise duty in accordance with Council Directives 92/81 EEC and 92/82 EEC. The CCL will apply also to imported commodities when used in the UK. It will not be applied to commodities which are intended to be burnt outside the UK.

The Commission decided to raise no objections to the following exemptions and reductions:

- Exemption for electricity, gas and coal used in public transport and railfreight (diesel and petrol are not within the scope of the tax as they are already subject to excise duties). The main beneficiaries of this exemption will be main-line railways, light railways, London Underground and rail freight companies using electricity
- Exemption for input fuels and electricity generated by 'good quality' 'Combined Heat and Power' (CHP). This technology makes significant fuel and emissions savings over conventional, separate forms of power generation and heat-only boilers. The generation of electricity and the recovery of heat in CHP Schemes typically achieve overall energy use efficiencies of 60-80% and sometimes more, compared to efficiency rates in the range of 25-50% for the generation and supply of electricity from conventional power stations which reject the unutilised energy content as heat directly into the atmosphere or into seas or rivers. Some of the heat cogenerated in a CHP Scheme is used typically in industrial processes or for heating and hot water in buildings. The heat used in this way displaces heat that would otherwise have to be supplied by burning additional fuel and so leads directly to a reduction in emissions. The development of CHP provides a particularly environmentally-effective approach for reducing CO<sub>2</sub> emissions. 'Good quality' CHP plants must meet a set of criteria ensuring a particularly efficient use of energy.
- Exemption for electricity generated from some energy sources. The technologies eligible for exemption will be: Wind energy, hydro power up to 10 MW, tidal power, wave energy, photovoltaics, photoconversion, geothermal hot dry rock, geothermal aquifers, the biodegradable fraction of municipal and industrial wastes, landfill gas, agriculture and forestry wastes, energy crops and sewage gas. This exemption is also applicable to imported electricity from the same energy sources.
- Reductions for companies entering into climate change agreements. Those sectors that can agree targets for improving their energy efficiency or reducing carbon emissions will get an



80% discount from the levy. Climate Change Agreements have been concluded between the UK authorities and numerous sectors, amongst them the chemical, aluminium, food and drink, paper, glass, ceramics, cement and steel industries. Monitoring and evaluation of the targets will ensure that they are respected and remain challenging over the ten year period.

The Commission decision not to raise objections to these four types of exemptions, either because they are not deemed to be State aid (exemption for electricity from renewable sources and for Good Quality CHP) or else because they are compatible with Article 87(3) of the EC Treaty (exemption for

public transport and rail freight, exemption for companies entering into Climate Change agreements) – gives clearance for the implementation of the major elements of the Climate Change Levy.

However, on the exemption for dual use, the Commission decided to open the 88 (2) CE State aid investigation procedure. Under the current UK legislation, energy used partly for fuel purposes and partly for non-fuel purposes, for example in a chemical reduction, will be exempt from the CCL. The Commission wants to consider further whether this exemption constitutes State aid and, if so, whether it is compatible with the Community's State aid rules.

## **Germany — Commission concluded its investigation and authorised the restructuring aid for the construction company Philipp Holzmann AG.**

*Elke GRAEPER, Directorate General Competition, unit H02*

On 8 May 2001 the Commission authorised a subordinated loan from the state-run Kreditanstalt für Wiederaufbau ('KfW') of Euro 76.7 million (DEM 150 million) and an 80% federal guarantee for a credit of Euro 63.9 million (DEM 125 million). The Commission came to the conclusion that the restructuring measures were in principle appropriate to restore the company's long-term viability and to avoid past mistakes. In that context the Commission took into account modifications to the original plan and authorised a one year credit line of Euro 63.9 million (DEM 125 million) provided by the Kreditanstalt für Wiederaufbau at the end of 2000.

In November 1999 the Federal Government of Germany undertook to grant the subordinated loan and the guarantee to Holzmann, which was in financial difficulties and had to file for insolvency. On the basis of this commitment, the creditor banks agreed a restructuring plan totalling over Euro 1.5 billion (more than DEM 3 billion), to whose financing they contributed more than 90%. Following this agreement the filing for insolvency was withdrawn. The aid was notified as restructuring aid in December 1999.

After a preliminary investigation of the notified aid, the Commission decided on the 18 January 2000 to open the formal procedure. Doubts as to the compatibility of the aid with the common market existed mainly with respect to the restoration of Holzmann's long-term viability, the measures to mitigate the distortions of competition and the necessity of the aid. Furthermore, the information basis of the Commission at that time was insufficient and the restructuring plan was only available as a rough concept. The opening of the procedure enabled the Commission to carry out a thorough investigation on the basis of the Community guidelines on state aid for rescuing and restructuring firms in difficulty.

Once the Commission had received all the necessary information in April 2001, the investigation could be completed and the Commission concluded that the aid was compatible with the common market. A decisive factor was that the aid is relatively small compared with the overall financing package and that the distortions of competition associated with it are offset by substantial measures to reduce the company's

market presence. Thus the Holzmann Group's workforce in Germany had been already significantly reduced, a vast number of regional offices had been closed, and subsidiaries, especially in Germany but in other Member States as well, had been rationalised, sold or closed. These measures are still continuing. In addition, the need for the aid was sufficiently explained by the Federal Government in the context of the negotiations at the time and in the light of the liquidity planning for the restructuring phase.

The Commission analysed in greater detail the restructuring plan with respect to its appropriateness to restore the company's long-term viability. It concluded that the restructuring measures were basically conducive to achieve this aim. However, it became also clear that Holzmann is 'not yet there' and that the success of the restructuring effort is conditional on the remaining measures being implemented very quickly and on there being no further deterioration in the German construction industry.

In its assessment, the Commission has also taken into account that Holzmann modified the restructuring plan at the end of 2000, receiving a further credit line of Euro 256 million (DEM 500 million) from the creditor banks and a credit line of Euro 63.9 million (DEM 125 million), from KfW both for a period of one year. The need for these measures had arisen because of delays in selling off assets and because the aid had not yet been released. Contrary to the German position the Commission concluded that, given Holzmann's economic situation, the credit line from KfW constituted aid. However, the German government despite its position submitted all the necessary information concerning this measure. Therefore, and given the relative weight of this measure in the context of the total restructuring plan, its compatibility could be assessed together with the notified aid in the context of the investigation procedure. The Commission took also into account that the modified plan includes more reduction and divestment measures which will further reduce the company's market presence. Given the company's liquidity position, the need for this temporary aid measure was demonstrated and the creation of excess liquidity could be ruled out.

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## Competition DG staff list

Télécopieur central: 295 01 28

<b>Directeur général</b>	<b>Alexander SCHAUB</b>	2952387/2958819
<b>Directeur général adjoint plus particulièrement chargé des Directions C et D</b>	<b>Jean-François PONS</b>	2994423/2962284
<b>Directeur général adjoint plus particulièrement chargé des Directions E et F</b>	<b>Gianfranco ROCCA</b>	2951152/2967819
Conseiller pour les réformes	...	
Conseiller auditeur	<b>Helmut SCHRÖTER</b>	2951196/2960090
Assistants du Directeur général	<b>Nicola PESARESI Bernhard FRIESS</b>	2950766/2992132 2956038/2950006
<i>Directement rattachés au Directeur général:</i>		
1. Personnel, Budget, Administration, Information	<b>Stefaan DEYPERE</b>	2990713/2950210
2. Questions informatiques	<b>Javier Juan PUIG SAQUES</b>	2968989/2965066
<b>DIRECTION A</b>		
<b>Politique de concurrence, Coordination, Affaires Internationales et relations avec les autres Institutions</b>	<b>Kirtikumar MEHTA</b>	2957389/2952871
Conseiller	<b>Juan RIVIÈRE MARTI</b>	2951146/2960699
Conseiller	<b>Georgios ROUNIS</b>	2953404
1. Politique générale de la concurrence, aspects économiques et juridiques Chef adjoint d'unité	<b>Bernd LANGEHEINE Kris DEKEYSER</b>	2991855/2965019 2954209
2. Projets législatifs et réglementaires; relations avec les Etats membres Chef adjoint d'unité	<b>Emil PAULIS Paolo CESARINI</b>	2965033/2995470 2951286
3. Politique et coordination des Aides d'Etat	<b>Robert HANKIN</b>	2959773/2961635
4. Affaires internationales Chef adjoint d'unité	<b>Yves DEVELENNE</b> ...	2951590/2995406
<b>DIRECTION B</b>		
<b>Task Force 'Contrôle des opérations de concentration entre entreprises'</b>	<b>Götz DRAUZ</b>	2958681/2996728
Télécopieur du Greffe Concentrations		2964301/2967244
1. Unité opérationnelle I	<b>Claude RAKOVSKY</b>	2955389/2955198
2. Unité opérationnelle II	<b>Francisco Enrique GONZALEZ DIAZ a.i.</b>	2965044/2965390
3. Unité opérationnelle III	<b>Dietrich KLEEMAN</b>	
4. Unité opérationnelle IV	<b>Paul MALRIC SMITH</b>	2959675/2964903
5. Unité chargée du suivi de l'exécution	<b>Wolfgang MEDERER</b>	2953584
<b>DIRECTION C</b>		
<b>Information, communication, multimédias</b>	<b>Jürgen MENSCHING</b>	2952224
1. Télécommunications et Postes, Coordination Société d'information — Cas relevant de l'Article 81/82 — Directives de libéralisation, cas article 86	<b>Pierre BUIGUES Suzanna SCHIFF Christian HOCEPIED</b>	2994387/2954732 2957657/2996288 2960427/2958316
2. Médias, éditions musicales Chef adjoint d'unité	<b>Herbert UNGERER David WOOD</b>	2968623 2951461
3. Industries de l'information, électronique de divertissement	<b>Cecilio MADERO VILLAREJO</b>	2960949/2965303



**DIRECTION D**
**Services**

	<i>Enzo MOAVERO MILANESI</i>	2953427/2951490
1. Services financiers (banques, assurances)	<i>Serge DURANDE</i>	2957243/2995592
2. Transports et infrastructures des transports	<i>Joos STRAGIER</i>	2952482
3. Commerce et autres services	<i>Lowri EVANS</i>	2965029/2965036

**DIRECTION E**
**Crtels, industries de base et énergie**

1. Cartels	<i>Angel TRADACETE</i>	2952462/2950900
Chef adjoint d'unité	<i>Georg DE BRONNET</i>	2959268
	...	
2. Industries de base	<i>Nicola ANNECCHINO</i>	2961870/2956422
3. Énergie, eau et acier	<i>Michael ALBERS</i>	2961874/2960614

**DIRECTION F**
**Industries des biens d'équipement et de consommation**

1. Industries mécaniques et électriques et industries diverses	<i>Sven NORBERG</i>	2952178/2959177
Chef adjoint d'unité	<i>Fin LOMHOLT</i>	2955619/2957439
	<i>Carmelo MORELLO</i>	2955132
2. Automobiles et autres moyens de transport et construction mécanique connexe	<i>Eric VAN GINDERACHTER</i>	2954427/2950479
3. Produits agricoles et alimentaires, produits pharmaceutiques	<i>Luc GYSELEN</i>	2961523/2963781

**DIRECTION G**
**Aides d'Etat I**

Conseiller	<i>Loretta DORMAL-MARINO</i>	2958603/2958440
	...	
1. Aides à finalité régionale	<i>Wouter PIEKE</i>	2959824/2967267
Chef adjoint d'unité	<i>Klaus-Otto JUNGINGER-DITTEL</i>	2960376/2965071
2. Aides horizontales	<i>Jean-Louis COLSON</i>	2960995/2962526
3. Transparence, contrôle, fiscalité directe des entreprises	<i>Reinhard WALTHER</i>	2958434/2956661

**DIRECTION H**
**Aides d'Etat II**

1. Acier, métaux non ferreux, mines, construction navale, automobiles et fibres synthétiques	<i>Humbert DRABBE</i>	2950060/2952701
Chef adjoint d'unité	<i>Maria REHBINDER</i>	2990007/2963603
	...	
2. Textiles, papier, industrie chimique, pharmaceutique et électronique, construction mécanique et autres secteurs manufacturiers	<i>Jorma PIHLATIE</i>	2953607/2955900
Chef adjoint d'unité	...	
3. Entreprises publiques et services	<i>Ronald FELTKAMP</i>	2954283/2960009

## Documentation

### *European Commission Directorate General Competition Administration, budget and information Cellule Information*

This section contains details of recent speeches or articles on competition policy given by

*Community officials. Copies of these are available from Competition DG's home page on the World Wide Web at: [http://europa.eu.int/comm/competition/speeches/index\\_2001.html](http://europa.eu.int/comm/competition/speeches/index_2001.html)*

### **Speeches and articles 1 February 2001 – 31 May 2001**

***Competition in the New Economy*** – Mario MONTI – 10th International Conference on Competition – Bundeskartellamt – Berlin – 21.05.2001

***Concurrence et Libéralisation dans le secteur des transports*** – Jean-François PONS – Colloque de l'Association française d'études de la concurrence – Paris – 03.04.2001

***The EU Views on Global Competition Forum*** – Mario MONTI – ABA meetings – Washington – 29.03.2001

***Services of General Interest in Europe*** – Mario MONTI – Editorial published in Europäische Zeitschrift für Wirtschaftsrecht (EuZW), volume 6/2001, page 161 – 24.03.2001

***The Global Competition Forum***: How it should be organised and operated – Alexander SCHAUB – European Policy Centre – Brussels – 14.03.2001

***Kartellrechtliche Probleme des elektronischen Marktplatzes aus Sicht der EU-Kommission*** – Alexander SCHAUB – XXXIV. FIW Symposium – Innsbruck – 02.03.2001

***Competition in the e-Economy*** (excerpts) – Mario MONTI – The New Economy in Europe: its potential impact on Eu enterprises and policies – Bruxelles – 02.03.2001

***Competition and Sport the Rules of the game*** – Mario MONTI – Conference on «Governance in Sport» – European Olympic Committee – FIA – Fédération Internationale de l'Automobile – Herbert Smith – Swissotel – Brussels – 26.02.2001

***Eléments d'intervention*** – Eric VAN GINDER-ACHER – Règlement n° 1475/95 – audition publique – Bruxelles – 13.02.2001

***Chairman's speaking points*** – Sven NORBERG – Regulation 1475/95 – Public Hearing – Brussels – 13.02.2001

### **Community Publications on Competition**

Except if otherwise indicated, these publications are available through the Office for Official Publications of the European Communities or its sales offices.

Use Catalogue number to order.

Many publications are also available on DG Competition web site:

<http://europa.eu.int/comm/competition/publications>

### **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, DA, DE; EL, EN, FR, IT, NL, PT, SV, FI)

**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*

**Competition policy in Europe and the citizen**

Catalogue No: KD-28-00-397-xx-C

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

**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 compendium 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 COMP-C-1 (tel. +322-2968623, 2968622, fax +322-2969819).

**Brochure explicative sur les modalités d'application du Règlement (CE) N° 1475/95 de la Commission concernant certaines catégories d'accords de distribution et de service de vente et d'après vente de véhicules automobiles –**

Copies available through DG COMP-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.-94/98**

Catalogue No: CV-90-95-946-xx-C (xx=language code= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

**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 matière de concurrence – Articles 85, 86 et 90 du traité CEE-64/72**

Catalogue No: CM-76-92-996-xx-C (xx=DE, FR, IT, NL)

**COMPETITION REPORTS**

**European Community competition policy 2000**  
(Sec Document 2001/694 final) available on Europa Competition website at: [http://europa.eu.int/comm/competition/annual\\_reports/2000/](http://europa.eu.int/comm/competition/annual_reports/2000/)  
Published version due: July 2001

**XXIX Report on Competition Policy 1999**

Catalogue No: KD-28-00-018-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

**European Community competition policy 1999**  
(xx=ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV). Copies available through Cellule Information DG COMP.

