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The wave of mergers and acquisitions experienced during the last several years in the United States is now on its way to Europe.[1] The Commission of the European Communities ("Commission") recently reported that cross-border mergers and stock purchases of majority shareholdings in the European Community ("EC" or "Community") have surged from 29 in 1983-1984 to 52 in 1985-1986.[2] Acquisitions by non-EC companies, particularly United States and Japanese firms, are also likely to increase dramatically. It was no surprise, for example, that the recent linkage between Nomura Securities, a Japanese company, and Wasserstein, Perella, a spin-off of First Boston Corporation, was intended to give Nomura access to the European market.[3]

The Community has become a field ripe for merger activity largely because both European and non-European companies are keen to position themselves in anticipation of "1992," the target date for the integration of the EC Internal Market. In the absence of a strong, uniform counterweight to this pressure to merge, competition in the Community could suffer or become distorted. Merger mania may mean that stagnant national economies and high unemployment could become the legacy of 1992.

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* Dobson, Sinisi & Associates, Brussels Office. This Article is based on the speech delivered by the author on Sept. 12, 1988 at the Seventh Annual International Antitrust Conference in Cambridge, England. The editors of the JOURNAL would like to thank Mr. Fine for his invaluable assistance in organizing this Symposium.

1 *See, e.g., In Merger Scramble, Companies Redraw Corporate Map of Europe*, Int'l Herald Tribune, Nov. 10, 1988, at 12, col. 1; *"Get Big" the Cry as 1992 Approaches*, Fin. Times, Nov. 21, 1988, at 1, col. 1 (special insert "Top 500: 1988").

2 COMMISSION OF THE EUROPEAN COMMUNITIES, SIXTEENTH REPORT ON COMPETITION POLICY, at 218, point 319 (1987).

3 Fin. Times, July 28, 1988, at 1, col. 7.

The Commission, and, in particular, the Directorate General for Competition ("DG IV"), recognized the need for merger control at the EC level long before the Commission began its initiative to unify the market. In 1973, the Commission submitted to the Council of Ministers ("Council") a proposal for the regulation of large-scale mergers ("Draft Regulation").[4] This legislation aimed to submit to "systematic control" those concentrations which might "prevent effective competition."[5]

Despite the need for EC merger control legislation, the Council of Ministers until now has been divided by national concerns, principally involving claims of sovereignty. The Commission, in turn, has tried to accommodate the Council with amendments in 1981,[6] 1984,[7] and 1986,[8] which have steadily increased the threshold for the applicability of the Draft Regulation.

There is now a great deal of pressure upon the Council to adopt the Draft Regulation, of which the latest draft was submitted to the Council in November 1988.[9] The Council is not only cognizant of the need for EC legislation to confront the expected merger and acquisition blitz in the Community, but it also is being threatened by DG IV's aggressive application of Articles 85 and 86 of the EEC Treaty[10] to mergers.[11] The Commission used Article 86 to prohibit a merger on only one occasion.[12] Until recently, the Commission consistently maintained that Article 85 was never intended to be applied to mergers.[13] In light of these develop-

4 *Proposal for a Regulation of the Council on the Control of Concentrations Between Undertakings*, 16 O.J. EUR. COMM. (No. C 92) 1 (1973).

5 *See id.* at Preamble, paras. 7, 13.

6 *Amended Proposal for a Council Regulation on the Control of Concentrations Between Undertakings*, 25 O.J. EUR. COMM. (No. C 36) 3 (1982).

7 *Amendment to the Proposal for a Council Regulation on the Control of Concentrations Between Undertakings*, 27 O.J. EUR. COMM. (No. C 51) 8 (1984).

8 *Amended Proposal for a Council Regulation on the Control of Concentrations Between Undertakings*, 29 O.J. EUR. COMM. (No. C 324) 5 (1986).

9 *Amended Proposal for a Council Regulation on the Control of Concentrations Between Undertakings*, 32 O.J. EUR. COMM. (No. C 22) 14 (1989)[hereinafter *Amended Draft Regulation*].

