EC COMPETITION POLICY NEWSLETTER

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ISSN: 1025-2266

competition policy NEWSLETTER

number 1
volume 2
Spring 1996

Published quarterly by the Competition Directorate-General of the European Commission

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Competition policy in the Telecoms Sector

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Telecommunications is one of the largest and most profitable economic sectors in the world. At a time when nearly all large industrial and service corporations faced general economic slow down the telecoms sector has thrived. Where telecoms services (data, long distance and mobile) have been subjected to the greatest level of competition is where the greatest revenue growth and new employment have been created. In those countries in the EU and around the world with the longest experience of liberalisation, it is also evident that telecoms employment by new service suppliers offsets jobs shed by incumbent PTOs as they take on the productivity gains of new technology.

At the same time, the increasingly strong link between efficient telecoms service and the whole national economy is shown in the growing reliance which business in general places on telecoms. Over the last ten years the ratio of business telecoms links to employees was around one to nine, now it is more than one to three. The benefits to business of telecoms competition are of course well known. However, it is important to underline that figures from around the world show that residential users also see significant benefits when competition is introduced.

The information sector today represents 450 bn ECUs (600bn US$) in the European Union alone. It is predicted that we will be facing a 3 trillion dollar worldwide market by the end of the 90s.

THREE KEY INGREDIENTS : CONVERGENCE, DIGITALI-ZATION, COMPETITION

The new information sector is being fundamentally re-shaped by the convergence of the telecoms sector with information technology and the "content industries" of television broadcasting and publishing. This poses decisive and unprecedented challenges for public policy at both national and EU level, as we run up to full telecommunications liberalisation by 1998.

There is massive potential for growth in Europe especially in the market for broadband services to the home. Compared with the US where 35% of households are equipped with PCs, we are still below 20% - though growing rapidly. Over 60% of US homes are linked to cable networks; in Europe six of the Member States have less than 25% of households passed, and three have no cable network to speak of yet.

The impulse of market players to pick up the slack between potential and market penetration is remarkably rapid. As we speak a wave of mega mergers and joint ventures are being formed in Europe. Much of these are spurred on by developments in multimedia services and applications. This is characterised by the vertical integration of content producers and various distributers and carriers, and also a horizontal convergence between the telecoms, cable and computer networks.

Competition will be amplified by the entering of digitisation in the television sector which may have similar effects in the television sector in the nineties as the introduction of digitalisation had in the telecommunications sector in the eighties. Its first consequence is further multiplication of channels and supply. A second is convergence with telecommunications and software services, in the context of the Information Society concept.

The resulting new opportunities of packaging of offerings across sectors, particularly in fields like video-on-demand, special interest offerings and on-line services is leading to repositioning and alliances across technologies and markets in the move towards multi-media.The media sector is undergoing substantial restructuring in Europe as in the United States.

These developments have led to a dramatically increased role of EU competition law for the sector. We are in favour of commercial initiative and partnerships when they are in the interests of the Information Society. But alliances must have a competitive not an anti-competitive logic behind them. With this in mind we have two general conditions:

The first is that such a powerful and radical revolution in telecoms as we are experiencing must be overseen by **competition safeguards**: basic principles which need to be as flexible and global as the moves and the players themselves

The second is that the markets must be **liberalised** before we can allow their dominant players to join forces. We cannot risk that markets such as digital interactive TV, or global mobile satellite systems, are sewn up by defensive commercial moves before they are even opened to competition. New gateways must be opened to avoid gatekeepers strengthening their positions.

COMPETITION POLICY IN THE TELECOMS SECTOR : A "THREE PRONGED" APPROACH

Competition policy in the telecomms sector follows a " three pronged" approach:

1. Lifting government restrictions on market entry (Article 90).

2. Setting down minimum rules of fair play which must be ensured by national governments (Article 90).

3. Controlling the behaviour and agreements of dominant players (Article 85 and 86, Merger regulation).

On March 13, 1996 the Commission adopted the final directive needed to complete the first of these "prongs". It implements into EU law the commitment to full competition in the EU telecommunications market by 1st January 1998. The directive fixes the date for full liberalisation into EU legislation and sets out deadlines for progress in national implementation in preparation for this goal. A crucial factor in achieving this was the recognition that competition, in the presence of the necessary regulatory safeguards provided by the Open Network Provision (ONP) framework, will enhance the provision of universal service as well as promoting economic growth and employment both within and outside the telecoms sector. In line with the broader interests of global information society coordination, adoption of this new EU legislative framework came just four weeks after final agreement in the US of the 1996 Telecoms Act which fully modernises US telecoms regulations and market structure.

In addition to the 1998 date for opening up the markets in voice telephony and public network infrastructure, the full competition directive accelerates the liberalisation in all other areas. As of July 1 of this year use of all alternative infrastructure (such as the telecoms networks of railways, energy and water companies which are currently only authorised for restricted "in-house" purposes) must be liberalised for carriage of commercial telecoms services. This provision excludes public voice telephony service which may be reserved to the national telecoms organisation until 1998.

Alongside the lifting of government restrictions, the directive also sets down broad competition principles as regards the appropriate national regulatory frameworks for the post 1998 environment. This concerns, in

particular, interconnection, licensing and financing of universal service. Such regulatory instruments must be transparent, non-discriminatory and as least restrictive of competition as possible whilst still achieving important policy goals of public service, interoperability and use of limited resources such as spectrum and rights of way.

The harmonisation requirements of Member State rules in these areas fall under the EU's ONP (Open Network Provision) framework which is concerned with open and efficient access to, and use of, the public telecoms networks and services. ONP Council and Parliament legislation in these areas, issued under Article 100A, is currently under discussion but a review clause in the directive ensures that the Article 90 framework will be fully coordinated and coherent with the ONP framework. In the meantime, before implementation of ONP rules is achieved and/or in areas where their application is limited, the rights of new entrants to liberalised market entry under the terms of Treaty competition rules will not be compromised.

The full competition directive represents the last hurdle in the series of directives in the telecoms sector issued under Article 90 (amending directive 90/388), phasing out Government restrictions and protected monopolies across the EU.

DEADLINES FOR MEMBER STATES

The absolute deadlines for Member States to notify measures implementing liberalisation (ie taking into account derogations where applicable for countries with less developed or very small networks) are now as follows:

August 1995: *satellite services and equipment*;

July 1996: *transmission capacity on alternative networks;*

October 1996: *use of cable networks;*

November 1996: *mobile communications;*

January 1998: *public voice telephony service and public network provision.*

The second "prong" of competition policy noted above concerns the establishment of minimum rules of fair play. The deadlines for notification and publication of terms and conditions for the multi-operator environment are:

January 1997:
- notification of any licensing or declaration procedure for the provision of voice telephony and/or public networks to the Commission.
- notification of national universal service schemes to the Commission;

July 1997:
- publication of all licensing or declaration procedures;
- publication by telecoms organisations of terms and conditions for interconnection;
- ensuring that adequate numbers are available for all telecoms services.

PRIORITY ON THE IMPLEMENTATION

Having completed the first stage of the Article 90 framework, formal adoption of the liberalisation measures by the Commission, DG IV will now devote increasing attention and resources to the task of implementation, ensuring compliance and policing the deregulated sectors.

The clear calender set out above must be strictly adhered to and DG IV will maintain a tough stance int his area. With this in mind we will start infringement procedures with Member States immediately the date indicated has passed if a target notification or publication has not been achieved. The infringement procedure followed is set out in Article 169 of the Treaty which enables the Commission, where necessary, to bring Member States before the European Court of Justice. Failure to implement a subsequent Court judgement will ultimately result in fines. Strict discipline does not, on the other hand, mean pursuing unnecessary "red tape": we will generally close the formal procedure as soon as the tardy implementing measure has been adopted in the Member State concerned.

Implementation problems concerning the actual content of Member State measures (ie whether they are sufficiently in line with the principles set down in the directive) is obviously more complex than the clear cut question of dates and deadlines. For a start we must take into account the varied legal traditions and legislative practices in the Member States, as well as the diverse historical and actual market structure of their telecoms industries. In this context we rely, to a certain extent, on the experience and feedback of market participants to inform us of the practical details of non-compliance and remaining barriers to market entry. It should be noted that such

input from market players does not in practice represent a formal complaint since any legal negotiations are between the Commission and the Member State government and does not directly involve the undertakings concerned.

Alternatively, market entrants may seek to ensure compliance with our directives through bringing problems or disputes to the **national courts** of the Member States concerned. Starting proceedings at national level may in fact be the most rapid and effective path to pursue given the greater resources available and the proximity to the point of effect. Provisions in Article 90 directives which are sufficiently clear and precise, such as a date for lifting restrictions, have "direct effect" in the member states. This means they can be directly translated into decisions or orders of the courts vis a vis government regulations or the behaviour of undertakings. Even in cases where the text of a directive is not so precise as to warrant direct effect the national court is anyway in a position to grant compensation to a party which has suffered from non-implementation.

CONTROLING "DOMINANT PLAYERS"

The third "prong" of competition policy in telecoms, mentioned above, is controlling the behaviour and agreements of dominant players in the context of deregulation.

Timing is critical. We must ensure that markets are not foreclosed by the defensive strategies of the dominant incumbent players before effective competition has had a chance to "bite". The next five to ten years will demand particular attention as the ex-monopolists reposition themselves and adjust their behaviour to the new commercial environment. Competition policy dictates that we allow normal "performance based" competitive behaviour on the part of dominant companies, whilst preventing defensive and anti-competitive behaviour. The distinction between the two is both complex and dynamic, depending upon, inter alia, the state of de-regulation, the structure of the market, intent of the dominant player and effect on actual and potential competitors.

Two key areas are (i) strategic alliances and (ii) discrimination as regards terms, prices and conditions of access to networks. Generally one can expect that the first of these will be dealt with under the provisions of Article 85 (for cooperative joint ventures) and the merger regulation (for concentrations between enterprises in separate markets). The second of these will tend to come under the scrutiny of Article 86 (abuse of a dominant position). This will both complement and underscore telecoms specific regulation as concerns access to public networks which is harmonised under Article 100A in the ONP framework.

Alliances

On the one hand, the situation (market, technology and regulatory) is changing all the time so we cannot give out clear rules in advance to would be investors as to what will and what will not be problematic from a competition point of view. On the other hand recent decisions over the past year or so should provide a certain amount of guidance as to the way the Commission's application of Treaty Articles 85 and Merger regulation, is actually working in this area.

Three important cases, Holland Media Group, Media Services GmBh and Nordic Satellite Distribution, proved to be unacceptable agreements in their notified form. There was, in essence, one basic reason: they all involved the strengthening and/or creation of dominant positions:

In the HMG case we concluded that the venture would lead to a strong dominant position on the TV advertising market in the Netherlands and to the strengthening of Endemol's dominant position on the Dutch TV production market. In the MSG case it was concluded that the venture would aggravate or extend dominance on all three relevant markets: administrative /technical services, provision of film/programme content and cable infrastructure. The Nordic Satellite agreement would have provided NSD with a "gatekeeper" function for the supply of satellite TV channels to the Nordic market. This was particularly problematic given the involvement of Kinnevik - a content provider holding strong interests in TV programming, magazines and newspapers.

Although dominant positions pose risks to consumers and competitors, this clearly does not mean that alliances "caught" by the EU competition rules will always be disallowed. Often the benefits of agreements will be seen to counterbalance the potential risks, and / or such benefits will be judged to be the legitimate advantages of normal

competitive strategy. This was the case, for example, with the BT-MCI agreement which was given the go-ahead in 1994. Furthermore, agreements may be modified, or conditions (such as the regulatory situation) changed in such a way as to cause the Commission to reconsider its position. Both the Nordic Satellite group and the MSG parties are re-notifying new ventures to us this year in the hope that the re-vamped agreements will be acceptable as either cooperative joint ventures or concentrations.

The well known Atlas-Phoenix case is a good example of the way that changes in regulatory conditions and commercial terms allows the Commission to re-assess the pros and cons of an agreement. The initial arrangements raised serious concerns with respect to the home markets of France Telecom and DBPT where they hold legal and de facto dominant positions. In response to this both the parties and the national governments concerned have now undertaken certain new commitments. The parties amended the agreement so that the domestic French and German public data networks would not be included in Atlas, so that non-discriminatory access to these networks would be ensured and so that cross subsidisation would be avoided. The governments committed to liberalisation of use of alternative network infrastructure by July 1996. On this new basis, the Commission has indicated that it is ready to take a positive view of the Atlas-Phoenix agreements.

I hope that an understanding of the logic behind cases such as these will encourage investment in competitive and innovative alliances and re-structuring, as well as discouraging defensive agreements aiming at market distortion and foreclosure. Real synergies between telecoms and broadcasting, and really global service offerings are benefits which should be promoted. But this will always be weighed against the risks of extending dominance and harming competition.

Discrimination regarding access to networks

In the broadest sense "access" refers simply to: access to and from the customers of network operators, whether these are end users or wholesale service providers.

Telecom operators in a dominant position as regards basic network infrastructure (in particular customer connections, switching and interexchange transport) are under special obligations to both customers and other service providers. Article 86 prohibits the abuse of a dominant position in particular concerning unfair conditions of trade, discrimination and tying practices. Where an abuse on the part of a telecom operator is explicitly condoned or even dictated by national regulations or government decisions then the case will involve a breach of both Article 86 (directed at the telecoms undertaking) and Article 90 (directed at the Member State)

With respect to the application of these general principles to access markets in the telecoms and multimedia sector, decisions taken by the ECJ and the European Commission already give considerable guidance. They are to a certain extent generalisable in the form of a hierarchy of factors about the nature of the network operator (dominance, vertical integration, control of essential facilities) representing cumulative "check list", with a concomitant hierarchy of duties and obligations (concerning non-discrimination, unbundling and transparency).

It is essential that the conditions of access upon which other market players rely, are now clarified to the greatest extent possible. To this end we announced last year the publication of a Commission Notice which will give guidance as to the application of Treaty competition rules to access to telecom networks in a multi-operator liberalised environment. This will achieve three main tasks:

* To set out access principles stemming from EU competition law relating to a large number of actual or potential Commission decisions in order to create greater market certainty and more stable conditions for investment and commercial initiative in the telecoms and multi-media sector.

* To define and clarify the relationship between competition law and sector specific secondary legislation harmonised under the Article 100A framework (in particular this relates to the relationship between competition rules and ONP legislation).

* To open the way for the application of competition rules in a consistent away across the converging sectors involved in the provision of new multimedia services, and in particular to access issues and gateways in this context.

ACCESS PRICING AND NON-DISCRIMINATION

The issue of access pricing and non-discrimination will be perhaps the key competition issue in this context over the next few years.

This is made particularly complex in this period of flux, where the national operators need to be allowed to undergo progressive tariff reforms in order to align their prices with underlying costs and so prepare themselves for the challenge of competition.

Competition policy must certainly encourage fair price differentials based on underlying costs. This is in the interests of commercially sustainable competition and of consumers. It includes, where justified by cost, flexible pricing arrangements for different types of users as well as the margin between wholesale and retail prices upon which many service providers will rely. On the other hand we will keep a close watch to prevent unfair price discrimination in the form of excessive or predatory pricing. In particular abuses under Article 86 will include pricing strategies not based on costs and which are designed to "lock customers in" and "lock competition out". This will often involve cross-subsidisation from monopoly operations to those where competition has been introduced. Greater accounting transparency and accounting separation on the part of vertically integrated incumbent telecom operators will be very important to adequately assess these type of cases.

The Commission has already launched an own initiative investigation in this area concerning the new charges set by Deutsche Telekom AG (DT) for providing voice services to business customers. In addition the Commission has also received a complaint (January 1996) from all the major competitors of DT in the recently liberalised areas of network and business voice services in Germany (CNI, RWE, Telliance, Plusnet, Meganet, Viag Intercom, Worldcom). These companies argue that this new tariff scheme should not be approved by the German authorities since it would drive their new business out of the market. They request "interim measures" (rapid action) representing an insurance that the government will prevent application of the new tariff.

The complaint itself emphasises that the proposed tariff change constitutes an abuse of a dominant position in the form of predatory pricing and discrimination. It also underlines that the discount scheme is designed to lock-in DT's existing customers and that this threatens to prevent the growth of efficient and undistorted competition in the business services sector. The investigation will assess whether the public telecom operator is abusing its dominant position with the result of unfairly eliminating new competition in that part of the business market which has recently been liberalised.

The proposed scheme would allow DT to grant large-scale rebates (up to 43% on ordinary voice service tariffs), depending on the package and volume of voice services provided to a business customer. The rebates would cover currently still reserved services (voice telephony) as well as already liberalised services (eg closed user group communications).

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

Currently competition is growing in the recently liberalised markets such as business and data services, while other areas, such as access to end customers and public voice telephony, will mostly remain closed until 1998. In this run up period there is a risk that incumbent telecom operators may restructure tariffs in such a way as to exploit the difference between increasing price elasticities in the competitive markets and the lower price elasticity (due to absence of competition) in the latter. This could harm the new suppliers of liberalised services, by "price squeezing" them out of the market. Even if the incumbents are forced to also offer discounts in the monopoly markets this does not ensure against the abuse of dominance to eliminate competition.

A NEW EUROPEAN TELECOMS REGULATOR, OR BETTER USE OF EXISTING INSTITUTIONS ?

One of the central aims of EU liberalisation and competition in the telecoms sector is to encourage the creation of an EU wide single market in telecoms services. This has raised the issue of whether there will be a need for a telecoms regulator at EU level in order to oversee, in particular,

the transborder issues. DG IV commissioned an intensive study in 1995-96 to consider this important institutional issue ("*The Institutional framework for the regulation of Telecommunications and the application of EC Competition rules*" (1995), Forrester, Norall and Sutton, available through the Office for Official Publications, see page 47).

The study examined the current situation and found that cooperation between National Regulatory Authorities (NRAs), National Competition Authorities (NCAs) and the Commission is seriously limited. It also confirmed the Commission's finding in its Communication on the implementation of 90/388, that the independence of certain NRAs is still questionable. Most agree that over time competition rules will emerge as the dominant regulatory tool, but there is disagreement as to the timing of this evolution. The study also revealed that, from the market players point of view it seems parties seeking redress foresaw that the Commission's competition directorate is likely to emerge "as the principal regulator of conduct on the liberalised telecoms market", since they could not rely on national authorities whose powers of investigation are confined. On the other hand it was also recognised that some sort of pan-European authority, alongside this, could play a key role in respect of frequency management, numbering and essential requirements.

The study considers various options including an independent European Telecoms Authority, a European Telecoms Institute (carrying out specific tasks for the Community institutions) and consolidation of existing committees and bodies at EU level. The 2nd option is favoured (in conjunction with the third). However the strongest recommendation of the study is to concentrate in the immediate term on closer and more effective cooperation and coordination of NRAs, NCAs and the Commission within a strong framework merging regulatory and competition law functions. Existing institutions and the frameworks for co-operation between them represent a huge amount of untapped potential from the point of view of institutional efficiency.

Liberalisation (lifting restrictions) certainly implies a burst of regulatory activity, including strong pro-competition rules. A key question is whether the latter needs to be telecoms specific or not. Under conditions of market convergence between telecoms, media, information and broadcasting it would seem unwise to make rigid regulations based on outdated sectorial divides. Some say the answer is to promote regulatory integration. However, the longer term solution is clearly increasing reliance upon general competition rules. In the shorter term more focused and "ex-ante" guidelines are needed. In any case improved cooperation and coordination between regulatory authorities and competition authorities is essential.

LOCAL, NATIONAL, EU WIDE OR INTERNATIONAL AUTHORITY ?

The other key issue is that of the appropriate "level" authority: local, national, EU wide or international (WTO)?

The simple answer is that, according to the principle of subsidiarity, it depends on the issue. For example, town and country planning and environmental issues tend to be regulated at the most local level. Highly political issues concerning culture, content and universal service will always have a national aspect. Issues with a clear EU dimension include the internal market and competition issues (especially those with a transborder effect). Market access, including foreign direct investment, to telecoms markets for third countries or in third countries is increasingly a GATS issue.

The core problem is, again, one of coordination and cooperation between these levels in order to increase efficiency and minimise uncertainty for market players.

Staying on track for the 1998 full telecoms competition deadline is of paramount importance and we must not let attention and energy be deferred from this goal. As has been discussed above, once the gates are opened to competition focused pro-competition regulation will be necessary in order to ensure fair play and control distortions caused by the extreme dominance of the incumbent telecom operators. However, ultimately we are moving towards broader and more flexible pro-competition rules and guidelines in order to reflect the development of the market in terms of restructuring, convergence and increasing competition. This underlying development must guide the post 1998 regulation of competitive conditions, and any accompanying institutional reforms.

So, for the moment we will focus on strengthening the existing framework. The current system is flexible and balanced, but needs strengthening. This means, inter alia,

* Increasing resources, information and coordination vis a vis follow up of Article 90 directives and harmonisation framework as well as the arbitration mechanisms.

* Clarifying the complementary relationship between application of Competition Rules and Harmonisation directives especially in the area of interconnection and access to essential facilities.

* Issuing maximum ex-ante guidance to the market vis a vis application of the Treaty Articles to relations between market players (access agreements and alliances) in the telecoms sector.

These represent practical and immediate solutions to many of the legal and institutional issues which need to be addressed, and this is where our energies will be devoted in the coming year.

■

OPINIONS AND COMMENTS

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

Le Livre vert sur la révision du règlement relatif au contrôle des concentrations

par Eric CUZIAT, DG IV-B

La Commission a adopté le 31 janvier dernier un Livre vert sur la révision du règlement relatif au contrôle des concentrations d'entreprises (Règlement du Conseil (CEE) n° 4064/89 du 21 décembre 1989). Ce livre vert constitue la seconde étape de l'exercice de révision qui a débuté en 1995 par une vaste enquête sur l'application du règlement auprès des Etats-membres, des institutions communautaires, du monde des affaires et de la communauté juridique. Une large consultation a été engagée sur la base des orientations présentées dans ce document par la Commission, qui souhaite pouvoir adopter un projet de modification législative avant l'été.

Le Livre vert s'inscrit dans le cadre de l'article 1(3) et des articles 9 et 22 du règlement qui prévoient respectivement une révision des seuils de contrôlabilité et des mécanismes de renvoi entre la Commission et les Etats-membres. Toutefois, la Commission a saisi l'opportunité de cette révision pour proposer un certain nombre d'améliorations afin d'optimiser le fonctionnement du contrôle communautaire des concentrations, et qui ont trait notamment à la question des notifications multiples dans l'Union, à l'harmonisation du contrôle des entreprises communes, à l'acceptation des engagements de première phase et à la méthode de calcul du chiffre d'affaires pour les établissements financiers et de crédit.

LA RÉDUCTION DES SEUILS DE CONTRÔLABILITÉ

La Commission propose de réduire les seuils de contrôlabilité à 2 milliards d'écu (seuil mondial) et 100 millions d'écu (seuil communautaire), comme elle en avait d'ailleurs fixé l'objectif chiffré dès 1990 dans son 19e rapport sur la politique de la concurrence. En revanche, elle propose de maintenir la règle des 2/3 en l'état.