**XXVIII Report on Competition Policy 1998**

Catalogue No: CV-20-99-785-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

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

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

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

**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)

**Fifth survey on State aid in the European Union in the manufacturing and certain other sectors**

Catalogue No: CV-06-97-901-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

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

**OTHER DOCUMENTS and STUDIES****Buyer power and its impact on competition in the food retail distribution sector of the European Union**

Cat. No: CV-25-99-649-EN-C

**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 automobile 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 télécommunication 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



## Competition-related items published in the Official Journal

1 February 2001 – 31 May 2001

*Note: The Official Journal is scanned daily on the Europa Competition web site for items of relevance to competition policy. See «Official Journal» section under each heading (Antitrust, Mergers, State Aid) at:*

[http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)

### Articles 81, 82 (restrictions and distortions of competition by undertakings)

#### 29.05.2001

**C 155-0073** Opinion of the Economic and Social Committee on the «Proposal for a Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and amending Regulations (EEC) No 1017/68, (EEC) No 2988/74, (EEC) No 4056/86 and (EEC) No 3975/87 («Regulation implementing Articles 81 and 82 of the Treaty»)"

#### 24.05.2001

**C 153** 2001/C 153-0004 Notification of a set of agreements (Case COMP/38.051 – Pro Europe)

#### 22.05.2001

**C 151** 2001/C 151E-0167 E-3427/00 by Christopher Huhne to the Commission

Subject: Commission power over abuse of a dominant position

#### 19.05.2001

**C 150** 2001/C 150-0024 Judgment of the Court of First Instance of 14 February 2001 in Case T-115/99: *Système européen promotion (SEP) SARL v Commission of the European Communities* (Competition – Distribution of motor vehicles – Rejection of a complaint – Action for annulment)

**C 150** 2001/C 150-0024 Judgment of the Court of First Instance of 14 February 2001 in Case T-62/99: *Société de distribution de mécaniques et d'automobiles (Sodima) v Commission of the European Communities* (Competition – Distribution of motor vehicles – Rejection of a complaint – Action for annulment)

**C 150** 2001/C 150-0022 Judgment of the Court of First Instance of 14 February 2001 in Case T-26/99: *Trabisco SA v Commission of the European Communities* (Competition – Distribution of motor vehicles – Rejection of a complaint – Action for annulment)

**C 150** 2001/C 150-0021 Judgment of the Court of First Instance of 20 February 2001 in Case T-112/98: *Mannesmannröhren-Werke AG v Commission of the European Communities* (Action for annulment – Competition – Decision to request information – Periodic penalty payments – Right to refuse to provide answers that imply admission of an infringement – Convention for the Protection of Human Rights and Fundamental Freedoms)

**C 149** 2001/C 149-0018 Notice of the Commission relating to the revision of the 1997 notice on agreements of minor importance which do not fall under Article 81(1) of the EC Treaty

#### 17.05.2001

**C 145** 2001/C 145-0002 Notification of cooperation agreements (Case COMP/C2/38.126 – BUMA, GEMA, PRS, SACEM)

#### 08.05.2001

**C 136** 2001/C 136E-0006 Written Question E-1640/00 by Alejandro Agag Longo to the Commission

Subject: Competition in the telecommunications sector

**C 136** 2001/C 136E-0193 E-3141/00 by Benedetto Della Vedova to the Commission

Subject: Take-over of DHL by Deutsche Post

**C 136** 2001/C 136E-0198 Written Question E-3178/00 by Luis Berenguer Fuster to the Commission

Subject: Independence of the Commission in the case involving the Kingdom of Spain concerning the costs of transition to competition for electricity companies

#### 05.05.2001

**L 125** 2001/L 125-0027 Commission Decision of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 – Deutsche Post AG) (notified under document number C(2001) 728)

**C 134** 2001/C 134-0015 Judgment of the Court of First Instance of 30 November 2000 in Case T-5/97: *Industrie des Poudres Sphériques v Commission of the European Communities* (Competition – Action for annulment – Rejection of a complaint – Article 86 of the EC Treaty (now Article 82 EC) – Misuse of the anti-dumping procedure – Statement of reasons – Rights of the defence)

**C 134** 2001/C 134-0023 Order of the President of the Court of First Instance of 17 January 2001 in Case T-342/00 R: *Petroleessence and Société de Gestion de Restauration Routière (SG2R) v*

Commission of the European Communities (Procedure for interim relief – Competition – Concentration – Admissibility – Urgency – Balancing of interests)

**25.04.2001**

**C 123** 2001/C 123-0011 Opinion of the Economic and Social Committee on the «XXIXth Report on Competition Policy (1999)»

**C 122** 2001/C 122-0007 Notification of a cooperation agreement (Case F-1/38.092 – SKF/Rockwell International/Timken/INA/Sandvik/Endorsia)

**21.04.2001**

**C 118** 2001/C 118-0003 Judgment of the Court (Sixth Chamber) of 7 December 2000 in Case C-214/99 (reference for a preliminary ruling from the Tampereen Käräjäoikeus, Finland): Neste Markkinointi Oy v Yötuuli Ky and Others (Competition – Exclusive purchasing agreements – Service-station agreements – Duration – Significant contribution made by one supplier's contracts to the closing-off of the market – Distinction between the contracts of the same supplier)

**C 118** 2001/C 118-0007 Judgment of the Court of 14 December 2000 in Case C-344/98 (reference for a preliminary ruling from the Supreme Court (Ireland)): Masterfoods Ltd v HB Ice Cream Ltd and HB Ice Cream Ltd v Masterfoods Ltd, trading as «Mars Ireland» (Competition – Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) – Parallel proceedings before national and Community courts)

**C 118** 2001/C 118-0033 Judgment of the Court of First Instance of 12 December 2000 in Case T-128/98: Aéroports de Paris v Commission of the European Communities (Competition – Air transport – Airport management – Applicable regulation – Regulation No 17 and Regulation (EEC) No 3975/87 – Abuse of dominant position – Discriminatory fees)

**C 117** 2001/C 117-0003 Notice pursuant to Article 19(3) of Council Regulation No 17 concerning Case COMP/E-2/37.747 – StoHaas Joint Venture

**20.04.2001**

**C 116** 2001/C 116-0099 Opinion of the Economic and Social Committee on the «Proposal for a European Parliament and Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services»

**18.04.2001**

**C 113** 2001/C 113E-0013 E-1447/00 by Wolfgang Kreissl-Dörfler to the Commission  
Subject: Multilateral competition rules and development

**C 113** 2001/C 113E-0033 E-1648/00 by Bart Staes to the Commission

Subject: Roadshows by the Belgian Ministry of Economic Affairs and compliance with Community competition rules

**C 113** 2001/C 113E-0200 E-2871/00 by Camilo Nogueira Román to the Commission

Subject: Possible agreement on restrictions on fuel price competition by oil companies in the Spanish state

**12.04.2001**

**L 103** 2001/L 103-0036 Decision of the EEA Joint Committee No 18/2000 of 28 January 2000 amending Annex XIV (Competition) to the EEA Agreement

**11.04.2001**

**C 110** 2001/C 110-0009 Notification of cooperation agreements (Case COMP/C2/38.016 – Modern Times Group AB and Nordiska Satellitaktiebolaget)

**07.04.2001**

**C 108** 2001/C 108-0016 Judgment of the Court of First Instance of 26 October 2000 in Case T-154/98: Asia Motor France SA and Others v Commission of the European Communities (Competition – Article 85 of the EC Treaty (now Article 81 EC) – Obligations regarding the investigation of complaints – Legality of grounds for rejection – Manifest error of assessment – Article 176 of the EC Treaty (now Article 233 EC) – Admissibility of a new plea in law)

**C 108** 2001/C 108-0018 Order of the Court of First Instance of 28 November 2000 in Case T-172/99: Francesca Pentericci v Commission of the European Communities (Competition – Non-admission to the tests – Conditions of admission – Professional experience – Candidate's file – Action manifestly unfounded in law)

**C 108** 2001/C 108-0019 Order of the President of the Court of First Instance of 14 December 2000 in Case T-5/00 R: Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission of the European Communities (Proceedings for interim measures – Suspension of operation – Competition – Payment of a fine – Bank guarantee – Urgency)

**C 108** 2001/C 108-0022 Order of the Court of First Instance of 30 November 2000 in Case T-175/00: Anthony Goldstein v Commission of the European Communities (Action for failure to act – Articles 81 and 82 EC – No need to adjudicate – Article 86 EC – Admissibility)

**C 107** 2001/C 107-0004 Notice pursuant to Article 5 of Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 81(3) of the EC Treaty to certain categories of

agreements, decisions and concerted practices in the air transport sector

### 03.04.2001

**C 103** 2001/C 103E-0238 P-3078/00 by Luckas Vander Taelen to the Commission

Subject: Selection panel for the international architectural competition relating to the European Quarter: partiality, qualifications and presence of Belgian panel members

**C 103** 2001/C 103-0007 Notification of joint ventures (Case COMP/38.089 – TF6 and Série Club)

**C 103** 2001/C 103E-0131 E-2354/00 by Mario Mauro, Giorgio Lisi and Antonio Tajani to the Council

Subject: Infringement of the principle of non-discrimination and competition in connection with the situation of teachers in schools officially recognised as equivalent to State schools

**C 103** 2001/C 103E-0209 E-2674/00 by Wolfgang Ilgenfritz to the Commission

Subject: MAN industrial vehicles – Kutschera complaint – Proceedings No IV/35.907/f-2

**C 103** 2001/C 103E-0138 E-2371/00 by Glyn Ford to the Commission

Subject: DVD discs and competition

### 30.03.2001

**C 100** 2001/C 100-0014 Notification of a cooperation agreement (Case COMP/38.091/F1 – Electabel/EDF/Endesa/Enel/Iberdrola/National Grid/Nuon/RWE/Scottish Power/United Utilities/Vattenfall – Eutelia)

### 27.03.2001

**C 96** 2001/C 096-0002 Notice by the Commission concerning a draft directive on competition in the markets for electronic communications services

### 24.03.2001

**C 95** 2001/C 095-0008 Judgment of the Court of First Instance of 26 October 2000 in Case T-41/96: Bayer AG v Commission of the European Communities (Competition – Parallel imports – Article 85(1) of the EC Treaty (now Article 81(1) EC) – Meaning of «agreement between undertakings» – Proof of the existence of an agreement – Market in pharmaceutical products)

### 20.03.2001

**C 89** 2001/C 089E-0035 P-1371/00 by Wolfgang Kreissl-Dörfler to the Commission

Subject: Multilateral competition rules **C 89** 2001/C 089E-0016 E-1227/00 by Jaime Valdivielso de Cué to the Commission

Subject: Competition

**C 89** 2001/C 089E-0183 P-2326/00 by Ursula Stenzel to the Commission

Subject: Compatibility of Polish draft law on

competition and consumer protection with the *acquis communautaire*

**C 89** 2001/C 089E-0075 E-1716/00 by Olivier Dupuis to the Commission

Subject: Bribes and Union policy on distortion of competition rules and the fight against corruption

**C 89** 2001/C 089E-0205 E-2541/00 by Theresa Villiers to the Commission

Subject: European car market

### 15.03.2001

**L 74** 2001/L 074-0001 Decision of the EEA Joint Committee No 175/1999 of 17 December 1999 amending Annexes XI (Telecommunication services and XIV (Competition) to the EEA Agreement

### 14.03.2001

**C 83** 2001/C 083-0006 Notice pursuant to Article 5 of Council Regulation (EEC) No 3975/87 of 14 December 1987 concerning case COMP/38.712 – British Midland Ltd/Deutsche Lufthansa AG/Scandinavian Airlines System

### 13.03.2001

**C 81** 2001/C 081E-0145 E-2113/00 by Luis Berenguer Fuster to the Commission

Subject: Recommendation of the Spanish Competition Court on the transition to competition in the electricity industry

**C 81** 2001/C 081E-0105 E-1900/00 by Antonios Trakatellis, Ioannis Averoff and Ioannis Marínos to the Commission

Subject: Outdated structures in Greek agriculture and distortion of competition: unlawful practices by ATE and the reimbursement of illegal aid by AGNO

**C 81** 2001/C 081E-0202 E-2455/00 by John McCartin to the Commission

Subject: Car pricing in Ireland and the EU

**C 81** 2001/C 081E-0042 E-1452/00 by Wolfgang Ilgenfritz to the Commission

Subject: Distortions of competition on the Austrian livestock market

### 08.03.2001

**C 76** 2001/C 076-0002 Commission notice pursuant to Article 12(2) of Council Regulation (EEC) No 4056/86 concerning Case COMP/D2/37.939 – P&O Stena Line 2

### 06.03.2001

**C 72** 2001/C 072E-0155 E-1946/00 by Luis Berenguer Fuster to the Commission

Subject: Assessment of the costs of transition to competition in the acquisition of a Spanish electricity firm

**C 72** 2001/C 072E-0178 E-2115/00 by Luis Berenguer Fuster to the Commission



Subject: Quantification of the costs of transition to competition (CTCs) for the Spanish electricity industry in the procedure initiated by the Commission

## 28.02.2001

**L 59** 2001/L 059-0001 Commission Decision of 20 September 2000 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/36.653 – Opel)(notified under document number C(2000)2707)

## 24.02.2001

**C 61** 2001/C 061-0017 Case T-368/00: Action brought on 30 November 2000 by General Motors Nederland B.V. and Opel Nederland B.V. against the Commission of the European Communities

## 23.02.2001

**L 54** 2001/L 054-0001 Commission decision of 5 July 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP.F.1/36.516 – Nathan-Bricolux) (notified under document number C(2000) 1853)

## 22.02.2001

**L 52** 2001/L 052-0030 Commission Decision of 29 December 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No COMP/36.841 – Unisource) (notified under document number C(2000) 4094)

**L 52** 2001/L 052-0038 Decision of the EEA Joint Committee No 113/2000 of 22 December 2000 amending Annex XIV (Competition) to the EEA Agreement

## 20.02.2001

**C 53** 2001/C 053E-0158 Written question E-1510/00 by Glyn Ford to the Commission  
Subject: DVD players

**C 53** 2001/C 053E-0168 Written question E-1589/00 by Martin Callanan to the Commission  
Subject: Competition

**C 53** 2001/C 053E-0171 Written question E-1621/00 by Nelly Maes to the Commission  
Subject: Complaint of unfair competition against German Postal Service

**C 53** 2001/C 053E-0097 Written question E-1193/00 by Christel Fiebigier to the Commission  
Subject: Distortion of competition caused by differences in the price of agricultural diesel

**C 53** 2001/C 053E-0058 Written question P-1024/00 by Paul Rübig to the Commission  
Subject: Competence of the European Court of Justice in competition proceedings in applicant countries

**C 53** 2001/C 053E-0157 Written question E-1509/00 by Glyn Ford to the Commission  
Subject: DVD players and free competition

## 15.02.2001

**C 49** 2001/C 049-0004 Notification of a cooperation agreement (Case COMP/38.064/F2 – Daimler Chrysler AG/Ford Motor Company/General Motors Corporation/Nissan Motor Co. Ltd/Renault SA – Covisint)

## 13.02.2001

**C 46** 2001/C 046E-0055 Written question P-0831/00 by Claude Desama to the Commission  
Subject: Regulation 2790/1999 providing for a block exemption for vertical agreements

**C 46** 2001/C 046E-0035 Written question E-0741/00 by Jannis Sakellariou to the Commission  
Subject: Municipal enterprises and fair competition

**C 46** 2001/C 046E-0173 E-1342/00 by Cristiana Muscardini to the Commission  
Subject: IAF and the Directorate-General for Competition

## 10.02.2001

**C 45** 2001/C 045-0002 Judgment of the Court (Fifth Chamber) of 16 November 2000 in Case C-283/98 P: Mo och Domsjö AB v Commission of the European Communities (Appeal Competition – Article 85(1) of the EC Treaty (now Article 81(1) EC) – Fines – Determination of the amount – Statement of reasons – Power of unlimited jurisdiction)