10 Treaty Establishing the European Economic Community, Mar. 25, 1957, arts. 85, 86, 298 U.N.T.S. 3, at 47-49.

11 European Report, Part III, at 3 (Mar. 5, 1988).

12 Europemballage Corp. v. Commission, 1973 E. COMM. CT. J. REP. 215, 12 COMMON MKT. L.R. 199. In *Continental Can*, a United States company, Continental Can, established a Delaware subsidiary, Europemballage, for the purpose of acquiring an EEC competitor, TDV. Europemballage, which maintained an office in Brussels, Belgium, subsequently obtained 80% of the shares of TDV. The Commission found that this acquisition infringed Article 86 of the EEC Treaty, because the acquisition amounted to an abuse of Continental Can's dominant position in the Common Market. Although the European Court annulled the Commission decision for lack of evidence, the Court affirmed the exercise of the Commission's jurisdiction. *Id.* at 241-42, 12 COMMON MKT. L.R. at 221-22.

13 *See* COMMISSION OF THE EUROPEAN COMMUNITIES, THE PROBLEM OF INDUSTRIAL CON-

ments, it is likely that the Draft Regulation, in a form approximating that of the April 1988 text, will be adopted by the Council in the coming months. For this reason, it would be useful to analyze the scope of the Draft Regulation.

I. SCOPE OF THE DRAFT REGULATION

The Draft Regulation covers several types of transactions which deal with the control of "concentrations." Article 3(1) of the Draft Regulation defines a "concentration" as a merger or acquisition of control, whether by the purchase of stock or assets "by contract or by any other means of the whole or parts" of one or more companies.[14] As is apparent from this definition, friendly as well as hostile bids are covered. Moreover, a concentration will result from the acquisition of control over a division of a company. The definition of "control," for the purpose of determining whether a concentration has taken place, is a flexible one. Control would result from the ownership of all or part of the assets of another company, from the power to influence the composition or voting of the Board of Directors, or more generally, from the power to manage the affairs of the other company.[15] Joint ventures would not result in a concentration where their object or effect "is the coordination of conduct of *independent* undertakings."[16] Partial mergers, or joint ventures in which the parties cease competing with respect to the products concerned, would be subject to the Draft Regulation.[17]

The foregoing are the types of transactions covered by the Draft Regulation. However, only those having a "Community dimension" are within the scope of the legislation.[18] The test for Community dimension has two parts. The first part is geographical, and the second part is quantitative.

The geographical test may be satisfied by three means. Under the first method, a merger would have a Community dimension if at least two of the undertakings effecting the merger have their "principal field of Community activities" in different Member States.[19] The phrase, "prin-

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CENTRATION IN THE COMMON MARKET 33-36 (1966); COMMISSION OF THE EUROPEAN COMMUNITIES, SEVENTH REPORT ON COMPETITION POLICY 31, points 29-32 (1978)(reporting the Commission's findings on a complaint concerning the European zip-fasteners industry).

14 *Amended Draft Regulation, supra* note 9, at art. 3(1). The scope of this Article extends to "concentrations" within the meaning of Article 3(1). For convenience, the more popular term, "merger," shall be used throughout this Article.

15 *Id.* at art. 3(3).

16 *Id.* at art. 3(2)(emphasis added).

17 *Id.*

18 *Id.* at art. 1(1).

19 *Id.* at para. 10 of Preamble.

cipal field of Community activities," is of vital importance in determining whether a merger would be subject to the Draft Regulation. This term of art, however, has not been defined formally. The Member State of incorporation will probably be irrelevant in determining whether this requirement has been satisfied. The Commission probably will employ a test akin to the "nerve center" test used in the United States. Under this test, the Commission would look to the Member State containing the greatest concentration of the firm's administrative, sales and manufacturing facilities.

The second means of satisfying the geographical test assumes that the parties effecting the merger have their principal field of Community activities within the same Member State. Under these circumstances, the merger would nonetheless have a Community dimension if one of the parties to the merger has "substantial operations," such as a subsidiary or direct sales in another Member State.[20]

The third formula for establishing the geographical part of Community dimension assumes that the companies effecting the merger do not have their principal field of activities in the Community. The merger of such companies nevertheless may satisfy the geographical test where such a merger has an "*effect* within the common market."[21] This third "effects" formula, like the other two, only establishes the geographical side of a two-part test for subject matter jurisdiction. The Commission is not attempting to legislate away the jurisprudence of the European Court on the extraterritorial jurisdiction of the Community. As the reader may recall, in the September 1988 *Wood Pulp*[22] judgment, the Court did not endorse a pure "effects" theory.[23] Rather, it asserted that non-EC companies, having no agents, offices or subsidiary in the Community, could be subject to Community jurisdiction where the agreement or transaction is implemented in the Community.[24] Thus, even though a merger between two non-EC companies having no EC contacts may have effects in the Community, such effects, alone, would appear insufficient to assert personal jurisdiction over the parties.