La Commission est convaincue de la nécessité de réduire les seuils dans la mesure où leur niveau jugé trop élevé, ne permet pas de satisfaire pleinement à deux objectifs communautaires fondamentaux, à savoir l'application du principe de subsidiarité et la réalisation du marché unique.

La Commission considère en effet que pour des opérations de concentration "dont l'effet sur le marché s'étend au-delà des frontières nationales d'un Etat-membre", l'intervention communautaire se justifie en raison des objectifs du contrôle des concentrations et des moyens dont dispose la Commission par rapport aux Etats-membres. Or, au travers de l'enquête effectuée en 1995, la Commission a constaté que l'ensemble des opérations ayant des effets transfrontaliers significatifs n'entrent pas dans le champ d'application du règlement, compte tenu du niveau actuel des seuils de contrôlabilité. Elle a ainsi identifié un certain nombre de concentrations d'intérêt communautaire qui ont échappé à son contrôle et dénombré plusieurs secteurs économiques d'importance qui pour des raisons structurelles sont soustraits dans une large mesure à l'examen communautaire.

Par ailleurs, la réalisation du marché unique suppose un soutien à l'intégration des marchés au travers notamment d'une évaluation rapide et uniforme des concentrations ayant des effets transfrontaliers significatifs dont le cadre idoine est fourni par le guichet unique communautaire qui permet une simplification des procédures administratives et une unicité du processus décisionnel garantissant un degré élevé de sécurité juridique. Or, la Commission a pu mesurer avec le concours des Etats-membres qu'un nombre non négligeable d'opérations de concentration, en dessous des seuils, étaient notifiées auprès de plusieurs autorités nationales de contrôle, disposant d'une législation spécifique. Il existe en effet actuellement onze systèmes nationaux de contrôle des concentrations dans l'Union dont huit sont à régime de notification obligatoire. Les entreprises soumises à ces notifications multiples ne

bénéficient donc pas des avantages du "guichet unique" communautaire.

De ce double constat, la Commission conclut à la nécessité de réduire les seuils afin de mieux couvrir les opérations qui sont légitimement de sa compétence et de permettre aux entreprises européennes qui procèdent à des restructurations pour s'adapter au marché unique, de bénéficier d'une procédure uniforme. Dans l'hypothèse d'une baisse des seuils aux niveaux proposés, la Commission prévoit une augmentation de 60 à 80 affaires par an.

LES MÉCANISMES DE RENVOI (ARTICLES 9 ET 22)

Dans son Livre vert, la Commission n'envisage aucune modification importante des mécanismes de renvoi entre elle-même et les Etats-membres dans la mesure où l'application rigoureuse des dispositions actuelles qui allient respect du principe de subsidiarité et sécurité juridique pour les entreprises a reçu une très large approbation des milieux concernés. Quelques améliorations techniques sont toutefois proposées au débat, notamment en ce qui concerne l'article 22.

LA QUESTION DES NOTIFICATIONS MULTIPLES

Si une majorité qualifiée ne pouvait être réunie au Conseil pour voter la réduction des seuils, la Commission est d'avis qu'il convient, à tout le moins, de résoudre le problème des notifications multiples dans l'Union européenne. La solution est claire : attribuer une compétence exclusive à la Commission dès lors que plusieurs systèmes nationaux sont impliqués dans le contrôle d'une opération de concentration. En revanche, la procédure à mettre en place pour y parvenir soulève un certain nombre d'interrogations. Elle se doit, en tout état de cause, d'être simple et de constituer une amélioration de la situation actuelle.

Le schéma simplifié de la procédure serait le suivant.

Les parties à l'opération ayant constaté le caractère notifiable de leur projet auprès de plusieurs autorités nationales notifieraient la concentration auprès de la Commission. Cette dernière constaterait que l'opération constitue une concentration au sens de l'article 3 du règlement et que des seuils planchers en chiffre d'affaires sont atteints. Les Etats-membres concernés vérifieraient que l'opération aurait été notifiable auprès de leur autorité de contrôle sur la base des seuils fixés par leur législation nationale. Si les Etats-membres confirment l'analyse des parties notifiantes, la première phase de l'examen serait engagée. En cas de désaccord avec les assertions des parties, les Etats-membres pourraient déclarer l'opération non-notifiable auprès de leur autorité de contrôle et en informeraient la Commission dans un délai donné (deux semaines, par exemple). Dans cette hypothèse, la Commission déclarerait l'opération sans dimension communautaire.

Malgré le caractère sommaire de cette description, le lecteur ne manquera pas de s'interroger sur le nombre adéquat d'autorités impliquées, sur le caractère obligatoire ou facultatif de la notification, sur la prise en compte des systèmes nationaux à notification volontaire, sur l'association des Etats-membres à la procédure, sur l'attaquabilité des décisions adoptées, sur les aspects pratiques de la procédure : extension de la première phase, contenu du formulaire C/O, problèmes linguistiques. Commission, Etats-membres et autres intéressés ont eu déjà l'opportunité de discuter ces questions et la plupart d'entre elles sont en voie de résolution.

LE TRAITEMENT DES ENTREPRISES COMMUNES

Nombre de participants à l'enquête préliminaire de 1995 ont fait valoir à la Commission leurs préoccupations quant au traitement différencié des entreprises communes qui entrent dans le champ d'application du règlement sur les concentrations et bénéficient en conséquence des procédures qui lui sont propres et celles qui, considérées comme des coopérations entre entreprises, tombent sous le coup de l'article 85 du traité et du règlement d'application n° 17/62.

C'est pourquoi la Commission a décidé d'ouvrir sur cette question un très large débat et a proposé à la réflexion des lecteurs du Livre vert un éventail de six options que l'on peut regrouper en deux catégories. Les options du premier groupe se limitent à apporter des solutions procédurales aux problèmes soulevés notamment quant aux délais de traitement et au renforcement de la sécurité juridique. Les options du second groupe conduisent à soumettre les entreprises communes coopératives de nature structurelle c'est-à-dire celles pour lesquelles l'accord aboutit à un réel changement de la structure des entreprises concernées et du marché

en cause, au test de substance et à la procédure du règlement sur les concentrations.

La Commission reste à ce stade ouverte quant à la détermination de l'option la mieux appropriée pour résoudre les disparités dans le traitement des entreprises communes.

AUTRES AMÉLIORATIONS

La Commission suggère enfin un certain nombre d'améliorations qui doivent permettre d'optimiser l'application du règlement. Il est proposé de donner une base juridique expresse à l'acceptation des engagements présentés par les entreprises dès la première phase d'examen et d'établir à cette occasion des modalités procédurales propres à assurer la transparence et la consultation en temps utile des Etats-membres et des tiers intéressés.

Pour tenir compte des observations des représentants du secteur bancaire, la Commission a ouvert également une réflexion sur la méthode de calcul du chiffre d'affaires des établissements de crédit et autres établissements financiers. Pour l'essentiel, il s'agit de substituer le produit bancaire à la base de calcul actuelle qui repose sur le dixième des actifs.

La période de consultation sur le Livre vert s'est achevée le 31 mars 1996. La Commission s'attache à présent à traiter l'ensemble des informations qu'elle reçoit. Un document de synthèse sera publié dans le courant du printemps.

C'est toutefois dans les propositions formelles de la Commission au Conseil que cet exercice trouvera son aboutissement. ■

Technology Transfer: the new Regulation

by Chris MITROPOULOS, IV-A-2

At the end of January this year, the Commission finally adopted the new block exemption on technology transfer agreements (Commission Regulation EC No 240/96). The new regulation came into force on 1st April 1996 and remains in force for a period of ten years. It is the result of a long consultation process with Member States, the other institutions, representatives of industry and other interested parties. The objectives of the new rules together with their substantive provisions are outlined below.

ENCOURAGING TECHNOLOGY TRANSFER

The new rules reflect the Commission's aim of encouraging the dissemination of technical knowledge in the Community and promoting the manufacture of technically more sophisticated products. It sees the role of technology transfers as essential in strengthening the competitiveness of European industry within Community and world markets. To this end, the Commission is already encouraging international cooperation in research and development through programmes such as Esprit, Drive and Brite EURAM. In this regard, the new rules should be viewed as an important back-up measure.

SIMPLIFYING THE RULES

Simplifying the way technology transfers are handled under the competition rules contributes to the Commission's aim of encouraging the dissemination of technology. The new block exemption replaces the block exemptions on patent licensing (Regulation (EEC) No 2349/89) and on know-how licensing (Regulation 556/89). The first of these was adopted in 1984. It expired in 1994, but has been extended on several occasions due to the delays in adopting the present regulation. The latter was adopted in 1988 and would

have continued until the end of 1999, but is repealed in the new regulation. The overlap between the two former regulations meant that in the case of mixed patent and know-how agreements, undertakings were unsure as to which regulation applied and the Commission was often accused of not providing clear guidance on the matter. Under the new regime, know-how licences, patent licences and mixed agreements are treated together under a single legal instrument. The harmonisation of the new rules reduces the disparities which existed between the old regulations and creates greater legal certainty. The new arrangements also reflect commercial reality in that agreements for the transfer of technology are more commonly mixed.

FOCUSING ON ECONOMIC STRENGTH

In addition, the old regulations drew no distinction in terms of the economic strength of the parties concerned. Under the old regime, automatic exemption was available even to dominant firms, which by securing exclusive licences, could succeed in monopolising a product market and prevent access to new technology by outsiders. At the same time, the restrictions which the Commission black listed in the old regulations (in order to counter the real danger of abuse) had a detrimental effect on firms whose relatively weak market position meant that they did not in any way hinder the interpenetration of markets. Such firms are given more lenient treatment under the new regime. The issue which was of foremost concern to industry was the obligation envisaged by the Commission that licensing agreements be individually notified (thereby loosing the benefit of automatic exemption), where the licensee had a significant market position (over 40%). Following several written consultations and a public hearing, the market share threshold test has been dropped as a condition for benefitting from the block exemption, but remains an important factor in the Commission's appraisal of its withdrawal (see below).

SCOPE

The regulation applies to pure patent licensing or know-how licensing agreements and to mixed patent and know-how licensing agreements, including those agreements containing ancillary provisions relating to intellectual property rights other than patents, such as trade marks and copyright. It applies only where a licensee actually manufactures products or provides services or has products or services provided for him. Therefore, resale agreements or sale agreements styled as a licence do not qualify for the block exemption, as is the case with certain joint venture agreements and agreements between members of a patent or know-how pool.

The main features of the new regulation are developped in the following few paragraphs.

THE WHITE LIST

Article 1 lists eight restrictive obligations which would ordinarily be caught by Article 85(1), but which are exempted by the regulation and, therefore, do not need to be notified to the Commission. These include the common territorial restrictions associated with technology transfer agreements. Such restrictions include an obligation on the licensor not to license other undertakings to exploit the licensed technology in the licensed territory or to exploit such technology in the licensed territory himself; an obligation on the licensor not to put the licensed technology on territory of the licensor or on territories which are licensed to other licensees. Such territorial restrictions are considered to improve the production of goods an promote technical progress in that they make the holders of patents or know-how more willing to grant licences. Licensees are in turn more inclined to undertake the investment required to manufacture and put a new product on the market. In this respect the regulation confirms the Maize seed doctrine.

Certain time limits have been placed on the restrictions which may be exempted depending on the type of agreement and the type of restriction. For pure patent licensing agreements, the territorial restrictions in question are allowed for as long as the product is protected by parallel patents. For pure know-how agreements, protection is generally limited to ten years from when the product is first put on the market. In mixed agreements, exemption for restrictions is either limited to the duration of the patents or ten years, whichever is longer.

The degree of territorial protection granted to the contracting parties is more far reaching than that granted to licensees in their respective relationships. In the case of the

former, export bans are permitted for the duration of the agreement. In the case of the latter, export bans can only be imposed for a five year duration from the date on which the product was first marketed in the Community. After this period, a licensee can only be protected against active sales on the part of other licensees.

OTHER LAWFUL OBLIGATIONS

In addition to the white list, Article 2 provides a list of clauses which are generally not restrictive of competition and whose inclusion in an agreement does not affect its exemption. These include the obligation on the licensee not to divulge the know-how communicated by the licensor; the obligation on the licensee not to grant sublicences; the right of licensors to terminate the agreement in the event of the licensee challenging the validity of the patent, secret or substantial nature of the licensed know-how or the obligation for licensees to use their best endeavours to manufacture and market the licensed product. This is a long, but not exhaustive list of clauses normally found in licensing agreements, which if found to fall within Article 85 (1) should be covered by the regulation.

THE BLACK LIST

The black list contains clauses which, if contained in an agreement, would preclude it from benefitting from the exemption. These include restrictions on the selling prices of the licensed product or the quantities to be manufactured or sold. Such restrictions seriously limit the extent to which the licensee can exploit the licensed technology and quantity restrictions particularly may have the same effect as export bans (Articles 3 (1) and (5)). Other unlawful restrictions include a ban on exploiting competing technologies, customer restrictions between competing manufacturers, obligations on licensees to assign improvements to the technology concerned and territorial restrictions for a longer duration than those exempted.

The restrictions listed in Article 3 are restrictive and not capable of benefitting from the block exemption. Such obligations may only obtain exemption by an individual decision which takes account of the market position of the undertakings concerned and the degree of concentration on the relevant market. It should be noted here that the black list is significantly reduced in comparison with previous IP licensing regulations.

OPPOSITION PROCEDURE

Article 4 of the regulation contains a "reduced" opposition procedure, by which exemption is granted to agreements containing obligations restrictive of competition which are not covered by the white or black list, provided that such agreements are notified to the Commission and that the Commission does not oppose the application of the exemption within four months (as opposed to six previously). The opposition procedure applies to agreements which contain previously outlawed clauses, such as obligations on the licensees to procure from the licensor goods or services which are not essential for a technically satisfactory exploitation of the licensed technology or for ensuring that the production of the licensee conforms to the quality standards that are respected by the licensor and other licensees.

Industry has complained that block exemptions act as straight jackets: often, amending an agreement so that it falls within the confines of a regulation can make it more anti-competitive. It is believed that a reduction in the number of black listed clauses, an extension of the permissible restrictions and an opposition procedure covering previously outlawed clauses will promote the contractual freedom of the parties and allay industry's concerns of an interventionist approach.

"EX POST CONTROL" WHERE A LICENSEE EXCEEDS 40% MARKET SHARE

As mentioned, the new regulation no longer contains the controversial market share ceiling of 40 %, which, if exceeded, would cause the loss of automatic exemption. The Commission, which invested much political capital in the market share thresholds, conceded that the quantative techniques required for assessing market share were costly and difficult to apply, especially when the technology was new and it was difficult to know how effective it would be. It, therefore, compromised and dropped the necessity for automatic notification whenever the aforementioned threshold was reached. It reasoned that its main concern, namely to ensure a broader dissemination of new technologies, could be achieved by less rigid methods.

However, market shares for a licensee which are of the order mentioned, will continue to be an important factor in the general economic assessment which must be made by the Commission when deciding whether to withdraw the benefit of the block exemption. The Commission's aim is to prevent agreements where the licensed products are not faced with real competition in the licensed territory and it considers this to be the case where the licensee's share of the market exceeds 40% of the whole market for the licensed products, and of all the products or services which customers consider interchangeable or substitutable on account of their characteristics, prices or intended use.

The decisions by which the Commission withdraws the benefit of automatic exemption are only effective from the date of the decision itself. In order to protect themselves from unexpected withdrawal of the block exemption, it is suggested (Recital 27) that the parties may notify agreements obliging the licensor not to grant other licences in the territory, where the licensee's market share exceeds or is likely to exceed 40%.

CONTINUITY OF AGREEMENTS IN FORCE BEFORE 1ST APRIL 1996

The new block exemption entered into force on the 1st of April 1996 and applies until the 31st of March 2006. The patent licensing regulation, for which the last extension expired on the 1st of January 1996 was extended until the entry into force of the new rules and the know-how regulation was repealed on the 1st of April 1996. Thus agreements which are already in effect on the 31st of March 1996 and which comply with the two former regulations are able to continue to benefit from an exemption for the entire duration of the new regulation.

In short, the new regime reduces the disparities which existed between the old rules, promotes the contractual freedom of the parties and meets competition concerns by keeping check on those undertakings whose sizeable market share may allow them to monopolise a market and prevent smaller undertakings from enjoying the fruits of technology transfer. ■

Telecoms sector soon fully open to competition : the central role of the European Commission

by C. HOCEPIED, DG IV-C-1

With the adoption, at the end of December 1995, of Parliament and Council Directive 95/62/EC on the application of ONP to voice telephony and, on March 13 1996, of Directive 96/19/EC amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (OJ No L 74, 22.3.96), the first package of measures required for implementing, in EU law, the commitment to full competition in the EU telecommunications market by 1st January 1998 is now in place (there are a number of further measures, notably the interconnection and general licensing directives, which are currently being discussed in the European Parliament and Council).

The first of the two Directives sets out the scope of universal service, the burden of which may be shared with new entrants. The second Directive fixes the date for full liberalisation and sets out deadlines for the national implementation of measures preparing for this goal. The package reflects the recognition in the Union that competition, in the presence of the necessary regulatory safeguards provided by the ONP framework, enhances the provision of universal service as well as promoting economic growth and employment

both within and outside the telecoms sector. On 13 March 1996, the Commission also issued a detailed communication setting out the approach of the Commission as regards the future provision of universal service in the Union.

The adoption of a Directive is in practice only the first stage of a long process. To the extent that their national legislation is not yet in line with the Directive, Member States must amend it accordingly. The task of the Commission is to ensure that all Member States effectively implement the provisions of the Directive at the same pace. Where certain Member States fail to take the necessary measures, the Commission must initiate infringement procedures which can ultimately include bringing the relevant Member State to the Court of Justice.

Directive 96/19/EC entered into force on 11 April 1996. DG IV has already initiated informal contact with the relevant departments of the Member States' ministries to assist them, where necessary, in the drafting of the measures required to implement this crucial directive in each of their national legislations. The task is not easy given the complexity and the number of obligations contained in the Directive.

LIBERALISATION OF ALTERNATIVE INFRASTRUCTURES

Article 2(2) of Directive 90/388/EEC, as amended by Directive 96/16/EC, requires Member States to abolish before 1 July 1996 all regulatory restrictions on the establishment of network infrastructure for the provision of services to closed user groups and on the use of authorised network infrastructure for the provision of already liberalised telecommunications services. In lay-terms, this means that, as of July 1st this year, the use of all alternative infrastructures (such as the telecoms networks of railways, energy and water companies which are currently only authorised for restricted "in-house" purposes) must be liberalised for the carriage of commercial telecoms services. This does not, however, imply the granting of way-leaves to the undertakings establishing such networks. The measures adopted to ensure the lifting of such restrictions must also be notified to the Commission before 1 July 1996.

LIBERALISATION OF VOICE TELEPHONY

The same Article of the Directive allows Member States to maintain the current special and exclusive rights regarding the provision of voice telephony and new public telecommunications networks until 1 January 1998. The measures taken to abolish these rights must, however, be communicated to the Commission before 11 January 1997. This means that the appropriate legislation must be passed before that date, although it may contain transitional provisions regarding the date of abolition of the remaining special and exclusive rights.

The abolition of special rights means in particular that any limitations on the number of undertakings authorised to supply voice telephony or to establish or provide public telecommunications networks must be lifted, except where justified by the lack of available spectrum. It implies also that any authorization procedure must be based on objective, proportional and non discriminatory criteria. The new article 4d of Directive 90/388/EEC, provides further for the obligation on Member States not to discriminate between providers of public telecommunications networks with regard to the granting of rights of way for the provision of such networks. Where the granting of additional rights of way is not possible due to essential requirements, Member States shall ensure access at reasonable terms to existing facilities established under rights of way which may not be duplicated.

As regards both the dates of 1 July 1996 and 1 January 1998, Ireland, Portugal, Greece and Spain shall, according to the Directive, be granted upon request an additional implementation period of up to five years and Luxembourg one of up to two years, provided it is needed to achieve the necessary structural adjustments.

Contrary to Article 4 of Directive 96/2/EC, Directive 96/19/EC does not set out a deadline for requesting such a derogation. Application for derogations must be made before 11 January 1997, but for reasons of legal certainty it is advisable that they are made as soon as possible.

The application will have to include a detailed description of the planned adjustments and a precise assessment of the timetable envisaged for its implementation. Once received, the

Commission will publish a notice in the Official Journal asking the other Member States and all other interested parties to comment during a period of one month. The Commission will then take a reasoned decision on the principle, the implication and the maximum duration of the additional period to be granted.

LICENSING INSTEAD OF EXCLUSIVE AND SPECIAL RIGHTS

The Directive acknowledges that Member States may make the provision of telecommunications services as well as the establishment and the provision of telecommunications infrastructure subject to licensing, general authorization or declaration procedures where necessary to ensure compliance with essential requirements.

As regards already liberalised services, such procedures, if any, had to be notified to the Commission before the dates set out in directives 90/388/EEC, 94/46/EC, 95/51/EC or 96/2/EC, to allow it to assess whether these procedures are based on objective, non-discriminatory, transparent and proportionate criteria. Member States must, for the same reason, continue to inform the Commission of any plan to change existing procedures.

As regards the provision of voice telephony and of public telecommunications networks, the Directive requests Member States to notify no later than 1 January 1997, any envisaged licensing or declaration procedure. The Commission must verify the compatibility with the Treaty of these drafts, before their implementation, and in particular the proportionality of the obligations imposed and that there is a possibility to appeal against any refusal. In recital 10, the Directive specifies that individual licensing procedures are only justified as regards the provision of voice telephony, public fixed telecommunications networks and other telecommunications networks involving the use of radio frequencies. In all other cases, a general authorization procedure or a declaration procedure suffices to ensure compliance with the essential requirements. Member States which still apply individual licensing schemes for already liberalised telecommunications services must therefore amend their regulation and notify to the Commission the measures taken for that purpose before 11 January 1997. The Directive in particular requests the abolition of the sets of public-service specifications adopted under Article 3 of the original Directive 90/388/EEC for the provision of packet- or circuit-switched data services. The relevant individual licensing procedures may be replaced by declaration procedures or general authorizations.

Under Article 6 of Directive 90/388/EEC, Member States must ensure that any fees imposed on providers of voice telephony and public telecommunications networks as part of authorization procedures are based on objective, transparent and non-discriminatory criteria and that such fees as well as the criteria upon which they are based, and any changes thereto, are published in an appropriate and sufficiently detailed manner so as to ensure easy access to that information.

The Directive, as modified by Directive 96/19/EC, furthermore requests Member States to ensure, no later than 1 July 1997, that :
- the mentioned licensing or declaration procedures for the provision of voice telephony and of public telecommunications networks, are published;

- the allocation of numbers is carried out by a body independent of the telecommunications organisation, that adequate numbers are made available for new entrants and, more generally, that numbers are allocated in an objective, non discriminatory and transparent manner. This does not prevent the required dialling of additional numbers to call a subscriber of one network from another network;

ENSURING ACCESS TO THE NETWORKS OF THE FORMER MONOPOLIES

It is not sufficient to abolish legal monopolies. Access to the market will only be possible if positive action is taken to ensure that new entrants can interconnect with the networks of the former monopolies. The Directive therefore provides that:

- the telecommunications organizations should publish the terms and conditions for interconnection. Member States must ensure that measures adopted for this purpose do not prevent the negotiation of interconnection agreements regarding special network access and/or conditions meeting specific needs.