**C 45** 2001/C 045-0002 Judgment of the Court (Fifth Chamber) of 16 November 2000 in Case C-286/98 P: Stora Kopparbergs Bergslags AB v Commission of the European Communities (Appeal – Competition – Article 85(1) of the EC Treaty (now Article 81(1) EC) – Fines – Statement of reasons – Liability for the infringement)

**C 45** 2001/C 045-0001 Judgment of the Court (Fifth Chamber) of 16 November 2000 in Case C-282/98 P: Enso Española SA v Commission of the European Communities (Appeal – Competition – Article 85(1) of the EC Treaty (now Article 81(1) EC) – Fines – Statement of reasons – Principle of equal treatment – Costs)

**C 45** 2001/C 045-0003 Judgment of the Court (Fifth Chamber) of 16 November 2000 in Case C-291/98 P Sarrió SA v Commission of the European Communities (Appeal – Competition – Article 85(1) of the EC Treaty, now Article 81(1) EC – Concept of single infringement – Information exchange – Order – Fine Determination of the amount – Method of calculation – Statement of reasons Mitigating circumstances)

**C 45** 2001/C 045-0004 Judgment of the Court (Fifth Chamber) of 16 November 2000 in Case C-297/98 P: SCA Holding Ltd v Commission of the European Communities (Appeal – Competition – Article 85(1) of the EC Treaty (now Article 81(1) EC) – Liability for the infringement – Fines

– Statement of reasons – Mitigating circumstances)

**C 45** 2001/C 045-0004 Judgment of the Court (Fifth Chamber) of 16 November 2000 in Case C-298/98 P: Metsä-Serla Sales Oy v Commission of the European Communities (Appeal – Competition – Article 85(1) of the EC Treaty (now Article 81(1) EC) – Fines – Determination of the amount – Statement of reasons – Cooperation during the administrative procedure)

#### **08.02.2001**

**C 42** 2001/C 042-0013 Notification of cooperation agreements (Case COMP/C1/38.074 – Vodafone Eurocall and wholesale preferred roaming scheme)

#### **02.02.2001**

**C 35** 2001/C 035-0006 Notification of a joint venture in the field of travel agency services (Case COMP/38.006)

### **Control of concentrations/merger procedure**

#### **30.05.2001**

**C 156** 2001/C 156-0018 Prior notification of a concentration (Case COMP/M.2416 – Tetra Laval/Sidel)

**C 156** 2001/C 156-0017 Prior notification of a concentration (Case COMP/M.2369 – CNH/FHE)

**C 156** 2001/C 156-0016 Prior notification of a concentration (Case COMP/M.2468 – Seat Pagine Gialle/Eniro)

**C 156** 2001/C 156-0019 Prior notification of a concentration (Case COMP/M.2411 – Autologic/TNT/Wallenius/CAT (JV))

#### **29.05.2001**

**2001/L 143-0001** Commission Decision of 9 February 2000 declaring a concentration to be compatible with the common market (Case No COMP/M.1628 – TotalFina/Elf) Council Regulation (EEC) No 4064/89 (Notified under document number C(2000) 363)

**2001/C 154-0008** Opinion of the Advisory Committee on Concentrations given at the 73rd meeting on 24 January 2000 and continuing on 1 February 2000 concerning a preliminary draft decision relating to Case COMP/M.1628 – TotalFina/Elf

**2001/C 154-0007** Opinion of the Advisory Committee on Concentrations given at the 75th meeting on 29 February 2000 concerning a preliminary draft decision relating to Case COMP/M.1672 – Volvo/Scania

**2001/L 143-0074** Commission Decision of 14 March 2000 declaring a concentration to be incompatible with the common market and the

functioning of the EEA Agreement (Case No COMP/M.1672 Volvo/Scania)(notified under document number C(2000) 681)

#### **24.05.2001**

**C 153** 2001/C 153-0003 Prior notification of a concentration (Case COMP/M.2459 – CDC/Charterhouse/Alstom Contracting) – Candidate case for simplified procedure

**C 153** 2001/C 153-0002 Prior notification of a concentration (Case COMP/M.2449 – Goldman Sachs/SJPC/SCP de Milo/Nascent) – Candidate case for simplified procedure

#### **23.05.2001**

**C 152** 2001/C 152-0008 Initiation of proceedings (Case COMP/M.2149 – T-Online International/TUI/C & N Touristic/JV)

**C 152** 2001/C 152-0007 Prior notification of a concentration (Case COMP/M.2415 – Interpublic/True North)

#### **22.05.2001**

**C 151** 2001/C 151-0003 Prior notification of a concentration (Case COMP/M.2448 – Dexia/Banco Sabadell/Dexia Banco Local) – Candidate case for simplified procedure

#### **19.05.2001**

**C 149** 2001/C 149-0024 Renotification of a previously notified concentration (Case COMP/M.2300 – YLE/TDF/Digita/JV)

**C 149** 2001/C 149-0025 Prior notification of a concentration (Case COMP/M.2400 – Dexia/Artesia)

**C 149** 2001/C 149-0023 Non-opposition to a notified concentration (Case COMP/M.1930 – Ahlstrom/Andritz)

**C 149** 2001/C 149-0026 Prior notification of a concentration (Case COMP/M.2413 – BHP/Billiton)

**C 149** 2001/C 149-0028 Prior notification of a concentration (Case COMP/M.2430 – Schroder Ventures/Grammer) – Candidate case for simplified procedure

**C 149** 2001/C 149-0027 Prior notification of a concentration (Case COMP/M.2460 – IBM/Informix)

**C 149** 2001/C 149-0023 Non-opposition to a notified concentration (Case COMP/M.2312 – Abbott/BASF)

#### **18.05.2001**

**C 147** 2001/C 147-0006 Prior notification of a concentration (Case COMP/M.2463 – Speedy Tomato/Olivetti)

#### **17.05.2001**

**C 145** 2001/C 145-0004 Non-opposition to a notified concentration (Case COMP/M.2384 – Ratos/3iGroup/Atle)



**C 145** 2001/C 145-0004 Non-opposition to a notified concentration (Case COMP/M.2230 – Sanmina/Siemens/Inboard Leiterplattentechnologie)

**C 145** 2001/C 145-0003 Prior notification of a concentration (Case COMP/M.2303 – 4\*Ciaoweb/We-cube) – Candidate case for simplified procedure

#### 16.05.2001

**C 143** 2001/C 143-0007 Non-opposition to a notified concentration (Case COMP/M.2353 – RWE/Hidroeléctrica del Cantábrico)

**C 143** 2001/C 143-0006 Prior notification of a concentration (Case COMP/M.2393 – Skanska Sverige/Posten/HOOC)

**C 143** 2001/C 143-0007 Non-opposition to a notified concentration (Case COMP/JV.33 – Hearst/VNU)

**C 143** 2001/C 143-0006 Non-opposition to a notified concentration (Case COMP/JV.31 – HMI International Holdings/Arnoldo Mondadori Editore)

#### 15.05.2001

**C 141** 2001/C 141-0013 Prior notification of a concentration (Case COMP/M.2187 – CVC/Lenzing)

**C 141** 2001/C 141-0016 Non-opposition to a notified concentration (Case COMP/M.1896 – Fiat/Unicredito Banca Mobiliare/JV)

**C 141** 2001/C 141-0015 Prior notification of a concentration (Case COMP/M.2441 – Amcor/Danisco/Ahlstrom)

**C 141** 2001/C 141-0014 Prior notification of a concentration (Case COMP/M.2403 – Schneider/Thomson Multimedia/JV)

#### 12.05.2001

**C 140** 2001/C 140-0011 Non-opposition to a notified concentration (Case COMP/M.2277 – Degussa/Laporte)

**C 140** 2001/C 140-0010 Prior notification of a concentration (Case COMP/M.2421 – Continental/Temic)

**C 140** 2001/C 140-0011 Non-opposition to a notified concentration (Case COMP/M.2350 – Campbell/ECBB (Unilever))

**C 140** 2001/C 140-0012 Non-opposition to a notified concentration (Case COMP/M.2335 – Michel Mineralölhandel/Thyssen-Elf Oil)

**C 140** 2001/C 140-0012 Non-opposition to a notified concentration (Case COMP/M.2360 – SGS/R & S/Freeglass JV)

**C 140** 2001/C 140-0013 Non-opposition to a notified concentration (Case COMP/M.2414 – Vattenfall/HEW)

#### 11.05.2001

**L 129** 2001/L 129-0047 Commission Decision of

10 May 2001 amending for the fifth time Decision 2001/223/EC concerning certain protection measures with regard to foot-and-mouth disease in the Netherlands (notified under document number C(2001) 1429) **C 138** 2001/C 138-0011 Non-opposition to a notified concentration (Case COMP/M.2153 – BHP/Mitsubishi/QCT)

**C 138** 2001/C 138-0011 Non-opposition to a notified concentration (Case COMP/M.2355 – Dow/Enichem Polyurethane)

**C 138** 2001/C 138-0010 Prior notification of a concentration (Case COMP/M.2397 – BC Funds/Sanitec)

**C 138** 2001/C 138-0009 Prior notification of a concentration (Case COMP/M.2458 – Bertelsmann/VVC/JV) – Candidate case for simplified procedure

**C 138** 2001/C 138-0008 Prior notification of a concentration (Case COMP/M.2437 – NEC/Toshiba/JV)

**C 138** 2001/C 138-0007 Prior notification of a concentration (Case COMP/M.2466 – Sodexho/Abela (II))

**C 138** 2001/C 138-0012 Non-opposition to a notified concentration (Case COMP/M.2104 – MIG/Carlyle/Eutectic and Castolin)

**C 138** 2001/C 138-0012 Non-opposition to a notified concentration (Case COMP/M.2328 – Shell/Beacon/3i/Twister)

#### 09.05.2001

**C 137** 2001/C 137-0008 Prior notification of a concentration (Case COMP/M.2190 – LSG/OFSI)

**C 137** 2001/C 137-0009 Non-opposition to a notified concentration (Case COMP/M.2365 – Schlumberger/Sema)

#### 08.05.2001

**C 136** 2001/C 136-0004 Prior notification of a concentration (Case COMP/M.2408 – RWE Com/Henkel/TEN UK/TEN DE) – Candidate case for simplified procedure

**C 136** 2001/C 136E-0209 E-3227/00 by Luis Berenguer Fuster to the Commission  
Subject: Merger controls by the European Commission

**C 136** 2001/C 136-0003 Prior notification of a concentration (Case COMP/M.2359 – International Fuel Cells (UTC)/SOPC (Shell)/JV) – Candidate case for simplified procedure

#### 04.05.2001

**C 132** 2001/C 132-0003 Prior notification of a concentration (Case COMP/M.2451 – Hilton/Scandic)

**C 132** 2001/C 132-0002 Prior notification of a concentration (Case COMP/M.2442 – Nobia/Magnet) – Candidate case for simplified procedure

**01.05.2001**

**C 130** 2001/C 130-0003 Prior notification of a concentration (Case COMP/M.2386 – MEI/Philips)

**C 130** 2001/C 130-0004 Prior notification of a concentration (Case COMP/M.2401 – Industri Kapital/Telia Enterprises) – Candidate case for simplified procedure

**C 130** 2001/C 130-0005 Prior notification of a concentration (Case COMP/M.2424 – Tyco/CIT) – Candidate case for simplified procedure

**C 130** 2001/C 130-0006 Non-opposition to a notified concentration (Case COMP/M.2155 – France Telecom/Schmid/Mobilcom)

**C 130** 2001/C 130-0006 Non-opposition to a notified concentration (Case COMP/M.2277 – Degussa/Laporte)

**28.04.2001**

**C 128** 2001/C 128-0005 Prior notification of a concentration (Case COMP/M.2396 – Industri Kapital/Perstorp (II))

**C 128** 2001/C 128-0003 Non-opposition to a notified concentration (Case COMP/M.2305 – Vodafone Group plc/Eircell)

**C 128** 2001/C 128-0003 Non-opposition to a notified concentration (Case COMP/M.2340 – EDP/Cajastur/Caser/Hidroeléctrica del Cantábrico)

**C 128** 2001/C 128-0002 Non-opposition to a notified concentration (Case COMP/M.2208 – Chevron/Texaco)

**C 128** 2001/C 128-0002 Non-opposition to a notified concentration (Case COMP/M.2267 – Siemens/Janet/JV)

**C 128** 2001/C 128-0004 Prior notification of a concentration (Case COMP/M.2445 – NIB Capital/Internatio-Müller Chemical Distribution) – Candidate case for simplified procedure

**27.04.2001**

**C 127** 2001/C 127-0012 Non-opposition to a notified concentration (Case COMP/M.2341 – Banco Popular Español/Fortior Holding)

**C 127** 2001/C 127-0011 Non-opposition to a notified concentration (Case COMP/M.2334 – DMData/Kommunedata/e-Boks JV)

**C 127** 2001/C 127-0011 Non-opposition to a notified concentration (Case COMP/M.1913 – Lufthansa/Menzies/LGS/JV)

**C 127** 2001/C 127-0008 Non-opposition to a notified concentration (Case COMP/M.2343 – Toro Assicurazioni/Lloyd Italiano)

**C 127** 2001/C 127-0008 Non-opposition to a notified concentration (Case COMP/M.2383 – VNU/RCS Editori)

**C 127** 2001/C 127-0010 Non-opposition to a notified concentration (Case COMP/M.2079 – Raytheon/Thales/JV)

**C 127** 2001/C 127-0012 Non-opposition to a notified concentration (Case COMP/M.2227 – Goldman Sachs/Messer Griesheim)

**C 127** 2001/C 127-0009 Non-opposition to a notified concentration (Case COMP/M.2344 – Xchange/BAE Systems/JV)

**C 127** 2001/C 127-0010 Non-opposition to a notified concentration (Case COMP/M.1976 – Shell/Halliburton/Well Dynamics JV)

**C 127** 2001/C 127-0009 Non-opposition to a notified concentration (Case COMP/M.2197 – Hilton/Accor/Forte/Travel Services JV)

**26.04.2001**

**C 125** 2001/C 125-0008 Initiation of proceedings (Case COMP/M.2322 – CRH/Addtek)

**C 125** 2001/C 125-0007 Prior notification of a concentration (Case COMP/M.2433 – Barclays Bank plc/Minimax GmbH) – Candidate case for simplified procedure

**25.04.2001**

**C 122** 2001/C 122-0010 Initiation of proceedings (Case COMP/M.2333 – De Beers/LVMH)

**C 122** 2001/C 122-0009 Prior notification of a concentration (Case COMP/M.2406 – Cepsa Gas Comercializadora/TotalFinaElf Gas & Power España) – Candidate case for simplified procedure

**C 122** 2001/C 122-0008 Prior notification of a concentration (Case COMP/M.2370 – Thales/Airsys-ATM)

**C 122** 2001/C 122-0006 Prior notification of a concentration (Case COMP/M.2409 – Rail Gourmet/Narvesen) – Candidate case for simplified procedure

**24.04.2001**

**C 120** 2001/C 120-0011 Withdrawal of notification of a concentration (Case COMP/M.2289 – Mediasis/Belgacom Skynet/JV)

**21.04.2001**

**C 117** 2001/C 117-0006 Renotification of a previously notified concentration (Case COMP/M.2434 – Grupo Villar Mir/EnBW/Hidroeléctrica del Cantábrico)

**C 117** 2001/C 117-0007 Prior notification of a concentration (Case COMP/M.2418 – ORF/Netway/Adworx) – Candidate case for simplified procedure

**20.04.2001**

**C 115** 2001/C 115-0002 Prior notification of a concentration (Case COMP/M.2407 – Bertelsmann/RTL Group) – Candidate case for simplified procedure

**C 115** 2001/C 115-0003 Prior notification of a concentration (Case COMP/M.2342 – Techint/VAI/JV) – Candidate case for simplified procedure