The implementation of the geographical test, in its present form, would result in a number of logistical problems. These problems stem from the absence of guidelines for the implementation of the test. The large multinational companies typically involved in a merger could have

20 *Id.*

21 *Id.* (emphasis added).

22 Re Wood Pulp Cartel: A Ahlström OY v. E.C. Commission, COMMON MKT. L.R. ANTITRUST SUPP. 901, 940-41 (Dec. 1988).

23 *Id.* at 941.

24 *Id.*

most of its manufacturing facilities in one Member State, its administrative and sales offices in another, and its greatest EC turnover occurring in still a third Member State. In which Member State are the principal activities of the company located? A similar ambiguity occurs in the determination of whether a company has "substantial operations" in a Member State other than the one in which its principal field of activities is located.

The above criticism suggests that the geographical test in its present form is unworkable for the purpose of establishing a cross-border dimension to mergers. In order for the test to operate effectively, this provision needs to be substantially revised or at least supplanted by an explanatory memorandum. An alternative approach may be to determine the locus of a company's EC activities on the basis of the Member State in which the company's EC headquarters, if any, are located and in which the company's greatest EC turnover occurs. If they are not in the same Member State, then each of the two Member States concerned would be deemed the locus of the company's EC activities.

Putting aside the problems inherent in the current formulation of the geographical test, it is clear that this test, with its emphasis on Community activities, could apply to non-EC firms seeking to acquire companies in the Community. Let us take a simple hypothetical where a United States or Japanese company, which we will call Company X, has its greatest EC investment in France where it maintains a subsidiary. Thus, we are assuming that this subsidiary's principal facilities are also in France. Let us further assume that Company X wishes to acquire Company Y, a West German firm whose principal administrative, manufacturing and sales facilities are located in West Germany. If Company X acquires Company Y through its French subsidiary, the merger would satisfy the geographical criteria of the Draft Regulation because the principal field of Community activities of the French subsidiary are in France, whereas those of Company Y are in West Germany. Moreover, jurisdiction could be obtained over Company X by means of the "single economic entity" theory. By this theory, the anti-competitive conduct of an EC subsidiary can be imputed to its non-EC parent where the latter in fact controls the subsidiary.[25]

Let us change the hypothetical slightly by assuming that Company

25 The European Court has affirmed the use of this test in the following cases: Imperial Chemical Indus. v. Commission, 1972 E. COMM. CT. J. REP. 619, 622, 11 COMMON MKT. L.R. 557, 629; Continental Can, 1973 E. COMM. CT. J. REP. at 242, 12 COMMON MKT. L.R. at 221; Instituto Chemioterapico Italiano Spa v. Commission, 1974 E. COMM. CT. J. REP. 223, 253, 13 COMMON MKT. L.R. 309, 342-43.

X will cause its West German subsidiary, Z, to make the acquisition of Company Y. Subsidiary Z has its principal field of Community activities in West Germany and has no facilities, subsidiaries or direct sales outside West Germany. By using this tactic, does Company X eliminate the problem of Community dimension? Or will the Commission look through the transaction and conclude that Company X is the true purchaser? If the Commission can look through the transaction, Company X's substantial contacts in France would create the necessary cross-border dimension. It is unclear whether the single economic entity theory would be an appropriate means of establishing a cross-border dimension to the transaction. It seems likely that the Commission would rely on the theory especially where the acquiring company forms or uses an existing subsidiary in order to circumvent the Draft Regulation. In any case, the single economic theory would be an appropriate means to obtain jurisdiction over Company X.