This obligation must be maintained for five years after the effective abolition of the exclusive rights for the provision of voice telephony and the underlying network. The Commission will review whether this obligation must continue, if, before the end of this five year period, the Parliament and the Council adopt the ONP-Interconnection Directive.

- the telecommunications organizations should implement a cost accounting system with regard to the provision of voice telephony and public telecommunications networks identifying the relevant cost elements for pricing interconnection offerings. It should reflect, for each element of the interconnection offered, the basis for that cost element, in order to allow monitoring that the pricing includes only elements which are relevant, namely the initial connection charge, conveyance charges, the share of the costs incurred in providing equal access and number-portability and of ensuring essential requirements and, where applicable, supplementary charges aimed to share the net cost of universal service, and provisionally, imbalances in voice telephony tariffs. The cost accounting system must also make it possible to identify when a telecommunications organization charges its major users less than providers of voice telephony networks. It should also be maintained during the five years following the date of effective liberalisation of voice telephony and the underlying networks.

Moreover, the Directive requests Member States to adopt measures ensuring that, from 1 July 1997 on, where negotiations between telecommunications organisations and new entrants in the voice telephony or public telecommunications networks markets do not lead to an agreement within a reasonable time period, a settlement can be obtained, upon the request of either party and within a reasonable time period, establishing the necessary operational and financial conditions and requirements for such interconnection.

DIRECTORY SERVICES

The new article 4b inserted in Directive 90/388/EEC provides for the abolition by the Member States of all exclusive rights in their territory regarding the establishment and provision of directory services, including the publication of directories and directory enquiry services. Measures taken for this purpose must be notified to the Commission before 11 January 1997.

FINANCING UNIVERSAL SERVICE

Where Member States envisage introducing a scheme to share the net cost of universal service obligations entrusted to the telecommunications organizations, it must notify the relevant draft to the Commission before 1 January 1997 (Certain Member States, such as Germany and the Netherlands, have already announced that they would not introduce such a mechanism in the initial stage). The Commission will under the new article 4c inserted in the aforementioned Directive, by Directive 96/19/EC, assess whether the scheme :

(a) applies only to undertakings providing public telecommunications networks ;
(b) allocates the respective burden to each undertaking according to objective and non discriminatory criteria and in accordance with the principle of proportionality.

As stated in the framework of the Council meeting of 21 March 1996, the Commission interprets Article 4 c of the Directive (as well as Article 5(1) of the common position on the ONP Interconnection Directive) as allowing contributions only to be imposed on voice telephony providers in proportion to their usage of public telecommunications networks, for the following reasons:

- according to the principle of proportionality contributions must, as emphasized in recital 16 of the Commission Directive, seek only to ensure that market participants contribute to the financing of universal service. The scope of universal service, burden of which may be financed through universal service mechanisms, is set out in Parliament and Council Directive 95/62/EC on the application of ONP to voice telephony;

- the principle of non discrimination opposes financing mechanisms for universal service obligations which lead either to double contributions to the cost of universal service in the same Member State or to all undertakings in the telecommunications markets subsidizing the voice telephony operators. Contributions must therefore be limited to services within the scope of the universal service definition.

The same Article of Directive 96/19/EC requests Member States to allow their telecommunications organisations to rebalance tariffs which are not in line with costs before 1 January 1998. Member States may, however, adopt special provision to soften the impact of re-balancing, where these are necessary to guarantee the affordability of the telephone service during the transitional period. Member States which consider that the rebalancing cannot be completed before this deadline, must, according to the Directive, forward to the Commission, before 11 January 1997, a report containing a precise timetable for the phasing out of the remaining tariff imbalances. This report should specify the net costs which are insufficiently covered by the tariff structure and the justifications for, if this is envisaged, such costs being reapportioned among all voice telephony providers.

In this context, Directive 96/19/EC announces that the Commission will, within three months after the adoption by the European Parliament and the Council of the ONP-Interconnection Directive, assess whether further initiatives are necessary to ensure the consistency of both Directives. Possible overlap between the Commission Directive 96/19/EC, which is already in force, and the proposal for a 100a Directive does not, in any circumstances, justify delays in the implementation of the obligations set out in Directive 96/19/EC.

ACCOUNTING TRANSPARENCY

Finally Directive 96/19/EC inserts a new article 8 in Directive 90/388/EEC, providing for the obligation for Member States to ensure that in the authorization schemes for the provision of voice telephony and public telecommunications networks, where such authorizations are granted to undertakings benefiting from exclusive or special rights in areas other than telecommunications. Such undertakings will have to keep separate financial accounts as concerns activities as providers of voice telephony and/or networks and other activities, as soon as they achieve as they achieve a turnover more than ECU 50 million in the relevant telecommunications market. Contrary to Article 2 of Directive 95/51/EC (lifting restrictions on the use of cable television networks), no derogation can be requested to this obligation. The relevant measures adopted for this purpose must be communicated to the Commission, under Article 2 of Directive 96/19/EC, not later than nine months after this Directive has entered into force, i.e. before 11 January 1997.

MONITORING THE IMPLEMENTATION BY THE MEMBER STATES

To facilitate the task of the Commission, Member States were asked to indicate clearly, when providing information on the implementation of the Directive, with regard to the various provisions of Directive 96/2/EC, the corresponding national measures already existing or which have been adopted to implement the Directive together with details of their publication. Within some months, the Commission will so have a comprehensive view on the (formal) implementation of each provision throughout the Community. As regards the actual administrative practice in the Member States, the Commission must rely on press articles and complaints to get a full picture.

The nine month time period for the communication to the Commission of the (formal) implementation measures mentioned in Article 2 refers to the notification of these measures. It is not a transition period granted to the Member States to adopt the relevant legislation. Article 90(3) Directives only specify existing obligations under the Treaty. Such Directives and must therefore be complied with, regardless of the time period granted to the Member States to communicate implementation measures.

According to the case-law of the Court of Justice, provisions of Directives have direct effect where they are complete and precise. This means that the relevant authorities of the Member States, including the national courts, may not implement laws or regulations which are incompatible with such provisions of the Directive. As regards this Directive, such direct effect results in particular from the new Article 2(2) third indent, which allows the establishment of own infrastructure or the use of alternative infrastructures for the provision of already liberalised telecommunications services. The relevant undertakings may thus proceed - so long as they comply with all other relevant rules - to apply these rights acknowledged in the Directive without having to wait for national measures implementing the Directive. On the other hand, as regards provisions of Directives requiring further national implementation measures, the Court of Justice confirmed in its judgment of 5 March 1996 (Brasserie du Pêcheur de Schiltighem) that the national governments were liable for damages to compensate companies in case of infringement of Treaty provisions conferring rights on the latter.

This case-law is as a matter of fact probably more effective to ensure full compliance with Directives than the infringement procedure provided for in Article 169 of the Treaty, which, taking into account the right granted to the Member States to state its case and the long administrative delays, can take more than three years before the Court of Justice pronounces a final judgment. ■

ANTI-TRUST RULES

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

Most important recent developments

COMMISSION IMPOSES FINE ON BAYER AG FOR IMPEDING EXPORTS OF THE PHARMACEUTICAL PRODUCT ADALAT WITHIN THE EUROPEAN UNION

The Commission has imposed a fine of ECU 3 million on the German pharmaceuticals producer Bayer AG in a Decision finding that the company has infringed Article 85(1) of the EC Treaty.

Documents obtained during investigations of the group's various companies show that the Bayer group has since at least the end of the 1980s been concerned by the phenomenon of parallel exports of the drug Adalat (in France, Adalate) to the United Kingdom. Adalat, which is used in the treatment of cardiovascular diseases, is one of the most important pharmaceutical products marketed by the group.

The prices for Adalat vary widely in the various Member States in which it is marketed. Adalat's largest market shares are in the United Kingdom. The price at which it is sold is also considerably higher in the United Kingdom than in other Member States, notably France and Spain.

Before 1989 in Spain and 1991 in France, the main customers of the French and Spanish subsidiaries of Bayer, i.e. the pharmaceutical wholesalers in those Member States, used to order larger quantities of Adalat than they required for supplying the domestic market. The surpluses were exported to other Member States, including the United Kingdom.

As from September 1991, the French wholesalers found that Bayer France was no longer prepared to supply them with all of the quantities of Adalat which they ordered. The same phenomenon had been encountered in Spain since early 1989.

Bayer Spain had set up a computerized system for identifying exporting wholesalers. In the autumn of 1991, a Bayer Spain executive came to explain how this system worked to the management of Bayer France. However, the system set up by Bayer France for identifying exporting wholesalers remained less elaborate (handwritten lists were drawn up specifying "do not supply" or "blocked" for certain orders).

Wholesalers in France and Spain continued their commercial relations with Bayer in an attempt to obtain supplies of Adalat. They tried by various means to obtain larger quantities than their domestic requirements so as to enable them to continue exporting to the United Kingdom. In particular, the wholesalers used a system of spreading orders intended for export between their various agencies and a system of placing orders through other, small wholesalers not subject to monitoring. In this way, they endeavoured to ensure that their orders appeared to comply with Bayer's requirement that the product should not be exported. When one of the wholesalers was found to be exporting, Bayer France and Bayer Spain penalized him by imposing successive reductions in the volumes supplied.

All these practices engaged in by Bayer France and Bayer Spain show that they subjected their wholesalers to a permanent threat of a reduction in the quantities supplied, a threat which was repeatedly put into effect if the wholesalers did not comply with the export ban.

The export ban forms part of the continuous commercial relations between Bayer France and Bayer Spain and their respective wholesalers. The wholesalers, both in France and in Spain, have shown by their conduct that they accepted the export ban. It may thus be concluded that an agreement, of which the export ban forms an integral part, exists between the parties (Bayer France and its wholesalers on the one hand, and Bayer Spain and its wholesalers on the other), which agreement is in breach of Article 85(1).

In determining the amount of the fine, the Commission has taken account of the fact that the practices involve a serious infringement of Community law. It has also taken account of the fact that pharmaceutical product prices are not set autonomously by companies, but are governed by the various relevant national rules and regulations. [IP/96/19]

COMMISSION IMPOSES CONDITIONS ON COOPERATION AGREEMENT BETWEEN LUFTHANSA AND SAS

Acting on a proposal from Mr Karel Van Miert, the Commission Member with special responsibility for competition policy, the Commission approved in Strasbourg a cooperation agreement concluded on 11 May 1995 between Lufthansa and SAS.

However, the Commission imposed four conditions covering the following main points:

a. At Frankfurt, Düsseldorf, Stockholm and Oslo airports, where available

capacities are saturated at peak periods, Lufthansa and SAS must as necessary give up up to eight slots a day to other airlines wishing to operate services on the following routes:
- Düsseldorf-Copenhagen
- Düsseldorf-Stockholm
- Frankfurt-Copenhagen
- Frankfurt-Gothenburg
- Frankfurt-Oslo
- Frankfurt-Stockholm
- Hamburg-Stockholm
- Munich-Copenhagen.

b. Where a new entrant starts operating on one of those routes, Lufthansa and SAS may not increase the number of their daily frequencies by more than one. However, this figure may be increased to match, but not exceed, the combined number of frequencies operated by airlines other than Lufthansa and SAS.

c. The new entrants must, subject to certain conditions, be able to conclude interlining agreements with and participate in the joint frequent-flyer programme of Lufthansa and SAS.

d. Lufthansa and SAS must terminate the following cooperation agreements with other airlines:

- SAS must terminate its cooperation agreement with Swissair and Austrian Airlines within the European Quality Alliance;
- Lufthansa must terminate its cooperation agreement with Transwede within the Marketing Alliance in Scandinavia;
- Lufthansa must terminate its cooperation agreement with Finnair in respect of routes between Scandinavia and Germany.

These conditions are applicable until 31 October 2002.

The Commission has also asked the two airlines to provide regular information on how their cooperation is working in practice, particularly as regards the level of fares charged. This information will be particularly important in enabling the Commission to assess the agreement's impact on air transport users.

The parties intend through the agreement to create a long-term alliance, establishing an operationally and commercially integrated air transport system. The agreement provides for the setting-up of a joint venture to act on behalf of the two airlines as their exclusive vehicle for offering scheduled passenger and cargo air transport services between Scandinavia and Germany. However, the joint venture will not be a new airline. The transport services will be supplied to the joint venture by Lufthansa and SAS in their own names, on the basis of close operational and commercial cooperation, which will include the setting of fares.

As regards worldwide cooperation, the parties intend to establish an integrated transport system involving joint network planning, a joint pricing policy and the harmonization of product and service levels, though without creating a common entity.

According to the parties, the object of the cooperation is twofold: firstly, to enhance the two airlines' European and worldwide networks and, secondly, to carry out a plan for reducing their costs.

The economic significance of the arrangement is considerable. In terms of passenger-kilometres within Europe, Lufthansa and SAS are respectively the second and third largest European airlines. Their cooperation agreement will thus have the effect of restricting competition significantly, particularly on routes between Scandinavia and Germany.

However, account must also be taken of the positive aspects of the agreement, which must be seen in the light of the restructuring of European air transport.

The alliance between the two airlines will give them a much more efficient worldwide network, enabling them to stand up more effectively to competition from other airlines, notably non-European airlines.

Furthermore, the study on the future of European air transport carried out in 1993 by the "Committee of Wise Men" showed that the European airlines are handicapped by much higher unit costs than those of American or Asian airlines. The cost reduction plan accompanying the agreement between Lufthansa and SAS is an important aspect to be taken into consideration in this respect.

Consumers will derive benefit from the agreement, firstly, by having much more extensive services available, notably as regards network size, better connections and the availability of a joint frequent-flyer programme and, secondly, by benefiting indirectly from the airlines' lower costs.

The Commission has therefore concluded that the cooperation can be authorized for a period of ten years, but that conditions should be imposed to allow other airlines to operate services on the routes between Scandinavia and Germany in competition with Lufthansa and SAS.

In general, the Commission has adopted the same approach in this case as that adopted in 1995 in the Swissair/Sabena case. In the wake of the liberalization of European air transport, new groupings between airlines may be useful in helping airlines to adjust to new market conditions, provide a better service to consumers and deal more effectively with competition from non-Community airlines.

The Commission has no wish to stand in the way of such operations, but it has to ensure that competition is not eradicated on the routes in question and that new airlines can still enter the market and compete with established airlines.

[IP/96/49]

PROFESSIONAL FOOTBALL: LETTER OF WARNING FROM THE COMMISSION TO UEFA

Following the Commission meeting in Strasbourg on 16 January, Mr Van Miert - in agreement with Mr Santer and with his colleagues Mr Flynn and Mr Oreja - has instructed his staff to send a letter of warning today to FIFA and UEFA questioning the compatibility of their rules on transfers and of the nationality clauses (known as the "3+2 rule") with Article 85 of the EC Treaty and Article 53 of the Agreement on the European Economic Area.

The letter is in response to the transfer rules the two federations notified to the Commission on 28 July 1995 and has been prompted by complaints brought by certain players in that connection.

After preliminary scrutiny of the file in the light of the judgment of the European Court of Justice in the Bosman case (C-415/93), the Commission departments concerned informed FIFA and UEFA that, in their opinion, the rules in question constituted agreements between undertakings, or decisions by associations of undertakings, which were contrary to the rules of competition of the European Union and the European Economic Area and were therefore prohibited. Moreover, by virtue of the principles highlighted by the Court of Justice, the rules and clauses did not qualify for exemption from the rules of competition.

The warning at this stage focuses on FIFA/UEFA rules governing the transfer, within the European Economic Area, of professional players or amateur players who have turned professional and on UEFA nationality clauses applying to national and international club competitions. The Commission may also at a later stage examine the effects on competition of FIFA's rules governing relations between the European Economic Area and the rest of the world, and national transfer systems.

The letter expressly requests FIFA and UEFA to comply with Community law by abolishing the transfer rules and nationality clauses in question and to inform the Commission within six weeks of the measures taken. In the absence of a satisfactory reply, a proposal will be put to the Commission formally to initiate infringement proceedings under the 1962 Regulation (known as Regulation No 17) implementing the rules of competition enshrined in Articles 85 and 86 of the Treaty and, solely in respect of the rules on transfers, to lift the immunity from fines which the two federations have enjoyed since their notification to the Commission of those rules on 28 July 1995.

The purpose of the letter is to provide players, clubs and football federations with legal certainty in connection with the contractual and organizational decisions they have to take.

Compliance with Community law and protection of players' and clubs' individual rights deriving therefrom are now matters for national courts, which are required to apply the provisions of the Treaty, as interpreted by the Court of Justice. That being so, the Commission remains determined to ensure compliance with the ruling of the Court of Justice and with the principles arising therefrom. Accordingly, it is now taking action as regards the rules governing transfers and nationality clauses.

The Commission is prepared - subject, of course, to compliance with the judgment of the Court of Justice in Bosman - to contribute actively to devising, by way of an alternative to the present transfer systems, arrangements that can guarantee solidarity between clubs, both large and small, and finance the training and development of players.

[IP/96/62]

Other relevant Press releases

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IP/96/98 : TECHNOLOGY TRANSFERS: COMMISSION ADOPTS NEW RULES TO PROMOTE DISTRIBUTION OF TECHNOLOGICAL INNOVATIONS THROUGHOUT THE EUROPEAN UNION [96/01/31]

IP/96/222 : NEW PROPOSALS TO ENHANCE THE COMPETITIVENESS OF EUROPE'S SHIPPING AND MARITIME INDUSTRIES

Court Judgements

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

JUDGMENTS OF THE COURT OF 24 OCTOBER 1995 IN CASES C-70/93, BAYERISCHE MOTORENWERKE AG V ALD AUTO-LEASING D GMBH, AND C-266/93, BUNDES-KARTELLAMT V VOLKS-WAGEN AG, VAG LEASING GMBH

In two proceedings pursuant to Art. 177 of the EEC Treaty, the Court of Justice, on 24 October 1995 issued preliminary rulings on the interpretation of Art. 85(1) of the EEC Treaty and Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Art. 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16, hereinafter "Reg. No 123/85").

Two leading German car manufacturers, Bayerische Motorenwerke AG (hereinafter "BMW") and Volkswagen AG (hereinafter "VW") used their distribution network of selected car dealers to influence the market of car leasing, in which both undertakings participate through their own subsidiaries, BMW Leasing GmbH and VAG Leasing GmbH, respectively.

BMW required its authorized dealers, by means of a circular letter, not to provide cars to independent, i.e., not BMW-connected, leasing companies who would make those BMW cars available to customers residing or having their principal place of business outside the territory assigned by BMW to the respective dealer. BMW's concern were those final customers later turning to the local BMW dealer established in their territory for supply and maintenance, thereby disturbing BMW's territorial division of the German market. ALD Auto-Leasing D GmbH challenged BMW's practice in German courts. The Bundesgerichtshof (Federal Court of Justice) then referred to the Court of Justice to answer the questions whether BMW's practice was prohibited by Art. 85(1) of the Treaty and eventually exempted by Reg. No 123/85 and, if allowed under EEC competition rules, could nevertheless be forbidden under German competition law as a supply embargo (C-70/93, par. 13).

VW, by means of a circular letter and a pre-formulated contract, turned its authorized dealers into exclusive agents for VAG Leasing GmbH, negotiating leasing contracts on behalf of VW's leasing company in the dealer's assigned territory. VW, having regard to the obligations established by their respective distribution agreements, expected its authorized dealers to buy brand cars from VW, transfer ownership in the cars to VAG Leasing GmbH in return of the purchase price and, upon expiration of the lease, effectively repurchase the cars from VAG Leasing GmbH. VW's dealers were allowed to supply independent, i.e., not VW-connected, leasing companies only upon customer's request or upon introduction of the customer by such an independent leasing company. The German Bundeskartellamt prohibited VW's exclusive agency agreements as restricting market access. VW challenged this order in German courts, of which the Bundesgerichtshof then referred to the Court of Justice to rule on whether VW's practice violated Art. 85(1) of the Treaty, was eventually exempted by Reg. No 123/85 and, if allowed under EEC competition rules, could nevertheless be considered unlawful under German competition law (C-266/93, par. 14).

The judgments of the Court of Justice

The Court of Justice first applied Art. 85(1) towards the contested practices and turned to the question of agreements between undertakings.

As to BMW's circular letter, the Court of Justice restated that "a call by a motor vehicle manufacturer to its authorized dealers" constitutes an agreement within the meaning of Art. 85(1) of the Treaty instead of a unilateral act "if it forme[s] part of a set of continuous business relations governed by a general agreement drawn up in advance" (C-70/93, par. 16, citing Joined Cases 25-26/84 Ford v Commission [1985] ECR 2725 at par. 21). The Court found such a general agreement in BMW's dealership agreement to which the circular letter referred "on numerous occasions" (C-70/93, par. 17).

As to VW's exclusive agency agreements, the Court of Justice, answering VW's allegations, distinguished separate undertakings from one economic unit and rejected the letter constellation as applying towards the relationship between VW or VAG Leasing GmbH and VW's authorized dealers. The Court of Justice pointed out that representatives are generally separated from their principal undertaking for the purposes of Art. 85(1) of the Treaty and will form one economic unit falling outside the scope of Art. 85(1) of the Treaty only if "they do not bear any of the risks resulting from the contracts negotiated on behalf of the principal and they operate as auxiliary organs forming an integral part of the principal's undertaking" (C-266/93, par. 19, citing Joined Cases 40-48, 50, 54-56, 111, 113 and 114/73 Suiker Unie et al. v Commission [1975] ECR 1663 at par. 539). The Court found VW's authorized dealers, however, to partially assume the financial risks of leasing transactions by accepting their repurchase obligation upon expiration of the lease and to conduct their sales activities in their own name and for their own account (C-266/93, par. 19).

Turning to possible restrictions of competition within the meaning of Art. 85(1) of the Treaty, the Court of Justice evaluated BMW's and VW's practices with respect to the leasing market.

The Court held BMW's practice to amount to absolute territorial protection in favour of authorized BMW dealers, since only the dealer in whose territory the ultimate lessee resides is in a position to supply BMW brand cars to a respective independent leasing company. Additionally, the Court of Justice found BMW's exclusivity rights to reduce each individual authorized dealer's "freedom of commercial action", because its choice of customers was limited to such independent leasing companies having customers exclusively in the dealer's special territory (C-70/93, par. 19).

The Court of Justice found VW's exclusive agency agreements to restrict competition mainly because they were, by their express terms and with all their obligations, closely attached to VW's distribution agreements which, so the Court, already restricted competition but were exempted by Reg. 123/85 (C-266/93, par. 21). Since VW's authorized dealers had the exclusive right to sell VW brand cars within their territory, the attached obligations of exclusive agency in favour of VW's VAG Leasing GmbH restricted market access for other leasing companies which were "unable to use the privileged channels of communication with potential customers", i.e., VW's dealer network (C-266/93, par. 22/23). The Court of Justice again saw a further restriction of competition within the meaning of Art. 85(1) in the agency agreements' limitations on the "freedom of action of traders independent of VAG" by imposing exclusivity: authorized VAG dealers are, in effect, restrained from engaging in leasing activities independently and integration into the manufacturer's, i.e., the principal's distribution strategy is increased (C-266/93, par. 24).