#### 19.04.2001

**C 114** 2001/C 114-0004 Prior notification of a concentration (Case COMP/M.2329 – Société Générale/Deufin) – Candidate case for simplified procedure

**C 114** 2001/C 114-0002 Prior notification of a concentration (Case COMP/M.2405 – Dow Chemical Company/Ascot plc) – Candidate case for simplified procedure

**C 114** 2001/C 114-0003 Prior notification of a concentration (Case COMP/M.2426 – Ineos/Phenolchemie) – Candidate case for simplified procedure

#### 18.04.2001

**C 113** 2001/C 113-0004 Prior notification of a concentration (Case COMP/M.2315 – The Airline Group/NATS) – Candidate case for simplified procedure

**C 113** 2001/C 113-0003 Prior notification of a concentration (Case COMP/M.2434 – Grupo Villar Mir/EnBW/Hidroeléctrica del Cantábrico)

#### 12.04.2001

**C 111** 2001/C 111-0009 Non-opposition to a notified concentration (Case COMP/M.2346 – Telefonica/Portugal Telecom/Brazilian JV)

**C 111** 2001/C 111-0010 Prior notification of a concentration (Case COMP/M.2435 – Electronic Data Systems Corporation/Systematics AG)

**C 111** 2001/C 111-0011 Prior notification of a concentration (Case COMP/M.2419 – Apax/Schering/MetaGen) – Candidate case for simplified procedure

#### 11.04.2001

**C 110** 2001/C 110-0008 Prior notification of a concentration (Case COMP/M.2391 – CVC/Cinven/AssiDomän)

#### 10.04.2001

**C 109** 2001/C 109-0007 Initiation of proceedings (Case COMP/M.2283 – Schneider/Legrand)

#### 07.04.2001

**C 107** 2001/C 107-0011 Prior notification of a concentration (Case COMP/M.2395 – Morgan Grenfell/Whitbread) – Candidate case for simplified procedure

**C 107** 2001/C 107-0008 Non-opposition to a notified concentration (Case COMP/M.2249 – Marconi/RTS/JV)

**C 107** 2001/C 107-0008 Non-opposition to a notified concentration (Case COMP/M.2330 – Cargill/Banks)

**C 107** 2001/C 107-0009 Non-opposition to a notified concentration (Case COMP/M.2269 – Sasol/Condea)

**C 107** 2001/C 107-0009 Withdrawal of notification of a concentration (Case COMP/M.2338 – Gevaert/Agfa Gevaert)

**C 107** 2001/C 107-0007 Non-opposition to a notified concentration (Case COMP/M.2323 – HSBC-CCF/Banque Hervet)

**C 107** 2001/C 107-0007 Non-opposition to a notified concentration (Case COMP/M.2339 – Conforama/Salzam Mercatone)

**C 107** 2001/C 107-0010 Prior notification of a concentration (Case COMP/M.2373 – Compass/Selecta)

#### 06.04.2001

**L 97** 2001/L 097-0001 Commission Decision of 14 December 1999 imposing fines under Article 14 of Council Regulation (EEC) No 4064/89 for supplying incorrect and misleading information in a notification and inaccurate information in response to requests for information (Case No IV/M.1610 – Deutsche Post/trans-o-flex)(notified under document number C(1999) 4502)

**C 106** 2001/C 106-0002 Opinion of the Advisory Committee on concentrations given at the 71st meeting on 18 November 1999 concerning a preliminary draft decision relating to Case IV/M.1610 – Deutsche Post

#### 05.04.2001

**C 105** 2001/C 105-0032 Non-opposition to a notified concentration (Case COMP/M.2368 – Gilde/Capvis/Soudronic)

**C 105** 2001/C 105-0033 Non-opposition to a notified concentration (Case COMP/M.2194 – CCF-Loxxia/Crédit Lyonnais-Slibail/JV)

#### 04.04.2001

**C 104** 2001/C 104-0011 Prior notification of a concentration (Case COMP/M.2218 – Thomas Cook Holdings/British Airways/JV)

**C 104** 2001/C 104-0008 Prior notification of a concentration (Case COMP/M.2414 – Vattenfall/HEW) – Candidate case for simplified procedure

**C 104** 2001/C 104-0009 Prior notification of a concentration (Case COMP/M.2279 – Nortel/Mundinteractivos/Broad Media/JV) – Candidate case for simplified procedure

**C 104** 2001/C 104-0010 Prior notification of a concentration (Case COMP/M.2374 – Telenor/ErgoGroup/DnB/Accenture/JV)

**C 104** 2001/C 104-0011 Prior notification of a concentration (Case COMP/ECSC.1354 – Usinor/Tubisud Italia)

#### 31.03.2001

**C 102** 2001/C 102-0011 Initiation of proceedings (Case COMP/M.2314 – BASF/Pantochim/Eurodiol)



**30.03.2001**

**C 100** 2001/C 100-0015 Prior notification of a concentration (Case COMP/M.2394 – SCI Systems/Nokia Networks) – Candidate case for simplified procedure

**29.03.2001**

**C 99** 2001/C 099-0003 Non-opposition to a notified concentration (Case COMP/M.2356 – Hermes/Codan/JV)

**C 99** 2001/C 099-0003 Renotification of a previously notified concentration (Case COMP/M.2345 – Deutsche BP/Erdölchemie)

**C 99** 2001/C 099-0002 Prior notification of a concentration (Case COMP/M.2300 – YLE/TDF/Digita/JV)

**28.03.2001**

**C 98** 2001/C 098-0005 Prior notification of a concentration (Case COMP/M.2222 – UGC/Liberty Media)

**C 98** 2001/C 098-0006 Prior notification of a concentration (Case COMP/M.2268 – Pernod Ricard/Diageo/Seagram Spirits)

**27.03.2001**

**C 96** 2001/C 096-0015 Prior notification of a concentration (Case COMP/M.2347 – Mannesmann Arcor/Netcom Kassel) – Candidate case for simplified procedure

**C 96** 2001/C 096-0016 Prior notification of a concentration (Case COMP/M.2149 – T-Online/TUI/C & N Touristik/JV)

**C 96** 2001/C 096-0017 Prior notification of a concentration (Case COMP/M.2398 – Linde/Jungheinrich/JV) – Candidate case for simplified procedure

**24.03.2001**

**C 94** 2001/C 094-0011 Non-opposition to a notified concentration (Case COMP/M.2294 – Etexgroup/Glynwed Pipe Systems)

**C 94** 2001/C 094-0010 Prior notification of a concentration (Case COMP/M.2289 – Mediasis/Skynet/JV)

**23.03.2001**

**C 92** 2001/C 092-0023 Prior notification of a concentration (Case COMP/M.2363 – BHP/Caemi)

**22.03.2001**

**C 91** 2001/C 091-0008 Non-opposition to a notified concentration (Case COMP/M.2272 – Rewe/BML/Standa Commerciale)

**C 91** 2001/C 091-0006 Prior notification of a concentration (Case COMP/M.2328 – Shell/Beacon/3i/Twister) – Candidate case for simplified procedure

**C 91** 2001/C 091-0007 Prior notification of a concentration (Case COMP/M.2333 – De Beers/LVMH)

**C 91** 2001/C 091-0008 Non-opposition to a notified concentration (Case COMP/M.2224 – Siemens/Demag Krauss-Maffei)

**21.03.2001**

**C 90** 2001/C 090-0005 Non-opposition to a notified concentration (Case COMP/M.2357 – Vattenfall/Hamburger Electricitätswerke/Nordic Powerhouse)

**20.03.2001**

**C 89** 2001/C 089-0003 Non-opposition to a notified concentration (Case COMP/M.2309 – Ericsson/Skandia/Alleato/JV)

**C 89** 2001/C 089-0003 Non-opposition to a notified concentration (Case COMP/JV.54 – Smith & Nephew/Beiersdorf/JV)

**C 89** 2001/C 089-0002 Prior notification of a concentration (Case COMP/ECSC.1352 – Endesa/CdF/SNET)

**17.03.2001**

**C 87** 2001/C 087-0017 Prior notification of a concentration (Case COMP/M.2322 – CRH/Addtek)

**C 87** 2001/C 087-0016 Prior notification of a concentration (Case COMP/M.2360 – SGS/R & S/Freeglass JV) – Candidate case for simplified procedure

**C 87** 2001/C 087-0018 Prior notification of a concentration (Case COMP/M.2304 – Bilfinger+Berger/Nemetschek/Strabag/Mybau/JV)

**C 87** 2001/C 087-0019 Prior notification of a concentration (Case COMP/M.2281 – Endesa/CdF/SNET) – Candidate case for simplified procedure

**16.03.2001**

**C 86** 2001/C 086-0008 Prior notification of a concentration (Case COMP/M.2349 – E.ON/Sydskraft)

**C 86** 2001/C 086-0007 Prior notification of a concentration (Case COMP/M.2354 – EniChem/Polimeri) – Candidate case for simplified procedure

**15.03.2001**

**C 85** 2001/C 085-0002 Prior notification of a concentration (Case COMP/M.2263 – Philips/LG Electronics/JV)

**C 85** 2001/C 085-0002 Prior notification of a concentration (Case COMP/M.2338 – Gevaert/Agfa-Gevaert) – Candidate case for simplified procedure

**C 85** 2001/C 085-0003 Non-opposition to a notified concentration (Case COMP/M.2244 – Royal Vopak/Ellis & Everard)

### 14.03.2001

**C 83** 2001/C 083-0011 Prior notification of a concentration (Case COMP/M.2383 – VNU/RCS Editori) – Candidate case for simplified procedure

**C 83** 2001/C 083-0013 Prior notification of a concentration (Case COMP/M.2358 – Flextronics/Ericsson)

**C 83** 2001/C 083-0014 Non-opposition to a notified concentration (Case COMP/M.2180 – Outokumpu/Avesta Sheffield (ECSC.1342))

**C 83** 2001/C 083-0012 Prior notification of a concentration (Case COMP/M.2231 – Huntsman International/Albright & Wilson Surfactants Europe)

**C 83** 2001/C 083-0014 Non-opposition to a notified concentration (Case COMP/M.2302 – Heinz/CSM)

### 10.03.2001

**C 78** 2001/C 078-0022 Non-opposition to a notified concentration (Case COMP/M.2168 – SNECMA/Hurel-Dubois)

**C 78** 2001/C 078-0021 Prior notification of a concentration (Case COMP/M.2355 – Dow Chemicals/EniChem Polyurethanes)

**C 78** 2001/C 078-0020 Prior notification of a concentration (Case COMP/M.2350 – Campbell/ECBB (Unilever))

**C 78** 2001/C 078-0019 Prior notification of a concentration (Case COMP/M.2365 – Schlumberger/Sema)

**C 78** 2001/C 078-0022 Non-opposition to a notified concentration (Case COMP/JV.28 – Sydkraft/Hew/Hansa Energy Trading)

### 09.03.2001

**C 77** 2001/C 077-0012 Renotification of a previously notified concentration (Case COMP/M.2223 – Getronics/Hagemeyer/JV)

**C 77** 2001/C 077-0011 Renotification of a previously notified concentration (Case COMP/M.2286 – Buhrmann/Samas Office Supplies)

**C 77** 2001/C 077-0010 Prior notification of a concentration (Case COMP/M.2375 – PAI + UGI/Elf Antargaz)

### 08.03.2001

**C 76** 2001/C 076-0008 Prior notification of a concentration (Case COMP/M.2384 – Ratos/3i Group/Atle)

**C 76** 2001/C 076-0011 Initiation of proceedings (Case COMP/JV.55 – Hutchison/RCPM/ECT)

**C 76** 2001/C 076-0009 Prior notification of a concentration (Case COMP/M.2334 – Dmdata/Kommunedata/e-Boks JV) – Candidate case for simplified procedure

**C 76** 2001/C 076-0007 Prior notification of a concentration (Case COMP/M.2367 – Siemens/E.ON/Shell/SSG)

**C 76** 2001/C 076-0006 Non-opposition to a notified concentration (Case COMP/M.2278 – Lafarge/Blue Circle/JV)

**C 76** 2001/C 076-0006 Non-opposition to a notified concentration (Case COMP/M.2196 – Enron/Bergmann/Hutzler)

**C 76** 2001/C 076-0010 Prior notification of a concentration (Case COMP/M.2275 – PepsiCo/Quaker) – Candidate case for simplified procedure

### 07.03.2001

**C 74** 2001/C 074-0006 Prior notification of a concentration (Case COMP/M.2366 – Denso/MMC)

**C 74** 2001/C 074-0007 Prior notification of a concentration (Case COMP/M.2323 – HSBC-CCF/Banque Hervet) – Candidate case for simplified procedure

**C 74** 2001/C 074-0008 Prior notification of a concentration (Case COMP/M.2313 – Teka/Finatlantis/Holdivat)

**C 74** 2001/C 074-0009 Non-opposition to a notified concentration (Case COMP/M.2291 – VNU/AC Nielsen)

**C 74** 2001/C 074-0009 Non-opposition to a notified concentration (Case COMP/M.2271 – Cargill/Agribrands)

**C 74** 2001/C 074-0010 Non-opposition to a notified concentration (Case COMP/M.2324 – Sanmina Corporation/AB Segerström & Svensson)

**C 74** 2001/C 074-0010 Non-opposition to a notified concentration (Case COMP/M.2292 – AEA Investors/DLJMB Funding III/BF Goodrich Performance Materials)

**C 74** 2001/C 074-0006 Initiation of proceedings (Case COMP/M.2220 – General Electric/Honeywell)

### 06.03.2001

**C 72** 2001/C 072E-0153 E-1944/00 by Luis Berenguer Fuster to the Commission Subject: Compatibility with the single European market of the «golden share» retained by the Spanish Government in the merger between Telefónica and KPN

### 03.03.2001

**C 71** 2001/C 071-0022 Prior notification of a concentration (Case COMP/M.2345 – Deutsche BP/Erdölchemie)

**C 71** 2001/C 071-0023 Prior notification of a concentration (Case COMP/M.2240 – CVC/Mascotech)

**C 71** 2001/C 071-0024 Prior notification of a concentration (Case COMP/M.2339 – Conforama Holding SA/Salzam Mercatone Holding) – Candidate case for simplified procedure



**C 71** 2001/C 071-0027 Prior notification of a concentration (Case COMP/M.2348 – Outokumpu/Norzink)

**C 71** 2001/C 071-0026 Prior notification of a concentration (Case COMP/M.2227 – Goldman Sachs/Messer Griesheim)

**C 71** 2001/C 071-0025 Prior notification of a concentration (Case COMP/M.2283 – Schneider/Legrand)

**C 71** 2001/C 071-0028 Non-opposition to a notified concentration (Case COMP/M.2101 – General Mills/Pillsbury/Diageo)

**C 71** 2001/C 071-0028 Non-opposition to a notified concentration (Case COMP/M.1874 – Lafarge/Blue Circle)

### 02.03.2001

**C 68** 2001/C 068-0011 Non-opposition to a notified concentration (Case COMP/M.2199 – Quantum/Maxtor)

**C 68** 2001/C 068-0003 Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98

**C 68** 2001/C 068-0012 Non-opposition to a notified concentration (Case COMP/M.2262 – Flughafen Berlin (II))

**C 68** 2001/C 068-0012 Non-opposition to a notified concentration (Case COMP/M.2284 – ABN Amro/Perkins Food)

**C 68** 2001/C 068-0013 Non-opposition to a notified concentration (Case COMP/M.2185 – OCE-Technologies/Real Software/OCE Real Business Solutions)

**C 68** 2001/C 068-0013 Prior notification of a concentration (Case COMP/M.2249 – Marconi/RTS) – Candidate case for simplified procedure

**C 68** 2001/C 068-0014 Prior notification of a concentration (Case COMP/M.2344 – Xchange/BAE Systems/JV) – Candidate case for simplified procedure