In a third hypothetical, let us assume that Company X purchases Company Y directly, that is, without using an EC subsidiary as the vehicle for accomplishing the merger. Suppose also that Company X's principal facilities in the Community are located in France. In this scenario, the single economic entity theory may not be appropriate due to the lack of involvement of Company X's French subsidiary in the merger. In both *Continental Can*[26] and *Commercial Solvents*,[27] jurisdiction over the non-EC companies was premised on the use of a subsidiary or controlled company with EC contacts as an instrumentality for the parents' anti-competitive objectives.[28] However, even if the single economic entity theory were inappropriate in this factual setting, the merger is in fact implemented in the Community. In these circumstances, therefore, the Commission would undoubtedly employ the qualified "effects" doctrine recently approved by the Court in *Wood Pulp*[29] in order to obtain jurisdiction over Company X.

Curiously, the current version of the Draft Regulation does not cre-

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26 Continental Can, 1973 E. COMM. CT. J. REP. at 242, 12 COMMON MKT. L.R. at 221-22.

27 Commercial Solvents, 1972 E. COMM. CT. J. REP. at 254, 13 COMMON MKT. L.R. at 343.

28 In *Commercial Solvents*, a United States company, Commercial Solvents owned, at the time of the Commission's investigation, 50% of Instituto, an EEC firm. Commercial Solvents also had a 50% right of representation in the Instituto board of directors. Commercial Solvents, 1974 E. COMM. CT. J. REP. at 226, 13 COMMON MKT. L.R. at 313. However, the president of Commercial Solvents was a voting chairman of the Instituto board. *Id.* These facts established Commercial Solvents' control of Instituto. The Commission attributed Instituto's refusal to supply an important EEC competitor of Commercial Solvents to Commercial Solvents' control of the board. Commercial Solvents subsequently was fined under Article 86. *Id.* at 227, 13 COMMON MKT. L.R. at 318. This infringement was upheld by the Court. *Id.* at 250-54, 13 COMMON MKT. L.R. at 340-44.

29 Re Wood Pulp, COMMON MKT. L.R. ANTITRUST SUPP. at 940-41.

ate a Community dimension for this scenario. Obviously, Company X and Company Y do not have their principal activities in different Member States. Likewise, they could not be classified as having their principal activities in the same Member State but with substantial operation in another Member State. Nor do both Company X and Company Y have their principal activities outside the Community. The problem is that this merger, having one foot inside and the other outside the Community, does not fit any of the Draft Regulation's criteria of Community dimension. This omission was probably unintended and should be remedied in the final version.

The quantitative aspect of "Community dimension" is provided in Article 1(2) of the Draft Regulation.[30] According to this provision, a merger would lack a Community dimension in one of the following three circumstances:

> (a) the aggregate worldwide turnover of all the "undertakings concerned" is more than 1 billion ECU; *and*
>
> (b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than 100 million ECU;
>
> (c) unless each of the undertakings concerned achieves more than 75% of its aggregate Community-wide turnover within the same Member State.[31]

"Undertakings concerned" is a special term, and includes not only the firms effecting the merger, but also those companies which control or which are controlled by the firms effecting the merger.[32]

Several points should be made concerning these quantitative aspects of Community dimension. First, the November 1988 version of the Draft Regulation lowers considerably the threshold requirements of the April 1988 proposal.[33] The April version required at (b) above, that the aggregate worldwide turnover of the undertaking to be acquired be at least 50 million ECU.[34] Similarly, the April version would have excluded a merger from the scope of the legislation where the companies effecting the merger, as opposed to all the undertakings concerned, have 75% of their EC-wide turnover within the same Member State.[35]

Second, regarding the turnover requirement, the turnover to be calculated is not based on the relevant product or products, but instead,

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30 *Amended Draft Regulation, supra* note 9, at art. 1(2).

31 *Id.*

32 *Id.* at art. 5(4).

33 *Amended Proposal for a Council Regulation (EEC) in the Control of Concentrations Between Undertakings,* 31 O.J. EUR. COMM. (No. C 130) 4 (1988).

34 *Id.* at art. 1(3)(b).

35 *Id.* at art. 1(3)(c).

represents all products sold by the relevant undertakings.[36] Third, the Draft Regulation does not account for currency fluctuations. These items should be addressed in the Commission's guidelines accompanying the final draft.