With regard to the required effect on trade between Member States, the Court of Justice in both cases pointed to the contested practices' effects on the whole territory of the Member State Germany and the resulting foreclosure of the German market (C-70/93 at par. 20 and C-266/93 at par. 26). The Court of Justice also noted that BMW's practice had the effects of an export ban towards foreign leasing companies which customers would possibly not reside in the respective dealer's territory (C-70/93, par. 20).

Accordingly, the Court of Justice found both BMW's and VW's practices in violation of Art. 85(1) of the Treaty.

The Court of Justice next examined the question whether the two undertakings' practices were exempted by the provisions of Reg. 123/85. Both BMW and VW had argued that independent leasing companies not part of their distribution system would be in the same position as unauthorized resellers and relied on Arts. 3(10)(a) and 13(12) of Reg. 123/85 to justify their practices: BMW had purportedly lawfully prohibited dealers from supplying independent leasing companies and, similarly, prohibited distribution depots or intermediaries in accordance Arts. 3(8) and 3(9); VW concluded a fortiori that negotiations with independent leasing companies could be prohibited as much as supplying such companies.

Applying the provisions of Reg. 123/85, the Court of Justice noted at the outset that provisions in a block exemption have to be narrowly construed and will not extend in their application "beyond what is necessary to protect the interests which they are intended to safeguard" (C-70/93, par. 28; C-266/93, par. 33).

The Court of Justice then found that, for the purposes of Reg. 123/85, independent leasing companies not offering an option to purchase cannot be considered to be in a comparable position to resellers as long as they "confine themselves to purchasing

vehicles in order to satisfy requests from their customers and do not build up stocks which they offer to customers attracted in that way" (C-70/93, par. 29; C-266/93, par. 34). Limited by reference of the Bundesgerichtshof, the Court in both proceedings considered only leasing transactions by independent leasing companies without an intention of transferring ownership to the lessee, i.e., purchase option (C-70/93, par. 3; C-266/93, par. 15).

The Court of Justice additionally held that Art. 13(12) of Reg. 123/85 only relates to the manufacturer-dealer relationship and intents to prevent dealers from circumventing their obligations under the distribution agreement by using the transactional form of a lease instead of another transactional form of distribution. Art. 13(12), so the Court, does not provide guidance for the question whether independent leasing companies are comparable to unauthorized resellers (C-70/93, par. 30; C-266/93, par. 35).

Accordingly, the Court of Justice also rejected BMW's further arguments and found that neither Art. 3(8) nor Art. 3(9) of Reg. 123/85 governed BMW's supply ban, pointing out that independent leasing companies would act on their own behalf and had to be regarded as final users (C-70/93, par. 34). Additionally, so the Court, the Ninth recital to Reg. 123/85 supports supply by dealers outside their territory and the regulation as a whole "does not authorize [manufacturers] to partition their market" (C-70/93, par. 36/37).

The Court of Justice therefore held that both BMW's and VW's restrictive practices were not exempted by Reg. 123/85. Since EEC competition law prohibited the contested agreements, the national court's question as to the relationship between Community and national competition law was left unanswered by the Court.

Main points:

Analysing the judgment, the Court of Justice refers to the two notions of a missing assumption of any transactional risk and of being an auxiliary organ forming an integral part of the principal's undertaking to define the limits of separate undertakings as opposed to one economic unit. The Court describes the principal-agent relationship (C-266/93, par. 19 "representatives") establishing separation as the general rule that will be overcome only if the two mentioned factors are fulfilled cumulatively. The Court of Justice turns to financial risks and to the agent's remaining business to hold that with respect to VW's dealers non of the two requirements are met. The criteria used by the Court are thus pointed to the nature of the business relationship in each case. The Court has examined this question with respect to VW and its authorized dealers in the light of the terms and provisions of the contested agreement. The undertakings concluding these agreements at that time existed in the ordinary structure of a manufacturer-dealer relationship. The proposed agreement did not change did not modify the legal status of the parties involved in that regard (see C-266/93 at par. 18/19).

The Court, in its analysis of VW's practices, relies on the restrictive effects of the distribution agreements exempted by Reg. 123/85 (C-266/93 at par. 21) to which the contested agreement is an adjunct. However, the Court finds the positive effects accounted for by the block exemption not to extend to the exclusive agency provisions which reinforce the anti-competitive effects of the distribution agreements. In its findings of an infringement of Art. 85(1) of the Treaty the Court of Justice clearly presents the "freedom of commercial action" of vertically connected undertakings as a value that, if negatively affected, constitutes by itself a restriction of competition. The Court effectively seems to take the view that, in addition to the foreclosure effect, any exclusive agency agreement will always impede Art. 85(1) of the Treaty: it will always affect the dealer's freedom of action (see C-266/93 at par. 24). In addition, Art. 13(12) of Reg. 123/85 accordingly protects only obligations already imposed on dealers by manufacturers and does not justify new ones.

Finally, the Court's interpretation of Art. 3 of Reg. 123/85 also confirmed the Commission's view as expressed in the new Regulation 1475/95 regarding distribution of automobiles.

It is unfortunate that the Court was not given the chance to clarify its position on the relationship between EEC and national competition law.

[693J0070]
M. WUNDERLICH and
P. ADAMOPOULOS

ARRÊTS DE LA COUR DE JUSTICE DU 12 DÉCEMBRE 1995 DANS LES AFFAIRES C-399/93"HG OUDE LUTTIKHUIS EA C/ VERENIGDE COOPÉRATIVE INDUSTRIALE MELKINDUSTRIE COBERCOBA" ET C-319/93, C-

40/94, C-224/94 "DIJKSTRA C/ FRIESLAND COÖPERATIE BA", "VAN ROESSEL C/ DE COÖPERATIE VERENIGING ZUIVELCO-ÖPERATIE CAMPINA MELK-UNIE BA", "WILLEM DE BIE E.A. C/ DE COÖPERATIE VERENIGING ZUIVELCO-ÖPERATIE CAMPINA MELKUNIE BA"

Ces affaires concernent la légalité au regard de l'article 85 du traité d'une série de clauses statutaires d'une coopérative laitière qui règlent les rapports entre la coopérative et ses membres et notamment celle des clauses dites "de fidélité".

Domaine: Statut des coopératives laitières - Régime d'indemnité au départ - article 85 et Règlement n 26.

Les Faits

L'affaire C-399/93 "HG Oude Luttikhuis ea c/ Verenigde coopérative industriale Melkindustrie CobercoBA" concerne deux questions préjudicielles posées par l'Arrondissementsbank te Zutphen et soulevées dans le cadre d'un litige opposant des éleveurs de bétail laitier à la coopérative agricole Corbeco BA dont ils étaient membres. Celle-ci s'engage à acheter la totalité du lait produit par ses adhérents, lesquels lui réservent, en contrepartie l'exclusivité.

Les requérants ont résilié leur adhésion à Coberco le 1er janvier 1992 après avoir respecté le délai de préavis en vigueur. Le litige a été soulevé à propos de l'obligation statutaire de payer une indemnité au départ en cas de retraite ou d'exclusion de celle-ci. Les questions portent sur les critères d'application de l'article 85, paragraphe 1 du traité CEE et de l'article 2 paragraphe 1 du règlement 26/62 à ce régime d'indemnité.

Les affaires jointes C-319/93, C-40/94, C-224/94 "Dijkstra c/ Friesland Coöperatie BA", "van Roessel c/ De coöperatie vereniging Zuivelcoöperatie Campina Melkunie BA", "Willem de Bie e.a. c/ De coöperatie vereniging Zuivelcoöperatie Campina Melkunie BA" concernent plusieurs questions préjudicielles posées par le Gerechtshof te Leeuwarden et l'Arrondissementsbank te's-Hertogenbosch soulevées dans le cadre de litiges opposant des éleveurs de bétail laitier aux coopératives agricoles dont ils étaient membres à propos de l'obligation statutaire de payer une indemnité de départ en cas de retraite ou d'exclusion de celles-ci. Les requérants ont fait valoir que l'indemnité de départ exigée par les coopératives crée, une obligation de livraison exclusive pendant une période indéterminée qui restreint la liberté économique de ses membres et constitue une entrave pour les concurrents de la coopérative. En outre, les demandeurs au principal ont soutenu que le régime de l'indemnité de départ en question ne peut pas bénéficier de l'exception prévue à l'article 2 du règlement n° 26.

Il convient de rappeler que, selon l'article 1 du règlement n° 26, les articles 85 à 90 du traité sont applicables à tous les accords relatifs à la production et au commerce des produits agricoles, sous réserve de l'article 2 du même règlement. Aux termes de l'article 2, paragraphe 1: "l'article 85, paragraphe 1 est inapplicable aux accords...(visés à l'article 1) qui font partie intégrante d'une organisation nationale de marché ou qui sont nécessaires à la réalisation des objectifs de l'article 39 du traité (première phrase). Il ne s'applique pas en particulier aux accords...d'exploitants agricoles, d'associations d'exploitants agricoles ou d' associations de ces associations ressortissant à un seul État membre, dans la mesure où, sans comporter l'obligation de pratiquer un prix déterminé, ils concernent la production ou la vente des produits agricoles..., à moins que la Commission ne constate qu'ainsi la concurrence est exclue ou que les objectifs de l'article 39 du traité sont mis en péril" (seconde phrase).

Sur le fond

Sur les critères d'application de l'article 85

La Cour indique que la compatibilité des clauses statutaires d'une société coopérative ne peut être appréciée de façon abstraite. Il faut l'examiner en tenant compte des conditions économiques sur le marché concerné. La Cour établit qu'afin de déterminer si le régime d'indemnité est compatible avec l'article 85, paragraphe 1, il faut examiner les critères relatifs à l'objet et les effets de l'accord et enfin l'affectation des échanges communautaires. Ainsi, elle confirme la ligne d'argumentation établie dans l'arrêt DLG du 15 décembre 1994 (C-250-92).

Quant à l'objet des accords, La Cour suit son approche d'un "rule of reason" limité en faveur des coopératives d'achat, comme elle l'a élaboré dans son arrêt DLG précitée. En effet, l'organisation d'une entreprise selon la forme juridique d'une coopérative ne constitue pas en soi un comportement anticoncurrentiel (arrêt Luttikhuis, point 12). Or, les restrictions imposées aux membres par les statuts doivent

être "limitées à ce qui est nécessaire pour le bon fonctionnement de la coopérative et de soutenir sa puissance contractuelle vis à vis des producteurs" (arrêt DLG point 35 et point 14 de l'arrêt Luttikhuis).

Quant aux effets des accords ou des clauses statutaires, la Cour signale que la combinaison de certaines clauses peut produire une restriction de la concurrence. Ainsi, dans le cas d'espèce, l'obligation de livraison exclusive et l'imposition d'indemnités de départ excessives liant les membres à la coopérative durant des longues périodes et les privant ainsi de la possibilité de s'adresser à des opérateurs concurrents, pourrait avoir pour effet de restreindre la concurrence. Il en résulte qu'une telle situation rendrait le marché excessivement rigide et une consoliderait la forte position concurrentielle de la coopérative, ce qui ferait obstacle à l'entrée de nouveaux concurrents (point 16 de l'arrêt Luttikhuis).

Quant au critère relatif au commerce intracomunautaire, la Cour reprend l'arrêt DGL pour établir qu'un accord est susceptible d'affecter le commerce entre Etats membres lorsqu'il peut, sur la base d'un ensemble d'éléments objectifs de droit ou de fait, exercer une influence directe ou indirecte sur les échanges entre Etats membres dans un sens qu'il pourrait nuire à la réalisation des objectifs d'un marché unique entre Etats membres (arrêt DLG, point 54).

Sur les critères d'application du règlement 26 du 4 avril 1962:

La Cour rappèle que l'article 1 du règlement énonce la règle générale d'applicabilité des articles 85 à 90 du traité et l'article 2 prévoit de dérogations à cette norme et il doit être interprété de manière restrictive (voir supra). Or, pour interpréter l'article 2, paragraphe 1 du règlement n° 26, il convient de tenir compte de la genèse ainsi que de la motivation dudit règlement. Il en résulte la volonté du législateur de protéger les coopératives agricoles en leur appliquant un régime plus souple. Par conséquent, les coopératives ne doivent pas être soumises aux conditions tant de la première que de la seconde phrase de l'article 2, paragraphe 1. Elles sont exclusivement soumises aux conditions énoncées à la seconde phrase de cette disposition (arrêt Dijkstra, point 18).

Cependant, il convient d'écarter l'argument selon lequel les accords visées à la seconde phrase de l'article 2, paragraphe 1, bénéficient d'une validité provisoire aussi longtemps que la Commission n'a pas constaté que la concurrence était exclue ou que les objectifs de l'article 39 étaient en péril. Cette disposition n'institue qu'un renversement de la charge de la preuve en faveur des exploitants agricoles.

En ce qui concerne les dérogations prévues par l'article 2 dudit règlement, la première n'a qu'un domaine d'application très limité parce que les organisations nationales de marché ont pratiquement disparu et la seconde dérogation s'applique aux accords nécessaires à la réalisation des objectifs énoncés à l'article 39 du traité.

La troisième dérogation a, selon la Cour, une portée autonome par rapport aux deux autres dérogations énoncées au même paragraphe. Celle-ci contient trois conditions cumulatives: La coopérative doit être ressortissant à un seul Etat membre, les accords ou clauses statutaires ne doivent pas porter sur le prix mais visent plutôt la vente de produits agricoles, ou l'utilisation d'installations communes de stockage, de traitement ou de transformation de ces produits, et enfin qu'ils n'excluent pas la concurrence ni mettent pas en péril les objectifs de la politique agricole commune.

Pour ce qui est de ce dernier point, la Cour indique qu'une accumulation de clauses statutaires liant les membres à la coopérative durant de longues périodes et les privant ainsi de s'adresser a des opérateurs concurrents peut mettre en péril l'objectif de la politique agricole commune relatif au relèvement du revenu individuel de ceux qui travaillent dans l'agriculture, dans la mesure où ces derniers ne pourront pas se bénéficier de la concurrence sur des prix d'achat de la matière première pratiques par les différentes entreprises transformatrices.

La Cour se réfère enfin aux affaires jointes C-319-93, C-40/94 et C-224/94 (Dijkstra, Van Roessel e.a et De Bie e.a.) pour aborder la question concernant les pouvoirs de la Commission et des juridictions nationales en ce domaine, (point 29 et 30).

S'agissant de la répartition des compétences entre la Commission et les juridictions nationales pour appliquer l'article 2, paragraphe 1, du règlement n° 26, la Commission bénéficie d'une compétence exclusive pour constater qu'un accord remplit les conditions prévues au paragraphe 1. En

revanche, la Commission partage sa compétence pour appliquer l'article 85, paragraphe 1 avec les juridictions nationales. Il convient d''examiner les conséquences de cette répartition de compétences à la lumière des principes dégagés par la Cour dans l'arrêt Delimitis (arrêt du 28/02/1991, aff. C-234/89).

Afin d'éviter des décisions contradictoires, le juge national peut tenir compte des considérations suivantes: si les conditions d'application de l'article 85, paragraphe 1, ne sont manifestement pas réunis, le juge national peut poursuivre la procédure pour statuer sur l'accord litigieux.

Au contraire, s'il estime que l'article 85, paragraphe 1 est applicable et que l'accord ne remplit manifestement pas les conditions pour bénéficier de la dérogation de l'article 2 du règlement n° 26 ni d'une exemption au titre de l'article 85, paragraphe 3, il peut en déclarer la nullité conformément à l'article 85, paragraphe 2. A cet égard, il doit tenir compte des critères dégagés par la jurisprudence de la Cour et par la pratique de la Commission (décisions, rapports sur la politique de la concurrence, communications).

En cas de doute, le juge national pourra, lorsque il s'avère opportun et conforme aux dispositions procédurales nationales, obtenir des informations complémentaires de la Commission ou mettre les parties en mesure de demander à la Commission de se prononcer.

Points essentiels

La Cour confirme l'application limitée de la règle de raison (rule of reason) aux coopératives comme elle l'a déjà énoncé dans son arrêt DLG, en confirmant leur caractère foncièrement favorable à la concurrence. La faveur du législateur national et des autorités communautaires pour cette forme juridique ont certainement joué un rôle important à cette prise de position de la part de la Cour.

Afin de décider si les clauses statutaires d'une société coopérative, sont compatibles avec l'article 85, paragraphe 1, du traité CEE, la juridiction de renvoi doit prendre en considération les critères relatifs à l'objet de l'accord prévoyant ces clauses et ceux relatifs à l'affection des échanges intracommunautaires, en tenant compte du contexte économique dans lequel opèrent les entreprises, des produits ou services visés par cet accord ainsi que de la structure et des conditions réelles de fonctionnement du marché concerné. En ce qui concerne l'interprétation de la seconde phrase de l'article 2, paragraphe 1, du règlement n° 26, la Cour a adopté la thèse de la Commission relative à la portée autonome de cette disposition.

A propos de la répartition des compétences entre la Commission et les juridictions nationales, la Cour se réfère aux critères qu'elle a élaboré dans son arrêt Delimitis, repris d'ailleurs par la Commission dans sa communication pour la coopération avec les juridictions nationales.

[693j0399] P. ADAMOPOULOS and R. MILLAN SANZ

Other Judgements

Extracts are published in the weekly publication " Les activités de la Cour de Justice et du Tribunal de Première Instance des Communautés Européennes", available on-line from the RAPID database, a few days after its publication by the Court. To obtain access to RAPID please write to:
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Arrêt de la Cour du 9/1/96: Aff. T-575/93 Casper Koelman / Commission des Communautés européennes; Concurrence; 'Règlement No 17 - Rejet d'une plainte - Motivation - Juge national'; (Quatrième chambre élargie)

Arrêt de la Cour du 15/2/96: Aff. C-226/94; Grand garage albigeois SA e.a. / Garage Massol SARL; Prejudicielle; Concurrence - Distribution d'automobiles - Règlement (CEE) no 123/85 - Opposabilité aux tiers - Revendeur indépendant; (Deuxième chambre)

Arrêt de la Cour du 15/2/96: Aff. C-309/94Nissan France SA e.a. / Jean-Luc Dupasquier du Garage Sport Auto e.a.; Prejudicielle; Concurrence - Distribution d'automobiles - Règlement (CEE) no 123/85 - Opposabilité aux tiers - Importateur parallèle - Cumul des activités de mandataire et de revendeur indépendant; (Deuxième chambre)

MERGERS

Application of Council Regulation 4064/89
Main developments between 1st January and 31st March 1996

Summary of the most important recent developments

by John FELLS, DG IV-B

Between 1st January and 31st March the Commission took 27 decisions under the Merger Regulation. This total included a decision under Article 8(2) of the Regulation (clearance with conditions and obligations: Kimberly-Clark/Scott Paper), and a decision under Article 9 of the Regulation (Member State referral: Gehe/Lloyds Chemists).

KIMBERLY-CLARK/SCOTT PAPER

On 16th January, after 5 months of extensive investigation, the Commission approved the proposed merger between Kimberly Clark Corporation (USA) and the Scott Paper Company (USA). However, this approval was only granted after the parties agreed to make substantial modifications to the merger in Ireland and the United Kingdom. The result of these modifications is that Kimberly Clark will not be able to combine its own Kleenex, and Scott's Andrex, branded consumer tissue businesses in the UK and Ireland.

- The parties will divest all of Kimberly-Clark's existing branded consumer toilet tissue business sold under the Kleenex "Double Velvet, Quilted and Recycled" brands. In order to allow the acquirer sufficient time to establish these brands in the UK and Irish market, the purchaser will be able to make use of the Kleenex umbrella trademark for a maximum 10 year period and Kimberly-Clark has undertaken not to re-enter the market with the Kleenex trademark for a minimum 15 year period. Similar arrangements will apply for Kimberly-Clark's branded consumer kitchen towel business.

- The parties will also divest Scott's "Scotties" and "Handy Andies" brands for facials and hankies respectively and undertake not to use the Andrex trademark for consumer facials and hankies for an indefinite duration in the UK and Ireland.

- The parties agree to divest Kimberly-Clark's 80 000 ton-per-year tissue facility at Prudhoe in England, comprising the tissue mill, the converting factory and the consumer tissue products converting equipment to support the above businesses as well as the warehousing, offices and the adjacent regional distribution centre.

Through the divestment of the Prudhoe mill, Kimberly-Clark's residual tissue paper production capacity will fall to below 40% of overall capacity in the UK and Ireland. The Prudhoe mill is a modern facility currently producing all of Kimberly-Clark's branded consumer toilet tissue and kitchen towel business. It is the only plant in the UK producing tissue paper using TAD (through-air-dry) technology which is capable of producing the highest quality toilet tissue.

Kimberly-Clark and Scott Paper are major tissue paper and related product manufacturers with worldwide businesses in the consumer and industrial (away-from-home) areas. Together, the surviving Kimberly Clark Corporation will become the No. 1 tissue paper producer both at the world and the European levels.

The operation gave rise to concerns in the UK and Irish markets for toilet tissue, kitchen towels and facials/hankies.

Because of the bulky, low value of consumer tissue products which gives rise to high transport costs, and in particular brand as well as differences in consumer preferences, the UK and Ireland constitute separate geographical reference markets.

Private label products (ie sold under the retailer's name) play an important role in the UK and Irish markets, and now in fact cover more than half of market demand. Nevertheless, the parties' control of the two leading brands, which are essential brands for retailers to stock, coupled with their position as the leading supplier of private-label products and overall market strength would have combined to create a dominant position. In particular, the Commission was concerned that if the merger went through unmodified, there would no longer have been sufficiently strong inter-brand competition. The result would have been that consumers would have had to pay too high prices for basic tissue paper products and that the benefits to consumers of further innovation and product quality improvement would have been lost.

Moreover, the tissue paper market is a very large market with combined sales of approximately 1000 million ECU for toilet tissue, kitchen towels and facials/hankies in the UK and Ireland.

The transaction was also notified to the U.S. competition authorities, who found competition concerns in the facial tissues and baby wipes markets. As a result, Kimberly-Clark agreed to divest Scott's baby wipes and facial tissue brands, Scott's Dover, Delaware, plant used to make Scott baby wipes and other products, and a maximum of two of four tissue mills.

GEHE/LLOYDS CHEMIST)

On 22nd March the Commission decided that the public bid by GEHE for Lloyds the Chemists should be referred to the competent United Kingdom authorities for further investigation.

Through its AAH subsidiary, GEHE is currently the largest wholesaler of pharmaceutical products in the UK and at the retail level GEHE also owns a large chain of chemist shops through AAH's subsidiary, Hills Pharmacy. Lloyds is currently the third largest UK wholesaler (behind AAH and Unichem) and the second largest retailer (behind Boots) of pharmaceutical products. Through the acquisition GEHE will become the largest pharmaceutical wholesaler and retailer in the UK.