### 01.03.2001

**C 66** 2001/C 066-0006 Prior notification of a concentration (Case COMP/M.2308 – Northrop Grumman/Litton Industries)

**C 66** 2001/C 066-0005 Prior notification of a concentration (Case COMP/M.2377 – Sydkraft/ABB/German Power Trading JV) – Candidate case for simplified procedure

**C 66** 2001/C 066-0004 Prior notification of a concentration (Case COMP/M.2364 – Deutsche Bank/Banque Worms) – Candidate case for simplified procedure

### 28.02.2001

**C 63** 2001/C 063-0008 Prior notification of a concentration (Case COMP/M.2267 – Siemens/

Janet/JV) – Candidate case for simplified procedure

### 27.02.2001

**C 62** 2001/C 062-0002 Prior notification of a concentration (Case COMP/M.2227 – Goldman Sachs/Messer Griesheim)

### 24.02.2001

**C 60** 2001/C 060-0018 Prior notification of a concentration (Case COMP/M.2353 – RWE/Hidroeléctrica del Cantábrico)

**C 60** 2001/C 060-0017 Prior notification of a concentration (Case COMP/M.2282 – BT/Esat Digifone)

### 23.02.2001

**C 58** 2001/C 058-0002 Prior notification of a concentration (Case COMP/M.2079 – Raytheon/Thales/JV)

**C 58** 2001/C 058-0002 Prior notification of a concentration (Case COMP/M.2368 – Gilde/CapVis/Soudronic) – Candidate case for simplified procedure

**C 58** 2001/C 058-0003 Prior notification of a concentration (Case COMP/M.2343 – Toro Assicurazioni/Lloyd Italiano)

### 22.02.2001

**C 56** 2001/C 056-0006 Prior notification of a concentration (Case COMP/M.1976 – Shell/Halliburton/Welldynamics (JV))

**C 56** 2001/C 056-0004 Prior notification of a concentration (Case COMP/M.2346 – Telefónica/Portugal Telecom/Brazilian JV) – Candidate case for simplified procedure

**C 56** 2001/C 056-0005 Prior notification of a concentration (Case COMP/M.2341 – Banco Popular Español/Fortior Holding) – Candidate case for simplified procedure

**C 56** 2001/C 056-0007 Non-opposition to a notified concentration (Case COMP/M.2172 – Babcock Borsig/MG Technologies/SAP Markets/ec4ec)

**C 56** 2001/C 056-0007 Non-opposition to a notified concentration (Case COMP/M.1381 – Imetal/English China Clays)

**C 56** 2001/C 056-0008 Initiation of proceedings (Case COMP/M.2201 – MAN/Auwärter)

### 21.02.2001

**C 54** 2001/C 054-0011 Non-opposition to a notified concentration (Case COMP/M.1848 – Schroder Ventures European Fund/Takko Modemarkt)

**C 54** 2001/C 054-0009 Non-opposition to a notified concentration (Case COMP/M.1869 – CVC/BTR Siebe Automotive Sealing Systems)

**C 54** 2001/C 054-0010 Non-opposition to a notified concentration (Case COMP/M.1510 – BT/AT

& T/Japan Telecom)

**C 54** 2001/C 054-0009 Non-opposition to a notified concentration (Case COMP/M.2225 – Fortis/ASR)

**C 54** 2001/C 054-0007 Prior notification of a concentration (Case COMP/M.2314 – BASF/Pantochim/Eurodiol)

**C 54** 2001/C 054-0008 Non-opposition to a notified concentration (Case COMP/M.2188 – NEC/Schott Glas/NEC Schott/JV)

**C 54** 2001/C 054-0008 Non-opposition to a notified concentration (Case COMP/M.2105 – SJPC/SCP De Milo/De Milo)

**C 54** 2001/C 054-0010 Non-opposition to a notified concentration (Case COMP/M.2202 – Stinnes/HCI)

#### 20.02.2001

**C 53** 2001/C 053-0012 Prior notification of a concentration (Case COMP/M.2357 – Vattenfall/Hamburger Elektrizitätswerke/Nordic Powerhouse) – Candidate case for simplified procedure

#### 17.02.2001

**C 52** 2001/C 052-0013 Prior notification of a concentration (Case COMP/M.2309 – Ericsson/Skandia) – Candidate case for simplified procedure

**C 52** 2001/C 052-0014 Prior notification of a concentration (Case COMP/M.2330 – Cargill/Banks)

#### 16.02.2001

**C 51** 2001/C 051-0010 Prior notification of a concentration (Case COMP/M.2356 – Hermes/Codan/JV) – Candidate case for simplified procedure

**C 51** 2001/C 051-0009 Non-opposition to a notified concentration (Case COMP/M.2066 – Dana/Getrag)

**C 51** 2001/C 051-0009 Non-opposition to a notified concentration (Case COMP/M.2251 – AOL/Banco Santander/JV)

**C 51** 2001/C 051-0008 Non-opposition to a notified concentration (Case COMP/M.2090 – Liverpool Victoria Friendly Society/AC Ventures/JV)

#### 15.02.2001

**C 49** 2001/C 049-0005 Non-opposition to a notified concentration (Case COMP/M.2243 – Stora Enso/Assidomän/JV)

**C 49** 2001/C 049-0003 Prior notification of a concentration (Case COMP/M.2340 – EDP/Cajastur/Cáser/Hidroeléctrica del Cantábrico) – Candidate case for simplified procedure

**C 49** 2001/C 049-0005 Non-opposition to a notified concentration (Case COMP/M.2285 – Schroder Ventures Limited/Homebase)

**C 49** 2001/C 049-0007 Non-opposition to a notified concentration (Case COMP/M.2246 – Sofinim/KBC Invest/Mercator & Noordstar/VIV/Tournesoleon/De Clerck/FOC)

**C 49** 2001/C 049-0006 Non-opposition to a notified concentration (Case COMP/M.2248 – CVC/Advent/Carlyle/Lafarge Matériaux de Spécialités)

**C 49** 2001/C 049-0007 Non-opposition to a notified concentration (Case COMP/M.2259 – Terra/Amadeus/1Travel.com)

**C 49** 2001/C 049-0006 Non-opposition to a notified concentration (Case COMP/M.2255 – Telefonica Intercontinental/Sonera 3G Holding/Consortium IPSE 2000)

#### 14.02.2001

**C 48** 2001/C 048-0023 Non-opposition to a notified concentration (Case COMP/M.2264 – Industri Kapital/Fives-Lille)

#### 13.02.2001

**C 46** 2001/C 046-0008 Non-opposition to a notified concentration (Case COMP/M.2247 – CU Italia/Banca Popolare di Lodi/JV)

**C 46** 2001/C 046-0006 Prior notification of a concentration (Case COMP/M.2220 – General Electric/Honeywell)

**C 46** 2001/C 046-0007 Non-opposition to a notified concentration (Case COMP/M.2232 – Marinopoulos Abette/Sephora Holding/JV)

**C 46** 2001/C 046-0007 Non-opposition to a notified concentration (Case COMP/M.2252 – Kuoni/TRX/E-TRX/TRX Central Europe JV)

#### 10.02.2001

**C 44** 2001/C 044-0011 Prior notification of a concentration (Case COMP/M.2317 – Lafarge/Blue Circle (II))

#### 09.02.2001

**L 40** 2001/L 040-0001 Commission Decision of 13 October 1999 declaring a concentration to be compatible with the common market and the EEA Agreement (Case IV/M.1439 Telia/Telenor) (notified under document number C(1999) 3314)

**C 43** 2001/C 043-0004 Renotification of a previously notified concentration (Case COMP/M.2256 – Philips/Agilent Health Care Solutions)

**C 43** 2001/C 043-0004 Non-opposition to a notified concentration (Case COMP/M.2192 – Smithkline Beecham/Block Drug)

**C 43** 2001/C 043-0003 Non-opposition to a notified concentration (Case COMP/M.1839 – Halbergerhütte/Bopp & Reuther/Muffenrohr)

**C 43** 2001/C 043-0003 Non-opposition to a notified concentration (Case COMP/M.1865 – France Télécom/Global One)

**C 43** 2001/C 043-0002 Supplementary Opinion of the Advisory Committee on concentrations given at the 70th meeting on 5 October 1999 concerning

a preliminary draft decision relating to Case IV/M.1439 – Telia/Telenor

**C 43** 2001/C 043-0002 Opinion of the Advisory Committee on concentrations given at the 69th meeting on 23 September 1999 concerning a preliminary draft decision relating to Case IV/M.1439 – Telia/Telenor

#### 08.02.2001

**C 42** 2001/C 042-0009 Prior notification of a concentration (Case COMP/M.2336 – Thomson/Technicolor) – Candidate case for simplified procedure

**C 42** 2001/C 042-0010 Prior notification of a concentration (Case COMP/M.2305 – Vodafone Group plc/Eircell)

**C 42** 2001/C 042-0011 Non-opposition to a notified concentration (Case COMP/M.1863 – Vodafone/BT/Airtel JV)

**C 42** 2001/C 042-0011 Non-opposition to a notified concentration (Case COMP/M.1783 – ZF Gotha/Graziano Trasmissioni/JV)

**C 42** 2001/C 042-0012 Non-opposition to a notified concentration (Case COMP/M.2210 – Georg Fischer/West LB/Krupp Werner & Pfleiderer)

**C 42** 2001/C 042-0012 Non-opposition to a notified concentration (Case COMP/M.1873 – Compagnie de Saint-Gobain/Meyer International)

**C 42** 2001/C 042-0013 Non-opposition to a notified concentration (Case COMP/M.2035 – Doughty Hanson/Rank Hovis McDougall)

#### 07.02.2001

**C 39** 2001/C 039-0009 Non-opposition to a notified concentration (Case COMP/M.2186 – Preussag/Nouvelles Frontières)

**C 39** 2001/C 039-0007 Notification of a concentration (Case COMP/JV.55 – Hutchison/RCPM/ECT)

**C 39** 2001/C 039-0008 Prior notification of a concentration (Case COMP/M.2335 – Michel Mineralölhandel/Thyssen-Elf Oil)

**C 39** 2001/C 039-0009 Non-opposition to a notified concentration (Case COMP/M.2216 – Enel/Wind/Infostrada)

#### 06.02.2001

**C 38** 2001/C 038-0002 Prior notification of a concentration (Case COMP/M.2208 – Chevron/Texaco)

#### 03.02.2001

**C 37** 2001/C 037-0054 Prior notification of a concentration (Case COMP/M.2324 – Sanmina Corporation/AB Segerström & Svensson) – Candidate case for simplified procedure

**C 37** 2001/C 037-0052 Prior notification of a concentration (Case COMP/M.2294 – Etex Group/Glynwed Pipe Systems)

**C 37** 2001/C 037-0053 Prior notification of a

concentration (Case COMP/M.2280 – BASF/Bertschi/Hoyer/VTGL/JV) – Candidate case for simplified procedure

**C 37** 2001/C 037-0051 Prior notification of a concentration (Case COMP/M.2277 – Degussa-Hüls/SKW Trostberg/Laporte)

#### 02.02.2001

**C 35** 2001/C 035-0005 Prior notification of a concentration (Case COMP/M.2302 – Heinz/CSM)

**C 35** 2001/C 035-0004 Prior notification of a concentration (Case COMP/M.2292 – AEA Investors/DLJMB Funding III/BF Goodrich Performance Materials) – Candidate case for simplified procedure

**C 35** 2001/C 035-0002 Prior notification of a concentration (Case COMP/M.2257 – France Télécom/Equant)

**C 35** 2001/C 035-0003 Prior notification of a concentration (Case COMP/M.2290 – SFK99-Rahasto/Fortum/Naps Systems) – Candidate case for simplified procedure

#### 01.02.2001

**C 33** 2001/C 033-0002 Prior notification of a concentration (Case COMP/M.2312 – Abbott/BASF)

### State Aid

#### 30.05.2001

**L 144** 2001/L 144-0023 Commission Decision of 13 February 2001 on the aid scheme 'Viridian Growth Fund' notified by the United Kingdom (notified under document number C(2001) 334)

#### 24.05.2001

**L 140** 2001/L 140-0065 Commission Decision of 17 January 2001 on the State aid which the United Kingdom is planning to implement for Nissan Motor Manufacturing (UK) Ltd (notified under document number C(2001) 164)

#### 23.05.2001

**L 139** 2001/L 139-0009 Commission Regulation (EC) No 996/2001 of 22 May 2001 amending Regulations (EEC) No 1764/86, (EEC) No 2319/89 and (EEC) No 2320/89 laying down minimum quality requirements for products processed from tomatoes, pears and peaches under the production aid scheme

#### 22.05.2001

**L 138** 2001/L 138-0016 Decision No 4/2000 of the EU-Romania Association Council of 10 April 2001 adopting the implementing rules for the application of the provisions on State aid referred to in Articles 64(1)(iii) and (2) pursuant to Article 64(3) of the Europe Agreement establishing an



association between the European Communities and their Member States, of the one part, and Romania, of the other part, and in Article 9(1)(iii) and (2) of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement

**C 151** 2001/C 151E-0210 E-3983/00 by Christine De Veyrac to the Commission

Subject: Community subsidies for the Midi-Pyrénées Region: amounts and allocation

**C 151** 2001/C 151E-0156 P-3390/00 by Phillip Whitehead to the Commission

Subject: State aids in the manufacturing industry

**C 151** 2001/C 151E-0156 P-3388/00 by Laura González Álvarez to the Commission

Subject: New aid scheme for coal with effect from 2002

**C 151** 2001/C 151E-0151 P-3372/00 by Antonios Trakatellis to the Commission

Subject: State aid and the rescue of Olympic Airways AE

#### 19.05.2001

**C 150** 2001/C 150-0020 Judgment of the Court of First Instance of 15 March 2001 in Case T-73/98: Société Chimique Prayon-Rupel SA v Commission of the European Communities (State aid – Failure to open the procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) – Serious difficulty)

**C 149** 2001/C 149-0006 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 149** 2001/C 149-0013 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 8/2001 (ex NN 110/2000) – Aid to Pertusola Sud SpA

#### 15.05.2001

**L 132** 2001/L 132-0030 Commission Decision of 6 April 2001 fixing the maximum amount of aid granted for the private storage of olive oil under the second partial invitation to tender provided for by Regulation (EC) No 327/2001 (notified under document number C(2001) 847)

**L 132** 2001/L 132-0010 Commission Regulation (EC) No 939/2001 of 14 May 2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards the grant of flat-rate aid for certain fishery products

#### 12.05.2001

**C 140** 2001/C 140-0008 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 140** 2001/C 140-0002 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 17/01 (ex N 98/00) – Aid to improve processing and marketing conditions for agricultural products – Regional Law 5/2000, Article 35

#### 09.05.2001

**L 127** 2001/L 127-0055 Commission Decision of 21 December 2000 on German aid to the coal industry for 2000 and 2001 (notified under document number C(2000) 4407)

#### 08.05.2001

**C 136** 2001/C 136E-0060 E-2635/00 by Karin Riis-Jørgensen to the Commission

Subject: Illegal state aid to Combust A/S

#### 05.05.2001

**C 134** 2001/C 134-0017 Judgment of the Court of First Instance of 31 January 2001 in Case T-156/98: RJB Mining plc v Commission of the European Communities (ECSC Treaty – Concentration between undertakings – Admissibility – State aid)

**C 133** 2001/C 133-0020 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 133** 2001/C 133-0019 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 133** 2001/C 133-0018 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 133** 2001/C 133-0003 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 66/2000 (ex NN 40/98) – Restructuring of Zeitzer Maschinen, Anlagen, Geräte ZEMAG GmbH

#### 03.05.2001

**L 122** 2001/L 122-0023 Commission Decision of 13 February 2001 authorising the United Kingdom to grant aid to the coal industry, covering the period from 17 April 2000 to 31 December 2000 (notified under document number C(2001) 401)