II. Prior Notification Requirement

The geographical and quantitative tests described above determine whether a merger has a Community dimension, and thus falls within the scope of the Draft Regulation. When any merger is within the scope of the Draft Regulation, the Commission must be notified of it prior to its implementation.[37] The rule has no exceptions. The pre-merger notification procedure applies regardless of whether the takeover is friendly or hostile.[38] Failure to notify the Commission of a merger could result in a fine of up to 10% of the aggregate turnover of the undertakings concerned.[39] Significantly, the test of whether a duty to notify arises is different from that of whether the merger is in fact anti-competitive.[40] The size of the fine for failure to notify depends on whether the party or parties deliberately or negligently failed to consider that the merger had a Community dimension. Thus, that the merger in fact has no anti-competitive effects is not a defense to a charge of omission to notify, nor is it a factor in the setting of fines.

The danger of confusing the duty to notify with the evaluation of the merger itself is exemplified by the case of the 25% presumption. Under the Draft Regulation, a concentration is presumed to compatible with the Common Market where the EC market share of the undertakings concerned (thus including affiliates of the parties effecting the concentration) is less than 25%.[41] If a merger satisfies this 25% presumption, it is not exempt from the notification requirement. As explained above, all mergers falling within the geographical and quantitative criteria of the Draft Regulation must be notified by the Commission. This 25% presumption is one aspect of the evaluation given to concentrations already satisfying the threshold requirements for notification.

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36 *Amended Draft Regulation*, *supra* note 9, at art. 5(1).

37 Article 4(1) of the Draft Regulation states that, "Concentrations as referred to by this Regulation, whether or not they form the subject-matter of an agreement, shall be notified to the Commission before they are put into effect." Mergers must be jointly notified by the companies concerned, whereas acquisitions of control must be notified by the acquiring party. *Id.* at art. 4(2).

38 *See id.* at art. 4(1).

39 *Id.* at art. 13(2)(b).

40 *See infra* text accompanying notes 42-48.

41 *Amended Draft Regulation*, *supra* note 9, at para. 15 of Preamble.

III. Appraisal of Mergers

Mergers within the scope of the Draft Regulation are subject to a two-stage examination. During the initial stage, the Commission must decide whether the facts warrant an investigation.[42] The Commission has one month after notification of a merger to make this threshold decision.[43] No time limit applies to the initial evaluations of mergers which come to the Commission's attention via a third party complaint or other sources.

The second phase of the inquiry depends upon a finding by the Commission that a merger is within the scope of the Draft Regulation. In all such cases, whether the Commission is notified of the merger or not, it is required to initiate a formal proceeding in order to establish whether the merger is compatible with the Common Market.[44] The test of compatibility is whether the merger would "*create or strengthen* a position as the result of which the maintenance or development of effective competition is impeded in the common market or in a substantial part thereof."[45] The factors to be considered include the market shares of the companies, the structure of the markets affected, barriers to entry and the effect on supply and demand.[46]

An exemption is available under Article 2(3) for mergers whose benefits may outweigh the anti-competitive effects. The factors to be considered are the contribution of the merger to improving production and distribution, to promoting technical or economic progress or to improving the EC competitive structure.[47] However, a merger satisfying these criteria would only be authorized to the extent that it is not indispensable to the implementation of the merger and does not create the possibility of eliminating competition with respect to a substantial part of the goods or services concerned.[48]

As in the case of the first phase of the inquiry, the Draft Regulation would impose time limits on the completion of the stage involving formal proceedings. Not surprisingly, mergers of which the Commission has been notified are the beneficiaries of these provisions. The Commission must make a decision authorizing the merger as compatible with the Common Market within one month from the date of initiation of the

42 *Id.* at art. 6(1)

43 *Id.* at art. 6(3).

44 *Id.* at arts. 6(1).

45 *Id.* at art. 2(3)(emphasis added).

46 *Id.* at art. 2(1).

47 *Id.*, at art. 2(3). The last of the factors, "improving the competitive structure" seems incongruous with the prerequisite finding that the merger would hinder competition.

48 *Id.*

proceedings.[49] Decisions granting an exemption or prohibiting a merger must be made within four months.[50] No deadlines are fixed for completing an investigation of a merger of which the Commission has not been notified. The lack of deadline reveals the leverage the Commission intends to exert in order to compel notification.