After the merger GEHE/Lloyds and Unichem will have over two-thirds of the UK market for the wholesale supply of pharmaceutical products to independent retail chemists. In certain regions their combined market share will be significantly higher. Although Boots has a large chain of retail chemists, it is not active in the wholesale market. After the merger, there will be only two wholesalers, GEHE/Lloyds and Unichem, supplying a full range of pharmaceutical products throughout the UK. Other wholesalers are very much smaller and operate only on a regional basis. Regional wholesalers would appear unable to provide a sufficient competitive counterweight to the duopoly pair composed of Gehe/Lloyds and Unichem. The Commission therefore considered that the proposed concentration threatens to create a dominant position in the market for pharmaceutical wholesaling in the UK, whether this market be examined on a regional or a national basis.

The Commission also identified a small number of areas in which pharmacies belonging to the AAH and Lloyds chain of pharmacies would appear to have a local monopoly, as other pharmacies appear too distantly located. Furthermore, the Commission considered that the vertical consequences of the merger require thorough investigation as after the merger, GEHE/Lloyds' position as the leading pharmaceutical wholesaler and retailer could have consequences for the supply of pharmaceutical products to independent pharmacies competing at the retail level with the group's outlets. The Commission therefore considered that the concentration also threatens to create a dominant position in the market for pharmaceutical retailing in the UK.

Lloyds has no turnover outside the United Kingdom and the distinct geographical reference markets for pharmaceutical wholesaling and retailing are wholly limited to the UK.

Gehe's bid for Lloyds was notified to the Commission on 8 February and a request for referral was submitted by the United Kingdom authorities on 1 March.

The Commission decided to refer the case to the UK authorities. The Commission considered that only a detailed analysis of both the pharmaceutical wholesaling and retailing markets in the UK will make it possible to determine the precise scope of the geographical reference market and to properly assess the competition consequences of the merger. The Commission noted that the United Kingdom authorities have already decided to refer the parallel Unichem bid for Lloyds to The Monopolies and Mergers Commission. Referral will therefore also have the advantage of allowing both bids to be examined by the same regulatory authority on a coordinated timetable.

GENCOR/LONRHO

In December 1995 the Commission decided to initiate a detailed investigation of the proposed merger of the PGM (platinum group metals) interests of Gencor and Lonrho which are located in South Africa. Both Gencor and Lonrho have substantial operations in the European Union.

The merger involves share exchanges between the two companies with respect to Impala Platinum Holdings Limited ("Implats"), Eastern Platinum Limited and Western Platinum Limited.

The operation will result in Lonrho receiving new shares in Implats. These shares would be listed on the Johannesburg Stock Exchange and the International Stock Exchange in London. Following the issue of new shares Gencor and Lonrho will each hold about 32% of the shares in Implats. The remaining shares will be held by the public.

The Commission considers that the scope of the geographic market for PGMs is worldwide. The Commission decided to initiate the second phase investigation into the effects of the operation because of concerns that the merged company may have an adverse effect on competition in the PGM market. The second phase investigation, and hearings of the parties concerned, have continued during the first trimester of 1996, and the Commission's final decision is due to be taken by early May 1996 at the latest.

TELECOMMUNICATIONS CASES

Three decisions already taken in the first trimester of 1996 indicate the ongoing restructuring which is taking place in the telecommunications sector. The Commission cleared the acquisition by the American telecommunications company A.T.T. of certain business units of Philips Electronics N.V. in the market for the provision of public telecommunications equipment. The Commission also approved the acquisition from the Belgian State of a strategic interest in Belgacom by Ameritech International, Tele Danmark and the Singapore Telecom; although the companies will compete on the European-wide markets which should follow liberalisation, scheduled before the beginning of 1998 by the Commission, they will be faced with strong competitors such as BT, France Telecom and Deutsche Telekom. Finally the Commission cleared the setting-up of a joint venture, 'Hermes', to create a pan-European telecommunications network combining the telecommunications expertise of the American company GTS with the infrastructure of European national railway companies.

ARTICLE 66 ECSC

Raab Karcher Kohle GmbH / Ruhrkohle Handel GmbH.

After an in-depth investigation of the effects of the concentration in the markets for the sale of hard coal and hard coal products in Germany the Commission approved the proposed acquisition of all capital and voting rights in Raab Karcher Kohle GmbH by Ruhrkohle Handel GmbH.

Ruhrkohle Handel GmbH is a subsidiary of Ruhrkohle AG and is mainly active in the trade in solid fuels (hard coal, hard coal briquette, coal coke and brown coal). Accounting for over 80 % of domestic hard coal production, Ruhrkohle is by far the largest German mining company. Raab Karcher Kohle GmbH groups together the coal trading activities of Raab Karcher AG, a member of the VEBA group.

The concentration affects the sale of hard coal to the electricity-generating industry, steelmakers as well as other industrial users, in particular in the cement, chalk and paper industry. In the past the German market for the sale of hard coal coal was characterized, in relation to the two main user groups of generators and steelmakers, by extensive price regulations and purchasing commitments according to the "Jahrhundertvertrag" and the "Hüttenvertrag". From 1996 the generators are not obliged any more to purchase certain minimum quantities of German hard coal but can demand imported hard coal. Nevertheless, in the next few years the market will open up only for a limited extent for imported coal.

As a result of the concentration the market share of Ruhrkohle with the sale of hard coal to the electricity-generating industry increases to about 73 %. This sizeable market share is predominantly based on price-regulated direct supplies of Ruhrkohle to generators according to the "Jahrhundertvertrag". Since Ruhrkohle has no real scope of price setting here, this market share does not reflect real market power. Through the acquisition Ruhrkohle will improve its access to imported coal. However, on the basis of the limited importance of Raab Karcher as an importer and on the basis of the diminishing importance of merchants in the import of coal it will not gain any major advantage regarding the import of coal.

Regarding the sale of hard coal to steelmakers Ruhrkohle has a market share of about 78 %, which wll be increased very slightly. This sizeable market share is based on predominantly price-regulated direct supplies of Ruhrkohle to steelmakers according to the "Hüttenvertrag" and does not reflect real market power.

In the case of the sale of hard coal to other industrial users Ruhrkohle has a market share of about 38 %. Because these users are geographically dispersed and the volume of their purchase generally is small they depend on coal merchants active in Germany. However, with Stinnes, RTE, Rheinbraun and a number of smaller traders there will still be a sufficient number of alternative sources of supply.

On the basis of the results of the investigation the Commission decided that the concentration fulfils the criteria for the protection of competition according to Article 66 paragraph 2 of the ECSC-Treaty. In view of the degree of concentration achieved and the high level of state coal subsidies, the Commission will carefully monitor future developments within this industry. ■

▹ MERGERS

Press releases

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IP/96/14 : THE COMMISSION CLEARS A JOINT VENTURE BETWEEN ERICSSON AND ASCOM [96/01/09]

IP/96/40 : THE COMMISSION CLEARS THE JOINT VENTURE OF SKANSKA FASTIGHETER AB AND SECURUM FORVALTNING AB IN THE FIELD OF HOTEL BUSINESSES IN SWEDEN [96/01/12]

IP/96/41 : THE COMMISSION APPROVES A JOINT VENTURE CREATED BETWEEN VEBA AND CIBA-GEIGY IN CHEMICAL PRODUCTS USED IN THE LEATHER AND PELT INDUSTRY [96/01/12]

IP/96/48 : AFTER SUBSTANTIAL MODIFICATIONS, THE COMMISSION FINALLY GIVES THE GREEN LIGHT TO THE MERGER BETWEEN KIMBERLY-CLARK AND SCOTT PAPER [96/01/16]

IP/96/97 : COMPANY MERGERS: THE COMMISSION LAUNCHES A WIDE RANGING DEBATE TO ADAPT THE REGULATORY FRAMEWORK TO THE REALITIES OF THE SINGLE MARKET [96/01/31]

IP/96/110 : COMMISSION CLEARS THE CREATION OF A JOINT VENTURE BETWEEN NOKIA AND AUTOLIV [96/02/06]

IP/96/129 : COMMISSION CLEARS THE ACQUISITION BY AT&T OF CERTAIN BUSINESS UNITS OF PHILIPS IN THE TELECOMMUNICATIONS EQUIPMENT SECTOR [96/02/07]

IP/96/133 : COMMISSION CLEARS RAIL TECHNOLOGY JOINT VENTURE BETWEEN SIEMENS AND LAGARDERE [96/02/09]

IP/96/138 : THE COMMISSION APPROVES THE ACQUISITION OF LANDIS AND GYR BY ELEKTROWATT [96/02/13]

IP/96/139 : THE COMMISSION APPROVES THE CREATION OF A JOINT VENTURE BETWEEN BP AND SONATRACH [96/02/13]

IP/96/152 : COMMISSION CLEARS THE CREATION OF A JOINT VENTURE BETWEEN SKF AND INA [96/02/20]

IP/96/163 : THE COMMISSION APPROVES THE DOW/DUPONT ELASTOMER JOINT VENTURE [96/02/22]

IP/96/182 : COMMISSION AUTHORIZES THE ACQUISITION OF RAAB KARCHER KOHLE GMBH BY RUHRKOHLE HANDEL GMBH. [96/02/28]

IP/96/192 : COMMISSION APPROVES STRATEGIC INVESTMENT IN BELGACOM [96/02/29]

IP/96/199 : COMMISSION CLEARS THE CREATION OF A JOINT VENTURE BETWEEN WIENERBERGER AND STARCK [96/03/05]

IP/96/236 : COMMISSION APPROVES TAKEOVER BY PREUSSAG OF ELCO LOOSER [96/03/19]

IP/96/251 : THE COMMISSION APPROVES TAKEOVER BY PHOENIX OF COMIFAR. [96/03/22]

IP/96/252 : COMMISSION APPROVES ACQUISITION OF VALOIS INDUSTRIES BY TEXTRON [96/03/22]

IP/96/253 : COMMISSION CLEARS THE ACQUISITION OF PART OF THE DIVERSEY CO. BY UNILEVER PLC [96/03/22]

IP/96/254 : COMMISSION REFERS THE GEHE/LLOYDS CASE TO THE UNITED KINGDOM FOR FURTHER INVESTIGATION [96/03/22]

IP/96/276 : THE COMMISSION CLEARS THE JOINT VENTURE OF VIACOM AND BEAR STEARNS [96/03/28]

IP/96/277 : THE COMMISSION CLEARS DEAL BY WHICH LOCKHEED MARTIN WILL ACQUIRE SOLE CONTROL OF LORAL [96/03/28]

Judgements

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

Arrêt de la Cour du 11/1/96: Aff. C-480/93 P Zunis Holding SA e.a. / Commission des Communautés européennes; 'Pourvoi - Concurrence - Contrôle des opérations de concentration - Recevabilité du recours en annulation formé contre une décision refusant de rouvrir la procédure'; (Cinquième chambre) ■

LIBERALISATION & STATE INTERVENTION

Application of Article 90 EC
Main developments between 1st January and 31st March 1996

Most important recent developments

COMMISSION FORMALLY ADOPTS DIRECTIVE ACCELERATING COMPETITION IN EU MOBILE AND PERSONAL COMMUNICATIONS MARKET

The Commission has today formally adopted the Article 90 directive, put forward by Commissioner Van Miert in cooperation with Commissioner Bangemann, opening the EU mobile and personal communications market to full competition.

The directive is based on the discussion process launched last year by the Green Paper on Mobile and Personal Communications. It requires Member States to abolish all exclusive and special rights in the area of mobile communications and, wherever this has not yet been achieved, to establish open and fair licensing procedures to authorise the launch of the digital services GSM, DCS 1800 and DECT. This includes lifting the restrictions on current licensees for one of these frequencies from applying to extend their services into the others. The directive stipulates that Member States must cease to restrict the combination of the mobile technologies or systems, in particular where multistandard equipment is available, while also taking into account the benefit of ensuring effective competition between operators in the relevant markets by allowing new entrants gain a foothold.

The directive also removes all existing restrictions on use of facilities for mobile networks, allowing new mobile operators to make full use of their own infrastructure as well as that provided by third parties such as utilities' networks. Use of infrastructure other than those controlled by the incumbent telecoms operator is essential to the success of new entrants to the mobile market as it gives them much greater control over their cost base. Leasing capacity currently represents a cost factor for second operators of between 30 and 50%. The right to set up their own networks and choose alternative infrastructure and connections also gives mobile operators significantly more flexibility representing an strong push towards further development and innovation in the mobile market.

Greater efficency and choice bought about by competition in the mobile market is particularly important in the run up to 1998 full telecoms liberalisation as it will dampen the potential for increases in (fixed) local charges to the consumer. The increasingly commercial incumbent (fixed link) operations are now set to position themselves to make the most of their local loop monopoly before the effects of full network competition are felt. However, the rapidly decreasing price of competitive mobile services will set an effective ceiling for the wire based local tariffs.

The Commission will be paying close attention to price adjustments in the telecoms sector between now and 1998 in order to secure the maximum benefits of liberalisation for consumers across the EU.

Time Table

The mobile directive will enter into force twenty days after publication in the Official Journal of the EC which is expected within the next ten days. The Member States then have nine months to notify the Commission of the appropriate national measures taken to implement its provisions.

From the moment the directive enters into force, in addition to what has already been achieved in opening up the GSM licensing process across the Union, Member States must open licence allocation procedures for all public access/Telepoint applications, including systems operating on the basis of the DECT standard.

By January 1, 1998, at the latest the Member States must also have opened up the licencing of mobile systems according to the DCS 1800 standard.

Restrictions on infrastructure and direct interconnection for mobile communications must be abolished immediately. However, Member States with less developed networks may apply for derogations of up to five

years to take account of their specific situations. This concerns Portugal, Greece, Spain and Ireland.

Some figures about the Mobile Market

With adoption of these measures the European Union has now taken the lead in setting the right regulatory conditions for encouraging the development of mobile and personal communications into a vast mass market. The directive means that the EU market will be the first region in the world to enjoy the combination of liberalisation of services and networks, together with the deployment of harmonised, leading edge, digital standards over such a large area. The standards confirmed for the EU are GSM, DCS 1800 (the two frequencies available for digital mobile services) and DECT (for digital cordless telephony within a fixed radius). This both reflects and further establishes the global momentum behind the take up of this technology for the second generation digital mobile systems. The wireless market is now set to become a core component of the information society and the development of true person to person communications.

The mobile sector is by far the most dynamic in the telecoms market in the EU experiencing levels of growth of over 60%. In the last year the number of cellular subscribers in Europe has grown from around 12 million to over 20 million, clearly outstripping growth in numbers of fixed subscribers. The vast majority of the new mobile customers are enjoying digital services, particularly GSM, which allows them to roam throughout Europe with the same handset and is also much more efficient concerning use of the frequency spectrum.

On top of very substantial analogue networks in countries such as the UK, Italy and Scandinavia, the growth potential of GSM is now also evident in nearly all the Member States. In France, for example, GSM subscribers grew from around 337 000 to around 797 000 over the past year. In Belgium there were around 53 000 GSM subscribers at the end of 1994 and there are now nearly 146 000. Italy saw growth over the same period from 45 000 in 1994 to 170 000 in October 1995. Germany still remains by far the most important market with almost three and a half million users, of which over two and a half million are now on the GSM network. However progress in countries with less developed networks is also notable. Over the last 12 months GSM subscribers in Greece increased from 125 000 to 255 000, and in Portugal, from 122 000 to 241 000. The Scandinavian countries are now also experiencing massive growth in take up of GSM. Most impressive is Sweden where the GSM market has grown from around 200 000 to 905 000 over the past year.

In total, Commission studies predict 38 million cellular mobile users in Europe by the year 2000 and around 80 million by 2010.

The Market growth and lower prices brought about by introducing competition into these markets will effect all sorts of users: residential, both young singles as well as families, and elderly or disabled people who benefit from a cordless phone; small and medium sized businesses benefitting from the organisational flexibility implied by the cordless office, and international business travellers benefitting from cross border GSM roaming.

[IP/96/51]

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IP/96/183 : COMMISSION ACCELERATES LIBERALISATION IN TELECOMS SECTOR WHILE EMPHASISING THE IMPORTANCE OF UNIVERSAL SERVICE [96/02/29]

IP/96/205 : THE COMMISSION ACCEPTS PROPOSAL FROM DANISH GOVERNMENT TO SOLVE COMPETITION PROBLEM IN THE PORT OF ELSINORE [96/03/06]

IP/96/211 : COMMISSION APPROVES CREATION OF PAN-EUROPEAN TELECOMMUNICATIONS NETWORK [96/03/08]

IP/96/218 : COMMUNICATION ON THE FUTURE DEVELOPMENT OF THE UNIVERSAL SERVICE IN THE EUROPEAN UNION [96/03/13] ■

STATE AID

Main developments between 1st January and 31st March 1996

Summary of the most important recent developments

by Henrik MØRCH, DG IV-G-1

THE COMMISSION ADOPTS NEW "DE MINIMIS" RULE

In 1992 the Commission set out its policy on state aid for small and medium-sized enterprises (SMEs) in Community guidelines (OJ C 213 of 19.8.1992). In an effort to reduce the administrative burden on the Member States and on the Commission itself - which ought to be left to concentrate its resources on matters of real importance to competition policy within the Community - the Commission decided to introduce a de minimis facility in the SME guidelines which provided that aid not exceeding ECU 50 000 per firm over three years for a given broad type of expenditure need not be notified to the Commission under Article 93(3) of the EC Treaty. The Commission considers that aid in such small amounts is unlikely to have a perceptible impact on trade and competition between Member States within the meaning of Article 92(1). In 1993 DG IV sent a note to all Member States on the use of the de minimis facility which clarified a number of outstanding issues, in particular that:

- under the de minimis facility each firm may receive aid of ECU 50 000 over three years for two categories of expenditure, i.e. investment of any kind and for whatever purpose except R&D and other expenditure. Hence, a given firm could receive a maximum of ECU 100 000 of aid under the two categories over a three-year period.

- in respect of cumulation between aid under the de minimis facility and aid under an authorized scheme falling within the same category, the de minimis and authorized aid combined must not exceed the maximum award authorized by the Commission for the notified scheme if this is above ECU 50 000.

It has since become clear that the de minimis facility as outlined above does not cover some aid measures which clearly are not capable of distorting competition and affecting trade between Member States to any perceptible degree. Moreover, it has proved difficult to establish that the conditions laid down are being met, in particular where aid of this kind is combined with aid under other schemes approved by the Commission.

Thus, in January the Commission adopted a revised de minimis rule in the form of a separate Commission Notice (OJ C 68 of 6.3.1996) the purpose of which is to make it clearer that, although SMEs may be the most frequent beneficiaries, the rule applies to enterprises of any size. Thus, the new de minimis rule which replaces the de minimis facility in the SME Guidelines as outlined above. The primary objective of the revised de minimis rule is one of simplification, so to make it more comprehensible and to facilitate the use of the rule by national authorities. The de minimis rule is amended as follows:

- the ceiling for aid covered by the de minimis rule will now be ECU 100 000 over a three-year period irrespective of the type of expenditure. In other words, the previous distinction between two categories of expenditure, i.e. investment and other expenditure for which ECU 50 000 may be granted, has been abandoned;

- the ceiling of ECU 100 000 will apply to the total of all public assistance considered to be de minimis aid and will not affect the possibility of the recipient firm obtaining other aid under schemes approved by the Commission. In other words, the rule concerning cumulation of de minimis aid and aid under approved scheme is no longer necessary.

- export aid is explicitly excluded from the benefit of the de minimis rule and still need to be notified to the Commission. The revised de minimis rule provides a definition of export aid.

- the de minimis rule will also apply in certain sectors with specific rules on state aid, i.e. the synthetic fibres sector, the textile sector and the motor-vehicle sector. However, as for the previous rule, it does not apply to the transport, agriculture, fishery and ECSC sectors.

▹ STATE AID

THE COMMISSION ADOPTS NEW SME GUIDELINES

The Community guidelines on state aid to small and medium-sized enterprises (SMEs), adopted by the Commission in 1992 (OJ C 213 of 19.8.1992) provide that before the end of the three-year period following their publication the Commission will review the operation of the guidelines. The revision of the SME guidelines is now completed and has led the Commission to introduce certain modifications to the guidelines while maintaining the overall favourable position towards aid to SMEs. Thus, the Commission continues to acknowledge the important contribution of SMEs in terms of job creation, innovation and economic development on the one hand and the difficulties SMEs have in raising capital and their insufficient access to information on the other hand. The revised SME guidelines contain the following important amendments the purpose of which are primarily to make the guidelines more clear and coherent with other Community policy objectives and to facilitate their application:

- in respect of the definition of SMEs the new guidelines refer to the new common definition of SMEs in the Commission's recommendation of 7 February 1996 (IP/96/121 of 8.2.1996). This means that in the new guidelines the financial tresholds are being increased so that an SME may have a turnover up to ECU 40 million (ECU 20 million before) and a balance sheet of ECU 27 million (ECU 10 million before). The max. number of employees of 250 remains unchanged.

In respect of small enterprises the turnover may not exceed ECU 7 million (ECU 5 million before) and the balance sheet may go up to ECU 5 million (ECU 2 million before).

- the most important amendment is concerned with the clarification and extension of the type of investment eligible for investment aid under the guidelines.

The SME guidelines from 1992 do not define which type of investment is eligible for investment aid and until now the Commission has applied the regional aid rules applicable to investment aid which stipulate that investment in fixed assets only is eligible for investment aid. To clarify and confirm this approach the new guidelines incorporate the Commission's definition of investment in fixed assets as laid down in the Principles of coordination principles of regional aid systems (OJ C 31 of 3.2.1979). It follows from this definition that the investment must be in land, buildings or equipment in the context of the setting-up of a new business, the extension of an existing business or in engaging in an activity which involves a fundamental change of the product or the production process of an existing business. The definition also covers investment in fixed assets by way of takeover of an establishment which has closed or would have closed had such takeover not taken place.

The Commission's White Paper on "Growth, competitiveness and employment" stresses the importance of promoting immaterial investment as an instrument to boost the global competitiveness of European industry and calls for an elimination of the current discrimination in favour of material investment. Under the new SME guidelines the Commission will allow aid for immaterial investment in the form of transfer of technology from research institutes or other enterprises to SMEs. The aid intensity will be similar to that allowed for material investment, i.e. 7.5% -15% outside regional assisted areas and an additional 10-15% on top of the aid intensity allowed for bigger firms in assisted areas, and will be calculated on the basis of the costs of acquiring patent rights, licences or other intellectual property rights in respect of a given technology/process.

- the Commission decided to maintain the criteria adopted in the existing SME guidelines in respect of aid to encourage SMEs to use consultants and provide training for their employees. This type of aid may benefit from an aid intensity of 50%. However, in the new guidelines the Commission considered it to be appropriate to stress that this type of aid will not be accepted on a continous or repetitive basis and may not contribute to cover the costs of consultancy forming part of any firm's normal operating costs, such as consultancy on legal or fiscal issues.

- the de minimis rule in the existing SME guidelines does not form part of the new guidelines but is made into a separate Commission Notice, see above.

THE COMMISSION ADOPTS NEW CODE ON AID TO THE SYNTHETIC FIBRES INDUSTRY

In 1977, in recognition of the low average rate of capacity utilisation for

the production of synthetic fibres and yarns, the consequent job losses and the risk that further aid would exacerbate the situation and distort competition, the Commission adopted a Code on aid to the synthetic fibres industry imposing supplementary control on aid to producers of certain fibres and yarns.