#### 28.04.2001

**C 128** 2001/C 128-0010 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

#### 26.04.2001

**C 125** 2001/C 125-0009 State aid (SAM 020.500.035 Norway) – EFTA Surveillance Authority notice pursuant to Article 1(2) of Protocol 3 of the Surveillance and Court Agreement, to other EFTA States, EU Member States

and interested parties concerning State aid in the form of compensation payments for express bus operators (State aid SAM 020.500.035)

#### 24.04.2001

**L 113** 2001/L 113-0008 Commission Decision of 29 November 2000 on the State aid which Italy is planning to grant to five ECSC steel undertakings (notified under document number C(2000) 3933)

#### 21.04.2001

**C 117** 2001/C 117-0008 State aid (Articles 87 to 89 of the Treaty establishing the European Community) – Commission notice pursuant to Article 88(2) of the EC Treaty, addressed to the other Member States and interested parties, concerning State aid C 63/99 (ex NN 84/99) – Impact of new electricity tax on feed-in price under «Stromeinspeisungsgesetz»

**C 117** 2001/C 117-0009 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 14/2001 (ex NN 16/01) – France – «Société Nationale Corse-Méditerranée»

**C 117** 2001/C 117-0018 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 117** 2001/C 117-0014 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 117** 2001/C 117-0019 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

#### 18.04.2001

**C 113** 2001/C 113E-0164 E-2750/00 by Hiltrud Breyer and Alexander de Roo to the Commission Subject: Tax exemption for gas-fired power stations in Germany and legislation on state aid

**C 113** 2001/C 113E-0098 P-2449/00 by Ulrich Stockmann to the Commission

Subject: State aid notification procedures in the new Länder of the Federal Republic of Germany

**C 113** 2001/C 113E-0132 E-2606/00 by Carlos Ripoll y Martínez de Bedoya to the Commission Subject: State aid for fishing vessels and the fishing fleet

**C 113** 2001/C 113E-0157 Written question E-2718/00 by Christopher Huhne to the Commission

Subject: Launch aid for Airbus Industrie's A3XX aircraft

#### 12.04.2001

**C 111** 2001/C 111-0002 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning the waste disposal system

for car wrecks in the Netherlands, C 11/2001 (ex N 629/00)

#### 11.04.2001

**L 100** 2001/L 100-0016 Decision No 3/2001 of the EU-Czech Republic Association Council of 8 March 2001 extending by five years the period within which any public aid granted by the Czech Republic will be assessed taking into account the fact that the Czech Republic is to be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community

#### 07.04.2001

**L 98** 2001/L 098-0019 Decision No 2/2001 of the EU-Lithuania Association Council of 22 February 2001 adopting the implementing rules for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2) pursuant to Article 64(3) of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part

**C 108** 2001/C 108-0019 Order of the President of the Court of First Instance of 8 December 2000 in Case T-237/99 R: BP Nederland vof and Others v Commission of the European Communities (Proceedings for interim measures – Suspension of operation – State aid – Prima facie case – Urgency)

**C 108** 2001/C 108-0014 Judgment of the Court of First Instance of 12 December 2000 in Case T-296/97: Alitalia – Linee aeree italiane SpA v Commission of the European Communities (State aid – Recapitalisation of Alitalia by the Italian authorities – Classification of the measure – Private investor test – Examination by the Commission)

**C 108** 2001/C 108-0014 Judgment of the Court of First Instance of 14 December 2000 in Case T-613/97: Union Française de l'Express (Ufex) and Others v Commission of the European Communities (State aid – Rights of the defence – Access to the file – Requirement to state reasons – Postal sector – Cross-subsidies between the reserved sector and the competitive sector – Concept of State aid – Normal market conditions)

**C 107** 2001/C 107-0003 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 107** 2001/C 107-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

#### 03.04.2001

**L 93** 2001/L 093-0048 Commission Decision of 31 January 2001 on the State-aid scheme proposed by Greece for fruit and vegetable growers (notified



under document number C(2001) 323)  
**C 103** 2001/C 103E-0065 E-2112/00 by Luis Berenguer Fuster to the Commission  
 Subject: Application of Article 87 of the EC Treaty to aid granted to the Spanish electricity industry  
**C 103** 2001/C 103E-0171 E-2520/00 by Glyn Ford to the Commission  
 Subject: Transparency of State aids

### 31.03.2001

**C 102** 2001/C 102-0008 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections  
**C 102** 2001/C 102-0006 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

### 30.03.2001

**L 90** 2001/L 090-0062 Commission Decision of 26 March 2001 fixing the maximum amount of aid granted for the private storage of olive oil under the first partial invitation to tender provided for by Regulation (EC) No 327/2001 (notified under document number C(2001) 823)

### 29.03.2001

**L 89** 2001/L 089-0028 Commission Decision of 29 November 2000 on the aid scheme implemented by Spain in favour of the shipping company Ferries Golfo de Vizcaya (notified under document number C(2000) 3931)

### 24.03.2001

**C 94** 2001/C 094-0006 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections  
**C 94** 2001/C 094-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

### 21.03.2001

**L 81** 2001/L 081-0031 Commission Decision of 13 December 2000 authorising the United Kingdom to grant aid to the coal industry, covering the period from 17 April to 31 December 2000 (notified under document number C(2000) 4056)

### 20.03.2001

**C 89** 2001/C 089E-0218 E-2721/00 by Christopher Huhne to the Commission  
 Subject: State aid in manufacturing industries  
**C 89** 2001/C 089E-0217 E-2720/00 by Christopher Huhne to the Commission  
 Subject: State aid in extraction industries

### 17.03.2001

**L 79** 2001/L 079-0029 Commission Decision of 16 May 2000 on the aid scheme implemented by Italy to assist large firms in difficulty (Law No 95/

1979 converting Decree Law No 26/1979 on special measures for the extraordinary administration of large firms in crisis) (notified under document number C(2000) 1403)

**C 87** 2001/C 087-0014 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections  
**C 87** 2001/C 087-0011 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 2/2001 (ex NN 13/99) – aid for the purchase of milk quotas  
**C 87** 2001/C 087-0002 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 28/2000 (ex NN 52/99) – aid in favour of Hirschfelder Leinen und Textil GmbH (Hiltex) – Saxony, Germany

### 14.03.2001

**L 72** 2001/L 072-0006 Commission Regulation (EC) No 495/2001 of 13 March 2001 amending the Annex to Council Regulation (EEC) No 3508/92 establishing an integrated administration and control system for certain Community aid schemes

### 13.03.2001

**L 71** 2001/L 071-0023 Commission Decision of 15 November 2000 concerning State aid granted by Belgium to Cockerill Sambre SA (notified under document number C(2000) 3563)

### 10.03.2001

**C 79** 2001/C 079-0001 Judgment of the Court (Sixth Chamber) of 23 November 2000 in Case C-1/98 P: British Steel plc v Commission of the European Communities and Others (Appeal – ECSC – Commission Decision No 3855/91/ECSC (Fifth Aid Code) – Individual Commission decisions authorising State aid for steel undertakings – Competence of the Commission – Legitimate expectations)  
**C 79** 2001/C 079-0001 Judgment of the Court (Sixth Chamber) of 23 November 2000 in Case C-441/97 P: Wirtschaftsvereinigung Stahl and Others v Commission of the European Communities and Others (Appeal – ECSC – Commission Decision No 3855/91/ECSC (Fifth Aid Code) – State aid for steel undertakings in the Italian public sector – Misuse of powers – Principle of non-discrimination – Principle of necessity)  
**C 79** 2001/C 079-0010 Order of the Court of 12 October 2000 in Case C-278/00 R: Hellenic Republic v Commission of the European Communities (Interim measures – Suspension of operation – State aid)  
**C 78** 2001/C 078-0013 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections  
**C 78** 2001/C 078-0024 Commission communication concerning the review of the Community

framework for State aid for research and development

**C 78** 2001/C 078-0006 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty and Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty, concerning aid C 7/2001 (ex NN 108/2000) – Spain - support measures in the fisheries sector following the rise in fuel costs

**C 78** 2001/C 078-0002 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty and Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty, concerning aid C 3/2001 (ex N 632/2000) – Belgium – subsidised loans for fishermen, partially guaranteed by the State, following the rise in fuel prices

**C 78** 2001/C 078-0009 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty and Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty, concerning aid C 9/2001 (ex NN 111/2000) – France – measures for fishermen following the rise in fuel costs

### 09.03.2001

**L 67** 2001/L 067-0052 Commission Regulation (EC) No 471/2001 of 8 March 2001 amending Regulation (EEC) No 1858/93 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector

### 08.03.2001

**L 66** 2001/L 066-0048 Decision of the EEA Joint Committee No 6/2001 of 31 January 2001 amending Annex XV (State aid) to the EEA Agreement

**L 66** 2001/L 066-0035 Commission Decision of 16 May 2000 on the aid scheme which Germany is planning to implement for company founders (notified under document number C(2000) 1402)

### 06.03.2001

**L 64** 2001/L 064-0016 Commission Regulation (EC) No 449/2001 of 2 March 2001 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables

**C 72** 2001/C 072E-0178 E-2114/00 by Luis Berenguer Fuster to the Commission  
Subject: Impact of State aid to Spanish electricity companies: real competition on the generation market

**C 72** 2001/C 072E-0120 P-1801/00 by Christian Rovsing to the Commission

Subject: Unlawful provision of state aid to Post Danmark by the Danish government

**C 72** 2001/C 072E-0100 E-1689/00 by Jonas Sjöstedt to the Commission

Subject: Swedish state aid to Bengtfors in Sweden

### 03.03.2001

**C 71** 2001/C 071-0017 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 71** 2001/C 071-0019 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 71** 2001/C 071-0016 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

### 28.02.2001

**L 58** 2001/L 058-0024 Commission Decision of 13 December 2000 on the granting by Spain of aid to the coal industry in 2000 (notified under document number C(2000) 4190)

### 27.02.2001

**L 57** 2001/L 057-0032 Commission Decision of 19 July 2000 on the State aid implemented by Spain in favour of the maritime transport sector (new maritime public service contract) (notified under document number C(2000) 2447)

### 24.02.2001

**C 60** 2001/C 060-0004 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid C 64/2000 (ex N 941/96) – Tax exemption for biofuels

**C 60** 2001/C 060-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

### 22.02.2001

**L 52** 2001/L 052-0026 Commission Decision of 31 October 2000 amending Decision 97/21/ECSC, EC on State aid implemented in favour of Compañía Española de Tubos por Extrusión SA, located in Llodio, Álava (notified under document number C(2000) 3268)

### 17.02.2001

**C 52** 2001/C 052-0009 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 52** 2001/C 052-0011 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 52** 2001/C 052-0002 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 63/2000 (ex NN 102/2000) – BahnTrans GmbH

**C 52** 2001/C 052-0015 Commission Decision of 31 October 2000 on State aid for Ford Genk, Belgium (Only the French and Dutch texts are authentic)

#### 15.02.2001

**L 44** 2001/L 044-0039 Commission Decision of 13 June 2000 on a measure taken by Germany in respect of Kali und Salz GmbH (notified under document number C(2000) 1662)

#### 10.02.2001

**C 44** 2001/C 044-0002 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid C 54/2000 (ex NN 70/2000) – Italy – Tax measures for banks and banking foundations

**C 44** 2001/C 044-0006 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

#### 09.02.2001

**L 39** 2001/L 039-0033 Commission Decision of 25 October 2000 concerning the aid scheme introduced by the region of Sardinia (Italy) to promote and add value to organic farming (notified under document number C(2000) 3153)

#### 08.02.2001

**L 38** 2001/L 038-0033 Commission Decision of 19 July 2000 on State aid granted by Austria to Lenzing Lyocell GmbH & Co KG (notified under document number C(2000) 2454)

#### 06.02.2001

**L 35** 2001/L 035-0039 Commission Decision of 20 September 2000 on the aid scheme which Italy is planning to implement pursuant to Article 14 of the Sardinia Region Law of 4 February 1998 laying down rules for speeding up expenditure of EAGGF Guidance Section funds and on urgent measures for agriculture (notified under document number C(2000) 2753)

#### 03.02.2001

**L 34** 2001/L 034-0036 Commission Decision of 23 June 1999 conditionally approving aid granted by France to Crédit Foncier de France (notified under document number C(1999) 2035)

**C 37** 2001/C 037-0048 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty – Cases where the Commission raises no objections

**C 37** 2001/C 037-0022 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 53/2000 (ex NN 38/2000) – Mines et Potasses d'Alsace (MDPA)

**C 37** 2001/C 037-0029 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 55/2000 (ex NN 5/2000) – Germany, aid in favour of Mesacon Messelektronik GmbH Dresden

**C 37** 2001/C 037-0016 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 65/2000 (ex N 679/2000) – France – Start-up aid for short-sea shipping services

**C 37** 2001/C 037-0003 Community guidelines on State aid for environmental protection

**C 37** 2001/C 037-0038 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning three non-notified state aid schemes: C 58/2000 (ex NN 81/2000) – tax aid in the form of exemption from corporation tax for certain newly established firms in the Province of Álava (Spain); C 59/2000 (ex NN 82/2000) – tax aid in the form of exemption from corporation tax for certain newly established firms in the Province of Guipúzcoa (Spain); C 60/2000 (ex NN 83/2000) – tax aid in the form of exemption from corporation tax for certain newly established firms in the Province of Vizcaya (Spain)

**C 37** 2001/C 037-0044 State aid – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 57/2000 (ex NN 157/99) in favour of Valmont Nederland BV (ex Nolte), the Netherlands

#### 01.02.2001

**L 30** 2001/L 030-0045 Commission Decision of 21 April 1999 concerning aid granted by Greece to two fertiliser companies (notified under document number C(1999) 1120)

## Press releases

1 February 2001 - 31 May 2001

*All texts are available from the Commission's press release database RAPID at: <http://europa.eu.int/rapid/start/> Enter reference (e.g. IP/01/760) in the 'reference' input box on the research form to retrieve the text of a press release. Note: Language available vary for different press releases.*

## ANTITRUST

**IP/01/760 – Date: 2001-05-30** ‘Commission imposes a 30.96 million fine on Volkswagen AG for retail price maintenance measures on the German market.’

**IP/01/736 – Date: 2001-05-23** ‘European Commission strengthens the role of the Hearing Officer in competition proceedings.’

**IP/01/713 – Date: 2001-05-17** ‘Commission approves selective distribution system for Yves Saint Laurent perfume.’

**IP/01/709 – Date: 2001-05-16** ‘Competition policy: Revision of the 1997 Notice on agreements of minor importance (de minimis Notice).’

**IP/01/696 – Date: 2001-05-15** ‘Commission formally objects to partnership between Austrian Airlines and Lufthansa.’

**IP/01/694 – Date: 2001-05-15** ‘Commission takes preliminary view that IATA cargo tariff consultations infringe competition rules.’

**IP/01/698 – Date: 2001-05-15** ‘Competition activity run high in 2000.’

**IP/01/690 – Date: 2001-05-14** ‘Commission ends cartel proceedings against WestLB and Bank J. Van Bre & Co after they changed their tariffs for exchanging euro-zone currencies.’

**IP/01/683 – Date: 2001-05-14** ‘Commission clears joint control of UK air traffic control provider NATS.’

**IP/01/673 – Date: 2001-05-10** ‘Commission completes investigation into discriminatory landing fees at European airports.’

**IP/01/661 – Date: 2001-05-08** ‘Commission prohibits Glaxo Wellcome's dual pricing system in Spain.’

**IP/01/656 – Date: 2001-05-08** ‘Commission sets out strategy on Korean shipbuilding case

following investigation into unfair trade practices.’

**IP/01/650 – Date: 2001-05-07** ‘Dutch and Belgian banks change cash conversion charges, Commission drops cartel proceedings.’

**IP/01/635 – Date: 2001-05-03** ‘Commission ends proceedings against Ulster Bank after changed its tariffs for exchanging euro-zone currencies.’