An important aspect of this appraisal procedure are the rules on the suspension of mergers. Mergers falling with in the scope of the Draft Regulation must be suspended pending the Commission's decision on whether to initiate proceedings.[51] If proceedings are opened, the Commission is authorized to extend the suspension of the merger until the Commission makes a final decision.[52] These rules, however, are subject to several exceptions. First, a public takeover or exchange bid may be implemented if the Commission has been notified by the date of its announcement, provided that the acquirer does not exercise the voting rights attached to the shares in question.[53] Secondly, a suspension may be shortened or waived in order to prevent serious damage to one or more of the parties.[54]

IV. Powers of Infringement

The Draft Regulation grants extensive enforcement powers to the Commission. Under Article 8, the Commission may block a merger, order divestiture, or authorize the merger subject to conditions. The Commission may impose fines not only for failing to notify, but also for implementing the merger before the Commission has completed its initial inquiry or subsequent investigation.[55] Similarly, the Commission may fine the parties for implementing a merger in defiance of a decision prohibiting it.[56] The fine in each case, except for failure to notify, may reach a maximum of 10% of the aggregate turnover of the undertakings concerned.[57]

To ensure that mergers within the scope of the Draft Regulation are properly notified and evaluated, Article 10 grants the Commission authority to obtain all "necessary information" from the Member States

49 *Id.* at art. 9(1).
50 *Id.* at art. 9(2).
51 *Id.* at art. 7(1).
52 *Id.* at art. 7(2).
53 *Id.* at art. 7(3).
54 *Id.* at art. 7(4).
55 *Id.* at art. 13(2)(a).
56 *Id.*
57 *Id.* at art. 2.

and from the companies themselves.[58] In addition, Article 12 grants the Commission investigating powers to conduct searches of business premises, to examine books and business records, to "take or demand" copies from such books and records, and to ask for on-the-spot "oral explanations." It may offend the sensibilities of lawyers in the United States to learn that the Commission requires no search warrant under EC law. The reason is that the Commission acts as a hybrid judge and prosecutor. Nevertheless, United States companies with offices in the Community have to live with these draconic powers. To facilitate the enforcement of these rules, the Commission is establishing a Task Force to monitor large-scale mergers.

V. Effects on Other EC and National Antitrust Rules

Assuming that the Draft Regulation is adopted and in effect, how would it affect Articles 85 and 86 and national antitrust laws? Since one of the main reasons for the Draft Regulation is to provide a "one-stop" authorization procedure for large-scale mergers, the Draft Regulation should preempt the application of other antitrust rules, both at the Community and at the national level.

If a merger is within the scope of the Draft Regulation, the Commission would not be permitted to apply Articles 85 and 86. This much is clear from the face of the Draft Regulation. Article 22 strips the Commission of its power to apply Regulation 17, the enforcement arm of Articles 85 and 86. However, Regulation 17 only applies in a Commission investigation. Whether Regulation 17 would prevent the use of Articles 85 and 86 in *private actions* in the national courts is unclear. In any case, the Member States would be prohibited from applying their national antitrust legislation to mergers having a Community dimension, unless empowered by the Commission.[59] Such limited cases would arise where the Commission has found that a merger is compatible with the Common Market.[60] Thus, where the Commission has prohibited or exempted a merger, the Member State authorities could not apply their national antitrust rules to approve the merger.

If a merger is outside the scope of the Draft Regulation, the Commission and the national courts could apply freely Articles 85 and 86. However, due to the huge commitment in resources expected in the en-

[58] In United States practice, Article 10 would be akin to a request to produce documents or to answer questions.

[59] *Amended Draft Regulation, supra* note 9, at art. 20(2).

[60] *Id.* at art. 8(2). The rationale behind this exception is to permit the Member States to regulate mergers affecting national markets.

forcement of the Draft Regulation, the Commission is unlikely to initiate proceedings under Articles 85 and 86. Nonetheless, theoretically the Commission could open proceedings under Articles 85 and 86 since a "Community dimension," as defined in the Draft Regulation, is not necessary under these articles. Similarly, the national authorities are free to apply their antitrust rules to mergers outside the scope of the Draft Regulation. In short, a two-tier system of EC and national antitrust law would continue to apply to such mergers.

In closing, the November 1988 version of the Draft Regulation should be viewed as a later rather than final draft of the legislation. Further modifications are likely of such controversial items as the financial thresholds, the requirement of pre-notification, compulsory suspension and the preemption of national antitrust rules. Nevertheless, the November 1988 Draft Regulation constitutes a meaningful blueprint for the functioning of EC merger control in the event that the Draft Regulation is adopted.