The validity of the current Code expired on 31.3.1996 and therefore in 1995 the Commission commissioned an independent firm of specialist consultants to undertake a first study on the efficacity of the Code and the arguments for an against continuing to control such aid and a second study on the future control of aid to this industry. In the light of the consultants conclusions the Commission considers that the Code has been an effective industrial and competition policy tool in the past and that to avoid a severe disruption of competition in the capital-intensive synthetic fibres industry, in particular in those sectors still characterized by structural overcapacity, the Commission should continue to impose supplementary control on aid to that industry. However, as the consultants reports on the existing Code identified ways in which the control of state aid to the synthetic fibres industry could be refined, the Commission decided that it should continue to excercise control through the introduction of new industry-specific measures rather than by a further extension of the period of validity of the current Code.

In January the Commission adopted the new Code on aid to the synthetic fibres industry (OJ C 94 of 30.3.1996) which modifies the Code in force until 31.3.1996 as follows:

The scope of control

The previous Code encompassed all categories of aid, with the exception of aid coming within the scope of the Community Guidelines on state aid for environmental protection and the Community Framework for state aid for research and development. In addition to these two exceptions the new Code excludes from its scope of control aid for vocational training/retraining awarded under schemes approved by the Commission.

The new Code clarifies the scope of its application in respect of industrial processes in stressing that the scope of control should not encompass aid in support of processess upstream of polymerization and certain activities downstream of extrusion / texturi-zation.

The notification requirement

Under the previous Code, Member States were obliged to notify any plan to grant aid in whatever form to the synthetic fibres producers by way of support for such activities.

Under the new Code the de minimis rule also applies to the synthetic fibres industry and Member States will no longer be obliged to notify aid awards to firms in the synthetic fibres industry not exceeding ECU 100 000 over a three-year period (for more details on the de minimis rule, see above). Moreover, Member States will no longer be required to notify the categories of aid which are specificly excluded from the scope of the new Code, see above.

When proposals were notified under the previous Code in accordance with the standard format, the Commission was generally obliged to ask a number of additional questions some of which arose out of the specific features of the case but some of which were asked in all cases. These additional questions invariably extended the period required for the initial assessment and in order to reduce the administrative burden and accelerate the assessments the new Code introduces a supplement to the standard format for notification of aid proposals requiring Member States to supply certain additional information on the aid recipient(s) and the purpose of the aided investments.

Methodology and authorization criteria

The new Code introduces a methodology for the assessment of aid to synthetic fibres producers and a set of authorization criteria.

In assessing the compatibility of aid coming within the scope of the new Code, the fundamental consideration is the effect of that aid on the markets for the relevant products, i.e. the fibres/yarn whose production would be supported by the aid. Thus, the Commission will examine the state of the relevant market, the effect that the aid would have on the production capacity of the relevant products of the recipient firm and the innovativeness of the relevant products.

It is important to note that the authorization of aid will still be dependent on a significant reduction in the relevant capacity except where there is evidence of a structural shortage of supply. The new Code includes a non-exhaustive list of

factual evidence the Commission will consider when assessing whether the reduction in capacity would be "significant".

Irrespective of the effect of the aid on the relevant market the Code provides for a limitation of the intensity of the aid. However, in line with the SME Guidelines SMEs will be able to receive aid at a higher intensity than larger firms and at an even higher rate if it would support the production of an innovative product.

PROPOSAL FOR A NEW STEEL AIDS CODE

In a Communication of March this year the Commission proposes to the Council of Ministers to give its unanimous assent pursuant to Article 95 of the ECSC Treaty to the adoption of a new Steel Aids Code to replace the current fifth Steel Aids Code which will expire by the end of 1996.

The purpose of the new Steel Aids Code will be to ensure fair competition in the ECSC steel industry up until the expiry of the ECSC Treaty in the year 2002. The proposal is to renew the rules of the current Code, however with the exemption of its Article 5 covering regional investment aid for certain regions of the Community.

The Commission proposal for a new Steel Aids Code shall be seen in the light of its intention to provide an equal footing of the Community steel industry with other industries in respect of awards of certain types of aid. Thus, under the proposed new Code the provisions on aid for research and development and aid for environmental protection refer explicitly to the Community framework on aid for R&D and the Community guidelines on aid for environmental protection, including any subsequent amendments to these rules. Hereby, an equal treatment of the steel industry under the two framework/guidelines would be ensured.

Similarly, the proposed new Code intends to bring the procedural rules applicable to the steel industry in line with those under Articles 92-94 of the Treaty. The proposed provisions in the new Code stipulate therefore that the Commission's power to order the suspension of the payment of non-notified aid pending the outcome of its examination of that aid, (see Judgment of the European Court of Justice in the "Boussac" - C 301/87 of 14.3.1990, ECR 1990 I 307), and the Commission's power in certain cases to adopt a provisional decision ordering the reimbursement of non-notified aid pending the outcome of its examination of that aid (see Commission Communication to Member States in OJ C 156 of 22.6.1995), also apply in cases of non-notified aid to a steel undertaking under the ECSC Treaty.

The provisions concerning aid for closure are proposed to be maintained in order to promote further adaptation of the capacity of the Community steel industry. However, it is proposed also to allow closure aid for undertakings which are part of a group with different steel undertakings provided that the group does not increase its ECSC capacity for a period of five years.

Press releases

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

IP/96/50 : COMMISSION DECIDES TO TOUGHEN CONTROL ON STATE AID TO SECTORS OF THE SYNTHETIC FIBRES INDUSTRY IN OVERCAPACITY [96/01/16]

IP/96/80 : COMMISSION APPROVES PLAN TO RESTRUCTURE COMPTOIR DES ENTREPRENEURS [96/01/24]

IP/96/81 : COMMISSION AMENDS DE MINIMIS RULE IN ORDER TO SIMPLIFY NOTIFICATION PROCEDURES FOR STATE AID SCHEMES OF MINOR IMPORTANCE [96/01/24]

IP/96/102 : COMMISSION AUTHORIZES CAPITAL INCREASE IN THE SPANISH AIRLINE IBERIA ON COMME-RCIAL GROUNDS [96/01/31]

IP/96/111 : MEASURES IN SUPPORT OF COLLECTIVE GUARANTEES IN THE AGRICULTURE AND AGRO-INDUSTRY SECTORS [96/02/07]

IP/96/112 : MEASURES TO ASSIST ECONOMIC DEVELOPMENT IN MOUNTAIN AREAS [96/02/07]

IP/96/114 : AGRI-MONETARY COMPENSATION AID [96/02/07]

▹ STATE AID

IP/96/115 : STATE AIDS FOR FISHERIES IN THE UNITED KINGDOM AND SPAIN [96/02/07]

IP/96/123 : COMMISSION AUTHORISES AID TO THE SALE OF IRISH STEEL TO ISPAT INTERNATIONAL [96/02/07]

IP/96/125 : STATE AID - SPAIN - COMMISSION ACCEPTS REGIONAL AID SCHEME GRANTED TO SPANISH SUBSIDIARY OF FINNISH OUTOKUMPU COPPER GROUP [96/02/07]

IP/96/126 : AIDE D'ETAT - FRANCE ENQUETE DETAILLEE DE LA COMMISSION SUR UN INVESTISSEMENT DE SAAB-SCANIA A ANGERS [96/02/07]

IP/96/159 : COMMISSION APPROVES INSTALLATION OF A GUARANTEE SCHEME FOR THE SHIPBUILDING SECTOR IN THE GERMAN LAND MECKLENBURG--VORPOMMERN [96/02/22]

IP/96/160 : COMMISSION RAISES NO OBJECTIONS TO THE GRANT OF FRENCH GOVERNMENT AID FOR A EUREKA R&D PROJECT INVOLVING RENAULT AND SOLLAC [96/02/22]

IP/96/161 : COMMISSION TAKES FINAL DECISION ON AID TO FRENCH MANUFACTURER OF PULP FOR PAPER INDUSTRY [96/02/22]

IP/96/162 : AUSTRIA: COMMISSION OPENS PROCEDURE IN RESPECT OF AID FOR HOFFMANN-LA ROCHE FOR THE ORLISTAT PROJECT [96/02/22]

IP/96/223 : MEASURES TO ASSIST SMES (SMALL & MEDIUM-SIZED ENTERPRISES) IN THE AGRICULTURAL SECTOR [96/03/14]

IP/96/224 : MEASURES TO ASSIST ECONOMIC DEVELOPMENT IN MOUNTAIN AREAS [96/03/14]

IP/96/225 : AID FOR THE ACQUISITION OF SUGAR BEET DELIVERY POINTS [96/03/14]

IP/96/226 : STATE AIDS : COMMISSION DECISIONS - STRASBOURG, 13TH MARCH 1996 [96/03/14]

IP/96/238 : COMMISSION AUTHORISES AID TO DUTCH MARITIME SECTOR [96/03/21]

IP/96/247 : THE COMMISSION AUTHORIZES A TOTAL OF #378 MILLION IN AID TO THE UNITED KINGDOM COAL INDUSTRY [96/03/21]

IP/96/248 : STATE AID FOR IPARLAT AND GRUPO LACTEO GALLEGO (GLG) [96/03/21]

IP/96/249 : COMMISSION ADOPTS NEW GUIDELINES ON STATE AID FOR SMALL AND MEDIUM-SIZED ENTERPRISES (SMES) [96/03/21]

IP/96/250 : THE COMMISSION DECIDED TO RAISE NO OBJECTIONS TO AN AID PROJECT, BY SPAIN, TO SUZUKI MANUFACTURING [96/03/21]

IP/96/267 : STATE AID: FRANCE: COMMISSION AGREES TO "PACTE POUR LA VILLE" [96/03/27]

IP/96/268 : STATE AID - ITALY - COMMISSION DECIDES TO TERMINATE PROCEEDINGS CONCERNING ALUMIX [96/03/27]

IP/96/269 : STATE AID - BELGIUM: THE MARIBEL CASE [96/03/27]

IP/96/270 : COMMISSION APPROVES AID TO JAGUAR CARS AND FORD MOTOR COMPANY IN SUPPORT OF AN INVESTMENT PROJECT IN BIRMINGHAM [96/03/27]

IP/96/274 : COMMISSION RAISES NO OBJECTION TO THIRD TRANCHE OF STATE AID TO TAP [96/03/27]

Judgements

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

Arrêt de la Cour du 29 février 1996: Aff. C-122/94: Commission des Communautés européennes / Conseil de l'Union européenne; 'Politique agricole commune - Aide d'Etat'; (Cour plénière)

Arrêt de la Cour du 29 février 1996: Aff. C-56/93: Royaume de Belgique / Commission des Communautés européennes; 'Aides d'Etat - Système tarifaire préférentiel pour les livraisons de gaz naturel aux producteurs néerlandais d'engrais azotés'; (Cinquième chambre)

INTERNATIONAL DIMENSION OF COMPETITION POLICY

Main developments between 1st January and 31st March 1996

Summary of the most important recent developments

by Steffan DEPYPERE, Thinam JAKOB, Brona CARTON and Y. SCARAMOZZINO, DG IV-A-3

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

During the first quarter, the essential activity was situated at the level of bilateral relations and the preparation of events that will take place during the second quarter.

Bilateral activity

In the framework of the Europe Agreements, parties can meet in Association Councils, Association Committees or in Subcommittees. Competition issues are prepared by the Subcommittees for competition matters (one subcommittee for each CEEC) that can meet as subcommittee A (to discuss antitrust matters) and subcommittee B (to discuss state aid matters). On behalf of the Union it is the Commission (DG IV) that participates. On behalf of the associated country it is the relevant institution (e.g. an AMO for antitrust, or a Ministry of Finance for state aid). In the subcommittee all the "daily business" is discussed. The results of the subcommittees' work are then transmitted to the Association Committee for information or approval.

During the first quarter subcommittee meetings were held with the Czech and the Slovak Republics and with Hungary. With the Baltic States no subcommittees exist as yet. It is for the Joint Committee (first meeting on 1-3 April) to decide on the creation of formal working groups they would correspond to subcommittees under the Europe Agreements. However, for the moment the Europe Agreements with the Baltic States are not yet inforce, and the corresponding bodies under the existing Free Trade Agreements are the Joint Committee and Working Groups). Nevertheless, the competition authorities from the Baltic States and DG IV met in an informal working group in Brussels to prepare the further cooperation with respect to competition aspects.

Slovak Republic

The subcommittee with the Slovak Republic met in Bratislava on 1 February to discuss both antitrust (Antimonopoly Office) and state aid (AMO and the Ministry of Finance).

As regards antitrust the discussion points were the practical organisation once the implementing rules would be adopted by the Association Council. (In the meantime the Association Council of 27/02/96 did adopt the rules). On both sides, the operational services have to take care, when handling cases, to verify whether or not an important interest of the other party is involved. They have to be aware also of the possibilities that are offered by the IR in terms of exchange of information and positive or negative comity actions (reminder : a description of the rules was given in the Newsletter of summer 1994). The subcommittee further reviewed technical assistance actions. This TA, which is financed through PHARE, has been an important tool to develop the competition policy in the Slovak Republic. The nature of this TA can vary. It can cover issues such as legislative advice, case advice, training, material organisation etc. The TA is delivered by external consultants, mostly law offices.

Both DG IV and the Antimonopoly office have been very satisfied with the quality of the assistance and the support given by PHARE.

As regards State aid the proposed draft of the implementing rules was reviewed. Both sides agreed upon a final text at administrative level. On the Slovak side further decisions have to be taken as to the monitoring authority.

As soon as this final element of the text is ready it can be submitted on both sides for further approval and final adoption by the Association Council.

Czech Republic

The relations between the Slovak and the Czech antitrust authorities are excellent. This has allowed DG IV and

the associated authorities to organise joint subcommittees. Which is why the subcommittee (antitrust) for the Czech Republic met in Bratislava as well on 1 February. As with the Slovak authority, DG IV discussed with the Czech Ministry for Economic Competition the implementing rules and their practical application. To be noted that the rules were approved by the Association Council of 31/01/1996.

The subcommittee for state aid did not meet. To be reported however on the state aid side that the implementing rules have been cleared by the relevant aid monitoring authorities on both sides (DG IV respectively Ministry of Finance) and that they are now going through the process of adoption by the Association Council (on the Union's side this implies i.a. consultations with the Council and the Parliament).

HUNGARY

The EU-Hungarian Sub-Committee for Competition met in Brussels on 21 March 1996, and it was followed by the EU-Hungarian Association Committee on 22 March in Brussels.

The Sub-Committee focused on various issues :

Approximation of antitrust legislation: The Hungarian delegation was encouraged to move ahead quickly with their legislative work. The new draft law was discussed. The Hungarian side hopes it will be adopted early so that it can enter into force by 1 January 1997.

Article 64 of the Europe Agreement: public undertakings and undertakings with special or exclusive rights.

A discussion on the interpretation of Article 64 of the Europe Agreement with respect to the corresponding Article 90 of the EC Treaty has taken place. The Hungarian delegation underlined they were ready to comply with the requirements of Article 90. The Hungarian delegation has provided a detailed state of play of the liberalisation in energy sector, telecommunication sector, transport sector and postal sector.

Implementing rules undertakings: The Implementing rules have been approved by the Hungarian side, and by the Community side (Commission, Council) and by the European Parliament in its plenary session of 19 September 1995. They are currently being examined by EU/Hungarian legal revisors. The Community side stressed that the work should be speeded up so that the Association Council can adopt the rules as quickly as possible by way of the written procedure.

Implementing rules state aid: The Hungarian government has now given its approval. The Hungarian Ministry of Finance has been appointed as the monitoring authority. The above-mentioned process of consultation with the Council, Parliament, can now start. It will lead to an adoption by the Association Council.

Baltic States

A first informal Working Group on Competition consisting of representatives of Estonia, Latvia and Lithuania has taken place in Brussels on 19 March 1996, in the perspective of preparing the Association Committees of 1-3 April 1996. Three issues were treated :

Implementing Rules for undertakings: The proposed implementing rules for undertakings were discussed by the group. The Estonian Ministry of Finance has already expressed its approval of the proposed rules and has asked to launch the formal adoption process. The Latvian and the Lithuanian authorities are expected to follow quickly.

Implementing Rules for state aids: The proposed implementing rules for state aid were also discussed by the group. The Estonian Ministry of Finance has already expressed its approval. Here, likewise, the other delegations could agree on the proposed rules. Formal approval is expected in the near future.

Approximation of legislation: The delegations reported on the legislative developments in their countries.

Slovenia

The Europe Agreement with Slovenia is not yet in force. Nevertheless relations between DG IV and the Slovene Competition Protection Bureau are picking up. The Slovenian Minister responsible for competition matters visited DG IV at the end of last year and cooperation was launched. Preliminary discussions are taking place about the implementing rules for state aid and antitrust, as well as about establishing an overview of state monopolies and undertakings with special and exclusive rights in Slovenia. At the occasion of a conference organised by the Commission (DG IA) and the Slovene authorities, ground could be laid for bringing the relations between

Slovenia and DG IV upto the same level as with the other CEEC.

Preparation of horizontal events

As already mentioned in previous newsletters the bilateral activity is complemented more and more by horizontal events, involving more than one country. This is also in line with the tendency towards plurilateral cooperation in competition matters. In the CEEC, PHARE has supported this tendency in a flexible manner by making available a horizontal TA facility. Two activities have been prepared during the first quarter. A report on the results will follow in the next newsletter.

Baltic Booster Conference

Currently, the DG IV is finalising the Baltic Booster Conference in cooperation with the CEEC and certain Member States. This project, financed by PHARE, will consist of a workshop in each of the three Baltic States which will be followed by a joint conference in Riga. This conference takes place in the week of 9-12 April 1996. Its objective is to speed up work on competition issues in the Baltic States.

Conference in Brno

This is a successor to the conference held in Visegrad last year. This year the Baltic states and Slovenia will join the conference. It is a unique event in bringing together so many competition authorities (EU + 10 associated countries) both on antitrust and state aid.

Accession strategy

At present major efforts are made to prepare for the accession issue. This implies making an inventory of all outstanding questions and making the point on the level of approximation of legislation. A further report will be made in forthcoming issues of the newsletter.

FOLLOW-UP TO REPORT OF GROUP OF EXPERTS ON COMPETITION POLICY IN THE NEW TRADE ORDER

As reported in the last Newsletter, the Directors General of the Member State competition authorities, at their annual meeing of 17 October, established a working group to consider in more detail the technical aspects of some of the recommendations of the report of the group of experts on "Competition policy in the new trade order".

That working group had its first meeting on 9 January, when an extensive work programme was set out. On the instructions of the Directors General, the working group will concentrate in particular on the reinforcement of positive comity and the exchange of confidential information in the framework of deeper bilateral cooperation.

At its second meeting on 21 March, the group examined the legal rules within the Community and the Member States governing the exchange of information in competition cases. It also assessed the practical experience acquired so far in exchanging information both within the Community framework and between Member States or between the Community or its Member States and third countries. Working group participants looked at other sectors, such as securities, taxation, customs and criminal matters, where international agreements already provide for extensive sharing of information of a confidential nature.

The role played by comity in the conduct of investigations was also evaluated and the manner in which the important interests of other countries should be taken into account in determining what measures are taken to resolve anticompetitive behaviour was considered by the working group.

With a clear view of what can be and is being done currently in the competition area, the working group will go on to consider at its next meeting the Community's needs in terms of greater information exchange and a more developed positive comity instrument. A final meeting will consider how the needs identified by the working group can be realized.

The working group will report back to the Directors General at their next annual meeting in the autumn and on the basis of the discussion which is generated the Commission will consider what, if any, measures it should propose in the area of bilateral cooperation.

On the multilateral front, the Commission is currently preparing a position paper in the light of the recommendations in the report on "Competition policy in the new trade order" with a view to opening discussions with the Member States in Council on the approach the Community should adopt vis-à-vis the possible inclusion of trade and competition in the work programme of the World Trade Organization. The first WTO Ministerial conference in Singapore next December presents an opportunity to target trade related areas which could usefully be further explored within the WTO framework. The Marrakesh declaration has already identified trade and competition as a possible subject for inclusion and the Commission services will continue to work towards the definition of a Community position on this matter. ■

Russian Competition Law on abuse of dominant position: basic provisions and application experience

by Iouri V. KOKOVIKHINE, State Committee of the Russian Federation for Anti-monopoly Policy and Promotion of New Economic Structures

The Russian Law on Competition and Limitation of Monopolistic Activity on Commodity Markets determines the organizational and legal foundations for prevention, limitation and suppression of monopolistic activities and unfair competition. the law is directed towards ensuring the condition for the establishment and effective functioning of commodity markets.

The present law extends to relations having an impact on competition in the commodity markets of the Russian Federation involving Russian and foreign juridical persons as well as natural persons.

State policy for promoting the development of commodity markets and encouraging competition, and for preventing, limiting and suppressing monopolistic activities and unfair competition, is conducted by a Federal Anti-monopoly Authority: the State Committee of the Russian Federation for Anti-monopoly Policy and Promotion of New Economic Structures.

MAIN POWERS OF THE AUTHORITY

The Russian Federal Anti-monopoly Authority has the right to issue to economic entities (undertakings) binding instructions (orders):
- on the termination of infringements of anti-monopoly legislation and/or on the elimination of their consequences,
- on the restoration of the initial position,
- on their compulsory division or on separation of structural divisions from their setup,
- on the dissolution or change of contracts (agreements) which are contrary to antimonopoly legislation,
- on the conclusion of a contract (agreement) with another economic entity (undertaking),
- on the transfer to the Federal budget of profits made because of infringement of anti-monopoly legislation;

The Authority also has the right to take decisions concerning the imposition of fines and penalties on commercial and non-profit organisations and their managers, including individual entrepreneurs for infringements of anti-monopoly legislation except in the cases of violation of the procedures for price-fixing in conformity with legislation on natural monopolies.

Finally the Authority can establish the fact of a dominant position of economic entities (undertakings) and can exercise other powers stipulated by the relevant legislation of the Russian Federation.

BASIC CONCEPTS OF THE RUSSIAN LAW

Article 4 of the Russian law contains the following definitions:
Commodity: a product or activity (including work, services) intended for sale or exchange.

Commodity market: a sphere of circulation of commodities having no substitutes, or interchangeable commodities, on the territory of the Russian Federation or in its part, determined preceding from the economic capacity of the buyer to acquire a particular commodity or article of merchandise or manufacture on a given territory or the absence of such capacity outside territory.

Dominant position: the exclusive position of an economic entity, or several economic entities, on a relevant market handling a commodity that has no substitute(s), or interchangeable commodities affording it (them) the possibility of exerting a decisive influence on the general conditions of circulation of a particular commodity on a given market or of making access to the market difficult for other economic entities. The position of an economic entity should be deemed to be dominant if its share on the market of a particular commodity makes up 65% of the total and more, except instances in which the economic entity can prove that, despite exceeding the said proportion, its position on the market is not dominant. The position of an economic entity should also be deemed to be

dominant, though its share on the market of a particular commodity is less than 65%, should this be established by the Antimonopoly Authority from stability of the share of the said economic entity, the relative shares on the market held by competitors, and possibilities for new competitors to gain access to that relevant market or other criteria characterizing the commodity market. The position of an economic entity whose share on the market of a particular commodity does not exceed 35% should not be deemed to be dominant.