**IP/01/634 – Date: 2001-05-03** ‘Commission ends cartel proceedings against Bayerische Landesbank Girozentrale after changed its tariffs for exchanging euro-zone currencies.’

**IP/01/584 – Date: 2001-04-20** ‘Commission acts against Duales System Deutschland AG (Green Dot) for the abuse of a dominant position.’

**IP/01/583 – Date: 2001-04-20** ‘Commission clears UEFA's new Broadcasting Regulations.’

**IP/01/578 – Date: 2001-04-20** ‘Enterprise Oil, Statoil and Marathon to market Irish Corrib gas separately.’

**IP/01/569 – Date: 2001-04-18** ‘Microsoft agrees not to influence technology decisions of European digital cable operators.’

**IP/01/554 – Date: 2001-04-11** ‘Commission ends cartel proceedings against Dutch bank SNS after changed its tariffs for exchanging euro-zone currencies.’

**IP/01/456 – Date: 2001-03-28** ‘Commission clarifies the application of competition law principles to telecommunications.’

**IP/01/419 – Date: 2001-03-20** ‘Antitrust proceedings in postal sector result in Deutsche Post separating competitive parcel services from letter monopoly.’

**IP/01/366 – Date: 2001-03-14** ‘Commission seeks comments on partnership between British Midland, Lufthansa and SAS.’

**IP/01/365 – Date: 2001-03-14** ‘Commission starts procedure against IMS HEALTH in Germany, seeks interim measures.’

**IP/01/342 – Date: 2001-03-12** ‘Commission takes Luxembourg to the EU Court for failure to comply with rules on rights of way in telecoms.’

**IP/01/341 – Date: 2001-03-12** ‘UK-French electricity interconnector opens up, increasing scope for competition.’



**IP/01/340 – Date: 2001-03-12** ‘Commission clears Cargill/Banks joint-venture in agricultural merchanting.’

**IP/01/333 – Date: 2001-03-08** ‘Commission seeks comments on P&O Stena Line’s cross-Channel ferry services.’

**IP/01/314 – Date: 2001-03-06** ‘Outcome of discussions between the Commission and FIFA/UEFA on FIFA Regulations on international football transfers.’

**IP/01/270 – Date: 2001-02-28** ‘Discussion with FIFA/UEFA on Transfer systems.’

**IP/01/249 – Date: 2001-02-23** ‘Commission terminates infringement procedure against production and sales license agreements between Philip Morris and Altadis.’

**IP/01/227 – Date: 2001-02-19** ‘Car prices in the European Union: still no clear trend towards a substantial reduction of price differentials.’

**IP/01/225 – Date: 2001-02-17** ‘Outcome of technical discussion with FIFA/UEFA on Transfer systems.’

**IP/01/209 – Date: 2001-02-14** ‘Joint statement by Commissioners Monti, Reding and Diamantopoulou and Presidents of FIFA Blatter and of UEFA Johansson.’

**IP/01/204 – Date: 2001-02-14** ‘Commission Hearing discusses the future of car distribution in the EU.’

**IP/01/181 – Date: 2001-02-08** ‘Commission publishes consultation paper on IATA passenger tariff conferences.’

## MERGERS

**IP/01/765 – Date: 2001-05-30** ‘Commission clears acquisition by Matsushita of sole control over two battery manufacturing factories in Belgium and Poland.’

**IP/01/764 – Date: 2001-05-30** ‘Commission clears Industri Kapital’s acquisition of a controlling stake in Telia’s business armThor.’

**IP/01/736 – Date: 2001-05-23** ‘European Commission strengthens the role of the Hearing Officer in competition proceedings.’

**IP/01/727 – Date: 2001-05-22** ‘Commission clears Austrian internet joint venture Adworx.’

**IP/01/726 – Date: 2001-05-22** ‘Commission clears de-merger of Thales and Siemens ATM joint venture.’

**IP/01/698 – Date: 2001-05-15** ‘Competition activity run high in 2000.’

**IP/01/687 – Date: 2001-05-14** ‘Commission clears acquisition of Systematics by Electronic Data Systems.’

**IP/01/686 – Date: 2001-05-14** ‘Commission clears acquisition by Industri Kapital of the chemical business of Perstorp Ab, subject to commitments.’

**IP/01/676 – Date: 2001-05-10** ‘Commission clears purchase by CVC Capital Partners and Cinven of two AssiDomän units.’

**IP/01/670 – Date: 2001-05-08** ‘Commission opens in-depth probe into travel joint venture between T-Online, TUI and Neckermann.’

**IP/01/669 – Date: 2001-05-08** ‘Commission clears the acquisition by Pernod Ricard and Diageo of the spirits and wine business of Seagram.’

**IP/01/668 – Date: 2001-05-08** ‘Commission clears the acquisition of Selecta Group Compass Group Plc.’

**IP/01/638 – Date: 2001-05-03** ‘Commission clears Norwegian office supplies Date B2B joint venture.’

**IP/01/636 – Date: 2001-05-03** ‘Commission clears Usinor’s control of Tubisud Italia.’

**IP/01/629 – Date: 2001-05-02** ‘Commission clears joint venture between Thomas Cook Holdings and British Airways.’

**IP/01/618 – Date: 2001-04-26** ‘Commission authorises BP’s acquisition of sole control over Erdölchemie.’

**IP/01/611 – Date: 2001-04-26** ‘Commission approves Linde and Jungheinrich’s joint Internet market place.’

**IP/01/601 – Date: 2001-04-25** ‘Commission clears Liberty Media’s purchase of a controlling stake in UnitedGlobalCommunications.’

**IP/01/570 – Date: 2001-04-20** ‘BHP withdraws notification of Caemi deal.’

**IP/01/573 – Date: 2001-04-19** ‘Commission opens in-depth probe into De Beers joint venture with LVMH.’

**IP/01/574 – Date: 2001-04-19** ‘Commission launches in-depth investigation into acquisition of Addtek by CRH in the construction sector.’

**IP/01/555 – Date: 2001-04-11** ‘Commission authorises Buhrmann’s acquisition of Samas’s office supplies business, subject to a divestiture.’



**IP/01/532 – Date: 2001-04-10** ‘Commission clears joint venture between Philips and LG Electronics.’

**IP/01/531 – Date: 2001-04-10** ‘Commission authorises acquisition of sole control over Sydkraft by E.ON.’

**IP/01/529 – Date: 2001-04-10** ‘Commission clears acquisition of joint control over Belgium’s Holdivat by Spanish company Teka.’

**IP/01/520 – Date: 2001-04-06** ‘Commission clears acquisition of Sema by Schlumberger.’

**IP/01/501 – Date: 2001-04-03** ‘Commission clears takeover of ADtranz by Bombardier, subject to commitments.’

**IP/01/494 – Date: 2001-04-03** ‘Commission clears Campbell Soup purchase of Unilever’s European Culinary Brands Businesses.’

**IP/01/493 – Date: 2001-04-03** ‘Commission clears takeover of Atle by Ratos and 3i Group Plc.’

**IP/01/492 – Date: 2001-04-03** ‘Commission clears joint venture between Getronics and Hagemeyer in the field of ICT wholesaling.’

**IP/01/486 – Date: 2001-04-02** ‘Commission clears Huntsman International’s buy of Albright & Wilson’s European surfactants.’

**IP/01/485 – Date: 2001-04-02** ‘Commission clears electronic mailbox joint venture in Denmark.’

**IP/01/481 – Date: 2001-04-02** ‘Commission opens detailed investigation into the acquisition of Legrand by Schneider Electric.’

**IP/01/478 – Date: 2001-03-30** ‘Commission authorises joint venture between Thales and Raytheon.’

**IP/01/453 – Date: 2001-03-28** ‘Commission authorises participation of Shell in Siemens Solar.’

**IP/01/452 – Date: 2001-03-28** ‘Commission launches in-depth investigation into acquisition of Pantochim and Eurodiol by BASF.’

**IP/01/451 – Date: 2001-03-28** ‘Commission clears Outokumpu purchase of Norzinc.’

**IP/01/450 – Date: 2001-03-28** ‘Commission authorises acquisition of Quaker by Pepsico.’

**IP/01/449 – Date: 2001-03-28** ‘Commission clears the acquisition of Magneti Marelli Climatizzazione by Japan’s Denso Corporation.’

**IP/01/438 – Date: 2001-03-26** ‘Commission authorises Northrop Grumman to acquire Litton Industries.’

**IP/01/429 – Date: 2001-03-22** ‘Commission gives go-ahead to purchase of Elf Antargaz by Paribas Affaires Industrielles (PAI) and UGI.’

**IP/01/426 – Date: 2001-03-22** ‘Commission clears France Telecom purchase of Equant.’

**IP/01/424 – Date: 2001-03-21** ‘Commission clears acquisition of Messer Griesheim by Goldman Sachs.’

**IP/01/423 – Date: 2001-03-21** ‘Commission clears purchase of MSX International and Delco Remy International by Citicorp venture capital.’

**IP/01/417 – Date: 2001-03-20** ‘Commission authorises RWE acquisition of control over Hidrocantábrico.’

**IP/01/408 – Date: 2001-03-19** ‘Commission authorises acquisition of Telenor’s stake in Esat Digifone by British Telecom.’

**IP/01/381 – Date: 2001-03-16** ‘Commission clears the joint venture between Shell and Halliburton.’

**IP/01/376 – Date: 2001-03-15** ‘Commission clears purchase of Italian insurer Lloyd Italico by Toro Assicurazioni.’

**IP/01/364 – Date: 2001-03-14** ‘Commission clears joint ventures between British, Dutch and Singapore postal operators with conditions.’

**IP/01/352 – Date: 2001-03-12** ‘Commission clears Degussa purchase of Laporte subject to a divestment package.’

**IP/01/312 – Date: 2001-03-06** ‘Commission authorises EDP-Cajastur-Caser joint bid for Hidrocantábrico.’

**IP/01/307 – Date: 2001-03-05** ‘Commission clears acquisition of Eircell by Vodafone Group.’

**IP/01/306 – Date: 2001-03-05** ‘Commission clears Philips acquisition of Agilent Healthcare Division.’

**IP/01/300 – Date: 2001-03-02** ‘Commission clears acquisition of Blue Circle Industries by Lafarge.’

**IP/01/298 – Date: 2001-03-02** ‘Commission opens full investigation into the General Electric/Honeywell merger.’

**IP/01/295 – Date: 2001-03-01** ‘Commission opens in-depth inquiry into the acquisition of ECT by Hutchison and the Rotterdam port authority.’

**IP/01/290 – Date: 2001-03-01** ‘Commission authorises Michel Mineralölhandel to purchase two Thyssen Elf Oil sales agencies.’

**IP/01/289 – Date: 2001-03-01** ‘Commission approves acquisition of the pharmaceutical business of BASF by Abbott.’

**IP/01/288 – Date: 2001-03-01** ‘Commission clears merger between Chevron and Texaco.’

**IP/01/287 – Date: 2001-03-01** ‘Commission clears acquisition of Glynwed’s Pipe Systems Division by Etex.’

**IP/01/250 – Date: 2001-02-26** ‘Commission approves acquisition of the food division of CSM by Heinz.’

**IP/01/232 – Date: 2001-02-20** ‘Commission authorises Cargill to acquire Agribrands International.’

**IP/01/230 – Date: 2001-02-19** ‘Commission clears two joint ventures specialised in travel services combining Accor Forte and Hilton.’

**IP/01/223 – Date: 2001-02-16** ‘Commission authorises acquisition of E.ON’s stake in VIAG Interkom by British Telecom.’

**IP/01/217 – Date: 2001-02-15** ‘Commission initiates detailed investigation into merger between MAN and AUWÄRTER.’

**IP/01/192 – Date: 2001-02-12** ‘Commission clears merger between VNU and ACNielsen.’

**IP/01/188 – Date: 2001-02-12** ‘Commission clears acquisition of Thomas Cook Holdings by C&N Touristic.’

**IP/01/183 – Date: 2001-02-09** ‘Commission refers part of transaction between Metsäliitto and Vapo to the Finnish Competition Authority.’

**IP/01/175 – Date: 2001-02-07** ‘Commission clears purchase by EdF of a stake in German electricity firm EnBW subject to conditions.’

**IP/01/164 – Date: 2001-02-06** ‘Commission approves take-over of Berlin Brandenburg Flughafen Holding by Hochtief and IVG consortium.’

**IP/01/156 – Date: 2001-02-05** ‘Commission takes preliminary view that the agreements between SAS and Maersk Air infringe competition rules.’

## STATE AID

**IP/01/745 – Date: 2001-05-23** ‘Commission authorises France to pay State aid of almost one billion euros to its coal industry for 2001.’

**IP/01/744 – Date: 2001-05-23** ‘Commission allows restructuring state aid to French company Sernam.’

**IP/01/739 – Date: 2001-05-23** ‘Commission adopts Communication on state aid and risk capital.’

**IP/01/738 – Date: 2001-05-23** ‘Commission investigates restructuring aid to Schmitz-Gotha Fahrzeugwerke GmbH and Gothaer Fahrzeugtechnik GmbH.’

**IP/01/698 – Date: 2001-05-15** ‘Competition activity run high in 2000.’

**IP/01/665 – Date: 2001-05-08** ‘Commission requests Germany to bring State guarantees for public banks into line with EC law.’

**IP/01/660 – Date: 2001-05-08** ‘Fisheries: Commission opens investigation into Dutch and Italian aid schemes.’

**IP/01/659 – Date: 2001-05-08** ‘Commission authorises aid to Holzmann.’

**IP/01/657 – Date: 2001-05-08** ‘Commission raises no objection to State aid in favour of Wacker Chemie GmbH.’

**IP/01/653 – Date: 2001-05-08** ‘The European Commission authorises the United Kingdom to grant aid amounting to ?25 million to the uk coal industry.’

**IP/01/652 – Date: 2001-05-08** ‘The Commission approves part of the restructuring aid for Brittany Ferries.’

**IP/01/599 – Date: 2001-04-25** ‘Commission does not object to subsidies for French professional sports clubs.’

**IP/01/598 – Date: 2001-04-25** ‘Commission investigates new aid to Germany’s Graf von Henneberg Porzellan.’

**IP/01/597 – Date: 2001-04-25** ‘Commission approves State aid for restructuring of Poligrafico e Zecca dello Stato.’

**IP/01/553 – Date: 2001-04-11** ‘Commission raises no objections to aid in favour of ST Micro-electronics for three high-tech R&D projects in microchips.’

**IP/01/455 – Date: 2001-03-28** ‘Commission approves tax exemptions from the UK Climate Change Levy.’

**IP/01/454 – Date: 2001-03-28** ‘Commission confirms the legitimacy of the bulk of the aid paid to the Lintra group.’

**IP/01/448 – Date: 2001-03-28** ‘Commission allows Danish restructuring state aid to COMBUS.’

**IP/01/445 – Date: 2001-03-27** ‘Commission adopts its report on the implementation in 2000 of the Steel Aid Code.’

**IP/01/430 – Date: 2001-03-22** ‘Commission unveils EU Register on State aid.’

**MEMO/01/85 – Date: 2001-03-14** ‘Precisazione del Portavoce.’

**IP/01/354 – Date: 2001-03-13** ‘Commission approves a UK scheme ‘Partnership support for regeneration (5).’

**IP/01/353 – Date: 2001-03-13** ‘Commission authorises investment aid in less-favoured regions in Italy.’

**IP/01/282 – Date: 2001-02-28** ‘Commission approves German Risk Capital scheme for small technology companies.’

**IP/01/281 – Date: 2001-02-28** ‘Commission investigates aid elements in Dutch disposal system for car wrecks.’

**IP/01/280 – Date: 2001-02-28** ‘Commission gives the green light to the investment allowance law in the new Länder and Berlin for 1999-2003.’