Monopolist activity: actions (or failure to act) of economic entities that are contrary to anti-monopoly legislation and are directed towards prevention, restriction or elimination of competition.

Monopolistically high price: the price of a commodity fixed by an economic entity occupying the dominant position on a particular commodity market, with the object of making good unwarranted losses caused by under-utilization of production capacity and/or of making extra profits by lowering product quality.

Monopolistically low price: the price of a commodity fixed by an economic entity occupying the dominant position on the market, as a buyer, with the object of making extra profits and/or making good unwarranted losses at the expense of the seller; or the price of a commodity deliberately fixed by an economic entity at some level causing losses from the sale of a particular commodity. Its fixing causes or can cause a limitation of competition through displacing a competitor from the market.

ABUSE OF DOMINANCE

In accordance with Article 5 of the Russian Competition Law actions by an economic entity (group of persons) occupying a dominant position which have or might have as their result a limitation of competition and/or impingement on the interests of other economic entities or natural persons are prohibited, including such actions as:

- the withdrawal of goods from circulation for the purpose of, or resulting on, creation and maintenance of a deficit on the market or an increase of prices;
- consent to conclude a contract only on condition of placing conditions therein concerning goods in which the contracting party (or a consumer) is not interested;
- posing obstacles to access to the market (or withdrawal from the market) for other economic entities;
- infringement of the procedure for price-formation established by normative acts;
- tying up a contracting party through the conditions of a contract which are not advantageous to it or do not relate to the subject of the contract (unjustified demands for the transfer of financial assets, property, proprietary rights, the contracting party's labour, etc.);
- incorporation into a contract of discriminatory conditions which place the contracting party in an unequal position compared with other economic entities";
- fixing monopolistically high (low) prices;
- reduction in, or discontinuation of, the production of commodities which enjoy a demand and draw orders from consumers (users) provided there are possibilities for their break-even production;
- an unjustified refusal to conclude a contract with separate buyers (customers) while there are capabilities for producing and delivering a specific commodity.

In exceptional instances, the actions of an economic entity specified above may be deemed to be lawful if the economic entity proves that the positive effect of its actions, including that in the socially economic sphere, will exceed the negative consequences for the commodity market under consideration.

THE RECENT CASE OF ABUSIVE BEHAVIOUR ON THE MARKET : SINGER

Concentration

On November 1994 the Russian Anti-monopoly Committee examined the application from the Semi-Tech Company Limited (Hong Kong) on acquisition of 70% of stocks of ownership capital of Joint Stock Company PODOLSK (Russia).

Semi-Tech Company Limited is an investment company established in 1982. Semi-Tech owns and operates the worldwide SINGER business. In March 1993 Semi-Tech reached a conditional agreement to purchase up to a 51% share interest in G.M PFFAF AG of Germany. SINGER and PFFAF are the leading producers of consumer sewing machines. This international business group (SINGER and PFFAF) in 1993 possessed 37% of the consumer sewing machines world market.

PODOLSK is the single producer of consumer sewing machines in Russia.

Its share of the relevant Russian market in 1994 was more than 73%. The Russian Anti-monopoly Committee deemed that PODOLSK held a dominant position in consumer sewing machines market.

The Anti-monopoly Committee, took into account that information, supposed that the said transaction could lead to the strengthening of dominance of PODOLSK. Thereby the Committee had the right to reject Semi-Tech's application pursuant to Article 18(4) of Russian Competition Law but the parties to the transaction proved that the positive effect of their activities, including that in the socially economic sphere, would be more than their negative consequences for the relevant market. For instance PODOLSK's president in his official letter to the Anti-monopoly Committee wrote that the transaction should let them an efficient use of investment and should do home-made products more competitive in the world markets. Also he noted that they planned to produce consumer sewing machines in total amount of 350.000 units per year. Based on these facts the Anti-monopoly Committee gave the consent to the Semi-Tech's acquisition of 70% of stocks in ownership capital of PODOLSK but at the same time the Committee informed PODOLSK that it should be under observation and control by the Committee in order to prevent the monopolist activity; in December 1994 the Joint Stock Company PODOLSK was named Joint Stock Company SINGER.

Investigation of the PODOLSK (SINGER) company

On July 1995 the Anti-monopoly Committee received a complaint from the Deputy of Parliament of the Russian Federation in which he reported that PODOLSK (SINGER) had discontinued the production of consumer sewing machines. The Committee also had taken the same information from several sources and it made a decision to undertake an investigation into PODOLSK (SINGER) as well as a general inquiry into that sector of the economy (consumer sewing machines).

Results of the investigation showed the following. The volume of output in PODOLSK (SINGER) during the first half-year of 1995 decreased in six times and was about 35.000 units(1995). The production was ceased in July 1995. The lowering of production had gone simultaneously with the decreasing of sale. The inspection ordered by the Committee discovered evidences concerning PODOLSK's (SINGER) refusals to supply orders from customers on consumer sewing machines while there was possibilities for their producing and delivering.

At the same time the Committee conducted a customers opinion poll within Moscow and 6 provinces of the Russian Federation which demonstrated that consumer sewing machines made by PODOLSK (SINGER) had been enjoying a demand. More than 55% of respondents confirmed that. On the other hand the Committee of the Russian Federation for Trading had estimated a potential demand on that production in 1995-1996 about 300.000 units per year. Information which was submitted by the State Customs Committee of the Russian Federation testified about a permanence of consumer sewing machines import in 1994-1995 and about high increasing in it the shares of imported production from Germany and Japan.

Under analysis of consumer demand the Anti-monopoly Committee drew the conclusion that the main buyers of PODOLSK's (SINGER) production were the families with average earned income (about 55,5% of all families) which preferred simple, reliable and not expensive home-made sewing machines. Thereby discontinuation of production of that kind of goods by PODOLSK (SINGER) should lead to creation of a deficit on the market and an increase of prices.

Decision

On 14 November 1995 the Anti-monopoly Committee has adopted the following decision:

- PODOLSK (SINGER) occupying a dominant position on the market of consumer sewing machines has infringed Article 5(1) of the Russian Federation Law on Competition and Limitation of Monopolistic Activity on Commodity Markets by reduction in and discontinuation (from 01.07.1995) of the consumer sewing machines which enjoy a demand and draw orders from consumers (users) while there are possibilities for their break-even production;
- To issue to PODOLSK(SINGER) binding instructions (order) on the termination of infringement of anti-monopoly legislation and in time before 1 April 1996 the ensuring of production of consumer sewing machines in volume of output which shall satisfy the demand provided that there are possibilities for their break-even production.

Conclusion

This case has an important significance for anti-monopoly practice. There are a lot of discussions about this case in Russia. It is very difficult to investigate such kind of abusive behaviour because you have to prove available demand and possibility for break-even production. On the other hand some opponents consider that it means interfering in private company marketing strategy. Other analysts deem that these action could prove an agreement between firms aimed to the elimination of other competitors from the market. ■

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Documentation ...

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

SPEECHES AND ARTICLES

Main developments in merger control during 1994, by Juan Briones Alonso [sp96002]

Services publics et règles communautaires, par J.F. Pons, Colloque à Calais organisé par l'U.N.S.A., le 7 février 1996 [sp96003]

Die Stellung der Unternehmen im europäischen Beihilfeverfahren, Studienvereinigung Kartellrecht e.V., Arbeitssitzung, Brüssel 25/01/95, Wolfgang MEDERER [sp96004]

European telecommunications policy,by Herbert UNGERER, Fontainebleau GiTi Forum Day, 7 July 1995 [sp96005]

Introduction to the EC Antitrust Law, practice and policy, by Roland A.J. KOBIA, 1st semester 1995 [sp96006]

Introduction to the law, practice and policy of state aids in the European Community, by Roland A.J. Kobia, Gand (Belgium), 1996 Institute for European Business Administration [sp96007]

An outline of Community Competition Policy, by Donncadh Woods. Speech to masters degree students from University College Dublin, CEEPA Irish Institute for European Affairs, Leuven, 22 March 1996 [sp96008]

Règles de concurrence de l'Union Européenne applicables aux entreprises, Joos Stragier. Charleroi, 7.10.95 [sp96009]

EU pharmaceutical forum: Mergers, Joint Ventures and the Pharmaceutical Industry, by John Gatti [sp96010]

Calendrier et mesures d'ouverture des télécommunications à la concurrence, par J.F. Pons. Symposium international des télécommunications Monaco, le 22 mars 1996 [sp96011]

Transport multimodal et fixation des taux de transport terrestre, Paris, le 28 mars 1996 par J.F. Pons [sp96012]

Distribution automobile, et autres: les relations verticales entre règle de concurrence et règle de raison, par R. Goyer (paru le 7 mars 1996 dans SEMAINE JURIDIQUE, Cahiers de Droit de l'Entreprise (Supplément) [sp96013]

COMMUNITY PUBLICATIONS ON COMPETITION

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

LEGISLATION

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

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

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

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

▹ INFORMATION SECTION

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

COMPETITION DECISIONS

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

COMPETITION REPORTS

European Community competition policy 1994, 11 languages, (available on request through DG IV's Cellule Information)

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

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

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

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

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

Older annual reports are also available on request.

OTHER DOCUMENTS and STUDIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

▹ INFORMATION SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUBLISHED IN THE OFFICIAL JOURNAL

1st January to 31 March 1996

ARTICLES 85, 86, 90 (RESTRICTIONS AND DISTORTIONS OF COMPETITION BY UNDERTAKINGS)

Legislation

Décision du Comité mixte de l'EEE n° 65/95, du 22 novembre 1995, modifiant l'annexe XIV (concurrence) de l'accord EEE, JO L 8, 11/01/96

96/2/CE: Directive de la Commission, du 16 janvier 1996, modifiant la directive 90/388/CEE en ce qui concerne les communications mobiles et personnelles, JO L 20, 26/01/96

Règlement (CE) n° 385/96 du Conseil, du 29 janvier 1996, relatif à la défense contre les pratiques préjudiciables en matière de prix dans la construction navale, JO L 56, 06/03/96

Règlement (CE) no 240/96 de la Commission, du 31 janvier 1996, concernant l'application de l'article 85 paragraphe 3 du traité à des catégories d'accords de transfert de technologie (Texte présentant de l'intérêt pour le EEE), JO L 31, 09/02/96

Decisions

96/180/CE - Décision de la Commission, du 16 janvier 1996, relative à une procédure d'application de l'article 85 du traité CE et de l'article 53 de l'accord EEE (IV/35. 545 LH/SAS), JO L 54, 02/03/96

Communications

Communication de la Commission. Les défis auxquels sont confrontées les industries européennes liées à la défense

- contribution en vue d'actions au niveau européen, COM/96/10/fin., 24/01/96

Communication effectuée conformément à l'article 12 paragraphe 2 du règlement (CEE) No. 4056/86 du Conseil et à l'article 12 paragraphe 2 du règlement (CEE) n° 1017/68 du Conseil concernant l'affaire n° IV/35. 680 Baltic Liner Conference Agreement, JO C 44, 16/02/96

Communication faite conformément à l'article 19 paragraphe 3 du règlement n° 17 du Conseil concernant le cas n° IV/E-3/35.875 - Nuclear Electric plc/British Nuclear Fuels plc, JO C 89, 26/03/96

Communication faite conformément à l'article 19 paragraphe 3 du règlement n° 17 du Conseil concernant le cas n° IV/E-3/35.876 - Scotish Nuclear Ltd/British Nuclear Fuels plc, JO C 89, 26/03/96

Communication faite en application de l'article 19 paragraphe 3 du règlement n° 17 du Conseil concernant l'affaire n° IV/E-3/35.757 - British Gas plc - Code de gestion du réseau, JO C 93, 29/03/96

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Avis sur le "XXIVe rapport de la Commission sur la politique de concurrence 1994", JO C 39, 12/02/96

Notifications

Notification d'une entreprise commune (Affaire n° IV/E-2/35.883 - Nisso/BASF), JO C 36, 09/02/96

Notification d'une entreprise commune (Affaire n° IV/35.869 - Banque Bruxelles Lambert), JO C 41, 13/02/96

Notification d'un accord sur les frais terminaux (REIMS) conclu entre opérateurs postaux (Affaire n° IV/35.849 -REIMS), JO C 42, 14/02/96

Notification d'accords concernant la coopération industrielle entre entreprises et la création d'une entreprise commune (Affaire n° IV/35.895 - Mercedes-Benz, MTU, Detroit Diesel Corporation), JO C 63, 02/03/96

Notification d'une entreprise commune (Affaire n° IV/35.993/F3), JO C 76, 16/03/96

Affaire n° IV/34. 657 - Sammelrevers, JO C 54, 23/02/96

CONTROL OF CONCENTRATIONS/MERGER PROCEDURES

Decisions

96/177/CE: Décision de la Commission, du 19 juillet 1995, déclarant une concentration incompatible avec le marché commun et le fonctionnement de l'accord sur l'Espace économique européen (Affaire n° IV/M. 490 - Nordic Satellite Distribution), JO L 53, 02/03/96

96/204/CE: Décision de la Commission, du 20 septembre 1995, déclarant une concentration compatible avec le marché commun et le fonctionnement de l'accord sur l'Espace économique européen (Affaire n° IV/M.582 - Orkla/Volvo), JO L 66, 16/03/96

96/222/CE: Décision de la Commission, du 14 novembre 1995, déclarant une opération de concentration compatible avec le marché commun et l'accord EEE (Affaire n° IV/M.603 - Crown Cork & Seal/CarnaudMetalbox), JO L 75, 23/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 666 - Johnson Controls/Roth Frères), JO C 3, 06/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 664 - GRS Holding), JO C 8, 13/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 567 - Lyonnaise des eaux/Northumbrian Water), JO C 11, 16/01/96

Non-applicabilité du règlement à une opération notifiée (Affaire n° IV/M. 544 - Unisource/Telefónica), JO C 13, 18/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 595 - British Telecommunications/VIAG), JO C 15, 20/01/96/

Non-opposition à une concentration notifiée (Affaire n° IV/M. 655 - Canal+/UFA/MDO), JO C 15, 20/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 676 - Ericsson/Ascom II), JO C 19, 23/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 678 - Minorco/Tilcon), JO C 24, 30/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 670 - Elsag Bailey/Hartmann & Braun AG), JO C 24, 30/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 660 - RTZ/CRA), JO C 22, 22/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 621 - BLG/Bawag), JO C 23, 27/01/96

Non-applicabilité du règlement à une opération notifiée (Affaire n° IV/M. 650 - SBG/Rentenanstalt, JO C 23, 27/01/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 642 - Chase Manhattan/Chemical Banking), JO C 33, 06/02/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 674 - Demag/Komatsu), JO C 38, 10/02/96

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Non-applicabilité du règlement à une opération notifiée (Affaire n° IV/M. 661 - Stragab/Bank Austria/Stuag, JO C 38, 10/02/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 677 - Skanska Fastigheter/Securum Förvaltning, JO C 54, 23/02/96

Non-applicabilité du règlement à une opération notifiée (Affaire n° IV/M. 681 - RB of Scotland/Bank of Ireland), JO C 57, 27/02/96

Non-applicabilité du règlement à une opération notifiée (Affaire n° IV/M. 673 - Channel Five)., JO C 57, 27/02/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 668 - Philips/Origin), JO C 58, 28/02/96

Non-opposition à une concentration notifiée (Afaire n° IV/M. 657 - Röhm/Ciba Geigy/TFL Ledertechnik), JO C 60, 29/02/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 662 - Leisure Plan), JO C 63, 02/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 692 - Elektrowatt/Landis & Gyr), JO C 69, 07/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 686 - Nokia/Autoliv, JO C 69, 07/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M. 672 - BP/Sonatrach), JO C 72, 12/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M.694 - SKF/INA/WPB), JO C 76, 16/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M.707 - Toro Assicurazioni/Banca di Roma), JO C 76, 16/03/96

Non-opposition à une concentration notifiée (Affaire n° IV/M.685 - Siemens/Lagardère), JO C 86, 23/03/96

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Avis du comité consultatif en matière de concentrations rendu lors de la 30e réunion tenue le 5 juillet 1995 concernant une proposition de décision dans l'affaire n° IV/M. 490 - Nordic Satellite Distribution, JO C 63, 02/03/96

Avis du comité consultatif en matière de concentrations entre entreprises rendu lors de sa trente et unième réunion, le 4 septembre 1995, sur un avant-projet de décision relatif à l'affaire IV/M.582 - Orkla/Volvo, JO C 76, 16/03/96

Avis du comité consultatif en matière de concentrations rendu lors de la 34e réunion, le 6 novembre 1995, sur un avant-projet de décision rélatif à l'affaire n° IV/M. 603 - Crown Cork & Seal/ CarnaudMetalbox, JO C 86, 23/03/96

Notifications

Affaire n° IV/M. 681 - RB of Scotland/Bank of Ireland), JO C 7, 12/01/96

Affaire n° IV/M. 686 - Nokia/Autoliv, JO C 7, 12/01/96

Affaire n° IV/M. 651 - AT&T/Philips Electronics NV, JO C 7, 12/01/96

Affaire n° IV/M. 685 - Siemens/Lagardère, JO C 8, 13/01/96

Affaire n° IV/M. 672 - BP/Sonatrach, JO C 13, 18/01/96

Affaire n° IV/M. 692 - Elektrowatt/Landis & Gyr, JO C 13, 18/01/96

Affaire n° IV/M. 269 - Shell/Montecatini, JO C 13, 18/01/96

Affaire n° IV/M. 694 - SKF/INA/WPB, JO C 23, 27/01/96

Affaire n°. IV/M. 663 - Dow/DuPont, JO C 24, 30/01/96

Affaire n° IV/M. 697 - Lockheed Martin Corporation/Loral Corporation, JO C 33, 06/02/96

Affaire n° IV/M. 689 - ADSB/Belgacom, JO C 33, 06/02/96

Affaire n° IV/M. 702 - Starck/Wienerberger, JO C 35, 08/02/96

Affaire n° IV/M. 707 - Toro Assicurazioni/Banca di Roma), JO C 36, 09/02/96

Affaire n° IV/M. 699 - Tomkins/Gates, JO C 38, 10/02/96

Affaire n° IV/M. 683 - GTS-Hermes Inc/Danske Statsbaner/Deutsche Bahn AG/Ferrovie dello Stato SpA/NV Nederlandse Spoorwegen/Österreichische Bundesbahnen/Red Nacional de los Ferrocarriles Españoles/Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische spoorwegen / Société nationale de chemins de fer français / Schweizerische Bundesbahnen / Statens Järnvägar/Racal-BR Telecom-munications Ltd, JO C 41, 13/02/96

Affaire n° IV/M. 716 - GEHE/Lloyds Chemists, JO C 43, 15/02/96

Affaire n° IV/M. 711 - Generali/Unicredito, JO C 44, 16/02/96

Affaire n° IV/M. 698 - NAW/Saltano/Contrac, JO C 49, 20/02/96

Affaire n° IV/M. 714 - Preussag/Elco Looser, JO C 53, 22/02/96. 3)

Affaire n° IV/M. 704 - Unilever/Diversey, JO C 55, 24/02/96

Affaire n° IV/M. 721 - Textron/Valois, JO C 58, 28/02/96

▹ INFORMATION SECTION

Affaire n° IV/M. 717 - Viacom/Bear Stearns, JO C 60, 29/02/96

Affaire n° IV/M. 718 - Phoenix/Comifar, JO C 62, 01/03/96

Affaire n° IV/M. 697 - Lockheed Martin Corporation/Loral Corporation, JO C 68, 06/03/96

Affaire n° IV/M. 556 - Zeneca/Vanderhave, JO C 70, 08/03/96

Affaire n° IV/M. 705 - Deutsche Telekom/SAP-S, JO C 70, 08/03/96

Affaire n° IV/M. 726 - Bosch/Allied Signal, JO C 71, 09/03/96

Retrait de la notification d'une opération de concentration (Affaire n° IV/M. 680 - Kvaerner/Amec), JO C 8, 13/01/96

Affaire n° IV/M.722 - Téneo/Merill Lynch/Bankers Trust), JO C 81, 19/03/96

Affaire n° IV/M.731 - Kvaerner/Trafalgar), JO C 83, 20/03/96

Affaire n° IV/M.732 - Nordic Capital/Euroc), JO C 85, 22/03/96

Affaire n° IV/M.729 - GEC Alsthom/Tarmac/Central IMU), JO C 86, 23/03/96

Affaire n° IV/M.738 - Natwest/Schroder/Shefield), JO C 89, 26/03/96

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96/75/CE: Décision de la Commission, du 4 octobre 1995, concernant l'aide accordée par la Région flamande de Belgique au constructeur de camions DAF, JO L 15, 20/01/96

96/76/CE: Décision de la Commission, du 4 octobre 1995, concernant l'aide accordée par les Pays-Bas au constructeur de camions DAF, JO L 15, 20/01/96

Approbation d'une aide d'Etat conformément aux articles 92 et 93 du traité CE - Cas pour lesquels la Commission ne soulève pas d'objections - Aides d'Etat N 241/95 - Belgique, JO C 5, 10/01/96

Communication de la Commission concernant les aides d'Etat relatives aux crédits à court terme à taux d'intérêt bonifiés en agriculture ("crédits de gestion"), JO C 44, 16/02/96

Encadrement communautaire des aides d'Etat à la recherche et au développement, JO C45, 17/02/96

96/169/CE: Décision de la Commission, du 14 février 1996, relative aux dates à fixer par les Etats membres pour la présentation des demandes d'aides "surfaces" dans le cadre du système intégré de gestion et de contrôle relatif à certains régimes d'aides communautaires ("système intégré"), JO L 45, 23/02/96

96/178/CECA: Décision de la Commission, du 18 octobre 1995, relative à des aides d'Etat accordées par le Land de Bavière à l'entreprise CECA Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg, JO L 53, 02/03/96

96/179/CE: Décision de la Commission, du 31 octobre 1995, enjoignant au gouvernement allemand de fournir tous les documents, informations et données concernant les projets de nouveaux investissements du groupe Volkswagen dans les nouveaux Länder allemands et les aides prévues en faveur de ces investissements (C 62/91 ex NN 75, 77, 78 et 79/91), JO L53, 02/03/96

Adoptions des aides d'Etat

-C 45/95 (NN 48/95) - Italie, JO C 3, 06/01/96
-N 463/94 - Espagne, JO C 25, 31/01/96
-C 2/93 (ex N 505/92) - Belgique, JO C 33, 06/02/96
-C 4/93 (ex N 652/92) - Allemagne, JO C 33, 06/02/96
-Contrôle des aides d'Etat - Appel d'offres (IV G 5/PSI/01), JO C 36, 09/02/96
-C 21/94 (ex N 415/93) - Italie, JO C 42, 14/02/96
-C 46/95 (NN 130/93) - France, JO C 58, 28/02/96
-C 10/94 (ex NN 126/93) - Grèce, JO C 68, 06/03/96
-C 47/95 (ex NN 61/95) - Italie, JO C 68, 06/03/96
-C 43/93 - Irlande, JO C 70, 08/03/96
-C 49/95 (ex N 76/95) - République fédérale d'Allemagne, JO C 71, 09/03/96
-C 50/95 (N 317/95) - Autriche, JO C 71, 09/03/96
-C 51/95 (ex N 320/95) - Autriche, JO C 71, 09/03/96
-C 48/95 (N 295/95 et N 296/95) - Belgique, JO C 73, 13/03/96
-C 56/95 (N 941/95) - Espagne, JO C 75, 15/03/96
-C 32/94 (N 48/94) - Allemagne, JO C 76, 16/03/96
-C 2/88 (NN 128/87) - Grèce, JO C 84, 21/03/96
-C 5/96 (NN 138/95) - France, JO C 84, 21/03/96
-C 59/95 (ex NN 79/95) - Italie, JO C 92, 28/03/96