**IP/01/279 – Date: 2001-02-28** ‘Commission approves two joint UK regional development schemes.’

**IP/01/278 – Date: 2001-02-28** ‘Commission authorises aid to Fiat for investment in Southern Italy.’

**IP/01/277 – Date: 2001-02-28** ‘Commission closes investigation into Grid Feed-In Law (Germany).’

**IP/01/199 – Date: 2001-02-13** ‘Commission takes partially negative decision on aid to SCI (computer assembly) in the Netherlands.’

**IP/01/198 – Date: 2001-02-13** ‘Commission approves 25.287 million restructuring aid to KataLeuna.’

**IP/01/197 – Date: 2001-02-13** ‘State aid - Commission clears a venture capital fund in Northern Ireland.’

**IP/01/187 – Date: 2001-02-12** ‘Commission and Germany start focused discussions on guarantees to public banks.’

## **Court of Justice/Court of First Instance**

### **New cases before the Court**

This information is extracted from the 'New Cases' listing in the Proceedings of the Court of Justice and the Court of First Instance. The proceedings can be consulted on the website of the Court of Justice at:

*Proceedings of the Court of Justice and the Court of First Instance of the European Communities – New Cases*

<http://europa.eu.int/cj/en/act/index.htm>

Please note: the listing is given in French, which is the most up-to date version of the Proceedings. (At the time of going to press, the proceedings are available up to 18 May 2001).

For the French version of the proceedings of the Court, see: *Les Activités de la Cour de justice et du Tribunal de première instance des Communautés Européennes – Affaires introduites:*

<http://europa.eu.int/cj/fr/act/index.htm>

### **Affaires introduites devant la Cour et le Tribunal dans le domaine de la concurrence – 1 February 2001 – 18 May 2001**

#### **Aff. T-49/01**

##### **P&O European Ferries (Portsmouth) Ltd/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. 88 du traité CE, concernant des prétendues aides d'état accordées par les autorités françaises à l'opérateur français de services de ferrie Bretagne-Angleterre-Irlande SA (Brittany Ferries) pendant la période 1982-1998

#### **Aff. T-50/01**

##### **Saffron Investments NV, anciennement Compagnie Maritime Belge Transports SA/Commission**

D'une part, l'annulation de la décision de la Commission, du 29 décembre 2000, refusant de payer des intérêts et des frais de garantie bancaire concernant l'amende, imposée à la requérante par décision du 23 décembre 1992, en vertu des articles 81 et 82 du traité CE, et ultérieurement annulée par l'arrêt du 16 mars 2000, rendu par la Cour de Justice dans les affaires jointes C-395/96 P et C-396/96 P, ainsi que, d'autre part une demande de dommages-intérêts

#### **Aff. T-53/01**

##### **Poste Italiane SpA/Commission**

Annulation de la décision de la Commission C(2000)4067 déf., du 21 décembre 2000, relative à une procédure d'application de l'art. 86 du traité CE relative à la fourniture, en Italie, de nouveaux services postaux de remise garantie à une date ou à une heure prédéterminées

#### **Aff. T-57/01**

##### **Solvay SA/Commission**

Annulation de la décision de la Commission, du 13 décembre 2000, relative à une procédure d'application de l'article 82 du traité CE (COMP/33.133-C: Carbonate de soude – Solvay) ou, à titre subsidiaire, l'annulation ou réduction de l'amende infligée à la requérante – Nouvelle décision prise après annulation par la juridiction communautaire

#### **Aff. T-58/01**

##### **Solvay SA/Commission**

Annulation de la décision de la Commission, du 13 décembre 2000, relative à une procédure d'application de l'article 81 du traité CE (COMP/33.133-B: Carbonate de soude – Solvay, CKF) ou, à titre subsidiaire, l'annulation ou la réduction de l'amende infligée à la requérante – Nouvelle décision prise après annulation par la juridiction communautaire

#### **Aff. T-66/01**

##### **Imperial Chemical Industries plc (ICI)/Commission**

Annulation de la décision de la Commission, du 13 décembre 2000, relative à une procédure d'application de l'article 82 du traité CE (COMP/33.133-D: Carbonate de soude – ICI) ou, à titre subsidiaire, l'annulation ou réduction de l'amende infligée à la requérante – Nouvelle décision prise après annulation par la juridiction communautaire

#### **Aff. T-67/01**

##### **JCB Service/Commission**

Annulation de la décision de la Commission, du 21 décembre 2000, relative à une procédure d'application de l'article 81 du traité CE (COMP.F.1/35.918 – JCB) ou, à titre subsidiaire, la réduction de l'amende infligée à la requérante

#### **Aff. C-82/01 P**

##### **Aéroports de Paris/Commission**

##### **Alpha Flight Services (AFS)**

Pourvoi formé contre l'arrêt du Tribunal de première instance (troisième chambre) du



12 décembre 2000, Aéroports de Paris/Commission (T-128/98), par lequel le Tribunal a rejeté un recours visant à l'annulation de la décision 98/513/CE de la Commission, du 11 juin 1998, relative à une procédure d'application de l'art. 86 du traité (IV/35.613 – Alpha Flight Services/Aéroports de Paris) – Redevances des entreprises de 'catering'

#### **Aff. C-91/01**

##### **Italie/Commission**

Annulation de la décision de la Commission C(2000) 3565 def., du 15 novembre 2000, relative à une aide d'Etat en faveur de Solar Tech Srl – Violation des art. 92 (devenu, après modification, art. 87 CE) et 93 du traité CE (devenu art. 88 CE) et de la réglementation communautaire des aides d'Etat aux petites et moyennes entreprises

#### **Aff. C-94/01 P**

##### **La Poste/Commission**

Pourvoi formé contre l'arrêt du Tribunal de première instance (quatrième chambre élargie) du 14 décembre 2000, Union française de l'express (Ufex) e.a./Commission (T-613/97) par lequel le Tribunal a annulé l'art. 1er de la décision 98/365/CE de la Commission en ce qu'il constate que l'assistance logistique et commerciale fournie par la Poste à sa filiale SFMI-Chronopost ne constitue pas des aides d'Etat – Rémunération «aux conditions du marché» des prestations fournies par un monopole d'Etat à sa filiale

#### **Aff. C-102/01**

##### **Italie/Commission**

Annulation de la décision 2001/176/CE de la Commission, du 21 décembre 2000, relative à une procédure d'application de l'article 86 du traité CE relative à la fourniture, en Italie, de nouveaux services postaux de remise garantie à une date ou à une heure prédéterminées [notifiée sous le numéro C(2000) 4067]

#### **Aff. T-18/01**

##### **Anthony Goldstein/Commission**

Annulation de la décision de la Commission, du 12 janvier 2001, rejetant la plainte du requérant relative à une prétendue infraction des articles 81 et 82 du traité CE par le «General Council of the Bar of England and Wales»

#### **Aff. T-26/01**

##### **Fiocchi Munizionni SpA/Commission**

Recours en carence visant à faire constater que la Commission s'est illégalement abstenue de prendre une décision sur la plainte déposée par la requérante sur le fondement des articles 87 et 88 du traité CE, concernant des aides prétendument accordées par les autorités espagnoles à la société Santa Barbara

#### **Aff. T-42/01**

##### **Syndicat des Employés, Techniciens et Cadres de la Fédération Générale des Travailleurs de Belgique (SETCA – FGTB)/Commission**

Recours en carence tendant à faire constater que la Commission s'est illégalement abstenue de prendre des mesures provisoires et d'adopter une décision définitive suite à la plainte déposée par le requérant sur le fondement des articles 39 et 81 du Traité CE (IV/36.583-SETCA-FGTB/FIFA, URBSFA), concernant le système de transfert de joueurs professionnels de football appliquée par les organisations telles que la FIFA, l'URBSFA et la Ligue Professionnelle de Football de Belgique

#### **Aff. C-32/01 P(R)**

##### **Anthony Goldstein/Commission**

Pourvoi formé contre l'ordonnance du Président du Tribunal de première instance du 12 décembre 2000, Goldstein/Commission (T-335/00 R) – Rejet d'une demande de mesures provisoires dans le cadre d'un recours en indemnité visant à obtenir réparation du préjudice prétendument subi par le requérant suite au défaut de la Commission d'adopter les mesures provisoires nécessaires pour mettre fin à l'infraction à l'article 85 du traité CE (devenu art. 81 CE) par le «General Council of the Bar» malgré la plainte déposée par le requérant

#### **Aff.jtes C-34/01, C-35/01, C-36/01, C-37/01, C-38/01**

##### **Enirisorse SpA**

et

##### **Ministero delle Finanze**

##### **Enirisorse SpA**

et

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##### **Enirisorse SpA**

et

##### **Ministero delle Finanze**

##### **Enirisorse SpA**

et

##### **Ministero delle Finanze**

##### **Enirisorse SpA**

et

##### **Ministero delle Finanze**

Préjudicielle – Corte suprema di cassazione – Interprétation des art. 12 du traité CE (devenu, après modification, art. 25 CE), 13 du traité CE (abrogé par le traité d'Amsterdam), 30 du traité CE (devenu, après modification, art. 28 CE), 86 et 90 du traité CE (devenus art. 82 et 86 CE), 92 du traité CE (devenu, après modification, art. 87 CE), 93 du traité CE (devenu art. 88 CE) et 95 du traité CE (devenu, après modification, art. 90 CE) – Réglementation nationale transférant aux entreprises publiques agissant sur le marché des opérations portuaires les deux tiers de l'impôt payé à l'Etat italien par les opérateurs économiques à

l'occasion du chargement et du déchargement des marchandises

**Aff. C-2/01 P**

**Bundesverband der Arzneimittel-Importeure eV/Bayer AG**

**Commission**

Pourvoi formé contre l'arrêt du Tribunal de première instance (cinquième chambre élargie) du 26 octobre 2000, Bayer/Commission (T-41/96), annulant la décision 96/478/CE de la Commission, du 10 janvier 1996, relative à une procédure d'application de l'art. 85 du traité CE (IV/34.279/F3 – ADALAT) – Notion d'entente entre entreprises – Preuve de l'existence d'une entente

**Aff. C-5/01**

**Belgique/Commission**

Annulation de la décision C(2000)3563 final de la Commission, du 15 novembre 2000, concernant l'aide d'Etat mise à exécution par la Belgique en faveur de l'entreprise sidérurgique Cockerill Sambre SA

**Aff. C-7/01 P(R)**

**Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied/Commission e.a.**

Pourvoi formé contre l'ordonnance du Tribunal de première instance (Président) du 14 décembre 2000, Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied/Commission (T-5/00 R) rejetant une demande de sursis à exécution de la décision 2000/17/CE de la Commission dans la mesure où celle-ci inflige à FEG une amende de 4,4 millions d'Euro pour des infractions à l'art. 85, par. 1, du traité CE (devenu art. 81 CE) – Situation financière d'une association d'entreprises dépendant des contributions de ses membres

**Aff. C-501/00**

**Espagne/Commission**

Annulation de la décision C(2000)3269 final de la Commission concernant la législation espagnole en matière d'impôt sur les sociétés – Aide d'Etat aux entreprises sidérurgiques sous forme de déduction fiscale pour les dépenses et investissements effectués à l'étranger – Violation des dispositions de l'art. 4, sous c), du traité CECA

**Aff. C-448/00 P**

**Commission/BP Chemicals Ltd**

Pourvoi formé contre l'arrêt du Tribunal de première instance (deuxième chambre élargie) du 27 septembre 2000, BP Chemicals/Commission (T-184/97) annulant partiellement la décision SG(97)D/3266 de la Commission, du 9 avril 1997, de ne pas soulever d'objections au titre des dispositions relatives aux aides d'Etat, à l'égard de

l'exonération de la taxe intérieure sur les produits pétroliers que la France entend accorder à certains biocarburants

**Aff. C-456/00**

**France/Commission**

Annulation de la décision de la Commission C(2000) 2754 final concernant l'aide d'Etat mise à exécution par la France dans le secteur viticole

**Aff. C-448/00 P**

**Commission/BP Chemicals Ltd**

Pourvoi formé contre l'arrêt du Tribunal de première instance (deuxième chambre élargie) du 27 septembre 2000, BP Chemicals/Commission (T-184/97) annulant partiellement la décision SG(97)D/3266 de la Commission, du 9 avril 1997, de ne pas soulever d'objections au titre des dispositions relatives aux aides d'Etat, à l'égard de l'exonération de la taxe intérieure sur les produits pétroliers que la France entend accorder à certains biocarburants

**Aff. C-457/00**

**Belgique/Commission**

Annulation de la décision n. 40/99 de la Commission, du 20 septembre 2000, concernant les aides en faveur de Verlipack – Belgique

**Aff. T-335/00**

**Anthony Goldstein/Commission**

Recours en indemnité visant à obtenir réparation du préjudice prétendument subi par le requérant suite au défaut de la part de la Commission d'adopter les mesures provisoires nécessaires pour mettre fin à l'infraction à l'article 81 du traité CE par le «General Council of the Bar» malgré la plainte déposée par le requérant

**Aff. T-342/00**

**Petrolessence SA et Société de Gestion de Restauration Routière SA (SG2R)/Commission**

Annulation de la décision SG(2000)D/106729 de la Commission, du 13 septembre 2000, rejetant la demande d'agrément des candidats repreneurs des stations-services sur des autoroutes françaises en exécution des engagements de désinvestissement (cession d'actifs) pris par la société TotalFina Elf dans le cadre de l'opération de concentration entre TotalFina et Elf Aquitaine (Affaire n. COMP/M.1628 – TotalFina/Elf)

**Aff. T-354/00**

**Métropole Télévision – M6/Commission**

Annulation de la décision de la Commission, du 12 septembre 2000, (Affaire COMP/C2/37.825 Métropole TV (M6)/Union européenne de radio-diffusion (UER)), rejetant la plainte déposée par la requérante, le 6 mars 2000, contre l'Union européenne de radiodiffusion (UER), sur le fondement de l'article 81 du traité CE, relative aux

nouvelles règles d'admission adoptées suite à l'arrêt du Tribunal, rendu le 11 juillet 1996, dans les affaires jointes T-528/93, T-542/93, T-543/93 et T-546/93

**Aff. T-368/00**

**General Motors Nederland BV et Opel Nederland BV/Commission**

Annulation de la décision C(2000)2707 de la Commission, du 20 septembre 2000, relative à une procédure d'application de l'article 81 du traité CE (COMP/36.653 – Opel) qui constate l'existence d'accords entre la requérante et les concessionnaires Opel établis au Pays-Bas, visant à restreindre ou à interdire les exportations de véhicules automobiles de la marque Opel à destination d'autres Etats-membres ou, subsidia-

rement, la réduction de l'amende infligée à la requérante

**Aff. T-374/00**

**Verband der freien Rohrwerke eV e.a./Commission**

Annulation de la décision de la Commission du 5 septembre 2000, déclarant la compatibilité avec le marché commun d'une concentration (Affaire n. COMP/M.2045 – Salzgitter/Mannesmannröhren-Werke) sur base du règlement (CEE) 4064/89 du Conseil, ainsi que l'annulation de la décision du 14 septembre 2000, autorisant l'opération sur base de l'article 66, paragraphe 2, du traité CA (Affaire COMP/EGKS.1336 – Salzgitter/Mannesmannröhren-Werke)

## **Competition DG's address on the world wide web:**

[http://europa.eu.int/comm/dgs/competition/index\\_en.htm](http://europa.eu.int/comm/dgs/competition/index_en.htm)

## **Europa competition web site:**

[http://europa.eu.int/comm/competition/index\\_en.htm](http://europa.eu.int/comm/competition/index_en.htm)

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## **Coming up:**

Competition Policy Newsletter, 2001, Number 3 – October

European Community Competition Policy 2000: (Available on Europa Competition Web Site at:

[http://europa.eu.int/comm/competition/annual\\_reports/2000/](http://europa.eu.int/comm/competition/annual_reports/2000/) )

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