Autorisation des aides d'Etat dans le cadre des dispositions des articles 92 et 93 du traité CE - Cas à l'égard desquels la Commission ne soulève pas d'objection:
JO C 6, 11/01/96; JO C 23, 27/01/96; JO C 19, 23/01/96; JO C 53, 22/02/96; JO C 63, 02/03/96; JO C 67, 05/03/96; JO C 70, 08/03/96; JO C 72, 12/03/96; JO C 73, 13/03/96; JO C 74, 14/03/96; JO C 75, 15/03/96; JO C 72, 12/03/96; JO C 73, 13/03/96; JO C 74, 14/03/96; JO C 85, 22/03/96; JO C 86, 23/03/96

DIVERS

Appel à manifestations d'intérêt d'experts-conseils dans le domaine de la politique de la concurrence, de l'information, de la communication et de

la société de l'information, JO C 73, 13/03/96

WRITTEN QUESTIONS

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E-2101/95 de Lyndon Harrison (tarifs autoroutiers au Benelux)

E-2403/95 de Edward McMillan-Scott (commandes en chaîne dans le secteur des chemins de fer)

E-2549/95 de Tony Cunningham (finnancement d'un fabricant d'armes par la Commission)

E-2617/95 de Amedeo Amadeo (réseaux câblés de télévision)

E-2618 de Amedeo Amadeo (réseaux câblés de télévision)

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E-2548/95 de Liam Hyland (ports privés)

P-2761/95 de Hugh McMahon (non-respect des règles communautaires de concurrence pour la traversée du pont de l'île de Skye)

E-2728/95 de Christoph Konrad (subventions de l'Union européenne en faveur de la construction d'un nouvel aéroport à Athènes)

E-2793/95 de Alexandros Alavanos (correspondance entre la Commission et le gouvernement grec concernant les chantiers navals grecs)

P-2942/95 de Graham Watson (aide d'État au secteur irlandais d'extraction de la tourbe)

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E-2159/95 de Markus Ferber (initiatives communautaires à venir visant à promouvoir la compétitivité de l'industrie européenne aéronautique et astronautique face aux États Unis d'Amérique et aux pays asiatiques)

E-2376/95 de WolfgangKreissl-Dörfler (aide de l'Union européenne à des projets industriels en Chine)

E-2733/95 de Amedeo Amadeo et Cristiana Muscardini (transports aériens)

E-2720/95 de Mathias Reichhold (violation des règles de concurrence de l'Union européenne sous forme de double péage en Autriche)

E-2734/95 de Cristiana Muscardini (restructuration des industries informatiques du groupe Olivetti)

E-2745/95 de Jannis Sakellariou (délocalisations d'entreprises industrielles opérées grâce des crédits de l'union européenne)

E-2987/95 de Irene Crepaz (droits relatifs à la periode de non-concurrence et aux indemnités dues au titre de la clause de non-concurrence, acquis régulièrement dans un État membre et revendiqués dans un autre État membre de l'Union européenne)

E-2533/95 de Detlev Samland (information sur le montant des aides accordées en 1994 à la région Nordrhein-Westphie)

E-2579/95 de Richard Howitt (demande d'aide financière de Oikkos Ltd, Essex, pour un projet de régénéation des hydrocarbures)

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E-1631/95 de Markus Ferber (aide de l'Union européenne à la recherche)

E-1984/95 de Nel van Dijk (distorsions de concurrence provoquées par une aide publique accordée par la ville de La Haye)

E-2169/95 de Ursula Schleider (tarifs aériens)

E-3136/95 de Jaak Vandemeulebroucke (distorsion de concurrence)

E-2872/95 de Winifred Ewing (aides d'État)

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E-3166/95 de Imelda Read (entreprise commune Atlas)

E-3200/95 de KARL VON Wogau (distorsions de la concurrence dans le secteur de la production du boisen république fédérale d'Allemagne)

E-3208/95 de James Fitzsimons (aides publiques excessives)

COURT OF JUSTICE/TRIBUNAL

Affaires introduites devant la Cour

Aff. C-379/95 P : France e.a. / Commission: Pourvoi contre l'arrêt du Tribunal (première chambre élargie), rendu le 18 septembre 1995, dans l'affaire T-548/93 - Annulation de la décision de la Commission rejetant la plainte de Ladbroke Racing Ltd - Paris sur les courses de chevaux - Pari mutuel urbain

Aff. C-399/95 : Allemagne / Commission Annulation de la décision K(95)2828 final concernant une aide du Freistaat Bayern à l'entreprise CECA Neue Maxhütte Stahlwerke GmbH

Aff. C-404/95 : Allemagne / Commission Annulation de la décision K(95)2754

de la Commission du 31 octobre 1995 concernant une aide de la Freie und Hansestadt Hamburg à l'entreprise Hamburger Stahlwerke GmbH

Aff. C-406/95 : Italie / Commission
Annulation de la décision de la Commission du 4 octobre 1995 relative aux conditions imposées au second opérateur de radiotéléphonie GSM en Italie

Aff. C-410/95 : Grands garages méditerranéens SA et Nissan France SA / Nice ouest automobiles
Préjudicielle - Tribunal de commerce de Nice - Interprétation du règlement (CEE) n 123/85 de la Commission concernant l'application de l'art. 85, par. 3, du traité CE à des catégories d'accords de distribution et de service de vente et d'après-vente de véhicules automobiles - Revendeurs n'appartenant pas à un réseau de distribution exclusive - Activité consistant à vendre des véhicules neufs provenant d'importations parallèles

Aff. C-2/96 : Carlo Sunino / Giancarlo Data : Préjudicielle - Pretura circondariale di Ivrea, sezione di Strambino - Interprétation des art. 48, 55, 59, 60, 66, 86 et 90 du traité CE - Législation nationale qui exclut les entreprises privées de l'activité d'intermédiaire dans le marché du travail intérimaire

Aff. C-35/96 : Commission / Italie
Manquement d'Etat - Concurrence - Violation des art. 5 et 85 du traité CE - Fixation des tarifs obligatoires pour les expéditeurs en douane

Aff. C-41/96 : VAG-Händlerbeirat e.V. / SYD-Consult : Préjudicielle - Landgericht - Hamburg - Interprétation de l'art. 85 du traité CE et du règlement (CEE) nu 123/85 de la Commission concernant l'application de l'article 85 paragraphe 3 du traité CEE à des catégories d'accords de distribution et de service de vente et d'après-vente de véhicules automobiles - Législation nationale en matière de concurrence qui exige l'étanchéité du système pour que les membres du système puissent obtenir des injonctions interdisant à des tiers la distribution des produits concernés - Distinction entre systèmes de distribution théoriquement étanches et théoriquement et pratiquement étanches

Aff. C-46/96 : Allemagne / Commission
Annulation de la décision C(95)3319 final concernant une aide fiscale en matière d'amortissements octroyée au profit d'entreprises allemandes - Amortissements extraordinaires sur les aéronefs

Aff. C-51/96 : C. Deliège / Ligue francophone de judo et disciplines associées ASBL e.a.
Préjudicielle - Tribunal de première instance de Namur - Interprétation des art. 59 à 66, 85 et 86 du traité CE au regard de la réglementation d'une association sportive (internationale) qui exige une autorisation ou une sélection de la fédération nationale pour concourir dans une compétition internationale - Sportif amateur, mais candidat au professionnalisme ou semi-professionnalisme - Judo féminin

Aff. C-55/96 : Job Centre coop. arl
Préjudicielle - Corte d'Appello - Milano - Interprétation des art. 48, 49, 55, 59, 60, 62, 66, 86 et 90 du traité CE au regard d'une législation nationale qui exclut les entreprises privées de l'exercice des activités de placement des travailleurs

Affaires introduites devant le Tribunal

Aff. T-221/95 : Endemol Entertainement Holding e.a. / Commission
Annulation de la décision de la Commision relative à une procédure d'application du règlement (CEE) nu 4064/89 du Conseil (affaire nu IV/M.553-RTL/Veronica/Endemol), déclarant incompatible avec le marché commun l'accord de concentration d'entreprises visant la constitution du Holland Media Group.

Aff. T-224/95 : R. Tremblay e.a. / Commission : Annulation de la décision de la Commision rejetant la plainte introduite par les requérants sur le fondement des art. 85 et 86 du Traité CE (nu IV/31.773), relative à l'entente entre les societés d'auteurs des différents États membres - Exécution incorrecte de l'arrêt du Tribunal du 24 janvier 1995 rendu dans l'affaire T-5/93

Aff T-227/95 : AssiDomãn Kraft Products e.a. / Commission
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Aff. T-229/95 :Telecom Italia Mobile / Commission; Annulation de la décision de la Commission relative aux conditions imposées au second opérateur de radiotéléphonie GSM en Italie

Aff. T-231/95 : SIC / Commission
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Aff. T-234/95 : Hamburger Stahlwerke / Commission; Annulation de la décision le la Commission K (95) 2754 endg. relative à l'octroi d'une aide accordée par la ville hanséatique de Hamburg à l'entreprise CECA Hamburger Stahlwerke

Aff. T-235/95 : A. Goidstein / Commission; Annulation de la décision de la Commission refusant de reconsidérer, suite aux arguments de fait

et de droit développés par le requérant, sa décision de rejeter la demande de mesures provisoires introduite dans le cadre d'une procédure tendant à faire constater la violation des art. 85 et 86 du traité CE par le "General Medical Council", organisme chargé de réglementer les professions médicales au Royaume-Uni

Aff. T-236/95 : TAT European Airlines / Commission; Annulation de la décision de la Commission relative au paiement de la seconde tranche de l'aide en faveur d'Air France, approuvé par la décision de la Commission consistant en une augmentation de capital payable en trois tranches

Aff. T-2/96 : Neue Maxhuette Stahlwerke / Commission
Annulation de la decision de la Commission K (95) 2828 endg., concernant une aide accordee par le Freistaat Bayern a l'entreprise Neue Maxhuette Stahlwerke

Aff. T-9/96 : Europeenne automobile / Commission; Recours en carence tendant a faire constater que la Commission s'est illegalement abstenue de prendre une decision suite a la plainte deposee par la requerante sur le fondement de l'art. 85 du traite CE et de l'art. 3, point 11, du reglement (CEE) no 123/85 de la Commission, et concernant les agissements de la societe Peugeot aupres des concessionnaires de ses filiales etrangeres afin de les empecher d'accepter de vendre des vehicules aux intermediaires francais - Recours en indemnite en reparation du prejudice pretendument cause par le comportement de la Commission

Aff. T-14/96 : BAI / Commission
Annulation de la décision de la Commission de clore la procédure ouverte, en application de l'art. 93, par. 2, du traité CE, suite à une plainte de la requérante relative au soutien financier accordé par les autorités espagnoles en faveur d'un nouveau service de ferries pour le transport de marchandises et de passagers entre l'Angleterre et l'Espagne, exploité par la société Ferries Golfo de Vizcaya, estimant que l'accord en question ne constitue pas une aide d'Etat

Aff. T-16/96 : Cityflyer Express / Commission; Annulation de la décision de la Commission concernant l'aide accordée par la région flamande à la compagnie aérienne belge Vlaamse Luchttransportmaatschappij NV (VLM)

Aff. T-17/96 TFI / Commission
Recours en carence tendant à faire constater que la Commission s'est illégalement abstenue de prendre position sur la plainte déposée par la requérante contre l'Etat français, sur le fondement des art. 85, 90 par. 1 et 92 du traité CE, et concernant les modes de financement des chaînes de télévision publiques FRANCE2 et FRANCE3 - Subsidiairement, annulation de la prise de position sur la plainte éventuellement contenue dans la lettre de la Commission du 11 décembre 1995

Aff. T-18/96 SCK e.a. / Commission
Annulation de la décision de la Commission relative à une procédure d'application de l'art. 85 du traité CE (IV/34.179, 34.202, 216 - Stichting Certificatie Kraanverhuurbedrijf et Federatie van Nederlandse Kraanverhuurbedrijven) ou, subsidairement, déclaration de l'inexistence de l'acte attaqué

BOOKS and PUBLICATIONS

Received by DG IV' s library

The antimonopoly laws and policies of Japan by H. Iyori and A. Uesugi, published by New York: Federal Legal Publications 1994 - ISBN 0-87945-077-0.

Approaching 2000 : the corporation in transition, edited by Dennis Campbell - Deventer: Kluwer Law and Taxation, 1994 - ISBN 90-41-10007-5.

Kommentar zum Kartellgesetz in der Fassung der Kartellgesetznovelle 1993 samt Nahversorgungsgesetz und EU-Kartellrecht by Norbert Gugerbauer (Österreich).

Gli aiuti alle imprese nel mercato unico europeo, by Patrizia Fariselli, Enrico Mantovani - Perugia: Protagon Editrice 1992 - ISBN 88-7891-059-6.

The legal protection of trade secrets by Alison Coleman, London: Sweet and Maxwell. 1992 - ISBN 0-421-47170-0.

Vorbeugender Rechtsschutz im Recht der Europäischen Gemeinschaften by Thomas Jean Berrang. Baden-Baden: Nomos, 1994 - ISBN 3-7890-3577-7.

Taylor and Winsor on joint operating agreements by Michael P.G. Taylor and Sally M. Tyne. London: Longman Law, Tax & Finance, 1992: ISBN 0-85121-854-7.

The mystery of Japanese growth/Ramesh Ponnuru. London: Trade Policy Unit, Centre for Policy Studies, 1995 - ISBN 1-897969-31-7.

Les nouveau maîtres du monde. Renaud de La Baume, Jean-Jerome Bertolus. Paris: Belfond, 1995 - ISBN 2-7144-3253-0.

International direct investment statistics = Annuaire des

statistiques d'investissement direct international / Paris OECD.

Multinationalisatie van Nederlandse dienst-enondernemingen door Pieter Klaas Jagersma. Jagersma Research & Consultancy, 1994.

Monopoly and competition policy edited by F.M. Scherer. Aldershot: Edward Elgar, 1993 2nd volume - ISBN 1-85278-753-8.

State aid: Community law and policy - Staatliche Beihilfen: Gemeinschaftsrecht und Gemeinschaftspolitik = Aides d'Etat: droit et politique communautaires herausgegeben von Ian Harden. Köln: Bundesanzeiger, 1993 - ISBN 3-88784-424-6.

EC shipping law: first supplement to the first edition by Vincent Power. London: Lloyd's of London Press, 1994.

Les entreprises publiques dans l'Union européenne: entre concurrence et intérêt général sous la direction de Bernard Thiry et Jacques Vandamme; CIRIEC International; TEPSA. Paris: Pedone, 1995: ISBN 2-233-00270-9.

Competition and integration: what goals count? EEC competition law and goals of industrial, monetary and cultural policy by R.B. Bouterse. Deventer: Kluwer Law and Taxation, 1994 - ISBN 90-6544-8160-0.

EC competition law source materials by Ivo Van Bael, Jean-François Bellis. Bicester: CCH Europe, 1994: ISBN 0-86325-384-9.

Pratique communautaire du contrôle des concentrations: analyses juridique, économique et comparative: Europe, Etats-Unis et Japon. Laurent Cohen-Tanugi, David Encoua, Antoine Winckler .. - ISBN 2-8041-1991-2.

The Development of a Competitive Internal Energy Market in the European Community by Rüdiger Dohms. Connecticut Journal of International Law - Summer 1994.

Monopolies & anti-competitive practices. A guide to the provisions of the Fair Trading Act 1973 & the Competition Act 1980. Office of Fair Trading 1995.

Umbruch der Wettbewerb-sordnung in Europa. Referate des XXVIII.FIW-Symposiums. 1995.

Schwerpunkte des Kartellrechts 1993/94. Referate des Zweiundzwanzigsten FIW-Seminars 1994. 1995.

The anti-subsidies code of the Uruguay Round transposition in the European Union. 1995.

Loosening the strait-jacket. CBI proposals for reform of the scope and administration of Art. 85. CBI.

Standortfaktor Wettbewerbspolitik - Reformbedarf auf deutscher und europäischer Ebene. Bundesverband der Deutschen Industrie e.V. 1995.

Legislações nacionais de concorrência. (Finlândia, Hungria e Suécia). Direcção-Geral de Concorrência e Preços- 1995.

Die Anwendbarkeit der EG-Fusionskontrollverordnung im Verhältnis zum Fusionskontrollrecht der Mitgliedstaaten von Dr. Thomas Lampert. 1995.

L'Europe de l'utilité publique. Des industries de services publics réno-vées dans l'Europe libérale. 1995.

GATS - Allgemeines Übereinkommen über den Dienstleistungsverkehr. 1995. ISBN 92-827-4228-8.

Pricing. A Behavioural Approach to Abuses of Market Power by Conor Hanly. 1995.

Sicherung des Wettbewerbs im kommunalen Bereich. Referate des Berliner Kolloquiums 1994 und einer Sonderveranstaltung 1994. 1995.

Das Leisungsprofil des Großhandels in Bayern von Bruno Tietz. 1995.

EG:s konkurrensrätt - vägledande domar. Carl Nisser, Anna Carin Krokstäde. 1995.

Aktuelle Rechtsprobleme der Elektrizitätswirtschaft 1995 mit Beiträgen von K. Arnold, R. Dohms, H. Hörtenhuber, W. Pesendorfer, N. Wimmer.

Marktaggressivität und Unternehmenserfolg von Joachim Lücking. 1995.

Polish antimonopoly case law. Tadeusz Skoczny. 1995.

Konkurrensreglerna i det Integrerade Europa (EU/EES). Johan Bärlund. 1995.

▹ INFORMATION SECTION

Rechtfertigungs- und Entschuldigungsgründe im Bußgeldrecht der Europäischen Gemeinschaften von Dr. Markus Wagemann. 1995.

Economic report of the President transmitted to the Congress. Together with the annual report of the Council of Economic Advisers. Washington, DC:USGPO. 1996.

European Law Review. **Competition Law Checklist 1995**. Year 1994 by C. Jones et M. van der Woude, including "Main developments in merger control during 1994" by Juan Briones Alonso

Konkurrensfoerhaallanden : Om foerhaallandet mellan EGs konkurrensraett och nationell Konkurrensraett/Nils Wahl. Stockholm : Juristfoerlaget, 1994.

Droit des affaires de l'Union européenne by Christian Gavalda et Gilbert Parleani.

Praxis der Europäischen Fusionskontrolle von Götz Drauz und Dirk Schröder. Köln. Verlag Kommunikationsforum, 1994.

Global Forum on Competition and Trade Policy. Harmonization of International Competition Law Enforcement. June 1995.

Frankfurter Institut - Stiftung Marktwirtschaft und Politik. **Dauerkrise am europäischen Stahlmarkt -Markt- oder Politikversagen**? von Norbert Berthold. 1994. ISBN 3-8015-044-6.

Handelen med Stål. KonkurrenceRådet 1996.

Les organisations interbancaires en Europe (Moyens et systèmes de paiement). Rapport pour le Conseil National du Crédit. Novembre 1995.

Realkreditinstitutternes Samarbejde med Pengeinstitutter om Formidling af Realkreditlån til Ejerbolig. KonkurrenceRådet 1996.

Aspects juridiques de la concurrence maritime : etude comparative a partir du droit communautaire, de L. Athanasiou, éditions Pédone, France.

Coming up ....

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

EC Competition Policy Newsletter: Summer 1996*, autumn/Winter 1996

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

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

XXV Report on Competition Policy - 1995*

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

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

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

Recueil des décisions sur les aides d'Etat

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

Brochure sur la politique concernant les aides d'Etat

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

Video: Introduction to competition policy*

Survey of the Memeber State National Law Governing Vertical Distribution Agreements*

Interim report of the multimodal group*

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

SHORTLY ON THE INTERNET / BIENTÔT SUR L'INTERNET

EUROPA, the Commission's WWW site (http://www.cec.lu) will shortly contain data on European Community Competition Policy.

▹ INFORMATION SECTION

New procedure for the dissemination of Merger decisions

In conformance with the rules that apply on public access to Commission documents (see *Commision decision of 8 February 1994 on public access to Commission documents (94/90/ECSC, EC, Euratom) in OJ L 46 of 18/02/1994 p. 58*), the Commission is implementing a new system of disseminating Commission's Merger Decisions based on Articles 6 (1) a) and b) of Regulation 4064/89.

Unfortunately, although the introduction of the new system was planned for the 1st of March 1996, it has been delayed until mid-April, mainly for technical reasons.

These decisions will be available:

- in paper form through the document delivery procedures of the Office for Official Publications of the European Communities and its sales agents;

- in electronic form, through the CELEX database containing Community legislation and case law.

The announcement of these decisions in the Official Journal series C will contain the appropriate CELEX document number (necessary to consult the electronic version online).

Several gateways provide access to CELEX, while commercial hosts distribute CELEX under licence either online or on CD-ROM. For more information about CELEX or to receive an updated list of gateways and distributors please contact: **EUR-OP, Information, Marketing & Public Relations**, (OP/4B), 2, rue Mercier, L-2925 Luxembourg; tel. +(352) 2929 42455 fax. +(352) 2929 42763

For countries not covered by gateways and for Universities please contact **EUROBASES** at the following address: **EUR-OP, Eurobases**, (OP/4C, 2, rue Mercier, L-2985 Luxembourg; tel. +(352) 2929 42053, fax. +(352) 2929 42025.

A short manual for extracting Article 6 (1) a) and b) decisions from CELEX is available on request through DG IV's Cellule Information.

More Information ...

The Directorate General for Competition (DG IV) receives many requests with specific questions. While it is impossible, given the resources available, to investigate and reply individually to each one of them, we will do our best to reply as soon as possible. In order to better inform the public on Competition Policy, DG IV produces several publications, available through the Office for Official Publications of the European Union (see catalog on p. 46). We also publish three times a year the ***"EC Competition Policy Newsletter"***, available free of charge. Finally, we can provide copies of speeches by the Competition Commissioner and by officials from the Directorate General. Please address your questions to :

European Commission,
Directorate General IV-Competition,
Cellule Information,
C150 00/158, Rue de la Loi 200
Wetstraat, Bruxelles
B-1049 Brussel, Belgium.
fax(+322) 29 55437 E-Mail: Internet: info4@dg4.cec.be X.400: c=be;a=rtt;p=cec;ou=dg4;s=info4

The members of the Cellule INFORMATION will endeavour to answer your enquiries. If they are unable to do so they will find someone who can. They will not, however, answer questions pertaining to ongoing cases.

Cases covered in this issue

Anti-trust Rules

Commission Decisions

Court Judgements

Mergers

Commission Decisions

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